



## People with a disability

# 4

This section of the report discusses our work in reviewing services for people with a disability and their families. In the children and young people section of this report, we have outlined the Ombudsman's broad ranging responsibilities under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-RAMA). These responsibilities mean that we review community services provided to children and young people and their families, as well as people with disabilities and their families.

### Highlights

- Resolved a range of complaints about disability accommodation and support services and facilitated outcomes such as new premises, an increase in staff training, and improved communication and complaint-handling.
- Assisted area health services and disability services to develop protocols and agreements to confirm their relevant roles and responsibilities.
- Started a detailed review of the adequacy of DADHC's actions to identify and meet the needs and goals of 60 people living in nine large residential centres.
- Began a review of complaint-handling in agencies providing services under the DADHC funded community participation program to help service providers better understand and fulfil their responsibilities under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.
- Tabled our *Report of Reviewable Deaths in 2006 Volume 1: Deaths of people with disabilities in care* in Parliament, including eight recommendations for systemic and procedural change.

Figure 26 — Outcomes of formal complaints finalised in 2007–2008 about agencies providing disability services



- Service improvement comments or suggestions to agency (3) **1%**
- Direct investigation (4) **2%**
- Referred to agency concerned or other body for investigation (6) **3%**
- Complaint outside jurisdiction (6) **3%**
- Complaint declined at outset (13) **6%**
- Complaint declined after inquiries (54) **24%**
- Complaint resolved after inquiries, including local resolution by the agency concerned (135) **61%**

Figure 27 — Number of formal and informal matters received in 2007–2008 about agencies providing disability services — by agency category

As a formal or informal complaint may involve concerns about multiple community services program areas, there are more complaints by program area than the 218 formal and 216 informal matters received in 2007–2008.

Agency category	Formal	Informal	Total
<b>DoCS</b>			
Disability accommodation services	3	2	5
Disability support services	7	10	17
<b>Sub total</b>	<b>10</b>	<b>12</b>	<b>22</b>
<b>DADHC</b>			<b>0</b>
Disability accommodation services	135	76	211
Disability support services	58	68	126
<b>Sub total</b>	<b>193</b>	<b>144</b>	<b>337</b>
<b>Other government agencies</b>			
Disability accommodation services	6	1	7
Disability support services	1	3	4
<b>Sub total</b>	<b>7</b>	<b>4</b>	<b>11</b>
<b>Non-government funded or licensed services</b>			
Disability accommodation services	143	73	216
Disability support services	82	32	114
Boarding houses	7	7	14
<b>Sub total</b>	<b>232</b>	<b>112</b>	<b>344</b>
Other (general inquiries)	0	3	3
Agency unknown	0	35	35
<b>Sub total</b>	<b>0</b>	<b>38</b>	<b>38</b>
<b>Total</b>	<b>442</b>	<b>310</b>	<b>752</b>

## Resolving complaints

In 2007–2008 66.5% of the formal complaints we received were about disability accommodation services and 33.5% were about support services for people with disabilities and older people. Disability accommodation and support services are provided or funded by the Department of Ageing, Disability and Home Care (DADHC) (see figure 27).

The most common concerns about disability services raised in complaints were the extent to which services assessed, planned and provided for the needs of people receiving services. This included the provision of appropriate and relevant accommodation placements, and providing for the developmental, health, community access and participation, and other needs of people with disabilities receiving services.

Other issues complained about included:

- services' responses to allegations of assault and abuse in care, particularly for residents of disability accommodation services
- the quality of service management, systems, and staff recruitment, training and support, as they relate to services for people with disabilities.

Agencies supporting people with disabilities are required to plan and deliver services that will meet individual needs. Many of the complaints we received this year were about individual needs not being met. These include the need for behaviour support (see case studies 27 and 28) and for health care (see discussion on page 91).

### Case study 27

Some parents raised concerns about an agency providing accommodation services for adults with disabilities, particularly their ability to manage the difficult and complex behaviours of one resident in the group home. Staff time and attention was increasingly being spent in trying to manage this one resident, and this was impacting on the time staff were able to give the other residents. The complainants also raised their concerns that their complaints to the provider about these issues were not being addressed.

We decided to refer the matter to DADHC to investigate.

DADHC reviewed the home and identified some underlying issues. These included the level of staff training and knowledge, clinical recommendations for clients not being acted upon, inconsistent data collection and incident reporting, clients' health care needs and inadequate complaint resolution.

DADHC recommended to the agency that they:

- consider whether alternative accommodation models would be better suited to meet the needs of each of the service users
- review their complaint-handling policy
- ensure all staff receive induction and training
- review clinical assessment recommendations for clients and develop an action plan to incorporate these recommendations
- review all behaviour management plans and documentation systems.

DADHC advised they will remain involved throughout the implementation of the recommendations.

## Case study 28

An official community visitor had concerns about a group home licensed by DADHC to house residents with severe disabilities or challenging behaviours. At the time the contract was awarded to the agency running the home, the parents of the female resident objected on the grounds that the agency did not meet the criteria and had no experience in the field. There were two men and one woman living there.

Over the next 12-18 months, one of the men and the woman were both violent towards the third resident. The man was also violent towards staff.

On some occasions the house was damaged and the police were called. The male resident who behaved violently refused to take his medication. It appeared that staff did not have the skills or training to deal with his serious behavioural problems.

DADHC only became aware of these issues when we contacted them to discuss how this complaint could be resolved. At a meeting with DADHC and the agency, DADHC agreed to take measures to consider increasing staff ratios, improve the residents' participation in day programs, and better meet the needs of the resident who had been assaulted. In particular, DADHC agreed to look for somewhere they

could move him. The resident was eventually moved after eight months to another home.

After that, the parents of the female resident complained that she continued to feel threatened by the remaining male resident. Very little progress seemed to have been made in controlling his behaviour.

We met with DADHC and they agreed to take over responsibility for the day-to-day functions of the service for at least six months and only house two residents there for the time being. They also agreed to put in place immediate steps to improve the safety and security of residents and staff. During those six months, they would re-assess the needs of the resident behaving violently, look at purchasing or building more suitable premises so that residents could be separated in safety if and when required, and provide training and mentoring to the staff. After the six months was over, they would arrange to provide ongoing training and support.

DADHC agreed to give us quarterly progress reports. So far they have built new premises and provided training. No incidents have been reported since DADHC took over responsibility for the home. We will monitor the handing back of responsibility to the agency later in 2008.

In some complaints, concerns were raised about the support provided by agencies to meet the overall needs of the people with disabilities in their care (see case study 29).

## Case study 29

A rural supported accommodation service for adults with an intellectual disability has been the source of numerous complaints over recent years. Lack of behaviour management plans, inadequate staffing, lack of access to and consultation by management with residents and their families, poorly maintained housing and vehicles, and an inappropriate mix of residents were some of the complaints received from families and official community visitors (OCVs).

We asked the service and DADHC to clarify what they were doing to address these concerns. A particular concern was the decision of the service's parent body not to keep a manager with decision-making responsibilities at the service. When the service was unable to resolve or rectify the problems, we asked DADHC to investigate individual complaints and report back to us. DADHC and the service agreed on an action plan for improving the service's systems and quality of care, including appointing a local manager.

During this time the service's auspice changed twice, although the parent body remained the same. This meant funding agreements and the service improvement action plan had to be renegotiated.

We increased the frequency of OCV visits to the service to obtain first hand information about the impact of the service improvement plans on residents — and compared this feedback with the information from DADHC. The OCV's direct observations of what was happening in the group homes — and discussions with staff and families about their experiences of the service — showed serious problems remained. The OCV told us that the service's management was again restructured and the key local management position was moved out of the area. This was continuing to adversely impact on the quality of care provided to residents.

We wrote to DADHC last year setting out our continuing concerns and they agreed a more holistic approach was needed. They engaged consultants to do a financial audit and quality reviews of each of the group homes. These were finalised earlier this year. The parent agency has since notified DADHC that it will relinquish its auspice of the service — and other services it has auspiced in NSW. We are now monitoring DADHC's planning and management of the transition of the service to the interim and eventual permanent new auspice. We have also arranged for the OCV to visit the service frequently over the next 12 months.

### Case study 30

We received a complaint from the mother of a young man with an acquired brain injury and various other medical conditions about the quality of drop-in support services he was receiving in his home. The family's dissatisfaction arose following a change in the service provider. Their relationship with the new service provider was difficult and we felt this was a matter where conciliation could be useful. Because the young man was not able to be present at the conciliation, we initially met him in his home.

The following day we held a conciliation between the service provider and the mother and daughter of the family. The family was able to articulate their concerns about the services being provided and the difficulties they had communicating their expectations and needs, and the service provider was able to explain their position to the family.

During the conciliation, the service provider made a commitment to consider viable options for resolving the family's issues and report to us on their capacity to address these.

The parties held another meeting approximately two months later to review the effectiveness of new strategies and draft an action plan to address the outstanding issues. The service manager agreed to hold regular phone meetings with the mother, and the key worker organised a fortnightly meeting with the young man to provide feedback on the progress of changes to his service provision.

The service also agreed to provide more training to staff working with the client and develop staff tools, such as a duty checklist and staff information folder. These actions will be reviewed again in three months time and we will continue to monitor the outcomes.

### Case study 31

We recently conciliated a longstanding dispute between an advocacy service and a disability accommodation service provider. The two parties had been in conflict for several years. A key issue was the advocate's perception that the service provider was not promoting or supporting advocacy involvement in the lives of residents with intellectual disabilities. The advocates complained that they were not invited to relevant meetings, had limited access to the service and sometimes to their clients, and were not allowed membership of the service or included in information mail-outs. They argued this stopped them from performing their role effectively.

We first tried to resolve this matter in 2006 with 'shuttle conciliation', as the heads of the agencies would not meet face-to-face. Although an agreement was reached, the advocacy service subsequently decided that the complaint had not provided the outcome they expected and asked for a review.

The outcome sought was not one we could provide. To try to progress this matter, we requested further information from both parties and, despite significant reluctance from both sides, persuaded them to attend conciliation — this time face-to-face.

Through the conciliation, we were able to help the parties reach an agreement that detailed their respective roles and responsibilities, clarified expectations in relation to communication and consultation about resident needs and related decision-making and, importantly, outlined how complaints and disputes would be addressed in the future.

### Case study 32

An OCV approached us concerned about statements made by DADHC representatives during a meeting about the eligibility of a resident in a large residential centre to access an accommodation program for which he had previously been funded.

The question of the man's eligibility was the central issue in two previous complaints to the former Community Services Commission and the Ombudsman in 2002 and 2004. These complaints were closed on the basis that DADHC deemed the man as eligible for the program and committed to meeting with the man's guardian to discuss plans for moving him into the community.

At the time each of these complaints was made, the man explicitly expressed his wish to live independently in the community.

We reviewed departmental files and met with the service provider and the OCV. We met separately with DADHC to discuss the resident's eligibility for the program and his desire to live independently. During these meetings we were able to get an assurance from the department that the man still remained eligible and a project officer would be assigned to develop and implement an exit plan for him to move into the community.

Although in some cases we find the quality of a service could be improved, in other cases a complaint results from a difference between what the individual (or their family) expects and what the service is able to provide. This is often combined with a breakdown in communication. Sometimes complaints arise from disputes between service providers and others who play a role in supporting people with a disability, such as advocacy groups. We can sometimes resolve these kinds of complaints by playing an 'honest broker' role — listening to both sides of the story and trying to bring the parties together to reach a mutually satisfactory outcome. This year we were able to resolve a number of disputes in this way (see case studies 30, 31 and 32).

In 2007–2008 we also resolved a complaint from a father with a disability who was having trouble gaining access to his three children who were living with a relative (see case study 33).

## Meeting health and medical needs

People with a disability who need help and support from community services often have complicated needs. Some critical elements to ensure these needs are met include proper planning, effective communication and cooperation between the agencies involved, and participation from the person and their family or advocate.

One fundamental need is the need for health and medical services. Adequately meeting these needs can require a well-coordinated response from both health and disability services. This is particularly the case if the person's health needs are complex, there are frequent hospital admissions, or their support needs have increased as a result of a decline in their health (see case studies 34, 35 and 37).

### Case study 33

A father with an intellectual disability complained that DoCS was not adequately helping him to see his three children, all under 11 years old. They were removed from his care in 2004 and placed with a family member who subsequently moved interstate.

Final care orders had been made placing the children under the parental responsibility of the family member until the age of 18. These orders provided for monthly contact with the father, to be supervised by DoCS for 12 months. The family member had been planning the interstate move for several months and had tried to arrange access with the father before moving, but he did not agree to the changed arrangements. It seemed clear to us that the father did not understand the nature of the care orders or DoCS' role with his children.

We felt that the best way to resolve the complainant's concerns was for DoCS to meet with him to explain the orders, his rights and their role. We suggested that DoCS should arrange for an independent support person to be present to assist the father.

At the meeting, DoCS explained the court processes that needed to be followed. They told him they were writing a report for the court to recommend that he still be able to see his children because that was in the children's best interests. They also explained the way he could go about asking the court for the current care orders to be changed.

A fortnight after the meeting DoCS contacted the father to make sure he understood what had been explained and to answer any further questions he had. They told us they are still following up these issues.

### Case study 34

In 2006, we reviewed the deaths of two men who had lived together in a regional group home. Both men had very high medical and overall support needs, profound intellectual and physical disabilities, and chronic and complex health issues. They both experienced significant complications associated with their tube feeding, and had been to hospital 13 times in the 12 months before they died.

After our reviews of their deaths, we investigated the adequacy of the response by the disability service and the relevant area health service (AHS) to the critical health issues of both men — and the adequacy of the interagency work undertaken by both agencies to meet their health needs.

We found that actions taken by the AHS were inadequate in relation to:

- assessments to determine whether the disability service would be able to continue to meet the men's needs on discharge
- discharge planning for one of the men, including communication with the disability service about post-surgery care
- working cooperatively with the disability service to clarify agency responsibilities and ensure appropriate support for the two men.

Our recommendations to the AHS referred to existing NSW Health policy requirements about support for people with disabilities during hospitalisation — including the development of area and local protocols with the disability service and training for relevant staff. The AHS has accepted the recommendations and we are continuing to monitor their implementation.

### Case study 35

Information from a hospital social worker raised concerns about the adequacy of mental health support for a young man living with an intellectual disability and a mental health condition in a disability group home. The information suggested that the service was not adequately supporting the young man — based on his repeat admissions to hospital for mental health treatment.

We sought advice from both the treating hospital and the disability residential service about these issues. The information provided indicated that adequate discharge planning was occurring when the young man left the hospital, though there had been some instability in his accommodation situation.

We also noted that communication between the hospital and the accommodation service was often difficult, and ineffective in meeting the young man's needs both while he was in hospital and after discharge.

We suggested that the hospital and the accommodation service develop a protocol detailing their relevant roles and responsibilities, including effective ways of communicating and sharing information. This suggestion was supported by both agencies and we received a commitment that a protocol would be developed.

### Case study 37

A mother complained about the adequacy of care and supervision her son received at a respite facility for people with a disability. The son has physical disabilities, requires daily medication and needs help with personal care. On the second day of his stay, staff found him unconscious in bed. He was taken to hospital where he remained in intensive care for several weeks. The mother alleged the facility had not given her son his medication and had not notified her of the incident.

We found that the facility was not fully informed about the client's support needs, so it was difficult to meet their duty of care. They relied on previous information provided by a brokerage agency, and did not check with the family if the information was accurate and up-to-date. We also found that improvements could be made to their compliance with certain policies and procedures — including health care and medication administration, responding to critical incidents, respite planning and staff communication.

After a meeting with the manager, the facility agreed to review their policies and procedures to clarify what was required to fulfil their duty of care towards clients and to give ongoing training to staff on these. They also agreed to change a number of practices, including obtaining comprehensive and current information about each client and having a staff member with a first aid certificate on every shift.

### Case study 36

A resident of a disability service was admitted to hospital for two weeks and needed additional support while he was in hospital, due to his disability. The disability service organised additional support for the person after what they considered to be a verbal agreement with the hospital. The service complained to us about the hospital's decision not to reimburse them for the additional support they provided during the hospital admission.

We found that — as there was no written protocol or agreement between the hospital or area health service (AHS) and the disability service — the hospital's decision was not inconsistent with NSW Health policy. In response to our inquiries, the AHS advised that they would develop an agreement with the disability service and review their existing policy.

The importance of developing protocols between health and disability services was also illustrated in a complaint we received this year about the provision of in-hospital support to people with disabilities (see case study 36).

## People living in large residential centres

A fundamental part of the NSW *Disability Services Act 1993* (DSA) is the requirement that services meet the individual needs and goals of the people with disabilities they support. Our work in recent years has raised questions about whether, and how well, DADHC does this in their large residential centres. These centres typically accommodate more than 20 residents on one site.

This year we have started a review of the adequacy of DADHC's actions to identify and meet the needs of 60 people who currently live in nine large residential centres. The review has involved audits of files and meetings with DADHC staff, residents and relevant disability agencies. The review is expected to be completed this year.

The NSW Government's 10-year plan for disability services, *Stronger Together*, includes plans to close some large institutions, redevelop others, and develop new models of accommodation services.

This year we sought legal advice about:

- whether the maintenance of institutions or their redevelopment can comply with the DSA
- any particular challenges that would need to be met to comply with the DSA
- 'transition plans' for services that did not comply with the DSA when it was introduced.

The advice we received raises some questions about the nature of compliance and how this is determined. We are having ongoing discussions with DADHC about this issue and the implications of our legal advice for the redevelopment of large residential centres.

## Children with a disability

In 2004 and 2006 we released reports on DADHC's services for children and young people with disabilities. These reports highlighted significant deficiencies in service provision for many families.

This year, we have contracted Early Childhood Intervention Australia (ECIA) to examine:

- programs and services for children with disabilities and the administration of funding
- eligibility criteria for these programs and services
- access of children with disabilities to mainstream/universal services and targeted support services, including early intervention services
- the current system of case management for children with disabilities and their families.

## People with an intellectual disability and the criminal justice system

DADHC is the lead agency for a cross agency Senior Officers' Group (SOG) responsible for improving support for people with an intellectual disability who are in, or at risk of, contact with the criminal justice system.

We have monitored the work of the SOG since 2004, and this year have produced a report on its work over the past three years. This report details relevant developments in the disability services sector and discusses actions taken to improve the operation and accountability of senior officer groups.

Our report highlighted the slow progress of the SOG, and outlined our concern that, while a number of significant initiatives have commenced, key areas of work have yet to be finalised or progressed to a point at which they can be evaluated. Through our recommendation to DADHC, we will continue to closely monitor the progress of the SOG.

## DADHC's Aboriginal policy framework

Last year we reported on our consultations with peak Aboriginal disability bodies about their awareness of DADHC's *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*. These policies are aimed at ensuring that Aboriginal people with a disability and their carers have:

- equity of access and outcomes to DADHC programs and services
- equity of participation in DADHC planning and decision-making.

In June this year we started a review of how DADHC is implementing these policies 'on the ground'. The review will explore the adequacy of consultation mechanisms in place between DADHC, relevant service providers and Aboriginal communities at a local, regional and state level. We will also look at whether these mechanisms are providing Aboriginal people with better access to DADHC's services and the services they fund.

For more details about this review, see page 50 in Chapter 1: Community engagement.

## Social housing tenants with mental health issues

This year we started an investigation into the implementation of the Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing (JGoS). We are examining the steps taken by the Department of Housing and NSW Health to meet the objectives of the JGoS. These are to:

- better assist and enhance the wellbeing of existing social housing tenants whose tenancy may be otherwise at risk
- help housing applicants who may be homeless or at risk of homelessness to successfully establish a tenancy.

For more details about this investigation, see page 31 in 'Our organisation'.

## Reviewing complaint-handling

This year we started a review of complaint-handling in agencies providing services under the DADHC funded community participation program. Our aim is to increase awareness across the sector of the complaints framework established under CS-CRAMA, and help service providers better understand and fulfil their responsibilities under the Act.

Community participation services aim to help young people with a disability to develop the skills they need to work towards their goals, increase their independence, and participate as valued and active members of the community. Many of the young people are from vulnerable groups with culturally and linguistically diverse backgrounds.

We will review 20 services from all DADHC regions plus one statewide service. Many of the services are funded by large organisations, so the review provides an opportunity to implement changes that could have an impact on a large number of service users.

We hope to report on the results of our review by the end of 2008.

## Reviewing deaths of people with disabilities

The Ombudsman's statutory responsibilities include reviewing the deaths of people with a disability living in care and people living in licensed boarding houses.

Our goal is to identify shortcomings in agency policy, systems and practice and make recommendations to prevent and reduce the risk of deaths in future. An advisory committee contributes to our review function. In 2007–2008 the committee met twice. There is a list of the committee members in Appendix M.

### Our annual report

In November 2007 we released the fourth annual report about our work in this area, *Report of Reviewable Deaths in 2006 Volume 1: Deaths of people with disabilities in care*. The report is available on our website.

Between 1 January and 31 December 2006, we reviewed the deaths of 98 people with a disability. Our report highlighted issues such as:

- insufficient management of dementia and risks such as falls and swallowing problems
- inadequate or ineffective first aid responses to critical incidents, and the need for mandatory first aid requirements in all services accommodating people with disabilities
- the need for improved discharge planning by hospitals, including assessing whether the person's health needs can be adequately met in their home environment
- the need for improved service provision for people living in large residential centres — including identifying the needs of individual residents, providing adequate access to the broader community, and ensuring meaningful involvement in decisions about their lives.

We made a total of eight recommendations to DADHC and NSW Health and we are actively monitoring their implementation.

### The deaths we reviewed in 2007

This year we reviewed the deaths of 98 people who died in 2007, including 15 people who lived in licensed boarding houses and 83 people who lived in group homes or residential centres.

We took action in relation to 11 of these deaths, including two matters that we investigated. In eight cases, we prepared a report for the service provider about the issues we identified.

This year's annual report on reviewable deaths of people with a disability in care will be tabled and publicly available later in 2008. It has a particular focus on the deaths of people with Down Syndrome who also had dementia.

In May 2008, we engaged the National Centre for Classification in Health (NCCCH) to analyse both the underlying and contributory causes of 466 reviewable disability deaths between 2003 and 2007. The results of this work will be covered in our annual report on reviewable deaths of people with a disability in care.





## Policing

# 5

We have a long-term commitment to working with the NSW Police Force (NSWPF) to improve the police complaints system. Although overseeing individual matters is a large part of our role, so is monitoring the general effectiveness of the police complaints system. We protect the public interest by making sure individual complaints are effectively handled and by proactively reviewing general complaint-handling procedures and overall system performance.

### Highlights

- Cut red tape in police complaint-handling by introducing electronic delivery of complaint notifications and final investigation reports.
- Evaluated the streamlined complaint-handling trial in 13 NSW Police Force commands and supported its general roll out to all commands, simplifying the management of less serious complaints.
- Identified 328 investigations where there were defects in the investigation or proposed management outcomes. Over three quarters of the identified deficiencies were remedied following our advice to the NSW Police Force.
- Our review of the use of emergency powers to prevent or control disorder, enacted in response to mob violence at Cronulla, was tabled in Parliament.
- Conducted a major survey of defendants in local courts to assess their experience of police searches conducted under the *Law Enforcement (Powers & Responsibilities) Act 2002*.

## The police complaints system

Like other public and private sector organisations, the NSWPF needs to quickly and informally resolve complaints about minor unprofessional conduct by their officers. At the same time, complaints about more serious professional misconduct and corrupt behaviour need to be vigorously investigated — and decisive action taken if they are sustained. This is essential to maintain high professional standards and the reputation of the force.

Figure 28 — The police complaints system

Category of complaint	Description	How the complaint is handled
<b>Notifiable complaints</b> Police must notify the Ombudsman about these matters.	More serious complaints, such as complaints involving allegations of criminal, corrupt or unreasonable conduct.	Police investigate the majority of these complaints and the Ombudsman oversees the investigation.
	This includes conduct that may result in serious management action — e.g. reduction in rank/salary or dismissal — or conduct indicating a lack of integrity.  Some examples of serious complaints include allegations of perjury, involvement in the manufacture or supply of illegal drugs, or police action or inaction resulting in death, injury or significant financial loss.	PIC may investigate or oversee any complaint. In practice, the PIC only does this in a small number of cases.
<b>Non-notifiable complaints</b> Police must record these matters on their complaints information system but need not notify the Ombudsman.	Less serious complaints, such as complaints about poor customer service, rudeness or minor workplace conduct issues.	Dealt with by local commanders without any direct Ombudsman oversight.  We use methods such as audits to examine the way some of these complaints are handled.

New South Wales has a mature and sophisticated police complaints system that caters well for these dual requirements. It has changed considerably over the past three decades since we have had an oversight role and continues to evolve. Currently, the statutory framework in the *Police Act 1990* provides for the majority of complaints to be dealt with directly by police. The more serious complaints are notified to the Ombudsman and we review the adequacy, timeliness and fairness of their investigation and the action taken. We have the discretion to monitor police investigations, seek further information, or ask the Commissioner to review any action taken if we believe it is inadequate. We can also take over a police investigation, initiate 'own motion' investigations, and make reports about police investigations we consider deficient.

We have a class or kind agreement with the Police Integrity Commission (PIC) that specifies the types of less serious complaints that can be handled directly by police, without our direct case by case oversight. Police can decide if these complaints need an evidence-based investigation or can be informally resolved, or if no action needs to be taken. We conduct regular audits to ensure these matters are handled appropriately.

In the past year, we implemented a new class or kind agreement and oversaw the trial and implementation of a new streamlined complaint-handling process. Both initiatives were aimed at making the complaints system more efficient and effective, but still preserving the critical independent oversight role of the Ombudsman. These new procedures have significantly cut 'red tape'. They have also provided a more flexible and responsive system for citizens, internal police complainants and the NSWPF. Figure 28 shows how the agreement works.

### Streamlining the complaints process

Since 2004, we have been encouraging the NSWPF to manage complaints more quickly and informally, without always using their resource-intensive complaint management teams (CMTs).

This year we worked closely with the Professional Standards Command (PSC) to develop and implement a complaints streamlining project. The project was launched in July 2007 by the Ombudsman and Mr Ken Moroney, the former

NSW Police Commissioner. New guidelines were developed for handling less serious complaints and then trialled over a six month period at nine local area commands and four specialist commands across the state.

The trial was monitored by a Complaints Advisory Group (CAG) convened by the Ministry for Police. This group included representatives of the Ministry for Police, the Professional Standards Command, PIC, the Police Association of NSW and the NSW Ombudsman.

Our evaluation of the trial included a comprehensive review of 223 finalised complaints as well as discussions with professional standards officers, executive officers and commanders at participating commands. The guidelines achieved their goals — complaints were resolved more quickly, less resources were used, and appropriate action was taken to address the concerns of complainants.

Importantly, surveys conducted by the PSC of complainants and subject officers revealed increased levels of satisfaction. Commanders and professional standards officers also strongly supported the new procedures.

The NSWPF introduced the new streamlined complaint process across the organisation in May 2008. It includes:

- a triage procedure to provide a more timely and effective assessment of complaints at the outset
- a 45 day timeliness standard for completing less serious complaints — the previous NSWPF standard for complaints managed by CMTs was 90 days
- decreased workloads for CMTs
- reduced administrative procedures for less serious complaints.

After the trial, the CAG supported an amendment to s.141 of the Police Act to allow commanders to consider additional information from complainants and any existing relevant records to determine whether complaints should be investigated or not. This supported the new assessment procedure developed during the trial.

## Maintaining effective relationships with police

The Ombudsman and the police have complementary roles in ensuring that the police complaints system works effectively. To achieve this, we need to build and maintain constructive and professional working relationships. Staff from both our organisations meet regularly to discuss issues ranging from major developments and points of contention to individual complaints.

We also share information about how we do our work. For example, we use our intelligence holdings to provide information to commanders about officers who have complaint histories of concern. This helps commanders to manage those officers more effectively. We also discuss any issues that may have arisen as a result of our consultations with community groups.

This year we visited 11 commands — Coffs/Clarence, Cootamundra, Wagga Wagga, Flemington, The Rocks, Rosehill, St Marys, Lake Illawarra, Brisbane Water, Macquarie Fields and Barwon. We also regularly talk to student police officers at the Police Academy about the features and ethical underpinnings of the complaints system.

*“The introduction of the streamlining strategy has proven to be an efficient and timely method of dealing with complaints.”*

*“The feedback I have received indicates the new process is not only a great improvement on the previous process, but it is also seen as being a lot fairer by subject officers.”*

*Complaints streamlining has “taken a lot of pressure off the Exec Officers and CMT.”*

*“The process has reduced the time for complaints making it a better/fairer process for both — the subject officer and complainant.”*

*“Great improvement in time and satisfaction with the process.”*

## Police complaints this year

During 2007–2008 there were over 15,000 police officers in the NSWPF. They attracted approximately 5,000 complaints from the public and their own colleagues. The most serious complaints were investigated and directly oversighted by the Ombudsman, while the police directly handled the remaining complaints as local management issues using more informal methods.

Figure 29 — Formal complaints about police received and finalised — five year comparison

	03/04	04/05	05/06	06/07	07/08
Received	3,565	4,179	3,753	3,466	2,969
Finalised	3,316	4,367	3,833	3,555	3,254

Figure 30 — What people complained about

Subject matter of allegations	No of allegations
Arrest	223
Complaint-handling	213
Corruption/misuse of office	473
Custody/detention	225
Driving related offences/misconduct	150
Drug related offences/misconduct	225
Excessive use of force	1,115
Information	913
Inadequate/improper investigation	1,232
Misconduct	1,616
Other criminal conduct	461
Property/exhibits/theft	373
Prosecution related inadequacies/misconduct	321
Public justice offences	286
Public servants	31
Search/entry	179
Service delivery	1,586
<b>Total</b>	<b>9,622</b>

This year we received 2,969 formal or written complaints. These came either directly from the public or as notifications from police or referrals from the PIC. We also received 2,994 informal complaints by telephone or in person. We dealt with these by providing advice and referral information.

We finalised 3,254 formal complaints. The drop in notifiable complaints reflected in figure 29 is a direct result of changes to the class or kind agreement. This raised the threshold of seriousness and diverted more complaints to police for handling as local management issues.

We declined to investigate a percentage of the complaints we received for various reasons. For example, there could have been an alternative and satisfactory means of redress — such as raising allegations in court if they were directly related to charges. We reviewed 2,082 individual complaints that were fully investigated or conciliated by police. Of these 1,752 or 84% were considered to be satisfactory. However in 328 matters (16% of all investigated or conciliated matters), we found that the investigation itself — including its timeliness or the management action taken in response to the findings of the investigation — was deficient. Following our advice, the NSWPF remedied over three quarters of the identified investigation deficiencies and proposed management outcomes.

Figure 31 — Who complained about the police?

This figure shows the proportion of formal complaints about police officers made this year by fellow police officers and from members of the general public, compared to the previous four years.



Overall, 72% of complainants who police contacted at the end of investigations reported they were satisfied with the action police took about their complaint. However this figure may not be reliable, as in 22% of applicable cases the police were unable to contact the complainant or they failed to advise their level of satisfaction.

Figure 30 shows the type of issues raised in the complaints finalised this year. Appendix A breaks down each issue into the specific allegations made and the action taken.

Of the serious complaints we directly oversighted this year, 1,913 were made by members of the public and 1,056 (or 36%) were made by other police officers — either internally or directly to us. Compared to the previous year, the percentage of complaints made by police decreased marginally by 1% (see figure 31). The fact that such a high percentage of complaints against police are generated by their colleagues indicates a healthy professionalism and intolerance for misconduct by serving police and is a very positive reflection on the health of the complaints system.

### Outcomes

Figure 32 shows the type of action we took in response to complaints finalised during the year. There were 1,983 complaints investigated by police and reviewed by us. We also reviewed the informal resolution of 99 additional matters. We decided that 490 of the complaints we received were local management issues and referred them back to police to be resolved at a local level.

We decided 682 complaints did not require any action at all. Some of the incidents were too remote in time, in others the conduct complained about would be dealt with in upcoming court proceedings, or sometimes there were other alternative and satisfactory ways to resolve the grievance.

This year more than half of the 2,082 police investigations and conciliations we reviewed resulted in some form of management action. The most common action taken was formal counselling, followed by official reprimands or commander's warning notices (see figures 33 and 34).

In some cases, a police officer is charged with a criminal offence during or at the end of an investigation. This year 49 officers were charged with a total of 136 offences. There was a 26% decrease in the number of charges laid against serving officers in comparison to the previous year. See figure 35 for a five year comparison of charges against police arising from complaints. Figure 36 lists the type of charges laid against police. Compared to the previous year, there was a noticeable decrease in the number of charges relating to domestic violence and sexual assault matters.

In addition, as a result of complaints, the appointment of one probationary constable was terminated and 23 police were dismissed from the force during the year. See case study 38 for an example of a serious complaint that resulted in an officer being removed from the force.

Much of the more serious management action resulted from internal police complaints. Sixty five per cent of the officers charged with criminal offences as a result of complaint investigations involved complaints made by other police officers. Similarly, more than 75% of the referrals of officers to the Internal Review Panel for reviewable management action resulted from officers' complaints.

### Performance indicator

#### Percentage of our reports about police complaints that made recommendations relating to law, policy or procedures

Target	2007–2008
70%	75%

### Performance indicator

#### Percentage of our recommendations in formal reports implemented by the NSW Police Force

Target	2007–2008
80%	91%

## Contributing to the quality of complaint investigations and outcomes

Under the current statutory framework, the police are responsible for investigating and dealing with the vast majority of complaints about their officers. Our role is to make sure the whole complaints system works well and to review the more serious complaints on a case by case basis.

If we identify deficiencies, we send detailed advice to the NSWPF outlining our concerns. This year, in response to such advice, the NSWPF remedied 76% of the identified investigation deficiencies and 83% of the proposed management actions identified as deficient.

Figure 32 — Action taken in response to formal complaints about police that have been finalised — three year comparison

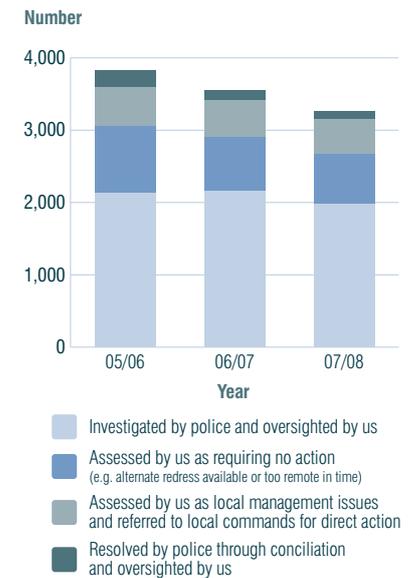


Figure 33 — Action taken by the NSW Police Force following complaint investigation — five year comparison

	03/04	04/05	05/06	06/07	07/08
No management action taken	1,072	1,480	895	936	837
Management action taken	606	960	1,236	1,221	1,146
<b>Total investigations completed</b>	<b>1,678</b>	<b>2,440</b>	<b>2,131</b>	<b>2,157</b>	<b>1,983</b>

### Case study 38

In the early hours of a Sunday morning, two male police officers pulled over a woman for a random breath test. The woman took the test and was over the 0.05 limit. It was alleged that one of the officers told the woman that if she performed a sexual act on his colleague, she would not be charged. The other officer then got in the car with the woman and there was apparently some interaction between them. The woman was then allowed to leave the scene without being charged. As a result of the police complaint investigation, the officers were charged for attempting to pervert the course of justice and making a collusive agreement with a member of the NSWPF. One of the officers has resigned and the other was dismissed.

Figure 34 — Common NSW Police Force management outcomes to complaints about police

Type of management action taken against police officers as a result of investigation of complaints 2007–2008	Percentage
Management counselling	36%
Official reprimand/warning notice	15%
Additional training	10%
Performance agreement	7%
Coaching/mentoring/referral to specialist services	6%
Change in policy/procedure	5%
Increased or change in supervision	4%
Transfers	4%
Removal under s.181D	3%
Reduction in rank/seniority	3%
Restricted duties	3%
Formal apology	2%
Deferral of salary increment	1%
Compensation paid	1%
<b>Total</b>	<b>100%</b>

### Case study 39

A supervisor became aware that a five page fax had been inappropriately sent to an external address. The fax contained confidential information from the COPS system about the registration details of a vehicle. The officer who sent the fax was spoken to and could not adequately explain why it had been sent.

Later the same day, the officer created a false intelligence report stating that the owner of the vehicle in question was involved in car rebirthing.

The officer then sought advice from a colleague who advised her, if questioned to lie about the circumstances of the matter. This second officer was also involved in the matter and had accessed the COPS details in relation to the same vehicle.

Both officers were untruthful when subsequently interviewed. The second officer later admitted that he had colluded with the first officer in supplying a false account of the circumstances surrounding the access and dissemination of the information.

Both officers eventually admitted that the information from the COPS system had been supplied to a friend who was interested in purchasing a vehicle.

The first officer was removed from the NSWPF due to the integrity issues that the investigation had identified. Police proposed that the second officer be transferred to another command.

We raised concerns about the adequacy of the management action in relation to the second officer. The NSWPF subsequently agreed to take further action and the officer's pay increments were reduced a number of levels.

This is a very positive response rate, given that a number of matters may not be capable of direct remediation due to time and other reasons.

Case studies 39 to 43 provide examples of deficient investigations or outcomes that were remedied after our advice.

### Monitoring investigations

We usually do an initial assessment of a complaint and then check the quality of the investigation once it has been completed. In some cases, we also monitor investigations while they are being conducted. For example, we observe interviews with complainants, witnesses and officers or review investigation records progressively during the course of the investigation. In both cases, we liaise with the police investigators to make sure all relevant lines of inquiry are fully considered.

This year we used our monitoring powers to closely scrutinise 17 investigations while they were in progress.

Monitoring investigations is one of the ways we keep the standards of the complaints system under scrutiny. Often, the complaints we choose to monitor involve complainants from vulnerable groups who have communication difficulties or are fearful of police. Sometimes there are other public interest reasons for closer scrutiny of the police investigation. For example, this year we closely monitored an internal police complaint about a critical incident in which a suspect was shot while being apprehended.

### Improving the police complaint-handling system

We are committed to working with police to improve the efficiency of the complaint-handling system. Apart from the major streamlining trial, this year we implemented a number of other reforms to achieve this.

### Class or kind agreement

On 1 June 2007 we finalised a new class or kind agreement under s.122(2) of the Police Act. It was aimed to achieve two key outcomes. Firstly, to ensure that allegations of criminal and other types of police misconduct raising integrity issues continue to be notified to us and subjected to rigorous oversight. Secondly, to allow police commanders to manage a wider range of less serious matters more informally — without our direct oversight.

During its first year of operation, the agreement resulted in a drop of over five hundred complaint notifications from the previous year.

Preliminary assessments by the PIC, our office and Professional Standards Command all indicate that the agreement has been operating effectively.

## Identifying deficiencies in police investigations

This year we audited a sample of 157 police investigations that we had assessed as being deficient. We wanted to identify any common features and find out if the outcomes changed as a result of our feedback.

The most common deficiency was the failure to pursue relevant lines of inquiry — such as interviewing key witnesses, reviewing COPS accesses or entries, reviewing CCTV material and following up information to check statements made in directed memoranda or interviews. Failing to identify key issues in the complaint — as well as policy or procedural issues that need to be addressed as a result of an investigation — were the next most common deficiencies we identified.

The NSWPF remedied a high percentage of the deficiencies we identified in individual cases. We will be preparing a report about these common deficiencies to help educate investigators.

## Detrimental action complaints

Historically, police in most jurisdictions have been reluctant to report misconduct by their colleagues. In recent years this has changed significantly for the better in NSW. However, there remains a constant challenge to provide a supportive ethical environment — backed by strong policies and procedures — in which officers can have the confidence to make a complaint without the fear of retribution.

It is an offence to take detrimental action against an officer because they made a protected allegation under the Police Act or a protected disclosure under the *Protected Disclosures Act 1994*. These are important whistleblower protections. This year we conducted a review of cases involving detrimental action to assess how well these protections are operating.

Our review showed that much of the detriment suffered by internal police complainants and witnesses is caused by their work colleagues. Detrimental action was generally taken in response to allegations of serious misconduct being made. It included bullying, harassment, verbal abuse (direct and to other officers), undermining of the officer to their staff and others, ostracism at the workplace, 'pay-back' complaints or a combination of these. A common and disturbing feature of the cases was the significant stress suffered by the officers victimised.

Figure 35 — Police officers criminally charged — five year comparison

	03/04	04/05	05/06	06/07	07/08
No. of complaints leading to charges	54	78	65	63	50
No. of officers charged	52	81	64	60	49
<b>Total charges laid</b>	<b>95</b>	<b>155</b>	<b>101</b>	<b>184</b>	<b>136</b>
Officers charged following complaints by other officers	40	63	51	48	32
% of no. of officers charged	77%	78%	79%	80%	65%

Figure 36 — Types of charges

Type of charge	Number of charges	Proportion of total
PCA and other driving related offences	14	10%
Assault	16	12%
Criminal conduct — other	79	58%
Sexual assault	4	3%
Fraud	2	1%
Public justice offences	11	8%
Drug offences	1	1%
Domestic violence related	1	1%
Dangerous/culpable driving	8	6%
<b>Total</b>	<b>136</b>	<b>100%</b>

## Case study 40

Police were called to an 18<sup>th</sup> birthday party that had got out of hand. There were a few hundred young people in attendance, some heavily intoxicated. As the police were in the process of closing down the party, the complainant and some friends arrived and were told to leave. As they were walking to their cars, some police called them names and started jostling them to hurry up. The complainant became concerned when police pushed one of his friends. He took a photo on his mobile phone and when the police spotted this, they tackled him to the ground and demanded the phone. The complainant claimed he was kneeed in the back and an officer stood on his ankle, resulting in injuries. The police let him go when they confirmed the photo had not been saved.

The police admitted they detained the youth because they thought he was committing a criminal offence by photographing them. They claimed the ankle injury was accidental as they had all fallen down during the incident.

We identified deficiencies in the investigation of the complaint and an error of law. As a result, a memo was distributed throughout the command involved reminding police that it is not an offence to take photographs of police in the execution of their duties.

### Case study 41

A young person was involved in a police pursuit. After the car crashed and he absconded on foot, police eventually arrested him. When the young person did not comply with police directions, a degree of force was used to restrain him. The young person had minor injuries and was taken to the police station where he was strip searched. When he later arrived at a detention facility, he complained that police had assaulted him.

Police investigated the allegation and made no adverse findings. We were concerned that the youth may have been strip searched unlawfully. Police must have reasonable grounds to conduct a strip search. However, an internal custody document that was regularly used at the station concerned appeared to specify that strip searches should be routinely conducted in all circumstances. We raised our concerns about this document with the commander and he agreed with our view. The commander advised that the document would be amended to ensure that strip searches are not considered a routine practice for people in custody.

### Case study 42

Police had been involved in a car pursuit when they momentarily lost sight of the vehicle. They later spotted what they thought to be the same car. Two men were ordered out of the car by the police, who had their guns drawn. The men were handcuffed and made to lie on the ground until the officers realised that this was not the car they had been following. The officers immediately apologised to the men and explained their mistake.

A solicitor complained about the way the men had been treated by police and asked for them to be financially compensated for the trauma they had suffered.

Police investigated the complaint and we asked them to provide further information about the incident. We noted that a number of standard operating procedures had not been followed. As a result of this additional information, we accepted the police had made an honest mistake when arresting the men. We felt a written apology was appropriate in the circumstances. Police agreed and provided one to both men.

### Case study 43

A complaint was made that an officer was acting as his fiancé's 'pimp' and that she was working as a prostitute at a brothel. It was also alleged the officer had a second job as a panel beater for which he did not have approval.

Police investigated and found that the officer was doing unauthorised work as a panel beater. They also found he had failed to declare a conflict of interest in relation to his fiancé's employment. The officer was counselled about this and given advice and guidance about not associating with people in his private life that may subject him to a professional risk. The officer advised his commander that he no longer lived with his fiancé.

The officer had a significant complaint history and, when we made some further checks, we found that he and his fiancé had registered a business with a suggestive name that was described as an 'automotive consultancy'. However, we also identified a website that advertised the business as a male and female escort service catering for couples. Both escorts had 'working names' and the female's name was the same as the officer's fiancé. The site included suggestive photos of the male escort with his face partially obscured.

We asked the police to make further inquiries about this new information. One of our concerns was that the officer may have been untruthful during the investigation. We also asked police to consider if the officer was the male escort in the photos. The

investigator then advised that the sex industry is not defined as a 'high risk' industry in the NSW Police Force's secondary employment policy, and thus was not a matter for Professional Standards Command to investigate. Because of our concerns about the obvious risks associated with this matter, we then met with the investigator. When he was shown the photos, the investigator immediately identified the officer as being the male escort.

Police made further inquiries and found that the officer had signed the business registration document and was a co-proprietor. The officer claimed he did not know his photos were being used on the website, although his mobile phone number was listed on it. He also told police that he was no longer in a relationship with his fiancé. He was living with her in a one bedroom flat, but paying her rent to sleep in the sunroom. Police found that the officer was untruthful in his original interview and that his engagement in the sex industry was unauthorised secondary employment.

Although the investigator felt that the officer's untruthfulness was 'at the lighter end of the scale considering the nature of this investigation', we felt significant management action should be considered. We contacted the officer's commander who shared our concerns. The matter was sent to the Internal Review Panel (IRP) and a reviewable order under s.173(2) was recently served on the officer advising him that his conduct and integrity was unsatisfactory and improper. Police also reduced him to a lower pay level.

Of the 26 cases we reviewed, 29% were considered to have been unsatisfactorily investigated — a deficiency rate more than three times higher than the general pool of police investigations. Problems included confusion about legislative requirements and difficulties proving that detrimental action had actually occurred or was ‘substantially in reprisal’ for making a protected allegation or disclosure. Cases involving detrimental action generally took substantially longer to investigate than other internal police complaints. A troubling finding was that none of the cases reviewed led to a charge being laid under either the Police Act or the Protected Disclosures Act, or made a clear finding that detrimental action had occurred. In most matters, no management action was taken in relation to the behaviour suspected of being detrimental action.

There are significant problems with the interpretation and practical application of the legislative protections for whistleblowers. There are also no protections for people who forward on a complaint, act on behalf of a complainant, or are mistakenly identified as having made a protected disclosure or allegation.

There is a need to create a simpler and more effective legislative framework and have clear and practical police procedures to better deal with ‘pay-back’ complaints and detrimental action. We are in the process of refining a discussion paper on detrimental action with suggestions for reform.

## Recording false or vexatious complaints

The Police Act allows the Ombudsman, the Police Integrity Commissioner and the Commissioner of Police to develop protocols about the information recorded on the police complaints information system, c@tsi.

This year a new memorandum of understanding was introduced about complaints considered to be frivolous, vexatious or not made in good faith. With the agreement of the Assistant Commissioner Professional Standards and the Assistant Ombudsman, specific complaints like this can be registered on c@tsi without the name of the police officer who is the subject of the complaint.

False and vexatious complaints can harm the complaints system by causing unnecessary investigations and unfairly bringing the work of honest officers under suspicion and causing them stress. In appropriate cases, we support police in taking appropriate action against people who make false complaints. Case study 44 describes one of the cases this year where a complainant was successfully prosecuted for making a false accusation.

## Case study 44

A woman was arrested and charged with a number of offences after a violent altercation. She was convicted and sentenced to a term of imprisonment. She appealed the severity of her sentence and lodged a complaint alleging criminal conduct on the part of the police during the incident.

The allegations included a number of physical assaults on the woman, and the capsicum spraying of herself and her nine year old daughter in the eyes during the incident. She further alleged that police assaulted her six year old son with batons before arresting her and another 14 year old son. The woman claimed that police refused to provide her and her son with refreshments, blankets or phone calls after they were taken into custody, her son was interviewed without her consent, and police failed to contact a legal representative on her behalf. It was alleged that both the woman and her son had physical injuries as a result of the incidents that took place.

The investigator found no evidence to support any of the woman’s allegations. The woman was given eight opportunities to provide more details to the police investigator, including giving a statement in the company of her solicitor, but she did not cooperate on any of these occasions. Custody records showed she ate meals and a number of phone calls were made on her behalf, including to a local solicitor. The woman was also visited by a close relative. An ambulance officer who de-contaminated the woman and her son from the capsicum spray at the station did not find, or hear them complain of, any injuries. A friend who stayed in the woman’s house and looked after the other children — including the six and nine year old who police had allegedly assaulted — confirmed she did not witness anyone being assaulted and the children had no injuries. A probation and parole officer, who interviewed the woman on two occasions after she pleaded guilty to the original charges, confirmed she raised no issues about police assaulting her or her children or having any injuries as a result of the altercation and arrest.

As a result, the woman was charged with making a false accusation. A two day hearing involving evidence from police and civilian witnesses resulted in her being convicted and sentenced to a 12 month bond. Police are appealing that conviction on the grounds that it is an inadequate sentence.

## Evaluating the effectiveness of the CARA protocol

The Complaint Allocation Risk Appraisal (CARA) process helps police to decide if complaints should be managed locally or transferred to another location for investigation. It involves assessing risk factors — such as whether the command or the investigator has any conflict of interest that may affect the fairness or effectiveness of the complaint investigation. Police began using CARA in March 2007.

This year, together with the PIC and the NSWPF Professional Standards Command, we reviewed 100 investigations to check compliance with the CARA process and see if the process would benefit from any changes.

Overall, we found that most commands were using CARA appropriately. However, all three agencies agreed that changes could be made to the process to improve accountability and transparency. These changes relate to the requirement for commands and investigators to document how an identified conflict of interest will be managed.

As a result of the audit, a tri-agency report with a number of recommendations to improve the effectiveness of CARA is currently being prepared.

## Delivering reports electronically

In July 2007, we successfully developed and deployed a new system for the electronic delivery of police complaint notifications in cooperation with the NSWPF. The electronic system operates on a secure network and means that police no longer have to send us new complaints in hard copy. This saves police resources and means we receive new notifications more promptly.

In 2008, we extended the system to include the electronic delivery of complaint investigation reports. Again, this provides the NSWPF with substantial resource savings. We have made further improvements to the system by allowing additional documents to be sent without the need to resend the original report.

## Maintaining the integrity of the police complaints system

As well as overseeing individual investigations, we regularly review the overall effectiveness of the complaints system by conducting regular compliance audits.

## Auditing local management issues

The class or kind agreement under the Police Act allows police to deal with less serious complaints directly, without the involvement of the Ombudsman. These matters are recorded on the police complaints system as local management issues. We regularly inspect police records to ensure the complaint provisions of the Act are being followed. One aim of our audits is to ensure only less serious matters are being treated as local management issues and that the issues raised are being appropriately addressed.

A particular focus of our 2007 audit was to examine whether the new class or kind agreement — which started in June 2007 — was working successfully. We examined more than 1,400 matters and found a high level of compliance with the notification requirements. We raised only 13 matters with police that we considered should have been notified, but hadn't been. The police agreed to notify all of these after we asked them to reconsider their original assessment decisions.

## Monitoring delayed investigations

Undue delay in investigations can result in complainant dissatisfaction and added stress for police officers. We have a long standing policy of systematically identifying untimely investigations and raising them with police through meetings between the Assistant Ombudsman and Commander of the Professional Standards Command. As a result, the number of delayed matters has steadily declined. This year we are satisfied that the overall numbers of delayed matters has reduced to such a level that we have agreed — with Professional Standards Command — to trial having identified delays dealt with directly by middle managers.

## Case study 45

A man was searched by police during a drug detection dog operation at a nightclub, but no drugs were found. The man complained about police infringing his privacy by recording his personal details from his driver's licence without consent. The man was also concerned about the impact of being publicly searched by police in front of work colleagues.

As a result of a previous complaint, and our review of the *Police Powers (Drug Detection Trial) Act 2003*, the NSWPF had already acknowledged that they did not have the power to obtain personal details from belongings during a search in which no offence was detected.

We reminded police of this and they apologised to the man and removed his details from the incident record in COPS. In addition, they amended policies and procedures to ensure that officers are aware that there is no power to obtain or compel a person to provide details when no offence has been detected.

## Monitoring reviewable actions and observing panels

Some complaints result in serious management sanctions such as removal from the police force or reductions in rank or seniority. These matters are managed by employee management and are referred to a police internal review panel for consideration. The panels provide expert advice to commanders and the Commissioner on appropriate sanctions to ensure they are fair and proportionate.

We began regular audits of the timeliness of these matters in 2007. Since then police have introduced a number of changes aimed at reducing delay. This has included outsourcing some of the work involved to a private law firm.

We continue to closely monitor the process and outcomes. Our staff regularly observe the work of the internal review panels so they have a full appreciation of the involved decision-making that occurs. We will also be participating in a review by the Complaints Advisory Group of Part 9 of the Police Act, which deals with the management of misconduct and unsatisfactory performance.

## Improving our internal procedures

We regularly review the quality of our own complaint-handling and oversight work.

## Checking our monitoring process

The Ombudsman has the power to monitor a complaint investigation if we think it is in the public interest. In 2007 we negotiated a new agreement with police setting out a protocol for how we will arrange and conduct these monitored investigations.

We conducted an audit of monitored investigation files to see if the new arrangements were working successfully. The audit found that we were complying with the terms of the agreement and that, in most cases, our monitoring was positively contributing to the overall quality of the investigation.

## External quality review of a random sample of files

Over the last two years we have engaged external consultants to closely examine a random sample of completed complaint investigation files that involve allegations of serious police misconduct. The purpose of the reviews was to find out if:

- We made appropriate assessments of the adequacy of complaint investigations and the management actions taken by the NSWPF.
- We took appropriate action in matters where the actions taken by the NSWPF were identified as deficient.

The previous review was done by a barrister with significant experience in police misconduct matters. This year the review was conducted by a retired NSW Police Chief Superintendent. It concluded that:

*The overall quality of the Ombudsman's oversight of these matters displayed a great attention to detail and a very thorough analysis of the material provided by NSW Police. Indeed the case officers showed the consistent ability to detect deficiencies in investigations which needed to be readdressed by the investigators. The deficient investigations reviewed were very good examples of the ability of the case officers to analyse and correct shortcomings and also to praise competent investigators who have carried out a thorough investigation.*

## Research and projects

### Examining the use of Tasers

Use of force by police regularly generates complaints. It also places police and the public at risk and is often the cause of injuries and police sick leave. Getting operational procedures for the use of force right therefore benefits both the police and the community. In the past, we have examined the police use of capsicum spray. This year we undertook a major project that examined the police use of conducted energy devices, commonly known as Tasers. Although in use by the NSWPF since 2002, there was a significant spike in their use in 2007. Our decision to review the use of Tasers was also driven by an emerging public concern about their use and increasing demands from police to equip all officers with Tasers.

We did an international literature review and closely examined all incidents where police had used Tasers between May 2002 and February 2008. We tracked the medical treatment given to people who had been 'Tasered' in these incidents. We also examined the standard operating procedures and training given to officers and interviewed officers who used the Tasers.

During our investigation, the Minister for Police announced the roll out of a further 229 Tasers to duty officers and supervisors and the training of a further 2000 officers in their use.

We found the police use of Tasers in NSW had been responsible to date, because they were used by specialist and well trained officers. Even so, Tasers were ineffective in more than a quarter of the incidents in which they were used. In the report, we identified improvements that need to be made to police standard operating procedures and training and outlined the risks involved in their use. We also called for further monitoring, especially given the plan to roll Tasers out to some general duty officers. Once our report is tabled in Parliament it will be available on our website.

## Working with Aboriginal communities

Our work with police and Aboriginal communities across the state continues to focus on trying to resolve issues at a local level — improving Aboriginal access to quality policing services and helping police implement effective initiatives and reforms.

An important part of our role is to identify and support local police efforts to create and strengthen genuine partnerships with Aboriginal people and organisations. With the help of our Aboriginal Unit, we also work with the Commissioner of Police and the NSWPF Aboriginal coordination team to ensure that local initiatives receive the support they need.

Increasingly, crime prevention partnerships and other local initiatives involve police working closely with agencies such as community services, probation and parole, health and education. Together, they plan and implement coordinated strategies to address child abuse and sexual assault, domestic and family violence, substance abuse and other issues that impact on community life. Community organisations and other non-government agencies with responsibilities for providing outreach services, emergency accommodation and other essential services are also an important part of developing local solutions.

### Aboriginal Strategic Direction audits

Last year we finalised our four year program of audits of 36 local area commands to assess the implementation of the NSWPF's *Aboriginal Strategic Direction 2003–2006*. At the end of 2008 we will start monitoring implementation of the new *Aboriginal Strategic Direction 2007–2011*. The new policy includes specific objectives requiring police to focus more closely on developing effective strategies to deal with sexual assault and Aboriginal substance abuse. Both require police to foster closer links with agencies that can help them address these issues. Our audits will focus specifically on progress in improving outcomes in relation to these two new objectives.

### Child sexual assault

To help us develop our audit strategy, we met with the Department of Aboriginal Affairs to gain an understanding of their coordinating role for the *NSW Interagency Plan to tackle child sexual assault in Aboriginal communities*. Given the sensitive and complex nature of the subject matter, we also consulted with 233 people from communities in 30 towns across NSW to seek their input about our proposed audits. We gathered information about the impact of child sexual assault on the community, and discussed current and proposed strategies and support services.

Our consultations highlighted some key challenges, including the need:

- for police and the community to work in a more unified way to address child sexual assault and substance abuse in their local communities
- to encourage Aboriginal communities to talk about child sexual assault — the issue is overwhelmingly still not being discussed
- for awareness/education programs and empowering community members to make a stand and speak out against child sexual assault
- to increase the knowledge of community members about available services and programs, and make these services more culturally appropriate or accessible.

Although the NSWPF has a clearly defined role, they are only a small part of the overall picture. Our future audits may need to include the many mainstream organisations that provide services to Aboriginal people.

## Police Aboriginal Strategic Advisory Committee

The Police Aboriginal Strategic Advisory Committee (PASAC) is the main forum for showcasing good practice police work with Aboriginal partners at a local and corporate level, and for raising and addressing any impediments to improving police work in Aboriginal communities. It has also proved an effective avenue for tracking progress on other police work — such as the long-awaited *Aboriginal Employment Strategy 2008–2011* that brings together a number of police initiatives to promote Aboriginal school retention and employment opportunities. Our 2005 report to Parliament, *Working with local Aboriginal communities*, highlighted the value of linking Aboriginal employment and training programs with targeted crime prevention strategies and other police priorities. Our participation in PASAC helps us track progress on various youth diversion, school retention and youth mentoring programs, models for coordinating domestic and family violence investigation and prevention initiatives, and other police work with Aboriginal people.

## Special Commission of Inquiry into Child Protection Services in NSW

Our submissions to the Special Commission detailed a number of important opportunities for police and other agencies to play a more active role in linking Aboriginal communities with the programs and services needed to address long-standing issues and improve outcomes for Aboriginal children. These are set out in our submissions on interagency cooperation and Aboriginal communities. For more details about these submissions, see Chapter 3: Children and young people.

For more details about our work with Aboriginal communities, see Chapter 1: Community engagement.

## Policing domestic violence

This year we continued to closely monitor the implementation of the recommendations in our 2006 special report to Parliament, *Domestic violence: improving police practice*. In mid 2007, the NSWPF established a steering committee to oversee the implementation of the recommendations. It included separate working parties focusing on human resources, standard operating procedures, legal issues, and education and training. We attend regular meetings of the committee and provide detailed advice and feedback where appropriate. For example, we have commented on new draft standard operating procedures, revised domestic violence liaison officer position descriptions, and reviewed proposals for locating 35 new positions targeting domestic violence.

### How our recommendations have been implemented

In December 2007, we wrote to the Commissioner of Police to commend the progress police had made in implementing our recommendations. This progress includes:

- A significantly expanded domestic and family violence team within the NSWPF to better develop and monitor the capacity of police to respond to domestic violence. The team became operational in April this year and will have a particular focus on responding to repeat offenders.
- A comprehensive review of all domestic violence training for police. New courses have been developed for general duties officers and domestic violence liaison officers and these have begun to be delivered. A new course for supervisors and another focusing on Aboriginal family violence are being developed. Police in 'high risk' commands will be required to undertake annual domestic violence training.

- The introduction of and recruitment for a new domestic violence prosecutions coordinator position. This position is responsible for developing, trialling and monitoring good prosecution practices, providing expert legal advice to prosecutors, monitoring the overall quality of briefs and reasons for failed prosecutions, and providing training to prosecutors.
- The progressive rollout of domestic violence evidence kits, and associated standard operating procedures, to all commands to help police investigate and prosecute domestic violence.
- The development of new and comprehensive domestic violence standard operating procedures (SOPS). The SOPS were due for release earlier this year but were delayed following the announcement of the Wood Inquiry into Child Protection Services in NSW. The inquiry is likely to impact on police procedures in relation to child protection — a key aspect that police must consider when responding to domestic violence — but we have encouraged the NSWPF to consider releasing the new SOPS in electronic form as soon as possible, with a temporary caveat on those sections addressing child protection issues.

Since the tabling of our report in Parliament, new domestic violence legislation has also been introduced. Among other things, the *Crimes (Domestic and Personal Violence Act) 2007* includes provisions to better protect children affected by domestic violence. Part 9 of the Act requires the court to include any child in a domestic relationship with the adult as a protected person under any apprehended domestic violence order (ADVO) taken out on behalf of that adult, unless there are good reasons for not doing so. The Act also includes measures to protect children during ADVO court proceedings.

## Our ongoing role

Half of the recommendations in our report have now been implemented by the NSWPF. We are closely monitoring their progress in implementing the remainder. Of particular importance are our recommendations that they develop a good practice framework for commanders and a publicly available code of practice. We have had a number of detailed discussions with police about the basis for these recommendations and have communicated our views about what the framework and code should include. We have also participated in several meetings with the NSWPF and other relevant agencies about developing a cross agency domestic violence risk assessment tool.

In March 2007, the Premier announced funding for 35 new police officers to target domestic violence in 'high risk' areas. The positions will become operational in 2009–2010. In feedback to the NSWPF about their proposed locations for these officers, we have emphasised the need to take a range of factors into account. These factors include the particular needs of regional and remote locations, per capita rates of domestic violence, communities in which domestic violence is known to be highly under-reported, and the needs of communities with significant Aboriginal populations.

In September this year we addressed a domestic violence stakeholder forum convened by the NSWPF to explain our ongoing role in monitoring the implementation of our recommendations. At this meeting, NSWPF sought the views of stakeholders about the development of a domestic violence code of practice. They also provided information about how they are ensuring that police officers respond appropriately to domestic violence situations when there is a need to correctly identify the 'primary aggressor'. We have had a number of discussions with the NSWPF about this issue, based on information and concerns communicated to us by stakeholders, and have emphasised the need for police to be provided with advice and training that adequately addresses it.

## Domestic homicide review process

We support the establishment of a domestic homicide review process in NSW. We believe that such a process has the potential to improve the collective understanding and knowledge of agencies, including the NSWPF, about how domestic homicides come to occur and what strategies and practices may reduce the risk of them happening. There have been a number of domestic homicides this year and renewed calls for a review process to be introduced. We have recently written to the Premier to reiterate our support for a domestic homicide review process and ask for information about the progress of the government's consideration of such a process. We will continue to monitor developments in this area.

## Reviewing legislation

### Current legislative reviews

Since 1998, Parliament has asked the Ombudsman to review the implementation of more than 20 new laws. Our review function requires us to look closely at the agencies and people affected by certain new laws to check that the powers are being exercised in a proper, fair and effective manner. If we identify any problems or inconsistencies with the use of the powers, we make recommendations to the appropriate minister. See Appendix B for a list of our legislative review activities in 2007–2008.

During the year, we worked on six legislative reviews of laws conferring new police powers.

### Review of emergency powers to prevent or control disorder

In September 2007, we provided the Attorney General and the Minister for Police with a report on our 18 month review of the exercise of powers conferred on police officers under the Part 6A emergency powers inserted into the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Part 6A gives police emergency powers to deal with actual or threatened large-scale public disorder. These powers were enacted in direct response to violence that occurred at Cronulla, Sydney on 11 December 2005 and the reprisal attacks in the southern and eastern suburbs of Sydney in the days that followed.

Since then, the Part 6A powers have been used on just four occasions. Our review found that police acted in a responsible and appropriate manner on these occasions. However as some powers are yet to be used at all, the operational value of all the provisions and their possible shortcomings could not be fully evaluated. We concluded that certain changes should be considered if Parliament decides to retain the powers.

The 14 recommendations in our report aimed to improve fairness to the community and the effectiveness of police. They included proposals to:

- Strengthen safeguards, especially for when and in what circumstances the powers could be used.
- Provide much clearer direction on when — and for how long — police can shut down liquor outlets, allow people to enter or leave a lockdown area and seize vehicles, mobile phones and other items.
- Clarify police authority to seize items such as sporting equipment and other everyday items that could be used as weapons during a riot.
- Provide police with clearer direction on seizing and returning vehicles and mobile phones.
- Simplify the recording requirements.

We also recommended the ongoing review of future uses of these 'extraordinary' powers.

The NSW Government supported almost all of our recommendations. The only one not supported was a proposal for police to apply a 'reasonable suspicion' test in determining who should be searched in a lockdown area. The government reasoned that the powers would rarely be used and that other safeguards, including ongoing Ombudsman oversight of the powers, would be sufficient to address the concerns raised.

Updated Part 6A legislation was introduced in Parliament in December 2007. It included a requirement that the Ombudsman 'keep under scrutiny' any exercise of powers and report annually on this work.

Immediately after the introduction of the legislation, we implemented interim reporting arrangements in which police agreed to advise us of any uses of the powers. In January 2008, we proposed arrangements to facilitate the provision of information about uses of Part 6A powers. By the end of June 2008, the NSWPF had not yet provided us with a formal response to this proposal.

There have been no further uses of the power up to the end of the reporting year.

## Terrorism reviews

In 2005, Parliament added two new parts to the *Terrorism (Police Powers) Act 2002* providing for preventative detention orders and covert search warrants. Under Part 2A, a person can be detained by court order for up to 14 days to prevent — or preserve evidence of — a terrorist act. Part 3 allows the NSWPF and the Crime Commission to carry out covert search warrants to prevent or respond to a terrorist act.

We consulted widely with the agencies directly involved in these changes — including the police, the Department of Corrective Services, the Department of Juvenile Justice and the Crime Commission. We negotiated information exchange agreements, monitored police implementation, attended relevant meetings, inspected records and observed detention facilities. In April 2007 we published an issues paper and received 34 submissions from government agencies, interested organisations and individuals.

To ensure procedural fairness and accuracy, we sent a consultation draft of our report on the exercise of covert search warrant powers and our interim report on preventative detention orders to the relevant agencies in February 2008. Final comments were not received till July. We issued our report to the Attorney General and Minister for Police in September 2008.

## Drug detection trial

This year we finalised our review of the *Police Powers (Drug Detection Trial) Act 2003*. This Act gives police the power to set up roadside check points in outer metropolitan areas of NSW and randomly stop and screen vehicles with drug detection dogs. A senior police officer may authorise a drug detection operation if there are reasonable grounds to suspect that an area is being regularly used to supply prohibited drugs and there is suspected criminal activity.

We monitored the use of the legislation for the first 12 months of operation and provided our report detailing research activities, findings and recommendations to the Attorney General, Minister for Police and the Commissioner of Police in June 2008. It was tabled in Parliament on 21 August 2008.

## CINs review

This year we started a review of the penalty notice provisions of the *Criminal Procedure Act 1986*. These provisions extend the criminal infringement notices (CINs) scheme that was previously trialled (and reviewed by the Ombudsman) in 12 local area commands. The scheme gives police the option of issuing an on-the-spot penalty notice to adults for certain minor offences such as offensive language, offensive conduct and some stealing related offences.

This review requires us to scrutinise the impact of the CINs scheme on Aboriginal and Torres Strait Islander communities.

We are in the process of analysing CINs data from the NSWPF, and have begun conducting consultations on the impact of CINs with a range of key stakeholders — including police and Aboriginal and Torres Strait Islander community workers in regional and metropolitan areas. Submissions from the public will also be invited. For more details about this review, see Chapter 1: Community engagement.

## LEPRA

Between 1 December 2005 and 30 November 2007, we reviewed the implementation of certain parts of the *Law Enforcement (Powers and Responsibilities) Act 2002*. The police powers under review were those relating to personal searches on arrest or while in police custody, the establishment of crime scenes, and the provisions regarding notices to deposit-taking institutions to produce documents.

During the review period, we conducted focus groups with a wide range of police in the 13 local area commands we visited — and interviewed, surveyed and met with various stakeholders, interest groups and specialist policing units. We also observed police doing their work to gain valuable insight into the practical operation of the legislative provisions under review.

We anticipate that our final report on the exercise of these powers will be delivered to the Minister for Police and the Attorney General in the latter part of 2008.

## Survey of people facing charges

As part of the LEPRA review, we also undertook some important research which involved surveying people facing charges in the local and Children's Courts. We wanted to find out about police searching practices from the perspective of those who had experienced them first hand. A team of 18 Ombudsman staff conducted 463 surveys at 12 local and two Children's Courts between September and December 2007. The survey contributed to our review of the LEPRA powers, but also raised many issues beyond the scope of the review which provided us with other areas for possible investigation in the future.

## Achieving positive results

In 2005, we began to systematically monitor the implementation of the recommendations in our legislative review reports. This year, we examined the implementation of 119 recommendations made to the NSWPF since we began the monitoring project. We found that police have either implemented, partially implemented, or are in the process of implementing 80% of these recommendations.

A further 62 recommendations — involving operational policing practice made in our reviews of the *Crimes (Forensic Procedures) Act 2000* and the *Law Enforcement Legislation Amendment (Public Safety) Act 2005* — are to be addressed by whole-of-government responses that are in the process of being finalised.

The provisions in relation to internally concealed drugs were repealed, effective from December 2007. This was the main recommendation of our legislative review of the *Police Powers (Internally Concealed Drugs) Act 2001*, tabled in Parliament in November 2005.

We have also been monitoring the implementation of recommendations made to other NSW government agencies. Since 2005, we have made 43 recommendations to the Department of Corrective Services — 77% (33 of 43) of these have been implemented, partially implemented, or are in the process of being implemented. The Department of Juvenile Justice has implemented, or is in the process of implementing, 79% (11 of 14) of our recommendations to them.

## Witness protection

The witness protection program was established under the *Witness Protection Act 1995* to protect the safety and welfare of Crown witnesses and others who have given information to police about criminal activities. The Ombudsman is responsible for hearing appeals about the exercise of certain powers and handling complaints from people participating in the program.

## Appeals

The NSW Commissioner of Police has the power to refuse someone entry to the witness protection program or remove them from the program. A person directly affected by such a decision can appeal to the Ombudsman. The Ombudsman must determine an appeal within seven days of receiving it and our decision overrides the Commissioner's decision. This year we received no appeals under the Act.

## Complaints

Every person taken on to the witness protection program has to sign a memorandum of understanding with the Commissioner of Police. This memorandum sets out the basic obligations of the participant and includes provisions such as:

- prohibitions from engaging in specified activities
- arrangements for family maintenance, taxation, welfare or other social and domestic obligations or relationships
- matters relating to their identity
- the consequences of failing to comply with the provisions of the memorandum.

The Witness Protection Act states that witnesses must be informed they have a right to complain to the Ombudsman about the conduct of police in relation to any matters covered in the memorandum.

Historically, we have received only a few complaints from participants in the witness protection program. When complaints have raised systemic issues, the police have responded positively and resolved those issues. This has contributed to the noticeable improvement in the management of the program and a related decrease in the number of complaints we receive. This year we dealt with only two complaints related to the program.





## Juvenile justice 6

We recognise the particular difficulties young people — and especially those in detention have in making complaints. We therefore do our work concerning juvenile justice a little differently. Young people in detention do not need to write to us to complain. We can take an oral complaint from them over the telephone or in person. We regularly visit all juvenile justice centres, taking complaints and talking to detainees about what we do. We also talk regularly to senior staff at the Department of Juvenile Justice to make sure we are aware of any particular problems or significant changes that are planned. Letters between our office and a young person in detention attract professional privilege which means they cannot be opened or read by anyone else.

### Highlights

- Made 17 visits to juvenile justice centres in NSW, visiting each of the eight full-time centres twice and the part-time centre once.
- Consulted with police, juvenile justice staff, solicitors, magistrates and the Children's Court about overcrowding issues in centres and changes to the *Bail Act 1978*.
- Produced a fact sheet for Department of Juvenile Justice staff explaining the type of complaints we handle and how we deal with them, and the important role staff can play in resolving complaints at a local level.

## Complaint trends and outcomes

This year there was an increase in both formal and informal complaints (see figure 38). While the majority of complaints from detainees continue to be received on visits or over the phone, there has been a 50% increase in the number of formal complaints we have taken this year. This is largely due to our increased focus on improved service delivery to young complainants. Rather than requiring a young person to write to us, we will now take an oral complaint over the telephone. We conducted 99 preliminary investigations this year as a result of formal complaints received, up from 49 last year.

Figure 37 — What people complained about

This figure shows the complaints we received in 2007–2008 about juvenile justice centres, broken down by the primary issue that complainants complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Probation/parole	0	1	1
Mail	0	3	3
Community programs	0	1	1
Child abuse related	0	0	0
Case management	3	5	8
Transfers	1	12	13
Enforcement	0	0	0
Records/administration	2	2	4
Fail to ensure safety	4	1	5
Daily routine	22	73	95
Food and diet	4	19	23
Visits	13	10	23
Issue outside our jurisdiction	0	5	5
Unfair discipline	14	21	35
Day/other leave/works release	1	5	6
Object to decision	2	0	2
Legal problems	0	2	2
Segregation	1	4	5
Security	0	3	3
Other administrative issue	7	23	30
Information	3	3	6
Officer misconduct	9	25	34
Customer service	0	0	0
Buy-ups	0	1	1
Work and education	2	8	10
Property	5	8	13
Medical	6	8	14
<b>Total</b>	<b>99</b>	<b>243</b>	<b>342</b>

Figure 38 — Five year comparison of matters received and finalised

Matters	03/04	04/05	05/06	06/07	07/08
Formal received	25	19	41	49	99
Formal finalised	25	21	44	47	98
Informal dealt with	318	216	257	219	243

Figure 37 gives a breakdown of the issues complained about. The majority of complaints were about daily routines in centres, food and diet, visits and discipline. Problems are likely to have arisen more often this year due to the overcrowding experienced in juvenile justice centres. While department and centre staff have worked hard to manage the increased numbers, it is not surprising that this situation has resulted in more complaints (see 'Numbers in custody' for more detail).

### A typical visit

There are nine juvenile justice centres in NSW. Eight are full-time and one operates on a needs basis. This year we made 17 visits, going to each of the full-time centres twice and the part-time centre once.

We arrange a visit a few weeks ahead with the manager of the centre. We send posters advertising our visit for display around the centre and detainees are told they can put their names down to see us or approach us on the day. Generally two staff go on each visit and this often includes an officer from our Aboriginal Unit. Sometimes someone from our workplace child protection area also attends.

When we arrive at the centre we talk to the centre manager and other senior staff about how the centre is going, any particular problems or challenges they are dealing with, and any issues that might be raised with us during the day. We interview the detainees who have put their names down to see us in a private interview room so they can speak freely.

We also inspect the centre's accommodation units, common areas, holding rooms, rooms used for strip searches, and program and activity areas as well as the gym and sports facilities. While we are inspecting the centre, we talk to any detainees who want to chat to us and can arrange to talk with them privately if appropriate. Sometimes we also talk to the Justice Health nurse or visit the school.

The operation of centres is tightly regulated and staff are required to document many of the tasks and procedures that occur every day. For example, if a young person misbehaves staff must complete a report detailing the nature of the misbehaviour and who was involved — and recommend a punishment from among those set down in legislation. This is then considered by a more senior officer and a final decision made. Similarly if a young person is

placed in segregation or force is used, a report must be completed. We inspect a random sample of these records during our visit to gain additional information about how the centre is operating on a day-to-day basis and to check that staff are being appropriately supervised.

Before we leave, we meet with the centre manager again to go through the complaints raised by detainees as well as broader systemic issues we have identified during our day at the centre. We confirm these issues in writing and ask the centre manager to report back to us on action taken. Often complaints are about issues common to all institutions such as food, clothes and visits. Other issues raised with us this year include young people requesting transfers to a centre nearer their family, delays in gaining a place in a centre school, and complaints about unfair punishments.

## Case study 46

Following a phone call from our office, centre staff arranged for a young detainee to be placed under close supervision for his own safety. The young man had telephoned us about being bashed by other detainees and was scared. He said he had not told anyone about what was happening because he did not want to be a 'snitch'. We explained the centre could not help him unless he told them what was happening. He agreed we should call the centre and ask a member of staff to see him. The centre called us back to confirm they had done this. They had not been aware the young person had been having any problems. As well as talking to the detainee, they had looked at the CCTV footage in the unit. While the footage did not show him being hit, staff were satisfied he was genuinely fearful and arranged for him to be closely supervised.

## Fact sheet for juvenile justice staff

During visits to juvenile justice centres, we often talk to youth officers and a number of times this year we have been invited to speak with groups of new staff about our work. As a result of these discussions, we realised that few centre staff knew about the broad range of functions we have. Indeed, many thought that detainees could only talk to us about complaints concerning juvenile justice. To address this we have produced a new fact sheet for staff who work for the Department of Juvenile Justice explaining the type of complaints we deal with, how we deal with them, and how they can support young people to make complaints. The fact sheet emphasises our focus on resolving matters as informally as possible at a local level, as well as the important role staff can play in resolving complaints (see case studies 46, 47 and 48).

## Numbers in custody

Over the last two years there has been an increase in the number of young people in custody. We have reported on this trend in our last two annual reports. This year the problem of overcrowding has become acute.

Although it is a court that decides a young person should be placed in custody, the Department of Juvenile Justice is responsible for accommodating them. Each juvenile justice centre is designed to accommodate a particular number of detainees. When there are more than this, young people may have to sleep on mattresses on the floors of other detainees' rooms or in holding, admissions and interview rooms. Accommodating additional detainees in this way has a range of possible consequences including:

- an increase in minor misbehaviour and an increase in the seriousness of punishments being given
- an inability to accommodate detainees near their families
- delays in starting new unit based programs
- delays in getting places in school, including for young people of compulsory school age
- a shortage of escort staff to take detainees to medical appointments
- lack of holding room space for detainees who need to be confined or segregated
- increased pressure on resources, including bedding and clothes
- a significant use of overtime, leading to staff tiredness and irritability.

## Case study 47

This year we received a call from a detainee in a juvenile justice centre to complain that he could not make any legal calls as the detainee automatic phone system was blocking him. He told us he spoke with unit staff and nothing had happened. We immediately telephoned the centre manager who found a problem with the system affecting all detainees at that centre. The manager resolved the problem by providing detainees with alternative phone access to make legal calls while the technical problem was fixed.

## Case study 48

Instead of wasting more time looking for paperwork he realised had been lost, a youth officer acted promptly to resolve a detainee's complaint that he had heard nothing about his request for his cousin to be approved as a visitor.

The young person told us he had asked about his application a number of times but staff had told him he would just have to wait. The detainee had done the right thing in trying to resolve the problem with the centre first. As this had not worked, we called the centre and asked what was happening with his application. The officer who looked into it could trace the paperwork up to a certain point, but then it seemed to have been lost. To solve the problem he got the detainee to complete a new application, emailed the form to his juvenile justice officer for approval, and hand delivered the request to the centre manager for sign off. This was all done within 24 hours and arrangements were then made for the cousin to visit at the weekend.

Overcrowding increases the risk of serious incidents occurring. There are particular risks associated with detainees sharing rooms, especially when they have been recently admitted to a centre and their behaviour is not well known.

Juvenile justice has a focus on programs and meaningful activities. The ability of centres to provide these is severely tested by the extra numbers in spaces not designed to hold so many people.

In the course of our work we have consulted with police, juvenile justice staff, children's solicitors, Children's Court magistrates and officers of the Children's Court to better understand the reasons for the increased numbers in custody. There is general agreement that the increase has

been caused by a number of factors, particularly changes to the *Bail Act 1978* which make it more difficult for some young people to get bail and the proactive policing of compliance with bail conditions.

Although measures are now being put in place — somewhat belatedly — to provide additional beds, we remain concerned at the adequacy and appropriateness of some of the arrangements. We will be closely monitoring what happens in the centres.

## Transfers to an adult correctional centre

Recent amendments to the legislation concerning children in detention mean that certain categories of detainees over the age of 18 may be transferred to an adult correctional centre. The existing legislation permitted some over 18 year olds to be moved from a juvenile justice centre to the adult corrections system. The changes have added some new grounds — and therefore potentially increased the number of young people aged between 18 and 21 who will be accommodated in an adult prison. We will be closely monitoring the implementation and impact of these changes.

## Changes to the incentive scheme

This year the Department of Juvenile Justice has started to roll out a new incentive scheme. Incentive schemes are based on the idea of a token economy and used as a means of behaviour management. Previously each centre had its own scheme with differing ways of calculating rewards. The new system means common terms will apply in all centres, making it much easier for detainees who move between centres. It also places much more emphasis on improving behaviour. Weekly meetings must be held with each detainee to discuss their behaviour and to set targets for the coming week. In the past, we have been critical of a sometimes blurred line between incentive schemes and the disciplinary system. Although the new scheme is in its infancy, early reports seem positive. We will continue to monitor the new scheme through our visits to centres and general complaint-handling work.



## Corrections

# 7

In an environment of ever increasing prison populations and the resulting impact on the resources and the staff of the Department of Corrective Services (DCS), the role of the Ombudsman as an independent oversight body is critical to ensuring that inmates, their families and friends have an avenue through which to raise issues and make complaints. Sometimes people think our role is to advocate for inmates, but that is not the case. As with our work across all NSW government agencies, we are an advocate for good public administration. In the context of the corrections system, this means administrative practices that result in a fair, reasonable and humane correctional system.

### Highlights

- After our inquiries, the Department of Corrective Services reviewed their compassionate leave policy and procedures to include the involvement of the Aboriginal Planning and Support Unit and allow for the approval of compassionate leave at a regional level.
- Made suggestions to devise and adopt appropriate timeframes for responding to inmate applications for classification reviews, and these were accepted and implemented by the Commissioner of Corrective Services.
- Spent 167 days visiting 28 different correctional centres around NSW, meeting with inmates and staff.
- Visited the High Risk Management Unit every six months and raised concerns about the management of inmates with mental health issues.
- Worked with Justice Health to address issues such as behaviour management and poor access to dental services.

The Ombudsman Act makes provision for people who are detained by a public authority to have direct access to the Ombudsman to make a complaint. It specifies that contact between a person in custody and the Ombudsman must be outside the ordinary security restrictions that cover inmate contact with other people. This is a clear indication from the lawmakers of our state of the importance of an independent, external complaints system for inmates — one that ensures that any complaint they make, regardless of its seriousness, will be independently and effectively considered and appropriate action taken. A correctional centre is a very closed environment and it can be a difficult decision for an inmate to make a complaint about the actions of people who control every aspect of their daily life. This makes our role as an independent oversight agency especially important.

To provide independent and effective action on complaints, we have a team of staff who deal only with complaints and issues relating to the correctional system. As the number of people who spend some time in custody in NSW continues to grow — in June 2008 there were approximately 9,800 people being held in correctional centres and court cells across the state — a specialised team has proved to be the most efficient way to manage the many thousands of contacts we have from inmates, their families and friends. Most of these contacts relate to the conduct of the Department of Corrective Services (DCS), the GEO Group (that operates Junee Correctional Centre) and Justice Health. We also receive complaints from many of the 18,000 or so people who come under the Community Offender Services arm of DCS. This covers parole supervision, periodic detention, home detention and community service orders.

Our staff understand the complex environment of correctional facilities and spend significant amounts of time inside the centres speaking with inmates and staff to resolve issues and improve processes and procedures. Their familiarity with relevant legislation, policies and procedures means they can often provide immediate advice and clarification on issues brought to them. Many times this means that a formal complaint is not made, as the inquiry can be resolved right away.

In the past year, changes have been made to the way we work with the official visitors who are appointed by the minister to go to correctional centres and interview staff and inmates about complaints. We have always regarded our contact with official visitors as fundamental to ensuring that the complaints of inmates are monitored. Although official visitors have no capacity to investigate complaints as we do, they are a vital resource for both inmates and our office. Our reduced access to official visitors has the capacity to diminish the system of oversight in the NSW correctional system.

## Complaint trends and outcomes

The complaints and inquiries we receive in the corrections area range from complaints about food and access to treatment programs to serious allegations of criminal or other misconduct. Our objective is to resolve each complaint cooperatively, in consultation with the department and the inmate.

More serious allegations however may be investigated in a number of ways, and we can use our own motion investigative powers if we become aware of an issue that causes us significant concern.

This year we made a series of inquiries with DCS using our own motion powers, after identifying trends in a number of contacts and complaints we were receiving. Often, the complaints or inquiries we received were relatively minor when taken on their own. However once the contacts were analysed, certain common issues were identified and we needed to make further inquiries. The following sections show the range and complexity of the issues and complaints we deal with in the corrections area.

Despite a continuing increase in the number of people in custody, overall complaint numbers remained relatively stable when compared to 2006–2007.

However, the proportion of matters we received as formal complaints increased by 38% (see figure 39). A significant number of these formal complaints were made to us by phone.

As can be seen in figure 41 (see over page), the main areas of complaint involve the daily routine in correctional centres as well as property, visits and transfers. There has been a considerable increase in complaints received about work, education and 'buy-ups', along with a noticeable increase in informal complaints about periodic and home detention. On a positive note, the number of complaints alleging officer misconduct, as well as those about segregation, has dropped.

We finalised preliminary or informal investigations of 692 complaints, an increase of approximately 31% from last year (see figure 40). We achieved a positive outcome in 440 of these matters, including having errors acknowledged and corrected, apologies given, the payment of compensation, and reasons for decisions being provided. In many cases we were able to provide further information to the complainant that helped them to better understand a decision or the reason why certain things had happened.

The number of complaints received about individual correctional centres is set out in Appendix I. In the ten months after it opened in August 2007, we received 229 complaints about Wellington Correctional Centre — the major issues of complaint are covered elsewhere in this chapter. The number of complaints we received about the Metropolitan Special Programs Centre (MSPC) were much higher this year than previously, as were those about Broken Hill Correctional Centre. Reasons for such variations are not always easy to detect but they are taken into consideration when we prepare our schedule of visits to centres.

### Compassionate leave

We were contacted by many inmates who had not been given compassionate leave by the department to attend the funeral of a family member. In one case, the inmate was not told about his mother's death until the following day. This meant that the paperwork was not done in time for a decision to be made before her funeral. Another inmate was refused permission to go to his grandmother's funeral because staff did not believe they had a sufficiently close relationship.

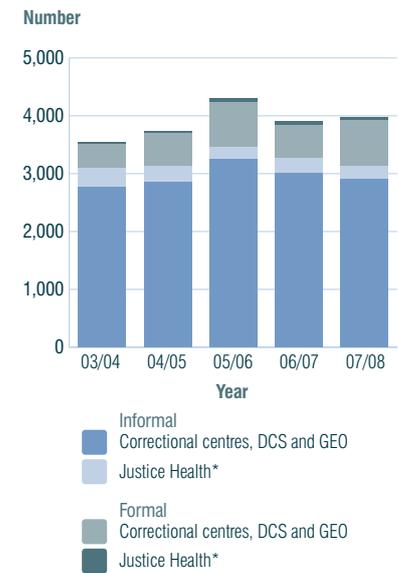
Our inquiries involved looking at the department's policy and the timeliness of the procedures used to make decisions about who should go to funerals and in what circumstances permission was granted. The department's response revealed that the majority of applications were not approved because the deceased was not an immediate family member, or because there was too great a security threat if the inmate was allowed to attend. After our inquiries, DCS reviewed their compassionate leave policy and procedures and we were pleased by a number of changes — including involving the Aboriginal Planning and Support Unit to help staff to determine kin relationships within Aboriginal communities.

The revised policy also allows for compassionate leave to be approved at a regional level, rather than by a centralised officer as was previously the case. A local delegation to make a decision about leave, along with the ability to email applications, will result in a faster approval process. For cases where inmates are not granted permission to attend a funeral, the new policy also guides staff on other ways the inmate can be helped to honour the occasion.

### Access to education

This year we received an increasing number of complaints from inmates about education related issues. Some complained about being unable to access any education programs and others complained that they were enrolled in education in one centre and then transferred to another where there was little or no ability for them to continue with their studies.

Figure 39 — Formal and informal matters received about correctional centres and Justice Health — five year comparison



\* Justice Health provides services in both Correctional Centres and juvenile justice centres. For simplicity, all Justice Health matters are reported in this figure.

Figure 40 — Formal complaints about corrections finalised in 2007–2008



Figure 41 — What people complained about

This figure shows the complaints we received in 2007–2008 about correctional centre concerns, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Probation/parole	24	84	108
Court cells	1	2	3
Mail	18	74	92
Community programs	1	4	5
Child abuse related	0	0	0
Case management	46	102	148
Transfers	48	182	230
Records/administration	54	80	134
Fail to ensure safety	16	42	58
Daily routine	118	437	555
Food and diet	16	57	73
Visits	52	208	260
Issue outside our jurisdiction	12	30	42
Unfair discipline	20	98	118
Day/other leave/works release	16	21	37
Legal problems	11	46	57
Periodic home detention	4	19	23
Segregation	19	44	63
Security	5	39	44
Other administrative issue	19	229	248
Complaint-handling	1	0	1
Information	20	66	86
Classification	32	178	210
Officer misconduct	49	149	198
Buy-ups	45	153	198
Work and education	23	98	121
Property	77	286	363
Medical	32	174	206
<b>Total</b>	<b>779</b>	<b>2,902</b>	<b>3,681</b>

When we made inquiries, we were invited to a meeting with departmental staff to see and hear first hand the measures being introduced to track each inmate's progress through education and therapeutic programs. A new database is accessed by offender services and programs staff at the end of each day to record when an inmate has attended an education or program session, as well as when they have completed a module. This data will be of great assistance to both program and parole staff in monitoring and reporting on inmates and assessing the availability of programs if a prisoner is transferred.

There are many educational services and programs available in the correctional system and the new database is an improvement on the haphazard way information was previously collected. DCS advised us that most inmates who want to attend education will be given access. However there remains a significant number who will not have access, particularly at centres that find it difficult to attract and retain sufficient staff to provide the services identified for that centre. This is especially the case at the newer regional centres.

### Inmate classification appeals

Several inmates from the Dawn De Loas Centre had appealed against decisions made about their classification. The inmates had followed the standard procedure for lodging their appeals, but after many weeks they had not heard anything more. Staff at the centre were unable to find out anything further about their appeals and, as the time approached for their next classification, the inmates were worried their original appeals had not yet been decided. We made some inquiries with centre staff and found that the appeal documents had to be sent out of the centre to a number of other areas

of the department for approval — and there were no specific timeframes for processing the documentation.

As the Dawn De Loas Centre is relatively small, it does not have a designated Classification and Case Management Review Coordinator who would monitor these applications. We wrote to the Commissioner and were sent the information about the appeals process and the outcomes for inmates. In spite of this, we remained concerned about the procedures generally so we suggested to the Commissioner that he devise and adopt appropriate timeframes for responding to applications for classification reviews. The Commissioner accepted our suggestion and has implemented timeframes. These timeframes will also be supported by the roll out of the department's electronic document management.

### Weekly 'buy-ups'

Several inmates from a remand unit at Parklea Correctional Centre called when they did not receive their weekly buy-up. They had put in their order forms but when the buy-up providers arrived there were no parcels for them. Buy-up is an important part of the inmate week because it is when they receive the toiletries, tobacco and other goods they have purchased. The inmates had tried to resolve the problem and been told that the buy-up provider did not receive any of their purchase forms. No reason could be

found for this, but staff in the unit did not have the authority to make any further decisions to help resolve their problem. We contacted the General Manager who agreed to issue these inmates with new forms and authorise the provider to supply their buy-ups within the next few days.

## Wellington Correctional Centre

When Wellington Correctional Centre opened in August 2007, we were contacted by many of the inmates transferred there. Most of the issues raised related to 'teething problems' that can be expected when a new building opens, housing hundreds of people and staffed by many new employees. By November 2007, however, Wellington inmates began to complain about being placed into segregation, without knowing why or for how long and without any segregation order. Also, several inmates in the mainstream accommodation units complained about the size of the cells and especially the inclusion of a second bunk in a cell that was clearly built for only one person.

Our initial inquiries with the centre found the inmates were being put into a behaviour management program run in a separate pod from the mainstream accommodation, not the identified segregation unit. They were not placed on a segregation direction while in the program unit, but in the behaviour management unit (BMU). We visited Wellington Correctional Centre in February and observed the BMU as well as the mainstream cells where the inmates had complained about the second bunk.

We were particularly concerned the BMU was similar to other short term management programs the department had operated several years earlier. As a result of previous investigations conducted by the Ombudsman, it was determined that participants housed in these units had been illegally segregated.

After our visit to Wellington Correctional Centre, we wrote to the Commissioner using our own motion powers. Shortly after our approach to the Commissioner we were told by inmates that the BMU had been closed. In responding to our inquiries, DCS said the BMU draft program had been discontinued and no inmate would be placed in the BMU until there was a further review of the program. Also, if and when the BMU program is approved, it will only be used to manage inmates on a valid segregation direction back to a normal institutional routine.

We also asked the Commissioner for information about the second bunk in the main accommodation cells that were originally designed to accommodate one person. Our staff who visited the centre noted that a person sitting on the bottom bunk hit their head on the top bunk, there was only space in the cell for the property tubs for one inmate, and there was only one fixed concrete stool in the cell. This meant that only one person could sit at the fixed concrete bench to eat or write.

The Commissioner responded with advice that although the cells did not meet the terms of either the Development Consent from Wellington Council, or clause 22 of the Public Health (General) Regulation 2002, the department had submitted an amended development application to council which was approved. In addition, the Minister for Health issued an order exempting them from the provisions of clause 22 of the Public Health (General) Regulation "subject to the condition that at all times the Department of Corrective Services shall be satisfied that this exemption will not result in adverse effect on the health of persons sleeping in any room or cubicle which is the subject of this exemption". Clause 22 provides that a room or cubicle that is to be occupied for more than 28 days by any person must have a floor area of 5.5 square metres for each person. We had been advised by the department that the standard for single cells (i.e. the original design of these cells) is between 7.5 and 9 square metres. The exempted cells will now potentially house two inmates. We remain concerned about aspects of this issue and we are continuing our inquiries.

## Case study 49

An inmate's partner had been banned from visiting all correctional centres and wrote to us questioning the ability of DCS to stop her from visiting him in a public hospital.

The inmate had been transferred to a public hospital and his partner decided to visit because she believed that her visiting 'ban' applied only to correctional centres. DCS became aware of the partner's intention to visit the hospital and allegedly threatened the inmate with removal from the hospital if the visit occurred.

We made inquiries with DCS about the allegations and their authority to stop anyone, including those banned from DCS centres, from visiting public places such as a hospital. The department denied any threat had been made to the inmate. They acknowledged that he had been told that such a visit might cause them to review his situation and location, but that his medical condition would not be compromised.

When inmates need to go to hospital they spend the minimum possible amount of time there. Inmates who are in hospital are not normally entitled to visits, unless for compassionate reasons when their next of kin may be called.

In this case, the inmate had been told to warn his partner not to visit him — especially given her status as a 'banned visitor'. DCS agreed that they did not have any legal authority to stop a person who has had their visiting privileges removed from attending anywhere other than a correctional facility. Given that DCS 'bans' visitors on the basis of their potential or actual risk to the good order and security of a correctional centre, we suggested they look at the relevant provisions of the legislation to see whether any amendments are justified to provide clarification in other circumstances.

## Visits to correctional centres

Each year we run a program of visits to correctional centres. This year we spent 167 days visiting 28 different centres. Our visit program puts us in the unique position of visiting nearly every correctional centre at least once every couple of years — with some centres visited much more regularly. As a result, we have developed some very effective professional relationships with many senior managers and staff in these centres which assist in the local and timely resolution of inmate grievances. The visits we make have also given us a first hand appreciation of the culture and environment of most centres, something rarely experienced by those who do not live or work within the correctional system. It can also mean that we look at what happens in the centres with experienced but 'fresh eyes'.

For example, when we visited Kariang Juvenile Correctional Centre we received a complaint from a young man about the conditions in the 'observation' cell in which he had been housed for several days as part of his initial assessment.

When our staff inspected the cell, they agreed with the young man that it was unreasonably dirty and that he should have been given more adequate bedding and other facilities.

Over the past year there have been some occasions where many more inmates than we can see have asked for an interview with our staff during a visit. Sometimes when this happens we first meet with the elected inmate delegates to determine if there are any general or 'systemic' issues in that centre. We took this approach when we made our first visit to the newly opened Wellington Correctional Centre, where we had received a large number of inquiries.

Of course we are not the only people who visit correctional centres. Apart from many other authorised or official visitors, each week many thousands of people go to correctional centres across the state to visit their families and friends who are serving time. Inevitably, incidents occur and sometimes visitors have their visiting privilege removed by DCS. This is commonly referred to as a 'visit ban'. One complaint we received this year raised a slightly different implication of a visit ban (see case study 49).

## Sex offenders

In 2005–2006 we reported that the length of the waiting list for inmates to take part in sex offender treatment programs was an issue of some concern. The *Crimes (Serious Sex Offenders) Act 2006* had been introduced and it was becoming increasingly apparent that inmates assessed as being 'high risk' would not be released from custody unless they completed the custody based intensive treatment (CUBIT) program. However, the CUBIT program is currently only run at the Metropolitan Special Programs Centre (MSPC) at Long Bay.

Shortly after his appointment, we met with the department's coordinator of sex offender programs. He outlined several changes to be made to the treatment programs to increase the number of participants in any one year. It is now more than a year since the program was changed from a 'closed' group format to one in which inmates can start the program at any stage — as soon as a vacancy arises — and progress at their own speed. The number of inmates completing the program has increased by 30%, but the total number of offenders estimated to complete it each year is still only between 50 and 60.

The waiting list for the CUBIT is over 100 inmates at any given time.

Priorities are set based on an inmate's earliest release date, not when they accept referral to the program. As a result, we are now receiving complaints from inmates who applied to take part in the program (some as long as three years ago) in plenty of time to complete it before their earliest release date. These inmates are now being pushed further down the waiting list, causing them justifiable concern as their parole dates approach. We understand it is unlikely that any of the inmates currently in the program will complete it in time to be given favourable consideration for parole at their earliest opportunity.

During the past year, the senior psychologist responsible for the CUBIT program left the department, as did the psychologist running the lower risk CORE program at Kirkconnell Correctional Centre. The MSPC has also introduced a series of regular 'lock-in' days, meaning inmates are locked in their cells and unable to attend the program. Many inmates complained to us that the lock-in days could add as much as three months to the length of time it will take them to complete the program. When we raised the issue of the lock-in days with the coordinator, he agreed they were interfering with the program and had instructed psychology staff to restructure the program to avoid the lock-ins where possible.

The sex offender treatment programs offered in NSW are currently considered to be the most effective way of reducing the risk of serious sex offenders re-offending. While the state is now able to apply to the courts to extend the custodial detention of any 'high risk' sex offender inmate who has not attended a treatment program, it is concerning that the daily routine at the main therapeutic correctional centre cannot be structured to ensure the best opportunity for treating as many inmates, as quickly as possible. We will continue monitoring this important issue.

## Court cells

The court cell complexes operated by DCS are considered the 'pointy end' of the correctional system. This is where most people have their first experience of being in custody, and they are often under significant stress. In these circumstances it is imperative that court cell staff have clear guidance from legislation, policy and procedures about how they should do their job — for their own safety and that of the offenders. DCS court cell staff also need regular review by their managers and support from the various specialist units within the department. As the numbers coming into custody continue to increase, people are frequently spending up to the maximum allowable time of seven days in these cell complexes which are, in reality, ill equipped to cater for the needs of inmates.

### Case study 50

A man alleged he had been assaulted by DCS officers when force was used on him at a court cell complex. We referred the allegations to DCS for investigation and asked for a copy of their final report. It appeared that DCS had already started investigations into the use of force generally at this court cell complex, and this complaint became part of that broader investigation.

The department's investigation was lengthy and resulted in three recommendations. These were that the two officers involved should be subject to formal disciplinary investigations and processes, and DCS procedures for questioning inmates after a use of force and collecting relevant cell complex camera or video footage should be examined.

We are awaiting confirmation from the department that they have implemented the recommendations made by the investigators.

## Case study 51

An offender who had a physical disability affecting his walking alleged he had been assaulted at a court cell complex. He said he was told by officers to walk to a cell and when he refused, because he did not have his usual walking aids available, he was dragged to the cell and forcibly strip searched. We asked DCS to investigate the matter and report back to us. When we received the report several months later, we assessed it as being inadequate and asked DCS to reinvestigate the complaint.

Ultimately, a more thorough report was prepared into the incident. Although the allegation of assault could not be substantiated as there was insufficient evidence available, it was found that court cell staff had failed to identify the incident involving the man as a use of force, and so had not complied with the relevant procedures for reporting. If those procedures had been followed, there may have been sufficient evidence to conclusively determine whether or not an assault had occurred.

It was clear from the investigation that court cell staff could have been more proactive in managing the inmate's stay in the cell. We suggested to the department that they should require their Disability Support Unit to liaise with court cell staff on an ongoing basis about the services they can offer.

## High Risk Management Unit

The High Risk Management Unit (HRMU) is the most secure unit within the NSW correctional system and the inmates housed there are subject to very strict daily regimes and intense scrutiny by staff. It is therefore important that we record in this report our contact with them and the corrections staff that work there. Our staff visit the HRMU every six months. This year, the Ombudsman also visited the HRMU. He went to each of the units and met with several inmates who valued the opportunity of explaining to him about their issues and concerns.

We have spoken with HRMU management about the number of inmates in the unit who seem to suffer from mental health issues, including those who occasionally receive assessment and treatment at the forensic hospital. It is sometimes

difficult to determine whether these inmates only intermittently need the ongoing psychiatric care and treatment available in the hospital, have been identified as too high a risk in terms of the challenge of managing them, or simply pose too great a risk to security to stay in a hospital environment. There is no doubt, however, that the HRMU does not provide a therapeutic environment for these inmates.

Equally concerning is the number of fires lit in recent years by inmates in the HRMU, potentially causing danger to inmates and staff alike. Some of the fires have been started by inmates suffering from a mental illness. Other fires have been lit by inmates who described it as the only method available to them to express their frustration and exasperation at their life in the HRMU.

## Junee Correctional Centre

In recent years we have reported that the number of complaints received from Junee Correctional Centre, the only privately operated centre in NSW, was significantly higher than from other similar sized centres. We have met with staff from GEO, the company that runs Junee, on several occasions to try to find out the reasons for this. One possible cause identified was the physical separation of the inmates from the staff in their office in the accommodation units. When the inmates were in their pods they could see staff in the office, but could not readily contact them. They did, however, have easy access to their phone to call our office and would therefore contact us directly. Junee management suggested they would trial having staff spend a fixed period of time in the pods each day when the inmates were there, specifically to deal with inmate requests and inquiries. The number of calls to our office has since decreased slightly.

## Case study 52

When an inmate called from Junee to complain that their toilet roll ration had been reduced, we made immediate inquiries with the centre. Reducing or removing basic necessities such as toilet paper can spark an easily preventable incident in a correctional centre. We were told that each inmate usually received two rolls per week, but if they ran out they could get more from the sweepers (inmate domestic workers) in their pod. The sweepers, however, no longer had a supply and — in the absence of sufficient toilet rolls — they had become gaol currency and were being stolen from cells. When we called the centre they were not aware of any change to the ration of toilet paper and undertook to investigate and rectify the situation immediately.

## Justice Health

Medical services in the NSW correctional system (except for Junee) are provided by Justice Health. We do not examine clinical or professional matters, but we do receive complaints from inmates about access to health services. The inmate population is generally highly compromised healthwise and the demand for health services sometimes exceeds the available resources. Justice Health aims to provide a service to the standard equal to that in the community public health system. Sometimes this means a lengthy waiting list to see a doctor, particularly for specialist services, and to attend appointments at hospitals and clinics. As well as contending with waiting lists, inmates and Justice Health staff are reliant on DCS officers to provide escorts to hospital and for appointments, and to ensure that inmates are out of their cells and able to move around their centre to access medical services. This does not always happen and generally causes the inmates who miss out to complain to us.

Many complaints we receive relate to poor access to dental services. Inmates wanting to see a dentist, either for a check up or because they are in pain, must call a central hotline number and describe their needs. The person on the hotline then 'triages' the inmate and they are given an appropriate place on the dentist's list for their centre. In some centres this can be a very long wait. An inmate who is in pain can visit the clinic for general pain relief, but the nurses are not usually able to give them any more assistance. Significantly, nurses cannot assess an inmate's dental needs and make an appropriate recommendation to the dental hotline staff about priorities. If they could this might improve the service for inmates with serious dental problems. Inmates regularly tell us that they call the dental hotline over and over in an attempt to have their call answered. More often than not the call rings out. Sometimes an inmate's dental problem can deteriorate significantly before they see the dentist and those who seek preventative care will usually be continually reprioritised on the waiting list, unless they are in a smaller centre.

### Case study 53

One inmate complained by phone that he had not received his heart medication as the nurses had refused to give anyone their pills until 'whoever made a rude comment to staff owned up'. We were told about 20 inmates had missed out on their pills. We contacted the clinic and were told the nurses had decided not to hand out medication in the wing where the comment was made until after they had given all other wings their medication. They intended to return to the wing, but had told the inmates they would not get any medication that night. All medication was eventually given to those inmates who needed it.

We were concerned the nurses appeared to have administered collective punishment, and that inmate disciplinary issues should be managed by custodial rather than clinic staff. We wrote to the CEO of Justice Health and were advised that they do not have a policy authorising the refusal of prescribed medication to patients. It was also noted that inmate discipline is the responsibility of DCS. The appropriate way for clinic staff to manage incidents is to log them in the incident information management system and ask DCS officers to control any unruly behaviour by inmates. Justice Health advised they would try to ensure this approach is adopted in future.

Endnote

Figure 39 — Number of formal and informal matters received about correctional centres and Justice Health — five year comparison

	03/04	04/05	05/06	06/07	07/08
<b>Formal</b>					
Correctional centres, DCS and GEO	412	561	772	566	779
Justice Health*	30	41	80	69	61
<b>Sub total</b>	<b>442</b>	<b>602</b>	<b>852</b>	<b>635</b>	<b>840</b>
<b>Informal</b>					
Correctional centres, DCS and GEO	2,773	2,852	3,242	3,010	2,902
Justice Health*	327	283	218	266	241
<b>Sub total</b>	<b>3,100</b>	<b>3,135</b>	<b>3,460</b>	<b>3,276</b>	<b>3,143</b>
<b>Total</b>	<b>3,542</b>	<b>3,737</b>	<b>4,312</b>	<b>3,911</b>	<b>3,983</b>

\* Justice Health provides services in both correctional centres and juvenile justice centres. For simplicity, all Justice Health matters are reported in this table.



## Departments and authorities

# 8

The NSW Ombudsman has jurisdiction over a wide range of NSW public sector agencies — including large agencies such as the Roads and Traffic Authority, the State Debt Recovery Office and WorkCover, and smaller agencies such as the Nurses and Midwives Registration Board and the Public Trustee. This chapter outlines the breadth and scope of the work we do across the NSW public sector to ensure high standards of administrative practice.

### Highlights

- Held a complaint-handling forum for all NSW universities to discuss the implementation of our guidelines on complaint-handling in universities, and a number of universities have now implemented these guidelines.
- Completed an investigation into the implementation of the Department of Education and Training's policy and procedure for long suspensions, and made recommendations across four main areas.
- Conducted a survey of complaint-handling systems across all NSW government departments and authorities, and analysed similarities and differences between different size agencies.
- Achieved a broad range of positive outcomes for complainants, as well as improvements to the policies and procedures of the agencies involved.

Our specific work in relation to the Department of Corrections, Juvenile Justice, freedom of information and local government is reported throughout other chapters.

One of the areas we have focused on this year is education, both school and higher education. In addition to dealing with individual complaints about universities and the Department of Education and Training (DET), we have undertaken a number of projects on issues that have the potential to affect a large number of people. Our work on university complaint-handling, international students and the suspension of students from public schools is discussed below.

## Complaints trends and outcomes

This year we received 1,348 formal complaints about departments and authorities, a significant upward trend from last year and a number more consistent with the number of complaints we received in 2004–2005 (see figure 42).

Figure 42 — Five year comparison of matters received and finalised

This figure does not include complaints about public sector agencies that fall into the categories of police, community services, local government, corrections or FOI.

Matters	03/04	04/05	05/06	06/07	07/08
Formal received	1,390	1,355	1,329	1,158	1,348
Formal finalised	1,390	1,386	1,317	1,167	1,354
Informal dealt with	4,161	4,414	3,625	3,465	3,962

Planning, property and housing issues were the subject of 24% of complaints (see figure 43). Complaints about business regulation and professional disciplinary bodies were also high. As in previous years, the two largest categories of complaints continue to be about poor customer service and poor complaint-handling practices, with a significant increase in the latter category (see figure 44).

Figure 43 — Formal and informal complaints received



Aboriginal Land Councils and services	0.4%
Culture and recreation	0.4%
Emergency services	1%
Environment and natural resources	3.4%
Health	6.8%
Education	11.2%
Transport and utilities	16.8%
Law and justice	17.8%
Business regulation and revenue	17.9%
Planning, property and housing	24.3%

This year we finalised over 800 formal complaints following preliminary investigations and 12 formal complaints through an investigation that involved the use of our coercive powers (see figure 45). As a result of our involvement in these matters we achieved 772 positive outcomes including the department or authority providing reasons for its decision, reviewing its decision, changing its policies and procedures, correcting an error or apologising to the complainant. (Please see Appendix G for a full list of agencies we received complaints about this year and how we dealt with these complaints.)

### Performance indicator

#### Average time taken to assess complaints

Target	2007–2008
90% within 48 hours	94%

### Performance indicator

#### Average time taken to finalise complaints

Target	2007–2008
7 weeks	5.2 weeks

### Performance indicator

#### Complaints resolved through the provision of advice or constructive action by public sector agency

Target	2007–2008
65%	70%

## Performance indicator

### Percentage of our formal investigation reports recommending changes to law, policy or procedures

Target	2007–2008
90%	50%

This outcome includes suggestions made on three formal investigations that were discontinued. Another three cases were FOI matters where the focus is on release of documents rather than changes to law, policy or procedures.

## Performance indicator

### Percentage of recommendations made in investigation reports that were implemented by public sector agency/authorities

Target	2007–2008
80%	80%

This outcome includes suggestions made on 3 formal investigations that were discontinued.

## Focus on education

### Universities

#### Forum for university complaint-handlers

Our *Complaint-Handling Guidelines for Universities* was released in December 2006, and in November 2007 we hosted a forum for university complaint-handlers to obtain feedback on the implementation of the guidelines. Twenty four complaint staff representing all NSW public universities attended.

Many participants advised that the forum was the first opportunity they had had to discuss how they were dealing with complaints. The first part of the forum was spent identifying key issues arising from our guidelines and exploring how each university currently handles complaints from students and staff. The afternoon sessions dealt with more practical issues facing complaint-handlers — such as complaints that involve multiple parties and unreasonable complainant conduct. We received overwhelmingly positive feedback about the forum and, as a result, a further forum is planned for late 2008.

#### International students

This year we have received an increased number of complaints from international students studying at NSW universities. The introduction in 2007 of a new *National Code of Practice* under the *Commonwealth Education Services for Overseas Students Act 2000* appears to have contributed to this increase, with more students contacting us to request a review of a university's decision to exclude them from studying at the university. We have been proactive in contacting universities about a number of procedural issues to do with the 'external review' mechanism outlined in the code and our ordinary complaint processes. We have also established a communication protocol with each university for international student complaints and developed an information sheet for universities to give to students at the conclusion of their internal appeal. The information sheet advises students of their rights, the role of the Ombudsman in conducting an external review, and what complaints can be made to us.

Figure 44 — What people complained about

This figure shows the complaints we received in 2007–2008 about NSW public sector agencies other than those complaints concerning police, community services, councils, corrections and freedom of information, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Charges/fees	158	558	716
Contractual issues	81	321	402
Child abuse related	0	3	3
Misconduct	38	59	97
Enforcement	123	173	296
Management	13	61	74
Policy/law	41	179	220
Child protection	0	2	2
Natural justice	15	28	43
Issue outside our jurisdiction	86	267	353
Object to decision	120	554	674
Other administrative issue	4	137	141
Complaint-handling	244	476	720
Information	83	251	334
Approvals	102	302	404
Customer service	240	591	831
<b>Total</b>	<b>1,348</b>	<b>3,962</b>	<b>5,310</b>

Figure 45 — Formal complaints finalised



Formal investigation	12
Conduct outside our jurisdiction	107
Agencies outside jurisdiction	364
Assessment only	419
Preliminary or informal investigation	816

#### Current investigations (at 30 June)

Under preliminary or informal investigation	46
Under formal investigation	5
<b>Total</b>	<b>51</b>

## Case study 54

We received a complaint from a student who had been excluded from her university for poor academic performance. She believed this was strongly connected with the fragile state of her mental health after aggressive conduct towards her by a teacher. In addition, certain key documents about the student's performance appeared to be missing from the university's records. Following our inquiries, the university redoubled their efforts and located the documents. They then proceeded to deal with the student's situation appropriately, structuring a return to studies program designed to maximise her chances for success.

This case highlights the difficulties that can arise if students suffer from depression or other mental illnesses. Although many students may be more reluctant to give universities information about mental health issues than about other health issues that may affect their study, it is also clear that universities cannot take into account circumstances they do not know about. Universities need to carefully consider how these issues can be treated with appropriate sensitivity and confidentiality.

including four school days. A long suspension is for up to and including 20 school days. We focused on long suspensions as they have a significant impact on both students and their parents or carers. There is an obvious impact on students' access to learning when they are out of the classroom, and practical implications for working parents or carers who have to make alternative arrangements for their child's supervision. There is also concern that if parents or carers can't or won't arrange supervision, the student may be on the street while out of school. The home environment itself may not be ideal and being in school may be providing the student with some degree of respite from difficulties at home. A long suspension may also exacerbate a student's disengagement from school.

## Case study 55

A student with a disability complained that his university had twice failed to provide him with the appropriately formatted exam for one of his units. On the first occasion, the exam papers had not been enlarged as required under his disability access plan. On the second occasion, the examination and the answers sheet were numbered differently which created some confusion in completing the exam. To resolve the matter, and because there was no further formal examination time available, the university proposed to give the student a final grade based on the average of his assignment marks. The student complained this was unreasonable, as it would mean his entire grade would be based on one assignment.

As a result of our inquiries, the university contacted the student to seek a more appropriate solution. They ultimately agreed to a further special examination and issued a written apology to the student. The university also assessed how disability access plan examination requirements are handled more generally, and took action to avoid a situation such as this occurring again. We were pleased with how the university finally handled this complaint.

We have also given feedback to a number of universities on their handling of specific internal appeals. In particular, we identified the need for university staff to keep better records of internal appeal decisions and to give students written and sufficiently detailed reasons for their appeal being rejected.

## School education

### Investigating long suspensions

This year we completed an own motion investigation into the Department of Education and Training's policy and procedure for long suspensions. Students can be given a short or long suspension for poor behaviour. A short suspension is for up to and

We identified the mandatory elements of the procedure and audited for compliance a random sample of several hundred long suspension files from schools across the state. We also interviewed a range of departmental staff — including primary and high school principals and deputies, school education directors and student welfare staff.

It was evident from our work that schools are dealing with significant instances of poor behaviour on a regular basis, often in very challenging and difficult circumstances. Lack of engagement by parents or carers is unfortunately all too common. This is sometimes because parents themselves have had a poor experience of school or because the nature of their lives is

such that they are unable to engage. We found that the procedure on suspensions provides a framework for schools to manage poor behaviour, but there are significant areas where the requirements of the procedure are not being adequately implemented. We identified examples of good practice which the department could use in improving action taken by schools in relation to suspensions.

We have made a number of recommendations across four main areas:

- Operational and administrative issues — including the development of a checklist of the essential requirements of the long suspensions procedure for use by schools, training in the procedure for deputy principals, and guidance to schools about what work should be given to a student on suspension.
- Measures to help the department better understand the characteristics of students who are being suspended — including a review of the range and adequacy of the data currently captured about long suspensions.
- The adequacy of support services and assistance — including a review of how effective the early intervention approach is in identifying and managing poor behaviour, and the availability of school counsellors and support for students identified as having behavioural and emotional problems.
- The use of in-school suspensions and time out rooms.

The department worked constructively with us throughout the investigation and welcomed our recommendations. We have asked them to report to us on the implementation of the recommendations.

### Restricting access to school grounds

We received two complaints about DET's decision to restrict access to school grounds under the *Inclosed Lands Protection Act 1901*. Concerns raised included the Act being used instead of alternative dispute resolution techniques to resolve complaints. We also had concerns about DET's failure to review the restrictions periodically and provide reasons — both for imposing restrictions in the first place or for extending the restrictions. Although the department had produced guidelines to assist principals in imposing restrictions, they do not appear to be official departmental policy and it is not clear how accessible the guidelines are to school staff and the wider community. We have suggested that DET provide advice to school principals about the need to give clearer reasons for decisions to restrict access and make the guidelines more widely available. DET has agreed to implement these changes.

### Case study 56

In late 2007, we met with the Wildlife Licensing and Management Section of the Department of Environment and Climate Change (DECC). We receive complaints from time to time about the granting of licences to care for native wildlife. We took the opportunity presented by a particular complaint to gain a better understanding of the department's role in overseeing community wildlife care bodies and the process for determining licence applications. We were also aware that this is a difficult area of work for DECC. It is not uncommon for difficulties to arise in licensed groups and for disputes to have long term and significant consequences for both the individuals involved and the department.

DECC staff told us a new Wildlife Council has been formed to coordinate the work of the sector and improve standards across licensed groups. We raised the issue of complaint-handling within groups, as poor complaint-handling has created difficult situations involving many hours of staff time. DECC advised that they and the council are actively pursuing this issue, and we were pleased to subsequently learn that the council has developed their own complaint-handling policy. We told DECC staff about some useful resources — including our new training courses on managing unreasonable complainant conduct which staff from the unit later attended.

We also discussed the procedures for issuing general licences to care for sick and injured wildlife. As a result of our involvement, DECC agreed to clarify certain provisions in their procedures to ensure transparency in their decision-making.

## Case study 57

A doctor working in rural NSW as a GP had worked in several 'area of need' positions for over three years. Areas of need have a shortage of doctors and these positions can be filled by overseas trained doctors. When the doctor started applying for other 'area of need' positions in 2006, he found that the NSW Medical Board required him to pass the English proficiency test for new entrants into the system. This meant that he was unable to practice for two years because he could not pass the test.

In July 2005, a national agreement had been reached between state medical boards that all overseas trained doctors would be required to meet a defined minimum standard of English language proficiency. The policy allowed for exemptions in certain circumstances. The Medical Board decided it would not require currently registered overseas doctors to comply with the national policy, but all applicants for new registrations would need to comply with the new English language standard.

The doctor applied to the Medical Board for an exemption from the English language policy. His request was rejected because each area of need application was considered to be a new registration. The doctor felt this was unfair as it failed to take into account the fact that he had been registered for over three years. He also believed a policy should not apply retrospectively and consequently complained to us.

Our review of the doctor's file showed that the Medical Board made a policy decision that no discretion would be applied to area of need applications in relation to the English language requirements. It seemed to us that by having a policy that is indiscriminately applied in every case — without being able to consider the individual merits of a particular case — the Medical Board was unreasonably fettering the discretion given to it by the *Medical Practice Act 1992*.

After we had made extensive inquiries, the Medical Board agreed to review the doctor's application. They decided to waive the English language requirements in his case, having taken into account the merits of his individual circumstances. The board also agreed to consider our suggestions for improving their processes. These suggestions included reviewing how they give advice to applicants about their appeal rights, reviewing the processes used to ensure procedural fairness is afforded to all applicants, and considering making passing the English language requirements a prerequisite to registration — to avoid unnecessary delays in filling 'area of need' positions.

## Good complaint-handling

An important part of our work is to encourage good complaint-handling by agencies themselves. Our work on individual complaints often allows us to identify areas for improvement in an agency's own complaint-handling processes. Our complaint-handler's toolkit, now in its second edition, gives advice to agencies about setting up a complaint-handling system and includes practical information and guidance on handling complaints. This year we also conducted a survey of complaint-handling systems across all NSW government departments and authorities. The survey allowed us to paint a high level picture of the current 'complaint-handling' situation and analyse the similarities and differences between different size agencies. For further details see page 8 in 'Our year in review'.

### Apologising for mistakes

One element of good complaint-handling is a willingness to apologise for mistakes. Nobody is perfect and neither is any organisation — we all make mistakes. We encourage agencies who have made an error in judgement to consider giving an apology as a way to help resolve the matter. Last year we published guidelines for public authorities to help them to give appropriate and effective apologies. An appropriate apology is often seen by complainants as an essential prerequisite for resolving their complaint. In our experience, it is often the main thing they really want. However, a poorly crafted apology can be just as damaging as one that is not delivered at all.

Our experience this year suggests that saying sorry is still sometimes a challenging process. We saw an example of a very poor apology by the Office of Fair Trading (OFT). Although there had been clear customer service problems in handling the complainant's application for a licence, the apology from OFT was vaguely worded and did not acknowledge

the concerns raised. It is unlikely this apology went any way towards resolving the complainant's concerns.

Delay in giving an apology can also diminish its worth. The Legal Aid Commission of NSW issued an apology to a complainant for failing to respond to a complaint he lodged with them and for using an old address in relation to his application. On this occasion, the form of the apology was appropriate. However the agency failed to send it until a month after we had told the complainant they would be issuing it. The apology did not arrive until after the complainant contacted our office a second time, advising it had not arrived. Given the poor customer service experienced by this complainant originally, the delay in issuing the apology would have diminished its effect and sincerity.

In contrast, a fulsome and timely apology can be very powerful. We suggested to RailCorp that they apologise to a complainant about a number of customer service issues, including staff rudeness and a lack of response to inquiries. RailCorp agreed to this suggestion and the apology made to the complainant was an outstanding example of a successful apology. Despite the substantive issues involved in the complaint showing no evidence of wrong conduct on the part of their staff, RailCorp took the opportunity to try and repair their relationship with this person. It was clear from their unreserved and sincere letter of apology that RailCorp staff appreciated the complainant's concerns about how she had been treated.

## Good results

We achieve a broad range of outcomes in relation to the complaints we handle. In many matters we dealt with this year, our intervention led to an improvement in an agency's policies or procedures as well as a good outcome for the person who complained to us. Case studies 56 to 59 illustrate some of those outcomes.

## Case study 58

We received a complaint that some wheelchair accessible taxis licensed by the Ministry of Transport did not comply with the Commonwealth's Disability Standards for Accessible Public Transport in terms of the space allocated for wheelchairs. Licences for wheelchair accessible taxis are subsidised and cost considerably less than licences for standard taxis. The concern was that wheelchairs could not fit into the accessible taxis and so taxis licensed to transport wheelchairs were not able to do so.

When we raised this with the Ministry of Transport, they asked the Roads and Traffic Authority to measure the wheelchair accessible taxis in question. The RTA concluded they did not comply with the Commonwealth standards. The Ministry then employed an independent engineer to check the taxis again. The engineer concluded the taxis did comply, but found there was a lack of guidance provided to companies that convert taxis and to engineering signatories who certify them. As a result of our investigation, the Ministry drafted a protocol that clearly explains the allocated space required for wheelchair accessible taxis to comply with the Commonwealth standards. This protocol will help taxi operators, conversion companies and engineering signatories understand what is required.

## Case study 59

A Department of Housing tenant called us to advise she had received a notice of termination. She had deliberately not paid rent for the last three weeks because of a leaking roof that had not been properly repaired. After making inquiries, the department realised the workmen who were supposed to repair the roof a few months earlier had not done so. They acknowledged they did not have a mechanism in place to follow up repairs not actioned. The tenant had continued to ring her local office and was referred each time to the maintenance line, who advised that nothing could be done until the weather cleared up. The department apologised to the tenant for not following up and the roof was repaired.

## Case study 60

We received a complaint about delays by the Office of Fair Trading (OFT) in issuing a contractor's licence. The OFT's guarantee of service states that applicants can expect their application to be processed within six weeks. We made inquiries with the agency who told us there had been a spike of 16,000 applications for electrical qualified supervisors during February 2008. However, as these licences are renewed at the same time every three years, the agency had anticipated this and appropriately resourced the sections responsible for processing them. Our complainant had his contractor's licence issued seven weeks after he submitted his application. Although this was outside the guarantee of service, this case is an example of an agency taking proactive steps to manage its resources in difficult circumstances so that delays are minimised.

## Case study 61

The Nurses and Midwives Registration Board had an unusually high workload due to changes to the vetting of qualifications. An employment agency sent two applications to the board in August 2007 on behalf of two overseas nurses. These applications had not been assessed by March 2008. We found that the board did not have a formal complaint-handling policy and had no system for recording what applications had or had not been assessed. We advised that as well as providing a transparent process for dealing with complaints, a complaint-handling policy would help the board identify systemic problems — such as those with managing applications. This would enable them to address such problems proactively. The board agreed to our suggestion and have developed and implemented a formal complaint-handling policy.

## State Plan

The State Plan is a blueprint for agencies to deliver better results for the community. It sets priorities for government with challenging targets for improvement.

We provide advice and support to agencies around implementing State Plan strategies, particularly relating to complaint-handling, customer service and improving service delivery. In November 2007 the Premier issued a memorandum to all agencies promoting our *Complaint-Handling Guidelines* as the standard to be used when reviewing and improving their complaint-handling systems as required by the State Plan's customer service priority. We made our guidelines and other information available through our website.

We have continued to promote effective internal complaint-handling through our representation on the Senior Officers Working Group for this initiative. We also conducted a major survey of the existing complaint systems of public authorities to gain a compliance snapshot which will guide our future work.

## Managing delays

From time to time agencies may experience a significant increase in workload or a reduction in resources, leading to delays in the provision of services. This may be due to circumstances beyond the direct control of an agency, but it is important that they nevertheless actively manage the situation. Good administrative practice to deal with delays can include providing information to the public about the challenges being faced, establishing additional communication strategies to manage expectations, and adopting procedures to expedite genuinely urgent matters.

Last year we reported our concern that a restructure at the Office of the Protective Commissioner (OPC) had resulted in significant problems. These problems included delays in callers getting through to customer liaison staff, delays in decisions being made, and a lack of coordination between new specialist units. As the Protective Commissioner administers the financial affairs of people with a disability who are unable to do this for themselves, any delays in making decisions is of considerable concern. We have been impressed by the frank and cooperative approach of the OPC in response to our inquiries. They provide us with regular briefings about the difficulties they are facing and the progress of the change program they are undertaking to address these. We will continue to monitor the situation closely.



## Local government 9

Customer service issues make up 25% of the complaints that we receive about councils. The NSW Government's priority in the State Plan is to increase customer satisfaction with government services. Our experience, confirmed by our recent mystery shopper audit of 30 councils, suggests that the quality of customer service can vary widely within and across various councils. We promote customer friendly service delivery through our advice and our *Good Conduct and Administrative Practice Guidelines*. We also promote customer satisfaction through our work with councils to improve their complaint-handling systems and processes.

### Highlights

- We achieved 367 positive outcomes for complainants in relation to 442 complaints investigated.
- After we met with senior management, Wollongong City Council properly investigated allegations of illegal work, set up a regulation and enforcement division within their organisational structure, and started to develop a compliance policy.
- After our investigation, Bathurst Regional Council agreed to improve their insurance and sewer asset management processes and paid compensation for possessions damaged after a sewer overflow.
- Several councils, including Woollahra and Albury City Council, apologised for delays or not responding to customer correspondence.
- We conducted mystery shopper audits of 30 councils to assess their customer service standards and received positive feedback from the councils audited, many of whom have made improvements to their systems and processes.

## Complaint trends and outcomes

This year we received fewer overall complaints about corporate and customer service, development, misconduct, management and community service matters and people objecting to council decisions.

The largest number of complaints this year related to corporate and customer service issues.

Routine customer service issues such as inaction, failing to reply to correspondence, delays in taking action, providing incorrect advice, lack of notification and consultation, and poor complaint-handling continued to be matters of concern.

There was an increase in the number of formal complaints about strategic planning (100%), rates

and fees (91%), engineering (28%), environmental enforcement (15.6%) and environmental services (3%). See figure 48 for the issues people complained about.

We achieved 367 positive outcomes for complainants as a result of 440 preliminary investigations and 2 formal investigations. This was a 10.8% increase from last year (see figure 47). Some of the outcomes we achieved included payment of compensation, apologies, admission and correction of errors, reviews of cases and changed decisions, mitigation of the consequences of decisions, changes to procedures, the implementation of policies and staff training. Over a third of the outcomes involved providing further information and/or reasons for decisions that helped complainants to understand the basis for the council's action.

Figure 46 — Five year comparison of matters received and finalised

Matters	03/04	04/05	05/06	06/07	07/08
Formal received	840	814	744	841	768
Formal finalised	865	833	720	837	788
Informal dealt with	2,194	2,138	1,891	1,992	1,965

Figure 47 — Formal complaints finalised



Formal investigation	2
Conduct outside our jurisdiction	16
Assessment only	330
Preliminary or informal investigation	440

## Customer service and complaint-handling

This year, complaints involving poor service and complaint-handling included incorrect advice (see case study 63), delays (see case studies 64 and 68), inaction on complaints (see case studies 65 and 66), poor communication (see case studies 62 and 67) and failing to reply (see case studies 69 and 70). We received 3.5% less complaints about councils than last year. There were 8.7% less formal written complaints and 1% less informal complaints received by telephone or in person at our office (see figure 46).

Figure 48 — What people complained about

Issue	Formal	Informal	Total
Corporate/customer service	312	376	688
Uncategorised	0	109	109
Development	102	337	439
Misconduct	38	83	121
Enforcement	118	183	301
Management	0	18	18
Engineering services	45	190	235
Strategic planning	12	32	44
Issue outside our jurisdiction	6	57	63
Object to decision	24	170	194
Community services	9	27	36
Environmental services	32	189	221
Rates charges and fees	70	194	264
<b>Total</b>	<b>768</b>	<b>1,965</b>	<b>2,733</b>

### Case study 62

After paying a levy for a new sewerage system to Cabonne Shire Council for 10 years, a number of ratepayers were concerned about how much longer they would have to pay but not be told about progress. Initially the council had kept the ratepayers informed but, as the years went by and various obstacles to completion surfaced, communication with the community dropped away. After our intervention, council reinvigorated their consultation processes and appointed the project manager as the designated person for communications with ratepayers. The ratepayers were pleased with this outcome while council told us they had learned an important lesson.

### Case study 63

A landowner complained that Eurobodalla Shire Council had not taken action when her neighbour illegally cut down trees on their boundary. At first the council allowed the neighbour to apply to surrender the consent. They then determined that consent was no longer required for tree removal in rural areas, even though this was contrary to their own local environment plan (LEP). The council had also published a fact sheet incorrectly advising the community that consent was no longer required for tree removal in rural areas. We found the surrender of consent was not in accordance with the law, even though the application had not been finalised, and consent to remove the tree was still required as the LEP had not been changed. We recommended council consider issuing a fine for the illegal tree removal, apologise for the way the complaint was handled, provide the complainant with trees to replace those cut down, and re-issue their fact sheet with correct advice. Council has complied with our recommendations.

### Case study 65

A family's access to their home was severely restricted for a long period because of delays with footpath works by Ryde City Council. The family's communications went unanswered while their frustrations mounted as cars and bins had to be left in the street. After our inquiries, council organised a temporary access, had the family's damaged gateway repaired and undertook to complete the footpath work as a priority.

### Case study 67

Shellharbour City Council conducted a public consultation for a controversial new cycleway. Although council conducted a survey on different route options, they promoted a particular option. We received a number of complaints from residents concerned that council had treated their 49 form-letter submissions as only one submission. Our inquiries showed that council was not clear why they had conducted the survey, what would happen with the data once it was obtained, and how it would be analysed and weighted. Council seemed to have given more weight to the survey results than to submissions. We advised council that the methodology for assessing public submissions and surveys should be made public at the start of consultation to ensure transparency and accountability. We also discovered council had prepared a flow chart explaining the consultation process but had not published it, despite the clear public interest in doing so. At our suggestion, council placed this document on their website and reviewed their processes for analysing public submissions.

### Case study 64

A man complained that Bathurst Regional Council took a long time to refuse two small insurance claims following damage to his relatives' possessions from a sewer overflow — caused by poor maintenance of a section of sewer main near the property. Our investigation found a lack of procedures, poor record-keeping, inadequate communication between sections of councils and council and their insurance company, and inadequate sewer asset management. Council agreed to improve their insurance and sewer asset management processes and compensated the claimants more than \$4,000.

### Case study 66

A resident complained that Wollongong City Council took a long time to deal with their application to close an unformed road and did not act on their complaints about another resident doing illegal work on the road reserve. Our inquiries revealed inadequate investigations and record-keeping, poor communication between sections of council, failure to progress a development application that had to be determined before other decisions could be made, and failure to advise the complainant. After we met with senior management, council properly investigated the allegations of illegal work, determined the development application, progressed the road closure application, wrote to the complainant, set up a regulation and enforcement division within their organisational structure, and started to develop a compliance policy to guide the work of that division.

### Case study 68

Woollahra Council carried out extensive work on a heritage wall that damaged a home owner's sewer pipes. Council told the home owner to repair the pipes and apply for reimbursement. However, the refund was delayed by conflicting opinions at council about their liability. After our intervention, council reviewed the case, reimbursed the \$6,000 repair bill and apologised for the delay.

### Case study 69

A legal firm contacted us when Sutherland Shire Council failed to respond to their correspondence for a second time on the same matter. We made inquiries and council admitted the error, rectified the circumstances through improved resourcing of the section of council involved, and provided the outstanding response.

### Case study 70

A community activist complained that Albury City Council did not reply to his correspondence about a controversial development of a child care centre at a popular local park. When we made inquiries, the council said the officer has assumed answers to the questions raised in the letter would be well known to the community so he did not provide a response. A response and apology were provided to the complainant.

## Council customer service audits

The NSW Ombudsman *Customer Service Audit — Multiple Local Councils* report is one of a series of reports on mystery shopper audits of customer service standards in the NSW public sector.

In 2007–2008 we conducted mystery shopper audits of 30 NSW councils.

The following councils were part of this year's audit:

Albury City Council	Hurstville City Council
Ballina Shire Council	Kogarah Municipal Council
Blacktown City Council	Ku-ring-gai Council
Blue Mountains City Council	Lachlan Shire Council
Camden Council	Liverpool City Council
City of Botany Bay Council	Liverpool Plains Shire Council
City of Sydney Council	Mid-Western Regional Council
Clarence Valley Council	Orange City Council
Coffs Harbour City Council	Queanbeyan City Council
Cowra Shire Council	Ryde City Council
Gilgandra Shire Council	Shoalhaven City Council
Glen Innes Severn Council	Strathfield Municipal Council
Great Lakes Council	Tamworth Regional Council
Greater Taree City Council	Waverley Council
Greater Hume Shire Council	Yass Valley Council

Between 19 February and 20 May 2008, 30 identical inquiries were made with each of these councils — with equal numbers made via a phone call, letter or email. All tasks were conducted by and assessed by our staff.

### Telephone contact

The advice provided by council staff in response to telephone inquiries was of a higher quality than advice provided in response to letters or emails. The advice given was generally accurate, but in only 75% of cases was the information provided considered to be a complete response.

The vast majority of calls we made to councils were answered by a person (80%) rather than interactive call systems or recorded messages (20%). Calls were answered promptly and very few callers experienced technical difficulties, such as being disconnected. There were also very few occasions where mystery shoppers were placed on hold for extended periods.

Council staff were generally considered to be courteous and appropriately business-like when handling inquiries. Very few staff were discourteous or uninterested in our callers' inquiry.

## Letters to councils

The average turnaround time for a response to a letter was only 10 days, which is an extremely good result. The advice in the response letters was generally accurate, clear and understandable.

However, only 78% of letters sent were responded to by councils. Of these responses, only 72% were assessed as providing complete information.

In total, only 57% of letters (170 of 300) received an appropriate response. This result is very disappointing.

## Emailed requests

The response rate to email inquiries was also disappointing, and considerably worse than the response rate to the letters we sent. Over 30% of emails sent were not responded to within 17 business days, with only 202 responses received to 300 emails sent.

However, response times were prompt when the council did reply to emails. The most common response time to emails was one business day (29% of all responses) and many responses arrived in under half a day (20% of all responses).

There were significant problems with the completeness of the responses provided by councils to emails. Only 67% of responses were judged to be complete. Overall, only 44% of emails received an adequate response.

The feedback received from the councils audited has been overwhelmingly positive and many have indicated how valuable the results have been in understanding the quality of their customer service and developing improvements to their systems and processes.

## Feedback from councils

Many councils have contacted our office and expressed their appreciation at being included in the audit. They have also noted particular changes they have implemented in light of the results. A number of councils will be providing further training for staff about access to council documents and privacy. Other changes implemented as a result of the audit are automatic acknowledgement of emails, training in writing business letters and, in the case of one council, the development of an integrated customer service centre.





## Freedom of information

# 10

On 22 April 2008, the Ombudsman announced that he would conduct an independent and comprehensive review of how the *Freedom of Information Act 1989* (FOI Act) is implemented in NSW. The Premier has given his support for the review.

Freedom of information legislation is one of the cornerstones of good governance. It ensures that government decision-making is open and transparent and decision-makers are held accountable for their actions.

### Highlights

- Started an independent and comprehensive review of the implementation of the *Freedom of Information Act 1989* (FOI Act) in 18 agencies, and released a public discussion paper to provide all interested parties with an opportunity to contribute to the review.
- Clarified the use of clause 13(a) of the FOI Act to exempt documents, such as employment contracts, from being released due to a breach of confidence.
- After a journalist applied unsuccessfully under FOI to eight area health services in NSW and The Children's Hospital for access to clinical indicator reports, we intervened and NSW Health directed all the area health services and The Children's Hospital to release the reports in the public interest.
- Worked with agencies on a range of FOI issues including advance deposits, applications for electronic documents, and the need for good communication with applicants.

## Review of the Freedom of Information Act

Since the FOI Act came into force nearly 20 years ago, the way government departments operate and do business has altered dramatically. The Act has been the subject of more than 60 amendments in that time which have only served to make it more complex and difficult to navigate. We are aware from our work dealing with FOI complaints that both applicants and agencies find the Act frustrating to use and work with. For nearly 14 years we have been calling for an independent and comprehensive review of the FOI Act.

Eighteen agencies have been selected for specific investigation as part of the review. We have deliberately selected a mix of agencies including:

- government departments, local councils, universities and area health services
- agencies of varying sizes, to reflect the different resources available to handle FOI matters
- agencies with different functions such as regulatory, service delivery or policy coordination
- agencies that receive varying numbers of FOI applications, from large numbers to more limited applications.

Each agency has been asked to provide specific documents and information. We are conducting audits of a sample of their FOI files and interviewing agency staff who deal with FOI applications.

We have requested information from the Administrative Decisions Tribunal about the external review applications they deal with, as well as information from all NSW local councils about requests they deal with under s.12(6) of the *Local Government Act 1993*, the FOI Act, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

As part of the investigation process, we have released a public discussion paper to provide all interested parties with an opportunity to contribute to the review. This is a detailed document reflecting our experience in dealing with a wide range of challenges and difficulties related to FOI in NSW. The discussion paper was distributed widely and is available on our website.

The findings from our investigation will inform our final report and recommendations to Parliament. Updates and announcements about our review will be posted on our website.

## The decisions agencies make on FOI applications

As in previous years, we reviewed the reporting of FOI statistics in the annual reports of over 100 agencies.

The review indicated that the number of FOI applications reported to have been made to those agencies decreased by 9.5% between 2005–2006 and 2006–2007. This continues the downward trend that was first noticed in the 2005–2006 reporting period. Overall there has been a decrease of close to 20% in the number of FOI applications reported to have been made to reviewed agencies since 2004–2005 (a decrease of 3,280 applications — down from 15,958 to 12,678). The primary cause of this decrease has been the significant reduction in the number of FOI applications made to the NSW Police Force (NSWPF), down from a peak of 8,505 in 2003–2004 to 5,780 in 2006–2007 (a decrease of 32%). However, applications to other audited agencies have also decreased by 690 per year, down from 7,587 to 6,898 (a decrease of 9%) over the past three reporting periods, primarily between 2005–2006 and 2006–2007.

Of the 103 agencies whose annual report FOI statistics were reviewed, the 20 agencies that received the most FOI applications in 2006–2007 between them received 91.5% of all reported FOI applications (11,576 out of a total of 12,678). This is largely similar to the percentage of total applications received by those

same 20 agencies in the two preceding reporting years. Excluding the figures for the NSWPF, the remaining 19 agencies between them received 84% of all non-police applications (5,796 out of 6,898). This is an increase of 4% over the figure for 2004–2005.

Since 2002–2003, the percentage of FOI applications reported to have been approved in full in all annual reports (the subject of our review) has decreased by approximately 18% in total and by 10.5% to non-police agencies. This means that total refusals increased by 18% and 10.5% respectively.

As part of this latest review, we analysed in more detail the reporting history of the seven agencies that received more than 300 applications per year (a total of 9,916 out of 12,678 applications reported to have been made in all reviewed annual reports). While the nature of the reported statistics had not changed significantly for six of those agencies, there has been a significant change in the nature of the determinations made by the NSWPF over the past four reporting periods. Over that time, the total number of applications refused by the NSWPF based on exemption clauses has increased by 43% (from 12% of refusals to 55%). While this was almost completely related to partial refusals, the total number of applications refused in full based on exemption clauses has increased by 6% (from nil to 6% over the period). Over the past three years the determinations made by the NSWPF have significantly impacted on the overall statistics from all reviewed annual reports. With the police figures removed from the calculation, over the past three reporting periods there was still an approximate 10.5% increase in refusals by agencies, including an approximate 6% increase in partial refusals and an approximate 5% increase in full refusals.

Figure 49 — Five year comparison of matters received and finalised

Matters	03/04	04/05	05/06	06/07	07/08
Formal received	139	189	188	208	225
Formal finalised	129	182	198	205	197
Informal dealt with	309	345	294	316	422

## FOI complaints

This year we received over 220 formal complaints about FOI applications (see figure 49). As was the case last year, most complaints involved agencies refusing access to documents requested (see figure 50). This reflects an overall trend we have observed of a significant decline in the number of applications resulting in the release of all documents.

In many of the complaints, the agency had not made an actual determination to refuse to release the documents, rather, it had made a 'deemed refusal'. A deemed refusal occurs when an agency does not determine the FOI application within the statutory time frame and does not seek an extension of time to process the application, as provided for by the FOI Act. We found that as a result of poor FOI application management or a lack of resources, a number of agencies simply let the statutory time frame elapse without determining the FOI application. The use of the wrong procedure by an agency in determining an FOI application was also the subject of a large number of complaints.

In 2007–2008 we finalised over 190 FOI complaints and achieved 171 positive outcomes in these matters (see figure 51 over page). Many of these matters were resolved by the agency agreeing to re-determine the FOI application and release the documents. We also resolved a number of matters where the agency had been unable to locate the documents at the time of the original determination, but subsequently located and released them to the applicant at our suggestion. See Appendix J for a full list of actions we took for each complaint finalised this year.

Figure 50 — What people complained about

This figure shows the complaints we received in 2007–2008 about freedom of information, broken down by the primary issue for each complaint. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Third party objection	7	10	17
Agency enquiry	0	54	54
Pre-application enquiry	0	75	75
Documents not held	8	7	15
Issue outside our jurisdiction	1	3	4
General FOI enquiry	1	104	105
Documents destroyed	0	2	2
Documents lost	1	5	6
Pre-internal review enquiry	0	32	32
Documents concealed	0	8	8
Charges	8	21	29
Access refused	126	63	189
Information	0	2	2
Wrong procedure	67	32	99
Amendments	6	4	10
<b>Total</b>	<b>225</b>	<b>422</b>	<b>647</b>

We continue to receive complaints about agencies requesting advance monetary deposits. We encourage these agencies to explain to applicants in detail how the advance deposit charge was calculated. This information can assist applicants to negotiate a more restricted FOI application so as to reduce the cost incurred.

Figure 51 — Significant outcomes achieved in relation to complaints about freedom of information finalised in 2007–2008

Outcome	No.
Policy/procedure change	5
Authority pays compensation	1
Authority makes apology	4
Other remedy	5
Authority reviews case	12
No significant outcome	37
Further information provided	58
Authority admitted and corrected errors	5
Authority reviewed and changed decision	15
Authority provides reasons	14
Agreement reached through informal means	3
FOI documents released	38
FOI refund/remission of fees	7
FOI search made and documents made	4
<b>Total</b>	<b>208</b>

## Confidentiality clauses in employment contracts

In 2007, the Sydney Morning Herald made FOI applications to each of the NSW public universities for the Vice Chancellors' (VC) employment contracts. Macquarie University, the University of Technology, Sydney and the University of Newcastle released the contracts fully, and two universities released them partially. However, the five remaining universities exempted them in full, relying largely on clause 13(a) of Schedule 1 of the FOI Act. This provides for an exemption if disclosure of information would be a breach of confidence for which legal action could be taken.

We made own motion inquiries into how the universities made their decisions. We learned that a number of them exempted the contracts on the basis of a confidentiality clause within the contract.

We were concerned that the approach taken to clause 13(a) effectively amounted to 'contracting out' of FOI by expressly creating a contractual obligation of confidentiality — and therefore predetermining the exemption of documents under FOI. We considered this to be contrary to the public interest. We believe that the terms and conditions of employment contracts of public sector staff should be transparent and open to public scrutiny, except in exceptional circumstances.

At the time of our inquiries, the Administrative Decisions Tribunal (ADT) also addressed the issue of whether the inclusion of a confidentiality clause could predetermine that a document would be exempt under FOI in *Watt v Forests NSW* [2007] NSWADT 197. This decision contrasted with a previous ADT decision in *Fomiatti v University of Western Sydney (No 2)* [2006] NSWADT 210.

In light of the conflicting case law, we asked the NSW Solicitor General for advice about the appropriate interpretation of clause 13(a) of the FOI Act. The Solicitor General's advice was that "clause 13(a) is principally directed to cases in which a person has provided confidential information to a

government agency and another person seeks to obtain access to that information by lodging a request under the Act". A right of action arising under a confidentiality clause of a contract would be for a breach of the agreement, not for a breach of confidence.

### Case study 71

Miners are required to submit reports to the Department of Primary Industries about their mining exploration activities. The department received an FOI application for such reports and, as required by the FOI Act, consulted the miners about the release of the documents. Two miners objected to the release. The objection was based on the fact the department had previously advised them that the information in the reports would be kept confidential while their licences were in force. The miners were also concerned about an unreasonable adverse effect on their business affairs as information about specific exploration locations is valuable to competitors. They also claimed that when site locations had been released in the past, competitors had carried out unauthorised work.

We wrote to the department and suggested they delete those parts of the reports that referred to specific exploration locations. We also suggested they amend their Exploration Reporting Guidelines to indicate that confidentiality of the reports cannot be guaranteed. They have complied with this advice.

The relevant issue for clause 13(a) is whether the disclosure of the material would satisfy the elements of an equitable action of breach of confidence. According to the Solicitor General, these elements are:

- the information is confidential
- the information was originally imparted in circumstances importing an obligation of confidence
- there was, or is threatened, an unauthorised use of the information to the detriment of the party communicating it — where embarrassment, for example, has constituted sufficient detriment in the case of a private individual, although damage to the public interest must be demonstrated by a government agency.

The Solicitor General did not consider the disclosure of Vice Chancellors' employment contracts would meet these criteria because the contracts would be unlikely to contain confidential information imparted by the VC to the university or vice versa.

We have shared the Solicitor General's advice with the universities and they have all indicated they would consider it in any future applications of clause 13(a).

Case studies 71 and 72 demonstrate how an undertaking of confidentiality can also create unrealistic expectations in people that their information will not be released under FOI.

## NSW Police Force — determining FOI applications

In 2005, we completed an investigation into the failure of the NSW Police Force (NSWPF) to comply with timeframes in the FOI Act. The NSWPF responded by allocating nine additional staff to their FOI Unit to help deal with the significant volume of 8,000 applications they receive every year.

Since our investigation, the FOI Unit has reduced the back-log of unprocessed applications by approximately half. They have made significant improvements in the volume of applications they process each month. However, we continue to receive complaints about ongoing and sometimes significant delays in determining FOI applications.

We have had a number of meetings with the FOI Unit to discuss how they manage their workload. We will continue to monitor the way the NSWPF addresses delays in processing times. We are also keen to see them consider ways of releasing certain types of information outside of FOI, particularly in response to requests from complainants (both police and public) for information about the outcome of their complaint.

## Case study 72

A journalist applied under FOI to eight area health services in NSW and The Children's Hospital for access to clinical indicator reports compiled by the Australian Council on Health Care Standards (ACHS), a non-profit organisation. ACHS compiles these reports from clinical information given to it by private and public hospitals and health care institutions. They provide the reports to the institutions themselves, not to any of the area health services or NSW Health.

All but one of the area health services and The Children's Hospital exempted all the reports under clauses 7 and 13(b) of Schedule 1. They argued that release of the reports would unfairly disadvantage ACHS's business affairs as its competitors would be able to copy their procedures. They also claimed that professional and medical staff would stop providing the information for the reports. One area health service only claimed exemption under clause 7.

After obtaining all the clinical indicator reports from all the institutions, we met with ACHS to find out about their role and procedures. We then met with ACHS and the journalist to try to resolve the complaint. ACHS advised us they effectively had no competitors and would welcome a mandatory reporting scheme implemented by the NSW Minister for Health.

Following our consideration of the complaint, we wrote to NSW Health and presented our view that the release of information and statistics about the performance of hospitals and other health institutions would be in the public interest. To try to resolve the complaint, we asked whether NSW Health would consider directing or suggesting to the various area health services and The Children's Hospital that they release the clinical indicator reports they had determined as exempt.

NSW Health advised us that they agreed with our view and directed the chief executives of all the relevant area health services and The Children's Hospital to release the reports to the journalist. NSW Health also advised that release of the reports would be subject to any contractual arrangements of the area health services and The Children's Hospital with ACHS.

### Case study 73

A journalist made an FOI application to the NSWPF for documents concerning the number of times police had been called out to private schools and the reasons for those call-outs. The police exempted the material claiming that its release could reasonably be expected to have an unreasonable adverse effect on the business, professional, commercial or financial affairs of the schools.

We wrote to the NSWPF suggesting the information sought by the journalist be released. We did not consider that the information in the documents concerned the business, professional, commercial or financial affairs of the schools — as the business of private schools is providing education to children.

The NSWPF argued that the schools' reputation and standing in the community had a direct influence on their ability to attract students and staff. The disclosure of the information, they argued, might

attract unwarranted discrimination — resulting in the schools becoming less competitive and unable to attract students and staff. In addition, prospective parents may be influenced by negative newspaper articles in their choice of schools and this would diminish the competitiveness of individual schools.

Our view was that a school's reputation is made up of many individual factors and there are a multitude of reasons that may affect or influence a parent's choice of school. Given this, the release of information about police call-outs could not be reasonably expected to affect the competitiveness of the schools. While there was a risk that the release might have this effect, this was not enough to meet the test in the business affairs exemption in the FOI Act — this requires there to be a reasonable expectation of an unreasonable adverse effect.

The NSWPF agreed to release the documents. One of the schools challenged that decision in the Administrative Decisions Tribunal.

### Case study 74

We received a complaint from a young man that there were two identical records about him in the police database. The young man had previously advised us he often found it very difficult to resolve problems with government agencies because of his mental illness. He also said he had attempted to alert the NSWPF to the error but with no success. While the complainant had previously made a number of FOI requests to the police about this information, it was unclear whether he had formally requested the information be amended.

Regardless of this, given the complainant's personal circumstances and his lack of success in complaining to the police, we asked the NSWPF FOI Unit to assess his concern about the extra record and make necessary amendments if an error was identified. The police reviewed the matter and amended the record.

In this case, the complainant spent many months attempting to resolve a concern that was ultimately fixed quickly once our office became involved.

Case study 73 provides an example of a matter where the NSWPF exempted material sought by a journalist because of concerns they held that the release of the information would damage the reputation of certain schools.

Mental health issues can often be a barrier in successfully negotiating FOI outcomes. If a complainant has a mental illness, or their ability to resolve a matter is in some way limited, government agencies must be proactive in reviewing and resolving matters promptly. Case study 74 illustrates this.

### Open disclosure and FOI

The Department of Health's open disclosure policy and related guidelines applies to all area health services. It sets out how healthcare staff should communicate with patients and their support persons after adverse incidents. One of the requirements is the provision of an apology in appropriate circumstances.

We consider that full and frank disclosure can go a long way towards helping patients come to terms with an adverse situation. It can also prevent matters from developing into drawn out complaints or multiple FOI applications. Adherence to the open disclosure policy also means that patients and their families don't need to resort to FOI to find out what happened. Case study 75 illustrates this issue.

## Food hygiene matters

Food hygiene related issues continued to receive media interest this year with journalists lodging FOI applications to obtain information from councils about breaches of the *Food Act 2003*. Last year we reported that, in our view, there are good reasons for introducing a system that alerts the public to health and hygiene issues in all food businesses. We did not think the FOI Act was a suitable vehicle to achieve this outcome, but developing an appropriate system was an important issue for policy-makers to consider.

Since then, there has been further debate about whether information on food hygiene standards should be disclosed by the government outside of the FOI Act. In response to this debate, the NSW Food Authority started publishing the results of successful prosecutions on their website. On 14 April 2008 the Food Amendment (Public Information on Offences) Bill 2008 was assented to, providing for the publication of information about infringements by the NSW Food Authority. This practice has already started with the authority naming establishments on their website that have been prosecuted for infringements.

## Legal professional privilege

Last year, we suggested the Department of Education and Training (DET) consider redrafting their reporting school accidents policy in regard to the application of legal professional privilege. DET's policy stated that legal professional privilege will apply to all school accident reports, thus pre-determining a blanket exemption for such documents requested under FOI. Our view, supported by the Solicitor General, is that this approach is wrong. DET has advised us that they have now amended the policy to state that legal privilege 'may apply'.

Sometimes our review of how an agency handled an FOI application reveals problems in the agency's systems or processes that need to be rectified.

## Case study 75

A complainant sought an external review of the determination the North Coast Area Health Service made on her FOI application. She wanted documents that would explain the treatment her elderly father had received in hospital, as he came home with bruises. Although the hospital initially gave some information, the complainant was not satisfied and sought additional details. In response to her FOI application, the hospital released incident reports and medical records — but declined to give documents about their investigation of the complaint about the treatment the father received.

We suggested the documents about the investigation be released. As it appeared the open disclosure policy was not followed in this case, we also suggested the area health service apologise to the complainant for both the shortfalls in the treatment her father had received and the way they had responded to her complaint. The area health service gave the complainant a written apology and an opportunity to meet with the chief executive so he could apologise in person.

While we consider the apology and the release of the documents resolved the issues raised by the complainant, we have continued to monitor the way area health services comply with the open disclosure policy.

## Case study 76

An inmate from the High Risk Management Unit (HRMU) lodged an FOI application for a large number of documents held on his case management file. When he received the documents, he was concerned that documents about regular case reviews appeared to be missing and pages were missing from other documents.

In addition to finding that some documents had been omitted and some had been incorrectly copied by the HRMU, we also found that the HRMU had been using outdated forms to record inmate case reviews. Our inquiries drew attention to the need for the HRMU to review their document management practices. We will continue to monitor this matter.

## Case study 77

The Combined Pensioners and Superannuants Association applied for access to all documents about a Roads and Traffic Authority (RTA) review of pensioner concessions for driving licences and car registrations. The review sought to introduce charges for pensioners that conflicted with the Minister's earlier advice to the association that there would be no changes to pensioner concessions. The RTA refused access to many documents under the internal working document exemption.

When we first made inquiries with the RTA about whether the documents were of any ongoing relevance, they advised us there was no current review of pensioner concession charges. We therefore suggested the documents should be released. In response, the RTA advised us they were conducting a review. At our suggestion, the RTA advised the association of the review. The RTA's letter contained contradictory remarks about how much information they would provide to the association about the review and the extent of any consultation.

Following two media articles about the review, a senior RTA manager contacted the association to advise them the RTA was not carrying out a review of pensioner concessions. As a result, the RTA agreed with our suggestion and released the documents.

Case studies 76 and 77 demonstrate our work in FOI sometimes highlights underlying issues with agencies' administrative processes which we can give agencies feedback about.

## Investigations

This last year has been a particularly busy year for investigations into how agencies handle FOI applications. We have some investigations underway that we cannot report on due to their confidential nature, but a number of completed investigations — some of which are detailed below — demonstrate the issues confronted by the community in relation to accessing information under the current FOI legislation.

### Investigation 1

The Sydney Morning Herald applied to the RTA for access to documents relating to a payment in 2006 of \$25 million to Connector Motorways, the company that built and operates the Lane Cove Tunnel. The payment was made to allow for a delay to changes in traffic direction in roads close to the Lane Cove Tunnel. The RTA refused access to all 59 documents under clauses 1, 7, 9 and 10 of Schedule 1 to the FOI Act.

We conducted a formal investigation into the RTA's conduct. In accordance with normal procedure, the RTA obtained certificates from the Department of Premier and Cabinet to support their determination that the documents

were Cabinet documents. The RTA obtained certificates for 39 documents and continued to maintain other documents not covered by the certificates were also Cabinet documents. After considering our preliminary report, the RTA agreed that many documents they initially considered exempt could be provided to the newspaper. However they continued to maintain exemptions for a second category of documents, including the ones they had no Cabinet certificates for.

In our final report we recommended the release of most of the second category of documents, as we considered there was a strong public interest in knowing the details of the \$25 million payment of public money to Connector Motorways. The RTA refused to comply.

We also had concerns about the way the RTA consulted with Connector Motorways. They consulted with them a second time after the company had initially advised the RTA they had no concerns about the release of documents concerning their affairs.

## Investigation 2

We conducted two investigations into how the NSW Rail Corporation (RailCorp) handled applications by the Sydney Morning Herald for documents involving a public private partnership for the purchase of new railway carriages, as well as documents about the risk assessment of major infrastructure above rail tracks. After lengthy negotiations, RailCorp released a number of documents about the rail carriages previously considered to be exempt. However they refused to fully comply with our recommendations about the documents on the risk assessments of infrastructure — stating concerns that the information in the documents could be used for possible terrorist attacks.

We were concerned that these two cases may indicate a systemic problem in the way RailCorp handles applications by the media. We suggested consideration be given to a more proactive disclosure of information, particularly in situations where there is an already known or perceived risk to public safety. This would allow RailCorp to demonstrate that they had been diligent in mitigating risks, as we were satisfied they did in this case.

## Advance deposits

Many agencies receive FOI applications that request access to a large number of documents, sometimes involving hundreds or thousands of pages. Such applications clearly mean a lot of work for an agency's FOI staff.

Although agencies can request an advance monetary deposit from an applicant, they should take care to ensure any advance deposits and FOI charges are reasonable and appropriate. Two cases we dealt with highlight this issue:

- We received a complaint from an employee of Sydney South West Area Health Service (SSWAHS) who became involved in an industrial dispute with SSWAHS. He applied under FOI for all documents about his employment and the industrial dispute. Hundreds of documents were involved and the applicant was asked to pay over \$1300 in processing fees. The majority of documents were about the applicant — such as his timesheets and other personnel documents. Access to these should have been available to him without recourse to FOI. We suggested to SSWAHS that they negotiate with the applicant to reduce the fee. They waived the entire fee and released nearly all the documents.
- An application was made to the Department of Education and Training for two different categories of documents. One category related to the applicant's personal affairs and included thousands of documents, while the other category did not concern her personal affairs. The department asked the applicant for an advance deposit for the part of her application that did not concern her personal affairs, but did not commence processing the applicant's personal affairs application until we became involved.

When we received her complaint we were quickly able to resolve that part of her application that did not concern her personal affairs. However, there were long delays by the department in processing the documents about the applicant's personal affairs. We negotiated with the department over many months. While we do understand there could be legitimate delays when an agency has to deal with such a large application, we considered it was inappropriate for the department to request any advance deposit for the documents not concerning the applicant's personal affairs due to the extensive delay. The department agreed.

We believe it is good practice for agencies to consider the types of documents being requested and any potential for delay when calculating advance deposits and processing charges. Agencies should consider refunding fees where delays have been experienced.

## Applications for electronic documents

With continuing advances in technology, we see an increasing number of FOI applications for documents that are held in electronic format.

The FOI Act, which was written before the advent of email and the widespread use of the computer, provides no clear guidance for dealing with requests for electronic documents — except that such documents are subject to FOI applications. There can sometimes be a fine line between a legitimate application for 'existing' documents held on a database, and a request for information that requires complex research or the manipulation of information technology. Our review of the Act will address some of these important issues.

In dealing with complaints involving electronic documents, we would generally examine whether the agency has tried to properly satisfy the applicant and provide access to the documents. This may include the agency seeking information technology advice about whether documents can be located, downloaded or easily retrieved. We would also look to see whether an agency may be using the difficulties in retrieving a document to simply avoid releasing it.

## Searching for documents

We are seeing a rise in the number of complaints claiming an agency has failed to carry out a proper search for documents. On 19 June 2008, in the case of the *Administrative Decisions Tribunal Appeal Panel v Director-General, Department of Commerce & Ors* [2008] NSWCA 140, the Court of Appeal determined that the jurisdiction of the ADT does not extend to reviewing the adequacy of searches undertaken by the agency in response to an FOI application. We expect a further rise in insufficient search complaints to us as a consequence of this decision.

These complaints mostly arise in large decentralised agencies where FOI staff cannot carry out searches themselves and have to rely on other staff, often located away from the head office, to supply them with documents.

We expect FOI staff to carry out sufficient and appropriate searches for documents in every case, even if that means contacting the local office several times. It is important however that agencies ensure all staff fully cooperate with FOI managers and provide all assistance needed in locating documents.

## The importance of communicating with applicants

In our experience, many problems that emerge from an agency's handling of FOI applications arise through poor communication with the applicant. Problems can include a failure to identify all relevant documents, insufficient searches, excessive FOI charges and unnecessary work carried out to determine particular documents are exempt — as it sometimes turns out the applicant is not really interested in these.

It is not uncommon for FOI applications to be very broad and for an agency to have difficulty identifying all the relevant documents. It is appropriate for agencies to consult with applicants if they have any difficulty in dealing with the application, wish to clarify parts of it, or discuss why the applicant wants the documents. If an agency knows the reasons behind an application, there may be an opportunity to resolve either the FOI application or a related issue. Although it may not always be appropriate to contact an applicant, communication about any possible delays in dealing with an application is always good practice.



## Protected disclosures

# 11

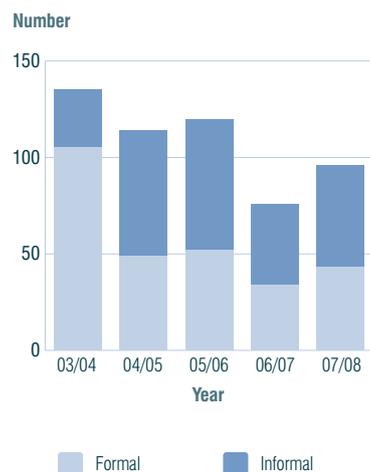
In November 2006, the Parliamentary Joint Committee (PJC) on the Independent Commission Against Corruption made 17 recommendations for amending the *Protected Disclosures Act 1994* (the PD Act) and improving how protected disclosures are handled.

### Highlights

This year we have:

- Continued our contribution to the Whistling While They Work research project.
- Started a review of our *Protected Disclosure Guidelines*.
- Promoted the implementation of the recommendations of the 2006 Parliamentary review of the *Protected Disclosures Act 1994*.
- Produced a guideline for agencies on *Reporting of Progress and Results of Investigations*.
- Conducted eight training workshops on the better management of protected disclosures.

Figure 52 — Protected disclosures received — five year comparison



## Progress on amending the legislation

In March 2008, the Protected Disclosures Act Implementation Steering Committee wrote to the Premier encouraging the government to implement the Parliamentary Joint Committee on the Independent Commission Against Corruption's (ICAC Committee) recommendations. The Steering Committee is yet to receive a response from the Premier.

In June 2008, the Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008 was introduced in Parliament by the Leader of the Opposition. The Bill covers the main recommendations of the PJC's review of the PD Act and seeks to establish a Public Interest Disclosures Unit within the Ombudsman's Office.

On 11 July 2008, the ICAC Committee announced the start of a further inquiry into the effectiveness of current laws, practices and procedures in protecting public sector whistleblowers.

## Whistling while they work project

Over the past four years, we have been involved in a collaborative national research project on the management and protection of internal witnesses — including whistleblowers — in the Australian public sector. The Deputy Ombudsman has provided considerable input into this project and is the co-author of two chapters in the project's final report.

The first report of the project, called *Whistleblowing in the Australian Public Sector*, was published in draft form in October 2007. The final version was published in September 2008, entitled: *Whistling While They Work: Enhancing the theory and practice of internal witness management in public sector organisations*. It is proposed that a draft of a second report — on internal witness management systems — will be released at the National Investigation Symposium to be held in Sydney in November 2008.

The first report of the Whistling While They Work project focuses on such important issues as:

- the incidence and significance of whistleblowing — identifying that disclosures of wrongdoing by staff are far more common than was expected
- who blows the whistle, who doesn't, and why — finding that just about anybody could blow the whistle, depending on circumstances such as the seriousness of the issue and whether they thought anything would be done about it
- whether reports are made internally or externally — finding that the vast majority of reports are made internal to the organisation, and usually to a supervisor
- the outcomes of whistleblowing — finding that while a majority of whistleblowers reported there was no change or they were better off following the making of a report, a significant number reported that they suffered reprisals
- identifying the risks of mistreatment — identifying a number of common risk factors (which interestingly did not include confidentiality).

Other issues addressed in the report include:

- improving investigation practices and capacity
- internal witness support
- comprehensiveness and effectiveness of agency procedures
- key principles for whistleblower legislation
- project findings, including an agenda for action.

We have started reviewing our own *Protected Disclosures Guidelines* in the light of the findings of the research and plan to publish a new version (the 6<sup>th</sup> edition) later in 2008.

## Providing information to interested parties

This year we received a number of inquiries from agencies about what information can be given to interested parties about the progress and results of investigations into complaints or protected disclosures. Although it is not possible to give a definitive answer to this question that applies in all circumstances, we issued some general advice to agencies in a guideline called *Reporting of Progress and Results of Investigations*. These can be downloaded from our website.

Information given to interested parties — such as complainants/whistleblowers, subjects of complaints/disclosures and witnesses — should:

- meet the legitimate expectations of those involved
- respect the rights and interests of those involved
- improve how complainants/whistleblowers and subjects of complaints/disclosures are managed
- provide procedural fairness to subjects of complaints/disclosures.

The actual information provided and how it is provided will depend on:

- the nature of the investigation — ‘evidence focused’ or ‘outcome focused’
- who the information is given to — e.g. complainant, whistleblower, witness or subject of the investigation
- the particular stage of the investigation — e.g. at the outset, after a decision is made, during the course of the investigation, before completion or at the end of the investigation.

Complainants and whistleblowers should be given at least enough information to show that their complaint was properly investigated.

## Timely assessment of protected disclosures

We received a complaint this year alleging that detrimental action was taken against the complainant as a result of making a protected disclosure to an agency. It highlighted the importance of agencies assessing internal disclosures and complaints from their staff to determine, at the outset, if they are protected disclosures. This allows agencies to appropriately manage confidentiality issues, the complainant’s expectations about the actions to be taken, and the level of information provided to them. It also enables agencies to assess the risk of any potential for detrimental action.

Developing a protected disclosure assessment tool, with a checklist based on the eligibility criteria in the PD Act, will assist agencies with this task. Our fact sheet on Protected Disclosures provides useful guidance for doing this.

## Providing training workshops

Providing regular training to the nominated disclosure officers in an agency is vitally important to ensure internal reporting procedures are working properly. This is especially the case in large organisations that have many decentralised units. Staff sometimes temporarily act in positions that are nominated to take protected disclosures, but don’t understand what they are required to do when they receive one. This can cause problems for both the agency and the whistleblower.

During 2007–2008, the Deputy Ombudsman and a representative of the ICAC conducted eight Better Management of Protected Disclosures workshops in Sydney, Albury, the Hunter, Newcastle and Wagga Wagga. About 20 people attended each workshop, and over 90% of participants provided feedback that the workshops were very useful and relevant to their work.

In addition, the Deputy Ombudsman:

- conducted several in-house training sessions for staff of a number of agencies on the management of whistleblowers
- presented a workshop on managing public interest disclosures with Dr A.J. Brown of Griffith University, as part of the APSAC Conference in Sydney in October 2007
- co-delivered a presentation on whistleblowing at an Australian and New Zealand School of Government (ANZSOG) training course in Melbourne in May 2008.

## Pay-back complaints

Several years ago, a number of whistleblowers made a series of protected disclosures that led to a major investigation by the Ombudsman. This year we received a new complaint from one of those whistleblowers. Several people within her organisation had made complaints about her. She believed these complaints were malicious, and had been made by friends of the person who had been investigated after the earlier disclosure — as a ‘tit for tat’ response for her having come forward.

We organised a meeting between the chief executive officer of the organisation and the complainant. We discussed the fact that if a person makes a disclosure and seeks the protections of the Protected Disclosures Act, it is important to not — at the outset — dismiss the idea that a matter may be genuine, even if some ‘tit for tat’ considerations may be involved. Every complaint needs to be examined on its merits.

However, we also pointed out that the Act provides that principal officers of an authority may decline to investigate a matter if they believe that the disclosure was made frivolously or vexatiously. In this case, a person who makes such a complaint could be penalised under the organisation’s code of conduct. The chief executive officer agreed to communicate these considerations in a memo to all staff to prevent any further pay-back disclosures being made against the complainant. The complaints already made were found to be groundless.



## Covert operations 12

The NSW Police Force, the Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission have the power to do a range of things — as part of a covert operation — that would otherwise be illegal.

### Highlights

- During the year, we inspected the records of 364 controlled operations, an increase of 59 over the previous year.
- Conducted 19 separate on-site inspections of the telecommunication interception and controlled operations records of the relevant law enforcement agencies.
- Complied with our external reporting obligations.

Under the *Listening Devices Act 1984* (recently replaced by the *Surveillance Devices Act 2007*), the Commonwealth *Telecommunications (Interception and Access) Act 1979* and the *Law Enforcement (Controlled Operations) Act 1997*, the relevant law enforcement agencies can intercept telephone conversations and plant devices to listen to and video conversations and track positions of objects. They can also carry out controlled or 'undercover' operations that may involve committing breaches of the law, such as being in possession of illicit drugs.

Because these kinds of operations involve significant intrusions into people's private lives, the agencies may only use these powers if they follow the approval procedures and accountability provisions set out in the relevant legislation. An important function of the Ombudsman is to review the compliance of agencies with these requirements.

The Ombudsman has always been involved in monitoring compliance with the legislation for telecommunications interception and controlled operations. However, up to this year, there was no external oversight of listening devices by an independent agency. The *Surveillance Devices Act 2007* was assented to on 23 November 2007, but was not yet in force during this reporting year. Under this new legislation, we will also have the role of inspecting the surveillance device records of NSW law enforcement agencies to determine the extent of compliance with the Act — both by the agency and their law enforcement officers. We will also have reporting obligations to the Attorney General and Parliament.

These monitoring and inspection functions are carried out by specialist, security cleared staff in our secure monitoring unit who report directly to an Assistant Ombudsman. During 2007–2008, staff from the unit conducted 19 separate on-site inspections of the telecommunication interception and controlled operations records of the relevant law enforcement agencies to make sure they were complying with their legislative obligations. For controlled operations, this monitoring role extended to three Commonwealth law enforcement agencies that are eligible to conduct operations under the NSW Act. These are the Australian Federal Police, the Australian Customs Service and the Australian Crime Commission. To date, only the Australian Crime Commission has conducted controlled operations using their powers under the NSW Act.

## Controlled operations

Controlled operations are an important investigation tool. They allow law enforcement agencies to infiltrate criminal groups — particularly those engaged in drug trafficking and organised crime — to obtain evidence to prosecute perpetrators of criminal offences or expose corrupt conduct.

The chief executive officer of the law enforcement agency gives approval for controlled operations without reference to any external authority. To ensure accountability, the Ombudsman has a significant role in monitoring the actual approval process for these undercover operations.

Agencies must notify us within 21 days if an authority to conduct an operation has been granted or varied, or if a report has been received by the agency's chief executive officer on the completion of the operation.

We are required to inspect the records of each agency at least once every 12 months to ensure they are complying with the requirements of the Act. We also have the power to inspect agencies' records at any time — and make a special report to Parliament if we have concerns that should be brought to the attention of the public.

During 2007–2008, we inspected the records of 364 controlled operations.

We report in detail on our monitoring work under the Law Enforcement (Controlled Operations) Act in a separate annual report that is available on our website or from our office. As well as reporting on compliance with the Act, the report includes details about the type of criminal conduct targeted in the operations and the number of people who were authorised to undertake controlled activities. It also provides some basic information about the results of those operations.

## Telecommunication interceptions

A judicial officer or member of the Administrative Appeals Tribunal grants a warrant for a telephone interception, so — unlike controlled operations — our role does not include scrutinising compliance with the actual approval process.

We make sure that the agency carrying out the telecommunication interception complies with all the necessary record-keeping requirements. These records must document the issue of warrants and how the information gathered was used. Some records have to be given to the Attorney General and all intercepted material must be destroyed once specified conditions no longer apply. All telephone intercept records have to be kept under secure conditions by the agency.

We are required to inspect each agency's records at least twice a year, and also have discretionary power to inspect their records for compliance at any time. We report the results of our inspections to the Attorney General. The *Telecommunications (Interception and Access) (New South Wales) Act 1987* prevents us from providing any information about what we do under that Act in our annual report — or in any other public report we prepare.

In 2006, the Commonwealth *Telecommunications (Interception and Access) Act 1979* was amended to allow the interception of communications of an innocent third party known to communicate with a person of interest. These amendments also provided for stored communications warrants. These warrants are obtained by law enforcement agencies to lawfully access — by covert means — emails, SMS and voicemail messages that are stored on telecommunications service providers' equipment. NSW law enforcement agencies can already use these additional powers. However, as we reported last year, the failure over recent years to amend the NSW Telecommunications (Interception and Access) Act to keep it up-to-date and compatible with the Commonwealth legislation means that we do not monitor how agencies use these powers.





THE AUDIT OFFICE  
OF NEW SOUTH WALES

Mr Bruce Barbour  
NSW Ombudsman  
Level 24  
580 George Street  
SYDNEY NSW 2000

Dear Mr Barbour

Client Service Report  
For the Year Ended 30 June 2008  
NSW Ombudsman

The attached Client Service Report (CSR) from the Ombudsman (the Ombudsman) contains findings, before the management representation letter, and the findings of the Public Finance and Audit Act 1982 (the Act) in relation to the matters you in your role as one of those charged with the duty of care.

Shortly, I will send you a copy of the CSR and the findings of the Ombudsman in relation to the matters in the CSR.



## INDEPENDENT AUDITOR'S REPORT NSW OMBUDSMAN

Members of the New South Wales Parliament

I have audited the accompanying financial report of the NSW Ombudsman for the year ended 30 June 2008, and the operating statement, balance sheet as at 30 June 2008, and the operating statement, balance sheet, cash flow statement, program statement and summary of compliance with financial directives for the year ended 30 June 2008, and the accompanying explanatory notes, and the significant accounting policies and other explanatory notes.

### Auditor's Opinion

- In my opinion, the financial report:
- presents fairly, in all material respects, the financial performance and its cash flow statement, balance sheet, program statement and summary of compliance with financial directives for the year ended 30 June 2008, and the accompanying explanatory notes, and the significant accounting policies and other explanatory notes, in accordance with Australian Accounting Standards (interpretations)
  - is in accordance with section 10 of the Public Finance and Audit Act 1982 and the Public Finance and Audit Act 1982.

### Department Head's Response

The Department Head has responded to the findings of the Ombudsman in accordance with the Ombudsman's recommendations and the Ombudsman's control relevant to the findings of the Ombudsman in relation to the material misstatements and the Ombudsman's significant accounting policies and other explanatory notes.

### Auditor's Response

My responsibility is to provide an independent and objective audit opinion on the financial report, and to report on the findings of the Ombudsman in relation to the material misstatements and the Ombudsman's significant accounting policies and other explanatory notes.

### My opinion on

- about the financial report
- that it is in accordance with Australian Accounting Standards (interpretations)
- about the Ombudsman's compliance with section 10 of the Public Finance and Audit Act 1982 and the Public Finance and Audit Act 1982.

### Independence

In conducting this audit, the Auditor-General has complied with the requirements of the Australian Auditing Standards, which promote independence.

- providing the Auditor-General with the necessary information and access to the records of the Ombudsman
- mandating the Auditor-General to provide non-audit services, this ensures that the Auditor-General is not compromised in their role by the provision of such services.

## Financials

The following information including the audited financial statements, provide an overview of the financial activities of our office during 2007–2008. The financial statements, our supporting documentation and our systems and processes have all been reviewed by our own auditors and the NSW Audit Office. We have received an unqualified audit report.

Our accounts section has the day-to-day responsibility for managing and reporting on our finances, including liaising with NSW Treasury and the Audit Office. This year, we continued our ongoing review of the roles and responsibilities of the accounts section so that we could better focus on internal budgeting and reporting and improve our financial management. Although some changes are still to be implemented, we have seen significant improvements — particularly with expenditure reporting and forecasting.

## Highlights

- Received an unqualified audit report.
- 28% reduction in workers compensation expenses.
- Paid 98.44% of accounts on time.
- Generated \$263,000 in revenue.
- Improved internal financial reporting.
- Updated our accounting policies and manual.

# Financial summary

## Balancing our books

The Ombudsman receives funding from the government. Although we account for these funds on an office-wide basis — as reflected in our financials — internally we allocate them between our four business programs and our corporate and cross agency teams. However our 'Program Statement — Expenses and Revenues' in the financial statements only identifies the four business programs. This is because the corporate team and cross agency team costs have been pro-rated to provide a more accurate cost of the work of our office. Figure 56 shows the net expenditure for our programs for the last five years.

## Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditures. Consolidated funds are accounted for on the operating statement after the net cost of service is calculated to allow for the movement in accumulated funds to be determined for the year. The government also makes provision for certain employee entitlements such as long service leave.

Our initial 2007–2008 recurrent consolidated fund allocation was \$20.176 million. We did not use \$107,000 that had been allocated for our review of the implementation of the *Crimes Legislation Amendment Act 2002* — Detention during search warrant execution review, as this new police power had not yet come into operation. Our final allocation was \$20.069 million.

Funding for our reviews of the implementation of new police powers is included in the Ombudsman's allocation. For more details about these reviews, see Chapter 5: Policing. Figure 55 shows the amount provided for the legislative reviews over the last five years. \$273,000 has been allocated for our legislative review work in 2008–2009. This represents 1.37% of the Ombudsman's total recurrent allocation.

In 2007–2008 we budgeted that the Crown Entity would accept \$919,000 of employee benefits and other entitlements, but the actual acceptance was about \$831,000.

We were allocated \$300,000 for our capital program but only spent \$298,000. We upgraded our computer systems, purchased new office equipment and updated and improved our fitout.

We generated \$263,000 through the sale of publications, bank interest, fee-for-service training courses and our consultancy services to AusAid (see figure 54).

There is a breakdown of our revenue, including capital funding and acceptance of employee entitlements, in figure 53.

Figure 53 — Total revenue 2007–2008

Government	Revenue
Recurrent appropriation	\$20,069,000
Capital appropriation	\$298,000
Acceptance of certain employee entitlements	\$831,000
Total government	\$21,198,000
From other sources	\$263,000
<b>Total</b>	<b>\$21,461,000</b>

Figure 54 — Revenue from other sources

Revenue from other sources	Revenue
Workshops	\$132,000
Grants	\$41,000
Bank interest	\$66,000
Other revenue	\$14,000
Publication sales	\$10,000
<b>Total</b>	<b>\$263,000</b>

Figure 55 — Legislative reviews — amount provided over 5 years

2007/2008	\$1,085,000
2006/2007	\$1,073,000
2005/2006	\$633,000
2004/2005	\$432,570
2003/2004	\$751,000

## Expenses

Most of our revenue is spent on employee-related expenses (see figure 57). These include salaries, superannuation entitlements, long service leave and payroll tax. Our operating statement shows that last year we spent more than \$17.1 million — or 77.6% of our total expenses — on employee-related items, an increase of 4.72% over the previous reporting year.

Salary increases awarded to public servants were the main reason for the \$514,000 or 3.75% increase in our salary expenses. There was a slight decrease in payroll tax expenses and a \$126,000 increase in superannuation. Our workers compensation insurance reduced by around 28%, partly reflecting the positive strategies we have employed to reduce workplace injuries and our better support for staff returning to work after injury. Long service leave expenses increased by \$162,000 or 59.77%, due to a review of our accounting for this liability.

The day-to-day running of our office costs over \$4.2 million a year. Significant items are rent (\$1.7 million), fees (\$839,000), travel (\$467,000), maintenance (\$268,000) and training (\$180,000). No consultants were engaged in 2007–2008.

The financial statements show \$694,000 for depreciation and amortisation. We only spent \$298,000 on our capital program so we had a decrease in our asset base.

Although capital funding is shown on the operating statement, capital expenditure is not treated as an expense — it is reflected on the balance sheet.

Figure 56 — Net cost of services by program

Program	04/05 \$'000	05/06 \$'000	06/07 \$'000	07/08 \$'000
Police	\$5,801	\$6,138	\$6,645	\$6,363
General	\$4,428	\$4,342	\$4,755	\$5,113
Child protection	\$3,140	\$3,026	\$3,338	\$3,649
Community services	\$5,505	\$5,518	\$6,115	\$6,665
<b>Total</b>	<b>\$18,874</b>	<b>\$19,024</b>	<b>\$20,853</b>	<b>\$21,790</b>

Figure 57 — Total expenses 2007–2008

Total expenses	Expenses
Employee-related	\$17,114,000
Depreciation and amortisation	\$694,000
Other operating expenses	\$4,245,000
<b>Total</b>	<b>\$22,053,000</b>

We have an accounts payable policy that requires us to pay accounts promptly and within the terms specified on the invoice. However, there are some instances where this may not be possible — for example, if we dispute an invoice or do not receive it in enough time to pay within the specified timeframe. Our aim is to pay accounts within the specified timeframe 98% of the time. During 2007–2008 we paid 98.44% of our accounts on time. This is a slight reduction in our performance from the previous year. We have not had to pay any penalty interest on outstanding accounts.

Figure 58 — Performance Indicator: Accounts paid on time

Quarter	Target %	Paid on time %	Paid on time \$'000	Paid \$'000
September 2007	98	99.74	\$4,672	\$4,684
December 2007	98	94.80	\$5,218	\$5,504
March 2008	98	99.34	\$4,968	\$5,001
June 2008	98	99.88	\$6,495	\$6,503
<b>Total</b>	<b>98</b>	<b>98.44</b>	<b>\$21,353</b>	<b>\$21,692</b>

## Assets

Our balance sheet shows that we had \$2.258 million in assets as at 30 June 2008. The value of our current assets decreased by \$151,000 from the previous year and the value of our non-current asset base decreased by \$396,000. This is an overall decrease of \$547,000 in our asset base from the previous year.

Just over 47% of our assets are current assets, categorised as cash or receivables. Receivables are amounts owing to us and include bank interest that has accrued but not been received, fees for services that we have provided on a cost recovery basis, and GST to be recovered from the Australian Taxation Office. Also included in receivables are amounts that we have prepaid. We had \$152,000 in prepayments as at 30 June 2008. The most significant prepayments were maintenance renewals for office equipment and software support.

Our cash balance includes a \$47,000 advance payment from the Commonwealth and other state Ombudsman to cover the cost of developing guidelines and training Australian Ombudsman staff in dealing with unreasonable complainant conduct. We also received \$35,000 from the Department of Immigration and Citizenship for our young people and the internet project. We cannot use this cash for any other purpose, so it is classified as a 'restricted asset'.

Our non-current assets, which are valued at \$1.191 million, are categorised as:

- plant and equipment — which includes our network infrastructure, computers and laptops, fitout and office equipment
- intangible assets — which includes our network operating software and case management software.

We were allocated \$300,000 in 2007–2008 for asset purchases and spent \$298,000. This is reflected in our capital consolidated fund appropriation. We will receive \$559,000 in 2008–2009.

Figure 59 — Major assets

Description	06/07 Acquisition	Disposal	07/08
File servers	22	2	0
Switches	15	0	0
Computers	221	5	0
Printers	12	2	0
Photocopiers	5	0	0
Telephone systems	1	0	0

# Financial summary

## Liabilities

Our total liabilities as at 30 June 2008 are \$1.893 million, an increase of \$45,000 over the previous year. Over 81% of this amount is the provision that we make for employee benefits and related on-costs. This includes accounting for untaken recreation (annual) leave that is valued at \$905,000. The Crown Entity accepts the liability for long service leave.

We have \$197,000 of goods or services that we have received, but have not yet been invoiced. The value of accounts on hand (those accounts we have processed but not yet paid) at 30 June 2008 is detailed in figure 60. We monitor the amounts that we owe on a regular basis to ensure that we are paying accounts on time.

Figure 60 — Aged analysis of accounts on hand at the end of each quarter

	September 2007	December 2007	March 2008	June 2008
Current (i.e. within due date)	\$108,775	\$89,038	\$155,588	\$21,716
Less than 30 days overdue	\$167,582	\$170,315	\$921	\$0
Between 30 days and 60 days overdue	\$0	\$0	\$873	\$0
Between 60 days and 90 days overdue	-\$230	\$0	\$0	\$3,015
More than 90 days overdue	\$0	\$0	-\$140	\$0
<b>Total accounts on hand</b>	<b>\$276,127</b>	<b>\$259,352</b>	<b>\$157,242</b>	<b>\$24,731</b>

## Financial statements

Our financial statements are prepared in accordance with legislative provisions and accounting standards. They are audited by the NSW Auditor General (or delegate), who is required to express an opinion as to whether the statements fairly represent the financial position of the office. The office received an unqualified audit report. The audit report as well as the financial statements follow.



GPO BOX 113  
Sydney NSW 2001

## INDEPENDENT AUDITOR'S REPORT

### OMBUDSMAN'S OFFICE

To Members of the New South Wales Parliament

I have audited the accompanying financial report of the Ombudsman's Office (the Department), which comprises the balance sheet as at 30 June 2008, the operating statement, statement of recognised income and expense, cash flow statement, program statement - expenses and revenues, and a summary of compliance with financial directives for the year then ended, and a summary of significant accounting policies and other explanatory notes.

#### *Auditor's Opinion*

In my opinion, the financial reports:

- presents fairly, in all material respects, the financial position of the Department as at 30 June 2008, and its financial performance and cash flows for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- is in accordance with section 45E of the Public Finance and Audit Act 1987 (the PF&A Act) and the Public Finance and Audit Regulation 2005.

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

#### *Department Head's Responsibility for the Financial Report*

The Ombudsman is responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the PF&A Act. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

#### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial report based on my audit. I conducted my audit in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making these risk assessments, the auditor considers internal controls relevant to the Department's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Ombudsman, as well as evaluating the overall presentation of the financial report.

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

## Financial statements

### My opinion does not provide assurance

- about the future viability of the Department,
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal controls, or
- on the assumptions used in formulating the budget figures disclosed in the financial report.

### Independence

In conducting this audit, the Audit Office of New South Wales has complied with the independence requirements of the Australian Auditing Standards and other relevant ethical requirements. The PFA Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.



Peter Achte-straal  
Auditor-General

19 September 2008  
SYDNEY



NSW Ombudsman

Level 24 580 George Street  
Sydney NSW 2000

Phone 02 9286 1000

Fax 02 9283 2911

Tollfree 1800 451 524

TTY 02 9264 8050

Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

#### STATEMENT BY THE OMBUDSMAN

Pursuant to section 45F of the *Public Finance and Audit Act 1983* to the best of my knowledge and belief state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), the *Public Finance and Audit Act 1983*, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the Public Finance and Audit Regulation 2005 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2008, and transactions for the year then ended;
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

Bruce Barbour

**Ombudsman**

17 September 2008

# Financial statements

## Start of the audited financial statements

### OMBUDSMAN'S OFFICE

#### Operating Statement for the Year Ended 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>Expenses excluding losses</b>				
Operating expenses				
Employee related	2(a)	17,114	17,804	16,342
Other operating expenses	2(b)	4,245	3,813	4,041
Depreciation and amortisation	2(c)	694	698	647
<b>TOTAL EXPENSES EXCLUDING LOSSES</b>		<b>22,053</b>	<b>22,315</b>	<b>21,030</b>
<b>Revenue</b>				
Sale of goods and services	3(a)	142	72	79
Investment revenue	3(b)	66	50	66
Grants and contributions	3(c)	41	–	–
Other revenue	3(d)	14	68	32
<b>TOTAL REVENUE</b>		<b>263</b>	<b>190</b>	<b>177</b>
<b>Net Cost of Services</b>	17	<b>21,790</b>	<b>22,125</b>	<b>20,853</b>
<b>Government Contributions</b>				
Recurrent appropriation	4(a)	20,069	20,176	19,610
Capital appropriation	4(b)	298	300	253
Acceptance by the Crown Entity of employee benefits and other liabilities	5	831	919	610
<b>TOTAL GOVERNMENT CONTRIBUTIONS</b>		<b>21,198</b>	<b>21,395</b>	<b>20,473</b>
<b>DEFICIT FOR THE YEAR</b>		<b>(592)</b>	<b>(730)</b>	<b>(380)</b>

The accompanying notes form part of these financial statements.

## OMBUDSMAN'S OFFICE

### Statement of Recognised Income and Expense for the Year Ended 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>TOTAL INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY</b>		–	–	–
Deficit for the Year		(592)	(730)	(380)
<b>TOTAL INCOME AND EXPENSE RECOGNISED FOR THE YEAR</b>	15	<b>(592)</b>	<b>(730)</b>	<b>(380)</b>

The accompanying notes form part of these financial statements.

# Financial statements

## OMBUDSMAN'S OFFICE

Balance Sheet as at 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash and cash equivalents	7	707	523	584
Receivables	9	360	623	634
<b>Total Current Assets</b>		<b>1,067</b>	<b>1,146</b>	<b>1,218</b>
<b>Non-Current Assets</b>				
Property, plant and equipment				
Plant and equipment	10	850	879	992
Intangible assets	11	341	313	595
<b>Total Non-Current Assets</b>		<b>1,191</b>	<b>1,192</b>	<b>1,587</b>
<b>TOTAL ASSETS</b>		<b>2,258</b>	<b>2,338</b>	<b>2,805</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	12	357	350	259
Provisions	13	1,386	1,639	1,434
Other	14	128	98	98
<b>Total Current Liabilities</b>		<b>1,871</b>	<b>2,087</b>	<b>1,791</b>
<b>Non-Current Liabilities</b>				
Provisions	13	13	15	14
Other	14	9	9	43
<b>Total Non-Current Liabilities</b>		<b>22</b>	<b>24</b>	<b>57</b>
<b>TOTAL LIABILITIES</b>		<b>1,893</b>	<b>2,111</b>	<b>1,848</b>
<b>Net Assets</b>		<b>365</b>	<b>227</b>	<b>957</b>
<b>EQUITY</b>				
Accumulated funds	15	365	227	957
<b>TOTAL EQUITY</b>		<b>365</b>	<b>227</b>	<b>957</b>

The accompanying notes form part of these financial statements.

## OMBUDSMAN'S OFFICE

### Cash Flow Statement for the Year Ended 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(16,285)	(16,588)	(15,722)
Other		(4,349)	(4,357)	(4,447)
<b>TOTAL PAYMENTS</b>		<b>(20,634)</b>	<b>(20,945)</b>	<b>(20,169)</b>
<b>Receipts</b>				
Sale of goods and services		153	72	79
Interest received		85	45	56
Other		448	594	429
<b>TOTAL RECEIPTS</b>		<b>686</b>	<b>711</b>	<b>564</b>
<b>Cash Flows from Government</b>				
Recurrent appropriation		20,069	20,176	19,610
Capital appropriation (excluding equity appropriations)		300	300	253
<b>Net Cash Flows from Government</b>	17	<b>20,369</b>	<b>20,476</b>	<b>19,863</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>		<b>421</b>	<b>242</b>	<b>258</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Purchases of Leasehold Improvements, Plant and Equipment and Infrastructure Systems		(298)	(303)	(253)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(298)</b>	<b>(303)</b>	<b>(253)</b>
<b>NET INCREASE/(DECREASE) IN CASH</b>				
Opening cash and cash equivalents		584	520	579
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	7	<b>707</b>	<b>459</b>	<b>584</b>

The accompanying notes form part of these financial statements.

# Financial statements

## OMBUDSMAN'S OFFICE

### Program Statement — Expenses and Revenues for the Year Ended 30 June 2008

	Program 1*		Program 2*		Program 3*		Program 4*		Not Attributable		Total	
	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000
<b>AGENCY'S EXPENSES AND REVENUES</b>												
<b>Expenses excluding losses</b>												
Operating expenses												
Employee related	4,937	5,185	4,148	3,811	2,900	2,677	5,129	4,669	-	-	17,114	16,342
Other operating expenses	1,246	1,275	941	876	662	572	1,396	1,318	-	-	4,245	4,041
Depreciation and amortisation	211	216	173	157	120	105	190	169	-	-	694	647
<b>Total Expenses excluding losses</b>	<b>6,394</b>	<b>6,676</b>	<b>5,262</b>	<b>4,844</b>	<b>3,682</b>	<b>3,354</b>	<b>6,715</b>	<b>6,156</b>	-	-	<b>22,053</b>	<b>21,030</b>
<b>Revenue</b>												
Sale of goods and services	(3)	(5)	(115)	(51)	(1)	(3)	(23)	(20)	-	-	(142)	(79)
Investment revenue	(20)	(22)	(17)	(16)	(11)	(11)	(18)	(17)	-	-	(66)	(66)
Grants and contributions	(7)	-	(6)	-	(20)	-	(8)	-	-	-	(41)	-
Other revenue	(1)	(4)	(11)	(22)	(1)	(2)	(1)	(4)	-	-	(14)	(32)
<b>Total Revenue</b>	<b>(31)</b>	<b>(31)</b>	<b>(149)</b>	<b>(89)</b>	<b>(33)</b>	<b>(16)</b>	<b>(50)</b>	<b>(41)</b>	-	-	<b>(263)</b>	<b>(177)</b>
<b>Net Cost of Services</b>	<b>6,363</b>	<b>6,645</b>	<b>5,113</b>	<b>4,755</b>	<b>3,649</b>	<b>3,338</b>	<b>6,665</b>	<b>6,115</b>	-	-	<b>21,790</b>	<b>20,853</b>
Government contributions**	-	-	-	-	-	-	-	-	(21,198)	(20,473)	(21,198)	(20,473)
<b>NET EXPENDITURE/(REVENUE) FOR THE YEAR</b>	<b>6,363</b>	<b>6,645</b>	<b>5,113</b>	<b>4,755</b>	<b>3,649</b>	<b>3,338</b>	<b>6,665</b>	<b>6,115</b>	<b>(21,198)</b>	<b>(20,473)</b>	<b>592</b>	<b>380</b>

\* The name and purpose of each program is summarised in Note 6.

\*\* Appropriations are made on an agency basis and not to individual programs. Consequently, government contributions are included in the 'Not Attributable' column.

## OMBUDSMAN'S OFFICE

### Summary of Compliance with Financial Directives

	2008				2007			
	RECURRENT APPN \$'000	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND \$'000	CAPITAL APPN \$'000	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND \$'000	RECURRENT APPN \$'000	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND \$'000	CAPITAL APPN \$'000	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND \$'000
<b>ORIGINAL BUDGET APPROPRIATION/EXPENDITURE</b>								
* Appropriation Act	20,176	20,069	300	298	19,654	19,547	245	245
* Additional Appropriations	-	-	-	-	-	-	-	-
* s.21A PF&AA — special appropriation	-	-	-	-	-	-	-	-
* s.24 PF&AA — transfers of functions between departments	-	-	-	-	-	-	-	-
* s.26 PF&AA — Commonwealth specific purpose payments	-	-	-	-	-	-	-	-
	<b>20,176</b>	<b>20,069</b>	<b>300</b>	<b>298</b>	<b>19,654</b>	<b>19,547</b>	<b>245</b>	<b>245</b>
<b>OTHER APPROPRIATIONS/ EXPENDITURE</b>								
* Treasurer's Advance	-	-	-	-	63	63	8	8
* Section 22 — expenditure for certain works and services	-	-	-	-	-	-	-	-
* Transfers to/from another agency (s.28 of the Appropriation Act)	-	-	-	-	-	-	-	-
	-	-	-	-	<b>63</b>	<b>63</b>	<b>8</b>	<b>8</b>
<b>Total Appropriations/Expenditure/Net claim on Consolidated Fund</b>	<b>20,176</b>	<b>20,069</b>	<b>300</b>	<b>298</b>	<b>19,717</b>	<b>19,610</b>	<b>253</b>	<b>253</b>
<b>Amount drawn down against Appropriation</b>		<b>20,069</b>		<b>300</b>		<b>19,610</b>		<b>253</b>
<b>Liability to Consolidated Fund</b>		-		<b>2</b>		-		-

The Summary of Compliance is based on the assumption that Consolidated Fund monies are spent first (except where otherwise identified or prescribed). The Liability to Consolidated Fund represents the difference between the 'Amount drawn down against Appropriation' and the 'Total Expenditure/Net claim on Consolidated Fund'.

# Financial statements

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2008

#### 1 Summary of significant accounting policies

##### (a) Reporting entity

The Ombudsman's Office is a NSW government department. Our role is to make sure that public and private sector agencies and employees within jurisdiction fulfil their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

The Office is a not-for-profit entity (as profit is not its principal objective) and has no cash generating units. There are no other entities under our control.

The Office is consolidated as part of the NSW Total State Sector Accounts.

This financial report has been authorised for issue by the NSW Ombudsman on 17 September 2008.

##### (b) Basis of preparation

Our financial report is a general purpose financial report, which has been prepared in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* and Regulation; and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer.

The financial statements have been prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations made are disclosed in the relevant notes to the financial report.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

##### (c) Statement of compliance

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

##### (d) Income recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

##### (i) Parliamentary appropriations and contributions

Parliamentary appropriations and contributions from other bodies (including grants) are generally recognised as income when we obtain control over the assets comprising the

appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to this is when appropriations remain unspent at year end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are accounted for as liabilities rather than revenue. The liability is disclosed in Note 14 as part of 'Other Current Liabilities'.

##### (ii) Sale of goods

Revenue from the sale of goods such as publications are recognised as revenue when we transfer the significant risks and rewards of ownership of the assets.

##### (iii) Rendering of services

Revenue from the rendering of services such as conducting training programs, is recognised when the service is provided or by reference to the stage of completion, for instance based on labour hours incurred to date.

##### (iv) Investment revenue

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

##### (e) Employee benefits and other provisions

##### (i) Salaries and wages, annual leave and on-costs

Liabilities for salaries and wages (including non-monetary benefits), and annual leave that fall due wholly within 12 months of the reporting date are recognised and measured in respect of employees' services up to the reporting date at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.

Long-term annual leave is measured at the 10 year bond rates at present value in accordance with AASB 119 *Employee Benefits*. Market yields on government bonds of 6.45% are used to discount long-term annual leave.

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

The outstanding amounts of payroll tax, workers' compensation insurance premiums and Fringe Benefits Tax, which are consequential to employment, are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised.

##### (ii) Long service leave and superannuation

Our liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. We account for the liability as having been extinguished, resulting in the amount assumed being shown as part of the

non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits and other liabilities'.

Long service leave is measured at present value in accordance with AASB 119 *Employee Benefits*. This is based on the application of certain factors (specified in NSWTC 07/04) to employees with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

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

#### (f) Insurance

Our insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for government agencies. The expense (premium) is determined by the Fund Manager based on past claims experience.

#### (g) Accounting for the Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of GST, except where:

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

Cash flows are included in the cash flow statement on a gross basis. However, the GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

#### (h) Acquisitions of assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by us. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

#### (i) Capitalisation thresholds

Plant and equipment and intangible assets costing \$5,000 and above individually are capitalised. For those items that form part of our IT network, the threshold is \$1,000 individually.

#### (j) Revaluation of plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 07-1). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment* and AASB 140 *Investment Property*.

Plant and equipment is measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative uses, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market buying price, the best indicator of which is depreciated replacement cost.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for fair value.

When revaluing non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation are separately restated.

For other assets, any balances of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus/deficit, the increment is recognised immediately as revenue in the surplus/deficit.

Revaluation decrements are recognised immediately as expenses in the surplus/deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

As a not-for-profit entity, revaluation increments and decrements are offset against each other within a class of non-current assets, but not otherwise.

# Financial statements

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2008

Where an asset that has previously been revalued is disposed of, any balance remaining in the asset revaluation reserve in respect of that asset is transferred to accumulated funds.

Our assets are short-lived and their costs approximate their fair values.

#### (k) Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, we are effectively exempted from AASB 136 *Impairment of Assets* and impairment testing. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

#### (l) Depreciation of plant and equipment

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

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

Depreciation rates used are:

Computer hardware — prior to 1 July 2005	33.33%
Computer hardware — from 1 July 2005	25%
Office equipment	20%
Furniture & fittings	10%
Leasehold improvements	Useful life of 10 years (or to the end of the lease, if shorter)

#### (m) Restoration costs

Wherever applicable, the estimated cost of dismantling and removing an asset and restoring the site is included in the cost of an asset, to the extent it is recognised as a liability.

#### (n) Maintenance

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

#### (o) Leased assets

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks

and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Operating lease payments are charged to the Operating Statement in the periods in which they are incurred.

Lease incentives received on entering non-cancellable operating leases are recognised as a lease liability. This liability is reduced on a straight line basis over the lease term.

We do not have any finance leases.

#### (p) Intangible assets

We recognise intangible assets only if it is probable that future economic benefits will flow to the Office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition.

The useful lives of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for our intangible assets, they are carried at cost less any accumulated amortisation.

Our intangible assets are amortised using the straight-line method over a period of 3 to 5 years depending on the year of acquisition. The amortisation rates used are:

Computer software — prior to 1 July 2003	33.33%
Computer software — from 1 July 2003	20%

In general, intangible assets are tested for impairment where an indicator of impairment exists. However, as a not-for-profit entity, the Office is effectively exempted from impairment testing (refer to paragraph 1(k)).

#### (q) Receivables

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. These financial assets are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method, less an allowance for any impairment of receivables. Any changes are accounted for in the Operating Statement when impaired, derecognised or through the amortisation process.

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

#### (r) Payables

These amounts represent liabilities for goods and services provided to us as well as other amounts. Payables are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

#### (s) Budgeted amounts

The budgeted amounts are drawn from the budgets formulated at the beginning of the financial year with any adjustments for the effects of additional appropriations approved under s 21A, s 24 and/or s 26 of the *Public Finance and Audit Act 1983*.

The budgeted amounts in the Operating Statement and Cash Flow Statement are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Balance Sheet, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; i.e. per audited financial report (rather than carried forward estimates).

#### (t) Comparative information

Comparative figures, where appropriate, are reclassified so as to be comparable with the figures presented in the current financial year.

#### (u) New Australian Accounting Standards

At the reporting date, the following new Accounting Standards (which include Australian Accounting Interpretations) have not been applied and are not yet effective as per Treasury mandate:

- AASB 3 (March 2008), AASB 127 and AASB 2008–3 regarding business combinations;
- AASB 8 and AASB 2007-3 regarding operating segments;
- AASB 101 (Sept 2007) and AASB 2007–8 regarding presentation of financial statements;
- AASB 123 (June 2007) and AASB 2007–6 regarding borrowing costs;
- AASB 1004 (Dec 2007) regarding contributions;
- AASB 1049 (Oct 2007) regarding the whole-of-government and general government sector financial reporting;
- AASB 1050 (Dec 2007) regarding administered items;
- AASB 1051 (Dec 2007) regarding land under roads;

- AASB 1052 (Dec 2007) regarding disaggregated disclosures;
- AASB 2007–9 regarding amendments arising from the review of AAS's 27, 29 and 31;
- AASB 2008–1 regarding share based payments;
- AASB 2008–2 regarding puttable financial instruments;
- Interpretation 4 (Feb 2007) regarding determining whether an arrangement contains a lease;
- Interpretation 12 and AASB 2007–2 regarding service concession arrangements;
- Interpretation 13 on customer loyalty programmes;
- Interpretation 14 regarding the limit on a defined benefit asset;
- Interpretation 129 (Feb 2007) regarding service concession disclosures;
- Interpretation 1038 (Dec 2007) regarding contributions by owners.

The Office has elected not to early adopt Exposure Draft ED 125 Financial Reporting by Local Governments. If adopted, the standard requires that revenue is not recognised until:

- we have supplied the related goods and services, where grants are 'in-substance agreements for the provision of goods and services' or
- conditions have been satisfied, where grants are 'in-substance conditional grants (but not 'in-substance agreements for the provision of goods and services')'.

#### (v) Going concern

The current liabilities exceeded current assets as at 30 June 2008. The current liabilities include provision for leave of \$1.4 million of which \$460,000 is payable within 12 months. To meet current liabilities from current assets, the Office receives fortnightly funding from the Crown Entity for recurrent and capital expenditure. The NSW Ombudsman Office is a going concern public sector agency based on sufficient Parliamentary appropriations for 2008–2009 and forward estimates for 2009–2010.

# Financial statements

## OMBUDSMAN'S OFFICE

Notes to the financial statements for the Year Ended 30 June 2008

	2008 \$'000	2007 \$'000
<b>2 Expenses Excluding Losses</b>		
(a) Employee related expenses		
Salaries and wages (including recreation leave)	14,227	13,713
Maintenance — employee related	82	79
Superannuation — defined benefit plans	375	320
Superannuation — defined contribution plans	997	926
Long service leave	433	271
Workers' compensation insurance	67	93
Payroll tax and fringe benefit tax	831	851
Payroll tax on superannuation	82	75
Payroll tax on long service leave	20	14
	<b>17,114</b>	<b>16,342</b>
(b) Other operating expenses include the following:		
Auditor's remuneration-audit or review of financial reports	25	25
Operating lease rental expense-minimum lease payments	1,731	1,700
IT leasing — minimum lease payments	–	24
Insurance	18	14
Fees	839	609
Telephones	177	177
Stores	139	165
Training	180	222
Printing	120	139
Travel	467	431
Books, periodicals and subscriptions	47	47
Advertising	60	83
Energy	45	39
Motor vehicle	33	36
Postal and courier	36	47
Maintenance — non-employee related	268	223
Other	60	60
	<b>4,245</b>	<b>4,041</b>
* Reconciliation — Total maintenance		
Maintenance expenses — contracted labour and other	268	223
Employee related maintenance expense included in Note 2(a)	82	79
<b>Total maintenance expenses included in Notes 2(a) and 2(b)</b>	<b>350</b>	<b>302</b>

	2008 \$'000	2007 \$'000
(c) Depreciation and amortisation expense		
<b>Depreciation</b>		
Plant, equipment and leasehold improvements	328	343
<b>Total depreciation expense</b>	<b>328</b>	<b>343</b>
<b>Amortisation</b>		
Intangible assets	366	304
<b>Total amortisation expense</b>	<b>366</b>	<b>304</b>
<b>TOTAL DEPRECIATION AND AMORTISATION EXPENSES</b>	<b>694</b>	<b>647</b>
<b>3 Revenue</b>		
(a) Sale of goods and services		
Sale of publications	10	9
Rendering of services	132	70
	<b>142</b>	<b>79</b>
(b) Investment revenue		
Interest	66	66
	<b>66</b>	<b>66</b>
(c) Grants and contributions		
Unreasonable Complainants Conduct Project	26	–
Young People and Internet Project	15	–
	<b>41</b>	<b>–</b>
(d) Other revenue		
Miscellaneous	14	32
	<b>14</b>	<b>32</b>
<b>4 Appropriations</b>		
(a) Recurrent appropriation		
Total recurrent draw-downs from Treasury (per Summary of Compliance)	20,069	19,610
	<b>20,069</b>	<b>19,610</b>
<i>Comprising:</i>		
Recurrent appropriations (per Operating Statement)	20,069	19,610
	<b>20,069</b>	<b>19,610</b>
(b) Capital appropriation		
Total capital draw-downs from Treasury (per Summary of Compliance)	300	253
Less: Liability to consolidated fund (per Summary of Compliance)	(2)	–
	<b>298</b>	<b>253</b>
<i>Comprising:</i>		
Capital appropriations (per Operating Statement)	298	253
	<b>298</b>	<b>253</b>

# Financial statements

## OMBUDSMAN'S OFFICE

Notes to the financial statements for the Year Ended 30 June 2008

	2008 \$'000	2007 \$'000
<b>5 Acceptance by the Crown Entity of Employee Benefits and Other Liabilities</b>		
The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:		
Superannuation — defined benefit	375	320
Long service leave	433	271
Payroll tax on superannuation	23	19
	<b>831</b>	<b>610</b>

## 6 Programs/Activities of the Agency

### (a) Program 1: Resolution of complaints about police

Objectives: Oversight and scrutinise the handling of complaints about the conduct of police. Promote fairness, integrity and practical reforms in the NSW Police.

### (b) Program 2: Resolution of local government, public authority and prison complaints and review of Freedom of Information complaints

Objectives: Resolve complaints and protected disclosures about the administrative conduct of public authorities and local councils. Promote fairness, integrity and practical reforms in New South Wales public administration.

### (c) Program 3: Resolution of child protection related complaints

Objectives: Scrutiny of complaint-handling systems and monitoring of the handling of notifications of alleged child abuse.

### (d) Program 4: Resolution of complaints about and the oversight of the provision of community services

Objectives: Provide for independent monitoring of community services and programs, keep under scrutiny complaint handling systems and provide for and encourage the resolution of complaints. Review the deaths of certain children and people with a disability and formulate recommendations for the prevention or reduction of deaths of children in care, children at risk of death due to abuse or neglect, children in detention and correctional centres or disabled people in residential care.

	2008 \$'000	2007 \$'000
<b>7 Current Assets — Cash and Cash Equivalents</b>		
Cash at bank and on hand	707	584
	<b>707</b>	<b>584</b>
For the purposes of the Cash Flow Statement, cash and cash equivalents include cash at bank and on hand.		
Cash and cash equivalent assets recognised in the Balance Sheet are reconciled at the end of the year to the Cash Flow Statement as follows:		
Cash and cash equivalents (per Balance Sheet)	707	584
Closing cash and cash equivalents (per Cash Flow Statement)	<b>707</b>	<b>584</b>
Refer Note 19 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.		

## 8 Restricted Assets — Cash

	2008 \$'000	2007 \$'000
Unreasonable Complainants Conduct Project	47	63
Young People and Internet Project	35	–
Liability to Consolidated Fund	2	–
	<b>84</b>	<b>63</b>

The Ombudsman received funding of \$123,000 in 2007–2008 in the form of an advance payment from Commonwealth and other state Ombudsman's offices and from the Department of Immigration and Citizenship. This funding was provided to cover the costs relating to the development of guidelines and the training of staff in appropriately dealing with unreasonable complainant conduct (\$73,000) and Young People and Internet Project (\$50,000). \$82,000 of this funding is to cover expenses expected to be incurred in 2008–2009. Therefore, this amount is classified as a restricted asset. The liability of \$2,000 to the Consolidated Fund is due to an asset costing less than estimated.

## 9 Current Assets — Receivables

	2008 \$'000	2007 \$'000
Sale of goods and services	–	1
Transfer of leave	8	10
Workshops	11	27
Bank interest	37	37
GST receivable	133	88
Legal fees	3	13
Other	16	1
Prepayments	152	457
	<b>360</b>	<b>634</b>

We consider all amounts to be collectible and as such, no allowance for impairment was established. Details regarding credit risk, liquidity risk and market risk, including financial assets that are either past due or impaired, are disclosed in Note 19.

### Prepayments

Salaries and wages	–	19
Maintenance	108	118
Prepaid rent	11	150
Worker's compensation insurance	–	76
Subscription/membership	14	17
Training	7	7
Motor vehicle	2	3
Employee assistance program	6	5
Insurance	–	18
Cleaning	–	4
Travel	4	10
International Ombudsman Conference	–	29
Other	–	1
	<b>152</b>	<b>457</b>

# Financial statements

## OMBUDSMAN'S OFFICE

Notes to the financial statements for the Year Ended 30 June 2008

10 Non-Current Assets — Plant and Equipment	1 July 2007 \$'000	1 July 2006 \$'000	30 June 2008 \$'000	30 June 2007 \$'000
Gross carrying amount	3,023	2,860	3,209	3,023
Accumulated depreciation	(2,031)	(1,736)	(2,359)	(2,031)
<b>Net carrying amount at fair value</b>	<b>992</b>	<b>1,124</b>	<b>850</b>	<b>992</b>
<b>Reconciliation</b>				
A reconciliation of the fair value of plant and equipment at the beginning and end of financial years is set out below:			<b>2008 \$'000</b>	<b>2007 \$'000</b>
Fair value at start of year			992	1,124
Additions			186	211
Depreciation expense:				
Computer hardware			(145)	(130)
Office equipment			(43)	(46)
Furniture and fittings			(47)	(43)
Leasehold improvements			(93)	(124)
<b>Fair value at end of year</b>			<b>850</b>	<b>992</b>
<b>11 Non-Current Assets — Intangible Assets</b>				
	1 July 2007 \$'000	1 July 2006 \$'000	30 June 2008 \$'000	30 June 2007 \$'000
<b>Software</b>				
Gross carrying amount	2,763	2,803	2,875	2,763
Accumulated amortisation	(2,168)	(1,946)	(2,534)	(2,168)
<b>Fair value</b>	<b>595</b>	<b>857</b>	<b>341</b>	<b>595</b>
<b>Reconciliation</b>				
A reconciliation of the fair value of software at the beginning of and end of financial years is set out below:			<b>2008 \$'000</b>	<b>2007 \$'000</b>
Fair value at start of year			595	857
Additions			112	42
Amortisation expense			(366)	(304)
<b>Fair value at end of year</b>			<b>341</b>	<b>595</b>
<b>12 Current Liabilities — Payables</b>				
Accrued salaries, wages and on-costs			135	85
Creditors			222	174
			<b>357</b>	<b>259</b>

### 13 Current/Non-Current Liabilities — Provisions

#### Current employee benefits and related on-costs

	2008 \$'000	2007 \$'000
Recreation leave	905	931
Annual leave loading	174	168
Payroll tax on recreation leave	54	66
Workers' compensation on recreation and long service leave	9	6
Payroll tax on long service leave	156	169
Other on-costs on recreation and long service leave	88	94
	<b>1,386</b>	<b>1,434</b>

#### Non-current employee benefits and related on-costs

Payroll tax on recreation and long service leave	8	9
Other on-costs on recreation and long service leave	5	5
	<b>13</b>	<b>14</b>

#### Aggregate employee benefits and related on-costs

Provisions — current	1,386	1,434
Provisions — non-current	13	14
Accrued salaries, wages and on-costs (Note 12)	135	85
	<b>1,534</b>	<b>1,533</b>

The value of annual leave and associated on-costs expected to be taken within 12 months is \$432,000 and \$648,000 after twelve months.

The value of long service leave and associated on-costs expected to be settled within 12 months is \$28,000 and \$238,000 after 12 months.

### 14 Current/Non-Current Liabilities — Other

#### Current

Unreasonable Complainants Conduct Project	47	63
Young People and Internet Project	35	–
Prepaid income	10	1
Liability to Consolidated Fund	2	–
Lease incentive	34	34
	<b>128</b>	<b>98</b>

#### Non-current

Lease incentive	9	43
	<b>9</b>	<b>43</b>

# Financial statements

## OMBUDSMAN'S OFFICE

Notes to the financial statements for the Year Ended 30 June 2008

### 15 Changes in Equity

	Accumulated Funds		Total Equity	
	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000
Balance at the beginning of the financial year	957	1,337	957	1,337
Changes in equity — other than transactions with owners as owners	—	—	—	—
Deficit for the year	(592)	(380)	(592)	(380)
<b>Balance at the end of the financial year</b>	<b>365</b>	<b>957</b>	<b>365</b>	<b>957</b>

### 16 Commitments for Expenditure

#### Operating lease commitments

Future non-cancellable operating lease rentals not provided for and payable:

Not later than one year	1,876	1,972
Later than one year and not later than five years	470	2,564
Later than five years	—	—
<b>Total (including GST)</b>	<b>2,346</b>	<b>4,536</b>

The leasing arrangements are generally for leasing of property. The lease is a non-cancellable lease with a 10-year term, with rent payable monthly in advance. An option exists to renew the lease at the end of the 10-year term for an additional term of five years. The total operating lease commitments include GST input tax credits of \$213,300 which are expected to be recoverable from the Australian Taxation Office.

### 17 Reconciliation of Cash Flows from Operating Activities to Net Cost of Services

Net cash used on operating activities	421	258
Cash flows from Government/Appropriations	(20,369)	(19,863)
Acceptance by the Crown Entity of employee benefits and other liabilities	(831)	(610)
Depreciation and amortisation	(694)	(647)
Decrease/(increase) in provisions	49	(64)
Increase in payables	(98)	(9)
Increase/(decrease) in receivables	(274)	49
Decrease in other liabilities	6	33
<b>Net cost of services</b>	<b>(21,790)</b>	<b>(20,853)</b>

## 18 Budget Review

### Net cost of services

The actual net cost of services is lower than budget by \$335,000. There was a \$690,000 decrease in employee related expenses as Ombudsman engaged contractors to fill some vacancies. This contributed to an increase of \$432,000 in other operating expenses. Revenue increased by \$73,000 as the office conducted more workshops than anticipated following the distribution of the unreasonable complainant conduct guidelines. Employee related expenses were lower than anticipated for a number of reasons. Funding provided to employ staff to conduct a legislative review of a new police power were not used, as the review provisions had not been proclaimed. There was also an increase in superannuation expenses and long service leave over 2006–2007.

### Assets and liabilities

Current assets are higher than budget by \$79,000, mostly due to an increase in cash, including funds that were provided for specific projects continuing into 2008–2009.

### Cash flows

Net cash flows from operating activities were higher than budget by \$179,000. Total payments were lower as were receipts and government contributions.

## 19 Financial Instruments

The Office's principal financial instruments which are outlined below, arise directly from our operations. We do not enter into or trade financial instruments for speculative purposes. We do not use financial derivatives.

### (a) Financial instrument categories

Class:	Note	Category	Carrying Amount	
			2008 \$'000	2007 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	(7)	N/A	707	584
Receivables	(9)	Receivables (at amortised cost)	75	89
<b>Financial Liabilities</b>				
Payables	(12)	Financial liabilities measured at amortised cost	338	256

### (b) Credit risk

Credit risk arises when there is the possibility of the Ombudsman's debtors defaulting on their contractual obligations, resulting in a financial loss to the Ombudsman's Office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment).

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

### Cash

Cash comprises cash on hand and bank balances within the Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11am unofficial cash rate, adjusted for a management fee to Treasury.

# Financial statements

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2008

#### Receivables — trade debtors

All trade debtors are recognised as amounts receivable at balance date. Collectibility of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that we will not be able to collect all amounts due. The credit risk is the carrying amount (net of any allowance for impairment, if there is any). No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 14-day terms.

#### Other assets

All other assets are current and are mainly prepaid rent and maintenance agreements. The credit risk is the carrying amount. There is no interest earned on prepayments.

	Total	Past due but not impaired \$'000	Considered impaired \$'000
<b>2008</b>			
< 3 months overdue	28	28	—
3 months — 6 months overdue	—	—	—
> 6 months overdue	—	—	—
<b>2007</b>			
< 3 months overdue	19	19	—
3 months — 6 months overdue	13	13	—
> 6 months overdue	—	—	—

The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7.

#### (c) Liquidity risk

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

#### Bank overdraft

The Office does not have any bank overdraft facility.

#### Trade creditors and accruals

The liabilities are recognised for amounts due to be paid in the future for goods and services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. We did not pay any penalty interest during the year.

The table below summarises the maturity profile of the Ombudsman's Office financial liabilities.

	Weighted Average Effective Int. Rate	Nominal Amount \$'000	<1yr	1–5yrs	>5yrs
<b>2008</b>					
<i>Payables:</i>					
Accrued salaries, wages and on-costs	–	135	135	–	–
Creditors	–	203	203	–	–
	–	338	338	–	–
<b>2007</b>					
<i>Payables:</i>					
Accrued salaries, wages and on-costs	–	85	85	–	–
Creditors	–	171	171	–	–
	–	256	256	–	–

(d) Market risk

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

The effect on the result and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Ombudsman's Office operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the balance sheet date. The analysis is performed on the same basis for 2007.

	Carrying amount	–1%		+1%	
		Profit \$'000	Equity \$'000	Profit \$'000	Equity \$'000
<b>2008</b>					
<i>Financial assets</i>					
Cash and cash equivalents	707	(7)	(7)	7	7
Receivables	75	–	–	–	–
<i>Financial liabilities</i>					
Payables	338	–	–	–	–
<b>2007</b>					
<i>Financial assets</i>					
Cash and cash equivalents	584	(6)	(6)	6	6
Receivables	89	–	–	–	–
<i>Financial liabilities</i>					
Payables	256	–	–	–	–

(e) Fair value

Financial instruments are carried at cost. The fair value of all financial instruments approximates their carrying value.

**End of the audited financial statements**



# Appendices

## Contents

	Page
A: Profile of notifiable police complaints 2007–2008	192
B: Status of legislative reviews — as at 30 June 2008	195
C: Child and family services	196
D: Disability services	197
E: Other community services	198
F: Action taken on formal complaints finalised in 2007–2008 about all public sector agencies — summary table	200
G: Departments and authorities	201
H: Local government	203
I: Corrections	206
J: Freedom of information	208
K: FOI report	210
L: Significant committees	212
M: Expert advisory committees	213
N: Mandatory annual reporting requirements	214
O: Publications list	219
P: Our staff	220
Q: Glossary	221

## Appendix A Corrected

### Profile of notifiable police complaints 2007–2008

Figure 61 — Action taken on finalised notifiable complaints about police officers, categorised by allegation

Note: This is a corrected table following discovery of errors in the original Annual Report table [inserted 13/07/09]

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
<b>Arrest</b>				
Improper failure to arrest	8	12	0	20
Unlawful arrest	29	40	2	71
Unnecessary use of arrest	26	41	4	71
<b>Total</b>	<b>63</b>	<b>93</b>	<b>6</b>	<b>162</b>
<b>Complaint-handling</b>				
Deficient complaint investigation	1	12	1	14
Fail to report misconduct	6	59	0	65
Fail to take a complaint	4	10	0	14
Inadequacies in informal resolution	0	3	0	3
Provide false information in complaint investigation	4	59	0	63
<b>Total</b>	<b>15</b>	<b>143</b>	<b>1</b>	<b>159</b>
<b>Corruption/misuse of office</b>				
Explicit threats involving use of authority	1	18	0	19
Improper association	29	94	0	123
Misuse authority for personal benefit or benefit of an associate	20	103	1	124
Offer or receipt of bribe/corrupt payment	13	56	0	69
Protection of person(s) involved in criminal activity (other)	2	0	0	2
<b>Total</b>	<b>65</b>	<b>271</b>	<b>1</b>	<b>337</b>
<b>Custody/detention</b>				
Death/serious injury in custody	1	3	0	4
Detained in excess of authorised time	1	6	0	7
Escape from custody	0	13	0	13
Fail to allow communication	0	4	0	4
Fail to caution/give information	1	10	0	11
Fail to meet requirements for vulnerable persons	2	15	2	19
Improper refusal to grant bail	1	1	0	2
Improper treatment	17	65	2	84
Unauthorised detention	5	11	1	17
<b>Total</b>	<b>28</b>	<b>128</b>	<b>5</b>	<b>161</b>
<b>Driving related offences/misconduct</b>				
Breach pursuit guidelines	1	16	0	17
Dangerous driving causing GBH/ Death	0	2	0	2
Drink driving offence	3	21	0	24
Improper use/disclosure of In Car Video	0	1	0	1
Negligent/dangerous driving	9	26	1	36
Unnecessary speeding	7	21	0	28
<b>Total</b>	<b>20</b>	<b>87</b>	<b>1</b>	<b>108</b>
<b>Drug related offences/misconduct</b>				
Cultivate/ manufacture prohibited drug	2	0	0	2
Drinking/ under the influence on duty	1	14	0	15
Protection of person(s) involved in drug activity	18	26	0	44
Supply prohibited drug	17	27	0	44
Use/possess restricted substance	1	5	0	6
Use/Possession of prohibited drug	8	31	0	39
<b>Total</b>	<b>47</b>	<b>103</b>	<b>0</b>	<b>150</b>
<b>Excessive use of force</b>				
Assault	139	482	13	634
Firearm discharged	0	2	0	2
Firearm drawn	2	11	0	13
Improper use of handcuffs	7	14	1	22
<b>Total</b>	<b>148</b>	<b>509</b>	<b>14</b>	<b>671</b>

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
<b>Information</b>				
Fail to create/maintain records	9	139	3	151
Falsify official records	10	37	1	48
Misuse e-mail/Internet	20	22	1	43
Provide incorrect or misleading information	10	67	4	81
Unauthorised access/disclosure/alteration of information/data	36	280	8	324
Unreasonable refusal to provide information	5	8	0	13
<b>Total</b>	<b>90</b>	<b>553</b>	<b>17</b>	<b>660</b>
<b>Inadequate/improper investigation</b>				
Delay in investigation	16	33	0	49
Fail to advise outcome of investigation	8	10	1	19
Fail to investigate (customer service)	190	210	10	410
Improper/Unauthorised forensic procedure	0	4	0	4
Improperly fail to investigate offence committed by another officer	2	1	0	3
Improperly interfere in investigation of offence committed by another police officer	3	23	1	27
Inadequate investigation	140	277	17	434
<b>Total</b>	<b>359</b>	<b>558</b>	<b>29</b>	<b>946</b>
<b>Misconduct</b>				
Allow unauthorised use of weapon	0	2	0	2
Conflict of interest	6	45	0	51
Detrimental action against a whistleblower	1	11	0	12
Dishonesty in recruitment/promotion	3	13	0	16
Disobey reasonable direction	4	53	0	57
Fail Performance/Conduct Plan	0	2	0	2
Failure to comply with statutory obligation/procedure/code of conduct (other)	95	500	3	598
False claiming for duties/allowances	3	18	0	21
Inadequate management/ maladministration	19	129	2	150
Inadequate security of weapon/appointments	1	27	2	30
Inappropriate intervention in civil dispute	1	5	0	6
Minor workplace related misconduct	3	39	0	42
Other improper use of discretion	1	24	0	25
Unauthorised secondary employment	5	33	0	38
Unauthorised use of vehicle/ facilities/equipment	8	59	0	67
Workplace harassment/victimisation/ discrimination	23	141	3	167
<b>Total</b>	<b>173</b>	<b>1101</b>	<b>10</b>	<b>1,284</b>
<b>Other criminal conduct</b>				
Conspiracy to commit offence	1	9	1	11
Fraud	0	16	0	16
Murder/Manslaughter	8	4	0	12
Officer in breach of domestic violence order	0	1	0	1
Officer perpetrator of domestic violence	3	21	0	24
Officer subject of application for domestic violence order	2	7	0	9
Other Indictable offence	16	65	0	81
Other summary offence	24	94	1	119
Sexual assault/ indecent assault	10	44	0	54
<b>Total</b>	<b>64</b>	<b>261</b>	<b>2</b>	<b>327</b>
<b>Property/exhibits/theft</b>				
Damage to	7	15	1	23
Fail to report Loss	1	3	0	4
Failure or delay in returning to owner	22	16	3	41
Loss of	9	62	0	71
Theft	15	50	0	65
Unauthorised removal/destruction/use of	6	52	1	59
<b>Total</b>	<b>60</b>	<b>198</b>	<b>5</b>	<b>263</b>

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
<b>Prosecution related inadequacies/misconduct</b>				
Adverse comment by Court/ Costs awarded	1	25	1	27
Fail to attend Court	2	31	0	33
Fail to check brief/inadequate preparation of brief	2	52	0	54
Fail to notify witness	1	26	0	27
Fail to serve brief of evidence	3	31	0	34
Failure to charge/prosecute	8	9	1	18
Failure to use Young Offenders Act	0	4	0	4
Improper prosecution	27	14	0	41
Legal representation for withdrawal of charge	2	0	0	2
Mislead the Court	1	5	0	6
PIN/TIN inappropriately/wrongly issued	15	1	0	16
<b>Total</b>	<b>62</b>	<b>198</b>	<b>2</b>	<b>262</b>
<b>Public justice offences</b>				
Fabrication of evidence (other than perjury)	12	13	0	25
Make false statement	11	28	0	39
Other pervert the course of justice	36	67	1	104
Perjury	6	8	1	15
Withholding or suppression of evidence	4	9	0	13
<b>Total</b>	<b>69</b>	<b>125</b>	<b>2</b>	<b>196</b>
<b>Search/entry</b>				
Failure to conduct search	1	9	0	10
Property missing after search	0	4	0	4
Unlawful entry	3	9	0	12
Unlawful search	12	52	2	66
Unreasonable/Inappropriate conditions/Damage	1	16	1	18
Wrongful seizure of property during search	3	5	0	8
<b>Total</b>	<b>20</b>	<b>95</b>	<b>3</b>	<b>118</b>
<b>Service delivery</b>				
Breach Domestic Violence SOPS	4	30	1	35
Fail to provide victim support	27	36	7	70
Fail/delay attendance to incident/'000'	4	12	4	20
Harassment/Intimidation	102	113	23	238
Improper failure to WIPE	7	24	2	33
Improper request for identity/proof of identity	0	1	0	1
Improper use of move on powers	2	6	0	8
Neglect of duty (not specified elsewhere)	36	60	4	100
Other (customer service)	133	168	18	319
Rudeness/verbal abuse	117	198	16	331
Threats	24	55	7	86
<b>Total</b>	<b>456</b>	<b>703</b>	<b>82</b>	<b>1,241</b>
<b>Summary of allegations</b>	<b>1,739</b>	<b>5,126</b>	<b>180</b>	<b>7,045</b>

The number of allegations is larger than the number of complaints received because a complaint may contain more than one allegation about a single incident or involve a series of incidents.

## Appendix B

### Status of legislative reviews — as at 30 June 2008

Status	Legislation	Brief description
Review reports tabled in Parliament in 2007–2008	<i>Law Enforcement Legislation Amendment (Public Safety) Act 2005</i>	Additional powers to police to prevent or control large-scale public disorder.
Review reports provided to the responsible Minister	<i>Justice Legislation (Non-association and Place Restriction) Act 2001</i>	Allows police and courts to put restrictions — when determining bail conditions, imposing a sentence or allowing parole — on the places that a person can be in and the people they can associate with.  Provided to the Attorney General December 2006 and not yet tabled.
	<i>Police Powers (Drug Detection Trial) Act 2003</i>	Allows police to use drug sniffer dogs on vehicles randomly stopped in 'outer metropolitan' areas.  Provided to the responsible Ministers June 2008 and tabled in Parliament 21 August 2008.
Current reviews	<i>Terrorism (Police Powers) Act 2002 — Part 3</i>	Allows police and the Crime Commission to execute covert search warrants.
	<i>Terrorism (Police Powers) Act 2002 — Part 2A</i>	Allows police to hold people suspected of involvement in terrorist-related activities in preventative detention.
	<i>Law Enforcement (Powers and Responsibilities) Act 2002 — Part 4, Divisions 2 and 4</i>	Regulates the safeguards connected with searching people after they have been arrested or while they are in police custody.
	<i>Law Enforcement (Powers and Responsibilities) Act 2002 — Part 5, Division 3</i>	Allows police to issue notices to financial institutions to produce information about their customers for criminal investigations.
	<i>Law Enforcement (Powers and Responsibilities) Act 2002 — Part 7</i>	Regulates police powers for establishing crime scenes.
<i>Criminal Procedure Act 1986 — Part 3 'Penalty notice offences'</i>	Allows police to issue penalty notices for certain criminal offences. Focus of review is the impact on Aboriginal and Torres Strait Islander communities.	

## Appendix C

### Child and family services

Figure 62 — Complaints issues for child and family services received in 2007–2008

Figure 62 shows the issues that were complained about in 2007–2008 in relation to child and family services. Please note that each complaint we received may have more than one issue.

Program area Issue	Child protection		Out-of-home care		Children's services		Family support		Adoption		Total
	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	
Casework	113	183	79	130	0	2	1	0	0	1	509
Meeting individual needs	29	50	99	117	0	1	0	1	0	0	297
Object to decision	35	104	29	57	0	2	0	0	1	1	229
Case management	59	61	44	16	0	1	2	1	0	0	184
Customer service	37	54	27	53	1	1	1	1	1	2	178
Complaints	33	26	12	27	1	2	0	1	0	0	102
Information	21	31	17	19	1	0	1	1	0	1	92
Assault/abuse in care	16	46	3	15	2	2	0	0	0	0	84
Investigation	30	40	7	4	0	1	0	0	0	0	82
Professional conduct	18	24	6	11	2	3	0	0	0	0	64
Allowances/fees	3	4	22	21	0	3	0	0	2	0	55
Clients rights/ choice/participation	2	15	6	3	2	0	0	0	0	1	29
Policy/procedure/law	2	12	2	3	1	1	0	2	0	0	23
Legal problems	7	8	0	7	0	1	0	0	0	0	23
Service management	1	3	8	1	1	3	2	1	0	0	20
Access to service	2	4	0	0	2	0	0	0	0	0	8
File/record management	1	1	3	1	0	0	0	0	0	0	6
Safety	1	1	1	2	0	0	0	0	0	0	5
Client finances and property	1	0	2	0	1	0	0	0	0	0	4
Service funding/ licensing/monitoring	0	0	0	0	2	0	0	0	0	0	2
Outside our jurisdiction	9	64	1	4	2	7	1	1	0	0	89
Not applicable	1	36	0	12	0	1	0	0	0	0	50
<b>Total</b>	<b>421</b>	<b>767</b>	<b>368</b>	<b>503</b>	<b>18</b>	<b>31</b>	<b>8</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>2,135</b>

Figure 63 — Child and family services — formal complaints finalised

Figure 63 shows the outcomes of formal complaints finalised about child and family services this year.

Program area	A	B	C	D	E	F	G	Total
Child protection services	25	132	69	10	0	10	16	262
Out-of-home care	12	58	107	3	1	0	4	185
Children services	2	2	4	0	0	0	1	9
Family support services	0	0	1	0	0	0	1	2
Adoption	1	1	1	0	0	0	0	3
<b>Total</b>	<b>40</b>	<b>193</b>	<b>182</b>	<b>13</b>	<b>1</b>	<b>10</b>	<b>22</b>	<b>461</b>

#### Description

<b>A</b>	Complaint declined at outset	<b>D</b>	Service improvement comments or suggestions to agency
<b>B</b>	Complaint declined after inquiries	<b>E</b>	Referred to agency concerned or other body for investigation
<b>C</b>	Complaint resolved after inquiries, including local resolution by the agency concerned	<b>F</b>	Direct investigation
		<b>G</b>	Complaint outside jurisdiction

## Appendix D

### Disability services

Figure 64 — Complaints issues for disability services received in 2007–2008

Figure 64 shows the issues that were complained about in 2007–2008 in relation to disability services. Please note that each complaint we received may have more than one issue.

Program area Issue	Disability accommodation		Disability support		Total
	Formal	Informal	Formal	Informal	
Meeting individual needs	78	40	21	11	150
Case management	34	13	19	7	73
Assault/abuse in care	46	15	6	4	71
Service management	26	19	11	6	62
Customer service	5	6	19	21	51
Professional conduct	10	8	13	10	41
Access to service	10	3	15	13	41
Complaints	15	4	15	7	41
Client rights/choice/participation	12	12	5	6	35
Object to decision	8	7	4	12	31
Safety	12	8	1	3	24
Casework	1	3	7	3	14
Information	3	2	5	3	13
Investigation	6	1	3	2	12
Service funding/licensing/monitoring	3	5	0	2	10
Client finances and property	2	6	1	0	9
Policy/procedure/law	3	1	3	1	8
File/record management	3	1	2	0	6
Allowances/fees	1	0	2	2	5
Legal problems	0	0	1	0	1
Outside our jurisdiction	3	2	2	8	15
Not applicable	0	0	2	13	15
<b>Total</b>	<b>281</b>	<b>156</b>	<b>157</b>	<b>134</b>	<b>728</b>

Figure 65 — Disability services — formal complaints finalised

Figure 65 shows the outcomes of formal complaints we received about disability services this year.

Program area	A	B	C	D	E	F	G	Total
Disability accommodation services	5	26	92	2	5	2	4	136
Disability support services	8	28	43	1	1	2	2	85
<b>Total</b>	<b>13</b>	<b>54</b>	<b>135</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>6</b>	<b>221</b>

#### Description

<b>A</b> Complaint declined at outset	<b>D</b> Service improvement comments or suggestions to agency
<b>B</b> Complaint declined after inquiries	<b>E</b> Referred to agency concerned or other body for investigation
<b>C</b> Complaint resolved after inquiries, including local resolution by the agency concerned	<b>F</b> Direct investigation
	<b>G</b> Complaint outside jurisdiction

## Appendix E

### Other community services

Figure 66 — Number of formal and informal matters received in 2007–2008 about other community services — by agency category

Agency category	Formal	Informal	Total
<b>DoCS</b>			
Supported accommodation and assistance program services	0	2	2
General community services	5	8	13
Aged services	0	0	0
Disaster welfare services	0	1	1
<b>Sub total</b>	<b>5</b>	<b>11</b>	<b>16</b>
<b>DADHC</b>			
Supported accommodation and assistance program services	0	0	0
General community services	0	0	0
Aged services	7	21	28
Disaster welfare services	0	0	0
<b>Sub total</b>	<b>7</b>	<b>21</b>	<b>28</b>
<b>Other government agencies</b>			
Supported accommodation and assistance program services	0	0	0
General community services	0	1	1
Aged services	0	2	2
Disaster welfare services	0	0	0
<b>Sub total</b>	<b>0</b>	<b>3</b>	<b>3</b>
<b>Non-government funded or licensed services</b>			
Supported accommodation and assistance program services	43	20	63
General community services	38	8	46
Aged services	6	6	12
Disaster welfare services	0	0	0
<b>Sub total</b>	<b>87</b>	<b>34</b>	<b>121</b>
Other (general inquiries)	0	32	32
Agency unknown	0	28	28
<b>Sub total</b>	<b>0</b>	<b>60</b>	<b>60</b>
<b>Total</b>	<b>99</b>	<b>129</b>	<b>228</b>

Some complaints about supported accommodation and general community services may involve complaints about children and family and disability services.

Figure 67 — Complaints issues for other community services received in 2007–2008

Figure 67 shows the issues that were complained about in 2007–2008 in relation to general community services. Please note that each complaint we received may have more than one issue.

Program area Issue	Other community services		Total
	Formal	Informal	
Access to service	18	14	32
Customer service	13	19	32
Professional conduct	13	10	23
Complaints	10	13	23
Meeting individual needs	5	13	18
Object to decision	7	10	17
Allowances/fees	2	12	14
Information	7	6	13
Clients rights/choice/participation	1	10	11
Case management	5	3	8
Service funding/licensing/monitoring	4	4	8
Files/record management	7	0	7
Assault/abuse in care	2	4	6
Casework	1	5	6
Service management	2	4	6
Policy/procedure/law	2	2	4
Investigation	1	2	3
Safety	2	0	2
Legal problems	0	1	1
Client finances and property	1	0	1
Outside our jurisdiction	10	30	40
Not applicable	4	35	39
<b>Total</b>	<b>117</b>	<b>197</b>	<b>314</b>

Figure 68 — Outcomes of formal complaints by program area — other community services

Figure 68 shows the outcomes of formal complaints finalised about general community services this year.

Program area	A	B	C	D	E	F	G	Total
Supported accommodation and assistance program services	0	9	8	0	0	0	1	18
General community services	0	7	4	7	0	0	0	18
Aged services	0	2	5	0	0	0	0	7
Other	1	0	0	0	0	0	11	12
<b>Total</b>	<b>1</b>	<b>18</b>	<b>17</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>55</b>

#### Description

<b>A</b>	Complaint declined at outset	<b>D</b>	Service improvement comments or suggestions to agency
<b>B</b>	Complaint declined after inquiries	<b>E</b>	Referred to agency concerned or other body for investigation
<b>C</b>	Complaint resolved after inquiries, including local resolution by the agency concerned	<b>F</b>	Direct investigation
		<b>G</b>	Complaint outside jurisdiction

## Appendix F

Figure 69 — Action taken on formal complaints finalised in 2007–2008 about all public sector agencies — summary table

Figure 69 shows the action we took on each of the written complaints that we finalised this year about public sector agencies (except NSW Police, DoCS and DADHC and those relating to child protection notifications), broken down into agency groups. See appendices G, H, I and J for a further breakdown into specific agencies in those groups.

Complaint about	Assessment only		Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Bodies outside jurisdiction	364	0	0	0	0	0	0	0	0	0	0	0	0	364	
Departments and authorities	526	31	402	25	268	76	12	2	0	2	1	5	4	1,354	
Freedom of Information	75	4	21	12	60	14	7	0	0	1	0	0	3	197	
Local government	346	11	247	7	95	51	29	0	0	0	0	0	2	788	
Corrections and Justice Health	139	187	216	16	227	42	4	0	0	0	0	0	0	831	
Juvenile Justice	5	12	43	0	33	5	0	0	0	0	0	0	0	98	
<b>Total</b>	<b>1,455</b>	<b>245</b>	<b>929</b>	<b>60</b>	<b>683</b>	<b>188</b>	<b>52</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>9</b>	<b>3,632</b>	

### Description

#### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

#### Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

#### Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

## Appendix G

### Departments and authorities

Figure 70 — Action taken on general formal complaints about departments and authorities finalised in 2007–2008

Agency	Assessment only	Preliminary or informal investigation									Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Aboriginal Housing Office	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Ambulance Service of NSW	3	0	2	0	0	0	0	0	0	0	0	0	0	5	
Anti-Discrimination Board	4	0	0	0	1	1	0	0	0	0	0	0	0	6	
Attorney General's Department	8	2	2	0	1	1	0	0	0	0	0	0	0	14	
Board of Studies	1	0	1	0	0	0	0	0	0	0	0	0	0	2	
Board of Vocational Education and Training	1	0	0	0	1	1	0	0	0	0	0	0	0	3	
Building and Construction Industry Long Service Payments Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Building Professionals Board	1	0	2	0	0	1	0	0	0	0	0	0	0	4	
Charles Sturt University	1	0	1	1	0	0	0	0	0	0	0	0	0	3	
Commission for Children and Young People	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Consumer, Trader and Tenancy Tribunal	8	0	0	0	0	0	0	0	0	0	0	0	0	8	
Country Energy	5	0	0	0	0	0	0	0	0	0	0	0	0	5	
Dental Board of NSW	0	0	1	0	1	0	1	0	0	0	0	0	0	3	
Department of Arts, Sport and Recreation	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
Department of Commerce	20	2	17	2	7	2	0	0	0	0	0	0	0	50	
Department of Community Services	0	0	0	0	3	0	0	0	0	1	0	3	2	9	
Department of Education and Training	50	1	12	3	8	6	0	0	0	0	0	0	1	81	
Department of Environment and Climate Change	3	1	1	2	3	1	1	0	0	0	0	0	0	12	
Department of Health	37	1	13	3	6	2	2	0	0	0	0	1	1	66	
Department of Housing	49	4	104	0	51	15	2	0	0	0	1	0	0	226	
Department of Lands	12	1	10	0	2	2	0	0	0	0	0	0	0	27	
Department of Local Government	0	0	1	0	1	0	0	0	0	0	0	0	0	2	
Department of Natural Resources	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Department of Planning	5	0	3	0	2	0	0	0	0	0	0	0	0	10	
Department of Premier and Cabinet	1	0	1	0	0	0	0	0	0	0	0	0	0	2	
Department of Primary Industries	6	0	4	1	1	0	0	0	0	0	0	0	0	12	
Department of Water and Energy	2	0	1	0	1	1	0	1	0	0	0	0	0	6	
Director of Public Prosecutions	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Electoral Commission NSW	1	0	1	0	0	1	0	0	0	0	0	0	0	3	
Energy Australia	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
First State Superannuation Trustee Corporation	1	0	0	0	2	0	0	0	0	0	0	0	0	3	
Game Council of NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Geographical Names Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Growth Centres Commission	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Health Care Complaints Commission	16	0	7	1	0	0	0	0	0	0	0	0	0	24	
Housing Appeals Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Hunter Water Corporation Limited	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Integral Energy	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Internal Audit Bureau of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Lake Illawarra Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Landcom (NSW Land and Housing Corporation)	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Lands Board	0	0	1	0	1	0	0	0	0	0	0	0	0	2	
Legal Aid Commission of NSW	5	1	5	0	3	0	1	0	0	0	0	0	0	15	
Macquarie University	4	1	2	0	8	0	0	0	0	0	0	0	0	15	
Marine Parks Authority NSW	0	0	2	0	0	0	0	0	0	0	0	0	0	2	
Mental Health Review Tribunal and Psychosurgery Review Board	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
Ministry of Transport	6	0	5	0	3	0	0	0	0	0	0	0	0	14	
Motor Accidents Authority	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
Murrumbidgee Catchment Management Authority	0	0	1	0	0	0	0	0	0	0	0	0	0	1	

Agency	Assessment only		Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Newcastle Port Corporation	0	0	2	0	0	0	0	0	0	0	0	0	0	2	
NSW Fire Brigades	5	0	1	0	0	1	0	0	0	0	0	0	0	7	
NSW Food Authority	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
NSW Heritage Office	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
NSW Lotteries	1	0	1	0	0	0	0	0	0	0	0	0	0	2	
NSW Maritime Authority	5	0	3	0	2	0	0	0	0	0	0	0	0	10	
NSW Medical Board	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
NSW Office of Liquor, Gaming and Racing	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
NSW Police Force	0	0	0	0	0	0	0	0	0	0	0	1	0	1	
Nurses Registration Board	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Office of Minister for Natural Resources	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Office of Protective Commissioner	9	2	23	0	32	2	0	0	0	0	0	0	0	68	
Office of Public Guardian	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Office of State Revenue	70	9	78	1	63	17	0	0	0	0	0	0	0	238	
Pillar Administration	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Podiatrists Registration Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Public Trustee	8	1	2	0	4	0	0	0	0	0	0	0	0	15	
Rail Corporation New South Wales	26	2	7	1	8	1	3	0	0	0	0	0	0	48	
Registry of Births, Deaths and Marriages	3	0	3	0	8	4	0	0	0	0	0	0	0	18	
Roads and Traffic Authority	67	3	34	1	29	11	0	0	0	1	0	0	0	146	
Rural Assistance Authority	1	0	1	1	0	0	0	0	0	0	0	0	0	3	
Rural Fire Service NSW	2	0	1	0	0	1	0	0	0	0	0	0	0	4	
Rural Lands Protection Board	3	0	4	0	0	0	0	0	0	0	0	0	0	7	
Southern Cross University	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
State Authorities Superannuation Trustee Corporation	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
State Parole Authority	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
State Transit Authority of NSW	7	0	2	1	2	0	0	0	0	0	0	0	0	12	
Sydney Catchment Authority	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Sydney Ferries Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Sydney Harbour Foreshore Authority	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Sydney Ports Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Sydney Water Corporation	6	0	1	2	0	0	0	0	0	0	0	0	0	9	
Transport Infrastructure Development Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Unnamed agency	3	0	0	0	0	0	0	1	0	0	0	0	0	4	
University of New England	0	0	0	0	1	1	0	0	0	0	0	0	0	2	
University of New South Wales	5	0	2	2	2	0	1	0	0	0	0	0	0	12	
University of Newcastle	4	0	3	0	2	1	0	0	0	0	0	0	0	10	
University of Sydney	2	0	3	0	3	1	0	0	0	0	0	0	0	9	
University of Technology	4	0	6	0	1	0	0	0	0	0	0	0	0	11	
University of Western Sydney	5	0	5	0	0	0	0	0	0	0	0	0	0	10	
University of Wollongong	1	0	1	1	0	1	0	0	0	0	0	0	0	4	
Valuer General	3	0	1	0	0	0	0	0	0	0	0	0	0	4	
Workcover Authority	7	0	6	0	1	0	0	0	0	0	0	0	0	14	
WSN Environmental Solutions	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
<b>Total</b>	<b>526</b>	<b>31</b>	<b>404</b>	<b>23</b>	<b>268</b>	<b>76</b>	<b>12</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>1,354</b>	

## Description

### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

### Preliminary or informal investigation:

B Substantive advice, information provided without formal finding of wrong conduct

C Advice/explanation provided where no or insufficient evidence of wrong conduct

D Further investigation declined on grounds of resource/priority

E Resolved to Ombudsman's satisfaction

F Resolved by agency prior to our intervention

G Suggestions/comment made

H Consolidated into other complaint

I Conciliated/mediated

### Formal investigation:

J Resolved during investigation

K Investigation discontinued

L No adverse finding

M Adverse finding

## Appendix H

### Local government

Figure 71 — Action taken on formal complaints finalised in 2007–2008 about local government

Figure 71 shows the action we took on each of the written complaints finalised this year about individual councils.

Council	Assessment only		Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Accredited Certifier	2	0	3	0	1	0	0	0	0	0	0	0	0	6	
Albury City Council	0	0	2	0	3	0	0	0	0	0	0	0	0	5	
Armidale Dumaresq Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
Ashfield Municipal Council	3	0	0	0	0	1	0	0	0	0	0	0	0	4	
Auburn Council	2	0	0	0	0	0	1	0	0	0	0	0	0	3	
Ballina Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Bankstown City Council	3	0	1	0	1	1	0	0	0	0	0	0	0	6	
Bathurst Regional Council	3	0	0	0	0	0	1	0	0	0	0	0	0	4	
Baulkham Hills Shire Council	5	0	1	0	0	1	1	0	0	0	0	0	0	8	
Bega Valley Shire Council	4	0	2	0	2	1	0	0	0	0	0	0	0	9	
Bellingen Shire Council	2	0	2	0	0	0	0	0	0	0	0	0	0	4	
Blacktown City Council	1	0	4	0	0	1	0	0	0	0	0	0	0	6	
Bland Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
Blue Mountains City Council	4	0	6	0	1	0	0	0	0	0	0	0	0	11	
Bombala Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2	
Broken Hill City Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Burwood Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Byron Shire Council	0	0	2	0	0	1	0	0	0	0	0	0	0	3	
Cabonne Shire Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3	
Camden Council	0	0	0	0	0	1	1	0	0	0	0	0	0	2	
Campbelltown City Council	4	0	1	0	1	0	0	0	0	0	0	0	0	6	
Canterbury City Council	3	0	2	0	1	0	0	0	0	0	0	0	0	6	
Central Darling Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Central Tablelands Water	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Cessnock City Council	5	0	2	0	1	1	1	0	0	0	0	0	0	10	
City of Botany Bay Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
City of Canada Bay Council	4	0	3	0	0	1	0	0	0	0	0	0	0	8	
Clarence Valley Council	4	0	1	0	0	0	0	0	0	0	0	0	0	5	
Coffs Harbour City Council	4	0	1	0	0	0	1	0	0	0	0	0	0	6	
Cooma-Monaro Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Cootamundra Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Cowra Shire Council	2	0	0	0	0	3	0	0	0	0	0	0	0	5	
Dubbo City Council	1	0	1	0	0	1	0	0	0	0	0	0	0	3	
Dungog Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Eurobodalla Shire Council	8	0	3	0	0	0	0	0	0	0	0	0	1	12	
Fairfield City Council	3	0	1	0	1	0	1	0	0	0	0	0	0	6	
Glenn Innes Severn Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Goldenfields Water County Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2	
Gosford City Council	19	2	10	0	4	2	0	0	0	0	0	0	0	37	
Goulburn Mulwaree Shire Council	0	0	2	1	0	0	0	0	0	0	0	0	0	3	
Great Lakes Council	5	0	2	0	0	1	1	0	0	0	0	0	0	9	
Greater Hume Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Greater Taree City Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
Griffith City Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2	
Gunnedah Shire Council	2	1	1	0	0	0	0	0	0	0	0	0	0	4	
Harden Shire Council	2	0	3	1	0	0	0	0	0	0	0	0	0	6	

Council	Assessment only		Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Hawkesbury City Council	0	0	3	0	1	1	0	0	0	0	0	0	0	5	
Holroyd City Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3	
Hornsby Shire Council	7	0	7	0	1	0	0	0	0	0	0	0	0	15	
Hunters Hill Municipal Council	3	1	2	0	0	0	0	0	0	0	0	0	0	6	
Hurstville City Council	3	0	2	0	1	0	0	0	0	0	0	0	0	6	
Junee Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Kempsey Shire Council	5	0	2	0	1	1	0	0	0	0	0	0	0	9	
Kogarah Municipal Council	3	0	3	0	3	0	0	0	0	0	0	0	0	9	
Ku-ring-gai Council	6	0	3	1	0	1	1	0	0	0	0	0	0	12	
Kyogle Shire Council	2	0	0	0	1	0	0	0	0	0	0	0	0	3	
Lachlan Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Lake Macquarie City Council	6	0	8	0	2	2	0	0	0	0	0	0	0	18	
Lane Cove Municipal Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Leeton Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Leichhardt Municipal Council	3	0	5	0	2	0	0	0	0	0	0	0	0	10	
Lismore City Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Lithgow City Council	8	0	1	0	0	3	1	0	0	0	0	0	0	13	
Liverpool City Council	3	0	2	0	2	2	0	0	0	0	0	0	0	9	
Liverpool Plains Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Maitland City Council	2	1	2	0	3	0	0	0	0	0	0	0	0	8	
Manly Council	4	0	1	0	0	1	0	0	0	0	0	0	0	6	
Marrickville Council	1	0	4	0	2	1	0	0	0	0	0	0	0	8	
Midcoast Water	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Mid-Western Regional Council	1	0	3	0	1	1	1	0	0	0	0	0	1	8	
Moree Plains Shire Council	1	0	0	0	0	1	0	0	0	0	0	0	0	2	
Mosman Municipal Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2	
Murray Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Muswellbrook Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Nambucca Shire Council	5	0	3	0	0	0	1	0	0	0	0	0	0	9	
Narrabri Shire Council	2	0	2	0	1	0	0	0	0	0	0	0	0	5	
Narrandera Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3	
Narromine Shire Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
Newcastle City Council	3	1	9	0	1	0	0	0	0	0	0	0	0	14	
North Sydney Council	4	0	2	0	0	0	0	0	0	0	0	0	0	6	
Oberon Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Orange City Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
Palerang Council	14	0	2	0	1	1	1	0	0	0	0	0	0	19	
Parramatta City Council	5	0	3	0	1	0	0	0	0	0	0	0	0	9	
Penrith City Council	5	0	4	0	1	3	0	0	0	0	0	0	0	13	
Pittwater Council	6	0	4	0	2	1	0	0	0	0	0	0	0	13	
Port Macquarie-Hastings Council	6	0	6	1	3	0	0	0	0	0	0	0	0	16	
Port Stephens Shire Council	4	0	2	0	3	0	0	0	0	0	0	0	0	9	
Randwick City Council	3	0	2	0	0	1	0	0	0	0	0	0	0	6	
Richmond Valley Council	7	0	1	0	1	1	0	0	0	0	0	0	0	10	
Rockdale City Council	5	0	3	0	1	0	0	0	0	0	0	0	0	9	
Ryde City Council	4	1	3	0	5	0	0	0	0	0	0	0	0	13	
Shellharbour City Council	2	0	1	0	0	0	12	0	0	0	0	0	0	15	
Shoalhaven City Council	4	0	9	0	2	3	0	0	0	0	0	0	0	18	
Singleton Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Snowy River Shire Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
Strathfield Municipal Council	3	0	1	0	2	0	0	0	0	0	0	0	0	6	
Sutherland Shire Council	6	0	7	0	4	4	1	0	0	0	0	0	0	22	
Sydney City Council	15	1	9	0	7	2	0	0	0	0	0	0	0	34	
Tamworth City Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3	
Temora Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	

Council	Assessment only			Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Tenterfield Shire Council	0	0	3	0	0	0	0	0	0	0	0	0	0	3	
Tumbarumba Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Tumut Shire Council	2	0	3	0	0	0	0	0	0	0	0	0	0	5	
Tweed Shire Council	7	1	5	1	0	0	0	0	0	0	0	0	0	14	
Upper Hunter Shire Council	1	0	0	0	1	1	0	0	0	0	0	0	0	3	
Uralla Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Wagga Wagga City Council	0	0	1	1	1	0	0	0	0	0	0	0	0	3	
Walgett Shire Council	0	0	2	2	0	0	0	0	0	0	0	0	0	4	
Warrindah Council	17	1	2	0	0	0	0	0	0	0	0	0	0	20	
Warrumbungle Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Waverley Council	8	0	0	0	2	1	0	0	0	0	0	0	0	11	
Willoughby City Council	0	0	3	0	0	0	0	0	0	0	0	0	0	3	
Wingecarribee Shire Council	5	1	4	0	0	0	0	0	0	0	0	0	0	10	
Wollondilly Shire Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3	
Wollongong City Council	8	0	10	0	2	2	1	0	0	0	0	0	0	23	
Woollahra Municipal Council	3	0	3	0	2	0	1	0	0	0	0	0	0	9	
Wyong Shire Council	3	0	2	1	1	0	0	0	0	0	0	0	0	7	
Yass Valley Council	1	0	2	0	2	0	0	0	0	0	0	0	0	5	
Young Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
<b>Total</b>	<b>346</b>	<b>11</b>	<b>245</b>	<b>9</b>	<b>95</b>	<b>51</b>	<b>29</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>788</b>	

## Description

### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

### Preliminary or informal investigation:

**B** Substantive advice, information provided without formal finding of wrong conduct

**C** Advice/explanation provided where no or insufficient evidence of wrong conduct

**D** Further investigation declined on grounds of resource/priority

**E** Resolved to Ombudsman's satisfaction

**F** Resolved by agency prior to our intervention

**G** Suggestions/comment made

**H** Consolidated into other complaint

**I** Conciliated/mediated

### Formal investigation:

**J** Resolved during investigation

**K** Investigation discontinued

**L** No adverse finding

**M** Adverse finding

## Appendix I

### Corrections

Figure 72 — Action taken on formal complaints finalised in 2007–2008 about corrections

Figure 72 shows the action we took on each of the formal complaints finalised this year about corrections.

Agency	Assessment only			Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M			
Department of Corrective Services	124	148	178	15	172	31	4	0	0	0	0	0	0	672		
Justice Health	9	15	14	0	17	4	0	0	0	0	0	0	0	59		
GEO Australia	6	24	24	1	38	7	0	0	0	0	0	0	0	100		
Department of Juvenile Justice	5	12	43	0	33	5	0	0	0	0	0	0	0	98		
<b>Total</b>	<b>144</b>	<b>199</b>	<b>259</b>	<b>16</b>	<b>260</b>	<b>47</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>929</b>		

#### Description

<p><b>A</b> <b>Decline after assessment only, including:</b></p> <p>Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds</p>	<p><b>Preliminary or informal investigation:</b></p> <p><b>B</b> Substantive advice, information provided without formal finding of wrong conduct</p> <p><b>C</b> Advice/explanation provided where no or insufficient evidence of wrong conduct</p> <p><b>D</b> Further investigation declined on grounds of resource/priority</p> <p><b>E</b> Resolved to Ombudsman's satisfaction</p>	<p><b>F</b> Resolved by agency prior to our intervention</p> <p><b>G</b> Suggestions/comment made</p> <p><b>H</b> Consolidated into other complaint</p> <p><b>I</b> Conciliated/mediated</p> <p><b>Formal investigation:</b></p> <p><b>J</b> Resolved during investigation</p> <p><b>K</b> Investigation discontinued</p> <p><b>L</b> No adverse finding</p> <p><b>M</b> Adverse finding</p>
---	--	--

Figure 73 — Number of formal and informal complaints received in 2007–2008 about correctional centres, DCS and GEO

Institution	Formal	Informal	Total
Bathurst Correctional Centre	24	121	145
Berrima Correctional Centre	6	18	24
Broken Hill Correctional Centre	4	16	20
Cessnock Correctional Centre	11	72	83
Community Offender Services	13	32	45
Compulsory Drug Treatment Correctional Centre	3	3	6
Cooma Correctional Centre	2	12	14
Corrective Services Department	117	181	298
Court Escort/Security Unit	23	21	44
Dawn De Loas Special Purpose Centre	10	31	41
Department of Corrective Services Head Office	2	10	12
Dillwinya Correctional Centre	17	89	106
Emu Plains Correctional Centre	26	87	113
GEO Australia	13	55	68
Glenn Innes Correctional Centre	2	9	11
Goulburn Correctional Centre	51	198	249
Grafton Correctional Centre	9	53	62
High Risk Management Unit	14	67	81

Institution	Formal	Informal	Total
Ivanhoe "Warakirri" Correctional Centre	1	2	3
John Morony Correctional Centre	4	44	48
Junee Correctional Centre	83	258	341
Justice Health	61	241	302
Kariong Juvenile Correctional Centre	5	11	16
Kirkconnell Correctional Centre	14	61	75
Lithgow Correctional Centre	31	128	159
Long Bay Hospital Area One	12	51	63
Long Bay Hospital Area Two	0	3	3
Mannus Correctional Centre	0	7	7
Metropolitan Remand Reception Centre	49	204	253
Metropolitan Special Programs Centre	72	272	344
Mid North Coast Correctional Centre	27	162	189
Oberon Correctional Centre	2	17	19
Parklea Correctional Centre	23	116	139
Parramatta Correctional Centre	4	25	29
Periodic Detention Centre	2	9	11
Silverwater Correctional Centre	28	153	181
Silverwater Women's Correctional Centre	11	87	98
Special Purpose Prison Long Bay	3	3	6
St Heliers Correctional Centre	3	26	29
Tamworth Correctional Centre	4	15	19
Wellington Correctional Centre	56	173	229
Yetta Dhinnakkal (Brewarrina) Correctional Centre	0	1	1
<b>Total</b>	<b>842</b>	<b>3,144</b>	<b>3,986</b>

\*Some complaints may involve more than one centre.

Figure 74 — Number of formal and informal complaints received in 2007–2008 about juvenile justice centres and DJJ

Institution	Formal	Informal	Total
Acmena Juvenile Justice Centre	5	18	23
Cobham Juvenile Justice Centre	6	49	55
Frank Baxter Juvenile Justice Centre	41	68	109
Juniperina Juvenile Justice Centre	17	19	36
Department of Juvenile Justice	12	20	32
Keelong Juvenile Justice Centre	7	21	28
Orana Juvenile Justice Centre	5	12	17
Reiby Juvenile Justice Centre	3	21	24
Riverina Juvenile Justice Centre	3	15	18
<b>Total</b>	<b>99</b>	<b>243</b>	<b>342</b>

## Appendix J

### Freedom of information

Figure 75 — Action taken on formal complaints finalised in 2007–2008 about FOI

Figure 75 shows the action we took on each of the written complaints finalised this year about individual public sector agencies relating to freedom of information.

Agency	Assessment only		Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Ashfield Municipal Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Attorney General's Department	0	0	0	0	1	0	1	0	0	0	0	0	0	2	
Ballina Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Blacktown City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Bombala Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Campbelltown City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Charles Sturt University	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Cooma-Monaro Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Department of Community Services	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Department of Corrective Services	2	0	1	1	3	0	0	0	0	0	0	0	0	7	
Department of Education and Training	1	0	0	0	8	3	1	0	0	0	0	0	0	13	
Department of Health	14	1	2	1	7	4	1	0	0	0	0	0	0	30	
Department of Housing	1	0	0	0	2	0	0	0	0	0	0	0	0	3	
Department of Lands	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Department of Planning	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Department of Premier and Cabinet	1	0	0	0	0	0	1	0	0	0	0	0	0	2	
Department of Primary Industries	0	0	0	0	3	1	0	0	0	0	0	0	0	4	
Department of Water and Energy	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Director of Public Prosecutions	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Fairfield City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Film and Television Office	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Gosford City Council	2	0	0	0	1	0	0	0	0	0	0	0	0	3	
Goulburn Mulwaree Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Health Care Complaints Commission	1	0	1	0	0	1	0	0	0	0	0	0	0	3	
Infringement Processing Bureau	0	0	0	0	0	0	0	0	0	1	0	0	0	1	
Lake Macquarie City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Legal Aid Commission of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Lismore City Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Macquarie University	0	0	1	1	0	1	0	0	0	0	0	0	0	3	
Ministry for Police	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Ministry of Transport	2	0	0	0	0	0	1	0	0	0	0	0	0	3	
Northern Sydney Central Coast Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
NSW Fire Brigades	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
NSW Food Authority	1	0	0	0	0	0	1	0	0	0	0	0	0	2	
NSW Maritime Authority	0	0	0	0	2	0	0	0	0	0	0	0	0	2	
NSW Ombudsman	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
NSW Police Force	22	3	6	0	19	2	1	0	0	0	0	0	0	53	
NSW Treasury	2	0	0	0	0	0	0	0	0	0	0	0	0	2	
Office of Protective Commissioner	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Office of State Revenue	3	0	0	0	0	0	0	0	0	0	0	0	0	3	
Palerang Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Pittwater Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Rail Corporation New South Wales	3	0	0	0	0	0	0	0	0	0	0	0	2	5	
Richmond Valley Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	

Agency	Assessment only		Preliminary or informal investigation							Formal investigation					Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Riverina Conservatorium of Music	1	0	1	0	0	0	0	0	0	0	0	0	0	2	
Roads and Traffic Authority	1	0	0	0	2	1	0	0	0	0	0	0	1	5	
Rural Fire Service NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Rural Lands Protection Board	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Southern Cross University	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
State Rescue Board of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
State Transit Authority of NSW	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
Sydney Ferries Corporation	0	0	0	0	2	0	0	0	0	0	0	0	0	2	
Sydney Harbour Foreshore Authority	1	0	0	0	1	0	0	0	0	0	0	0	0	2	
Sydney Ports Corporation	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Tumbarumba Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
University of New England	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
University of New South Wales	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
University of Newcastle	1	0	1	1	0	0	0	0	0	0	0	0	0	3	
University of Sydney	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
University of Technology	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
University of Western Sydney	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
University of Wollongong	0	0	1	1	0	0	0	0	0	0	0	0	0	2	
Veterinary Surgeons Investigating Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Warrumbungle Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
<b>Total</b>	<b>75</b>	<b>4</b>	<b>21</b>	<b>12</b>	<b>60</b>	<b>14</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>197</b>	

## Description

### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

### Preliminary or informal investigation:

**B** Substantive advice, information provided without formal finding of wrong conduct

**C** Advice/explanation provided where no or insufficient evidence of wrong conduct

**D** Further investigation declined on grounds of resource/priority

**E** Resolved to Ombudsman's satisfaction

**F** Resolved by agency prior to our intervention

**G** Suggestions/comment made

**H** Consolidated into other complaint

**I** Conciliated/mediated

### Formal investigation:

**J** Resolved during investigation

**K** Investigation discontinued

**L** No adverse finding

**M** Adverse finding

## Appendix K

### FOI report

The following information is provided in accordance with the *Freedom of Information Act 1989* (FOI Act), the Freedom of Information Regulation 2005 and the NSW Ombudsman's FOI Procedure Manual.

We processed six new FOI applications during 2007–2008 and two internal reviews, one of which related to an application initially received and determined in 2006–2007.

We did not hold any documents that fell within the scope of the three applications. Two of those FOI applications requested documents related to certain controlled operations and one application requested documents relating to a complaint about a local council.

This year we refused access to documents to three applicants on the basis that we are exempt from the operation of the FOI Act, by virtue of Schedule 2 and section 9 of the FOI Act, in relation to applications that ask only for documents that relate to our complaint-handling, investigative and reporting functions. The NSW Supreme Court made a decision in 2007 that confirmed the exemption available to agencies listed in Schedule 2 of the FOI Act (*Independent Commission Against Corruption v Gerard Michael McGuirk* [2007] NSWSC 147).

Only one of the applicants asked for an internal review and also appealed our decision to the ADT. The ADT upheld our original determination.

We refunded the application fees where we held no documents or the documents were exempt by virtue of Schedule 2 and section 9 of the FOI Act.

The number of FOI applications we dealt with this year has dropped from 16 to 6 and is the same as the number of applications we dealt with in 2005–2006.

### Section A: New FOI applications

FOI requests	Number of FOI applications					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
New	1	1	15	5	16	6
Brought forward	0	0	0	0	0	0
Total to be processed	1	1	15	5	16	6
Completed	1	1	15	5	16	6
Discontinued	0	0	0	0	0	0
Total processed	1	1	15	5	16	6
Unfinished (carried forward)	0	0	0	0	0	0

### Section B: Discontinued applications

We had no discontinued applications in either 2008 or 2007.

### Section C: Completed applications

FOI requests	Number of completed FOI applications					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
Granted or otherwise available in full	0	0	4	0	4	0
Granted or otherwise available in part	1	0	5	0	6	0
Refused	0	1	6	2	6	3
No documents held	0	0	0	3	0	3
Completed	1	1	5	5	16	6

### Section D: Applications granted or otherwise available in full

	Number of FOI applications (granted or otherwise available in full)					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
Provided to the applicant	0	0	4	0	4	0
Provided to the applicant's medical practitioner	0	0	0	0	0	0
Available for inspection	0	0	0	0	0	0
Available for purchase	0	0	0	0	0	0
Library material	0	0	0	0	0	0
Subject to deferred access	0	0	0	0	0	0
Available by a combination of any of the reasons listed above	0	0	0	0	0	0
Total	0	0	4	0	4	0

### Section E: Applications granted or otherwise available in part

	Number of FOI applications (granted or otherwise available in part)					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
Provided to the applicant	1	0	5	0	6	0
Provided to the applicant's medical practitioner	0	0	0	0	0	0
Available for inspection	0	0	0	0	0	0
Available for purchase	0	0	0	0	0	0
Library material	0	0	0	0	0	0
Subject to deferred access	0	0	0	0	0	0
Available by a combination of any of the reasons listed above	0	0	0	0	0	0
Total	1	0	5	0	6	0

### Section F: Refused FOI applications

	Number of refused FOI applications					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
Exempt	0	1	6	2	6	3
Deemed refused	0	0	0	0	0	0
Total refused	0	1	6	2	6	3

## Section G: Exempt documents

This is the first year that this type of information is being collected by agencies. Therefore, we have not provided figures for 2006–2007. All applications we dealt with this year were refused by virtue of Schedule 2 and section 9 of the FOI Act.

	Number of FOI applications (refused or access granted or otherwise available in part only)					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
Schedule 2 exempt agency documents containing information confidential to Olympic Committees (Clause 22)	0	1	0	2	0	3

## Section H: Ministerial certificates (s.59)

No ministerial certificates were issued in relation to FOI applications to the Ombudsman in 2007–2008 or 2006–2007.

## Section I: Formal consultations

	Number of formal consultations conducted	
	2007	2008
Number of applications requiring formal consultation	1	0
Number of persons formally consulted	1	0

## Section J: Amendment of personal records

We received no requests for the amendment of personal records in 2007–2008 or 2006–2007.

## Section K: Notation of personal records

We received no requests for notation of personal records in 2007–2008 or 2006–2007.

## Section L: Fees and costs

	Assessed costs		Fees received	
	2007	2008	2007	2008
All completed applications	\$711	\$185	\$711	\$185

We refunded all the FOI fees received in 2007–2008.

## Section M: Fee discounts

	Number of FOI applications (where fees were waived or discounted)					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
Processing fees waived in full	0	1	0	3	0	4
Public interest discounts	0	0	0	0	0	0
Financial hardship discounts — pensioner or child	0	0	0	0	0	0
Financial hardship discounts — non-profit organisation	0	0	0	0	0	0
Total	0	1	0	3	0	4

## Section N: Fee refunds

We did not refund any fees as a result of significant correction of personal records.

## Section O: Days taken to complete request

Days to process	Number of completed FOI applications					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
0–21 days — statutory determination period	1	1	11	5	12	6
22–35 days — extended statutory determination period for consultation or retrieval of archived records (s.59B)	0	0	1	0	1	0
Over 21 days — deemed refusal where no extended determination period applies	0	0	3	0	3	0
Over 35 days — deemed refusal where extended determination period applies	0	0	0	0	0	0
Total	1	1	15	5	16	6

## Section P: Processing time

Processing hours	Number of completed FOI applications					
	Personal		Other		Total	
	2007	2008	2007	2008	2007	2008
0–10 hours	1	1	10	5	11	6
11–20 hours	0	0	4	0	4	0
21–40 hours	0	0	1	0	1	0
Over 40 hours	0	0	0	0	0	0
Total	1	1	15	5	16	6

## Section Q: Number of reviews

	Number of completed reviews	
	2007	2008
Internal reviews	6	2
Ombudsman reviews	n/a	n/a
ADT reviews	0	4

## Section R: Results of internal reviews

We received two requests for internal reviews, one in relation to an application dealt with in the previous year and one of an application dealt with in 2008. They were not requests for personal information. The internal reviews upheld the original decision to refuse access to documents.

## Appendix L

### Significant Committees

Our staff members are members of the following inter-organisational committees:

Staff member	Committee name
Ombudsman — Bruce Barbour	Regional Vice President for the Australasian and Pacific Ombudsman Regional Group; Director on the Board of the International Ombudsman Institute; Institute of Criminology Advisory Committee; Reviewable Disability Death Advisory Committee; Reviewable Child Death Advisory Committee
Deputy Ombudsman — Chris Wheeler	Protected Disclosures Act Implementation Steering Committee; Security Committee; Whistle While They Work Steering Committee
Deputy Ombudsman/Community and Disability Services Commissioner — Steve Kinmond	Police Aboriginal Strategic Advisory Committee (PASAC); Reviewable Disability Death Advisory Committee; Reviewable Child Death Advisory Committee
Assistant Ombudsman (Police) — Greg Andrews	International Network for the Independent Oversight of Police; Early Intervention System Steering Committee; South Pacific Ombudsman Network
Assistant Ombudsman (Children and Young People) — Anne Barwick	Child Protection and Sex Crimes Squad Advisory Council
Assistant Ombudsman (Police) — Simon Cohen	NSW Police Force Internal Witness Advisory Committee; International Network for the Independent Oversight of Police
Cross Agency Team Manager — Julianna Demetrius	PASAC; Youth Justice Coalition, NSW Police Force Domestic Violence Steering Committee
Senior Investigation Officer (Aboriginal Unit) — Laurel Russ	PASAC
Team Manager — Anne Radford	Joint Initiatives Group
Inquiries and Resolution Team Manager — Vince Blatch	Joint Initiatives Group
Youth Liaison Officer — Mandy Loundar	Multicultural Youth Issues Network, NSW Police Force Youth Issues Advisory Group
Manager, Projects & Major Investigations — Helen Ford	Corruption Prevention Network
Project Manager (Police) — Brendan Delahunty	Network of Government Agencies: Gay, Lesbian, Bisexual and Transgender Issues; PASAC

## Appendix M

### Expert advisory committees

Two expert advisory committees assist us to perform our reviewable deaths functions. In 2007–2008, the Reviewable Child Death Advisory Committee and the Reviewable Disability Death Advisory Committee each met on two occasions. Our advisory committees continue to provide the Ombudsman with valuable advice on complex child and disability death matters, policy issues and health practice issues.

#### Reviewable Disability Death Advisory Committee

Mr Bruce Barbour	Ombudsman (Chair)
Mr Steve Kinmond	Deputy Ombudsman/Community and Disability Services Commissioner
Ms Margaret Bail	Human Services Consultant
Dr Helen Beange	Clinical Professor, Faculty of Medicine, University of Sydney
Ms Linda Goddard	Course Coordinator, Bachelor of Nursing, Charles Sturt University
Associate Professor Alvin Ing	Senior Staff Specialist, Respiratory Medicine, Bankstown-Lidcombe Hospital and Senior Visiting Respiratory Physician, Concord Hospital
Dr Cheryl McIntyre	General practitioner (Inverell)
Dr Ted O'Loughlin	Paediatric Gastroenterologist, The Children's Hospital, Westmead
Associate Professor Ernest Somerville	Prince of Wales Clinical School, Neurology
Ms Anne Slater	Physiotherapist, Allowah Children's Hospital
Dr Julian Troller	MD FRANZCP, Senior Research Fellow Neuropsychiatric Institute, Prince of Wales Hospital
Dr Rosemary Sheehy	Geriatrician/Endocrinologist, Central Sydney Area Health Service

#### Reviewable Child Death Advisory Committee

Mr Bruce Barbour	Ombudsman (Chair)
Mr Steve Kinmond	Deputy Ombudsman/Community and Disability Services Commissioner
Dr Judy Cashmore	Associate Professor, Faculty of Law, University of Sydney; Honorary Research Associate, Social Policy Research Centre, University of New South Wales; Adjunct Professor, Arts, Southern Cross University.
Dr Ian Cameron	CEO, NSW Rural Doctors Network
Dr. Michael Fairley	Consultant Psychiatrist, Department of Child and Adolescent Mental Health at Prince of Wales Hospital and Sydney Children's Hospital
Dr Jonathan Gillis	Senior Staff Specialist in Intensive Care, The Children's Hospital, Westmead
Dr Bronwyn Gould	Child protection consultant and medical practitioner
Ms Pam Greer	Community worker, trainer and consultant
Dr Ferry Grunseit	Consultant paediatrician, former Chair of the NSW Child Protection Council and NSW Child Advocate
Associate Professor Jude Irwin	Associate Professor, Faculty of Education and Social Work, University of Sydney
Ms Toni Single	Clinical Psychologist, former Senior Clinical Psychologist, Child Protection Team, John Hunter Hospital, Newcastle
Ms Tracy Sheedy	Manager, Children's Court of NSW

## Appendix N

### Mandatory annual reporting requirements

Under the *Annual Reports (Departments) Act 1985*, the Annual Reports (Departments) Regulation 2005 and various Treasury circulars, our office is required to include in this report information on the following topics. All references to sections are to sections in the Annual Reports (Departments) Act and all references to clauses are to clauses in the Annual Reports (Departments) Regulation, except where stated otherwise. TC means Treasury Circular, PC means Premier's Circular.

Legislative provision	Topic	Comment
s.11A	Letter of submission	See the inside front cover
s.16(5)	Particulars of extensions of time	No extension applied for
s.11	Charter	See pages 18 – 19 and this Appendix (Legislation administered)
Sch. 1 to the Annual Reports (Departments) Regulation 2005	Aims and objectives	See pages 20 – 27
	Access	See inside back cover
	Management and structure:	See pages 32 – 33
TC 01/12	<ul style="list-style-type: none"> <li>• names of principal officers, appropriate qualifications</li> <li>• organisational chart indicating functional responsibilities</li> </ul>	
	Summary review of operations	See pages 15 – 17
	Funds granted to non-government community organisations	We did not grant any funds of this sort
	Legal change	See this Appendix
	Economic or other factors	See page 39 and pages 164 – 166
	Management and activities	See pages 14 – 40 and pages 41 – 56
	Major works in progress	There were no such works
	Research and development	See pages 108, 112 – 114, 164 and Appendix B.
	Human resources	See pages 34 – 39
	Consultants	We used no consultants this year
	Equal Employment Opportunity	See pages 35 – 36
	Disability plans	See this Appendix
	Land disposal	We do not own and did not dispose of any land or property
	Promotion – overseas visit	<p>The Ombudsman was sponsored to attend a consultation meeting between the National Ombudsman Commission of Indonesia and members of its National Parliament in Jakarta, Indonesia in July 2007 and participated in the Pacific Island Ombudsman Network held in Vanuatu to discuss the Regional Ombudsman Initiative of the Pacific Plan in May 2008. The Deputy Ombudsman attended the 5<sup>th</sup> International Conference of Information Commissioners in Wellington, New Zealand in March 2008.</p> <p>The General Division Manager and Principal Researcher (Police) attended the National Ombudsman Commission in Indonesia in June 2008 as part of the Indonesian Australian Linkages and Strengthening Project to scope a major project about the complaint-handling capacity of Indonesia's Land agency. The Assistant Ombudsman (General) attended meetings of the South Pacific Ombudsman Network in Auckland, New Zealand in November 2007 and Port Vila, Vanuatu in May 2008 and met with government ministers in the Federated States of Micronesia, Marshall Islands and Palau in March 2008 to explore and progress the development of the Regional Ombudsman initiative of the Pacific Plan. These consultancy services were all funded by the Commonwealth Government.</p>

Legislative provision	Topic	Comment
s.11 Sch. 1 to the Annual Reports (Departments) Regulation 2005	Promotion – overseas visit cont.	The Assistant Ombudsman (Police) attended a meeting of the International Network for the Independent Oversight of Police Steering Committee held in conjunction with the National Association for Civilian Oversight of Law Enforcement 13 <sup>th</sup> Annual Conference in San Jose, United States, in September 2007.
TC 01/12 cont.	Promotions — publications	See Appendix O
	Consumer response	See pages 12 – 13
	Guarantee of service	See pages 18 – 19
	Payment of accounts	See page 166
	Time for payment of accounts	See page 165
	Risk management and insurance activities	See pages 28 – 29 and 36 – 37
	Controlled entities	We have no controlled entities
	Ethnic affairs priorities statement and any agreement with the CRC	See this Appendix
	NSW Government Action Plan for Women	See this Appendix
	Occupational health and safety	See pages 36 – 37
	Waste	See pages 39 – 40
s.9(1)	Financial statements	Auditor general statement pages 167 – 189
cl.4	Identification of audited financial statements	See pages 170 – 189
cl.6	Unaudited financial information to be distinguished by note	Not applicable
cl.5	Major assets	See page 165
TC 00/16	Copy of any amendments made to the code of conduct	The code of conduct was reviewed and there were no substantial changes made. A copy of the current Code of Conduct may be accessed on our website at <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>
	Particulars of any matter arising since 1 July 2007 that could have a significant effect on our operations or a section of the community we serve	Not applicable
	Total external costs incurred in the production of the report	\$32,168 (including \$16,157 to print 1,000 copies)
	Is the report available in non-printed formats?	Yes
	Is the report available on the internet?	Yes, at <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>
cl.7, 8; TC 00/24; PC 92/4	Executive positions	See page 35
s.68 <i>Freedom of Information Act 1989</i>	Statistical and other information about our compliance with the Freedom of Information Act	See Appendix K
<i>Privacy and Personal Information Protection Act 1998</i>	Privacy management plan	We have a privacy management plan as required by s.33(3) of the <i>Privacy and Personal Information Protection Act 1988</i> . This also covers our obligations under the <i>Health Records and Information Privacy Act 2002</i> . We had no requests for an internal review under Part 5 of the Act this year.
PM 91–3	Evaluation of programs worth at least 10% of expenses and the results	We reviewed our work processes and how we capture and report on data across all our programs. We reviewed the effectiveness of our cross agency team and permanently established it.
PM 94–28	Departures from <i>Subordinate Legislation Act 1989</i>	This year we did not depart from the requirements of the <i>Subordinate Legislation Act</i> .
PM 98–35	Energy management	See pages 39 – 40
PM 00–12	Electronic service delivery	We have an electronic service delivery program to meet the government's commitment that all appropriate government services be available electronically. We provide an online complaints form, an online publications order form and a range of information brochures on our website.
TC 99/6	Credit card certification	The Ombudsman certifies that credit card use in the office has met best practice guidelines in accordance with Premier's memoranda and Treasury directions.
s.42(8) <i>Ombudsman Act 1974</i>	Must distinguish between complaints made directly to our office and those referred to us	There were three complaints referred to us from other agencies.

## Legislation relating to Ombudsman functions

*Ombudsman Act 1974*

*Community Services (Complaints Reviews and Monitoring) Act 1993*

Enabling legislation for each NSW University as amended by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*

*Freedom of Information Act 1989*

*Police Act 1990*

*Protected Disclosures Act 1994*

*Witness Protection Act 1995*

*Law Enforcement (Controlled Operations) Act 1997*

*Telecommunications (Interception and Access) (NSW) Act 1987*

*Children and Young Persons (Care and Protection) Act 1998*

*Law Enforcement Legislation Amendment (Public Safety) Act 2005*

*Law Enforcement (Powers and Responsibilities) Act 2002*

*Terrorism (Police Powers) Act 2002*

*Criminal Procedure Act 1986*

*Police Powers (Drug Detection Trial) Act 2003*

*Surveillance Devices Act 2007*

*Law Enforcement (Controlled Operations) Regulation 2007*

## Litigation

In the last year we have been a party to a number of legal actions.

### FOI related proceedings

- *Cianfrano v NSW Ombudsman* (2007) NSW ADT 275 (judgement delivered 5 October 2007, application dismissed).
- *Cianfrano v NSW Ombudsman* (2007) NSW ADT 273 (judgement delivered 23 November 2007, application dismissed).
- *Challitta v NSW Ombudsman* (2008) — NSW ADT 238 (judgement delivered 25 August 2008, application dismissed).
- *McGuirk v NSW Ombudsman* (2007) NSWADT 269 (judgement delivered 21 November 2007, application dismissed).
- *McGuirk v NSW Ombudsman* (2008) NSWADTAP 20 (judgement delivered 14 March 2008, appeal dismissed).

### General proceedings

- *McGuirk v NSW Ombudsman* (2007) NSWSC 1286 — Rothman J — 13 November 2007 — summary dismissal of summons.
- *Clarkson v Commonwealth & ors* (High Court SL 00/2007) — 11 December 2007 — special leave application refused.
- *Manning v Ombudsman* (Workers Compensation Commission) — February 2008 — workers compensation proceedings withdrawn against Ombudsman.
- *McGuirk v NSW Ombudsman* — Court of Appeal — 13 November 2007 — current — appeal against decision of Rothman J.

## Legal changes

*Police Amendment Act 2007*

This Act commenced in February 2008 and brings into law the remaining recommendations of the 2006 review of the *Police Act 1990*, in particular recommendations relating to complaints under Part 8A of the Act. The amendment improves the capacity of the Ombudsman to consult and provide reports to the Minister for Police and the Police Commissioner in relation to police complaints. The amendment also assists police to better protect the identity of complainants and permits police to take a more flexible approach to complaint resolution.

*Statute Law Miscellaneous Provisions Act 2008*

This Act was passed to amend section 10 of the *Ombudsman Act 1974* regarding delegations. Specifically, the amendment allows for largely administrative reporting functions to be delegated beyond the Assistant Ombudsman, to include a special officer of the Ombudsman, at the Ombudsman's discretion. Section 141(1A) has also been inserted into the *Police Act* to allow the Police Commissioner or Ombudsman to refer to additional information when assessing whether to investigate a police complaint. This Act is awaiting assent.

*Child Protection (Offenders Registration) Amendment Act 2007*

Removal of provision for monitoring of Act by Ombudsman as statutory review period has ended.

*Crimes (Administration of Sentence) Legislation Amendment Act 2008*

Amendment to section 152 of the *Crimes (Administration of Sentence) Regulation 2001*. Definition of "withdrawable privilege" clarified to include "exempt bodies" such as the Ombudsman. This means that inclusion of provisions relating to telephone contact with exempt bodies including the Ombudsman not being withdrawn as punishment.

## External legal advice sought

- Mr Michael Sexton, Solicitor General of NSW — advice regarding interpretation of clause 13(a) Schedule 1 *Freedom of Information Act 1989*.
- Peter Garling SC and Kate Morgan — advice regarding statutory review provisions in *Law Enforcement (Powers and Responsibilities) Act 2002*.
- John Griffiths SC — advice regarding application of the *Disability Services Act 1993*.

## Ethnic Affairs Priority Statement (EAPS) — future plan

Key result area	Initiative	Time frame	Intended outcome
Planning	<p>Coordinate office EAPS activities to ensure the implementation of EAPS action plan.</p> <p>This year we conducted preliminary research (literature review and consultations) into government responses (at state, federal and local levels) to newly emerging communities to identify issues and to determine whether individual agencies are responding in a planned, appropriate and coordinated way to address these issues.</p>	Ongoing	<p>A coordinated approach in our effort to improve access and awareness by culturally and linguistically diverse (CALD) communities.</p> <p>Community needs and gaps in government services identified and addressed.</p>
Social justice	<p>Establish and maintain effective communication with key CALD organisations and workers. Address any specific access issues identified.</p>	Ongoing	Improved participation by CALD communities in our decision-making on access issues.
	<p>Form partnership with other complaint-handling bodies and key agencies relevant to CALD communities to improve access to the NSW complaint system by CALD communities.</p>	Ongoing	Improved access by CALD communities to NSW complaint system.
	<p>Develop and implement effective communication strategies to raise awareness of our role among CALD communities.</p>	Ongoing	Improved awareness of the role of the Ombudsman.
	<p>Consult with key CALD organisations and workers to identify any barriers to access and develop strategies to minimise these.</p>	Ongoing	Improved access by CALD communities to the Ombudsman.
	<p>Implement any new strategies identified in our EAPS action plan for 2007–10.</p>	Ongoing	Improved access by CALD communities to the Ombudsman.
Community harmony	<p>Provide training on cross cultural issues and effective communication skills with CALD communities to our frontline staff, project officers, managers and liaison officers. Participate in cultural activities and festivals.</p>	Ongoing	Increased staff competence in service provision to CALD communities.
		Ongoing	Improved community relations.

## Disability Strategic Plan

Priority area for action	Goal	Strategy	Outcomes
Physical access	Ensuring that our office and any other locations we use are accessible to people with a disability.		<p>Our office is situated in a building that has wheelchair access (ramp and lift) and tactile ground surface indicators near all staircases, ramps and escalators. The tenant directory is in a reasonable sized font in a well-lit area.</p> <p>Our public access areas are accessible by wheelchair, and we have toilet facilities for people with a disability.</p> <p>We have also modified some of our workstations to meet the needs of staff with a disability.</p>
Promoting positive community attitudes	Actively promote people with a disability as valuable members of the community.	Working in partnership with peak organisations to promote positive community attitudes.	<p>We have reached an agreement with DADHC and become a partner in the celebration of 2008 International Day for People with Disability. We will be organising a range of activities to actively promote people with a disability.</p> <p>This year we conducted an investigation into accessible taxis and made recommendations to Department of Transport for improvements in physical access of wheelchair accessible taxis.</p>
Staff training	Staff are trained and competent in providing services for people with a disability.	Conduct disability awareness training for staff.	This year we developed an in-house disability awareness training program that offers a general awareness of disability and focuses on attitudinal and practical issues for people with a disability. This training course is compulsory and will be presented to all staff members in the next financial year.
Information about services	Our office and the services we provide are accessible to people with a disability.		<p>Our general information brochure is available in a number of accessible formats including large print, Braille, discs with Braille labels and audiotapes. We also have a poster specifically designed for people with intellectual disability using the Compic symbols.</p> <p>We widely distributed the Rights Stuff Toolkit to consumers and service providers throughout the year.</p>
Employment in the public sector	To employ more staff who have a disability.		6% of our staff have a disability, with 2% requiring work related adjustments.

## Disability Strategic Plan cont.

Priority area for action	Goal	Strategy	Outcomes
<b>Complaints procedure</b>	Our office and the services we provide are accessible to people with a disability.	Develop strategies to let people with a disability know about our compliments and complaints policy.	<p>We provided training to about 60 consumers of community services on their rights to use the services and to make complaints.</p> <p>We worked with consumers from CALD backgrounds, older people who use HACC services and families of young children with disability to improve their access to our services.</p> <p>We formed partnerships with other complaint-handling bodies and held a series of joint information forums for disability workers. We also made presentations to a number of key contact points about the role of the Ombudsman and issues in community services.</p> <p>We have an internal compliments and complaints policy, and we inform people who use our services about how to make a complaint about us.</p> <p>We gave special consideration to complaints by vulnerable members of the community, including people with a disability.</p>

## Action Plan for Women — progress report

Objective	Outcomes
<b>Reduce violence against women</b>	This year we continued to actively monitor the implementation by the NSW Police Force (NSWPF) of the recommendations contained in our 2006 report to Parliament on the policing of domestic violence. We meet with the NSWPF regularly to discuss progress and to provide detailed advice and feedback where appropriate.
<b>Promote safe and equitable workplaces that are responsive to all aspects of women's lives</b>	We have adopted flexible working conditions including flexible working hours, part-time work, work at home and job share arrangements, and leave for family responsibilities. We promote a safe workplace free from harassment and have procedures in place for dealing with staff complaints and grievances. We also offer training courses on equal employment opportunity, managing grievances and depression in the workplace.
<b>Maximise the interests of women</b>	<p>We participate in the NSW Spokeswoman interagency meetings with spokeswomen from other agencies. Our Spokeswoman is available to provide information to all women staff about issues that affect their employment.</p> <p>We also reviewed our fact sheet for women widely distributed the information throughout the year.</p> <p>This year we delivered three workshops on complaint-handling and advocacy to people who work in the area of domestic violence. We also conducted presentations on the role of the Ombudsman to the Assyrian, Middle Eastern, Turkish and Arabic Women's Groups at the Fairfield Immigrant Women's Health Service.</p>
<b>Improve the access of women to educational and training opportunities</b>	<p>We have provided women in our office with educational and training opportunities to further their careers, including specialised in-house training on building a career in the public sector.</p> <p>We select and promote staff on merit.</p>
<b>Promote the position of women</b>	<p>We have a diverse and skilled workforce. Women make up 73% of total staff and 68.9% of staff grade six or above. All but two of our team managers are women, all three of our senior officers are women and one of our six statutory officers is a woman.</p> <p>We participated in this year's main International Women's Day (IWD) event at Hyde Park where we distributed brochures and fact sheets and spoke to women about how our office can help in dealing with their complaints about NSW government and certain non-government agencies.</p>

# Appendix O

## Publications list

The following is a list of reports to Parliament and other publications issued between 1 July 2007 and 30 June 2008. To obtain a copy of these reports, contact us or visit our website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au). All listed publications are available at the website in Acrobat PDF.

### Reports to Parliament

Review of Emergency Powers to Prevent or Control Disorder

### Annual reports

Law Enforcement (Controlled Operations) Act Annual Report 2006–2007

NSW Ombudsman Annual Report 2006–2007

Official Community Visitors Annual Report 2006–2007

Report of Reviewable Deaths in 2006 Volume 1: Deaths of people with disabilities in care

Report of Reviewable Deaths in 2006 Volume 2: Child deaths

### Discussion and issues papers

Care Proceedings in the Children's Court

Ombudsman's Submission to the review of the *Children and Young Persons (Care and Protection) Act 1998*

### Fact sheets and guidelines

Guidelines for dealing with youth complaints

Information sheet: The Ombudsman and you

Information sheet: Protection of whistleblowers: Practical alternatives to confidentiality

Information sheet: Are you an international student who has been excluded from your university or TAFE course?

NSW Ombudsman's work with Juvenile Justice

Reviewable Disability Deaths: Frequently asked questions

Apologies: a practical guideline

The NSW FOI manual (for a hard copy contact the Department of Premier and Cabinet)

Unreasonable complainant conduct manual: interim practice manual (hard copies not available)

### Reports tabled

Review of the *Police Powers (Drug Detection Trial) Act 2003*.

### Reports not yet tabled

The following report has been provided to the Attorney General and relevant Minister but has not yet been tabled. It will not be available on our website until tabled.

Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*. Provided to the Attorney General in December 2006.

### Brochures

General information: making a complaint to the Ombudsman

### Other

Family Support Services Complaint-Handling Review

Complaint-Handling Systems Survey Report — Councils

Complaint-Handling Systems Survey Report — Departments and Authorities

## Appendix P

### Our staff

Abdipranoto Luci	Ciano Cathy	Hemmings David	McKenzie John	Rowley Pamela
Adofaci Monique	Ciliegi Anna	Hermanto Lucky	McKenzie Kathryn	Russ Laurel
Afflick Monalyn	Clarke Louise	Hicks Alex	McKinlay Stuart	Ryan Carol
Agius Jennifer	Clements Melissa	Hitzegrad Reinhard	McNamara Gabrielle	Ryan David
Akrivos Maria	Cohen Alice	Humphrys Elizabeth	Meade Sue	Ryan Janette
Allen Janine	Cohen Simon	Hy Jenny	Mellon Rebecca	Ryan Louise
Andreallo Daniel	Cohen Terri	Hynd Stephen	Meneguz Lilia	Sanders Katrina
Andrews Greg	Conaty Michael	Janson Philomena	Mewing Natasha	Sandler Marissa
Ansari Ayishah	Coombes Padmadakini	Jeffries Todd	Middledorp Kate	Savage Kelly
Arestides Tracylee	Coppin Janet	Johnson Emily	Millett Tom	Seeto Belinda
Arora Sharat	Coughlan Janette	Johnston Adam	Morris Katrina	Shea Alison
Aswani Bina	Craig Irene	Joyce Charlene	Morse Oliver	Shivakotee Binam
Banwell Kirsteen	Curran Rebecca	Kaye Margaret	Mueller Helen	Shone Kate
Barbour Bruce	Dacey Matthew	Kell-Clarke Bridgette	Munro Wendy	Silver Sanya
Barlow Ruth	Dawson Gary	Kelly Patricia	Newman Nicole	Simon Kelvin
Barton Margo	Delahunty Brendan	Kenny Kim	Nguyen Bao	Simpkins Justine
Barwick Anne	Demetrius Julianna	Kinmond Steve	Noble Jenny	Slowik Teresa
Basnov Ann	Denning Matthew	Kiriczenko Sophia	Noble-Paulinich Michele	Smithers Kate
Bates Linda	Denning Emma	Koorey Emma	O'Donahue Rodney	Smithett Penny
Bautista Zaldy	Di Bartolomeo Rebecca	Koren Diana	O'Donovan Sheila	Smithson Marie
Bayler Trisha	Doherty Kate	Kosh Wayne	O'Hallaran Marie	Smyth Frances
Bernard Megan	Donaldson Stella	Kuiters Frank	Ovenden Katharine	Snell David
Blatch Vince	Donnelly Terry	Kwan Ivy	Owen Jennifer	Stacey Karen
Blundell Nicole	Doyle Shelagh	Kwo Angel	Palma Claudio	Stanford Storm
Borg Kelly	Du Lisa	Lai Alexandra	Paneras Katerina	Stewart Michelle
Borg Maryanne	Dulfer-Hyams Yvette	Lam Helen	Parsons Kylie	Swan Kim
Borthwick Maya	Duller Joanne	Law Teresa	Paxman Marina	Szaraz Les
Boyle Stephanie	Edmonds Claire	Lazzari Sophia	Phelan Sue	Talbot-Sapsford Samantha
Bradlova Lenka	Eisenhuth Brooke	Leahy Jayson	Philip Joy	Tan Aimee
Britton Maxwell	Enders Lily	Lee Justin	Phillips Lin	Tapa Mele
Brogden Veronica	Evans Frances	Legg Bronwyn	Piga Yvon	Tran Cuong
Brough Heather	Fenton Sheena	Lobos Jacqueline	Piper Rebecca	Vasquez-Lord Merly
Brunt Christine	Fernandez Claire	Loundar Mandy	Powell Michele	Waciega Stan
Burford Elizabeth	Fitzpatrick Amie	Lowe Tim	Power Julie	Ware Carla
Burford Jillian	Flanagan Jo	Lumbewe Adrian	Premarajah Risha	Webb De'Arne
Burford Peter	Ford Helen	Macklin Paul	Price-Kelly Sonya	Wheeler Chris
Busby Jane	Formby Lisa	Magnus Jonathan	Primmer Glenn	White Candice
Cameron Tamaris	Garcia Rebeca	Maguire Steven	Purches Bryce	Whittaker Anita
Campbell Scott	Gazzard Kerrie	Maigre Michelle	Quiohilag Jeremie	Williams Greg
Campbell-McLean Carolyn	Gennery Joan	Mallia Mark	Quirke Michael	Williams Marcelle
Carter Christine	Gleeson Michael	Malthus Henry	Radford Anne	Wingrove Robert
Chapple Kym	Graham Eileen	Maniruzzaman Mani	Ralph Nina	Withers Julie
Chard Janeane	Grant Judith	Manns Terry	Reynolds Ben	Wolf Monica
Chen Steven	Griffith Therese	Martin Tania	Rigby Aiden	Woodward Nadine
Cheung Trinh	Grima Jacqueline	McAuley Barbara	Riordan Vincent	Yetzotis Nick
Chie David	Hanna Evette	McCallan-Jamieson Ian	Robertson Cathy	Zurek Yvette
Choo Selena	Harris Sarah	McCleary Mary	Robinson Gareth	
Christodoulou Andrew	Haydon Sally	McDonald Kate	Rose Elizabeth	
Chung Chi	Heazlewood Alice	McKenzie Alison	Rowe Dominique	

## Appendix Q

### Glossary

AAT	Administrative Appeals Tribunal	IOI	International Ombudsman Institute
ADT	Administrative Decisions Tribunal	JCC	Joint Consultative Committee
AIS	Association of Independent Schools	JGoS	Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing
APOR	Australasian and Pacific Ombudsman Region	JIG	Joint Issues Group
AVO	Apprehended violence order	JIRT	Joint Investigation Response Team
CALD	Culturally and linguistically diverse	LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>
CAT	Cross agency team	LG Act	<i>Local Government Act 1993</i>
CCER	Catholic Commission for Employment Relations	MRC	Migrant Resource Centre
CCTV	Closed-circuit television	MRRC	Metropolitan reception and remand centre
CINs	Criminal infringement notices	NSWPF	NSW Police Force
CCYP	Commission for Children and Young People	OCV	Official community visitor
CS-CRAMA	<i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i>	OFT	Office of Fair Trading
CTTT	Consumer, Trader and Tenancy Tribunal	OH&S	Occupational health and safety
DADHC	Department of Ageing, Disability and Home Care	OOHC	Out-of-home care
DCS	Department of Corrective Services	OSR	Office of State Revenue
DET	Department of Education and Training	PADP	Program of appliances for disabled people
DJJ	Department of Juvenile Justice	PASAC	Police Aboriginal Strategic Advisory Committee
DoCS	Department of Community Services	PD Act	<i>Protected Disclosures Act 1994</i>
DoH	Department of Housing	PIC	Police Integrity Commission
DSA	<i>Disability Services Act 1993</i>	PJC	Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission
DVLO	Domestic violence liaison officer	PPIP Act	<i>Privacy and Personal Information Act 1998</i>
EAPS	Ethnic affairs priority statement	PSC	Professional Standards Command
EEO	Equal employment opportunity	SAAP	Supported accommodation assistance program
EWON	Energy and Water Ombudsman (NSW)	YLO	Youth liaison officer
FOI	Freedom of information		
HACC	Home and community care		
ICAC	Independent Commission Against Corruption		

# Index

- A**
- Aboriginal Child, Family and Community Care State Secretariat (AbSec), 65
  - Aboriginal Consultation Strategy* (DADHC), 31, 50, 94
  - Aboriginal cultural appreciation, 52
  - Aboriginal Disability Network, 51
  - Aboriginal Employment Strategy 2008–2011*, 110
  - Aboriginal Health and Medical Research Council, 7, 31
  - Aboriginal Housing Office, 7, 31
  - Aboriginal Legal Service (ALS), 54
  - Aboriginal people
    - child protection issues, 47, 65
    - community outreach work, 51
    - criminal infringement notices (CINs), 50
    - DADHC policies, 50, 94
    - detainees or inmates, 51
    - with a disability, 50
    - foster carer project, 7, 30, 42, 49, 61, 69
    - 'Good Service Forums,' 51
    - JGoS social housing investigation, 7, 21, 30, 31, 51, 94
    - policing, 47, 50, 109, 110
  - Aboriginal Placement Principles, 48
  - Aboriginal Policy Framework* (DADHC), 31, 50, 94
  - Action Plan for Women, 218
  - Administrative Appeals Tribunal (AAT), 161
  - Administrative Decisions Tribunal (ADT), 7, 146, 148, 150
  - Administrative Decisions Tribunal Appeal Panel v Director-General, Department of Commerce & Ors* [2008], 154
  - Annual Reports (Departments) Act 1985*, 3, 214
  - Annual Reports (Departments) Regulation 2005*, 3, 214
  - Anti-Discrimination Board, 17, 35, 38
  - apologies, 136
  - apprehended domestic violence order (ADVO), 111
  - area health service (AHS), 67, 80, 91, 149
  - Attorney General, 161
  - Attorney General's Department, 73
  - Auditor-General, 17
  - audits, 8, 13, 20, 29, 47, 50, 78, 106, 109, 142
  - AusAID project, 24
  - Australasian and Pacific Ombudsman Region (APOR), 9
  - Australian Building Greenhouse Rating (ABGR), 40
  - Australian Council on Health Care Standards (ACHS), 149
  - Australian Crime Commission, 160
  - Australian Customs Service, 160
  - Australian Federal Police, 160
  - Australian Information Security Standard
    - AS7799, 29
    - AS7799.2, 29
  - Australian Institute of Aboriginal and Torres Strait Islander Studies, 45
  - Australian Institute of Criminology, 45
- B**
- bail accommodation, 54
- Bail Act 1978**, 120
- Bankstown Adult Migrant English Services, 52
  - Barbour, Bruce, 5
  - Better Management of Protected Disclosures* workshops, 24, 157
  - Bidura Children's Court, 53
  - Brighter Futures program (DoCS), 64
  - business regulation complaints, 132
- C**
- Carinya Arncliffe Licensed Boarding House, 45
  - child death reviews, 13, 54, 61, 72
  - child protection. *see also* employee-related child protection; Special Commission of Inquiry into Child Protection Services in NSW
    - 2009 symposium, 25
    - Aboriginal people, 47, 65
    - case studies, 67, 68, 69, 70, 71
    - complaints, 29, 68, 70
    - education and forums, 61
    - interagency cooperation, 66
    - investigations, 67
    - mandatory reporting, 63
    - national child protection framework, 66
    - privacy laws, 65
    - role of oversight agencies, 66
  - Child Protection (Offenders Registration) Amendment Act 2007*, 216
  - children
    - with disabilities, 93
    - facing charges, 114
    - Internet, 74
    - Ombudsman's activities, 61, 74
    - out-of-home care, 16, 21, 30, 48, 62, 63, 64, 65
      - 10 to 14 years, 21, 70
      - under fives, 21, 70
      - foster carer project, 7, 30, 42, 49, 61, 69
    - rural and remote communities, 39
    - service organisations scrutinised, 16
  - children and family services complaints, 196
  - Children and Young Persons (Care and Protection) Act 1998*, 63
  - Children's Court, 54, 64, 66, 120
  - The Children's Hospital, 23, 149
  - class or kind agreements, 28, 98, 100, 102–3, 106
  - clinical indicator reports, 149
  - Combined Pensioners and Superannuants Association, 152
  - Commissioner of Corrective Services, 23, 122, 125
  - Commissioner of Police, 15, 55, 105, 109, 115
  - Commonwealth Ombudsman, 24, 45, 51
  - Commonwealth *Telecommunications (Interception and Access) Act 1979*, 160
  - community consultation, 21, 26, 31, 41, 42, 46, 47, 49, 51, 52, 53, 54, 56, 69, 99
  - Community Relations Commission (CRC), 52
  - community services
    - complaints, 198
    - organisations scrutinised, 16
    - service organisations scrutinised, 16
  - Community Services Commission, 6
  - Community Services (Complaint, Reviews and Monitoring) Act 1993*
    - official community visitor program, 43
    - responsibilities to children, 62
    - responsibilities to people with disabilities, 87, 94
    - statutory review, 6, 10, 17, 21
  - complainants, unreasonable
    - conduct project, 8
    - workshops, 25
  - Complaint Handler's Toolkit (NSW Ombudsman), 136
  - Complaint Handling Guidelines for Universities* (NSW Ombudsman, 2006), 133
  - Complaints Advisory Group (CAG), 99
  - complaints and notifications
    - about Ombudsman, 13
    - case studies, 58, 59
    - child protection, 68, 70
    - complaint-handling review of agencies, 7–8, 22
    - formal, 10–11
      - decision review, 12
    - informal, 10
    - levels, 28
    - oral complaints, 25, 58
    - pay-back, 158
    - performance indicator, 12
    - process, 58
    - review of decisions, 12
    - by subject area, 11
    - systemic issues, 59
    - total number, 10
    - young people, 25
  - confidentiality of information, 148
  - Connector Motorways, 152
  - controlled operations, 160
  - correctional centres. *see also* court cells; Justice Health
    - case studies, 126, 127, 128, 129, 152
    - centres
      - Broken Hill Correctional Centre, 123
      - Dawn De Loas Centre, 124
      - High Risk Management Unit (HRMU), 128, 152
      - Junee Correctional Centre, 122, 128
      - Kariong Juvenile Correctional Centre, 126
      - Kirkconnell Correctional Centre, 127
      - Metropolitan Special Programs Centre (MSPC), 123, 126, 127
      - Parkelea Correctional Centre, 124
      - Wellington Correctional Centre, 123, 125, 126
    - classification security level, 59
    - compassionate leave, 23, 123
    - complaints
      - formal, 123
      - informal complaints, 123
      - investigations, 123
      - statistics, 123, 124, 206–7
    - Custody Based Intensive Treatment (CUBIT) program, 126
    - dental health services access, 129
    - education related issues, 123
    - FOI case, 152
    - health services access, 129
    - inmate classification appeals, 124
    - 'lock-in' days, 127
    - medication allocation, 129
    - Ombudsman
      - motion powers, 122, 125
      - reduced access to official visitors, 122
      - role, 121, 122
      - visits by officers, 6, 23, 51, 126, 128
    - overcrowded cells, 125
    - segregation, 125
    - sex offender treatment programs, 126
    - toilet roll ration, 128
    - visit bans, 126
    - weekly buy-ups, 124
  - Corruption Prevention Network Conference, 25
  - court cells, 127, 128
  - covert operations, 17, 159–61
  - Crime Commission, 22, 113
  - Crimes (Administration of Sentence) Legislation Amendment Act 2008*, 216
  - Crimes (Domestic and Personal Violence Act) 2007*, 111
  - Crimes (Forensic Procedures) Act 2000*, 114
  - Crimes (Serious Sex Offender) Act 2006*, 126
  - Criminal Infringement Notices (CINs) scheme review, 50, 114
  - criminal justice system
    - people with intellectual disabilities, 93
  - Criminal Procedure Act 1986*, 114
  - Cronulla riots, 7, 20, 112
  - cross cultural training, 53
  - Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, 34
  - culturally and linguistically diverse (CALD) communities, 52, 56
  - customer service improvement project, 7
- D**
- Department of Aboriginal Affairs, 47, 109
  - Department of Ageing, Disability and Home Care (DADHC), 6, 14, 16, 21, 31, 42, 45, 62
    - Aboriginal Consultation Strategy*, 31, 50, 94
    - Aboriginal Policy Framework*, 31, 50, 94
    - complaint-handling review, 94
    - disability services, 55, 88, 92
  - Department of Community Services and Families NSW, 8
  - Department of Community Services (DoCS), 7, 14, 16, 31, 42, 47, 48, 49, 55
    - audits by Ombudsman, 78
    - Brighter Futures program, 64
    - child deaths, 72, 73
    - child protection, 62, 63, 64, 65, 66, 67, 68, 70, 71, 73
    - domestic violence reporting, 73
  - Department of Corrective Services, 23, 113, 115, 127, 128
  - Community Offender Services, 122

- Department of Education and Training (DET), 63, 74  
 complaints, 132, 135, 153  
*Reporting School Accidents Policy*, 151  
 school suspensions, 7, 20, 134
- Department of Environment and Climate Change (DECC)  
 Wildlife Licensing and Management Section, 135
- Department of Housing (DoH), 7, 31, 58, 94, 137  
*Open Disclosure Policy*, 150
- Department of Immigration and Citizenship, 74
- Department of Juvenile Justice, 113, 115, 119, 120
- Department of Premier and Cabinet, 34, 46, 152
- Department of Primary Industries, 148
- disability awareness training, 55
- disability death reviews, 13, 95
- Disability Service Standards, 44
- Disability Services Act 1993*, 3, 92, 93
- disability services complaints, 197
- Disability Standards for Accessible Public Transport, 137
- Disability Strategic Plan, 217
- disabled people. *see* people with disabilities
- document searches, 154
- domestic homicide review process, 112
- domestic violence  
 complaint-handling and advocacy training, 55  
 cross-agency reference group, 73  
 mandatory reporting, 73  
 monitoring interagency response, 6  
 police response, 21, 31, 55, 110
- Domestic violence: improving police practice* (NSW Ombudsman, 2006), 21, 31, 55, 110
- drug detection trial, 113
- drug trafficking, 160
- E**
- Early Childhood Intervention Australia (ECIA), 93
- Education Services for Overseas Students Act 2000*, 133
- employee-related child protection  
 audit of agencies' systems, 78  
 case studies, 75, 77, 79, 82, 84  
 complaints and notifications, 12, 74, 81  
 evidence preservation, 83, 84  
 grooming behaviour in the workplace study, 82  
 historical allegations, 84, 85  
 investigations, 62, 78  
 monitoring agency investigations, 77, 81  
 procedural fairness for employees, 76, 77  
 repeat offenders, 74  
 risk assessment, 74  
 risks to children, 76, 77  
 support for agencies, 80
- employment contracts  
 confidentiality clauses, 148
- Energy and Water Ombudsman (EWON), 45, 51
- Ethnic Affairs Priority Statement, 217
- F**
- Fomiatti v University of Western Sydney* (No 2) [2006], 148
- Food Act 2003*, 151
- Food Amendment (Public Information on Offences) Bill 2008, 151
- food hygiene, 151
- Freedom of Information Act 1989* (NSW), 3  
 implementation review, 7, 20, 21, 146
- freedom of information (FOI)  
 advance monetary deposits, 148, 153  
 agencies' reporting requests review, 146, 147  
 case studies, 148, 149, 150, 151, 152  
 communicating with applicants, 154  
 complaints statistics, 146, 148, 208–9  
 confidentiality, 148  
 document searches complaints, 154  
 electronic documents, 154  
 food hygiene, 151  
 investigations, 152  
 Lane Cove Tunnel, 152  
 legal proceedings, 216  
 legal professional privilege, 151  
 NSW Police Force, 149–50  
 outcomes of complaints, 148  
 patient information, 151  
 pensioner concessions review, 152  
 RailCorp, 153  
 report, 210
- G**
- general practitioner language proficiency test, 136
- GEO Group, 122
- government departments. *see* public sector agencies
- grooming behaviour in the workplace study, 82
- Guidelines for Dealing with Youth Complaints* (NSW Ombudsman), 24, 31, 61, 71
- H**
- Health Records and Information Privacy Act 2002*, 146
- Home and Community Care (HACC), 45
- housing  
 for people with a mental illness, 7, 21, 30, 31, 51, 53, 56, 94  
 repairs, 137
- housing issue complaints, 132, 137
- humanitarian entrants, 52
- I**
- Inclosed Lands Protection Act 1901*, 135
- Independent Commission Against Corruption (ICAC), 17, 22, 24, 45, 156
- Indonesian Australian Ombudsman Linkages and Strengthening Project, 24
- Indonesian Ombudsman, 9
- information expos, 52
- inter-organisational committees, 212
- International Information Security Standard ISO/IEC 27001, 29
- International Network for the Independent Oversight of Police, 25
- International Ombudsman Institute (IOI), 8  
 2007 Board meeting, 9, 25
- international students' complaints, 133
- Internet, children, 74
- Investigation into African Humanitarian Settlement in NSW* (CRC report), 52
- J**
- joint disability intermediaries forums, 45
- Joint Guarantee of Service (JGoS)  
 social housing investigation, 7, 21, 30, 31, 41, 42, 51, 53, 56
- Joint Investigation Response Team (JIRT), 69, 75, 77
- Joint Outreach Initiatives Network, 45
- Justice Health, 23, 122, 129–30
- juvenile justice, 117  
 centres  
 case studies, 118, 119, 120  
 complaints, 119, 208  
 documentation of procedures and incidents, 118  
 fact sheet for staff, 119  
 incentive scheme, 120  
 overcrowding, 119–20  
 telephone access, 119  
 transfers to adult correctional centres, 120  
 visits by Ombudsman, 6, 23, 31, 51, 53, 118, 120  
 visits by relatives, 120
- L**
- Lane Cove Tunnel, 152
- law enforcement agencies. *see also* NSW Police Force  
 covert operations, 159–61  
 powers not monitored by Ombudsman, 161  
 secure monitoring unit inspections, 160
- Law Enforcement (Controlled Operations) Act 1997*, 160, 161
- Law Enforcement Legislation Amendment (Public Safety) Act 2005*, 114
- Law Enforcement (Powers & Responsibilities) Act 2002*, 7, 21, 53, 112, 114
- Legal Aid Commission of NSW, 137
- Legal Aid Hotline, 54
- Legal Aid to young people, 54
- legal professional privilege, 151
- legislative reviews, 7, 13, 21, 22, 23, 112, 146, 195, 268
- listening devices, 160
- Listening Devices Act 1984*, 160
- local councils  
 complaint-handling, 140  
 complaints  
 statistics, 140, 203–5  
 subject of, 140
- councils  
 Albury City Council, 142  
 Bathurst Regional Council, 141  
 Cabonne Shire Council, 140  
 Eurobodalla Shire Council, 141  
 Ryde City Council, 141  
 Shellharbour City Council, 141  
 Sutherland Shire Council, 142  
 Wollongong City Council, 22, 141  
 Woollahra Council, 141
- customer service, 140
- audits, 142
- email inquiries, 143
- feedback to Ombudsman, 143
- FOI on food hygiene breaches, 151
- information requests, 146
- letters to councils, 143
- overdue water bills, 59
- telephone inquiries, 142
- Local Government Act 1993*, 146
- M**
- mandatory reporting  
 annual report, 214  
 child protection, 63  
 domestic violence, 73
- Medical Practice Act 1992*, 136
- mentally ill people. *see* people with mental illness
- migrant resource centres, 52, 53
- migrants, 31. *see also* culturally and linguistically diverse (CALD) communities
- Minister for Health, 125
- Minister for Justice, 122
- Minister for Police, 108
- Ministry for Police, 99
- Ministry of Transport, 137
- mystery shopper audits, 8, 20, 142
- N**
- NAIDOC Week, 51
- National Centre for Classification in Health (NCCH), 73, 95
- national child protection framework, 66
- National Children's & Youth Law Centre (NCYLC), 71
- National Code of Practice* (international students), 133
- National Ombudsman Commission of Indonesia (NOC), 9, 24
- New Zealand Ombudsman, 8
- non-government organisations, 21
- North Coast Area Health Service, 151
- notifications. *see* complaints and notifications
- NSW Aboriginal Community Care Gathering Committee, 51
- NSW Food Authority, 151
- NSW Health, 7, 23, 31, 72, 73, 80, 94, 149
- NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, 47, 109
- NSW Medical Board, 136
- NSW Ombudsman  
 Aboriginal Unit, 15, 30, 31, 50, 51, 52, 109, 118  
 accountability, 17  
 accounting practices, 9  
 Action Plan for Women, 218  
 administrative conduct, 28  
 annual report, 3, 72, 95, 214  
 audits, 8, 13, 20, 29, 47, 50, 78, 106, 109, 142  
 case management system, 27, 29, 30  
 child protection division, 14, 20–1, 26, 29, 33, 74  
 coercive powers, 10, 132  
 community consultation, 13, 21, 22, 23, 26, 31, 41, 42, 46, 47, 49, 51, 52, 53, 54, 56, 69, 99  
 community services division, 8, 14, 16, 26, 29, 33  
 community visits, 23  
 complaint-handling advice to agencies, 7–8, 20, 22, 28, 46, 52, 94, 102–3, 136  
 complaints (*see also* complaints and notifications)  
 about Ombudsman, 13  
 levels, 28  
 compliments to, 13  
 cooperation with agencies, 47  
 corporate, 15, 33  
 corporate governance, 17  
 corporate plan, 17  
 corporate team, 15

- correctional system, oversight system diminished, 122
  - Corrections Unit, 31
  - cross agency team (CAT), 9, 15, 26, 30–1, 33
  - data classification, 27, 29
  - Disability Strategic Plan, 217
  - energy management, 39
  - Ethnic Affairs Priority Statement, 217
  - executive, 14, 15, 33, 34
    - remuneration, 34, 35
  - expert advisory committees, 213
  - finances
    - assets, 165
    - expenses, 39, 164
    - funds, 39, 164
    - liabilities, 166
    - revenue, 39, 164
    - statements, 166, 170–90
  - functions, 14, 57
  - future plans, 21, 23, 25, 27
  - general division, 14, 17, 29, 33
  - goals, 17, 20, 22, 24, 26, 28
  - good results, 135, 136, 137
  - Greenhouse performance, 40
  - guarantee of service, 18
  - information technology (IT), 9, 27, 29
  - Inquiries and Resolution Team, 57
  - inter-organisational committees, 212
  - investigations, 42, 78
  - Joint Consultative Committee (JCC), 34
  - legislation relating to functions, 10, 216
  - legislative reviews, 7, 13, 20, 22, 23, 112, 146, 195
  - litigation, 216
  - mission, 19
  - monitoring agencies, 7, 160
  - motion powers, 122, 125
  - multilingual information, 53
  - operational review, 9
  - organisational changes, 29
  - organisational structure, 19, 32–3
  - organisations scrutinised, 14, 16–17
  - performance indicators, 12, 27, 29, 36, 39, 40, 101, 132
  - performance monitoring, 28
  - performance statement, 19–27
  - personnel policies and practices, 34
  - police division, 14, 17, 33
  - project work, 6, 9, 25, 29, 42
  - publications, 219
  - purpose, 20–7
  - relationships with oversight agencies, 8–9
  - reviews, 13, 21
  - risk management, 27, 28, 29
  - role, 6
  - school/TAFE visits, 55
  - security accreditation, 28–9
  - senior executive service, 34, 35
  - staff, 220
    - employment basis, 37
    - equal employment opportunity (EEO), 35–6
    - industrial relations, 34
    - levels, 37
    - occupational health and safety, 34, 36, 37
    - training and development, 26, 27, 29, 31, 35, 38–9, 52, 55
    - wage movements, 34
    - workers compensation, 37
  - statement of responsibility, 18
  - terminology standardisation, 9, 27, 29
  - training for agencies, 8, 21
  - unauthorised disclosure of information, 28
  - values, 19
  - vision, 19
  - watching brief system, 25, 29
  - women working with, 34, 42
  - youth liaison officer, 15, 30, 47, 53, 54, 55, 71
- NSW Police Force, 15, 17, 21. *see also* law enforcement agencies
- Aboriginal child sexual assault, 47, 109
  - Aboriginal Coordination Team, 109
  - and Aboriginal partners, 110
  - Aboriginal Strategic Direction (ASD) audits, 47, 50, 109
  - calls out to private schools, 150
  - case studies, 101, 102, 103, 104, 107
  - child protection reports, 63, 73
  - class or kind agreements, 98, 100, 102–3, 106
  - collusive agreement, 101, 102
  - complaints and notifications
    - action taken on police complaints, 100–1
    - Complaint Allocation Risk Appraisal (CARA), 106
    - complaints oversighted, 12
    - compliance audits, 106
    - detrimental action, 103, 105
    - electronic, 29, 106
    - external quality review of completed investigations, 108
    - false or vexatious, 105
    - formal, 100
    - handling procedures, 8, 20, 27, 98
    - information system, c@tsi, 105
    - local management issues, 106
    - Ombudsman monitoring investigations, 102, 107
    - profile, 192
    - system, 98
    - witness protection program, 115
  - compliance, *Domestic violence* recommendations, 31, 55
  - conflict of interest, 104
  - criminal infringement notices (CINs), 50, 114
  - domestic homicides, 112
  - domestic violence, 21, 31, 55, 73, 110
  - drug detection trial, 113
  - extraordinary powers, 112
  - freedom of information (FOI), 149–50
  - investigations
    - into complaints, 20, 23, 101–2
    - deficient, 102, 103, 104
    - delayed, 107
  - Ombudsman's activities, 97
  - pervert the course of justice, 101
  - police pursuit, 104
  - Professional Standards Command (PSC), 98, 99
  - protected allegations, 103
  - protected disclosures, 103
  - relationships with Ombudsman, 99
  - searching practices, 107, 114
  - strip searching, 104
  - Tasers project, 108
  - terrorism powers, 113
  - unauthorised work, 104
    - and young people, 54
- NSW Sentencing Council, 21, 31, 41, 47
- NSW Solicitor General, 148, 151
- NSW Telecommunications (Interception and Access) Act 1987*, 161
- NSW Treasury, 17
- Nurses and Midwives Registration Board, 138
- 
- Office of Fair Trading (OFT), 51, 136, 138
  - Community Access Program, 45
- Office of the Protective Commissioner (OPC), 138
- official community visitor (OCV) scheme, 42, 43
  - case studies, 44, 45
  - community education, 44
  - regional and remote communities, 46
- official community visitors (OCVs), 42
- issues raised, 44
- statistics, 41, 43, 44
- Ombudsman. *see* NSW Ombudsman
- Ombudsman Act 1974*, 3, 10, 14, 28, 62, 77, 78, 122
- organised crime, 160
- P
- Pacific Island Ombudsman Network, 9
- Pacific Island Ombudsman offices, 9, 24
- Parliament, 23
- Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (PJC), 17
  - review of Community Services (Complaint, Reviews and Monitoring) Act 1993*, 6, 10, 17, 21, 43, 62, 87, 94
- pay-back complaints, 158
- people facing charges, 114
- people with disabilities
  - Aboriginal, 50
  - accessibility to Ombudsman's services, 55
  - assault in court cells, 128
  - case studies, 88, 89, 90, 91, 92
  - complaint-handling review, 94
  - complaints, 88, 91
  - deaths reviewed, 13, 95
  - health and medical services needs, 91
  - Ombudsman's activities, 87
  - review of services to, 7
  - wheelchair accessible taxis, 137
- people with intellectual disabilities
  - criminal justice, 93
- people with mental illness
  - negotiating FOI outcomes, 150
  - social housing review, 7, 21, 30, 31, 53, 56
- Planet Ark Close the Loop Resource Recovery Program, 40
- planning issue complaints, 132
- Police Aboriginal Strategic Advisory Committee (PASAC), 110
- Police Act 1990*, 3, 98, 99, 103, 105, 106
- Police Amendment Act 2007*, 216
- Police Association of NSW, 99
- Police Integrity Commission (PIC), 22, 23, 98, 99, 106
- Police Integrity Commissioner, 105
- Police Powers (Drug Detection Trial) Act 2003*, 21, 107, 113
- Police Powers (Internally Concealed Drugs) Act 2001*, 115
- Police Service. *see* NSW Police Force
- policing. *see* covert operations
- The policing implications of cannabis, amphetamine and other illicit drug use in Aboriginal and Torres Strait Islander communities* (report, 2005), 45
- Privacy and Personal Information Protection Act 1998*, 146
- Privacy Commissioner, 17
- professional disciplinary bodies complaints, 132
- property issue complaints, 132
- protected allegations, 103
- Protected Disclosure Guidelines* (NSW Ombudsman), 25, 156
- protected disclosures, 103
  - amending legislation, 24, 156
  - assessment, 157
  - Better Management of Protected Disclosures* workshops, 24, 157
  - detrimental action, 59, 157
  - highlights, 153
  - information to interested parties, 157
  - managing public interest, 158
  - pay-back complaints, 158
  - training disclosure officers, 24, 157
  - Whistling While They Work project, 24, 156
- Protected Disclosures Act 1994*, 22, 103, 105, 157, 158
- Protected Disclosures Act Implementation Steering Committee, 156
- Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008, 156
- public authorities. *see* public sector agencies
- Public Health (General) Regulation, 125
- Public Interest Disclosures Unit, 156
- public private partnership, 153
- public sector agencies. *see also* universities
  - apologies, 136
  - complaints
    - case studies, 134, 135, 136, 137
    - statistics, 132, 200–2
    - subject of, 133
  - delays, managing, 138
  - mystery shopper audits, 8, 20, 142
- Public Sector Executive Development Program, 39
- Public Sector Management and Employment Act 2002*, 34
- Public Sector Workforce Office (PSWO), 34
- Public Transport Ombudsman (Victoria), 71
- R
- RailCorp, 137, 153
- Regional Ombudsman Initiative for the Pacific Plan, 24
- Registry of Births, Deaths and Marriages, 59
- Report of Reviewable Deaths in 2006*
  - Volume 1: Deaths of people with disabilities in care* (NSW Ombudsman), 87, 95
  - Volume 2: Child Deaths* (NSW Ombudsman), 61, 72, 73

*Reporting of Progress and Results of Investigations* (NSW Ombudsman), 24, 157

residential care  
official community visitors, 42  
review of DADHC centres, 55, 92  
Reviewable Child Death Advisory Committee, 213  
Reviewable Disability Death Advisory Committee, 213  
*Rights Stuff Toolkit* (NSW Ombudsman), 45  
Roads and Traffic Authority (RTA), 58, 137, 152  
rural and remote communities  
drugs, alcohol and substance abuse workshop (2007), 45

## S

'Safe Families' program, 48  
schools  
police call outs to private, 150  
restricting access to grounds, 135  
suspensions, 7, 20, 134  
Senior Officers' Group (SOG), 93  
Senior Officers Working Group  
State Plan Priority S8: Customer Satisfaction, 22  
Seniors Day, Royal Easter Show stall, 45  
seniors groups, 52  
Sentencing Council. *see* NSW Sentencing Council  
'Solving Problems - Right at Home' program, 45  
Special Commission of Inquiry into Child Protection Services in NSW (Wood Inquiry), 6, 21, 30, 31, 41, 48, 50, 53, 61, 63, 110, 111  
St George Migrant Resource Centre, 52  
State Coroner, 72  
State Debt Recovery Office, 47, 50  
State Plan, 22, 138-9  
State Records, 17  
*Statute Law Miscellaneous Provisions Act 2008*, 216  
*Stronger Together* (disability plan), 93  
Supported Accommodation Assistance Program (SAAP), 71  
*Supporting the carers of Aboriginal children* (NSW Ombudsman), 49, 69  
surveillance, 160  
surveillance devices, 160  
*Surveillance Devices Act 2007*, 25, 160  
suspensions process  
public schools, 7, 20, 134  
Sydney South West Area Health Service (SSWAHS), 153

## T

taxis, wheelchair accessible, 137  
telecommunication interception, 160, 161  
*Telecommunications (Interception and Access) Act 1979* (Clth), 161  
*Telecommunications (Interception and Access) Act* (NSW), 161  
telephone interception, 160, 161  
*Terrorism (Police Powers) Act 2002*, 21, 113  
terrorism reviews, 21, 113

## U

unauthorised disclosure of information, 28  
undercover operations. *see* controlled operations

universities

FOI applications, VC employment contacts, 148  
forum for university complaint handlers, 133  
international students' complaints, 133  
students with a disability, 134

## W

*Watt v Forests NSW* [2007], 148  
whistleblowing. *see* protected disclosures  
*Whistleblowing in the Australian Public Sector* (2007), 156  
*Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations* (2008), 24, 156  
Whistling While They Work Project, 24, 156  
wildlife care licences, 135  
Wildlife Council, 135  
witness protection, 115  
*Witness Protection Act 1995*, 115  
women, 55  
women's refuges, 56  
Wood, Justice, 6  
Wood Inquiry, 21. *see* Special Commission of Inquiry into Child Protection Services in NSW  
*Working Together - the Public Sector OHS & Injury Management Strategy*, 37  
*Working with local Aboriginal communities* (NSW Ombudsman, 2005), 110

## Y

young offenders, 54, 114  
in detention, 119, 120  
*Young Offenders Act 1997*, 54  
young people, 53  
complaints, 29  
with disabilities, 93  
*Guidelines for Dealing with Youth Complaints* (NSW Ombudsman), 24, 31, 61, 71  
Ombudsman's activities, 52, 53, 61  
out-of-home care, 7, 16, 21, 30, 42, 48, 49, 61, 62, 63, 64, 65, 69, 70, 71  
policing, 103, 104  
at risk, 54, 64  
rural and remote communities, 46  
Youth Accommodation Association of NSW, 71  
Youth Harmony Day, Darling Harbour, 52  
Youth Justice Coalition, 53  
Youth Week 2008, 55

## Acknowledgments

Our annual report is a public record of our work and through it we are accountable to the people of NSW.

Our report is prepared against criteria set out by NSW Treasury and the Annual Report Awards. It is available from our office or our website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

Many thanks to everyone who contributed to this year's annual report, but particularly Anita Whittaker, our statutory officers and the staff involved in coordinating their division's contribution: Gary Dawson, Selena Choo, Natasha Mewing, Mandy Loundar and Tom Millett.

## Project Team

Editorial director	Bruce Barbour
Project manager	Julianna Demetrius
Project officer	Cathy Ciano
Editors	Rebecca Curran, Julianna Demetrius
Layout and design	In house studio



Pictured Cathy Ciano and Julianna Demetrius.

## External consultants

Editor	Janice McLeod
Proofing and indexing	IndexAT
Photography	PulchPhotography pp. 2, 4, 15, 16, 17, 34, 38, 225; Michael Combe (NSWPF) p. 97.
Printing	Lilyfield Printing, Sydney
ISSN	1321 2044
ISBN	978-1-921132-22-3

## Contacting NSW Ombudsman

You can contact the office of the NSW Ombudsman by calling our general inquiries number on 02 9286 1000 or call toll free on 1800 451 524. Business hours are Monday to Friday, 9am-5pm. Our email address is [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au). We are located on Level 24, 580 George Street, Sydney NSW.

We are planning for the future, and have printed on FSC (Forest Stewardship Council) Certified stock. Forest management certification involves an inspection of the forest management unit by an independent FSC-accredited certification body to check that the forest complies with the internationally-agreed FSC Principles of Responsible Forest Management.

Before a certified forest operation can sell their products as FSC certified, they must also obtain chain of custody certification (FM/COC). Chain-of-custody is the path taken by raw materials from the forest to the consumer, including all successive stages of processing, transformation, manufacturing and distribution. Recycled material is used in this stock. No chlorine bleaching occurs in the recycling process and is ISO 14001 certified.



**FSC**  
Mixed Sources  
Product group from well-managed  
forests, controlled sources and  
recycled wood or fiber

Cert no. SCS-COC-091360  
[www.fsc.org](http://www.fsc.org)  
© 1996 Forest Stewardship Council

