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PARLIAMENT OF NEW SOUTH WALES

REPORT

OF THE

OMBUDSMAN

OF

NEW SOUTH WALES

For the Year ended 30 June, 1982

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THE OMBUDSMAN OF NEW SOUTH WALES

SEVENTH ANNUAL REPORT

(1st July, 1981—30th June, 1982)

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THE OMBUDSMAN OF NEW SOUTH WALES

SEVENTH ANNUAL REPORT

(1st July, 1981 — 30th June, 1982)

Introduction

Under Section 30 of the Ombudsman Act, 1974, the Ombudsman is required to submit a report to the Premier for presentation to Parliament on the work and activities of his Office in the twelve months ending 30th June. The report is to be submitted as soon as practicable after that date. Section 56 of the Police Regulation (Allegations of Misconduct) Act, 1978 requires the annual report to include functions under that Act.

The present Ombudsman, G. G. Masterman, Q.C., was appointed from the 18th June, 1981. Accordingly this is his first Annual Report.

This report is divided into four parts. Part I deals with general matters and activities under the Ombudsman Act. This in turn has three sections: General, Local Government and Prisons. Part II, dealing with activities under the Police Regulation (Allegations of Misconduct) Act, includes statistics on complaints against the police. Part III comprises Case Notes, grouped under the headings General, Local Authorities, and Prisons and Police. Part IV consists of statistical tables of complaints lodged against public authorities and local councils under the Ombudsman Act. The year covered is that ending 30th June, 1982, and statistics are for that period. However, developments up to the date of completion of this report (1st October, 1982) have been included where relevant.

Overall numbers of complaints have continued to rise during 1981–82, as can be seen from the following table. The total of 5 105 written complaints from all sources during the year is an increase of 1 198 over complaints received in the previous year.

Written Complaints by Major Categories

	1980–81	1981–82
OMBUDSMAN ACT		
(a) Departments and Authorities	2 086	3 124
(b) Local Councils	991	860
POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT	830	1 121
Total	3 907	5 105

PART I

Section A: OMBUDSMAN ACT: GENERAL AREA

1. The Role of the Ombudsman

The New South Wales Ombudsman's role is established under the Ombudsman Act, 1974. The Ombudsman, appointed for seven years, investigates any administrative actions of public authorities which may constitute wrong conduct. Investigations are generally undertaken in response to complaints from citizens, but the Ombudsman has the right to act on his own motion. The International Bar Association defined the role of an Ombudsman in the following terms:

"BE IT RESOLVED, that the International Bar Association recommends:

1. That consideration be given to the establishment of the Office of Ombudsman on the national, state, province levels and local government in order to protect persons against the violation of their rights by government officials and agencies.
2. The office of the Ombudsman so established should be in accordance with the following definition: An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports."

(1974 resolution, as amended in August, 1980, in West Berlin: *Ombudsman and Other Complaint Handling Systems Survey*, Vol. X, 80–81, International Ombudsman Institute, page 1).

The N.S.W. Ombudsman has the power to investigate, recommend corrective action, and issue reports, but there are strict limitations on the persons to whom a report may be issued.

2. Secrecy

The power of the New South Wales Ombudsman to publicise cases is circumscribed in many ways by the secrecy provisions of the Ombudsman Act. The relevant sections of the Act are sections 17 and 34.

"S.17 An investigation under this Act shall be made in the absence of the public."

"S.34 The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made—

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

(b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or

(d) for the purpose of discharging his functions under this or any other Act.

Penalty: One thousand dollars."

These provisions mean that even when an inquiry with the powers of a Royal Commission is held under section 19, the press and public are excluded. They also prevent the Ombudsman from making copies of reports containing findings of wrong conduct available to the press, even when matters of considerable public interest are involved.

In the year under review an inquiry into alleged inadequate maintenance by the Electricity Commission of N.S.W. and an inquiry into the propriety of retrospective charging for electricity by county councils have both generated media attention. This is understandable, since blackouts and power bills affect most citizens. The provisions of the Act prevent me from giving more than a "No comment" response to most press enquiries.

Some journalists have utilised the provisions of the Act by becoming complainants in these matters themselves. There is no reason why they should not, as citizens, lodge complaints, nor why they should not share information made available to them as complainants under section 26 (4) (a). However, I regard this practice as less desirable than an appropriate amendment to the Act giving me the right to publish reports.

I wrote to the Premier, drawing his attention to Section 26 of the South Australian Ombudsman Act, which seemed to provide an appropriate provision. The section reads:

"S.26 Without limiting the generality of the powers elsewhere contained, the Ombudsman may if he considers it in the public interest or in the interest of any Department, Authority or proclaimed Council, publish in any manner in which he thinks fit any report of an investigation made by him whether or not the subject matter of the report has been dealt by him or otherwise under the Act."

Mr Bakewell, the South Australian Ombudsman is very satisfied with section 26. In a letter to me he said:

"Therefore, in my view, an express power to publish is important, in that without it I would have to rely on the media to 'pick up' issues about which I believed the public should be aware . . .

One also needs to bear in mind that an Ombudsman derives his *influence* in large measure from his express power to make his work known, where to do so is in the public interest. Without this power, a defensive administration (not an unknown phenomenon) and responsible Minister and Cabinet, will often ignore the Ombudsman, especially where the potential of discovery of maladministration might cause embarrassment. It is in the public interest that they (the public) be informed by an objective official, who is aware of all relevant facts and arguments."

On the 3rd September, 1982, the Premier advised me that the Government is not prepared to amend the Ombudsman Act to include a provision similar to South Australia's section 26. In so far as is relevant his comments were as follows:

"In relation to the proposal that the Ombudsman be empowered to publish in any manner a report on a matter he has investigated, it is noted that only South Australia has an express provision of this kind and it is considered that the justification for such a provision in New South Wales has not been demonstrated."[1]

It is for Governments to determine policy, including such questions as this. Nevertheless, it seems appropriate for a statutory officer such as the Ombudsman to point out in an annual report to Parliament the difficulties of operating under the present Act, and to request the Government to reconsider the issue. A serious problem arises when persons or bodies other than the complainant have a legitimate interest in the subject of a report, but the Ombudsman is prevented by the legislation

1. Section 31 of the Tasmanian Ombudsman Act also permits publication by the Ombudsman of reports in the public interest. Section 27 of the Queensland Act permits publication with the consent of the Speaker. The Commonwealth Act is currently being amended to enable the Commonwealth Ombudsman to disclose information or make statements in the public interest.

from providing them with a copy. Also, where one or more journalists lodge complaints it is anomalous that other journalists are not entitled to a copy of the report unless they can obtain it from the Minister, the authority or the complainants. A striking example of this anomaly occurred in the release of the report on retrospective charging by County Councils.

The limitations upon publication which affect my office contrast strongly with the working relationship between the Swedish Ombudsman and the press. An interview with Mr Per-Erik Nilsson, the present Chief Parliamentary Ombudsman of Sweden, appeared in the *Canberra Times* on 31st January, 1982. It contained the following information:

> "Another fascinating difference is that the Swedish Ombudsman works hand in glove with the press. A press room is provided in his office and, each day, as one of his staff opens the mail, all of it except letters containing information on individuals' personal affairs are copied and given to the reporters."
>
> "Copies of all Mr Nilsson's outgoing letters to government agencies and decisions on complaints are immediately given to the press. He regards the media as essential to the performance of his functions and said the publicity given to the Ombudsman's activities in fact provided the executive power withheld in the establishing legislation."

Such open access to files is, of course, impossible under the New South Wales Ombudsman Act. It has merit, and provided sensitive material relating to individuals remains classified, I would be in favour of a similar system. The system utilised by the Commonwealth Trade Practices Commission, namely a Confidential Register for complaints and correspondence of a private or confidential nature and an Open Register for the great bulk of complaints and correspondence which are not confidential, could provide a useful precedent.

While I appreciate the matters mentioned by the Premier in his letter, I believe that there are considerable advantages in a more open system. At the present time some complainants take final reports in their favour to the media and this "selective leaking" tends to give those reports a significance they may not deserve. In all the circumstances, I request the Government to look at the matter again and to consider as a model the system used by the Trade Practices Commission under the Trade Practices Act.

3. Naming names: Annual Reports

An allied matter is whether public servants whose conduct has been found to be "wrong" after investigation should be named in case notes and other references in Annual Reports of the Ombudsman. Such public servants, as required by the Act, already will have been given a full opportunity to answer any complaints made against them. Present practice, introduced during the current year, is to send a public servant a copy of any draft report reflecting adversely on him, inviting comment prior to completion of the final report.

My own view is that where a matter investigated by the Office of the Ombudsman is thought sufficiently important or relevant to be referred to in an Annual Report the names of any public servants adversely commented upon in that investigation should be given unless there are good reasons for the contrary. Government departments, statutory and local authorities are composed of individuals. As is recognised by the Ombudsman Act, and in particular the definition of "public authority" in section 5 (1) (d), individual officers of the public service are themselves subject to investigation and report. In my view the results of such investigations and report generally should be made available to the public.

While my views are as stated above, I am conscious that the previous practice in New South Wales has not been to include names of public servants. After giving the matter considerable thought I have decided to postpone the introduction of the practice of the naming of individual public servants until next year's Annual Report. This will give fair notice of the change in practice.

4. Reports to Ministers

The Ombudsman is required, under section 26 of the Act, to report to the responsible Minister in cases where a finding of wrong conduct has been made about a department or authority.

The relevant sub-section reads as follows:

> "26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons.
>
> (3) The Ombudsman shall give a report under this section—
>
> (a) to the responsible Minister;
>
> (b) to the head of the authority whose conduct is the subject of the report; and
>
> (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board."

I wrote to the Premier informing him that I felt, in view of the imperative nature of the word "shall" in these sections, that the Ombudsman was obliged to report to Ministers in these circumstances, although my predecessor had seldom done so. I suggested that if the Government wished this course to be taken only as an option, the section could be amended to replace the word "shall" with "may".

The Premier acknowledged this change of practice and informed me that no amendment to section 26 was proposed.

All findings of wrong conduct will accordingly entail reports to Ministers. The responsible Minister is approached, under section 25, while the report is still in draft form, and given the opportunity to be consulted on the subject of the report. A number of consultations with Ministers which have occurred in this way have proved fruitful. Consultations are designed to enable a frank exchange of views between the Minister and the Ombudsman about the finding of wrong conduct in respect of his Department or a public servant within it.

Investigations under the Ombudsman Act in no way concern the acts or decisions of Ministers. These are properly excluded by clause 1 (b) of Schedule 1 to the Ombudsman Act. Ministers' decisions are to be judged by the electorate, not by a non-elected statutory officer such as the Ombudsman. Accordingly reports under the Ombudsman Act cannot be, and should not be, seen in any way as critical of a Minister or a Government. The proper object of scrutiny under the Ombudsman Act is the bureaucracy. Reports to Ministers should be seen by them as an additional source of information about their departments and authorities together with recommendations. Ultimately, and properly in a democratic society, Ministers may give such weight and effect to findings and recommendations of an Ombudsman as they think fit.

5. Reports to Parliament

In addition to the Annual Report there are two types of reports which can be made by the Ombudsman to Parliament under the Ombudsman Act:

(a) where the recommendations made in a report to a Minister have not been carried out (section 27);

(b) where the Ombudsman decides to make a special report on any matter arising in connection with the discharge of his functions (section 31).

There have been no reports to Parliament of the first kind in the year to 30th June, 1982. In part this is because the policy of making reports to Ministers whenever there has been a finding of wrong conduct was introduced during the course of the year. Departments have also been given time to comply with recommendations made in such reports. It seems, from experience to date, there will be a significant increase in the number of section 27 reports to Parliament. Since the close of the year under review three reports have already been made to the Premier for presentation to Parliament arising out of non-compliance with recommendations by the Department of Corrective Services. A review is currently being made of compliance by the Commissioner of Police with recommendations made to him during the course of the year ended 30th June, 1982. This will lead to a number of reports being made to Parliament. Similar reports are contemplated in the general area.

There has been one report to Parliament under section 31 during the course of the year, namely:

"Special Report to Parliament on the Effectiveness of the Role of the Ombudsman in Respect of Complaints Against the Police." (March, 1982)

This report is further discussed in the Complaints against Police section of this Report.

Since the close of the year two further reports on matters arising during the year in connection with Ombudsman functions have been forwarded to the Premier for presentation to Parliament. These are:

Report on the Deficiencies and Limitations of the current legislation which regulates the handling of citizens' complaints against Police—Investigation of alleged Police involvement in tow truck rackets.

Report on the limitations of the Ombudsman's powers in respect of investigations under the Ombudsman Act of the Commissioner of Police and non-observance of notification provisions of Police Regulation (Allegations of Misconduct) Act—Inquiry into allegations of blank search warrants.

The latter report was delivered to the Premier and the Minister of Police on the 14th September, 1982 and presented to Parliament on 14th October, 1982.

Reports to Parliament under the two sections mentioned become public on being tabled.

One use of section 31 under consideration is to report to Parliament on the way the Budget affects the operations of the Office of the Ombudsman. Such a report would not be intended to be critical of the Budget which is a government responsibility; it would provide information for Parliament and indicate any limitations which financial considerations placed on the manner in which the statutory task of the Ombudsman could be carried out.

6. Investigations under section 13—"own motion"

Although the vast majority of investigations carried out by this Office are in response to a complaint made by one or more persons, the Ombudsman has the right, under section 13 of the Ombudsman Act, to investigate a matter without a complaint having been received.

The decision to investigate a matter under section 13 involves many factors. A good discussion of these has been provided by the New Zealand Ombudsman. In March, 1981 the New Zealand Ombudsman, in relation to his investigations in what is known as the Marginal Lands Board affair, laid down the following guidelines for decisions to investigate of his own motion:

> "The basis on which an Ombudsman decides whether to intervene in this way is a matter entirely for his discretion. The Ombudsman Act contains no guidelines. My own approach is set out in my report for the year ended 31st March, 1981 in relation to my involvement in the Marginal Lands Board affair as follows:
>
> > 'It has always seemed to me a good working rule that if public allegations of impropriety are made against an organization within the Ombudsman's jurisdiction he should give serious thought to investigating them in the interests of the public and of the organisation concerned. If they are not promptly and satisfactorily rebutted, if it seems that they might have substance, and if they provoke sustained public controversy, there is, in my view, a strong case for investigation. Only if it turns out that some other form of independent inquiry is to be undertaken, should the Ombudsman be dissuaded from intervention.' "

One "own motion" matter upon which investigation was commenced this year concerned the administrative errors involved in the compilation of the results of the Higher School Certificate 3-Unit English examination. Well after the printing of the results, and indeed after the start of the 1982 University year, it was announced that the marks of a number of students had been increased upwards—some by as much as 40 marks in a possible total of 150. Various conflicting reasons appeared to have been given, and following some preliminary enquiries an investigation was commenced by this Office.

Subsequently, on 21st May, 1982 the Minister for Education, the Hon. R. J. Mulock, announced the formation of a Committee under the Chairmanship of Dr Ken McKinnon, Vice Chancellor of Wollongong University to report on the marking procedures in the Higher School Certificate examination generally, but including the circumstances surrounding the 3-Unit English examination. Other members of the Committee were Mr B. H. Travers, Principal, Church of England Grammar School and Dr Totaro, Chairman of the Ethnic Affairs Commission of New South Wales.

Given the independence of this Committee, the high calibre of its membership and the likelihood of the publication of its results I suspended the Ombudsman's Office inquiry. When the report of the McKinnon Committee was completed, I had the opportunity of considering it. I discontinued the investigation in this Office because the McKinnon Report more than adequately, in my view, investigated the problem connected with the 1981 3-Unit English examination.

The power conferred by section 13 to institute an investigation without a complaint in the same terms is often useful where in investigating a complaint another area of inquiry is suggested by the original investigation. This may then be made the subject of investigation without the need for a further complaint. This use of the "own motion" procedure is not uncommon in other countries.

7. Section 19 Inquiries

The Ombudsman Act, in section 19, enables the Ombudsman to hold inquiries with the powers and protections of a Royal Commission. Section 19 inquiries are not open to the public due to the secrecy provisions of the Act.

A decision was made in 1981 to make use of section 19 in the more important investigations, ones where conflicting accounts of particular events are likely or where there had been unreasonable delay in replying to correspondence about investigation of complaints. The section 19 procedure has considerable advantages where it appears that there is a conflict of evidence between the citizen complainant on the one hand and departmental officers on the other hand. Persons concerned come at appointed times to the Ombudsman's Office and are questioned and the Ombudsman has the opportunity in the case of conflict to hear the two versions of any particular instance and to make a report in accordance with his personal observations.

Inquiries held under this section have the advantage that the Ombudsman is able to question witnesses and make judgements as to whether their evidence is consistent and credible. During the year, eighteen section 19 inquiries have been held. They have had a noticeable effect in speeding up replies to correspondence from this Office.

There has been some criticism of the use of the section. It has been said that some prison officers had objected to being summoned to the Ombudsman's Office to explain their actions. No such complaint has been received by this Office. Indeed, two prison officers, after the event, wrote of their approval of the practice.

In many cases hearings pursuant to section 19 are held where the incident complained of took place. For example, the bulk of oral questioning during a section 19 investigation concerning an incident at Grafton Gaol took place at Grafton.

The feedback from some public servants and prison officers called to section 19 inquiries has been positive. They have seen fair questioning in person leading to an early decision as to whether a complaint is sustained or not as preferable to a protracted investigation involving lengthy correspondence which could limit prospects for promotion in the interim.

Section 19 inquiries are an important adjunct to the more usual methods of investigation in cases where delay or conflicting accounts of events make them appropriate or where direct questioning by the Ombudsman is considered desirable.

8. Problems with the Department of Environment and Planning

The overall experience of this Office has been that Departments and authorities have been generally co-operative in providing information during the investigation of complaints. There has been widespread acknowledgement of the impartiality of officers of the Ombudsman and the benefit to the public of any administrative improvements achieved as a result of investigations. Occasionally, however, the Office has met with resistance and lack of co-operation.

An instance of this occurred during the investigation of a complaint relating to an offer the Department of Environment and Planning made to acquire land from the complainant at a price allegedly well below market value.

During the course of the investigation, the Department of Environment and Planning was informed that the procedures used by the Department in relation to the making of offers to purchase land in open space, corridor and special use zones where the Department was the only potential purchaser had been the subject of many complaints to this Office.

In reply to a request for documents the Director of the Department, Mr R. B. Smyth, claimed that the offer in question had been made on a "without prejudice basis" and therefore was not really an offer at all. His letter said:

> "It would seem, therefore, that no relevant offer was made to Mr B. It seems doubtful whether any other 'offers' were made but, assuming, but without admitting that this was so, the 'offers' were rejected *and thus, no longer constituted offers.*
>
> It also appears to follow that there are no papers relevant to the matter you have raised." (emphasis added).

In view of this unco-operative attitude, it was necessary for an investigation officer after taking the advice of counsel to go to the Department's premises and require the immediate production of the relevant files and papers. The power to enter premises and inspect documents is set out in section 20 of the Ombudsman Act.

In subsequent correspondence, Mr Smyth criticised officers of the Ombudsman's Office for dealing directly with officers of his Department.

He said all questions should be addressed to him in writing. An internal direction was issued by him in support of this stance.

Although the normal practice of this Office is to write to the head of the authority concerned, investigation officers are encouraged to deal directly with departmental officers to avoid delays and unnecessary correspondence. The Ombudsman reserves the right to proceed as seems appropriate during investigations. Individual public servants are "public authorities" themselves and may be directly questioned by the Ombudsman or his officers.

In another investigation concerning the same Department an investigating officer who was examining a file which had been requested came across a loose handwritten note in the following terms:

> "The Ombudsman has requested access to the attached files. The Valuers have completed a chronological survey of each of the files and these are attached. It is not my intention to provide the surveys to the Ombudsman as they have been done for my information."

The material removed apparently was some type of index or summary. While perhaps not of substantial importance, its removal seems scarcely to have been designed to assist the investigation. The Ombudsman Act in section 37 (a) creates an offence of hindering or misleading an officer of the Ombudsman in the exercise of his powers. If evidence of any such offence is obtained the matter will be referred to the Attorney General.

It should be emphasized that obstruction during investigations is rare, and it should not be thought that criticism of this kind applies widely. Indeed, in the Department in question the attitude of many public servants has been co-operative and helpful except where directions of a superior preclude this.

9. Limitations on jurisdiction

Not all complaints against New South Wales Government departments and other public authorities are within the jurisdiction of the Ombudsman. The Ombudsman Act itself limits matters which can be investigated. In addition, the Ombudsman is given a broad discretion as to what matters within jurisdiction he will investigate.

During the current year, two most important limitations in practice on the jurisdiction of the Ombudsman have been and are:

(a) the conduct complained of must relate to a "matter of administration" (section 5);

(b) unless there are special circumstances the complainant should have no alternative satisfactory means of obtaining redress of legal remedy (section 13 (4) (b) (v) and 13 (5)).

In particular cases the meaning of the expression "matter of administration" may not be free from doubt. The term clearly excludes the legislative and judicial fields. Wrong conduct in a matter of administration, or maladministration on the other hand, can include a wide field. In his text book de Smith spoke of the field of inquiry of the U.K. Ombudsman or Parliamentary Commissioner in the following terms:

> "'Maladministration' was deliberately undefined: the Parliamentary Commissioner was left to work out his own case-law. The term includes corruption, bias and unfair discrimination, misleading a member of the public, failure to notify him of his rights, losing or mislaying documents, sitting on a decision or an answer to a request for information for an inordinate length of time, failing to explain why a decision was made or why a situation had arisen when it was unreasonable to refuse, making a decision on the basis of faulty information which should have been properly ascertained and assembled."

The above quotation, while not providing a definition, gives a useful account of some of the matters properly investigated by the Ombudsman.

As to the second limitation, it is my strong view that the Office of the Ombudsman should primarily concern itself with alleged administrative wrong conduct for which there is no legal remedy. After a hearing the Court can make an order binding on the authority. By contrast, at the end of the road the findings and recommendations of the Ombudsman are merely advisory and can be ignored. In the process the expectations of complainants may have been unduly raised. It is better in the ordinary case where there is a remedy in the courts that the complaint to the Ombudsman should be immediately declined and the complainant left to his or her remedies at law. This is not to say the Office may not make a preliminary inquiry as to the facts to assess the position. In the case of such a complainant with limited means, the Office may assist with referring the matter to the Legal Services Commission. Thanks in no small way to the interest of the present Public Solicitor, Ken Shadbolt, good co-operation is being built up between the two offices.

In some areas I have taken a narrower view of what falls within the jurisdiction of the Ombudsman than did my predecessor. Particular matters in which I have declined complaints on the ground that they are not within jurisdiction include conduct which is subject to appeal or review under another Act; some Local Government issues that fall within the sphere of policy rather than administration; matters dealt with by bodies such as the Consumer Claims Tribunal which can call witnesses; matters dealt with by the Protective Commissioner and matters concerning the administration of private trusts or estates by the Public Trustee. A different set of procedures has also been developed for some complaints about the Metropolitan Water Sewerage and Drainage Board and the County Councils.

The jurisdictional position in relation to Local Government is further specifically covered in Part 2 of this Annual Report. Consumer Claims Tribunals, the Protective Commissioner, the Public Trustee and complaints about water rates are discussed in the next paragraphs.

10. Consumer Claims Tribunal

There has been considerable controversy in the past as to whether the Ombudsman has jurisdiction in respect of Consumer Claims Tribunals. The Senior Referee of the Consumer Claims Tribunal, Mr B. Lynch, strongly asserted that the Ombudsman had no jurisdiction. The former Ombudsman contended that he did have jurisdiction although he would apply this only in relation to matters of general procedure for the conduct of the referee—not the merits of the decision.

Under Schedule 1 of the Ombudsman Act, one of the matters excluded from the jurisdiction of the Ombudsman is "conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body".

The Consumer Claims Tribunal Act provides in section 42 (1) that the Government may make regulations not inconsistent with that Act in respect of "The issue of summonses requiring parties to a proceeding before a Consumer Claims Tribunal or other persons to give evidence, or produce evidence to the Tribunal".

No regulations have yet been made. I take the view that the Consumer Claims Tribunal Act as presently enacted shows an intention that the Ombudsman should not be involved in scrutinising the conduct of the referees of the Consumer Claims Tribunal or the manner in which they perform their duties. The mere fact that the regulations have not been enacted does not alter the conclusions to be drawn from the Consumer Claims Tribunal Act.

I wrote simultaneously to the Premier and the Minister for Consumer Affairs and Minister for Roads informing them of my view of this matter. I stated that if the Government wished the Ombudsman to have jurisdiction, an amendment to either the Consumer Claims Tribunal Act or the Ombudsman Act would be necessary. Otherwise I would continue to regard the Ombudsman as having no jurisdiction.

My views were acknowledged and no mention was made of amendments.

11. Protective Commissioner

Despite the fact that a number of complaints about the Office of the Protective Commissioner have been dealt with by the former Ombudsman—11 such complaints are recorded in the Annual Report for 1980-81—there had been doubt about the Ombudsman's jurisdiction for some time. The Protective Commissioner himself has not raised these doubts; in fact he has been co-operative and helpful with complaints taken up by the Ombudsman.

I take the view that Schedule 1 of the Ombudsman Act, which excludes from the jurisdiction of the Ombudsman "conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a body" applies in this case.

The Mental Health Act, 1958 establishes the Office of Master in the Protective Jurisdiction of the Supreme Court, and a Deputy Master (the Protective Commissioner) who may exercise the Master's powers. Sections 55 and 56 of the same Act provide the Master with power to summon persons before him, administer oaths and take evidence.

This provision, in my view, clearly excludes the Protective Commissioner from jurisdiction, as a person with power to call witnesses. I wrote to the Attorney General, Minister for Justice and Minister for Aboriginal Affairs informing him of my view on this matter, and wrote in similar terms to the Premier. The Protective Commissioner was sent a copy of my letter to the Attorney General.

In his reply, the Attorney General said that the Protective Commissioner concurred with my view. The Attorney General further stated:

> "Whilst I certainly agree that many of the functions of the Protective Commissioner should be subject to the scrutiny of the Ombudsman, I consider immediate legislative action to remedy the anomaly to be unwarranted at this stage, in view of the proposed amalgamation of the Protective Office with the Public Trust Office.
>
> Although the legislative amendment to give effect to this amalgamation has yet not been finalised, it is probable that the power for the Protective Commissioner to summon persons before him, and other similar powers, will be deleted. Accordingly, the problem relating to jurisdiction you have raised will then be resolved.
>
> In the meantime, however, the Protective Commissioner has assured me that he will fully co-operate with any investigation complaints you may receive in respect of the Protective Office."

12. Public Trustee

A number of matters concerning complaints about the administration of trusts or private estates by the Public Trustees were being investigated in the Office by the Deputy Ombudsman and other officers. In at least one of these a draft wrong conduct report under section 26 had been prepared and forwarded to the Public Trustee for comment. The Public Trustee thereupon briefed counsel to advise on the question of whether matters concerning the administration of private estates or trusts were within the jurisdiction of the Ombudsman. In due course an opinion obtained by the Public Trustee from Mr Downes of counsel was forwarded, and the matter was referred to me for decision. After considering the relevant provisions of the Ombudsman Act, and the role of the Public Trustee in relation to trusts and estates I agreed with the advice of counsel obtained by the Public Trustee that, while the matter was not free from doubt, the Ombudsman had no jurisdiction to investigate complaints of this nature. It is true that the type of issues raised concern matters of administration of the particular estate or trust. However, in the context of the Ombudsman Act it was my view, and that of counsel, that the expression "matter of administration" refers to what might be described as governmental public functions, and that the role of the Public Trustee in relation to private estates or trusts did not readily fall within this concept.

Accordingly, I wrote to both the Premier and the Attorney General advising them of the conclusion I had reached. I indicated that I would decline to accept future complaints against the Public Trustee while the Ombudsman Act remains in its present terms. It is thus up to the Government to determine whether it wishes to amend the Ombudsman Act to cover complaints against the Public Trustee arising out of his administration of estates and trusts.

13. Complaints about water rates

The Office of the Ombudsman has been in receipt of many complaints about excess water rates over a lengthy period. I have decided that normally such complaints should be declined, on the ground that an alternative legal remedy is available. A procedure has been adopted of referring complaints about excess water rates to the Metropolitan Water Sewerage and Drainage Board for review and advice direct to the complainant. Complainants who remain unhappy after hearing from the Water Board may choose to pay the amount under protest and take legal proceedings for recovery of the amount they claim to be excessive.

Few complaints about excessive water rates contain evidence of "wrong conduct" under the terms of the Ombudsman Act. However, complaints may fall within the provisions of the Act where administrative matters are involved, such as unreasonable delay, failure to inform consumers of amounts payable in reasonable time, and failure to review procedures to detect marked discrepancies in amounts of water consumed.

All of these factors occurred in the case of Mr C., of Potts Point. Mr C. first became aware of an outstanding 1979 account for $1,967.38 for excess water rates when he found, in June 1981, in the box of the Secretary to the body corporate of his building, a red card containing a warning that the water would be disconnected in 4 days unless the account had been paid in that time. No account had even been issued to Mr C. In the course of a visit to the Board's Office, Mr C. discovered that the Board regarded him as owing a further $4,154.95 on his 1980 account. That account had not been posted either.

The subsequent investigation by my Office revealed that both accounts had been incorrectly calculated. They were withdrawn and the Under Secretary of the Board indicated that a system existed to check such accounts. Following further investigation, I made a number of recommendations concerning the procedures for issuing and following up accounts and for dealing with complaints and queries about the accounts. My recommendations were accepted by the Minister and called, amongst other things, for a complete review by the Board of this area of operation. A summary of the investigation is set out as Case 11 (see Part III).

14. Conduct of Public Authorities relating to employees

The conduct of public authorities relating to employees and employment matters is specifically excluded from the jurisdiction of the Ombudsman by paragraph 12 of Schedule 1 to the Ombudsman Act.

In his last report the former Ombudsman Mr Smithers expressed the hope that his successor would support his view that this exclusion should be repealed. In view of this I have considered the matter. Ultimately, the question is one for Government policy. However, with respect to Mr Smithers, I believe the exclusion should remain. Firstly, I believe that the topic is one best dealt with by those with special expertise, namely the relevant unions or associations, industrial officers and ultimately the industrial tribunal and courts. Secondly, the number of complaints within existing jurisdiction have been rising and the limited resources of the Office of the Ombudsman are best utilized by investigating vigorously and without delay those complaints which are presently within jurisdiction.

15. The Inquiry into Alleged Inadequate Maintenance at Liddell and other Electricity Commission Power Stations

The most onerous investigation undertaken this year concerned allegations that the Electricity Commission of N.S.W. had inadequately maintained its generators at the Liddell Power Station. Partly, at least, as a result of the failure of the generators power restrictions had been imposed in New South Wales in December, 1981.

Numerous complaints about the restrictions were received, particularly from small businesses. The issue received considerable media coverage, because so many consumers were affected. Preliminary inquiries suggested an investigation by the Ombudsman was warranted.

Advice of Senior Counsel confirmed that an investigation into the maintenance procedures of the Commission was within the jurisdiction conferred under the Ombudsman Act. There was sustained public controversy and continuing complaints to the Ombudsman's Office. Commission announcements indicated that there was a significant possibility of restrictions being imposed during the 1982 winter months with consequent adverse effects on individuals. Electricity cost increases flowing from the Liddell failures were inevitable. There was no detailed rebuttal by the Commission of the allegations. No other independent inquiry was announced or in prospect.

In these circumstances a decision was made to investigate, and this decision was communicated to the Electricity Commission by letter of 21st January, 1982. The form of the investigation was a Royal Commission type investigation pursuant to the terms of section 19 of the Ombudsman Act.

The terms of reference of the inquiry were as follows:

"(1) The general inspection and maintenance procedures adopted by the Commission in relation to power stations under its management and control since 1st July, 1975.

(2) In particular, without limiting the generality of (1), the inspection and maintenance procedures adopted with respect to the four 500 megawatt turbine generating sets at Liddell Power Station since 1st July, 1975.

(3) Whether the inspection and maintenance procedures utilized at the Liddell Power Station in respect of turbine generating sets since 1st July, 1975, complied with reasonable standards.

(4) The measures taken with the intention of preventing malfunctioning of turbine generator sets at Liddell Power Station including planning and/or implementation of a programme of routine maintenance.

(5) Measures adopted to ensure the completion of any such regular routine maintenance programme.

(6) The abandonment of any such programme once implemented.

(7) The failure to implement such a programme once planned."

The terms of reference primarily focused on the inspection and maintenance procedures adopted with respect to the generators at the Liddell Power Station. They were, however, wide enough to enable particular allegations of inadequate maintenance at Liddell or other stations to be investigated as part of a review of general procedures adopted by the Commission. The time period, commencing 1st July, 1975, was selected so as to enable scrutiny of the allegation that there had been no removal of end covers and rotor or other proper inspection of the generators end windings for a period of at least five years prior to the breakdown of three of the four Liddell generators. The first of these breakdowns had taken place in March 1981.

This investigation, which began on 4th February, 1982, had not been concluded by 30th June. Evidence has been taken from some 42 witnesses and 168 exhibits were tendered in evidence. On 15th August, 1982, a draft report of some 123 pages was sent to the Minister for Energy, Mr Landa, and to those persons entitled to notice under section 24 of the Ombudsman Act. Comment and submissions on the draft have been received and further evidence in reply is being taken. It is expected that after consideration of the submissions, the final report should be completed and sent to complainants, the Electricity Commission, to relevant officers and the Minister in late October or early November 1982.

16. Expulsion from Government Schools

A complaint was received from the father of a youth who had been expelled from all Government Schools.

It is not necessary to recount the events which led to the youth's expulsion.

The investigation by this Office disclosed that the youth's parents had not been given an opportunity to state their views on the question before the matter was referred to the Minister for Education for his decision. Only the Minister has the power to expel.

The conduct of the Department of Education was found wrong in terms of the Ombudsman Act in that the Department failed to extend to the parents an interview for the purpose of consulting and making submissions about their son's future education before the Department's final recommendation for expulsion to the Minister, and that such conduct was unreasonable, unfair and otherwise wrong.

A draft report recommended, inter alia, that in future cases where the Department is considering a recommendation to the Minister that a student be suspended or expelled from Government Schools, the student's parents or guardians be invited to an interview for the purpose of making submissions upon the Department's proposed recommendation before it is forwarded to the Minister and, further, that the Departmental submission to the Minister should outline the parents' or guardians' views for the Minister's consideration. The draft report was forwarded to the Director-General for his comment.

In his reply, the Director-General said, inter alia:

> "With regard to the recommendations of your draft report, you will be interested to know that my Department's Policy and Planning Group has recently reviewed the procedures in respect of expulsion, suspension and exclusion cases. It is proposed to include the requirement that the parents be invited for interview in expulsion and suspension cases and that record of the interview be submitted with the recommendation. I am prepared to act on this aspect of the procedures and will issue an instruction to take immediate effect."

As required by Section 25 of the Ombudsman Act, I offered to consult with the Minister for Education before I published my report, a draft copy of which I gave him. I subsequently consulted with the Minister who informed me that the procedures outlined in the Director-General's reply had been adopted. The position for the future should therefore be satisfactory.

17. Plethora of Authorities concerned with planning, management and control of Sydney Harbour and Foreshores

A case concerning a plan to install a "trot" mooring system in Sailor's Bay drew the attention of this Office to the very large number of authorities with power over Sydney Harbour and its foreshores. The Maritime Services Board authorized a private company to install the "trot" mooring system in March 1981. No environmental impact statement was called for, nor was the proposal referred to the Foreshores Building Committee of Advice. This Office received a complaint from a local resident.

In March 1982 a meeting was held by the Deputy Premier and Minister for Ports, attended by several officers of the Maritime Services Board, the Member for Willoughby, and two local residents, including the complainant in this case.

At the conclusion of the meeting the Minister directed the Board to instruct the company to cease replacing swing moorings with "trot" moorings. He called for an Environmental Impact Study to be carried out to determine whether the installation of the moorings should be allowed to continue.

Bearing in mind the economic, environmental and visual significance of Sydney Harbour and its foreshores, it is clear that the existing fragmented and ad hoc legislative and administrative framework is in serious need of a comprehensive review and overhaul.

A preliminary list of the authorities, legislation and responsible Ministers concerned with the area of Sydney Harbour and its foreshores bounded by the Gladesville and Roseville Bridges is as follows:

(i) Three Ministers of the Crown:

The Minister for Local Government and Lands,

The Minister for Environment and Planning (also responsible for the State Pollution Control Commission and National Parks and Wildlife Service), and

The Minister for Public Works and Ports (whose responsibilities include the Maritime Services Board and, in part, the Coastal Protection Act).

(ii) Six Public Authorities:

The Maritime Services Board,
The Department of Environment and Planning,
The National Parks and Wildlife Service,
The State Pollution Control Commission,
The Public Works Department, and
The Coastal Council of N.S.W.

(iii) Fourteen Local Government Authorities:

Concord Municipal Council
Drummoyne Municipal Council
Hunters Hill Municipal Council
Ku-ring-gai Municipal Council
Lane Cove Municipal Council
Leichhardt Municipal Council
Manly Municipal Council
Mosman Municipal Council
North Sydney Municipal Council
Ryde Municipal Council
Sydney City Council
Warringah Shire Council
Willoughby Municipal Council
Woollahra Municipal Council

(iv) Sixteen Acts of Parliament:

Clean Waters Act, 1970
Coastal Protection Act, 1970
Dangerous Goods Act, 1975
Environmental Planning and Assessment Act, 1979
Local Government Act, 1919
Maritime Services Act, 1935
National Parks and Wildlife Act, 1974
Navigation Act, 1901
Pilotage Act, 1971
Port Rates Act, 1975
Prevention of Oil Pollution of Navigable Waters Act, 1960
Public Works Act, 1912
Sport and Recreation Act
State Pollution Control Commission Act, 1971
Sydney Harbour Transport Act, 1951
Sydney Harbour Trust Act, 1900–1901

(v) Over fourteen Local Environmental Planning Instruments.

(vi) Various Regulations and Ordinances under the Local Government Act, 1919; the Maritime Services Act, 1935; Sydney Harbour Trust Act, 1901; and the Environmental Planning and Assessment Act, 1979.

I have recommended that the Minister for Ports (after consultation with the Minister for Planning and Environment) give consideration to the carrying out of a comprehensive inter-Departmental review of the existing legislative and administrative framework. The report prepared on the basis of this review should contain practical recommendations for the rationalization of legislative controls and administrative responsibilities, and the proper co-ordination of administrative policies and activities.

As an interim measure, prior to the eventual overhaul of the existing situation, I have recommended that the Minister for Ports formally instruct the Maritime Services Board to expand the role of the Foreshores Building Committee of Advice to enable the consideration of all building or development proposals (both private and public land, and water based) which would have environmental impact within adjacent municipalities.

Such development and or building proposals would include:

(1) any significant increase in the number of moorings in a bay which are held or controlled by a marina; and

(2) the establishment or expansion of a marina, port facility or other premises or activity on the foreshores of the Harbour.

The Foreshores Building Committee of Advice is made up of representatives of the local council, the Department of Environment and Planning and the Maritime Services Board, and the expansion of the role of the Committee would be far less difficult and much quicker than the amendment of the relevant statutes and regulations.

I have discussed this matter with the Minister and concur with his suggestion that any dispute as to a recommendation to be made by a Foreshores Building Committee of Advice should be referred to both the Minister for Ports and the Minister for Environment and Planning for a determination. In this way, the agreement of the Council's representative on the Committee is required prior to a recommendation being put to the Maritime Services Board.

Although the subject Committee fulfils an advisory role only, I have recommended that the Minister instructs the Board that any proposed departure from a recommendation of the Committee requires his concurrence.

In relation to Sydney Harbour and foreshores, the Maritime Services Board is not a "consent authority" in terms of sections 4 and 84 of the Environmental Planning and Assessment Act, 1979, even though marinas are declared to be "designated developments" under the provisions of Schedule 3 (1) of the Environmental Planning and Assessment Regulation Act, 1980. It may be appropriate for the inter-Departmental review (suggested in recommendation (a)) to consider this problem with a view to bringing development on Sydney Harbour and foreshores within the scope of the "designated development" provisions of the Act and Regulation.

18. Juvenile Institutions

This Office has always received and dealt with complaints from juvenile institutions administered by the Department of Youth and Community Services, and principally from Mt Penang Training School for Boys at Gosford, Minda Remand Centre at Lidcombe and Daruk Training School at Windsor. In the past year visits to these institutions have been stepped up in order to improve communication between the juveniles and this Office, and between this Office and the management of the institutions.

The Deputy Ombudsman visited each of the three principal institutions named early in the year to improve liaison with the management and to obtain an appreciation of the problems of both management and the resident juveniles. This was followed up by visits by Investigation Officers, who extended the liaison with both management and the residents. This has subsequently been followed up with discussions with the senior management of the Department of Youth and Community Services and liaison with the regional directors.

The procedure adopted by this Office in dealing with the complaints has also been modified. Written complaints received from the institutions are dealt with either by direct investigation or a report from the Department of Youth and Community Services, followed up when necessary by further action. In addition, Investigation Officers receive oral complaints from all who wish to make them. These people are seen individually and where appropriate an oral complaint is reduced to writing. In most cases, the matters raised can be dealt with quite quickly by the Investigation Officer providing an effective liaison between the resident and the Superintendent of the institution and the results of these enquiries are made immediately known to the resident. In other cases it is necessary to proceed by the formal complaint mechanism and these matters are raised with the Director-General of the Department of Youth and Community Services. In addition, matters of principle arising from the complaints are discussed with the Superintendent and the regional directors so that they may be aware of the problems within the institutions and so that this Office can have the benefit of their observations.

In the current year 64 written complaints were received. Many oral complaints have also been handled. Staff resources in this Office are limited but I wish to continue the current approach and, if possible, extend it.

For the most part the residents seek an improvement in their conditions of living and an end to practices which they see as unnecessarily inhibitive or even positively harmful. Many of the problems raised, however, relate to the needs of the juvenile residents or the institutions in general and have an importance to all concerned.

As examples of these, certain questions have been raised between this Office and the Director-General:

- The use and condition of isolated detention cells at remand centres and training schools.
- The availability of information to the juvenile residents about their legal position and rights.
- The availability of psychological support or counselling to the juvenile residents.
- The censorship of mail.

It will be helpful to identify the type of problems commonly raised by the juvenile residents. Of central concern is the manner in which the discipline system of the institution is run. Infractions of the rules result in punishments which range from being made "unprivileged" for periods that can be quite extended to incarceration in solitary confinement and the manner in which a determination is made that an infraction has occurred is of prime consideration. The juvenile residents have complained that determinations are made by officers without allowing them an opportunity to provide an explanation of their conduct or an excuse. Such allegations have been denied by the Department. Other matters relating to punishment have been that punishments have been unfair or that a group of boys has been subject to what is termed "mass punishment" or reduction of privileges for the fault of one of their number. This, too, has been denied by the Department.

The availability of contact with friends and relatives has also been the subject of complaint. Most juvenile residents wish to see their friends, but visits from such friends are either prohibited or strongly discouraged by the institution, usually on the basis of lack of parental consent or danger to security of the institution or the best interests of the juvenile resident. Communication by telephone or writing with persons other than parents or certain relatives is also discouraged by some institutions. Certain practical difficulties arise in relation to visits to some of the institutions for juvenile residents whose parents live a long distance from the institution or do not have the means of access to the institutions by car through limitation of finance.

Other complaints are raised about the quality and quantity of food. These have been denied on the basis that the food eaten by the juvenile residents is of the same quality as that eaten by staff, from whom no organized complaints have been received and that provision is always made for second helpings.

The provision of appropriate and adequate clothing is also the subject of complaint. Juvenile residents are provided with institutional clothing and complaints are made that the clothing does not suit them or is torn or worn. It is readily admitted that difficulties can arise in this area, but the point is made that the Department is energetic in ensuring that proper suitable clothing is made available to the juvenile residents.

Access to education within the institution has also been the subject of complaint.

19. Complainants

The people who make complaints under the Ombudsman Act are too diverse to characterise easily. They come from many parts of the State, a wide range of age groups, and the subject matter of complaints is varied. The vast majority of complaints are made in good faith. Investigation of complaints sometimes shows that the complainant did not have all the facts, or misunderstood the actions of a public authority. This is understandable; in such a case, while the complaint is found not sustained, the investigation by the Ombudsman's Office performs a useful function in assisting the public to gain information or understand the problems of a public authority. Complainants who bring complaints which are, as the Act says in section 13 (4) (b) (i) "frivolous, vexatious or not in good faith" are fortunately rare. They do, however, exist.

A recent, somewhat intemperate, description of a complainant, made by an official, gives some insight:

> "You will find that Mr (name) is a pain in the posterior of every public body in this area. He is critical of Councils, Department of Agriculture, Board of Tick Control, State Rail Authority, Pastures Protection Boards, this one in particular (and hates the Secretary's guts), and if I have missed any other Government, Local Government, Government Agency or any other in authority you can include it because he has criticised it through the press. In today's (local paper) he is castigating the (district) County Council and the State Rail Authority over weeds."

Where this Office after an investigation of a complaint believes that the complainant has been vexatious it should not hesitate to say so in an appropriate case.

20. Staff

At 30th June, 1982 the Ombudsman, Deputy Ombudsman and Assistant Ombudsman were assisted by a staff of 35. The staff comprises a Principal Investigation Officer, 7 Senior Investigation Officers, 10 Investigation Officers, 3 Interviewing Officers and an administrative staff of 14, including an Executive Assistant, records staff, secretaries and typists.

During the year a new Assistant Ombudsman, a new Principal Investigation Officer and 4 new Investigation Officers were appointed consequent upon retirements or resignations.

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The important position of Assistant Ombudsman is discussed in more detail in the next section. Gordon Smith, who was appointed Principal Investigation Officer on 2nd February, 1982, brings to his task considerable practical experience and realism. He has shown a particular ability to assist new investigating officers in appreciating their role and tasks. He also has a gift of bringing harmony between diverse groups.

Investigating officers are entrusted with important delegated functions. Their task is to ascertain all the relevant facts so that unless the complaint is resolved a judgment can be made as to whether there has been "wrong conduct" by the public authority or not. Some have shown outstanding ability and carried out important investigations promptly and impartially.

Inevitably a change of Ombudsman brings some changes. In the current year the staff have had to adjust to these changes and new procedures which are outlined in this Report. In particular, the Deputy Ombudsman, Daryl Gunter, has had a very onerous task. He and the staff as a whole have my thanks.

21. New Assistant Ombudsman: Police and Prisons

During the year the position of Assistant Ombudsman, vacant since the resignation of Roger Vincent in February 1981, was filled by the appointment of Susan Armstrong. Susan Armstrong took up her position on 26th October, 1981.

The role of Assistant Ombudsman as announced by the Premier Mr Wran was created to exercise, within the Office of the Ombudsman and subject to the Act, the primary responsibility for handling complaints from prisoners and also the limited functions conferred upon the Ombudsman under the Police Regulation (Allegations of Misconduct) Act, 1978.

Prior to her appointment, Susan Armstrong was Director of Legal Aid in South Australia. She has brought to her new task considerable enthusiasm coupled with practical realism and administrative experience.

In the area of complaints by prisoners the Assistant Ombudsman is virtually a Prison Ombudsman. Believing that wherever possible prisoners making complaints should be interviewed and the matter the subject of complaint investigated at first hand, Susan Armstrong has substantially increased the number and regularity of visits to the State's geographically widely dispersed gaols. She has been ably assisted in her task by two specialist investigating officers. Apart from reference to certain section 19 investigations carried out by the Ombudsman, section 3 of part 1 of this report was written by the Assistant Ombudsman and represents her views.

The sensitive area of complaints against Police has been joint responsibility of the Ombudsman and the Assistant Ombudsman. In the early part of the year under review, it was necessary for the Ombudsman to take vigorous action to reduce an alarming backlog of unfinalised police complaints which existed at the time he took office. This backlog which had apparently been due to staff shortages, including the unfilled Assistant Ombudsman position, had been the subject of trenchant criticism by the former Commissioner of Police, Mr Lees. Despite the Public Service staff freeze the Premier gave his consent to the temporary use of two barristers and a solicitor on a part-time basis to assist in reducing the backlog. Messrs Robert Meagher, Richard Waddell and Ms Robin Lansdown have the thanks of the Office for the energy they brought to this task and the quality of the reports they wrote. By the end of November 1981 the processing of police complaints was generally up to date.

Given the comments on this topic, following the retirement of the former Ombudsman, Mr Smithers, and the resignation of the former Assistant Ombudsman, Mr Vincent, it was necessary for the new Ombudsman to be actively involved in and monitor closely the handling of police complaints between 1st July, 1981 and 31st December, 1981. Acting on the advice of Queen's Counsel, a new category of "unable to determine" was introduced in respect of police complaints at the beginning of this period. This category covers complaints where the police investigation discloses a substantial conflict of statement between the citizen complainant and the police officers concerned and there is no means open to the Ombudsman to resolve this conflict. Other new procedures were also introduced. The conclusions following the Ombudsman's involvement in and scrutiny of the first six months of the period were set out in a Report to Parliament dated March 1982. This was the subject of extensive media discussions.

The Assistant Ombudsman took over control of the day-to-day administration of the handling of police complaints early in 1982. Unfortunately, due in substantial part to the very extended absence and ultimate retirement through ill health of the Senior Investigating Officer (Police) and the absence of other officers, arrears of work again developed in this area. This has now substantially been brought up to date.

Part II of this Annual Report dealing with complaints against the police under the Police Regulation (Allegations of Misconduct) Act has been substantially written by the Assistant Ombudsman and represents her views. In the writing of that section of the report, as well as the handling of police complaints generally, invaluable assistance has been provided by Greg Andrews who, despite a workload of other matters has been acting as Senior Investigating Officer (Police) during the ill health and ultimate retirement of the person appointed.

22. Staff Recruitment and Rotation

An issue of some concern has been the best method of recruiting and rotating the officers who handle complaints.

Investigating Officers are required to receive and investigate complaints from members of the public about alleged conduct of government departments and instrumentalities. The role requires an understanding and receptive attitude to members of the public and enthusiasm in any investigation. Contact with individuals who may have difficult personalities, and the need to remain impartial while dealing with conflict situations, make heavy demands on patience and enthusiasm.

Contact with other Ombudsmen at a conference in Wellington, New Zealand in September 1981, enabled me to discuss how the problem of possible "burn-out" is approached in other countries. From discussions, I found that in general it is thought few people can effectively engage in this type of work for more than five years. The Tasmanian Ombudsman, for instance, makes appointments for limited periods of three to five years. The United Kingdom Parliamentary Commissioner (the equivalent of Ombudsman) provided me with a paper on the U.K. practice of recruiting investigation officers on secondment from government departments for periods usually of three years.

Accordingly, I decided to seek appropriate approvals for the recruitment of future investigation officers by both secondment from within and appointment from outside the Public Service in each case for periods of up to three years. Early notification of this proposal was given to the relevant union. This proposal was discussed with the Secretary of the Premier's Department and the Public Service Board. Consent was ultimately given towards the end of the year under review. Two positions have now been advertised and filled on this basis. There were a large number of applicants and their overall calibre was high.

There remains the matter of investigating officers appointed under the former system who have been at the Office of Ombudsman for more than five years. I have made, and will continue to make, requests for rotation or relocation of investigating officers in this category, and from time to time will report on progress. This is in accordance with modern public service management policies. Rotation programmes and lateral transfers are supported in the Wilenski Reports. In any event, whatever the position in the Public Service generally, and without reflecting in any way on the officers concerned, it is in my view undesirable both from the viewpoint of the Office and the officers concerned that persons should be appointed investigating officers in the Office of the Ombudsman in effect until retirement.

23. Inability to replace absent officers

The Ombudsman's Office has had problems with staffing during the Public Service "freeze". In general, no relief staff has been available to fill the positions of officers absent on extended sick leave or on maternity leave. While sympathizing with those who have health problems, and fully supporting the right of working women to adequate maternity leave, I have nevertheless felt concern at the backlog of complaints that builds up during unexpected staff absences.

These problems have been discussed with the Premier's Department, but little relief has been available because of overall staff ceilings. Officers who have extensive sick leave entitlements through many years' employment in the Public Service in other Departments or Authorities remain on full salary for the period of their absence, and replacement staff cannot be temporarily employed while there is a freeze.

The Office was grateful that arrangements were able to be made with the Public Service Board and the Department of Environment and Planning to second Dr R. Yardley, formerly of the Department of Environment and Planning, initially for a period of three months to work as an investigating officer. The case load of all officers, though, has remained very high throughout the year.

24. Publicity

During 1981–82 new pamphlets informing the public about the Ombudsman's Office have been developed with the help of the Advertising Branch of the Premier's Department. One is an updated version of the existing pamphlet, "Your Ombudsman—A service for every citizen". A simpler, more personalised version of this features a photograph of the Ombudsman. There is also a multi-lingual pamphlet with text in English, Greek, Serbian and Vietnamese.

These pamphlets have been distributed through the Government Information Centre at 55 Hunter Street and through its regional offices, and through Premier's Department promotions during Carnivale and at the Easter Show. This has led to a number of country and local newspapers publishing the shorter pamphlet as a news or information item. Two excellent pilot radio commercials were developed by Advertising Branch.

During 1981–82 there has been considerable media coverage of the Ombudsman's investigations. Radio commentators and newspaper reporters, by taking an interest in the special report to Parliament on complaints against the Police, the Liddell investigation, and the issue of retrospective charging for electricity, have greatly increased public awareness of the role of this Office. The Ombudsman also took part in a television debate on the ABC's Nationwide. The media play an important role in informing the public of their rights as well as covering current issues. The generally responsible approach of the media to the functions of this Office is appreciated.

There are undoubtedly still many citizens of New South Wales who remain unaware of the existence of the Ombudsman or are intimidated by the complaint procedure. In particular, it is considered that there is inadequate knowledge of the utility of the Office in country areas, among the poor and disadvantaged, and among ethnic and Aboriginal communities. Information on a pilot public awareness campaign in the Western Suburbs of Sydney in the year under review and the need for increasing accessibility of the Office of the Ombudsman to all citizens is discussed in the next section.

25. Community Information Programme

During the year an analysis was made of the source of complaints received in this Office. One point that became evident was that the services of the Ombudsman seem to be used by more articulate members of the community rather than by the community as a whole. One group that did not seem to be using the services to a proportional extent were those from the outlying dormitory areas of Sydney.

To this end the Office conducted a pilot programme in the Western Area of Sydney (Mount Druitt) and South Western Area (Campbelltown) to assess the demand for services in those areas and to make available information on the role of the Ombudsman and, if necessary, take enquiries from those areas. To assist in the programme the Office acquired a portable booth which was erected in the two shopping centres at those venues mentioned. At Mount Druitt the Office ran the booth on two consecutive Thursdays, including the late night shopping period, preceded by a programme of radio and newspaper advertisements. At Campbelltown the Office ran the booth for three and a half days, including Thursday night shopping and Saturday morning. As with the Mount Druitt exercise, the event was preceded by radio and newspaper advertisements.

Observations of those exercises suggest:

- The public surveyed have become more aware in recent months of the existence and basic role of the Ombudsman.
- The public are not fully aware of the jurisdiction and *specific role limitations* of the Ombudsman under the Ombudsman Act. They constantly confuse the areas of jurisdiction of the New South Wales and Commonwealth Ombudsman.

Based on the findings of those two comparative exercises, it is considered that the Office should as much as possible take the services to the outlying areas of metropolitan Sydney and the country, where complainants or potential complainants will have the opportunity at first hand to discuss particular problems with investigation staff.

In the Budget submissions for the year ended 30th June, 1983 the Ombudsman proposed country circuits, each of which are to be conducted over a period of one week using two officers to the circuit. Broadly, the circuits are to the Far North Coast, North Coast New England, Newcastle Hunter, Central West, South Coast, Illawarra, Murrumbidgee–Riverina, South West, and Bathurst–Orange.

Regrettably, current State budget difficulties have led to the allocation of insufficient funds to permit the fulfilment of these plans. At best, available funds will permit only selected limited pilot country visits which should provide information and experience which will be useful if the funding position improves in later years.

26. The need to computerize records in the Ombudsman's Office

The Ombudsman's Office in N.S.W. relies on a cumbersome, manually operated, records system. In contrast with most other similar offices in Australia and overseas, it has no automatic retrieval of information such as complaint statistics in particular categories. Precedents must be checked in a card index, and less cross-referencing is available than could be achieved using a micro-computer.

The number of complaints received each year has grown steadily, and now totals over 5,000. This volume of complaints makes heavy demands on staff time for file creation, filing, card indexing, and so on; and also means that the space required for records has grown. Although most files which are more than two years old are stored by the State Archives, storage space is already crowded.

During the year a submission was prepared which set out the case for computerization of records using a micro-computer with word processing capabilities. Such a system would provide more sophisticated record-keeping than is currently possible. The word processor would enable standard acknowledgement and follow-up letters to be prepared, and would also produce multiple copies of reports when necessary.

A number of suitable systems were considered and costing done on systems with the required capabilities. The cost of hardware, software and initial consultancy fees to cover programming and training, was estimated at $22,500. Unfortunately this project has had to be abandoned for the time being following its exclusion from the Budget Estimates for 1982–83. While it is appreciated that the 1982–83 State Budget was prepared in what the Treasurer described as "times of deep national economic difficulty" (Budget Paper No. 1, p. 2), lack of computer facilities will prevent the Office's records system reaching optimum efficiency.

27. Telephone System

Telephone services in the Ombudsman's Office urgently need upgrading following the enlargement of the jurisdiction of the Office to include complaints against local councils and the police. Last year consultations were held with the Department of Public Works as to how we should best approach problems with our telephone system. This is an issue of crucial importance in the Office's ability to serve the public.

At present there are insufficient lines, with the result that many calls are lost when the switchboard becomes overheated. A number of investigating officers share lines. Members of the public wishing to speak to the officer handling their complaint are often not able to do so because another officer is using that line. A large, fully-automatic system is needed, with more lines in and out and the capacity for dialling in directly to extension numbers of individual officers. The need for such a system was accepted by Public Works subject to Budget approval.

A new PABX system would cost approximately $45,000. Regrettably this amount has not been granted by Treasury in the Budget for the year ended 30th June, 1983, because of current economic constraints. As a short term expedient the Public Works Department recommended a PMBX satellite system, to supplement the existing system. This is a manual system, and hence is unsuited to the Ombudsman's Office, which requires a receptionist who can devote her energies to dealing with members of the public who wish to lodge complaints. Sympathetic and efficient complaint handling is the prime function of the Office, and it would be inappropriate for the receptionist's capacity to assist complainants to be interfered with by the requirements of a manually operated switchboard. This short-term alternative was rejected.

It is hoped that at least for the year ended 30th June, 1984, if not earlier, the Government will be in a position to allocate sufficient funds to the Office of the Ombudsman for an enlarged PABX system to enable the Office to effectively cope with the enlarged workload entrusted to it by Parliament. Ease of public access is of vital importance.

28. Country Visits

The Ombudsman Act, 1974 requires my Office to serve all the citizens of New South Wales, and not just those who happen to live in Sydney. There are three main reasons for country visits to be carried out by staff of this Office. First of all, complaints from prisoners who are living in the State's widely dispersed prisons continue to be a major area of concern and frequently require on-the-spot investigation. Witnesses to an alleged prison incident, for instance, cannot be interviewed effectively by mail, and it is necessary for an investigation officer to visit the gaol concerned.

Secondly, the investigation of individual complaints from other citizens in the country may require on-the-spot interviews for similar reasons. Certain types of complaints against local councils cannot properly be investigated without visits to the premises or area in question. It is unreasonable to expect complainants and their witnesses to travel to Sydney in such cases, as the cost involved would be prohibitive for many people.

Thirdly, the fact that city residents have better access to information about the role of the Ombudsman means that a systematic campaign to improve public awareness of the Ombudsman's Office among country residents is long overdue.

In any event, only $12,000 has been allocated for travel in 1982–83. The effect of this will be to restrict country travel primarily to personal visits to prisons in country areas. There will be limited funds for on-the-spot investigation of complaints arising from country areas and very little for travel in connection with what will now have to be no more than a pilot country public awareness campaign, if that can be managed at all.

29. Budgeted "Savings" on Salaries

A problem arises from the practice of Treasury of assessing, within the Salaries Item, the savings expected to accrue during the year from the delay in filling positions vacant at the start of the financial year and from "turnover" savings during the course of the year. In a small office with a heavy workload there is, or ought to be, a considerable sense of urgency about filling staff vacancies. A management aim, by use of eligibility lists or otherwise, ought to be to eliminate any delay in replacement of staff.

In the financial year ending 30th June, 1983, the budgeted "saving" included in the Budget of the Office of the Ombudsman by the Treasury is $37,000. This is apparently a generalized figure based on "past experience". It was not discussed with the Ombudsman.

While the budget difficulties arising from the national economic crisis are appreciated, the effect of inclusion of a saving which may not be made should be pointed out. For if no saving of the budgeted figure does become apparent in the course of the financial year drastic action may be necessary to delay appointments in the final part of the financial year. While this problem is not unique to the Office of the Ombudsman, the budgeting approach clearly can have a more severe impact on a small office with high workloads than on larger departments or authorities.

30. Relationship with Premier's Department

The Ombudsman's Office is in a somewhat anomalous position in its relationship with the Premier's Department. The Ombudsman and Deputy Ombudsman are appointed by the Governor as independent statutory officials. It is intended that the Assistant Ombudsman will be similarly appointed when the proposed legislative amendments to the Ombudsman Act have been passed. This independence is important if the Office is to be seen as performing its functions in a vigorous, fair and impartial manner. Decisions are based on a logical consideration of the facts and in accordance with the powers conferred by the Ombudsman Act. The public esteem of the Office depends vitally on this degree of independence from the bureaucracy which is the subject of investigations.

The anomaly arises from the fact that, administratively, the Office functions as a unit of the Premier's Department. Decisions about staffing and expenditure are negotiated with the Permanent Head, the Secretary of the Premier's Department, or officers of his Department. In this respect there is a great contrast between the position of the N.S.W. Ombudsman and that of the Chief Parliamentary Ombudsman of Sweden. To quote again from the *Canberra Times* interview with Mr Per-Erik Nilsson (31st January, 1982):

> "He described his office's budget as a preliminary limit which could be exceeded as necessary. 'We can hire extra personnel, we can travel, we can do anything . . . Of course we try to keep within the budgeted limit, but no one says anything if we can give a reasonable explanation of why we exceeded it'."
>
> "If he needed more staff, he would hire them and *afterwards* inform the Parliamentary Standing Committee to which he reports."

All cheques have currently to be signed by officers of Premier's Department. Approval has to be obtained from Premier's Department to incur expenditure over $1,000 even although within budget. Use of air travel, even within budget, has to be similarly approved. Approval to recruit temporary or permanent staff for the Office of the Ombudsman has to be approved by the Secretary of the Premiers' Department.

It is even necessary to seek Departmental approval for staff to work minor overtime hours which are well within the budgeted overtime.

The case for independence of the Office of Ombudsman is not merely a matter of release from administrative dependence on efficiency grounds. It is much more important that the Office of the Ombudsman should be seen by the public to be free from any possibility of influence by any Department it may be called upon to investigate. As it happens, during the current year an investigation under the Ombudsman Act was commenced following a complaint of "wrong conduct" involving at least one officer of Premier's Department. While no adverse consequences of undertaking such an investigation on the Office of the Ombudsman were manifest or were in any way anticipated, it is important that the independence of such an investigation should not be the subject of suspicion in minds of the complainant or the public. The analogy with the maxim that "justice should be seen to be done" is appropriate.

A satisfactory independence for the Office of Ombudsman might be achieved if the Ombudsman's Office were declared an Administrative Office and listed in Schedule 2 of the Public Service Act. In that event, the Ombudsman, rather than the Permanent Head of the Premier's Department, would be the person exercising the functions under Section 46 (2) of the Public Service Act. Bodies that enjoy Administrative Office status include the Auditor-General's Department, the Valuer-General's Department and the State Superannuation Board. A more radical alternative, which has been adopted in a number of countries and in Tasmania, is to make the Office of Ombudsman completely separate and independent from the Public Service.

Statutory independence conferred by an amendment to Schedule 2 of the Public Service Act would also free officers of the Ombudsman from the embarrassment of any conflict of loyalty in those cases when it may be necessary to investigate the possibility of wrong conduct having occurred in the Premier's Department. Such cases should, of course, be investigated as rigorously as those involving any other public authority and there should be no doubt in the public mind on this score.

Despite these comments, my gratitude to officers of the Premier's Department (and in particular Mr John Harrison) for the efficient and helpful way they have handled recruitment and related administrative matters should be placed on record.

Section B—OMBUDSMAN ACT: LOCAL GOVERNMENT

31. Jurisdiction in Local Government complaints

Section 13 (5) of the Ombudsman Act in effect provides that where there is a right of appeal or review available to a complainant against a local government authority there needs to be exceptional public interest or other special circumstances to justify intervention by the Ombudsman. The Office is not intended to be a substitute for the courts. Complainants with legal remedies available to them in general should exercise those remedies. If they succeed, they obtain an enforceable order rather than the merely persuasive effect of any recommendations made by the Ombudsman.

Another jurisdictional limitation in local government arises from the restrictions implicit in the words "matter of administration". A definition of maladministration was given in the textbook on Administrative Law, Judicial Review of Administrative Action by S. A. de Smith earlier in this report (see Part 1, Section A, Sub-section 19). Clearly the Ombudsman may intervene where it is alleged that a Council has acted ultra vires or beyond its power, or with mala fides or with some impropriety. This, however, is not the sole ambit of possible wrong conduct in a matter of administration under the Ombudsman Act by a Council, its aldermen or officers.

A problem arises, however, where complaints are made that Council has passed a resolution after debate. These are described as "policy" decisions for want of a better word. Very often complaints are made which are merely an extension of the debate which ought to have concluded with the decision of Council. These complaints will not be taken up unless there is very clear material put forward which shows that there has been some form of wrong conduct by the Council or its officers.

A recent letter to a Shire Clerk gave some general information about the type of complaints investigated by the Office of the Ombudsman relating to the conduct of Councils. A list of examples where complaints may arise is reprinted here as it may be helpful to others in local government:

(1) Council's failure to comply with the requirements laid down by the Local Government Act, 1919, the Environmental Planning and Assessment Act, 1979, the Public Health Act, 1902 (and the Ordinances and Regulations made under those Acts) as well as the provisions of any planning controls in force in the Municipality.

This would include a Council's failure to:

(a) take into account those matters it is required to consider prior to granting various consents, licences or approvals, including compliance with the various administrative procedures laid down under the provisions of the various Acts, Regulations, Ordinances and Planning Controls;

(b) undertake the necessary inspections prior to determination being made;

(c) enforce compliance with the approvals, licences or consents, and conditions attached to such approvals, licences or consents.

(2) Council's failure to require its servants to prepare suitable reports for its consideration and to maintain adequate records.

(3) Council's failure to give proper consideration to a matter prior to making a determination.

(4) Council's failure to adequately advise adjoining owners that a building application has been received, and to allow those persons so notified to peruse the relevant building plans.

(5) Council's failure to ensure that its servants exercise delegated authority in a manner which is appropriate, authorized and reasonable.

(6) Council's failure to rectify administrative oversights or errors.

It should be emphasized that this list is given purely by way of example. The possible field of "wrong conduct in a matter of administration" in the local government area is, of course, not limited to the list set out.

32. Denial of Liability by Councils—Insurance Type Claims

The failure of local Councils to give reasons when denying liability on claims normally covered by insurance has been the source of many complaints both in the past year and previous ones. Officers of the Ombudsman's Office believe that there is widespread public dissatisfaction particularly by small claimants against Councils which, it was alleged, have often merely referred claims to their insurers which, in turn, almost automatically deny liability. This puts such claimants in the difficult situation of having to resort to the courts for small sums which are hardly worth pursuing in court.

Most complaints about insurance claims against Councils refer to cases where the Council has simply passed the claim on to the relevant insurance company. There is no evidence that such a system represents an adequate acceptance of responsibility by Councils towards their residents. In my view, a local government authority has a responsibility to see that its insurers deal with a claim expeditiously and that a reasonable explanation for rejection is given. In other words, a local government authority should do more than merely forward a claim to its insurers, and no more. An authority should not be permitted to wash its hands of the whole affair in this way. The authority, at the very least, has a responsibility to see that a claim receives adequate and prompt attention and that a claimant is given a decision supported by clear and sufficient reasons. Legal advice given to some Councils supports the view that there is no legal impediment to giving such reasons.

If one had any doubt about the importance of this area a recent document discovered on a Council file would give cause for concern. In part the Council Officer's document stated:

> "As I have indicated earlier in an attempt to tighten up on the handling of these claims it is now common for claims to be rejected and liability denied notwithstanding the fact that when one reads Mr . . .'s advice there is probably little question that Council is, if taken to Court, liable. The attitude of denying liability is very much akin to the approach which is quite common amongst Insurance Companies who explore every possible avenue even to the extent of bluffing in their attempts to resist payments.
>
> Whilst one may question the ethics or morality of such an approach it can always be argued that there is some element of doubt."

In an effort to be constructive at the outset I forwarded to the Local Government Association of New South Wales and the Shires Association of New South Wales suggested Recommended Procedures for dealing with these claims. (These Recommended Procedures are reproduced following this note).

Very recently amicable discussions have taken place with representatives of these Associations and it is hoped that eventually uniform procedures will be adopted. In the meantime, the Ombudsman will continue with investigation of particular complaints and in the case of findings of wrong conduct will make reports to the Minister for Local Government and, where necessary, to Parliament.

The whole topic is one requiring substantial scrutiny by the Office of the Ombudsman. It will be the subject of further comment in the next Annual Report.

33. Recommended Procedures—Insurance Claims

(i) When the claimant verbally contacts a Council he or she should be advised to submit details of the claim in writing for consideration by the Council.

(ii) Upon receiving the formal claim, the Council should immediately undertake a preliminary investigation of the factual basis on which the claim is based. The Council also should immediately acknowledge receipt of the claim to the claimant on a "without-prejudice" basis and forward the claim to the appropriate insurers. This advice of claim should be accompanied by or followed by a report from the appropriate Council Officer and signed by the Clerk detailing the results of the investigation of the incident by Council.

(iii) The insurer upon receiving such claims information as is provided and conducting such further investigation as may be necessary examines details of the claim circumstances. Having determined its attitude towards the claim the insurer should communicate this advice directly to the Council giving reasons for its decision especially if indemnity or liability is to be denied.

(iv) The Council shall be under an obligation to request from its insurers reasons for any delay in the processing of the claim and to take steps to ensure that the claim is finalized expeditiously. The Council should advise the claimant of any reasons for delay.

(v) The Council upon receiving advice from insurers regarding their attitude or recommendations regarding the claim should adopt one of the following courses of action:

(a) If the insurer acknowledges that a liability exists to the claimant and also that indemnity will be provided to the Council under the policy:

The clerk should inform the claimant by letter that the matter has been reported to insurers and further that such insurers or their legal advisors will shortly be in contact with the claimant on behalf of the Council.

(b) If the insurer acknowledges that a liability may or does exist to the claimant but that indemnity *will not* be provided to the Council under the policy:

The Council should consult its own solicitors to confirm whether a liability exists to the claimant and further that denial of indemnity by insurers is justified.

If the Council's solicitors confirm that a liability exists to the claimant and also that the Council is not entitled to indemnity under its liability policy the solicitors should be instructed to negotiate settlement terms on behalf of the Council.

However, if the Council's solicitors confirm that a liability exists to the claimant but dispute the insurers contention that indemnity is not available under the policy, the solicitors or insurance brokers for the Council should be instructed to resolve the matter of indemnity with insurers.

(c) If the insurer contends that a liability does not exist to the claimant and accordingly that liability should be denied to the claimant, the Council should seek confirmation of such advice from its own solicitors and if they agree, the claimant should be informed by letter from the Council that liability is denied.

As soon as a final decision has been made on the claim either the Council or the insurer will advise the claimant of the result and, if liability is denied, the reasons for such denial. It shall be the responsibility of the Council to ensure that this is done.

34. Notification of adjoining owners in relation to Building Applications

In the course of various investigations it has been found that Councils normally adopt the practice of considering the likely effect of a proposed building on the amenity of the immediate neighbourhood, when giving consideration to residential building applications.

The results of a recent survey carried out by this Office have shown that most Councils within the greater Sydney Metropolitan region (and a majority of country Councils which contain at least a sizeable urban area within their boundaries) already adopt the policy of notifying affected persons and allowing inspection of building application plans, at least in some situations. However, to date, over thirty complaints against Councils have been received by this Office relating (at least in part) to the fact that such considerations either did not take place or were carried out in an unacceptable manner.

These complaints were normally based on a claim that new buildings (or extensions/alterations to existing buildings) had significantly detrimentally affected the use and enjoyment of the complainant's property due to such things as: loss of views; light; amenity or privacy; the creation of drainage problems; and the creation of environmental or geological hazards.

The main aspects of these complaints were that Councils:

(i) failed to notify those persons that could reasonably and properly be considered to be affected by the proposed building;

(ii) refused to allow "properly interested persons" to inspect the relevant building application plans as a basis for deciding whether or not to lodge an objection with Council; and

(iii) failed to take into consideration any valid objections lodged by "properly interested persons".

In May/June 1979 the former Ombudsman wrote to all the Municipal, City and Shire Councils in New South Wales requesting advice as to the policies, attitudes and procedures adopted by each Council relating to the question of notification of "properly interested persons" and perusal of building application plans by those persons.

Responses were received from 172 Councils (including 36 Councils located within the greater Sydney metropolitan region and 136 country Councils) and the following results were obtained:

(i) Approximately 38 Councils notified possibly affected persons that building applications had been received, and allowed those persons to peruse the building application plans, at least *in some situations*. This figure included 55.5 per cent of the metropolitan Councils and 14 per cent of the country Councils.

(ii) A total of 29 Councils notified possibly affected persons and allowed perusal of the plans in those situations where it was considered that the amenity of those persons could be affected (i.e. *in most situations*).

(iii) Only 18 Councils *always* notified possibly affected persons and allowed those persons to inspect the Relevant plans. This figure included 25 per cent of the metropolitan Councils and 7.3 per cent of the country Councils.

(iv) 44.5 per cent of metropolitan Councils and 86 per cent of country Councils did *not* notify possibly affected persons or allow *any* individual to inspect building application plans (without the written consent of the owner).

The main impediments seen by Councils to notifying possibly affected persons and allowing those persons to peruse the relevant plans were:

(i) *Section* 314 (2) of the Local Government Act which specifies a time limit for the determination of building applications;

(ii) *Section* 312 (2) of the Act which provide that plans and specifications lodged with Council are not to be used for any purpose other than giving effect to the provisions of the Act;

(iii) *Clause* 56 (b) to Ordinance No. 1 which states that Council records are not to be shown to any person without the permission of Council;

(iv) administrative costs and staff shortages; and

(v) invasion of the privacy of those persons who lodge building applications.

Some Councils considered that public participation was not required or needed as the Councillors were elected to make such decisions for the ratepayers.

In February, March and April of this year, 64 Municipal, Shire and City Councils were contacted (39 Councils within the greater Sydney metropolitan region and 25 country Councils—chosen on the basis that each contained at least one sizeable urban area within its boundaries) and requested to advise concerning their policies and procedures regarding notification and perusal of building applications by adjoining owners and other "properly interested persons".

The results of this survey can be summarised as follows:

Councils	Notify and allow perusal	Allow perusal	Notify only if amenity affected	Notify only if B.A. out of ordinary or contentious	No notification or perusal
Country	1	11	6	6	8
Metropolitan ..	8	12	7	12	5
Totals ..	9	23	13	18	13

NOTE: As a Council could fall into more than one category, the totals shown above do not relate to the number of Councils contacted.

(i) Out of the 64 Councils surveyed, 51 Councils (80 per cent) notified possibly affected persons that building applications had been received, and allowed those persons to peruse

the building application plans, at least *in some situations*. This figure included 34 (87 per cent) of the 39 Councils located within the greater Sydney metropolitan region. (Note: Due to the non-representative nature of the country Councils contacted, it would not be relevant to provide a percentage breakdown of the country Council's responses).

(ii) A total of 39 Councils (61 per cent) notified possibly affected persons and allowed those persons to inspect the relevant plans, at least in those situations where it was considered that the amenity of those persons could be affected (i.e. in most situations).

(iii) 9 Councils (14 per cent) always notified possibly affected persons and allowed those persons to inspect the relevant plans. This figure included 23 per cent of Metropolitan Councils.

(iv) Only 13 (20 per cent) of the Councils surveyed refused to notify possibly affected persons or to allow those persons to inspect the relevant plans (without the written approval of the owner), except as required under the Act and Ordinances.

The main impediments seen by Councils, to the notification of possibly affected persons, and allowing those persons to peruse the relevant plans, were those as set out above.

A matter raised by the majority of Council servants who were contacted during this recent survey was that there existed a significant degree of confusion as to the practical legal effect of the restrictions and requirements under the provisions of *Section* 321 (2) of the Local Government Act, 1919, and *Clause* 56 of Ordinance No. 1.

It would appear that a majority of those Councils which notify and allow perusal of plans, have done so in the knowledge that they may be breaching one or both of the provisions of the Act and Ordinance listed above. This situation was usually explained on the basis that the Council was of the opinion that possibly affected persons ("properly interested persons") had a right to information concerning proposals which could affect the use and enjoyment (amenity) of their property. This view often went hand in hand with a general Council policy of fostering "open government" and "freedom of information".

On the basis of the advice received from the various Council servants who were contacted during the recent survey, it would appear that there is a general trend towards allowing greater participation by "properly interested persons", which includes the provisions of adequate information to those persons to allow such participation to be valid and useful.

Although the results of the Questionnaire Survey (carried out in May/June 1979) and the recent survey are not totally comparable, it would appear (from the comparisons that can be made) that there has been a significant *decrease* in the number of (at least) metropolitan Councils which *refuse* to notify or allow perusal of plans. In the Questionnaire Survey it was found that 44.5 per cent of the metropolitan Councils adopted this approach as compared to only 13 per cent of those Councils at the time of the more recent survey.

In addition, of the 13 Councils which advised that they still refuse to notify or allow perusal of plans (in any situations apart from those specified in the Act and Ordinances), 2 of these Councils advised that Council servants were at liberty to discuss the details of building applications with "properly interested persons".

The Ombudsman is of the opinion that if Councils were to notify adjoining owners who could be detrimentally affected by building applications ("properly interested persons") this would overcome many of the problems which otherwise develop in these situations. If a development could create serious problems for adjoining owners (such as loss of view, light, amenity, privacy or drainage problems) it would appear to be reasonable and appropriate for a Council to consider such matters when deciding whether to approve, approve with conditions, or refuse a building application. It is reasonable to assume that Councils could only be helped in their considerations by receiving the comment of those persons who considered that the application would adversely affect them. Such comments could only be informed, accurate and useful in situations where "properly interested persons" are able to inspect the plans which accompanied the building application. Such a procedure would often dispel misapprehensions and prevent purposeless and misplaced objections.

There is a growing body of opinion in the community at large that the activities of local government bodies should be open to public scrutiny to a far greater degree than they have been in the past. There are (as it is mentioned in a letter from the Department of Local Government to Warringah Shire Council of 14th November, 1978) "increasing calls for more open government and a greater degree of 'third' party participation in the decision-making process". In the same letter the Department of Local Government stated that Councils "not infrequently actively canvass public opinion and base decisions partly on representations received and use them in responding to appeals to the Local Government Appeals Tribunal".

At present there is no requirement, under section 313 of the Local Government Act, 1919, for Councils to consider the likely detrimental effects of a building on adjoining properties. However, there are provisions under section 308A of the Act and under Clause 11.6 (5) (b) of Ordinance 70 which require Councils to notify adjoining owners (and allow perusal of plans) in certain situations. Further, the requirements of *section* 342ZA of the Local Government Act, 1919, are still in effect in relation to Development Applications for Residential Flat Buildings.

A considerable degree of confusion in this matter arises out of the provisions of Section 312 of the Local Government Act, 1919, which states that:

> "one copy of such plans and specifications shall become the property of the Council but shall not be used for any purpose other than giving effect to the provisions of this Act or of any Act relating to local government or public health".

As it is provided that one copy of the plans and specifications shall become the property of the Council, it would appear that this provision was included in the Act to limit the rights which would otherwise flow from ownership and prevent such mischiefs as breach of copyright. Some Councils have interpreted this provision to mean that the subject plans cannot be used for the purpose of allowing inspection by persons who could be affected by the approval of a building application. The Ombudsman has formed the opinion that the inspection of building application plans by "properly interested persons" is not inconsistent with the purpose of giving effect to the provisions of the Local Government Act, 1919, on the basis that such inspections could result in the provision of further information to Councils for consideration in the determination of building applications.

Reluctance to allow inspection of plans by adjoining owners has also been based on the provisions of clause 56 (b) to Ordinance No. 1 which specifies procedures relating to Council records and states:

> "Except as otherwise provided by law no member or servant of the Council shall be at liberty to show, lay open or expose any record of the Council to any person other than a member without the leave of the Council".

The former Ombudsman considered this matter in some detail on a number of occasions and the Ombudsman shares his opinion that failure to allow the inspection of building application plans by "properly interested persons" is unreasonable and unjust under the provisions of the Ombudsman Act, 1974.

Various opinions in this matter have been based on the statements made and principles laid down in the judgement of Mr Justice Needham in the case of *Bray* v. *Faler* (1978) 1 *N.S.W.L.R.* 335. In this case Judge Needham stated that the plaintiff claimed that she had a right as a neighbouring owner to be considered, and presumably to have her views considered by the Council, when an application for building approval is made by her next door neighbour. He also stated that Council did not refer to him any case which draws out of such a section a right in law to the neighbour or to some person who may be affected by the decision of the Council other than the applicant, under which right such a party may have a right to be heard by the Council. He then stated, "There is nothing in my opinion, in the Local Government Act, which gives a right to a neighbour to interfere with the application of an owner for building approval to have his or her views as to the propriety of the application considered by the Council."

However, he also stated, "It may be that the law should provide that neighbours should be heard in applications for building approval in residential areas".

This issue of natural justice relating to this matter was raised in the former Ombudsman's investigation of a complaint against Woollahra Municipal Council in 1979. In this case the complainants alleged they had been denied natural justice in relation to Council's approval of a building application on an adjoining property.

In a letter to the former Ombudsman, the Council rejected the allegation that the complainants had been denied natural justice and further stated that:

> ". . . the objectors appeared to have presumed that they have legal rights to influence the type of development which should take place on an adjoining property".

The implication, though not directly expressed, was that adjoining owners had no legal rights since such a consideration was not included in the various heads of consideration under *Section* 313 of Part XI of the Local Government Act. A key point to Council's assertion that there was no denial of natural justice was therefore the fact that there was no inclusion in *Section* 313 of the Local Government Act that Councils should consider the affects of building applications on the immediate neighbourhood. This point was also made by Judge Needham in the *Bray* v. *Faler* case where he stated that there was no denial of natural justice as the concept of natural justice had to be linked to a right written into the particular Act in question, i.e., the Local Government Act, 1919.

A Report under the provisions of Section 26 of the Ombudsman Act, 1974 has been made to the Minister for Local Government and Lands, (and, further to preliminary consideration and correspondence) *it was recommended* that the Local Government Act, 1919, be amended by:

(a) The removal of any possible restrictions on the inspection of building application plans showing the external configuration of a building in relation to the boundaries of the site, by "properly interested persons".

(b) The inclusion of a requirement under section 313 of the Act for Councils to consider the likely effect of a proposed building or alteration on adjoining properties.

(c) The inclusion of a requirement under section 313 of the Act for Councils to consider the views and opinions of "properly interested persons" prior to determining building applications for approval to erect buildings which could affect the amenity of an area. This requirement not to relate to building applications for approval to carry out internal alterations, or alterations which do not affect the external configurement or height of a building.

(d) The inclusion of a requirement that Councils notify adjoining owners and other possibly affected persons of any building application for approval to carry out works which may affect the amenity of an area. This requirement not to relate to building applications for approval to carry out internal alterations, or alterations which do not affect the external configuration or height of a building.

Consideration of this matter by the Minister is continuing.

35. Inability of Councils to approve existing buildings

Local authorities must authorise any proposed building or structure before it is built. Legally they are unable to give *post hoc* approvals.

This issue, which is of wide concern to local authorities, was highlighted in several complaints this year.

A case in point was a complaint from an eastern suburbs resident that his neighbours had built an enclosed carport that obstructed part of his view of the ocean. The complainant had had the opportunity to view the plans before the carport was built. He made no objection at that stage because, according to the plans, the carport was to be an open one, not affecting his view.

The Council informed the complainant that it had no option but to approve the application to build the carport because it conformed with the requirements of the Local Government Act and other ordinances.

The Council's conduct was found to be wrong in this case because Section 311 of the Local Government Act, 1919, requires approval to be obtained *prior to* the erection or alteration of a building. Further, section 306 states that "a building shall not be erected . . . in contravention of the provisions made by or under this Act".

The case raises the issue of the dilemma a Council faces once a building (or carport) is erected without prior approval or contrary to approved plans. A conference with Council officers and their solicitors enabled a wide range of views to be shared.

Matters discussed included the difficulties experienced generally within Local Government, and the means available to authorise building work undertaken without Council approval. My attention was drawn to an article in the April 1982 edition of the Local Government Bulletin, page 31, titled "Illegal Erections—Must They Come Down?" This article evidences the concern of Councils generally, and the Local Government Association, which has recently prepared a submission to the Office of Local Government in regard to this subject matter.

I accept that although the Council's conduct in this matter was wrong in terms of the Ombudsman Act, the Council and its Officers have not acted wilfully in defiance of the provisions of the Local Government Act, but took the "lesser of two evils" approach to realise a practical solution to the problem. Inquiries have determined that Councils are faced with a real dilemma in the day-to-day administration of Section 317A of the Local Government Act, 1919, and this problem does not previously appear to have been recognized or rectified by prior State Governments.

I have been furnished with a copy of a letter dated 10th March, 1982, sent to the Director, Office of Local Government, by the Municipal and Shires Associations of New South Wales which outlines the problems faced by Councils with respect to section 317A and contains proposals for amendments to that section.

Although I do not fully concur with all the proposals contained in the above letter, I am of the opinion that the proposals contained in point (i) (a) and (b) on page 4 of that letter are appropriate:

"(i) The issue of a certificate should act as conclusive evidence in favour of a bona fide successor in title (not just a purchaser) that the Council has waived its right to issue a section 317B (1A) notice in respect of all or specified building work in existence at the date of the certificate. It should be open to Council to issue a certificate along the following lines:

(a) In Council's opinion there are no contraventions or departures which are such as need be rectified (Gibson *v.* Richardson and Wrench Limited and Kool (1977) unreported, per Waddell *J.*); or

(b) Council has noted the following contraventions/departures with respect to which it reserves its rights under section 317B (1A). There are no other contraventions/departures which are such as need be rectified";

Although any amendment to the Act should be based on the maintenance of the existing scheme and approach of the Act (in relation to the requirement that building approvals should be obtained *before* any works are commenced) from my consideration of this problem it would appear that any such amendment should be framed with the following circumstances in mind:

(a) a situation where a contravention or departure from the provisions of the Act and Ordinances or the approved plans and specifications is discovered by a Council prior to the completion of the erection of a building;

(b) a situation where a contravention or departure from the provisions of the Act and Ordinances or the approved plans and specifications is discovered by a Council after completion of the erection of a building; and

(c) a situation where it is found that a building or work does not strictly comply with development standards, as defined in section 4 (1) of the Environmental Planning and Assessment Act, 1979.

Any amendment should also remove the present requirement on Councils to certify that a building either complies in "*all*" respects (virtually impossible to determine accurately) or to list "*all*" contraventions or departures which are discoverable.

Councils should have discretion to allow the construction of a building to continue, even though the building as constructed does not comply with the approved plans and specifications or contravenes the provisions of the Act and Ordinances.

A further matter which should be incorporated in any such amendment would be to give Councils the express power to require the submission of a survey certificate, as well as other relevant plans, specifications and certificates (as the Council may reasonably require given the circumstances of each case) with any application for a section 317A Certificate.

In my view, an appropriate legislative amendment to section 317A of the Act, to achieve the matters referred to above, could be based on the following provisions:

"(1) In relation to a building, and with respect to the Act, the Ordinances, and the plans and specifications, if any, approved by the Council, the Environmental Planning and Assessment Act, 1979, and any environmental planning instrument, any person may at any time apply for a certificate to the effect that:

(a) in the opinion of the Council there are no contraventions or departures which are such as need to be rectified; or

(b) the listed contraventions/departures have been noted with respect to which Council reserves its rights under section 317B (1A). There are no other contraventions/departures which in the opinion of the Council are such as need be rectified; or

(c) with respect to that part of the building as erected at the date of issue of the Certificate, in the opinion of Council there are no contraventions or departures which are such as need to be rectified.

(2) Application for the Certificate shall be made in writing and shall state the name and address of the applicant, and the particulars of the building in respect of which the Certificate is required.

(3) The Council shall, upon payment of the prescribed fee, as soon as practicable furnish such Certificate to the applicant.

(4) Prior to furnishing such Certificate the Council may require the applicant to submit such plans, specifications and certificates as the Council may reasonably require to make a determination.

(5) The production of the Certificate shall for all purposes be deemed conclusive evidence in favour of a bona fide purchaser for value of a building that at the date thereof, with respect to the Act, the ordinances and the plans and specifications, if any, approved by the Council, the Environmental Planning and Assessment Act, 1979, and any environmental planning instrument, either:

(a) in the opinion of the Council there are no contraventions or departures which are such as need to be rectified; or

(b) the listed contraventions/departures have been noted with respect to which Council reserves its rights under section 317B (1A).

There are no other contraventions/departures which in the opinion of the Council are such as need be rectified; or

(c) with respect to that part of the building as erected at the date of issue of the Certificate, in the opinion of Council there are no contraventions or departures which are such as need to be rectified.

(6) Should the building not comply with any development standard (within the meaning ascribed thereto in Section 4 (1) of the Environmental Planning and Assessment Act, 1979), and the Council is satisfied that strict compliance with that development standard would be unreasonable, unnecessary, or tend to hinder the attainment of the objects specified in Section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act, 1979, the Council may, with the concurrence of the Director of the Department of Environment and Planning, furnish a Certificate to the applicant notwithstanding the non-compliance with the development standard.

(7) Any person aggrieved by the failure of the Council to furnish a Certificate under this Section, within ninety (90) days of the application being made, may appeal against the failure to the Land and Environment Court, and the Court may direct the Council to furnish the Certificate in such terms as the Court orders."

Whether or not the above suggestions are considered to be appropriate should not detract from that fact that the existing situation is unsatisfactory.

It is recommended that the Minister for Local Government and Lands give consideration to these views in conjunction with the current examination of possible amendments to Section 317A of the Local Government Act, 1919.

36. Local Councils as complainants

The Ombudsman Act provides that any person, including a public authority, may complain to the Ombudsman about the conduct of another public authority (section 12 (1)). Accordingly, Local Councils may in appropriate circumstances complain about the conduct of State Government departments or statutory authorities where it is alleged that there has been wrong conduct in a matter of administration (including delay) by the latter authorities (and, of course, vice versa).

During the course of the year several complaints have been made by local authorities or their Mayors about State Government authorities. While themselves being subject to scrutiny under the Ombudsman Act, local authorities thereby have the opportunity to make other authorities with which they are dealing subject to investigation under the Ombudsman Act.

Section C: OMBUDSMAN ACT: PRISONS

37. Introduction

During the past year, a total of 628 complaints were received either from prisoners or in relation to the Department of Corrective Services. This is an increase of 42% over the number received in 1980-81. When complaints carried over from the previous year are taken into account, the Office has handled a total of 833 complaints, during the past twelve months.

Table 2 summarizes the nature and disposition of complaints made against the Department of Corrective Services. Of the 833 complaints dealt with in the course of the year 41 (5%) were found to be sustained; 119 (14%) were found to be not sustained; 92 (11%) were withdrawn or rejected as outside the Ombudsman's jurisdiction; 385 (43%) were discontinued, and 196 (24%) remained under investigation.

It will be observed that a very high proportion of the complaints received are discontinued without a positive finding for or against misconduct ever being made. This occurs for two reasons. First, all complaints in this area are dealt with by two full time investigation officers and the Assistant Ombudsman, the latter of whose responsibilities also cover complaints against police. With this limited staff it would simply be impossible to investigate to finality all complaints received. Second, and perhaps more important, most prisoners who complain to this office are less concerned with having a finding of misconduct recorded than with having their particular problem resolved. In a very high proportion of the discontinued cases—probably about 70%—the file is closed because the problem has been resolved to the complete satisfaction of the prisoner, or because some reasonable compromise has been worked out. The remaining cases are discontinued because in the circumstances no point would be served by continuing with the investigation. Nevertheless, it should be understood that in a number of the files which have been discontinued some wrong conduct probably did occur, but it was considered that the circumstances of the case and the priority which had to be accorded to other more serious matters made further investigation impossible.

Table 3 summarizes the complaints received from different gaols in New South Wales. However, it should be noted that this data is at present available only for the last three months of the financial year, although it is now being recorded on a regular basis.

Table 3 records the gaol where the prisoner was held at the time she/he made the complaint, and it is important to understand that this is not always the gaol at which the cause of the complaint arose. This particularly applies to complaints about transfers, where prisoners usually complain from the gaol to which they have been sent. Thus, transfer complaints originating at Goulburn most commonly involve allegations that the prisoner was unjustly transferred to Goulburn from another gaol of lesser security—in many cases from Kirkconnell; while the considerable number of transfer complaints from Kirkconnell actually came from representatives of a large group of prisoners who were abruptly transferred there from Cessnock. Similarly, the complaints in relation to segregation come from the maximum security gaols where prisoners subjected to such an order are confined, although the decision to impose the order may have been made at another gaol altogether.

38. The Role of the Ombudsman in Corrective Services

The role of the Ombudsman in dealing with complaints from prisoners is limited by the general provisions of the Ombudsman Act. However, particular problems arise in this area because prisoners lack access to other routine avenues of complaint available to the community, and because there is very little public scrutiny or knowledge of gaols.

This Office has therefore adopted the view that a narrow interpretation of its responsibilities in the area of prisons is inappropriate, and while observing the requirements and the limitations of the legislation, has endeavoured to fulfil to some extent a general monitoring and reporting role in addition to discharging its responsibility for dealing with individual complaints. The very limited staff resources available place great constraints upon the extent to which this can be achieved. However, during the year under review, the policy has been adopted of making visits to all institutions in the State, both on a regular basis and as required. It is hoped that this practice ensures that all prisoners can gain effective access to the Office, in addition to keeping us informed of conditions and developments throughout the State.

The Office has endeavoured to work constructively with the Department of Corrective Services, and on many occasions has received good co-operation from its staff. Our investigations regularly bring to light problems or anomalies which can be rectified by administrative action, and in many cases this has occurred without a finding of misconduct being recorded. For example, among the many changes implemented as a result of discussions between this Office and the Department are:

- installation of a telephone for the use of prisoners hospitalized at the Prince Henry Hospital Annexe;
- a change in the procedure used by the Probation and Parole Service to ensure that where a client is given an instruction the breach of which could well lead to the revocation of parole, that instruction is set out fully and signed and dated by the client as an acknowledgement that it has been given and understood;
- tightening of the criteria governing the placement of inmates in the OBS unit at Long Bay;
- correction of wrongful procedures used by certain gaols in depriving prisoners of amenities while they are on segregation; and
- prisoners being permitted to use their regular telephone call to contact the Ombudsman if they wish.

Such cases are important, not only because they may lead to improved conditions or to the correction of an injustice for all prisoners, but also because they ensure that the Department receives from an independent source at least some of the basic information which it needs to administer its responsibilities fairly and efficiently.

39. The Administration of the Corrective Services Department

This Office must place on record its serious concern about the quality of administration within the Department of Corrective Services and the accuracy of information reaching senior officers through Departmental channels. It is our experience that many problems arise unnecessarily within prisons because basic management skills are not applied and because channels of communication between senior staff, prison officers, and inmates are inadequate.

39.1 The Ineffectiveness of the Establishments Division in Supervising Prisons

N.S.W. has twenty-three (23) gaols scattered through the State. If the policies determined by the Corrective Services Commission are to be fairly and effectively implemented, proper monitoring of the practices and conditions in these gaols is essential. The Superintendent of a prison must inevitably have considerable discretionary power in the running of his or her own institution. But it is also essential for senior staff in Head Office, and for the Corrective Services Commission itself to have an accurate understanding of what is occurring in the gaols if possible problems and abuses are to be detected and dealt with.

Ensuring that such feedback is provided is a function of the Establishments Division, a section based in Head Office which consists mainly of experienced and senior staff members, many holding the rank of Superintendent or Assistant Superintendent. These officers have the freedom to travel around the gaols, to report back to the Director of Establishments on what they find, and within certain limits to deal with problems.

Unfortunately, this Office must take the view that the Establishments Division is not effective in providing the Corrective Services Commission and senior Departmental staff with accurate feedback on what is happening in N.S.W. gaols. Indeed, it appears that on many occasions in the past, Establishments Division officers have spent their time on quite minor matters (in particular, the investigation of lost property claims submitted by prisoners) while ignoring the development of quite serious problems which should have been apparent to them and should have been dealt with or reported to the appropriate authorities.

A striking illustration of this failure was apparent on the first visit made by the present Assistant Ombudsman to Cooma Gaol. Cooma is a very small medium-security gaol holding about 100 inmates. When our representatives arrived, a very large proportion of the inmates lodged complaints about the conditions, and in particular about ways in which Cooma prisoners were disadvantaged compared with prisoners in other gaols. The complaints were all similar, and it was immediately apparent that there was a very high level of tension and frustration which had arisen from petty restrictions and local rules which were out of line with those applying in other N.S.W. gaols. Even prisoners who were basically happy at Cooma, and who liked working in the tailor's shop which provides the mainstay of prison industry there, were enormously resentful of what they saw as unfair and unnecessary "pettifogging" rules which they had not encountered in any other gaol, even those generally regarded as far "tougher" than Cooma. These included:

- *Insufficient facilities for exercise.* Although Cooma is a very small gaol and has no exercise area, no attempt had been made to provide reasonable alternative facilities, although these were readily available elsewhere. Inmates were permitted a short run inside the gaol wall, but this had to be taken immediately after lunch, when prisoners were forced to run on a full stomach. Only two weight bars were available for the 100 inmates, and these were only unlocked for two hours each day, even though a number of prisoners spent all day locked in a yard where use of the weights would not have been difficult. This meant that each prisoner might only get three minutes exercise with the weights per day, and no other exercise at all. Exercise was allowed only *after* the inmates had completed their daily showers.

- *Access to the Wings.* Even though Cooma is a very small gaol (the cell block is located only a matter of yards from the dining area, the showers, the yards, and the workshops) at the time of our visit prisoners were not permitted to return to their cells even for a few minutes during the day. This meant that prisoners leaving their cells in the morning had to take their shower gear with them and carry it around all day in order to be ready for the afternoon shower, which occurred after work was completed. This absurd requirement did not apply in any other N.S.W. gaol, even in those many times the size of Cooma where arranging access to the wings was far more difficult.

- *Power to Cells.* Electricity to all cells was cut off at around midnight and during the day, so that people sick in their cells during the day, or unable to sleep at night, were prevented from listening to music or making a cup of tea. This practice was greatly resented, because in all other N.S.W. gaols power to the cells was left on all night.

In themselves, these practices are of relatively minor importance, but the fact that they were out of line with conditions in other, tougher N.S.W. goals, and the fact that there seemed to be no good reason for imposing them, had led to great resentment. They were viewed as petty and unfair harassments, and they had clearly resulted in quite a high level of inmate frustration and resentment.

This Office pointed out these and other problems at Cooma to the Chairman of the Corrective Services Commission and the Director of Establishments. It was apparent that neither officer was aware of these local rules and practices, or of the degree of resentment which had built up as a result. Most of the problems—which were all comparatively minor—were readily rectified, and this Office considered it unnecessary in the circumstances to make any formal finding of misconduct.

However, it is disturbing that this situation could develop without senior Departmental officers being aware of it. It is not the function of this Office to keep the Department informed of what is happening in its gaols.

39.2 The Ineffectiveness of the Department in Dealing with Allegations of Misconduct

A number of cases occurring in the past year have also raised doubts about whether the Department is effective in investigating and dealing with allegations of misconduct on the part of its own officers once these have come to light.

> Two junior prison officers at Mulawa Women's Prison informed the Establishments Division that on December 27, 1981, they had witnessed a serious assault by two senior prison officers (one of them being the officer in charge of the gaol at the time) on a mentally disturbed prisoner. They claimed that they saw the unresisting prisoner being kicked and punched.
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> Members of the Establishments Division took statements from all concerned. In these, the two witnesses confirmed their story, while the accused officers denied that any assault had occurred. As a result of this, the Department's legal officer recommended that charges be laid, and this was approved by the Chairman of the Corrective Services Commission.
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> However, in fact no charges were ever laid. Staff of the Establishments Division took further statements, which did not materially change or add to the position. They then recommended that no charges be laid because they could not be certain that the denials of the accused prison officers were incorrect.
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> This approach completely misconceives the role of Departmental officers in carrying out such an investigation. It is not up to them to reach a final verdict on whether a suspended officer is guilty or innocent—that is a matter for the court or tribunal which hears any charges that are laid. Their job is simply to collect the evidence and to decide whether that evidence is sufficient to justify the laying of Departmental or criminal charges.
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> There is no doubt that, in this case, the statements of the two junior officers amounted to sufficient evidence to justify the laying of charges, as was recognized at the time by the Department's own legal officer. It is disturbing that even now, six months after the incident, no charges have been laid, a fact which has been the subject of a Report to Parliament by this Office in accordance with Section 27 of the Ombudsman Act.

The Departmental investigation was also seriously flawed in other ways:

- The reports prepared by the Establishments Division seemed to be less concerned with whether or not the assault had occurred than with various minor or even imagined breaches of Departmental rules by the junior officers who witnessed or reported the assault;
- Senior officers of the Establishments Division seriously misstated in their report the law governing an officer's right to inflict injury on a prisoner in self-defence—claiming that "methods of protecting yourself accepted by this Department are kicking and breaking fingers, etc.". The Director of Establishments, who commented on their report, made no attempt to investigate any misunderstandings of this critical issue but merely wrote: "I hope that the reporting officers have been misquoted by the typist . . ." Other evidence in the Report suggested that this was unlikely.
- The medical examination of the prisoner, which might have confirmed or denied that the assault occurred, was useless because the prisoner was examined fully clothed, even though the allegations were of kicks and punches to the stomach and pubic region.

This Office made a report under Section 26 of the Ombudsman Act and recommended:

1. That charges of assault be laid against the prison officers concerned;
2. That the Director of Establishments be charged with neglect of duty; and
3. That urgent consideration be given to the establishment of an independent inquiry to investigate the conditions at Mulawa.

This supported a recommendation made by the Establishments Division, who expressed concern that a faction fight among the officers at Mulawa was causing problems in the gaol. This Office has been concerned for some time about serious problems at the Women's Training and Detention Centre, and on a number of occasions has informally made its concern known to the Chairman of the Corrective Services Commission.

As a result of this Report, the Minister for Corrective Services appointed Mr K. S. Anderson to inquire into "all aspects of the alleged assault, and the conduct of prison officers at this Centre". However, it is our view this did not amount to adequate steps being taken as a result of the report, because it appeared that the terms of reference do not cover the general administration of Mulawa. Accordingly, a report has been submitted to the Premier for tabling in Parliament in accordance with Section 27 of the Ombudsman Act.

The Report on this case, and the subsequent Report to Parliament will be separately printed following its tabling in Parliament.

A prisoner who had been transferred from Grafton Gaol to Long Bay complained that, shortly after his arrival, he was assaulted in his cell by a prisoner, and that the assault occurred in the presence of another prisoner and a prison officer. He claimed that the officer had made no attempt to stop the assault until after he had suffered quite substantial lacerations to his back and other minor injuries, and he alleged that this was a deliberate failure to act on the part of the officer. The prisoner concerned has been on protection for several years, and is regarded as highly unpopular both with inmates and with officers—inter alia, because of his efforts to publicize what he sees as deficiencies in the prison system.

This case raised serious questions about the adequacy of the protection afforded prisoners at risk from other inmates and these issues are considered below (see Prisoners on Protection). However, our investigation of this incident again brought to light serious deficiencies in the way the original complaint of assault was handled by the Department.

- A report submitted by the officer who was present claimed that the supposed victim had himself initiated the fracas, and on the basis of this charges of assault were laid against our complainant (he was subsequently acquitted). However, even when it became apparent that he wished to personally lay a charge of assault and had required medical treatment for his injuries, no statement was taken by prison authorities from him, and initially he was not even interviewed by the investigating officer.
- The investigating officers from the Malabar Emergency Unit made no attempt to pursue discrepancies in the evidence available to them. Explaining this, the officers concerned suggested that their task was simply to collate material, not to analyse or interpret it. A senior officer explained that the officer conducting the investigation was of relatively junior rank, and that it would not be appropriate for him to question the version of events put forward by more senior staff. It was also pointed out that the Malabar Emergency Unit relies heavily in its work on co-operation from custodial staff.

This Office concluded that in fact the version of events put forward by the prisoner who made the complaint was the correct one, and that he had been assaulted by another prisoner in the presence of a prison officer who took no steps to intervene until after the complainant had sustained injuries. However, it is apparent that, regardless of what actually happened in the cell, this incident was not properly investigated by the Department.

The full report on this incident is included as Case 32, Part III, Case Notes.

If the Department of Corrective Services is to administer its responsibilities fairly and effectively and ensure that serious abuses do not arise, it is essential that both inmates and staff be satisfied that allegations of misconduct will be properly investigated and appropriately dealt with. The experience of this Office is that at present this does not occur.

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39.3 Inadequate or Inaccurate Communications

Many problems which this Office has encountered have arisen simply because both inmates and staff have an inadequate or inaccurate understanding of the rules and criteria governing important aspects of Departmental policy, which affect them. This occurs largely because the Department has not produced in accessible form, basic information on such crucial matters as a prisoner's eligibility for day leave; the procedures to be used for transferring a prisoner from gaol to gaol; the criteria to be used in assessing eligibility for release on licence; and so forth.

As a result, in many cases neither prisoners nor staff have any clear idea of what rules the Department applies, and this often leads to prisoners receiving conflicting advice on their entitlements; and to different approaches being applied in Head Office from that applied in the Gaol. These confusions lead to enormous resentment among prisoners who may, for example, look forward eagerly to being eligible for day leave at a particular date—and earn good work reports in the hope of obtaining it—only to find they are not eligible after all.

The information on these policy matters is contained in a very large number of Departmental circulars which extend back over a long period of time. These deal with many minor administrative matters as well as important policy decisions. They have not been kept properly up to date, and they are not effectively indexed. On several occasions, this Office has brought to the attention of senior Departmental staff circulars governing important aspects of policy (including, on one occasion, the steps which should be adopted in transferring a prisoner for misconduct), which were not being enforced because they had been forgotten about.

Moreover, the rules themselves have grown incrementally and are often confusing and/or contradictory. Even the Superintendent of a Gaol may be unclear as to his duties.

> A prisoner at Long Bay complained to this Office that his letters of complaint to the Chairman of the Corrective Services Commission were being read by the prison officers about whom he was complaining.
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> Our investigation found that the letters were being read in accordance with Prison Rule 73, which stated:
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> > The Superintendent shall be the medium of communication between the superior authority and the officers and prisoners under his charge, and shall forward without delay to the Commissioner any report, petition or complaint he may receive, with his remarks and recommendations thereon.
>
> However, this rule conflicted with rights given to prisoners through the Prisons Regulations and with the procedures for handling mail laid down by Departmental Circular 4560, which stipulated that outward mail was not to be read unless an authorized officer formed the opinion that despatch of the letter might adversely affect the security of the prison, in which case he could bring the letter to the Superintendent who could read it.
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> The Corrective Services Commission advised that, as a result of the case, steps would be taken to clarify the situation and ensure that officers were aware of the legal entitlements of prisoners in this area.

The situation is even more serious when information given to prisoners by the Department on important aspects of their rights and entitlements is simply wrong.

> A number of prisoners complained that Circular 4679, which set out the eligibility of various prisoners to apply for day leave, was being wrongly interpreted by the responsible staff in Head Office. This Circular, which was displayed on the notice-boards of most gaols, was somewhat confusingly phrased but stated that prisoners convicted of violent crimes or serious drug offences were eligible to apply for day leave when they *were within twelve months* of their expected date of release. The prisoners complained that in fact they were not being considered for day leave until they were within *six* months of their expected date of release.
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> The investigation by this Office disclosed that some time before September 1981, the Corrective Services Commission had decided to limit day leave to prisoners in those categories who were within *six* months of their expected date of release. This was not, however, explained to prisoners or to prison staff, and no attempt was made to amend Circular 4679, which continued to be displayed on prison notice-boards. Indeed it appears that the change was not even reduced to writing except in the form of an unconfirmed minute from the Corrective Services Commission dated September 1981, which "confirmed" the change of policy. However, this minute related only to prisoners convicted of violent crimes, and it was therefore unclear that any amendment affecting prisoners convicted of serious drug offences had ever been made, although it was certainly being applied.
>
> This Office took the view that this conduct was unreasonable. The Corrective Services Commission clearly had power to change the rules governing eligibility for day leave at any time, but such changes should have been brought to the attention of prisoners and prison staff. Day leave is of immense importance to prisoners, and many spend years looking forward to the date upon which they are eligible to apply for it. They feel understandably resentful if the rules on such an important issue are changed without their even being told.
>
> A further aspect of concern was that certain senior officers of the Department clearly did not understand our concern over this issue, or appreciate their obligations to fairly and equitably apply the policies laid down by the Corrective Services Commission—whatever these policies might be. For example, the senior Department officer responsible for assessing day leave applications made it clear to the Assistant Ombudsman that in assessing whether an

inmate was guilty of a "serious drug offence" he abided by his own subjective assessment of what was "serious" and not by the quite precise definition laid down by the Commission and published in Circular 4679. Discussions in June 1982 made it clear that he was continuing this practice even after it had been explicity criticised by this Office several months before, and he seemed quite unable to understand that his job was to apply the policy laid down by the Commission, not to invent his own.

It also became apparent in June, 1982 that there had been further changes to the rules governing eligibility for day leave, although the precise nature of the change was again very hard to determine and indeed the Department stated (apparently erroneously) that it merely "confirmed" the current policy. Once again, however, the circular governing day leave had not been amended. The Department did request that the change (or confirmation) be given the widest publicity within gaols, but there is little doubt that most prisoners and prison staff will continue to rely on the outdated Circular 4679, which continues to be displayed. Indeed, they have little choice. If it is almost impossible for this Office to work out what the current rules on day leave are, doing so from within a gaol would be out of the question.

A Report on the above is included as Case 32, Part III, Case Notes.

Such deficiences in communication cause much unnecessary work for the Department's own staff, and engender resentment among prisoners whose reasonable expectations are frustrated. This Office is advised that the Department is now preparing a loose-leaf manual for its staff which will set out the rules governing areas of major concern simply and unambiguously. This long-overdue development is to be greatly welcomed, and it is hoped it will be made generally available as soon as possible.

39.4 Sentence Records

A further problem of administration which causes concern to this Office is the system adopted by the department for maintaining records of the sentences being served by inmates. Such records must obviously be kept with absolute accuracy, and they must be updated regularly to reflect remissions earned by, or granted to, the inmates. As there are between 3 000 and 4 000 inmates in N.S.W. gaols at any one time, this is obviously a considerable task.

Nevertheless, at present all records are kept on a completely manual basis. This system is time-consuming and inefficient. More importantly, inmates cannot be kept informed on a regular basis of the adjusted sentences which they must serve because the sentence cards maintained in each file are incomprehensible to any person not trained in their use, and there is no system for providing inmates with regular statements. This Office believes that it is unreasonable that the Department of Corrective Services should be incapable of regularly providing a simple statement to each prisoner on a matter as important as his or her expected date of release.

The present manual system is also inevitably prone to human error, despite the considerable diligence of some of the staff who operate it. In a number of cases known to this Office the consequences of error have been quite serious. For example, recently a prisoner was incorrectly advised that he was due for release on a date well in advance of the correct one. Because of this, he declined to be considered for parole, preferring to wait and be released at the expiry of his sentence without the restrictions imposed by parole. When the error was discovered he did seek and obtain release, but as a result of the mistake he undoubtedly served an additional period of some four months in gaol.

A further serious problem arises when the basis upon which sentences and/or remissions are calculated is changed. This has happened several times over the past year as a result of court decisions which have held that the methods of calculation previously adopted by the Department were incorrect. Each such case involves recalculation of the sentences being served by some or all current inmates. Several cases have shortened quite dramatically the periods which certain inmates must serve. This not only brings forward their estimated date of release, but also means they can apply at an earlier stage for admission to educational programmes, day leave and other such activities.

Unfortunately, the only way in which the prisoners who are entitled to such benefits can be identified is if a manual check is made of all 4 000 files in the records section at Head Office, with recalculations being made where necessary. However, such a complete file audit requires substantial staff time, and on recent occasions the Department has preferred instead to ask each gaol to identify, from its own records, any prisoner whose sentence needs to be recalculated. However, in practice there is no guarantee at all that the lists provided by the gaols will be exhaustive—and indeed omissions from them have come to light and have had to be rectified in the past.

Moreover, the process takes considerable time to complete, and the delays involved may well mean that prisoners are denied access to programmes or privileges to which they would otherwise be entitled simply because of the Department's slowness in updating its records. These problems are discussed in somewhat more detail in the Report prepared by this Office on the *Inadequacy of Existing Procedures Relating to the Compilation and Availability of Prisoners' Sentence Calculation.**

* See Case 33, Part III

There is nothing more important to a prisoner than his or her expected date of release, and this Office considers it unreasonable that the present administrative systems do not allow for this to be calculated speedily and accurately; to be readily recalculated in the event of changes to the process being required; and to be made available regularly to each prisoner in the form of a statement. Computerisation of the Department's records provides the obvious solution, and indeed this Office is advised that the Department has access to a computer but that it has not so far been applied to this most important area. We understand that the Department intends to proceed with computerisation of these records, and it is to be commended for this decision. However, the system as it presently operates is entirely unsatisfactory.

39.5 Other Administrative Problems

One further administrative problem observed by this Office is the difficulty encountered by the Department in implementing apparently simple administrative decisions. In several cases it appears that industrial issues were frustrating the proper implementation of decisions. These at times resulted in senior staff of this Office and the Department having to expend considerable time in endeavouring to resolve situations which ought to have been dealt with expeditiously. Some of these cases border on black comedy.

> The Special Care Unit at Long Bay is an independent unit within the MRP which houses "difficult" or "problem" prisoners in a "therapeutic community" environment. It is completely enclosed, and prisoners therefore enjoyed looking through the one outside window available, which allowed them to observe activity in the main yard. In September, 1981, this Office received complaints that shutters had been erected over the window to prevent the inmates looking out.
>
> It was established that the erection of the shutters had been authorised by the Acting Superintendent of the MRP, who had not consulted in any way with the Superintendent of the Special Care Unit. The reason given was that prison officers had complained that inmates could look down on them and observe the night routine.
>
> A necessary background to an understanding of the dispute was the great hostility which many officers felt towards the Special Care Unit, a successful and innovative programme launched by the former Chairman of the Corrective Services Commission. Indeed, there was clearly doubt that the security considerations cited were the real reason for the erection of the shutters. It appeared that the Chairman of the Prison Officers Vocational Branch (POVB) had conceded that curtains would be sufficient to avoid this problem, and in any event prisoners could readily observe the night routine from their cells, albeit with the aid of a mirror.
>
> Nevertheless, discussions were held with the Department and it was agreed that a reasonable compromise would be to replace the shutters with sliding doors which could be left open by day but closed at night. This Office asked to be kept informed of progress.
>
> By the end of October, no visible progress had been made, although measurements needed for the doors to be made had been given to the Principal Industries Officer some six weeks earlier. On 29th October, we obtained from the Acting Chairman information to the effect that the doors were a stock size and were expected to be installed immediately. On the same day we were advised by staff at the MRP that the measurements previously submitted had been lost, and would have to be done again. One month later no visible progress had been made, but we were advised that the doors had now been ordered, although they would not be available for between four and six weeks.
>
> The sliding doors were finally erected some time before Christmas. However, the shutters were left in place when the new doors were erected, so that now the window was shielded by both a shutter and a door! It was explained to this Office that the prison officers had threatened industrial action if the shutters were removed.
>
> Ultimately the shutters were removed on 12th January, 1982—some four months after they were erected. They were removed only after the Chief Superintendent of Long Bay had issued written orders on the matters, and the Chairman of the Corrective Services Commission had personally intervened.

40. Issues in Corrective Services

It is not possible in this Report to document all the major issues with which this Office has been concerned over the past year. However, there are a number of problems which arise on a continuing basis which require some comment.

40.1 Segregation Orders

If a prisoner is considered to be a "threat to the personal safety of any other prisoner or of a prison officer, or to the security of the prison, or to the preservation of good order and discipline within the prison" s/he may be made the subject of a segregation order under section 22 of the Prisons Act. Such an order means that a prisoner is detained away from association with other prisoners. The Superintendent of a gaol may order segregation for up to two weeks, and the Corrective Services Commission for up to three months. Consecutive orders may be made, but the Minister's consent is required where any period of segregation exceeds six months.

The imposition of a segregation order is a preventative action to avoid trouble, and may not be a punishment for misconduct. This is clear from section 22 (3), which directs that a prisoner subject to a segregation order does not lose any other rights or privileges, and also from other provisions in the Prisons Act and Regulations which govern the imposition of punishments for misconduct. The Royal Commission into N.S.W. Prisons strongly criticized the Department for what it considered to be the Department's "entirely wrong interpretation of section 22", which in the view of the Commission, had led to misuse of the section. The report concluded that:

> "It is important that the Department not only follow the letter of section 22, but that it also adheres to the spirit of the legislation. Segregation should be used as a purely temporary measure, to be invoked only in situations of urgency."

It is evident that problems in the Department's use of section 22 orders remain. Table 2 reveals that this Office receives a substantial number of complaints about segregation orders, and in the main these allege that orders were wrongly made or made on inadequate evidence. Proper investigation of these complaints is very difficult, because the inquiries required are usually time consuming and the staff resources available to carry them out are limited. A number of complaints alleging wrongful use of section 22 orders are currently under investigation, but it would seem clear that on occasions in the past year the Department has used such orders wrongly, either as a de facto punishment or for some other reason.

In one case prison officers at the gaol where the inmate was held threatened to strike unless he was transferred to another gaol. The then Chairman of the Corrective Services Commission was of the view that the inmate concerned could not be provided with adequate protection in any other N.S.W. gaol and was therefore unwilling to authorize the transfer. As a compromise with the prison officers the inmate was placed on segregation. While the Chairman's action may have been understandable in the circumstances, it nevertheless constituted a clear misuse of section 22.

In the event the prisoner spent 75 days in segregation deprived of normal movement in the gaol and all association with other prisoners. The Ombudsman made a finding of wrong conduct and recommended that compensation be paid to the prisoner for his period in segregation. This recommendation was rejected by the Department and the Minister.

A number of complaints about segregation orders point to its arbitrary nature and the inability of a prisoner to challenge the facts upon which the order was based unless disciplinary or criminal proceedings are brought.

In one matter investigated by the Ombudsman (see Case 38, Part III, Case Notes) the prisoner stated his complaint following the making of a segregation order in the following terms:

> "My desire is to be officially charged with the alleged assault so as to be able to prove my innocence."

This complaint raised in an acute form the relationship between segregation orders made under section 22 of the Prisons Act and the offences, including assault, provided for by section 23 of the Act. In defended matters the latter are determined on evidence before a Visiting Justice, a Court of Petty Sessions or on indictment on ordinary committal proceedings before a Stipendiary Magistrate.

Inevitably there will be an overlapping between the provisions relating to the procedures of segregation and charging of prisoners with an offence. There appear to be at least 3 classes of cases:

(i) Cases where a prisoner is alleged to have committed an offence such as an assault where it is proper and appropriate to make an immediate order for segregation of that prisoner in the interests of the good order and discipline of the prison before the hearing of the charge of assault.

(ii) Circumstances where it is appropriate for a segregation order to be made even where no offence has taken place. For example, it may be that by reason of mere suspicion or grapevine intelligence a riot or some other incident is believed to be about to occur and it is appropriate to exercise the segregation order power without any actual or hard evidence of any offence or intended offence.

(iii) Finally, where an offence is committed but where no question of segregation arises.

In cases where a segregation order is made on the basis of an alleged assault by a prisoner against a prison officer the prisoner should be charged with assault and the charge heard as soon as possible. The adoption of such a practice would, in my view, assist in ensuring that segregation orders were not made as a mere form of unappealable discretionary punishment. As the Nagle Royal Commission made clear such use of segregation orders is improper. To quote the Nagle Royal Commission:

> "Segregation should be used as a purely temporary measure to be invoked only in instances of urgency."

Punishment for offences such as an assault is a matter for the courts. In overlapping situations, given the consequences to the prisoner of segregation, charges should be laid so that the facts can be evaluated by judicial officers independent of the prison system.

In the case under discussion a general recommendation was made as indicated in the previous paragraph. This recommendation, and indeed the whole question of the making of segregation orders, will be kept under close review by the Office of the Ombudsman.

40.2 Transfers

To some extent the problems of prisoners being transferred from one gaol to another—often at short or no notice—raises issues similar to those discussed in respect of segregation.

There is no doubt that the Department must have flexibility to arrange transfers from gaol to gaol. However, moving a prisoner from a gaol where he is reasonably settled may greatly disrupt his or her life, and may also make it very difficult or impossible for family members to arrange visits. This means that, in effect, transfers can readily be used as a punishment, although this is not authorized by the legislation.

In June 1981, discussions between this Office and the Department of Corrective Services led to the issue of Circular 81/23 governing the movement of prisoners for misconduct. This stated that certain procedures should be followed if a prisoner was transferred because of his or her misconduct:

1. S/he should be informed of the allegations prior to the movement;
2. If time permits and security will not be compromised, the recommendations of the local Programmes Review Committee should be sought; and
3. Wherever possible, the prisoner should be charged so that a thorough investigation can be made and a proper hearing held before the Visiting Justice or the Superintendent.

Unfortunately, the Department is not enforcing these procedures in all cases. This Office is aware of many situations where prisoners have been abruptly transferred from one institution to another, with no notice being given of the move, with no information being provided about the reasons, and with no charges being subsequently laid. The limited resources available to this Office make it very difficult for us to adequately investigate and report on all such matters.

A somewhat different misuse of the transfer procedures is indicated by the following case.

> A number of prisoners from Cessnock Gaol travelled by bus to Silverwater Gaol, under the supervision of two officers, in order to play cricket. In the course of the day one of the officers became substantially affected by liquor and evidently failed to enforce the rule prohibiting the prisoners from consuming alcohol.
>
> When the prisoners entered the bus to return to Cessnock the junior officer became concerned at undertaking the return journey when his colleague—the senior officer—was clearly drunk and a number of prisoners were affected by alcohol. Accordingly, he drove the bus into the grounds of Silverwater Gaol. There the senior officer ordered the prisoners not to get off the bus, and then himself left or was removed from the scene. Other prison officers then ordered the prisoners to leave the bus, but they refused, relying on the original order given by the senior escorting officer. They were then forcibly removed by the use of mace gas. Instead of being returned to Cessnock, a medium security gaol, they were then transferred to Long Bay and Parramatta Gaols, with the result that many lost access to educational programmes in which they were enrolled or other privileges such as day leave. Charges of disobeying a lawful order were laid against all the inmates concerned (including several who, on the reports submitted by prison officers at the scene, had not disobeyed any orders) but those were never proceeded with. Prisoners therefore had no chance to put their side of the story, even though they all suffered the significant punishment of transfer to a maximum security institution. In addition, because of the charges hanging over their heads, many prisoners were denied access to day leave or other programmes, and this led several to plead guilty to the charges (even though they denied them) simply in order to clear the slate and be eligible for day leave.
>
> While there was probably some element of devilment in the prisoner's refusal to leave the bus, it is clear that blame for the incident rested with the senior prison officer who became drunk and issued an order which, in their subsequent actions, the prisoners were simply obeying. Ultimately, on the recommendation of this Office, all charges against prisoners were dropped, and the convictions expunged from the records of those prisoners who had pleaded guilty. However, the Department declined to accept the recommendation of this Office that prisoners be compensated for the time spent in maximum security gaols as a result of the incident. (A report has been made to Parliament on this matter and will be separately printed.)

On many occasions problems also arise from physical or logistical aspects of transfers. A prisoner's property is not always taken with him on the escort vehicle, but may instead follow later, and complaints very commonly allege that this property is lost or mislaid in whole or in part. Problems also arise from administrative deficiencies in the systems for authorizing and arranging transfers, and sometimes these can quite seriously disadvantage prisoners, by for example, cutting of access to educational courses, causing loss of benefits earned in the prisoner's former gaol, or leading to a prisoner being held in inappropriate security conditions for a considerable period of time.

40.3 Prisoners on Protection

"Protection prisoners" are prisoners who require protection from their fellow inmates. Over recent years there has been a substantial rise in the number of protection prisoners in N.S.W. gaols. Our observations would suggest this is due to a number of factors, including:

- increasing levels of inmate violence, stemming from the inability of some prisoners to service debts incurred through drug abuse, gambling or drug trafficking within prison;
- increasing numbers of young offenders in maximum security (primarily those serving long term sentences who are therefore unsuitable for placement with the Department of Youth

and Community Services) who believe they are in need of protection from other, more hardened prisoners in normal discipline;

- increasing numbers of prisoners giving evidence against fellow inmates associated with activities or crimes within or outside prison, who fear retribution directly or through associates. The high degree of drug related crimes has contributed to this particular problem.

The trend has been exacerbated by the dispersal in 1981 of some 40 inmates from Parramatta, which had the effect of disturbing established inmate hierarchies within virtually every maximum security prison in the State. Additionally, the general lack of incentives and opportunities in most maximum security prisons, has created a situation of boredom and malaise which has contributed to the use of violence. It is the view of this Office that the rise in the number of prisoners seeking protection reflects a lack of confidence within the inmate community in the ability and commitment of prison officers to monitor their safety under routine gaol conditions.

New South Wales prisons were not constructed to cater for a large number of prisoners on protection, and the conditions under which these prisoners are held in many gaols are grossly inadequate.*

At Goulburn:

- up to eight prisoners are held each day in yards designed for one person;
- the yards are open to the rain and wind, and have virtually no seating arrangements—inmates are forced to sit on the bare concrete floors;
- although Goulburn has an extremely cold climate (in winter there are an average of eleven days per month where the minimum daily temperature falls below freezing point), prisoners in the yard are generally allowed to wear only light clothing—estimated as about a third of the amount of clothing needed to provide adequate protection in the circumstances;
- prisoners receive no exercise at all, spending the nights in their cell and their days in a yard approximately 3 metres x 5 metres. Some prisoners interviewed had spent up to 2 years in these conditions;
- no work was available to inmates, and no recreation was provided. Prisoners had no access to the library, and most could not use TV or make hot drinks during the day because the yards contained no power points;
- prisoners on protection were denied contact visits and were grossly disadvantaged in their access to other rights and privileges such as telephone calls, availability of welfare officers, etc.;
- physical conditions in the yards were disgraceful, and showering and toilet facilities grossly inadequate. In general these protection prisoners were held in conditions which were far worse than those applying to the aggressors in normal discipline from whose attentions they were being protected.

In its response to that report, the Department acknowledged that the criticisms made were generally fair, and the recommendations reasonable, and advised that steps were being taken to implement as many of the recommendations as possible. However, the overall problem of protection prisoners remains.

It is not likely that the rise in the number of prisoners needing protection will be reversed. In theory it would obviously be desirable to segregate the predators rather than their victims, but in practice expecting this approach to solve the problem ignores the fact that there are close bonds between different groups of prisoners, and the prison ethos is very hostile to any informer. Segregating the person who initially assaulted or raped the person in need of protection will not protect the prisoner from all the friends and associates of the person who is to blame. Any change in this pattern will require long term alterations to the way in which prisons function.

To date, insufficient attention has been given to the special needs and problems of prisoners on protection. In the past year this Office has dealt with two major complaints involving assaults on protection prisoners which, in the view of this Office, occurred because of inadequate or unprofessional supervision.

> In the first of these cases a protection prisoner in the Central Industrial Prison was seriously assaulted by a fellow inmate who was allowed into his yard (ostensibly to clear a blocked toilet) by the two officers patrolling the protection yards. The prisoner complained that the assailant had been let into the yard against his wishes, and the officers continued their patrol away from his yard, in effect allowing the assault to take place. A week or two before the assault occurred the victim had advised this Office that he feared an assault, and this information had been passed on to the Superintendent of the prison.
>
> Our investigation disclosed that no steps had been taken to advise the officers patrolling the yards of the prisoner's concern, and that these officers had little opportunity to gain any knowledge of the prisoners they were required to monitor, since a variety of different officers staffed that particular patrol on a rotating basis.
>
> Quite apart from the inadequacy of the steps taken by the Department to investigate the assault and take appropriate action, the major focus of concern arising out of this complaint was the inadequacy of the facilities available for protection prisoners and the conduct of the patrolling officers in walking away from the yard.

* For a full report, see Case 34, Part III, Case Notes

The inadequacy of the facilities was acknowledged by the Director of Establishments who advised:

> "This type of incident is becoming increasingly probable, considering the alarmingly high proportion of inmates on protection, the type of accommodation we have for protection cases, and the number of 'heavy' types claiming a need for protection".

As to the conduct of the officers concerned, the same officer "conceded as a possibility" that the officers concerned could have allowed their personal feelings for the prisoner (a rapist who was liked neither by his fellow inmates nor by prison officers) to have interfered with the proper performance of their duty.

See Case 37, Part III, Case Notes

A more recent complaint, again from a prisoner generally disliked in the prison community, raised similar issues. This prisoner alleged that he was assaulted by a fellow inmate and that the assault took place in the presence of a prison officer. The prisoner was, in fact, charged with the assault of that inmate and was later transferred to a section of the prison (the Observation Cells) normally reserved for seriously disturbed prisoners. The prisoner complained that these actions were unjustified and that the department's investigation of the incident was inadequate (this latter aspect of the complaint is referred to earlier in this report).

Our investigation of this complaint concluded that:

- On the balance of probabilities, the version put forward by the prisoner was substantially correct (he was subsequently acquitted of the assault charge brought against him); and
- the officer did not intervene in time to prevent the occurrence of the assault and the infliction of injury, although he could have done so.

See Case 35, Part III, Case Notes

It is a matter of great concern to this Office that prisoners who are placed on protection because they are considered at risk of physical assault from their fellow inmates should be placed at risk because of inadequate supervision and protection from the prison officers responsible for their safety.

The problem partly arises because many prison officers, as well as most prisoners, tend to absorb the traditional prison ethos of respect (albeit grudging) for the prison "heavies" and contempt for the protection prisoners, who clearly lie at the other end of the inmate hierarchy. The problem has been greatly exacerbated by the very significant rise in the number of prisoners on protection. It needs to be addressed through consideration of special measures such as the allocation of senior and experienced officers to protection posts, as well as through the improvement of conditions and the provision of increased work and amenities.

40.4 Property

Complaints continue to be received about the loss or non-return of prisoners' property. These complaints mainly arise following sudden transfers, when the prisoner has not had the opportunity to pack up the property in his cell and have it inventoried before his departure for another gaol. Such inmates are then in the position of having to demonstrate that the property was in their cell at the time of the transfer, and this is normally impossible. Most items in a prisoner's possession at the time of reception are listed on his property card at that time. However, whenever a prisoner wishes items to be released for day to day use in his cell, he is required to sign a statement that he agrees to assume responsibility for the care of the property so released. When transfers occur, it is difficult to demonstrate that the prisoner had not disposed of the items claimed to be missing, either by barter or by outright sale. Such exchanges are in theory supposed to be reflected in the respective property cards of each prisoner, but this is not done in all gaols and is not always practicable, as the transaction may be associated with gambling, drugs or some other prohibited activity. Prisoners have complained that, following their transfer, fellow prisoners rather than authorized officers were involved in the packing of their cell gear.

The existence of this practice has been challenged by the Department, but it is generally true that adequate inventories of the items in the cell are not made, and where the prisoner is sharing a cell, disputes over ownership invariably arise.

Claims are also made for items missing or stolen from prisoners' cells. However, this Office has, as a general rule, declined to investigate these complaints. It is true, however, that while a prisoner agrees to assume responsibility for the property released to him, he does not always have control over who goes into his cell. Gaol routine, certainly in maximum security, normally dictates that cells are left open during the day, and if a prisoner is working or engaged in educational or other activities he must take the risk that his cell may be subjected to theft.

Complaints regarding the security of property entrusted to the Department are sometimes received: prisoners have claimed that they have left suits, TV sets and other items in the care of officers, believing they would be returned to their property when in fact no trace can be found of the transaction. These complaints are rare and, of course, difficult to prove one way or the other. One complainant claimed that he had not received two rings from his property after he was transferred from Cessnock to Goulburn. The rings were alleged to be of great value, being formed from ancient gold coins. Investigations revealed that the prisoner had not in fact received the rings which were missing from the property store at Goulburn, but their value was unable to be determined from the description given on the card. The complainant was offered a sum of money in compensation (considerably less than he claimed) and the matter is still under investigation by the Department and the police.

The most serious claims for lost property during the last year, however, came following an extensive cell search at Parramatta Gaol in January 1982. The searches were ordered by the Minister for Corrective Services, Mr Jackson, following the then unexplained murder of inmate Peter Leslie Thomas. While this Office considered the cell search was justified, and that proper steps were taken initially to conduct the search, our investigation revealed that there were certain anomalies in the procedures adopted, and that the conduct of the Department was unreasonable in that:

- inventories of removed objects were not taken from all cells;
- prisoners were not given an opportunity to sign as Correct those inventories that were taken;
- a storage area used to hold the removed items was not secured in a manner which precluded unauthorized access by officers; and
- various prison officers were allowed access to the storage area, unsupervised, to complete the inventory.

The view was taken by this Office that the procedures failed to provide adequate protection to the property of the prisoners. The responsible officers of the Department were aware that a large number of items (some of considerable value) were either released to the prisoners' custody and marked off from their property cards, or were not recorded at all, as the practice of trading or bartering had been widespread and tacitly permitted. While only sixteen complaints were received by this Office, we were informed that some 80% of prisoners at the gaol lost property as a result of the search.

The Minister for Corrective Services declined to accept the recommendations made in the report on cell searches. A Report has been submitted to the Premier for presentation to Parliament in accordance with Section 27 of the Ombudsman Act. When tabled, it will be separately printed.

TABLE 1

PARTICULARS OF SEPARATE ITEMS OF COMPLAINT RECEIVED SINCE THE COMMENCEMENT OF THE OMBUDSMAN ACT

	Corrective Services	Others	Total
12th May, 1975 to 30th June, 1976 ..	249	23	272
Year ended 30th June—			
1977	196	40	236
1978	443	82	525
1979	484	63	547
1980	234	30	264
1981	338	104	442
1982	538	90	628

TABLE 2

COMPLAINTS AGAINST THE DEPARTMENT OF CORRECTIVE SERVICES—1981-82

Nature	Discontinued	Under investigation	Declined/ withdrawn	Not sustained	Sustained	Total
Legal Aid/Visiting Justice Legal Representation ..	15	2	6	4	..	27
Classification	30	8	3	7	..	48
Transfers	53	16	11	11	..	91
Calculation of Sentence ..	25	11	3	21	3	63
Victimisation	26	9	5	8	1	49
Assault	11	12	2	1	4	30
Parole	19	18	9	13	3	62
Property	30	17	4	4	13	68
Mail/Phone Calls	23	11	1	7	1	43
Visits	18	6	4	1	1	30
Day Leave	8	..	2	5	3	18
General Conditions	27	20	..	5	1	53
Money/Wages	7	9	2	1	..	19
Medical/Dental	36	12	3	3	1	55
Segregation	13	18	1	1	2	33
Protection	7	5	..	1	2	15
Work/Work Release ..	4	9	..	3	..	16
Searches	3	..	2	3	6	14
Riots/Disturbances	2	..	..	..	..	2
Buy-ups	2	2	..	..	..	4
Other	19	7	32	17	..	77
Licence	3	..	1	2	..	6
Injury	..	3	..	..	..	3
Food	4	1	1	1		7
	385	196	92	119	41	833
	(43%)	(24%)	(11%)	(14%)	(5%)	

TABLE 3A

COMPLAINTS RECEIVED FROM VARIOUS GAOLS—1st MARCH–30th JUNE, 1982

Nature/Result	Long Bay	Goulburn	Parramatta	Maitland	Cessnock	Mulawa	Cooma	Emu Plains	Glen Innes	Silverwater	Oberon	Bathurst	Mannus	Kirkconnell	Grafton	Broken Hill	Berrima	Norma Parker	Narrabri	Other
LEGAL AID/V.J./ETC.—																				
Discontinued	1	–	–	–	–	–	–	–	–	1	1	1	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	2	–	–	1	–	–	–	–	–	–	1	1	–	1	–	–	–	–	–	–
CLASSIFICATION—																				
Discontinued	1	–	–	1	1	1	–	–	–	–	–	–	–	1	–	–	–	–	–	1
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	1	–	–	–	–	–	1	–	–	–	1	–	–	–	1	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
TRANSFERS—																				
Discontinued	5	9	–	1	–	1	1	1	–	–	1	–	–	4	–	–	–	–	–	1
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	2	–	–	–	1	–	1	–	–	–	–	–	1	1	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2	–	–	–	–	–
CALCULATION OF SENTENCE—																				
Discontinued	1	1	1	–	1	–	1	–	–	1	–	1	–	1	–	2	–	–	1	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Not Sustained	3	1	–	–	1	–	–	–	–	1	–	1	–	–	–	–	–	–	–	–
Under Investigation	–	1	–	1	–	–	–	1	–	–	1	–	–	–	–	–	–	–	–	1
Declined, etc.	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–
VICTIMISATION—																				
Discontinued	1	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	2	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	–	2	1	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	–
Declined, etc.	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
ASSAULT—																				
Discontinued	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	1	1	1	–	–	2	–	–	–	–	–	–	–	–	1	–	–	–	–	–
Declined, etc.	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

TABLE 3B

COMPLAINTS RECEIVED FROM VARIOUS GAOLS—1st MARCH–30th JUNE, 1982

Nature/Result	Long Bay	Goulburn	Parramatta	Maitland	Cessnock	Mulawa	Cooma	Emu Plains	Glen Innes	Silverwater	Oberon	Bathurst	Manus	Kirkconnell	Grafton	Broken Hill	Berrima	Norma Parker	Narrabri	Other
PAROLE—																				
Discontinued	1	1	–	–	–	–	–	–	–	–	1	1	–	1	–	1	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Not Sustained	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	1	–	–	–	–	5	1	–	–	1	–	1	–	2	–	1	–	–	–	–
Declined, etc.	–	1	1	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–
PROPERTY—																				
Discontinued	2	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	5	1	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
MAIL/PHONE CALLS—																				
Discontinued	1	1	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	1	–	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	2	2	–	–	1	1	–	–	–	–	–	–	1	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
VISITS—																				
Discontinued	2	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	2	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
DAY LEAVE—																				
Discontinued	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–
Under Investigation	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
GENERAL CONDITIONS—																				
Discontinued	–	2	–	–	–	–	–	–	–	–	–	–	–	2	–	–	–	–	1	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	1	9	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Declined, etc.	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

TABLE 3C

COMPLAINTS RECEIVED FROM VARIOUS GAOLS—1st MARCH-30th JUNE, 1982

Nature/Result	Long Bay	Goulburn	Parramatta	Maitland	Cessnock	Mulawa	Cooma	Emu Plains	Glen Innes	Silverwater	Oberon	Bathurst	Mannus	Kirkconnell	Grafton	Broken Hill	Berrima	Norma Parker	Narrabri	Other
MONEY/WAGES—																				
Discontinued	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	1	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Under Investigation	–	1	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
MEDICAL/DENTAL																				
Discontinued	–	3	1	1	–	–	1	–	–	–	1	–	–	–	–	–	–	–	–	1
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	2	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
SEGREGATION—																				
Discontinued	–	3	–	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	4	2	3	3	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
PROTECTION—																				
Discontinued	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–
Sustained	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	1	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
WORK/WORK RELEASE—																				
Discontinued	–	1	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	–	–
Sustained	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–
Under Investigation	–	1	2	–	1	–	1	–	–	–	–	–	–	–	–	–	1	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
SEARCHES—																				
Discontinued	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

TABLE 3D

COMPLAINTS RECEIVED FROM VARIOUS GAOLS—1st MARCH-30th JUNE, 1982

Nature/Result	Long Bay	Goulburn	Parramatta	Maitland	Cessnock	Mulawa	Cooma	Emu Plains	Glen Innes	Silverwater	Oberon	Bathurst	Mannus	Kirkconnell	Grafton	Broken Hill	Berrima	Norma Parker	Narrabri	Other
RIOTS/DISTURBANCES—																				
Discontinued	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
BUY-UPS—																				
Discontinued	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
OTHER—																				
Discontinued	1	–	–	1	1	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–
Sustained	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	1	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–
Under Investigation	1	–	–	–	–	1	–	–	–	–	1	–	–	–	–	–	1	–	–	–
Declined, etc.	4	–	1	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	1
LICENCE—																				
Discontinued	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–
Under Investigation	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
INJURY—																				
Discontinued	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
FOOD—																				
Discontinued	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Not Sustained	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Under Investigation	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Declined, etc.	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Totals	61	53	25	13	10	18	9	5	1	6	9	8	2	17	6	5	3	3	2	12

PART II

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT, 1978

41. Statistics

For the period July 1, 1981 to June 30, 1982, a total of 1,121 complaints against police were received. This represents an increase of 35% over the number of complaints received in 1980–81. In addition, a total of 839 complaints were carried over from the previous year, making a total of 1,960 complaints dealt with during the year. A total of 1,017 new files were opened, the discrepancy between the figures being explained by the fact that on occasions a file will include more than one complaint.

Tables 1 and 2 summarize the nature of the complaints investigated and the disposition of those complaints.

Of the 1,277 complaints finalized in the course of the year, 638 (50 per cent) were fully investigated. Of these, 11 per cent were found to be sustained, 36 per cent not sustained, and in 53 per cent it was impossible for this Office to make a determination because of the limited powers available to the Ombudsman, a matter which is discussed further in the next section. Of the complaints concluded without a full investigation, 28 per cent were finalized through conciliation; 21 per cent were declined or not proceeded with, either because they were withdrawn, were rejected as trivial, or for some other reason; and one per cent were considered to be outside the jurisdiction of the Ombudsman.

The 35 per cent increase in the number of complaints received during the past year as compared to the 830 received in 1980–81 is not readily explainable except in terms of increased community dissatisfaction with police.

There has also been a substantial increase in the number of cases terminated as a result of conciliation—from 16 per cent in 1980–81 to 28 per cent in the past year. In principle, it is obviously highly desirable that the maximum possible number of complaints be dealt with by effecting a successful conciliation between the police and the complainant. However, in practice this Office is concerned that police are endeavouring to conciliate certain cases where a full investigation is required. This issue is further discussed below in section 47.

Over the past year, this Office has adopted a conscious policy of declining to accept complaints which are considered to be minor or trivial. This has resulted in the proportion of complaints declined or not proceeded with to rise from 16 per cent to 32 per cent of complaints finalized, taking into account the 141 complaints about the issue of traffic infringement notices which are awaiting further contact from the complainant. This situation arises because the office now has a policy of declining to investigate complaints about the issue of such notices until after the breach has been determined one way or the other in court, or by payment of the fine. If the complainant still wishes to proceed with the complaint at that stage, a file is then opened.

The most noticeable feature of the statistics is that in more than half of the 638 cases which were fully investigated, it was not possible for this Office to reach a conclusion as to whether or not the complaint was justified. This occurred because of the limitations in the powers available to the Ombudsman which are further discussed in the next section.

42. The System for Dealing with Complaints Against Police

42.1 The Investigation of Complaints

The present system for dealing with complaints against police officers is entirely unsatisfactory. In brief, it requires that all complaints against police acting in the course of their duty as constables be investigated not under the normal provisions of the Ombudsman Act, but instead under the Police Regulation (Allegations of Misconduct) Act.

This means that all investigation is carried out by police. At the conclusion of the police investigation the Ombudsman's Office receives a copy of the police reports and any relevant material (including copies of statements taken from witnesses), and on the basis of this material the Ombudsman is required to make a determination on whether he believes the complaint has been made out (sustained) or not. The Ombudsman may recommend to the Police Commissioner the taking of such action as he thinks appropriate. However, it is up to the Police Commissioner to decide whether he wishes to take that action. He does not have to accept either the decision or the recommendations made by the Ombudsman, and in fact the Police Commissioner almost never does so where they conflict with the view which he originally formed.

The major deficiency of this system is obviously that the Ombudsman has no power to interview police officers or witnesses or to carry out investigations, but must, instead, rely on the material collected and presented to him by police. Thus the Ombudsman is denied the ordinary means of testing the credibility of different accounts of the same incident, and in many cases simply cannot satisfy himself whether the complaint is justified or not justified. As a result, in more than half of the 638 cases which were investigated to finality the Ombudsman was unable to reach a decision on whether or not the complaint was sustained.

This problem became apparent immediately upon my appointment in June, 1981, and after obtaining counsel's advice, I adopted the practice of concluding these cases on the basis that they were "unable to be determined". This differs from the practice adopted by the former Ombudsman, Mr K. Smithers, who classified such cases as "not sustained", and this change in practice should be borne in mind when comparing the figures in Tables 1 and 2 with the figures from previous Annual Reports. The practice of concluding such cases as "unable to be determined" has now been challenged by a police officer, Senior Constable K. E. Moroney, through a writ issued in the Supreme Court in May, 1982. The hearing of this matter has been set down for 29 October, 1982.

My concern about the ineffectiveness of the present system prompted me to make a *Special Report to Parliament on the Effectiveness of the Role of the Ombudsman in Respect of Complaints Against the Police*, which was tabled in March, 1982.

In that Report, I summarized the system and concluded that:

> ". . . the existing role of the Ombudsman in relation to police is impractical and ineffective. Worse, without exaggeration, it can be described as a dangerous charade likely to deceive members of the public into believing that there is a public watchdog or guardian with effective powers when there is not. Given the real possibility of deception and the not inconsequential cost of the present system, it would be better to abolish the present role of the Ombudsman in relation to police rather than retain the present system in an unamended form. If none of the various alternatives are acceptable to the Government, such an abolition would at least make clear to the public what in reality is the present position, namely that investigations of alleged police misconduct and consequent decisions about prosecution or disciplinary action are made by the police and there is no effective review."

From her own experience in the Office, the Assistant Ombudsman subsequently has made a number of other criticisms of the present system. In brief, these were that:

1. Police displayed a lack of objectivity in coming to conclusions as to whether or not a complaint was justified and, in many cases, were less concerned with determining the truth of a particular complaint than in preserving the good name and reputation of the police force.
2. That on occasions police used unfair or intimidating tactics in carrying out investigations or dealing with complaints.
3. That in the performance of its present function, this Office is hampered by lack of information on police operations and by lack of co-operation from police.
4. That the present system, because of its concentration on the determination of individual complaints rather than the control of police misconduct, is ineffective and involves the wastage of substantial resources which would be better used in other ways.

There is no doubt that the present system is deficient and that there is a need for legislative reform which guarantees effective, independent investigation, or control of the investigation of complaints made against police. This Office has no knowledge of any changes which are, or may be proposed in this area. To date no attempt has been made to consult this Office on any proposed reforms, or to ensure that the knowledge and experience of those at present working in the area is taken into account.

In response to a request for discussion, the Minister for Police, the Hon. P. T. Anderson, M.P., advised as follows:

> "I have received your letter of 8 September, 1982, and I would be quite happy to discuss with you your views on the present provisions of the Police Regulation (Allegations of Misconduct) Act, its administration and the problems encountered in the investigation of complaints under that Act.
>
> Given the present status of my Cabinet submission on police discipline and matters pertaining to allegations of misconduct I would not be able to canvass with you on the 14th the details of my proposals."

42.2 The Resolution of Complaints

In a considerable number of cases the Ombudsman concludes that a complaint has been sustained although the Commissioner considers that it has not been sustained, and in these cases no action is taken by the Commissioner. Some of these cases demonstrate a disturbing reluctance on the part of the Police Commissioner to accept that any misconduct on the part of police has occurred in the absence of the most compelling proof to the contrary.

> Mr B., a Sydney barrister, who was also a member of the Corrective Services Advisory Council, was at a gaol while a strike by prison officers was in progress and police were in command. He had previously been at the gaol on a number of occasions to assist in feeding the prisoners, but on this occasion had completed his business and was having a cup of

coffee in the gatehouse with the Deputy Superintendent of the prison when he was approached by the police officer in charge and asked to leave. There was some dispute over the degree of abruptness, and over whether Mr B. was escorted from the gaol by a number of police officers. However, there was agreement that at the time of the incident there was no pressing emergency such that Mr B.'s presence in the gatehouse presented any immediate risk to security, although the general situation was one of some tension. Mr B. had a statutory right to be present at the gaol by virtue of a section in the Prisons Act which allowed Council members to "visit and examine any prison at any time . . .".

The senior police officer who reported to the Commissioner on this matter—a Deputy Chief Superintendent—recommended that the matter be dealt with by a suitable communication being sent to Mr B. expressing the regret of the Police Department that it had been found necessary on the occasion in question to prevent him remaining in the gaol complex, and saying that in all probability this would not occur again. However, the then Commissioner declined to accept this recommendation taking the view that the police officer concerned had not acted wrongly. The Assistant Ombudsman ultimately found the complaint sustained and recommended that a suitable communication along the lines suggested by the Deputy Chief Superintendent be sent to Mr B.

This case was the subject of a consultation between the Ombudsman and the Minister for Police, Mr Anderson. During the consultation the Minister appeared to agree that some such communication was desirable. Enquiries recently have disclosed that, as recommended, a letter has been sent to Mr B.

I have no wish to criticize the Commissioner, who is responsible for maintaining morale with the police force, for adopting an attitude which is protective and supportive of his officers in the absence of clear wrong-doing. However, this merely serves to illustrate the inappropriateness of a system in which the one person is ultimately responsible both for the operation of the police force and the investigation of complaints against it.

Table 3 is taken from information contained in the Annual Reports issued by the Police Commissioner and summarizes the cases in which disciplinary action was taken against police officers.

It is noteworthy that so few instances of misconduct are dealt with in a force numbering over 9,000 members. The number of complaints received by this Office makes it unlikely that the explanation for this is that very few instances of misconduct come to attention. Rather, it appears likely that the Police Commissioner tends to adopt informal avenues in dealing with most instances of misconduct. In particular, it may be noted that the Lusher Commission of Inquiry into N.S.W. Police Administration noted that in 1979 there were 4,418 transfers of police from one place to another—an almost 50 per cent turnover rate in a force which then numbered 9,011. Of these transfers approximately 25 per cent were "in the interests of the Service", and it would seem that the bulk of these may have been quasi-disciplinary moves. Justice Lusher took the view that the practice of ordering transfers "in the interests of the Service" without the giving of more detailed reasons was open to serious criticism. The Report recommended that:

> ". . . under no circumstances should a transfer be used as an alternative to counselling, the pressing of Departmental Charges or the instigation of criminal proceedings. To transfer a member who is not performing his duties properly or who is suspected of improper practices without recourse to the available supervision processes and disciplinary measures is an abuse of the system and merely passes the problem into another field of police work." (at p. 497.)

Little more detailed information on the way in which police misconduct is dealt with can be obtained. The information contained in the Police Department Annual Reports is not particularly helpful and the former Crown Employees Appeal Board and the new Government and Related Employees Appeal Tribunal Board publish no Annual Reports. Thus no information can be found on what punishments were given for what offences, and what adjustments were made on appeal.

Moreover, complaints made verbally to members of the police force, or raised internally, are not reviewed by the Ombudsman and this Office receives no information at all about the number of such complaints and how they are dealt with. An example of this was the investigation of misconduct by the former Deputy Commissioner, Mr Bill Allen. Although a report in writing was made by Sergeant Molloy to the Head of Internal Affairs about the conduct of the Deputy Commissioner, this Office was given no information on the progress of the Allen inquiry. This Office therefore, had no role in the subsequent inquiries. This system obviously leaves open the possibility of abuse whereby certain serious complaints may be held away from external scrutiny. The question of notification to the Ombudsman of allegations of misconduct made by one police officer against another police officer has recently been the subject of a Report by the Ombudsman for presentation to Parliament.

This Office has recently requested that it be supplied with information on what happens in those cases where officers appear before the Police Tribunal. The results in two cases in which this information was provided are as follows:

A drug dealer made a complaint against two police officers who had solicited a bribe from him. The departmental investigation by the Internal Affairs Branch found the complaint to be sustained: one of the police officers resigned before being departmentally charged.

The Police Tribunal found the charge proved against the other police officer. His appeal against this finding to the Review Division of the Police Tribunal was dismissed.

Recent advice from the present Commissioner indicated that the former Commissioner, Mr Lees, had directed that the offending officer be suspended from pay and duty as from the day following the Police Tribunal hearing. Following the dismissal of this officer's appeal to the Review Division of the Police Tribunal, the present Commissioner dismissed him from the Force with his last day of service being counted as the date from which he was suspended from pay and duty.

The second case concerned a situation of harassment and intimidation of two youths in a country town. The investigation of the complaint resulted in the Commissioner recommending that the offending constable be charged with four counts of "misconduct" and one charge of "neglect of duty". The Ombudsman agreed with the Commissioner's finding and recommended that the departmental charges be proceeded with.

Almost a year to the day following the original lodgement of the complaint, all charges were found to be proved by the Police Tribunal. The officer was then permitted one month in which to lodge an appeal to the Review Division of the Tribunal. Following the expiration of this period and before making a determination on the penalty to be imposed the officer was afforded the further opportunity to make a submission to the Commissioner in respect of the matter including the question of penalty.

Two and a half months following the Tribunal's decision, the Commissioner advised me that all disciplinary action against the Constable had been completed. I wrote back to the Commissioner to ask what in fact this disciplinary action was following the five Departmental charges being found to be proved. The Commissioner then informed me that reference to the papers on this matter were to be included in his Service Register and Record Sheet but the question of punishment was to be held in abeyance for a twelve month period, to be reviewed at the end of that time in the light of the Constable's conduct and manner of performance of duty. When informed of the Commissioner's direction by his District Superintendent, the officer was simply reminded of his responsibilities as a member of the Police Force and the conduct expected of him, and was made aware that leniency would not be extended to him should he again come under adverse notice.

42.3 General Delay in the Investigation and Reporting Process

The experience of this Office is such that the investigations by police into most complaints, whether of a serious nature or of a more minor nature, follow a well defined pattern. This pattern usually involves:

(a) Attendance of the investigating officer on the complainant to verify authorship of the complaint and intention to pursue it, and then the taking of a statement.

(b) Obtaining statements from other civilian witnesses.

(c) Presenting copies of the complaint and/or the statement taken from the complainant to police officers involved in order for them to compile a report.

(d) Obtaining reports from other police witnesses, again after providing them with copies of the complaint or the complainant's statement.

(e) Where an obvious discrepancy exists, complainants, police and witnesses may be requested to undergo a further record of interview.

(f) In matters involving possible criminal proceedings, an opinion about whether or not a prima facie case could be established against the police officer(s) involved is obtained from the Police Prosecution Branch after the investigation has been completed.

(g) Where departmental charges are considered, advice from the Appeals Section is obtained in the framing of the charges.

(h) The investigating officer's report and recommendations are then reviewed and commented on by up to three senior officers (often of Superintendent rank) before presentation to the Commissioner or his delegated officer.

(i) The Commissioner or delegated officer then provides his own comments.

(j) All this material is then forwarded to the Ombudsman.

The most usual time period between the lodgement of a complaint and the receipt of the police investigation report by this Office is from four to six months. It is not unusual, however, to find much longer delays.

When the material is received in this Office, certain sections of it are copied and forwarded to complainants to enable them to make comments. The complainant is invariably the first witness to be interviewed in the investigation process, and is rarely informed by the police investigating officer of developments in the investigation, or given the opportunity as part of the investigation to comment on the evidence given by the police officers involved. I believe it is essential, therefore, to present to the complainant for comment the accounts given by police before I consider the complete material to decide whether further investigation is warranted and finally to attempt to satisfy myself whether the complaint is sustained or not. The matters are, therefore, delayed in my Office for a further period following receipt of the police report and before a final determination is made.

Many investigations take much longer before a final determination is made. It is not unusual to make determinations on complaints about incidents that are a year or more old.

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This is a most unsatisfactory situation. It is not surprising that many complainants, when provided with material from the police report and asked to comment, do not take up that opportunity. While it could be said that this may cast doubt on the integrity of the complainant in first lodging the complaint, I am inclined to believe, on the basis of many comments that are made, that many complainants, when finally presented with the police reports denying their claims, feel generally dispirited and can see no point in vainly pursuing any further a complaint over an incident that happened many months previously, or in some cases more than a year ago.

Delay in a great many cases comes about through deferment. In cases where legal proceedings arise out of the incident complained of, the Commissioner of Police normally seeks the Ombudsman's consent to defer the investigation pending the outcome of the proceedings. In cases where the alleged misconduct is adequately explored during proceedings, no actual investigation may ever be done, and a transcript of the proceedings may be presented to the Ombudsman along with comments and a recommendation on whether any action should be taken. In other cases the police investigation may in fact have almost totally been concluded, and a final recommendation is held in abeyance pending the Court outcome. Often the interim report presented to me in these cases includes the brief of evidence to be used in the proceedings and the Commissioner invokes his injunctive powers under the Act to prevent me from disclosing any of the information provided to the complainant.

It is the practice of this Office to agree to the majority of requests to defer the investigation pending Court proceedings. On occasions, however, consent to a deferment is refused, either because it is considered that the issues raised by the complaint are different from those to be the subject of the proceeding, or because it is considered that an immediate investigation is warranted for some other compelling reason. However, in such cases it is not uncommon to find that the investigation is either not completed or not reported on to the Ombudsman before the legal proceedings have been concluded. In practice there is nothing that the Ombudsman's Office can do about this. The following case illustrates the delay experienced in a matter where, at the time, urgent investigations had been requested:

> Mr A. made a written complaint to a member of the Internal Affairs Branch on 11th August, 1981, containing a number of allegations against Police. The Commissioner provided the Ombudsman with a copy of this statement on 25th August, 1981, and advised that only one matter fell within the ambit of the Police Regulation (Allegations of Misconduct) Act, 1978, which had been the subject of a previous complaint and determination by this Office. Mr A. subsequently lodged a similar set of complaints directly with the Ombudsman. On 3rd September, 1981, the Ombudsman informed the Commissioner that he disagreed with his opinion and considered that five separate allegations were within jurisdiction and required urgent investigation as an investigation might cast doubt on the desirability of proceeding with the prosecution of several charges against Mr A. that were then outstanding. It was also suggested that those proceedings be adjourned pending the investigation.
>
> The Commissioner did not act on the suggestion of seeking an adjournment. On 14th September, 1981, he advised that an officer had been appointed to investigate the complaint but that the charges would be proceeded with as listed.
>
> On 9th November, 1981, the Ombudsman received a preliminary report from the Commissioner who sought consent to defer the further investigation of the complaints pending the Court proceedings. In addition, he invoked his injunctive powers to prevent me from releasing any of the information provided to the complainant.
>
> The request was made in the usual manner and was based on the opinion of the investigating officers that the allegations would be raised in the forthcoming Court proceedings. The Chief Superintendent of the Internal Affairs Branch, in his report to the Commissioner commenting on the recommendation made by the investigation officer, commented that he considered the outcome of the pending proceedings might throw new light upon the allegations made. The Ombudsman's request for an urgent investigation appeared to be totally ignored.
>
> The Ombudsman replied to the Commissioner on 12th November, 1981, refusing to consent as the case was considered to be an exceptional one. A central allegation was that particular police officers had been multiplying charges against the complainant and proceeding with prosecutions maliciously. Several similar prosecutions against him had already been dismissed by the Court by that date.
>
> The Ombudsman asked that a final report on the investigation be presented no later than mid-January, 1982. The next proceedings were listed for 2nd February, 1982.
>
> On 7th January, 1982, the Ombudsman's investigating officer wrote to the Commissioner seeking advice as to whether the report would in fact be presented to the Ombudsman by 15th January, 1982.
>
> On 12th January, 1982, the Ombudsman received a reply from the Commissioner advising that inquiries had been finalised, but that an opinion from his Senior Police Prosecutor was being sought before submitting his final report.
>
> The Ombudsman's officer rang the Internal Affairs Branch on 18th January, 1982, to be advised that the advice from the Police Prosecutor had been received but had been referred back to the investigating officer for comment before the Commissioner's final report was prepared. On inquiring how long that would take, the officer was informed that the police investigation officer was in fact on leave. After concern at this delay was raised, alternative arrangements were then made by the Chief Superintendent of Internal Affairs Branch for another officer to prepare comments.

The final report was eventually received in this Office on 22nd January, 1982. The Commissioner did in fact advise that he had directed that an application be made for the withdrawal of one charge, although two other charges were to be proceeded with.

When these charges finally were heard several days later, a prima facie case was established in one, but the other matter was dismissed. Mr A. was eventually convicted on the remaining "Goods in Custody" charge which is now the subject of an appeal.

In any event, after receipt of the final report, the Ombudsman did not have sufficient time to gather comments from the complainant (who lived in the country) before considering all the material, in order to make a determination and prepare a report before the Court hearing.

The complainant was also burdened with the financial and emotional costs of preparing a defence for a charge that the police investigation revealed to be unnecessary.

43. Assaults by Police

The limitations of the present system are well illustrated by an examination of several cases where complainants alleged they had been assaulted by police.

Mr J. was arrested by police as a result of an altercation on a bus, and taken to a suburban police station. There he alleges he was kneed in the testicles on a number of occasions by one of the arresting officers. The evidence in support of Mr J.'s story is:

- the evidence of the bus driver and conductor involved in the altercation, which clearly suggests that at the time he was arrested, Mr J. was not suffering from any injury;
- that on leaving the police station, after being released on bail, Mr J. immediately took a taxi direct to Royal Prince Alfred Hospital, where a doctor found bruising and tenderness of the scrotum. This was confirmed by further medical examinations and photographs on the following day.

The three police officers present all denied that any assault had taken place. They suggested instead that Mr J. was seeking retaliation against the police for their action in charging him with malicious injury to the bus. One officer alleges that Mr J. said at one stage: "you'll be sorry for this, I got a policeman the sack in New Zealand for charging me."

The implied allegation by police is that Mr J. deliberately injured himself in order to substantiate an allegation of assault against police. However, this does not take account of:

- the fact that there was no time lag between 11.!0 p.m. when Mr J. left the police station, and his going by taxi to Royal Prince Alfred Hospital, where he was seen by a doctor at approximately 11.40 p.m.; and
- the nature and severity of the injury to Mr J. Colour photographs taken shortly afterwards show extreme and extensive bruising of the scrotum.[1]

It should be noted that the Ombudsman's Office was able to find this complaint sustained only because of the compelling corroborative evidence which was contained in the statements obtained by police and provided to us with their reports recommending dismissal of the complaint. We were not able to take the obvious course which would be adopted by any Court or tribunal considering such a matter—interviewing the complainant, interviewing the officers, and drawing conclusions as to their credibility which would supplement the actual evidence available. This makes it very difficult to draw conclusions in the cases where the evidence supporting the complainant's story is strong, but rather less compelling than in the case of Mr J.

Mr N. was stopped by police after being observed driving erratically. Mr N.'s story was that he performed a breathalyser test by the road; his right hand had been handcuffed; and one of the officers had then made a move towards him which led him, in a reflex action, to raise his own arms, in defence, although his fists were not clenched. The officer then "twisted my arm behind my back . . . forced me to the ground, and came down on me rather heavily on his knees, landing on the right hand side of my spine".

The police officers' version was that Mr N. had swung round attempting a blow, that the officer had then stepped backwards pulling on Mr N.'s handcuffed right wrist, and Mr N. then went to his knees in the gravel. Mr N. was then instructed to lie on his stomach, which he did, and the officer then "knelt and placed his right knee on my left shoulder, reached over and handcuffed his left wrist".

Medical examination supported Mr N.'s version, and found that the plaintiff had five fractured ribs on the right hand side of his spine. A radiologist stated that these injuries were consistent with an assault as described by Mr N., or a fall to the ground onto the right side of the chest. It was not suggested that these injuries could have occurred in any other way during the course of the arrest process, nor that they existed before Mr N. was arrested.

Mr N. visited his doctor the day after the alleged assault, and it was found that he was suffering, among other things, from tenderness on the right side of the rib cage. However, no X-rays were taken until sixteen days later, because Mr N. initially took the view that the pain was not too severe and X-rays were not needed. When taken, the X-rays showed uniting

[1](See Case 39, Part III, Case Notes)

fractures of five ribs, which appeared to have been sustained about two weeks before the X-rays were taken. However, the radiologist's precise words to the investigating police officer were:

"The appearance of the fracture of the right seventh rib would indicate that the injury was received round about two weeks prior to the X-ray. The sixth looks about the same; the fourth rib fracture shows no evidence of union, this could indicate a more recent injury; the other fractures could have been at the same time as the seventh rib injury."

The Police Commissioner took the view that the fourth rib raised doubts about whether all the fractures were received at the same time, and that consideration therefore had to be given "to the distinct possibility that the injuries were not suffered by Mr N. whilst in police custody, but were received subsequent to his release." He therefore found that the complaint had not been sustained.

After some deliberation, the Ombudsman's Office took the view that, while a determination of sustained might be justified, the fact that there was a delay of several hours between Mr N. leaving the police station and consulting his doctor made it impossible to absolutely rule out self inflicted injury, and the case was concluded on the basis that it was not possible to determine whether or not the complaint was sustained.

It is the experience of this Office that where a conflict in evidence arises between the complainant and one or more police officers, the investigating police and the Commissioner are almost invariably willing to accept the word of the officers concerned and conclude that the complaint is not sustained.

At times this occurs in circumstances where there is quite considerable evidence in support of the complainant's version of events, as evidenced above.

These cases both demonstrate the almost impossibly high standard of proof required by the police before they accept that a complaint has been made out. In practice, the Police Commissioner certainly requires that such complaints be made out according to the criminal standard of "beyond reasonable doubt". It should be noted that the Police Tribunal, to which the most serious cases are referred for hearing, requires proof only on the balance of probabilities, as was pointed out by Mr Justice Perrignon in his determination of the recent charges against the former Deputy Commissioner, Mr Bill Allen. The Commissioner clearly required a higher standard of proof than this in the cases involving Mr J. and Mr N. above.

Another assault case was as follows:

Mr X. was involved in an altercation with a police officer in a hotel carpark. Mr X. claimed that the officer, on discovering that Mr X. owned the car which was obstructing him, grabbed Mr X. saying to his colleague, who wished to leave, "No, I am going to teach the smart little cunt a lesson." He then rained punches on Mr X. and kicked him when he fell to the ground. Mr X. was able to break away and fetched some friends from the bar. When he returned to the car park with his friends he found that the door of his car had been kicked in and the radio aerial bent over. Mr X. was again assaulted by the officer in the presence of his friends and the hotel manager, who corroborated his version of the incident and said they considered the officer was affected by alcohol.

When other police were called to the scene by the hotel manager Mr X. indicated that he wished to charge the officer with assault and damage to his motor car. He was advised that he would have to attend the police station if he wished to do this, and he then walked there in the company of his three friends. When he arrived there, he was charged with "resisting arrest", "assaulting a police officer" and "using unseemly words".

The police officers denied the assault, and alleged that Mr X. used unseemly words to them when he was asked to move his car. They claimed that the damage to the car occurred when the second police officer was thrown heavily against the vehicle in the scuffle with Mr X. which ensued. They both denied that Mr X. had been kneed, punched, or kicked during the incident.[1]

These events occurred on 28th March, 1979. At the present time—over three years after the incident—the Police Department has still not decided whether or not it proposes to proceed with the charges laid against Mr X. This is in spite of the second police officer having been found guilty of the assault charges laid against him by Mr X. The Police Department considered that it had sufficient evidence to warrant criminal proceedings being laid against the police officer six months after the assault, but the charges against Mr X. have still not been dropped.

44. Intimidation of Complainants and Witnesses

This Office has received a number of complaints alleging that police investigating complaints have treated complainants or witnesses in an intimidating or harassing fashion likely to deter them from proceeding with a particular complaint or from giving evidence.

The limitations on the powers of this Office make it very difficult to assess whether such complaints are justified, but it is obviously a matter of the greatest possible concern if the police officers assigned to carry out the investigation of a complaint do not perform their duties effectively, impartially, and with sensitivity to the situation of complainants and witnesses.

[1](Case No. 40, Part III Case Notes).

Mr R., a 19 year old youth living in a small country town, was on probation from a court and was therefore under the supervision of a probation officer. Mr R. and his father complained to the probation officer that Mr R. and his brothers were being unfairly and unreasonably harassed by a particular police officer, whom they alleged was frequently drunk and had questioned them more than once while in this state. The probation officer lodged a complaint on behalf of Mr R.

The complaint was assigned for investigation to a Detective Sergeant from the Internal Affairs Branch who adopted the normal procedure of going to the town and interviewing, after some difficulty, Mr R. senior and his sons. Both sons declined to put any complaint in writing, and said that they did not wish to proceed. Accordingly, no further action was taken.

However, the probation officer who had lodged the original complaint subsequently wrote to this Office stating that he was most annoyed about the way the complaint had been handled.

> ". . . I know for example, that uniformed police officers were sent to R.'s house to collect the complainant for interview with Sergeant .. This caused embarrassment for the probationer and precipitated a fear by his landlady that the police visits represented further offences on the part of the probationer."

He also claimed that the Detective Sergeant responsible for the investigation had placed pressure on him to formally withdraw the complaint without giving him a chance to speak to R. He alleged that the Sergeant had telephoned him while he was out of town visiting an afforestation camp; had advised him that R. wanted to withdraw his complaint, and—

> "pressured me as the author of the complaint to write a statement indicating my satisfaction with the resolution of the complaint and the way the investigation had been conducted. He undertook to drive from (the town) to the afforestation camp that afternoon, which would have meant travelling 204 kilometres on a round trip. I was most ambivalent about this course and indicated that I would rather write to him the following week. As it was a Friday afternoon, I told Sergeant .. that I would be travelling to (another town) that afternoon for the weekend and would be unable to meet him. This did not seem to deter Sergeant .. and he said he would travel to (the other town) (452 km round trip) and meet me on Saturday morning in order to resolve the matter. As I was not prepared to comply with this request I undertook to write to Sergeant .. in Sydney after I had had contact with either of the complainants the following week."

The probation officer was later contacted by the local Inspector, and it was suggested that any future complaints be directed to him. The probation officer concluded that:

> "My experiences in relation to this matter do not engender confidence in the ability of police to investigate complaints in relation to the police."

45. Pressure to Sign Conciliation Statements

It has already been noted that the proportion of complaints resolved through conciliation has risen sharply from 16 per cent in 1980–81 to 28 per cent in the past year. A closer analysis of our records, however, reveals that this sharp increase has been accounted for almost entirely in the last six months, when the effective rate of conciliated complaints has been 37 per cent of all complaints finalised. This period approximates the office of the new Commissioner of Police, Mr Abbott, and may suggest that there was a policy decision made by the Commissioner to deal with a far greater percentage of complaints received by him by way of conciliation in the first instance, rather than by investigation.

One advantage of this process is that complaints are attended to reasonably promptly by an officer assigned to call on the complainant with the express purpose of dealing with the matter by way of explanation or clarification, which for many people is all that is desired. Whilst in most cases the alleged misconduct is not investigated and police officers who did commit acts of misconduct may go undetected and unpunished, the person making the complaint does feel that the Police Department has responded in some way in a reasonable period, unlike cases that are fully investigated.

The processing of complaints against police by way of conciliation rather than investigation is, of course, a much less costly and time consuming way of dealing with complaints, which may partly explain why Mr Abbott has recently been able to announce a reduction in the number of staff in the Internal Affairs Branch. This was said to be because the number of complaints made against police had dropped. Our figures, however, record a 35 per cent increase. What has changed, in the last six months in particular, is the fact that far fewer complaints are fully investigated, and far more complaints are dealt with by way of conciliation.

This is a matter of some concern as it has been the experience of this Office that complainants often have reservations about the way their complaint is actually dealt with when conciliated by police.

Previous annual reports from the former Ombudsman, Mr K. Smithers, expressed concern at evidence that investigating police on occasion place excessive pressure on complainants in order to induce them to withdraw a complaint by signing a conciliation statement. Thus, in his Annual Report for 1979–80, Mr Smithers said:

"There is evidence to suggest that on certain files pressure may have been brought to bear to persuade the complainant to agree that the matter had been conciliated to his or her satisfaction. There is no doubt in my mind because of certain attitudes expressed and statements made by complainants, that in some of these cases a fear of reprisal may have influenced their decision in this regard and naturally this has been of concern to me."

I am concerned that this problem is continuing, and that for practical purposes under the present system there is little that this Office can do to overcome it except to decline to accept the conciliation statement in cases which come to attention, and require that the complaint be investigated in full.

Cases where such complaints arise are not uncommon, and include the following examples which have passed through the Office in the past year.

Mrs E. complained to the Ombudsman's Office that a police officer who had been called to her house had failed to take appropriate action against her ex-husband, who had seriously assaulted both her and her mother (to the extent that hospital treatment was required) as a result of an argument over the late return of children from an access visit. Because Mrs E. indicated that she did not really want the officer to be punished, and desired only that her husband be taken to court for assault, this Office decided that the matter should be conciliated with a view to the possible prosecution of the husband.

This Office was subsequently advised by one of the officers responsible for conciliating the complaint, that as a result of the conciliation Mrs E. had withdrawn her complaint and had signed a statement to this effect, although no prosecution was proposed against her ex-husband. Mrs E. however, contacted this Office and denied this, saying that being a nervous person, she signed the statement without knowing what she was signing because she was at a loss as to how to deal with the situation. According to Mrs E., the police had made no effort to conciliate the matter, and had simply advised her that the officer who had attended the scene was a good policeman and "could have been tired or he could have had an upset at home."

Mr P. was a motorcyclist involved in a collision with a car whose motorbike was stolen after he was taken to hospital following the accident. He complained that the police present had undertaken to look after the bike, but had failed to do so. The Ombudsman's Office agreed that police should endeavour to conciliate the matter, but two months later Mr P. came to our Office complaining that police wanted him to sign a statement to the effect that everything was OK and that he had himself made arrangements with other people present at the accident scene for the safekeeping of the bike. Mr P. denied making any such arrangements, and expressed worry at "pressure" being put on him by police.

The matter was then investigated, with the police concluding the complaint had not been sustained.

Mr C. complained to the Ombudsman's Office about the failure of police to take suitable action with respect to the illegal parking of cars around a suburban club. He later contacted this Office and complained that a police Inspector had telephoned him and asked if he would be prepared to sign a statement of conciliation on the basis that police were conducting an investigation. Mr C. declined to do so unless he saw some sign of improvement. He alleged that the Inspector then attempted to pressure him into signing the statement, saying "Do you understand what that means? You will have to answer questions, a typist will have to be employed to assist, etc".

Ultimately, the complainant did sign a conciliation statement, and the matter was concluded on that basis.

In other circumstances, no direct complaint is made that unfair pressure has been applied, but the circumstances may nevertheless give rise to a suspicion that a complaint has been withdrawn because the complainants are fearful of harassment or persecution from police if they proceed.

In many cases, complainants sign conciliation statements saying they are satisfied to leave the matter in the hands of the officer dealing with it. The expectation of the complainant is obviously that this officer will then follow up the matter, speak to the offending officer, and take whatever action is necessary. Except in rare cases, what happens in practice to the knowledge of this Office is that when such statements are obtained no further action is taken apart from reporting to the Ombudsman.

The present system whereby the Ombudsman has no direct power of investigation into any matters precludes this Office from investigating whether or not statements of withdrawal made at conciliation meetings are in fact fully voluntary. This concern is particularly acute in cases involving complainants who are susceptible to harassment by police—for example, Aboriginal or juvenile complainants. However, the involvement of the Ombudsman through the present system does provide at least some backup for complainants who may consider their complaint has been inadequately dealt with.

Ways of improving the effectiveness of this involvement are currently being examined.

46. Public Mischief

In his Annual Report for the year ended 30 June, 1981, the former Ombudsman, Mr Smithers, referred to a case where a complainant to this Office had been charged with public mischief and convicted by a Magistrate. The complainant appealed to the District Court where he was represented by Senior Counsel. Counsel for the appellant argued that as there were specific provisions in the Ombudsman Act, making in certain circumstances wilfully false complaints to the Ombudsman an offence, there was no room for the Crimes Act offence of committing a public mischief. This submission was rejected by the learned District Court Judge (Boulter D.C.J.). However, as His Honour substituted a fine of $500 for the Magistrate's penalty the appellant decided not to appeal further in respect of the ruling of law by the District Court Judge.

In the Annual Report referred to, Mr Smithers expressed concern at the use of such a charge of public mischief against a person who had brought a complaint to this Office. I share this concern and request that the government consider amendments to the law to ensure that the only penalties for making unfounded complaints to the Ombudsman are those set out in the Ombudsman Act.

It has come to the notice of the Office that occasionally in seeking conciliation or withdrawal of a complaint, investigating police officers have referred to the possibility of public mischief proceedings being brought in the event of investigations showing the complaint to be unfounded. Such a practice, if it exists, is deplorable and interferes with the free expression of complaints. This was the subject of discussion between the Ombudsman and the former Commissioner of Police, Mr Lees on 29 September, 1981. The then Police Commissioner appeared to agree that it was undesirable that a threat of public mischief proceedings should be made by investigating police officers, and subsequently no further case has come to the attention of this Office. The matter will be closely monitored, but it could be readily dealt with simply by amending legislation rendering public mischief proceedings inapplicable in the case of complaints to the Ombudsman.

47. Juveniles

47.1 General Problems in the Investigation of Complaints by Juveniles

Particular problems arise in the investigation of complaints made by or on behalf of juveniles. Young people from low income areas, like certain other groups such as Aborigines, are particularly susceptible to harassment or discriminatory treatment by police because a significant part of their activities tends to occur in and around public places, and because they are in a less favourable position to know and enforce their rights. There is no doubt that this leads to a reluctance on the part of some young people to lodge, or to proceed with perfectly legitimate complaints about police misconduct.

This problem calls for special sensitivity on the part of investigators dealing with complaints from juveniles and other people who may be at risk from police harassment. However, it is evident that such sensivity is not always forthcoming. It is common for this Office to become aware, for example, that juveniles have been required to attend at police headquarters or a police station for an interview rather than being seen in the less daunting surroundings of their own home, or have been made conspicuous through procedures such as being collected in a police car.

> V. and T., males aged 16 and 17 respectively alleged that at around 10.00 p.m. on a Friday night they had been at a Bondi Junction pinball parlour when they were picked up by two police officers and taken, in separate cars, to Waverley Police Station. There they were placed in a "paddy wagon" with two other boys and driven to La Perouse. Two other police cars accompanied the paddy wagon. At La Perouse, the boys were taken out of the paddy wagon. V. claimed that he was then punched in the stomach and ribs and kicked in the testicles. It was claimed that T. and a third boy were also punched—the fourth boy was not assaulted as police said he was too small. The boys claimed that the police then took their shoes and threw them into the scrub, and left them to walk home. None of the boys sought medical attention.
>
> An investigation was conducted by a Detective Inspector from the Internal Affairs Branch. He arranged to interview V., sending a police car to pick him up or his father, and bring them for an interview to Police Headquarters. When interviewed, V. confirmed the statement he had made about the incident but said that he did not want to pursue the matter. He refused to attend an identification parade of police officers, and declined to go to La Perouse to identify the area.
>
> The Detective Inspector then tried to interview T. and the two other boys, but T. failed to keep the appointment and the others said they knew nothing and declined to make a statement. It may be, as police inferred, that T. failed to keep the appointment because the allegations were not true—but it is also possible that he feared the consequences of proceeding.
>
> Despite this, the independent investigation of the incident was cursory in the extreme, focussing largely on an earlier visit by police to the pinball parlour, which had little to do with the allegations of abduction and assault. The denials of the incident by police were not seriously tested. The Inspector did not question the police in detail about the movements of the cars involved, or ask how they managed to clock up the mileages recorded in the vehicles' diaries (100 kms in the case of one vehicle). He also did not ask whether anyone at places which police said they subsequently visited could corroborate their alibis.
>
> The investigation concluded that there was no evidence of misconduct on the part of police, and the Commissioner found the complaint to be not sustained. This Office had power to require the police to conduct further inquiries, but it was considered that to do so might result in harassment of the complainants. Accordingly, the case was concluded on the basis that it was unable to be determined whether or not the complaint was sustained.

47.2 Problems in the Interrogation of Juveniles

It has been generally recognized that juveniles face particular disadvantages in dealing with police inquiries because they generally have little knowledge of, or ability to enforce, their legal rights This recognition led the Australian Law Reform Commission, in its report on Criminal Investigation, to recommend special protections for juveniles being interviewed by police. For the same reason, the N.S.W. Government enacted section 81c of the Child Welfare Act. This Section provides, in effect, that statements or confessions made by persons under the age of 18 years are not to be admissible unless there was present in the police station throughout the time it was made or given, one of the child's parents or guardians, a lawyer of his or her choosing, or a person not a member of the police force who is consented to either by the child or by his or her parents.

However, there are a number of loopholes in the present legislation which enable the apparent intention of the legislature to be defeated in many cases. The major deficiency is that the protections provided by the section apply only if the interview takes place in a *police station*—if it occurs anywhere else, no other person need be present. This requirement that the interview be conducted at a police station appears to render the protection of this section of the legislation ineffective from an operational point of view.

In addition, it appears that if the interview takes place at a time when police have not yet decided that proceedings against the juvenile are or may be involved, the protections of the section are not relevant.

It appears that the preliminary interview in the investigation stage can be used to gather evidence relevant to the accusation stage, and there is no responsibility placed on the police officers interviewing the child to show that they do not expect to be laying charges against the child at a later time. Where there is reasonable suspicion of the need to make accusations later, the police officers are not required to err on the side of having a suitable adult in attendance.

> A 17-year old boy was questioned by police officers regarding the theft of stocks of new clothing from a small isolated airport at night.
>
> He was not accompanied at this interview by a parent or approved substitute.
>
> At the time, the police officers conducting the interview knew that the boy had driven with another person to the rubbish dump next to the airport on the night of the theft, and they had found the same type of sand at the dump as occurred at the airport around the area where the theft occurred. They had also established prior to the interview that the boy had the same type of marked plastic bags at his home as were found filled with sand inside the empty clothes cartons (i.e. substituting for the clothes which had been stolen.) Thus, before the interview, the police officers investigating the crime had considerable reason to suspect that the boy might have been involved with the theft of the clothing.
>
> The investigator's report on this complaint referred to the right of police officers to question children unaccompanied by an appropriate adult during the *investigation stage* of their detective work but not during the *accusation stage* when it appeared that some charges might be laid against the interviewee. The investigator considered that the interview in this case occurred when the case was only in its investigation stage, and therefore was in order.
>
> The investigator also referred to the fact that since the interview was not conducted in a police station the protections of Section 81 (c) of the Child Welfare Act did not apply.

48. Failure To Act

It will be noted from the figures on Table 2 that a significant percentage of complaints against police relate to a failure to take action in relation to a particular matter. These cover a very broad range of complaints, from allegations that police failed to issue a traffic infringement notice to an erring motorist to far more serious matters. One major case is summarized below:

> The complaint related to a serious assault upon a prisoner at Long Bay Gaol by one or more other prisoners. The assault occurred at 7.00 p.m. one evening in the shower block of the Metropolitan Reception Prison Hospital.
>
> Police interviewed the victim in hospital on the night of the assault, and obtained an account of what had happened. However, no further steps in the investigation were taken by police for almost six weeks. It appeared that this was because an industrial dispute was in progress at the Gaol which made it impossible to remove the victim from the Gaol to Maroubra Police Station for the purpose of obtaining from him a further and more detailed statement. In the result, the police investigation was not able to identify the offender, although an identification parade was held some six weeks after the assault occurred.
>
> The Office took the view that the failure to proceed with the investigation for six weeks amounted to wrong conduct, particularly in view of the fact that the prison is a controlled environment, and swift action should have permitted police to definitely identify those inmates who might have been in the shower block at the time.

Although the prisoner could not be removed to the police station, there was nothing to prevent police interviewing him at the gaol. Police considered that there were "no proper interviewing facilities" at the gaol, but lawyers and staff of this Office nevertheless must manage to use such facilities as exist. In fact a separate investigation by this Office resulted in the Department of Corrective Services acknowledging that the issuing of orders to cover the removal of prisoners to police stations for such interviews was unlawful and the discontinuation of the practice was ordered.

Even leaving this aside, there was nothing to stop police proceeding with an investigation on the basis of the descriptions they obtained from the victim on the night of the assault. Indeed, the statement taken from him six weeks later did not add substantially to the description he provided at the time.

The Commissioner of Police disagreed with the finding of this Office that the complaint was sustained and therefore declined to admonish the responsible officer.*

49. Some Notable Investigations

The Internal Affairs Branch has shown itself to be capable of some very fine efforts in carrying out investigations into allegations of misconduct against police officers. Investigations officers in this Office have noted some very skilfully planned and well executed investigations. It is not appropriate to refer to case studies in this regard, since to do so might possibly be of assistance to those wishing to avoid being found out by such Internal Affairs Branch methods in the future.

*(Case No. 41, Part III, Case Notes.)

TABLE 1

COMPLAINTS AGAINST POLICE

	Under Investigation	No Jurisdiction	Declined	Conciliated	Not Proceeded with	Sustained	Unable to be Determined	Not Sustained	Total
Number of Cases carried forward from 1980–81	133	4	4	85	83	58	289	183	839
Number of complaints received from 1st July, 1981 to 30th June, 1982	550	9	56	272	126	11	51	46	1 121
Total	683	13	60	357	209	69	340	229	1 960
Disposition of finalised complaints—percentages	..	1%	5%	28%	16%	5%	27%	18%	100%

Number of Files Opened = 1,017

In addition to the above figures, there were 141 complaints about the issue of Traffic Infringement Notices which are deferred/declined awaiting further contact from the complainant (if any).

TABLE 2

COMPLAINTS AGAINST POLICE—TOTALS

Nature	Sustained	Not Sustained	No Determination	Conciliation	Not Proceeded With	Declined	Under Investigation	No Jurisdiction	Total
Abuse	2	3	20	18	3	1	14	..	61
Assault	6	26	46	1	27	1	125	2	234
Breach of Laws	..	1	2	4	1	..	8	..	16
Bribery	3	5	2	..	2	..	11	..	23
Conspiracy	..	2	..	..	..	..	2	..	4
Damage to Property	..	8	6	..	2	1	9	..	26
Dangerous Driving	1	4	7	7	..	..	16	..	35
Drinking on Duty	1	2	3	1	2	..	5	..	14
Drug Trafficking	..	1	..	..	..	..	1	..	2
Extortion	..	2	..	..	..	..	1	..	3
Fabrication of Evidence	..	12	2	1	9	2	25	1	52
Fail to Identify	2	1	4	2	2	..	5	..	16
Fail to Inform	2	4	7	3	2	1	12	..	31
Fail to Properly Investigate	9	9	13	16	7	1	31	..	86
Fail to Return Property	3	2	5	5	5	..	16	..	36
Fail to Take Action	3	37	25	81	21	4	55	1	227
Give False/Misleading Information	1	3	5	3	3	..	12	..	27
Harassment	3	13	19	18	15	2	34	..	104
Ill Treatment	2	9	7	9	5	..	22	..	54
Incorrect Charges	1	9	7	4	4	1	32	..	58
Misuse of Office	1	3	6	11	3	..	19	..	43
Neglect of Duty	2	2	6	2	2	..	2	..	16
Non-Compliance with Tow Truck Rosters	..	..	..	..	..	..	..	..	..
Non-Provision of Standard Rights	..	..	..	..	1	..	1	..	2
Not Wear Number	..	..	1	2	1	..	6	..	10
Payment of Protection Money	..	..	..	..	..	..	..	..	..
Provocation to Commit Offence	..	..	..	1	2	..	1	..	4
Refuse Reasonable Request	2	2	10	4	10	2	21	..	51
Rudeness	4	7	48	80	20	5	48	1	213
Theft	1	7	4	..	4	..	12	1	29
Threats	2	3	11	4	10	1	22	..	53
Trespass	..	3	2	1	..	1	9	..	16
Unauthorised Release of Information	3	2	2	2	3	..	6	1	19
Unauthorised/Unexplained Search	..	6	4	4	3	2	12	..	31
Unnecessary Arrest	3	10	18	5	6	3	23	1	69
Unnecessary Detention	2	2	5	4	10	..	10	..	33
Unnecessary Investigation	1	..	..	..	1	..	..	..	2
Unlawful Operation of Radar Units	..	..	..	1	..	..	1	..	2
Unwarranted Invasion of Privacy	..	..	1	1	..	..	6	..	8
Victimisation	..	4	8	7	1	1	4	..	25
Wrongful Issue of T.I.N.	3	8	19	40	15	18	25	..	128
Wrongful Issue of Drivers/Riders Licence	..	..	..	..	..	..	..	..	..
Other	5	12	9	14	5	10	14	5	74
Corruption	1	5	6	1	2	3	5	..	23
Total	69	229	340	357	209	60	683	13	1,960

PART III

CASE NOTES

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CASE No. 1

CHIROPRACTORS' REGISTRATION BOARD

Allegations of discrimination against osteopaths

Complaints were received from a number of people about the Board's conduct. The complaints took various forms but were related to four basic complaints (which were, to some extent, inter-related and overlapping), namely—

(a) The alleged failure of the Board to investigate and assess existing Osteopathic courses conducted by the Windsor College of Applied Osteopathy and the N.S.W. College of Osteopathic and Natural Therapies for the purpose of prescription in terms of the Act, before requiring graduates from such courses to undertake an examination for the purpose of registration;

(b) Alleged discriminatory treatment of Osteopathic Colleges by the Board in this regard, as compared to the treatment afforded Chiropractic Colleges;

(c) Alleged unreasonably high standard of the examination arranged by the Board for the purpose of registering Osteopaths; and

(d) Alleged improper and unlawful levying of examination fees by the Board.

The report dealt with each of the complaints separately.

The investigation was conducted both in writing and by personal visit to the Board's Office as well as discussions with the Chairman of the Board by the Principal Investigation Officer who dealt with the matter in this Office. Of significance was the fact that the Board lacked representation from the "pure" Osteopathy ranks in its composition, all of its "profession" representatives being either Chiropractors or Chiropractors who were also registered as Osteopaths.

As a result of the investigation, and after considering comments made by the Chairman of the Board, the Board's conduct, in respect of each of the four basic complaints was found to be wrong in terms of the Ombudsman Act in that the Board—

(a) (i) failed to take proper steps as early as was consistent with its responsibility under the Chiropractic Act, 1978, to evaluate for prescription or rejection as approved courses those courses in Osteopathy conducted by the aforementioned Osteopathic Colleges;

(ii) failed to evaluate in a manner reasonably consistent with its statutory responsibilities the course in Chiropractic conducted by the Sydney College of Chiropractic Ltd before recommending that such course be prescribed under the Act in August 1979, even though the subsequent assessment of Osteopathic course standards, at the Board's express direction, was inflexibly tied to the "standard" of the Sydney College Chiropractic course.

(iii) failed to conduct its evaluation of Osteopathic courses in such a way as to identify to the Colleges concerned with these courses areas which were in need of upgrading in order to achieve the standard seen by the Board as essential to enable prescription to be recommended.

(iv) failed to expeditiously inform the Osteopathic Colleges that their courses, having been assessed, would not be recommended for prescription under the Act.

(b) dealt with the Windsor College of Applied Osteopathy and the N.S.W. College of Osteopathic and Natural Therapies in an unfair, unreasonable and discriminatory way;

(c) in setting the examination for registration purposes, failed to allow for the possibility that some segments of the Osteopathic courses undertaken by candidates would meet its required standards and, in particular, failed to make satisfactory provision for those candidates who were in practice and not current course participants, and such conduct was unfair and unreasonable; and

(d) failed to see that a regulation, in respect of the payment of examination fees, was made after having resolved that such regulation be made.

The most significant result of the Board's conduct was that graduates from the two Osteopathic Colleges who completed their courses too late to take advantage of the "grandfather" registration provisions of the Chiropractic Act, 1978, but early enough to have been engaged in Osteopathic practice for some time, were placed at a distinct disadvantage in securing registration.

The report identified those factors which were believed to have contributed to the Board's wrong conduct in the matter and, in order to mitigate the consequences of such conduct, the following recommendations were made:

(a) That—

(i) the Board take immediate action, as soon as possible and no later than 1983, to ensure the provision of a bridging course of appropriate content and duration to afford those Osteopathic graduates concerned a reasonable opportunity to attain the knowledge they require and to otherwise equip them to attempt the Board's examination for registration; and

(ii) pending the availability of such a bridging course, the Board ensures that those Osteopathic graduates who have not yet gained registration but who have been and are presently engaged in the practice of Osteopathy be given all practicable and positive assistance possible to otherwise enable them to attempt the present registration examination.

(b) That the new Board, when constituted, contain appropriate representation from the ranks of the "pure" Osteopathic profession.

(c) That the Board take immediate action to regularise and remove the uncertainty which surrounded its practice of charging examination fees by arranging for an appropriate regulation or for appropriate regulations, as the case may be, to be made.

The Minister for Health was given a copy of the report before its publication and was asked whether he wished to consult in terms of Section 25 of the Ombudsman Act. He did not wish to consult with me but advised in the following terms:

"I have been similarly concerned about the actions of the Chiropractors' Registration Board and have been considering all options available to me as Minister for Health since the former Board completed its terms of office on 31st March 1982.

The major area of concern to me related to representation on the Board by practising osteopaths and the manner in which the interests of osteopaths were handled generally by the Board.

To overcome this situation I advise that a new Chiropractors' Registration Board was appointed by the Governor-in-Council for a term of 12 months concluding on 19th July, 1983. This Board includes for the first time a practising osteopath in the person of Mr A. K. Ross, who was nominated to me by the Australian Natural Therapists' Association. Attached for your information are details of the new Board appointments.

In respect of the other issues you have raised, I advise that I will be writing to the Chairman of the new Board to request that immediate action be taken by the Board to ensure that every step is taken to have a bridging course for osteopaths provided by an appropriate educational body. The Board will be asked to liaise with organisations such as the Higher Education Board and the Osteopathic Colleges in this regard. The bridging course should be a one-off event to enable practising osteopaths who have not, or cannot, attain registration, to be given one chance to achieve the necessary standard required to sit for the Board's examination. I will request the Board to widely publicise within the osteopathic profession the matter of a bridging course.

In addition, I will request the Board to submit proposed amendments to the Chiropractic Act, 1978, as I intend to give consideration to any amendments which might be appropriate in the light of the contents of your Report."

The Ombudsman's report was made final on 11th August, 1982 and the Board was asked to let me know, within three months, of the action taken in respect of the recommendations made. The extent of compliance by the Board with the recommendations will be monitored.

Case No. 2

CORPORATE AFFAIRS COMMISSION

Decision to Change Business Name

The complainant operated a business engaged in armed escort and security and private detective work.

An application was made to the Corporate Affairs Commission for registration of the firm's name under the Business Names Act, 1962 for a name which included the word "Detective". A certificate was issued by the Commission granting registration of the name for which application was made.

However, on applying for renewal of his pistol licence, which was essential to the business, the complainant was advised by the licensing officer that the licence would not be granted unless the registered business name was changed. The licensing officer drew attention to the provisions of section 17 (i) of the Police Regulation Act, 1899. This section provides where relevant, that it is an offence (subject to an exception which did not apply in this case) for:

"any person who, not being a member of the police force,— . . .

(c) for the purposes of or in connection with any business, occupation or employment—

(i) assumes or uses the designation of detective or private detective, or any other designation which includes the word "detective . . . "

The complainant had spent a considerable sum on stationery, advertising, etc., based on the Corporate Affairs Commission registration of the original name.

He then applied to change the business name by omitting the word "Detective" and substituting "Investigation" but the Commission rejected this request on the grounds of likely confusion with another business name. In this instance the names of each firm comprised three words and only the first word was similar in each case and was a word of ordinary usage.

When this matter was taken up with the Commission, the Chairman advised that the name, which included the word "Detective" was inadvertently registered

> "having regard to the inclusion, in the name, of the word "Detective", the use of which is prohibited under section 17 of the Police Regulation Act, 1899–1935. As a result of this inadvertent registration, it is necessary that the name be cancelled. Any claim for compensation by ________ arising from the cancellation of the name will be considered upon receipt of an itemised account accompanied by evidence of expenditure in relation to the necessity to change his business name."

The Chairman went on to say that although the proposed new name was refused on the basis of the likelihood of confusion with an existing registered business name, he had reconsidered the matter and approved such name and that a certificate of registration had been issued.

As the matter was resolved, the investigation was concluded.

CASE NO. 3

DEPARTMENT OF ENVIRONMENT AND PLANNING

Resumption of a historic building

The former Ombudsman received a complaint in February, 1978 concerning the proposed resumption of Rouse Hill House, located at Blacktown, Sydney.

At the time of the complaint the house was owned by the complainants and a relative as tenants in common, and both parties were living in separate parts of the house.

One month after the date of receipt of the complaint, the then Minister for Environment and Planning gave notification of the resumption of Rouse Hill House and the land on which it was erected.

The former Ombudsman carried out an investigation of certain questions surrounding the making of the Order for Resumption, and, prior to the date of the notification of resumption, he made a finding that the recommendation by the former Environmental and Planning Commission (that the house be resumed) could not be found to be wrong conduct within the meaning of the Ombudsman Act. In what he described as an "interim report" the former Ombudsman noted that "the Commission has no desire to dispose the present owners and would endeavour to allow the occupancy to continue . . ."

Approximately 1½ years after the notification of resumption, the original complainants made a further complaint to the effect that their relative (who had shared ownership of the building as tenant in common) had sold his interest in the property, house and furniture to the Department on the basis of an agreement that he would have control and use of the whole of the property for the rest of his lifetime.

The former Ombudsman commenced to investigate this complaint, but did not make any decision on the subject matter of the complaint prior to his retirement. The investigation was continued as to whether the agreements and the assurances proffered by the Commission to the complainant's relative constituted "wrong conduct" under the provisions of the Ombudsman Act.

The main assurance in question (given by the then Chief Administrative Officer of the Commission) was in the following terms:

> "I am now able to give you an assurance that you and your wife would be allowed to continue during your lifetimes, to live at Rouse Hill House, if the building was purchased or resumed by the Commission, *and that no other person would be allowed to live in the house without your agreement . . .*"
> (emphasis added)

After careful consideration of all the information available, and interviewing the relevant officers involved, it was obvious that a number of alternatives had been open to the Commission in the circumstances. One would have been to acquire the house by resumption without any arrangements with the parties for continued occupancy or otherwise. Another alternative would have been to negotiate or attempt to negotiate an agreement with continuing accommodation rights acceptable to both sides of the family. The problem about the eventual agreement that was reached (and the assurances it was based on) was that it represented the wishes of one party only. The other party (including the complainants) were at that stage entirely unaware of the arrangements that had been made.

Notwithstanding the advice that was apparently given to the former Ombudsman that " . . . the Commission has no desire to disposition the present owners and would endeavour to allow the occupancy to continue . . .", the Department of Planning and Environment (as successed to the Commission) decided to terminate the occupancy of the complainants. More recently, upon their refusal to vacate, a Notice to Quit was issued.

The former Ombudsman's views on this matter were apparently also influenced by advice recorded as given to him by a Ministerial staff member within a few days of the resumption as follows:

> "The Minister and the Commission has no desire to dispossess the . . . (complainants) . . . from their occupancy of the cottage".

In a final report to the Minister, the Department of Environment and Planning, and the complainants (under the terms of section 26 of the Ombudsman Act) it was concluded that the agreement made by the Commission in the terms that " . . . no other person would be allowed to live in the house without your agreement . . ." was an unreasonable one, made without reference to, or discussion of the proposed terms with, the complainant's side of the family. The Commission's conduct in approving this agreement was therefore found to be unreasonable and thus "wrong" within the meaning of section 5 (2) of the Ombudsman Act.

It was acknowledged in the final report that this opinion was based on the view that the problem stemmed from an error of judgment, rather than misconduct in the normal sense of the word.

In the final report it was recommended that the complainants should be allowed to remain in that part of the premises which they occupied, until the deaths of their relative and his wife (who occupied the other part of the premises) or their earlier vacation of the premises. Thereafter all occupancy should be brought to an end and the matter reviewed in the light of what the then relevant authority believes to be the public interest.

No steps have been taken in consequence of the final report under section 26 referred to above, and in fact the Department has now commenced proceedings in the Supreme Court to evict the complainants from Rouse Hill House. The complainants have indicated that they intend to contest this matter in the courts. The matter has not yet proceeded to a hearing.

There is concern that the Department and the Minister have seen fit to ignore the recommendations made in the final report referred to above and are continuing to take action to evict the complainants from the subject premises, while at the same time, the complainants' relative and his wife have been allowed to remain in occupation indefinitely.

Case No. 4

FORESTRY COMMISSION

Road extended through forest without environmental impact study

Very soon after taking Office on 17th June, 1981, the Ombudsman had his attention drawn to a complaint made some time before that date alleging that the New South Wales Forestry Commission was disregarding the principles and procedures for Environmental Impact Assessment adopted by the Government and detailed in Environmental Standard EI-4, published in 1974.

It was noted that a great deal of work and effort had been put into the matter but that no decision had been made. It was also clear that in the meantime the above non-statutory principles and procedures had been replaced by the provisions of sections 112 and 113 of the Environmental Planning and Assessment Act, which came into force on the 1st September, 1980.

In the circumstances the investigation of the initial complaint was discontinued. It was decided in consultation with the complainant to investigate the following specific conduct of the Commission:

(1) Whether there has been unreasonable delay in preparing the Environmental Impact Statement known as "Proposed Rain Forest Logging Operations in the Hastings Catchment".

(2) Whether the Commission's then current proposals and submissions to the Minister relating to the extension of North Plateau Road (Tigra Road) in the Upper Hastings Valley and proposed associated logging constituted wrong conduct under the Ombudsman Act.

The principal basis upon which the question of wrong conduct arose was that it could be contended that the Commission's submissions to the Minister were made on the basis that the Commission could lawfully proceed with its road works and logging prior to the completion of the procedures relating to Environmental Impact Statements contained in Part V of the Environmental Planning and Assessment Act, 1979.

The complainant on the one hand had been concerned that the Commission had undertaken the preparation of an Environmental Impact Statement encompassing proposed activities over such an extensive area that its completion in respect of specific locales of special and immediate concern would be unduly delayed. It was further contended that the Commission was proceeding towards the construction of roads to facilitate the extraction of rain forest timbers within those locales prior to the completion of the Environmental Impact Statement procedures which the complainant argued was a necessary pre-requisite to such activities imposed by the legislation.

The Commission, for its part, had argued that the road construction and logging activities in question were an integral feature of a continuing programme of Forest Management approved before the commencement of the legislation on the 1st September, 1980, and so were excluded from its requirements. The Environmental Impact Statement covering those activities was being prepared not as a statutory obligation but as a result of an earlier decision to prepare six representative statements covering the Commission's activities.

Briefly, section 112 of the Environmental Planning and Assessment Act, 1979, provides that a determining authority shall not make a final decision to undertake or approve of the undertaking of an activity that is likely to significantly affect the environment unless the stipulated procedures have been completed.

The Commission is a determining authority in terms of the Act and there was common recognition that the proposed activities were of a nature intended to be covered by the Act from its commencement. The Commission also agreed that the second of the two issues under investigation, whilst specific in its terms, involved an issue of general importance which could well affect other proposed operations.

On the question of delay, the abovementioned decision which encompassed the preparation of an Environmental Impact Statement in respect of the Commission's Rain forest logging in the Hastings Valley area was taken in July 1979. The Commission thereupon appointed its first Environmental Policy Officer in August of that year. This Officer was responsible for the preparation of all six of the proposed Environmental Impact Statements. No other staff was appointed until early 1980, but at the time of my investigation the latter part of 1981, the Environmental Policy Officer had secured a supporting staff of three Foresters and a Clerk despite general staff restrictions then current throughout the State Public Service.

Between October, 1979 and June 1980 the Environmental Policy Officer was engaged full-time in the Terania Creek Inquiry, except for involvement also in the Washpool issue which required her attention at that time. Nevertheless, preliminary work for the Upper Hastings study had been completed by February 1981 and in April 1981 the Commission approved an outline operation giving an indication of the extent and methods of logging proposed.

I am satisfied from my investigation that between April, 1981 and the sending of the final Environmental Impact Statement to the printer in the first week of August, 1981 the responsible Officers worked under a strong sense of urgency in completing the report. Whilst there had been some delay, I concluded that the economic realities under which a Government Department operates has to be taken into account and that the delay had been neither deliberate nor such as to constitute unreasonable conduct under the Ombudsman Act.

Turning now to the Commission's conduct in respect of the extension of North Plateau Road known as Tigra Road in the Upper Hastings Valley and the proposed associated logging, I approached this issue, as I have indicated above, by focusing on the question of whether submissions made to the Minister following the introduction of Section 112 (1) of the Environmental Planning and Assessment Act were reasonable in their unstated, underlying, assumption that the decisions recommended could legally be taken.

In particular, the issue was in my opinion brought to a head in a submission placed before the Minister in May, 1981 seeking his approval to the expenditure of funds on the Tigra Road. This was approved subject to further Ministerial approval being obtained for the commencement of the works. The latter approval was awaited at the time of my investigation but was expected before publication of the Environmental Impact Statement, and I was informed that it was the Commission's wish and intention to proceed with the construction of the road and associated logging of the rain forest in any event, that is, irrespective of the progress and examination of the Statement.

The Commission was acting on the assumption that decisions taken in 1978, within a Management Plan for the State Forest in the Wauchope area, including Mt Boss State Forest in the Upper Hastings Valley, constituted final decisions and that these were therefore excluded from the operation of section 112 (1) of the Environmental Planning and Assessment Act.

In paragraph 2.5.1 of the Wauchope Management Plan it is provided that:

> "Road construction should be restricted to that necessary to supply the sawing yield. As a guide only the following roads shall be investigated and, on the basis of investigation, shall be constructed as required to meet sawlog quotas . . ."

Plateau Road is one of the roads nominated, but in my view the reference to Plateau Road in the Management Plan does not apply to what is now known as Tigra Road although it was identified in its earlier stages as an extension of Plateau Road. In any event, it will be noted that even in regard to the named roads, the Plan merely provides that "the following roads shall be investigated".

Prior to the completion of the Wauchope Management Plan the Commission had in June, 1978 obtained Ministerial approval to the construction of Stage 1 of Plateau Road which covered a distance of 3.8 km.

Following upon my investigation of the facts I prepared a draft report in which I indicated, amongst other thing , that in my view the proposed construction of Tigra Road prior to the completion of the procedures required by the Environmental Planning and Assessment Act raised serious questions of possible illegality and that the Commission had acted wrongly, in terms of the Ombudsman Act, in not discussing this problem in making its submission for the Minister's approval.

In response, the Commission argued that the Minister had, indeed, been well aware of the legal issue and this had brought about referral of the proposed construction of the Tigra Road to the Minister for Environment and Planning for his concurrence. The Commission contended that in view of this the absence of specific reference to the question of legality in the May, 1981 submission could not be seen as wrong conduct.

The Commission also furnished me with copy of an Opinion obtained from Counsel which concluded that the 1978 Ministerial approval of the construction of North Plateau Road Stage I constituted a final decision which also encompassed the construction of Tigra Road, and so placed it outside the operation of the Environmental Planning and Assessment Act.

It appeared to me, however, that that Opinion did not deal with some difficulties in the way of treating the decision of 8th June, 1978, as the relevant final decision. In my view, such a question would have to be determined in the light of facts such as that over three years had then passed; that changes had been made to the proposed road networks as indicated in later documents; that the approval itself was expressed to be approval of stage I of Plateau Road; that in the subsequent period consideration of alternatives had been actively pursued; and that even at the time at which the Opinion had been obtained approval to start construction was stated to be dependent upon the concurrence of the Minister for Environment and Planning.

Quite apart from this, the Commission had, of course, conceded that the possibility of contravention of the Environmental Planning and Assessment Act had been recognized. Although the Commission had argued, in effect, that it was unnecessary to draw attention to an issue of which the Minister was unknown to be already aware, I remained of the view expressed in my draft report, that the Commission had acted wrongly in this omission, in terms of the Ombudsman Act.

I do not suggest, of course, that there was any deliberate attempt to deceive the Minister. However, It happens from time to time that by reason of sickness or temporary absence decisions have to be made by Acting Ministers and there was nothing in the Commission's submission of May 1981 to draw attention to the very real difficulty involved in proceeding as proposed before completion of Environmental Impact Statement procedures. Nor was there adequate legal advice available to justify proceeding with construction of the road in advance of the completion of those procedures.

However, although I made a final report to that effect under section 26 of the Ombudsman Act, I did not make any specific recommendations. Consultation with the Minister pursuant to section 25 satisfied me that the Commission had become fully aware of the legal difficulties provided by Section 112 of the Environmental Planning and Assessment Act in the subject issue, and the Minister informed me that an Opinion was being obtained from Counsel on the difficulties involved.

It remained open, of course, to the complainant organization to test the matter in the Court if the construction of Tigra Road and the proposed associated logging were to be embarked upon prior to the completion of the procedures laid down by the Environmental Planning and Assessment Act. The complainant has commenced proceedings in the Land and Environment Court for an injunction against construction of Tigra Road.

CASE NO. 5

GOVERNMENT INSURANCE OFFICE

Allegation of restrictive trade practice

It was complained that the tying of home insurance policies to home loans by the Government Insurance Office was a restrictive trade practice and that this was unfair.

The Government Insurance Office admitted that the package which was obtained did combine insurance and loan. It added that it would not take advantage of exception from the provisions of the Trade Practices Act to impose on borrowers conditions that could operate to their disadvantage or place the Government Insurance Office in an unfair competitive position with other insurance companies. The packaging of home loans, it was said, provides additional security for borrowers, and to an extent, mitigates the commercially unsatisfactory aspects for an insurance company of the provision of housing finance. It enables the Office, it was said, to undertake a socially constructive role which might not otherwise be possible, or at least on such a substantial scale.

The full reasons given by the Government Insurance Office were provided to the complainant who was willing to accept them and commented that if he had been so advised he would not have felt the need to come to the Ombudsman. The enquiry discontinued on that note.

CASE NO. 6

HEALTH COMMISSION OF N.S.W. (N.S.W. AMBULANCE SERVICE)

Regional Office not notified of decision to waive ambulance costs

In July 1981, I referred to the Chairman of the Health Commission a complaint made to me by a young woman who considered that, due to the circumstances present at the time, a requirement that she pay for ambulance transportation from Bega to Pambula was unfair and unreasonable.

On 17th August, 1981, the Chairman wrote to me and, amongst other things, indicated that approval had been granted for the full amount of the charges raised ($242) to be waived. Subsequently, I discontinued my enquiries on the basis that the matter raised by the complainant had been satisfactorily resolved.

On 7th January, 1982, the complainant wrote to this Office again enclosing a copy of a letter she had received from the South Eastern Region Office of the Ambulance Service. The letter was a demand for the payment of $202 still outstanding on the original account and threatening legal action.

One of my officers made preliminary enquiries with the South Eastern Region Ambulance Office at Goulburn and was disturbed to learn that the Regional Office had not been informed of the approval given to waive the charges levied in respect of the complainant's transportation by ambulance and that, in fact, payment of the account had been pursued in the intervening period. Of course, my officer informed the Regional Office of the situation and was assured that appropriate action would be taken.

The matter was taken up with the Chairman on the basis that the complainant's further letter was regarded as a further complaint that the Health Commission had failed to give effect to the decision to waive the charges in her case, with the result that she had been threatened with legal proceedings. The Chairman was particularly asked why the South Eastern Regional Office of the Ambulance Service, apparently, had not been informed of the decision to waive the charges.

The Chairman subsequently reported that, unfortunately, the complainant's papers had been filed inadvertently and appropriate action to notify the Regional Officer had not been taken. However, he had made arrangements for the amount already paid by the complainant to be refunded to her and he had forwarded her a letter of apology.

I discontinued my enquiries on the basis that the matter had been resolved and I was pleased to receive this letter from the complainant:

> "I wish to thank you very much for your time and effort with the Ambulance People. Everything now has been settled and I received the cheque some three weeks ago.
>
> Once again I would like to thank you for your time and for getting on with the problem so quickly. I did receive a letter of apology from the Ambulance People."

CASE No. 7

DEPARTMENT OF LANDS

Land purchase in jeopardy

The complainants entered a ballot for a home site at Menai conducted by the Department of Lands on 19th March, 1981. They paid a $1,500 entitlement for this and were fortunate enough to be allocated a lot in the ballot.

On 6th April, 1981, the Department notified them of their allocation and that the conditions were 30 days to exchange contracts and 60 days to settlement.

The complainants were at that stage in the process of selling their existing home and sought an extension of the exchange date so that a simultaneous exchange would be possible.

The Department of Lands granted this extension to 31st May, 1981.

On 28th May, the complainants contacted the Department and advised that they were waiting for the cheque they received as part deposit on their property to be cleared through a Western Australian Bank. The complainants and their solicitor further advised the Department of Lands that they would exchange contracts as soon as the cheque was cleared.

Unfortunately the Telecom dispute was in evidence at the time and the clearing of the cheque was delayed. The complainants' solicitor, however, was in close contact with the Department during this period and was assured that everything was alright.

On 17th June, 1981, the complainant's solicitor sent a cheque and a letter to the Department of Lands for which they issued a receipt on 23rd June, 1981, and informed him that the contracts would be sent to him within the following few days. The contracts in turn were forwarded to the Department.

On 30th June, 1981, however, the complainants received an undated letter from the Department stating "it is noted that no arrangements have been made for exchange of Contracts. Accordingly your reservation of the subject property has been cancelled" and enclosing a refund cheque of $1,500. The cheque was dated 24th June, 1981.

When the Department was contacted by the complainants, they were informed that another deposit had been taken that day (30th June, 1981). When they visited the Department the following day, they were told that the property was relisted for sale on 17th June.

The complainants were not notified of this, and as previously noted, the Department had accepted their money and issued a receipt some time after this, on 23rd June, 1981.

Understandably, the complainants were heartbroken at that stage having outlaid considerable finance to have a builder draw up plans and a building contract.

It was at this stage that they sought the assistance of this Office.

After notifying the Department of Lands of the complaint and seeking comments from the Under Secretary, the complainants wrote again to me to say that the matter had been resolved and that they were rightfully granted ownership of the land and thanking me for my assistance on the matter.

The Under Secretary for Lands and Registrar-General shortly after notified me that the matter had been referred to the Crown Solicitor and as a consequence of the advice received, the sale to my complainants was allowed to proceed.

Case No. 8

DEPARTMENT OF LANDS

Unreasonable costs for removal of jetty

The complaint was against the Lands Department's requirement for a $3,000 guarantee on a river frontage permissive occupancy, the figure being both very high compared to neighbours' and unexplained. The Department claimed that $3,000 was a fair estimate of the cost of removal of the structures proposed to be erected or present on the property, these being a jetty, a landing, a ramp and access. Nonetheless they reduced the amount immediately to $2,000. The complainant produced quotations for removal of a jetty and these were of the order of $400.

> "An enquiry to the Department of other deposits revealed none over $500. To determine what the Department had in mind an inspection took place on 31st October, 1980. This revealed that the removal of an earth ramp (not installed by you) was contemplated. The Department was formally advised by the Ombudsman that there was "insufficient justification for the size of the deposit" and that he therefore had grounds for adverse comment."

The previous Ombudsman considered a further submission from the Department and said that unless the deposit was reduced to the cost of structures which the complainant was going to erect, he would report the matter, under Section 26 of the Ombudsman Act, to the Minister. The Department replied that a security deposit for the ramp and access would be deleted from the permissive occupancy. When asked what deposit would be required, they said they had deleted the requirement for a deposit. It was asked whether there was no deposit for the jetty and after three months it was ascertained that $600 would be required for a landing and a jetty, further correspondence eliciting that the extra $200 was for the landing. It was pointed out to the Department that as the cost of removing what the complainant proposed to erect was $400, in accordance with the Ombudsman's earlier view, that should be the figure. The Department then agreed to that, 20 months after the initial complaint.

Case No. 9

LOCAL GOVERNMENT EXAMINATION COMMITTEE

Misunderstanding over exemptions in Engineering Certificate

Mr B. wrote to the Ombudsman as a last resort regarding the failure of the Local Government Examination Committee to grant him exemptions under Ordinance 4 of the Local Government Act for the Local Government Engineering Certificate.

Mr B. had been advised he was accepted as a candidate for the Examination for Certificate as Engineer (Civil) under the Local Government Act, 1919, but also that "the Local Government Engineering Examination Committee does not grant exemptions to graduates of the Bachelor of Engineering (Civil) or the Masters Degree (Civil) from the University of Wollongong, and therefore to complete the examination requirements for the issue of a Certificate, you will need to pass all subjects of the Committee's examination".

Mr B. felt this decision to be most unfair as two of his workmates who had sat for the examination in 1979 had been granted exemptions. He did not sit for the examination in 1979 although eligible, as he had wished to complete further studies, namely a Masters Degree and a graduate course at the University of New South Wales.

Mr B. advised the Committee that he had obtained his Bachelor of Engineering (Civil) prior to 1979, the date he believed exemptions to have ceased. The Committee, although now in receipt of this information, again decided not to grant Mr B. any exemptions and did not supply a reason.

Following receipt of Mr B.'s complaint I requested the Local Government Engineering Examination Committee to consider the matter and comment on it.

After some time the Secretary replied:

> "The Local Government Engineering Examination Committee has reconsidered Mr B.'s application for exemptions from its examination and believes that there has been a misunderstanding concerning the granting of exemptions in this instance."

Apparently the University of Wollongong was informed on 23rd December, 1981, that if a degree in engineering was gained after 1978, it would not be recognized for exemption purposes. The Committee noted that Mr B. had completed the degree course in 1977. In the circumstances, it was decided to grant him exemptions in all subjects of the above examination, except for the subject "Powers and Duties of a Municipal Engineer".

Mr B. wrote and thanked me and advised that he would proceed to sit for the May 1983 examination. In view of the satisfactory resolution of Mr B.'s complaint I discontinued my enquiries.

CASE NO. 10

DEPARTMENT OF MAIN ROADS

Car struck by road sign

The Department of Main Roads denied liability for damage done to the complainant's car when a pipe stanchion, indicating parking times, fell on it, having previously been damaged by persons unknown. The Department expressed the view that it could not be held liable in any circumstances where the stanchion had been properly constructed and placed into the footpath and had been subsequently damaged by persons other than the Department's employees. The Department drew attention to relevant case law:

> In the case of Subiaco Municipal Council v. Walmsley (1930) 32 WALR 49 the Council was authorized to erect seats in public places or streets and erected a seat in a proper and secure manner and the seat was moved by some unauthorized person thereby becoming a danger along the footpath. It was held that the real cause of the accident was the mischievous interference of some third party and that the defendant Council could not have anticipated that some unauthorized person would be likely to move the seat into a dangerous position and therefore, the defendant Council was not negligent.

It was concluded that the denial of liability in this case was not wrong in terms of the Ombudsman Act.

CASE NO. 11

METROPOLITAN WATER SEWERAGE AND DRAINAGE BOARD

Excess water accounts: checking and billing procedures

Mr C., the Secretary of a strata unit development in the inner city, complained about excess water accounts issued to the Body Corporate with which he disagreed and the fact that the sale of one of the units was being held up while the claim for excess water was dealt with. Mr C. had previously been in to see the Board and subsequently wrote to it. After waiting four months he wrote to this Office. An immediate clarification of the position was sought and when this was received, it appeared that there were a number of matters requiring action. The investigation brought about a resolution of the claim for excess water in respect of the strata unit development and cleared the problem that was holding up the sale of the unit but it showed that there were a number of problems associated with the preparation of accounts for the development and it appeared that such problems may be affecting a large number of other accounts that had been issued by the Board.

Further enquiries were made in relation to these matters and it emerged that a number of errors had occurred in the preparation of Mr C.'s accounts. These included a misreading of the water meter on two occasions, a misrecording of the meter readings, the issuance of accounts to an incorrect address, and a failure to follow up the accounts. Although the accounts, as issued, were subsequently shown to be wrong, the Board had in my view taken insufficient action to collect the accounts which raised the question of whether sufficient action was being taken by the Board to collect other accounts which were correctly issued.

Further problems emerged in relation to the action taken by the Board to deal with the queries and complaints made direct to the Board. There seemed to have been considerable delay and some confusion on the Board's part in dealing with the problem and this raised the question of whether the Board's procedures for dealing with complaints were satisfactory in their design and whether they were operating effectively.

The investigation proceeded and upon consideration of all the material provided by the Board, I came to the view that further action was required. My report was sent to the Hon. D. P. Landa, LL.B., M.L.C., Minister for Energy and Water Resources, with the following recommendations:

(a) That the Board proceed with its intention to show on the rate notices for the financial year commencing 1st July, 1982, the allowance of water for residential properties which may be consumed before a water consumption account becomes payable.

(b) That the Board proceed, as indicated by the President, to change the format of its water consumption accounts so as to improve both the design of the account and the information contained therein.

(c) That the Board, as indicated by the President, now move to investigate the procedures, systems and controls in respect of the calculation of accounts, the issue of those accounts and their collection.

(d) That the Board now move to examine the procedures, systems and controls for queries and complaints from consumers and the correspondence associated therewith.

(e) That a report on such investigation be provided to the Minister and to the Ombudsman within three months.

The Minister informed me that the President of the Board was acting on the recommendations.

CASE NO. 12

DEPARTMENT OF MINERAL RESOURCES

Refusal of a mining lease

This case centred on the refusal of a mining lease to the complainant, referred to here as Mr V. Although the Ombudsman made a finding of wrong conduct by the Department of Mineral Resources, because of the delay and mistaken instructions involved in the case, there was no way of rectifying the situation to Mr V.'s satisfaction. By the time the investigation was over, another company had exploration rights for the land sought by Mr V.

Mr V. first complained to the former Ombudsman, Mr Smithers, in November, 1980. Mr Smithers stated in January 1981 that the complaint could not be sustained. He reached this decision after receiving a report from the Department of Mineral Resources that Mr V. had breached the Mining Act, 1973 by placing a datum post 128 metres north of its correct position.

Mr V. provided additional information in February 1981 that prompted Mr Smithers to re-open his investigation. Mr Smithers retired before the investigation was completed.

The case proved to be more complex than the original complaint suggested. Several misunderstandings had occurred, perhaps not surprisingly in view of this chronology of events:

31st January, 1980	The application was referred to Armidale for a mark-out.
10th March, 1980	First mark-out—attended by Mr V. the land owner, and a Mining Occupations Officer. At the mark-out it was discovered Mr V.'s datum post was 128 metres north of its correct position, and thus in breach of the Mining Act. The application had to be refused because of this.
31st March, 1980	Refusal reported internally by Mining Occupations Officer.
2nd July, 1980	A draftsman in the Armidale Office, apparantly unaware of the Mining Occupations Officer's report, referred the application for a mark-out.
22nd August, 1980	A second mark-out occurred, giving Mr V. the impression that by relocating the datum-post he was meeting all requirements.
28th October, 1980	Mr V. was informed of the proposed refusal of his application. Soon after this he complained to the Ombudsman, claiming he had relocated the datum-post as required by the Department.
24th December, 1980	Company "X" applied for an exploration licence for an area that included the site for which Mr V. had applied for a Mining lease.
1st April, 1981	In response to question from the Ombudsman, the Mining Occupations Office wrote a report conceding that on the second (unlawful) mark-out the datum-post was placed in its "correct" position.

In a report to the Minister under section 26 of the Ombudsman Act, the Ombudsman stated that the delay in making a decision on Mr V.'s application placed him at a disadvantage compared to Company "X". If he had been notified earlier of the proposed refusal, he might have been able to lodge a fresh application before the Company "X" exploration licence application was lodged. Eleven months elapsed between Mr V.'s. lodgment of the application and its refusal. Furthermore, the decision to mark-out a second time was wrong. It led Mr V. to believe the defect in his application had been corrected.

As there was no way in which the consequences of the Department's conduct could be rectified (Company "X" having secured exploration rights to the land in question and refused any concessions to Mr V.), no recommendations were made.

On the questions of delay in processing applications for leases, Mining Occupations Officers were instructed, from 1st September, 1980, to try to mark-out areas within 21 days of receiving applications.

CASE NO. 13

DEPARTMENT OF MOTOR TRANSPORT

Discrimination against interstate driver

A man complained that he had been required to serve a full twelve months probation period on his driver's licence when he changed over from an interstate licence when ten charge free months probation had already taken place in that state. The effect would have been that he would have been on probation twenty two months instead of the twelve required in either state.

The Department admitted that the application had been incorrectly handled and a full licence was approved. The complaint was concluded as sustained but resolved.

CASE NO. 14

DEPARTMENT OF MOTOR TRANSPORT

Application leads to loss of licences

The complainant applied to the Department of Motor Transport for a taxi driver's licence and was told that not only would he not get such a licence but also his driver's and motor cycle licences were revoked. Enquiries revealed that this decision was made on the basis of a police report which indicated that the complainant drank to excess. The report was made by a policeman who had never met him, on the basis of hearsay.

It was conceded that a good character report may be desirable for a taxi licence but that it was hardly a pre-requisite for a driver's licence, especially if there were no driving convictions as in this case. It was further suggested that cancellation of a licence on the basis of an unspecific report, albeit with appeal to the Courts, was unfair.

The matter was resolved when the Department reported that "following a more recent application by (the complainant) for restoration of his driver's licence and rider's licence, a Police report . . . indicated that his drinking habits are now satisfactory". New licences were issued to him.

It was suggested to the Department that "very strong Police reports" such as was made in this case should be viewed with care.

CASE NO. 15

NEW SOUTH WALES MEDICAL BOARD

Problems in registration of overseas-trained doctors due to delay in Proclamation of Act.

In November, 1981, I received complaints from two doctors (Dr A. and Dr B.) who, because of legislative changes, were unable to gain registration as medical practitioners in this State. As a result of preliminary enquiries I made, I discovered that a somewhat nightmarish administrative situation had arisen due to delay in proclaiming commencement of the Medical Practitioners (Amendment) Act, 1981, which had been assented to on 22nd May, 1981.

The facts were as follows:

1. Under the Medical Practitioners Act, 1983, certain qualifications awarded by overseas universities, colleges, etc., were recognized for the purpose of registration as a medical practitioner in New South Wales. Such qualifications were set out in Schedule One of the Act.
2. (a) Doctor A. and Doctor B. and no doubt others besides, made enquiries with the Medical Board sometime in late 1980 or early 1981, when they were both practising in England, as to whether their qualifications were recognized in New South Wales. Dr A. held the degree of Licentiate of the Royal College of Physicians and Surgeons, Ireland; Dr B. graduated in Medicine from Alexandria University and subsequently obtained further qualifications in England (Licentiate of the Royal College of Physicians and Member of the Royal College of Surgeons).
   (b) They were informed by the Board, on 2nd February, 1981 and 2nd January, 1981, respectively, that their qualifications were such as to entitle them to registration in this State. Both made their arrangements to migrate to this country—Dr A. arrived on 14th November whilst Dr B. arrived on 1st August.
3. In the meantime, on 8th July, 1981, by proclamation published in the Government Gazette, the qualifications awarded by the Royal Colleges in Ireland and England, which they possessed, were removed from Schedule One of the Act and, from that date, were no longer recognized for the purpose of registration in New South Wales.
4. Thus, both doctors were faced with the situation of having arranged to come to this country, having been assured in writing that they would be able to be registered as medical practitioners, only to discover when they did arrive that the law had been changed and that they could no longer be so registered.
5. Following receipt of Dr A's complaint I arranged for urgent preliminary enquiries to be made. Dr B's complaint was received shortly afterwards. The enquiries made included personal discussion with the Secretary of the Medical Board which revealed the following situation:
   (a) Removal of the "Royal College" qualifications from Schedule One of the Act in July, 1981 had occurred in anticipation of the Medical Practitioners (Amendment) Act (hereafter called "the new Act") being proclaimed shortly thereafter. The Secretary explained that some of the Royal Colleges conduct courses of insufficient length to warrant recognition here. This was not the case with the Royal College in Ireland, which conducts a six-year course, but the Secretary said that they were "all lumped together" in the proclamation (probably in error). It was not seen as terribly significant at the time because, once the new Act came into force, registration would be possible under Section 16 of the new Act.

(b) *Proclamation of commencement of the new Act* had been extensively delayed, initially for reasons which are not terribly clear, but later at the direction of the Minister for Health. Proclamation had been mooted for 20th November, 1981 and then for 27th November, 1981. It had still not occurred and nobody was able to say when it would. The delay was discussed by 'phone on 27th November, 1981 with the Minister's Office. Under the new Act (Section 8), once it commenced, all Board members must vacate Office. The Board had been reconstituted under the new Act. Certain appointments to be made by the Minister are made from persons nominated by various bodies. Such bodies had forwarded nominations of one person (or where entitled to nominate more than one person, of such number of persons they were entitled to nominate) to the former Minister. The present Minister was not prepared to accept a situation wherein he had no choice but to "rubber stamp" the nominations and he had directed that each body be asked to nominate more than one person for each position open to them so that he could exercise a choice as to who he appointed to the Board. There was also some problem with the constitution of the Investigation Committee in that the Minister wished to have a practising Solicitor appointed to the Committee, and I was informed, the Minister had written to the Premier in that regard.

6. *Considerations—Possible Investigation*

(a) I was initially concerned at Dr A's claim that the Board had not informed her of the change in the law which rendered her qualifications unacceptable in New South Wales. I pursued this aspect with the Secretary on 23rd November, 1981 and I was assured that the Board had written to all persons who had approached it in a similar manner (and for similar reasons) as Dr A. between January and July 1981, informing them of the July 1981 changes. Initially, the Secretary was not able to tell me when such advice had been sent or provide a copy of the Board's letter, but she later informed me that such advice had been sent on 3rd August, 1981 and provided me with a copy of the letter sent to Dr A.

(b) So far as Dr B. was concerned, it was highly unlikely that a similar letter would have been sent to him as his approach to the Board would have been pre-January, 1981 and, in any case, he had arrived here on 1st August.

(c) Questions which arose, and which would be addressed if an investigation was commenced, included:

When had removal of the relevant qualifications from Schedule One of the Act been first known by the Board to be a real possibility?

When had removal by proclamation been known to be a definite course of action to be placed before the Minister?

Should not the Board have warned the people affected by the change much earlier that it was intended to recommend removal of certain qualifications and that they should, therefore, exercise caution before leaving to come to New South Wales?

Why had the qualifications been removed *in anticipation* of the new Act being proclaimed?

7. *Investigation*

Even bearing in mind the then unsatisfactory situation whereby people like my complainants could not be registered under the present Act (because their qualifications were no longer recognized) nor under the new Act (because it has not been proclaimed to commence), the question remained whether there was anything to be achieved by making the complaints the subject of an investigation under the Ombudsman Act.

Clearly the only action that would resolve the complainant's problems or benefit them in any way was for the new Act to be proclaimed. I could not see that an investigation by this Office would achieve anything constructive and, in fact, might be quite non-productive. I, therefore, decided to write personally to the Minister outlining my concern about the position in which the complainants and, no doubt, others were placed in the hope that this would cause the Minister to expedite his action and allow early proclamation of the new Act.

In writing to the Minister, I said, inter alia:

> "I realize that proclamation of the Medical Practitioners (Amendment) Act is a matter entirely for you as the responsible Minister. However, I felt that I should voice my concern about the situation that has arisen whereby persons who previously would have been entitled to be registered can no longer achieve that goal under the present Act, as it stands, until the Amendment Act is proclaimed. Quite apart from (Dr A.), I understand that there are some 200 doctors caught up in this unfortunate situation. I expect to receive a number of complaints about the matter.
>
> I am unaware of the reasons for the delay in proclamation; no doubt they are significant and of moment. However, any action you may be able to take to expedite resolution of the matter would be appreciated, I am sure, by all of the people adversely affected in terms of the present situation.

> If it appears likely that there will be significant delay in proclaiming commencement of the Amendment Act, an alternative course, which might be seriously considered, would be to restore to Schedule One of the present Act, by urgent proclamation in the Gazette, the relevant and appropriate qualifications, which were removed from the Schedule in July."

Finally, towards the end of December, 1981, I was informed that proclamation of the commencement of the new Act with effect from 27th January, 1982, was to be published in the Gazette on 8th January. With the proclamation of the new Act, my complainants' problems were resolved. This was confirmed when Dr B. subsequently 'phoned my Office to inform me that he had secured registration and to express his thanks for the action taken.

Case No. 16

STATE POLLUTION CONTROL COMMISSION

Pollution of oyster beds

The Oyster Farmers' Association complained that the State Pollution Control Commission failed to prosecute a householder who had been discovered by a Fisheries Inspector pumping sewage into waters adjacent to oyster beds. The State Fisheries were not advised of the Commission's decision not to proceed with charges until after the statutory limitation period had expired. A period of nearly two months elapsed between the decision and the advice to State Fisheries.

The Commission claimed that there were extenuating circumstances in that the offender had requested Sutherland Shire Council to pump the effluent out into one of their tankers but this had not occurred before the tank overflowed. The State Fisheries says that it could have supplied evidence to the State Pollution Control Commission that this was not the first time this had happened, however it was not consulted before the expiry of the limitation period. The Health Commission has advice from Sutherland Council's Health Inspector of neighbours complaining of pumping effluent into the Bay.

The Commission did not consult with State Fisheries who had this further information, which was not contained in the Report of Offence under the Fisheries and Oyster Farms Act, 1935 and commented to me:

> "Further, the request that any correspondence on the matter be forwarded direct to the local inspector of fisheries and not to the Director of Fisheries gave no indication that the matter was being viewed with the great significance that has now been attached to it."

Inspection of the Commission's file revealed a reluctance to prosecute lest an "undesirable precedent" be established, where the State Pollution Control Commission prosecuted a domestic polluter.

The Commission, when asked to make a formal submission argued that the offence was not serious, that there may not have been adequate evidence and that there were mitigating circumstances, while conceding that better contact with State Fisheries should have taken place and that action through the Health Commission and under Ordinance 44 of the Local Government Act would have been "more appropriate".

From the complainant's and State Fisheries points of view the offence could not be regarded as insignificant. Pollution of Georges River oysters resulting from a number of sources had recently caused serious economic losses to the oyster farmers. The evidence to found the charge was incontrovertible and admitted. Superficially, there were mitigating circumstances, but contact with State Fisheries would have changed the appearance of the offence.

As regards a prosecution being an "undesirable precedent", enforcement of such laws where a clear breach is proven is desirable unless the resulting pollution is minimal. Mitigation should affect the penalty only.

The failure of the Commission to prosecute in this case, and the failure to advise the informant State Fisheries of the decision before the expiry of the statutory limitation period, was found to be wrong conduct in terms of the Ombudsman Act.

Case No. 17

STATE RAIL AUTHORITY

Paintings damaged in break-in at Nowra Parcels Office

Miss S. complained on behalf of her mother, Mrs S., a resident of the south coast. Two parcels worth $160 which were sent by train from Sydney to Nowra in a parcel were damaged when, nearly a week later, thieves broke into the Nowra parcels Office.

The parcel was freighted south on 1st November, 1980, and arrived on the same day. It was placed in the Parcels Office awaiting collection by Mrs S. On Friday 7th November the officer-in-charge of the railway station locked all doors before leaving at 11 p.m. The Assistant Station Master arrived on duty at 1.30 a.m. on Saturday 8th November and found the Parcels Office had been broken into while the station was unoccupied. 35 parcels, including the one consigned to Mrs S., had been interfered with. Investigations by local police and members of the State Rail Authority's security service were unable to solve the crime.

The State Rail Authority did not accept liability, claiming that adequate precautions had been taken and pointing out that the parcel was not insured.

Issues raised by the Ombudsman's Office during the investigation of the complaint included the following:

(a) No attempt was made to notify Mrs S. that her parcel was available for collection at Nowra Railway Station. Six days had gone by between its arrival and its damage by vandals. If Mrs S. had been notified, it is possible the parcel could have been picked up before the break and entry.

(b) Normal practice would have been to notify Mrs S. on 17th November the date from which storage charges would have been levied.

(c) The Ombudsman's Office was aware, from investigating a similar complaint, that at some stations consignees were informed within two days of a parcel arriving. This practice was clearly not followed at Nowra.

Other questions to be considered related to how the damage was done, the security of the premises, and the way in which the claim was considered.

The damage to the paintings was not discovered until the parcel was collected. It appeared a foot had been shoved through them. Although the parcel was not listed in the itemized accounts of damage following the break-in, there was no way of disproving the State Rail Authority's assumption that the vandals caused the damage.

Entry was gained to the Parcel Office via the Meal Room. The officer on duty failed to secure one of the Meal Room windows that night. This particular window, unlike the other windows in the Meal Room, was not fitted with protective studs. Leaving aside the failure of the officer to secure the window, the former Ombudsman took the view that, having installed studs to prevent the windows being opened, the State Rail Authority must have been aware of the distinct possibility of unauthorized entry to the premises. Failure to maintain the studs in effective working order, or to install them at all in one window, could not be construed as having taken adequate precautions.

The Ombudsman found the State Rail Authority had acted unjustly in rejecting the claim for compensation. Its initial rejection was based on principles which apply to goods damaged in transit, whereas the paintings had been damaged while warehoused. Other factors such as the failure to notify Mrs S. that the parcel had arrived, or to protect warehoused goods adequately had not been taken into account when the claim was rejected.

These and other factors were set out in a draft report to the Chief Executive of the State Rail Authority, who maintained in his reply that the Authority stood by its earlier decision not to make any payment to Miss S.

In a report under Section 26 of the Ombudsman Act, the following findings were made by the Ombudsman:

> "In my opinion the Authority, by fitting certain security devices to the windows at Nowra Station, had already acknowledged the possibility of someone attempting to gain illegal entry to its premises. Nowra Parcels Office was described in Senior Detective White's report as an Office receiving and sending "heavy parcels traffic", a prime target for a break and entry.
>
> The Authority, having fitted security devices to all of the windows, but one, at Nowra Station, had a responsibility to properly maintain such devices as were installed and, moreover, to install them where they had not been installed. In my view, such responsibility was not adequately discharged.
>
> Notwithstanding that the Authority, pursuant to its By-Laws, was not compelled to notify a consignee when a parcel remains undelivered after a reasonable period following its arrival, the Authority's failure to discharge its custodial responsibility was wrong conduct in terms of the Ombudsman Act and I found accordingly.
>
> Similarly, I found that the Authority's refusal to meet the claim made by Miss S. on her mother's behalf was wrong conduct."

I recommend that the Authority compensate Mrs S. to the extent of the claim made on her behalf, i.e., $160, either with or without a formal admission of liability.

Alternatively, I recommended that, if the Authority believed that the value of the paintings had been overstated, the Authority enter into negotiations with the complainant and her mother with a view to determining a mutually acceptable figure for the purpose of payment of compensation.

As required in terms of Section 25 of the Ombudsman Act, I informed the Minister for Transport The Hon. P. F. Cox, M.P., of my intention to publish my report and offered to consult with him if he so desired.

The Minister wrote to me and said that he had sought a report on the matter from the Chief Executive. He went on to say:

> "In the light of your comments and the length of time that this matter has been under examination, I have today written to Mr Hill supporting Recommendation 1 of your draft report under Section 26 of the Ombudsman Act, i.e. payment of $160 to Miss S. without admission of liability."

CASE No. 18

STATE RAIL AUTHORITY

Refunds on replacement yearly train tickets

The complainant purchased a yearly ticket for $212 and within a few weeks it was stolen. He obtained a replacement ticket for the usual fee of $200, having made the appropriate declaration. He then moved house and having no further need for a rail ticket he sought a refund and was surprised to receive after only a few weeks' use a refund of $6.70.

The State Rail Authority said that their rules provided that there will not be a refund made on tickets lost or mislaid unless the ticket is eventually found and surrendered for refund, and that any departure from this would unduly encourage fraudulent practice.

It was suggested to the Authority that the rule unduly penalized a person who has the misfortune to lose or have stolen a periodical ticket and that it implied that the applicant may well be fraudulently using the ticket.

Further negotiation with the Authority led to their concluding that as such cases were rare that the complainant should be made a refund upon his furnishing a Statutory Declaration on his inability to make use of the ticket beyond that date. The complaint was resolved on this basis.

CASE No. 19

WATER RESOURCES COMMISSION

Refusal to recognise subdivision of holding for purpose of Water Act

The Manager of a country property complained that, whilst the property had been purchased by the owner (his employer) following its subdivision into two holdings, the Water Resources Commission refused to constitute separate holdings and apportion water rights on the basis that all of the original had been purchased by the present owner on the same day.

Information provided by the complainant indicated, quite correctly (as investigation later showed), that the facts were as follows:

(i) A. subdivided his holding into two lots, lot 1 and lot 2. A. arranged to sell lot 1 to B. (the complainant's employer) and lot 2 to C.

(ii) The sale to C. fell through after some months and B. offered to purchase lot 2 as well as lot 1. His offer was accepted.

(iii) Formal transfer of both lots to B. was completed on the same day and B. became the registered proprietor of both lots on the same (but a later) day.

The matter had been taken up with the Commission by B's. Solicitors. In March 1980, the Commission wrote to the Solicitors and, inter alia, said:

> "Section 147 (9) of the Water Act provides that the Commission may constitute new holdings in respect of the subdivided parts of a holding only when it becomes aware that the holding has been subdivided and part has been disposed of."

Following further approaches in the matter, the Commission, in October 1980, wrote saying:

> "In the Commission's view, the incidence and disposition of the transfer of lands to B resulted in no change in the status of (the original holding) . . . other than in a change in the ownership of that holding."

Section 147 (a) of the Water Act reads as follows:

> "99) (a) Upon the Commission becoming aware that an owner has subdivided his holding and has disposed of any part or parts or all the parts thereof the Governor shall on the recommendation of the Commission declare that, as from a specified date not being earlier than the date the Commission became aware of such subdivision and disposal, the holding shall for the purposes of this Part cease to be a holding and that new holdings shall be deemed to be constituted in respect of each part disposed of and the part, if any, retained by the owner."

The Section goes on to provide for the Governor, on the recommendation of the Commission, to apportion water rights between the new holdings.

One of my officers took up the matter with the Chief Commissioner who subsequently replied as follows:

> "The Commission does not dispute that, within the meaning of the Real Property Act, a subdivision of lands has occurred. Nevertheless, in the Commission's opinion, what has been done does not fulfil all the requirements of Section 147 (9) of the Water Act which must be satisfied before a recommendation may be made to the Governor for the constitution of new holdings in a District and the apportionment of water rights between such new holdings."

My officer, in his reply to the Chief Commissioner, said that he was somewhat mystified as to the "requirements . . . which must be satisfied before a recommendation may be made to the Governor. . .". He went on to say:

> "Section 147 (9) of the Water Act appears to require that the Commission become aware of two things before a recommendation is made to the Governor, namely:
>
> (a) that an owner has subdivided his holding; and
>
> (b) that he has disposed of "any part or parts or all the parts thereof".
>
> So far as (a) is concerned, you concede that a subdivision occurred and I can find nothing in the Water Act which gives the word "subdivision" any special or unusual meaning. So far as (b) is concerned, there seems to be no doubt that "all of the parts" of the subdivided holding were disposed of. There appears to be nothing in Section 147 (9) to require disposal of individual parts to occur at different times, or that where all of the parts are disposed of disposal be to more than one person.
>
> In this respect, it would appear that the advice conveyed in the second paragraph of the Commission's letter of 21st March, 1980 to (B's. Solicitors) was incorrect. Section 147 (9) does not seem to require disposal of part only of a holding. In fact, sub-section (a) refers to . . . "the part, if any, retained by the owner".
>
> Perhaps you would now let me have an answer to the following questions:
>
> 1. If a sub-division occurred (and you concede that it did) and "all of the parts thereof" were disposed of (as they were), why is the Commission unable or unwilling to recommend to the Governor that the original holding cease to be a holding and that new holdings be deemed to be created in respect of each part disposed of?
> 2. What exactly, are the "requirements of Section 147 (9)" which, according to the Commission, have not been satisfied and which prevent a recommendation being made for the constitution of new holdings and the apportionment of water rights between them?
> 3. What would have been the situation if transfer of the two Lots to B. had been finalised on different dates, say, several months apart?"

The Chief Commissioner subsequently replied and said the Commission maintained that it had not acted unreasonably in that it regarded the two transfers to the same person on the same day as a transfer of the whole. However, he said that, "because of the difficulty of interpretation of the statute and the further information from the Solicitors", the Commission was prepared to review its previous decision in this particular case and to proceed towards constitution of separate holdings. He added that B's Solicitors would be contacted direct in this regard.

In the light of this, the complainant was informed that, as the matter had been satisfactorily resolved, the investigation would be discontinued.

Case No. 20

BLUE MOUNTAINS CITY COUNCIL

Homebuilder misled over connection date of sewer main

A sewer main which had been laid but not connected was the cause of Mrs J's problem. Mrs J. whose home at Hazelbrook was nearing completion, came to my office in March 1981 and advised that although she had received advice from the Blue Mountains City Council in March 1979 confirming a sewer main served her property, she had now discovered that there was no sewer connection. Mrs J. had to install a septic tank despite having paid a sewer rate to Council on the property for a number of years and having obtained Council's approval on her building application in April 1980.

Enquiries were commenced and Council was asked to comment on Mrs J's complaint. The Administrator advised that prior to the water and sewerage responsibilities being taken over by the Metropolitan Water, Sewerage and Drainage Board in July 1980, Council had intended to construct a sewerage pumping station. And that "the matter is now outside of the Council's functions and in the circumstances it is presumed you will pursue your enquiries with the Metropolitan Water, Sewerage and Drainage Board".

Enquiries were made with the Board who advised that the sketch plan supplied by Council was correct in that there was a sewer main laid. However, it was a "dry" sewer and could not be used as it was not connected to anything. A pumping station was required in order for it to be operative.

The Board advised how the present situation evolved and why the pumping station had not yet been constructed:

"In October, 1972, the Blue Mountains City Council approved a proposal to subdivide the property . . . of which Mrs J's allotment formed part. One of the conditions of this approval was that the developer pay a specified amount of money to Council in respect of the provision of sewage facilities and that, futher, the developer set aside a suitable site for a sewage pumping station. Council could then carry out construction of the sewers and pumping station with its own forces.

In 1975 the sewer reticulation works and rising main were completed but, while the site of the sewage pumping station itself was determined . . . , the pumping station itself was not constructed at that time. In October, 1978, the developer paid Council a contribution amounting to Council's estimate of the cost of constructing the pumping station and Council subsequently purchased items for the proposed station. No construction work on the station had, however, been commenced by 1st July, 1980, when the Board assumed responsibility for sewerage in the Blue Mountains.

As soon as the Board became aware of the need for a sewage pumping station to serve the ten Lots referred to above it immediately initiated action to rectify the situation and wrote to Council as early as 6th August, 1980, seeking engineering details of the station. Unfortunately, however, these and other investigations by the Board showed that the pumping station as originally proposed would fall far short of the Board's minimum acceptable requirements for reliability and serviceability. As a consequence, it has been necessary to completely redesign the facility. This has involved the determination of an economically viable type of pumping station to serve the ten lots in question, as conventional redesigns would simply be uneconomical for such a small scale operation. Detail design action is now nearing completion, and construction is scheduled to commence in September of this year. Completion is expected in early 1982 with the Board bearing the full cost of the project estimated at $35,000."

In view of the notation on a document relating to the "position or availability of the sewer" held by Mrs J. that "sketch to scale indicate approximately the property described above", Council was asked to comment further.

The Town Clerk advised:

". . . Prior to the transfer of responsibilities to the Water Board, the subdivision of this and nearby blocks had been approved on the basis that sewerage would be available, and such was Council's undertaking at the time of the sale of the the blocks. Sewer mains were laid at that time and it was Council's intention that the Sewerage Pumping Station to service the mains would be complete by the time the first block had been developed.

The notation mentioned in your letter refers to the fact that the mains were already in existence at that time. The work of constructing the Pumping Station was programmed for compietion by approximately August 1980. There was no need for Council to proceed with the construction at an earlier time than August, 1980 because of work in other directions and the fact that no development would be completed in the vicinity for some time.

A list of priority works, which was passed to the Water Board at the time of transfer of responsibilities, included the construction of this Pumping Station . . . if the Water Board has chosen not to meet that commitment, it is considered not to be Council's responsibility.

It is worth noting that Council purchased the pumps for this Station in October 1978, and it is very clear that Council's intention was to complete construction at the most suitable time. However, all assets of the water and sewerage funds of this Council were transferred to the Board on 1st July, 1980 . . . It is therefore suggested your enquiries should be further pursued with the Metropolitan Water, Sewerage and Drainage Board."

It had become evident from information provided that:

(1) Council levied sewer rates on the property until 1st July, 1980.

(2) Council did not enforce the condition of the subdivision and acquire the land necessary to build the substation.

(3) Council's policy was to classify blocks as "sewered blocks" on the understanding that the sewer would be available when the home was completed. Because of Council's procedure, a Council employee stated Mrs J. was served by the sewer, when in fact it was assumed that the sewer would be available to the property by the time the home was completed.

This undertaking that the sewer was available was given by the Council on 21st March, 1979, when the Blue Mountains City Council had full responsibility for sewerage works.

(4) Following transfer of Council's water and sewerage responsibilities to the Board in July 1980, and the subsequent decision by the Board not to proceed with the substation as planned by the Council, the Council did not inform Mrs J. that the sewer might not be available when her home was completed.

(5) Council took no steps to inform Mrs J. that the sewer would not be available.

(6) The pumping station proposed by Council fell far short of the Board's minimum acceptable requirements for reliability and serviceability and the necessary capital outlay had increased dramatically.

Since the Board had assumed responsibility for the project in 1980 it was also questioned as to the steps it had taken to inform persons who proposed building in the area and similarly affected, of the non-existence of the sewer connection.

The Board explained that the Board did not undertake to provide sewerage by a particular date and that questioned as to the availability of the sewer it would stamp "sewer not available" or "sewer available in future" but give no date. Although the Board was aware from 18th July, 1980, that two building applications had been approved by Council in the subdivision, it took no steps to inform those persons affected by its decision.

Mrs J's home was completed in June 1981, yet she could not expect a sewer connection until February 1982. After my intervention Council decided to refund the pump and charges likely to be incurred by Mrs J. over and above the amount likely to be charged for the sewerage rate from the time she occupied the premises until April 1982. The Board at first was reluctant to compensate Mrs J. as an ex-gratia payment could open up a "Pandora's Box". However as it was considered that an individual should not be treated unjustly simply because of possible repercussions, the Board decided as "an act of grace and without prejudice" to make a payment of $600.00 in full settlement of any claims. The Board also wrote to all the property owners of the ten lots affected by the delay in the construction of the Sewerage Pumping Station.

In view of the satisfactory resolution which was reached, enquiries were discontinued.

CASE NO. 21

FAIRFIELD MUNICIPAL COUNCIL

Neighbours' disputes

The complaint was that a local Council had failed to prevent the neighbour's dogs barking and early morning nuisance and invasion of privacy. The Council had in fact interviewed neighbours and inspected the properties in question, but the complainant was not satisfied. The Council then proposed that the disputing neighbours avail themselves of the local Community Justice Centre. This proposal appeared to have merit and, as Council had made considerable effort to resolve the matter the enquiry was discontinued.

CASE NO. 22

KU-RING-GAI MUNICIPAL COUNCIL

Water damage from blocked drain

This complaint was from a resident whose property had been flooded on the 6th and 7th February, 1981, when two Council drains in the road at the end of a cul-de-sac were blocked. The damage to the property was the washing away of the top soil and sand from a rockery in the front of the home.

On Friday, 13th February, further torrential rain resulted in a repeat of the previous damage and subsequent erosion and damage to the rockery, etc. The complainant cleaned up the damage, bought a yard of top soil and a yard of sand to replace that washed away and then commenced his action with Council in an effort to be recompensed $25.00 for the cost of replacement of the top soil and sand. Councils' insurers had denied liability and he had then written to the Ombudsman because of the principle involved.

Enquiries were made at Council and a report on file indicated that its Drainage Ganger had inspected the site on 11th February, 1981, following a telephone message from the complainant's wife a couple of days previously. The ganger discovered that one of the drop pits was partially filled with water and its cover had been removed. He cleared the pit sufficiently to allow water to escape but reported that further cleaning and flushing of the pipe line was required. He also mentioned that as the pit was located in steep, rough bushland, away from buildings, and as it had not been completely cleared the replacement of the lid was neither necessary nor desirable. The complainant's wife was informed of the situation in case young children were present.

In the correspondence the Mayor acknowledged that the flooding of the property had been caused by the total blockage of the sag pit and also it was noted from Council's file that the roots from a willow tree were a contributing factor to the cause of the blockage of the drain and that the tree in question was subsequently removed by Council.

As Council had commenced work to rectify the problem but had not completed the job with the result that the damage occurred, it was pointed out to it that it had a "duty of care" to properly follow through its efforts to clear the drain before the flooding. This principle and several other relevant cases were pointed out to Council in subsequent correspondence.

Council subsequently advised that in view of the suggestions contained in the Ombudsman's letter that it had directed that an ex-gratia payment of $25.50 be paid to the complainant. The enquiries were then discontinued.

CASE NO. 23

KU-RING-GAI MUNICIPAL COUNCIL

Delay in provision of pedestrian access

A resident complained that he had been trying to get Council to construct a walkway through a Drainage Reserve for some seven years. Council initially had promised that the work would go ahead but problems arose when a resident living alongside the Reserve had encroached upon it and Council was attempting to have the encroachment removed before proceeding with the walkway. The complainant wrote to the Office when the Mayor informed him that the work would not proceed because it was considered of very low priority and would interfere with flood flow, in times of heavy rain, through the Drainage Reserve.

Enquiries with Council and perusal of Council's file revealed that the resident adjoining the Reserve, in 1973, had deposited large quantities of excavation material on the Reserve. A retaining wall that he had erected also encroached to a minor degree. The complainant had approached Council at this time seeking clearing of the encroachments from the Reserve to enable pedestrian access to again be had. In May 1973, Council commenced action to have the encroachments removed.

Perusal of Council's file revealed that Council's efforts met with resistance and, eventually, Council decided to take legal action to achieve removal of the encroachments. That did not work out very well either and the matter dragged on.

An additional complication arose in that, in order to enable public access to the Reserve, Council would need to acquire a small triangular piece of land from the resident against whom Council was endeavouring to take legal action. Action in this regard commenced but this, too, became bogged down.

While all of this was going on, Council kept telling the complainant that, as soon as the problems were resolved, pedestrian access through the Reserve would be constructed. He was understandably concerned when, after some seven years, the Mayor wrote to him and, inter alia, said:

> "In company with the Town Clerk and Deputy Engineer, I today inspected the desirability of a pedestrian access between Bolton Place and Rosedale Road, Pymble.
>
> We were unanimously of the view that the matter has a very low priority in relation to all the demands currently being made on the Council and there are certain problems which would arise if we were to consider creating a pedestrian access.
>
> Firstly, there would be the need to acquire a small area of land from Mr . . . to give effect to a pedestrian access but, more importantly, the creek area would have to be built up and this would not be desirable as we would not wish to interfere with the free flow of water during flood time, however irregularly this may occur."

Council, in its report to the Ombudsman said:

> "The topography of the area is such that Council is extremely reluctant to provide any pedestrian thoroughfare which might interfere with existing flood levels.
>
> At the same time, Council is reluctant to introduce additional pedestrian traffic into the area where extreme hazards would presently exist.
>
> The hazards are of such major significance that Council would probably never justify remedial works in full."
>
> "Earlier plans for construction of a sealed path have been reviewed and because the whole of the drainage reserve is flooded during intense rains, it is not now proposed to construct a formal path."

Two of my Investigation Officers inspected the Reserve and agreed with Council about the need to keep the floodway through the Reserve free of obstruction and, in the light of this, they felt that construction of a proper pathway with necessary retaining walls would not be desirable. However, as a result of their discussions with Council's officers, general agreement was reached that, to enable pedestrian access through the Reserve, some minor regrading and improvement works, including the placement of fine crushed rock where needed, would be carried out once Council had acquired the small piece of land needed to enable entry to the Reserve to be gained.

It was subsequently ascertained that Council had acquired the small area of land required and had issued instructions for the marking of the boundaries of the Drainage Reserve, clearing of vegetation and tree stumps from the access route and the laying of fine crushed rock. The complainant was informed accordingly and that, in view of the work proposed by Council, the investigation of his complaint would be discontinued.

It was gratifying to later receive a letter from the complainant saying:

> "The comprehensive nature of your investigation and detailed reply is deeply appreciated. The issue was not a world shattering one but I believe that it involved an important matter of principle.
>
> If I may say so the compromise which you achieved is a sensible one. It clearly demonstrates that (the) Office of the Ombusdman is a real and effective champion of the rights of the individual citizen."

CASE NO. 24

NEWCASTLE CITY COUNCIL

Failure to take action to prevent flooding of property

The complainant said that she became interested in purchasing a dwelling advertised in the local press and went to inspect it. Seeing that the level of the land on which the dwelling was erected was low, and having spoken to local residents about flooding problems, she went to Council to enquire about the likelihood of flooding before committing herself to purchase. She initially approached the Engineer's Department but was refused information and was referred to the Building Department. There she was assured that, as Council had approved the dwelling's construction, there would be no problems with flooding. She was shown a map of the area which indicated that much of the land in the area, many years before, had been declared unhealthy because of its low level but her block had not. Council's officers did not know why.

The complainant purchased the house and, a week after moving in, the property was flooded during heavy rain which coincided with a high tide in Newcastle Harbour. Further flooding occurred on other occasions. She felt that the kerb and gutter in front of her property was too low and that the general drainage of the area was defective. Having approached Council about the matter, with no result, she complained to this office.

The complaint was referred to Council and the Town Clerk replied that a survey investigation in relation to the drainage of the area in the vicinity of the property was being carried out to enable "an engineering assessment to be made with a view to suggesting such adjustment to the existing drainage system as may be necessary to improve the present situation". Shortly thereafter, the Town Clerk reported that the following remedial measures were proposed:

(a) an additional drainage pit to be installed in the vicinity of the property and be connected to the Hunter District Water Board main drain which served the area;

(b) existing drainage pits to be modified so as to more effectively collect runoff on the up-stream side and in front of the property; and

(c) pipework to be altered to provide more adequate and streamlined flow into the main drain.

However, the Town Clerk's report went on to say:

"It is advised that (the area) abuts Newcastle Harbour and the drainage system being investigated is frequently affected by the tide. On these occasions tidal water which backs up the system may rise to within 0.1 metres of the . . . Street gutters or even higher and problems of localised flooding occur when this situation coincides with heavy rain."

The complainant said that the work proposed by Council would not solve her problems. She had written to Council giving details of repeated floodings at times of high tide when tidal water flowed across the footpath and onto her property. She felt that the only effective answer was for the house to be raised above flood level and she had asked for access to the reports made at the time of Building Application site inspection because, in her view, Council should not have approved construction of the dwelling at its low level. She, thereafter, provided this office with a wealth of material relating to the early history of the development of the area and its problems with tidal flooding.

The matter was again taken up with Council and, inter alia, the following questions were asked:

(i) What action did Council propose taking to eliminate or, at least, alleviate the problems associated with tidal flooding?

(ii) Did Council permit the dwelling to be constructed at its present low level even though the flooding problems were apparently well known? (Reference was made to the complainant's original letter of complaint regarding her efforts to obtain reliable information from Council about flooding problems when she was contemplating purchase of the house.)

(iii) Were site inspections carried out and reports made at the time of building? If so, what were the terms of those reports?

(iv) Were any conditions relating to raising the level of the allotment and/or minimum height for the dwelling floor imposed when building approval was given, particularly in the light of the complainant's claim that all of the surrounding allotments were classified as unhealthy building land?

Although there was a considerable delay before a reply was received from Council, the complainant kept me informed and I was aware that several inspections were made of the property by both Council officers and Alderman. Finally, towards the end of August, 1981, I received Council's reply. The City Engineer had submitted a report to the Works, Planning, Traffic and Services Committee on 23rd June. The complainant had been in attendance and had addressed the Committee when the report was being considered. The Committee had inspected the site on 29th June and on that date had recommended to Council that:

(a) The footpath be raised from a low level to a normal footpath and drains with flap valves be installed from any property where water will be inpounded.

(b) The use of the park (opposite the property) as a detention basin be further investigated.

(c) The situation be reviewed following the completion of the work referred to.

Council adopted such recommendations on 30th June.

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The report went on to outline some of the history of the property in the following terms (altered where considered appropriate, in order to protect the complainant's identity):

"Following the demolition of a derelict house on the property, a Development Application was received in 1979, for the construction of a warehouse and amenities. This application was withdrawn after the applicant had been informed that it was proposed to rezone the land from Light Industrial to Residential.

On 26th March, 1980, a Building Application was lodged by a firm of builders for permission to construct a timber frame dwelling on the site and this was approved on 16th April, 1980.

Upon completion, the house was purchased by the complainant who took up residence in November 1980, and wrote to Council on 24th January, 1981, giving details of nuisance flooding which she had experienced at the site.

The footpath and kerb and gutter in this locality were constructed by (the original and former) Municipal Council to levels presumably conforming to occupations at that time, on land which was not classified as unhealthy building land. Land to the west had been subject to an unhealthy building land proclamation, but was released in 1939.

The area is drained by a Hunter District Water Board box culvert which discharges into the harbour and is affected by tidal activity. At peak tides (approximately 3 or 4 times per year) the three footpath sumps between House No. 87 (the complainant's) and House No. 77 surcharge, causing inundation of the low level footpath in this vicinity, until the tide recedes, and apparently on these occasions water does enter the drive of (the complainant's) property.

The position is greatly aggravated when rainfall coincides with the above conditions.

It is considered that no advantage would be gained by lifting the kerb and gutter, but that there would be benefit in raising the level of a section of the *footpath* so as to convert it from a low level to a normal profile.

Raising the level of the footpath at the property line of (the complainant's) property by approximately 150 mm could cause rainfall to pond within her property until absorbed by the sandy soil or released by a flap valve to the gutter.

She was approached on 12th June, 1981, on the basis that the footpath could be raised to prevent tidal water, entering the drive, but after deliberating on the matter, *she was not in favour of the proposal, but desired to have her house raised by Council.*

It should be noted that the Hunter District Water Board box culvert originally drained parts of Railway Street, Throsby Street and Church Street with its catchment until recent work by Council diverted run-off from these areas into a separate system.

Also, consideration is being given to the establishment of a detention basin within the park as another means of reducing the peak load on the box culvert. Because of the levels of the general area, this is considered to be the limit of action which can be taken by Council to reduce the flow of water to the Hunter District Water Board drain."

So far as approval of the Building Application was concerned, the report went on to say:

"Council did permit the dwelling to be constructed at the normal level above ground as the land was not declared unhealthy building land, and although flooding of the road from tidal influence was known to occur, it was not known that the land was affected by tidal influence on rare occasions.

The Senior Building Surveyor noted as follows:

"A site inspection was made on 31st March, 1980, which revealed that there was a depression on the land. At the time of the inspection the site was not damp and it did not appear to be affected by dampness or flooding, consequently, no report was made following the inspection.

It was noted that the land was not a proclaimed unhealthy building site and was not considered further measures under Part 44 of Ordinance No. 70 were necessary.

A subsequent inspection of the trenches on the 24th September, 1980, before the footings were laid, indicated that the site had not been affected by dampness since the initial inspection.

As there was no notice of the completion of the stormwater drains or the completion of the building indicated to Council, it is now the intention of Council to approach the builder and request details of the manner of disposal of stormwaters from the building and to carry out a final inspection."

The normal conditions of Ordinance No. 70 in relation to the level of the floor bearers were all that were applied. It is to noted that surrounding allotments had been released from the unhealthy building land proclamation."

The complainant was quick to point out that the work proposed by Council (and which was well underway by the time I received Council's report in August) would be quite ineffective in resolving her flooding problem and that she had earlier opposed the execution of similar work because water would pond on her property and be unable to escape.

An investigation officer arranged to visit Council for discussions with relevant Council officers and to examine Council's records. A site meeting was arranged with the City Engineer and the complainant and this occurred on 17th September. Such inspection revealed that Council had raised the level of the footpath for a distance, including in front of the complainant's property. A collection sump and inlet grate had been installed on the property adjacent to the driveway while a low concrete hump had been constructed at the driveway entrance.

In discussions on site, the City Engineer said that the collection sump was designed to cope with ordinary rainwater (stormwater) falling on and impounded within the property at times of no high or king tides. He readily admitted that, whilst the raised footpath and hump on the driveway should prevent tidal flooding from the street from entering the property, the collection sump would not cope with and would be quite ineffective in times of heavy rain *with* a high tide.

At high tide, the street drains are full and the flap on the collection sump outlet pipe would prevent such water entering the sump and surcharging out of the inlet grate onto the property. Neither, however, would the rainwater impounded on the property be able to flow out into the street drains, at least not until the tidal flooding receded. The collection sump had a capacity of approximately only 6 gallons.

The City Engineer said that Council had diverted drainage from an area on the other side of a Park opposite the property, so that such drainage did not now flow into the street drains in the complainant's street, in an attempt to relieve the load on the latter. In addition, consideration was being given to diverting water from a catchment area on the other side of the Highway into a detention basin which would need to be constructed in the Park. At present, all of this water flowed at considerable speed into the low point of the complainant's street (a laneway next door to her home) where it tried to get into the already overloaded drainage system and exacerbated the flooding problems.

The City Engineer expressed the view that the overall problem of drainage of the general area simply could not be solved as the ground level was too low to permit adequate drainage or improvement of present drainage. If, for example, the drainage outlets in the Harbour were raised to either free them from or alleviate the affects of tidal influences, the street drainage would have to flow uphill to escape—a gravitational impossibility. This was because the Water Board drains had to be constructed very close to the surface of the land to get any fall in them at all.

Examination of Council files revealed a most interesting situation. The investigation officer wrote to the Council as follows:

> "As you know, the City Engineer met me at the complainant's residence and explained in some detail the merits and the shortcomings of the work already carried out by Council with a view to alleviating the problems being experienced by (her). In summary, it seems to me it can be said that the work carried out will be of help in preventing the flow of tidal flooding on to the property, and, in the absence of tidal flooding, will help rid the property of stormwater impounded on the property during heavy rain. However, no practical benefit will flow from the work in critical periods where tidal flooding and heavy rain coincide.
>
> The problem in this case, clearly, is the low level on which the dwelling has been built, particularly taking into account the material of which the floor of the building is constructed. This material, it was conceded, tends to swell and explode if subjected to water penetration. Thus my consideration of the matter has been directed to the events which led to the dwelling being allowed to be built on its present low level.
>
> As you are aware, I spent some time examining a number of Council's files relating to the property . . . and, in addition, had discussions with Council's Chief Building Inspector. The conclusions I have reached are based on the material available in Council's files, the material provided to me by the complainant and my discussions with Council's officers, and can be summarised as follows:
>
> 1. (a) There can be no doubt that, at the time Council approved the relevant Building Application (No. 634/80) in April, 1980, it was clearly and unequivocally recorded in Council's files that there was a depression on the land itself, and, more importantly, that the whole of the land was lower than adjoining properties.
>
>   (b) (i) Those facts were fully set out in the Closing Order (in respect of the original building on the land) issued by Council on 2nd November, 1976. In his certificate to Council, pursuant to Section 58 of the Public Health Act, which led to the issue of the Closing Order, Mr. Inspector B. A. Schasser indicated that, inter alia, the following conditions existed:

"The ground level beneath the dwelling is below the level of the surrounding land which is below the level of the adjoining properties."

(ii) The work required to be carried out in terms of the Closing Order in respect of this condition was stated as follows:

"Raise the height of the land which being the curtilage of the house to a height level with the adjoining land including the area under the house for the purpose of eliminating dampness."

(iii) My comment is that, if this work was regarded as necessary in respect of the original dwelling then, surely, it was just as necessary in respect of the dwelling constructed in 1980.

(c) In addition, but of less significance, there was the letter of 9th November, 1976, from (a nearby resident) which, inter alia, drew attention to the low level of the block and the need for it to be raised to normal level.

2. (a) The existence of this material within Council's own records, coupled with admitted knowledge of tidal flooding problems in the area where the land is situated, *alone* should have alerted the Building Surveyor who carried out the site inspection on 31st March, 1980, to the need to consider carefully the matter of adequate drainage and possible flooding of the land.

(b) Added to this, of course, was the very physical appearance of the land which the Building Surveyor must have seen. This particular block was (and still is) lower than the footpath and the adjoining properties. The Building Surveyor failed to attach any importance to this despite the fact that, only a few years previously, Council had issued an Order requiring that the level of the land be raised to that of adjoining properties if the dwelling then thereon was to be, after renovation, rendered "fit for human habitation or occupation."

3. (a) I have noted Council's explanation as to why the present dwelling was allowed to be built at its present level above ground and without requiring the level of the land to be raised. Such explanation appears to encompass two aspects, namely:

—the land had never been proclaimed as unhealthy;

—there was no evidence of dampness on the block at the time of site inspection in March and April 1980 (not September as stated in the Engineer's report of 23rd June, 1981).

(b) Council's explanation, in my view, must fail because:

(i) In terms of Section 313 of the Local Government Act Council had a mandatory duty to consider, in respect of the application for building approval, amongst other things:

—drainage and healthiness of the building—section 313 (a);

—height of floor levels in relation to the level of road—section 313 (c);

—whether the site was subject to flooding or tidal inundation—section 313 (1), but it would appear that such matters were either not considered or not properly considered.

(ii) Council has not denied the complainant's claim that the site inspections were carried out during an extensive dry spell and that, therefore, the absence of any sign of dampness, in itself, was not sufficient to override the other factors present (as set out in items (1) and (2) above) nor sufficient discharge of the responsibilities imposed by section 313.

4. (a) I have noted Council's claims that some fill was placed on the land when the old, original building was demolished. However, (a resident) who lives nearby and who has taken an active interest in this particular land since, at least immediately prior to demolition of the original dwelling, has claimed that only a very small amount of fill was placed on the land, and then only on the front section of it.

(b) It would be difficult to refute this claim (and, I note, Council has not attempted to do so). Even today, after (the complainant) has placed quite a lot of fill on the land, it is evident that the level of the land when the existing dwelling was built was significantly lower than the level of adjoining properties, and that there is still a depression under the house. I might add that I saw the land, in any case, on 19th January, 1981, before (the complainant) had carried out filling.

5. (a) In my discussion with the Chief Building Inspector, Mr Stewart, I raised the matter of the responsibility of the officer who carried out the initial site inspection in the light of the mandatory provisions of section 313. Mr Stewart indicated that the officer, at that time, was new to the area. This indicated to me that the officer might not have been aware of the tidal flooding problems experienced in the area. However, Mr Stewart went on to say that the officer had conferred with the Area Inspector who, I presume, was aware of such problems.

(b) I also raised with Mr Stewart the fact that no final inspection has been carried out in respect of this building and that Council is still unaware of what the builder did about disposal of stormwater from the building. I expressed the view that the latter aspect appeared important in view of the problems with flooding on the land and Mr Stewart undertook to follow up that aspect.

In the light of the foregoing, I am of the view that, given the history of tidal inundation of this area . . . and the low level of the land in comparison to adjoining land, the present problems being experienced by the complainant in times of tidal flooding accompanied by rain could reasonably have been foreseen by Council and that Council did not exercise a proper duty of care nor discharge the mandatory duty imposed upon it by Section 313 of the Local Government Act when approving the relevant building application, in that Council failed to require the level of the land to be raised to a height at least level to that of adjoining properties.

On this basis, and bearing in mind that the only sure way to prevent water penetration of the floor of the complainant's dwelling is to raise the floor level to a safe height, it would seem reasonable that Council assume full responsibility for the rectification of the problem and to accept responsibility for having the dwelling raised to an appropriate height."

The Town Clerk subsequently informed me that Council had resolved to accept responsibility, in view of the approval of the building application, for the raising of the cottage to allow the land to be filled to raise the dwelling to a height above any nuisance flooding. He added that arrangements were being made to implement Council's decision.

In view of the action taken by Council enquiries were discontinued.

Case No. 25

NEWCASTLE CITY COUNCIL

Subdivision of land without owner's knowledge

A complaint was received from a Newcastle resident, referred to here as Mr Z., that his land had been subdivided by the previous owner without his knowledge.

Mr Z. bought the property early in 1976, three days before the previous owner, Mr W., lodged an application to subdivide it.

Mr Z., was under the impression that he owned the whole of the block of land concerned. Council records showed him as liable for rates on the entire property.

Mr and Mrs Z. were given vacant possession of the property a month after purchasing it. Twelve days later, Mr W. received conditional approval for the subdivision. Final approval was granted by Council in August, 1976.

Mr Z. living at his new address, had no reason to suspect the former owner was still intending to subdivide it. The Council raised no questions and sent him no information about the proposed subdivision, despite the fact that he was listed as the ratepayer for the property, and that the subdivision was in the name of Mr W.

To complicate matters, the solicitor handling Mr Z.'s original purchase did not submit the transfer documents to the Stamp Duties Office or the Registrar General's Office for more than two years.

Between 1976 and 1981, the Council rates were paid by Mr and Mrs Z. even though the Council considered and approved a subdivision of the land in the name of W.

Without Mr Z.'s knowledge or consent, the original contract for sale of the land appeared to have been altered after the subdivision. The amended document showed Mr Z. as having purchased only half of the original block of land although Council took no action on the contradictory information in the files.

In consultation with the Ombudsman's Office, Council gave a number of undertakings to ensure similar problems do not arise in the future. These included:

"(i) Survey plans will not be endorsed unless ownership of the land is in the same name at the time the subdivision application is lodged and the date on which the plan of subdivision is endorsed.

(ii) Building Application will not be considered unless the owner as indicated on the Building Application is the same as that appearing in Council's records."

The Ombudsman also recommended that the Council consider compensating Mr and Mrs Z. for the costs incurred due to problems arising from, or exacerbated by, Council's actions and failure to take action.

CASE NO. 26

PARRAMATTA CITY COUNCIL

Co-operation to overcome health hazard

In desperation Mrs X. wrote to the Ombudsman on 4th January, 1982, complaining about the inaction by various authorities and specifically Parramatta City Council, the Health Commission of New South Wales and the Metropolitan Water Sewerage and Drainage Board.

Mrs X.'s complaint concerned the condition of the adjoining property. She wrote:

"It is a very serious health problem. There is raw sewerage running from my neighbour's house onto the footpath and seeping through an old P.M.G. box in front of my gateway making it impossible to get out of the gate without having to tread in it. My front grass is just a swamp, it can't even be mowed. My neighbour's toilet has been out of order for more than 3 years, over which time many reports have been made, but nothing has ever been done about it. Not only have I complained about it, but the other neighbours have too. They got nowhere with their complaints either.

They use a bucket for their toilet and throw it out in the yard against the fence where it has piled up over some time. Now they have the floor boards up in the lounge-room and are throwing it under the house, along with garbage, washing machine water, dish water and they wash in a garbage bin and this water also goes under the house too. All this water and toilet urine is running into the front of my house and smells absolutely vile. They are semi-detached houses and the stench coming into my house from all this is putrid . . .

Not one thing has been done to correct this matter at my front gate which was reported on Monday 23rd November, 1981, and I am tired of getting the run-around and everybody passing the problem to somebody else, because they don't want to handle it."

Prompt action was taken by this Office and on 11th January, 1982, Health Commission officers were met by my investigating officers on site and the Town Clerk and an inspector from the Metropolitan Water Sewerage and Drainage Board were interviewed in regard to the problem. That same day the Health Commission officers gained admission to the problem premises with the assistance of two Police officers and found the state of the house to be as described, if not worse, with the presence of fleas, rats, maggots and cockroaches also noted.

Enquiries revealed that the Board, Council and the Commission were previously aware of the problem and had approached it by either serving notices on the inhabitants or involving a welfare officer. However, in this situation such action was not sufficient. A barrier to further action had been the fact that when approached the owner became abusive and refused access and without access the various authorities faced problems complying with the statutory requirements.

The problem of access was solved by the Health Commission officers. The Health Commission arranged for scheduling of the inhabitants in terms of the Mental Health Act as they were unable to care for themselves and on 13th January, the inhabitants were removed. This action pioneered the way for action to then be taken by Council and the Board. Council supervised the removal of rubbish and waste matter from the property, and the Sewerage and Maintenance Unit fixed the Sewerage blockage and repaired the defective drainage as soon as it could gain entry.

This complaint proved a harrowing experience for all involved. It was rectified but only with the involvement of the Ombudsman's Office and the combined efforts of the Health Commission of N.S.W., Parramatta City Council, the Police and officers of the Metropolitan Water Sewerage and Drainage Board. It was pleasing to see such co-operation and Mrs X was most grateful for the cleaning of the neighbouring premises.

It was found in this instance that "although there was some delay by Council in utilizing its powers and fulfilling its responsibilities there is no evidence to support a finding of wrong conduct in regard to any of the above authorities".

CASE NO. 27

RYDE MUNICIPAL COUNCIL

Unfair requirement of a restrictive covenant

The complainant advised in early February, 1981, that he had purchased his home in August, 1978, with the only important restriction being a 15 feet wide drainage easement (a creek) running inside and parallel to his side boundary. In November of that year he applied to Council to construct a timber deck extending 12 feet towards the creek and supported by brick piers.

The plans were rejected by Council because of a supposed "restrictive covenant" on the land title extending 25 feet from the centre line of the creek easement towards the house. Council, however, stated that the plans would be approved if the complainant was prepared to enter into a Deed of Indemnity prepared by its Solicitors, at his cost. This Deed would then have the effect of a caveatable interest on the property.

The complainant's Solicitor wrote to Council concerning his search of Title and findings; however, this letter was not acted on by Council.

The complainant then constructed illegally a 6 feet wooden deck of cantilever design in the belief that without piers and/or foundations it would not encroach on the supposed restriction and that it would therefore not require formal Council approval.

Council subsequently discovered that the deck had been constructed and issued a Demolition Order.

The property owner then prepared and submitted another application for the deck in retrospect which was rejected by Council in January, 1981, for the same reasons as previously given. At this stage the complainant came to the Ombudsman's Office and a report on the matter was sought from Council. This was received in late March, 1981, and it set out the history of the complaint. Subsequently the home was inspected and it was noted at the time that the deck, because of its cantilever design, could in no way be affected by any flooding of the creek.

The matter was subsequently discussed with Council's Engineer who agreed that there was no chance of the deck being damaged by flood waters and that the deck did not encroach into the easement. It was also discovered that a Caveat was never lodged by Council concerning the 25 feet centre line. During the conversation it was pointed out that the complaint was something of a "Catch 22" situation. The Council could not approve the illegal structure in retrospect yet really could not demand a Deed of Indemnity from the complainant. It was pointed out that Council had the power, if it so decided, to issue a Section 317A Certificate of Compliance, indicating on it that the deck was something that was a departure from the approved plans and specifications but such that it need not be rectified. It was also felt that if the Council had pursued the Demolition Order and the home owner had appealed to the Land and Environment Court, that there was some doubt as to whether the Court would order the demolition of the deck.

This information was conveyed to Council formally on the 8th May, 1981 and on 27th August Council advised that, based on legal advice, it had resolved that the Deed of Indemnity and covenant be no longer required and that the Demolition Order be removed.

This information was passed on to the complainant who wrote back thanking the Officer concerned for his efforts.

CASE No. 28

SYDNEY COUNTY COUNCIL

Tenant asked to pay previous tenant's account

A person moving into a flat was told by letter from the Sydney County Council that unless his predecessor's account for electricity was paid within four days of its date, and a week before the predecessor's account was due, the electricity supply would be disconnected. It was pointed out to the Council that this was quite unacceptable and assurances were sought that this was not the Council's usual practice and that an appropriate apology was made. Following receipt of such assurances it was decided to discontinue the enquiry.

CASE No. 29

WAVERLEY MUNICIPAL COUNCIL

Two-storey building on public reserve near Bronte Beach

A complaint was received by the former Ombudsman, Mr K. Smithers, in June, 1979, that Waverley Council proposed to erect a brick two-storey building in a public reserve adjoining Bronte Beach. The upper floor was intended for use primarily by an organisation known as the Bronte Splashers Winter Swimming Club. The complaint, from a local citizen's society, was that it was illegal and beyond the power of the Council to approve the erection of such a building. The second aspect of the matter arose from information given to the Ombudsman in the latter part of 1981 that apparently keys had been given by the Council to some groups and persons (but not the public generally or the complainants) for the use of the western half of the constructed ground floor of the brick building designated on the plans as "club rooms".

Mr Smithers decided to investigate the first of the above two complaints and sought information from the Council. The Council's solicitors took the view that because of legal proceedings in the Supreme Court between one member of the society which had complained and the Council, the Ombudsman was not entitled to the information he sought. (It is not my intention to review the correspondence between the Council or its solicitors and the former Ombudsman or to pass any comments on the tone of that correspondence. I take the view that it was for the former Ombudsman to utilise any powers that he had if he wished to do so.) The Supreme Court litigation initially came before Mr Justice McLelland and then went on appeal to the Court of Appeal which gave its judgment on 18th December, 1979. The former Ombudsman did not take the matter forward to any determination prior to his retirement on 17th June, 1981.

When the matter was drawn to my attention, I sought information as to whether the matter would be listed before a single judge of the Supreme Court. My attention was also drawn by correspondence from the complainant to the current use of the completed ground floor of the building.

I determined that I ought to complete the investigation of the complaint made to Mr Smithers and should also investigate the second aspect of the matter. Accordingly, by notice dated 18th January, 1982, I required the Town Clerk to attend before me on 27th January, 1982, to answer my questions in the matter. He duly attended.

In my view the result of the first complaint is determined by the decision of the Court of Appeal. That Court held that in so far as the erection and proposed use of the second floor of the proposed building was concerned the Council was not empowered by either the provisions of the Local Government Act or the Crown Lands Consolidation Act to approve or proceed with the construction of the building. The Court held, in effect, that the erection of a building with such second floor uses was not possible in a public reserve. (The Court of Appeal did leave open the possibility that some changes of proposed use which made the building open to the public in the relevant sense might enable the construction of a second floor to proceed.)

In my view, therefore, it follows that the conduct upon which the Council embarked in 1979 in commencing the construction of building was contrary to law, and thus wrong conduct as defined by Section 5 of the Ombudsman Act. It also follows that the original complaint must be sustained.

However, before me, evidence was given of the legal advice which Council had obtained before it actually embarked upon the construction of the building. The Town Clerk informed me that he was present at a conference on the 16th March, 1979, in which Mr T. R. Morling, Q.C. (as His Honour Mr Justice Morling then was), gave unambiguous and unqualified advice that the proposed development was within power, and in particular the power vested in Council under Section 350 (h) of the Local Government Act, 1919. This evidence is confirmed by a letter from Messrs Lane & Lane to the Town Clerk of the 21st March, 1979. Mr Morling was at the time a Queen's Counsel of the highest standing with considerable practice and knowledge of the field of Local Government law. The fact that the advice he gave, and upon which the Council relied, was ultimately held to be wrong by the Court of Appeal, nevertheless, in my view, provides significant mitigation of what I have found to be wrong conduct on the part of the Council. It is no doubt true that considerable moneys of the Council have been spent on litigation, but, in my view, a Council is justified in relying upon legal advice of the calibre of that relied upon in this case.

Evidence was given before me by the Town Clerk as to the present use of the ground floor of the proposed building which was completed and not made the subject of any challenge in the Supreme Court proceedings. The eastern half of the building contains Men's and Women's change rooms and is freely open to the public between normal swimming times. In the original drawings the second, or western, half of the ground floor was designated as "Club Rooms". According to the Town Clerk what appears to have happened is that the Mayor, Alderman Page, without the matter going before Council, gave keys to the locked club rooms to two clubs, the Bronte Amateur Swimming Club and the Bronte Ladies Amateur Swimming Club. A third key was apparently given by the Mayor to a member of a group of early morning swimmers, not a formal club, for their use. Obviously, it appears that a number of keys must have been cut as the complainants have noticed a significant use of keys. The problem is thus that there appears to be a privileged group of the public who are entitled to use the club rooms while applications that members of the complainant group have made have been rejected. Quite apart from the complaint of the complainants the large number of keys available has led to security problems. This was the subject of a letter of the Bronte Ladies Amateur Swimming Club of the 17th December, 1981, which states as follows—

> "However, keys to the club room have now been issued to a good number of males who use it as their change room. As so many people now have keys the club room has no security and several of our kicking boards used for learn-to-swim have been stolen."

Following upon the security problems, and also the notice that I gave to the Town Clerk, a new lock was placed on the building and as I understand the position as detailed in evidence currently no-one has access to the building.

In my opinion the correct approach is to ask what course should the Council properly take in relation to the so-called club rooms, having regard to the fact that the building has been erected on a public reserve. It is clear from the authorities that in appropriate circumstances a Council may licence a club to use a building for some activity carried on in connection with the use of the public reserve. Any such licences should, however, in my opinion, be the subject of licence approved in writing by the Minister under Crown Lands Consolidation Act, Section 37RR. In my view, subject to the Minister's consent, and having regard to the fact that there was no challenge in the litigation to the ground floor, it would be appropriate for the Council to approve a license in writing to any bona fide club. However, I do not consider that it is proper to license some members of the public (not being members of a bona fide club) to utilise the so-called club rooms and not to allow other members, including members of the complainant group, to utilise those club rooms.

To summarise, in my view, the situation prior to the recent action of the Town Clerk in providing a new lock for the building was such as the Council should not have allowed to occur. It may well have been that the Mayor had in mind some temporary use of the club rooms but, nevertheless, what occurred should not have occurred. In the appearance before me counsel for the Council indicated that he had been instructed that the Council was interested to have my recommendations as to what course should now take place. I responded to that request by indicating that—

(a) no use of the club rooms should take place until the matter was regularised.

(b) the Council should prepare licences for such bona fide clubs as it wishes to license nominating the use contemplated in association with the park and that a resolution of Council should approve such licences. Applications for licence by different bona fide clubs should be considered fairly by the Council.

(c) the Minister's consent should be sought forthwith as a matter of urgency.

CASE No. 30

WOLLONGONG CITY COUNCIL

Piping of a Water course

The following letter was received on 20th May, 1980, from a resident of Woonona, referred to here as Mr J.

> "A creek which runs through my property floods in wet weather and creates a lot of damage. However, despite repeated requests to the local council, nothing has been done. I am enclosing press clippings and reports relating to this matter and hope that you might be able to help."

Enquiries were made at Council and it was revealed that the piping of the water course in question had been the subject of discussion and correspondence since 1974, shortly after the complainant purchased the home. Council maintained that he was well aware at the time of purchase of the natural water course being located within the property and as such that it was his responsibility to maintain it. The property owner had been acting through various Solicitors, the local news media and the Health Commission in an effort to have Council pipe the drain.

Council had always maintained that the road drainage ran into a natural water course which traversed the property and therefore was not their responsibility to pipe as it was on private land. In addition, the surrounding area was also similarly traversed by natural water courses being on the side of steep hills.

As a part of this Office's enquiries the area was inspected and copies of various plans obtained showing the drainage catchment and storm water drains.

It was apparent at the inspection that some damage had been caused to the property and that it was possible in the future that the house could be undermined.

A letter was then sent to Council on 4th September, 1980, asking the following questions:

(1) Does Council consider that the area of Mr J's land into which drainage water is discharged is a watercourse? I should be pleased to know Council's view on the factual bases and the legal bases which are relied upon to substantiate Council's position. I have been referred to the decision of Barwick, C.J., in *Knezovic* v. *Shire of Swan-Guildford* 118 CLR 468 at 475-476 where His Honour said that a watercourse must essentially be a stream and be sharply distinguished from a mere drain or a drainage depression in the contours of the land which serves to relieve upper land of excess water in times of major precipitation. It is not enough that the water, when it does flow, does so in what may be seen as a defined course or channel.

(2) Has there been any significant increase in quantity or any detriment resulting from the rate or manner of discharge of water at the point that it is discharged into the land of Mr J.?

(3) Has any damage been caused to Mr J's land by the flow of water from the drain at any time since the original construction of the drain, and what is the effect on Mr J's land of water flowing during, or as a result of, heavy precipitations?

(4) Will you kindly explain why your letter of 25th June, 1980, sent to me in response to my letter of 2nd June is in precisely the same terms as your letter to the Senior Legal Officer of the Australian Legal Aid Office on 22nd February, 1980? I would have expected following receipt of my letter some further consideration of the matter would have taken place; possibly the site had been inspected. If such further consideration did occur it is certainly not reflected in the correspondence.

Council sought legal advice and on 24th March, 1981, answered the questions as follows:

(1) Council does consider that the land into which drainage water is discharged is a natural watercourse. Plans held by Council, submitted by the owner, of the whole of the land prior to subdivision, show both by a line drawn on the plan and notation that a natural watercourse existed on the land prior to subdivision and road construction.

DP 29622, accepted by the Registrar General in 1958, shows by a line and notation a natural watercourse wholly within Lot 81.

I cannot comment on the current legal basis as major legal variances appears to have occurred in determining what constitutes a natural watercourse since 1958. However, in and prior to 1958, the stream was accepted as a natural watercourse and is, and has been for many years well defined by banks and bed.

Council's Solicitor has considered the case *Knezovic* v. *Shire of Swan-Guildford*, and submits that this case cannot be directly compared with the property the subject of the enquiry. It would firstly appear that the High Court in this case was considering a situation in Western Australia and was accordingly applying Western Australia Local Government law. The Solicitor secondly points out that the facts in that case were similar but certainly far from the same as the facts in this situation. Accordingly, it is not possible to comment on that decision of the High Court.

(2) From the limited records available, it does not appear that any significant increase has occurred in the catchment contributing to the water course in Lot 81; however, it should be noted that in the years 1974, 1975 and 1976 abnormal rainfall intensities were experienced in the area, which would have increased the quantity of water discharging into the watercourse above that experienced for many years before.

The effect of this abnormal rainfall intensity and high discharge would no doubt have accelerated erosion of friable material on the steep grade within Lot 81. This would be particularly detrimental to any filling placed on Lot 81 in or immediately adjacent to the watercourse, by previous owners.

(3) As indicated above, the flow of water in a watercourse on a grade as steep as existing on Lot 81 over talus material, which also exists on the lot, must cause and continue to cause erosion.

Council's records indicate that serious erosion existed on the site in May, 1962, prior to Council acquiring Lot 31 abutting the eastern side of Lot 81.

The width and depth of the watercourse is such that the flow of water, even in intense storms, would be of only relatively shallow depth; however, the effect of possible further erosion of the bed, coupled with erosion of the bank by surface water flow from Lot 81, and rain and wind erosion on the exposed bank face could have an effect on Lot 81.

The situation regarding the eroded watercourse within Lot 81 has altered only marginally since the first complaint in 1974. The site has been inspected on numerous occasions since that date, and as outlined in the letter of 25th June, 1980, considerable discussion and correspondence has occurred.

As your letter of 2nd June, 1980, requested a report as soon as possible, and not later than 27th June, 1980, and as the situation has not changed since my letter of 22nd February, 1980, to the Australian Legal Aid Office, and as Council had already endeavoured to fully but briefly acquaint the Australian Legal Aid Office of all facts considered pertinent, it was considered reasonable and sensible to advise you in the same terms.

It should be noted that in the period between February 1980, and June 1980, a drought situation existed and minimal rain occurred in this area.

Subsequently in early June a further letter was sent to Council requesting it to review the matter after considering the cases of *Rudd* v. *Hornsby Shire Council* (31 LGRA.120) and Helsham C.J. in the *Stevens and Anor* v. *Bowral Municipal Council* case. A copy of the Ombudsman's 1978 Annual Report on the Rudd case was supplied as well as a copy of the Stevens judgment for Council's consideration.

Mr J. was kept informed of the proceedings and advised that the matter of complaint to the Ombudsman was whether the area into which the Council was discharging street water was a natural water course or whether it was a mere depression in the ground into which water, on occasions, ran.

Council again sought legal advice and on 27th October, 1981, advised that it had notified the complainant that it had resolved to suggest to him that he transfer to Council a strip of land containing the water course on the understanding that it would be piped in 1982.

Mr J. subsequently agreed to Council's offer and thanked the officer concerned in this Office. The case was then discontinued.

Case No. 31

WOOLLAHRA MUNICIPAL COUNCIL

Refusal to refund building enquiry fee

The complainant made an enquiry with the Council regarding the suitability of two project homes for possible erection on her land. She lodged sketch plans only on the advice of the local Building Inspector, as she merely wished to ascertain Council's attitude and likely response to a formal building application before she incurred the expense of having formal plans prepared. She paid the normal enquiry fee of $115.

Council subsequently informed her that formal plans were required to enable her enquiry to be considered and she, therefore, arranged for plans to be prepared by each of the two project builders at a cost, all told, of $930.

As, in her view, Council had provided her with no information in response to her initial enquiry, the complainant sought a refund of the enquiry fee. This was refused on the basis that the fee was "not refundable" and, later, on the basis that "there is no provision for the refund of fees paid in respect to enquiry applications".

The matter was taken up with the Mayor who reported in the following terms:

"The issues have been discussed with senior staff of the Council and I must say that I believe (the complainant) has been treated a little harshly. There was, I feel, a too rigid adherence to regulation by staff members. The situation with regard to enquiry applications, as a matter of Council policy, has required payment of processing fees equivalent to half the statutory fees stipulated by Ordinance 70. The justification for this has been the cost of processing. Enquiry applications, because of their very nature, would not call for the degree of staff time demanded by fully documented applications.

In relation to the proposal from (the complainant) a fee of $115 was paid on 15th September, 1981. Subsequently, the District Building Surveyor was involved in the preparation of comments; this following his examination of the enquiry proposal. As a result of the involvement of the District Building Surveyor a letter was forwarded to (the complainant) on 8th October, 1981, suggesting that formal plans, drawn to a suitable scale, be submitted.

When (the complainant) replied to the Council on 27th October, seeking a refund of the $115 fee, the correct response would have been for a refund of part of the fee to be made, with the deduction being related to the actual processing time involved. Unfortunately, this was not done. Further to this, the later response from the Council was that there is no provision for refund of fees.

Now that the matter has been brought to my attention, I have issued instructions to—

(a) provide for a full refund of the $115 to (the complainant), notwithstanding processing costs which were incurred; and

(b) that administrative steps be taken to ensure there is no further similar occurrence.

I have had the Town Clerk write, this day, to (the complainant)."

The complainant informed me that she was completely satisfied with this outcome and in view of this, and the fact that the Mayor had taken action to ensure there was no further similar occurrence, I discontinued my enquiries.

Whilst this complaint involved a relatively minor matter, it illustrates the benefits which can flow from the fact that my correspondence with public and local authorities is usually dealt with by the head of the authority.

Case No. 32

CORRECTIVE SERVICES—Report on Day Leave

Report under Section 26 Ombudsman Act—Day Leave

THE COMPLAINT

Complaints were received by the Ombudsman from and on behalf of a number of prisoners who alleged that Circular 4679, issued on 16th July, 1980, by the Corrective Services Commission to cover the granting of Day Leave to prisoners, was being interpreted in a way that was wrongful and/or discriminatory. The complaints were—

(1) that in the case of serious drug offenders and inmates involved in violent crime, the statement in paragraph 5 that they would be eligible to apply for day leave during the last twelve months of their sentence was being disregarded, and in fact applications were not usually considered until six months before a prisoner's expected date of release; and

(2) that in deciding whether a prisoner was prevented by paragraph 5 from applying for Day Leave until the last twelve months of his or her sentence, the Commissioner's delegates were not considering the full definition of "serious drug offence" as laid down in paragraph 5.

THE INVESTIGATION

On 25th January, 1982, I wrote to the Department stating the terms of both complaints and seeking a response from the Chairman of the Corrective Services Commission. As a result of that letter, Mr K. McCormack, the Executive Officer (Establishments) and Mr Roger Gallagher of the Commission attended my Office on 10th February, 1982, and provided me and an officer of this Office, Mrs Albertje Gurley, with the information sought. I am most grateful for the help provided by Mr McCormack and Mr Gallagher.

Complaint 1:

It appears that Circular 4769 was issued by the Department on 16th July, 1980, and that this Circular did indeed advise that inmates who were convicted of serious drug offences or who were directly involved in crimes of violence would not be eligible to apply for Day Leave until twelve months before their expected date of release. It seems inescapable that this must be interpreted as meaning that they were entitled to apply at that time.

It appears that this Circular was generally published throughout gaols by being displayed on notice boards and otherwise being made available to prisoners. It was clearly known to those prisoners who complained to this Office.

However, it appears that the eligibility of these prisoners for Day Leave was varied some time before September, 1981, by a decision of the Commission that prisoners in this category should not be granted Day Leave until *six months* before their expected date of release. This decision was not, however, explained to prisoners or indeed to anyone else, either specifically or in the form of an amendment to Circular 4679. Indeed, on the basis of material supplied to me by Mr McCormack, it does not appear to have been reduced to writing except in the form of an unconfirmed minute (No. 3.10) dated 7th September, 1981, which stated that the Commission "confirmed" that this was the policy with respect to prisoners convicted of "serious violent crimes". The wording of this minute speaks of the date at which prisoners can be granted Day Leave rather than the date on which they are eligible for it, but I am satisfied that this is a purely semantic distinction and that it does refer to a decision which varied the eligibility for Day Leave. The minute makes no reference to serious drug offenders, but Mr McCormack confirmed that the decision applied to this group as well.

It appears that the change in eligibility was not published until 3rd February, 1982, after the Commission had received the letter of complaint from this Office. On that date the Commission issued a circular to Superintendents which referred generally to the change in policy, and advised of a further change in that inmates convicted of serious drug offences would again be eligible to apply for Day Leave twelve months from their expected date of release. However, Superintendents were not asked to bring this to the attention of inmates by, for example, posting it on notice boards, although the circular stated that—

> action should be taken to ensure that any inmate who now comes within the criteria and whose case has been deferred should be given the opportunity to re-apply and be reconsidered.

I believe that the Commission's action in not publishing the change in the eligibility rules to prison staff and inmates—either in the form of an amendment to Circular 4679 or in some other way—was wrong conduct within the terms of the Ombudsman Act, in that it was unreasonable. The date at which prisoners become eligible for Day Leave is understandably of great importance to them and gives them an incentive towards which they can work. The fact that they did not understand that the rules had been changed caused great distress and resentment among those prisoners who spoke to this Office. It cannot be conducive to a prisoner's prospects for rehabilitation for him or her to work hard and conduct themselves well in the hope of obtaining Day Leave only to be told, when the date at which they believe they are eligible arrives, that leave has been refused and they should re-apply in six months' time. It also seems odd that the Commission should employ welfare officers for the purpose, inter alia, of giving advice to prisoners and then not ensure that they are provided with accurate information.

I am concerned that the failure to publish the change of eligibility in this case is indicative of a general failure within the Department to ensure that prisoners are adequately informed of their rights and obligations.

Insufficient attention has been given, in the past, to ensuring that basic prison rules and regulations, as well as the criteria governing programmes like Day Leave, are reduced to simple English and made readily available. It is unreasonable to expect that prisoners who do not know their obligations and rights can obey them. Considerable frustration is generated when prisoners work diligently and well towards an incentive which they wrongly believe exists and which then disappears without any explanation just as they expect to obtain it. This situation must contribute to tensions within the prison system generally.

Mr McCormack offered no explanation for the failure to publish the change other than, first, that it takes a considerable time to issue an amending circular; and second, a statement to the effect that if prisoners are granted a privilege they soon demand it as a right.

I do not accept the first of these explanations. Circular 4679 consists of roneoed sheets which could have been amended as required by altering the word "twelve" to "six" on two occasions. There are not a large number of prisons in New South Wales, and I would not have thought that sending a copy of the altered sheets to the Superintendent and the Welfare Officer at each would have been a time consuming exercise. I can see no logic in the second explanation, as the decision in this case withdrew a benefit rather than extended one. In any event, the original circular and the subsequent decision spoke only of an inmate's *eligibility* to be granted Day Leave. It is always up to the Commission to decide whether or not an eligible applicant will in fact be *granted* Day Leave, as this decision is completely within the Commission's discretion.

Complaint 2:

Paragraph 5 (a) of Circular 4679 defines "serious drug offence" as—

> "one heard before a Judge in the District Court which involved the personal use of a drug of addiction, and/or possession of a drug which could reasonably be taken as a sign that the person is 'at risk' of engaging in the impulsive or criminal behaviour endangering the community and thereby bringing the day leave scheme into disrepute."

The importance of this section is that a prisoner who is convicted of a "serious drug offence" is not eligible for Day Leave until within twelve months of his or her expected date of release.

The complaint to this Office was that the full definition of "serious drug offence" was not being taken into account in determining when a prisoner was eligible to be granted Day Leave, and that in practice any District Court conviction was regarded as sufficient to disqualify a person from eligibility to apply until twelve months from the expected date of release.

My discussions with Mr McCormack lead me to conclude that the criteria laid down in paragraph 5 (a) are not being applied according to their clear legal meaning. Mr McCormack tended to the view that the paragraph was impractical as a genuine test, and was much concerned with the difficulty of finding a definition of "serious" which he would consider satisfactory. However, that is not the point. I have no doubt of Mr McCormack's good faith, but the Circular provides a definition which is perfectly clear, although not necessarily easy to apply. Any person who in the opinion of the Commission or its properly delegated officer falls outside that definition is entitled to be considered on the merits for Day Leave without waiting until twelve months from their expected date of release.

The confusion is illustrated by the case of an inmate cited in our letter to the Department. This person applied for Day Leave two years before his expected date of release, and accompanied his application with a submission to the effect that his was not a "serious drug offence" because it involved no personal use and no possession "which could reasonably be taken as a sign that the person is 'at risk' of engaging in the impulsive or criminal behaviour endangering the community . . .". However, it appears that the question of whether he was eligible for Day Leave at this stage was simply not addressed. The comments made to the Commissioner by the Executive Officer (Establishments) were—

> "This is a case where the Court took a very serious view of the offence (10 years with NPP of 5 years). Although it has been recent policy to review such cases within 6 months of expiry of NPP—this is a case when the Commission might well consider review 12 months prior to possible release, i.e. November, 1982, and I so recommend."

Day Leave was refused.

If the comments indicated that the application was excluded by paragraph 5 (a) because it was a case "where the Court took a very serious view of the offence", this is simply not consistent with the clear terms of 5 (a). If in fact the application was considered on the merits but refused because the offence was a serious one or for some other reason, this should have been made clear.

In my view the way in which the Commission goes about considering applications for Day Leave does not conform with the rules and criteria laid down by Circular 4679. It is entirely within the power of the Commission to alter those rules and criteria if they consider the present ones impractical or inappropriate, but in my view, it is unreasonable conduct within section 5 of the Ombudsman Act for the Commission to publish certain rules and criteria to prisoners and then to disregard those rules and criteria in making decisions.

It is not an answer to the problem to say that all applications are in fact considered by the Commission. At present the published rules would lead many people not to bother applying until twelve months before their expected date of release because of a belief that they are ineligible. If the Commission proposes to deal with all applications on their merits, that fact should be made clear to prisoners.

RECOMMENDATION

Complaint 1:

The complaint is found to be sustained.

It is recommended that the rules currently governing Day Leave be immediately reduced to simple English and published generally within the prison system to inmates and Corrective Services Department staff.

It is further recommended that urgent attention be given to drawing up a simple and regularly updated manual for all prisoners which sets out their basic obligations and entitlements and explains the rules governing programmes of major importance such as Day Leave.

Complaint 2:

The complaint is found to be sustained.

It is recommended that the application of the prisoner referred to above be reconsidered in the light of the present criteria as contained in Circular 4679.

It is also recommended that, in making decisions on Day Leave, the Commission in future adhere to the criteria laid down in Circular 4679, or to such other criteria as may be determined and published from time to time.

Signed by
Susan Armstrong,
Assistant Ombudsman for G. G. Masterman,
Ombudsman.
23rd June, 1982.

CASE NO. 33

CORRECTIVE SERVICES

Sentence calculation following the Burr case

Report under Section 26 Ombudsman Act

Inadequacy of Existing Procedures Relating to the Compilation and Availability of Prisoners' Sentence Calculations

1. THE COMPLAINANTS

Complaints were received by this Office from several prisoners whose non-parole periods were affected as a result of a recent Supreme Court decision in *Regina* v. *Burr*. Similar complaints had been received some months earlier as a result of the decision in *Smith* v. *Corrective Services Commission*.

2. THE COMPLAINT

The prisoners were aware that the application of the principles inherent in both of these decisions would alter their effective dates of release. In 1981 this Office had noted some delays in the Department's advice to prisoners on the effects of the *Smith* decision. The prisoners were now complaining of similar delays in informing them of revisions to their non-parole period dates following *Burr*.

3. BACKGROUND

(a) *Effect of these decisions*

Both the *Smith* and *Burr* decisions varied the Department's customary interpretation of the remission legislation.

The effect of the *Smith* case was that where a prisoner is returned to prison after revocation of parole to serve the balance of his or her sentence, s/he is entitled to remissions on the period of imprisonment served before the release on parole as well as on the balance served subsequently.

The *Burr* case was consequential in that it held that, where prisoners whose date of release was affected by *Smith's* case were serving a subsequent sentence which was to commence on the expiry of their previous term (i.e., the balance of parole), the non-parole period set for the second sentence should be adjusted to allow for the reduced time now to be served on the first sentence. This decision, of course, did not apply to prisoners whose second sentence was to be served concurrently, or was fixed to commence on a day other than that of the expiry of the first sentence.

(b) *Action taken by the Department*

It appears that all prisoners affected by the first of these decisions, that of *Smith*, were identified over a weekend after overtime for some thirteen officers was approved, and all the the recalculations necessary were completed by May, 1981, a period of some seven months.

On the face of it, the *Burr* decision merely required that the Department identify those of this group who were also serving a second sentence commencing on the expiry date of their sentence, and then deduct from the non-parole period set in the second case the amount credited in the first. The *Burr* decision itself explicitly recommended that the Executive Government give consideration to effecting this at an administrative level, and pointed out that the necessary result could be achieved by considering the release on licence of the prisoners affected at the date when they might have hoped to be considered for parole if the correct remission release date had been known to the sentencing judge.

In respect of the *Burr* decision, the Minister for Corrective Services approved, on 3rd November, 1981, that—

> "cases of all prisoners affected should be referred to the Parole Board for its views on the question of early release on licence at a time in advance of the expiration of the non-parole period, equivalent to the difference between the date of release under the old and new methods of calculating remission entitlements."

(c) *The Problem*

While it appeared that the steps suggested by the Court were being taken by the Department, it appeared also that the systems and procedures operating within the Department constrained the extent to which it was possible to speedily and accurately identify those prisoners serving various types of sentences. Delays in advising prisoners of their entitlements were occurring as a result.

However, there remained another aspect of the problem. The date upon which a prisoner becomes eligible for parole, while in no sense a "release date," is used as "the date of expected release" which, in turn, determines when an inmate is eligible to apply for day leave, work release and other rehabilitative programmes. Thus, simply to ensure that the prisoners so affected were considered by the Parole Board with a view to licence on or before the adjusted date was not enough to ensure fairness. Naturally, the opportunity to work towards day leave, work release and other educational and training programmes assumes particular importance to prisoners.

For example, during a visit to Cessnock Corrective Centre in January this year, Mr Stephen Davis approached me concerning his inability to obtain information from the Department about a possible revised non-parole period date, following the *Burr* case. If he was covered by the *Burr* decision, as he believed, he would have been eligible to apply to attend a course at Newcastle C.A.E. which would have started in March. The delay in clarifying his position, he claimed, had made it impossible for him at that stage to have been considered for a course which he considered would have greatly enhanced the likelihood of his rehabilitation, quite apart from any further remissions he may have been able to earn as a result of his participation in a training programme.

Mr Davis has now advised me that he had in fact subsequently gained the benefit of attending college, which he has attributed to the efforts of this Office in following up his complaint through a letter to Mr Dalton of 25th January, 1982. I believe it would be fair comment to say that if Mr Davis had not been aware of his possible entitlement, and not raised the question of gaining it with this Office, the benefit he now enjoys would not have been made available to him, notwithstanding his clear entitlement to it under the *Burr* decision.

In summary, the prisoners who had complained to me following the *Burr* decision were anxious to establish, first, whether they were affected by the decision and, if so, what their respective new non-parole period expiry dates would be. Second, they were anxious to receive a statement of their entitlement from the Department so that they could have clear access to any other benefits flowing from their revised non-parole period dates.

4. THE INVESTIGATION

In company with Mr Hartigan of this Office, I interviewed the Officer in Charge of the Prisoner Index Section, Mr Vedemuthu, about the problems raised above.

The following points emerged as a result of this interview:

- It is, indeed, not possible to speedily and accurately identify prisoners serving various types of sentences. For the *Smith* decision it was necessary to go through all 4,000 current files in order to identify which prisoners were serving a balance of parole sentence—and even this search was not conclusive in that files which were at the time out of the system may have been eligible but not detected. In the *Burr* case a similar complete audit would have been necessary to identify all eligible prisoners, despite the fact that only *Smith* case prisoners would have been affected, because there was no means of identifying new prisoners, entering the system since *Smith*, who were affected by its principles. A similar complete audit was also required to identify prisoners affected by the subsequent *Green* and *Murphy* decisions.
- No such complete audit had been carried out in the *Burr* case because of the inordinate staff time involved and the fact that the Records Section was patently over-extended. Instead, the Department was relying on a list provided by each gaol of prisoners serving a balance of parole plus a sentence.
- There was no guarantee that these lists were authoritative, and it appeared that a number of omissions from them had already come to light and had been added.
- In order to conclusively determine whether a prisoner was affected it was necessary to obtain a copy of the judge's remarks on sentence or the Court judgement in order to determine whether the second sentence commenced on expiry of the first (covered by *Burr*) or was concurrent or from another specified date (not covered).
- Because of the above, a list of prisoners possibly affected, with the adjusted non-parole period dates, was forwarded individually to the Parole Board before the adjusted date fell due, so that, in accordance with the Minister's approval the Board could make a recommendation for or against release on licence.

It was my view that, while the full audit procedure represented a significant expenditure of limited staff resources, the measures employed above to replace that procedure meant that many prisoners, to whom their release and non-parole period dates are the most important things in the world, were left in uncertainty for unduly long periods of time. I consider that urgent steps needed to be taken to determine conclusively which prisoners were subject to the *Burr* decision; to recalculate their revised non-parole period dates; and to notify them as soon as possible of the results.

Accordingly, while recognising the staffing difficulties involved, on 25th January, 1982, I wrote to Mr Dalton expressing the above and urgently sought his intervention in the matter. I expressed the view that any reasonable sentence recording system should allow for the provision to each prisoner of a regular (e.g., annual) statement of entitlements, with appropriate revisions to release and non-parole period dates clearly shown. I also expressed my view that maintaining an adequate system of sentencing records would require the introduction of technological aids.

Mr Dalton's reply of 2nd April, 1982, contained advice that all prisoners affected by the *Burr* case had been identified, and that all remission entitlements had been recalculated in line with the principles of that decision. He did not dispute the comments I had made in my letter, which were expressed in similar terms to those made above. He conceded that until prisoner records and remission calculations were computerised the Department will not be able to provide inmates with annual statements. He went on to say—

> "I am concerned with the failure of the organisation to provide these details and have instructed that the project involving computerisation of offender records proceed as quickly as possible.

Part of the problems which cause unnecessary complexities in the remission system relate to the imprecise working of legislation and regulations governing remission. As you are aware, there have been a number of court decisions over the last twelve months which have substantially altered the Department's understanding of how certain parts of the remission and legislation are to be interpreted.

The Corrective Services Commission is at present considering major changes to the system of remissions and this also includes proposed changes to the Parole of Prisoners Act involving the application of remissions.

The Commission will be in a position shortly to make firm recommendations to the Minister for the legislation and policy in these areas to be changed. Some of the basic objectives to be achieved from these changes are to simplify the existing remissions system and to ensure, through the wording of the legislation being made precise, that remission is applied in line with the relevant principles."

5. CONCLUSIONS AND RECOMMENDATIONS

It is clear that the existing manual system of recording sentence calculations, while possibly adequate to deal with a small prison system operating under fixed sentencing principles, has failed to cope during a period in which prisoners' rights have been, and probably will continue to be, more intensively litigated.

I am heartened to learn that the Department is countering this problem in two respects—firstly, by the introduction of computer based systems, and secondly, by simplifying the remission system itself and ensuring that the wording of the impending legislation is more precise.

However, for the moment, the Department continues to be saddled with a system that is acknowledged to be deficient. I understand problems similar to those outlined above are currently being experienced in relation to the application of the principles determined in the recent Supreme Court decisions in *Murphy* and *Borges*. The approach taken following both of these decisions appears also to have been based on the same principles of expediency that were applied before in respect to *Burr*. I am informed that overtime was approved for the gaol clerks to identify those prisoners possibly eligible to benefit under the decisions. Officers in Head Office of the Department collated the material received from the respective gaols and authorised release or revisions to non-parole period dates where appropriate.

While this action was a prompt response to yet another variation to existing remission entitlements, the problem of delays and of incompleteness do not appear to have been resolved.

The problems inherent in this system are compounded when it is recognised that there is no established system of audit which could be used to monitor the accuracy of these various calculations and recalculations. The present extent of audit appears to be restricted to sentence calculations conducted in parallel to those undertaken in the various prisons by a much overworked Mr Vedemuthu in the Prisoner Index Section at Head Office. Cross check of the various entries is sporadic, and there is certainly no attempt to pursue possible omissions, as for example industrial remission for which a local gaol officer may have failed to advise the Prisoner Index through a clerical oversight. This aspect of procedures is taken up in a future report arising out of a complaint from Mr J. W. Duff, an ex-prisoner at Newnes, who not only lost several days industrial remission as a result of being transferred for a short court appearance and medical observation, but was advised of a grossly inaccurate date of release which led him to elect to defer his parole.

As stated earlier in this report, calculations relating to sentences are the most important set of figures in existence for every prisoner. In my view, prisoners should be entitled to a statement as clear and as correct as any bank statement. This should be provided on reasonable request and at six-monthly intervals automatically be issued. This system should be capable of providing advice expeditiously whenever changes occur to those calculations. It can be reasonably assumed that some prisoners are unaware of their rights, and are accordingly unable to bring matters concerning possible early release to the attention of the Commission or the Parole Board. Early advice of changes to release is essential.

While I am certainly heartened by the Department's intention to alter the remission system by changes to the existing legislation, I fear that this intention may lead to postponements to the introduction of improved procedures and technology. If such should be the case then considerable unfairness and inconvenience will persist longer that it should.

I therefore recommend that the Department's initiatives in respect to the development of a computer based system be accelerated as a matter of the greatest urgency—if necessary, by the recruitment of external consultants, either from the Public Service Board or from the private sector.

The Department's plans for legislative changes to the remission system are to be welcomed, and while I look forward to advice in due course as to the progress being made in that direction, it should not, in my view, necessarily preclude the urgent action necessary to improve the procedures and systems which are the subject of this report.

Signed by
SUSAN ARMSTRONG,
Assistant Ombudsman for the Ombudsman.

CASE NO. 34

CORRECTIVE SERVICES

The front yards, Goulburn Gaol

Report under Section 26 Ombudsman Act

1. THE COMPLAINT

In the course of a regular visit to Goulburn Training Centre on 25th March, 1982, I interviewed prisoners about a variety of general complaints. Among the prisoners I interviewed several complained to me about the physical conditions in the Front Yards of the Gaol, and about the general treatment of the prisoners on protection who are confined there.

As a result of these complaints, an investigation of the Front Yards was subsequently conducted. In the course of this investigation similar complaints were put to me by all the other protection prisoners and the one segregation prisoner who were interviewed.

In addition, I later received a written complaint from a Front Yard inmate, who reiterated several of the general complaints put to me by the other prisoners, and from Redfern Legal Centre, which lodged a general complaint as a result of information received from its clients.

In essence, the prisoners complained about the appalling physical conditions in the Front Yards; their lack of access to basic rights and privileges enjoyed by all other prisoners at Goulburn Training Centre; and the damaging effects of the regimen on their physical and mental health. These issues will be treated separately in the report.

2. THE INVESTIGATION

Following receipt of the initial complaints, I returned to Goulburn on 28th and 29th April, 1982, and on 6th May, 1982, in company with Acting Senior Investigation Officer, Mr Greg Andrews; a thorough inspection of the Front Yards was made, and photographs were taken to illustrate the conditions.

All occupants of the Front Yards were interviewed over the three days. In addition, interviews were conducted with the Superintendent of the Goulburn Training Centre, the Deputy Superintendent, the Property Officer, and with three prison officers who had manned the Front Yards post. I also had discussions with the Charge Nurse and inspected the patient contact list at the Clinic. Prisoners' files were also inspected.

3. THE GOULBURN FRONT YARDS

Like many other gaols in New South Wales, the major part of the Goulburn Training Centre was built in the last century.

Layout plan of the gaol is contained in Appendix 1. As can be seen from that plan, the Front Yards are situated in a corner of the gaol complex away from the main cell blocks and activities areas. There are nine individual yards. At the time of inspection, one of those yards was not in use and was undergoing restoration work. Another yard is used as a shower complex, leaving seven yards for occupation. Six of these yards at the time of inspection were used for protection prisoners, and the remaining yard was used for a prisoner under a segregation order. The physical layout of the front yards is shown in illustrations 1 and 2 in Appendix 2.

The yards themselves are concrete and metal cages. As shown in illustration 3 and 4, a spiked metal fence and gate operates as a first barrier. This opens into the cage proper. The yard itself is approximately 3 metres wide by 5 metres deep. Three of the walls are covered in heavy sheet iron. The remaining wall is made up of heavy security bars and a security gate. Similarly, apart from a 1 metre wide covered section at the back of the yard the roof is open to the elements and comprises heavy security bars covered by a finer wire mesh. The flooring is bare concrete.

As illustration 5 shows, most of the yards contain nothing but a small steel chair and table, a tap, and an open toilet. The toilet, as shown in illustration 6, consists of an uncovered aluminium pan set into a concrete block, the walls of which are covered with sheet iron. The metal desk is relatively small and designed for the use of one person. It is welded to the walls and is not moveable. (See illustration 7.)

Two of the yards also have a wooden bench attached to one of the side walls. These benches are approximately 2 metres long and can comfortably seat approximately four people. (See illustration 8.)

4. THE FRONT YARD OCCUPANTS

The Front Yards were originally designed to house segregation prisoners—i.e., those prisoners who, because of their misconduct or for other reasons, constituted a threat to the personal safety of other prisoners or prison officers, to the security of the prison, or to the preservation of good order and discipline within the prison and who therefore needed to be segregated from other prisoners. Each yard was obviously designed to hold one segregation prisoner.

However, at the time of my investigation, only one of the yards was being used for segregation purposes. All the other yards were being used to house prisoners on protection, and this is now the usual situation at Goulburn.

Prisoners on protection are held separately from the rest of the prison population. Prisoners ask to be placed on protection for a variety of reasons. For example, one of my complainants had been in the Front Yards for six months. Prior to that, most of his cell gear had been stolen—including a colour television set, a stereo, and sixty cassette tapes. He came to know who had stolen the property. Through an intermediary he asked for his property to be returned, but was told that he would be killed if it was reported stolen. Subsequently he did report it stolen, and at the same time asked to be placed on protection. As a result of reporting the theft, the complainant fears for his life if he returns to normal prison discipline.

Another complainant explained the situation of seeking protection in the following way:

> "Most prisoners in the front yards have found it necessary to ask for protection from the other inmates for a multitude of reasons. Sexual molestation is a major factor. Fear of being physically assaulted or even killed by the gangsters who abound in the prison proper is another reason. These gangsters have successfully transferred their criminal activities in the society which they offended into their place of supposed punishment and rehabilitation. The records of killings, bashings and rapes, the cornucopia of drugs available in the gaols will attest to the success these unrepentent gangsters enjoy. The attitude towards the victims of these recidivists—front yard prisoners—is of repugnance and disdain, while these prisoners enjoy all the privileges and access to facilities which their victims are denied. Surely it is obvious that this system has become depraved and even the senior officers are content to ignore the situation. While these gangsters are given the best of all conditions in the gaols, reform and rehabilitation will always be suppressed and prison crime encouraged".

In contrast to the main prison population, most of the protection prisoners I interviewed were relatively young, and the majority were of slight build. They tend not to have extensive criminal records or convictions for major crime. While some prisoners seek protection after incurring debts to other prisoners, it is clear that many are concerned purely to avoid being assaulted or raped.

An order which confines a prisoner on segregation to the Front Yards may be for up to three months at the discretion of the Corrective Services Commission, whose approval is required. However, protection prisoners are usually faced with a much longer period in the Front Yards. The average time of occupancy among the protection prisoners that I interviewed was six months. One prisoner had been on protection for 21 months.

5. CONDITIONS IN THE FRONT YARDS

(a) *Overcrowding*

Each of the Front Yards is designed for the occupancy of one person. However, in my inspections the only Yard occupied by a single person was that used to hold a prisoner on segregation.

At the time of my first visit on 25th March, 1982, there were 34 protection prisoners in the seven Yards then available to them. On the inspection in April this number had dropped to 22. One yard had five occupants at that time, although I had been informed that on the previous occasion there had been up to eight prisoners confined in one of the Yards at particular times.

I have already pointed out that in most of the Yards there is seating for only one person. This means that, for the 6½ hours that the protection prisoners spend in the Front Yard each day, they must either sit on the bare concrete floor, on the toilet, or else take turns using the one available seat.

There is nothing at all to do in the Yards each day, and because most Yards have no power points prisoners cannot even watch television or make coffee or tea. One Yard has two power points, and the occupants of that Yard can use a television set to occupy the empty hours. (See illustration 9.) While it was reported to me that prisoners occupying other yards were at times able to take turns at being in the television yard, at least three of the inmates I interviewed were on strict protection (i.e., requiring protection from protection prisoners), and could not avail themselves even of this opportunity.

(b) *Provision of Basic Facilities*

Only two of the nine yards are provided with a wooden bench seat to complement the single metal seat and provide what would even approximate to adequate seating for the number of prisoners who are forced to occupy them from time to time. I was informed that the existing benches were put into the two yards earlier this year, but that further work then ceased. When I interviewed the Superintendent, Mr Routley, on this point he informed me that the building maintenance section at the Goulburn Training Centre was currently making benches up for all the yards. At the time of my last visit, Mr Andrews of this Office inspected the carpentry shop where it was explained to him that priority was being given to the manufacture of bed bases for an outside order.

I was informed by prisoners that at some stage in the past they were able to bring blankets from their cells to sit on during the day, but that prison officers had stopped them from doing this. Mr Routley informed me that this direction was caused by the fact that the blankets were misused by some prisoners. I explored with Mr Routley the possibility of the occupants using donated mats or carpet pieces in order to protect them from the cold concrete when sitting on the floor in the absence of adequate seating. Mr Routley informed me that he could see no security problems in this and would have no objections. The only foreseeable problem was the protection of mats from getting wet when it rained.

The toilet in each yard provides no privacy for its user, either when the cell is occupied by other protection prisoners or when the person is confined in the yard alone, when they are still exposed to the full view of the Prison Officer manning the tower above the Front Yards and to any officer or other prisoner walking past the Yards.

(c) *Showers*

As illustration 10 shows, one of the yards has been converted to a shower complex comprising three open cubicles. The only concession that has been made to the substantial cold experienced in Goulburn for many months of each year is that the barred front wall and gate into the yard is covered with a perspex sheet to afford some protection from the wind.

I was informed by various inmates that they are taken to the showers in twos or threes at a time.

My inspection of the shower complex revealed grossly inadequate water pressure. When the three showers were operating at the one time there was only a dribble from each shower rose. When only two showers were operating the pressure was only slightly increased. It was only when one shower was used alone that there was anything like the water pressure necessary to ensure an adequate flow of water for a person to have a shower.

While the shower cubicles themselves had tiled floors and either concrete or sheet metal walls, the condition and cleanliness of the cubicles could only be described as deplorable. As illustrations 11-13 show, the walls are badly affected by damp and serious fungal infestation.

Apart from the obvious complaints of inadequate water supply and extreme coldness that comes from being exposed to the elements in a state of undress, several prisoners complained to me that the unclean state of the showers presented a health risk and that many of them developed sores and pimples as a result of contact.

I was informed by one of the Prison Officers I interviewed that they attempted to give each inmate fifteen minutes in which to go to the shower complex, take a shower and then re-dress and return to their yard. It is clear that when there are as many as thirty-four prisoners in the Front Yards it is impossible to do this with only one adequately working shower in the 6½ hours each day that the prisoners are in the Front Yards. This is especially so when it is considered that the officer manning the post responsible for the Front Yards has various other duties which make it possible to give only periodic attention to Front Yard prisoners.

One prisoner complained that in the week before he was interviewed, he had been locked in the shower yard for 1½ hours before the Prison Officer on duty released him to go back to his own yard. The demands on the Prison Officer manning post 19 (which I will discuss further below) are such that the other responsibilities of the post may occupy the attention of the officer for periods that would necessitate officers leaving the prisoners in the shower complex for unreasonable amounts of time following their showers.

(d) *Cleaning*

The cleaning of the shower areas in particular is clearly inadequate. The Front Yards are serviced by two sweepers. While the shower complex appears to be hosed out regularly, the large areas of fungal infestation clearly indicate that this is an inappropriate method of cleaning, and that the shower cubicles are crying out for a proper scrubbing with anti-fungal solution and disinfectant, at a minimum.

The general cleanliness of the yards themselves is at a level that could only be expected from yards that are open to the weather and occupied by many more persons than they were designed for.

(e) *Weather Protection*

One of the most persistent and worrying complaints made to me was that the inmates of the Front Yards were continually exposed to rain which in cold weather had a most serious effect on their body temperature. As can be seen in illustrations 14 and 15, the yards are completely open to the weather apart from a small portion at the back of each yard. This section of roof is no more than a metre wide, and offers very little protection from wet weather.

It was put to me by several of the inmates that when it rained they had no alternative but to stand on top of the toilet or the table to seek cover, which on many occasions was only partial because of the angle at which rain was coming into the yards. Illustration 16 gives some indication of the limited room available for occupants to take evasive action.

At weekends inmates have the option of remaining locked in their cell for the full 24 hours of a day, but during the week, prisoners on protection are obliged to spend the day in the Front Yards, regardless of how inclement the weather may be.

On days when it continues to rain, the fact that inmates may be forced to stand in such conditions for up to 6½ hours to protect themselves from the weather is a deplorable state of affairs. If there are any more than three or four inmates in any yard (which frequenlty occurs) there is no option but for some of them to stand in the rain for this time.

This problem is exacerbated by the severe temperatures experienced at Goulburn. In Appendix 3 there appears a table of the average maximum and minimum monthly temperatures for Goulburn and the number of days per month that minimum temperatures fall below freezing point. As can be seen from the tables, in the depths of winter the average minimum monthly temperature falls to —1.5°, and there are at least eleven days in the month when the minimum daily temperature falls below freezing point. It is not surprising therefore to find animal-like behaviour amongst the Front Yard occupants, with inmates constantly walking up and down the small yards in an effort to keep warm.

At the other extreme, the Front Yard inmates reported that in the summer months the conditions were unbearable because of the heat. A combination of minimal shade (and then for only part of the day) and open exposure, together with the iron clad walls, makes this an understandable complaint.

(f) *Provision of Adequate Clothing*

In order to comment on the adequacy of the clothing provided to the Front Yard prisoners, it is necessary first to consider the amount of insulation in the form of clothing necessary to protect a person from adverse physiological reactions to cold temperatures.

As part of this Investigation I consulted a senior official from the Commonwealth Institute of Health, who referred me to an authoritative work in this area. According to Burton and Edholm[1] the total insulation of clothing plus air needed for a person at rest is 5.5 clo at freezing point, 4.8 clo at 5°C, 3.25 clo at 15°C and 3 clo at 20°C. The clo is an internationally accepted scientific measure of thermal insulation that is expressed in an easily understood equivalent—i.e., the magnitude of the clo unit of insulation is chosen to approximate the normal indoor clothing worn by sedentary workers in comfortable surroundings, which is a "business suit" and the usual undergarments. Most people in cities wear one clo unit of thermal insulation most of the time.[2]

The weight of scientific evidence therefore would suggest that in a place like the Goulburn Front Yards, where prisoners are exposed to the weather and the monthly temperatures in winter are low (such as in the month of July when temperatures range from a minimum average of 1.5 to a maximum average of 11.3°C) the necessary amount of clothing to provide sufficient thermal insulation ranges from a minimum of slightly less than four times the equivalent of a normal business suit and undergarments to slightly more than 5½ times this amount of clothing.

On this basis it is clearly apparent that the normal clothing issued to prisoners who spend up to 6½ hours per day in the Front Yards is grossly inadequate. Prisoners are only allowed to wear the standard clothing issue, which consists of underpants, T-shirt, a cotton shirt, a wool and nylon mix pullover, and a cotton jacket, plus socks and shoes. It would appear that this is little more than the equivalent of one or two clo units.

When investigating this aspect of the complaint, the Property Officer at the Goulburn Training Centre was interviewed in regard to the clothing issued. He informed Mr Andrews of this Office that in addition to the standard issue, prisoners were freely supplied with long-john underpants and fleecy-lined singlets. On further questioning of the Property Officer, however, it became apparent that these were not automatically issued to prisoners, but only issued if they were requested.

On questioning prisoners, however, it was also clearly apparent that they were not aware that these were available. In fact, one prisoner complained that the previous year he had asked for a pair of long-johns because of the cold problem, but these had been refused. While the provision of such under-garments may assist the clothing problem, it was quite clear that the gaol authorities did nothing to make the prisoners aware of the availability of these items to which they were entitled.

I discussed this matter with the Superintendent, who informed me that he would arrange for these garments to be issued to any of the Front Yard prisoners who requested them.

During the inspection of the Front Yards I noticed that, in one of the yards housing the strict protection prisoners, two of the three prisoners in the yard were wearing army-disposal greatcoats. When I inquired of these prisoners how they came to have greatcoats, they said that they were supplied by the Wing Officer from "D" Wing. They further informed me that there were only two coats, and the three occupants of the yard took turns wearing the coats to keep warm. I was further informed by other prisoners that they had asked for the use of such coats but had been refused by their wing officer. I also had reports that the coats had been available for the previous year, but did not seem to be this year.

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[1]See Figure 30, Page 108 in A. C. Burton and O. G. Edholm *Man in a Cold Environment: Physiological and Pathological Effects to Exposure to Low Temperatures*. Edward Arnold (Publishers Ltd): London, 1955.

[2]The formal definition of clo unit is: 1 clo unit of thermal insulation will maintain a resting-sitting man, whose metabolism is 50 kcal/sq.m/hr indefinitely comfortable in an environment of 21°C, relative humidity less than 50 per cent, and air movement 20 ft. min.

I took up the question with Mr Routley, who assured me that he had a plentiful supply of greatcoats, and that he had acquired an additional lot of coats the previous year for the use of protection and other prisoners in the Front Yards. He assured me that the prisoners only had to ask the Wing Officer for the use of a coat and that they would be issued. Mr Routley's assurances, however, were in stark contrast to the accounts of the Front Yard occupants that I interviewed, who complained bitterly about the cold and appeared to spend most of the day marching up and down the yards in order to keep warm.

Perhaps the last observation that needs to be made on the provision of adequate clothing for prisoners in the Front Yards is to contrast their issue of clothing with the clothing provided to the Prison Officers who work in the same situation. Apart from their standard uniforms, which are of a much heavier and higher quality fabric, the officers are issued with thick parka jackets to protect themselves from the cold. On my inspection of the Goulburn Training Centre it was noticeable that even among those officers working indoors, many of them wore these jackets because of the temperature.

6. ACCESS TO NORMAL PRIVILEGES

(a) *Work*

While most prisoners have the option of working in one of the gaol industries or not, this choice is not open to those prisoners confined to the Front Yards where no work is available. No special arrangements have been made to provide protection prisoners with access to one of the gaol industries, and the prisoners I interviewed complained to me that they were not able to engage in any form of productive work.

The absence of work has a number of serious consequences for the inmates. First, at a psychological level, there is no relief from the excruciating boredom that many of the Front Yard occupants suffer, which is caused by their not having any activities to occupy their time while locked in the Front Yards during the day. Second, the absence of productive work greatly reduces the likelihood that these inmates will acquire any skills that will be of advantage to them in pursuing acceptable occupational endeavours once they have completed their term of imprisonment. Consequently, the rehabilitative value of their time in the prison is seriously retarded. Third, the absence of productive work makes it most difficult for those inmates to display the co-operation and modes of behaviour that would be likely to make favourable impressions which could assist them in terms of the reports submitted by officers to help evaluate requests for re-classification parole, release on licence etc. Fourth, the absence of work makes it impossible for these prisoners to earn any money, and they must therefore rely on the basic allowance of $4 per week plus any other money that they are able to obtain from outside sources. A number of prisoners who do not have any outside support complained to me that it was incredibly difficult to survive on $4 per week, especially since they were now forced to purchase on their Buy-Up many of the basic necessities that were once provided free, such as soap. Considering that these prisoners are locked up 24 hours a day, and do not have available to them the normal diversions of a prison day such as work, sports, educational classes and so on, it is not surprising to find that the consumption of tobacco, and food and other beverages that can be purchased through the Buy-Up is of far greater significance in their daily lives (merely for the purpose of stimulation) than perhaps it is for other prisoners.

Compounded, these factors make the absence of productive work a destructive feature of the day-to-day lives of the Front Yard occupants.

The only jobs available to protection prisoners are two sweeper positions for the Front Yard area itself, and at present, a job in the clinic.

While the sweeper jobs certainly provide some useful diversion for the two occupants of the positions, the work itself is far from desirable in terms of its potential rehabilitative value, and only occupies a relatively small amount of their time during the day. One of the sweepers is the prisoner who, at the time of my inspection, had been in the Front Yards for the longest period of time (21 months). As other prisoners also tend to spend long periods in the Front Yards, the sweeper positions do not become frequently vacant, and therefore are not something that the other prisoners can readily aspire to.

(b) *Medical, Welfare and Parole Officers*

Access to medical staff for the Front Yard prisoners roughly coincides with the escort of prisoners from "D" Wing to the Front Yards and back each day. In this regard, I did not receive many complaints about access to the clinic. I did, however, receive many complaints about access to parole and welfare officers. The Front Yard inmates reported that to see one of these officers a request was made to the Prison Officer on Front Yard duty who was then responsible for relaying the message and subsequently arranging for their escort. The prisoners complained, however, that this system was most unreliable, and depended totally on the discretion of the Prison Officer on duty. They reported many incidents where they had made requests which apparently had never been taken any further.

One of the problems that I observed during my inspection was that there appeared to be no system for alerting officers to the continuity of action required of them from one shift to another in this respect. An officer on afternoon shift therefore, would know nothing about a request made to the officer on the morning shift. In the absence of any systematic recording of requests, the arrangement makes it only too easy for any one officer to abdicate responsibility for the inaction of another.

The complaints by the prisoners in this regard were confirmed by the Welfare Officer, Mr Gardiner, who expressed concern to me that he did not always know about Front Yard prisoners who wished to see him.

An additional complication in this area was that, as reported to me, the Front Yard prisoners were only taken to see the Parole and Welfare Officers after 3.00 in the afternoon, and that by this time these officers had frequently knocked off and were not available.

(c) *Library and Education Block*

Protection prisoners are not able to have free access to the Library or the classes and materials available from the Education Block, because of the risk to their safety posed by allowing them to pass through, or mingle with, the rest of the prison population. Despite this, no alternative arrangements have been made to enable them to obtain materials or books that would help them pass their time in the Front Yards, even though the monotony of their environment would suggest that they have a far greater need for such facilities than prisoners on normal discipline.

(d) *Sport/Exercise*

Prisoners in the Front Yards have no opportunity at all to obtain any exercise. By night they are locked in their cell; and by day they are confined in small yards (3m × 5m), where the cramped space and the number of people in the yard makes free movement impossible. They have no exercise equipment, and are given no access to an exercise area or other exercise facilities.

This situation is plainly in disregard to the *Minimum Standard Guidelines for Australian Prisons* published by The Australian Institute of Criminology. These have no legal force, but are based on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Guideline 21 provides—

"(a) Every prisoner who is not employed in outdoor work shall have the opportunity for an absolute minimum of one hour of suitable exercise in the open air daily, if the weather permits.

(b) All prisoners shall have daily exercise and physical recreational training. To this end space, installations and equipment should be provided".

As in most gaols, one of the most highly used and prized privileges available to most prisoners at Goulburn Training Centre is their access to sports facilities. In Goulburn there is a large sports oval which enables prisoners to play football and other field games, in addition to access to sophisticated body-building equipment and other activities gear such as ping pong, etc. However, because of their incarceration in the Front Yards, the protection prisoners are denied access to all these facilities, which are available to all other prisoners on normal discipline.

As the protection and segregation prisoners in the Front Yard are either confined to their cells or the small yards for 24 hours a day, for many months at a time, the lack of access to proper exercise facilities poses an obvious threat to their general health and well-being.

I was informed by some of the Front Yard prisoners that at one previous stage half the Front Yard prisoners at a time were allowed to use the limited area in front of the yards for exercise purposes. However, following an incident involving a hostage situation at the Goulburn Training Centre in 1981, this procedure was apparently suspended and the prisoners were confined to the yards themselves for the whole period. The prisoners complained to me that it was unreasonable to punish them for the actions of a disturbed former inmate, and reiterated the fact that they were in the Front Yards not through any misbehaviour but purely for their own protection. When I discussed this matter with Mr Routley, he advised that the procedure by which half the Front Yard inmates at a time were allowed to use the area in front of the yards had been the subject of a Union ban and only became functional after the Executive Officers of the establishment supervised proceedings for a week and after intervention from head office. Mr Routley, however, said that the prisoners had abused this freedom by yelling and screaming and generally playing up. While one could understand such behaviour following a long incarceration in the confined and dismal space of the Front Yards, I was not able to ascertain whether the suspension of this procedure was made after providing the prisoners with warnings of the possible result of their abuse of this privilege.

Mr Routley also raised the problem of not being able to adequately ensure protection of the prisoners when they were in this area, even though it is guarded by two steel fences of approximately 2 metres in height and is in clear view of the Deputy Superintendent's Office and the nearby tower.

I was also informed by the Prisoners that at some previous time there had been a punching bag available in one of the yards for their use. However, this had been removed earlier in the year. When I spoke to Mr Routley about this he seemed surprised, and was of the belief that there was some exercise equipment available in the Front Yards. When I asked whether he had any objection to equipment such as an exercise bike being located there, he said that he had no objection to equipment that could be contained in one of the yards, assuming that the Commission was able to supply it.

(e) *Contact Visits*

Any prisoner not undergoing segregation or punishment is entitled to one contact visit per week. I was told that at some time in the past, Front Yard prisoners on protection were able to have contact visits like all other prisoners on normal discipline. However, this practice was stopped at some stage late last year or early this year.

A number of the protection prisoners I spoke to were of the understanding that the visits had been stopped because a prisoner who was on protection at that time had been discovered receiving contraband articles during a contact visit. They claimed that suspension of the contact visits for all the protection prisoners was an unjustifiable punishment.

The Superintendent, Mr Routley, however, put forward the main reason for the suspension of visits as being that he could not guarantee the safety of protection prisoners on such visits as they would have to take their contact visits in the same area used by prisoners on normal discipline, who might attack them.

Several of the protection prisoners were aware of this objection, and in order to obtain that privilege, had offered to make statutory declarations releasing the Corrective Services Department from any liability should they be attacked in any way during a contact visit. They argued that they saw no potential threat of assault while on a contact visit, as such visits are highly prized by all prisoners and it was unlikely that any prisoner would jeopardise his access to future visits by an attack in this situation.

When I raised this with Mr Routley he simply reiterated his view that it was his responsibility to afford the prisoners full protection, and that as he could not guarantee it in the contact visiting area he would not allow contact visits for protection prisoners.

The curious thing about the contact visit situation is that there appears to be no guarantee of safety for protection prisoners using the visiting booth area of the Visiting Centre, where they are now forced to receive visits. A sketch of the booth section of the Visiting Centre appears in Appendix 4. As can be seen from that sketch, prisoners proceeding to the contact visiting areas are admitted to the Visiting Centre through door A by remote control by the officer in the control post, and they then proceed to doors B or C, before proceeding into the contact visiting areas beyond. A protection prisoner who is in one of the booths receiving a visit therefore has his back to any other prisoner who enters the area, either proceeding or returning from a contact visiting area, or proceeding or returning from visiting a parole officer or psychologist in the office area leading off to the left. There are no barriers to prevent any of the prisoners attacking a protection prisoner, and as the officer on duty is inside the control room it would be some time before he could get out of that room and rush to assist any prisoner under attack. It is clearly evident that, in this regard, the protection prisoners are not secure in any way by being confined to booth visits, and one could easily hypothesise that they may indeed be in a safer position in the contact area in the presence of other civilians and under the supervision of a prison officer, bearing in mind the comment previously mentioned.

(f) *Telephone Calls*

Prisoners who either work or are on protection are entitled to one telephone call per week. As with the contact visits, telephone calls are highly prized among the normal privileges afforded to prisoners, and are an important means by which the Corrective Services Department encourages continuing contact between prisoners and their families and friends for rehabilitative purposes.

Of all the conditions complained about by Front Yard prisoners, the difficulties they experience in obtaining their weekly telephone calls were perhaps the most often mentioned. According to the prisoners, they frequently missed out on calls for some weeks in a row; "No answers" were sometimes counted as calls; officers frequently came late, thus making it impossible for all prisoners to have enough time to make calls; and on many days they were not even able to have access to the telephone because no officer was available to escort them.

I ascertained that, at the time of my inspection, it was the normal duty of the Activities Officer, following the lock up of the activities area at 3.00 pm, to start escorting protection prisoners to the Education Block to have their telephone calls from 3.30 to 4.00 pm each day. The Officer in the telephone area kept a log of prisoners' calls.

The practical problem encountered with this arrangement was that, according to the rostering procedure used at the gaol, the Activities Officer was the first officer to be used in a relief capacity when other staff were absent. On the days that this happened, which appeared to be often, the 20 post officer took over the responsibility for escorting protection prisoners for telephone calls. However, this officer only left the 20 post at 3.30 p.m., and then proceeded to the Front Yards from outside the gaol. The consequent delay caused by having to pass through several gates before reaching the Front Yards meant that this officer was not able to reach the Front Yard section until approximately 3.40 pm on those days, leaving less than 20 minutes to escort a number of prisoners to the telephone section and back. On these occasions many prisoners were forced to have short calls, and others missed out.

While it is clear that, for security reasons, it is only possible under current arrangements to enable protection prisoners to have access to phones after 3.30 pm on weekdays, it is also clear that the current situation is most unsatisfactory, and that the Front Yard prisoners are often disadvantaged in this regard. One prisoner, for instance, explained to me that his only viable contact with the outside world was a friend who was only available in the morning, and as he was not able to ring that person at that time he feared the relationship could not be sustained. Other prisoners complained in a similar manner that they had to make special arrangements for relatives or friends to be home in order to receive their calls, and that when they missed out it placed those relationships in severe jeopardy.

(g) *Meal Arrangements and Buy-Ups*

Under the current arrangements at Goulburn Training Centre, the Front Yard prisoners are taken back to their wings for lunch and dinner after the other prisoners have been locked up. A consequence of this arrangement is that the Front Yard prisoners receive their meals slightly later. Although this should not necessarily be a problem in view of the heated serving carts, many prisoners complained to me that their meals were frequently cold, and they did not receive their full rations. Apparently the sweepers in "D" wing where most protection prisoners are housed, are not protection prisoners themselves and the protection prisoners instanced this arrangement as one of the subtle ways that they were "got at" by the other prisoners.

In regard to the weekly Buy-Ups, I was told that the Buy-Ups for protection prisoners were left to last for security reasons. However, the effect of this was that the protection prisoners, more than others, suffered from temporary shortages of various items.

The other serious area of complaint to do with Buy-Ups was the fact that there has been a continual eroding of standard provisions in the prison system, so that basic necessities such as soap now must be bought out of the prisoners own Buy-Up allowance. As the Front Yard prisoners were not able to earn any money, and many did not receive supplements from outside the gaol, these prisoners were at a severe disadvantage compared to other prisoners under normal discipline in that they were not able to buy many consumables.

(h) *Movies and Other Group Associated Activities*

Protection prisoners, for obvious security reasons, are not able to participate in the weekly movie or other similar group association activities organised in the gaol. No alternative arrangements are made for these prisoners to have access to these privileges, although the deprived environment to which they are subjected would indicate that their need in this area is considerably greater than that of prisoners on normal discipline.

(i) *Laundry*

Many of the prisoners in the Front Yards complained to me that they were disadvantaged in their access to laundry facilities. While the prisoners were able to send their clothes to the prison laundry, they complained that the prisoners running the laundry were always able to recognise the laundry bag from "D" Wing, which houses the protection prisoners, and sabotaged their clothes in numerous ways. Often the clothes were substituted or damaged when they were returned. Consequently, the protection prisoners were reluctant to send their clothes through this normal channel, and tended to wash their clothes in their cells or in the Front Yards shower. At one stage I was informed that there were a number of large plastic bins in the Front Yards which the prisoners used for the washing of clothes. These, however, were subsequently taken away from the prisoners. When I questioned Mr Routley about this, he claimed that the plastic buckets were never issued but had been scrounged by the prisoners from various sections of the gaol. He claimed that the buckets were taken away from the prisoners because they had used them to throw water around the yards. He also objected to them hanging clothes on the bars of the Front Yards, as these were unsightly and also obstructed the view from the tower, which posed a possible security risk.

7. MEDICAL AND PSYCHOLOGICAL PROBLEMS ASSOCIATED WITH CONFINEMENTS

During my visit on 6th May, 1982, I held discussions with Mr Ron Costello, the nurse at the Goulburn Clinic, and the Charge Nurse, Mr Clive Stuart. These gentlemen informed me that they did not consider there to be a disproportionate share of health problems experienced by the Front Yard prisoners compared to other prisoners on normal discipline. However, they attributed this primarily to their readiness to dispense preventative medication, particularly medication to guard against the development of colds and flu. The major health problem as they saw it, particularly in the Front Yards, was that of boredom leading to high anxiety and stress reactions. The symptomatology of this was found in the high reportage of headaches, and problems such as acne and various skin rashes. I inspected the clinic lists, which confirmed the observation of the nurses that the most frequent complaints of the Front Yard prisoners were for migraine headaches. While the nurses at the clinic were able to dispense preventative medicine for problems such as colds and flu, they were not in a position to offer any preventative treatment for these more serious tension and anxiety related problems.

From the experience of the nursing staff and my own observation of the normal behaviour of the Front Yard prisoners, it is clear that many of them suffer from physical and psychological symptoms of distress caused through prolonged exposure to a monotonous environment.

8. STAFFING AND SECURITY

The responsibility for overseeing and attending the Front Yard prisoners belongs to the officer posted to No. 19 post—and to a much lesser extent to the officer manning the tower overlooking the Front Yards.

The duties attached to No. 19 post are onerous. In addition to looking after and dealing with the needs of Front Yard prisoners (including the escorting of prisoners to and from the shower), the officer must operate six separate gates—only two of which give access to the Front Yards. The main gate to No. 2 post is a particularly busy thoroughfare, and to a lesser extent the gates to "X" Wing and the clinic also take up a large proportion of the time of the officer manning 19 post. The Deputy Superintendent's Office is in the 19 post area and receives much daily traffic. Prisoners come to this office to receive official letters from agencies such as the Parole Board and the Ombudsman's Office; Section 44 orders are collected; and all receptions are received at this office. In addition, each morning the Principal Industries Officer takes requests, and the monthly Visiting Justice hearings also necessitate the attendance of numerous prisoners in the area on the day of the sittings. The Officer manning 19 Post has to search all reception prisoners, and in addition has to search all prisoners entering the gaol from "X" Wing.

It is clear from the discussions I had with three prison officers who had experience in manning 19 Post, as well as from my own observations, that the extensive calls upon the 19 Post Officer's time from these varied sources prevent him from giving adequate attention to the needs of Front Yard inmates. It is obviously impossible for the Front Yards to be given continuous supervision by the 19 Post Officer and all the officers to whom we spoke described the difficult situation which arose when they could be forced to disregard, temporarily, cries from protection prisoners in the Front Yards while they were in the process of searching a group of reception prisoners.

The difficulties encountered by Front Yards prisoners in obtaining adequate attention from the 19 Post Officer is of particular concern when it is appreciated that inmates are dependent on that officer for relaying requests to see welfare officers and obtain other special attention or requests. I have no doubt that many of the problems described above could at least be minimised if an officer were available on a continuous basis to deal with the prisoners' needs.

The officers I spoke to were unanimous in reporting that 19 Post was the post with the heaviest workload at Goulburn Training Centre. When I discussed this issue with Mr Routley, he was not of the same opinion. Nevertheless, I am of the view that, comparative to other posts within the Gaol, the duties of 19 Post are excessively onerous and prevent proper attention being paid to the needs of prisoners in the Front Yards. Many of the problems described above—from the lack of exercise to the lack of access to the library and other facilities—could be overcome if an officer were posted to deal specifically with, and look after, the Front Yard inmates.

This problem raises a further and fundamental issue. At least one prisoner complained that he suffered acute anxiety every time a new protection prisoner was allowed into the Front Yards, as he claimed there had been occasions where protection prisoners had been assaulted in the yards by an inmate who had gone on protection for a few days purely for this purpose, returning then to normal discipline. It became clear during my investigation that the officers manning 19 Post had no knowledge of why protection prisoners were in the Front Yards, or of who they were seeking protection from. In this respect they were not in a position to ever be especially wary about particular prisoners who entered the 19 Post area who were likely to seize any opportunity they had to attack a protection prisoner.

This situation is largely caused by the fact that no special attention is paid to the needs of protection prisoners. Indeed many a prison officer, as well as inmates, tends to absorb the traditional prison ethos of respect (albeit grudging) for the prison "heavies" and contempt for the protection prisoners, who clearly lie at the other end of the inmate hierarchy. This problem has been greatly exacerbated by the very significant rise in the number of prisoners on protection over recent years.

This rise is undeniable and has been mentioned as a cause for concern by a number of Superintendents. From my observations of the protection inmate population, this trend appears attributable to a number of causes including:

- increased levels of violence stemming from the inability of some prisoners to service debts incurred through drug abuse or drug trafficking or whose activities in drug dealings post a threat to established networks;
- increasing numbers of young offenders in maximum security, primarily those serving long term sentences who are unsuitable for placement with the Department of Youth and Community Services and who believe they are in need of protection from "heavy" predators in normal discipline;
- prisoners giving evidence against fellow inmates associated with activities or crimes within or without prison and who fear retribution directly or through associates.

This trend has been exacerbated by the dispersal of some 40 inmates from Parramatta in 1981 which has had the effect of dislodging established power hierarchies within virtually every maximum security prison in the State. The phasing-out of industry in the Central Industrial Prison and the lack of work opportunities in all maximum security prisons has created a situation of boredom and malaise where violence has been allowed to operate virtually unchecked. It is clear that the rise in the number of prisoners seeking protection reflects a lack of confidence within the inmate community in the ability and commitment of prison officers to monitor their safety within the normal discipline contact.

It is not likely that this rise in the number of prisoners needing protection will be reversed. In theory it would obviously be desirable to segregate the predators rather than their victims but in practice expecting this approach to solve the problem ignores the fact that there are close bonds between different groups of prisoners and the prison ethos is very hostile to any informer—segregating the person who initially assaulted or raped the prisoner in need of protection will not protect him from all the friends and associates of the person to blame. Any change in this pattern will require long term alterations to the way in which prisons function.

It is my view that the Department needs to give considerably more care and attention to the special problems of managing protection prisoners than it has to date. In the past year this Office has dealt with two major complaints involving assaults on prisoners on protection which, in my view, occurred because of inadequate or even unprofessional supervision.

The unpopularity of protection prisoners with many officers should be dealt with by acknowledging that major protection posts require officers of skill, sensitivity and experience over and above that required on routine and especially rotating, custodial positions which are manned by a variety of different officers day by day with little ongoing knowledge of the needs and fears of the prisoners they are required to protect. Officers should also be given some incentive to move into this area and to acquire skill and professional status through working in it.

9. CONCLUSION

I am satisfied that the actions of the Department in administering the Goulburn Front Yards amount to wrong conduct within the terms of Section 5 of the Ombudsman Act in that the Department has failed to provide due care or reasonable conditions to these prisoners and has denied them access to basic benefits and entitlements available to other members of the prison population.

10. RECOMMENDATIONS

(i) While I am compelled to make a number of recommendations that would bring some temporary alleviation to the problems facing the Front Yard prisoners, I believe that the most appropriate long term solution is to relocate all protection prisoners at Goulburn in a special protection gaol. I am aware that the Department has recently announced plans to alter the status of Parramatta Gaol. I therefore recommend that urgent consideration be given to transforming part of Parramatta Gaol into an institution for protection prisoners at the earliest opportunity and that all protection prisoners from the Goulburn Training Centre be transferred there.

(ii) In the interim period, I believe it is essential that the duties of 19 Post be divided and an additional post be created whose sole duty is the supervision of the Front Yards and the conduct of associated programmes and escort services. Many of my subsequent recommendations could more easily be implemented with the availability of an additional officer whose sole responsibility was the Front Yards.

(iii) The incarceration of prisoners in the appalling conditions that exist in the Front Yards for long periods of time is something that requires immediate attention. I recommend that top priority be given to the manufacture and installation of wooden benches for the remaining yards. Furthermore, I recommend that each yard be supplied with a double power point to enable prisoners to use electrical appliances such as radios, television sets, jugs, etc.

(iv) To overcome the immediate problem of inadequate seating in the yards, I recommend that the Department acquire or seek donations of mats or carpet remnants for issue to front yard prisoners to insulate them from the cold concrete when seated.

(v) The lack of privacy accorded to prisoners when using toilets is a deplorable state of affairs. To remedy this situation, however, would restrict even further the available space in each yard. Accordingly, I make no recommendations in this respect.

(vi) In regard to the shower complex, immediate attention should be given to a proper cleaning of the complex and the eradication of the fungus in the cubicles. It is clear that the shower complex is simply not able to cope with the current Front Yard population, especially in regard to the disfunctioning of the plumbing system. I believe it is not practical to recommend a costly upgrading of these facilities in view of the desirability of transferring the majority of prisoners out of the Front Yards completely in line with recommendation (i).

(vii) The front wall of the shower complex has already been successfully clad with perspex to give some protection from the weather. I recommend that dismountable (for summer months) perspex sheets be attached to the front of the remaining yards and that the roofs of each yard be similarly clad to offer protection from rain. I am mindful of the possible security problem that could arise from reduced tower visibility caused by glare off the roof sheeting. However, I recommend, at a minimum, that several of the yards be clad as such and possible security problems be fully evaluated during an experimental period.

(viii) Protection prisoners housed in the Front Yards should have the option of remaining in their cell throughout the day if they prefer to do so—particularly if the weather is inclement.

(ix) In regard to clothing, I recommend that all prisoners taken to the Front Yards be immediately issued with winter underwear and a greatcoat from available resources. I further recommend that the Department conduct a proper review of the adequacy of the clothing issued to each institution according to its local climate, and that immediate consideration be given to supplying additional jumpers to Front Yard prisoners. As a temporary measure I believe that the Front Yard prisoners should be allowed to supplement their prison issue clothing with their own clothing.

(x) The implementation of recommendation (vi) could be easily achieved by providing this work for Front Yard prisoners. Additional maintenance work to the Front Yards area in general is another avenue for providing temporary work opportunities to these prisoners.

The provision of opportunities to partake in continuing productive work must, however, be given a top priority. In this regard, I recommend that a security barrier be erected on the stairs to secure the small tailor shop for use by protection prisoners and the current occupants be transferred to the understaffed main tailor shop. The provision of the small tailor shop for the exclusive use of protection prisoners would therefore be a solution to one of the principal problems of the Front Yards.

Additionally, I recommend that all other jobs in Goulburn Training Centre be assessed to see which jobs could be staffed by protection prisoners and that they be given top priority for these jobs.

(xi) The difficulty that Front Yard prisoners have in obtaining access to parole and welfare officers is a major cause of frustration and anxiety amongst those prisoners. I therefore recommend that a log book be kept of all requests for access so that the officers on 19 Post are more able to follow through requests. Additionally, I recommend that the prison psychologist, welfare and parole officers or their representative make a regular weekly visit to the Front Yards for the purpose of checking on any outstanding appointments.

(xii) The absence of sufficient amusements in the Front Yards makes it imperative that these prisoners be given specially arranged regular access to the education and library facilities. No group at Goulburn Training Centre is more in need of such services.

(xiii) The denial of access to sport and exercise facilities also needs urgent attention. I therefore recommend that the two gates into the Front Yard area be heightened, to provide an adequate barrier to the area in front of the Front Yards and that the prisoners be given daily access to this area for the purpose of exercise. If this is not possible, I recommend that special weekly access be arranged to the sports oval and activity centre for the Front Yard prisoners. In addition, I recommend that the Department provide some exercise equipment and games that can be contained in one of the Front Yards for the prisoners' use.

(xiv) As the current security arrangements made for Front Yard prisoners to receive booth visits seem to offer no more protection than that available in the contact visiting areas, I recommend that contact visiting privileges be immediately restored for all Front Yard prisoners.

(xv) In relation to telephone calls, I recommend that a senior officer make a regular check of the telephone log and arrange for any prisoner who has missed his weekly call to make it perhaps in one of the administrative offices adjacent to the Front Yards.

(xvi) While the delivery of the food cart to "D" Wing is appropriately done by a prisoner on normal discipline, I recommend that protection prisoners be immediately appointed to the task of issuing food rations once they have been delivered to the Wing.

(xvii) I recommend that protection prisoners be given priority access to Buy-Ups.

(xviii) Lastly, I recommend that alternative arrangements be made to ensure that the Laundry from "D" Wing prisoners is not interfered with, if necessary by the provision of a washing machine and dryer in the end Front Yard.

Signed by
SUSAN ARMSTRONG,
Assistant Ombudsman for the Ombudsman.

APPENDIX 3

GOULBURN

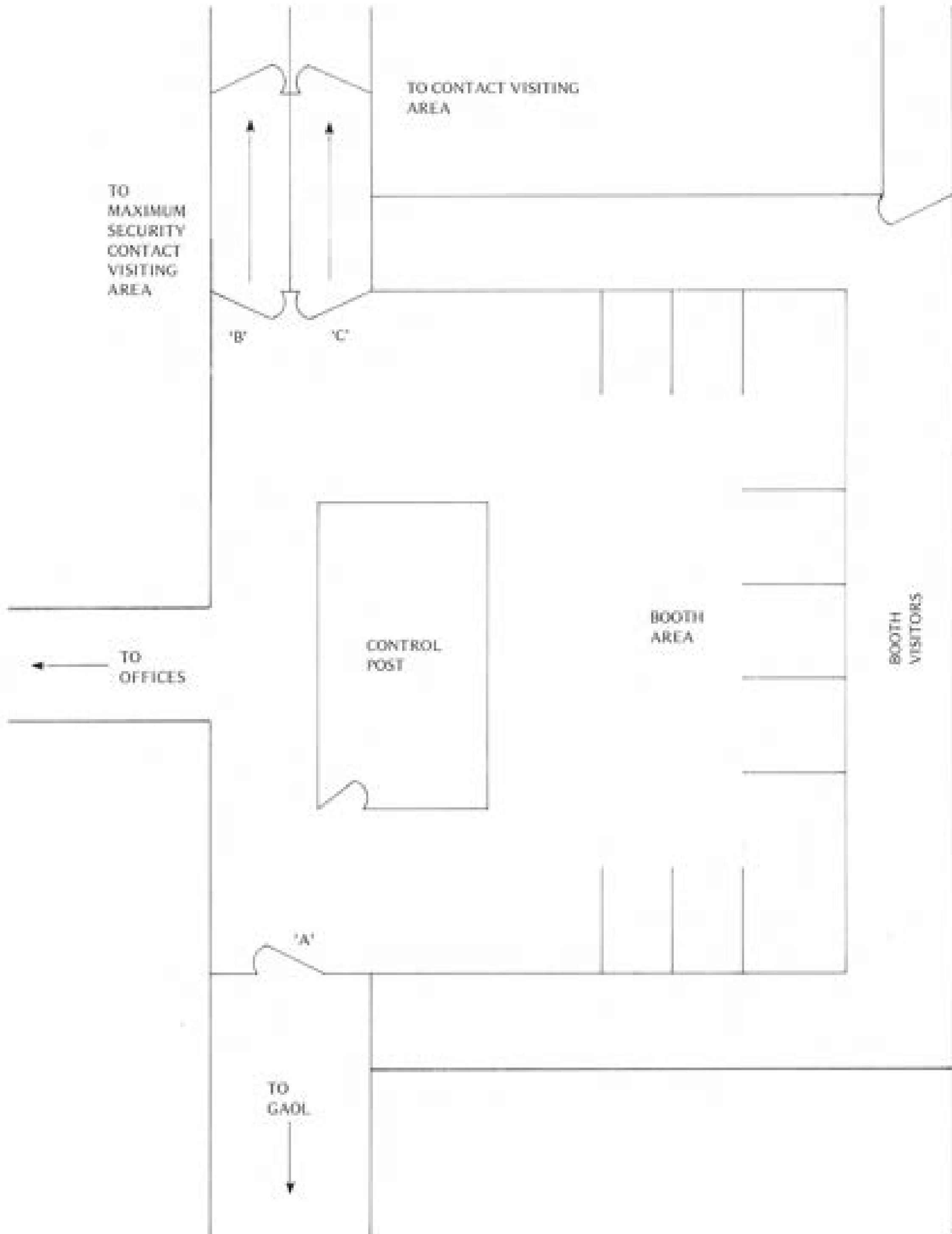
Average Monthly Temperature

Month	Maximum	Minimum
January	26.1	12.2
February	26.7	12.5
March	23.7	10.4
April	20.0	6.0
May	13.6	2.1
June	11.7	1.0
July	11.3	−1.5
August	12.2	1.3
September	14.2	1.5
October	19.1	5.2
November	21.6	7.4
December	24.5	8.6

Number of Days per Month when minimum temperatures fall below 0° Centigrade

Month	Days
April	2
May	7
June	10
July	11
August	11
September	5
October	1

APPENDIX 4



APPENDIX 2

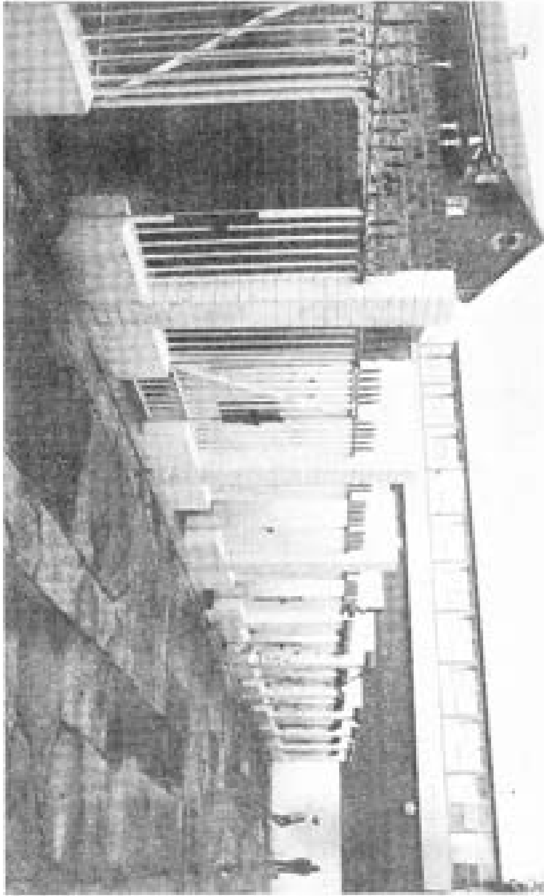


Illustration No. 1

Illustration No. 2

Illustration No. 3

Illustration No. 4

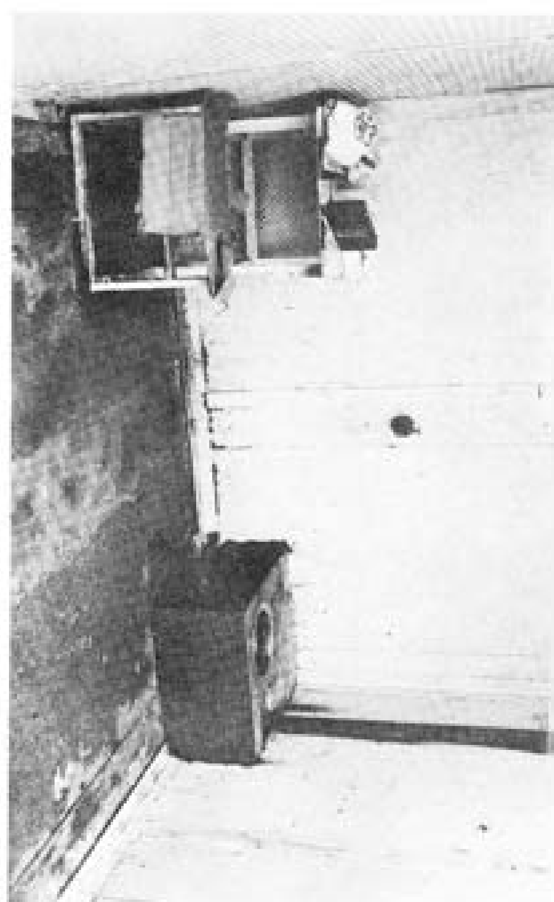
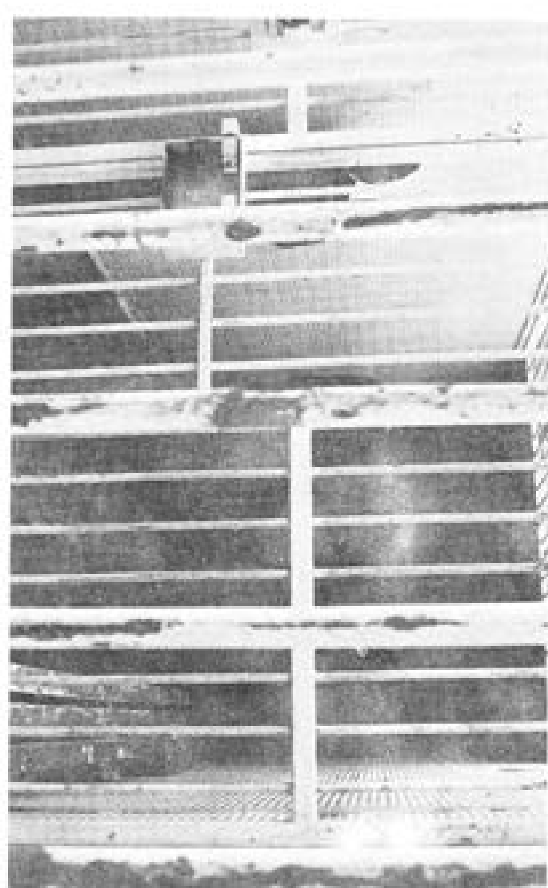


Illustration No. 5

Illustration No. 6

Illustration No. 7



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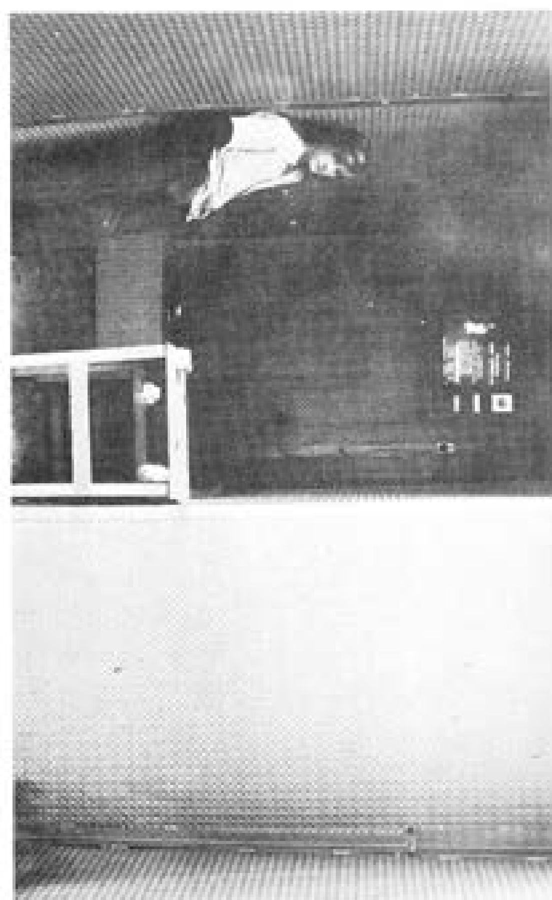

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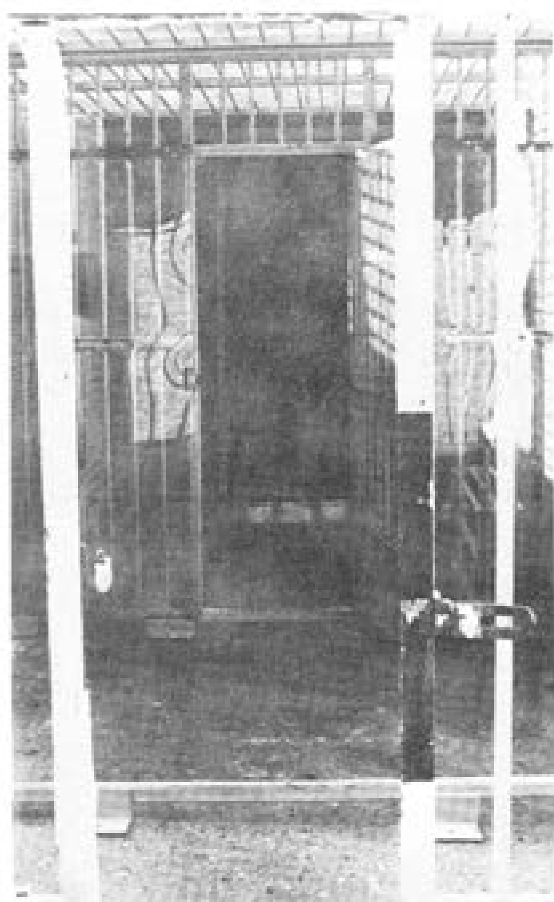

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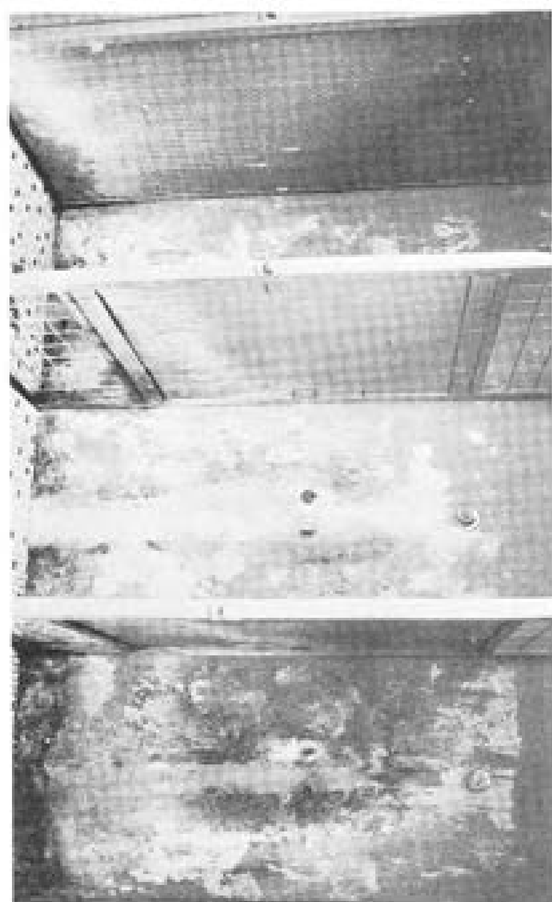

Illustration No. 11

Illustration No. 12

Illustration No. 13

Illustration No. 14

Illustration No. 15

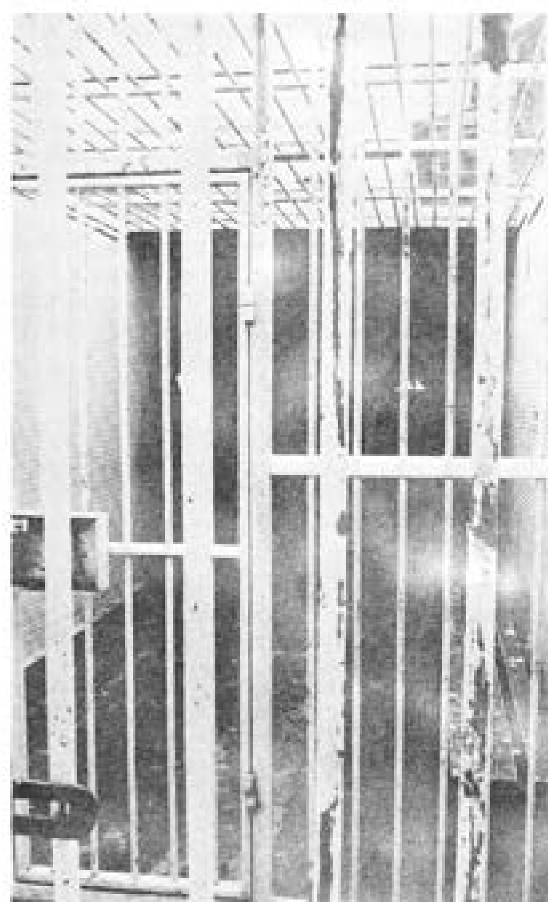

Illustration No. 16

CASE No. 35

CORRECTIVE SERVICES

Long Bay—assault by prisoner

Mr F. a prisoner at the Central Industrial Prison, Long Bay, complained that a prison officer took no action to prevent him being assaulted by another prisoner on 14th March, 1982.

Mr F. also claimed he had been wrongly charged with assaulting the prisoner who assaulted him; that he was described as mentally disturbed and wrongly transferred to the Observation Unit; that he was refused access to his personal papers; and that Superintendent Glenn at the C.I.P. intercepted his mail. Mr F. complained that these incidents amounted to a victimisation campaign.

Investigation by the Ombudsman's Office, assisted by the Department of Corrective Services, involved the examination of a number of documents and interviews with all those who were involved in or witnessed the alleged assault. Officers who recommended the transfer to the Observation Unit (O.B.S.) were also interviewed. The detailed accounts of various witnesses were described and analysed in the Assistant Ombudsman's final report, and are only outlined in this summary.

A factor underlying Mr F's case was his unpopularity as someone well known for drawing the media's attention to conditions in the prison system. During the disturbances at Parramatta Gaol in 1980 he made a long telephone call to a radio station. He played a role in providing information to the *Sunday Telegraph* about an alleged rape at the Central Industrial Prison. An article about this incident appeared on Sunday, 7th March, 1982. In short, Mr F. was regarded as a troublemaker by both prison staff and fellow prisoners.

Mr F.'s account of the incident in his cell on 14th March, 1982 was as follows. He had been on a hunger strike for 32 days and feeling weak and dizzy, sought a sick card and remained in his cell. He was asked to fill in a form seeking "protection" status. He argued with the Wing Officer over this, but agreed to do so when requested by the Deputy Superintendent of the prison. He was just filling out the form when two sweepers (prisoners with general servicing duties) entered his cell, each carrying a plate of food. Mr F. told them he was on a hunger strike.

According to Mr F. one of the sweepers, Mr P. replied "I don't care whether you eat the stuff or not, you're only an arse anyway and you've brought the gaol undone with the newspaper article last week". With that, Mr P. punched Mr F. about the head, pushed him to the bed, grabbed him by the head and slammed his head against the bedrail. Mr F. attempted to free himself and retaliated by biting his assailant on the base of the neck.

Throughout this assault no action was taken by Prison Officer C. or the other sweeper for a minute or so. The Officer then said "That's enough, break it up", and the second sweeper separated the two men after Mr F. stopped biting his assailant's chest.

In Mr P's version the two sweepers entered the cell to put food on the table, although it was not necessary for two of them to be present. Mr F. jumped up abusing him, throwing his hands around without landing any punches. Then he lunged at Mr P., biting him on the left of the shoulder. Mr P. did not realise he had been bitten until he noticed, on leaving the cell, that his neck was wet. The Assistant Ombudsman found this account less plausible than Mr F.'s, which was more consistent with his and Mr P.'s injuries.

The other sweeper, Mr D., said that Mr F. jumped up yelling when sweeper P. walked in. Mr F. lunged at sweeper P., biting him on the neck. Sweeper P. threw Mr F. against the wall on the right side of the bed. D. said to the Officer that he would go and get the Wing Officer but Officer C. said, "No, just wait here, P. will be out in a minute". The Officer then told P. to get out.

The Prison Officer C. declined to be interviewed, saying he had already made a written report on the incident.

This written report stated that Mr F. lunged at the sweepers, biting Mr P. on the left side of the neck. The report went on to say, "I immediately ordered the sweepers to leave the cell. F. fell against the bed as I pushed the sweepers out. The sweepers showed remarkable restraint in that they did not attempt to retaliate. I locked the cell and F. continued with a lot of incoherent abuse. I saw red marks on P's neck".

After the others had left his cell Mr F. pressed the "knock-up" button, attracting the attention of Wing Officer P., who looked through the peephole of the cell and saw no obvious injuries or evidence of a fight. He told Mr F. he would report the matter as soon as possible.

Running sheets at the Malabar Emergency Unit (M.E.U.) show that a M.E.U. Officer was summoned to investigate an assault on a sweeper by Mr F. at 1.50 p.m., almost three hours after the incident. Two M.E.U. reports were written on the incident. One said that some sort of scuffle occurred but it was not known who had initiated it. The M.E.U. recommended that if Mr F. wished to press charges against sweeper P. he should proceed via a Chamber Magistrate. The report said Maroubra Police had been informed about the incident.

The recommendation about pursuing charges through a Chamber Magistrate was supported by the Principal Prison Officer.

No mention was made in the M.E.U. reports of an attack upon Mr F. or of the injuries he sustained which were treated by a prison doctor.

The doctor treated Mr F. for lacerations to the back and injuries to the head some hours after the incident. Mr F. contends she was prepared to send him back to his cell before two prison officers, Officers P. and X., conferred with her. She then signed a certificate stating he was "suffering from delusions of grandeur and persecution" and recommending his transfer to the Observation Unit. When questioned during the investigation by the Ombudsman's Office, the doctor described this as a "community decision". Medical comments in the M.E.U. report appeared even more tenuously based. Mr F. had been described, one day after his arrival from Grafton, as "behaving in a totally unrational (*sic*) manner in the past few weeks". In fact his Grafton work reports showed his behaviour as close to exemplary.

The Medical Superintendent commented that the O.B.S. nurses saw no reason for Mr F.'s transfer to the O.B.S. block and that "far too many prisoners" were sent there for the "most tenuous of reasons".

Subsequently the Director of Establishments arranged for Mr F. to be placed in the Metropolitan Remand Centre.

Investigation of Mr F.'s claim that his court papers were withheld from him showed that they were only given to him after the gaol Superintendent had issued directions on three occasions. In this instance, the Assistant Ombudsman found Mr F.'s complaint sustained.

The Ombudsman was unable to determine whether there had been any interference with Mr F.'s mail but expressed concern that similar complaints by prisoners are common.

With regard to Mr F.'s claim that there had been a campaign of victimisation against him, the Assistant Ombudsman stated:

> "It is usually very difficult to determine whether or not such complaints are well-founded as they generally involve a pattern of conduct in which no one incident is determinative.
>
> However, in the present case, I take the view that Mr F.'s complaint that some or all of the incidents described above were part of an attempt by certain officers to victimise him is sustained. In reaching this conclusion, I take into account that Mr F. has a reputation for "trouble-making" and is known to make regular complaints against the Department of Corrective Services.
>
> Indeed, his papers are marked "Agitator". Equally, his attempts to publicize wrongdoings by prisoners in the media, firstly by making a twenty-five minute telephone call to Radio 2UE during the 1980 Parramatta Gaol disturbances and his more recent attempts to publicize an alleged rape on a prisoner at the C.I.P. on 16th February, 1982, have not endeared him to the prisoner community.
>
> These facts are, in themselves, a reason why Mr F. might well face some victimisation from certain prison officers. However, in view of Mr F.'s perceived limited credibility as a witness, I was particularly cautious in my examination of the relevant evidence. Nevertheless, it is my conclusion that the facts in this case speak for themselves. Mr F. claims he was attacked while under the strictest protection; he had medical injuries to support his claim which are not mentioned by the gaol officers to the officer investigating the incident; he is wrongly consigned to the O.B.S. cells as a patient; is deprived of his court papers which are returned only after three directions that he be given them by the Superintendent; and is charged with assault on another prisoner on the strength of an inadequate investigation of the incident. In my view, certain of the incidents experienced by the prisoner subsequent to his transfer from the C.I.P., which are described elsewhere in the Report, may also be explained as possible victimisation.
>
> It is a matter of great concern to this Office that prisoners who are placed on protection because they are considered at risk of physical assault from their fellow inmates should be placed at risk because of inadequate supervision from the prison officers responsible. In 1981, in a somewhat similar case, this office received a complaint from another prisoner on protection in the front yards at the C.I.P. This Office concluded in that case that the prisoner had been attacked after a sweeper had been allowed into the yard with him while the two patrolling officers had moved away.
>
> In his final report to me on that matter, the Director of Establishments, Mr J. McTaggart, said this:
>
> > "It is also a fact that the same type of person may be disliked by prison officers who could allow their personal feelings to interfere with the proper performance of their duty. Whilst this could not be proved in the case of officers . . . and . . ., it is conceded as a possibility."
>
> It is my view that insufficient attention has been given by the Commission to the special problems of staffing those areas of the gaol where protection prisoners are held."

Recommendations in this case included the dropping of charges against Mr F.; the laying of assault charges against Mr P.; a charge of neglect of duty by Officer C.; and a reprimand for Wing Officer P. The adequacy of the Corrective Services Commission's methods of investigation was questioned and it was recommended that transfer of prisoners to the O.B.S. cells be more carefully monitored by medically qualified staff and that consideration be given to requiring a review of such transfers to be made, within 24 hours, by a psychiatrist.

The report also recommended a review of staffing procedures affecting prisoners on protection.

CASE NO. 36

CORRECTIVE SERVICES

Complaint about wrongful segregation order at Grafton Gaol

Report under Section 26 *Ombudsman Act*

The case concerned a prisoner at Grafton Gaol, Mr S., who was placed under a segregation order after complaining that a prison officer was opening prisoners' mail. The Ombudsman's investigation revealed that Mr S. was denied natural justice in the internal investigation carried out by the Department of Corrective Services. The main impetus to the segregation order was a motion passed by the Grafton branch of the prison officers' union, the Prison Officers' Vocational Branch. Mr S. remained in segregation at Grafton for almost three months, no charges were laid against him in connection with the segregation order.

The investigation was a complex one requiring interviews with several prisoners, prison officers, officers of the Establishment Eastbrig Division, the industrial officer of the Department of Corrective Services and the then Chairman of the Commission, Dr Vinson. A former prisoner living in Grafton was also interviewed.

On 15th April, 1981, Mr S. was transferred to Grafton Gaol. The following morning he received a visit from his de facto wife in the visitors' section of the gaol. While this visit was taking place Mr S. saw Prison Officer J. opening mail. Mr S. believed it to be prisoners' mail, although Prison Officer J. subsequently denied opening any letters except his own.

Following this incident, Mr S. elected to have the Superintendent, or his Deputy, open all his mail.

A number of prisoners signed a petition requesting that all incoming and outgoing mail be opened by someone other than Officer J. On 30th April this petition was handed to the Superintendent, who began obtaining statements from prisoners who had signed it. At that point several withdrew their complaints.

On 1st May the Superintendent wrote to the Director of Establishments of the Department of Corrective Services, informing him of the events and requesting an inquiry. This letter named Prisoner H. as the instigator of the petition and said two prisoners had been intimidated into signing it.

Two officers of the Establishments Division carried out an investigation at Grafton Gaol between 2nd and 4th June, 1981. They found no evidence that Officer J. had opened prisoners' mail. They recommended that consideration be given to transferring Mr S. and/or another prisoner named M. to separate institutions.

The report shows that Mr S. was given no opportunity to answer charges of putting pressure on other prisoners to sign the petition. One prisoner, X., is quoted as saying a prisoner named H. asked him to sign it and abused him when he refused. The Establishments Division report quotes Prisoner X. as stating "That Prisoners S., H., and M. had been 'standing over' other prisoners as a means to their ends".

Prisoner X., interviewed in Grafton in August, 1981, following his release from gaol, denied having said anything about Mr S.'s involvement.

The Director of Establishments noted on the file copy of the report that S. or M. should be separated and transferred, and that Mr S. should be charged under Section 23 of the Prisons Act with preferring a false complaint against a prison officer and making a frivolous complaint.

A Departmental legal officer was asked to consider whether legal action could be taken against Mr S. but advised there was no evidence of standover tactics and he did not believe legal proceedings would succeed.

On 18th June, 1981, a meeting of the Grafton Branch of the Prison Officers' Vocational Branch passed the following resolution:

> "This Sub-Branch demand the immediate segregation of prisoners M. and S. owing to their tactics of continual intimidation and harassment of prisoners and prison officers and that they be transferred from Grafton Gaol within 48 hours or industrial action will be considered by this Sub-Branch."

At the time, Officer J. was the Chairman of the Branch. Other officers informed the Ombudsman that the activities of Prisoner M. in particular were causing a lot of trouble for Officer J., who was on edge. Mr S. was seen as a bush lawyer in the gaol; he used to walk around the yard with a clipboard soliciting complaints. One officer stated "It was mainly an eye for an eye—we wanted them out of circulation". The officer who moved the resolution had had his authority questioned by Mr S. over a telephone call but said his main complaint was against M. not Mr S. (This resolution made no mention of H., the actual instigator of the petition.)

On 18th June, the Superintendent, on being told of the resolution, telephoned an Associate Commissioner responsible for industrial relations and passed on the details of it to him. After consulting the Chairman of the Commission, Dr Vinson, the Associate Commissioner .ang back and said:

> "Place S. and M. in segregation and the Chairman and I will be up on the 22nd."

That afternoon Mr S. was placed in segregation.

On 22nd June, the Chairman, Associate Commissioner and two union officials held a long meeting with staff at Grafton Gaol. On 25th June, the Superintendent of Grafton Gaol completed the formal segregation order for Mr S. The general reason was stated as "The preservation of good order and discipline within the prison" and the period of segregation was put at three months. On 2nd July, the segregation order was confirmed by Dr Vinson, who was also motivated by concern that Mr S.'s safety might be at risk if transferred to another gaol.

Mr S. was released from segregation on 2nd September, 1981, some 12 days short of the three months period.

In giving his findings on the complaint by Mr S. the Ombudsman found that the segregation order ought never have been made. Mr S. had spent 75 days in segregation, deprived of normal movement within the gaol and all association with other prisoners. The Ombudsman conceded that a segregation order is discretionary and no hearing is necessary. A Superintendent may clearly need to act on suspicion alone where there is an imminent threat of riot or disorder in gaol. In other circumstances the segregated prisoner should be charged or given an opportunity to deny the facts which are said to have led to segregation. The precipitating factor in the segregation of Mr S. was the resolution of the Grafton Prison Officers' Vocational Sub-Branch.

The Nagle Royal Commission stated that the provisions of Section 22 of the Prisons Act ought not to be applied by way of punishment. The Ombudsman endorsed that view.

Mr S. had had no opportunity to answer the allegation that he stood over other prisoners in asking them to sign the petition.

The Ombudsman concluded Mr S. was not involved in intimidation, no matter what the position may have been with prisoners M. and H. Essentially the wrong conduct in this case was the issuing of a segregation order in response to industrial pressure.

The Ombudsman recommended that Mr S. be paid compensation of $1,500, or less than $25 per day for each day in segregation. He welcomed a change of policy which the Minister for Corrective Services, Mr Jackson, informed him of in a meeting on 17th March, 1982. Since becoming Minister he had directed that representations by any union be made to him or the Department by the elected senior officers of the union. Such an approach would preclude the Commission receiving and acting on the resolution of a sub-branch as happened in the case of Mr S.

Case No. 37

CORRECTIVE SERVICES

Long Bay—assault on prisoner with protection status

Mr P., a prisoner at the Central Industrial Prison, was assaulted by a fellow prisoner on 21st April, 1981, despite having "protection" status within the gaol. Mr P. was hospitalised at the Metropolitan Remand Prison after the assault. The case raised many issues and in particular revealed ground for concern about the ability of the Department of Corrective Services to meet the needs of prisoners requiring protection.

Mr P. died of natural causes a few months after the assault described here. As a result, charges arising from the incident were not pursued through the courts.

Mr P. had feared for some time that he might be assaulted and had alerted the Ombudsman's Office to the possibility on 10th April, 1981. The Ombudsman's investigation officer informed the Superintendent of Mr P.'s fear, and he in turn discussed it with a number of senior officers, although no written instructions were entered in the muster book. On 22nd April a letter from Mr P. was received by the Ombudsman's Office.

In that letter he repeated his claim that a physical assault upon him was likely and named two prisoners who he felt represented a particular threat. Ironically, by the time this letter arrived Mr P. was already in hospital as a result of the assault by a prisoner on 21st April.

Accounts of the incident varied to some extent but investigation established the following facts:

Mr P. was alone in a yard at the time of the assault. One of the officers patrolling the front yards, Officer M., informed Mr P. that he was admitting Prisoner J. to repair a blocked toilet in Mr P.'s yard. When Mr P. objected, Officer M. said words to the effect of "Stiff, J. is going in".

Mr P. alleged that the two officers on duty, M. and W., then moved away from his yard, leaving him alone with prisoner J. Officer W. could not remember Mr P. objecting to J. entering his yard. A third prison officer, Mr Q. a receiving clerk, noticed the fight. He saw J. repeatedly striking Mr P. in the face with his knee. Mr P. was crouched against a side wall at this point, trying to protect himself with his hands. Mr Q. then summoned Officers M. and W.

Initially, the investigation officer from the Ombudsman's Office was told that there was no witness to the assault and that Mr P. did not wish to press charges. However, investigation revealed that Mr Q. had witnessed at least part of the assault and that there was *prima facie* evidence of an assault by J. in that he was the only prisoner present with Mr P. and he suffered injuries only to his fingers, whereas Mr P. was seen bleeding from wounds to his face and chest and was later admitted to hospital. Mr Q. did not submit a misconduct report on J. saying that the incident was one of many such assaults and that senior officers and the Visiting Justice would not have acted on a report in any event.

The Maroubra Police were informed of the assault in these terms: "No action taken. P. would give no information". However, on 24th April, Mr P. advised the Superintendent that he thought Officer M. had been negligent and that he wanted to consult a Chamber Magistrate about bringing charges against J.

The Superintendent took no action to have J. charged before the Visiting Magistrate.

The Chamber Magistrate considered the matter was serious enough to issue summonses. Section 44 warrants were issued on the Central Industrial Prison to produce the two prisoners at a Central Court hearing on 5th June, 1981. Owing to Mr P.'s death the matter was not dealt with.

In his final report, the Ombudsman commented on several aspects of this case, including the risk prisoners run of further attacks in retaliation if they have passed information to the authorities and the increasing risk of protection prisoners being attacked by other prisoners who are also on protection. He expressed concern at the inadequate facilities for prisoners claiming protection, a concern shared and acknowledged by some senior officers of the Department of Corrective Services.

The Minister for Corrective Services wrote to the Ombudsman in February, 1982, giving details of instructions issued by the Superintendent of the Central Industrial Prison:

(i) more detailed and closer attention to be given to the Muster Book by rotating staff;

(ii) segregated inmates to be moved from yard to yard only after consideration by the Superintendent;

(iii) inmates not to be taken into segregation yards for the purpose of effecting repairs without the Superintendent's knowledge and consent;

(iv) all segregation yards to be patrolled in such a way as to have as many as possible under surveillance at any one time.

The Ombudsman commended the Department for this action and made no further recommendations.

Case No. 38

CORRECTIVE SERVICES

Report under Section 26 Ombudsman Act

Central Industrial Prison—Segregation Order and Transfer to Goulburn Gaol

Mr C., a prisoner held in the Goulburn Security Unit, complained that a segregation order was wrongly made against him. He had been transferred to Goulburn Security Unit against his wishes, following an allegation that he had assaulted a prison officer. He was not charged with this offence despite the allegation. He stated in his letter of complaint:

> "My desire is to be officially charged with the alleged assault so as to be able to prove my innocence."

On investigating the complaint, the Ombudsman found that Mr C. was one of 13 prisoners transferred at very short notice from Parramatta Gaol to the Central Industrial Prison. The Superintendent of the C.I.P. was unhappy about the transfer, believing that he lacked the proper facilities and that some of the group were likely to cause difficulties for the prison administration. The Superintendent had some discussions with Mr C. who seemed to be a spokesman for the Parramatta prisoners, who were equally unenthusiastic about the sudden transfer.

An important background fact to the incident is some general agreement between the Corrective Services Department and the prison officers' union that whenever there is an allegation of assault by a prisoner against an officer that prisoner will in general be transferred from the gaol where the assault took place. It is clear that at least by the 27th May, the Superintendent was extremely unhappy about the presence in the gaol of these 13 prisoners from Parramatta and in particular Mr C. as their spokesman. In a meeting with Mr C. the Superintendent apparently said:

> "I did not ask to have you here."

The Superintendent had made enquiries from the Acting Director of the Establishments Division about the possibility of Mr C. and others in the group being transferred from the Central Industrial Prison.

On the 28th May, 1981, in the middle of the day the particular incident occurred. Another prisoner, prisoner J., passed through Gate 9 (to go to his cell). On his return (from his cell) to move into the open yard area, prisoner J. was not wearing his name tag and Prison Officer O., who was in control of the gate with Probationary Prisoner Officer H., asked him to put his name tag back on. There was some discussion about this which Mr C., who was in the general yards, heard. While the discussion was taking place Prison Officer O. opened the gate and let other prisoners through and prisoner J. took the opportunity to attempt to get through the gate himself. In this attempt he was assisted by Mr C. who allegedly intervened to push Prison Officer O. backwards slightly to assist in permitting prisoner J. through into the general area. At the time of his intervention Mr C. is alleged to have said:

> "You fucking screw maggot if you want trouble we'll give you trouble. We'll burn the fucking place down."

In his description of the incident to me, Probationary Officer H. described the incident as:

> "Just a minor scuffle."

He said:

> "It wasn't really much."

When asked what the final outcome of the incident was he said that prisoners J. and C. both wandered off into the general yard after Prison Officer O. had said:

> "This matter will be reported."

Probationary Prison Officer H. did not regard the reference to burning the place as other than mere abuse. The Superintendent also told me that he did not believe there was any intention to take steps to burn down any of the buildings and he also regarded the words as a matter of abuse.

Later on the 28th May, Prison Officer O. made a written report on a form headed "Prisoner Report Form Prisons Act 1952 Section 23". In that report he stated that in his view Mr C. had committed two offences against prison discipline, namely:

(1) "Assault against a prison officer."

(2) "Threatening to destroy Government property".

His description of the assault was as follows:

> "Prisoner C. physically moved me from the gateway at 9 Post to allow prisoner J. to leave from the area. He did this by putting his right shoulder into my chest and pushing."

Later in the afternoon of the 28th May, there was some argument or disruption in the main square apparently involving prisoners J. and C. on the one hand and some prison officers on the other. This incident is referred to in a written document by the Superintendent who, however, had no direct knowledge of the incident himself. The Acting Superintendent told me at the time of my visit that this later incident was "not worth making a note about". He told me it was "little more than an argument".

On the next day, the 29th May, Probationary Prison Officer H. also made a written report in which his description of the assault was as follows:

> "As Prison Officer O. opened the gate to let other prisoners through J. started pushing Officer O. to try and get through 9 Post gate. Prison Officer O. attempted to shut the gate but prisoner C. prevented him from doing so. Prisoner C. put his shoulder into Officer O. and physically pushed him back allowing prisoner J. through the gate."

On the 29th May, after some discussion with the Acting Director of Establishments of the Department of Corrective Services, the Superintendent made an order for the segregation of Mr C. under Section 22 of the Prisons Act. He completed the transfer report form under Section 23 which had been commenced by Prison Officer O. by adding under the heading of "Action by Superintendent" against the printed word "charge" in the report the word "assault". No such charge was, however, pursued against C. either before the Superintendent as prison governor or before the Visiting Justice.

Later on the 28th May, Prison Officer H. personally conveyed prisoner C. and two other prisoners who were involved in some other incident to the Goulburn Training Centre where he was placed in the segregation unit. Mr H. told me his function was merely as escort so far as Mr C. was concerned. His emergency unit had not been called in to investigate any incident involving Mr. C.

Conclusion. The essence of the complaint made by Mr C. was that on the facts a charge of assault ought to have been preferred in order to give him the opportunity of denying any assault and enabling an independent person to make a conclusion about the facts of the particular incident. It may be said that Section 22 does not require proceedings to be lodged. However, in my strong view, where the factual basis for making the segregation order is an assault upon a prison officer as well as short term segregation, a charge ought to be laid. Otherwise the prisoner concerned has no opportunity of answering the allegations and, as in this case, could well have such a degree of resentment at the treatment he received and in particular his transfer to the Goulburn Security Units that his future conduct may be influenced by the degree of resentment he feels.

It was more difficult on the particular facts to determine whether the segregation order was wrongly made. In one sense a short term discretion is entrusted to the Prison Superintendent and then to the Commission. However, in the present case, on the facts before me, the incicent relied on for the making of the Order was as quoted by Probationary Officer H., "Just a minor scuffle". In my opinion, the Superintendent was placed in an invidious position by the sudden transfer to his custody of the 13 prisoners from Parramatta Gaol but nevertheless ought not to have utilised the minor scuffle and the abusive reference to burning the place down as reason for making a segregation order which removed Mr C. from the prison to the very much harder and solitary environment of the Security Unit at Goulburn.

Essentially Mr C.'s complaint was that he ought to have been charged with the alleged assault so as to have an opportunity of both knowing what was alleged against him and attempting to prove his innocence. In my opinion this ought to have been done and my recommendation is that in future similar cases, prisoners made the subject of segregation orders as a result of alleged assaults on prison officers, ought to be also charged with the alleged offence.

CASE NO. 39

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT, 1978

Report under Section 28

Assault by Police

1. THE COMPLAINANT

Mr J., of Leichhardt.

2. POLICE OFFICERS THE SUBJECT OF THE COMPLAINT

Constable 1st Class P.,

Constable 1st Class R., and

Senior Constable T.,

all of Leichhardt Police Station.

3. THE COMPLAINT

Mr J. complained that while he was in the dock at Leichhardt Police Station late in the evening of 14th November, 1980, being charged with malicious injury to a Public Transport Commission bus he was kneed on a number of occasions in the testicles by one of the arresting police. Mr J. alleged that a constable with two stripes committed the assault and that the other arresting constable was present in the room when the assault occurred. He alleged that the station constable left his place behind the counter just before the assault occurred to stand guard at a nearby station doorway and returned immediately the assault was over. He said that the station constable was within visual and, certainly within audible, distance of the beating.

4. THE INVESTIGATION

(a) The investigation was conducted by Inspector Dunlop of Police Internal Affairs. His investigations established that the two police officers who arrested the complainant were Constable R. and Senior Constable T., that the Station constable at the time the complainant was charged was Constable 1st Class P., and that the officer the complainant alleges assaulted him was Senior Constable T.

Inspector Dunlop obtained reports from the three Policemen and also conducted records of interview with them. He also interviewed two police officers on the subsequent shift at Leichhardt Police Station—Senior Constable W. and Constable J., who entered the Charge Room while the complainant was being charged. Inspector Dunlop obtained statements from the complainant; his flatmate; Doctor Simon Mark Willcock of the Royal Prince Alfred Hospital, who treated the complainant on the evening of 14th November, 1980; Doctor Peter Piazza of Leichhardt, who treated the complainant on 15th November, 1980; Bent Erik Poulsen, a photographer who took photographs of the complainant's injuries on 18th November, 1980; and the bus driver and the acting conductor on the bus the complain ant damaged on the evening of 14th November, 1980, John Edward Russ and Sam Khouri. Inspector Dunlop obtained the photographs taken by Mr Poulsen and photographs of the interior of the Leichhardt Police Station.

(b) The investigation revealed that late on the evening of 14th November, 1980, Mr J., the complainant, was on board a 440 Leichhardt-bound bus being driven by Mr Russ. Mr Khouri was the acting conductor on the bus. The complainant pressed the stop signal button before his stop but the blue indicator light above the driver failed to go on and the bus did not stop. The complainant became involved in a verbal altercation with the driver and conductor about this. The argument became quite heated. Mr Russ and the complainant agree that the conductor pushed the complainant off the bus, although the conductor, Mr Khouri, does not mention this in his statement. The driver states that after the complainant was pushed out of the bus he kept his footing, but Mr J. says that he fell out of the bus door down onto the roadway onto his hands. The complainant kicked the back centre door of the bus causing the perspex panel to fall out of the bus from its rubber mountings.

The driver stopped the bus and both the driver and conductor chased the complainant down Norton Street. Mr J., the complainant, states merely that both "grabbed hold of me", but both driver and conductor state that the driver, Mr Russ, tackled Mr J. around the top part of his body, causing both the driver and Mr J. to fall to the ground. Mr Russ, the driver, thinks the complainant landed on his right side into the gutter; Mr Khouri, the conductor, thinks the complainant fell on his left side. The driver states that he landed *next* to the complainant on the footpath and that he does not remember coming into contact with the complainant as they both fell to the ground. The conductor, Mr Khouri, also cannot remember whether the driver fell on top of the man or not after he tackled him. Mr Russ states that he got to his feet before the complainant, and picked him up by his arm holding on to him firmly. Mr Khouri also grabbed hold of the other of Mr J.'s arms. Both Mr Russ and Mr Khouri state that the complainant was still struggling while they walked him to the bus.

(c) The police had been called and the complainant, Mr Khouri and Mr Russ waited about ten minutes before they arrived. During this time, Mr Khouri stated that the complainant said to him: "let the driver take the bus and we'll walk to the Police Station". Both Mr Russ and Mr Khouri record that the complainant said, while waiting for the police, that he was going to run away (according to Mr Khouri). Mr Russ states that the complainant threatened to charge him and the conductor for tackling him, and Mr Khouri states that the first words the complainant said to the police when they arrived were "they assaulted me". After a verbal interchange with the police, the arresting Police picked the complainant up by the arm from the wall on which he had been sitting and took him to the police car. Mr Khouri states that the arresting police "walked him over" to the car, but Mr Russ states that "the man walked himself" to the Police car. Neither Mr Russ nor Mr Khouri, although both comment on the complainant walking or being walked to the police car, make any remarks that his gait was strange or that he appeared in any way to have been affected by the tackle. Mr J., the complainant, states that he was "physically led" to the police car but makes no mention of any injury from the tackle.

(d) Both Mr Russ and Mr Khouri state that Mr J. appeared affected to some degree by drugs or alcohol, in Mr Russ' view, mildly.

(e) Mr J. was then taken by the arresting police, Senior Constable T. and Constable R., to Leichhardt Police Station where he was placed in the dock to be charged with malicious injury to the bus. Mr J. states that he found the situation surprising, and asked a number of questions of the arresting officers, none of which were answered except with the comment that he was being too "stroppy" and "the rules were made not by him but by the policemen". Mr J. states that the officer with two stripes (which must be a reference to Senior Constable T.) turned to him in anger shouting about the fact that he was sick of his attitude and did not like Mr J.'s arrogance and that it was time he was taught a lesson. Immediately before this, states Mr J., the officer behind the desk (a reference to the station constable, Constable P.) left the room—Mr J. assumed to stand guard at the nearby station doorway. Senior Constable T. approached the dock and opened the gate, pulling Mr J. to his feet and at the same time kneeing him in the testicles with considerable force. Mr J. alleges that Senior Constable T. did this at least two times more, also slapping him with an open hand across the face several times and punching him twice under the ribs with his clenched fist. Mr J. states that the officer walked away after the beating, and then briefly returned to slap him across the face a few more times, during which period he may have kneed him in the testicles a few more times, although Mr J. cannot remember due to the shock of the first assault. Mr J. states that the other arresting officer remained in the charge room during this assault and that the station constable could certainly have heard it and probably seen it as well. He states the station constable re-entered the room immediately upon the assault finishing.

(f) Mr J. details the subsequent events. He states that the two arresting officers soon left, and that shortly after that, while he was still in the dock, another policeman entered the charge room who Mr J. describes as in his mid-thirties, shorter and slighter than the others. He states he was told that the officer had served in Vietnam and suffered an injury there.

(g) Mr J. states that just prior to leaving the station, another police officer came into the room who he believed to be a more senior officer and who was addressed as Sergeant by the station constable. Mr J. says that he told the officer that he had been kneed in the balls, to which the officer's only reaction was a pair of raised eyebrows.

(h) In the records of interview with Inspector Dunlop, the three police officers concerned all deny the alleged assault and their accounts of the events of that evening corroborate one another. Constable R. and Senior Constable T. state that they remained in the charge room about ten minutes with the complainant before they were called out on an accident call, and deny that the station constable left his position behind the counter at any time during this period, at the end of the counter quite close to the dock completing station records. Constable R. adds that Senior Constable T. had his back to the dock while he stood at the counter, and states that Senior Constable T. states that when the complainant was charged he said "you'll be sorry for this, I got a policeman the sack in New Zealand for charging me". Senior Constable T. suggests that the complaint is retaliation by Mr J. for being charged.

(i) Inspector Dunlop also interviewed two of the officers on the next shift, Senior Constable W. and Constable J., who each state that they entered the charge room while a male person, presumably the complainant, Mr J., was in the dock. It may be that Senior Constable W. was the officer the complainant Mr J. assumed had served in Vietnam, as Senior Constable W. agrees that the station constable, P., did make a comment to the effect that he (Constable W.) had been overseas and nearly killed (in fact this was in Cyprus on a twelve months service with the Australian Police Force). Senior Constable W. states that the complainant did not speak to him, nor he to the complainant. He states that he saw the complainant walk out of the charge room and some distance down the steps and into the street. Senior Constable W. earlier states that the complainant appeared to have no difficulty in walking.

It seems that the complainant may have confused the two police officers of the next shift who entered the charge room. Senior Constable W. states that he was in the charge room from 11.00 p.m. until 11.10 p.m., when the complainant was released, and no other officer entered the charge room during that time. The other officer, Constable J., to whom the complainant could have made the complaint he alleges he made, apparently entered the charge room before Senior Constable W., and left before Senior Constable W. arrived. Constable J. was not specifically asked if any complaint was made to him but said in a passing comment that he had no conversation with the male person in the dock, the complainant.

It appears undeniable that, at some time on the evening of 14th November, 1980, the complainant was struck or kneed in the testicles. Inspector Dunlop interviewed the complainant's flatmate, who confirmed that the complainant had told him a policeman with two stripes had slapped him across the face and kneed him in the testicles three or four times. The complainant showed Mr T. his injuries, and Mr T. noticed that the scrotum was very black and slightly swollen, and that beneath his testicles was also very black. Mr T. noticed that the complainant walked around the house very slowly, unlike his normal practice, and said the complainant complained to him quite often about the pain in his groin. Mr T. drove him to the hospital on Sunday, 16th November, 1980, seeking treatment, and was aware that the complainant went to his own doctor a couple of times for treatment.

Simon Willcock, a junior resident medical officer employed by the Royal Prince Alfred Hospital, states that on the evening of 14th November, 1980, at approximately 11.40 p.m. he examined the complainant, Mr J., observing bruising and tenderness of the scrotum. Doctor Peter Piazza states that Mr J. attended his surgery on the morning of 15th November, 1980, and alleged that while being interviewed the previous night by police, he had been kneed in the testicles and slapped across the face. Doctor Piazza states that on examination of the complainant he found injuries to and tenderness of the testicles. Doctor Piazza states that his findings were consistent with the mode of injuries as described by Mr J. He states that he only saw Mr J. on that one occasion, but that according to his record cards Mr J. consulted Dr Tringali on 17th November, 1980. At that time Mr J. still complained of pain and was advised to continue taking pain killers.

The photographer, Mr Poulsen, states that when taking photographs of Mr J., he noticed that his testicles appeared to be swollen and were dark bluish in colour. The photographs clearly record that Mr J.'s testicles were swollen and discoloured.

(j) Inspector Dunlop concludes that the complainant did receive injuries of the nature referred to in his statement, but that he is unable to determine how, when or by whom those injuries were inflicted upon the complainant. He referred to the fact that Mr J. had been engaged in a struggle with the P.T.C. employees which resulted in him being tackled and falling to the ground, and said it could be contended that his injuries were received at that time. Inspector Dunlop did not consider the information to hand to be sufficient to institute criminal proceedings, but suggested that the papers be referred to the senior police prosecutor for his information and comment.

(k) Superintendent Redhead, the Superintendent-in-Charge of the Police Prosecuting Branch, was of the view that a criminal charge of assault against Senior Constable T. would not be proved beyond reasonable doubt. He states that a Court would be unable to rule out the possibility that Mr J.'s injuries were occasioned when he was tackled by Mr Russ. In the light of the conflict of evidence between Mr J. and the three police officers who all denied the assault, Mr J.'s credibility would be very much at stake. The evidence of Mr Russ and Mr Khouri as to his actions on the bus must in Superintendent Redhead's view, detrimentally affect Mr J.'s credibility. Superintendent Redhead recommended that no criminal proceedings against Senior Constable T. be instituted.

(l) Detective Inspector Shankleton, signing for the Chief Superintendent, Police Internal Affairs Branch, in the light of all this material, was of the view that the allegation had not been sustained. The Commissioner agreed with this finding.

5. COMMENT

(a) I disagree with the finding of the Commissioner that the complaint has not been sustained. In this regard it is important to keep in mind that under the Police Regulation (Allegations of Misconduct) Act, 1978, a complaint need not be established beyond reasonable doubt to be sustained, but merely on the balance of probabilities—the civil as opposed to the

criminal standard. I am of the view that this allegation has been established on the balance of probabilities. Inspector Dunlop, in his major report dated 6th February, 1981, states that there is no corroboration of the allegation that the undoubted injuries were occasioned by a Police assault. There is indeed no evidence directly corroborating this allegation, but such evidence is not essential for a complaint to be sustained. I am mindful of the fact that the three police officers involved all deny the assault and corroborate one another, but am of the view that the inferences that can be drawn from the material before me establish the complaint on the balance of probabilities.

(b) In this regard, I should also mention that, in my view, there has been some confusion in this matter between the test of whether there is sufficient evidence to institute criminal proceedings and the separate question as to whether those proceedings would be successful —i.e., whether the charge would be established beyond reasonable doubt. The confusion is evident in Inspector Dunlop's short report dated 19th February, 1981. In that report Inspector Dunlop states that there is insufficient evidence to establish a *prima facie* case against any of the police concerned, yet the material on which he bases the recommendation has dealt only with the separate question of whether the allegation would be established beyond reasonable doubt.

Clearly, when deciding whether to institute proceedings it is necessary to cast one's mind to the question of whether the proceedings will be successful, but in my view it is not necessary that the material before the prosecutor establish the charge beyond reasonable doubt before a charge can properly be laid. To this extent I respectfully disagree with the apparent approach of Superintendent Redhead.

(c) Accepting, as does Inspector Dunlop, that the evidence does establish that Mr J. suffered injuries of the type he describes in his complaint, I regard it as more probable that those injuries were received in the manner he alleges than in any other manner for the following reasons.

There is no evidence suggesting that Mr J. had suffered those injuries before he joined the Leichhardt bound bus at Town Hall, and it is highly unlikely that had he suffered those injuries before that time he would have had the spirit to engage in the subsequent altercation with the driver and conductor of the bus. Mr J. states that he caught a taxi to the Royal Prince Alfred Hospital at Camperdown immediately on leaving Leichhardt Police Station, which Senior Constable W. states was approximately 11.10 p.m. The statement of Doctor Willcock of the Royal Prince Alfred Hospital corroborates Mr J. in this regard, for he states that he saw him at approximately 11.40 p.m. on the evening of 14th November, 1980. It appeared then, that Mr J. must have suffered the injuries at some time between boarding the bus in the city and leaving the Police Station at approximately 11.10 p.m. that night.

Inspector Dunlop, Superintendent Redhead and the Commissioner are of the view that it was possible Mr J. suffered these injuries in the tackle with the bus driver, Mr Russ. I consider this unlikely. Mr Russ states that he struck Mr J. side-on around the shoulders, and that Mr J. fell onto his side into the gutter. Mr Russ does not remember landing on top of Mr J., yet in my view it is only had he done so that he could have caused these injuries, intentionally or unintentionally, to Mr J. I believe that had Mr Russ indeed landed on top of Mr J. he would remember this fact. Mr Khouri does also not remember whether or not Mr Russ landed on top of Mr J.

Mr J. complained of the assault by Mr Russ both to Mr Russ and Mr Khouri and, according to Mr Khouri, to the arresting Police officers, but he did not go on to say that he had been kneed in the testicles, which would have been the logical thing to add had this indeed occurred. There is no reference in either Mr Russ' or Mr Khouri's statement to Mr J. appearing to be in pain or suffering any discomfort from the tackle, and he would hardly have suggested that they walk to the Police Station or that he would run away if he had suffered the injuries to his testicles in the tackle. Both Mr Russ and Mr Khouri refer to Mr J. walking or being walked to the police car, but they do not go on to say that he walked strangely or appeared to be in pain. If this had been the case it would have been the natural thing for them to add at this point.

(d) It is also in my view unlikely that Mr J. suffered these injuries when he was pushed out of the bus. It is not clear whether indeed he fell over on this occasion—Mr J. himself says that he fell but according to the driver, Mr Russ, he kept his balance. Even if Mr J. did indeed fall, in his account he fell onto his hands. There is no evidence whatsoever to suggest that any object came in contact with his groin at this time. Had Mr J. suffered these injuries at that time he may have been so enraged as to kick the back door of the bus, but he would hardly have been in a state to run 100 yards down the road away from the driver and conductor.

(e) I am fortified in my view that it is unlikely that Mr J. suffered his injuries on being pushed from the bus or in the tackle. By the statements of both arresting officers Constable R. and Senior Constable T. that Mr J. walked quite normally before entering the charge room. Constable R. states that Mr J. walked normally the distance of 40 metres from the car to the charge room at the Leichhardt Police Station. Senior Constable T. does not recall any peculiarities in the manner in which Mr J. walked from the wall where he had been seated to the police car in Norton Street, a distance of about 20 feet. He does say, however, that it was only a short distance to the car and he did not pay any real attention to the way in

which Mr J. walked. This may well be the case, but I would suggest that had Mr J. already suffered the injuries to his groin there would have been a marked awkwardness about his gait which would have attracted the attention of Senior Constable T. His attention may well not have been attracted simply because Mr J. walked normally. Similarly, Senior Constable T. did not pay any "real attention" to the way Mr J. walked the distance of, in Senior Constable T.'s account, 20 yards between the car and the charge room. Again I would suggest that this may have been because there was nothing to attract Senior Constable T.'s attention in the way Mr J. was walking because he had not at that stage been injured.

(f) Doctor Piazza states that Mr J.'s injuries were consistent with the alleged assault. There is no other medical evidence as to whether the injuries were consistent with the alleged assault or indeed whether they were equally consistent with an injury suffered in the tackle. Nevertheless, I am satisfied that Mr J. did not suffer these injuries in the tackle or on being pushed from the bus. There is nothing in the account of the eyewitnesses, the driver and the bus conductor to suggest that Mr J. was injured at this time (no record of him crying out in pain, having difficulty in walking, or appearing shocked) and in several respects these eyewitness accounts are inconsistent with the injuries having been cause in that way.

As Mr J. was in the custody of the police from this time until approximately 11.10 p.m., when he caught a taxi cab and went immediately to the Royal Prince Alfred Hospital with his injuries, the only inference is that he suffered these injuries while in police custody. Notwithstanding the denials of the police officers concerned, I am satisfied on the balance of probabilities that Mr J. suffered these injuries in the manner he alleges while in that Police custody.

6. RECOMMENDATION

I find this complaint sustained. I am inclined to agree with Superintendent Redhead that a charge of assault against Senior Constable T. would not be established beyond reasonable doubt. I do not regard this as a sufficient reason for not instituting criminal proceedings where a *prima facie* case is established as it is quite possible that under cross-examination more material may emerge.

I take note of the Commissioner's opinion that a Crown Prosecutor would take the view that evidence is insufficient to institute any proceedings in an indictable offence and of his willingness, without precedent, to submit the papers to the State Crown Solicitor for a decision on whether proceedings should be instituted. Accordingly, I recommend that these papers be transferred to the New South Wales Crown Solicitor for her view as to whether indictable proceedings for assault or some other charge should be laid against Senior Constable T.

If the Crown Solicitor is of the view that criminal proceedings should not be instituted, I accept the Commissioner's view that, as Departmental action against former Senior Constable T. is no longer possible, such action against Constable R. and Constable P. would be inappropriate.

Signed by
SUSAN ARMSTRONG,
Assistant Ombudsman for G. G. Masterman,
Ombudsman.
16-2-1982.

CASE No. 40

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT, 1978

Report under Section 28

Assault in Carpark Outside Hotel

1. THE COMPLAINANT

Mr David N. of North Turramurra

2. THE POLICE OFFICER—THE SUBJECT OF THE COMPLAINT

Constable M. of Gladesville Police Station

3. THE COMPLAINT

Mr N. has complained that on the evening of 28th March, 1979, at approximately 6.00 p.m. to 6.40 p.m. he was assaulted on two occasions by Constable M. in the car park of the Pymble Hotel. The first alleged assault occurred when the complainant was about to remove his motor vehicle which was parked in the car park of the Pymble Hotel and which happened to be obstructing the motor vehicle of Detective Senior Constable O., after having apologised to Detective O. The complainant subsequently alleges that he was assaulted a second time by Constable M. after returning to the public bar for assistance and upon returning to the car park shortly thereafter, accompanied by some friends.

4. THE INVESTIGATION

(a) The investigation was conducted by Inspector N. G. West of the Police Internal Affairs Branch. His report was reviewed and commented on by W. A. R. Allen, the Chief Superintendent, Metropolitan Area, and by the Police Commissioner, James T. Lees.

(b) Inspector West obtained statements and/or interviewed the following people:

Mr Lowe
Mr Bullivant
Mr Scaife
Mr White
Mr Lewis
Mr Westhoff
Mr Burke
Miss Cochrane
Mr Willats
Ms Kimbal
Mr Bridgeman
Mrs Willats
Mrs Phillips
P. Constable M.
Detective Senior Constable O.
Senior Constable P. J. Allott
Constable R. S. Palmer
Senior Constable T. C. Hile
Constable G. W. Hilton
Constable P. M. Donohoe
Sergeant 3rd Class J. L. Sheddon
Sergeant 2nd Class Mortimer
Inspector H. S. Hackman
Detective Sergeant 3rd Class S. C. Owen
Probationary Constable P. A. O'Neill
Detective Senior Constable J. N. O'Connor
Constable M. S. Collins
Detective Sergeant 3rd Class R. Fuller
Senior Constable T. J. Gardiner

Relevant documents were inspected and photocopied.

(c) According to Mr N. the first assault took place on the evening of the 28th March, 1979, at or about 6.00-6.15 p.m. He states that he was standing in the public bar of the Pymble Hotel drinking a glass of beer when he heard his car registration number being paged on the Hotel paging system. The call requested the owner to move the vehicle to allow someone else to leave the car park. After finishing his drink he left the bar to move his vehicle and go home. On reaching the car park he walked around to the passenger side of his vehicle to see whom he was obstructing and to tell that person that he owned the offending vehicle and intended to remove it. He was confronted by a male person, whom he now identifies as Detective Senior Constable O. who asked him if he was the owner of the car. The complainant replied that he was and apologised and said that he was going to move the vehicle. Mr N. then walked around to enter his vehicle when another man, now identified as Constable M., came down the steps from the rear entrance of the Hotel and asked Detective Senior Constable O. if the complainant owned the car, receiving the reply that he did. Constable M. then walked around the vehicle where Mr N. was standing and asked him why he had blocked him in. Mr N. replied that it was the normal practice, owing to the size of the parking area and the clearway conditions existing on the highway. Constable M. then grabbed him by the T-shirt, just below the neck, and commenced to twist it. It is claimed by Mr N. that Detective O. then said "leave him alone, let him move his car and go, so as we can too". Constable M. is alleged to have replied "No, I am going to teach the smart little cunt a lesson". Thereupon Constable M. released his grip on the complainant's T-shirt and grabbed him by the hair, pulling his head down and at the same time bringing his knee up under the complainant's chin. Constable M. then rained punches on the complainant, who fell to the ground where he was repeatedly kicked. Mr N. is not aware whether this assault was witnessed.

Constable M. told Mr N. to remove his vehicle and he managed to evade the kicks and ran up the footpath to the door of the public bar where he called to a couple of friends (Mr Scaife, Mr Lowe and Mr Bullivant). Mr N. requested their assistance as he was distressed and worried that damage could be caused to his motor vehicle.

He then claimed he ran back to the car park with his friends following and, upon returning to his vehicle, discovered that the passenger's side door had been kicked in and the radio aerial bent over. He was again grabbed by the hair by Constable M. and again asked whether he was going to move his vehicle. Constable M. produced his wallet, flicked it open and said "You didn't expect that, did you, you smart little cunt,—now I will teach you". With that he kneed the complainant under the chin and punched him to the ground and commenced to kick him once again. The complainant requested his friends to contact the Police on his behalf and Constable M. told him to move his car. Mr Westhoff, the

Night Manager of the Pymble Hotel, told Mr N. to leave the vehicle as the Police were attending. Constable M. then threatened Mr Westhoff and made an announcement that if anyone else wanted to interfere they would receive the same treatment that the complainant was receiving. Mr N. then claims he saw Constable M. take hold of the Night Manager, Mr Westhoff, who informed the Constable that his actions constituted an assault.

(d) At approximately 6.35 p.m. the Police arrived at the scene of the alleged incident, and Mr N. spoke to a Senior Constable H. He thereupon indicated to Senior Constable H. that he wished to charge Constable M. with assault and damage to his motor vehicle. He was then advised by that Senior Constable that he would have to attend the Police Station if he wished to follow this course of action; Mr N. then claims he walked to the Police Station solely in the company of his three friends (Messrs. Scaife, Lowe and Bullivant). Approximately an hour and a half later, he was charged with resisting arrest, assaulting a Police Officer and using unseemly words.

(e) At the time of the attack upon him Mr N. considered that Constable M. was drunk and would not listen to reason. As a result of this assault he received treatment from his medical practitioner for bruising to the back and kidneys, as well as receiving dental treatment for a broken molar. He claims Detective O. did not participate in the assault upon him.

(f) In the interview with Messrs. Lowe, Bullivant and Scaife, all claim Mr N. was sober at all times. They claim that upon following Mr N. to the car park they saw Mr N. having a heated argument with Constable M. in the parking area. Mr Lowe claims he intervened in their argument asking Constable M. why he had struck Mr N. and why he had damaged the vehicle. Constable M. denied being near the damaged area and then Mr N. swung a blow to Constable M. which struck him on the chest. Mr Lowe described it as "not a very good blow and it did not appear to have any effect."

(g) In Mr Bullivant's statement he claims Mr N. asked Constable M. why he had damaged his motor vehicle and that Constable M. then walked up and took hold of Mr N.'s T-shirt at the neck. Constable M. then twisted Mr N's shirt up against his throat causing the shirt to tear. He then denied damaging the vehicle and there was verbal abuse between them whilst Constable M. held Mr N. at arm's length. Constable M. is then supposed to have started punching the complainant, Mr N. about the face with his right hand. Mr N. then tried to cover up and made a few pathetic efforts to swing back.

(h) All three witnesses claim that Mr N. and Constable M. were separated and Constable M. stepped back and said that he had something to show them, producing a wallet from his pocket, opening it, and show a Police Identification Certificate. It is then claimed Constable M. indicated that he intended teaching Mr N. a lesson. All three witnesses then claimed that Constable M. caught hold of Mr N. and began beating him around the face. All three witnesses also claimed that they witnessed Constable M. grabbing Mr N. by the hair and pulling his face down and kneeing him in the face. This is said to have occurred on several occasions. Constable M. is alleged to have released Mr N. upon hearing that the police were coming.

(i) Mr N. is then claimed to have gone to his vehicle and was about to enter the same when the bar useful, Mr Burke, approached him and informed him not to move his vehicle as the police were on their way. Mr Burke in his statement claims Constable M. spoke to him then grabbed him by the front demanding that he come around to the bottom of the car park to talk to him. Mr Burke declined to go and Constable M. tried to move him, forcibly. The Manager's wife, Mrs Willats, and a barmaid, Miss Cochrane, grabbed hold of Mr N's arms. This resulted in a scuffle between Constable M. and Mr Burke and his shirt was torn. He was not punched but was shaken.

(j) Miss Cochrane alleges in her statement that Constable M. wanted to fight Mr Westhoff the night Manager of the Pymble Hotel and then wanted to fight everyone, including herself.

(k) Mr Westhoff's statement claims he witnessed Constable M. holding Mr N. who was endeavouring to escape from his clutches. Mr Westhoff requested them to desist and was told by Constable M. to leave. He then claims he told Constable M. if he did not leave the complainant alone he would be forced to contact the Police and was again told to go and that Constable M. was from the Police. Further conversation took place and Constable M. told Mr Westhoff not to be a hero as "this guy tried to be a hero and I will show you what happened to him". Constable M. then is alleged to have taken hold of the complainant's hair, pulled his head down and kneed him in the face on two occasions. Mr N. then managed to break away. Mr Westhoff again informed Constable M. that if he did not leave him alone he would call the police. He then went back inside the Hotel and contacted the Police.

(l) When the uniformed police arrived at the Hotel Constable M. told the uniformed Police Officer everything was alright, but in Mr Westhoff's statement he claims he informed the police that Constable M. was the person causing the trouble. When Mr N. indicated to the uniformed police he was going to charge Constable M. with assault Mr Westhoff then informed Mr N. that he would be available to make a statement if required. He then claimed that he felt a tap on the shoulder and turning around saw Constable M. who poked his finger into his chest and told him to stay out of it because he was "going to get him".

(m) Mr White in his statement claims when the uniformed police arrived at the Hotel, following the fracas, he was making enquiries as to the procedure Mr N. should take in relation to preferring charges. He claims as he was turning away from the above officers he was grabbed by the man speaking to the Senior Constable and this man enquired what business it was of his. Mr White did not reply but requested this person to remove his hands and was then told to leave and the person had his car number and would "fix him". He then enquired of this person whether he was a policeman and was informed that he was, and was stationed at Eastwood. This person he later came to identify as Constable M.

(n) Mr Lewis, in his statement, claims that he heard the Bar Manager of the Pymble Hotel, Mr Willats, inform Mr N. that he had witnessed the occurrence (that being near the second alleged assault) and that Constable M. grabbed Mr Willats by the front of his shirt and threatened that "he'll come back one night and will kill him". He also claims he heard Constable M. tell Mr White that he had his car number and that he made threats towards Mr White.

(o) All witnesses other than policemen claimed that Constable M. was under the influence of alcohol. In the statements of Miss Cochrane, the barmaid, Mr J. Willats, the Manager of the Hotel and Ms. Kimbal, barmaid—Constable M. and Detective O. had been drinking at the Hotel on and off throughout the day, since before noon.

(p) The statements of Constable M. and O. however tell a contradictory story. Both Constable M. and Detective O. maintain that on the 28th March, 1979, they performed duty between the hours of 8.30 a.m. and 4.30 p.m., and that they went to the Pymble Hotel during the lunch hour to locate suspects, but without success. Both Detective O. and Constable M. claim the purpose of their visit to the Pymble Hotel later that afternoon was to follow up a report that suspected motor vehicle thieves could be apprehended in the saloon bar of the Pymble Holtel. They claim they entered the Hotel at 4.50 p.m. after having parked their vehicle in the Hotel's car park. They consumed one middy of beer in the public bar and two middies of beer in the saloon bar, by which time it became obvious to them that they would not be able to locate the suspect. At about 5.40 p.m. they returned to Constable M.'s vehicle in the car park, noticing a vehicle that was obstructing their egress. They claim they waited for a short period and then went to the Bottle Department of the Hotel and requested that the driver of the obstructing vehicle be paged. However, this proved unsuccessful and Detective O. thereupon went to the Office of the Hotel and requested the owner of the vehicle to be paged once more. After having both returned to the car park some five minutes later Mr N. approached the two Detectives and enquired what the problem was. One of them then asked Mr N. if it was his vehicle, and when he acknowledged that it was his he was told by them that their vehicle was obstructed. Mr N. is alleged to have replied "big deal, you don't know what this pub is like". Detective M. then informed Mr N. that they were members of the police force and would he move his car. Mr N. is then alleged to have replied "You fucking coppers think you run the fucking place". Constable M. then informed Mr N. that he was under arrest for using unseemly words and took hold of him by the arm. Constable M. then maintained that the Detective O. then walked towards the right entrance of the Hotel with the intention of contacting the Pymble Police and in his absence the complainant commenced to struggle violently, trying to break free. As a result Constable M. was thrown heavily against the side of the complainant's vehicle, losing his grip on the complainant and falling to the ground. Mr N. ran from the car park towards the Hotel calling out "You're gone, you're gone".

Detective O. corroborates this in his statement. He claims that he walked upstairs to the side entrance of the Hotel and, hearing a noise, turned around and saw Constable M. fall against the passenger's side of Mr N.'s vehicle and then onto the ground. He also claims that he heard Mr N. say if he ran around the roof of the panel van "You're gone, you're gone". Detective O. then returned to Constable M. and they commenced to follow Mr N. whereupon he again appeared accompanied by four (4) male persons and ran towards the two detectives. Detective O. then announced that they were police and requested them not to do anything silly as they wanted to speak to Mr N. Both Detectives claimed that the group stopped approximately three (3) ft. from them but Mr. N. continued on towards them and said "You're dead, you're dead." They both then claim that Mr N. punched Constable M. on the face with his closed fist and the latter endeavoured to take hold of Mr N. to restrain him and with the assistance of Detective O. he was subjugated. Detective O. claims that he informed Mr N. that he wanted him to accompany Detective O. to the Pymble Police Station. The complainant is alleged to have agreed, if one of his friends could also accompany him.

(q) Shortly thereafter uniformed police arrived at the Hotel and Constable M. spoke to Senior Constable H. informing him of his identity and informing him that he arrested Mr N. in the car park for using unseemly words, and that he had been assaulted by Mr N. who ran into the Hotel to get assistance from his friends. He also claimed he told Senior Constable H. that he believed it was their intention to further assault himself and Detective O. and in fact, this did happen, although the four male persons who had accompanied the complainant took no part in this assault. Later Constable M. claims Detective O. had informed him that he would walk the complainant to the Police Station and for Constable M. to drive his own vehicle there. Constable M. followed this suggestion. Detective O. claims that he walked behind the complainant and two other persons to the Police Station. When Constable M. escorted Mr N. to the charge room at the Police Station where Mr N. was

charged with using unseemly words, assaulting a police officer and resisting arrest, Mr N. said "If I'm going to be charged, then so are you". Constable M. replied "What do you mean by that?"

(r) Constable M. claims allegations made by Mr N. are complete fabrications. Constable M. denies that he threatened the Hotel employee and also that he said that if anyone wants to interfere they would get the same treatment the complainant got. He also denied taking hold of the Night Manager, Mr Westhoff and further denies kneeing, punching or kicking Mr N. during the course of the arrest. He claims Mr N. was the aggressor and his actions were solely in self defence to try and stop Mr N. from continuing the assault upon him. At no stage did he use any more force than was necessary to effect the arrest of the complainant.

(s) Detective O. also maintains that the complaint made by Mr N. is all in his imagination. He's also of the view that Constable M. acted completely within the Rules and Regulations set down by the Police Department and that Constable M. did not exert any more force than was necessary to effect the arrest of Mr N.

(t) In the report submitted by Senior Constable H. he states he arrived at the Pymble Hotel at 6.30 p.m. in the company of Constable Hilton and there he observed at the front of the Hotel, near the car park, Senior Constable Allott, and Constable Palmer and a number of people of both sexes. These persons were noisy and were shouting loudly at each other. He formed the opinion that an "all in brawl" may occur; Detective O. approached him and informed him that Constable M. had been assaulted by Mr N. and that he had broken away after being arrested. He was then approached by three (3) male persons, unknown to him, who intimated that they wished to be witnesses. Senior Constable H. then approached Detective M. and Mr N. and requested them to enter a room at the Hotel together with the three (3) potential witnesses to make further enquiries. However, Mr N. refused this request. Senior Constable Allott then is claimed to have suggested that they adjourn to the Police Station. Detective O. indicated to him that he would take the offender to the Police Station and then left in the direction of the Police Station with Mr N. Senior Constable H. then states that three (3) males and a female walked towards the police station.

(u) Constable Hilton, who was in the company of Senior Constable H. at the Hotel, claims in his statement that he saw several male persons walking down the footpath towards the police station but did not take any notice of who they were or their exact number.

(v) In a report submitted by Sergeant 2nd Class Mortimer he states that a report was made to him at Pymble Police Station at approximately 6.40 p.m. on the 28th March, 1979, by Detective O'Toole. Detective O. recounted the story of the alleged assault by Mr N. upon Mr M. at the Hotel car park, his resistance to arrest and his use of unseemly words, along with his claim that he had walked to the Police Station with Mr N. Sergeant Mortimer then conducted interviews with Mr Lowe and Bullivant. He was, however, satisfied with the charges proposed to be laid against Mr N. When Mr N. was informed of this he replied if that was the case he wanted Constable M. charged as well.

(w) Inspector H. S. Hackman, in his report, states that he interviewed Constable O. and Constable M. that evening at Pymble Police Station. The story told by these two officers is the same story told to Sergeant Mortimer. However, they did say to Sergeant Hackman that at about 3 p.m. that day they attended the Hotel in search of the suspect but were unsuccessful. They claim that they then left the Hotel and performed other duties during the course of the afternoon, and at about 5 p.m. they returned to the Hotel in search of the suspect and, on arrival they parked their vehicle at the car park at the Hotel. This evidence however, would seem to conflict with the statements of Ms Kimbal, the barmaid in the Saloon Bar of the Pymble Hotel. She claims that Detective O. and Constable M. remained drinking in the Saloon Bar from 2.30 p.m. until 5.30 p.m. The Manager of the Hotel, Mr Willats, corroborates this in his statement as does the statement of Miss Cochrane, the bottle shop attendant.

5. COMMENT

I am of the opinion that the complaint is sustained for the following reasons:

(a) Presented with a conflicting account of the altercations between Mr N. and Constable M. I am unable to make any determination on the truth of the matter. However, I am of the opinion that the actions involving Constable M. were unreasonable in the circumstances. I note also that on March 29th, 1979, Constable M. was found guilty of assaulting Mr N. before the District Court.

(b) While the alleged arrest for the use of unseemly words by Mr N. in a car park appears to have prompted the resisting arrest charge, the charge of assaulting Constable M. stems from the alleged assault committed upon Mr N. when he returned to the car park with his friends. According to the statement made by Messrs. Lowe, Bullivant, Scaife, Westhoff, Burke and Willats, they all witnessed Constable M. beating Mr N. All statements would suggest that more than reasonable force was used by Constable M. to affect the arrest of Mr N. on the second occasion in the car park even allowing for the fact that Constable M. may have only been defending himself from Mr N.'s assault. Statements made by Lowe, Bullivant, Scaife and Westhoff all claim they saw Constable M. beat Mr N. with his fist, knee him in the face and kick him while he lay upon the ground.

(c) Statements made by Lowe, Scaife, Bullivant, White, Lewis, Westhoff, Burke, Cochrane and Mr and Mrs Willats, all claim that Constable M.'s behaviour and language were of a generally abusive and aggressive nature. Many of these witnesses claim Constable M. was drunk at the time of the alleged offences. Independent assaults upon Messrs Burke, Westhoff and White, by Mr M. were also witnessed by some of these people in the car park of the Hotel.

(d) In my view it is significant that the statements of Westhoff, Burke and White are those of independent witnesses having no relationship to either of the parties, Mr N. and Constable M.

(e) Notwithstanding the many areas of conflicting evidence in this matter, for the reasons given above I am of the opinion that Constable M. acted unreasonably in the circumstances and the behaviour is such that in my view it necessitates the determination of a court of law.

6. THE RECOMMENDATION

I note that, after lengthy adjournments, Constable M. was found guilty of assaulting Mr N. on 24th February, 1982, by the District Court at Queens Square, Sydney, and that sentence was deferred upon Constable M. entering into a $100 recognizance to be of good behaviour for two years, paying a fine of $250, and paying $500 costs to Mr N. I note also that Constable M. resigned from the Police Force as from 30th March, 1982. I note also that the question of further charges against other police involved in the incident is under consideration by the Commissioner.

In these circumstances, no further recommendation is necessary.

SUSAN ARMSTRONG, *Assistant Ombudsman*
for G. G. Masterman, *Ombudsman.*

CASE No. 41

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT, 1978

Report under Section 28

Inaction by Police over assault at Long Bay

1. THE COMPLAINANT

Mr P. (now deceased), also the subject of Case No. 37.

2. THE POLICEMAN, THE SUBJECT OF THE COMPLAINT

Detective Sergeant 3 of Maroubra Police.

3. THE COMPLAINT

Mr P.'s complaint is about the inaction of Maroubra Police concerning an assault upon his son whilst his son was still alive and in the custody of the Department of Corrective Services. Mr P. alleged that his son, while being held in protective custody, was assaulted when he was showering. He alleged that his son's ribs were broken. He also believed that his son was informed by Maroubra Police that because he was in the custody of Corrective Services an investigation into the assault was out of the hands of police.

4. THE INVESTIGATION OF THE COMPLAINT

The investigation into the allegation was conducted by Inspector T. E. H. James of Police Internal Affairs Branch. In early September, 1981 he obtained statements from all police who could assist. These police officers were—

Detective Sergeant 3rd Class R. C. H.
Detective Sergeant 2nd Class K. E. M.
Detective Sergeant 3rd Class K. M. J.
Former Police Constable W. B. B.

As well as obtaining these statements, he obtained photocopies of statements taken from prisoners during the initial police investigation into the alleged assault. A statement from a prison officer who had spoken with one of the possible suspects in the assault upon P. as well as a photocopy of the "occurrence" report dated 18th March, 1980, was obtained. Inspector James was provided with a report on the alleged assault by a prison officer involved in departmental enquiries in relation to it.

5. THE FACTS ABOUT THE ALLEGED ASSAULT

(i) On 17th March, 1980 at approximately 7 p.m., P. was in the shower block of the Metropolitan Reception Prison Hospital. According to Prison Officer Farrer, who submitted a report on the assault, police at Maroubra were contacted at 11.30 p.m. His report states that P. was found in the shower room lying naked on the floor bleeding from one ear. This report was received from a prisoner by the name of D. who had been alerted by another prisoner that P. was in distress. D. saw a blood-stained sheet lying near P.

(ii) The Police occurrence pad entry discloses that at 2.15 a.m. on 18th March, 1981, Detective Sergeant H. and Detective Sergeant Zanatta went to Prince Henry Hospital in response to having received a telephone message about an assault at Long Bay. They interviewed Doctor Keogh, who informed them that P. was being treated for abdominal injury and a possibly bruised left kidney and two possible fractured ribs on the right side as well as bruising on the right triceps and an abrasion to the left temple. Mr P. received two stitches to the right ear and was admitted for observation.

The two police officers then interviewed P. Detective Sergeant H. and made the following notes in the occurrence pad:

". . . he had just finished showering and had dressed at the Long Bay Hospital Complex M. R. P. when two prisoners later described walked into the shower room. They threw a white sheet over him and punched him to the floor and whilst on the floor kicked him a number of times, nothing was said by all parties during the assault. He stated that he went to the Long Bay Hospital where he was treated and was then conveyed to Prince Henry Hospital where he complained to Superintendent Quarmby of the assault. He told us he did not know why he was assaulted. There were no others present in the showers whilst he was being assaulted. He does not know the names of his assailants but describes them as being:

(1) 47 years old, 5 ft 6 in stocky build, mass of hair, crippled left hand, nicknamed maybe 'Bigfoot'.

(2) 32 years old, 5 ft 6 in stout build grey, short hair, moustache, pale complexion.

Enquiries from the Prison Officers present, stated that all records had been locked up for the night and Superintendent Quarmby would be on duty at 8 a.m. this date."

(iii) On 3rd July, 1980, Steven C. the prisoner who found P. stated that when he first saw P. he was standing, and that he was bruised and bleeding. Although at the time P. alleged assault, C. thought that P. had slipped.

(iv) On 11th July, 1980, Anthony D. prisoner, was interviewed. He confirmed Prison Officer Farrer's report, but also stated that P. had informed him that he had fallen in the shower.

5. COMMENT

(i) Police claim that it was not possible to carry out an investigation into the alleged assault until 25th April, 1980, although the alleged assault occurred on 17th March, 1980, because disturbance in the gaol made it impossible for P. to be taken to Maroubra Police Station for the purposes of an interview where details of the assault could be obtained. According to police it is customary to interview victims of assault at the police station by means of an order under Section 29, Prisons Act. An industrial dispute at the prison complex, and the fact that police engaged on the enquiry were detailed on other enquiries, made it impossible for the prisoner to be interviewed in this manner prior to 25th April, 1980. Detective Sergeant J., the officer in charge of enquiries, also comments that industrial dispute at the Long Bay complex on 23rd March, 1980, 9th April, 1980 and 15th April, 1980 also disrupted the investigation.

I do not accept that police could not have pursued their inquiries in this matter before 25th April, 1981. Two reasons are given for the police policy of preferring to interview prisoners at police stations rather than the gaol:

(1) That there are no proper facilities at the Gaol; and

(2) That when interviews are conducted at the Gaol it has been found from experience that prisoners are subjected to harassment from their peers.

These may be valid reasons for preferring to interview at police stations whenever possible, but in my view they cannot justify the long delay in this case. Lawyers, officers of this Office, and others are obliged to make use of the interviewing facilities at the Gaol, and there would seem to be no reason why police should not do so in circumstances such as these where obtaining release under a Section 29 order was not possible. Moreover, it is evident that the officers responsible were aware that P. was detested by other prisoners as a result of his violation of telephone rules and was already a subject of protection. He was therefore unlikely to suffer further harassment through talking to police.

(ii) Moreover, the information contained in the statement obtained from Mr P. on 25th April, 1980, was in effect, no different to that provided to police by him in the early hours of 18th March, 1980. As a result of the interview at the police station a muster was arranged on 29th April, 1980, and Mr P. identified a particular prisoner. Because this prisoner was not on the ward on the date Mr P. was assaulted, this prisoner was not interviewed. However, his brother was interviewed because he was not only on the ward, but he also had a hand injury consistent with that described by Mr P. This prisoner denied having assaulted Mr P.

(iii) Because information was obtained from the victim of the alleged assault by police hours after the assault, I consider that action to investigate the matter should not have been delayed until after P. was interviewed at the police station. P. did not add much to what he had already told the two officers who answered the telephone message. I can see no reason why a muster could not have been arranged for the day of P's discharge from hospital or shortly thereafter.

(iv) Police Constable B., who is no longer in the police force, in his statement, claims that he did not believe that Mr P. had been assaulted. Detective Sergeant J. in his statement of 1st September, 1981, also claims that P. may have fabricated the whole incident after he had tripped and fallen in the shower area. However, both officers ignored the evidence of the sheet which was stained with blood, and also the information provided by the doctor at Prince Henry Hospital, which suggests that the extent of the injuries was not consistent with mere slipping on the floor. Had enquiries commenced immediately, the blood-stained sheet could have been taken by Police as an exhibit. Forensic information may have been obtained from it.

(v) I am in no position to decide whether or not Police would have come to a different conclusion had the investigation taken place straight away. However, I note that Inspector James stated: "I consider that if it had been at all possible for Detective Sergeant J. and Plain Clothes Constable B. to interview and obtain a statement from P. soon after the alleged assault and then interview all prisoners confined in Ward 2 of the Prison Hospital, perhaps sufficient evidence would have been available to identify the assailants". (paragraph 47). This is particularly so since at the time of the assault, the Hospital would have been locked off from access by prisoners in the rest of the gaol, and as it appears, from investigations undertaken by this Office into the handling of the assault by the Department of Corrective Services, that a maximum of eight prisoners would have had access to the showers at the time. This information was conveyed to Inspector James by Mr Hartigan of this Office.

(vi) I consider the complaint sustained only because I consider that the delay in investigating the matter until after P. had been formally interviewed at the police station was unnecessary. This delay may have been caused by the belief of the police that P. had fabricated the assault story. As stated before, the police did not take into account the evidence of the stained sheet which was consistent with P's allegation that a sheet had been used to overpower him when he was assaulted. The presence of the sheet is not explained by the version that P. had slipped.

(vii) Detective Sergeant J. makes mention of the reasons why P. was considered unpopular by other prisoners. This surely should have alerted him to the fact that, under such circumstances, the assault story was as credible as the story that P. had slipped on the bathroom floor.

(viii) In relation to that aspect of the complaint which alleges that P. was wrongly informed by Maroubra Police that, because he was in the custody of Corrective Services, an investigation was out of the hands of police, I find the complaint not sustained. His father Mr G. P., has no direct knowledge of any such incident. The incident is denied by police, who did in fact proceed with inquiries.

7. THE RECOMMENDATION

I recommend that Detective Sergeant J. be admonished for the unnecessary delay in investigating the alleged assault upon P. I do not consider that a notation in his service register is necessary.

Signed by
SUSAN ARMSTRONG,
Assistant Ombudsman *for the Ombudsman*.
16th April, 1982.

PART IV

STATISTICAL SUMMARY OF COMPLAINTS UNDER OMBUDSMAN ACT

1st July, 1981 to 30th June, 1982

Key to Statistical Categories

New statistical categories for finalised complaints came into effect on 19th February, 1982. Next year's Annual Report will have those categories only. This year, because of the changeover, some categories appear under a double heading, while others are separated into periods before and after 19th February.

Discontinued

(1) Resolved completely.

(2) Resolved partially.

(3) Withdrawn by complainant.

(4) Other reason.

No Jurisdiction

"Not Public Authority"—private companies, individuals, etc.

"Conduct is of a class described in The Schedule"—S.12 (1) (a)—specifically excluded from jurisdiction in Schedule attached to Ombudsman Act.

"Conduct or complaint out of time"—S. 12 (1) (b) (c) (d)—action complained of occurred before commencement of Ombudsman Act, etc.

Declined

General discretion—S. 13 (4) (a).

Insufficient interest of complainant; vexatious or frivolous complaint; trivial subject matter; trading or commercial function; alternative means of redress etc.—S. 13 (4) (b).

Local Government authority where complainant has right of appeal or review—S. 13 (5).

Withdrawn 1st July, 1981 to 18th February, 1982—Withdrawn by complainant.

Not Sustained and No Wrong Conduct

"Not Sustained" used until 18th February 1982.

"No Wrong Conduct" used after 19th February, 1982.

Sustained

"Wholly and Wrong Conduct"—after 19th February, 1982 simply "Wrong Conduct".

"Partially"—category not used after 19th February, 1982.

Discontinued

1st July, 1981 to 18th February, 1982

Investigation discontinued, often after conciliation and resolution. For current "Discontinued" categories, see first heading.

The first set of statistics, (a) refers to Public Service Departments, Statutory Authorities, and similar public bodies. The second set, (b) refers to Local Government authorities.

For statistics of complaints under the Police Regulation (Allegations of Misconduct) Act, see Part II.

Councils / Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction: Sec. 12 — Not Public Authority	No Jurisdiction: Sec. 12 (1) (a) — Conduct is of a class described in Schedule	No Jurisdiction: Sec. 12 (1) (b) (c) (d) — Conduct or complaint out of time	Declined: Sec. 13 (4) (a) — General Discretion	Declined: Sec. 13 (4) (b) — Insufficient interest, trading, commercial function, alternate means of redress, etc.	Declined: Sec. 13 (5) — Local Government Authority where right of appeal or review	Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained: 1 — Wholly and Wrong Conduct	Sustained: 2 — Partially	Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Adult Migrant Education Service of New South Wales	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Agriculture Department	1	..	..	..	..	2	..	1	..	..	..	1	..	..	..	1	6
Albury-Wodonga Development Corporation of New South Wales	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Apprenticeship Directorate	2	..	..	..	..	..	..	..	..	..	..	2	..	..	..	1	5
Argentine Ant Eradication Committee	..	..	..	1	..	..	..	1	..	..	..	..	..	..	..	..	2
Armidale and New England Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Armidale Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Armidale Land Board Office	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Armidale Pastures Protection Board	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Attorney General and Justice	1	..	..	..	..	18	..	2	..	..	1	4	..	..	2	5	33
Auburn District Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Australian Gas Light Company	..	..	..	..	..	..	..	3	1	..	..	2	..	..	2	1	10
Australian Museum	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Barley Marketing Board of New South Wales	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Bathurst-Orange Development Corporation	1	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	2
Board of Senior School Studies	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	4	5
Board of Tick Control	..	..	..	..	..	..	..	..	..	..	..	7	..	..	..	..	7
Broken Hill Hospital	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Broughton Hall Geriatric Centre	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Builders' Licensing Board	1	1	1	8	..	..	..	6	3	..	..	20	2	..	11	12	65
Camperdown Children's Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Catchment Areas Protection Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Central Criminal Court	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Central Mapping Authority	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Chiropractic Registration Board	..	..	..	1	..	..	..	2	..	..	..	..	..	..	..	8	11
Clerk of the Peace	1	..	..	..	..	2	..	..	..	..	..	..	..	..	1	..	4
Coal and Oil Shale Mine Workers Superannuation and Long Service Leave Branch	..	..	..	..	..	3	..	..	..	..	1	..	..	..	..	..	4

Public Authority (Departments) / Councils	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Commonwealth Police	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Consumer Affairs Department	2	2	..	..	..	2	..	4	1	..	..	4	..	..	1	5	21
Consumer Claims Tribunal	..	..	..	..	1	8	..	3	1	..	..	2	..	..	..	3	18
Corporate Affairs Commission	3	..	..	..	..	..	..	2	2	..	..	2	2	..	1	5	17
Corrective Services Commission	79	51	2	17	6	46	..	17	9	..	14	119	38	3	236	196	833
Counsellor for Equal Opportunity	..	..	..	..	..	1	..	2	1	..	..	1	..	..	..	..	5
Council of Auctioneers and Agents	..	..	..	..	..	..	..	1	1	..	..	2	..	..	..	..	4
Crown Lands Office	..	..	..	..	..	..	..	1	..	..	..	1	..	..	..	..	2
Crown Solicitor's Office	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Crown Street Women's Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	7	7
Cumberland College of Health Sciences	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	1
Dairy Industry Marketing Authority of New South Wales	..	..	..	1	..	..	..	..	..	..	..	7	..	..	..	6	14
Dental Hospital of Sydney	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1	2
Dental Technicians Registration Board	..	..	..	1	..	..	..	1	1	..	..	2	..	1	..	..	6
District Court	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Dust Disease Board	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1	..	2
Education Department	2	2	..	6	1	10	..	6	2	..	..	12	1	..	11	29	82
Egg Marketing Board of New South Wales	..	..	..	..	..	..	..	1	1	..	..	..	..	..	..	..	2
Electricity Commission	2	..	1	..	..	..	..	2	..	..	..	4	..	..	..	3	12
Energy Authority of New South Wales	..	..	..	..	..	2	..	..	..	..	1	1	..	..	..	3	7
Environment and Planning, Department of	..	2	..	4	1	3	1	7	1	..	3	17	..	..	11	15	65
Fire Commissioners, Board of	1	..	..	1	..	..	..	..	1	..	..	1	..	..	1	1	6
Forestry Commission of New South Wales	1	..	..	3	..	1	..	1	..	..	..	1	1	..	..	6	14
Geographic Names Board	..	..	..	..	..	..	..	2	..	..	..	..	..	..	1	..	3
Gladesville Psychiatric Hospital	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Gosford District Hospital	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2
Government Insurance Office	4	4	3	4	..	..	..	2	12	..	4	15	1	..	7	7	63

Councils Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Government Printing Office	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Government Railways Superannuation Fund	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Greyhound Racing Control Board	..	..	..	..	..	..	..	..	..	..	..	2	..	..	..	..	2
Health Commission of N.S.W.	1	..	..	3	..	3	2	9	..	..	..	10	2	..	11	9	50
Health Commission (Prison Medical Board)	9	12	..	3	..	..	..	..	..	..	..	4	2	..	17	6	53
Heritage Council of N.S.W.	..	..	..	1	..	..	..	1	..	..	..	..	..	..	3	2	7
Hornsby Court of Petty Sessions	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Hornsby and Ku-ring-gai Hospital	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Housing Commission of N.S.W.	1	3	..	..	..	2	..	13	..	..	..	28	..	..	6	5	58
Housing Co-operatives, Department of	..	..	..	..	..	..	..	2	..	..	..	..	..	..	..	..	2
Hunter District Water Board	..	..	..	2	..	..	..	5	3	..	..	1	..	..	..	1	12
Hunter Valley Conservation Trust	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Industrial Relations, Department of	1	..	..	2	..	1	..	..	..	..	..	4	..	..	4	6	18
Land Commission	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2	..	2
Lands, Department of	1	3	..	..	..	..	..	1	1	..	..	8	..	1	2	4	21
Land Board Office	..	..	1	..	..	..	..	1	..	..	..	2	..	..	..	7	11
Land Tax Office	1	..	..	..	..	..	..	2	2	..	..	1	1	..	1	3	11
Law Society of N.S.W.	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Legal Services Commission	2	1	..	..	..	3	..	3	2	..	..	6	..	..	2	4	23
Licenses Reduction Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Lidcombe Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Liverpool Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Local Government, Department of	..	1	..	..	..	..	..	1	..	..	..	..	..	..	1	1	4
Local Government Examination Committees	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Local Government Superannuation Board	1	..	..	1	..	..	..	..	..	..	..	4	..	1	..	2	9
Macarthur Development Board	..	..	..	..	..	..	..	..	2	..	..	..	..	..	..	..	2
Macquarie University	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1

Councils Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Main Roads, Department of	2	..	..	3	..	..	1	7	5	..	1	36	3	..	7	13	78
Manly District Hospital	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Macquarie Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Maritime Services Board	..	..	..	..	..	..	..	..	..	..	..	4	..	1	2	4	11
Medical Board of New South Wales	..	..	..	..	..	3	..	5	..	..	..	5	..	..	3	..	16
Metropolitan Water, Sewerage and Drainage Board	7	1	2	3	..	1	..	28	12	..	3	32	6	1	14	32	142
Mineral Resources, Department of	..	..	..	1	..	..	..	3	1	..	..	3	1	..	4	1	14
Mines, Department of	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Mines Subsidence Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Moree Pastures Protection Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Morisset Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Moss Vale Pastures Protection Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Motor Transport, Department of	6	1	1	2	..	..	..	8	..	..	2	21	2	..	13	30	86
Motor Vehicle Repair Industry Council of New South Wales	..	..	..	..	..	..	..	2	..	..	..	2	..	..	1	1	6
Music Examinations Advisory Board	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	3	4
National Parks and Wildlife Service	..	..	..	2	..	..	..	2	..	..	1	6	..	..	1	10	22
Nepean Hospital	..	..	..	..	..	1	..	..	..	..	..	1	..	..	..	..	2
N.S.W. Ambulance Service	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
N.S.W. Chiropody Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
N.S.W. Government	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
N.S.W. Government Bursary Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
N.S.W. Institute of Technology	..	..	..	..	..	..	..	..	..	..	..	2	..	..	1	1	4
N.S.W. Retirement Board	..	..	..	..	..	1	..	..	..	..	..	1	..	..	..	4	6
North Shore Gas Company Ltd.	..	..	..	..	..	..	..	..	..	..	..	1	..	1	..	..	2
Northern Rivers College of Advanced Education	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Nowra Land Board Office	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Nurses' Registration Board	..	..	..	..	..	..	..	1	..	..	1	2	1	..	..	1	6

Councils

Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Parole Board	1	..	..	1	..	3	..	..	1	..	..	2	..	..	..	1	9
Parramatta Legal Aid Office	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	..	1
Pastures Protection Board	..	1	..	..	..	..	..	..	..	..	..	1	..	..	..	1	3
Pharmacy Board of New South Wales	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Plumbers, Gasfitters and Drainers' Board	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Police Citizens' Boy's Club	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Police Department	..	..	..	..	3	4	..	10	5	..	..	29	8	..	25	25	109
Premier's Department	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1	2
Prince Alfred Hospital	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	1
Prince of Wales Hospital	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Protective Office	1	..	..	1	..	1	..	2	1	..	..	..	..	..	1	1	8
Public Accountants' Registration Board	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Public Service Board of New South Wales	..	..	..	..	..	2	..	..	..	..	..	1	..	..	..	..	3
Public Solicitor	1	..	..	1	..	..	..	1	..	..	..	5	1	..	1	1	11
Public Trust Office	4	2	..	2	..	..	..	..	1	..	2	..	..	..	6	4	21
Public Works, Department of	..	..	..	..	..	1	..	1	2	..	..	7	..	..	2	4	17
Randwick Technical College	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Registrar General's Office	1	..	..	4	..	..	..	..	..	..	..	2	..	..	9	1	17
Registry of Births, Deaths and Marriages	1	..	..	1	..	..	..	..	1	..	..	3	..	..	..	1	7
Registrar of Co-operative Societies	..	..	..	..	..	..	..	3	1	..	..	..	..	..	..	2	6
Registrar of Credit Unions	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Rental Bond Board	..	1	..	1	..	..	..	1	1	..	..	3	..	..	2	4	13
Riverina College of Advanced Education	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Royal Alexandra Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Rozelle Hospital	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Rural Assistance Board	..	..	..	..	..	..	..	..	..	..	..	3	..	..	..	1	4
Rural Reconstruction Agency, Bathurst	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	1

Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
Councils					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Rydalmere Hospital	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Secondary Schools Board	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Services, Department of	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	1	2
Sheriff's Office	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1	..	2
Singleton District Hospital	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Singleton Gas Company Ltd.	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Snowy Mountains Hydro Electricity Authority	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Soil Conservation Service	..	..	..	..	..	1	..	..	..	..	..	..	..	..	3	1	5
Solicitor General	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Sport and Recreation, Department of	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Sporting Injuries Committee	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Stamp Duties Office	1	2	..	..	..	..	..	..	2	..	1	3	..	..	6	8	23
State Bank	1	..	..	..	..	1	..	..	1	..	..	1	..	..	1	1	6
State Contracts Control Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
State Electoral Office	..	1	..	..	..	1	..	..	2	..	1	..	..	..	..	1	6
State Fisheries Department	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1	2
State Library of New South Wales	..	..	..	..	..	..	..	1	..	..	..	..	..	..	1	..	2
State Lotteries Office	..	..	..	..	..	..	..	1	1	..	..	..	..	..	..	2	4
State Pollution Control Commission	2	1	..	2	..	..	..	5	1	..	..	2	1	..	4	10	28
State Rail Authority	6	2	..	1	1	1	..	22	4	..	..	17	5	2	9	35	105
State Superannuation Board	1	1	..	..	..	..	..	3	..	..	1	4	..	..	3	1	14
Strata Titles Board	..	..	..	..	..	2	..	3	1	..	..	1	..	..	..	1	8
Sutherland District Hospital	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Sydney College of Arts	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Sydney Farm Produce Market Authority	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1	2
Teacher Housing Authority of New South Wales	..	..	..	..	..	..	..	..	..	..	..	1	2	..	..	1	4
Technical and Further Education, Department of	..	..	2	..	..	1	..	2	..	..	..	2	2	..	..	4	13

Councils Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction: Sec. 12 — Not Public Authority	No Jurisdiction: Sec. 12 (1) (a) — Conduct is of a class described in Schedule	No Jurisdiction: Sec. 12 (1) (b) (c) (d) — Conduct or complaint out of time	Declined: Sec. 13 (4) (a) — General Discretion	Declined: Sec. 13 (4) (b) — Insufficient interest, trading, commercial function, alternate means of redress, etc.	Declined: Sec. 13 (5) — Local Government Authority where right of appeal or review	Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained: 1 — Wholly and Wrong Conduct	Sustained: 2 — Partially	Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Tenterfield Pastures Protection Board	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Totalisator Agency Board	..	..	..	..	..	..	..	2	..	..	..	4	..	..	..	..	6
Treasury	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Trotting Authority of New South Wales	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
University of New England	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
University of Sydney	..	..	..	..	..	..	..	..	..	..	..	2	..	..	3	1	6
University of New South Wales	..	..	..	..	..	1	..	..	..	..	1	..	..	..	..	6	8
University of Wollongong	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Urban Transit Authority	2	1	..	1	..	1	..	3	2	..	..	3	..	..	3	1	17
Valuation Board of Review	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Valuer General	..	..	1	..	..	..	..	..	4	..	..	1	1	1	4	1	13
Veterinary Surgeons Board of New South Wales	..	..	..	1	..	1	..	..	..	..	..	..	1	..	..	..	3
Water Resources Commission	1	2	..	2	..	1	..	2	..	..	..	8	1	..	5	2	24
Western Lands Commission	..	..	..	1	..	..	..	1	..	..	..	1	..	..	1	1	5
Westmead Hospital	..	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1
Wilcannia Pastures Protection Board	..	..	..	..	..	..	..	..	..	..	..	2	..	..	..	..	2
Workers' Compensation Commission	..	..	..	..	..	1	..	..	..	..	..	1	..	..	..	..	2
Workers' Health Centre, Lidcombe	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Youth and Community Services, Department of	4	3	..	10	..	1	..	4	1	..	..	10	3	..	16	92	144
Total	156	105	14	110	15	147	4	243	105	..	39	554	92	12	514	782	2892

Councils Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Unscheduled Bodies (Outside Jurisdiction)—																	
Australian Government Departments	..	..	..	..	80	..	..	..	..	..	..	..	..	..	..	..	80
Employer—Employee	..	..	..	..	24	..	..	..	..	..	..	..	..	..	..	..	24
Private Organizations and Individuals	..	..	..	..	153	..	..	..	..	..	..	..	..	..	..	..	153
Local Government Authorities	156 37	105 20	14 6	110 96	272 6	147 7	4 4	243 251	105 38	.. 27	39 7	554 385	92 19	12 4	514 174	782 215	3149 1296
	193	125	20	206	278	154	8	494	143	27	46	939	111	16	688	997	4445
Less: Under Investigation as at 30th June, 1981	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1321
Total received for year ended 30th June, 1982	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	3124

Councils Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Albury City Council	..	..	..	..	..	..	..	1	1	..	..	1	1	..	..	1	5
Armidale City Council	..	..	..	..	..	..	..	1	..	..	..	3	..	..	1	2	7
Ashfield Municipal Council	..	..	..	..	..	..	..	1	..	..	..	2	..	..	..	..	3
Auburn Municipal Council	..	..	..	..	..	..	..	1	..	..	..	1	..	..	..	..	2
Ballina Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	3	1	5
Balranald Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1	2
Bankstown City Council	..	1	..	4	..	1	..	5	..	..	..	6	..	..	1	3	21
Bathurst City Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	2	2	5
Baulkham Hills Shire Council	..	..	..	..	..	..	..	1	1	..	..	6	..	..	4	3	15
Bega Valley Shire Council	..	..	..	1	..	..	..	1	..	1	..	1	..	..	1	..	5
Bellingen Shire Council	..	..	..	1	..	..	..	1	..	..	..	1	..	..	5	1	9
Berrigan Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Blacktown City Council	..	..	..	2	..	..	..	3	1	..	..	5	1	..	6	3	21
Bland Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1
Blue Mountains City Council	..	..	..	2	..	..	1	3	2	..	1	6	..	..	4	6	25
Botany Municipal Council	..	..	..	..	..	..	..	..	..	..	..	5	..	..	..	2	7
Burwood Municipal Council	..	..	1	1	..	..	..	3	3	..	..	..	..	..	2	..	10
Byron Shire Council	..	..	..	..	..	..	..	..	..	..	..	2	..	..	2	1	5
Camden Municipal Council	..	..	..	..	..	..	..	..	1	..	..	1	..	..	1	..	3
Campbelltown City Council	..	1	..	..	..	..	..	..	..	..	..	1	..	..	1	2	5
Canterbury Municipal Council	..	..	..	..	..	..	..	6	..	1	..	13	..	..	3	6	29
Casino Municipal Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Central Darling Shire Council	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Central Tablelands County Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1	2
Central West County Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Cessnock City Council	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Cobar Shire Council	..	..	..	..	..	..	..	2	..	..	..	1	..	..	..	..	3

Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Councils																	
Coffs Harbour Shire Council	..	..	1	3	..	..	..	3	..	1	..	1	..	..	..	2	11
Concord Municipal Council	..	..	..	..	..	..	..	2	..	..	..	..	..	..	..	..	2
Coonamble Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Corowa Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Cowra Shire Council	..	..	..	..	..	..	..	..	..	..	..	13	..	..	..	2	15
Crookwell Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2	..	2
Deniliquin Municipal Council	..	..	..	1	..	..	..	..	..	..	..	1	..	..	1	1	4
Drummoyne Municipal Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1	2
Dubbo City Council	..	..	..	1	..	..	..	..	..	..	..	1	..	..	..	1	3
Dungog Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Eurobodalla Shire Council	..	1	..	1	..	1	..	4	..	..	..	3	..	..	2	4	16
Fairfield City Council	..	..	..	1	..	..	..	4	1	1	..	3	..	..	3	1	14
Far North Coast County Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Forbes Shire Council	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	1
Gloucester Shire Council	..	..	..	1	..	..	..	..	..	..	..	1	..	..	..	..	2
Gosford City Council	..	3	1	3	..	1	1	11	..	2	..	10	..	..	3	10	45
Goulburn City Council	..	..	..	..	..	..	..	1	..	..	..	1	..	..	..	..	2
Grafton City Council	..	..	..	..	..	..	..	2	..	..	..	1	..	..	..	..	3
Greater Cessnock City Council	..	..	..	..	..	..	..	..	..	..	..	3	..	..	3	1	7
Greater Lithgow City Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Greater Taree City Council	..	..	..	..	..	..	..	2	..	..	..	3	..	..	1	1	7
Great Lakes Shire Council	..	2	..	..	..	..	..	..	..	1	..	..	..	..	4	2	9
Griffith Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Gunnedah Shire Council	..	..	..	..	..	..	..	..	..	..	..	3	..	..	..	..	3
Guyra Shire Council	..	..	..	..	..	..	..	..	..	..	..	4	..	..	..	..	4
Hastings Municipal Council	..	..	..	1	..	..	..	7	..	..	..	8	..	..	3	3	22
Hawkesbury Shire Council	..	..	..	..	4	..	..	10	..	..	..	3	..	..	1	1	19

Public Authority (Departments) — Councils	Discontinued 19th February, 1982 to 30th June, 1982 — 1	2	3	4	No Jurisdiction — Sec. 12 — Not Public Authority — 1	No Jurisdiction — Sec. 12 (1) (a) — Conduct is of a class described in Schedule — 2	No Jurisdiction — Sec. 12 (1) (b) (c) (d) — Conduct or complaint out of time — 3	Declined — Sec. 13 (4) (a) — General Discretion — 4	Declined — Sec. 13 (4) (b) — Insufficient interest, trading, commercial function, alternate means of redress, etc. — 5	Declined — Sec. 13 (5) — Local Government Authority where right of appeal or review — 6	Withdrawn 1st July, 1981 to 18th February, 1982 — 7	Not Sustained and No Wrong Conduct — 8	Sustained — 1 — Wholly and Wrong Conduct — 9	Sustained — 2 — Partially — 10	Discontinued 1st July, 1981 to 18th February, 1982 — 11	Under Investigation as at 30th June, 1982 — 12	Total — 13
Hay Shire Council	..	..	..	..	..	..	..	..	..	..	..	2	..	..	..	..	2
Holbrook Shire Council	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	1
Holroyd Municipal Council	..	1	..	..	..	..	..	..	2	1	1	5	..	..	..	1	11
Hornsby Shire Council	1	..	..	1	..	..	..	9	..	..	1	6	1	..	4	5	28
Hume Shire Council	..	..	..	..	..	..	..	..	..	..	..	4	..	..	..	4	8
Hunters Hill Municipal Council	1	..	..	..	..	..	..	3	..	..	..	..	..	..	..	..	4
Hurstville Municipal Council	..	..	..	..	..	..	..	3	..	..	..	4	..	..	2	2	11
Illawarra County Council	1	..	..	1	..	..	..	1	1	..	..	2	..	..	1	2	9
Imlay Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Inverell Shire Council	..	..	..	1	..	..	..	..	..	..	..	1	..	..	..	..	2
Jerilderie Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Junee Shire Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Kempsey Shire Council	..	..	..	..	..	..	..	..	..	..	..	2	1	..	2	1	6
Kiama Municipal Council	..	1	..	..	..	..	..	..	..	..	..	..	..	..	2	..	3
Kogarah Municipal Council	1	..	..	..	..	..	..	4	..	..	..	..	1	..	..	..	6
Ku-ring-gai Municipal Council	..	..	..	..	..	..	..	1	2	..	1	3	1	..	4	2	14
Kyogle Shire Council	..	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	1
Lake Macquarie Municipal Council	..	1	..	4	..	..	..	12	1	1	1	10	1	2	2	7	42
Lane Cove Municipal Council	..	..	..	1	..	..	..	2	..	..	..	3	..	..	..	..	6
Leichhardt Municipal Council	..	1	..	1	..	..	..	4	..	1	..	3	..	..	3	2	15
Lismore City Council	..	..	..	4	..	..	..	3	..	..	..	2	..	..	3	5	17
Lithgow City Council	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	..	1
Liverpool City Council	..	..	..	3	..	..	..	3	3	1	..	3	..	..	2	6	21
Maclean Shire Council	..	..	..	1	..	..	..	..	..	1	..	..	..	..	..	..	2
Macquarie County Council	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Maitland City Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Manly Municipal Council	..	..	..	1	..	..	..	1	..	1	..	4	..	..	..	1	8

Councils

Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction: Sec. 12 — Not Public Authority	No Jurisdiction: Sec. 12 (1) (a) — Conduct is of a class described in Schedule	No Jurisdiction: Sec. 12 (1) (b) (c) (d) — Conduct or complaint out of time	Declined: Sec. 13 (4) (a) — General Discretion	Declined: Sec. 13 (4) (b) — Insufficient interest, trading, commercial function, alternate means of redress, etc.	Declined: Sec. 13 (5) — Local Government Authority where right of appeal or review	Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained: 1 — Wholly and Wrong Conduct	Sustained: 2 — Partially	Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Manning River County Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Marrickville Municipal Council	1	..	..	3	..	..	..	2	..	..	..	8	..	1	3	5	23
Merriwa Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Mittagong Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Moree Plains Shire Council	..	1	..	..	..	..	..	1	..	..	..	1	..	..	5	3	11
Mosman Municipal Council	..	..	..	..	..	..	..	2	..	..	..	7	..	..	1	..	10
Mudgee Shire Council	..	..	..	..	..	..	..	2	..	1	..	1	..	..	1	..	5
Mulwaree Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1	2
Murray River County Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1	2
Murray Shire Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1	2
Murrumbidgee County Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	1
Murrurundi Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	1
Muswellbrook Shire Council	..	..	..	1	..	..	..	1	..	..	..	..	..	..	..	1	3
Nambucca Shire Council	..	1	..	1	..	..	..	5	..	1	..	1	1	..	..	..	10
Namoi Valley County Council	..	..	..	..	..	..	..	3	..	..	..	3	..	..	2	..	8
Narrabri Shire Council	..	..	..	..	..	..	..	..	..	..	..	2	..	..	..	..	2
Newcastle City Council	..	..	1	..	..	..	..	3	1	..	..	3	..	..	2	2	12
New England County Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Northern Riverina County Council	..	..	..	..	..	..	..	1	..	..	..	1	..	..	1	..	3
Northern Rivers County Council	..	..	..	1	..	..	..	2	..	..	..	4	..	..	..	1	8
North Sydney Municipal Council	3	..	..	1	..	..	..	6	..	..	..	6	..	..	2	6	24
North West County Council	..	..	..	..	..	..	..	1	..	..	..	3	..	..	2	..	6
Nowra Shire Council (Now Shoalhaven City Council)	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Ophir County Council	1	..	..	..	..	..	..	1	..	..	..	1	..	..	..	..	3
Orange City Council	..	..	..	..	..	..	..	..	..	1	..	2	1	..	1	1	6
Oxley County Council	..	..	..	..	..	..	..	..	..	..	..	4	..	..	1	..	5
Parkes Shire Council	..	..	..	..	..	..	..	..	..	..	..	2	..	..	..	1	3

Councils	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
Public Authority (Departments)					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Parramatta City Council	2	..	..	4	..	..	..	2	1	..	..	4	..	..	6	2	21
Penrith City Council	1	..	..	2	..	..	..	3	1	..	..	6	..	..	1	6	20
Port Stephens Shire Council	..	..	..	..	..	..	..	1	1	..	..	4	2	..	..	1	9
Prospect County Council	1	2	..	1	..	1	..	7	..	..	..	9	..	..	..	3	24
Queanbeyan City Council	..	..	..	..	..	..	..	1	..	..	..	1	..	..	..	..	2
Quirindi Municipal Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Randwick Municipal Council	1	..	..	1	..	..	1	3	..	1	..	3	..	..	6	3	19
Richmond River Shire Council	..	..	..	..	..	..	..	2	..	..	..	2	..	..	..	..	4
Rockdale Municipal Council	..	..	..	2	..	..	..	1	..	..	..	4	..	..	3	..	10
Rylstone Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	1	..	2
Ryde Municipal Council	..	..	..	3	..	..	..	5	..	1	..	4	1	..	2	3	19
Scone Shire Council	..	..	..	1	..	..	..	..	..	..	..	1	..	..	..	..	2
Shellharbour Municipal Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1	2
Shoalhaven City Council	1	..	..	..	..	..	..	7	..	1	1	5	..	..	..	4	19
Shortland County Council	1	..	..	..	..	..	..	..	1	..	..	2	..	..	1	2	7
Singleton Shire Council	..	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1	2
Southern Riverina County Council	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	2	3
Southern Tablelands County Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
South Sydney Municipal Council	..	..	..	..	..	..	..	..	..	..	..	5	..	..	5	..	10
South West Slopes County Council	..	1	..	..	..	..	..	1	..	..	..	..	..	..	..	..	2
Strathfield Municipal Council	..	..	..	..	..	..	..	..	..	..	..	2	..	..	..	..	2
Sutherland Shire Council	1	1	..	2	..	2	..	6	1	1	..	15	1	1	6	5	42

Councils Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction: Sec. 12 — Not Public Authority	No Jurisdiction: Sec. 12 (1) (a) — Conduct is of a class described in Schedule	No Jurisdiction: Sec. 12 (1) (b) (c) (d) — Conduct or complaint out of time	Declined: Sec. 13 (4) (a) — General Discretion	Declined: Sec. 13 (4) (b) — Insufficient interest, trading, commercial function, alternate means of redress, etc.	Declined: Sec. 13 (5) — Local Government Authority where right of appeal or review	Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained: 1 — Wholly and Wrong Conduct	Sustained: 2 — Partially	Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Sydney City Council	4	..	..	3	1	..	..	1	2	..	..	4	1	..	4	10	30
Sydney County Council	4	..	..	..	..	..	..	16	2	..	..	25	1	..	6	7	61
Tallanganda Shire Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Tamworth City Council	..	..	..	..	..	..	..	2	1	1	..	7	..	..	..	1	12
Tenterfield Shire Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	1	1	3
Tumbarumba Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1
Tumut Shire Council	..	..	..	1	..	..	..	..	..	..	..	1	..	..	..	..	2
Tweed Shire Council	1	..	..	3	..	..	..	1	..	..	..	6	..	..	2	1	14
Ulan County Council	..	..	..	..	..	..	..	2	..	..	..	..	..	..	..	1	3
Ulmarra Shire Council	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	1	2
Upper Macquarie County Council	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	1
Uralla Shire Council	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	3
Wade Shire Council	..	..	..	..	..	..	..	..	..	..	..	4	..	..	..	..	4
Wagga Wagga City Council	1	..	..	..	..	..	..	1	..	..	..	..	..	..	2	1	5
Walgett Shire Council	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	1
Warren Shire Council	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1
Warringah Shire Council	2	..	1	10	..	..	1	6	3	2	1	7	1	..	9	2	45
Waverley Municipal Council	..	..	..	3	..	..	..	3	..	..	..	8	2	..	1	6	23
Wentworth Shire Council	..	..	..	2	..	..	..	..	..	..	..	..	..	..	..	..	2
Willoughby Municipal Council	2	..	1	2	..	..	..	3	1	..	..	8	..	..	2	..	19
Wingecarribee Shire Council	..	..	..	1	..	..	..	1	..	1	..	2	..	..	1	2	8
Wollondilly Shire Council	..	..	..	..	..	..	..	2	..	1	..	3	..	..	..	5	11

Public Authority (Departments)	Discontinued 19th February, 1982 to 30th June, 1982				No Jurisdiction			Declined			Withdrawn 1st July, 1981 to 18th February, 1982	Not Sustained and No Wrong Conduct	Sustained		Discontinued 1st July, 1981 to 18th February, 1982	Under Investigation as at 30th June, 1982	Total
					Sec. 12	Sec. 12 (1) (a)	Sec. 12 (1) (b) (c) (d)	Sec. 13 (4) (a)	Sec. 13 (4) (b)	Sec. 13 (5)			1	2			
					Not Public Authority	Conduct is of a class described in Schedule	Conduct or complaint out of time	General Discretion	Insufficient interest, trading, commercial function, alternate means of redress, etc.	Local Government Authority where right of appeal or review			Wholly and Wrong Conduct	Partially			
	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12	13
Councils																	
Wollongong City Council	1	..	..	2	..	..	..	6	..	..	..	5	..	..	3	1	18
Woollahra Municipal Council	1	..	..	1	..	..	..	1	1	2	..	2	..	..	3	4	15
Wyong Shire Council	..	1	..	1	..	..	..	1	..	..	..	3	..	..	..	5	11
Yass Shire Council	..	..	..	..	..	..	..	3	..	..	..	..	..	..	1	..	4
Young Shire Council	..	..	..	..	1	..	..	1	..	..	..	..	..	..	..	..	2
	37	20	6	96	6	7	4	251	38	27	7	385	19	4	174	215	1296
Under investigation as at 30th June, 1981	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	436
Received	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	860