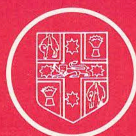

Annual Report

Ombudsman of New South Wales

YEAR ENDED 30TH JUNE, 1988

THE OMBUDSMAN OF NEW SOUTH WALES
THIRTEENTH ANNUAL REPORT
(1 July 1987 - 30 June 1988)

TABLE OF CONTENTS

PART I

	PAGE NO.
NARRATIVE SUMMARY	2
INTRODUCTION	12
CHARTER	12
AIMS AND OBJECTIVES	13
ACCESS	13
MANAGEMENT AND STRUCTURE	14
Principal Officers	14
Committees	14
LEGAL CHANGES	15
Proposals for legislative amendment	17
PROMOTION AND PUBLICITY	19
Community awareness programme	19
"The Investigator"	22
Closure of Westmead Office	22
GENERAL AREA	
Telecommunications interception; new inspection function for Ombudsman	23
Secrecy-amendments promised	27
Reports to Ministers and to Parliament	31
Disclosure of information to complainants	34
No bills: reasons to be given	35

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Excessive delays by public authorities in replying to preliminary enquiries (or, how best to ensure that the Ombudsman takes up a complaint) 36

Lost revenue from non-payment of parking fines 39

Drainage complaints still flood the Office 40

Inadequate drainage in the west end of Griffith 43

The Darling Harbour Authority - "We don't consult, we inform" 49

Fish Marketing Authority 53

Stolen Sigmas 54

Vehicles towed from clearways 57

Natural justice: right to be heard 59

Delay by the Health Department Complaints Unit 63

Residentials at The Rocks 65

Accreditation problem at Macarthur Institute of Higher Education 70

Retrospective rating 72

Registry of Births Deaths and Marriages 72

Expensive ticket 73

A cone of silence 74

Transfer of SRA patrol officers to the Police Department 75

Pollution at Gosford 77

Excavation permits - not a secret anymore 78

Visits to residential youth centres 79

Isolated detention cells 81

Problems with Crown Reserved Roads 32

Sydney Harbour foreshores management 82

Want to get the run-around? Take a school bus! 83

LOCAL GOVERNMENT AREA

Complaints about rates 85

Lake Macquarie City Council's rating of land damaged by land-slip 85

Rating relief for vacant flood-liable land 87

Rural rating 89

Conflict of interest - Ashfield Municipal Council 91

The Hibbard Ferry - to charge or not to charge 93

Rural road maintenance 94

Sale of unused roads at Cobar 95

Double standards on footpath parking 98

Councils should notify people of proposals which may affect them 99

Local government tendering 101

Ballet school in scout hall 102

Councils and existing buildings 102

Conversion of sub-standard buildings to Strata Title 103

Charging for preparing Local Environmental Plans 103

PRISONS AREA

Prison statistics 104

- Visits to prisons 104
- Complaints dealt with 105

Official Visitors 106

Segregation of prisoners 106

Classification 110

Withdrawal of contact visits 111

Prisoners and police interviews 113

Forensic prisoners 116

Prisoner not released on time 119

Searching of visitors to prisons 119

Compensation to prisoners injured while working 120

Education of prison officers 121

CONSTRUCTIVE ACTION BY PUBLIC AUTHORITIES

Department of Agriculture - Fisheries Division 122

Building Services Corporation 123

Health Department 123

Housing Department 123

Kempsey Pastures Protection Board 124

State Rail Authority 124

Department of Technical and Further Education 125

University of New England 125

Water Board 125

Coffs Harbour Shire Council 126

Manly Municipal Council 126

Marrickville Municipal Council 126

Department of Corrective Services 127

Police Department 127

POLICE AREA

Police complaint statistics 127

Ombudsman v The Commissioner of Police 131

Police Regulation (Allegations of Misconduct) Amendment Bill; threat to civilian oversight of police investigations of complaints about police 135

"Serious misconduct" reports 145

Removal of restrictions on civilian investigators 148

Seconded police officers - a time for action 151

Deemed not sustained findings 152

180-day limit on police investigations 155

Education programme - police officers 155

Quality of legal advice available to Commissioner 157

Attempt to mislead Ombudsman 159

Alleged suppression of previous convictions 162

Delay in paying for car repairs 168

Improper use of police letterhead 170

Police lockup conditions improved 173

Abuse of the system? 176

Questioning juveniles 178

Complaints by the New South Wales Police Association 180

Mr Azzopardi's complaint against the Internal Affairs Branch - some action on Ombudsman's recommendations 181

Verbal admissions - action following Report to Parliament 182

Police and weed inspectors 184

OPERATIONAL ASPECTS OF THE OFFICE OF THE OMBUDSMAN

Human resources 185

Numbers and categories of officers and employees 185

Extension of appointment of additional Assistant Ombudsman 187

Wage movements 187

Personnel policies and procedures 187

Procedures Manuals 188

Recruitment 188

Occupational health and safety 189

Ethnic Affairs Policy Statement 189

Regular meetings with staff 189

Industrial relations 190

Overseas visits 190

Consultants 190

Staff training 190

Equal Employment Opportunity 192

Accounts payable policy 192

Organisation Chart 193

Financial summary 194

Major assets on hand at 30 June 1988 195

Stores and equipment expenditure 195

Performance indicators 197

FINANCIAL STATEMENTS 205

STATISTICAL SUMMARY OF COMPLAINTS UNDER OMBUDSMAN ACT 215

STATISTICAL TABLES 216

PART II

CASE NOTES

THE OMBUDSMAN OF NEW SOUTH WALES

THIRTEENTH ANNUAL REPORT
1 JULY 1987 - 30 JUNE 1988

PART I

NARRATIVE SUMMARY

The Ombudsman

The Ombudsman is an independent statutory officer, responsible ultimately to Parliament, who investigates complaints about New South Wales government departments, authorities, local councils and members of the police force. Findings of wrong conduct are reported to the Minister concerned and, in more serious matters or where recommendations have been ignored, reports are also made to Parliament. The status of the Ombudsman as an avenue of final resort for aggrieved citizens is recognised in the Ombudsman Act.

Mr D E Landa was appointed Ombudsman on 1 February 1988. His predecessor, Mr G G Masterman QC, resigned on 14 September 1987.

Complaints received

In the year ended 30 June 1988 the following written complaints were received:

<u>Ombudsman Act</u>	
Departments and authorities (other than Corrective Services)	1067
Local councils	672
Department of Corrective Services	257
Outside jurisdiction	505
<u>Police Regulation (Allegations of Misconduct) Act</u>	
Complaints against police	2138
	4639

Reports to Ministers

A total of 105 reports of wrong conduct were made to Ministers during 1987-88. Of these, 25 related to complaints against government departments, 15 to complaints against local councils and 65 to complaints about the conduct of police. Section 25 of the Act provides for consultation with Ministers about reports made by the Office.

Reports to Parliament

Sixteen reports to Parliament were made during the year, including reports on:

- Need to amend the Ombudsman Act to limit the application of the words "matters affecting a person as an officer or employee" contained in item 12(b) of Schedule 1 of the Act.

- Refusal of Commissioner of Motor Transport to comply with Deputy Ombudsman's recommendations arising from an investigation concerning the registration by the Department of 52 stolen cars.

- Bellingen Shire Council's failure to implement the Acting Ombudsman's recommendation that Council resolve to waive collection of outstanding rates levied against the complainant.

- Lake Macquarie City Council's failure to implement the Acting Ombudsman's recommendations about the unreasonable levy of rates.

- Failure of Police Department to comply with the Ombudsman's recommendations that a police officer be placed before the Police Tribunal on a charge of "neglect of duty".

Royal Commission Inquiries

Section 19 of the Ombudsman Act confers the powers of a Royal Commissioner on the Ombudsman when making or holding inquiries. Thirty-one inquiries were held during the year, twenty-six in reinvestigating complaints against police, four in investigating the conduct of departments and authorities, and one in investigating the conduct of a local council.

Expanded community awareness programme

The Ombudsman has expanded the programme of visits to regional centres instituted by his predecessor. When officers of the Ombudsman visit such centres to service the public, they will also make contact with public authorities in the area. Local councils and police, in particular, are being targeted initially.

Secrecy

The government has promised to amend the secrecy provisions of the Ombudsman Act along the lines requested by the former Ombudsman. In the past, in some cases, the public was deprived of information that was of great interest to it; in others the Office was prevented from giving details that might have assisted other investigative bodies and from quickly correcting misleading reports in the media about the work of the Office. The Ombudsman looks forward to the promised legislative change.

Stolen Sigmas

The Ombudsman has made a report to Parliament about the refusal of the Commissioner of Motor Transport to implement his recommendations following the investigation of complaints that the Department's registration procedures failed to detect that at least 52 cars presented for registration were stolen. The Ombudsman's report notes that the very scheme used by the car thieves to avoid detection by the Department had been described

in the Lewer Report over eight years ago. The Department, however, had taken no action to deal with the problem.

Loss of parking fine revenue

Almost $1.2 million dollars in revenue was lost in 1986-87 because more than 94% of parking infringement notices issued against government vehicles were neither paid nor enforced. As well, it costs over $329,000 to issue, process and terminate enforcement action on the outstanding notices. The Police Department, for many years, has not enforced parking infringement notices issued against vehicles owned by the State or Commonwealth governments. With parking fines being increased from 1 July 1983, the amount of lost revenue will significantly increase.

The right to be heard

It is a principle of natural justice that a party whose rights, property or legitimate expectations may be affected by an administrative adjudication has the right to be heard. The Ombudsman has received complaints which have raised this issue. One complaint concerned the action of the Department of Business and Consumer Affairs in recommending that a trader be "named" in Parliament, without first giving the trader an opportunity to put its case. Other complaints concerned the way the Department of Family and Community Services treats child carers whose standard of care-giving is called into question. The Ombudsman has made a report about the procedures which ought to in future be followed by the Department of Business and Consumer Affairs. The Department of Family and Community Services is co-operating with the Office in reviewing the complaints about its practices which have been received by the Ombudsman.

Complaints about rates

The Ombudsman's Office receives many complaints about rates levied by local government authorities and Pastures Protection Boards. Complaints dealt with during the year included:

- the refusal of Lake Macquarie City Council to reduce the rates levied on land that had been devalued by actual or potential landslip;
- the refusal of Bellingen Shire Council to set a lower rate on flood-liable land;
- the refusal of Tallaganda Shire Council to levy a special rate for flood-liable land which was subject to a minimum rate, the amount of which exceeded the land's rateable value.

The Office is currently investigating complaints about the way in which some councils are administering the rural rating scheme.

Constructive action by public authorities

The Annual Report gives examples of constructive action by public authorities after they were contacted by this Office. These included:

- An oyster farmer was able to have his lease renewal application considered after the Department of Agriculture had earlier rejected it, but had sent a reminder notice to the wrong address.
- A single mother was allocated a three-bedroom town house after waiting some five years, even though the Department of Housing had lost her file.
- The Water Board agreed to waive a water consumption account of almost $500 on the basis that the meter reading had been "extraordinary", and replaced a leaking water meter.

- Manly Municipal Council refunded garbage service charges for two years to a man who had been paying for the removal of four bins each week when he only had two bins.

- The Department of Corrective Services arranged for a prisoner denied the privilege of contact visits to have contact visits with his children after he had not seen them for eight months.

In all, 141 cases were resolved during the year when public authorities took constructive or remedial action after an approach from this Office.

Time limit on police investigations

Since August 1987, police have been required to complete their investigations of complaints about the conduct of police within 180 days. This period commences from the date on which the Commissioner of Police notifies the Ombudsman that a complaint is being investigated or on which the Ombudsman notifies the Commissioner that he requires a complaint to be investigated. Provision exists for the Commissioner to seek the Ombudsman's consent to extend the 180-day period and, if consent is refused, the Commissioner can appeal to the Police Tribunal.

Improper use of police letterhead

The Commissioner of Police has instructed police officers and officers of the Police Department not to use official police stationery in personal or private matters to express and/or influence a point of view. This followed the Ombudsman's investigation of a complaint about a matter in which a police officer had used police Accident Investigation Squad letterhead to express his personal opinion about a proposal to construct a garage when the proposal was being considered by Randwick Municipal Council.

"Serious misconduct" reports

The Ombudsman made three reports about possible "serious misconduct" on the part of police during the year. These were reports about:

- the possible conduct of a Senior Constable of police and two other police officers in conspiring to pervert the course of justice and to cover up the real circumstances of a motor vehicle accident in which the Senior Constable's daughter had been involved.
- the alleged conduct of a former Sergeant of police (now an Inspector) in arranging for a car repair firm to charge the Police Department for repair work carried out on his private motor vehicle.
- the alleged conduct of an Inspector and a Sergeant of police who attended licensed premises and consumed alcohol while on duty, in contravention of Police Instructions. The two officers had gone to the premises in order to speak with a third and more senior officer about an investigation of alleged police misconduct that he was conducting; the Inspector was one of the officers whose conduct the more senior officer was investigating.

Case notes

Cases dealt with during the year included:

<u>An expensive exercise</u>: The Darling Harbour Authority spent $50000 moving sandstone blocks it had stored at Pyrmont to Castle Hill, because it had not sought development consent to use the land at Pyrmont. It would have cost the Authority $50 to lodge a development application. The Public Works Department has said that the blocks are unsuitable for restoration work and they appear to be being stored with no future use in mind for them.

Compensation delay: The Electricity Commission delayed, for six years, making an offer to a man from whom it had purchased an easement, and then offered him only $2000. The man eventually settled for $4000 but Elcom delayed paying him that amount as well. After the man complained and this Office commenced enquiries, he finally received payment.

A taxing problem: The Department of Motor Transport relaxed its requirements in relation to applications for concessional primary producer third party insurance premiums and agreed to accept certification by the Australian Taxation Office of the status of applicants as genuine primary producers. Previously, the Department had insisted that certificates be given by registered tax agents or accountants, even where applicants did not employ them.

Reservation error: When the National Parks and Wildlife Service learned that it had reserved part of a man's property for a national park, it acted quickly to remedy its error. The property owner accepted an offer by the Service to buy the land it had reserved, but he complained that the Service had delayed finalisation of the matter and had not offered him enough for the land. The Service paid a price for the land which was about $15000 more than the Valuer General's valuation; and the Ombudsman's enquiries showed that the matter had not been unnecessarily delayed.

Compensation delayed: A man on whose land in 1985 Coolah Shire Council had placed a gravel strip in order to widen a lane had never been compensated. He became concerned when he learned that council was intending to widen the lane even further. Council apologised to the man for encroaching onto his land without his permission and paid him $1100 compensation for the strip of land affected.

Council reconsiders: Fairfield City Council asked a resident to pay $272 for the cost of repairing the footpath outside his home. The footpath had been damaged by a builder who had done some work for the resident. The builder had already paid a damage deposit of $560 to the council. The resident objected on the basis that

the cost of repairing the footpath, if he did the work himself, would be no more than $120. Council said the cost would be more like $365; but the resident pointed out that council had already been paid more than this through the $500 damage deposit. Council agreed to withdraw its demand to the resident.

No news in "Watts News": Sydney County Council refused a pensioner's application for pensioner rebate because he had not applied at least two weeks before the relevant quarterly account was issued. Enquiries by this Office discovered that the council had not publicised in its publication "Watts News" for some eighteen months the rules relating to pensioner rebates. Because the pensioner might not have been aware of the need to apply for a rebate before the account was issued, the council agreed to grant the pensioner's application.

Old drain a problem: When the complainants commenced construction of a basement flat, they discovered a 600 mm drainage pipe running through the length of the basement, about one metre above the proposed floor level. The pipeline was clearly shown on old drainage plans but Woollahra Municipal Council had not checked those when it approved the complainants' development application. Council agreed to relocate the pipe at no expense to the complainants, who were satisfied with this resolution of the problem.

A "service" indeed: The Ombudsman has reinvestigated an anonymous complaint that a police officer received payments from a local funeral service for recommending to relatives of deceased persons that they use the funeral service. Although the police officer and the manager of the funeral service denied that any payments had been made, their evidence was contradicted by that given by a number of relatives of deceased persons whom the officer had approached, and by a former probationary constable of police who had worked with the police officer. The Police Department is making further enquiries about the possible serious misconduct of the police officer.

Reward, at last: Sixteen months after she had first raised the matter, the wife of a sheriff officer who prevented a robbery at

a TAB agency had the pleasure of seeing her husband presented with a reward of $5500. The officer's wife first wrote to the Commissioner of Police in May 1986; she received no reply. She wrote again in January 1987 and when, again, she received no reply, she complained to the Ombudsman in May 1987. After some difficulty in arranging a presentation date, the matter was eventually resolved in September 1987.

THE OMBUDSMAN OF NEW SOUTH WALES
THIRTEENTH ANNUAL REPORT
1 JULY 1987 - 30 JUNE 1988

INTRODUCTION

Under section 30 of the Ombudsman Act, the Ombudsman of New South Wales is required to submit an Annual Report to the Premier for presentation to Parliament. This is the thirteenth such Annual Report and contains an account of the work and activities of the Office of the Ombudsman for the twelve months ending 30 June 1988. This Report also includes an account of the functions under the Police Regulation (Allegations of Misconduct) Act, as required under section 56 of that Act. Material required in terms of the Annual Reports (Departments) Act is included in the Report. Information relating to developments and issues current at the time of writing (September 1988) have been mentioned in some cases in the interests of bringing material up to date.

Mr G G Masterman QC resigned as Ombudsman on 14 September 1987. Dr Brian Jinks acted as Ombudsman until the present Ombudsman, Mr D E Landa, took up duty on 1 February 1988.

CHARTER

The Office of the Ombudsman of New South Wales was established under the Ombudsman Act, which was assented to on 18 October 1974 and, with the exception of Part III of the Act, commenced on that date. Part III, which enabed complaints about the conduct of public authorities to be investigated, commenced on 12 May 1975. From 1 December 1976, the Ombudsman was empowered to investigate certain complaints against local government authorities.

The Police Regulation (Allegations of Misconduct) Act, giving the Ombudsman a role in the investigation of complaints against police, came into force in February 1981. A significant expansion of the role of the Ombudsman occurred in February 1984 when the Office of the Ombudsman was given the power to directly reinvestigate complaints about the conduct of police officers. More recent developments are dealt with later in this Report.

At the time it established the Office of the Ombudsman, the then Government said, "there is a need for an independent official who will approach in a consistent way, having regard to the justice and merits of each individual case, complaints made to him on administrative decisions". The independence of the Office of the Ombudsman is paramount; this is formally recognised by the statutory appointment of the Ombudsman, his Deputy and Assistants, and was reinforced in February 1984 by the declaration of this Office as an "Administrative Office" under the Public Service Act.

AIMS AND OBJECTIVES

The function of the Office of the Ombudsman is to receive and investigate complaints about matters of administration within the New South Wales public sector, and about the conduct of police, and to report the findings of investigations to the authority concerned, to the responsible Minister and, if necessary, to Parliament.

The Office receives very many oral and written complaints. The Office employs three Interviewing Officers to deal with enquiries from the public; they assess enquiries and, if a matter falls within the jurisdiction of the Ombudsman, suggest that a written complaint be lodged. If this Office is unable to help complainants, the Interviewing Officers suggest whether State or Federal government organisations or non-government organisations might be able to assist.

ACCESS

Access to the Office of the Ombudsman is not restricted in any way, by reasons of residence, citizenship or otherwise.

The Official address and telephone number of the Office of the Ombudsman is:

14th Floor
175 Pitt Street
SYDNEY NSW 2000

Telephone: 235-4000

The official hours of the service are 9 am to 5 pm, Monday to Friday. It is usually possible to obtain assistance from 7.30 am to 6 pm, Monday to Friday.

The Westmead branch office, opened in June 1987, was closed in November 1987 because of insufficient public response.

MANAGEMENT AND STRUCTURE

The principal officers of the Office of the Ombudsman are:

David Landa, Attorney at Law	Ombudsman
John Pinnock, BA LlM (Syd)	Deputy Ombudsman
Gordon Smith, Dip Crim (Syd)	Principal Investigation Officer
Sue Bullock, B Soc Stud (Syd)	Executive Officer

As at 30 June 1988, the two Assistant Ombudsman positions were vacant. Mr G R Andrews has since been appointed to one of those positions.

No member of the staff of the Ombudsman's Office is a member of a significant statutory body by virtue of any association with this Office.

Committees

There are four main committees within the Office.

1. The Equal Employment Opportunity Committee

   This Committee was established in April 1985 to prepare the Office Equal Employment Opportunity Management Plan. The Committee comprises the Executive Officer (Equal Employment Opportunity Co-ordinator), the Personnel Officer and four elected staff representatives.

2. Restrictive Work Practices Committee

This Committee was established to identify restrictive work and management practices and to suggest changes to those practices aimed at cost savings in order to achieve the second tier increase in wages of up to 4%. Payment of the wage increase was conditional on the continuation of the Committee. The Committee comprises two representatives from management and two representatives of the Public Service Association.

3. The Ethnic Affairs Policy Statement (EAPS) Steering Committee

The Committee was formed to implement the Ethnic Affairs Policy Statement, to monitor and review the EAPS and to prepare the EAPS Annual Report. The Committee comprises the Executive Officer, Personnel Officer and two Investigation Officers with an interest in the needs of ethnic communities. The EAPS Committee has dealt with a number of issues during the year, including public awareness campaigns within various ethnic communities, production of multi-lingual pamphlets and staff training.

4. Occupational Health and Safety Committee

An Occupational Health and Safety Committee was established; it comprises two management representatives and four staff representatives elected by their peers. The Committee meets once a month and has so far addressed a number of issues, including first aid training and fire evacuation procedures. Each Committee member will attend an accredited training course in occupational health and safety.

LEGAL CHANGES

During the past year, significant amendments have been introduced or proposed to both the Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act.

The Ombudsman (Further Amendment) Act, assented to on 26 November 1987, repealed Section 10(2)(e) and Section 32(5) of the principal Act, and thereby removed restrictions on civilian investigation officers becoming involved in the reinvestigation of complaints of police misconduct under the Ombudsman Act.

On 31 March 1988 the Premier advised the Ombudsman of the following proposals by the government to strengthen the Office of the Ombudsman:

- the Office of the Ombudsman will be constituted as a statutory corporation, independent of the Public Service;

- the Ombudsman will be able to appoint his own staff, subject to the Office's budget, and will be empowered to hire staff on contract for periods not exceeding five years;

- the benefits of public servants temporarily seconded to the Ombudsman's Office will be preserved;

- the Ombudsman Act will be amended to include a similar provision to Section 26 of the South Australian Ombudsman Act and Section 35A of the Commonwealth Act to allow the Ombudsman to publish the findings of an investigation, if he considers it to be in the public interest to do so.

- the secrecy provisions of the Ombudsman Act will be amended to permit the Ombudsman to provide information requested by any committee of Parliament.

- the Office of the Ombudsman will be brought within the scope of the Freedom of Information legislation.

On 25 May 1988 the Minister for Police introduced the Police Regulation (Allegations of Misconduct) Amendment Bill 1988, into the Legislative Council. On 16 June 1988 the Council resolved to

refer the bill to a Select Committee for consideration and report. The Bill proposed major changes to the present police complaints system and to the right of the Ombudsman to independently oversight the investigation by New South Wales police of complaints about police misconduct.

Other legislation introduced by either the past or present government extends the functions and duties of the Office of the Ombudsman:

- The Telecommunications (Interception) New South Wales Act, assented to on 16 December 1987, but not yet proclaimed, requires the Ombudsman to inspect and to report to the Attorney-General on the records of the Police Department and of the State Drug Crime Commission relating to the interception of telephone calls, under warrant, by those authorities.

- On 2 June 1988 the Premier introduced the Freedom of Information Bill into the Legislative Assembly. The legislation not only provides that the Office of the Ombudsman is an 'agency' for the purposes of the Bill, but also provides for the Ombudsman to exercise an external review of refusals by other agencies to provide access to information or documents.

Details of some of the amendments which have been introduced or proposed, and of their effects, are discussed later in this Report.

Proposals for legislative amendment

During the year the former Ombudsman made several submissions to Parliament for amendments to the Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act.

Among the most important recommendations made by the former Ombudsman were those contained in the special report to Parliament on the First Three Years of the New Police Complaints System (4 August 1987); these were recommendations for:

- Amendment of the Police Regulation (Allegations of Misconduct) Act and the Ombudsman Act to allow the Ombudsman to send the results of reinvestigations of complaints against police to the Director of Public Prosecutions or Solicitor for Public Prosecutions. This amendment would recognise the Director of Public Prosecutions and the Solicitor for Public Prosecutions as the appropriate bodies to provide legal advice on possible criminal and disciplinary proceedings. A similar provision exists in the United Kingdom under the Police and Criminal Evidence Act.

- Amendment of section 10(2) (a) of the Ombudsman Act to enable the Ombudsman to delegate to an Assistant Ombudsman the power to make reports under section 26 of the Ombudsman Act and sections 27 and 28 of the Police Regulation (Allegations of Misconduct) Act; and to enable the Ombudsman to delegate to any special officer the power to make progress reports under section 29 and 31 of the respective Acts. At present, Assistant Ombudsmen reinvestigate complaints against police, yet do not have the power to report their conclusions. The reports must be made by the Ombudsman or by the Deputy Ombudsman.

Other amendments previously sought by the former Ombudsman include:

- Amendment to section 25A of the Police Regulation (Allegations of Misconduct) Act to enable the Ombudsman, as a matter of discretion, to take no further action on a complaint where the conduct the subject of the complaint has been considered by the Police Tribunal or by a court.

- Amendment of item 12(b) of Schedule 1 of the Ombudsman Act to make it clear that the conduct excluded from the Ombudsman's jurisdiction concerns only those complaints which involve what might be termed "industrial" or

"personnel" issues. This amendment aims to close a "loophole" relating to the words "matters affecting a person as an officer or an employee" in item 12(b).

- Amendment of the Ombudsman Act so as to grant public authorities the power to make ex gratia payments recommended by the Ombudsman.

- Amendment of sections 30 and 31 of the Ombudsman Act and section 32 of the Police Regulation (Allegations of Misconduct) Act to allow delivery of all reports to Parliament directly to the Speaker of Parliament for tabling and not to the Premier or Minister for Police.

- Appointment of Ombudsman, Deputy Ombudsman and Assistant Ombudsman by a Parliamentary Committee, instead of by Cabinet on the advice of a selection committee.

PROMOTION AND PUBLICITY

Community Awareness Programme

The new Ombudsman has adopted and has expanded the policy developed by his predecessor of keeping in touch with citizens through a campaign of public awareness visits to centres throughout New South Wales.

The Ombudsman believes that it is essential for the success of his Office that members of the public be kept aware of his availability to investigate in cases where they are having difficulty with government bodies. Public awareness visits not only serve a public relations function, but they allow people the opportunity of discussing their complaints with Ombudsman investigators. Ombudsman investigators are able to advise complainants about the most appropriate way of dealing with public authorities, and complaints are often resolved at this stage. Sometimes, Ombudsman officers are able to clear up problems by taking action on the spot.

Another very important function of these visits is to keep public authorities themselves aware of the Ombudsman's jurisdiction and to promote liaison between the Ombudsman's Office and public authorities. Local councils, for example, often overreact to the Ombudsman's preliminary enquiries by providing excessively full and detailed information. They then complain that the Ombudsman wastes their time. First-hand liaison allows Ombudsman investigators to prevent such misunderstandings.

The Ombudsman believes that some of the misunderstanding between his Office and the Police Force could be overcome by better communication of his functions and procedures to members of the Force. He intends to take the opportunity provided by public awareness visits to consult with local police and arrangements have been made for him to visit four metropolitan police areas and speak to police officers there. The first of these visits took place on 6 September 1988.

During 1987-88 Ombudsman officers visited sixteen country centres. They were:

Bathurst	16 July 1987 and 26 May 1988	
Tamworth	22 July 1987 and 4 March 1988	
Armidale	24 July 1987 and 3 February 1988	
Broken Hill	20 August 1987	(The former Ombudsman took part in this visit)
Moruya	9 March 1988	
Merimbula	10 March 1988	
Albury	16 March 1988	
Wagga	17 March 1988	
Coffs Harbour	21 March 1988	
Grafton	22 March 1988	
Lismore	24 March 1988	
Taree	23 May 1988	{The Ombudsman took part
Port Macquarie	24 May 1988	{in these visits
Inverell	25 May 1988	
Moree	26 May 1988	
Cooma	23 June 1988	

As well as conducting a number of interviews with community groups, local public authorities and the media, officers of the Ombudsman interviewed 412 members of the public on these visits.

The Ombudsman is particularly concerned to ensure that the cities of Wollongong and Newcastle are adequately served by his Office. At the beginning of the financial year, the Office was experimenting with the frequency of visits required to these centres. Initially, Wollongong was being visited monthly and Newcastle fortnightly. Experience showed that the demand at those centres justified monthly visits to Newcastle and two-monthly visits to Wollongong. The visits are advertised well in advance in the local press. The local media has shown continued interest in the Ombudsman's presence in the areas. Wollongong was visited six times during the year and an average of twenty complainants were interviewed on each visit, whereas Newcastle was visited sixteen times and an average of sixteen complainants were interviewed on each occasion.

In May 1988 the Ombudsman had the opportunity, while on a country public awareness visit, to address a regional meeting of police officers at Port Macquarie. He also had a meeting with Executive Officers of the County Council in Taree.

Public speaking engagements

Since commencing duty in February 1988, the Ombudsman has attended a number of public engagements where he has spoken on the powers and duties of the Ombudsman. The purpose of such engagements is to educate the public on how the Ombudsman's Office can be used by them, if and when the need arises.

Addresses were given at the Muswellbrook Rotary Club, Australian Chinese Association and the B'nai Brith Lodge. On public awareness visits to Port Macquarie and Taree, a number of radio talk-back programs and interviews were carried out on-air to further inform people in the listening area of the functions of the Ombudsman's Office.

The Ombudsman addressed the annual conference of the New South Wales Shires Association in June 1988. After explaining his powers and duties, the Ombudsman answered questions from Association members. The Ombudsman found this exchange valuable because it enabled him to gain an insight into the issues and problems confronting shire officers in dealing with the Ombudsman's Office.

"The Investigator"

In previous Annual Reports the Ombudsman talked about the Office newsletter, "The Investigator". This publication was received with appreciation and approval by libraries, schools, colleges, public authorities, legal institutions and a host of other bodies, including overseas investigatory agencies. An edition published in July 1987 received favourable comment in the Sydney Morning Herald.

Although the publication was intended to be six monthly, it suffered difficulties common to most in-house publications, particularly because the Investigation Officers who produced it also had to manage a heavy case-load of investigations. Publication was suspended during the uncertain period between Mr Masterman's resignation and the appointment of a new Ombudsman.

The present Ombudsman believes that his scarce resources for public relations matters might be better employed in other public relations strategies, such as expanded public awareness visits to country centres, and he is reviewing the question of whether "The Investigator" should continue to be published.

Closure of Westmead office

In the 1986-87 Annual Report the former Ombudsman announced the trial opening of a branch office at the Westmead Shopping Centre. On 6 July 1987 the then Minister for Health, the Hon Peter Anderson MP, with an audience of local community representatives, officially opened the Westmead Office. Considerable publicity was willingly given by local media, so that the branch office would have the best chance of success in attracting the attention of those people who might best benefit from its existence.

The Office was initially staffed on a roster system by a Receptionist/Typist and an Investigation/Interviewing officer. More permanent staffing was contemplated if public demand justified it. Unfortunately, public response was not as good as had been hoped; during the months July to October 1987, only 119 telephone calls and 85 interviews were handled. The Ombudsman had leased the office for six months, with a three year option. At the expiry of the six month period, the then Acting Ombudsman, Dr Brian Jinks, decided to close the office. The Westmead branch office closed on 13 November 1987.

GENERAL AREA

Telecommunications interception; new inspection function for Ombudsman

At about 2 pm on 19 November 1987 the Ombudsman's Principal Investigation Officer was contacted by an officer of the Public Service Board. The Board's officer asked whether there would be any staffing implications for the Office of the Ombudsman as a result of the Ombudsman's new functions under the Telecommunications (Interception)(New South Wales) Bill. In this way, the Ombudsman was made aware that a wholly new function had been imposed on him; a function imposed without either consultation or advice by the government, and one which might be described as not related to the traditional work of an Ombudsman.

In his April 1986 report of the Royal Commission into Alleged Telephone Interceptions, Mr Justice Stewart recommended that the Commonwealth Telecommunications (Interception) Act be amended to extend the power to conduct interceptions of telephone conversations to police forces of the States and Territories and to the National Crime Authority.

In 1987 the Commonwealth government introduced the Telecommunications (Interception) Amendment Act. The Act provided for a scheme whereby the Commonwealth could confer the power to intercept telephone conversations on certain State

authorities. The scheme requires a State to pass complementary legislation to deal with a significant range of matters before the Commonwealth Attorney General can declare an "eligible authority" of the State to be an agency for the purposes of the Commonwealth Act. In particular, the Attorney General must be satisfied that the relevant law of the State makes satisfactory provision:

- requiring regular inspections of the eligible authority's records, for the purpose of ascertaining the extent of compliance by the officers of the eligible authority with certain requirements imposed by the Commonwealth Act, to be made by an authority of that State that is independent of the eligible authority and on which sufficient powers have been conferred to enable the independent authority to "make a proper inspection of those records for that purpose";

- requiring the independent inspection authority to report in writing to the responsible Minister about the results of its inspections of an eligible authority's interception records;

- empowering the independent inspection authority to include in its report on an inspection a report on any contravention of the law relating to telecommunications interceptions by an officer of the eligible authority.

The required complementary legislation, the Telecommunications (Interception)(New South Wales) Act 1987, was assented to on 16 December 1987. The Ombudsman was declared to be the independent inspection authority for New South Wales. The Act is yet to be proclaimed.

The combined effect of both the State and Commonwealth Acts is to make the New South Wales Police Force and the New South Wales State Drug Crime Commission eligible authorities and enable them to be declared agencies for the purposes of the Commonwealth Act.

The New South Wales Act imposes stringent obligations on eligible authorities as well as on their chief officers, namely the Commissioner of Police and the Chairman of the State Drug Crime Commission. Eligible authorities are required to keep detailed records relating to the exercise of their powers, to report regularly to the New South Wales Attorney General and to destroy certain records when they are no longer required.

Sections 9, 10, 11 and 12 of the Act confer the following functions, duties and powers on the Ombudsman:

> s.9. The Ombudsman may-
>
> (a) inspect an eligible authority's records in order to ascertain the extent of compliance by the authority's officers with Part 2;
>
> (b) report to the Minister about the results of those inspections; and,
>
> (c) do anything incidental or conducive to the performance of any of the preceding functions.
>
> s.10.(1) The Ombudsman shall inspect the records of each eligible authority -
>
> (a) ...
>
> (b) at least twice during each financial year beginning on or after 1 July 1988
>
> in order to ascertain the extent to which the authority's officers have complied with Part 2 since that commencement, or since the last inspection under this Part of the authority's records, as the case requires.
>
> (2) The Ombudsman may at any time inspect an authority's records in order to ascertain the extent to which the authority's officers have complied during any period with Part 2.
>
> s.11.(1)The Ombudsman shall, as soon as practicable, and in any event within 3 months after the end of each financial year, report to the Minister in writing, in relation to each eligible authority, about the results of the inspections under section 10(1), during that financial year, of the authority's records.
>
> (2) The Ombudsman may report to the Minister in writing at any time about the results of an inspection under this Part and shall do so if so requested by the Minister.

(3) The Ombudsman shall give a copy of a report under subsection (1) or (2) to the chief officer of the eligible authority to which the report relates.

s.12. Where, as a result of an inspection under this Part of the records of an eligible authority, the Ombudsman is of the opinion that an officer of the authority has contravened-

(a) a provision of the Commonwealth Act; or

(b) a requirement referred to in section 6(a) or (b) [of this Act] the Ombudsman may include in his or her report on the inspection a report on the contravention.

Sections 13, 14 and 15 of the Act give the Ombudsman extensive powers to enter premises of an eligible authority, to obtain access to records held by an eligible authority and to require officers of an eligible authority to disclose information.

The Act also contains important restrictions, however. Section 19 of the Act provides that section 35B of the Ombudsman Act does not apply in relation to the exercise or proposed exercise of a function of an inspecting officer; and further provides that anything that an inspecting officer has done or omitted to do shall not be included in a report or special report under sections 30 or 31 of the Ombudsman Act. Section 35B of the Ombudsman Act enables the Ombudsman or any interested party to apply to the Supreme Court for a determination of any question which arises as to the jurisdiction of the Ombudsman to conduct an investigation or proposed investigation. Section 30 of the Ombudsman Act refers to the Ombudsman's Annual Report, and section 31 refers to a Special Report of the Ombudsman to Parliament.

Section 19 of the Telecommunications (Interception) (New South Wales) Act, therefore, strictly separates the Ombudsman's functions under that Act from his functions under the Ombudsman Act. Indeed, the functions conferred on the Ombudsman by the new legislation are wholly different from his traditional functions. The new functions are essentially of an auditing and reporting nature, and the resulting Ombudsman's reports are directed not to Parliament, but to the New South Wales Attorney General. In turn, the Attorney General is required by Section 20 of the Act

to furnish the Commonwealth Attorney General with a copy of the Ombudsman's report "as soon as practicable".

The Ombudsman has established a Telecommunications Interception Inspection Unit and has commenced recruitment action to staff the Unit. Staffing needs are to be reviewed after one year. Because of the nature of the functions imposed by the Act, the Unit will need to be highly secure and for this reason, as well as considerations of space, the Unit will be accommodated at separate premises, at least for the time-being.

Extensive consultation has occurred between the Office of the Ombudsman and the New South Wales Police Force and the State Drug Crime Commission about the operational procedures of the eligible authorities and the proposed inspection procedures of the Ombudsman.

Secrecy - amendments promised

Sections 17 and 34 of the Ombudsman Act provide:

> s17 An investigation under this Act shall be made in the absence of the public.
>
> s34 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 -
>
> (i) with the consent of that person; or
> (ii) for the purpose of proceedings (including an inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act, 1978) with respect to the discipline of the Police Force before the Commissioner of Police, the Police Tribunal of New South Wales or the Government and Related Employees Appeal Tribunal;
>
> (c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or Part IV of the Special Commissions of Inquiry Act, 1983; or

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

Penalty: One thousand dollars.

These sections have come to be described as "the secrecy provisions" of the Ombudsman Act. In every Annual Report since the report for 1981-82, and in three special reports to Parliament as well, this Office has recommended that the secrecy provisions be amended.

The Ombudsman has long argued that the secrecy provisions:

- handicap effective investigation and reporting;

- deny citizens, public authorities and, even, parliamentary committees access to information which it would be in the public interest to provide to them;

- render the Ombudsman unable, short of making a special report to Parliament, to correct misleading and inaccurate media reports about his investigations.

Examples of absurd results produced by the need to comply with the secrecy provisions are set out in previous Annual Reports.

In the past, the Ombudsman's persistent, cogent and persuasive arguments for amendment of the Ombudsman Act appeared to fall on deaf ears. On 31 March 1988, however, the Premier, the Honourable N F Greiner MP, advised the Ombudsman of several reforms relating to the Ombudsman's responsibilities which the government proposed to introduce. So far as the secrecy provisions were concerned, the Premier said:

> The New South Wales Ombudsman Act will be amended to include a similar provision to S.26 of the South Australian Act and S.35A of the Commonwealth Act which allows the Ombudsman to publish the findings of an investigation if he considers it to be in the public interest.

Section 26 of the South Australian Ombudsman Act provides:

> Without limiting the generality of the powers elsewhere conferred, 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 (with) by him otherwise under the Act.

Section 35A of the Commonwealth Ombudsman Act provides:

> 35A (1) Nothing in this Act shall be taken to preclude the Ombudsman from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the Ombudsman under this Act if, in the opinion of the Ombudsman, it is in the interests of any Department, prescribed authority or person, or is otherwise in the public interest, so to disclose that information or to make that statement.
>
> (2) The Ombudsman shall not disclose information or make a statement under sub-section (1) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report under this Act.
>
> (3) The Ombudsman shall not, in disclosing information or making a statement under sub-section (1) with respect to a particular investigation -
>
> (a) set out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless the Ombudsman has complied with sub-section 8(5) in relation to the investigation; or
>
> (b) disclose the name of a complainant or any other matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.

The Ombudsman welcomes this long overdue reform; and he hopes that it will be implemented as soon as possible, because, even in very recent times, the secrecy provisions have continued to bedevil the Office. In June 1988 the Ombudsman was forced to make a report to Parliament in which he set out details of complaints against police which had been determined between 1 July 1987 and 31 May 1988, and which had been fully investigated. In the report, the Ombudsman said:

> The purpose of presenting this report to Parliament is to allow the Select Committee of the Legislative Council on the Police Regulation (Allegations of Misconduct) Amendment Bill to have access to the information.
>
> Section 34 of the Ombudsman Act prevents the Ombudsman from providing this material directly to the Committee.

In August 1988 the Ombudsman was again forced to make a report to Parliament in order to correct misleading and inaccurate statements in an article which had appeared on the front page of the "Illawarra Mercury" newspaper. The article was headlined "Ombudsman Probes Hatton Smash" and claimed, amongst other things, that the Ombudsman was investigating the Member for South Coast, Mr J Hatton MP, "over allegations concerning a car accident almost 18 months ago". In the report, the Ombudsman said:

> The article and headline are misleading and the article itself contains several serious inaccuracies.
>
> The statement that Mr Hatton is being investigated by the Ombudsman is the most serious inaccuracy. The statement is not true. Mr Hatton's conduct is not the subject of investigation. Indeed, the conduct of a member of Parliament is excluded from the jurisdiction of the Ombudsman. The article is misleading because it implies that the complaint concerns Mr Hatton's denial of liability for the accident.
>
> The Ombudsman is conducting a reinvestigation, under the Ombudsman Act, of a complaint that a police officer showed bias and failed to properly investigate a motor vehicle collision involving the complainant and Mr Hatton. Mr Hatton has given evidence to the Ombudsman concerning the circumstances of the accident.

He concluded:

> The Ombudsman makes this report to Parliament because the secrecy provisions of the Ombudsman Act prevent him from making any direct public comment about such inaccurate and misleading media statements. The correction of such misleading media statements is in the public interest.

Reports to Ministers and to Parliament

Report to Ministers

During the year the following reports of wrong conduct have been made to Ministers:

Ombudsman Act

Departments and authorities	25
Local councils	15
Total	40

Police Regulation (Allegations of Misconduct) Act

Without reinvestigation	42
Following reinvestigation	23
Total	65

Draft reports are presented to the Minister responsible for a particular authority, and the Ombudsman asks whether the Minister wishes to consult with him before he makes the reports final. Some fruitful discussions have taken place with Ministers about possible improvements to procedures in departments.

As at 30 June 1988 there were 31 draft reports with Ministers, and the Ombudsman was awaiting advice whether the relevant Minister wished to consult with him, as follows:

Ombudsman Act

Departments and authorities	11
Local councils	5
Total	16

Police Regulation (Allegations of Misconduct) Act

Without reinvestigation	14
Following reinvestigation	1
Total	15

Reports to Parliament

The Ombudsman is able to present reports to Parliament, apart from the Annual Report. They are special reports under section 31 of the Ombudsman Act and section 32 of the Police Regulation (Allegations of Misconduct) Act, and "non-compliance" reports under section 27 of the Ombudsman Act.

During the year two special reports under section 31 of the Ombudsman Act were presented to Parliament. There were four reports under section 27 of the Ombudsman Act where recommendations made by the Office were not carried out by the relevant non-police public authority.

Two reports were made under section 32 of the Police Regulation (Allegations of Misconduct) Act, and nine reports on police issues were made under section 31 of the Ombudsman Act and section 32 of the Police Regulation (Allegations of Misconduct) Act.

Special reports under section 31 of the Ombudsman Act

- Need to amend the Ombudsman Act to limit the application of the words "matters affecting a person as an officer or employee" contained in item 12(b) of Schedule 1 of the Act.
- Need to ensure the independence of the New South Wales Office of the Ombudsman from restrictions of the Public Service Act, 1979 and to increase its accountability to Parliament.

Non-compliance reports under section 27 of the Ombudsman Act

- Failure of Randwick Municipal Council to implement the Deputy Ombudsman's recommendations about the operation of a car wash.
- Refusal of the Commissioner for Motor Transport to comply with the Deputy Ombudsman's recommendations arising from an investigation concerning the registration by the Department of 52 stolen cars.
- Bellingen Shire Council's failure to implement the Acting Ombudsman's recommendations that Council resolve to waive collection of outstanding rates levied against the complainant.
- The failure of the Council of the City of Lake Macquarie to implement the Acting Ombudsman's recommendations about the unreasonable levy of rates.

Special reports under section 31 of the Ombudsman Act and section 32 of the Police Regulation (Allegations of Misconduct) Act

- The first three years of the new police complaints system.
- Failure of the Commissioner of Police to respond to a report made by the Ombudsman following the investigation of a complaint made by Mr E Azzopardi about the conduct of police.
- Refusal and failure of the Commissioner of Police to implement recommendations made by the Ombudsman in a report on an investigation of a complaint made by Dr A Refshauge, MP, about police conduct during the "Redfern Riots" of 2 and 3 November 1983.
- Failure of the Police Department to comply with the Ombudsman's recommendations made in a report relating to the escorting of persons by police officers across state and territory borders.
- Refusal and failure of the Commissioner of Police to implement recommendations made by the Ombudsman in a report on an investigation of a complaint relating to the complainant's arrest and an alleged police "verbal".
- Failure of the Police Department to implement the Ombudsman's recommendations arising from the investigation of a complaint relating to a police raid on premises known as "Club 80".
- Proceedings conducted before the Police Tribunal arising from investigations conducted by the Ombudsman.

- The Acting Ombudsman's decision to consent to the discontinuation of an investigation of complaints concerning the conduct of Assistant Commissioner R C Shepherd of the New South Wales Police Force.
- On proposals to amend the Police Regulation (Allegations of Misconduct) Act.

Special reports under section 32 of the Police Regulation (Allegations of Misconduct) Act

- Failure of Police Department to comply with the Ombudsman's recommendations that a policer officer be placed before the Police Tribunal on a charge of neglect of duty.
- Complaints of police misconduct, determined between 1 July 1987 and 31 May 1988, that were the subject of investigation under Part IV of the Police Regulation (Allegations of Misconduct) Act.

Disclosure of information to complainants

Investigation Officers often make preliminary enquiries before deciding whether a complaint should be investigated. Enquiries can usually be made by phone, but sometimes it is necessary to make them by letter. When the public authority's reply is received, it is usually sent to the complainant for comment before a decision is made about investigation under the Ombudsman Act. Although departments are not obliged to answer preliminary enquiries from the Ombudsman, most realise that it is desirable to provide information so that an assessment can be made about a complaint, often obviating a formal investigation.

In some cases, public authorities have asked that the information supplied to the Ombudsman not be forwarded to the complainant. This has occurred most often with prisoners' complaints, where the Department of Corrective Services has claimed that its conduct was based on sensitive security information which would have serious consequences if released to prisoners.

In one recent case the Chairman of the Corrective Services Commission declined to provide written information at the preliminary enquiry stage, despite the Ombudsman's assurances

that material supplied by the Department would not be released by any of his officers without consultation with the Chairman.

On 27 April 1988 the Ombudsman wrote to the Chairman and explained that, whilst he could not guarantee that any "caveat" claimed by a department would always automatically be observed, careful attention, nevertheless, would be paid to it. Where the Investigation Officer believed that the information should be given to the complainant, the matter would be referred to an Assistant Ombudsman or to the Principal Investigation Officer. If they agreed with the Investigation Officer's opinion, the matter would then be referred to the Ombudsman, and he would discuss the matter with the departmental Head. The Ombudsman noted that the former Ombudsman had told the Department of Corrective Services that it should alert this Office to any material which it believed should not be published. The Department, to his knowledge, had not taken up the invitation. Other departments, notably the Department of Family and Community Services, have often indicated their view that material should not be released to a complainant, and almost invariably the department's wishes have been agreed to.

The Ombudsman understands that consideration is being given to a legislative change to enable the Department of Corrective Services to resist attempts by this Office to obtain information about sensitive matters. Any change which restricts the Ombudsman's access to departmental files, beyond that already provided for in the Ombudsman Act, may have serious implications for the concept of accountability of public authorities, and for the independence of the Ombudsman.

No bills: reasons to be given

The desirability of giving reasons when making "no bill" decisions has been discussed in the last three Annual Reports of the Ombudsman.

A sometimes heated public debate followed the former Ombudsman's suggestion (1984-85 Annual Report) that reasons be given to the investigating police when a "no bill" is filed. This debate took

the matter much further and it was suggested by many, including the New South Wales Law Reform Commission, that reasons be given for "no bill" decisions, except where disclosure would be contrary to the public interest.

During the year, the New South Wales Director of Public Prosecutions, Mr R Blanch QC, announced that his Office would provide reasons for "no bill" decisions in all cases except those where the public interest demanded that the reasons be kept secret.

The Ombudsman applauds the decision of the Director of Public Prosecutions. Giving reasons should help to end the rumours and suspicion created by the secrecy surrounding the former procedure.

Excessive delays by public authorities in replying to preliminary enquiries (or, how best to ensure that the Ombudsman takes up a complaint)

Many complaints received by this Office contain insufficient information to enable a determination to be made about whether an investigation should be commenced. Consequently, Investigation Officers often require further information from complainants and make preliminary enquiries with a public authority to obtain the authority's comments on a complaint. A significant number of complaints are satisfactorily resolved at this preliminary enquiry stage.

The utility of making preliminary enquiries depends on the willingness of the public authority to co-operate and provide its comments within a reasonable time. Some public authorities appear to believe, erroneously, that, if they delay for long enough, the complaint will disappear, and so will the Ombudsman.

An example of excessive delay was described in the 1986-87 Annual Report. In May 1986 Mr H complained to this Office about the NSW Department of Industrial Relations and Employment. Over the next five months, this Office attempted to obtain information from the Department, without success. Consequently, in October 1986 the Ombudsman decided to hold a section 19 inquiry and to require the

then departmental Head, Mr J Wansbrough, to appear and give evidence.

Another case of excessive delay occurred during the year. In November 1987 Ms C complained about the failure of the Department of Housing to adequately maintain the building in which she lived. On the face of it, the complaint was simply about the Department's alleged failure to repair an open drain, install a TV antenna and fit weather shields to the doors and windows of the recently completed building. During November, the Public Tenants Appeal Panel, which had also received complaints about the same building, was contacted by telephone in an attempt to quickly resolve the matter. The Investigation Officer dealing with the complaint was advised by the Panel to discuss the complaint with the Housing Department's Regional Manager. The Regional Manager said that there was nothing he could do about the complaint, because the builder had been declared bankrupt. He suggested that the Investigation Officer might wish to contact a firm of private architects to discuss the structural problems with the building. Instead, the Investigation Officer, on 9 December 1987, sought the comments of the Director of the Department of Housing.

On 12 January 1988, when no reply had been received, the Investigation Officer rang the Director's Office; she was told that her letter had not been received. Consequently, a copy of the letter of enquiry and of the complaint were faxed to the Director's office. On 15 February, 21 March and 7 April 1988 the Investigation Officer contacted the Department in attempts to gain a reply. She was informed, respectively, on these occasions that:

- the file was at the Milsons Point Office for further comments and the reply would be delayed due to the imminent state elections.

- the reply would be ready in two weeks.

- the file was with the Works Superintendent for his/her comment on remedial work necessary to satisfy the complaint.

On 19 April 1988, when the reply still had not been received, the Principal Investigation Officer wrote to the then Acting Director requesting his urgent attention, and advising him that, if a reply was not received within two weeks, an investigation in terms of the Ombudsman Act would have to be commenced.

The Department's two-page reply was finally received on 3 May, almost six months after the complaint had been first raised with officers of the Department. Unfortunately, the Department's reply raised more questions than it answered. As well, because of the inordinate delay between receipt of the complaint and receipt of the Department's comments, during which time the Investigation Officer had twice inspected the building, other residents, who wished to add their name to the complaint, had also approached this Office.

On 27 June 1988 the Department was informed that the Office had commenced an investigation into its conduct. The conduct the subject of investigation now included the allegation that the Department had failed to adequately inspect the building prior to its purchase.

<u>Hints for public authorities: excuses that this Office hears too often to be acceptable</u>

- the file is lost.
- the office is being re-organised and the file can't be located (a subtle variation of "the file is lost").
- your letter wasn't received.
- your letter was placed on the wrong file.
- your letter wasn't referred to me (the person who is allegedly dealing with the matter) for attention.
- the reply is ready but unfortunately the (Mayor/Director/etc) is unavailable to sign it until next week.

- the complainant is a pain in the neck and we don't bother replying to him/her.

- the questions asked are too complex to prepare a reply within the time; sorry, I didn't think I needed to advise you of the delay in replying.

Lost revenue from non-payment of parking fines

In the year ended 30 June 1987, 43541 parking infringement notices were issued to government vehicles. The value of these infringements was $1,266,607. Of these infringement notices, approximately 1000 (or 2.3%) had been paid, and a further 1500 (3.4%) had been removed from the system by the normal review process. Approximately 41041 infringement notices, valued at $1,193,882, had not been paid or otherwise acquitted, and had not been enforced.

The present system of enforcement of trafffic and parking infringement notices is automatic in nature. If the notice is not paid within a specified time, a courtesy letter is issued; if payment is still not made, enforcement automatically proceeds. The system is soon to be changed again to provide for automatic cancellation of drivers' licences and vehicle registrations if fines are not paid.

When parking infringement notices are issued to government vehicles, however, the system operates differently. If a fine has not been paid after five weeks and the Department of Motor Transport records show that the vehicle is government owned, a courtesy letter is not sent and the Department's computer system automatically temporarily "suspends" the infringements from automatic enforcement techniques. The infringement notices are then manually removed from the system by Traffic Branch personnel. The direct cost of issuing and processing infringements, including the cost of terminating enforcements on the infringements outstanding, was estimated in 1986-87 to be $329,170, or $7.56 per infringement.

It has been the policy of the Police Department for many years to not enforce parking infringements in respect of parking offences committed by drivers of government vehicles, either State or Commonwealth. Accordingly, when fines have not been paid by the officer who committed the offence, courtesy letters are not sent to the departmental heads in whose department's names the vehicles are registered.

Although information was sought from the Police Department about the percentage of notices issued to State Government vehicles during 1986-87, and about the number of infringements issued to various State departments and statutory authorities during that period, the Department was unable to provide the information, because statistics of that nature had not been kept.

It is not known which departments or statutory authorities are the main offenders. Because courtesy letters are not sent to departmental heads, it is possible that they are unaware of the extent to which their officers are breaching the law when using departmental vehicles.

On 1 July 1988 parking fines were increased from $25 to $40. Unless some system of departmental and/or individual responsibility is introduced, the amount of lost revenue will significantly increase.

Drainage complaints still flood the Office

During the year, authorities complied with recommendations made in reports about two longstanding drainage complaints that have been discussed in previous Annual Reports.

The Department of Housing and Gosford City Council complied with recommendations made in a report on Mr B's complaint about the Department's Kariong subdivision. Mr B complained of flooding to his property after the construction of the Kariong estate. Although both authorities had agreed that there was a problem which needed rectification, each claimed that the other was responsible for the work that would have to be done.

The Ombudsman's final report found council's conduct wrong because it had failed to adequately consider the provision for downstream drainage in the Department's development application. The Department's conduct was also found to be wrong because it had failed to rectify defects in the design of the drainage system, despite having evidence which identified the defects.

In response to the Ombudsman's recommendations, council adjusted the contribution rate required under section 94 of the Environmental Planning and Assessment Act, to assist in funding the necessary drainage works. The downstream drainage system has been streamlined, with council and the Department sharing the cost of the work, and further remedial works are proposed by the Department. Mr B's home was also purchased by the Department. The council has advised the Ombudsman that, in future, when disputes arise over the requirements of section 90 of the Environmental Planning and Assessment Act, an appeal will be made directly to the Minister. All of the recommendations made in the Ombudsman's report have been complied with by the authorities.

A similar positive response has resulted from the report about flooding at Merewether. Newcastle City Council has acquired some properties which had been badly affected by flooding in recent years. Of more and far-reaching importance, however, are the steps being taken to delineate responsibility for drainage in the Newcastle area. The investigation by this Office focussed sharp attention on the lack of co-ordination and communication between the drainage authorities, council and the Hunter District Water Board. The Minister for Natural Resources has recently advised the Ombudsman that the Hunter Valley Conservation Trust will be taking a broader role in the management of the total catchment area, and that the Trust had taken a co-ordinating role in examining urban drainage problems in Newcastle. The Minister for the Environment, in a recent consultation with the Ombudsman, advised that Cabinet has considered the general issue of drainage in the Newcastle area and that the problem of co-ordinating responsibility for drainage was being addressed.

Although action on these matters has now been finalised, new complaints about drainage continue to pour into the Office. In

January 1988 a detailed complaint was received from a resident of Oxley Park. Mrs E complained that Penrith City Council had failed to adequately deal with flooding from Little Creek, Colyton. Severe flooding had occurred as a result of the storms in August 1986 and October 1987. Because of the complaints that had been received, council commissioned a report about drainage in the area. In March 1988 council resolved to adopt one of the reports' recommendations and has already taken steps to implement it. Enquiries by this Office are continuing.

Another complaint received during the year involved a property which had fallen into Prospect Creek. Ten metres of property had collapsed into the creek in 1986 and, in April 1988, a further 7 metres collapsed. The Office investigated claims that Fairfield City Council had caused the problem by allowing a stormwater drain to discharge immediately downstream from the property, causing excessive turbulence in a bend in the creek; by approving developments upstream, thereby increasing stormwater runoff into the creek; by approving the construction of a building at the rear of the property; and by not cleaning out the creek after the initial subsidence in 1986. Preliminary inquiries were made and council said that infill of the property by the developer was the main cause of instability. Although it acknowledged that approval had been given for the construction of the building at the rear of the property, council said that the building had not been constructed in accordance with its approval, and that load stress associated with an oven/chimney structure, which was not shown in the plans approved by council, could have contributed to the instability of the ground.

Council's Deputy Engineer reported that the slippage of the land in April 1988 was thought to have been caused by "down draw". The unstable ground had become highly water-charged during the storm. It was initially balanced or supported by the high water level in the flooded creek, but this fell rapidly. Because the water in the ground could not drain as quickly, wet soil flowed toward the creek at the base of the bank and this caused the top of the bank to slip. The slippage later extended along the creek bank, affecting a number of other properties in the same street as the complainant.

During the course of enquiries, council asked that the Government re-evaluate the criteria for the voluntary purchase of properties with high flood risk under a joint State - Local government scheme. The Minister for Public Works has advised the council that he can accept the eligibility of these residents to qualify for the scheme. Previously, the level of flood risk was decided purely on likely inundation following a flood, and council had no authority to expend funds to restore creek bank failures on private property, even if it wished to do so. The Minister, whilst not guaranteeing availability of funds in 1988-89, advised that he would be seeking additional funding for such works in the 1988-89 budget. Council, in the meantime, has decided to develop final designs and cost estimates for solutions to the bank failures in the creek.

Inadequate drainage in the west end of Griffith

In the early 1980s applications were made to the Water Resources Commission (now the Department of Water Resources) and Griffith Shire Council for consent to subdivide three former farms adjacent to a rural, open drainage channel owned by the Commission. In each case the Commission gave conditional consent and, after consent was given by the Griffith Shire Council, the lands were subdivided and residential houses were erected on the new allotments. On 31 December 1983, following the occupation of some of the houses, there was a severe storm in Griffith. The drainage channel proved to be inadequate to handle the stormwater generated and the area was flooded.

The Member for Murrumbidgee complained to the Ombudsman that houses should never have been built in the area because of the certainty of flooding; alternatively, subdivision approval should have been conditional on taking measures applicable for low lying areas where flooding was a hazard. An inferred complaint against both the Water Resources Commission and Griffith Shire Council was that their subdivision approvals should have been conditional on measures to provide adequate drainage for the area. The Member for Murrumbidgee alleged that the officers responsible for the approvals had been either dishonest or derelict in their duty.

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Griffith is the principal town in the Murrumbidgee Irrigation Area, where the first irrigation farms were made available in 1912, the year the town was named. Its development thereafter proceeded under the auspices of the Water Resources Commission. Drains formed an integral part of the overall irrigation system in the Griffith area. The land was broken up and supply channels were installed to deliver water to farms, and drains were provided to take the surplus away. Although most of the drains in the town and the surrounding area were built by the Water Resources Commission, local government came to Griffith in 1928, and the council has since taken over responsibility for some of the drains within the town boundary and has constructed some others. The area is unique, however, in that the council has no natural drainage courses into which it can discharge the town drainage. The town is completely surrounded by the irrigation area with its complex of supply and drainage channels that are the responsibility of the Department of Water Resources. The council is totally dependent on the drainage channels owned by the Department and into which it has been discharging the town drainage for years, without charge.

Over the years the Water Resources Commission accumulated a complex set of controls over land and water management in this and other irrigation areas and districts. Through various Acts, it was able to control the size and ownership of farms, the crops grown on particular farms and the volume of water available for use. The transfer of land in the area has, generally, also been subject to the consent of the Commission, as has subdivision of farms and change of land use. The Water Resources Commission, itself, has been a major developer of residential lots in the town of Griffith. Such development has generally only been permitted where it has been demonstrated that the land is of low agricultural value and that the creation of the additional lots meets community demands.

Development of land is also subject to controls administrated by the Griffith Shire Council under the Local Government Act and the Environmental Planning and Assessment Act. Consideration of drainage is a requirement under both Acts when applications for subdivision are determined.

The Ombudsman's investigation revealed that there was confusion in each public authority about its role and its responsibilities in relation to development at the rural-urban interface of Griffith. In a town which has no natural drainage and where, as a consequence, drainage considerations should figure high in the processing of development proposals, the curious position developed where the Commission regarded council as the expert on all matters related to urban drainage and adopted the position that it was not responsible for drainage requirements relating to subdivision. On the other hand, the council relied on the Water Resources Commission to give advice on drainage matters, because all town waters drained into Commission owned channels. It considered subdivision approvals by the Commission as indicative that the Commission considered drainage to be adequate. Evidence disclosed by the investigation suggested that both bodies had failed to properly exercise their statutory duties in granting approvals to the subdivisions the subject of the investigation.

At the time when the three subdivision applications came before the Commission for consideration, it was on notice that the existing capacity of the drain in the area was inadequate to cope with further residential development. The Shire Engineer had informed Commission representatives, several years earlier, that proposed development of the area required that the drains be enlarged. In 1981 the Commission had itself conducted an investigation into "D C Western", the main branch drain in the area of the proposed subdivisions, and had produced a report proposing enlargement works to cope with the development in its catchment. Yet, when it considered the subdivision applications, no consideration was given to the immediate impact that the subdivisions would have on the drains or to the necessity to provide for enlargement or other works as a condition of consent. This was despite the power the Commission had under the Crown Lands Consolidation Act to impose such terms and conditions as it deemed fit on subdivision approvals.

The drainage from the proposed subdivisions flowed into drains that were not owned or maintained by the council. Although it was not surprising that, in the circumstances, council took the

view that an approval by the Water Resources Commission meant that the Commission also considered the drainage to be adequate, the council was not relieved of its statutory responsibilities under the Local Government Act and the Environmental Planning and Assessment Act to properly consider drainage issues when dealing with the subdivision applications. On the admission of council's Chief Health and Building Surveyor, the requirements of the Environmental Planning and Assessment Act had not even been considered when the applications were approved.

Although the investigation found no evidence of any impropriety on the part of any council member or officer in relation to the processing of the subdivision applications, the Ombudsman found that conditional consents had been issued with a degree of carelessness and inconsistency. For example, consent for one subdivision had been given without a proper costing for road construction being made; this resulted in council effectively subsidising the development.

On one subdivision six houses were built and occupied with council approval, before the subdivision works had been completed or separate titles for the allotments had been registered. Further breaches of the Local Government Act occurred when the subdivision applications were considered, because matters relating to drainage were not considered even though sections 313(1)(a) and (d) require it. A further approval by a council officer, for disposal of roof water to sullage pits, appeared to have been given without due consideration to the potential viability of such a means of disposal, given the low nature of the land, the general high water table in Griffith and the soil type.

Following the flood in December 1983, the residents continued to complain to both authorities about the potential hazard presented by the inadequate rural drain and its regular blockage by rubbish and vegetation. At the time, the drainage channel was the responsibility of the Water Resources Commission, although it was planning to transfer title to the drain to the council. Despite this, the Commission failed to maintain the drain and misled the residents by claiming that the drain was the council's

responsibility. The council, although aware that it would eventually become responsible for the drainage reserve, was not legally in a position to carry out works on land which it did not own.

At one stage council tried to force the developer to install a communal drain for one of the subdivisions as an alternative to disposing of roof waters to sullage pits. The developer defended council's demands on the basis that it had gained council's approval for all of its actions. In the end, the residents and the council, in equal proportions, met the cost of a new drain. The Ombudsman formed the view that council shold have met the full cost of this construction, because the need for it had arisen from an error on council's part.

In concluding his investigation the Ombudsman found that the Water Resources Commission had acted wrongly because it had failed to give proper consideration to subdivision applications; it had granted subdivision consent to three applications without requiring sufficient drainage contributions to cover the enlargement of the Commission's drainage works that the subdivisions necessitated, or without requiring the developers to carry out those works; and it had failed to take sufficient action to correct the drainage problems associated with the subdivisions. In relation to the Griffith Shire Council, the Ombudsman found that it, too, had failed to give proper consideration to the subdivision applications and that such conduct was contrary to law; that it had granted consents that were inconsistent and to the financial detriment of council and that such conduct was unreasonable and improperly discriminatory; and that it had, contrary to law, failed to give proper consideration to six building applications.

A complaint had also been made about the council's conduct in specifying on certificates, issued under section 149 of the Environmental Planning and Assessment Act, that certian land had been the subject of localised flooding. The Ombudsman found that council's conduct in this regard had not been wrong.

Amongst other things, the Ombudsman recommended that:

- the Department of Water Resources honour its undertaking to carry out the planed enlargement works of "D C Western" and that special funds be sought to meet the shortfall in the Department's capital works budget caused by those works;
- the Department utilise its powers under the Crown Lands Consolidation Act to require developers to meet the cost of specific works necessitated by subdivisions, such as the construction of branch drains and the replacement of undersized pipes or culverts;
- the Department set a realistic drainage contribution levy to meet the proportional cost of the general enlargement works made necessary by future subdivisions, or that it introduce some other, appropriate system to provide for augmentation works made necessary by those future subdivisons;
- the Department introduce a reasonable charge against Griffith Shire Council for accepting town drainage waters into its channels and that it complete its flood study of the Griffith area as a matter of priority.

In relation to the Griffith Shire Council, it was recommended that:

- it review its development control procedures;
- on receipt of the flood study currently being prepared by the Department of Water Resources, it take immediate action to complete appropriate drainage works near the subdivisons and repay to affected residents the contributions they made for the installation of the communal stormwater drain;
- it carry out other investigations concerning potential flood hazards in the area.

The Ombudsman's final report was released in early July 1988 and he is awaiting advice from the council about the steps it intends to take in consequence of the report. The Department of Water Resources, on 19 August 1988, informed the Ombudsman that:

- the enlargement of "DC Western" would commence shortly;
- a special Treasury allocation had been obtained and $300,000 would be spent this financial year on upgrading "DC Western";
- a policy for a drainage contribution levy was being developed and its provisions would be embodied in the Water Supply Authorities Act;

- a policy for a drainage maintenance charge to be levied against councils was being prepared for Griffith and Leeton; and
- the flood study of the Griffith area was scheduled for completion by the end of September 1988.

The Darling Harbour Authority - "We don't consult, we inform"

Ms T complained about the Authority's failure to inform or consult with residents about the development of a site opposite ten residences, including her own, in Murray Street, Pyrmont. The residents understood that the development opposite their houses would consist of a carpark in a form as publicly displayed on a model exhibited in 1984-85. That model showed the carpark roof top to be landscaped and level with Murray Street. Some eighteen months later, Ms T discovered by accident that this was not the case; sometime later still, Ms T discovered that the airspace above the carpark was to be developed and two hotels were to be constructed there. Ms T felt strongly that affected residents should have been informed and consulted about a development likely to have a major impact on their houses, their neighbourhood and their lifestyle.

The Darling Harbour Authority Act exempts the Authority from compliance with the provisions of most of the legislation which regulates planning in New South Wales. It is not legally required to notify affected persons of any of its proposals for development and, of course, is not required to seek or consider any objections to them.

In 1984-85 the Darling Harbour Authority put its draft development plan on public exhibition. Together with the plan, a draft development strategy, comprising a model of the development envisaged for the Darling Harbour Development Area, was put on public display and comment by the public was invited. That model showed what amounted to a roadside park in Murray Street with a carpark beneath it. The residents in Murray Street objected to the proposed location of the carpark.

At the end of June 1986 Ms T discovered by accident that, in fact, the carpark, by then under construction, was going to rise several levels above Murray Street. It was designed to provide 1800 parking spaces, making it the largest carpark in the southern hemisphere. In fact, in its final form, the carpark will provide 2000 spaces. The access points were all to be in Murray Street. The tender accepted by the Authority in March 1986 made no mention of a landscaped rooftop.

Towards the end of 1986, again by accident, the residents became aware that a hotel was planned on or near the carpark. Residents were invited to discuss the Authority's new "guidelines" for the development area adjoining Murray Street at a meeting on 4 December. On 8 December, a document entitled "Northern Development Design Guidelines" was released; that document foreshadowed the extension of the carpark to cover the whole of the northern development site (on four levels) and the availability of the airspace above the carpark for a hotel with 600 to 1000 rooms, with options for associated commercial development.

In October 1987, in a "briefing" session organised by the Authority, the residents were given details of <u>two</u> hotels to be built over the carpark. A 400 room hotel to be located directly opposite their houses was to be ten storeys high.

During the investigation by this Office, which included a hearing under section 19 of the Ombudsman Act, the Authority emphasised the fact that the Darling Harbour project was "on the fast track", and that the elements on the model orginally displayed to the public were "indicative only" and subject to change. The Authority strenuously maintained that the public had been made aware that the project was "on the fast track." However, this Office was unable to find any evidence that the basis on which the development of the Darling Harbour area was to occur had been in any way explained to the public.

The Authority did not start to communicate with the Murray Street residents, in the form of "briefings", until after Ms T had made considerable efforts to have the residents' grievances heard.

These "briefings", however, were merely to inform residents of design decisions already taken by the Authority. In fact, the Authority's Project Co-ordinator for the northern carpark gave evidence that briefings were commenced only as a result of representations by the residents.

The General Manager of the Authority emphasised, both in writing and in his oral evidence, that the Authority had no legal obligation to consult residents. He said:

> ... several of the complaints by [Ms T] relate to the fact that we didn't consult, that it was a consultancy problem that they had. We don't consult, we inform.

The Ombudsman was of the opinion that, even though the Authority was not obliged by law to enter into a consultative process with the public, it had, in fact, commenced such a process with the public exhibition of the draft development plan and strategy. It displayed a very explicit and detailed model of the Darling Harbour development, and asked the public for comments.

The Ombudsman took the view that, having commenced a process of public consultation at the beginning of a development which, by its very nature, was to change and evolve, the Authority had a very high duty to continue to inform and consult with the public generally, but particularly with those members of the public specifically affected by major changes to the strategy. The Ombudsman said that this duty was particularly onerous precisely because the Authority was given exemption from all legislation which provides for mandatory consultative procedures designed to protect the public interest.

The Ombudsman was also of the opinion that the Authority had not properly considered the environmental effects of the northern carpark when considering its size and traffic generation. Several traffic studies and traffic plans had been produced over the years. The 1984 "Darling Harbour Transport Plan", for which the Ministry of Transport was responsible, recommended that 3000 off-street carparking spaces be provided for Darling Harbour (1000 in the northern carpark). It said that

NO FURTHER PARKING SUPPLY SHOULD BE PROVIDED IN THE VICINITY OF DARLING HARBOUR unless additional road capacity is provided to accommodate the increased traffic generated by any additional parking supply (existing emphasis).

A subsequent report made in 1985 and commissioned by the Authority increased this figure to 5000 and yet another study in 1987 quoted a maximum of 8250 carparking spaces. All reports relied on road capacity to justify the number of spaces; however, no evidence was provided to this Office to show that any changes to the road capacity had been or were to be made to justify this large increase in off-street parking.

The 1987 study estimated that the daily traffic volume in Murray Street would increase from 600 cars pre-Darling Harbour to 12500 cars after completion of Darling Harbour. The Authority's General Manager, in his evidence to the Ombudsman's inquiry, said that, from a personal point of view, this increase was not a "terrible impact".

The Ombudsman found that the Darling Harbour Authority had:

- failed to make it clear to the public from the outset that the project was on the fast track and, in so doing, in effect had misled the public;
- by continuing to use promotional material which showed the carpark level with the road and with tennis courts on top, continued to mislead the public;
- failed to inform and consult with residents about major changes to the carpark/hotel development;
- failed to properly consider the environmental effect of the northern carpark;

and that such conduct was unreasonable, unjust and oppressive in terms of the Ombudsman Act.

The Ombudsman recommended that the Authority:

- consult with the owners of properties in Murray Street to ascertain whether any of them wished the Authority to resume their properties;
- compensate those owners who did not wish to sell their houses for the intrusion and adverse effect on their properties;

- provide resident parking in the northern carpark; and
- as a matter of policy, inform and consult with affected residents and property owners about any further changes to the development.

The Minister for Planning, the Hon. David Hay, requested a consultation with the Ombudsman about this matter. At the consultation, the Minister did not raise any objection to the findings and recommendations made by this Office. The Minister later wrote to the Ombudsman and said that he had instructed the Authority to devise a system of consultation with affected residents and property owners adjoining the Darling Harbour Development Area. He also said that he had asked the Authority to pursue the issue of residents' parking with the Sydney City Council.

With regard to the Ombudsman's recommendations relating to resumption and compensation, the Minister said that he had "... received advice that the potential for resumption or compensation by an ex-gratia payment is of concern to a number of public agencies due to the precedent it may establish".

The Ombudsman has made a report to Parliament about this matter.

Fish Marketing Authority

The Ombudsman's own motion investigation of alleged improper practices at the Fish Marketing Authority was concluded during the year; a final report was issued in April 1988.

The Ombudsman found that controls on employee purchases had been inadequate and that various commission rates had been improperly applied. The Ombudsman said that there had been a "total absence of meaningful controls which would prevent abuse or, indeed, fraud in respect of commission rates charged to suppliers".

In his report, the Ombudsman recommended that commission rates be authorised by statute, and that they be publicised and permanently displayed on the market floor. The Authority had

earlier responded to criticism of employee purchases of commercial quantities of fish by instituting measures to adequately control this, and had formulated appropriate policies for the application of the various rates of commission it charged.

A separate investigation, commenced in 1986, has resulted in the Ombudsman sending a draft report to the Minister. The draft report makes recommendations about fish being labelled with the date of its receipt, and about prompt notification to suppliers of unsold fish, to allow arrangements to be made for sale at a price less than the reserve price, or for other disposal.

The investigation followed a complaint of unfair seizure of fish by fisheries inspectors. It was found that seafood received on different days was kept together, with no labelling of date of receipt. Because of this, smaller amounts of fresher seafood were more likely to be rejected by buyers and to be seized by inspectors as unwholesome, especially when fish supplies were plentiful, because the fresher seafood was mixed with seafood that was less fresh.

Stolen Sigmas

This matter, briefly mentioned in the 1986-87 Annual Report, has been completed.

Between August 1985 and May 1987 this Office received sixteen complaints about the action of the Department of Motor Transport (DMT) in passing stolen cars for registration. All of the complainants had bought Sigma cars through newspaper advertisements. Some time after the purchase, their cars were seized by police because they had been identified as stolen. The complainants were all victims of the same car stealing racket, now known to have involved at least 52 cars. The thieves had modified the engine and chassis numbers and had defaced the compliance plate of each car. The cars were then presented to a variety of registry offices for registration, with the claim that they had come from another State. The DMT registered all of the 52 cars.

At the relevant time, there existed explicit instructions to motor vehicle inspectors and motor registry staff which outlined procedures designed to avoid the registration of stolen vehicles. In addition, a computerised "Engine Number File" and a "Stolen Chassis Number Record" was checked each time a car was presented for registration. The procedures in force at the time did not lead to the detection of the 52 stolen vehicles.

The DMT's enquiries in response to the stolen Sigmas incident centred narrowly on the question of whether, during a vehicle inspection, it would be reasonable to expect an inspector to suspect that certain engine and chassis numbers had been altered. An independent consultant engaged by the DMT and a separate Internal Audit investigation found that in five cases the changes to identification numbers should have been noticed during the vehicle inspection. The Internal Auditor's report also identified a number of procedural deficiencies which, the Internal Auditor said, "led to the re-registration of 52 stolen vehicles". Nevertheless, the DMT concluded that it had fulfilled its obligations in the manner in which the vehicles were accepted for registration. It denied liability to compensate any of the vehicle purchasers for any loss suffered by them.

In October 1979 Mr W J Lewer, SM presented his "Report of the Inquiry into the Department of Motor Transport" (the Lewer report) to the New South Wales Parliament. The report dealt, in part, with the DMT's registration procedures. Mr Lewer criticised a number of the registration procedures, including the computerised stolen vehicle index. He mentioned, in fact, the very method used by the thieves in the stolen Sigmas incident as an available avenue of potential abuse of the system. From the evidence gathered by his inquiry, Mr Lewer believed that it was possible to point to a number of areas relating to the registration of motor vehicles, where activity, or lack of it, amounted to neglect of duty.

The investigation by this Office discovered that the DMT had done nothing of any note in response to Mr Lewer's findings and recommendations, except to defend its registration system.

Since the stolen Sigmas incident, the DMT has commenced a review of its registration system and has made some changes.

At the relevant time, however, the DMT's registration system was deficient to the extent that, in none of the 52 instances where a stolen car was presented for registration, was the system capable of detecting the attempt to deceive the Department. This Office concluded that such deficiency was serious, particularly given the fact that the Lewer report had drawn attention to it some six years previously.

The DMT defended its past inaction by saying that its principal role is to check for roadworthiness, not for "good title". Nevertheless, it does check for authenticity and maintains an elaborate and presumably costly system to do so. Having assumed an identity checking function, the DMT should have carried out that function a great deal more carefully than it did, and to the highest possible standard. After all, there is no proof of ownership other than registration.

It is widely accepted that car theft is a major crime today. The statutory registration authority, in the view of this Office, has an onerous responsibility to ensure that the registration process is not open to abuse by car thieves.

The conduct of the DMT was found to be wrong in terms of the Ombudsman Act, in that it had failed, over many years, to address and rectify identified deficiencies in its registration system; and in that it had failed to properly consider the issue of compensation which had been raised by eighteen of the people who had purchased stolen vehicles.

This Office recommended:

* the appointment of a suitably qualified person with the responsibility of ensuring the integrity of the DMT's registration system on an ongoing basis, and that this person's role should include pro-active field and computer system reviews;

* that the 52 victims be compensated for their financial loss by the DMT because, given the circumstances, it was not reasonable to put the victims of the car stealing racket to the expense and inconvenience of having to seek compensation through the courts.

The DMT said, however, that it did not intend to take any action in consequence of the recommendations. As a result, the Ombudsman made a report to Parliament on 3 June 1988.

So far there has been no indication of a change of heart by the Department. This Office has now taken the matter as far as it can. Fortunately, it seems that the ABC's program "The Investigators" has taken up where this Office must leave off. On 12 July 1988 it aired the issue for the second time, and promised that the matter would be actively pursued.

STOP PRESS: It was reported in both the Daily Telegraph and the Sydney Morning Herald on 17 August 1988 that the victims of the car stealing racket would be compensated, and that new rules designed to prevent innocent people from buying stolen motor vehicles would be introduced from 1 October 1988. The Minister for Transport, Mr Baird, was reported in the Sydney Morning Herald as saying:

> This whole distasteful issue has become a bureaucratic nightmare and must be resolved quickly so the victims do not suffer any further.

Vehicles towed from clearways

In July 1986 the Department of Main Roads (DMR) introduced the Clearway Towing Service. When illegally parked vehicles are removed from clearways, they are not towed to a central location, but are usually put in the nearest side street.

Before the towing service commenced, the DMR considered the most effective way of notifying the owners of removed vehicles where their vehicles were. Because it was thought that vehicle owners, who found their vehicles missing from where they had parked them, would report them as stolen to the police, the best method of

notifying owners of the location of their vehicles would be through the police at the time the vehicles were reported stolen. The Police Department provided the DMR with a list of police stations to which details of the towed vehicles were to be reported, and the DMR developed a practice of notifying the closest of those police stations of the towed vehicle's registration number, colour, make and location.

Unfortunately, this system of notifying vehicle owners ran into several problems. This Office received complaints from people whose vehicles had been towed and who had reported them stolen to the police, but who were not advised where their vehicles were. People sometimes reported their vehicles stolen to a different police station than the one that the DMR had advised about the vehicle being towed.

Preliminary inquiries were conducted with both the Police Department and the DMR. The DMR advised that, in order to overcome the problems being experienced, a list of "towed vehicles" would be supplied, twice daily, to the Stolen Motor Vehicle Index. After lengthy enquiries with the Police Department, the Ombudsman was advised that new procedures had been implemented; upon receiving a report of a missing or stolen vehicle, police at all metropolitan stations are required to identify its last location. If the vehicle was last parked in a clearway, and if the DMR Emergency Centre is operating, police can contact the Centre and determine whether the vehicle, in fact, was towed and, if so, its location. Outside the operating times of the Centre, police are required to contact the Stolen Motor Vehicle Index.

These new procedures are a considerable improvement over those which operated when the scheme commenced. For this reason, this Office concluded its inquiries into the first complaints received about the scheme.

Problems can still arise, however. The Department of Main Roads is attempting to resolve with the Police Department problems drawn to its attention. This Office is currently conducting preliminary enquiries in relation to a complaint which arose after the new notification procedures had commenced.

Natural Justice: right to be heard

> English law recognises two principles of natural justice: that an adjudicator be disinterested and unbiased... and that the parties be given adequate notice and opportunity to be heard...(de Smith: Judicial Review of Administrative Action; p 134)

> One of the two fundamental requirements of the rules of natural justice is that a party whose rights, property, or legitimate expectations may be affected by an administrative adjudication has the right to be heard ... In the United States the concept of procedural due process, as guaranteed by the Fifth and Fourteenth Amendments of the Constitution, serves an analogous function... Both concepts aim at providing the party with an opportunity for a fair hearing prior to any agency determination that may affect him adversely. (Flick: Natural Justice - Principles and Practical Application; p 68)

During the year, the Office received a number of complaints which raised the issue of the "right to be heard". Details of complaints involving two very different areas of administration, but which raised the notion of a right to be heard, follow:

Department of Business and Consumer Affairs

The Department of Business and Consumer Affairs has the duty to alert the public when the activities of a trader or company cause concern. Publicly "naming" a trader, however, may have significant and deleterious impact on its business operations. For this reason, it is desirable that the trader be given an opportunity to put its case before any recommendation is made to the Minister that the trader be "named" in Parliament and be included in the Directory of Unfair Traders.

A firm of solicitors complained that their client trader had not been given an opportunity to comment before the Department recommended that the trader be "named", and that the Department had not told the trader about a "disproportionate number of complaints" which the Department claimed to have received.

The Department was asked to provide information about the complaints it had received. This disclosed that, before the trader was "named", numerous "reputation checks" had been handled by the Department's telephone section and, between June and November 1985, five written complaints had been received. Four of the complaints had been raised with the trader. In November, the Department issued a press release warning consumers generally about dealing with rental listing services. The trader was not named in the release and was not told that the release had been issued. Between November 1985 and April 1986, the Department received a further seven written complaints; only three of these were raised with the trader and in April the trader was "named" in Parliament.

The solicitors objected to the lack of prior notice and the Department arranged a meeting with the trader on 30 June 1986. On 10 July, almost 10 weeks after the trader had been "named", the Department gave it details of eighteen complaints that had been received.

In September, as a result of enquiries from this Office, the Department collected documentation from three of its officers who had dealt with the trader prior to it being "named". Subsequent interviews with these officers disclosed that none of them had informed the trader that it would be or was likely to be "named" if the volume of complaints or enquiries continued, that the Department did not approve of the manner in which the trader operated, or that the firm's procedures and advertising should be changed. Although the approaches made to the trader by relatively junior officers might have been sufficient to alert the trader to the fact that there were problems, they did not constitute a warning; nor were they sufficient to put the trader on notice that it would or could be "named" in Parliament.

The trader's solicitors pointed out that their client could hardly be expected to respond to the Department's concerns or modify its methods of operation when there had been no communication by the Department of its concern.

The Ombudsman's investigation revealed that very little documentation had existed prior to the firm being "named" in Parliament and the commencement of inquiries by this Office. For example, there was no documentation, such as a file note or memo, of the decision to recommend that the trader be "named"; this decision had been made, apparently, in management meetings. The senior officers involved could not recall precisely when these meetings had taken place, or what had been discussed.

The Department strongly criticised the investigation by this Office. It contended that there had been "continuous" contact with the trader by its officers about individual complaints and that, therefore, the trader had had an opportunity to comment. However, the investigation by this Office failed to locate any evidence to support the Department's contention.

The Department has recently advised that new complaints against the trader are being investigated, and that consideration is being given to further action regarding the firm's trading practices.

The Ombudsman has recommended that:

- guidelines be established to prevent a recurrence of a trader being "named" without being given an opportunity to put its case;
- in future, the Department record all relevant details about the decision to recommend "naming", together with details of attempts to inform the trader of the Department's concern regarding its trading practices;
- if no prior notice has been given, the reason for this omission be recorded; and
- where a media release is issued, the trader be given a copy.

Department of Family and Community Services

The Ombudsman has received a number of complaints about the way the Department of Family and Community Services treats child carers whose standard of care-giving is called into question. These cases are invariably complex and are always emotionally

charged. A typical situation may involve an allegation of child sexual assault which is notified to the Department. The carer is not usually the alleged perpetrator, but is providing day care for a number of children, one of whom is allegedly sexually abused by another child. Sometimes the alleged perpetrator is the child of the carer.

Child carers are usually registered with Family Day Care and are not licensed directly by the Department. The Department licenses the Family Day Care Centre, but also has a general supervisory role in approving the registration of child carers or in recommending that certain persons not be registered.

Because they are at home caring for children, most child carers do not have alternative or extra sources of income. A decision to suspend or revoke a carer's registration usually has a serious effect on the carer and her or his family. Those carers who have complained to this Office are almost all in a financial situation such that the income derived from child care is essential to meet house payments and to pay for other necessities.

The Department is responsible to the community for implementing the government's policies on child protection. Recent years have seen an enormous increase in public awareness of and revulsion for all forms of child abuse. As a consequence, there has been a significant increase in allegations of child abuse and sexual assault notified to the Department, and this has placed considerable pressure on senior officers and field staff to do, and to be seen to be doing, everything possible to deal with this social problem. In such circumstances, there is potential for decisions to be made too hastily and, even, unfairly; and unjustified damage to reputations and feelings can occur.

In some of the cases dealt with by this Office, officers of the Department appear to have treated child carers unfairly by failing to give them an adequate opportunity to answer allegations made against them or their children.

Where the decisions of administrators are likely to affect the rights or interests of citizens, those citizens are entitled to a

fair hearing and an opportunity to rebut allegations made against them. If it is necessary to act quickly, however, a decision may have to be made without waiting to hear both sides of the story. For example, where it appears that a child may be in danger, an officer of the Department of Family and Community Services is not only entitled to take steps to protect the child, but would be negligent not to do so.

The Department has already indicated to this Office that its procedures are being reviewed to ensure that its practices are fair as well as efficient. The Department recognises that there have been instances where its officers, acting in good faith, have nevertheless treated some child carers unreasonably. It is co-operating with this Office in reviewing the complaints.

The Court of Appeal in Ackroyd v Whitehouse (1985) 2 NSWLR 239 outlined the purposes served by procedural fairness:

> At the heart of this rule is not only individual fairness to those whose persons or property are affected. There are also two concerns of a more general character. The first is the presumption that those who are entrusted by the Parliament to perform powers established by law, will do so in a just manner because it will not normally be imputed to Parliament that it would authorise the exercise of power in any other way. Secondly, the law insists upon compliance with the rules of natural justice, because the alternative is generally bad administration. It is not only personally offensive and constitutionally objectionable. It is also, being unreasonable, often tainted by inadequate consideration of the matters that should be taken into account in reaching the relevant administrative decision...

Delay by the Health Department Complaints Unit

In January 1986 a citizen complained to the Complaints Unit about certain irregularities in the prescription, administration and documentation of drugs of addiction in an intensive care unit at a major Sydney private hospital. The claims made were reasonably sensational, but the complainant provided the Unit with some supporting documentation. In May 1986 the complainant approached this Office, claiming that the Unit had made the complaint

"public" because, before commencing its inquiries, the Unit had informed a third party, unconnected with the hospital, of the content and scope of the complaint. The complainant also alleged that the Unit was refusing to inform her of the result of its investigation.

Preliminary enquiries were made and the Manager of the Unit advised the Ombudsman:

> ... I reiterate that this investigation was conducted in a professional manner and that (the) complaint to your Office does not raise any issues warranting an investigation by your officers of the handling of this complaint.

At that stage, however, no real investigation of the allegations had been carried out by the Unit; in fact, a report was not provided to this Office or to the complainant for a further eight months.

A formal investigation by this Office disclosed that there had been delay by the Unit in acknowledging the complaint, and some six weeks had passed before an interview to obtain specific details from the complainant had been held. A regional officer, who attended the interview and requested a copy of the complaint, said that, when she read it, "alarm bells rang" and she visited the hospital the very next day to check on the patients in the Intensive Care Unit. A full general inspection of the hospital was carried out in May 1986; as a result of the complainant's dissatisfaction with the report received from the Unit, a further inspection was made in November. The Unit's investigation was seriously flawed, however, because the regional officer nominated to make the investigation had no expertise in the areas of intensive care units or drug irregulaties and administration. As well, the officer was not given a copy of a 15-page submission from the complainant until late October, even though this had been given to the Unit in March; nor was she given specific instructions as to what the Unit wanted her to investigate.

This Office, after criticising the lack of action by the Unit, was informed that the Secretary of the Health Department had very limited powers to delegate or inquire into matters relating to

private hospitals. Apart from the extreme penalty o delicensing, the Department had no power to impose conditions on private hospitals. In the absence of clear substantiated evidence of mismanagement, the Department would have no grounds for setting up an inquiry.

The complainant obviously expected a complete overhaul of the hospital's practices, procedures and policies, and a full investigation and review of all drug procedures. Such an exercise would appear to have been beyond the resources and the power of the Unit. Unfortunately, information about the action that the Unit could and would take was not clearly conveyed to the complainant. It is at least questionable whether there was any point in the Unit embarking on such an investigation.

In his report, the Ombudsman commented on the tendency of the Department to suggest that more was being done than, in fact, was the case. For example, the Secretary had claimed that the regional officer had "spent a week examining the records at (the hospital)". The facts showed that, although there had been three visits to the hospital, the first had been very brief, the second comprised a couple of hours and the third covered two days.

In his response to the report, the Secretary of the Health Department advised that, since 1986, the "parameters of the Unit's work have been more carefully defined". He said that there was now more investigative staff and that the Unit had developed guidelines for investigations and now had a policy of properly training and inducting staff. As well, all complaints were being acknowledged within two weeks, and regular progress reports were being given to complainants. It is hoped that the implementation of these measures will result in more effective and efficient handling of complaints by the Complaints Unit.

Residentials at The Rocks

At the turn of the Century, several hundred properties in the Millers Point/Dawes Point area were resumed by the Government. Title to some of the properties was vested in the Minister for

Public Works and title to the others was vested in the Harbour Trust Commissioners under the Sydney Harbour Trust Act 1900. The Harbour Trust later became the Maritime Services Board (the Board).

Fifty nine of the properties, which had been built between 1840 and 1860, were said to include the oldest set of terraces on the Australian mainland. For decades, they were leased by the MSB for use as residentials. Sixteen of these properties formed part of a parcel of properties transferred to the Housing Commission (now the Department of Housing) in 1982. In 1984 the remaining forty three residentials were also transferred to the Housing Commission on twenty year leases.

A group of head tenants, who operated residential businesses in the premises that they had leased originally from the Board, complained to the Ombudsman. They alleged that officers of the Board, through personal contact before and after they had signed leases, had led them to reasonably expect that their leases (though formally weekly tenancies) would only be terminated if they were found to be breaking the terms of the lease or were allowing criminal activity on the premises. On the basis of that expectation, and in the knowledge that, for decades, proprietors of these residentials had enjoyed undisturbed tenancies and had been able to transfer and bequeath their interests in the residential businesses with the approval of the Board, the complainants had expended considerable sums of money, both in purchasing the "goodwill" of residential businesses and in upgrading the premises after being granted a tenancy by the Board. They complained that they had been unreasonably treated as a result of the transfer of control of the premises to the Housing Commission. The effect of the transfer had been to dispossess them, without compensation, from the businesses they had purchased from previous head tenants.

After a lengthy and complex investigation, the former Ombudsman found that the Board had led the complainants, and the other head tenants of the fifty nine residentials, to expect that their security of tenure was greater than the weekly leases that the Board had issued; that it had delayed giving formal notice of a

Ministerial review of administrative arrangements for the properties and the subsequent decisions to transfer control of the properties to the Housing Commission; and that it had failed to give proper consideration to the disadvantages suffered by the lessees as a result of the transfers, in that the Board had:

- failed to provide adequate policy advice to the Minister for Ports on the system of property management existing at the time; and on the implications for head tenants of the proposed transfers;

- unreasonably benefited from major improvements and alterations made to the premises by the head tenants; and

- refused to consider several applications for tenancy assignments.

In relation to the Department of Housing, the Ombudsman found that it had given proper notice of the transfer of control of the residentials and that there had been no wrong conduct in that regard. The Ombudsman found, however, that the Department had failed to give proper consideration to the disadvantage suffered by the lessees as a result of the transfer of control of the residentials. In particular, in respect of the initial sixteen properties transferred, he found that officers of the then Housing Commission had changed the method of acquisition approved by the Commission, from resumption to transfer of title, in order to minimise costs, and to avoid compensation claims for the interests that the head tenants held in the properties. The Ombudsman said that this contradicted the purpose for which the original resolution to resume the properties had been adopted by the Commission, and the conduct was therefore unreasonable and unjust.

The Ombudsman also found that the Department:

- had offered to consider claims for improvements made by head tenants, but had restricted its offer to those head tenants who had not entered into management contracts for the ongoing operation of the residentials after their transfer to the then Commission; this was unreasonable and unjust.

- had failed to properly research the relevance of industrial awards to its draft management contract,

even when criticised for failing to do so, and this was unreasonable and unjust.

- had misled the complainants, in 1984, into believing that all aspects of its management proposals were negotiable, when in fact they were not.
- during negotiations in 1985, had withheld information material to those negotiations from the complainants.
- had unreasonably continued to charge sub-tenants a "service fee" for gas and electricity when it did not pay for the supply of those services.
- had unreasonably placed an untenable condition on the release of certain information requested by the complainants.

By the time the Ombudsman made his report, all of the properties had been transferred in title to the Department of Housing, and the Department was taking proceedings against several of the complainants in an attempt to gain warrants of possession. It appeared that the proceedings had been initiated on legal advice, which in part relied on facts and documents provided by the Board. The Ombudsman's investigation, however, had suggested that the Board had misrepresented to the Department the true position regarding the advice given to the head tenants by its officers about their security of tenure. It seemed, therefore, that the Department's action in commencing legal proceedings had been partly based on information of doubtful validity.

The Ombudsman recommended that the Board and the Department of Housing discuss the possibility of negotiating an agreement to share the cost involved in considering general claims of compensation from head tenants for the termination of their tenancies. In one specific case, the last tenancy transfer that had been approved by the Board, he recommended an ex gratia payment of $29247. The Ombudsman found that the Board had approved the transfer without properly warning the in-coming tenant of the likely termination, on short notice, of the tenancy because of the Ministerial review that was then underway. The Board had previously advised other tenants of this.

The Ombudsman also recommended that the Board compensate another of the head tenants for renovations carried out to the premises; the renovations had been approved by the Board, without proper

notice being given of the likely termination of the tenancy as a result of the Ministerial review. The Ombudsman further recommended that the Board compensate other head tenants for renovations undertaken with Board approval. The Ombudsman considered that the Board had unreasonably benefited from the major works, renovations and alterations undertaken by some head tenants. He also recommended that the Board make nominal ex gratia payments to several tenants whose applications for tenancy transfers had been refused by the Board. Legally, the Board could not arbitrarily refuse consent to such assignments.

In relation to the Department of Housing, the Ombudsman recommended that the Department reconsider its position in relation to the proceedings it had initiated in order to obtain warrants of possession, because the evidence gained through the investigation suggested that the information provided by the Board to the Housing Commission, upon which the proceedings were at least partly based, was false.

Because the Department had acknowledged that it might receive an undue benefit from gaining possession of the properties, it was rcommended that, in the event that the Board did not make compensation payments, the Department, as the successor in title to the properties, should. It was recommended, as well, that the Department amend all existing management contracts in accordance with legal advice where appropriate, and that it re-open negotiations with the complainants. Other recommendations were made, including a recommendation that the Department honour an undertaking given by the former Minister for Housing that all existing residents would have a guaranteed right to continue to live in rooming house accommodation in Millers Point.

Prior to the release of the final report, the former Minister for Housing, the Hon Frank Walker, sought a consultation with the Ombudsman, as provided for under the Ombudsman Act. Amongst the matters raised by the Minister at the consultation was the view that the Ombudsman's report on his investigation of the Department of Housing appeared to leave the Deparment with no alternative but resumption. The Ombudsman, in his final report, made it clear that the report was not intended to and did not

suggest that the Department should resume the interests of head tenants in respect of the properties.

Nevertheless, eight days after the release of the Ombudsman's final report, the lands which were the subject of the complaint were resumed by the New South Wales Land and Housing Corporation.

The complainants then commenced actions against the Corporation and the Maritime Services Board in the Administrative Law Division of the New South Wales Supreme Court. Amongst other orders sought, the complainants sought a declaration that the notification of the resumption was void and of no effect. On 14 April 1988 Lee, J. in the Supreme Court granted that declaration.

Following the resumption, and pending the outcome of their challenge to the resumption in the Supreme Court, the complainants commenced proceedings in the Land and Environment Court, seeking to extend the time they had to serve claims for compensation under the Public Works Act. That matter was stood over to September 1988, and the complainants' entitlement to costs was preserved pending the outcome of the Supreme Court proceedings.

On 2 July 1988, in the Castlereagh Street Local Court, solicitors for the Department applied to dismiss all informations for the outstanding "warrants of possession" matters. The application was stood over to December 1988 to determine the question of costs.

According to the complainants, the new Minister for Housing, the Hon J Schipp MP, has invited the complainants to write to him in order to commence negotiations for the settlement of all proceedings in all courts. The Minister is apparently setting up a committee to negotiate with the complainants for the settlement of this protracted matter.

Accreditation problem at Macarthur Institute of Higher Education

Graduates with accounting majors who had completed the Bachelor of Business Degree at Macarthur Institute of Higher Education in

1987 complained that, although the course had been advertised and promoted by the Institute as being accredited with full professional recognition from the Australian Society of Accountants (ASA) and the Institute of Chartered Accountants (ICA), they had discovered that this was not the case. As a result, chartered accounting firms were refusing to consider them as potential employees.

It was evident that the handbooks and other promotional material issued by the Institute had created an incorrect impression, and that the course had been represented as sufficient to qualify graduates for membership of both professional bodies. Although the course had been running since 1985, the Institute had not been successful in gaining accreditation for it. Before accreditation is granted, a course must meet the standards of both ASA and ICA. There are presently 46 tertiary institutions running accounting courses in Australia and, of these, 45 have full accreditation. Macarthur Institute is the exception.

Negotiations are continuing between the professional bodies and the Institute. In the interim, a professional upgrading programme has been devised by the professional bodies in conjunction with the Higher Education Board. Provided that the graduates' performance is satisfactory, they will be eligible to undertake the professional upgrading programme and obtain membership of the professional bodies.

Although the issue of accreditation is yet to be resolved, the 1988 Macarthur Institute handbook no longer conveys the impression that the course is accredited. As well, all graduates who completed the accounting course before 1988 now have the opportunity of completing a bridging programme which, together with their degree from the Macarthur Institute, will give them professional recognition. Nineteen of the 1986 and 1987 graduates have entered the programme and the Macarthur Institute has undertaken to pay the necessary fees for those students.

Retrospective rating

A couple complained about the decision of the Moss Vale Pastures Protection Board to levy rates retrospectively for 1986 and 1987. The couple had received their first ever rate notice in 1988.

The Board said that, because of the composition of its district, the farming community was subsidising the occupiers of small holdings, or "minimum" ratepayers. It was the Board's intention to correct this by levying rates retrospectively on certain landholders. The Board had only recently identified some landowners who, as a result of amendments to the Pastures Protection Act, were liable for rates from 1 January 1986.

This Office decided to investigate the Board's decision to levy rates retrospectively and the Board, acting responsibly, immediately wrote to all affected new ratepayers informing them of the investigation and suggesting that they pay only the 1988 rates until the issue had been resolved.

A statement of provisional findings and recommendations has recently been issued to give the Board an opportunity to comment on the investigation by this Office.

Registry of Births Deaths and Marriages

The Ombudsman has received many complaints about delay by the Registry in providing certificates, particularly where postal applications have been made. This issue was mentioned in the 1984-85 Annual Report.

In 1984 the operation of the Registry Office was based on a three-day turnaround; in 1987, the Registry was trying to achieve a ten-day turnaround. Unfortunately, this is rarely achieved and it takes some four to six weeks to process a postal application and three weeks to process a counter application. If a priority fee is paid, a certificate can be produced within twenty-four hours.

This Office has been told that the Registry is operating a manual production system, involving highly repetitive and monotonous tasks. The Registry claims that over recent years staff have had to contend not only with equipment failures, inadequate staffing levels and additional work, but also with the dislocation created by "the introduction of new technology and streamlined production systems". The Secretary and Principal Registrar considered that, given the number of certificates processed each day (some 1500) on antiquated manual production systems, the Registry was doing well to have so few complaints made about it. This Office, however, is concerned that this situation has continued for so long and is continuing its investigation.

Expensive ticket

The 1986-87 Annual Report outlined the case of Mr W who had bought a yearly railway ticket, costing $808, for travel between Tuggerah and Central Station. A month later the ticket was stolen. He obtained a substitute ticket by submitting a Statutory Declaration to the State Rail Authority and paying $76. Soon afterwards, Mr W had to move to Sydney because of a death in the family. He applied for a refund, and received only $70, because a substitute ticket had been issued to him. The Authority said that a refund based on the value of the unused portion of the stolen ticket would be given only if the ticket were returned.

In January 1988 the Ombudsman issued his final report in the matter. He found that the Authority's failure to make provision for refunds where special circumstances existed was unreasonable and wrong. The Ombudsman recommended that:

- the State Rail Authority make provision for allowing refunds to periodical ticket holders where special circumstances exist, and where the bona fides of an applicant warrant a refund being made;

- the State Rail Authority formulate guidelines for the investigation and assessment of the bona fides of refund applicants placed in special circumstances.

In response to an earlier recommendation by the Ombudsman, the Authority had already made an ex gratia payment of $700 to Mr W. This represented the value of the unused portion of the stolen ticket and certain extraneous expenses which Mr W had incurred. The Authority is at present considering proposals to amend the Passenger Fares and Coaching Rates Handbook in response to the Ombudsman's recommendations.

A cone of silence

In September 1983 the State Rail Authority (SRA) called for tenders for the supply of ice cream products for the five years commencing on 1 January 1984. The SRA received two tenders, one from Streets Ice Cream and the other from Australian United Foods.

In December 1984, some fourteen months after the tenders had been received and almost twelve months into the supply period, the SRA decided not to accept either of the tenders, because it believed that the original ice cream specification had favoured Streets Ice Cream. Consequently, the SRA decided to remove any potential for discrimination against Australian United Foods by restructuring the ice cream specification. This involved rationalising product lines and reducing the contractual supply period from five to two years. Restructuring of the specification, however, was not approved until September 1985.

New tenders were called in November 1985 to cover the two years beginning 1 January 1986. Both Australian United Foods and Streets Ice Cream submitted tenders. In March 1986 the SRA told Australian United Foods that their tender was being considered and that a decision would soon be made. Nevertheless, the company had not received any advice from the SRA about the progress of its tender when it complained to this Office in December 1986.

Investigation by this Office revealed that the policy of the SRA in cases where no decision had been reached about who the successful tenderer should be was to allow the previously

contracted supplier to supply out of contract. Because Streets Ice Cream had held a contract for the supply of ice cream products for the five year period ending on 31 December 1983, that company had continued to supply out of contract.

Whilst the Branch responsible for considering tenders had recommended in April 1986 that the tender of Australian United Foods should be accepted, the SRA Contracts Control Board had sought clarification of some aspects of the recommended tender. It would appear that the clarification sought from the Branch was never provided and that the recommended tender was never resubmitted to the Board. The SRA made no determination about the acceptance of any tender called in November 1985 for the supply of ice cream products, and in June 1988, some six months after the expiry of the supply period, notified this Office that it intended to cancel those tenders.

The Ombudsman's investigation is continuing. A statement of provisional findings and recommendations dealing with its handling of the matter has been sent to the SRA and this Office is awaiting the SRA's comments on that document.

Transfer of SRA patrol officers to the Police Department

The 1986-87 Annual Report related details of two complaints about the conduct of State Rail Authority (SRA) patrol officers investigated by the Office.

On 15 February 1988, at the direction of the government, all SRA Transport Investigation Branch personnel, consisting of both patrol officers and detectives, were transferred to the administrative control of the New South Wales Police Department. A Police Transit Act was to be enacted to cover the status of these persons, but that has not yet occurred. In the meantime, this Office continued to receive complaints about the alleged conduct of patrol officers.

On 4 February 1988 the Commissioner of Police was asked to advise this Office about the status of patrol officers within the Police

Department once the proposed transfer occurred. The Commissioner explained that SRA Transport Investigation Branch personnel were special constables under section 101 of the Police Offences Act. Police rules and instructions, however, do not apply to them. Their conduct is regulated by the Transport Authorities Act 1980 and the State Rail Authority By-laws. The Commissioner said that their powers as special constables do not extend to legislation which gives a member of the police force power to act. The Government Railways Act gives patrol officers special powers to demand the name and address of persons suspected of breaching the Railway By-laws.

Transport Investigation Branch personnel are not members of the Police Force; accordingly, the Police Regulation (Allegations of Misconduct) Act does not apply to them. A complaint against a member of the Transport Investigation Branch can only be investigated under the provisions of the Ombudsman Act.

Difficulties arose, however, when the Office received a complaint about conduct which had occurred prior to 15 February 1988. Under the Ombudsman Act, the "head" of the public authority to whom notice of investigation had to be given was the Chairman of the State Rail Authority. In order to comply with the Act, all correspondence and reports had to be submitted to him. This created administrative difficulties because, as the Commissioner of Police had the administrative control of the officers the subject of complaint, it seemed more sensible and pertinent to deal with him.

As well, this Office believed that it would be inappropriate and fruitless for the Ombudsman to commence an investigation of conduct which occurred prior to 15 February 1988 and which was relevant only to the procedures and instructions for patrol officers laid down by the State Rail Authority. Any recommendation which the Ombudsman may have made in such an investigation could not have been acted on by the State Rail Authority, because it no longer had the administrative control of Transport Investigation Branch personnel. The Ombudsman decided, therefore, not to investigate complaints about conduct involving minor procedural matters which were relevant only to State Rail

Authority procedures and which occurred before 15 February 1988. The Ombudsman decided, however, that complaints alleging procedural breaches of a serious nature, and which were relevant to the duties of Transport Investigation Branch personnel, would be investigated in those cases where it seemed likely that any recommendations made by the Ombudsman would be relevant to the Police Commissioner's administration of such personnel and would be reasonably regarded as of interest to him for that purpose.

It was also decided that complaints involving alleged personal conduct of individual members of the Transport Investigation Branch which occurred prior to 15 February 1988 would still be investigated, because any findings of wrong conduct which might be made would be relevant to the individual's position within the Police Department and, therefore, should be brought to the Commissioner's attention.

Pollution at Gosford

The 1986-87 Annual Report mentioned an investigation then underway into the alleged failure of the State Pollution Control Commission to effectively deal with water pollution and offensive odours from the West Gosford meatworks.

An Investigation Officer visited West Gosford to experience the problem first-hand. He examined the Commission's files, obtained more information from the several complainants and monitored the remedial action being taken by the company at the direction of the Commission. The company had been prosecuted for a number of breaches of anti-pollution legislation, with little effect. The Commission imposed licence conditions which required that better waste treatment equipment be installed and properly used. Over two million dollars have been spent by the company on this work and pollution has been greatly reduced.

Four waste water ponds have largely been taken out of service. The waste water, which was previously discharged into Narara Creek, now passes through a pre-treatment works and is pumped into council sewers. As a result, odour emissions from the ponds decreased for a time.

Recently, some odour problems reoccurred when Gosford and Wyong councils refused to allow disposal of sludge from the pre-treatment works at various proposed sites within their shires. The Commission approved of the sludge being placed in one of the ponds. The protective crust on this pond later ruptured. The offensive smelling gas produced by bacterial breakdown of the sludge dispersed over the surrounding area and, in certain weather conditions, the smell was especially pungent. Further plant has been installed to turn the sludge into a usable product, so that the use of the pond can be discontinued.

The Commission is currently looking at alternatives for dealing with the ponds, and this Office has decided to wait until the future use of the ponds has been determined before preparing a final report on the matter.

Excavation permits - not a secret any more

Mr C complained that the Department of Water Resources had refused to tell him of the conditions attached to an excavation permit that it had issued to his neighbour under Section 23A of the Rivers and Foreshores Improvement Act. The Department had told him that this information was "a confidential matter between the Department and its client".

For some time Mr C's river-side property had suffered from a riverbank erosion problem. Even though departmental officers disagreed with him, Mr C believed that gravel excavation work on the adjoining property was responsible for the problem. Mr C wished to consult an independent advisor and, for this reason, needed to know in detail the extent of the activity that the Department had authorised next door.

In response to enquiries by this Office, the Department wrote:

> On the question of the confidentiality of such excavation permits, there is no Departmental policy spelt out in a document. It is just a long-standing, accepted practice of the Department not to issue copies

> of correspondence to other parties without the permission of its client.

The Ombudsman believed that the Department was taking an excessively and unnecessarily secretive approach in refusing access to this sort of information. By way of comparison, he mentioned the local government area, where local councils must by law maintain and make available to interested members of the public a register of development approvals.

The Ombudsman found that the Department had acted in accordance with an established practice but the practice was unreasonable, unjust and oppressive. He recommended that the Department institute a system to enable interested members of the public to have access to all information contained in and relating to an excavation permit issued under Section 23A of the Rivers and Foreshores Improvement Act.

The Department of Water Resources adopted the Ombudsman's recommendations without hesitation and before the matter was finalised. The Department's Director also advised:

> ....arising from this particular matter, I have instituted a review of policies regarding disclosure of information in other areas of the Department's administration.

Visits to residential youth centres

As outlined in previous Annual Reports the Ombudsman regularly visits residential youth centres run by the Department of Family and Community Services. Last year, eleven visits were made to eight centres, and 66 oral complaints were dealt with; more information is provided in "Performance Indicators" later in this Report.

In most cases, the complaints were relatively minor and could be dealt with by the centre's Superintendent on the day. Superintendents were generally willing to listen to the complaints and take appropriate action. Often, residents simply needed to voice their complaints to an outsider because they felt unable to raise them with centre staff.

One encouraging response came from Endeavour House at Tamworth, reputedly housing the toughest residents in the system. During a general visit to the centre, several complaints were made about lack of educational facilities and the difficulty faced by residents in gaining admission to external TAFE courses. One teacher attended the centre for four hours each week.

The Superintendent had not been aware that the residents wanted more educational facilities. He responded enthusiastically to the residents' complaints and obtained approval in principle from the Department of Education for one full-time teacher and a teacher's aide. The local TAFE is also prepared to delegate "outreach hours" to the centre when classroom facilities are obtained. At the time of writing, some delay is being experienced in obtaining appropriate classroom facilities, but the Superintendent is optimistic that further educational resources will be made available to the residents.

Visits to Residential Youth Centres
1 July 1987 to 30 June 1988

Youth Centre	Number of Visits
Endeavour House, Tamworth	1
Keelong Youth Centre, Unanderra	1
Minda Youth Centre, Lidcombe	1
Mt Penang Youth Centre, Kariong	1
Ormond Youth Centre, Thornleigh	2
Riverina Youth Centre, Wagga Wagga	1
Worimi Youth Centre, Broadmeadow	1
Yasmar Youth Centre, Ashfield	3
	11

Investigation of young offenders' complaints

Written complaints received from young offenders are allocated throughout the Office and dealt with by the majority of Investigation Officers. Very few written complaints are received from residents of youth centres.

Isolated detention cells

It is the practice of officers of the Ombudsman to monitor the use of cells for solitary confinement of juvenile offenders at Department of Family and Community Services training schools and remand centres.

In May 1987 Ombudsman officers visited Campbelltown Youth Centre (formerly Reiby School) and inspected the isolated detention rooms and the "time out" book, which details the use of the rooms. As a result of the inspection, an investigation was commenced into the apparent failure of the Department to renovate the rooms in accordance with standards set down in 1983 by the then Minister for Youth and Community Services.

In December 1987 the isolated detention rooms at Yasmar Youth Centre were inspected. The inspection revealed that a 13 year old resident had been placed in isolated detention in direct contravention of the requirements of the Child Welfare Act. An investigation into this matter was commenced in January 1988.

The Ombudsman's investigations revealed that there was a need for the Department to review its practices and procedures in this area. The introduction of new legislation, the Children (Detention Centres) Act, which, amongst other things, provides for the "segregation" of detainees for protection, and the "confinement" of detainees for misbehaviour, underlined the need for the Department to develop new procedures in this area.

In April 1988 the Director-General of the Department, Mr V Dalton, advised the Ombudsman that new policies in keeping with the new legislation would be developed. On 27 May 1988, in a further letter to the Ombudsman, Mr Dalton said:

> New standards for confinement in Detention Centres have been submitted for approval. If they are approved, new guidelines will also be finalised.

Given the legislative changes and the Department's expressed intention to formulate new guidelines about the segregation and

confinement of juvenile offenders, the utility of this Office continuing with its investigations is currently being assessed. Ombudsman officers, however, will continue to monitor the situation, having regard to the provisions of the new legislation.

Problems with Crown reserved roads

In October 1986 the Deputy Ombudsman recommended, among other things, that, because the Department of Lands had failed to notify the complainant of an application to close his northern access route, it should make an ex gratia payment of $2000 for the loss of vehicular access to his land. In March 1988 the Department informed this Office that it was prepared to support the payment being made. The Ombudsman has now informed the relevant parties that no further action will be taken by this Office in relation to the matter.

Previous Annual Reports have referred to problems which have arisen in relation to Crown reserved roads, partly due to deficiencies in the Public Roads Act and the Crown Lands Consolidation Act. Officers of the Ombudsman have been told that it is proposed to introduce a new Crown Lands Consolidation Act. To date, this has not occurred.

Sydney Harbour foreshores management

Since 1982 the Ombudsman has been seeking the implementation of recommendations about the management of Sydney Harbour foreshores.

The recommendation made by the Ombudsman was that an interdepartmental review be made of the legislative and administrative framework for the planning, management and control of the Harbour. The 1986-87 Annual Report noted that the review was still in progress; this has now been completed and drafting of the Sydney Harbour Foreshores Plan has commenced.

The Sydney Harbour Foreshores Plan will be exhibited for public comment on completion of the Parramatta River Plan, which is currently being redrafted. The Sydney Harbour Foreshores Plan might be exhibited by the end of 1988.

Want to get the run-around? Take a school bus!

Sometimes even Ombudsman investigators are baffled by the bureaucracy.

Recently a person from the Tuncurry area complained about the response made by the Lismore office of the Department of Motor Transport (DMT) to submissions about the local school bus service. On 9 June 1988, making preliminary enquiries, the Ombudsman's investigator wrote to the Commissioner of Motor Transport; he sent a copy of his letter to the Lismore office. On 16 June, the Lismore office telephoned to say that responsibility for school bus services in the Tuncurry area had been transferred to the Hunter Region office of the Department, and the investigator's letter had been sent there.

On 26 July, having heard nothing more, the investigator telephoned the School Student Transport Section of the Department's Hunter Region office at Hamilton, and was told that a report had been sent on 22 June to the Transport Policy Branch at Rosebery. Upon telephoning that Branch, the investigator was told that a reply was "in the typewriter" and would be sent to the Ombudsman, through the Department of Main Roads (DMR), within a few days.

The Government has decided to amalgamate the DMT, the DMR and the Traffic Authority into a new organisation to be called the Roads and Traffic Authority (RTA). There had been some administrative problems and, because the legal formalities had not been completed, the head of the new Authority, formerly the head of the DMR, was being referred to, not as Chief Executive, but as Chief Executive Designate. He was also holding the position of Acting Commissioner for Motor Transport. He continued to work

But the complications did not end there. When the Ombudsman's investigator telephoned the Transport Policy Branch on 5 August to chase things up, he was told that the report had been sent, not to the DMR after all, but to the Urban Transit Authority (UTA). As part of the reorganisation, apparently, responsibility for school bus services had been given to the UTA. As a consequence, branches of the DMT, such as the Hunter District School Student Transport Section and the Transport Policy Branch, are to be transferred to the UTA, which will have its name changed to the State Transit Authority. The enabling legislation had not been passed, so the Chief Executive Designate of the RTA, in his capacity as Acting Commissioner for Motor Transport, had found it necessary to formally delegate his powers over school buses to the Acting Managing Director of the UTA.

The acting secretary to the head of the UTA was very helpful, but on 9 August she had to admit defeat - she had been unable to find the papers; there was no trace of them having been received at the UTA. The secretary to the Chief Executive Designate of the RTA was also very helpful, and set up a determined search for the missing file. On 18 August the Ombudsman's investigator discovered that the papers had actually been received some time earlier by the Acting Managing Director of the UTA. The draft reply to the Ombudsman had been approved by him; but he felt it appropriate to refer the reply to the Chief Executive Designate of the RTA for signature. For some reason, his letter referring the papers and addressed to the DMR's Castlereagh Street offices (a large and imposing building), had been returned marked "addressee unknown". His secretary and the secretary to the Chief Executive Designate combined their efforts, and were able to tell the Ombudsman's investigator that a reply was now on the way to him.

Meanwhile, the Hamilton office is trying to resolve matters personally with the complainant while, at the time of writing, the Ombudsman's investigator awaits, with perhaps diminished confidence, receipt of the Department's reply to his now two-month old enquiries.

LOCAL GOVERNMENT AREA

Complaints about rates

The Ombudsman receives many complaints about rates levied by local government authorities. They include complaints about the amount of rates levied, the service of rate notices, the time allowed to pay rates, liability for water rates and other matters.

The Local Government Act provides for councils to set a general rate, but general rate increases are restricted by legislation. The system of rates and charges for services, however, is fairly complex, and there are areas where a council has discretion to decide the amount to levy or whether a property should be rated under one classification or another. The Ombudsman examines each complaint about rating on its merits. The Ombudsman may decide that the conduct of a council is wrong, even though it has acted in accordance with the law, or if a council has unreasonably exercised a discretion.

It is generally claimed that the rate income of local government authorities has decreased in real terms since 1983 when increases in general rates were pegged by law. Because of this, councils tend to maximise income from rates and charges and this can sometimes operate harshly. Brief summaries of cases where this appears to have occurred, or where the potential exists, follow:

Lake Macquarie City Council's rating of land affected by landslip

The 1986-87 Annual Report outlined a number of complaints from ratepayers whose land had been massively devalued by actual or potential landslip.

Lake Macquarie City Council refused to reduce the rates levied on land that had been devalued. Council maintained that it was bound by law to charge rates based on the value of the land prior to its devaluation. At law the council was correct. The Government's "rate-pegging" legislation allowed a specific

increase in rates each year, based on the value of the land in 1985, the year in which the legislation commenced. There was no provision to reduce rates if the value of land fell.

The government recognised the anomaly in the rate-pegging legislation; in 1987 the law was changed to allow councils to use for rating purposes the reduced value of land that had suffered "actual physical damage." Nevertheless, Lake Macquarie City Council continued to levy rates based on the higher value of damaged land for the years prior to 1987, and continued to charge full rates on properties affected only by potential landslip.

Given that the complainants' properties had suffered serious damage and a considerable reduction in value, the Ombudsman found that the council's conduct in continuing to levy rates based on the original value of the land was wrong. Even though the conduct was in accordance with the law, that law was unreasonable, unjust and oppressive in the circumstances. The Ombudsman recommended that the council treat the properties as having been devalued for rating purposes and, notwithstanding its legal powers, that it charge rates based only on the lower value. The matter was also referred to the Department of Local Government for its consideration.

The council ignored the Ombudsman's recommendations and resolved not to make any "donation" to the ratepayers concerned. It continues to charge the ratepayers rates based on the higher value of their properties and is adding interest to the debts owed by those ratepayers who have refused to pay their rates. As far as this Office is aware, council has refrained from taking legal action to recover the debts.

In May 1988 the Ombudsman made a report to Parliament, criticising the council's refusal to implement his recommendations. The Newcastle Herald reported that the Premier had said that he was concerned at the council's failure, and that the recommendations of the Ombudsman must be treated seriously. The council, however, remains intransigent.

The Department of Local Government is reviewing the legislation; hopefully, it will recommend changes to ensure that similar unfair situations do not again arise.

Rating relief for vacant flood-liable land

Section 126 of the Local Government Act enables councils to set a special minimum amount as rates for parcels of land that are vacant, flood-liable land; the special minimum amount is less than the minimum general rate. The provision was introduced in 1985 as part of the Local Government (Flood Liable Land) Amendment Act. It was designed to provide a means of rating relief for landowners who faced the injustice of having to pay full rates on land upon which they could not build. Complaints received by this Office, however, seem to indicate that some councils are reluctant to afford this relief to their ratepayers.

Tallaganda Shire Council

In 1987 a citizen complained about the hardship she was experiencing because Tallaganda Shire Council had levied the minimum general rural rate on three lots that, she said, had been described as "worthless swamp" by a council employee. The lots formed two separate parcels for rating purposes; in 1987 the rates levied on the lots had actually exceeded their combined ratable value.

Under the Interim Development Order applying to the land, it was not possible to erect a dwelling on either parcel, although council's Chief Health and Building Surveyor considered that there was no impediment to approval being given for the erection of a farm shed on one of the parcels. By default, the remaining parcel fell within the definition of vacant flood-liable land in the Local Government Act, and was eligible for rating relief. The council had not and was not willing to levy a special rate for such land, because it feared loss of revenue and took the view that it was unreasonable to expect other ratepayers to subsidise the owners of vacant flood-liable land.

The Acting Ombudsman found that the council had acted wrongly in terms of the Ombudsman Act for failing to specify a minimum amount of the rate under section 126 due to the parcel being vacant flood-liable land. He found that, in continuing to levy the general minimum rural rate on the parcel, the council's conduct was unreasonable, unjust, oppressive and improperly discriminatory.

He recommended that the council specify a nominal rate for vacant flood-liable land and levy it on all eligible parcels in the Shire. He further recommended that one of the complainant's lots be included and that the arrears owing on that lot be written off. He also recommended that council assess what other ratable parcels of land within the Shire of Tallaganda were vacant flood-liable land and apply the new rate to those properties as well.

The council at its meetings of 16 May and 30 June 1988 declined to implement any of the recommendations. Because he was not satisfied that sufficient steps had been taken in consequence of the report, the Ombudsman made a report to Parliament on the matter.

Bellingen Shire Council

Mr B complained that Bellingen Shire Council would not give him permission to build on his land unless he provided a report about the likelihood of flooding on the property. Such a report would have been expensive. He also complained that the council continued to charge him full rates, as if the land could be developed.

Council had the power to set a lower, differential general rate for flood affected land, to exempt the property from local water rates, and to set a lower local loan rate for sewerage; but it failed to use its powers to reduce the rates for 1986 and 1987.

Although Mr B was eventually granted consent to develop his land, during 1986 and 1987 his land could not be developed; yet he was obliged to pay rates as though it was under no such restriction.

The Ombudsman found Council's failure to charge lower rates to be unreasonable and recommended that council waive collection of the unpaid rates for 1986 and 1987.

Council resolved not to introduce a lower minimum rate for flood-liable vacant land generally and proceeded to enforce recovery of the unpaid rates from the complainant. Again, despite a report to Parliament about council's refusal to implement the recommendations, council is insistent that the full rates be paid.

Rural rating

Councils have discretion to introduce a reduced rural rate for rural land as defined in section 118(1) of the Local Government Act. The Act defines "rural land" as:

a) a parcel of ratable land which is valued as one assessment and exceeds 8000 square metres in area, and which is wholly or mainly used for the time being by the occupier for carrying on one or more of the businesses or industries of grazing, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind or forestry; or

b) an oyster farm within the meaning of the Fisheries and Oyster Farms Act 1935.

Under the Act, the onus of proof that the land is "rural land" rests with the owner of the land, and not with the council. As well, the owner has the right to appeal against a council's decision to levy the general rate rather than the reduced rural rate. The appeal must be lodged within 30 days of the date of issue of the rate notice.

Because councils are anxious to maintain their real income in the face of rate pegging, and because of the complexity of the definition of "rural land" and the divergent interpretations by councils and the courts of the meaning of terms like "wholly and mainly", "businesses or industries", "grazing" and "viticulture", there has been increasing disputation between councils and their ratepayers in recent times. Over the past few years this Office

has received many complaints about the refusal of councils to grant the reduced rural rate. The Ombudsman has usually taken the view that the appropriate means of redress for those complaints is by appeal to the court.

In more recent times, however, and particularly in the past year, the nature of the complaints has changed. This Office is currently investigating several complaints about the way in which councils actually administer the reduced rural rates scheme. Some of the issues that the complaints have raised are:

- whether councils should offer more assistance to ratepayers in their attempts to comply with the definition of "rural land."

- whether councils should give reasons for their decisions to refuse reduced rural rate applications.

- whether councils are discriminating against small lot holders, in favour of large lot holders and "Pitt Street farmers" by forcing dissatisfied applicants to appeal to the court, because small lot holders cannot afford to challenge the council's decision, every year, in the courts.

- whether councils in their refusal of applications for reduced rural rates are merely attempting to increase their rate revenue, rather than to administer the law reasonably.

Some complainants have argued that many of the issues raised in their complaints would be adequately addressed if councils provided:

- sufficient information to landowners about reduced rural rates and about the definition of "rural land" in the Local Government Act.

- adequate reasons for their decisions to refuse applications for reduced rural rates.

The complaints also raise the more general issue of whether the law itself is appropriate, given that it generates so much litigation and dissatisfaction between councils and their ratepayers.

In August 1985 the New South Wales Local Government and Shires Associations made a submission to the then Minister for Local Government on the issue of "Public Disclosure of Pecuniary and Other Interests". The submission made the point that the law then existing did not establish any code of conduct for elected members. The Associations had circulated to councils a recommended code of conduct regarding public duty and private interest. Details of the code were set out in the Ombudsman's 1984-85 Annual Report (p.74).

Following receipt of details of the Associations' submission to the then Minister, the Deputy Town Clerk and the Mayor of Ashfield discussed the participation of the two Aldermen in meetings on the car park development proposal. Council's solicitors were instructed to obtain an opinion from a Queen's Counsel on the issue of the possible pecuniary interest of both Aldermen. The opinion indicated that the two Aldermen had a pecuniary interest and said that they should not participate in discussion or vote in any matter dealing with the development of the car park. Both Aldermen disputed that they had such an interest.

Council gave all Aldermen a copy of the legal opinion. Some Aldermen resolved to seek a second legal opinion; this opinion, from another Queen's Counsel, confirmed the first opinion. After the legal opinions had been obtained, both of the Aldermen refrained from taking part in discussions and abstained from voting on issues dealing with the car park development.

At the council meeting on 1 April 1986, however, both Aldermen took an active part in debate and discussion and voted on various matters relating to the re-zoning of the car park, but both left the chamber prior to a vote being taken on the question of adopting a report from the Engineer/Town Planner about the matter. An attempt was made by one of their colleagues to exclude the two Aldermen from the meeting, but the Chairman failed to invite the meeting to vote on that question.

The Ombudsman concluded that council had gone out of its way to ascertain the correct legal position, yet had stopped short of taking action to ensure that the law was complied with. The Ombudsman has forwarded a draft report to the Minister, finding the conduct of council to be wrong, because it failed to provide by resolution for the exclusion of the two Aldermen from meetings at which matters in which they or either of them had a pecuniary interest were under consideration.

In the draft report the Ombudsman has recommended that council seek legal or other professional advice and that it adopt appropriate procedures to ensure that any member of council or of a council committee who has a pecuniary interest in any matter under consideration at a council or committee meeting is excluded from participation in debate and from voting on that matter.

The Ombudsman is awaiting the Minister's advice as to whether he wishes to consult.

The Hibbard Ferry - to charge or not to charge

A local progress association complained that Hastings Municipal Council had breached the Local Government Act, firstly, in changing the operating hours of the Hibbard ferry and, secondly, in charging a toll for conveyance on the ferry.

Section 253 of the Local Government Act requires a council to cause any ferry that was in operation during 1906 to be worked for the use of the public, unless the Minister grants permission to close the ferry. The Hibbard ferry had been in operation since at least 1902. Ordinance 33 of the Local Government Act listed those ferries for which a charge could be made. The Hibbard ferry was not listed.

The Acting Ombudsman found that an alteration to the hours of operation of the Hibbard ferry did not amount to a closure in terms of Section 253 of the Local Government Act. He further found that council had consulted the local progress associations before hanging the time table and that it continued to consult

Survival" alleged that the council's policy regarding approvals for the closure and purchase of unnecessary roads was unreasonable; they suspected that there might have been improper dealings by certain members of council in approving the application by Cobar Holdings.

The investigation by this Office found that no improprieties had been committed by any of the members of council, including the then Shire President, but that council's approval of the Cobar Holdings application had been unreasonable.

Unnecessary and unused roads may be closed and sold in accordance with the provisions of the Public Roads Act. According to Section 20 of the Act, the value of the road to be closed and sold is to be determined by the Local Land Board. In practice, however, the applicant for closure and purchase makes an offer to the Lands Department. The Lands Department requires local councils to consider the application and the offer. If the offer is "acceptable" to the local council, and if council otherwise approves of the closure and sale of the road, the Lands Department or, as in the case of Cobar, the Western Lands Commission, almost invariably approves the application.

In Cobar, the Shire Council has a policy of encouraging applications for closure of unnecessary roads. Until the Cobar Holdings application was made, offers in nominal amounts were approved as "acceptable". In most of these cases, however, the applications had been for the closure of small lanes, which had been used in the past by night-soil carters. The council's policy was designed to reduce road maintenance costs and to use the unnecessary roads more beneficially.

The Cobar Holdings application caused some controversy on council because one of the two roads applied for, Nyngan Road, adjoined a motel on the Barrier Highway; the company was purchasing the motel. Had council found the company's offer acceptable, Cobar Holdings would have received a significant windfall. The company had offered $2700 for both roads.

After much, often acrimonious, debate, council set a figure of $10200, which it claimed was the value of the two unnecessary roads. Council, however, had not sought the opinion of the Valuer General; nor had it obtained any other independent valuation. At best, the figure could have been described as a "guesstimate". Council had valued the Nyngan Road site at $7500, and the other road at $2700. The issue became a divisive one in the local community. One Councillor argued that the road beside the motel should be turned into a tourist shop. A hotelier went to council in an attempt to outbid Cobar Holdings. Cobar Holdings ultimately withdrew its application.

After the February 1987 council meeting, at which the road closure debate had risen to furious levels, the Shire Clerk sought the Valuer General's advice on the value of the road beside the motel. The Valuer General assessed the value of the Nyngan Road site at $13000.

In June 1987 council decided to adopt a new policy: all future road closure applications were to be accompanied by a valuation. At the same time, however, council resolved that it would continue to recommend "below market" valuations as "acceptable" offers to the Western Lands Commission.

In a draft report which he has sent to the Minister, the Ombudsman has concluded:

> The Council's policy of accepting the offer made by applicants for road closure was unreasonable and potentially open to abuse... [The] new policy [adopted in June 1987] is not an adequate and reasonable replacement of the old. It is also potentially open to abuse. No limits are placed on Council in the exercise of its discretion. There is no indication as to what relation there will be as between the independent valuation and the price recommended as "acceptable".

The Ombudsman has found that the council's policy and practice of recommending "below market" prices for unnecessary roads was unreasonable, as was its failure to develop and publicise criteria by which the "acceptability" of an offer could be estimated. He has criticised the vagueness of the legislation governing the sale of unused roads. The draft report recommends

obtain those comments, council needs to give notice of the proposals put before it to those people who are likely to be affected by them.

Some councils do this as a matter of course. Others strongly resist any suggestion that they should do so, arguing that such a practice would jeopardise the privacy of individual developers, be a waste of resources, or be contrary to law.

In the 1981-82 Annual Report, the Ombudsman recommended that the local government legislation be amended by removing any provision that would prevent adjoining owners, or other persons affected by building applications, from inspecting plans showing the height and other external configurations of proposed structures. After repeated recommendations from this Office, amending legislation was gazetted in February 1988. Notwithstanding this change of law, the Ombudsman has been notified by at least one council that it believes that it is still prevented from revealing such details.

In April 1987 the Land and Environment Court dealt with a case where a waterfront resident had his views restricted by a new building next door. The Court found that council, as it was empowered to do, had varied the existing foreshore building line by a small amount to allow the house to be built a little closer to the water. Council had dealt with the whole application, the Court found, without notifying the adjoining owner. There was no requirement at law for council to notify the adjoining owner, but the Court held that if council had had in place a regular procedure for notifying adjoining owners, and had failed to abide by that procedure in this case, then its decision might perhaps have been capable of being set aside. In fact, however, the Court found that the council did not have such a procedure and, therefore, the adjoining neighbour had no remedy against council's decision. This decision was reinforced by another decision of the same Court, which held that, where a council has a policy of notifying adjoining owners or other affected persons, failure in a particular case to give such notification might render council's subsequent decision open to review.

These decisions highlight the present totally unsatisfactory situation whereby the rights of individual land owners depend very largely on the geographical accident of which council's jurisdiction they fall within. People living on opposite sides of a street might have vastly different rights, if a local government boundary runs down the centre of the street and the respective councils have different policies on this issue.

The Ombudsman has commenced an "own motion" investigation on this issue, so that he can present a properly documented policy recommendation to councils and to the Minister. He hopes to report on his investigation later this year.

Local government tendering

The 1986-87 Annual Report discussed in some detail general tendering procedures in local government and, in particular, the procedures used by Narrabri Shire Council during the construction of a new Shire administration building. It was mentioned that a "working party" on local government tendering had been established.

The working party drafted a new ordinance covering tendering procedures and the letting of contracts. The new ordinance came into effect on 1 April 1988. Guidelines designed to assist councils in applying the new ordinance have also been issued. The guidelines not only advise councils about procedures which should be followed, but about pitfalls to avoid and the hazards of adopting different procedures.

It seems likely that the Ombudsman will continue to receive complaints about tendering procedures used by local councils. The new ordinance and the guidelines that accompany it, however, will provide a standard against which the conduct of local councils can be judged.

This Office understands that other proposals for legislative change which are likely to impinge on this issue are currently under consideration.

PRISONS AREA

Prison statistics

Visits to prisons

The Office maintained its programme of visits to prisons during the year. In all, 40 visits were made to 21 prisons and 308 oral complaints were discussed and dealt with. Further details can be found under "Performance Indicators" later in this report.

Ms Priscilla Adey, Assistant Ombudsman, continued her role in respect of prisons and, until her departure from the Office in May 1988, dealt with the more serious and important complaints received in the prisons area. Mr G R Andrews was recently appointed as Assistant Ombudsman and will have a role similar to that which Ms Adey exercised in respect of prison complaints.

The continued effective operation of the Official Visitors Scheme saw a further slight reduction in the number of written complaints made to this Office against the Department of Corrective Services during the year, from 262 in 1986-87 to 257 this year.

VISITS TO PRISONS 1 JULY 1987 TO 30 JUNE 1988

Prison	Number of visits made
Bathurst Gaol	3
Berrima Gaol	2
Broken Hill Gaol	1
Brookfield Afforestation Camp	2
Central Industrial Prison	1
Cessnock Corrective Centre	2
Cooma Gaol	2
Emu Plains Training Centre	3
Glen Innes Afforestation Camp	2
Goulburn Gaol	2
Grafton Gaol	2
Kirkconnel Afforestation Camp	2

Prison	Number of visits made
Maitland Gaol	2
Metropolitan Reception Prison	2
Metropolitan Remand Centre	2
Metropolitan Training Centre	2
Mulawa Training and Detention Centre	2
Norma Parker Centre	2
Oberon Afforestation Camp	2
Parklea Prison	1
Parramatta Gaol	1
Total	40

<u>Complaints dealt with</u>

Categories of written complaints against the Department of Corrective Services dealt with during the year ended 30 June, 1988 are set out below, together with comparative figures for the previous year.

	1987	1988
No Jurisdiction	7	4
Declined at outset	93	77
Declined after preliminary enquiries	124	129
Resolved after preliminary enquiries	32	24
No prima facie evidence of wrong conduct after preliminary enquiries	13	6
Discontinued after investigation	8	4
No wrong conduct after investigation	-	2
Wrong conduct after investigation	8	4
Current as of 30 June	50	57
Totals	335	307

sometimes being used as a method of punishment or preventive detention, rather than as a short term protective measure in accordance with the policy of the Commission.

Two of the cases mentioned in the 1986-87 Annual report have been finalised and another is the subject of a draft report which has been sent to the Minister:

- a prisoner at the Metropolitan Reception Prison, like all prisoners on segregation there, was forbidden contact visits, because it had always been the practice at that gaol to restrict segregated prisoners to regulation (box) visits. The Ombudsman found that this practice was improper and discriminatory, and appeared to be contrary to the Commission's stated policy of treating segregation as a protective rather than a punitive measure. The Ombudsman recommended in his final report that the Commission issue a new circular on segregation to make it abundantly clear that it is not appropriate to withdraw normal privileges from segregated prisoners without good reasons being supplied, and to require the Commission to be notified of the withdrawal of contact visiting rights from segregated prisoners. The Department published a new policy directive on segregation on 27 June 1988. The new policy provides that segregated prisoners must suffer no reduction in their diet; nor are they to be deprived of any rights or privileges, except as provided by section 22(3) of the Prisons Act. Any limitation or withdrawal of rights or privileges, including contact visits, must be notified in writing and approved by the Director of Custodial Services.

- Mr N and Mr P were segregated, as soon as they were extradited to Australia, on the basis of information supplied to the Commission by the National Crime Authority about the risk that they presented to security. One of the unsentenced prisoners was segregated for approximately twelve months, and the other for ten. The Ombudsman found that there had been

no up-to-date assessment made of the need to keep the prisoners in segregation at the time of the expiration of each successive segregation order. In fact, there had been a break of 67 days in the "chain" of segregation orders in the case of Mr N and a break of 23 days in the case of Mr P. The prisoners were released from segregation in August 1987, two days after the Ombudsman's provisional findings and recommendations were issued, and some six weeks before they were due to appear for sentence in the Supreme Court. Previously, the Department had stated that their segregation would only be reviewed once they had been sentenced. The Ombudsman considered that the prisoners had been illegally detained during those times, and he recommended that the Department grant each of them two days remission for every day that they had been unlawfully segregated. He also recommended that the provisions of the Prisons Act relating to segregation be amended. A draft report containing these recommendations has been sent to the Minister for Corrective Services.

- the complaint made by Mr D, who had been in segregation since January 1987, was initially not made the subject of an investigation, because the Department had received compelling advice of a security nature which suggested that the prisoner would be a threat to the good order, security and discipline of the gaol if he were to be released to the general gaol population. The case was reactivated late in 1987 after the prisoner complained that he was still on segregation and that no adequate reasons for this had been given to him. It had been expected that his placement would be reviewed after his trial, which was scheduled for October 1987; however, the Crown had successfully applied for an adjournment until May 1988 and no review of his placement had apparently taken place. The Ombudsman sought details of the information that had been supplied to the Commission and to the Minister, who, under section 22(4) of the Prisons Act, has to

sanction a prisoner's continued segregation beyond six months. He found that there was very little documentation of this information. The Department claimed that, because the information was so sensitive, it was kept under strict security conditions. The Chairman of the Corrective Services Commission declined to provide the sensitive information in writing to the Ombudsman at the preliminary enquiry stage, but did provide an outline of the Department's concerns in a private conference. Despite reservations about the sufficiency of the information relied upon for the continued segregation of the prisoner, it was decided that there was no utility in further investigating the case. The Ombudsman took the view that the recommendations he had made in his draft reports on the cases of Mr N and Mr P adequately covered the problems involved in Mr D's case.

Several new complaints have been received from segregated prisoners in the past year; these include:

- Mr X and Mr Y were placed on segregation after a riot by inmates at Parklea Prison on 13 December 1987. They claimed that they were being unfairly treated because, although some eighteen prisoners had been charged with offences arising out of that incident, only they had been segregated. The Department claimed that a shortage of facilities had prevented it from segregating the other prisoners involved in the riot.

- Mr M was segregated for 3 months in August 1987. He is serving a life sentence, and in 1986 was charged with the murder of another prisoner; he was convicted of this in April 1987. He had remained on general discipline from the time he was charged until four months after his conviction. He claimed that segregating him was unreasonable and discriminatory. He was released from segregation after 3 months. Again, the Department sought a private conference to

brief the Assistant Ombudsman on the sensitive security considerations that had led it to segregate the prisoner. The Ombudsman was satisfied that the Department had followed proper procedures in the case, and enquiries were discontinued.

Mr B was placed on segregation after being charged by police with conspiracy to murder a senior officer of the Department of Corrective Services. During his time in custody, Mr B had been charged with other offences but had remained on general discipline all that time. The Ombudsman found that the Department had sufficient reasons to justify the segregation of Mr B.

Classification

The Ombudsman receives a significant number of complaints from prisoners about their classification; most of these are declined at the outset. Prisoners often ask the Ombudsman to intercede on their behalf to obtain a lower classification, either because they feel that they have been on a particular classification for too long or because they hope to be able to be placed in a more congenial institution with a lower classification. It is not the Ombudsman's role to impose his personal views on administrators who properly exercise the discretion vested in them, within proper guidelines and according to identifiable criteria. His role is to investigate instances of alleged wrong conduct; for example, where the classification decision appears to have been tainted by some irregularity or unreasonableness, such as consideration of extraneous factors.

Two complaints about prisoners' classification are currently under investigation. The first came from a prisoner of ethnic origin who claimed that, during a Programme Review Committee meeting, the Chairman made disparaging and offensive remarks about the prisoner's ethnic origin and about the fact that he had been convicted of a drug offence. The complainant suggested that the Chairman's obvious prejudice had affected his classification adversely. Preliminary enquiries have been made with members of the Committee and a formal investigation has commenced.

The second complaint was from an A category prisoner who has been in custody since 1983 and who has been twice recommended for a B classification by the PRC. The recommendations were rejected by the Director of Classification because of the length of time the prisoner has to serve before he will become eligible for parole (1990). It was suggested that if a prisoner moves to a lower classification too quickly, he will develop unreasonable expectations about his prospects for being released on parole.

A formal investigation into the second complaint has also commenced.

Withdrawal of contact visits

During the year the Ombudsman received several complaints from prisoners who had been prohibited from having contact visits. The prohibition usually results from the discovery by police or by the Department's own security unit of the introduction of contraband into institutions, or of a conspiracy to introduce contraband, by way of contact visits. Visitors to a prison who are found with drugs or other contraband in their possession are often banned from visiting institutions; prisoners who were to be visited by them are restricted to regulation ("box") visits, usually for about 12 months. Prisoners sometimes complain that they were not informed that a proposed contact visit had been terminated because of the discovery of contraband on the visitor. The decision to restrict a prisoner to "box" visits is usually communicated to the prisoner several weeks after the decision is taken, and after a report has been submitted to the Corrective Services Commission by its security advisers.

Prison Regulation 92 enables the Commission to determine who shall be allowed to visit institutions. Permission to visit can be withdrawn if the visitor breaches the recognised standards of conduct inherent in the grant of permission, for example, by attempting to introduce contraband into a gaol. Similarly, the provision of contact visits to inmates is a privilege granted by the Commission. If the Commission has evidence that the inmate

is abusing the privilege, or if it has reasonable cause to believe that the inmate is using contact visits to receive contraband, the privilege can be withdrawn.

The Ombudsman generally makes preliminary enquiries into complaints from prisoners about the withdrawal of contact visits. If enquiries show that the decision has been taken within normal guidelines, and if it appears to be within the bounds of the discretion which the prison administrator is empowered to exercise under the Prisons Act, the Ombudsman will not intervene or seek to substitute his views for those of the administrator. The Ombudsman will only intervene if it appears to him that the administrator's decision was in some way irregular or unreasonable.

A prisoner complained that the withdrawal of contact visiting privileges from him was unreasonable. The Department's security advisers reported that the prisoner's female visitor had admitted passing him a ring during a contact visit. When searched, the prisoner was wearing two rings, one gold coloured, the other silver coloured. A report made by a prison officer who had searched the prisoner said that, when the prisoner entered the visiting area, only one ring (the gold coloured one) had been registered in the visiting area property register, and the officer concluded that the visitor must have passed the prisoner the silver ring. The prisoner and his visitor denied that the ring had been brought to the prison and passed to the prisoner during the visit. The prisoner claimed that the silver ring had always been in his possession, ever since his reception at the gaol. His property card confirmed this. The property register at the visiting centre merely recorded that, on the day in question, he had "one ring" in his possession. The colour of the ring was not specified.

Because of the obvious inconsistencies in the versions given by the prisoner and the prison authorities, an investigation was commenced and, at the time of writing, is continuing.

Prisoners and police interviews

Police are sometimes required to investigate criminal offences which occur in gaols. If they need to interview suspects or possible witnesses, they can do so in the institution itself, or they can ask the Corrective Services Commission to transfer the prisoner to a police station, where the prisoner can be interviewed in more private conditions than are available in the gaol.

Section 29 of the Prisons Act provides that the Commission can authorise the temporary removal of a prisoner from an institution for a number of purposes, one such purpose being:

> (for interview) by any member of the police force in connection with the commission of any crime or offence in any prison, whether or not committed or suspected of having been committed by the prisoner [s.29(i)(f)].

In August 1986 a prisoner was murdered in the Central Industrial Prison. The police wished to interview all prisoners in the wing in which the deceased had been housed. The Director of Custodial Services ordered that prisoners be escorted to the interview place, the gaol's administration block, after lock-up time. Prisoner L complained that, at about 6pm, he was escorted there by at least four Emergency Unit officers who were dressed in overalls and heavy duty gear, even though he had indicated that he did not wish to participate in an interview with police. When he reached the interview room, he repeated to police that he did not wish to speak to them, and he was returned to his cell. Preliminary enquiries made with the Department of Corrective Services confirmed that the Director had ordered the removal of prisoners at a late hour. He said that this had been done to avoid the situation where, because of peer pressure, prisoners might be persuaded not to co-operate with police.

The effect of having inmates interviewed after office hours, however, was that they could not contact legal advisers. Several years ago, an arrangement was made between the Legal Services Commission and the Department whereby a solicitor would be made available to give telephone advice to prisoners whom the police

wished to transfer to a police station for interview. The superintendent of the gaol was required to have the prisoner sign an acknowledgement that he had been afforded the opportunity of getting legal advice. There is no such obligation on prison officers in relation to interviews which the police are prepared to conduct within the institution.

The Assistant Ombudsman investigated Prisoner L's complaint, in so far as it related to the conduct of the Director of Custodial Services in ordering the removal of the prisoner at a time when there was little or no opportunity for him to contact a solicitor.

In a draft report that he sent to the Minister for Corrective Services, the Ombudsman commented on the inappropriateness of deploying four officers dressed in para-military fashion to escort prisoners to an interview with police. The presence of four officers, in addition to one or more supervisors, was found to be intimidatory, even though no actual force had to be used in Mr L's case. The report also noted that, if Mr L had been a private citizen and the police had wished to interview him, he would have been entitled to decline to be interviewed either on the spot or at a police station. The police would then have had to decide whether to place him under arrest. The Ombudsman acknowledged, however, that it was desirable for the police to have some contact with the person they proposed to interview and to have that person declare that he did not wish to say anything.

The report also noted the potential consequences of the failure to afford witnesses and suspects the opportunity to seek legal advice. The Ombudsman said:

> It is a small measure to put a prisoner in contact with a legal adviser but it could mean that at a later stage there is no challenge to the evidence gathered by the Police.

The Ombudsman concluded:

> The Department has the responsibility to ensure that the standards of reasonableness and fairness are followed when prisoners in its care are sought for interviews by external investigative authorities ... The circumstances surrounding

> Mr L's attempted interview were destined to cause hostility and distrust on the part of the prisoner and ultimately to thwart the police investigation. The method of his removal from his cell was such that it overbore his right to choose whether to submit to police interrogation or to exercise his right to silence.

The Ombudsman found that the conduct of the Director of Custodial Services in ordering the prisoners to be escorted from the wing after lock-up to be unreasonable, unjust and oppressive. He recommended that the Department review its policy with regard to procedures to be followed when prisoners are required for police interview either inside or outside a gaol, and incorporate in the revised policy a requirement for all prisoners to be given an opportunity to contact a solicitor. He further recommended that the Department should ensure that there are appropriate, private interviewing facilities in each gaol in which police and other authorities can interview prisoners away from other inmates.

The Minister for Corrective Services, whilst not requiring consultation, responded to the draft report with comments which were critical of the Ombudsman's conclusions. Nevertheless, the Minister agreed with the Ombudsman's recommendations about the procedures to be followed when prisoners are required for police interviews. He provided the Ombudsman with a draft policy directive which instructs that all prisoners are to be given an opportunity to contact the Prisoners' Legal Service when they are required for police interviews, either inside or outside a gaol. He also advised the Ombudsman that each institution already has suitable facilities, such as superintendent's or deputy superintendent's offices, where interviews can be held in private.

In his final report the Ombudsman said that the action taken by the Minister represented substantial compliance with his recommendations and that he proposed taking no further action in the matter.

Forensic prisoners

The forensic provisions of the Mental Health Act 1983 were proclaimed in August 1986. One of the features of the new legislation was the creation of the Mental Health Review Tribunal, which conducts regular, six-monthly reviews of all forensic patients, and makes recommendations about their placement and treatment to the Minister for Health.

A forensic patient is a person who has been charged with a criminal offence and subsequently is either found not guilty on the grounds of mental illness (and, therefore, is detained "at the Governor's Pleasure") or is unfit to stand trial because of mental illness. Some prisoners who show signs of mental illness while serving a sentence in gaol are transferred to a psychiatric hospital . They, too, are forensic patients for the purposes of the Act. Most forensic patients are held in psychiatric (schedule 5) hospitals and, thus, are under the jurisdiction of the Minister for Health; but a number are in the prison system.

Forensic patients who are in the prison system appear to be in limbo between the two departments. On the one hand, they appear before the Mental Health Review Tribunal where a full assessment is made of their condition, progress and treatment. The Tribunal makes recommendations through the Minister for Health, to the Governor. If the Governor approves them, the recommendations are forwarded to the Minister for Corrective Services. On the other hand, the Department of Corrective Services has its own classification system; it considers that it is not obliged to take notice of the recommendations of a Tribunal set up within the administration of another Department and answerable to another Minister.

The problem was highlighted in the still unresolved case of Mr G, which has been referred to in the 1985-86 and 1986-87 Annual Reports. Mr G was a "Governor's Pleasure" prisoner who had been in the prison system since his arrest in 1975. In 1985 he was released on licence, on condition that he admit himself to Morriset Hospital as a voluntary patient. The arrangement failed for various reasons, and Mr G was returned to the prison system.

He was reviewed by the Tribunal on a number of occasions and recommendations were made that he be given a minimum security rating, so that he could participate in the work release program at Silverwater Training Centre. After a delay of nine months, Mr G was finally transferred to the Silverwater Centre, but it was several more months before he became eligible to participate in the work release programme.

In his draft report to the Minister for Corrective Services, the Ombudsman recommended that the Classification Division of the Department of Corrective Services have a formal input into the Tribunal's review of forensic prisoners by having a representative appear before the Tribunal's hearings to make it aware of the Department's attitude towards a particular prisoner, and about its policies generally. In response to the draft report, the late Hon. R. Aston said that a meeting had been held between the President of the Tribunal, the Departments of Health and Corrective Services and the Mental Health Advocacy Service. The mechanisms required to ensure that the Tribunal was aware of all information concerning a forensic patient in the custody of the Department of Corrective Services had been discussed. Mr Aston said that the Corrective Services Commission was considering a proposal to appoint the Director of Prisoner Classification as an ex-officio member of the Tribunal under Section 45 of the Mental Health Act. The Ombudsman understands, however, that this proposal was not acceptable to the Mental Health Advocacy Service, and the Commission has advised the Minister against adoption of the proposal.

In his correspondence with the Ombudsman, the former Minister also referred to an advising given by the Crown Solicitor in October 1987. The advising cast doubt on the Tribunal's ability to recommend that a forensic patient be allowed "out of a hospital, prison or other place on unsupervised day leave". A recommendation of that nature, in the Crown Solicitor's view, was not permissible and he suggested that the Tribunal had no express power to make recommendations about particular custodial classifications. The former Minister concluded:

> Whilst a co-ordinated approach to the care of forensic patients is essential, a more fundamental issue which, despite the Crown Solicitor's advising, has not been clarified, is the clear delineation of areas of responsibility for forensic patients in Corrective Services custody.

In the Ombudsman's view, an impasse has been reached on the issue between the two departments, as complaints continue to be received by this Office. Two recent cases illustrate the problems involved:

- In December 1987 a complaint was received on behalf of Mr C who has appeared before the Tribunal four times in the past two years. On each occasion, the Tribunal has made recommendations as to his classification, medication and possible transfer to Rozelle Hospital. Although the Department of Corrective Services has not been officially informed of the recommendations, it has been made aware of their content and does not agree with the Tribunal's assessment of the prisoner. The former Minister for Health, on 28 January 1988, approved the Tribunal's recommendations of 20 August 1987, but no action has been taken to implement them.

- The Mental Health Advocacy Service complained in November 1987 of delays in implementing a recommendation of the Tribunal. The Tribunal had recommended Mr M's transfer to Cumberland Hospital or to a similar institution. The Governor approved the recommendation in April 1987, but it took five months for the transfer to be effected and for Mr M to be relocated to Rozelle Hospital.

It appeared to the Ombudsman that neither the Department of Health nor the Department of Corrective Services had developed effective administrative procedures to implement the Tribunal's recommendations. Enquiries have now commenced into the reasons for the apparent failure to develop such procedures.

Prisoner not released on time

Mr C was a prisoner who served his sentence at several NSW gaols, and was released in early 1987. Prisoners can earn extra remission when they satisfactorily perform industrial work or educational courses. They must apply for the extra remission and gaol staff and administrative officers process such applications.

About two months before his non-parole period expired, Mr C applied for remissions based on industrial work performed at one gaol, and educational courses attended at two other prisons. His education remissions were granted within a month by the two superintendents concerned. His application for industrial remission was put aside by the third superintendent, apparently because Mr C's earliest possible date of release, as shown on the application form, had not been adjusted to take account of the education remissions applied for.

The third application for industrial remission was approved six weeks later, four days after Mr C had been released from prison. After taking into account all remissions that had been approved, Mr C had been detained for six days more than he should have been.

When provided with the provisional findings and recommendations of this Office, the Department recognised the mistake. The Minister for Corrective Services approved an ex gratia payment to Mr C of $50 for each day of unnecessary detention. Mr C also received a formal apology from the Department.

Searching of visitors to prisons

Until late August 1988, prison officers did not have the right to search visitors to a prison, other than by using an electronic scanning device and by inspecting bags. If an officer suspected that a visitor might be bringing drugs or other contraband into a gaol, he had to notify the police. Police have the power to stop, search and detain a person reasonably suspected of carrying illegal or unlawfully obtained substances. The extent to which a

police officer can search a person prior to arrest is governed by police instructions.

The 1986-87 Annual Report referred to complaints made by several female visitors to Bathurst Gaol that they had been randomly and unreasonably searched when they attended a Gala Day at the gaol in March 1987.

Enquiries with the Department of Corrective Services established that prison officers had obtained reliable information, from various sources, that certain visitors would attempt to smuggle drugs into the gaol on that day. The prison authorities notified the police. The police attended the gaol and required nominated visitors to submit to strip searching. A small amount of green vegetable matter was found on one visitor. On the basis of preliminary enquiries, this Office decided that there had been no wrong conduct on the part of the prison authorities.

An investigation of the conduct of the police officers involved in the matter was conducted by an officer appointed by the Commissioner of Police. After an extensive investigation the police investigator concluded that the police were acting in accordance with established procedures when they required nominated visitors to submit to strip searching. Police had received from Corrective Services officers reliable information which had been gathered from reliable sources, and they had a reasonable suspicion that certain visitors would attempt to carry contraband into the gaol. After considering all of the evidence, the Ombudsman found the complaint against the police to be not sustained.

Compensation to prisoners injured while working

This matter was first reported in the Ombudsman's 1983-84 Annual Report and has been mentioned in each Annual Report since.

Following the recommendation made by the Ombudsman in 1985 that compensation payable to prisoners injured while working should be placed on a statutory basis, an Interdepartmental Committee was

established to examine the proposal. The Committee reported in December 1986 and its recommendations did not accord with those of the Ombudsman. It recommended only an ex gratia scheme, without statutory support, to provide compensation only for accidental injury to a person working in a prison industry or whose injury was due to the negligence of the Department or its officers.

While the Ombudsman was disappointed that the Committee's recommendations fell far short of the scheme he had proposed, he was satisfied that the matter had been fully considered by the Committee, which was constituted by representatives of the Department of Corrective Services, Department of Health, Attorney-General's Department and Treasury.

The Ombudsman's recommendation that the complainant be paid a sum commensurate with what he would have received if he had been covered by the Worker's Compensation Act, was finally approved by the Treasurer in early 1988. Thus, the matter was satisfactorily concluded after a delay of several years.

Education of prison officers

For a number of years, officers of the Ombudsman have addressed prison officer training courses about the role of the Ombudsman. Until 1987, the participation of this Office had been mainly confined to the courses for senior prison officers. In 1987, however, at the suggestion of the then Superintendent of the Correctional Officers' College, participation was extended to the refresher courses for new recruits held after 40 weeks on-the-job service, and to the executive officer courses.

The practice has continued in 1988 with the relocation of the Training College from Windsor to the Long Bay Complex. The training course for new officers has been revised and there is a significant component in that course on the role of the Ombudsman.

The Ombudsman regards the education of public authorities about his role as an extremely important function, and is pleased to have the co-operation and support of the administration of the College for a continued role by his officers in the education of all Corrective Services officers. In May 1988, Mr Peter Turton, Acting Director of Training and Recruitment, addressed a seminar for Ombudsman staff on the philosophy of and changes to the training of prison officers. The session was extremely successful in contributing to a greater understanding of the issues affecting Corrective Services staff, and the Ombudsman was pleased to have had the benefit of Mr Turton's experience and expertise.

CONSTRUCTIVE ACTION BY PUBLIC AUTHORITIES

Some public authorities quickly resolve complaints after the Ombudsman's Office contacts them. When this happens, the Office usually takes no further action. Some specific examples follow, and statistics on "constructive action" are set out later in this Annual Report under the heading "Performance Indicators".

Department of Agriculture - Fisheries Division

An oyster farmer complained about the Department's refusal to renew an oyster lease. He claimed that information about procedural changes had been sent to the lessees at an incorrect address. The Department said that the renewal of the lease had been refused because of policy changes which had been widely advertised, and because the renewal application had been late. Although there was no obligation on the Department to send reminders to lessees when renewal was due, the Department conceded that this had been the practice and that the reminder had been sent to an incorrect address. The Department agreed to rescind the refusal, and to allow the application for lease renewal to proceed.

Building Services Corporation

A homeowner claimed that action on a complaint to the then Builders Licensing Board had been denied, allegedly because the complaint had been made outside the maximum period for the receipt of complaints after expiry of a builder's licence (5 years), whereas it had been the delay by the Board in responding to his complaint that placed him outside the time limit. He also argued that his complaint had been necessary because a previous complaint had not been properly investigated or dealt with. The newly formed Building Services Corporation, in company with a Consultant Engineer, carried out further investigation to determine the most appropriate rectification work. As the original builder no longer held a licence and so could not be brought in to carry out rectification work, the complainant was invited to lodge an insurance claim with the Corporation to cover the costs of proposed rectification. The complainant specifically asked the Ombudsman not to carry the investigation further, because of the positive response of the Corporation.

Health Department

A former student at a Health Department Dental Therapists' School complained that she had been issued with an inaccurate academic record which listed the wrong years of attendance by her at the course, showed her as receiving passes where she had in fact achieved credits or better in particular subjects, and which failed to record that she had come equal first in the year. After protracted enquiries by the Ombudsman's Office and the Health Department's Complaints Unit, during which it was revealed that certain raw mark sheets had been lost, the complainant was issued with an accurate record of her course performance.

Housing Department

A pregnant, single mother complained about delay by the Housing Department in providing her and her three young children with accommodation. She had first applied for housing in 1982. Her

file had been firstly misplaced, then lost, and she had to re-apply in 1984. In July 1987, when her housing need was desperate, the complainant was promised housing within three weeks. In mid August, however, she was told that all 1984 applicants had been placed and that her files were missing again. Although the complainant's files could not be located, a departmental officer interviewed her and was satisfied that she met the criteria of continuous eligibility. As a result she was allocated a three-bedroom town house.

Kempsey Pastures Protection Board

A retired man occupied a small property which he considered was too steep and rough to allow any stock to be run on it. He objected to rating assessments based on the local Pastures Protection Board's estimation of the carrying capacity of the land. At the time, holdings below a prescribed size only attracted the general rate if they were capable of carrying a specified number of stock. After enquiries by this Office, the Board reconsidered the matter and decided that it was doubtful that the holding met the required carrying capacity. The land was later deemed not rateable.

State Rail Authority

A woman purchased a $90 Motorail ticket to carry her vehicle from Brisbane to Sydney. When she later realised the car was no longer roadworthy, she cancelled the reservation. Because she was unable to locate the ticket, the Authority refused her a refund. Following enquiries by this Office, the Authority admitted it had made a mistake and agreed to refund the money. Motorail reservations are treated differently to ordinary rail travel tickets. Under the Authority's General Regulations for Passenger Traffic, the Authority does not undertake to refund monies in respect of ordinary tickets which have been lost or mislaid.

Department of Technical and Further Education

A complainant said that a missing exam mark was delaying course completion and the issue of a course certificate, and promotion prospects were being affected. The Department was dependent on the exam result coming through normal institutional channels to the centralised Student Records Office, and an active search for the results sheet and the reason for its delay took place. In the meantime and pending the issue of the course certificate, the college offered to prepare supporting documentation about completion of the course in order to facilitate the complainant's promotion.

University of New England

Mr W was enrolled as a probationary candidate in two subjects in a Masters course. Although he passed the subjects, he did not meet the required standard. The University terminated his enrolment but later reinstated him to the course. Mr W complained that, when the University reinstated him, it refused to grant him credit for the two subjects he had passed. Following enquiries by this Office, the University decided to accredit Mr W with the subjects towards his degree. It also amended its procedures to ensure that probationary candidates are enrolled in no more than one subject each semester.

Water Board

Mrs A approached this Office after receiving a water consumption account for an amount that she considered excessive. There had been problems with a leaking meter and a written complaint to the Water Board remained unanswered. In response to enquiries from this Office, the Board agreed that the meter reading had been "extraordinary" and agreed to waive a consumption account of almost $500. It also promised to replace the leaking meter with a new one.

Coffs Harbour Shire Council

A couple said that council had failed to rectify sewerage problems on their commercial property. During periods of heavy rain the property was flooded with raw sewage because the local sewerage system was inadequate. After enquiries by this Office, council decided to install a supplementary pumping station in the area and that work commenced shortly afterwards.

Manly Municipal Council

The complainant moved into his premises in 1986. In 1988 he realised that he had been paying for garbage services on the basis of four bins per week rather than two bins, as was the case. The error had been brought to his attention by a new explanatory note in the 1988 rate notice. The council adjusted the account but refused to give a refund for past years. In response to enquiries by this Office, the council agreed to investigate making its rate notices even more explicit so it would be clear to people what the service charges were for, and agreed to make a refund.

Marrickville Municipal Council

The complainant said that council had voted to reject "hundreds of submissions" from residents who were concerned about a local area traffic plan, despite the guidelines of the NSW Traffic Authority which require councils to collate all comments and submissions. The submissions had been received within the period allowed. The council had based its rejection on the argument that the submissions, all of which were on yellow forms, had been from residents who had responded to a particular campaign that had the appearance of having been officially conducted. After preliminary enquiries were made, council resolved to rescind its decision, and to consider the submissions on yellow forms equally with all others received.

Department of Corrective Services

A prisoner complained that he had been denied contact visits with his young children. Because he was not willing to see them in a regulation "box" visit situation, he had not seen the children for eight months. The Department reviewed the matter and made arrangements for the complainant to have contact visits with his children in one of the family visiting facilities.

Complaints were received from several prisoners about undue delays in the receipt of mail from outside the prison system, as well as from other departmental institutions. The Department carried out an investigation which isolated a number of problem areas. Procedures were adopted which eliminated many of the causes of delay by streamlining mail collection, transportation and delivery.

Police Department

A case of mistaken identity resulting in recurring home visits by police caused a complaint by a Sydney resident. The resident shared an identical family name and first given name with a person who had defaulted on paying fines. Despite correction, the similarity in names and addresses had continued to cause confusion, and late night visits. The Department recognised the problem, and arranged for all warrants to be endorsed as "not identical" to the complainant, by name and address.

POLICE AREA

Police complaint statistics

The number of complaints against police officers and the Police Department fell by 4% during the year.

	1986-87	1987-88
Complaints under the Police Regulation (Allegations of Misconduct) Act	2115	1995
Complaints against police dealt with under the Ombudsman Act	36	51
Complaints dealt with under both Acts	14	3
Complaints outside jurisdiction	60	89
Total	2225	2138

Declined, investigated and reinvestigated complaints

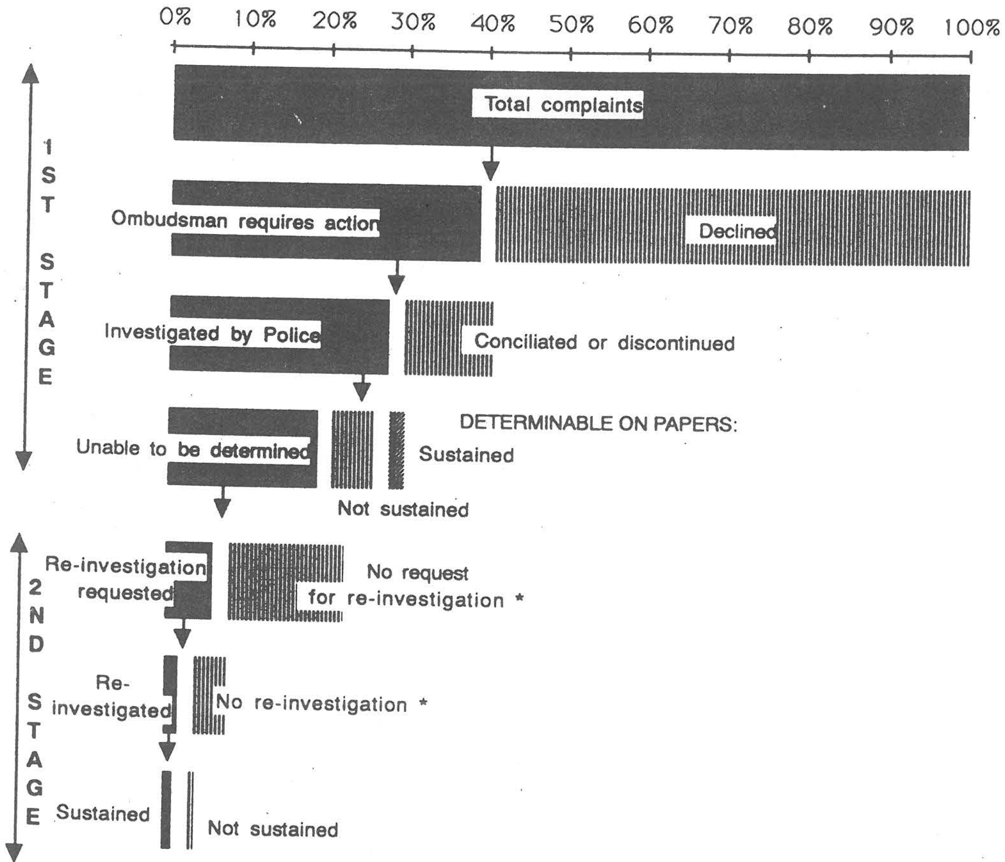
More than half of the complaints received were declined. Investigation was not required in 66% of cases; in a little over 5% of cases, for various reasons, investigation was discontinued. Altogether, 72% of complaints finalised during the year were not required by the Ombudsman to be fully investigated.

Investigation was required in 27.8% of cases and, after close analysis of investigation reports provided by the Commissioner of Police, 37 cases were accepted for reinvestigation by the Ombudsman..

Fewer cases proceeded to reinvestigation this year than last year, mainly because a number of vacancies occurred in statutory positions during the year, when the former Ombudsman, the former Deputy Ombudsman and an Assistant Ombudsman left the office. A lack of hearing officers and the unavailability for some time of anyone to exercise the Ombudsman's statutory authority in making determinations impeded performance in reinvestigations.

The following chart describes the flow of complaints to finality, showing the method and proportion in which cases were determined.

OUTCOME OF FINALISED COMPLAINTS 1987-88



* *Deemed Not Sustained*

The following table shows the results of cases that reached finality.

RESULTS OF FINALISED MATTERS

		%
Declined	1254	61
Discontinued	117	5.7
Conciliated	116	5.6
Sustained at 1st stage	42	2
Not sustained at 1st stage - no further action	108	5.2
Deemed not sustained - no reinvestigation	387	18.8
Reinvestigation discontinued	3	0.1
Sustained after reinvestigation	23	1.1
Not sustained after reinvestigation	11	0.5
TOTAL	2061	100%

Complaints not investigated

The Ombudsman's Office has continued to stringently screen new complaints, so that investigation is not required of trivial issues. Only 27.8% of complaints reaching finality were fully investigated. The bulk of complaints were declined either at the outset or after brief inquiry, and others were conciliated.

Typical examples of allegations that do not proceed to investigation are:

rudeness - rude/aggressive remarks or attitudes

traffic disputes	-	dispute about the validity of a traffic/parking infringement notice
poor attitude of service/ lack of service		

In these and other complaints of less serious conduct, the Ombudsman may decide to decline any further inquiry or investigation. In some cases he may consider that conciliation between the complainant and police is an appropriate form of resolution.

Ombudsman v The Commissioner of Police

On 24 February 1987 the Ombudsman commenced proceedings in the Supreme Court against the Commissioner of Police. The Ombudsman sought Declarations, the effect of which would be to require the Commissioner to notify the Ombudsman, in accordance with the Police Regulation (Allegations of Misconduct) Act, of any written complaint made to the Commisisoner by a member of the Police Force against another member.

In late 1986 the Ombudsman became aware of two statements, made by members of the Police Force, which raised separate allegations of misconduct by other police officers and which, in the belief of the Ombudsman, constituted complaints within the meaning of the Police Regulation (Allegations of Misconduct) Act. Sections 8 and 9 of the Act require the Commissioner to notify the Ombudsman of any written complaint made against a member of the Police Force. The Ombudsman immediately sought the advice of senior and junior counsel whose opinions confirmed the Ombudsman's belief. Counsel also advised that an addendum, to the statement of one of the members of the Police Force, to the following effect:

> I wish to state that I desire the Commissioner of Police to be the sole arbitrator in respect of this complaint. I do not desire that my complaint be brought under the notice of the Ombudsman, or any representative of the Ombudsman.

did not prevent the Commissioner of Police from notifying the Ombudsman of the complaint.

On 13 January 1987 the Ombudsman wrote to the Commissioner enclosing copies of counsels' opinions and requesting that the Commissioner formally notify him of the two complaints and, as well, of any other such complaints which might exist. The Ombudsman also advised the Commissioner that the matter would be immediately referred to the court should the Commissioner not comply with the request. On 19 January 1987 the Commissioner replied:

> It has always been the view of this Department that certain matters, broadly known as internal disciplinary inquiries or 'Departmental Inquiries' were excluded from the provisions of the Police Regulation (Allegations of Misconduct) Act. However, the legal advice you have furnished obviously raises some doubt on past definitions and the matter will now have to be reviewed in some depth.

The Commissioner said that he wished to obtain his own independent legal advice on the subject.

Proceedings were commenced in February 1987 and were heard before Lee, J, who handed down his judgement on 17 December 1987. In the course of argument, senior counsel for the Commissioner conceded that, should the Declarations sought be granted, an addendum to a complaint in the form earlier outlined could not operate to take a complaint outside the terms of the Police Regulation (Allegations of Misconduct) Act.

Lee, J granted the Declarations sought and in the course of his judgement observed:

> In the result then, one has an Act of Parliament which expresses in its long title that it is an Act 'to confer and impose on the Ombudsman and the Commissioner of Police certain powers, authorities, duties and functions with respect to the investigation of and adjudication upon, allegations of misconduct made against members of the Police Force ...' and there is nothing in the terms of the Act which in any way suggest that the expression 'allegations of misconduct made against members of the Police Force' is intended to be limited to allegations made by private citizens. Futhermore, and this is a matter, in my view, of real significance, there is nothing in any of the procedures

> established under the Act which could be said to make them inapt, awkward or inconvenient in their application to complaints by police officers against other police officers. (at pp. 11 and 12)

His Honour concluded:

> To disregard the generality of the terms of the Act and confine it merely to complaints by private citizens, would keep from the Ombudsman, the Parliament and the public that source of information as to police misconduct which is likely to be the most reliable source. The Act on any view is intended to be for the benefit of the public not just for the benefit of persons who complain of police misconduct and it operates on any complaint of misconduct which is in writing and which comes in to the hand of a police officer or the Ombudsman in the circumstances set out in section 6(1B) and whether the complaint is by a police officer or a private citizen. (at pp. 24 and 25)

On 30 March 1988 the Assistant Ombudsman and the Ombudsman's Senior Executive Assistant and Senior Investigation Officer (Police) met with Executive Chief Superintendent Snape of the Internal Affairs Branch to discuss, amongst other things, procedures for giving effect to Mr Justice Lee's decision.

On 8 June 1988, the Commissioner of Police issued Circular 88/97 in the following terms:

> Operation of the Police Regulation (Allegations of Misconduct) Act - Complaints by members of the Police Force.
>
> * * * *
>
> In December 1987, proceedings were determined in the Administrative Division of the Supreme Court of New South Wales in a case by the Ombudsman against the Commissioner of Police relating to interpretation of the Police Regulation (Allegations of Misconduct) Act.
>
> That case clearly determined that complaints by members of the Police Force against other members of the Force come within the ambit of the Act and investigation is therefore subject to review by the Ombudsman. Since that decision was handed down, action has been taken to relay to the Ombudsman a number of investigations which originated with complaints from members of the Force.

ERRATUM

Page 83 - Add at foot of page:

> out of the DMR, and this explained why the DMT's Transport Policy Branch was replying to the Ombudsman through the DMR.

Page 186 - Figures for Special Officer of the Ombudsman (Seconded Police Officer) as at 30 June 1985 and 1986 should read 10.

All Police, and especially (Commissioned) Officers, should be aware of the current situation. In simple terms, any document received which includes an allegation of misconduct by a member of the Police Force constitutes a complaint within the meaning of the Police Regulation (Allegations of Misconduct) Act and must be dealt with in accordance with the provisions of that Act. In particular, Officers should be fully conversant with the provisions of Section 8(1) of the Act regarding notification of complaints to the Police Internal Affairs Branch and transmission of complaints to the Commissioner.

The test to be applied is whether a document, irrespective of its origin, incorporates an allegation of misconduct by a member of the Police Force. For instance, any report submitted in accordance with the provisions of Police Rule 35 would obviously come into this category and be dealt with accordingly. On the other hand, many documents come into existence in the normal day to day supervisory or managerial operations of the Force which would not be seen as coming within the ambit of the Police Regulation (Allegations of Misconduct) Act.

If, for example, a prisoner were to escape from Police custody, an inquiry would automatically be commenced. However, unless this originated with a report accusing another officer of neglect or misconduct in allowing the escape, the inquiry would not come within the ambit of the Police Regulation (Allegations of Misconduct) Act, there being no written allegation of misconduct .

A degree of discretion and common sense has to be exercised in these matters by Officers. However, it is encumbent upon all members of the Force to be aware of the provisions of the Police Regulation (Allegations of Misconduct) Act and to comply with the requirements of that statute. Accordingly, in any cases of doubt as to whether a particular matter comes within the ambit of the Act, prompt action must be taken to refer the papers to the Police Internal Affairs Branch for adjudication and, if appropriate, relay to the Ombudsman.

I expect the co-operation of all Officers in this matter, so that there can be no cause for complaint regarding failure by the Department to comply with the relevant legislation.

The Commissioner has expressed the view, both publicly and in private discussions with the Ombudsman, that the operation of the Police Regulation (Allegations of Misconduct) Act should not intrude into areas which relate essentially to management practices. The Commissioner has argued that these areas should remain matters for his administration as head of the Police Force. At the same time, several senior officers or former

officers of the Police Force have expressed strong misgivings about the impact of Mr Justice Lee's decision on the administration of the Force.

The Ombudsman accepts the Commissioner's view that there will be cases which, as a result of the decision of His Honour, will constitute complaints under the Act, but which may appropriately be left to the Commissioner's discretion. The Ombudsman does not, however, share any misgivings which have been expressed. In the Ombudsman's opinion, recent experience has shown that there is a considerable measure of agreement between the Internal Affairs Branch and this Office as to complaints which fall into the category of management matters.

Equally, it is the Ombudsman's firm belief that the decision of Mr Justice Lee should be scrupulously adhered to. Accordingly, all complaints by members of the Police Force concerning other members must be reported to this Office. Those complaints which raise purely management matters will be reviewed on their merits and, where appropriate, will be declined by the Ombudsman in accordance with the wide discretion conferred by Section 18 of the Act. They will then be left for the Commissioner to deal with.

Police Regulation (Allegations of Misconduct) Amendment Bill; threat to civilian oversight of police investigations of complaints about police

On 16 May 1988 the Ombudsman made a special report to Parliament on proposals to amend the Police Regulation (Allegations of Misconduct) Act.

In essence, the proposals would have **required** the Commissioner of Police to investigate **only** those complaints of police misconduct which in the opinion of the Commissioner would, if proven, result in:

(i) a charge for an "indictable offence" or a "prescribed summary offence" being preferred against a member of the Police Force; or

(ii) the dismissal of a member of the Police Force

and would have removed the Ombudsman's power to require investigation of complaints which, in the Commissioner's opinion would not so result.

In his report to Parliament, the Ombudsman said:

> These amendments go to the very heart of and significantly undermine the effectiveness of civilian oversight of the investigation by police of complaints about the conduct of members of the Police Force. The concept that civilian oversight is essential for the public accountability of the Police Force is well recognised in many jurisdictions within Australia and overseas. The amendments will diminish the rights of citizens and in the opinion of the Ombudsman, are against the public interest.

The Ombudsman made the following points in rebuttal of arguments which had been put forward in favour of the proposals:

> Firstly, the cost of investigations of complaints against police was due, in part, to the inefficient and wasteful use of resources by the Internal Affairs Branch, where each complaint is investigated by a senior officer partnered by a junior officer. In contrast, investigations conducted by the Office of the Ombudsman are carried out by individual investigation officers.
>
> Secondly, any success achieved by the Internal Affairs Branch in reducing delays in the investigation of complaints had been achieved largely as a result of continuous civilian oversight by the Office of the Ombudsman to highlight excessive and unreasonable delays.
>
> Thirdly, and contrary to inaccurate and misleading statistics prepared by the Internal Affairs Branch, complaints against police were not "at their lowest level since 1982". Detailed statistics maintained by the Office of the Ombudsman showed that (with one exception) there had been a steady increase in complaints against police between 1982 and 1987, whether judged in real terms or on a comparative basis of complaints per 100 police.

Fourthly, there was simply no evidence to suggest that the police complaints system was being abused because the Ombudsman required the Commissioner of Police to investigate "minor complaints". As a result of an effective screening process adopted by the Office of the Ombudsman, detailed statistics showed that, with one exception, there had been a yearly decrease in the number of complaints which the Ombudsman had required to be investigated, and a corresponding increase in the number of complaints not investigated. The latter group of complaints were either conciliated or declined at the outset, or after preliminary inquiries of the Police Department, by the Office of the Ombudsman. The Ombudsman pointed out that this latter group of complaints were not counted by the Internal Affairs Branch in its statistics of complaints received. This meant that in 1986-87, the Internal Affairs Branch had ignored for statistical purposes 1266 complaints or 57% of all complaints received.

The Ombudsman concluded that the proposal contained in the Bill which, in relation to complaints alleging non-criminal conduct, would require the Commissioner of Police to investigate only those complaints which, if proven, would warrant dismissal, was unsatisfactory and uncertain. It was unsatisfactory because the requirement was not a requirement at all, but was, in effect, a discretion. This followed from the fact that the Commissioner of Police (or his delegate) had a discretion as to the nature of any penalty to be imposed where a departmental charge had been proven. The proposal was uncertain because there was no fixed scale of penalties which must be imposed for any particular departmental charge found proven. Police Rule 11(g) provides:

> 11. Each member admitted to the Force after the commencement of these Rules is admitted upon the following conditions, and each member admitted to the Force before that commencement continues to be a member upon the following conditions, namely -
>
> (g) he is liable to dismissal or other punishment for disobedience, neglect or omission of duty, incompetency, intemperance, being under the influence of intoxicating liquor while on duty or

> while in uniform, disrespect to any person in authority, insolent or indecorous behaviour, any words or actions subversive of discipline or calculated to impair the efficiency of, or bring discredit upon, the force, or any misconduct punishable by law or contrary to these Rules or the Police Instructions. (emphasis added)

The report gave details of variations in penalties which had been imposed by the Commissioner in eleven specific cases, and the Ombudsman said:

> In fact, it could be said that almost any offence or misconduct could result in dismissal. But whether dismissal will ultimately result is impossible to say at the time a complaint is made, because the nature of the penalty imposed is always at the Commissioner's discretion.

The Ombudsman also made the point that many complaints which raise serious issues in terms of the public interest do not necessarily allege criminal conduct or misconduct which would warrant dismissal. The following example was given:

> Mr M complained to the Ombudsman that his vehicle had been damaged in an accident while it was parked in the city. Witnesses to the accident provided Mr M with a registration number of the vehicle involved. Mr M reported the incident to police and a Sergeant who investigated the matter advised Mr M that the other vehicle was an unregistered Budget rental car.
>
> Mr M complained to the Ombudsman about the failure of the Sergeant to properly investigate the accident. Mr M said that his own inquiries at the Department of Motor Transport showed that the vehicle was registered to the Police Department.
>
> The Ombudsman required the complaint to be investigated. The investigation revealed that an Assistant Commissioner of Police (since retired) had been driving the vehicle at the time of the accident. The investigation also revealed a false and misleading traffic accident report and a false and forged insurance claim.

As a result of a reinvestigation conducted by the Ombudsman, the Assistant Commissioner was criminally charged with "malicious injury" to property. The charge was found proven but no penalty was imposed.

Contrary to the recommendation of the Ombudsman, the Sergeant who initially investigated the matter was not charged with neglect of duty. Rather, the Commissioner chose only to parade the Sergeant before the Executive Chief Superintendent.

The Ombudsman's report listed examples of categories of complaint which raise serious issues in terms of the public interest, but which do not allege criminal conduct or conduct necessarily warranting dismissal, namely:

- wrongful arrest and/or unlawful detention;
- failure to investigate/take action;
- abuse of office;
- wrongful execution of warrant;
- search without warrant;
- inappropriate use of arrest power instead of proceeding by way of summons;
- unlawful detention under the Intoxicated Persons Act;
- wrongful disclosure of criminal records or other confidential information.

On 25 May 1988 the Minister for Police, the Hon E P Pickering, introduced the Police Regulation (Allegations of Misconduct) Amendment Bill 1988.

Clause 12B of the Bill provides:

> 12B. (1) The Commissioner shall, as soon as practicable after receiving a complaint or being notified of a complaint -
>
> (a) determine whether or not the complaint is a complaint of serious misconduct; and

(b) notify the Ombudsman, in writing, of the determination.

(2) The Commissioner may determine that a complaint is a complaint of serious misconduct even though the complaint also relates to conduct that is not serious misconduct.

(3) The Commissioner may determine that a complaint, in the opinion of the Commissioner, is a complaint of serious misconduct in so far as it relates to certain conduct and is not such a complaint in so far as it relates to other conduct.

(4) If the Commissioner makes a determination under subsection (3), the complaint shall, for the purposes of this Act, be taken to be separate complaints.

Clause 12A provides:

12A. In this Division -

"serious misconduct" means conduct of a member of the Police Force -

(a) which would, in the Commissioner's opinion, constitute a serious offence; or

(b) for which, in the Commissioner's opinion, the member would be dismissed from the Police Force,

if the conduct had occurred.

The Bill defines "serious offence" as:

(a) an indictable offence (including an indictable offence which may be dealt with summarily); or

(b) any other offence which is declared by the regulations to be a serious offence for the purposes of this Act; or

(c) an offence which, if committed in New South Wales, would be such an indictable offence or other offence.

Clause 12D provides:

12D. No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of -

(a) any determination, or notification to the Ombudsman, by the Commissioner that a complaint is, or is not, a complaint of serious misconduct; or

(b) any decision, proceeding, step or other matter involved in the making, or review, of any such determination or notification.

On 16 June 1988, by resolution of the Legislative Council, the Bill was referred to a Select Committee for consideration and report on:

(a) whether the provisions of the Bill were in the public interest;

(b) whether the existing role of the Ombudsman in oversighting the system of public complaints against police under the Police Regulation (Allegations of Misconduct) Act 1978 was working effectively or needed changing and, if so, in what respects; and

(c) any other matters incidental to or arising out of the above terms of reference.

The members of the Select Committee are:

The Hon M M Bignold, Ll B, MLC
The Hon R D Dyer, MLC
The Hon B A Evans, B Ec, MLC
The Hon R W Killen, MLC
The Hon E Kirkby, MLC
The Hon B H Vaughan, Ll B, MLC

The Ombudsman made a detailed written submission to the Committee and gave evidence before the Committee on 29 June 1988.

The Ombudsman made the following points, amongst others, in his submission:

(i) the notion of serious misconduct was much wider than the proposed definition of "serious offence":

- the Minister for Police had acknowledged that the Ombudsman did not require the Commissioner to investigate minor complaints

- in past years the Ombudsman had declined more than 50% of all complaints

- an analysis of all complaints received by the Ombudsman in the three months preceding the introduction of the Bill, showed that only approximately 6% of those complaints fell within paragraph (a) of the definition of "serious offence";

(ii) accordingly, the Bill proposed to remove from the Ombudsman's oversight the middle ground of complaints which form the substantive number of investigations that are currently carried out;

(iii) the Ombudsman had the highest respect for the personal integrity and ability of the Commissioner of Police. Nevertheless, most, if not all, substantive decisions under the Police Regulation (Allegations of Misconduct) Act were made by an Assistant Commissioner, and decisions by delegated officers would continue to be made under the new Bill;

(iv) the definition of "serious misconduct" in Clause 12A(b) was unsatisfactory because it was not possible to judge, either in advance or in isolation, when a penalty such as dismissal would be imposed;

(v) Clause 12D of the Bill placed the Commissioner of Police and any officer responsible for a delegated decision above the scrutiny of the law;

(vi) the Ombudsman suggested a possible provision whereby the Ombudsman would not investigate a complaint relating to:

(a) traffic and/or parking infringement complaints;

(b) incivility;

(c) conduct that occurred at too remote a time to justify investigation (suggested period of one year in which a complaint could be lodged);

unless, in the opinion of the Ombudsman, there were special circumstances that made it reasonable for the complaint to be made the subject of an investigation under Part 4 of the Act.

The Committee has received submissions and taken evidence from numerous witnesses, including the Commissioner of Police; the Chairman of the Police Board, Sir Maurice Byers; the Acting Assistant Commissioner (Review); the Executive Chief Superintendent, Internal Affairs Branch; and the Secretary, Legal Division, Police Association.

On 2 August 1988, the Select Committee published an Interim Report. Under the heading, "Preliminary views of the Select Committee", the Committee said:

* Independent public scrutiny of the New South Wales Police Force must continue, and this is supported by the vast majority of witnesses whether or not they supported the continued involvement in the police complaints system of the Office of the Ombudsman.

* For Police to effectively and properly carry out their duties and responsibilites, they require the trust, respect, confidence and assistance of the public.

* Current public trust, respect, confidence in the New South Wales Police Force is noted.

* The original need for the Ombudsman to oversee and if necessary re-investigate complaints about police will continue to exist, even as the current Commissioner of Police succeeds in improving police conduct and behaviour.

* The Committee has a concern arising out of police evidence that the procedures followed by the Ombudsman at (inquiries) under Section 19 of the Ombudsman Act, 1974 may not be entirely satisfactory or fair. The Ombudsman should be given the opportunity to respond in detail to the police evidence relating to Section 19 (inquiries).

* There has been no credible evidence from any witness that the Ombudsman investigates trivial or vexatious complaints such as alleged refusal of a police officer to give a cup of coffee to a member of the public at a police station. There is substantial agreement in practice between the Ombudsman and the Commissioner as to which complaints are trivial and do not warrant a formal investigation.

* It is clear that during the short period of years the police complaints system has been operating, the Ombudsman has declined to investigate approximately 50% of all complaints. It is equally clear that the Ombudsman has reinvestigated after the initial police investigation less than 3% of all complaints.

* Police do not discriminate or differentiate between reinvestigations by the Office of the Ombudsman and investigations by the Internal Affairs Branch and the Internal Security Unit of the NSW Police Force.

* The existing police complaints system represents a compromise between external review and investigation by the Ombudsman's Office and police demands for a high degree of internal participation and control which occurs through the Police Internal Affairs Branch and Police seconded to the Ombudsman's Office.

* Other public authorities and departments are subject to external investigation by the Ombudsman. The question needs to be asked whether the Police Force should be treated in the same way or in a way that is substantially different?

* Police have wide powers and discretions with regard to ordinary members of the public. Unlike other Government agencies or departments much policing is by its very nature decentralised of low visibility and little supervised. Scrutiny should exist to ensure that the extensive powers possessed and exercised by police are not abused.

* It is not satisfactory that the Bill before the House leaves it to subsequent regulations to specify what is a "prescribed summary offence". Parliament is entitled to know what it is being asked to approve, particularly in relation to such a controversial measure as the Bill currently before the Legislative Council.

* The category of "serious misconduct" being conduct for which the Commissioner would dismiss the member of the Police Force is also unsatisfactory. Dismissal from the Police Force is a penalty within the discretion of the Commissioner, and it is not possible at the outset of an investigation to determine whether such a penalty is appropriate for a particular offence if subsequently proved.

* The area of real and substantial dispute regarding the Bill before the House involves matters that are neither trivial nor criminal offences. These matters appear to constitute at present most of the complaints against police which the Ombudsman examines. These "middle ground" complaints relate to such matters as unwarranted failure to investigate, victimisation and harassment, and abuse of police powers of search and seizure. It appears to the Select Committee that these matters which are certainly not trivial and which in the main will not amount to criminal offences will not necessarily fall within the ambit of "serious misconduct" as interpreted by the Commissioner.

* The Select Committee needs to determine whether a complaint for consideration by the Ombudsman should include complaints made by police against other police.

* The Select Committee given more time would wish to explore with the Ombudsman the concept outlined in his submission, that certain classes of less serious complaints could be codified in the legislation so as to not attract the oversighting role of the Ombudsman, and with the objective of increasing police morale.

The Committee has announced that it will be calling further witnesses to give evidence.

"Serious misconduct" reports

Section 33 of the Police Regulation (Allegations of Misconduct) Act provides that where the Ombudsman is of the opinion that a member of the Police Force is or may be guilty of such misconduct that may warrant dismissal, removal or punishment, he shall report his opinion to the Minister for Police and the Commissioner of Police, giving his reasons.

Three such reports were made this year. The first arose out of the Ombudsman's reinvestigation of a complaint by Ms B that police had failed to properly investigate a motor vehicle accident in which she had been involved. The other party involved in the accident was the daughter of a Senior Constable of police; the Senior Constable had attended the scene of the accident and, allegedly, had spoken privately to the two police officers who attended the accident after Ms B had contacted police. The other driver had been exiting from a driveway onto the street in which Ms B was travelling, but no action was taken

against her. Ms B feared that there might have been an improper investigation of the accident.

During the reinvestigation of Ms B's complaint, two of the police officers involved refused to give evidence to the Ombudsman's inquiry unless they were formally required to do so. Having considered the evidence provided by all other witnesses, including a number of local police officers, the Ombudsman decided that, without the benefit of evidence from the two police officers, he could not be completely satisfied that Ms B's complaint was sustained. Nevertheless, he considered that there was a strong suspicion that three police officers had conspired to pervert the course of justice and to cover up the real circumstances of the accident. The Ombudsman was of the opinion that the police officers involved in the matter could well be guilty of criminal conduct. Accordingly, a "serious misconduct" report was made.

The second report arose from an anonymous complaint made about an Inspector of police. The complaint made a number of allegations, including an allegation that, when the Inspector had been a Sergeant in charge of the Highway Patrol, he had charged to the Police Department work carried out on his private car by a car repair firm. All of the allegations were investigated by the Police Department and were found not sustained. So far as the above allegation was concerned, the evidence was conflicting and the matter was reinvestigated.

Evidence was given by several witnesses. A police officer who had been responsible for the maintenance of the Highway Patrol vehicles supported the allegations made in the complaint and elaborated on them. He gave evidence that, in early 1984, the "girl friday" at the car repair firm had asked him for a purchase order, so that it could be completed for repairs carried out on the sergeant's private motor vehicle. The officer had been surprised by this request and had informed his senior officer. The senior officer gave evidence and confirmed the officer's evidence. He said that he had confronted the car repairer; the repairer had admitted to him that there was an outstanding account and that the Sergeant had told him, in jest, to

incorporate it in the police account. The Sergeant had been on annual leave when these events occurred. It was common ground that work had been carried out on the Sergeant's vehicle. The car repairer had also raised the matter with another of the Sergeant's officers and had asked that he remind the Sergeant of the outstanding account.

The car repairer's "girl friday" denied having the conversation recounted by the police officer. The Sergeant also denied the allegation. He agreed that the account had been outstanding, but maintained that the car repairer had suggested that he delay payment until he returned from annual leave. In addition, he claimed, the car repairer did not have a price for a water pump used in the repairs, so an invoice had not been prepared.

The reinvestigation, however, disclosed that an invoice showing the price of the water pump had been issued on the day the car had been collected, prior to the Sergeant going on leave. There was no evidence that it had been backdated. As well, the car repairer had raised the matter of the outstanding account with two other officers; a curious course to take if, as the Sergeant claimed, the repairer himself had suggested that payment be delayed.

Many questions were left unanswered by the reinvestigation, and the high degree of satisfaction required before a complaint can be found sustained was not achieved. Nevertheless, the evidence suggested that the then Sergeant (now an Inspector) <u>may have been</u> guilty of misconduct, and a "serious misconduct" report was made in November 1987.

The third matter concerned the conduct of a Senior Sergeant and an Inspector attached to a metropolitan police station. The conduct made the subject of the "serious misconduct" report arose out of a reinvestigation carried out by the Assistant Ombudsman into the conduct of a Detective Chief Inspector.

The original complaint was that the Chief Inspector had associated improperly at an RSL Club and at a wine bar with police officers who were the subject of a complaint which, at the time, was being investigated by the Chief Inspector.

The Inspector was one of the police officers whose conduct was to be investigated by the Chief Inspector. They did not know each other. The Senior Sergeant, however, knew both of them. Earlier on the day in question, the Senior Sergeant had convened a Police Association meeting, specifically to express a vote of confidence in those senior officers who were under investigation. The evidence given during the reinvestigation suggested that the Senior Sergeant and the Inspector intended to speak to the Chief Inspector about his investigation. It was for this reason that they had gone to the RSL Club that night. The evidence given by other police who had been present at the club indicated that the Inspector and the Senior Sergeant had arrived at the club while still on duty and had drank while they were there. The Inspector and the Senior Sergeant denied this, but they contradicted each other in several respects when giving evidence; in particular, the Inspector admitted that he went to the Club with the Sergeant, but the Sergeant said that he went alone.

The Assistant Ombudsman did not believe the evidence given by the Inspector or the Senior Sergeant. The evidence strongly suggested that they had been on duty at the time of their arrival at the RSL Club and that they had consumed alcohol in contravention of Police Instructions. These prohibit police from entering licensed premises while on duty, unless in the execution of their duty, and from drinking while on duty.

Removal of restrictions on civilian investigators

On 31 December 1983 the Police Regulation (Allegations of Misconduct) Amendment Act and the Ombudsman (Police Regulation) Amendment Act were assented to. The "police discipline package", as the cognate legislation came to be known, gave the Ombudsman the power to reinvestigate, under the Ombudsman Act, a complaint of police misconduct where he was unable to make a positive determination following the initial police investigation.

In order to assist the Ombudsman to conduct reinvestigations up to ten police officers, selected by the Ombudsman, were seconded

to his Office after first being appointed as members of the Police Internal Affairs Branch. These secondments were necessary because the legislation significantly restricted the Ombudsman's power to reinvestigate.

Section 10(2)(e) of the Ombudsman Act, as amended, provided:

> (2) The Ombudsman may not delegate the exercise of -
>
> (e) any of the Ombudsman's powers, authorities, duties and functions with respect to an investigation of prescribed conduct, otherwise than to a special officer of the Ombudsman who is a member of the investigative staff of the Internal Affairs Branch within the Police Force.

Section 32(5) of the Ombudsman Act, as amended, also provided:

> An officer of the Ombudsman may not be concerned in the investigation under this Act of prescribed conduct unless the officer is a member of the investigative staff of the Internal Affairs Branch within the Police force.

"Prescribed conduct" was defined by Section 5(1) of the Act as "conduct within the meaning of the Police Regulation (Allegations of Misconduct) Act, 1978, of a member of the Police Force".

These provisions prevented civilian investigators in the Office of the Ombudsman (including, it was later discovered, the Deputy Ombudsman) from reinvestigating complaints of police misconduct. In a Special Report to Parliament on 11 April 1985, the former Ombudsman recommended the repeal of the restrictions on civilian investigators. Further, in his 1985 Annual Report, the former Ombudsman drew attention to an anomaly in other amending legislation, which had the unintended effect of excluding the Deputy Ombudsman from conducting reinvestigations. On 10 December 1985, remedial legislation, enabling not only the Deputy Ombudsman but also the Assistant Ombudsman to conduct reinvestigations, was assented to.

As time progressed, it was clear that the restrictions were affecting the efficiency of reinvestigations, and on 24 April 1986 the former Ombudsman again recommended the repeal of the

restrictions on civilian investigators in a further Special Report to Parliament. This report identified a number of problems caused by the provisions of the legislation:

- difficulties in recruiting suitable officers from the New South Wales Police Force
- the need for more women police investigators
- the inability to recruit serving or former members of interstate police forces.

The repeal of the restrictions was also a principal recommendation of the Special Report to Parliament on 4 August 1987, on the first three years of operation of the new police complaints system. That report also recommended the retention of seconded police officers in the Office of the Ombudsman and noted:

> The experiment of seconding serving New South Wales police officers to the Office of the Ombudsman has been a resounding success. The seconded officers currently serving at the Office are an extremely capable and dedicated group. As serving members of the New South Wales Police force who see their future careers as members of the force, they are each dedicated to the eradication of corruption and malpractice.

Following this persistent and persuasive campaign, the former government introduced the Ombudsman (Further Amendment) Act which was assented to on 26 November 1987. The amendment repealed sections 10(2)(e) and 32(5), ending the restrictions on civilian investigators in reinvestigating complaints of police misconduct.

Following the repeal of the restrictions, civilian investigators have assisted in a number of reinvestigations. The Ombudsman believes that the present mix of civilian and seconded investigators provides optimum flexibility for efficient reinvestigations.

Seconded police officers - a time for action

The Office of the Ombudsman has seconded to it a number of serving New South Wales police officers. These officers come from varying backgrounds and bring with them a mixture of experience and expertise. This is of advantage to the Office, which has to deal with complaints about the numerous sections and specialist fields which make up the Police Department. The seconded officers have well-developed investigation skills which are invaluable in carrying out reinvestigations and in assessing police investigations. It is often a necessary part of their duties to criticise the Police Department's initial investigation of complaints.

Seconded police officers attached to the Office of the Ombudsman usually see their future careers as members of the Police Force. Changes to the police promotional system and the introduction of positional promotion has caused them concern because they believe that their term of secondment is viewed by the Police Department as, at best, of no consequence. This view of their service here seriously hinders their careers. As a result, since January 1988 the number of police officers on secondment to this Office has dropped from nine to four, and three of the remaining four officers have submitted applications for transfer. There are ten designated positions for seconded officers and all possible action is being taken to fill them.

The situation, however, calls for a more permanent solution; steps should be taken to lessen the pressure on seconded officers to leave the Office of the Ombudsman in order to further their police careers, and to provide incentive for police to work at the Office. The Police Department would do well to recognise a term of secondment to a civilian oversight and investigative body, like the Ombudsman's Office, as a positive career move, providing worthwhile experience for its officers.

Seconded officer positions should be assessed and designated and ranked at a level commensurate with the work seconded officers do and the responsibilities that they discharge. If this is not done, seconded officers will become further removed from

mainstream policing and will find it increasingly difficult to return to the Police Force. If this occurs, secondment to this Office will not be seen as a positive career move and suitably qualified police officers will not be attracted.

The former Ombudsman approached the Police Department on this issue and, in July 1987, the Commissioner of Police said:

> At the expiration of the promotion priority lists please be assured the positions (of seconded police) will be evaluated and advertised at the appropriate rank commensurate with the level of responsibility.

Regrettably, the Commissioner has still not taken any action in this regard, despite the implementation of positional promotion for some ranks and its proposed extension in other ranks from April 1989.

The Ombudsman hopes that positive action will be taken in the near future, before this Office loses its seconded police officers and suffers reduced effectiveness because of its inability to attract suitable replacements. In the meantime, however, he is exploring other means of making secondment to the Office more attractive for serving New South Wales police officers.

Deemed not sustained findings

In the 1986-87 Annual Report the Ombudsman referred to complaints which, by virtue of the legislation, are deemed not to have been sustained.

Section 25A of the Police Regulation (Allegations of Misconduct) Act provides:

> 25A. (1) Where, after considering all the material and information provided for the Ombudsman under this Part, the Ombudsman is not satisfied that a complaint has not been sustained and is not satisfied that the complaint has been sustained, the Ombudsman may-
>
> (a) make the conduct to which the compliant relates the subject of an investigation under the Ombudsman Act, 1974; or

(b) having regard to the public interest, determine that no further investigation of the complaint should be carried out.

(2) Where the Ombudsman determines under sub-section (1)(b) that no further investigation of a compliant should be carried out -

(a) the Ombudsman shall, if the complainant is identified, notify the complainant accordingly, giving the reasons for the determination, and shall send a copy of the notification to -

(i) the Commissioner; and

(ii) the member of the Police Force whose conduct was the subject of the complaint; and

(b) the complaint shall be deemed not to have been sustained.

There appears to be considerable misunderstanding on the part of many police officers, including senior officers of the Internal Affairs Branch, about the circumstances which can lead to a complaint being deemed not to have been sustained. As well, as noted in the 1986-87 Annual Report, many police officers regard a "deemed not sustained" finding as inferior to a finding of not sustained on the facts. The Ombudsman adheres to the previously expressed view that a "deemed not sustained" finding is in no way inferior to a substantive finding and that to make any distinction between the findings, for example, for the purpose of promotions, would be improper.

On many occasions, however, the operation of section 25A(2)(b) produces a result so anomalous that the Ombudsman believes the provision ought to be amended. Where an investigation of a complaint under the Act produces sufficient evidence of the commission of a criminal or departmental offence by a police officer, that officer will usually be charged and the charge will be determined by a criminal court or, in the case of a departmental charge and if the officer denies the charge, by the Police Tribunal. The Ombudsman considers that this procedure is appropriate; and, indeed, section 41(1)(a) of the Act confers an original jurisdiction on the Tribunal in respect of such disciplinary charges.

Nevertheless, the Act requires the Ombudsman to make a determination on each complaint, notwithstanding that in some cases the court or the Police Tribunal has already determined a charge which encompasses the substance of a complaint. Where an officer denies a charge and where there are disputed questions of fact, the tribunal of fact has the best opportunity of deciding those facts and, indeed, ordinarily must do so in order to make a determination of guilt or innocence. The tribunal, whether it be a court or the Police Tribunal, is able to make judgements about the veracity and credibility of witnesses and about their conflicting evidence. Where questions of guilt or innocence are concerned, issues of credibility can only really be decided by such an assessment. Where a court or the Police Tribunal finds an officer guilty of an offence, the Ombudsman would very rarely exercise his power to reinvestigate the complaint. There would be little utility in his doing so.

In these cases, however, the Ombudsman is not able to make an assessment of the credibility of witnesses; nor is he able to make any judgement about conflicting evidence. It is clear from the judgement of Moffitt P. in Ombudsman v. Moroney that the Ombudsman must apply his mind to such matters if he is to be satisfied that a complaint is either sustained or not sustained. It is the Ombudsman who must be satisfied. The Ombudsman is not entitled to substitute the determination of a tribunal of fact, no matter how eminent that tribunal, for his own determination. The Ombudsman does not function in any way as an appellate or review body of the court system, and his determination must be independent. Accordingly, since the Ombudsman cannot be satisfied as to the truth of the matter, and since there is no utility in exercising his discretion to reinvestigate, a complaint in this category will invariably be deemed not to have been sustained by virtue of the operation of section 25A(2)(b), even though the relevant tribunal will have made a finding about guilt or innocence.

In these circumstances, the result is anomalous and produces misunderstanding and perplexity on the part of police. For this reason the Ombudsman has urged the government to amend section

25A to give the Ombudsman discretion to take no further action on a complaint in cases where a court has determined or is to determine a criminal charge against any officer which encompasses the facts of a complaint, or where the Police Tribunal exercises or is to exercise its jurisdiction under section 41(1)(a). The Ombudsman has made a similar submission to the Select Committee of the Legislative Council established to consider the Police Regulation (Allegations of Misconduct) Amendment Bill.

180 day limit on police investigations

On 4 August 1987 an amendment to Section 24 of the Police Regulation (Allegations of Misconduct) Act was proclaimed. The amendment introduced a 180 day limit on police investigations of complaints under the Act.

The period of 180 days begins from the date on which the Commissioner of Police notifies the Ombudsman that the complaint is being investigated, or on which the Ombudsman notifies the Commissioner that the complaint should be investigated.

Under Section 24B of the Act, the Commissioner may apply to the Ombudsman for consent to extend the 180-day period, but only if an application is made within that period. The Ombudsman may grant an application for extension of time; and, where an application is refused, the Commissioner may appeal to the Police Tribunal for a determination.

The operation of the amendment has been closely monitored. During the year 69 applications were received and 7 were refused. No decisions were disputed by the Commissioner and, on the whole, compliance with the new provisions is satisfactory.

Education programme - police officers

In July 1987 the former Ombudsman wrote to the Commissioner of Police and to the Police Board seeking support for the inclusion in police training courses of a session on the role of the

Ombudsman's Office in the investigation of complaints about police. The former Ombudsman said:

> For a considerable time, I have been aware of a widespread misunderstanding amongst police officers of the function and operations of this Office which creates an air of distrust and suspicion in the police force, both of which are unhealthy and unnecessary. I feel sure that all police officers, in particular trainees, would benefit from a session in which they would learn directly from one of my officers about the monitoring and investigative functions of the Office. It would also be valuable if experienced officers could be educated about the role of the Ombudsman's Office during their respective in-service or promotional courses.

On 24 July 1987, Mr K.R. Wark, Assistant Commissioner (Education) replied:

> Your suggestion has the support of the Commissioner and I have asked the Principal of the Police Academy, Chief Superintendent Taylor, to make the necessary arrangements to schedule such a session into the training courses. There would be benefit in including the information in the initial recruit training programme so that the new officers have an understanding of your role before commencing duty. The present Senior Sergeant's Course has a comprehensive session relating to the investigation of complaints. This is conducted by officers of the Internal Affairs Branch and I am sure that input from a Senior Officer of the Ombudsman would have mutual benefit.

During the year the former Assistant Ombudsman, Priscilla Adey, and the present Deputy Ombudsman, John Pinnock, lectured to police recruits on seventeen occasions and to Senior Sergeants and Inspectors on five occasions.

The Ombudsman strongly supports this initiative and intends to continue it. From recent statements made by the Minister for Police about police morale, and from much of the evidence given by senior police officers to the Legislative Council Select Committee on the Police Regulation (Allegations of Misconduct) Amendment Bill, it is evident that many police officers have serious misconceptions and misunderstandings about the role of the Ombudsman in investigating complaints about police.

Because of this, the Ombudsman had discussions with the Commissioner of Police and obtained his approval to commence a

series of personal meetings with police at a local district level. The Ombudsman hopes that these meetings will provide him with opportunities to lay to rest some of the myths about the Office of the Ombudsman. The first of four of those meetings, to take place in metropolitan police areas, was held in September 1988.

Quality of legal advice available to Commissioner

In May 1983 police arrested X "for questioning" about an armed robbery and later charged him with that offence. X complained to the Ombudsman that he had been assaulted by police at the time of his "arrest", and before being interviewed by them. After X's solicitor had notified the station sergeant that his client had been injured, the sergeant had arranged for X to be taken to Sydney Hospital for treatment. Because the matters raised in the complaint were expected to be canvassed at X's trial, the Commissioner of Police sought deferral of the investigation of the complaint until court proceedings were finalised. The Ombudsman eventually reinvestigated X's complaint.

At X's trial, the judge directed the jury to acquit X. During the trial, police gave evidence that, although they had had no reason to charge X with any offence when they initially sighted him, they nevertheless decided to place him in handcuffs "for his own protection". Police admitted that they had not arrested X for any specific offence and that they had put him in a police vehicle to transport him to the police station for interview. One police officer told the court that the difference between an arrest and voluntarily accompanying police is "a pretty grey area". Another police officer told the court that X had not been arrested, but had been merely "taken into custody". Police admitted that they had used force to effect X's "arrest", and gave evidence of having pushed his head down onto the bonnet of the police car.

The record of interview with X prepared by police revealed that X's solicitor had contacted the police station and had enquired if X needed his assistance. The answer given by X, as contained

in the record of interview, was "No, I don't want him to be present". X later told the Ombudsman's inquiry that he had not given that answer. He maintained that he had wanted his solicitor present, because he had been afraid of being further assaulted. He told the inquiry that he could not read or write, and he had wanted his solicitor present "to let me know what was going on". The trial judge rejected the tender of the record of interview because he was not satisfied that it contained a voluntary confession.

The Crown Prosecutor at X's trial told the Ombudsman's inquiry that he had been "furious" about the police conduct, and he had considered making a report to the Attorney-General about the matter.

The Internal Affairs Branch investigation of X's complaint resumed after the trial and the report of the police investigation was received by the Ombudsman in June 1986. The Assistant Commissioner reported that, in view of advice received from the Police Prosecuting Branch and the Legal Services Branch, he was satisfied that the complaint was not sustained, and he proposed to take no further action in the matter. The Ombudsman's reinvestigation revealed serious flaws in the advice the Assistant Commissioner had received.

The Superintendent in Charge of the Police Prosecuting Branch had reported to the Assistant Commissioner that, although the evidence given by police at X's trial clearly established that they were totally unprofessional with respect to their undertanding of the concepts of "reasonable suspicion" and "lawful arrest", he did not consider that there was sufficient evidence to justify the institution of criminal proceedings against the police officers involved. During the Ombudsman's inquiry, the advice given by the Legal Services Branch was found to be incorrect in several material facts. For example, the Chief Superintendent of Legal Advisings had informed the Assistant Commissioner that X had made no complaint of assault when he applied to the Magistrate for bail. Perusal of the court transcript showed that, in fact, a complaint of assault had been made.

After reinvestigating the matter, the Ombudsman recommended that the Commissioner of Police obtain independent legal advice about whether criminal or departmental proceedings should be preferred against the police officers concerned. The Director of Public Prosecutions later advised the Commissioner that sufficient evidence existed to charge four police officers with the assault of the complainant, and that sufficient evidence existed against two of those officers to sustain the indictable charge of "assault occasioning actual bodily harm".

The Commissioner has directed that criminal proceedings be commenced against the police officers concerned.

Attempt to mislead Ombudsman

In March 1985 Mrs S complained on behalf of her son. Her complaint included an allegation that her son had been assaulted by a Senior Sergeant. The police investigation found the complaint by Mrs S to be not sustained. When the Ombudsman examined the evidence obtained through the police investigation, he found it to be conflicting. Because he was unable to determine whether or not the complaint was sustained, he decided to reinvestigate the matter under the Ombudsman Act, and to conduct a section 19 hearing for that purpose.

During the Ombudsman's reinvestigation, Superintendent X was called by the Senior Sergeant to give character evidence on his behalf. The Superintendent gave evidence to the effect that he had known the Senior Sergeant for over 30 years and had never known him to assault any person.

At the conclusion of his evidence, Superintendent X was escorted to the lift foyer by an Inspector of police seconded to the Office of the Ombudsman. Also present was Sergeant Y, the legal representative of the Senior Sergeant, who was attached to the Police Legal Representation (Ombudsman's Inquiries) Office. While at the lift foyer, Superintendent X said to the seconded Inspector:

> I don't know whether I convinced them. I don't think so. We all know him as a basher.

The seconded Inspector immediately reported this statement to the Acting Ombudsman and later gave evidence of the incident to the section 19 hearing.

Sergeant Y was summonsed to give evidence regarding Superintendent X's comments. During her evidence, she agreed that the Superintendent had said words to the effect of those recalled by the seconded Inspector.

Superintendent X was recalled to the hearing and was questioned regarding his comments. The following exchange occurred:

Superintendent X:	We walked out that door and to be precise about what was said I can't be real sure, but I didn't use the work 'basher'. That's not a word I use.
Assistant Ombudsman:	Did you make any comment relating to [the senior sergeant] whether by name at all to [the seconded Inspector]
Superintendent X:	I really can't be sure, but if it's alleged I said 'We all know him as a basher', I wouldn't use the work basher and certainly wouldn't say we <u>all</u> know him as a basher.
Assistant Ombudsman:	[Sergeant Y] has given evidence today that you said those words or words to that effect in her presence to [the seconded Inspector]
Superintendent X:	Those words?
Assistant Ombudsman:	Those words or words to that effect.
Superintendent X:	To the best of my recollection when we got to there, I knew [the seconded Inspector] had

> worked with the [senior sergeant] as I did at the police academy.... To the best of my recollection, I may have said 'He likes a bit of a rough house', and that doesn't imply in my opinion he likes to bash people.

Throughout his evidence Superintendent X maintained that he would never "under any circumstances" use the word "basher", and he denied making the comments attributed to him. The Acting Ombudsman discounted the possibility that Superintendent X had used the expression "he likes a bit of a rough house", because those words differ entirely in sound and pronunciation from the word "basher". The Acting Ombudsman found the Superintendent's demeanour and his account of the conversation unconvincing.
After receiving a copy of the Acting Ombudsman's provisional findings, Superintendent X made a written submission to the Ombudsman, which, in part, read:

> A check of this recording [of Superintendent X's evidence] reveals that I referred to [the senior sergeant] as 'an ardent churchgoer'. It is difficult to recall my remarks to [Sergeant Y] on leaving the inquiry, but on recollection and in light of listening to the evidence I gave, I could have referred to [the senior sergeant] as a 'bible-basher'.

Superintendent X was called to give character evidence on behalf of the Senior Sergeant. The issue of the Senior Sergeant's good character was an issue to be considered in determining the complaint against him. Because of his rank and status, it would be expected that considerable weight would be attached to Superintendent X's evidence on this issue. If Superintendent X had knowledge or some belief that the Senior Sergeant was a "basher", or even that he "liked a bit of a rough house", his evidence to the inquiry was wholly misleading and, in the Acting Ombudsman's view, designed to mislead and create a false impression of the Senior Sergeant's character. The later suggestion by Superintendent X, that he may have used the term "bible basher" to describe the Senior Sergeant when he spoke to the seconded Inspector, is contrary to the evidence he gave to the inquiry that he had not used the word "basher" at all. It was also contrary to the evidence of the seconded Inspector and Sergeant Y.

Although the conduct of Superintendent X did not form any part of the complaint the subject of investigation, the Ombudsman considered his attempt to mislead the section 19 inquiry to be deserving of severe censure. Accordingly, the Ombudsman reported the matter to the Commissioner of Police and recommended that he consider appropriate disciplinary action against Superintendent X.

Superintendent X, however, resigned from the NSW Police Force before the Commissioner of Police could consider the matter.

Alleged suppression of previous convictions

In the previous two Annual Reports, the Ombudsman outlined allegations that a person with a prior conviction for driving with the prescribed concentration of alcohol had paid $1500 to police, through a middleman, to suppress the record of his prior conviction when he came before the court on another similar charge. The complaint alleged that the practice of suppressing records of prior convictions was widespread, and also that, for $5000, the middleman could arrange to remove a person's fingerprint record. The complaint was made in January 1984.

A lengthy investigation conducted by then Inspector Strong of the Internal Affairs Branch into the specific incident mentioned in the complaint suggested that the criminal and traffic records of the defendant had been falsified and suppressed when he appeared at court at Glebe on 28 July 1983.

On 28 June 1984 the police investigation papers were referred to the Secretary of the Attorney General's Department for advice as to whether there was sufficient evidence to charge any person with a criminal offence. The complaint was described as an allegation that police had conspired to pervert the course of justice. On 30 October 1984 the Secretary of the Attorney General's Department informed the Commissioner of Police that the Crown Solicitor, Crown Advocate and Solicitor General had advised that there was insufficient evidence to prefer criminal charges against any person.

The police prosecutor involved in the case, Acting Sergeant J Wood, however, was departmentally charged with two counts of misconduct, one of which averred that he had tendered a falsified traffic record to the court. He was found guilty of both offences before the Police Tribunal. In his judgement on 5 July 1985, Shillington, J concluded:

> The act committed by the defendant was a serious breach of the criminal law and was of course a breach of his position of trust.

His Honour recommended that Acting Sergeant Wood be dismissed from the Police Force.

On 11 July 1985 Mr J Perrin, then Deputy Commissioner of Police, suspended Acting Sergeant Wood from pay and duty. The penalty recommended by the Police Tribunal was held in abeyance pending the expiration of the relevant appeal period. On 17 July 1985 Mr Wood lodged an application for a Private Inquiry Agent's license; on 24 July he lodged an appeal against the Tribunal's determination. On 31 July Mr Wood submitted his resignation to Mr Perrin, who accepted it on that day. Mr Perrin later advised the Ombudsman that he had accepted the resignation because he was:

> ... firmly of the view that it was the most expedient and satisfactory way of dispensing with the member's services. I appreciate that it was the recommendation of His Honour Judge Shillington that the Acting Sergeant be dismissed. However, that was a recommendation only and I was not bound to comply. To my mind, I acted in good faith in the best interests of the Force, the Government and the community generally.

On 6 August 1985 Mr Wood withdrew his appeal against the Tribunal's determination. His application for a Private Inquiry Agent's license was referred to the Administrative and Special Services Section of the Internal Affairs Branch which, on 13 August 1985, reported to the Assistant Commissioner (General) details of the Police Tribunal's decision and its recommendation as to penalty. The Section's report, which was ultimately sent to the Superintendent of Licences, concluded:

> However, on 31 July 1985, following representations from Wood's legal advisers, Deputy Commissioner Perrin accepted the Acting Sergeant's resignation forthwith with his last day of service to take effect on 11 July 1985.

Mr Woods's application, however, was not referred to Inspector Strong, the officer who had investigated the complaint. The license was granted on 19 August 1985. No objection to the grant of the license was made by the Police Department.

On 30 October 1985, at the request of the Minister of Police, Deputy Commissioner Perrin wrote to the Secretary of the Attorney General's Department and asked that, in light of the findings and comments of His Honour Judge Shillington, further consideration be given to the question of criminal proceedings. The Department later advised the Commissioner of Police:

> The matters raised in the above letter and related documents, as well as the transcript of the proceedings of the Police Tribunal have been the subject of advice from the Office of the Solicitor General.
>
> Advice from the Crown Advocate and the Solicitor General has been submitted to the Attorney General who has been informed that in the opinion of both those officers there should be no criminal proceedings against Mr J D Wood arising from the hearing before Glebe Court of Petty Sessions on 28 July 1983.

In the meantime, because the allegations were serious and were strongly supported by the material obtained in Inspector Strong's investigation, the Ombudsman decided to reinvestigate the complaint and gave notice of his decision to all relevant parties in January 1985.

In this regard, the Ombudsman noted that Inspector Strong's investigation had established that the falsified traffic record tendered to the court by Acting Sergeant Wood had been produced by manipulating a police terminal linked to the Department of Motor Transport's computer. The evidence also suggested that a particular terminal had been used; and there was some evidence that Acting Sergeant Wood had had an opportunity for access to that terminal.

Further evidence suggested that Acting Sergeant Wood had deliberately arranged to have himself listed as "part-heard" at Glebe Local Court on the day that the fraud was committed. His Honour Judge Shillington rejected Acting Sergeant Wood's explanation for having made that arrangement when the matter later came before the Police Tribunal. His Honour concluded that Acting Sergeant Wood had also suppressed the defendant's fingerprint record (which also would have disclosed his prior conviction), but was unable to conclude, on the evidence presented to the Tribunal, as to which of four possible methods had been used to suppress the record. Similarly, Inspector Strong's investigation had not produced any conclusive evidence on this question.

The evidence presented to the Police Tribunal also established that there were deficiencies in a transcript of the court proceedings which had been prepared by the Internal Affairs Branch. As a result, His Honour had directed that a transcript be prepared by the Transcription Typing Service, which normally prepares transcripts of Local Court proceedings that have been recorded on audio tape.

The Ombudsman's reinvestigation focused on the manner in which the fingerprint record had been suppressed and on identifying other persons who might have been involved in the conduct about which complaint had been made. The reinvestigation involved many months of painstaking work by seconded Special Officers of the Ombudsman to obtain Police Department records and documents. Following advice from senior counsel which confirmed that the complaint involved allegations of widespread police corruption, seconded Special Officers examined records of several Local Courts in an attempt to determine whether similar cases of fraud on the court had occurred.

A section 19 Inquiry was conducted over fifteen full days in 1986 and 1987 by both the former Ombudsman and the present Deputy Ombudsman, and evidence was taken from thirty-eight witnesses. The Ombudsman's report, running to 177 pages, plus annexures, was issued on 10 June 1988. In his report, the Ombudsman concluded, amongst other things, that:

- Acting Sergeant Wood had substituted a "not known" fingerprint record form for the defendant's true fingerprint record form , and had tendered the false form to the court; that is, he had tendered a form which stated that the defendant had no convictions.

- There was evidence that Acting Sergeant Wood had acted in concert with other persons, that is, there had been a conspiracy to pervert the course of justice.

- Examination of the transcript of the court proceedings which had been prepared by officers of the Internal Affairs Branch revealed multiple deficiencies; not only were there significant omissions from the record, there were also additions which altered the meaning of what had been said. The most significant omission was of a remark made by Acting Sergeant Wood that the defendant was "favourably known to certain members of the Constabulary". The transcript also omitted a subsequent reference to that remark by the Magistrate. The Ombudsman concluded that the transcript showed evidence of negligence on the part of the officers who had prepared it, and on the part of Inspector Strong, who had checked it.

- The Police Department had known as early as 1979-80 of the fact that computer terminals could be manipulated to produce false traffic records. The steps taken to overcome this problem, including the issue of a circular which required police officers to certify records obtained by them as being correct, had not addressed the problem. At the time the Ombudsman's report was made, 4 years after Inspector Strong had completed his investigation, terminals which could be manipulated were still in use.

- Security measures concerning the provision of copies of criminal records for production at court were inadequate.

- The decision not to object to Acting Sergeant Wood's application for a Private Inquiry Agent's license did not have regard to the decision of the Police Tribunal, and was contrary to the Tribunal's finding.

The Ombudsman found that on 28 July 1983 Acting Sergeant Wood had knowingly tendered false traffic and fingerprint records to Glebe Court, and that such conduct was unlawful within the terms of section 28(1)(a) of the Police Regulation (Allegations of Misconduct) Act.

The Ombudsman said:

> I am satisfied that Acting Sergeant Wood's action in deceiving the court was the result of an agreement between him and others. I am satisfied that none of the present or past members of the New South Wales Police Force who gave evidence during the section 19 Hearing were associated with Acting Sergeant Wood in the conduct the subject of complaint.
>
> I am unable to say whether other members of the Police Force were involved with Acting Sergeant Wood in the conduct complained of.

Subsequently, the Ombudsman concluded that he was unable to determine the other aspects of the complaint.

The Ombudsman recommended that:

- his final report be forwarded to the Director of Public Prosecutions for advice as to whether sufficient evidence existed to charge Mr Wood and other persons with any criminal offence;

- copies of the final report be referred to the President of the Police Tribunal and to the Chief Magistrate for the information of judges and magistrates;

- the Police Department review security measures concerning the production of traffic and fingerprint records;

- independent legal advice be obtained as to whether there were grounds upon which the Police Department should object to the renewal of any Private Inquiry Agent's license held by Mr Wood or by any company of which he is a director;

- any officer preparing or directing the preparation of a transcript of court proceedings for the purpose of an investigation under the Police Regulation (Allegations of Misconduct) Act, certify that the accuracy of the transcript has been checked personally; and

- the Commissioner issue an Instruction directing that members of the Police Prosecuting Branch:

  (i) have present in court any police officer who wishes to make favourable comment on behalf of a defendant, and call that officer to give evidence if required by the Court;

  (ii) disqualify themselves from a prosecution where a defendant is known to them and they intend to make favourable comment or give character evidence on behalf of the defendant.

On 19 July 1988 Executive Chief Superintendent Snape, Internal Affairs Branch, advised the Ombudsman that action was being taken in relation to each of the recommendations.

Delay in paying for car repairs

A complaint made by Mr H was made the subject of preliminary enquiries. Unfortunately, those enquiries extended over many months. On 16 September 1987 police seized Mr H's car from his Merrylands home because they suspected that it was a stolen vehicle. The car was returned to Mr H on 28 September when police determined that it was not stolen; in the interim, however, the car had been involved in an accident and had been

damaged. Mr H was told that a police officer had had an accident in the vehicle, and that the Department would cover the cost of repairs. When this had not been done by 1 December, Mr H complained to the Ombudsman.

The matter was raised with the Commissioner. Preliminary enquiries made by the police confirmed that the car had been involved in a "minor" collision at the intersection of Bourke and Phillip Streets, Redfern on 28 September 1987 while being driven by a police officer. Quotes were obtained but the Government Insurance Office had rejected the claim. Approval of the Minister for Police had been sought for an ex gratia payment to Mr H of $558.09, to cover the repairs required.

The Department agreed that Mr H had "... a genuine complaint, as he has now waited in excess of four months for his motor vehicle to be repaired", but it took the view that the complainant would simply have to wait for an ex gratia payment to be made.

The Department's response was unsatisfactory and left many questions unanswered. On 12 April 1988, because Mr H had already waited more than six months, further information was sought from the Commissioner, including advice about how the accident had occurred; what the position would be if, due to inflation, the ex gratia payment no longer covered the cost of repairs; and why Mr H should just "have to wait".

The papers were referred by the Assistant Commissioner (Review) to Blacktown. From there, they were forwarded to Merrylands police station; then they were sent back to Blacktown. On 9 May 1988 the papers were referred back to the Assistant Commissioner (Review) with a request that they be redirected to the Commander, State Investigative Groups, South Region, so that enquiries could be conducted.

As at **15 June 1988**, some nine months after the accident, Mr H was still waiting for his car to be repaired and the Department had still not provided this Office with answers to the very basic questions it had asked.

In June, Mr H was told by the Department of Motor Transport that his car would not be passed for registration until repairs were carried out. In desperation, Mr H contacted his local Member of Parliament and, after a number of telephone calls, the Member was told that a cheque would be in the mail "shortly". Mr H finally collected a cheque from Merrylands police station on 24 June 1988. The cost of effecting repairs to his car, however, had risen by $40, which he had to pay himself.

On 11 July 1988 the Department's reply was received. Whilst agreeing that Mr H had been "inconvenienced by various delays", a Detective Inspector had reported to the Commander, Regional Investigative Group, South that no member of the Motor Unit Regional Investigative Group had acted "in anyway unlawfully or unethically". Regrettably, the questions raised by this Office in April 1988 were not answered.

The matter is to be investigated in terms of the Ombudsman Act.

Improper use of police letterhead

Mr D alleged that he had been the victim of "scandalous, outrageous and corrupt treatment" at the hands of a police Sergeant attached to the Traffic Accident Squad, a serving police officer who was also an Alderman on Randwick Council and by Mr P, a former police officer, who was his neighbour.

The complainant had lodged a development application for, among other things, the construction of a large garage abutting his neighbour's property. There had been a history of conflict between the neighbours regarding alterations to the complainant's property and consequent loss of views. Mr P, an ex-Chief Superintendent of Police, vigorously opposed construction of the garage, partly on the basis that it would reduce the view of drivers exiting from his property and would be a danger to pedestrians.

Some time before the matter was to be decided by council, Mr P contacted an Inspector from the Traffic Squad and asked him to

inspect the property and, then, to either attend the council meeting or write a report to the effect that the development would cause a greater hazard than already existed. The Inspector refused Mr P's request because, in his view, the proposed garage "would have only a minimal effect on existing conditions", and because he believed that "it would not be ethical or correct" to comment in his official capacity on a matter which appeared to have arisen from a dispute between neighbours. The Inspector said that the matter should be referred to the local Traffic Committee.

Mr P later wrote to council strongly stating his opposition to the development, and he suggested that the matter be referred to the Traffic Committee.

On the day before the relevant council meeting, an off-duty police Sergeant and former acquaintance of Mr P was driving past the site. He stopped to talk to Mr P and the subject of the proposed garage was raised. The Sergeant agreed with Mr P that the proposed structure would create a safety problem for persons driving from the property and he agreed to attend the council meeting the next night to voice his opinion to council. On the day of the meeting, however, Mr P discovered that council would only allow one speaker to the matter and, because he wished to speak himself, he telephoned the Sergeant to ask him if he would "put something on paper" about his opinion.

The Sergeant obligingly set forth his opinion on paper bearing the official police letterhead, "ACCIDENT INVESTIGATION SQUAD". Although the Sergeant used the words "in my opinion" in his report, the report gave the impression of being official.

Mr P tabled the Sergeant's report and a copy of it when speaking against the proposal. When the matter came up for decision, one of the Aldermen, who was a serving police officer and who had previously made his opposition clear, referred to the report as a further reason why the application should be refused. There is some dispute about the degree of emphasis placed on the report, but the Alderman concerned admitted that he may have referred to the report as a "report of the Police Traffic Accident Squad."

There is no doubt that a significant number of Aldermen were misled into believing that the document was an official police report; in fact, two Aldermen changed their vote on that basis. As a result, the application was refused by the council at that meeting, although the matter was subsequently reconsidered with the knowledge that the report represented purely the Sergeant's personal opinion.

Given the nature of the allegations and the suggestion of conspiracy between the police officers involved, the complaint was thoroughly investigated. Mr P, the complainant's neighbour, was a private citizen and therefore, was not subject to investigation under the Ombudsman Act; whilst he was interviewed, the Ombudsman's investigation focussed on the conduct of the Sergeant and the Alderman who was also a police officer.

At an inquiry conducted by the Ombudsman, evidence was given that the Sergeant and the Alderman police officer had not met prior to the council meeting and had not had any discussion about the matter. The Alderman said that the first he had seen of the report was when it had been tabled at the council meeting. There was insufficient evidence to support the complainant's allegation that the Alderman police officer had "heavily promoted" the report or that he had "intimate knowledge" of it. Furthermore, the evidence obtained showed that the status of the report had not been questioned at the council meeting; his fellow Aldermen said in their evidence that he had not actively promoted the report as an "official" report but, rather, had done nothing to dispel the impression that it was an "official" report. No evidence was found of any common purpose or pre-arranged intent with others involved in the presentation of the report.

The conduct of the Sergeant in producing the report on official police stationery was found to be wrong and the Ombudsman recommended that the Commissioner of Police issue an appropriate instruction to police to prevent such occurrences in future. The Commissioner accepted the recommendation and issued an instruction to the effect that police and officers of the Police Department are not to use official police stationery in personal

or private matters to express and/or influence a point of view, except when providing Certificates of Character relating to their official office.

Police lockup conditions improved

Several prisoners at Grafton Gaol complained that they had been held in sub-standard conditions at Lismore police lockup. By the time the investigation into their complaints began a number of improvements had been made and, consequently, several aspects of their complaints were withdrawn. The prisoners, however, continued to maintain that they had no way of contacting police in the event of an emergency when they were in the lockup, and that there was no supply of fresh water in the cells.

In the course of an inspection of Lismore police cells, Sergeant W found that there was no fresh water available in them. He also found that there was no alarm system installed, and he said:

> ... as the cells are situated quite some distance from the Police Station Charge Room and Inquiry Office, it would be hard for Police to hear any cries for assistance from prisoners in the cells.

A Chief Inspector examined the cell complex, which he found to consist of:

a) One juvenile cell and exercise yard. The cell contains one double decker single bed, water bubbler and toilet. The exercise yard has an open shower, immediately inside the main door to the exercise yard.

b) One female cell and exercise yard. The cell is equipped with one single double decker bed, and toilet. The exercise yard contains a water tap and sink mounted on the side wall, also an open shower immediately inside the main door to the exercise yard.

c) The male cells comprise of four individual cells and one padded cell. With the exception of the padded cell each is fitted with toilet and vinyl covered foam rubber mattresses, with a common exercise yard. The exercise yard has a tap, hand basin and one open shower.

He went on to report:

> ...the cells are contructed of brick and are all considered substantial and suitable for the confinement of all types of prisoners even though they have been constructed for some considerable years. The paint work on the cells is in a dilapidated condition and peeling from the walls.

The Chief Inspector recommended certain renovations and alterations, including that the whole of the cell complex be painted; all cells be fitted with water bubblers; and that a call alarm system be fitted in all cells and connected to the communications room at the police station. This would allow prisoners 24 hours a day contact with the police on duty and would facilitate prompt attendance to prisoners in cases of emergency.

After receiving the Chief Inspector's report, the Superintendent wrote to the Chief Superintendent and said:

> There is presently in existence an Ombudsman's complaint file regarding conditions at the Lismore cell complex. The conditions there are deplorable and require urgent attention. The requirements are set out in the attached report ... dated 20 October 1986.
>
> I would appreciate if you would forward this report to the Properties Branch who should adopt an attitude of urgency.

The Superintendent also wrote to the Assistant Commissioner (Internal Affairs) saying:

> Having read the file I am satisfied that there is no blame to be attributed to any Police in this Division. However, I do agree that the conditions at the Lismore cell complex are archaic and completely unsuitable. The Police at the Station do their best under the circumstances.... What is needed at Lismore is a new Police Station but this is not economically viable and we must do the best with what we have.

In response to the provisional findings and recommendations issued by this Office, the Sergeant at Lismore reported:

> Prisoners were monitored constantly throughout the day and early evening until they were locked away for the night, and any reasonable requests from prisoners were granted....prisoners were supplied with drinking containers to take water into their cells at all times. During meal times prisoners were supplied with hot tea and cold fruit juice, and had the opportunity to avail themselves of ample drinking water if needed. During exercise time the same applied...
>
> During the whole of my tour of duty as Assistant Officer in Charge and Officer in Charge conditions at the cell complex were constantly brought to the notice of my Superior Officers, and representations made through the New South Wales Police Association for their assistance.

Clearly, conditions in the cells at Lismore were sub-standard because, amongst other things, there was no alarm system to allow prisoners to contact police in emergencies and there was no supply of fresh water in the cells.

It is difficult to understand how the Superintendent could be satisfied that there was "no blame to be attributed to any Police in [the] Division" if no action was taken on the reports the Sergeant says that he submitted. The investigation revealed no procedure to regularly monitor the need for maintenance and repairs at police lockups.

The Acting Ombudsman recommended that, as a matter of urgency, a system be established to monitor the need for maintenance and repairs of police stations and lock-ups and that such a system incorporate a clear chain of command with concomitant responsibility.

The Secretary of the Police Department later advised:

> ...during the latter part of 1987 the following works were undertaken to bring cell accommodation at Lismore Police Station up to departmental standards:
>
> Drink fountains were provided to all cells.
>
> Shower, toilet and hand basin facilities and fixtures were upgraded.

> A communication system was provided between all cells and the police station office, and emergency call buttons also installed in all cells.
>
> Ventilation grills to all cells and exercise yards were replaced and vandal proof light fittings installed throughout the cell complex.
>
> All cell and associated facilities were completely repainted.

The Secretary added that, in accordance with new departmental regionalisation initiatives, building maintenance staff within the department had been attached to regional offices. The physical placement of such staff in the areas for which they are responsible was intended to facilitate a greater awareness of accommodation difficulties and, through that awareness, to identify and rectify situations of the kind encountered at Lismore before they became a serious accommodation problem. In addition, specialist staff were to be recruited to a newly restructured Police Department Properties Branch, whose specific function would be to regularly inspect accommodation to ensure that standards were being maintained and were relevant to needs.

Abuse of the system?

In November 1983, a former police officer complained about two police officers who, although on sick leave, had completed law degrees. In one case, the officer had attained first class honours; but, allegedly, he was suffering so much stress in the last 18 months of his studies that he was too sick to go to work. The complainant noted that "... within weeks of being boarded out of the force on a full pension, (Mr X) was admitted to the NSW Bar". According to the complainant, Mr X is presently practising as a barrister full-time, (mainly in respect of criminal matters) and is still receiving a police pension.

The complainant questioned how this person could undertake intensive, stressful study, and regular examinations, over several years, and then pursue an exceedingly stressful occupation, without this having any apparent ill-effect on his health. He believed that a person of such capacity could easily

perform one of the many academic or administrative jobs within the police force, rather than be discharged to eventually commence a legal career and to be subsidised by the community.

In the other case, the officer had been on sick report for at least 18 months, was drawing full-pay but was still attending lectures. The private medical opinion provided by the officer's doctor said:

> ...anxiety seems directly related to all aspects of police work and relationships but does not manifest itself in his separate law studies.

In response to enquiries by this Office, the Assistant Commissioner (Internal Affairs) pointed out that "... the absence on sick leave of the two persons complained of was approved in the light of private medical advice received and with the concurrence of the Police Medical Officer".

Mr X was re-examined by the Police Medical Board in 1985, but this, apparently, was merely to review a medical certificate provided by Mr X, rather than to conduct an independent physical and medical examination.

This Office noted that there did not appear to be any effective system for medical review after a pension had been granted. Although section 16 of the Police Regulation (Superannuation) Act provides for a retired member of the Police Force to submit himself for medical examination by the Police Medical Board, which could require him to serve again in the Police Force, the Crown Solicitor had advised the Department that the wording of that section was confusing and required amendment. Due to these interpretative difficulties, the Board had not developed any pro-active policy or procedure for assessing whether persons in receipt of a superannuation pension were, in fact, still incapacitated.

In May 1985 the Commissioner advised the Ombudsman that the review procedures relating to the recall to duty of former members previously discharged on medical grounds were currently being examined. In August 1986 certain recommendations were

made, including a recommendation that the relevant legislation be changed. In 1987 section 16 was amended and on 1 April 1988, the Police Superannuation Board was abolished and its administrative functions were transferred to the State Authorities Superannuation Board. The new arrangement empowers the Police Superannuation Advisory Committee, on delegation from the State Authorities Superannuation Board, to make a determination about the fitness of an officer, and to seek such expert medical advice as it deems necessary.

The Chairman of the Committee has advised this Office that Mr X's status is to be considered and investigated by the Committee, and a system of periodic re-assessment is to be introduced.

Questioning juveniles

In New South Wales, police interrogation of juveniles is conducted under rules which are stricter than those which apply to adults questioned by police. In this regard, section 13 of the Children (Criminal Proceedings) Act and section 17 of the Children (Care and Protection) Act reform the provisions of section 81C of the Child Welfare Act. Section 13 of the former Act deals with statements made by children to police about criminal matters. It requires that, before a statement can be admitted into evidence, an adult person, such as a lawyer, a parent or guardian, or a person chosen by the child, must be present at the time and place of questioning.

The law recognises the special status of children, and their vulnerability to pressure and the power of suggestion. Statements given by children and adults are regarded as unreliable if they are given in circumstances in which inducements are offered, or in which police have acted oppressively. Section 13 provides both protection against oppression of children by interrogating police and a form of guarantee of the reliability of statements made by children to police. Nevertheless, the law does not provide absolute protection against unfairness in questioning of children by police.

Ms G, when questioned by police concerning her allegations that she had been sexually assaulted, was 11 years old and mildly developmentally disabled. She was first seen by police at 5.30 pm on the day the assault allegedly took place. She was taken by her parents to the Mount Druitt Police Station at approximately 8.30 pm at the request of the investigating police. It was not until approximately 10 pm that a detective was available to question her, and she was then questioned for approximately four hours, even though her parents made a number of requests that they be allowed to take her home. This matter is outlined in more detail in the Case Notes section of this Report (see Case Notes, "Oppressive questioning and 'public mischief'").

Another complaint dealt with during the year concerned allegations made by a number of parents that police in a country town had conducted a raid on the local high school and had taken ten boys back to the police station where, without the boys' parents being present, they were questioned about smoking Indian Hemp. The police later took written statements from the boys in the presence of their parents.

During the reinvestigation of the complaint by this Office, the police said that, after receiving information about Indian Hemp being sold at the school, they had gone there and had questioned the boys in the presence of the headmaster. They claimed that the only questions asked of the boys at the police station prior to the arrival of the parents had been about their names, addresses and telephone numbers. The evidence given by the headmaster and the deputy headmaster of the school, however, was consistent with the account given by the boys and contradicted the evidence of the police. The parents said that they had no complaint about the fact that their sons were to be punished for breaking the law, but they were unhappy with the heavy-handed tactics used by the police.

After reinvestigation, the Deputy Ombudsman found that the police had taken the boys to the police station and had interrogated them without their parents being present, contrary to the provisions of the Child Welfare Act. The Deputy Ombudsman

rejected the evidence of the police and accepted the evidence of the boys, the headmaster and the deputy headmaster that the boys were not questioned at the school.

The Deputy Ombudsman said that this had been a case of police over-reaction to a perceived drug problem at the high school. He said that it should be made clear to police that such displays of disregard for the law are counterproductive in the long run, and give the impression to local communities that police believe they are above the law. The Deputy Ombudsman said that police should seek the active support and involvement of parents when dealing with juvenile crime, without resorting to public displays of force.

The Deputy Ombudsman recommended that the police primarily responsible for interrogating the boys be disciplined. The Commissioner of Police has refused to implement the recommendation.

Complaints by the New South Wales Police Association

Comment was made in the 1986-87 Annual Report about the NSW Police Association's regular public criticism of the role of the Ombudsman under the Police Regulation (Allegations of Misconduct) Act. Nevertheless, the Association has complained to the Ombudsman about various members of the Police Force. Some of the Association's complaints have alleged improper conduct by senior officers attached to the Police Internal Affairs Branch and the Police Internal Security Unit.

One of the matters briefly described in last year's report was an allegation that a senior officer of the Police Internal Security Unit had improperly disclosed information about a police officer to the Police Credit Union. The Police Credit Union suspended the police officer's credit card and ended credit facilities for him. The complaint was investigated by the Assistant Commissioner (Internal Affairs) and was the subject of some heated correspondence between him and the Association. In one letter to the Assistant Commissioner, Mr B Howe, Secretary of the

Legal Division of the Police Association, said that the Assistant Commissioner's "ability to mishandle the truth is now a matter of public record".

The Police Association asked this Office to reinvestigate the above complaint made by it on behalf of two of its members. In its correspondence to this Office the Police Association made the following statements:

> Finally, may I thank you for the opportunity to comment on the issues uncovered by this investigation. Without the ability to lodge a complaint under either the Ombudsman Act or the Police Regulation (Allegations of Misconduct) Act, then the Association would, in all probability, only have received a bland reply couched in similar terms of Snape's final letter addressed to you.
>
> It would therefore seem that members of the police administration are unwilling to take this matter further and no good purpose would be served by pointing out deficiencies in the investigation or the conclusions they have reached. Rather the matters of concern should now be canvassed by section 19 inquiry conducted by your Office. Should this procedure be adopted I would have no hesitation in attending and testifying to the matters raised in the Association's correspondence.
>
> (Excerpts from letters forwarded to this Office by Mr B Howe, the then Secretary, Legal Division, Police Association of New South Wales).

The Ombudsman believed that the Police Association's complaint in this matter was one which ought to be the subject of reinvestigation. However, it remains a mystery to the Office of the Ombudsman why the Police Association continues to publicly criticise the Office on the one hand, yet credits it with better and more impartial investigation than the Police Department on the other.

Mr Azzopardi's complaint against the Internal Affairs Branch - some action on Ombudsman's recommendations

The 1986-87 Annual Report noted that the long-running reinvestigation of Mr Azzopardi's complaint about the failure of the Police Internal Affairs Branch to properly investigate

allegations about the Parramatta Police Citizens Boys' Club had been completed.

Since then, the Police Department has complied with a number of the recommendations contained in the Ombudsman's report. In August 1987 the Assistant Commissioner (Review) informed the Ombudsman that the recommendation concerning improved training of Internal Affairs Branch investigators was being complied with. The Assistant Commissioner also said that he agreed with the criticisms made by the Ombudsman about the manner in which the Internal Affairs Branch had answered Parliamentary questions about the affairs of the Police Boys' Club. The Assistant Commissioner said that steps were being taken to eliminate the deficiencies described in the Ombudsman's report.

The Assistant Commissioner refused, however, to accept the former Ombudsman's recommendation that an ex gratia payment of $100 per ticket subscribed be made to each citizen who participated in good faith in the Parramatta Police Boys' Club Art Union No.15. The Assistant Commissioner said that he had received legal advice that the Police Department was not legally liable to make such a payment and, in his view, the inadequacy of the police investigation into allegations about the Boys' Club did not give rise to any moral obligation to make such a payment.

In November 1987 the Acting Ombudsman was informed that a submission had been made to the Minister for Police to amend the police rules on indebtedness in line with the Ombudsman's recommendation. In compliance with the Ombudsman's final recommendation, further enquiries are being carried out by the Police Department into the conduct of Art Union No.15.

Verbal admissions - action following Report to Parliament

The 1986-87 Annual Report outlined an investigation by the former Ombudsman which examined the use by police of verbal admissions recorded in police note books. The particular case arose from evidence, given by a Detective at a committal and trial of a complainant charged with murder, that, during an interview

following his arrest, the complainant had made verbal admissions which, together with the Detective's questions, had been contemporaneously recorded in his police note book. The complainant had maintained that the notes of the alleged conversation had been written later, and that the evidence given by the Detective and another policeman present at the time constituted what is colloquially known as a "police verbal".

The Ombudsman found that the record made in the Detective's note book was a record of interview within the meaning of Police Instruction 31, and that the Detective should have carried out the necessary procedures dictated by that instruction. The Ombudsman recommended that the guidelines in the Police Instructions concerning the questioning of and recording of statements from arrested persons be amended so that they provided that, in cases where oral admissions or statements corroborating evidence of the commission of an offence are recorded contemporaneously in a note book or other document, the procedures relating to formally recorded statements should apply.

The Assistant Commissioner (Review) informed the Ombudsman that the recommendation would not be adopted. The Ombudsman asked the Commissioner to review the decision and on 3 September 1987 he made a Report to Parliament about the matter.

On 19 January 1988 the Deputy Commissioner of Police informed the Acting Ombudsman that the matter had been referred to him for consideration by the Assistant Commissioner (Review). The Deputy Commissioner said that, despite the difficulties involved, he was of the opinion that the advantages to both suspects and police in implementing the changes proposed by the Ombudsman outweighed the disadvantages. He accordingly gave approval for an amendment to be made to Police Instruction 31 along the lines recommended by the former Ombudsman. A police circular was subsequently issued detailing those changes.

The effect of this change should mean that when an oral admission is recorded by a police officer in a note book or other similar document, even in a situation where the suspect refuses to sign it, the police officer would be required to have an independent

senior officer countersign the document as soon as possible after it was made and to give a copy of the notes to the suspect. This change should strengthen police procedures so that police in circumstances similar to those faced by the detectives involved in the case investigated will have available to them some means of countering suggestions that notes made of alleged verbatim records of interview have been "manufactured".

Police and weed inspectors

As mentioned in the 1986-87 Annual Report, the Ombudsman asked the Commissioner of Police to consider whether noxious weed inspectors should continue to detect Indian Hemp, whose danger is as an illegal drug, not as a noxious weed, even though it is classified as one.

Noxious weed inspectors have the power to enter private properties and search for noxious weeds, including Indian Hemp, without warrant; by contrast, police must obtain a search warrant. The Ombudsman was concerned that noxious weed inspectors, when detecting Indian Hemp, appeared to be engaged in a de facto police function, without the training or technical support available to police.

The Commissioner's half-page advice was finally provided in May 1988. The Commissioner said that "it would not be feasible to provide police for the personal protection of noxious weed inspectors during the performance of their duties". Unfortunately, the Police Department missed the point, and the matter has been referred back to the Commissioner.

OPERATIONAL ASPECTS OF THE OFFICE OF THE OMBUDSMAN

Human Resources

Numbers and categories of officers and employees

At the beginning of the financial year the staff establishment of the Office remained at 62 positions. Approval was given to employ an additional Assistant Ombudsman for a further 12 months on the basis that one of the 62 established positions remain vacant.

During the year the Public Service Board approved the following changes in the establishment:

Positions Created	Positions Deleted
Interviewing Officer (Aboriginal Complaints) Grade 2/3	
Administrative Clerk Grade 1/2	Administrative Clerk General Scale
Administrative Assistant (Systems) Clerk Grade 1/2	Word Processing Supervisor Clerk Grade 1
Senior Investigation Officer Grade 9 Telecommunications Interception Unit	
Investigation Officer Grade 7/8 Telecommunications Interception Unit	
Clerk Grade 4/5 Telecommunications Interception Unit	
Typist Telecommunications Interception Unit	

The staff establishment at 30 June 1988 was 67.

Categories of officers and employees are shown in the following table:

	At 30 June 1988	At 30 June 1987	At 30 June 1986	At 30 June 1985
Statutory Appointees				
Ombudsman	1	1	1	1
Deputy Ombudsman	1	1	1	1
Assistant Ombudsman	2	2	2	1
Officers				
Principal Investigation Officer	1	1	1	1
Executive Officer	1	1	1	1
Senior Investigation Officer	4	3	2	2
Investigation Officer	15	14	16	16
Special Officer of the Ombudsman (Seconded Police Officer)	9	9	16	16
Executive Assistant (Police)	3	3	2	1
Accounts Officer	1	1	1	1
Personnel Officer	1	1	1	1
Interviewing Officer	5	3	3	3
Officer in-Charge Records	1	1	1	1
Administrative Clerk	1	1	1	1
General Scale Clerk Records	-	-	-	1
Clerical Assistant Records	4	4	4	3
Information Officer	1	1	-	-
Keyboard Staff and Stenographers	16	15	16	16
	67	62	63	61

Extension of appointment of additional Assistant Ombudsman

An additional Assistant Ombudsman, Ms Priscilla Adey, was employed to assist in clearing the backlog of police reinvestigations and to deal with major complaints from prisoners. Ms Adey's term expired and she entered on maternity leave, prior to returning to the Legal Aid Commission, on 27 May 1988.

The Ombudsman obtained the Premier's approval to appoint an Assistant Ombudsman to replace Ms Adey for a further period of twelve months. As at 30 June 1988, interviews had been held and a recommendation had been made to Cabinet. Mr G R Andrews was appointed to the position on 13 July 1988.

Wage Movements

Staff at the Office were awarded two wage increases during 1987-88 in keeping with the "two-tier" wage system. The first increased salaries by $6.00 per week. A second increase of 4% was awarded following the identification and elimination of restrictive work and management practices and after some changes had been made to current conditions of service.

Personnel policies and procedures

Some minor changes to personnel policies and procedures have occurred during the year following changes in legislation (workers compensation and superannuation) and conditions of service (sick leave and recreation leave provisions). Sick leave entitlements have been reduced but are now cumulative. Reviews of sick leave taken and counselling guidelines have been established. From 1 December 1988 staff will not be able to accrue recreation leave beyond the current limit of 50 days. Leave rosters have been introduced in the Office.

The Office continues to examine all job advertisements before publication to ensure compliance with the Anti-Discrimination Act. Positions are advertised as widely as possible and, whenever possible, are advertised both within and outside the public service.

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Investigation Officers are appointed for limited terms of up to three years.

Procedures Manuals

Each specialist area of the Office has prepared a procedures manual which outlines the responsibilities and duties of officers in that area. The comprehensive manual dealing with investigative procedures is to be up-dated; in the meantime, changes are notified by the issue of procedural memorandums.

Recruitment

During the year 12 positions, other than seconded police officer positions, were advertised and filled. Six males and six females were appointed to these positions.

Recruitment action commenced to fill another three positions, but because of the suspension of recruitment and advertising announced by the Premier on the 25th March 1988, action had not been finalised as at 30 June 1988.

The Office is experiencing considerable difficulty in recruiting serving police officers to fill vacant seconded police officer positions. At the time of writing, only four seconded police officers remain in the Office and there has been poor response to advertisements recently published in the Police Gazette. The Office sought to advertise the vacant positions in "Police News", the journal of the New South Wales Police Association, but the Association rejected the advertisement. Consideration is being given to ways in which service at this Office might be made more attractive to serving police officers, and other options to fill the existing vacancies, including the recruitment of former and interstate police officers, are being examined.

Fortunately, no difficulty is experienced in attracting applicants for civilian investigation officer positions.

Occupational health and safety

At the request of staff, an Occupational Health and Safety (OH&S) Committee has been established under the provisions of the Occupational Health and Safety Act, 1983. Staff elected four representatives, and the Ombudsman nominated two officers to represent management on the Committee.

The Committee meets monthly to discuss issues related to OH&S. To date the Committee has dealt with issues such as first aid, smoking in the work place and fire evacuation procedures. Regular workplace inspections have commenced.

Each committee member is required, under the legislation, to attend an accredited training course and some members have already done so. Arrangements will be made to have the remaining committee members attend an appropriate course.

Ethnic Affairs Policy Statement

The Ethnic Affairs Policy Statement (EAPS) has continued to be actively implemented throughout the year.

The EAPS Committee organised a training session for all staff on the use of interpreters; the session was well received by staff. Other training sessions, aimed an increasing staff awareness of the ethnic community and its needs, are planned.

The programme of public awareness campaigns to ethnic communities has continued. It is anticipated that all major language groups will be included in this programme.

The Office multi-lingual pamphlets were reviewed and a new pamphlet, incorporating all current pamphlets, is to be printed.

Regular meetings with staff

General staff meetings continue to be held each month to provide information on current operations of the Office and on any administrative matters requiring discussion.

Keyboard, Records and Administrative staff also meet regularly to discuss matters affecting them. These staff members are also provided with information on current issues within the Office.

Industrial Relations

No industrial disputes have occurred this year.

Staff have been given the opportunity to participate in decision making through its representatives on various Office committees, including the Occupational Health and Safety Committee. In this way, staff concerns are addressed at the earliest possible stage.

Overseas visits

No overseas visits were made during the year. A visit was received from Kanagawa Prefecture, the area covering Tokyo and Yokahama, Japan. The delegation was provided with material on the operation of the Office of the Ombudsman.

Consultants

The Office employed one consultant during the year. Tangent Pty Ltd gave advice to the Office on the development of a computerised police complaints Information Retrieval System.

Staff training

One of the objectives of the Office's Equal Employment Opportunity Management Plan is to ensure that staff have access to job training and career development workshops.

A number of internal training courses were conducted during the year, including an induction course for new staff covering leave entitlements, conditions of service and Office procedures. It is planned to hold similar courses at least twice a year, or more frequently if required.

A number of information workshops for investigation staff were held. Ms Priscilla Adey, the former Assistant Ombudsman,

organised a 'Prisons Day' which dealt with topics relevant to the investigation by this Office of complaints about the Department of Corrective Services. Guest Speakers were invited from the Department of Corrective Services and from the Legal Services Commission. Another information day for investigators covered procedures in the police complaints area.

The Ombudsman has decided to hold regular training sessions for investigation staff. The sessions will be held each month for up to two hours; they will cover procedural matters and provide information of interest to staff. More extensive day-long training sessions are to be held every two or three months. The Ombudsman hopes to involve departmental heads and other senior officers of public authorities in the training sessions.

The Ethnic Affairs Policy Statement (EAPS) Committee conducted an "in-house" training session on the use of interpreters. This course, which was attended by most staff, was well received and proved most worthwhile. The EAPS Committee plans to conduct other training sessions in the coming year.

The members on the Occupational Health and Safety Committee are required under the Occupational Health and Safety Act to attend accredited training courses. It is envisaged that all members will be trained over the next year.

Outside agencies and individuals have been asked to attend the Office to address or train staff on matters in which the necessary expertise does not exist within this Office. Health Specialists from the Occupational Health and Safety Units at Sydney Hospital conducted a course for keyboard staff on health and safety matters and, in particular, on the prevention of RSI. A workplace inspection was undertaken by the Health Specialists and they provided invaluable advice to the Office about furniture types and layout.

Staff are encouraged to attend training courses and seminars conducted by outside agencies where attendance will benefit both the staff member and the Office. Courses attended by officers in the past year include Principles of Investigation, Effective Communication, Assertiveness Training and Records Management.

The Office gives staff members the opportunity to act in higher graded positions. During the reporting year, nine officers have acted in higher graded positions.

Equal Employment Opportunity (EEO)

In September 1987 the Office submitted its second EEO Management Plan Annual Report to the Director of Equal Opportunity in Public Employment. The Annual Report evaluated the Office EEO Management Plan and set new objectives.

The Director nominated a number of areas to which she wished the Office to pay attention during the forthcoming year. Those areas included setting numerical targets for women, recruiting Aboriginal staff and people with physical disabilities, and conducting EEO awareness training courses. Amendments to the plan were made to include these areas.

An election to choose staff representatives to serve on the EEO Committee was held. The Committee meets monthly to review the implementation of the EEO Management Plan.

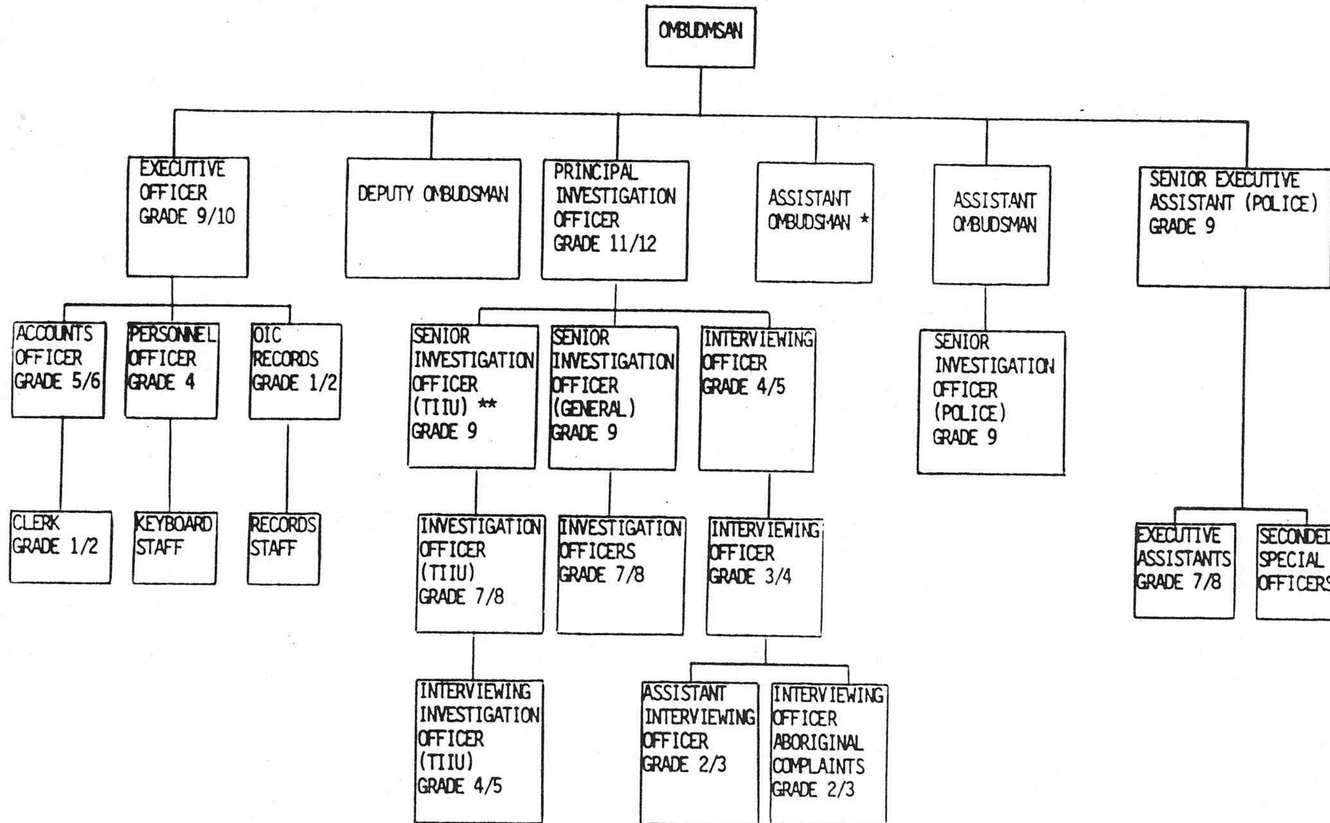
To ensure that all staff are aware of EEO issues, EEO is a permanent agenda item at monthly staff meetings. Information is regularly circulated to staff.

Accounts payable policy

Amendments to the Public Finance and Audit Act and Regulations were made to ensure the timely payment of accounts by departments. This Office has formulated an "Account Payable Policy", which commits the Office to the speedy payment of accounts. Suppliers are given a copy of the policy.

The Executive Officer has been designated the "Accounts Complaints Officer" and will discuss with suppliers any of their concern about the payment of accounts. If, after raising a matter with the Accounts Complaints Officer, a supplier remains dissatisfied, the matter can be drawn to the attention of the

ORGANISATION CHART - OFFICE OF THE OMBUDSMAN



* The second Assistant Ombudsman position is not an established position. The Premier has given his approval to the employment of an additional Assistant Ombudsman until May 1989, subject to another position remaining vacant.

** Telecommunications Interception Inspection Unit

Minister, who may award a penalty interest payment at the rate of up to 20% per annum. Details of any penalty payment imposed must be included in the Annual Report.

Since the new procedures were introduced, no complaints have been received from suppliers and no penalty interest payments have been imposed.

Financial summary

Funds allocated by Parliament for the operation of the Office of the Ombudsman during the year ended 30 June 1988 totalled $3,054,000. Expenditure for the year totalled $2,894,461. The significant expenditure items were:

Item	Expenditure	Percentage of Total Expenditure
Salaries and other Employee Payments	2,057,554	71.09
Rent	433,905	14.99
Fees	99,152	3.43
Stores	74,498	2.57
Postage and Telephone	56,292	1.94
Printing	42,463	1.47
Travel	40,317	1.41
Motor Vehicles	27,060	.93

Total expenditure for the financial year was $159,539 less than the budget allocation, for the following reasons:

1. There was a reasonably high staff turnover during the financial year, with consequent salary savings while recruitment action was being taken. The position of Deputy Ombudsman was vacant, in effect, for some nine months, from the time that the former Ombudsman resigned until it was filled on 29 June 1988.

2. The Office has continued to experience considerable difficulty in filling vacant seconded police officer positions. As at 30 June 1988, only four out of ten such positions were filled.

3. The Premier suspended all recruitment within the public service between 25 March 1988 and 19 July 1988. This, too, restricted the ability of this Office to recruit staff, and some positions remained vacant for this reason.

4. Expenditure on maintenance and working expenses items was reduced because certain functions of the Office had to be curtailed during the uncertain period between the resignation of the previous Ombudsman (September 1987) and the appointment of the present Ombudsman (February 1988).

Major Assets on hand as at 30th June 1988

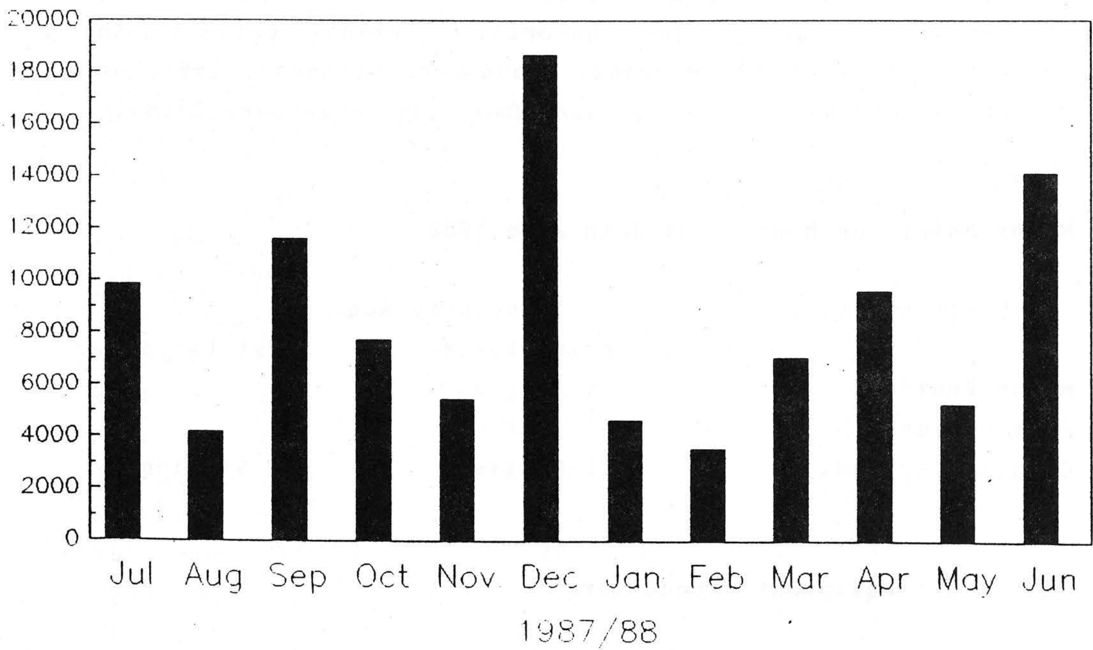
Class of Asset	Quantity Acquired	
	Prior 1.7.87	Post 1.7.87
Motor Vehicles	4	6
Photocopiers	4	-
Computer Systems	11 Stations	10 Stations

Stores and equipment expenditure

The graph following sets out monthly expenditure on stores and equipment during the year.

OFFICE OF THE OMBUDSMAN

STORES AND EQUIPMENT EXPENDITURE



Performance Indicators

Performance indicators for the year are set out below. An explanation of the categories is set out in the 1985-86 Annual Report, pp 271-6.

TELEPHONE ENQUIRIES AND INTERVIEWS

	Interviewing Officers	Receptionist	Total
Telephone enquiries	7775	453	8228
Interviews with prospective complainants	896		896

COMPLAINTS RECEIVED

In the year ended 30 June 1988 the following written complaints were received:

Ombudsman Act:

Departments and Authorities (other than Corrective Services)	1067
Local Councils	672
Department of Corrective Services	257
Outside Jurisdiction	505
Police Regulation (Allegations of Misconduct) Act:	
Complaints against police	2138
	4639

VISITS

	Oral Complaints Received	No of Visits	No of hours spent by Investigation Officers: Travel	Interviewing and follow-up	Totals
Prisons	308	40	223.5	289.5	513
Juvenile Institutions	66	11	41.5	62	103.5
Community Awareness Programmes	791	41	429	524.5	953.5
Totals	1165	92	694	876	1570

ACTION FOLLOWING VISITS

Action	Prisons	Juvenile Institutions	Community Awareness Programmes	Totals
Complaint discussed with relevant local public authorities (including Prison Superintendent, Institution Manager, etc) and advice given to complainant	58	32	-	90
Other general enquiries made and advice given to complainant	39	1	15	55
Advised to make written complaint	32	4	153	189
Written complaint taken	19	3	43	65
Referred to other service	48	2	63	113
Declined	51	16	300	367
No jurisdiction	35	5	194	234
Enquiry re existing complaint; advice given/arranged	26	3	23	52
Totals	308	66	791	1165

CONSTRUCTIVE/REMEDIAL ACTION TAKEN BY PUBLIC AUTHORITIES

1 July 1987 - 30 June 1988

	AREA			
	Departments and Authorities	Councils	Prisons	Police
No. of cases involved*	86	41	9	5
Nature of action taken				
Apology made	12	4		3
Account paid or adjusted or refund made	21	15		
Information provided/promised	18	4		
Procedures changed	9	5	4	1
Case reviewed (or review promised)	6	2	1	
Liability admitted/action to remedy taken	7			1
Damage repaired	1	2		
Delay resolved	15	6		
Inspection or personal visit to complainant made	1			
Case reconsidered and action favourable to complainant taken	24	11	3	1
Claim met or application approved	3		1	
Repairs/Work/Action/Notices to resolve problem	6	10		2
Payment made	3			1
Ex gratia payment made	1	2		
Negotiations commenced	3	3		
Service or benefit reinstated, officer counselled, reprimanded or disciplined	2			
Direction to staff issued	2		4	2
Investigation commenced by authority	1			
Funds to correct problem sought		1		
Facilities provided	1			
Financial assistance given/promised	1			
Matter re-opened and action taken in accordance with approved procedures	2		1	
Other	3	3	1	

* It is not unusual for more than one constructive/remedial action to be taken in one particular case

HEARINGS UNDER SECTION 19 OF THE OMBUDSMAN ACT - NUMBER OF DAYS

	No of hearings	No of days	No of witnesses	LOCATION: Office of Ombudsman	Other Sydney	Newcastle/ Wollongong	Country town/city	Inter-state
Departments and authorities	3	3.5	15	3	0.5	-	-	-
Local government councils	1	1	4	1	-	-	-	-
Prisons	1	6	34	4	2	-	-	-
Police	26	76	277	43.5	2	11.5	18	1
Totals	31	86.5	330	51.5	4.5	11.5	18	1

NUMBERS OF FORMAL REPORTS

OMBUDSMAN ACT

	Wrong Conduct	No Wrong Conduct
Departments and authorities	21	-
Local Government Councils	15	-
Prisons	4	1
Totals	40	1

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT

	Sustained		Not Sustained	
	Reinvestigated	Not reinvestigated	Reinvestigated	Not reinvestigated
Police	23	42	11	108

These are reports made final. Reports sent to Ministers for advice on consultation are set out in the topic 'Reports to Ministers and to Parliament'.

COMPLIANCE WITH RECOMMENDATIONS

1 July 1987 - 30 June 1988

	Departments and Authorities (excluding prisons)		Prisons		Local Government Councils		Police		Totals	
Number of cases involved	20		6		12		55		93	
Nature of recommendations	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted
Change in action:	4				4	2	4	2	12	4
Change in legislation:	1	1	1	1				2	2	4
Change in policy:	4	3	2		1		4	3	11	6
Change in procedure:	16	1	5		5	3	15	4	41	8
Disciplinary action:		2	1				30	16	31	18
Ex gratia or other payment:	7	2	1	1	3	1	7	4	18	8
Issue direction or instruction to staff:	7		2				16	3	25	3
Provide information to public:	3		2				2		7	0
Other:	3	1	1			3	6	5	10	9
TOTALS	45	10	15	2	13	9	84	39	157	60

80927-38856—14

REPORTS TO PARLIAMENT - NON COMPLIANCE WITH RECOMMENDATIONS

Departments and authorities	1
Local Government councils	3
Prisons	Nil
Police	6
	10

FINANCIAL STATEMENTS

BOX 12, G.P.O.
SYDNEY, N.S.W. 2001

AUDITOR-GENERAL'S CERTIFICATE

OFFICE OF THE OMBUDSMAN

The accounts of the Office of the Ombudsman for the year ended 30 June 1988, have been audited in accordance with Section 34 of the Public Finance and Audit Act 1983.

In my opinion, the accompanying summarised receipts and payments statements and statement of special deposits account balances, read in conjunction with the notes thereto, comply with Section 45E of the Act and are in accordance with the accounts and records of the Department.

K.J. ROBSON, FASA CPA
AUDITOR-GENERAL OF NEW SOUTH WALES

SYDNEY,
22 September 1988

Office of the Ombudsman
Year Ended 30 June 1988

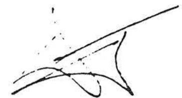
Pursuant to Clause 8 of the Public Finance and Audit (Departments) Regulation 1986, I state that:

(a) The accompanying financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act 1983, the Public Finance and Audit (Departments) Regulation 1986, and the Treasurer's Directions.

(b) The statements present fairly the receipts and payments of that part of the Consolidated Fund, and those accounts in the Special deposits Account operated by the Department.

(c) There are not any circumstances which would render any particulars included in the financial statement to be misleading or inaccurate.

D. E. Landa
OMBUDSMAN



A. Delany
ACCOUNTS OFFICER

Table A

OFFICE OF THE OMBUDSMAN
SUMMARISED RECEIPTS AND PAYMENTS STATEMENT
OF THE CONSOLIDATED FUND AND THE SPECIAL
DEPOSITS ACCOUNT BY ITEM FOR THE YEAR ENDED
30TH JUNE, 1988

Details	Note	1986/87	1987/88	
		Actual	Estimate	Actual
		$000	$000	$000
Receipts (a)				
Other Receipts				
Repayments to Previous Years Vote		*	...	*
Unclassified Receipts		*	...	*
Miscellaneous Services Rendered				
Commission on Deductions		*	...	1
Balance of Salaries Adjustment		10	...	6
Suspense - Salary Deductions		*	...	...
Provision for the Purchase of Computers		...	...	68
Total Receipts		10	...	75
Payments (a)				
Salaries and Other Employee Payments	10	1,973	2,095	2,057
Maintenance and Working Expenses		767	959	837
Plant and Equipment				
Purchase of Computers and Related Payments		...	...	19
Total Payments		2,740	3,054	2,913
Excess of Payments over Receipts		2,730	3,054	2,838

(a) Inter-fund transfers have been offset in the preparation of this table.

Table B

OFFICE OF THE OMBUDSMAN
SUMMARISED RECEIPTS AND PAYMENTS STATEMENT
OF THE CONSOLIDATED FUND AND THE SPECIAL
DEPOSITS ACCOUNT BY PROGRAM FOR THE YEAR ENDED
30TH JUNE, 1988

Details	Note	RECEIPTS			PAYMENTS		
		1986/87	1987/88		1986/87	1987/88	
		Actual $000	Estimate $000	Actual $000	Actual $000	Estimate $000	Actual $000
PROGRAM 1.1 Investigation of Citizens Complaints							
Consolidated Fund #					2,740	3,054	2,894
Special Deposits		...	...	68	...	...	19
Gross Total - Program 1.1		...	...	68	2,740	3,054	2,913
Less Inter-Fund transfers							
Net Total - Program 1.1		...	...	68	2,740	3,054	2,913
NON-PROGRAM							
Consolidated Fund		*	...	1	...	...	...
Special Deposits		28	NA	34	682	NA	658
Gross Total - Non-Program		28	...	35	682	...	658
Less Inter-Fund transfers					664	...	616
Net Total - Non-Program		28	...	35	18	...	42
TOTAL							
Consolidated Fund		*	...	1	2,740	3,054	2,894
Special Deposits		28	NA	102	682	NA	677
GRAND TOTAL - GROSS		28	...	103	3,422	3,054	3,571
Less Inter-Fund transfers(a)					664	...	616
GRAND TOTAL - NET	11	28	...	103	2,758	3,054	2,955
# Includes the Ombudsman's Salary and Allowance - Special Appropriation Act No. 4 of 1976					92	93	93
and Employers Liability to State Public Service Superannuation Fund Special Appropriation Act No. 45, 1945					...	...	3

(a) Amounts transferred from Consolidated Fund to Special Deposits are included in the Consolidated Fund payments section in this table. This has been done to make the Consolidated fund figures comparable to figures published in the Budget Papers. The Special Deposits transfer receipt amount is not displayed to ensure that total net program receipts are disclosed

Table C

OFFICE OF THE OMBUDSMAN
STATEMENT OF SPECIAL DEPOSITS ACCOUNT BALANCES AS AT
30TH JUNE, 1988

Previous Year Cash $000	Previous Year Securities $000	Previous Year Total $000	Account	Note	Current Year Cash $000	Current Year Securities $000	Current Year Total $000
28	...	28	1140 Balance of Salary Adjustment	10	34	...	34
55	...	55	1196 Salary Deductions		42	...	42
13	...	13	1784 Provision for the Purchase of Computers and Related Payments		62	...	62
96	...	96	Total - All Special Deposits Accounts		138	...	138

OFFICE OF THE OMBUDSMAN
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 1 General

(a) The financial statements of the Office have been prepared on the basis that the transactions of the Public Accounts are reported on a cash basis with the exception of payment for salaries which are reported on an accrual basis.(Note 10 also refers.)

(b) The financial details provided in Tables A and B relate to transactions on Consolidated Fund and Special Deposits accounts and are in agreement with the relevant sections of the Treasurer's Public Accounts.

(c) A reference in the receipts and payments statement to an "estimate" figure means:

(i) in the case of a special appropriation the amount included in the estimates in respect of that appropriation; and

(ii) in the case of an annual appropriation the amount provided in the estimates to be appropriated by the relevant Appropriation Act as advised by the Treasury.

(d) A reference in the receipts and payments statement to an "actual" figure means the payments actually made by the Office in respect of the item to which it refers with the exception of payment for salaries which are reported on an accrual basis as per (a) above.

(e) All totals have been rounded to the nearest one thousand dollars ($1,000). Asterisks in tables denote that the amount is five hundred dollars ($500) or less.

Note 2 Schedule of uncollected amounts

There are no uncollected amounts as at 30th June, 1988, due to the Office of the Ombudsman's function of investigating complaints being provided as a free service.

Note 3 Amounts due and unpaid for goods and services received

Amounts due and unpaid for goods and services received by 30th June, 1988, and comparative amounts as at 30th June, 1987, for the following items are:

1986/87		1987/88
$		$
5,754	Advertising	20
241	Books	850
2,691	Electricity	3,283
2,427	Fees	22,754
1,714	Motor Vehicles	624
4,033	Postal & Telephone	169
...	Printing	205
646	Stores	24,922
1,759	Travel	557
19,265		53,384

Note 4 Contingent liabilities

There is a matter currently before the Supreme Court and contingent liabilities in regards to legal costs cannot be determined at this time.

Note 5 Amounts repayable on outstanding loans and advances

The Office of the Ombudsman has no form of Public Borrowings, all funds are provided from Consolidated Fund.

Note 6 Debts written off

The Office of the Ombudsman had no bad debts to be written off during this financial year ended 30th June, 1988.

Note 7 Commitments

Commitments on hand as at 30th June, 1988, and comparative amounts as at 30th June, 1987, for the following items are:

1986/87		1987/88
$		$
1,666	Postal & Telephone	...
346	Printing	...
340	Stores	10,952
2,352		10,952

Note 8 Material assistance provided to the Department

No material assistance was provided to the Office during the financial year ended 30th June, 1988.

Note 9 Sums of money held for two years or more

The were no monies held by this Office as at 30th June, 1988 that should have been sent to the Treasury.

Note 10 Full years costs for Salaries and Wages expenditure

The expenditure for salaries and other employee payments for consolidated fund was $2,057,555 which includes an amount of $34,202 for the final seven days of the year to reflect the full year's salary costs.

Note 11 Dissection of Programs

A. The table below details the program receipts of Consolidated Fund and Special Deposits Account. The figures shown are net of inter-fund transfers

Previous Year Receipts $000	Program Description	Balance of Salaries $000	Provision for Computers $000	Other $000	Total Receipts $000
*	Program 1.1 Investigation of Citizens Complaints		68	...	68
28	Non Program	34	...	1	35
28	Total	34	68	1	103

B. The table below details the program payments of Consolidated Fund and Special Deposits Account. The figures shown are net of inter-fund transfers

Previous Year Payments $000	Program Description	Salaries & Other Employee Payments $000	Maintenace & Working Expenses $000	Other $000	Total Payments $000
2,740	Program 1.1 Investigation of Citizens Complaints	2,057	837	19	2,913
18	Non Program	42	...	...	42
2,758	Total	2,099	837	19	2,955

Note 12 Exemptions from Financial Reporting Requirements

The financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act 1983, the Public Finance and Audit (Departments) Regulation 1986, and the Treasurer's Directions. There have been no exemptions granted by the Treasury.

END OF AUDITED FINANCIAL STATEMENTS

STATISTICAL SUMMARY OF COMPLAINTS UNDER OMBUDSMAN ACT

1 July 1987 to 30 June 1988

The result categories currently in use are:

No jurisdiction (NJ)	-	Self explanatory.
Declined at the outset (DECO)	-	Complaint is declined without any enquiry being needed (ie on the material submitted by the complainant alone).
Declined after preliminary enquiry (DECE)	-	Complaint is declined after enquiry made with public authority, or complainant. This can be by letter, telephone or interview.
Resolved (Res)	-	Complaint is resolved to the satisfaction of Investigation Officer prior to an investigation being commenced.
No prima facie evidence of wrong conduct (NPFE)	-	Complaint is concluded after preliminary enquiries because there is no prima facie evidence of wrong conduct. Consequently, the matter does not proceed to investigation.
Discontinued (Dis)	-	Complaints that proceed to investigation but stop short of a finding (matter resolved, no utility in proceeding, withdrawn by complainant, etc).
No Wrong Conduct	-	After investigation, no wrong conduct found.
Wrong Conduct	-	After investigation, wrong conduct found.

STATISTICAL TABLES

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Aboriginal Land Council		1	1							2
Agriculture Department		5	5	1	1		1			13
Anti-Discrimination Board			1							1
Apprenticeship Directorate			1	1						2
Attorney General's Department	3	4	4	2					2	15
Australian Gas Light Company		2	2						1	5
Barristers Admission Board	1									1
Building Services Corporation		5	17	5	2	1			6	36
Bursary Endowment Board				1						1
Bush Fire Council	1									1
Business and Consumer Affairs Department	1	2	9	2	1				2	17
Chiropractors Registration Board		1		1					9	11
Coal & Oil Shale Mine Workers Tribunal	1									1
Consumer Claims Tribunal	8									8
Co-Operative Societies Department		3								3
Corporate Affairs Commission	1	5	7	4	3				4	24
Corrective Services Department	4	77	129	24	6	4	2	4	57	307

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Council of Auctioneers & Agents			2	1	1				3	7
Crown Solicitors Office	1		1							2
Dairy Corporation			1							1
Darling Harbour Authority	1	1						2		4
Dental Board			1							1
Dental Technicians Registration Board					1					1
Dust Diseases Board			1							1
Education Department	2	13	15		1	6		2	5	44
Egg Corporation		1	2						2	5
Electricity Commission		4	3	1	1				1	10
Energy Department		1								1
Ethnic Affairs Commission		1	1							2
Family & Community Services Department	1	20	34	1	6	2		1	34	99
Fire Commissioners Board				2					2	4
Fish Marketing Authority			2					1	1	4
Forestry Commission	1		6							7
Geographical Names Board			1							1

80927-38856—15

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Gov't & Related Employees Appeal Tribunal	1									1
Government Information Centre		1		1						2
Government Insurance Office	2	15	15	10					4	46
Government Supply Department			1							1
Hawkesbury Agricultural College									2	2
Health Department	9	27	16	2	2	1		1	13	71
Health Department (Prison Medical Service)	1	4	8	1					2	16
Heritage Council		1	1			1				3
Historic Houses Trust			1							1
Housing Department	2	24	50	16	4	1		3*	12	112
Hunter District Water Board		1	2	1	1	1		1	1	8
Industrial Relations & Employment Department		4	5	4				1	5	19
Joint Coal Board									1	1
Land Tax Office (now Office of State Revenue)	1		1	1						3
Land Titles Office			1	1					1	3
Lands Department		7	2						5	14
Legal Aid Commission	1	15	14	2	3				2	37

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECR)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Liquor Administration Board		4	1	1					1	7
Local Government Department			1	1				1		3
Long Service Payments Corporation			5							5
Macarthur Institute of Higher Education			1						1	2
Macquarie University									2	2
Main Roads Department		8	10	4	1				10	33
Maritime Services Board		3	5	1		3	1	2*	2	17
Medical Appeals Board			4							4
Mine Subsidence Board			2						1	3
Mineral Resources Department		1	3						1	5
Mitchell College of Advanced Education			1	1						2
Motor Transport Department	2	30	23	10	5			16**	10	96
Motor Vehicle Repair Industry Council		1	1		1					3
Music Examinations Advisory Board			1							1
National Parks & Wildlife Service	1	10	6		4				6	27
Newcastle College of Advanced Education				1						1
Office of the Minister for Environment		1								1

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Optometrical Registration Board			1						1	2
Parliamentary Superannuation Fund			1							1
Parole Board	2		3						1	6
Pastures Protection Board		7	5	1	2				1	16
Planning Department		2	4						2	8
Police Department	3	10	22	16	2	1			7	61
Premier's Department		1								1
Protective Office	1	1	1							3
Public Accountants Registration Board			1							1
Public Servant Housing Authority			1							1
Public Service Board		2		1	1					4
Public Trust Office	2	3	4	2	2					13
Public Works Department	1	4	1		3		1		2	12
Real Estate Valuers Registration Board			1							1
Registry of Births Deaths & Marriages			9	5					4	18
Release on Licence Board		1								1
Rental Bond Board			3	1						4

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Residential Tenancies Tribunal			1							1
Riverina Murray Institute of Higher Education			1						1	2
Senior School Studies Board			1							1
Small Business Office			1							1
Soil Conservation Service								1		1
Sport & Recreation Department			1		1				1	3
Sporting Injuries Committee									1	1
State Authorities Superannuation Board		5	5	3	6				4	23
State Bank		2	1							3
State Compensation Board		3	1							4
State Contracts Control Board		1	2							3
State Development Department			1							1
State Electoral Office	1		4		1					6
State Lotteries Office		1							1	2
State Pollution Control Commission		12	4	2	3				1	22
State Rail Authority	2	30	24	9	1	1		2	25	94
State Sports Centre			1							1

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECP)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Strata Titles Office		1	3							4
Sydney College of the Arts					1					1
Sydney Cricket & Sports Ground Trust						1				1
Sydney Farm Produce Market Authority		1								1
Teacher Housing Authority			1							1
Technical & Further Education Department		3	3	1				1		8
Tick Control Board								1		1
Tourist Commission	1									1
Traffic Authority		1								1
Treasury - now Office of State Revenue (NSW Treasury)	1	7	3	6	2			1	2	22
University of New England		1	1	2	1	1				6
University of NSW			4						2	6
University of Wollongong	1	1								2
Urban Transit Authority		2	1	2						5
Valuer General's Department		1	1							2
Veterinary Surgeons Board	1		1							2
Water Board		13	19	10	2				11	55

PUBLIC AUTHORITIES

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Water Resources Department		1	10					1	6	18
Western Lands Commission			1		1					2
Zoological Parks Board			1							1
	62	420	581	165	73	24	5	42	284	1656

* One report covered two cases of wrong conduct

** One report covered sixteen cases of wrong conduct

COUNCILS

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Albury City					1				1	2
Armidale City				1						1
Ashfield Municipal		3	1		1				1	6
Auburn Municipal		1	1							2
Ballina Shire		1	2						1	4
Bankstown City	1	5	2	2						10
Barraba Shire					1					1
Bathurst City			3						1	4
Baulkham Hills Shire		4	4		1				10	19
Bega Valley Shire			2	1					5	8
Bellingen Shire			3					1	2	6
Berrigan Shire					1					1
Blacktown City	1	2	11	2	1					17
Blue Mountains City		4	6		1					11
Bogan Shire			1							1
Botany Municipal		1	1		1				2	5
Broken Hill City			1							1
Burwood Municipal				1						1

COUNCILS

AUTHCRITY

Authority	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Byron Shire		2	5	1		1				9
Camden Municipal					1				1	2
Campbelltown City			2						1	3
Canterbury Municipal		2	4	1					2	9
Carrathool Shire									1	1
Central Darling Shire			1						2	3
Central Tablelands County					1					1
Cessnock City		2	1							3
Cobar Shire		1	1						1	3
Coffs Harbour Shire		1	2	1	1					5
Concord Municipal		1	1							2
Coolah Shire			1	1						2
Cooma - Monaro Shire		1	1							2
Coonabarabran Shire			1		1					2
Copmanhurst Shire			1							1
Corowa Shire			1		1					2
Cowra Shire			1							1

COUNCILS AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPEF)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Deniliquin Shire			1							1
Drummoyne Municipal		2	3		1					6
Dubbo City		1	1							2
Dumaresq Shire		1	1							2
Dungog Shire		1								1
Eurobodalla Shire		3	4	1	1					9
Evans Shire								1		1
Fairfield City		3	2		1	1				7
Far North Coast County			2			1				3
Forbes Shire						1			1	2
Gilgandra Shire		1								1
Gloucester Shire		1								1
Gosford City		5	5	1	2		1		1	15
Grafton City		1								1
Great Lakes Shire		1	1		2		1		1	6
Greater Lithgow City			1			1				2
Greater Taree City		2	1		2				6	11

COUNCILS

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Griffith Shire									1	1
Gundagai Shire		1		1						2
Hastings Municipal		3	3		1			1	4	12
Hawkesbury Shire		3	10						1	14
Holbrook Shire		1								1
Holroyd Municipal			1							1
Hornsby Shire		1	5						1	7
Hume Shire		1	2							3
Hunters Hill Municipal		1	1							2
Hurstville Municipal		1	5		1					7
Illawarra County			4		1				2	7
Inverell Shire		1	1							2
Junee Shire					1					1
Kempsey Shire			4						1	5
Kiama Municipal			3						1	4
Kogarah Municipal		2	3	1	1					7
Kuring-gai Municipal		9	1	1	3					14

COUNCILS

AUTHORITY

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '86	10. Total
Kyogle Shire	1		2							3
Lachlan Shire			1							1
Lake Macquarie City		6	10	1	3			3*	4	27
Lane Cove Municipal		1	1							2
Leeton Shire					1					1
Leichhardt Municipal		6	2	3		2				13
Lismore City		1	5		1				2	9
Liverpool City			2	2	1					5
Lower Clarence County		3	1					1	4	9
Maclean Shire	1		2					1	1	5
Maitland City		1								1
Manly Municipal		1	1	1						3
Marrickville Municipal		1	2	3						6
Merriwa Shire			1							1
Mosman Municipal		2	2	1		1				6
Mudgee Shire		2	1						22	25
Murray River Electricity		1								1

COUNCILS AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Muswellbrook Shire				1					1	2
Nambucca Shire		1								1
Namoi Valley County			1							1
Narrabri Shire		3	4	1				1		9
Narrandera Shire			1							1
Narromine Shire			1							1
Newcastle City		5	2		3			1	2	13
North Sydney Municipal		4	5	1	1				1	12
Northern Riverina County			1						3	4
Northern Rivers Electricity			2	1						3
Nymboida Shire			1					1		2
Ophir County			1							1
Oxley County			1							1
Parkes Shire			1							1
Parramatta City		6	5		1				2	14
Parry Shire		1	1						2	4
Penrith City		3	3		1				9	16

COUNCILS / AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Port Stephens Shire		3	1	1		1			3	9
Prospect Electricity		2	5	1	1				1	10
Queanbeyan City				1						1
Quirindi Shire					3					3
Randwick Municipal		8	7		2				3	20
Richmond River Shire		3								3
Rockdale Municipal			3						2	5
Ryde Municipal		3	4	1					1	9
Severn Shire			1						1	2
Shellharbour Municipal			2							2
Shoalhaven City		3	4		1				2	10
Shortland Electricity		2	2						1	5
Singleton Shire		1	2						1	4
Southern Mitchell County			1					1		2
Southern Riverina County			1	1						2
Southern Tablelands County			1		1					2
Strathfield Municipal		1	2		1	1			1	6

COUNCILS

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Sutherland Shire		12	5	2	3			1	7	30
Sydney City		13	13	5		4			6	41
Sydney County		2	6	3				1		12
Tallaganda Shire								1		1
Tamworth City			1	1	1				1	4
Temora Shire		1								1
Tenterfield Shire		1	2							3
Tumut Shire		1							2	3
Tweed Shire	1	1	2	1	1				4	10
Ulmarra Shire		1								1
Uralla Shire			1		1					2
Wagga Wagga City		1	1							2
Wakool Shire			1						1	2
Walgett Shire			1							1
Warren Shire								1		1
Warringah Shire		3	11	4	4				5	27
Waverley Municipal		5	1						2	8

COUNCILS

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Willoughby Municipal		3	3	1						7
Wingecaribee Shire		1	2	1					2	6
Wollondilly Shire		1	5							6
Wollongong City		3	15	1	1		1		6	27
Woollahra Municipal		2	4	3		1			1	11
Wyong Shire	1	7	3	1				2**	5	19
Yass Shire									1	1
	6	209	302	59	62	15	3	18	163	837
Current as at 30.6.87										165
Received										672

* one report covered 3 cases of wrong conduct

** one report covered 2 cases of wrong conduct

AUTHORITY	1. No Jurisdiction (NJ)	2. Declined at Outset (DECO)	3. Declined after Preliminary Enquiries (DECE)	4. Resolved after Preliminary Enquiries (RES)	5. No prima facie evidence of wrong conduct (NPFE)	6. Discontinued after Investigation (DIS)	7. No Wrong Conduct after Investigation (NWC)	8. Wrong Conduct after Investigation (WC)	9. Current as of 30th June '88	10. Total
Departments/Statutory Authorities	62	420	581	165	73	24	5	42	284	1656
Unscheduled Bodies (Outside Jurisdiction)										
I. Australian Government Departments	83									83
II. Employer/Employee	61									61
III. Private Organisations/Individuals	361									361
Local Government Authorities	6	209	302	59	62	15	3	18	163	837
Total from all sources	573	629	883	224	135	39	8	60	447	2998
Less under investigation as at 30.6.87										-497
Total Received for year ended 30.6.88										2501

POLICE COMPLAINTS

NOT OR NOT FULLY INVESTIGATED				NOT SUSTAINED				SUSTAINED		TOTAL
Declined	Conciliated	Discontinued before Ombudsman reinvestigation	Discontinued during Ombudsman reinvestigation	Not sustained finding without reinvestigation	Deemed not sustained - no request for reinvestigation (Section 25A(2))	Deemed not sutained by Ombudsman - Ombudsman decided reinvestigation not warranted despite request	Not sutained finding following reinvestigation	Sustained finding without reinvestigation	Sustained finding following reinvestigation by Ombudsman	
1254	116	117	3	108	301	86	11	42	23	2061

80927-38856—16

PART II

CASE NOTES

CASE NOTES

TABLE OF CONTENTS

COMPLAINTS AGAINST DEPARTMENTS AND AUTHORITIES

Authority and complaint	Page Number
DARLING HARBOUR AUTHORITY	
An expensive exercise	1
DEPARTMENT OF EDUCATION	
Transporting disabled children	2
ELECTRICITY COMMISSION	
Compensation delay	3
FINANCE DEPARTMENT	
Prior warning	4
MINE SUBSIDENCE BOARD	
Communicating changes	5
DEPARTMENT OF MOTOR TRANSPORT	
A taxing problem	9
NATIONAL PARKS AND WILDLIFE SERVICE	
Reservation error	10
SOIL CONSERVATION SERVICE	
Leaky dam	11
STATE RAIL AUTHORITY	
Illegible dates on tickets	12
Delayed retirement	14
DEPARTMENT OF TECHNICAL AND FURTHER EDUCATION	
Independent supervision	15

COMPLAINTS AGAINST COUNCILS

	Page Number
BLACKTOWN CITY COUNCIL	
Some improvement!	18
BOTANY MUNICIPAL COUNCIL	
Existing use rights	20
COOLAH SHIRE COUNCIL	
Compensation delayed	21
EVANS SHIRE COUNCIL	
Local council or land speculator?	22
FAIRFIELD CITY COUNCIL	
Council reconsiders	23
ILLAWARRA COUNTY COUNCIL	
Two-year undercharge	24
KOGARAH MUNICIPAL COUNCIL	
Swimming pool fence	26
PORT STEPHENS SHIRE COUNCIL	
Bad smell at Raymond Terrace	27
SYDNEY COUNTY COUNCIL	
No news in "Watts News"	28
Getting into hot water	29
WARREN SHIRE COUNCIL	
The best laid plans...	32
WILLOUGHBY MUNICIPAL COUNCIL	
Balcony blues	34
WOOLLAHRA MUNICIPAL COUNCIL	
Old drain a problem	36

COMPLAINTS AGAINST DEPARTMENT OF CORRECTIVE SERVICES

	Page Number
Priveleged correspondence	37
Strip searching of female inmates after contact visits	39
Search of artificial limbs	40

COMPLAINTS AGAINST POLICE

Lost film	42
Accidentally fractured skull	43
Blood tests	45
Ploy not acceptable	46
A "service", indeed	48
Failure to comply with Act	50
Questionable search	52
Asking a bit much	54
Lost pendant	55
Failure to act	57
Reward, at last	59
Leak of old criminal record	60
Bicycle found, but lost again	61
Futile and dangerous use of handcuffs	62
A cow of a thing to do to a man	63
Improper detention	64
Some party...!	65
Double jeopardy	66
Oppressive questioning and "public mischief"	68

COMPLAINTS AGAINST AUTHORITIES AND DEPARTMENTS

DARLING HARBOUR AUTHORITY

An expensive exercise

A resident of Pyrmont complained that the Darling Harbour Authority, without obtaining planning permission, had erected storage racks on land that the Authority had leased from the Maritime Services Board. The racks were used to store sandstone blocks which had been found on the Darling Harbour site and which were believed to be part of an old mill originally built in the area.

Investigation disclosed that the Authority had not submitted a development application before erecting the racks; neither had it submitted one after meeting with officers of the City Council who told the Authority that a development application was required. The Authority, during the investigation, moved the sandstone blocks to the Power House Museum's storage area at Castle Hill and dismantled the storage racks. The cost of this exercise was estimated at $50000; the cost of submitting a development application for the storage facilities would have been $50.

The Authority's conduct was found wrong; the Authority objected to the finding, saying that a lot of work had gone into looking at options for permanent storage for the blocks. Further questions asked of the Authority revealed that no use had been found for the blocks; in fact, the Public Works Department had rejected them as unsuitable for restoration work. It appears that the blocks are now being stored with no future use in mind for them.

This Office has recommended that the Authority ensure that any development it carries out, other than inside the Darling Harbour development area, complies with the requirements of all relevant planning legislation, and that in future, when

making similar decisions, the Authority consider the likely cost to the public.

DEPARTMENT OF EDUCATION

Transporting disabled children

Mr K, the owner of a taxi company on the mid-north coast, complained that the Department of Education had made an error when arranging transportation of disabled children to a special school in a neighbouring town. The Department had arranged for a taxi company located in the neighbouring town to collect disabled children from the town in which Mr K operated, and drive them to school. Mr K believed that his company should transport children living in his town.

Preliminary enquiries were conducted. The Department said that Mr K's company could have been considered but had not been, because the Senior Administrative Officer in the Region had accepted the school principal's decision to engage the other taxi company on the basis of his local knowledge and the best interests of his pupils.

Mr K was displeased that his company had not even been considered by the Department. He pointed out that the Department's own policy was to engage the local operator, which, in this case, was his company.

During the investigation by this Office, the Department said that the principal had made the transportation arrangements, but the principal said that the decision had been made at the Regional Office. In an effort to establish the facts the Investigation Officer contacted the principal by telephone. The principal said that he had no authority to make decisions about engaging taxi companies and that he had drawn to the attention of the Regional Director the error in the Department's advice to the Ombudsman. He was most upset that the advice had not been corrected.

The investigation Officer also spoke to the Senior Administrative Officer at the Department's Regional Office. He said that he was aware of the principal's concerns and explained that, although the Regional Office made the initial arrangements to engate a particular operator, the principal was involved in the day-to-day operation of student transportation. At the time the decision was made to engage the taxi company, the Department was in the process of transferring the responsibility for transporting school children to the Department of Motor Transport. Experienced staff had been seconded to the Department of Motor Transport, leaving inexperienced and temporary staff to handle applications for the transportation of disabled children. Both the principal and the Senior Administrative Officer had been on leave at the time the decision was made.

The investigation was discontinued on the basis that the decision to engage the particular taxi operator was the result of the unusual circumstances in the Regional Office at the time and was not due to any ongoing administrative problem. Further, there would be no cost saving to the Department if the transportation of the children was transferred to Mr K's company. The principal had also advised that the existing taxi company was providing an excellent service. Both Mr K and the Director-General of Education were advised of this decision. The matter of providing inaccurate information to the Ombudsman was drawn to the Director-General's attention.

ELECTRICITY COMMISSION

Compensation delay

Mr L complained that the Electricity Commission (Elcom) had not compensated him for easement arrangements on his land. Mr L said that, in 1980, Elcom sought his permission to purchase an easement over his property. Mr L agreed to the request.

The transmission line was constructed but it was not until May 1986 that Elcom made an offer of compensation of $2000. Mr L rejected this offer and Elcom made a further offer of $4000. Even though this was considerably less than Mr L had originally hoped to receive, he accepted the offer. Despite his constant enquiries with Elcom, however, payment was not made. In August 1987 Mr L complained to the Ombudsman about the delay.

The Ombudsman made preliminary enquiries and Elcom confirmed that the delay had been the fault of its legal branch; the matter was said to be near finalisation. In fact, a cheque for $4000 was sent to Mr L's solicitor on 25 August 1987. Notwithstanding the delay which had occurred, the Ombudsman decided that, as the complaint had been resolved, no further action would be taken.

In appreciation, Mr L wrote to the Ombudsman saying that he had received the cheque, and that seven years of negotiation with Elcom had at last come to an end.

FINANCE DEPARTMENT

Prior warning

The president of a charity to benefit homeless children complained that the Finance Department had failed to advise the charity of the then Minister's decision to order an independent audit of the charity's affairs. The complainant said that the first he had known of the matter was when a newspaper reporter had asked him to comment; the next day, the front page headline of the Daily Telegraph had proclaimed, "GOVT. PROBES KIDS CHARITY."

A lengthy investigation disclosed deficiencies in the structure and procedures of the Department's Licences and Charities Branch. The investigation found that at no stage during the Department's enquiries had the charity been

notified of complaints made against it. It also found that, before the charity was notified, the then Minister's Press Secretary had advised a reporter of the Minister's decision to order an independent audit.

The procedures of the Licences and Charities Branch were altered to ensure that charities be advised of the substance of complaints at the commencement of enquiries, unless the Commissioner determines that to do so could result in documents being destroyed or otherwise tampered with. As well, the internal structure of the Branch was re-organised to make Charities Inspectors directly responsible to the Commissioner, which had not previously been the case.

The Department's failure to consider whether or not the charity should have been notified of the complaints against it was unreasonable and denied the officers of the charity an opportunity to answer the complaints.

The Acting Ombudsman recommended that officers of the Department and of the Minister's Office be instructed to notify charities of decisions affecting them before discussing such matters with the media. The Department's adoption of revised procedures should ensure that charities are made aware of complaints about them, unless there are good reasons why they should not be told.

MINE SUBSIDENCE BOARD

Communicating changes

In 1981 the complainants purchased a vacant block of residential land within a mines subsidence district in the Lithgow area. During pre-purchase enquiries, the complainants applied to the Mine Subsidence Board for a "Mine Subsidence Certificate" in respect of the property and paid the necessary fee of $15.

The land was inspected by a Board inspector and a certificate under Section 15B of the Mine Subsidence Compensation Fund Act issued on 9 June 1981. The complainants, however, had proceeded with the purchase of the land, before receiving the certificate from the Board.

For the benefit of landowners in mine subsidence districts, the Mine Subsidence Board issues guidelines on the surface management of land within areas affected by mine subsidence. The guidelines describe the types of developments which the Board will accept for coverage under the Mine Subsidence Compensation Fund Act.

The complainants in 1985 lodged with the local council an application for the erection of a dwelling on the land. The council referred the application to the Board for approval. The plans submitted were rejected by the Board because they did not comply with its 1981 Suface Management Guidelines for "high-risk areas" (undermined at a depth of less than 25 metres).

The complainants queried the Board's rejection on the basis that, at the time they purchased the land (1981), their solicitors had advised them of the conditions laid down by the Board in September 1978, and it appeared that those would not prevent them from building. The complainants, however, had not sought a copy of the 1978 guidelines, either before or after purchasing their land, but had plans drawn on their understanding of the 1978 guidelines. Had they obtained a copy of the guidelines, it would have been clear that their proposed plans did not comply with the 1978 guidelines either.

Investigation showed that in July 1981, very shortly after issuing the certificate which had been requested by the complainants, the Board had received information which indicated that the complainants' land and surrounding allotments might be undermined to a much greater extent than had previously been thought. Based on this new information, new Surface Management Guidelines were drawn up and these

placed the complainants' land in a "high-risk" area. A minute issued by the Board's Secretary in August 1985 specifically directed that the new guidelines should be sent to all affected owners. The complainants, however, were not sent a copy of the guidelines, despite being included in a list of some 20 affected owners. In this regard the Board said:

> As far as [the complainants are] concerned, I can only assume that a letter was not sent because there was no record that the owners had enquired or had been advised of the 1978 guidelines.

At the time of the complainants' land purchase, the Board had no written policy on how it would inform affected owners of any changes made to its Surface Management Guidelines. In December 1986, however, the Board's Secretary said that the practice in 1981 may have been to notify all owners; this had certainly been the intention of the minute issued in August 1985.

Later in August 1985, the Board formally decided to adopt a policy on notifying owners, as follows:

> Where guidelines for a subdivision are varied,
>
> (a) The new guidelines will be advertised in newspapers that circulate in the area of the subdivision; and
>
> (b) Where the numbers of owners is not too great, individual owners will also be advised by direct mail.

It is clear that the complainants had the responsibility of ensuring that their information on the Surface Management Guidelines, in force at the time of their purchase, was accurate. Instead, they decided to rely on the advice of their solicitor and, moreover, finalised the purchase before receiving the certificate requested from the Board. This Office took the view that, in those circumstances, the Board could not bear any responsibility for the inappropriateness of the plans submitted by the complainants.

The Ombudsman, however, asked the Board to clarify its notification policy, particularly the issue of direct mail notification "if the number of owners is not too great". The Board replied:

> The Board's policies relating to the surface developments in subdivisions often cover whole mine subsidence districts. These districts can, as in the case of Newcastle, extend over nearly a whole city.
>
> If the Board was required, in all cases, to individually notify landowners it would have to discontinue the practice of issuing guidelines as it would need to conduct thousands of searches at the Registrar General's Office in Sydney at prohibitive cost in time and money.

This Office believes that there is little or no difference about the need to know about the guidelines between a small group of people and a much larger group. The impact would be identical on the individual landowner, no matter whether the number of landowners involved is small or great.

As to the Board's argument about the prohibitive cost of title searches, the Ombudsman noted that the Board had not conducted any such searches to identify the small group of people affected by its minute of August 1985. In fact, the list of owners had been provided by the local council which was in a position to give to the Board additional and useful information, usually not available through title searches, such as the nature of building improvements underway. The Ombudsman recommended that the Board immediately amend its policy to ensure that all affected owners be notified by direct mail when subdivision guidelines are varied.

The Ombudsman also recommended that the Board consult with those local councils controlling land within the boundaries of mine subsidence districts with a view to establishing a mechanism which would quickly provide a list of owners within specified areas, and that this mechanism be used whenever required as an alternative to existing means of obtaining information about land ownership.

DEPARTMENT OF MOTOR TRANSPORT

A taxing problem

Primany producers are able to obtain a concessional primary producer rate on the third party insurance component of vehicle registration. To reduce the incidence of fraudulent claims, the Department of Motor Transport had decided to require a registered tax agent or accountant to certify on all applications for the concession that the applicant was a genuine primary producer and used the vehicle concerned mainly for primary production.

Mr R wrote to the Department and explained that he prepared his own tax returns and accounts. The Department insisted on a properly certified application form, and told Mr R that tax records or statutory declarations were not acceptable. Mr R's registration renewal was held in abeyance while the matter was debated.

Mr R approached this Office. He said that, although he understood the Department's concern about possible fraud, he believed that it should accept the certification of other suitable public officials on the application form. He believed that primary producers who did not employ a tax agent were being discriminated against.

The Department told this Office that the policy was under review because several complaints had been made about it. Mr R's tax averaging certificate had been accepted as proof of his status, pending Ministerial approval of changes to the regulations. It was later confirmed that, among other revisions to the regulations, Australian Taxation Office certification would be accepted for the grantng of the concession.

The changes were implemented in February 1988, and advertisements were placed by the Department in rural affairs journals to publicise them.

NATIONAL PARKS AND WILDLIFE SERVICE

Reservation error

Mr B complained that, after he had found a buyer for his land, he discovered that a portion of it had been reserved for a national park. The National Parks and Wildlife Service had not advised him of the reservation. He had eventually agreed to sell the reserved portion of his land to the Service, but he was unhappy with the way the Service had handled the matter. He said that there had been a delay of nine months in settlement, and this had cost him $10000 in interest payments on a loan he had taken out on the strength of buyer interest in his land when it was first put on the market. He maintained, as well, that the Service had undervalued his land.

Enquiries revealed that the reservation had been placed over Mr B's land in error. Once the error was drawn to its attention, the Service made every effort to correct the problem. It offered to either revoke the reservation over Mr B's land or to buy it. Mr B chose the latter option. Although it took nine months, from the time the error was discovered, to settle the purchase, there was no undue delay on the part of the Service: negotiations with Mr B; deciding upon, clearing and surveying the boundaries; deciding upon a value; and completing purchase transactions through the Crown Solicitor were all legitimately time-consuming steps in the purchase. At all other stages, the Service had given the matter priority over others.

This Office believed that the Service could not be held responsible for Mr B's interest payments, particularly as he had taken out the loan without any concrete commitment from the potential buyer.

The Service eventually paid a price for the land which was around $15000 above the Valuer General's valuation and, in fact, which accorded with a valuation obtained by Mr B from an independent valuer.

The Service had never disputed that it had made an error in reserving Mr B's land. Errors are unfortunately part of any operation, and the fact that an error is made does not, of itself, necessarily constitute "wrong conduct" in terms of the Ombudsman Act. In this case, the Service took every reasonable action to rectify the error once it was brought to its attention. On this basis, enquiries were concluded.

SOIL CONSERVATION SERVICE

Leaky dam

A farmer obtained an advance under the Soil Conservation Act to carry out soil conversation works, including the construction of dams, on his property. He complained that the Soil Conservation Service failed to conduct proper soil tests before the construction of the main dam, which had failed twice since being built. He further alleged that officers of the Service had departed from standard procedures when they arranged a "fuel agreement" whereby he supplied fuel and paid a nominal fee, instead of being required to pay normal hire costs, for use of the Service's plant.

Investigation showed that the first dam had been constructed without the benefit of prior soil test results, contrary to the Service's standard procedures. In addition, the Service admitted that the fuel agreement, arranged by two officers of the Service, was inappropriate. Under the agreement, instead of paying a hire charge of $1920 (for 32 hours of bulldozer work), the complainant was required to supply diesel fuel and pay $120 for the first hour's hire of two machines. The Service said that the agreement had been initiated in good faith, but the staff involved had been disciplined.

80927-38856—17

The Deputy Ombudsman concluded that, although the fuel agreement had been initiated in good faith and had benefited the complainant, it was in violation of the Service's standard procedures.

The Deputy Ombudsman found that the conduct of the Service was wrong because it had failed to conduct appropriate and timely soil tests prior to the commencement of works on the complainant's property. He further found that the conduct of the two officers concerned was wrong because they had failed to observe standard Service procedures for plant hire.

Because the Service had already offered, without admitting liability, to repair the breach of the main dam and to reconstruct the embankment at no cost to the complainant, the Deputy Ombudsman recommended that the Service pay for the expense the complainant would incur in employing a private consulting engineer to report on the technical aspects of that offer. This recommendation was accepted. No recommendations were made about the conduct of the two officers, because they had already been disciplined and the Service had issued a circular to all regional staff directing that soil tests be made and analysed before construction commenced.

STATE RAIL AUTHORITY

Illegible dates on tickets

On 7 July 1987 Mr G purchased a "Day Rover" ticket at Blacktown railway station. At Arncliffe station he was challenged by an Authority employee because the date on the ticket was illegible. The employee told Mr G that it was the responsibility of the person purchasing a ticket to make sure that it was correctly and legibly dated, otherwise that person was liable to a $200 fine. Mr G complained to the Station Master at Blacktown who agreed that the date was illegible and said that this was because the ticket issuing machines were old and worn out.

Mr G complained to this Office and drew attention to a letter dated 22 January 1985 which he had received from the then Minister for Transport. The letter informed Mr G that the ticket issuing machine at Blacktown was an old one and was difficult to maintain, but promised that it would be replaced "shortly". It was evident, more than two years later, that the machine had not been replaced. Mr G believed that it should be the responsibility of the State Rail Authority to correctly and clearly date tickets when they were issued.

Enquiries were made with the Authority. In August 1987 the Authority said that the illegible date had been due to a worn ribbon in the date press; the Station Master had since changed the ribbon and had ordered new date presses and ribbons. The Secretary of the Authority foreshadowed the introduction of a new and improved system.

In November 1987 Mr G sent to this Office a selection of tickets that had been issued between 12 September and 19 November 1987. The dates on all of these tickets were either illegible or non-existent. An investigation was commenced into the alleged failure of the State Rail Authority to ensure the proper functioning of the ticket issuing/stamping machines at Blacktown station.

The continuing problem with the date stamping of tickets issued at Blacktown was blamed on the Ultimatic ticket issuing machine, an older, mechanically operated machine. Because the machines were old, maintenance had become increasingly difficult and spare parts were often unobtainable. Some machines had been withdrawn and cannibalised to provide parts for the remainder. A maintenance programme was being devised and tenders had been called for new machines.

The Authority made clear, however, that it was the responsibility of ticket issuing officers to ensure that tickets were in order when issued. Passengers are not liable to any penalty when it is confirmed that mutilation or

illegibility of a ticket is the fault of the State Rail Authority or its staff.

The Secretary on 2 February 1988 told this Office that the following action had been taken:

(i) a senior officer had addressed all staff at Blacktown on the importance of ensuring that each ticket was endorsed with a correct and legible date;

(ii) instructions had been issued to staff that, where the date impression was not legible, the machine was to be immediately taken out of service and a rubber date stamp was to be used;

(iii) instructions had been published in the Authority's Weekly Notice for the benefit of all staff;

(iv) all supervising officers had been instructed to exercise close supervision over these matters during their visits to stations.

In view of the action taken by the Authority, it was decided to discontine the investigation and to rely on Mr G to let the Ombudsman know should the system again break down.

Delayed retirement

On 13 December 1985 Mr S, an engine driver, tendered his resignation to take effect immediately. His written notice of resignation was supported by a medical certificate from an orthopaedic surgeon, and this said that Mr S was permanently unfit to return to work on the railways. The exit-disablement form sent to the former Public Authorities Superannuation Board by the Authority, however, showed the date of Mr S's retirement as 7 June 1986 and not 13 December 1985. Mr S complained that, because of this, he was substantially underpaid his superannuation entitlement.

The Public Authorities Superannuation Board, which then administered the relevant superannuation fund to which Mr S

belonged, said that its policy was to use the date nominated on the exit-disablement form to calculate superannuation entitlements. The Board told this Office that, had the Authority nominated an exit date prior to 31 December 1985, then, as a result of changes which had occurred in the superannuation scheme, Mr S would have been entitled to $21720 more than he had been paid.

Enquiries were made with the State Rail Authority. Mr S's letter of resignation, together with the supporting medical certificate, was tendered on 13 December 1985 but had not been received in the Authority's Medical Section until 14 January 1986. The Authority sought a second medical opinion but, through no fault of Mr S, this was not received until 10 April 1986. The second medical opinion confirmed that Mr S should be medically retired. The formal retirement of Mr S was accepted by the Head of the Operations Branch, to take effect on 7 June 1986.

This Office asked the Authority why the June 1986 date, rather than the earlier date of December 1985, had been used as Mr S's date of retirement when the second medical opinion merely confirmed the first medical opinion. The Authority said that it was prepared to backdate the formal retirement of Mr S to 13 December 1985. The Public Authorities Superannuation Board indicated its willingness to pay Mr S approximately $21700, together with applicable interest and tax adjustments.

DEPARTMENT OF TECHNICAL AND FURTHER EDUCATION

Independent supervision

In 1985, upon completing a four year part-time Associate Diploma Course at the Ryde School of Horticulture, a student learned that a fellow student was to be awarded a special prize for her academic performance. The complainant wrote in protest to the College and to the Director-General of Technical and Further Education, saying that the student to

whom the prize was to be given had been advantaged throughout her course by the grant of numerous privileges and favours because she was married to one of the College teachers. The complainant claimed that the award of the prize must arouse doubts in some minds as to the validity of assessment in the course.

The former student complained to the Ombudsman, initially about delay by the Director-General in investigating the matter, and later about his delay in responding to her criticisms of the report he eventually made to her about his investigation. This Office decided to investigate some of the more serious allegations originally made by the former student, because they had implications for the general administrative procedures operating at the College.

The investigation looked at allegations that the other student had been permitted to take two exams at home under the supervision of her husband, a teacher at the College; that she had been allowed to take an additional test in plant identification at a later time than and under different and more favourable conditions than those applicable to other students; and that she had been allowed to resubmit a written assignment and that the assignment had been assessed under different conditions than those applied to the assignments of other students. The Director-General's delay in replying to the complainant's criticisms of the internal Departmental investigation was also investigated.

Investigation showed that the other student had been unable to attend the College to sit for two examinations because she had been confined to bed with complications following surgery. Her husband had sought permission, in one case from the Assistant Principal and from a Senior Head Teacher in another, for her to sit these exams at home under his supervision. Approval was given in each case and the officers who gave approval said that they had done so because of the student's medical condition and because they held their colleague, her husband, in high esteem.

Whilst the integrity of the teacher in his supervision of his wife's examinations at home was not questioned, and there was no evidence to suggest that his wife had been unduly advantaged by the arrangement, the Ombudsman found wrong conduct because the Senior Head Teacher did not have authority to grant permission. Permission could only be given by the Assistant Principal and then only after an application had been made in writing. No written application had been made in either case. The Ombudsman also found that both the Senior Head Teacher and the Assistant Principal had made errors of judgement in that their choice of supervisor could not be publicly seen to be independent and he said that their conduct was unreasonable in this regard.

The investigation confirmed that the other student had taken a test in plant identification at a later time and under different conditions than those which applied to other students. The Ombudsman found that the Senior Head Teacher had acted wrongly in permitting this, in that the permission was granted in the absence of a written application from the student as required by the published procedures of the school. Although the examination conditions were different, the Ombudsman found that the differences were acceptable departures in the administration of a minor piece of assessment, and that the student was not unreasonably advantaged by them.

No evidence was found that the other student had been allowed to rewrite an assignment and have it assessed under conditions different to those applicable to the assignments of other students. This allegation had arisen from a drafting error in a report from the school to the Director-General.

In his report, the Ombudsman criticised the teacher husband of the other student for failing to observe known procedures of the school and for taking advantage of his status as a teacher to examine the records to check his wife's marks in a subject that he did not teach. The Ombudsman said that the teacher

should have been aware of his conflict of interest and should have distanced himself from his wife's dealings with the school.

Arising from the initial complaint to the Director-General by the former student, new procedures were implemented concerning appropriate independent examination supervision and the provision of information to students. The Ombudsman was satisfied that these new procedures were adequate to meet the deficiencies revealed by the investigation.

Because he considered the issues of conflict of interest and independent supervision of examinations to be serious, the Ombudsman recommended that the Senior Head Teacher and the teacher husband of the other student be formally counselled by a representative of the Director-General as to their responsibilities in such situations.

Prior to the release of his final report, the Ombudsman consulted with the Minister for Education and Youth Affairs who informed him that he agreed with the terms and recommendations of the report.

COMPLAINTS AGAINST COUNCILS

BLACKTOWN CITY COUNCIL

Some improvement!

Mr W bought his property at Mt. Druitt in 1980 after the usual searches in the conveyancing process had been made. In mid-1986 he discovered that a large drainage pipe ran diagonally across the back of his land. No easement existed in relation to the pipe.

Enquiries revealed that the pipe had been laid in 1964 to provide drainage for an existing creek, which had been later filled and levelled. Council had intended acquiring an easement, but had not done so. Any easement created would have been noted on the certificate of title.

When Mr W discovered the pipe in 1986, he entered into negotiations with council, seeking compensation for the easement which council wanted to create. Council offered Mr W $1000 for the easement, on the basis that the laying of the pipe had allowed the creek to be filled and level land had been created. The council's valuation was based on the assumption that the pipe was an "improvement" to the land. Mr W argued, however, that he had paid for the land as if it were an unaffected building block and that the pipe reduced its value. On this basis he wanted $12000 from council as compensation for the easement. When negotiations reached an impasse, Mr W complained to the Ombudsman.

In response to the Ombudsman's enquiries, council said that Mr W, or his solicitor, should have discovered the existence of the pipe by questioning the former owner and it was not council's fault that they had failed to do so. Mr W countered that he had been advised of the existence of a pipe and had gone to the council in 1980 to check its records. He produced a letter from council dated 21 July 1980 which said that there was a pipe "across the front portion of the premises". The letter referred to an "attached diagram"; unfortunately, Mr W had lost the diagram and it could not be located in council's records. As well, the author of the letter, a council officer, had died some time before.

There was insufficient evidence to show that the council had improperly advised Mr W in 1980. Under the circumstances, however, council decided to offer Mr W $6000 and to compensate him for legal costs. Council's offer was considered to be a satisfactory resolution of Mr W's complaint and no further action was taken.

BOTANY MUNICIPAL COUNCIL

Existing use rights

The 1986-87 Annual Report (Case Notes: pp 36-37) gave details of a couple's complaint that Botany Municipal Council had allowed a car repair business, situated at the rear of their neighbour's property, to expand on the basis that it had existing use rights when, in fact, this was not the case.

Investigation of the complaint found that:

(a) council had not required a proper investigation into the claim that the property had existing use rights;

(b) the development application approved by council was invalid;

(c) the increase in floor space approved by the council was contrary to planning law; and

(d) council had failed to properly formulate and apply conditions of consent to the development approval.

This Office recommended that council formulate a policy to instruct its servants on the matters to be considered prior to putting any report to council on existing use rights and council complied with this recommendation.

As a result of the recommendations made about the car repair business, council commenced an investigation of the company's existing use rights. As a result, council determined that existing use rights did not apply to the property and a notice was served on the owner to cease the unauthorized use within 56 days, or face court action.

The company's solicitors, shortly before the 56 day period expired, challenged the council's notice on the basis that a council health and building inspector had given verbal approval for a motor repair business in 1948. Council has referred this claim to its solicitors.

COOLAH SHIRE COUNCIL

Compensation delayed

Many matters are resolved without the need for this Office to conduct an investigation. The complaint made by Mr M was one such case.

In October 1987 Mr M complained that Coolah Shire Council had apparently "resumed" a 1.9 metre wide strip of his property when it had resurfaced a lane in 1985. He said that the matter had been reported to council staff at the time but, although he had been assured that his complaint was being investigated, he had heard no more. The matter had again become an issue because the council was proposing to further widen the lane.

Preliminary enquiries revealed that Mr M had written to council in February 1987 raising objections to the proposed further widening of the lane, and reiterating his previous complaint of "resumption". This letter was inadvertently filed and no action was taken on it until a further letter from Mr M was received in June 1987.

In November 1987, however, council considered Mr M's letter, as well as the correspondence from this Office, and resolved to tell Mr M that:

(a) it regretted that council employees, without his permission, placed a strip of gravel on and removed fences from his land; and

(b) council was prepared to pay him $1100 compensation for damages arising out of the gravel encroachment and the removal of the fences, on condition that he indemnify council in respect of future claims.

Council, at the same meeting, resolved not to proceed with the proposal to widen the lane.

In view of the satisfactory resolution of the problem, this Office concluded its enquiries.

EVANS SHIRE COUNCIL

Local council or land speculator?

A parcel of land jutted into the complainant's grazing property. It had long ago been dedicated as a road for the purpose of quarrying gravel from it. The quarry had petered out and council had allowed the complainant's predecessor in title to fence the land into his property and run stock on it. Council approached the complainant and said it wanted to close the road. At law, council had to give him the opportunity of commenting on this proposal. He agreed to the proposal on condition that he be granted the first option to purchase the land after the road had been closed.

The council, however, did not tell the complainant that its intention, once the road was closed, was to seek special planning permission to grant itself development cconsent for the erection of a dwelling on the land. (In the area, as is common in the country, houses may not be built on small parcels of land without special permission. The granting of such permission increases the land value considerably.)

The first the complainant heard about the matter was when council offered the parcel of land to him for $30000; he had expected to pay around $9000. Council had made no attempt to inform him of its intentions or to seek his comments. It had advertised the proposal in a local newspaper, but the land was identified by its deposited plan number, not its address, and the Ombudsman commented that it was unlikely that anyone would know the deposited plan numbers of neighbouring properties. In this case, in particular, the deposited plan number had only been allocated to the property once it had been closed as a road. The Ombudsman felt that council's procedures in this case had about them some of the character of land speculation.

The Ombudsman has recommended that council take some action to mitigate the loss suffered by the complainant, and that council adopt a proper written policy to cover cases like this.

FAIRFIELD CITY COUNCIL

Council reconsiders

Mr D complained that Fairfield City Council was unreasonably requiring him to pay $272 for the cost of repairing the footpath outside his home. The footpath had been damaged by a builder who had carried out work at Mr D's home. Council arranged for the footpath to be repaired and kept a $560 damage deposit paid by the builder prior to the commencement of the work. Mr D objected to being asked to pay an additional $272.

Before the damage was done, Mr D had signed a form which made him legally liable to pay for the cost of repairing any damage to the footpath beyond the value of the initial damage deposit. Council maintained that the amount of $272 was less than the amount that council believed Mr D was legally liable to pay. Mr D, however, believed that the charge was unreasonable and argued that he could have repaired the footpath for no more than $126.

Mr D pointed out that council's practice was to give to builders, who damaged public property in the course of working on private property, the opportunity of repairing the damage they had caused. He argued that he should have been given a similar opportunity. Council estimated that it would have cost Mr D $365 to repair the damage. Mr D pointed out that, even if this were so, that amount was less than the $560 damage deposit that council had already received from the builder.

An investigation was begun and council said that it had initially tried to hold the builder responsible for repairing the damage. When these efforts proved unsuccessful, council had arranged to have the footpath repaired so that it could then take legal action for the recovery of costs. When the matter was referred to council's solicitor, however, he advised that recovery action should be taken against Mr D.

At a meeting of council in December 1987, after this Office had commenced its investigation, council reconsidered its position and resolved that it would not require Mr D to pay the additional amount and that it would review its forms and procedures for the recovery of costs. In the light of council's decision, the investigation by this Office was discontinued.

ILLAWARRA COUNTY COUNCIL

Two-year undercharge

Mr H operated a sawmill. In May 1987 he received an electricity bill for $17887.13. Council told him that it had made an error in calculating the electricity accounts rendered between January 1985 and January 1987 and that he had been undercharged for electricity used in that period. Mr H complained that the electricity bill was unjust, given that council had admitted making an error.

Investigation disclosed that it was customary for council to periodically read and set the transformer ratio of electricity meters. A meter reading is then multiplied by a fixed "constant" to give the quantity of electricity consumed In cases where the customer's electrical load has increased beyond the limits initially anticipated, the transformer ratio is changed by a council technician; this ensures that the meter measures the full quantity of electricity consumed. When the transformer ratio is changed, a "Meter Change Report" should be submitted: this is documentary proof of the change

and is used to update the metering records, as well as the customer's billing file. An electricity account is rendered after the meter is read and is calculated by multiplying by the fixed "constant" the units of electricity used.

In Mr H's case, the sawmill originally had an initial transformer ratio of 300/5 to cater for anticipated electrical load. The "constant" recorded in the billing file was 60. In January 1985, a technician carried out a routine check and discovered that the transformer setting was inappropriate; he changed the transformer ratio to 600/5, which carries a billing "constant" of 120. The technician, however, did not submit a Meter Change Report and the "constant" remained unaltered at 60. As a result, the units of electricity used, as ascertained by periodic meter readings, continued to be multiplied by 60.

It was not until January 1987 that another technician discovered the altered transformer ratio and submitted a Meter Change Report. The council's failure to use the correct "constant" meant that, for two years, the sawmill had been undercharged. In May 1987 council rendered an account for arrears of $17887.13, payable within twenty-one days.

Council's power to recover arrears derives from section 419A of the Local Government Act. Pursuant to that section, council must take action within two years of issuing an incorrect electricity account, if it wishes to recover arrears.

The council's conduct was found to be wrong in that it had not recorded the correct "constant" in the billing file of the sawmill. Council's conduct in seeking payment of more than $17,000 within twenty-one days was found to be unjust and oppressive, given the circumstances of the case.

The Ombudsman recommended that the sawmill be allowed two years to pay the arrears and this recommendation was accepted.

KOGARAH MUNICIPAL COUNCIL

Swimming pool fence

Kogarah Municipal Council's Deputy Chief Town Planner conducted a site inspection related to Mr D's proposal to install a pool. The Deputy Chief Town Planner gave Mr D certain advice about, amongst other things, the need to provide adequate screening to ensure privacy for both Mr D and his neighbour. Mr D later made a building application to construct a swimming pool and council approved the application, subject to the condition that the proposed swimming pool be fenced and constructed in accordance with council's code for the installation of swimming pools. The building plans were stamped:

> APPROVED SUBJECT TO COMPLIANCE WITH COUNCIL'S SWIMMING POOL CODE.

Mr D decided to erect a colourbond fence to provide the needed privacy but he did not check to see if the proposed fence complied with council's code. He told his neighbour of his plans for the fence and the pool. His neighbour had no objections. Work on the swimming pool commenced in December 1987 and, after the work had been completed, the pool company told Mr D that he should arrange for a further council inspection before filling the pool with water.

In February 1988, a council health and building surveyor inspected the premises and told Mr D that the colourbond fence did not comply with council's swimming pool code. Mr D learned that to rectify the problems with the fence would cost a significant amount of money. He complained to this Office that council had failed to adequately advise him in relation to its requirements regarding swimming pool fencing.

After making preliminary enquiries with council, this Office took the view that, because Mr D had been clearly informed of the need to comply with the council's swimming pool code, there was no *prima facie* evidence of wrong conduct by council.

PORT STEPHENS SHIRE COUNCIL

Bad smell at Raymond Terrace

Mr C, on behalf of a number of Raymond Terrace residents, complained about the opertion by Port Stephens Shire Council of a sewage effluent depot behind his housing estate. The odour emanating from the depot was described by some residents as "unbearable", and the depot was said to be a health hazard, especially to children.

The depot had been opened in 1961, prior to the housing estate being built. The land occupied by the estate was rezoned from "rural" to "residential" in 1974 by the Minister for Planning and Environment, despite the very close proximity of the sewage depot, after representations by the owner who wished to subdivide his land. Under the legislation then in force, which preceded the Environmental Planning and Assessment Act, the council was not able to reject the development application on the grounds of proximity to a sanitary depot or other similar facility.

After protests from residents, council introduced a number of improvements to the system of sewage disposal at the depot. Effluent dumped in trenches was no longer left uncovered for long periods of time and a sand wall was built to reduce the unsightliness of the depot. Most significantly, an arrangement was made with the Hunter District Water Board to deal with liquid effluent and this considerably reduced the amount of sewage dumped at the Raymond Terrace depot and the time that trenches were left exposed to the air.

The residents of the estate were particularly concerned about the apparent delay by council in relocating the depot away from their homes. This Office commenced an investigation into the apparent delay in closing and relocating the depot, and the procedures used for dumping sewage. The site was inspected by Investigation Officers who interviewed a number of residents, the Shire President and council staff.

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The Shire President gave assurances that relocation of the depot was a high priority for council. He said that sewage serices were being reorganised to improve council's financial situation, so that construction of a new effluent depot could begin as soon as possible. Design work for the bridge and road needed for the new site were underway, and council expected to be able to commence operations at the new site in the first half of 1989.

The Ombudsman's Office was satisfied that the council had taken significant measures to rectify the problems about which the residents had complained. Council's attitude was positive, co-operative and open. Because of these considerations, the investigation was discontinued.

SYDNEY COUNTY COUNCIL

No news in "Watts News"

A woman complained about the refusal of the Sydney County Council to grant her father, Mr C, a pensioner rebate on an electricity account issued in January 1988. Mr C had become an eligible pensioner in November 1987. The council's Customer Service Branch said that the council's policy required applications for pensioner rebate to be lodged and approved at least two weeks before the issue of the quarterly account for which a rebate was claimed.

This Office made preliminary enquiries about the level of publicity given by council to the pensioner rebate scheme. The council said that there had been an interval of some 18 months (July 1986 to January 1988) between the appearance of articles on the pensioner rebate scheme in council's publication, "Watts News", which accompanies quarterly electricity accounts. Accordingly, council acknowledged that there had been no publicity to the scheme during 1987. Because of this, Mr C might not have been aware of the requirements to apply for the rebate before the account was issued.

The council decided to review its decision to refuse a rebate on Mr C's account and to review its publicity of the pensioner rebate scheme. In the light of council's response, there was no need for the Ombudsman to investigate.

Getting into hot water

Mr H complained that the Sydney County Council's promotional material on "Off-peak Freemoney", which offers cash to consumers who switch to "Off-Peak" for water heating, was misleading. The offer was subject to certain conditions, and the promotional material made available to the public clearly stated that only domestic premises not already connected to off-peak were eligible. Application forms for "Off-Peak Freemoney" contained the same information as the promotional material; applications had to be accompanied by a "Ready to Test Certificate" issued by the electrical contractor responsible for the installation of the water heater. "Freemoney" was paid after the customer had purchased the appliance and paid for its installation. The promotional material said:

> The water heater must comply with the conditions of off-peak supply as specified in Council's Schedule of Electricity Charges and must have been installed and connected on or after 15 May 1985 in accordance with the installation instructions supplied with the heater and the Council's Service and Installation Rules.

Mr H had bought a water heater of a capacity which he judged to be sufficient to his needs and had proceeded to have it installed. The county council, however, rejected his application for "Off-Peak Freemoney" on the grounds that the capacity and element rating of the appliance were not acceptable.

Neither the promotional material nor the application forms gave specific warning about any restriction applying to the

rating of the heating element or the appliance's storage capacity.

The county council maintained that it would be impractical to include in its promotional material information on all the possible combinations of factors which might lead to the rejection of an application for "Freemoney". Council added that, even if Mr H had purchased an acceptable appliance, his application might still have been rejected if, for example, the wiring and/or meter board facilities at Mr H's premises had not been suitable for off-peak connection.

No mention was made in either the council's promotional material or the application forms that alterations to the wiring or the meter board may be necessary if off-peak connection was desired. In this regard, council said:

> ... the Council's Off-Peak Freemoney promotional material is designed to encourage serious inquirers to make further contact with the Council ....

The promotional material advised readers:

> Application forms are available from Council's Head Office, Customer Service Centres, Customer Supply and Services Offices or by mail.
>
> For further information and application forms, please telephone Sydney (02) 266 0033.

The application forms, however, made no mention of the telephone contact number.

This Office believed that, as applications for the cash grant could only be made after the appliance had been purchased and installed, it was vital that potential applicants be adequately informed about the restrictions that applied to the offer. For example, in a case of the nature mentioned by the council, where premises themselves may be unacceptable for off-peak connenction, any necessary alteration might be fairly costly, and an applicant ought to be warned about that and have an opportunity to seek expert advice before deciding whether to purchase an appliance. Mr H said that an appliance

of similar size to the one that he had purchased had been illustrated in a publicity brochure distributed by a large retailer, and the brochure had mentioned the availability of the county council grant.

Whilst it was clear that the county council could not be held responsible for promotional material over which it had no control, it was equally clear that the information made available to the public by the county council had not been sufficiently precise.

The attractiveness to consumers of the "Off-Peak Freemoney" promotion is the perception that long-term savings can be achieved through conversion to off-peak electricity. In Mr H's case, having purchased and installed an appliance which he believed to be suitable, he found that, despite the substantial outlay involved, he was not eligible for the cheaper tariff.

The Ombudsman recommended that the promotional material on the scheme be amended in such a way that it gave clearer warning about the restrictions that applied and advised potential customers to check with Council's Technical Telephone Information Service before purchasing any appliance. It was also recommended that Sydney County Council make an ex-gratia payment, equivalent to the grant available under the scheme, to the complainant in recognition of the fact that he had acted bona fide on the information available at the time.

The then Minister for Energy and Technology, the Hon P.F. Cox, wrote on 1 September 1987:

> In the light of the success of this scheme, I am naturally keen to ensure that any publicity associated with OPPAS does not undermine its continued success by in any way misleading potential applicants.
>
> While I do not necessarily hold the view that the isolated instance of concern dealt with by your report indicates that OPPAS advertising has been widely misleading the community, in the interests of

> ensuring any potential future confusion does not occur, I have decided that the recommendations for amendment to existing OPPAS advertising should be adopted. In this regard the pamphlets used Statewide will be changed as will the television advertising. In addition, the Department of Energy will contact all county councils asking that their local material be amended appropriately.

Sydney County Council later informed the Ombudsman that his recommendations had been implemented.

WARREN SHIRE COUNCIL

The best laid plans...

Mr F complained to this Office that the council, having earlier refused a subdivision application made by him, had reconsidered the application without his knowledge and, allegedly, at the request of a third party, Mr S, who had an option to buy Mr F's property if subdivision was approved.

Investigation disclosed that, in 1979, Mr F and Mr S had entered into a lease agreement relating to Mr F's property, a Closer Settlement Lease governed by the Closer Settlement Act and administered by the Land Board Office. The lease agreement gave Mr S an option to purchase the property, subject to approval by the council and the Land Board of a subdivision proposal whereby an area of 8.9 hectares would be held by Mr F in perpetuity. In June 1981 Mr F enquiried with both the Land Board and the council about possible subdivision of his leasehold land.

In April 1982 Mr F lodged a subdivision application with the council and claimed that he wished to retain the 8.9 hectares for "future inflationary investment". The Land Board advised in May that the proposed subdivision was refused. Mr F sent this advice to council and asked for a decision on the subdivision application. Council considered the matter and refused the application on 3 June 1982.

It is evident from information obtained in the investigation that Mr F had made the subdivision application in the firm expectation that the subdivision application could never be approved and that, therefore, the option to purchase could never be exercised. In June 1982, however, solicitors acting for Mr S wrote to the council, explaining the conditions of the lease agreement between Mr S and Mr F and commenting that the Land Board's refusal might disadvantage their client. Council was asked to reconsider its decision. Soon afterwards, the Land Board advised the council that it now had no objection to the subdivision, provided certain conditions were met.

Upon receiving this advice, council reconsidered Mr F's subdivision application, under provisions of the Local Government Ordinances which provide that notice does not have to be given if the Chairman considers the matter to be of great urgency, and approved the subdivision, in principle, subject to two conditions, namely:

- that Mr F submit proper subdivision plans; and
- that the Land Board provide confirmation of its requirements for approval.

Mr F's solicitor questioned how council could ignore the provisions of the Interim Development Order under which the original application had been refused. Mr F's solicitor later advised council that no further application would be submitted by Mr F.

In September 1982 the Shire Clerk told Mr F's solicitor that the question of the proper interpretation of the Interim Development Order had been referred to the Department of Environment and Planning for clarification. In fact, this was not done until January 1983. The Department of Environment and Planning later advised that there was no clause within the Warren Shire Interim Development Order which would allow a small subdivision for the purpose of "inflationary investment."

The investigation found that the council's conduct in recommending and approving in principle a subdivision application which did not comply with the Shire's planning instrument was contrary to law, and that its handling of the application was contrary to accepted practice in situations where the Minister for Lands was the consent authority. As well, the council's delay in referring the subdivision proposal to the Department of Environment and Planning was unreasonable.

In the light of recommendations made in the Ombudsman's report, the Shire President has since said that Council has reviewed its subdivision handling procedure and, as a matter of policy, independent legal advice is now sought where doubt exists about the interpretation of the Shire's planning instrument.

Mr F believed that he should be compensated for monetary loss suffered as a result of council's conduct. The Ombudsman, however, took the view that council was entitled to regard Mr F's application for subdivision as a "bona fide" application. As well, Council believed that it was assisting Mr F in his transaction with Mr S. Accordingly, no recommendation was made concerning compensation for Mr F.

WILLOUGHBY MUNICIPAL COUNCIL

Balcony blues

Mrs S complained about her alleged unjust treatment by Willoughby Council. Her complaint concerned an application by her neighbouer to build a first-storey balcony, to run along the front of his house, which, like her's, was on a sloping block with water views. Mr S and Mrs S, offered the opportunity to comment on the application by council, had objected to it on the grounds of their privacy, with particular regard to the end of the balcony closest to the middle level of their house.

At an on-site meeting, all the parties agreed on deletion of a stairway to the balcony along the side of the house nearest the S's house, and, it seems, on removal of a further portion of the deck half the width of the room behind it.

After work commenced, a dispute arose about the amount of the deck to be deleted. It became apparent that an officer of council had approved and stamped plans for the now-completed balcony, and that these authorised the balcony to extend further than had been previously agreed. As built, it extended almost to the extent shown on the original plans. The officer had confused a reference in a report to the initial proposal to delete the stairs and the deck in front of them, with the later agreement to further shorten the deck. The deck was built a little wider than even the first amendment allowed, apparently due to misplaced footings. Council authorised this to remain on the condition that the extra portion of deck be occupied by a planner box.

After preliminary enquiries, an on-site inspection and discussions with both of the neighbours and council officers, the Ombudsman's officers decided that council's conduct was fair and reasonable, despite the error made by its officer. It was pointed out to Mrs S that council's notification and consultation on the matter had been as a courtesy, rather than from any legal requirement, and that it had showed genuine interest in resolving the matter, both before and after the unfortunate error.

Mrs S accepted this decision with good grace, satisfied that the matter had been properly examined by an independent body.

WOOLLAHRA MUNICIPAL COUNCIL

Old drain a problem

The complainants bought a house in Paddington in 1980, making all of the usual enquiries of relevant public authorities at the time. In 1986 they submitted a development application for construction of a basement flat and council approved the application.

When construction began, a 600mm drainage pipe was discovered. The pipe ran through the length of the basement, about 1 metre above the proposed floor level. After six months of fruitless correspondence between the complainants and the council, the complainants wrote to the Ombudsman.

Investigation by this Office concentrated on the alleged failure of council to notify the complainants of the existence of the drainage pipe, either at the time of their purchase of the property or when the development application was considered.

Council admitted that old drainage plans obtained from the Sydney City Council clearly showed the existence of the pipeline, but the plans had not been checked either at the time of purchase or when the complainants' development application was approved.

After correspondence with this Office, council agreed to relocate the pipeline clear of the complainants' property at no expense to them. The complainants were satisfied with this resolution of their complaint and, because there was no evidence to suggest that similar problems were widespread, the investigation was discontinued.

COMPLAINTS AGAINST DEPARTMENT OF CORRECTIVE SERVICES

Privileged correspondence

A forensic patient detained at Parklea Gaol asked his solicitor to send him copies of some reports made about him by prison officers. These reports had been admitted in evidence during a review of his case by the Mental Health Review Tribunal, and the prisoner had been able to read them during the proceedings before the Tribunal.

When the correspondence from the prisoner's solicitor arrived at the gaol, the Superintendent withheld it and sought legal advice about his right to do so. The Superintendent felt that releasing the prison officers' reports to the prisoner would be detrimental to him and to the good order and discipline of the prison. Furthermore, he feared that the safety of the officers concerned might be at risk if the prisoner obtained a copy of their reports. The Superintendent alleged that, shortly before the correspondence arrived at the gaol, the prisoner had made a death threat against one of the prison officers involved.

The Department's legal branch told the Superintendent that he was able to withhold the correspondence under Prison Regulation 81(2).

Prison Regulation 81(2) provides that where a letter or parcel is found to contain money, contraband or any item or matter that in the opinion of the Governor or authorised officer is likely to adversely affect the security, discipline or good order of the prison, that letter or parcel and any money, contraband or other item contained therein, or any or all of them, may be impounded.

The Prison Regulations provide that solicitors can claim privilege on certain correspondence, provided it is sealed in separate envelopes and a specific claim of privilege is made.

In this case, the solicitor had not claimed privilege for the documents. Even so, a claim of privilege does not exempt correspondence from examination by a Superintendent where he is of the opinion that a sealed envelope may contain money, contraband or any item or matter that is likely to adversely effect the security, discipline or good order of the prison.

The prisoner complained about the withholding of the documents sent to him by his solicitor and the investigation made by this Office found a number of inconsistencies related to the withholding of mail from the prisoner. For example, on a previous occasion he had been supplied with a copy of another prison officer's report prepared for a previous Tribunal review, and that report had made adverse references to him. In addition, after withholding the correspondence from the solicitor, the prison authorities had allowed a full transcript of the Tribunal proceedings to be provided to the prisoner: the transcript included detailed discussion of the prison officer reports that had been impounded.

The Ombudsman said that these inconsistencies raised serious doubts as to whether the impounding of the prison officers' reports was reasonable. He did not find it necessary to determine the question of reasonableness, however, because he believed that, whether or not it was reasonable for the Superintendent to want to withhold the reports, he had no legal authority to do so. In this regard the Ombudsman noted that Prison Regulation 91 provides that "nothing in these regulations shall be construed so as to limit correspondence between a prisoner and his legal advisor in respect of matters affecting his trial, conviction or imprisonment".

The Chairman of the Corrective Services Commission submitted that Regulation 91 did not apply to the case because it referred specifically to matters affecting a prisoner's "trial, conviction or imprisonment"; the prisoner was detained subject to the Governor's pleasure and, therefore, was not subject to a sentence of imprisonment; and his trial and

conviction had long been determined. The Ombudsman rejected this submission and took the view that the Regulation was an absolute prohibition against the construction of any other Regulation which would limit correspondence between a prisoner and his legal advisor in respect of matters affecting his trial, conviction or imprisonment.

The Ombudsman said that, although the term "imprisonment" was not defined in either the Prisons Act or the Prison Regulations, it should be given its ordinary meaning of a state of being in prison as against a state of being at liberty. He found that the prisoner was entitled to the benefits conferred by Regulation 91 so far as they related to the correspondence that had been withheld.

Notwithstanding this, he found that there had been no wrong conduct on the part of the Superintendent in impounding the correspondence. The Ombudsman took the view that the Superintendent was entitled to rely on the legal advice he had received from the Department's head office, even though that advice was wrong in law.

Strip searching of female inmates after contact visits

Female prisoners at Bathurst Gaol complained to the Ombudsman about a directive issued by the Superintendent requiring that female inmates submit to strip searing after contact visits, even when they were menstruating. The prisoners objected to having to remove sanitary items: they felt it was inhumane and degrading. They further suggested that the direction contravened Prison Regulation 14 which states:

> The searching of a prisoner shall be conducted with due regard to decency and self respect, and in as seemly a manner as is consistent with the necessity of finding any concealed article.

The Superintendent's local order provided:

1. Inmates would be given the opportunity to tell their visitors not to visit on inconvenient days.

2. Inmates could ask for a non-contact visit, instead of a contact visit.

3. If inmates elected to have a contact visit, they would be required to submit to strip searching, but searching would be carried out in a clean and discreet area, and replacement sanitary items would be supplied by the Department.

4. If an inmate refused to submit to a strip search prior to a visit, the visit would be cancelled or terminated. Disciplinary action would be taken if the inmate refused to submit to a strip search after a contact vist.

Preliminary enquiries discovered that the local order arose from a number of incidents in which female prisoners had untruthfully claimed that they were menstruating, and thereby avoided detection of drugs which had been passed to them on contact visists. Male prisoners are expected to submit to strip searches as directed.

After careful consideration of the two competing issues (namely, the privacy of the female inmate and the detection of drugs in the gaol), it was decided that the complaint should not be investigated as it did not disclose any prima facie evidence of wrong conduct. The Superintendent's order was clear in that it specified rules that female prisoners were expected to comply with if they wished to partake of the privilege of contact visits; and it provided an alternative if they did not wish to undergo the embarrassment of a strip search during menstruation.

Search of artificial limbs

A prisoner complained that when being transported between gaols he was forced to remove his artificial leg, while he was still handcuffed, so that the leg could be searched. When he protested that he could not remove his limb with handcuffs on, the cuffs were released. After the articifical limb had been

searched, he was made to get into the prison van without it. He complained but was forcibly placed in the van. The artificial limb was returned to him when he reached his destination.

The Department of Corrective Services advised this Office that the officers conducting the transport had used no more force than had been necessary to restrain the prisoner prior to handcuffing him and placing him in the vehicle. The Superintendent of the Special Response Unit instructed officers of the Transport Unit to in future seek advice from institutional medical staff prior to requesting a prisoner to remove an artificial limb.

Further enquiries were made with the Superintendent of the Special Response Unit to ascertain the procedures for searching prisoners with artificial limbs. It transpired that there were no specific procedures, but that it was customary for the prisoner to be allowed to reattach his artificial limb for the duration of the escort, once it had been searched at the point of departure.

The Superintendent responded to the complaint by issuing a further directive to staff which contained:

* a reminder that Prison Regulation 14 required searches of prisoners to be carried out with due regard to the decency and privacy of the individual;
* an instruction that the searching officer could request a prisoner with an artificial limb to remove it for the purpose of search, and if the prisoner refused, a member of the medical staff could be called to assist in the search;
* a direction that the artificial limb be returned to the prisoner prior to departure of the escort.

The response by the Superintendent was constructive and appropriate and eliminated the uncertainty which had previously existed. The Department's response satisfactorily resolved the matter and no further action was taken.

COMPLAINTS AGAINST POLICE

Lost film

Two brothers were arrested and taken to Blacktown Police Station for interview. Some time later they were charged with murder, fingerprinted and photographed.

During the trial, a solicitor representing one of the men subpoenaed from the Commissioner of Police and the Detective Sergeant in charge of the case all photographs taken of his client at Blacktown Police Station at the time he was charged.

A police officer representing the Commissioner of Police appeared and told the court that the roll of film containing photographs of the two men was "missing". The police officer produced to the court a "Photograph Book" which contained details of persons who had been photographed at Blacktown Police Station during the period stipulated in the subpoena. The Photograph Book had the word "missing" written over details of photographs recorded as having been taken on the particular film concerned. The officer did not know who had written the work "missing" in the book; nor did he know who was responsible for the safety and security of the film after its use.

A complaint was made about the loss of the film and, whilst the police investigation failed to locate the roll of film, it identified a number of procedural deficiencies which had occurred when police photographed the two men. The report of the police investigation also identified deficiencies in procedures for the assumption of responsibility for changing a completed roll of film and in the security arrangements for film awaiting development.

In his report the Ombudsman endorsed the Commissioner's view that the complaint was sustained, and noted that photographs

taken of offenders are of crucial importance to the court and to the police. The production of photographs to the court can assist in determining an allegation that a prisoner has been assaulted while in police custody; and they can assist the police in the positive identification of an offender should that person be required at some later stage.

The Ombudsman recommended that the Commissioner of Police instruct officers in the correct use of cameras and that rolls of film awaiting development be kept in a safe and secure place. He also recommended changes to the existing procedures for transmitting the film to the Police Scientific Section for development. The Commissioner's response to the recommendations is awaited.

Accidentally fractured skull

A citizen who had been twice assaulted and robbed by the same three people told detectives that he knew the identities of the offenders. The detectives told other police officers that the three offenders, one of whom was Mr B, were wanted for questioning.

On that same day, a report of a domestic dispute was received at the police station. Mr B was involved in the dispute. Police, including Sergeant X, attended the dispute. They attempted to arrest Mr B and claimed that he was told that he was wanted for questioning. Mr B and two of his relatives, however, said that he was not no informed. In any event, Mr B vigorously resisted arrest. Sergeant X and two other officers grabbed Mr B to put him in the police truck. A scuffle occurred, during which Mr B hit Sergeant X on the chest while trying to break free. The police managed to restrain Mr B and forced him into the truck. They claimed that Mr B was violent and abusive all the way to the police station and that, when they reached the police station, he leapt out of the police truck and adopted a "karate type" stance, as if to attack Sergeant X.

80927-38856—19

Sergeant X said that he knew that Mr B was a martial arts expert. Because he feared for his safety, he had raised his baton in self defence and had struck Mr B on his right arm to immobolise it. In doing so, Sergeant X said, he had accidently struck Mr B on the side of the head.

Mr B, however, claimed that he had quietened down by the time the truck reached the police station. He said that, after he got out of the police truck, he had heard the baton as it came down and struck him on the head. He said that although he was stunned he turned to look, and he saw Sergeant X standing with a raised baton, poised to strike again. Mr B said that he and Sergeant X had exchanged words and Sergeant X had hit him again, this time on the right elbow.

When he was being questioned by detectives at the police station, Mr B became violently ill and was rushed to hospital. A fractured skull was diagnosed.

Mr B's mother complained to this Office about the assault on her son. The complaint was investigated by the Police Department and was found to be not sustained. The complainant requested a reinvestigation by the Ombudsman and this was conducted because of the serious nature of the complaint and because of the conflicting evidence disclosed in the police investigation.

The reinvestigation found that Mr B had been assaulted after he had left the police truck and that the assault had not been in self defence. The Deputy Ombudsman was not convinced that Sergeant X was threatened sufficiently to use his riot baton in the way that he had. The baton used was about a metre in length and was made of hollow aluminium. Sergeant X had used a downward swing, even though police instructors recommend that an upward motion be used in such situations. If the blow had been simply to deflect an attack, as claimed by Sergeant X, an upward motion would have caused less harm.

It was recommended that the matter be referred to the Solicitor for Public Prosecutions to determine whether or not criminal proceedings should be instituted against Sergeant X. The Solicitor for Public Prosections has since advised that there is insufficient evidence to charge Sergeant X.

Blood tests

Three persons were arrested and charged with assault. On the day after they were taken into custody their legal representatives sought police permission for blood samples to be taken from their clients, to assist in the proper preparation of their defence.

The police refused permission because:

(i) nineteen hours had elapsed between the arrest and the request, and they believed the blood tests would be unlikely to have evidentiary value:

(ii) the offence charged was not alcohol related and there was no statutory basis for such tests; and

(iii) to accede to the request would create a precedent.

The complaint was found to be sustained because it was considered unreasonable for the police involved, in the absence of any relevant instructions or sufficiently expert advice, to have taken independent decisions to refuse the request.

Following the police investigation, the Commissioner of Police issued a circular directing that requests for blood tests be acceded to, except where security considerations, lack of resources or the fact that the person concerned was shortly to be admitted to bail or transferred to a prison made it impracticable for blood tests to be carried out.

The Commissioner's circular was seen to be an appropriate response to the problem raised in the complaint, and no further action was taken.

Ploy not acceptable

Mr E's sixteen year old son was hosing down his brother's car outside the family home. The son was approached by two police officers, one of whom asked "Who owns this shitbox?" The young person replied, "This shitbox belongs to my brother." The young man was then issued with an infringement notice for being an unlicensed driver, and a defect notice was placed on the vehicle. When the young man's mother appeared on the scene and queried the police officers, they allegedly refused to speak to her: but they told the young man that he would automatically lose 2 points when he got his "P" plates, that there were 80 police at the local station who would "keep an eye on him", and that they could have taken more serious action against him. The young man's father complained about the actions of the police.

Preliminary enquiries revealed that the young man may have driven the vehicle a short distance before the police arrived. When the police arrived, after a noise complaint about the revving of the engine had been made, the youth was outside the vehicle washing it.

One of the officers admitted asking "Who owns this shitbox?" He went on to say that no other person had been present and at first sight the young person had looked older than he was. The police investigating officer commented:

> In the ensuing conversation and what is described by the complainant as aggressive verbal manner, it is a ploy to make young persons realise the seriousness of driving motor vehicles without being the holder of a drivers license, acquainting him with the fact he would lose points if he had held a license and the more serious offences could incur greater loss of points.

He went on to say

> The indecorous language was not used in the presence of the wife. There is no denial by the Police Officers in relation to the conversation used, it was a statement of fact when considering the condition of the vehicle in question.

Later, when summing up, he said:

> My inquiries reveal that the conversation was used and is not in dispute, it was used broadly considering the condition of the vehicle. From my inquiries the aggressive attitude by the Police is a ploy used by Police Officers to assist young offenders by making them realise the consequence for bad driving.

The Assistant Commissioner (Review), in forwarding the reports to the Ombudsman, commented that the actions of the police concerned were deserving of censure. He said that he would arrange for both officers to be paraded and reminded of their responsibilities towards members of the public.

The Ombudsman wrote to the Assistant Commissioner, noting that the Assistant Commissioner had not distanced himself from the comment of the investigating officer that the aggressive attitude of the police was a ploy used by police to assist young offenders to realise the consequences of bad driving. The Ombudsman commented that the existence of such a policy within the Police Force was not known to him and he sought further information about it. The Assistant Commissioner replied that there was no such policy in force, that he did not support the use of such a "ploy", and that he had intended to convey that fact when he had said that the actions of the police concerned were deserving of censure and that he intended to have them paraded.

As the complaint had been resolved, no investigation was required.

A "service", indeed

An anonymous complaint received by the Police Department alleged that a police officer was receiving payments from a local funeral service for recommending them to the relatives of deceased persons. It was alleged that, when informing people of the death of a relative, the police officer would give them the business card of the funeral service and tell them that the funeral service would "fix everything up".

The evidence obtained in the police investigation of the complaint included a statement from a probationary constable who said that she had seen the officer hand a white business card to a relative of a deceased person. Later that day, the police officer had offered the probationer $40, saing "I've earned $40 for you". The probationer said that she had asked the police officer what he meant and she claimed that he had told her that, by talking the relatives of deceased persons into going to the funeral service, he received $80 or more, depending on the funeral arrangements. The investigation also obtained supportive evidence from a number of civilians who had dealt with the police officer after the death of a relative.

The police investigator from the Internal Security Unit believed the complaint to be sustained. All of the papers, however, were sent to the police Legal Services Branch; the Branch said that the evidence was inconclusive and recommended that no action be taken against the police officer. The Police Department finally decided that the complaint was not sustained, but told the Ombudsman that the police officer would be "extensively counselled" anyway.

The Ombudsman decided to reinvestigate the complaint because, on the basis of the information in the police investigation reports, he was not able to determine where the truth lay. A hearing under Section 19 of the Ombudsman Act was held before the Assistant Ombudsman.

During the hearing, Ms K gave evidence that she had separated from her husband and had gone to live in the country with her parents. When her husband was killed, she spoke by phone to the police officer about his death and the officer told her that the funeral service would be in touch with her to "arrange everything". The funeral service had contacted her the next morning. Ms K said that at no time had she or her parents approached the funeral service; her parents' evidence supported her claims.

Mrs B told the hearing that, while being interviewed by the police officer after the death of her husband, he "gave me a card and he said that he would send someone around". The funeral service had visited her at her home the next day to arrange the funeral. Mrs B said that at no time had she contacted the funeral service, nor had she given them her address. Mrs B's daughter said that she remembered seeing the police officer hand a white card to her mother; the card was similar to one given to her the next day by the funeral service.

The incident involving Mrs B had been witnessed by the probationary constable. The probationary constable had since resigned from the Police Force, but she gave evidence to the inquiry, reaffirming the statement she had made during the police investigation. She told the inquiry that, after giving her statement to the police investigator, she had been so mistreated by other police that she had resigned from the Force.

The manager of the funeral service gave evidence; he denied any involvement with the police officer or that he had made any payments to him. He said that, in every case, he had been contacted by the bereaved relatives who had asked him to perform the funerals. His evidence was in conflict with the evidence of Ms K and her parents and of Mrs B and her daughter, and he was not believed.

The police officer refused to attend or give evidence to the inquiry.

On the basis of the evidence given to the hearing, the Ombudsman was of the view that the complaint was sustained, and he made reports accordingly to the Minister for Police and the Police Commissioner. Later, the Police Commissioner told the Ombudsman that the Ombudsman's report suggested serious misconduct on the part of the police officer and further inquiries would be made by the Police Department. Those enquiries are continuing.

Failure to comply with Act

The Police Regulation (Allegations of Misconduct) Act requires any police officer who receives a complaint about the conduct of police to forward the complaint to the Internal Affairs Branch and to forthwith notify the Branch of particulars of the complaint. The Internal Affairs Branch, in turn, is required to notify the Ombudsman of particulars of the complaint and to forward a copy of it to him.

A complainant alleged that information, which he described as "rumours from the street and from ex-convicts" and "words on the street", and which he had presented to his local police through an intermediary, had not been properly dealt with. The information related to alleged drug offences, alleged police "protection" and alleged police involvement in the murder of a person for refusing to maintain payments for police protection.

A Detective Inspector of police received the information and made sufficient enquiries to satisfy him that the allegations contained in the information were unfounded. However, the information had not been received by the Internal Affairs Branch and, consequently, the matter had not been investigated under the provisions of the Act. The Detective Inspector claimed that he had forwarded the information to the Branch

and could offer no explanation as to why it had not been received. However, he conceded that he had not notified the Branch by telephone, as he was required to do.

The investigation satisfied both the Ombudsman and the complainant that the original allegations about police misconduct could not be supported. Nevertheless, the allegations had not been properly dealt with and would not have been investigated at all if the complainant had not subsequently complained about this direct to the Internal Affairs Branch. The complaint was clearly sustained. The Detective Inspector's failure to observe the requirements of the Act placed him in breach of it and contributed to the circumstances in which the original allegations were not properly investigated in the first instance. Had the required telephone notification been given to the Internal Affairs Branch, the non-receipt of the material by the Branch could have been remedied. As it was, had the further complaint not been made, there would have been no record at all of any receipt by the police of information containing extremely serious allegations, or of any attempt to investigate them.

There was no evidence to suggest that the Detective Inspector deliberately withheld or concealed the information he had received; but any member of the Police Force, especially of that rank, should be well aware of the relevant provisions of the Police Regulation (Allegations of Misconduct) Act and ought to meticulously observe them.

A Departmental charge of 'Neglect of Duty' was admitted by the Detective Inspector who commented that the disciplinary proceedings taken against him had adversely affected his promotion prospects. The Ombudsman had no doubt that this was the case and, in view of this and the fact that the original allegations contained in the information put forward by the complainant had been fully investigated, he required no further action to be taken.

Questionable search

Sometimes, investigation of a complaint discloses other, seemingly unconnected events which also warrant investigation.

In November 1984, a shopowner from the N.S.W. south coast complained about the manner in which a search warrant had been executed upon his premises. Police had obtained the warrant as a result of information supplied during "Operation Noah". This operation encouraged members of the public to contact police and provide information about persons alleged to be involved in the drug trade. In this instance, the information had been supplied anonymously. The complainant alleged that his reputation had been ruined and his business had suffered irreparable damage and loss as a consequence of the police search. He said that he suspected that a search warrant had been executed on his premises because he had earlier reported an incident involving a police officer to the local police inspector.

So far as the latter incident was concerned, the complainant said that, two months prior to the search, a motor vehicle accident had occurred outside his shop. A few days after the accident, one of the motorists involved in the accident had attended his shop and had accused him of telling a police officer that she was an unlicensed driver. The motorist told the complainant that a police constable, in full uniform, had attended her home and had threatened her that, unless she made restitution for the damage caused to the other vehicle, she would be taken to the police station and charged. The other vehicle had been driven by the constable's sister-in-law.

The complainant said that he had denied speaking to a police officer about the accident. Because he was concerned about the allegations levelled at him, he decided to inform the local inspector of police about the incident.

The complaint was reinvestigated by an Assistant Ombudsman who found that the information supplied to "Operation Noah" had

been hearsay, vague and unsupported by any corroborative evidence. The Assistant Ombudsman noted, however, that the particular search warrant had been issued before the introduction of the Search Warrants Act 1985, and that it was unlikely such a warrant would have been issued under the new legislation.

The Assistant Ombudsman found that, although the grounds for the issue of the warrant were in doubt, the complaints made against the searching police officers were not sustained. The Assistant Ombudsman believed that the police had conducted themselves in a professional manner and that they had caused minimal interference to the complaiannt in conducting their search. Although the front doors of the shop had been closed while the search was in progress, and this had prevented the public from entering the shop, the Assistant Ombudsman was not satisfied that irreparable damage had been caused to the shopowner's reputation and business.

The allegation that a constable of police had used his official position to bring pressure upon a person to pay the cost of repairs to his sister-inlaw's car was found sustained. The constable claimed that he had been patrolling the area where the female motorist resided and had decided spontaneously to speak to her about the matter. The constable gave evidence that he had not intended to use his position as a police officer to intimidate the motorist into paying for the damage. He said that, when he spoke to the motorist, he had made no mention of any amount of money required to pay for the damage. The female motorist, however, denied the constable's version. She gave evidence that the constable had told her to get dressed and to accompany him to the police station because she had done nothing about paying for the damage. She further claimed that the constable had allowed her a specific time in which to pay the amount of money specified by him, and that before leaving her premises he had said: "I know you're unlicensed. Mr X (the shopowner complainant) said you were. If you don't pay you'll be taken through legal proceedings and be charged with unlicensed and

negligent driving." A few days later, the constable and his sister-in-law had returned to the motorist's home and had collected the money.

The Acting Ombudsman recommended that the constable be paraded and counselled by his Divisional Superintendent but the Assistant Commissioner (Review) said that, having regard to the length of time that had elapsed and the self-remonstration displayed by the constable for his actions, he did not propose to have the constable counselled.

Asking a bit much

The complainant started business as a secondhand dealer in a country town. He forgot to renew his licence and it lapsed. Some time later, when police came to his premises to check for some allegedly stolen property, they found that the complainant's licence had expired and that he had not properly kept the records that the law requires secondhand dealers to keep. They prosecuted him for being unlicenced and for having stolen property in his custody. They also told him that he would not be allowed to continue trading until his licence had been renewed.

The complainant made a number of complaints which the Ombudsman considered unjustified. For example, he complained that:

- police should have reminded him when his licence was due for renewal;
- police should have been able to provide accurate legal advice as to the workings of the Secondhand Dealers and Collectors Act;
- it was unfair of police to "close him down";
- it was wrong of police to prosecute him without checking his explanation that he had bought the allegedly stolen property from another person.

The Ombudsman felt that it was unfair for a businessman to ask police to look after his business interests for him, or to provide him with legal advice. It was also unfair to blame police for "closing him down" when the law clearly prevents unlicenced persons from trading as secondhand dealers. The Ombudsman also pointed out to the complainant that people are often convicted for possessing stolen property, even where they have purchased it, either from the thief or from an intermediary. The Ombudsman told the complainant that he should have consulted his legal advisers on this question.

Lost pendant

After Mrs X was sentenced to four months imprisonment, she was taken into police custody and her personal property was removed from her. Details of each article belonging to the complainant were recorded in the prisoners' property book. Amongst Mrs X's property was a silver pendant on a chain; that item was properly recorded by police in the property book.

Mrs Y was sentenced late in the afternoon and it was not possible for police to transport her to the Mulawa Detention Centre at Silverwater during the standard admission times. Because of this, she was taken to Central Police Station pending her transfer to Mulawa. When she arrived at Central Police Station, Mrs X's property was checked, in her presence, against the appropriate entries in the property book. All of her property, including the silver pendant, was present.

At 6.30am the next morning, police transported Mrs X to Mulawa. It is the responsibility of the transporting police officers to check, before departure, that a prisoner's property accords with the details recorded in the property book. On this occasion the tansporting police officers signed for receipt of Mrs X's property, including the silver pendant. When Mrs X arrived at Mulawa Detention Centre, her property was checked by prison officers; they noted that the silver pendant was not there. A prison officer, with the concurrence

80927-38856—21

of the transporting police officers, amended the prisoners' property book so as to exclude all reference to the pendant.

Mrs X complained to the Superintendent of the prison, alleging that her pendant, which she valued at $340, had been lost. The complaint was referred by prison authorities to the Police Internal Affairs Branch.

The police investigator found that the property had been lost between Central Police Station and Mulawa. He concluded that the pendant must have dropped out of the plastic property bag.

The Assistnt Commissioner (Review) told the Ombudsman that the police officers concerned had been negligent in not ensuring proper safekeeping of the complainant's property, and he recommended that the police officers be counselled and that compensation of $37.45 be paid to the complainant by the Police Cepartment.

The Ombudsman endorsed the recommendation of the Assistant Commissioner that the police concerned be counselled; but he was unable to accept that the amount of compensation offered by the Commissioner was fair and reasonable, unless he could be given reasons why only that amount should be paid.

In his response the Assistant Commissioner said that, because the complainant had failed to provide evidence of the pendant's value or its place of purchase, three valuations had been obtained. The valuations were based on a photograph of the pendant supplied by the complainant, together with the description recorded in the property book. The lowest valuation had been accepted by the complainant.

On this basis, the Ombudsman concluded the matter.

Failure to act

Mr S was attacked by three men on his way home from work. A passing motorist witnessed the attack and went to the police station to report it. The police said that the victim would have to report the matter himself. The motorist returned to the park, found Mr S and took him to the police station where he reported the attack.

The police and the motorist went to the scene of the attack; the motorist identified the alleged assailants and they agreed to go to the police station for questioning. Mr S had stayed at the police station and he was not further interviewed once the police returned.

Mr S heard nothing from the police for several months, so he got in touch with Constable X. The Constable told him that he had accepted the version given by the alleged assailants and had not taken any further action. Constable X had made no record of the incident in the occurrence pad at the police station. He had taken statements from the alleged assailants and had recorded them in his official police notebook; but at no stage had he taken any statement from Mr S.

Mr S, a man of Filipino origin, complained that the failure of the police to take action was because of racial and sexual discrimination.

The Police Internal Affairs Branch investigation found the complaint "not sustained" on the basis that Constable X had not acted wrongly in failing to take action against the alleged perpetrators of the assault. Nevertheless, it found that the Constable had been remiss in not recording the incident on the station's occurrence pad and in not submitting a crime information report and other documentation.

The Ombudsman reinvestigated the complaint and conducted a hearing using Royal Commission powers. Mr S gave evidence that, when he first attended the police station, Constable X

had merely asked him for his name and address. He had not been asked to give a detailed account of the assault, but had been led to believe that the men would be charged. Constable X denied having given Mr S that impression. He said that he had made the decision not to charge the men after hearing their version of the incident, which he had accepted. Constable X said that, in fact, he had told Mr S that he was lucky that the three men did not want to charge him with assault, since he had allegedly made sexual advances to one of them. Mr S claimed that he had never been told of the version given by the three men and had never been given the opportunity to comment on it.

Constable X said that he did not regard the motorist as an independent witness because he was a friend of the victim's. Both Mr S and the motorist said that they had not known each other prior to the night in question, and had only become friends several months later. Some time previously, however, the motorist had made a complaint about another police officer attached to the same police station; that complaint had been investigated by the Internal Affairs Branch and the officer that had been the subject of that complaint had been on duty on the night that the incident involving Mr S had occurred.

At the hearing Constable X was asked to explain the basis on which he had formed the impression that Mr S and the motorist were friends, and whether he had been influenced by anything said to him by any other police officers on duty at the time. At this juncture, Constable X's legal representative sought an adjournment and this was granted. When the hearing resumed, Constable X said that he "could not remember". The Assistant Ombudsman conducting the hearing was unimpressed by the constable's convenient lapse of memory and noted that, prior to having been asked this question, he had experienced no difficulty in remembering details of the incident.

The Assistant Ombudsman could not establish affirmatively that the failure of Constable X to take action on Mr S's complaint had been the result of racial or sexual discrimination; but in

the abence of a satisfactory explanation from the officer for his lack of action, she drew the inference that he had been influenced by extraneous and irrelevant matters. The Ombudsman recommended to the Police Commissioner that Constable X be counselled about his obligations to record matters as required by the Police Instructions. The Commissioner accepted and acted on the recommendations.

Reward, at last

In June 1985, a man tried to rob the Armidale TAB. Mr H, a Sheriff's Officer, was passing the TAB office, saw the robbery taking place and went to the assistance of the cashier. He subdued the robber and detained him until the police arrived.

The Sheriff, in June 1986, and the Secretary of the Attorney-General's Department, in July 1986, commended Mr H for his actions. In May 1986 Mrs H wrote to the Commissioner of Police and asked whether her husband would be eligible for an award or a reward for his actions. She received no reply, so she wrote again on 28 January 1987. Again, there was no reply so in May 1987 she complained to the Ombudsman. Mrs H took all of these steps without her husband's knowledge.

Preliminary inquiries with the Department revealed that there was no record of Mrs H's original letters. Duplicate papers had been prepred and were being assessed. On 20 July 1987, the Department advised that Mr H's actions had been considered by the Department's Reward Evaluation Committee, which had recommended to the Totalizer Agency Board that a reward be paid. The complaint was declined at this stage, because it seemed that Mr H would shortly receive his reward.

On 17 August 1987 an officer from TAB security told an Investigation Officer that the Board had approved of a reward and that the presentation to Mr H would be made when the Police Department advised the Board of presentation dates. This advice was conveyed to Mrs H.

On 9 September 1987 Mrs H contacted the Investigation Officer again and complained that there was still no indication as to when the reward would be presented,. Telephone inquiries of the Police Department revealed that the cheque for the reward had been drawn a few days earlier and that the only action still required was to arrange the presentation. This information was passed on to Mrs H. Finally, on 29 September 1987, a cheque for $5500 was presented to a very surprised Mr H.

Leak of old criminal record

A woman complained that a police officer had released details of her criminal record to a private investigator. The complainant said that she had had no recorded convictions for over 35 years and that she was being harassed.

The Ombudsman's reinvestigation found that the complainant's criminal record had been improperly released by an unidentified police officer. The Ombudsman recommended that procedures be changed to prevent unauthorised release of information. The recommended changes included new instructions for computer operators, briefings for casual staff, integrity checks for new employees, denying access to criminal records by school students on "work experience" programmes, keeping criminal record relephone inquiry sheets for two years and restricting access to old and irrelevant records. The Police Department said that it intended to comply with the Ombudsman's recommendations.

The Ombudsman also recommended that the Commissioner of Police make an ex gratia payment of $500 to the complainant. The Assistant Commissioner (Services) refused to comply with this recommendation, so the Ombudsman wrote directly to the Commissioner of Police and asked him to personally consider the matter. The Acting Commissioner of Police replied that he had considered the matter but did not believe that an ex gratia payment was appropriate.

Bicycle found, but lost again

Mrs X complained that police had failed to return her son's stolen bicycle. The bicycle was stolen from her home in October 1986. In mid-November she was told by a neighbour that the bicycle had been handed in to the local police station. She made inquiries at the station and, finally, was told that the bicycle had been handed over to somebody else.

The police investigation disclosed that, at the time in question, Constable A had been performing the duties of station sergeant but had left the station to have a meal at home. He left the station keys with Constable B. This was contrary to Police Instructions, which require police performing duty as station sergeants to keep the keys to the exhibit room in their exclusive possession. During the meal break, an unidentified claimant attended the police station and inquired if any pushbikes had been handed in. He had a receipt for the purchase of a bicycle similar to the one stolen from the son of Mrs X. Constable B allowed the claimant into the exhibit room; the claimant identified the bicycle and Constable B released it to him.

The Deputy Ombudsman concluded that if Constable A had followed police instructions relating to the cusody of station keys, the incident might not have occurred. As well, Constable B had given possession of the bicycle to the claimant without making proper enquiries about ownership. He should have been alert to the fact that the colour of the bicycle, as shown on the claimant's purchase receipt, was different to that recorded in the police property book, and he should not have permitted the claimant to enter the exhibit room to identify the bicycle.

The complaint was found sustained and the Assistant Commissioner (Review) proposed that both constables be paraded by their respective Divisional Officers and be strongly

advised of their responsibilities in complying with the releant police instructions. The Department had sought approval to make an ex gratia payment of $120 to Mrs X in compensation for the loss of her son's bicycle.

The Deputy Ombudsman was in agreement with the action proposed and he recommended accordingly. Both constables were later counselled as recommended and $120 was paid to Mrs X.

Futile and dangerous use of handcuffs

A prisoner at Long Bay Gaol, who had to appear in Wollongong Court on a number of occasions, complained that he had been transported in the back of a police wagon while handcuffed. He said that this was dangerous because it made it difficult to brace oneself when the vehicle was going around corners.

Investigations by police showed that on at least one occasion, on a return trip from Wollongong, the prisoners had been handcuffed behind their backs. On the trip to Wollongong that day there had been an apparent escape attempt by prisoners who had used pieces of hacksaw blades to try to cut their way through the bars of the truck.

Police Instructions were confusing about whether prisoners should be handcuffed behind their backs when being transported. A senior police officer at Prisoner Security Group said it was not departmental policy to handcuff prisoners behind their backs when transporting them by prison van, but other senior officers at the same Group had differing opinions. There appeared to be general agreement, however, that any reasonably fit prisoner could easily step through his or her arms and end up with the handcuffs in front. It was quite clear that the practice of handcuffing prisoners behind their backs was not only dangerous, but futile as well.

As a result of its investigation, the Police Department amended Police Instructions to make it clear that prisoners

were not to be handcuffed behind their backs when being transported in prison vans. The Ombudsman formally reported that he found the complaint sustained but, given the action taken by the Department, he made no recommendations.

A cow of a thing to do to a man

The complainant was a grazier who also worked with a stock and station agency. He bought five head of cattle at auction from another man who, it seems, managed gazing properties for a third party and also ran some of his own stock. The seller of the cattle was accused by his principal of having stolen from the properties he was managing, over some time, a large number of beasts. The police formed the view that the five beasts the complainant had bought were among those stolen. They charged the seller with stealing them and, executing a search warrant on the complainant's property, took the cattle into custody. Notwithstanding the complainant's claims that he paid good money for the cattle, and regardless of communications from his solicitors, the police simply handed the cattle over to the person from whom they believed they had been stolen.

In the long run, the prosecution felt that it would only be able to prove that one of the five head of cattle had been stolen; the thief pleaded guilty on that count (among others) and was ordered to pay compensation to the complainant. No charge relating to the other four cattle was finalised at court and no order for compensation was made.

Police have no right to decide between competing claims for property Section 358A of the Crimes Act provides for court orders to be made as to the disposal of property in police custody in circumstances like this; and had such proceedings been commenced it would have given both the parties the opportunity of having their respecive claims properly adjudicated. By taking the cattle out of his possession and giving them to somebody else, without affording him the

opportunity of seeking a court order, the police overrode the complainant's rights. He is now in a position where he would find it very difficult to sue anyone for the loss that he suffered. A complicating factor was that police declined to give the complainant a receipt for the cattle. This was police procedure at the time. Questions were subsequently raised as to the identity of the cattle; had a proper receipt been given at the time the cattle were taken from the complainant, this problem would not have arisen.

The Ombudsman recommended that police change their procedures and, in future, issue receipts in all such circumstances and give people the opportunity of commenting on the sufficiency of identification contained in such receipts. He also recommended that, in future, police be directed to follow the legal procedures set down in Section 358A of the Crimes Act.

Improper detention

Police received information that the complainant's son had been involved in an alleged assault. They attended the complainant's house in the early hours of the morning to interview the son. The complainant alleged that the police entered his house without permission, and that their behaviour was unreasonable while they were there. The complainant went to Windsor Police Station later that morning to complain about the incident, but was detained as an intoxicated person. He complained that his detention was highy improper.

On the basis of the police investigation, the Ombudsman was unable to determine the facts relating to the visit to the complainant's home. There was a clear conflict of evidence between the complainant and the attending police. The Ombudsman decided, however, not to investigate that part of the complaint, and it was deemed to be not sustained.

Although the accounts of the police and the complainant about what happened at the Police Station differed, the police

admitted that they had been satisfied at the time that the complainant was in breach of section 5 of the Offences in Public Places Act. Because of his alleged state of intoxication, however, they decided to detain him as an intoxicated person, rather than charge him with "offensive conduct".

Section 5(5) of the Intoxicated Persons Act provides that a person found intoxicated in a public place shall not be detained under the provisions of the Act if that behaviour constitutes an offence under any other law. On their own admission, the police had improperly detained the complainant under the provisions of the Intoxicated Persons Act and should have proceeded against him for "offensive conduct".

The police investigation also revealed that police procedures had been breached when the police had placed the complainant in the police cells without searching him.

The Ombudsman was satisfied that the police officers involved had acted as they did because they misunderstood their legal position in detaining the complainant as an intoxicated person. He recommended that the officers be paraded before their Superintendent, that they be counselled to, wherever possible, prefer the substantive charge and that they be mindfull of all of the conditions that must prevail before a person can be detained as an intoxicated person. The Ombudsman further recommended that the District Commander bring to the notice of all police stationed at Windsor their responsibilities in relation to searching prisoners.

Both of these recommendations were implemented.

Some party...!

A man claimed that his neighbour, Mr X, had assaulted him and damaged his motor vehicle. The police were called and they interviewed the parties. Later, Mr X and two members of his

family went with police to the Police Station to make written statements. Later still Mr X and his relatives returned with two police officers who parked the police vehicle in front of Mr X's home, went inside, and stayed there for approximately two hours; a party was in progress at the time. Mr X's neighbour complained about the action taken on the incident by the police, and about their attendance at the party.

The Police Internal Affairs Branch said that the report of the initial police investigation of the complaint was of poor quality and the matter was returned to the investigating officer for further investigation. The investigator's second report was also rejected by the Internal Affairs Branch, and a senior police officer from Police Headquarters was ordered to undertake a further investigation of some of the issues in the complaint.

The third investigation established that police had attended Mr X's party for about two hours and that false entries had been made in police documents to cover the absence of the two police officers from their duties.

The senior of the two officers, a sergeant, was dismissed from the Police Force for absenting himself from duty for a period of two hours and for directing a junior officer to absent himself from duty and to make a false entry in police documents. The sergeant has appealed against his dismissal. The junior officer, who acted at the direction of the sergeant, was paraded and counselled.

Double jeopardy

Mr G was stopped by police in Smith Street, Wollongong. Police checked to see if there were any outstanding warrants for Mr G and told him that he was the subject of an outstanding commitment warrant for the sum of $135. Mr G insisted that he had already paid the warrant. He was allowed to drive his vehicle home, and the two police officers

followed. Mr G produced a receipt which showed that he had paid $135 in satisfaction of commitment warrant No. 40215989. The number on the outstanding warrant was 40857252, but it was for the same amount and for the same offence as the satisfied warrant. Mr G, despite his protests, was taken to Wollongong Police Station in the back of the police vehicle so that further inquiries could be made. He was later returned to his home by police.

The police investigation showed that two warrants had been issued, in error, by Castlereagh Street Court for the one offence.

Police instructions provide:

> Before a person is accompanied to a police station or elsewhere, he should, if he is not under arrest, be so informed. If not under arrest, he is not obliged to accompany police anywhere but may do so voluntarily.
>
> and,
>
> ... if a person for whom a commitment warrant is held claims that he has already paid the amount or any part of the amount mentioned therein or has made a firm arrangement with the clerk of petty sessions for the warrant to be recalled, the execution of the warrant will be allowed to stand over pending further inquiry from the clerk of petty sessions, under whose notice the facts should be brought immediately.

The Ombudsman found that there had been no justification for the police to take Mr G to the police station and that his detention had been unlawful.

The Ombudsman made no recommendations, however, because the Assistant Commissioner said that both officers were to be paraded before their District Superintendent to be reminded of their responsibilities concerning the execution of warrants. In addition, the Assistant Commissioner said that he would send a letter of apology to Mr G.

Oppressive questioning and "public mischief"

The Macquarie Legal Centre complained about the way police had interviewed an eleven year old girl for over five hours. The girl had alleged that she and another girl had been sexually assaulted by some boys in a park near Seven Hills railway station. The interview culminated in the girl being charged with "public mischief" for allegedly telling lies to police.

The girl and her parents were at the police station from approximately 8.30pm until about 2.00am the next morning. During this time the girl's parents asked that the interview be terminated and that, if necessary, it be continued the following day, after the child had rested.

The detective in charge of the investigation said that he believed it imperative to take the complainant's statement while the facts were still fresh in her mind, rather than wait until the next day to do so. It was common ground that the girl's mother had asked that she and her husband be allowed to take the child home. Although the request was not refused, police persuaded the parents to allow the interview to continue.

The police began their interview with the view that the girl and her friend had been the victims of abduction and sexual assault. After a time, they began to suspect that the allegations had been fabricated and continued the interview in order to investigate their suspicion. The girl eventually admitted that she had not told the truth to police.

The girl was very young and developmentally disabled to some degree. The law on confessions makes it clear that where a person is placed in a position of prolonged and sustained pressure in an interview, any admission made would be regarded as induced by oppression, and would not be admitted in evidence. The Ombudsman found that the interrogation of the girl had been oppressive and unreasonable, because it was carried out for several hours, in the middle of the night,

without significant breaks and in spite of requests that it be broken and continued the following day.

The Ombudsman also found that the decision to charge the girl with "public mischief" was unreasonable, because of:

(i) the girl's age;

(ii) the rebuttable presumption that a child under 14 years, but over 10 years of age, is incapable of committing a criminal offence;

(iii) her tiredness and possible confusion;

(iv) the oppressive nature of the interrogation;

(v) the availability to police of less harsh alternatives (such as an informal caution);

(vi) some medical evidence which was supportive of the girl's account of the alleged assault.

The Police Department accepted the Ombudsman's recommendation that the detective concerned in the case be paraded before his superior officer and counselled.

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