



NEW SOUTH WALES OMBUDSMAN ANNUAL REPORT 1990



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Annual Report

OMBUDSMAN

of

New South Wales

Year ended 30th June, 1990

THE OMBUDSMAN OF NEW SOUTH WALES

FIFTEENTH ANNUAL REPORT

1 JULY 1989 - 30 JUNE 1990

PART I

PART ONE

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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 fifteenth 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 1990. 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. Developments and issues current at the time of writing (September 1990) have been mentioned in some cases in the interest of bringing material up to date.

The Ombudsman during the period of this report was Mr D E Landa.

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 enabled 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 and in December 1986 that power was extended to enable him to investigate the conduct of members and employees of 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 1978. A significant expansion of that role occurred in February 1984 when the Office of the Ombudsman was given the power to directly reinvestigate complaints about the conduct of police officers.

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 then Public Service Act.

In more recent times, other functions have been imposed on the office. The Ombudsman was declared to be an inspecting authority in terms of the Telecommunications (Interception) (New South Wales) Act. As such, he is required to regularly inspect the records of those authorities which are able to seek warrants to intercept telephone calls. His functions in this regard were set out in some detail in the 1987-88 Annual Report (pp23 - 27). The Ombudsman is precluded by law from reporting the results of his inspections in his Annual Report.

On 1 July 1989, the New South Wales Freedom of Information Act commenced. Not only is the Office of the Ombudsman itself subject to the provisions of the Act, but it has an external review function as well. This was discussed in the 1988-89 Annual Report (pp47-49) and is further discussed elsewhere in this report.

AIMS AND OBJECTIVES

The primary function of the Office of the Ombudsman is to receive and investigate complaints about matters of administration, including determinations about the release of information under the Freedom of Information Act, 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 four Assistant Investigation Officers who, amongst other things, 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, they are referred to other State or Federal government organisations or non-government organisations which might be able to assist.

COMPLAINTS RECEIVED

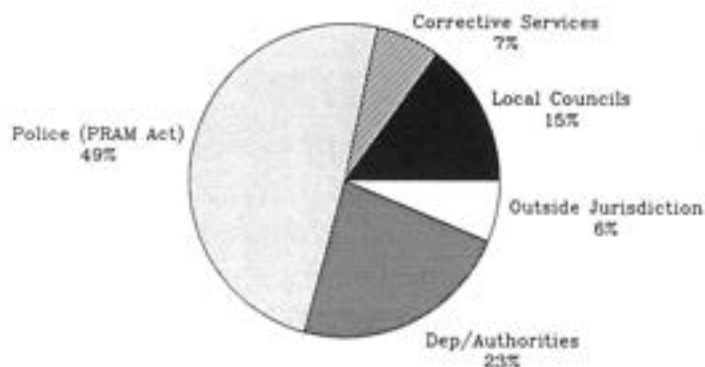
Ombudsman Act:

Departments and Authorities (other than Corrective Services)	1097
Local Councils	716
Department of Corrective Services	310
Outside Jurisdiction	302

Police Regulation (Allegations of Misconduct) Act:

Complaints against police	2352
	<u>4777</u>

COMPLAINTS RECEIVED 1989/90 Comparison of Authorities



Total Complaints 4777

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:

3rd Level
580 George Street
SYDNEY NSW 2000

Telephone: (02) 286 - 1000

Toll free telephone: (008) 451 - 524

Facsimile number: (02) 283 - 2911

The office hours of service are 9 am to 5 pm, Monday to Friday.

MANAGEMENT AND STRUCTURE

Principal Officers

The principal officers of the Office of the Ombudsman are:

David Landa,	Attorney at Law	Ombudsman
John Pinnock,	BA LL.M (Syd)	Deputy Ombudsman
Gregory Andrews,	BA (Hons)	Assistant Ombudsman
Gordon Smith,	Dip Crim (Syd)	Principal Investigation Officer
Sue Bullock,	B Soc Stud (Syd)	Executive Officer

Mr G E Chegvidden, Assistant Ombudsman, resigned from his position with effect from 1 June 1990.

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. The Assistant Ombudsman, Mr G Andrews, is a non-voting member of the Prisoners Legal Service Advisory Sub-Committee of the Legal Aid Commission.

Committees

There are seven formal Committees which meet regularly in the office. The number of Committees increased during the year and this is indicative of the major changes that have occurred in the office; including its restructure, the implementation of the Structural Efficiency Principle and the introduction of an office Information Processing Strategic Plan. More detailed information on the activities of these committees is discussed in "Operational Aspects of the Office of the Ombudsman" later in this report.

Equal Employment Opportunity (EEO) Committee

The EEO Committee was formed in 1985.

The Committee comprises the EEO Co-ordinator, the Personnel Officer and four elected staff representatives. The Committee meets monthly and is responsible for implementing of the EEO Management Plan, monitoring its progress and effectiveness, and preparing the EEO Annual Report.

Ethnic Affairs Policy Statement (EAPS) Committee

The EAPS Committee monitors, reviews and implements the Ethnic Affairs Policy Statement. The committee comprises the EAPS Co-ordinator, Personnel Officer, Public Relations Officer and an elected staff representative. The committee meets monthly and is responsible for preparing the EAPS Annual Report.

Occupational Health and Safety (OH & S) Committee

A new OH & S Committee was established in March 1990. The committee's aim is to ensure that programmes and policies which ensure the health, safety and welfare of all staff at the office are put in place. The committee has six full-time members and a number of alternate

members. Four members are elected by staff and two are appointed by the Ombudsman as his representatives. The majority of the new committee members have received accredited training; training for the remaining members will be completed by October 1990.

Following the relocation of the office, the committee implemented a number of training programmes, including fire drill and evacuation procedures, first aid training and training in the prevention of over-use injuries.

Structural Efficiency Principle (SEP) Joint Consultative Committee

On 2 February 1990 the Director-General of the Department of Industrial Relations and Employment, the Labor Council of New South Wales and the Ombudsman signed a "Memorandum of Understanding regarding the establishment of Joint Consultative Arrangements on Structural Efficiency".

The Memorandum of Understanding required the establishment of a work based Joint Consultative Committee, comprising an equal number of management and union representatives. A Joint Consultative Committee was established in March 1990 which comprises of three representatives of management and three nominated representatives of the Public Service Association.

The committee meets fortnightly and has concentrated on implementing key processes of the SEP, including multiskilling of most positions in the office, review of the office's functions and work, commencement of a skills audit and the establishment of a Training Committee.

Training Committee

Concomitant with the implementation of SEP was a restructuring of the office using an "investigative team" approach and implementing an Information Processing Strategic Plan. The object of these changes was to create potential for staff to perform new and varied duties, and

provide staff with adequate and relevant training in accordance with the principle of multiskilling. Because of the magnitude and nature of the changes made, the degree of training required was extremely high. It was obvious that all training needs should be recognised and prioritised, and that the implementation of training schemes should be co-ordinated. Accordingly, in April 1990, a Training Committee was established to perform these tasks. The committee has met regularly and its achievements thus far include the organisation of a Report and Letter Writing Course, Computer training courses, and a course for Investigative Assistants, entitled "Working On the Frontline", which dealt with handling enquiries from members of the public, communication skills and assertiveness training. The committee is developing a long term training programme for the office.

Management Committee

The Management Committee meets weekly to discuss matters relating to the functions, policy, budget and overall operation of the office. The committee comprises the Ombudsman, Deputy Ombudsman, Assistant Ombudsman, Principal Investigation Officer, Executive Officer, Senior Investigation Officers, Senior Executive Assistant (Police), Senior Administrative Officer and representatives of the Public Service Association Workplace Executive.

PROMOTION AND PUBLICITY

Community Awareness

Budgetary constraints towards the end of the financial year forced this office to suspend most public awareness visits to country areas. Nevertheless, a significant number of such visits were made during the year and regular monthly visits to Newcastle were maintained. Public awareness visits to Wollongong recommenced in August 1990 and, in the meantime, the 008 telephone line remains a vital link for country complainants.

As well, officers have talked to the local media about the office

whenever they visit a country region to inspect an institution or for the purpose of an investigation. The Ombudsman and the Aboriginal Liaison Officer spoke to local groups, police and the media whenever they travelled to country areas to speak to local Aboriginal groups. Visits were made to Wagga Wagga, Griffith, Leeton and Armidale and to a number of groups on the North coast.

Regional media, as a matter of practice, are sent copies of the Ombudsman's reports to Parliament and media releases, and the interest from country media has remained healthy.

Speaking engagements

During the year, the Ombudsman spoke to the following groups about his role:

- Members of Parliament and of the parliamentary press gallery, at Parliament House, in September 1989;
- Conference of Superintendents of Prisons at Long Bay Gaol in November 1989;
- University of New South Wales Law Society;
- Executive Development Programme for Women;
- Senior Executive Service Training Programme; and
- Internal Police Security Branch Seminar

The office provided speakers for Local Court regional and metropolitan training sessions during April, May and June 1990. These training sessions provided an opportunity to inform clerks of the court about the services the Ombudsman could provide, and about how they could best refer people on to the Ombudsman.

The office continues to participate in police and prison officer training sessions. During the year lectures were given to police recruits, to the detective training courses at the Police Academy at Goulburn and to

regional police investigators. Regular lectures are given at the Corrective Service Academy at Eastwood at each new intake of prison officers. As well, Investigation Officers gave lectures about the role of the Ombudsman to students at TAFE colleges and to administrative law students at Wollongong University.

In May 1990, Investigation Officers met with workers from youth services organisations to explain the Ombudsman's role and to discuss problems that young people can face when dealing with the office. Notes taken by youth workers at the meeting were distributed to a number of services who deal with young people around the state.

Aboriginal Liaison Officer

The role of the Aboriginal Liaison Officer, Joyce Clague, within the office, is dealt with later in this report but a brief mention of the media work that she has undertaken deserves mention.

While travelling to country areas with the Ombudsman, Joyce participated in a number of interviews with country media, talking about the services the office could provide for the Aboriginal community and about the role of the office generally.

She was also interviewed for the Aboriginal programme on 2EA. That interview was taped and distributed to regional radio stations that carry Aboriginal programmes. Public broadcasting stations around the state also carried interviews with Joyce that had been taped by the Sydney public broadcaster, 2SER.

The mainstream media have also expressed interest in Joyce's role, particularly the Margaret Throsby Programme on 2BL and the "Australian" newspaper.

Information for the police

The Ombudsman has continued his campaign to educate members of

the Police Service about the role of his office and has addressed meetings of police regional commanders at Manly, Armidale, Rushcutters Bay, Dubbo and Dee Why. As well, each time he has visited a country area, the Ombudsman has tried to meet with the local police to outline the complaints he has received during his visit and to speak to them about the office generally.

"Police News", the Police Association Journal, has continued to run the series of articles by the Ombudsman which began in September last year. So far, as well as giving a broad view of the role of the Ombudsman, the articles have dealt with more specific issues, such as the rights and obligations that police have when attending Ombudsman's hearings. The Ombudsman feels that the articles are an effective method of communicating with the average police officer and he hopes that they will continue to be run in the journal.

Overseas visits

In September 1989 the Ombudsman attended the IACOLE Conference in Oakland, California. While in the United States, the Ombudsman took the opportunity to consult with experts on the issue of the use of deadly force. In Washington, the Ombudsman conferred with experts in the area of critical stress management, particularly in so far as it relates to police force activities.

In April 1990 the Ombudsman attended a conference on Freedom of Information in Ottawa, Canada. The Ombudsman participated in a Freedom of Information seminar following the conference, and afterwards examined the private prison system in the United States, making visits to private prisons in Texas and Florida.

LEGAL PROCEEDINGS AND THE OMBUDSMAN

Statements of provisional findings and recommendations challenged.

The Ombudsman's practice of issuing statements of provisional findings and recommendations was described in detail in the 1985 Annual

Report. The practice was challenged by the Premier in a letter to the Ombudsman on 24 May 1990. The Premier enclosed an opinion from the Solicitor General which indicated that the practice was unlawful. The Premier said in his letter:

In light of the advice, I would appreciate receiving your confirmation that you will discontinue the practice of making draft reports available to complainants and public authorities concerned.

The Ombudsman immediately wrote to the Premier in the following terms:

I note your request for confirmation that I will discontinue such a practice. The procedures followed by this Office in this regard have been adopted as a result of advice by Senior Counsel and have been described in detail in past Annual Reports of this Office. I have referred the Solicitor General's opinion to Senior Counsel for advice and, in these circumstances, I am not able to give the confirmation sought in your letter. When I have received advice I will write to you again.

Subsequent advice received by the Ombudsman from two Senior Counsel confirmed the legality of the Ombudsman's practice.

The Ombudsman believes, however, that it is inappropriate to discuss in any further detail the practice of issuing statements of provisional findings and recommendations, because of proceedings that have been commenced in the Supreme Court. These proceedings challenge a number of decisions made by the Deputy Ombudsman in the course of a reinvestigation by him and the Assistant Ombudsman of a complaint made on behalf of Mr L. H. Ainsworth and the Ainsworth Group of Companies. The plaintiffs, amongst other matters, have sought a declaration that:

The practice of the Defendants in publishing a Report as to Provisional Findings to a complainant and parties to an inquiry is not authorised by law.

The proceedings are listed for hearing on 22 and 23 November 1990 and Senior Counsel have been briefed to appear on behalf of the Deputy Ombudsman and the Assistant Ombudsman.

LEGAL CHANGES

Changes made

Important amendments were made to both the Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act during the year.

Following a Special Report to Parliament on 18 August 1989, the Ombudsman Act was amended by the Statute Law (Miscellaneous Provisions) Act (No 3) 1989 to permit the Ombudsman to delegate his powers under section 19(2) of the Ombudsman Act ("Royal Commission powers") to the Deputy Ombudsman and to an Assistant Ombudsman. In addition, the Ombudsman was empowered to delegate to an Assistant Ombudsman the power to make a report under section 26 of the Ombudsman Act.

The Miscellaneous Provisions legislation also deleted practically all reference in the Ombudsman Act to "wrong" conduct in relation to complaints relating to matters of administration. Such conduct is now described as conduct "of any of one or more of the ...kinds" referred to in section 26 and that section lists the types of conduct which previously fell under the heading of the general term "wrong". Curiously, section 26(1)(g) of the Act still refers to conduct which is "otherwise wrong".

The principal Act was also amended by the insertion of section 26A which empowers (but does not oblige) a minister responsible for a public authority to make *ex gratia* payments of compensation where these have been recommended by the Ombudsman and approved by the Treasurer. It also empowered local government authorities to authorise such payments.

Section 19(3) was also added to the Ombudsman Act; this enables the

Ombudsman to pay expenses to witnesses required to appear before him.

All of these amendments took effect from 19 January 1990.

The Police Regulation (Allegations of Misconduct) Act was amended by the Statute Law (Miscellaneous Provisions) Act 1990 which repealed Section 48(4) of the principal Act, enabling the Ombudsman to delegate the making of reports under Sections 27 and 28 of the Act to an Assistant Ombudsman.

Changes proposed

At the time of writing no further amendments to the Ombudsman Act have been introduced, although the Premier has foreshadowed amendments to constitute a Joint Parliamentary Committee to oversee the Office of the Ombudsman. In a Special Report to Parliament on 19 July 1990, the Ombudsman endorsed the Premier's proposal, but recommended much more fundamental changes to the Ombudsman Act to guarantee the independence of his office from the executive arm of government and to increase the accountability of the office to the Parliament.

"Wrong" Conduct

In his last Annual Report, the Ombudsman discussed at length proposals to remove the concept of "wrong" conduct from the Ombudsman Act. As the legislation was originally enacted, the Ombudsman was able to find the conduct of public authorities "wrong" where it was contrary to one or more of various criteria specified in the Ombudsman Act.

The Ombudsman noted that as early as January 1988, the Local Government and Shires Associations had argued that the Ombudsman Act was unfair insofar as Section 5(2)(b1) enabled the Ombudsman to find the conduct of a public authority "wrong" even though the public

authority may have acted in accordance with the law which bound it; on the basis that the law was unreasonable. The Associations proposed that, in such circumstances, the Ombudsman should, in effect, be able to make a finding that the conduct of the public authority was not wrong, but nevertheless be able to recommend a change in the law. The Ombudsman had no objections to such a limited amendment.

By some process unknown to the Ombudsman, the very limited proposal noted above was not proceeded with but, rather, a decision was made to repeal any reference in the Ombudsman Act to wrong conduct as a description of maladministration on the part of public authorities. This amendment was first revealed when the Ombudsman Amendment Bill 1988 was introduced into Parliament. For various reasons, that Bill did not proceed and the Ombudsman initially believed that the proposal had seen its day.

In his last Annual Report the Ombudsman noted:

One suspects that the directness and simplicity of the word "wrong" is particularly upsetting to some public authorities which frequently resort either to obfuscation or "bureaucratese" when dealing with members of the public.

The Ombudsman remains of this view and has had ample opportunity to deal with the issue in a practical context since the Statute Law (Miscellaneous Provisions) Act (No 3) 1989 effected the amendment earlier proposed in the Ombudsman Amendment Bill 1988 and which came into effect on 19 January 1990.

Section 5(2) Ombudsman Act which defined "wrong" Conduct was repealed and the heads of such conduct were transposed into Section 26(1) of the Act. Other references to "wrong" in various parts of the Act e.g. Section 13 were also repealed. Such conduct is now described as "conduct referred to in Section 26 "or conduct of one or more of the kinds referred to in Section 26"



The Ombudsman believes that the result is a double triumph for public authorities and bureaucrats. Not only do public authorities no longer have to bear the odium rightly associated with the concept of "wrong" conduct - complainants are at a loss. While the Ombudsman is still able to find conduct unreasonable, oppressive, or improperly discriminatory, the public finds the description of conduct, as "one or more of kinds referred to in Section 26" virtually meaningless.

If conduct of a public authority deserves censure by the Ombudsman, then most apt way of describing that conduct is the label "wrong".

The Ombudsman strongly believes that the notion of "wrong" conduct should be reintroduced into the Ombudsman Act as a matter of urgency.

INDEPENDENCE OF THE OMBUDSMAN CRUCIAL

An essential and fundamental aspect of an Ombudsman is that he be independent of executive government. This independence is often reflected in the statement that the Ombudsman is an officer of the Parliament and is ultimately responsible to the legislature.

The issue of the relationship of the Ombudsman to Parliament and the

need for his independence from the executive has been clearly described by the New Zealand Chief Ombudsman, John Robertson, CBE:

If the Ombudsman is seen as an extension of the parliamentary role of reviewing citizens' grievances and holding the government executive accountable for the equitable impact of its administration on the governed, then the assessment of the degree of independence needed by Ombudsmen to carry out the task, and their relationship with Parliament, comes more into focus.

Unfortunately, in New South Wales there is a considerable gap between the rhetoric of independence and the reality.

On 19 July 1990, the Ombudsman made one of the most detailed and comprehensive reports ever made to Parliament on the "Independence and Accountability of the Ombudsman;" the report recommended far-reaching reforms to ensure the independence of his office from government and its accountability to Parliament. The report had its genesis in a series of events instigated by the Premier, without any prior consultation with the Ombudsman.

On 24 May 1990, the Premier, the Hon N F Greiner, wrote to the Ombudsman about the Ombudsman's practice of issuing statements of provisional findings and recommendations (referred to by the Premier as 'draft reports'), to complainants and to public authorities the subject of investigation. The Premier provided the Ombudsman with an opinion by the Solicitor General advising that the practice was unlawful and he sought the Ombudsman's confirmation that the practice would be discontinued.

In his letter the Premier also said:

I am concerned that at the present time the Ombudsman's operations are not monitored externally. I appreciate that accountability should not be allowed to impede the independence of the Office and clearly it would not be appropriate for the Ombudsman to be made accountable to the executive. However, I am inclined towards the view that it may be appropriate to establish a parliamentary committee of the kind which currently operates in relation to the ICAC and the NCA to monitor the operations of

the Ombudsman. Of course, such a committee would not be involved in reviewing specific cases, but rather would look at general operational and policy matters.

In the course of a ministerial statement in the Legislative Assembly on 24 May 1990, the Premier said:

When the Independent Commission Against Corruption was established, accountability was raised as a major issue by members of this Parliament on both sides and by some independent members. The Independent Commission Against Corruption is accountable to a parliamentary committee and errors of law made by the Commission are reviewable by the courts. Other independent bodies, such as the National Crime Authority, are similarly accountable to parliamentary committees and to the ordinary courts of law. The reality with respect to the Ombudsman is that whenever any Premier receives a complaint about the Ombudsman - which certainly does happen from time to time - all that the Premier can do is write back to the person and say that the Ombudsman is not accountable to him and that the person will have to take the matter up with the Ombudsman. The procedure of the Ombudsman dealing with complaints against himself is obviously entirely unsatisfactory.

It would be clearly undesirable if the Ombudsman were accountable to me as Premier or to the executive government. After all, the Ombudsman's role is to deal with complaints about the action of the executive government, other than those of Ministers of the Crown. I therefore believe that the Parliament needs to consider the question of whether or not a parliamentary committee, similar to that which operates in relation to the ICAC, should be set up to review the operations of the Ombudsman. The Ombudsman would be accountable to Parliament through such a committee. The committee would be charged with the responsibility of examining the general conduct, procedures and operations of the Ombudsman, but not with specific cases.

In his letter of 24 May 1990 to the Premier, the Ombudsman said:

I have noted your comments concerning the accountability of the Office of the Ombudsman and have also considered the remarks you made in the House today. I agree that it would be anomalous indeed for the Office of the Ombudsman to be accountable to the executive. The Ombudsman has repeatedly made that point clear in annual reports and I have made specific recommendations

to government to strengthen the independence of the Office of the Ombudsman.

In this context, I welcome your proposal to establish a committee of the Parliament to oversight the general operations of the Office of the Ombudsman as a means of ensuring the continued accountability of this Office to the legislature.

In the course of his Special Report to Parliament, the Ombudsman said:

The concept of the Ombudsman's independence from the executive is no mere issue of academic principle; rather, such independence is a practical necessity for an organisation whose task is to investigate citizens' complaints about maladministration by public authorities. Ministers are ultimately responsible for public authorities and governments have a tendency to view even constructive criticism of authorities under their control as criticism of their political administration. This is particularly so in Australia with its history of secrecy in public administration which has only recently begun to crumble with the adoption of Ombudsman and Freedom of Information legislation.

Nevertheless, governments dislike and react against public discussion and debate of issues of public administration, such as often occurs where the Ombudsman decides to report to Parliament.

The Ombudsman is seriously concerned that, despite the Premier's remarks in Parliament that the Ombudsman should not be accountable to him, the Premier has directed that the Office of Public Management conduct a management review of the Office of the Ombudsman. The Office of Public Management, of course, is responsible to the Premier and reports directly to him, not to Parliament, and it is clearly inappropriate that it should carry out such a task.

For these reasons the Ombudsman welcomes the proposal to establish a Joint Parliamentary Committee to monitor the Office of the Ombudsman and believes that many existing and anomalous legislative provisions which run counter to the concept of the independence of his



office from executive government should be repealed.

In particular, the Ombudsman reiterates the recommendations for comprehensive reform that he made to Parliament on 19 July 1990, namely that:

- a Joint Parliamentary Committee be established to oversee the operations of his office;
- the constitution and powers of such a committee be in similar terms to the Joint Parliamentary Committee established under Part 7 of the Independent Commission Against Corruption Act;
- the committee be empowered to recommend to the Parliament the appointment of the Ombudsman, Deputy Ombudsman and Assistant Ombudsmen, and that such appointments be made by the Governor upon an address of both Houses of Parliament;
- the committee be empowered to recommend to the Parliament the appropriation of funds from Consolidated Revenue for the Office of the Ombudsman;
- the Ombudsman report directly to the Speaker of the Legislative Assembly and the President of the Legislative Council and not

(as at present) to the Premier;

- . the Office of the Ombudsman be established as an independent statutory corporation, not subject to the Public Sector Management Act;
- . various machinery provisions in the Ombudsman Act, which require the Premier's approval of the appointment of Special Officers of the Ombudsman, the delegation of certain powers and the engaging of expert assistance by the Ombudsman in investigations, be repealed.

It is the Ombudsman's firm belief that it is only the passage of these reforms which will free his office from the potential for control by the executive government and make it properly accountable to the Parliament.

The reforms are long overdue and urgent if the Ombudsman is to continue to carry out his functions properly and in an independent fashion.

RELOCATION OF THE OFFICE

On 9 October 1989, the Office of the Ombudsman commenced operations in new premises at 580 George Street, Sydney. The office occupies all of level 3 and part of level 5 in the Coopers and Lybrand building. As reported last year, the relocation was significantly delayed due to industrial disputes on the building site and inability of the building contractor to complete the fitout on schedule. The time for fitout, originally estimated to be eight weeks, actually took in excess of thirteen weeks.

The Ombudsman is presently considering whether or not he should, in light of this office's experiences, present evidence to the Royal Commission into the Building Industry.

The relocation occurred over a weekend and there was minimal disruption to staff and the work of the office. The new premises are a great improvement on the previous accommodation, especially now that the office has space specially designated for a Library, Training Room and Conference Room.

The new office was officially opened by the Chief Justice of New South Wales, The Hon Mr Justice A M Gleeson on 31 October 1989.

GENERAL AREA

Complaints about departments and authorities (other than Department of Corrective Services)

Complaints received

During the year 1020 complaints were received about departments and authorities. In addition, 291 complaints already under enquiry or investigation were carried forward from 1989-90, to create a total of 1311 active cases.

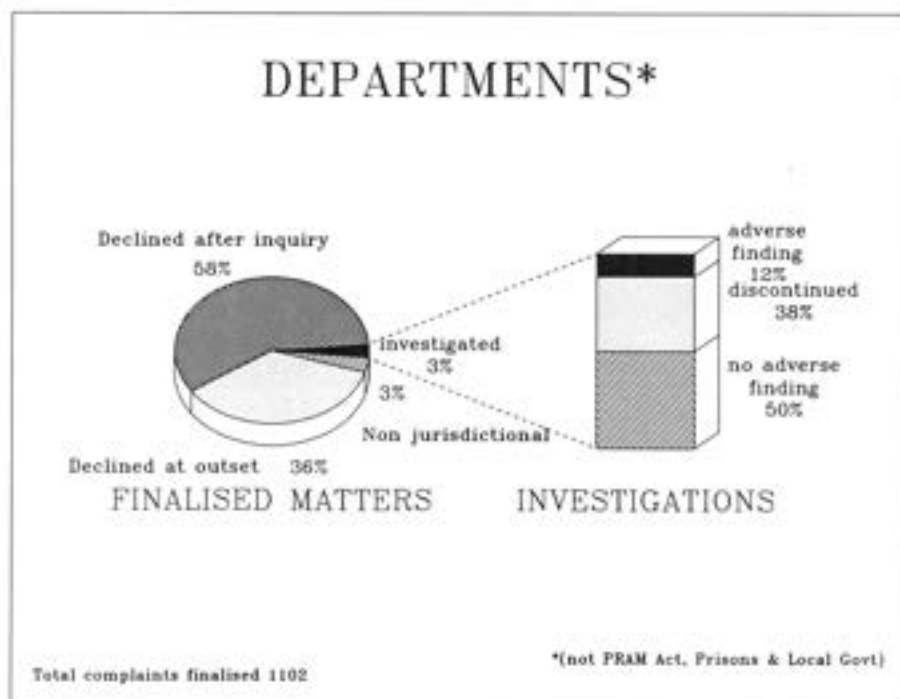
Finalised complaints

A total of 1102 matters were finalised during the year, leaving 209 cases under enquiry or investigation.

The following table gives the category of outcome for cases finalised during year:

<u>Outcome</u>	<u>Number</u>	<u>% of total</u>
No jurisdiction	36	3%
Declined without any enquiry	393	35%

Declined after preliminary enquiry	460	42%
Resolved after preliminary enquiry	139	13%
No prima facie evidence of conduct described in Section 26	40	4%
Discontinued	13	1.2%
No adverse finding	4	0.3%
Adverse finding	<u>17</u>	<u>1.5%</u>
	1102	100%



Reports to Ministers and to ParliamentReports to Ministers

During the year the following reports of conduct in terms of 26(1) of the Ombudsman Act or Section 28 of the Police Regulation (Allegations of Misconduct) Act, have been made to ministers:

Ombudsman Act

Departments and authorities	21*
Local councils	34**
Total	55

* of which 10 were in respect of related complaints

** of which 22 were in respect of related complaints

Police Regulation (Allegations of Misconduct) Act

Without reinvestigation	68
Following reinvestigation	10
Total	78

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.

As at 30 June 1990 there were 20 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	3
Local councils	1
Total	4

Police Regulation (Allegations of Misconduct) Act

Without reinvestigation	15
Following reinvestigation	1
Total	16

The Ombudsman is also able to report to the Minister for Police pursuant to Section 33 of the Police Regulation (Allegations of Misconduct) Act, concerning cases involving serious misconduct by police officers. In 1989-1990 two such reports were made.

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 31 of the Ombudsman Act were presented to Parliament. One report was made under both sections 27 and 31 of the Ombudsman Act.

One report was made under section 32 of the Police Regulation (Allegations of Misconduct) Act and one report on police issues was made under section 31 of the Ombudsman Act and section 32 of the Police Regulations (Allegations of Misconduct) Act.

Special reports under section 31 of the Ombudsman Act

- . The operation of the Freedom of Information Act 1989 and the functions of the Ombudsman
- . Particular practices of Baulkham Hills Shire Council when seeking donations from certain developers for community projects.

Non compliance and special report under section 27 and section 31 of the Ombudsman Act

- . The report dealt with the failure of Ryde Municipal Council to implement the Ombudsman's recommendations that:

- (1) it adopt a policy of notifying owners of adjoining properties of building applications; and
- (2) it adopt rigorous inspection procedures for works in progress to assess compliance with conditions attached to council approvals.

In terms of section 31, the report dealt with amendments recommended to the Local Government Act to require councils to notify owners of adjoining properties of building applications and to consider the objections of properly interested persons before determining building applications.

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

Failure to obtain evidence adequate for the successful prosecution of a Police Officer charged with assault occasioning actual bodily harm.

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

Failure of the Commissioner of Police to take satisfactory action in relation to previous recommendations of the Ombudsman concerning a review of the Special Weapons and Operations Squad procedures and instructions.

Complaints by ministers

It is often said that the Ombudsman is an officer of parliament and that his activities should be seen as an extension of the traditional work of parliamentarians in taking up citizen's grievances against the bureaucracy. This concept is given practical expression by S.12(2) Ombudsman Act and S.6(2) Police Regulation (Allegations of Misconduct) Act, both of which provide that a complaint may be made on behalf of a person by a member of parliament, with that person's

consent. Such complaints are fairly commonplace, as many members of parliament see the Ombudsman's Office as a means of addressing defects in public administration.

In the past year, however, the office has received three complaints under the Ombudsman Act made by ministers or by the relevant permanent head at the direction of the minister. A minister, of course, is in a different position from a backbench member of parliament, being responsible for the administration of those public authorities within his portfolio. Further, the Ombudsman Act contains provisions requiring the Ombudsman, upon request by the relevant minister, to consult with the minister during an investigation and before making a final report under S.26(1). This provision provides a minister with an opportunity to look at his or her department free of the 'Yes Minister' syndrome.

When a minister makes a complaint about the department for which he or she is responsible and invites an investigation by this office, the Ombudsman would expect the complete co-operation of the relevant department. If the department was in any way recalcitrant the Ombudsman would refer the matter to the minister immediately.

The fact that a minister has invited investigation of a department makes it difficult for the Ombudsman to refuse such an invitation, particularly where the issue is a serious one. Such complaints have the potential to drain scarce investigative resources away from other complaints which might otherwise be investigated. The most obvious instance of this concerns a complaint made by the Minister for Corrective Services, the Hon M R Yabsley. This complaint relates to recent well publicised allegations by Dr Tony Vinson, a former head of the then Corrective Services Commission, that there had been a resurgence of violence by prison officers against prisoners in certain gaols. The matter was of such seriousness to warrant immediate investigation. The investigation is proceeding and has required virtually the full time commitment of an Assistant Ombudsman and two investigation officers. The current estimate of the cost of the investigation is \$65,000 which by many standards is not a large amount; but in the context of the funds to this office the amount is substantial. The Ombudsman has asked the

Treasury for supplementation of \$65,000 but to date no reply has been received.

Independent Commission Against Corruption

The relationship between the Office of the Ombudsman and the Independent Commission Against Corruption was set out in some detail in the 1988-89 Annual Report (pp. 54-8).

The Ombudsman's principal obligation under the Independent Commission Against Corruption Act (the Act) is to report to the commission any matter which he "suspects on reasonable grounds concerns or may concern corrupt conduct". Given the Ombudsman's unique position as a complaint-handling authority, under both the Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act, this provision is most important in channelling serious complaints to the commission. An initial 156 matters were reported to the commission by this office from 13 March 1989 (when the Act commenced) until 30 June 1989. Last year, 622 complaints were referred to the commission.

At an early stage the Ombudsman and the Commissioner, Mr Temby, QC, agreed that the most practical method of reporting was to prepare monthly schedules of matters relating to corrupt conduct for report to the commission. In urgent or extreme cases, reports are made immediately.

The Act allows the Commissioner to issue guidelines as to what matters need or need not be reported. The Ombudsman has urged the commission to establish such guidelines in order to ensure greater certainty and to prevent the need to report many minor complaints. Accordingly, the Ombudsman welcomed Mr Temby's decision, on 19 July 1990, to publish draft guidelines. These were referred to the Ombudsman for comment.

The Ombudsman has sent his comments on the guidelines to the Commissioner. Because the guidelines are still only in draft form,

however, the Ombudsman does not propose to disclose his comments at this stage. In general terms, however, the Ombudsman believes that the guidelines represent a sensible and reasonable attempt to deal with a proliferation of complaints, particularly those relating to alleged conduct which appears to have occurred at too remote a time to justify the use of scarce investigative resources.

Senior officers of the Ombudsman and the commission continued regular monthly meetings which commenced last year. The meetings are useful in examining complaints which, with increasing frequency, are sent by citizens to both agencies, and in reaching decisions about the most appropriate agency to deal with each complaint.

Details of the matters referred to the commission during the year are shown below:

**Complaints referred to the Independent Commission
Against Corruption**

- 1 July 1989 to 30 June 1990

Departments and Authorities (other than Corrective Services)	2
Local Councils	3
Department of Corrective Services	0
Non jurisdictional	1
Police	<u>616</u>
TOTAL	622

Telecommunication Interception Inspection Unit

The functions of the Ombudsman under the Telecommunications (Interception) (New South Wales) Act were detailed in the 1987-88

Annual Report. That Act commenced on 20 January 1989 and shortly after the New South Wales Police Force and the State Drug Crime Commission were declared to be eligible authorities under section 35 of the Commonwealth Telecommunications (Interception) Act. Since that time, amendments to the New South Wales legislation enabled the Independent Commission Against Corruption to be declared an eligible authority, effective from 16 February 1990. At the time of reporting, however, it had not commenced intercepting telecommunications.

The Ombudsman's Telecommunications Interception Unit has operated since shortly after the enactment of the New South Wales legislation. This high security unit is not open to the public and is located on a separate floor from the main office. Four people comprise the staff of the unit: a Senior Investigation Officer, an Investigation Officer, an Assistant Investigation Officer, and an Investigative Assistant.

As required by the New South Wales legislation, inspections have been made of the records of the New South Wales Police Force and the State Drug Crime Commission. Results of those inspections must be reported to the New South Wales Attorney General as soon as practicable after 30 June each year, and in any case, within three months of that date. Reports have been prepared, and those reports have been delivered to the New South Wales Attorney General.

On 9,10 and 11 April 1990 this office hosted a conference attended by representatives of the other inspecting authorities in Australia to discuss experience to date and to formulate suggestions for amendments to the Commonwealth Telecommunications (Interception) Act. These suggestions were put to Mr Jim Dick of the Commonwealth Attorney General's Department, who attended the conference on Wednesday 11 April. Officers who have responsibility for compliance with the legislation within NSW eligible authorities also contributed to the discussion.

There was some restriction on free discussion between the delegates because there is no provision in either the Commonwealth or State legislation for the exchange of information.

The Ombudsman and the Aboriginal community

For some time the Ombudsman was concerned that few complaints were coming to the office from the Aboriginal community. He believed the only way to break down the barriers between the Aboriginal community and his office was to employ a Aboriginal officer to deal with Aboriginal complaints.

In August 1989 the Ombudsman employed Joyce Clague as Aboriginal Investigation officer; a position designated for an Aboriginal person. Ms Clague has a long active involvement in Aboriginal affairs.

One of her earliest projects in the office was to commence an awareness campaign for Aboriginal communities around the state to inform them about the role of the Ombudsman and how the office may be able to help them.

Ms Clague travelled, with the Ombudsman, to the north coast of NSW, visiting communities, speaking at local meetings and taking complaints. This opened up an area of communication that had previously been closed to the office. The areas of complaint focused on relationships with the police, and the provision of basic services, such as housing and local government services, to communities.

The direct intervention of this office and the skills of the Aboriginal investigation officer led, earlier this year, to the appointment of two Aboriginal liaison officers to the Griffith district. In January this year, during hearings in the Riverina area, Ms Clague, along with the Ombudsman, arranged a series of meeting with the Aboriginal community. During the meetings it became obvious that a disturbing level of tension existed between police and Aborigines in the area.

On returning to Sydney the Ombudsman contacted the Commissioner of Police to voice his concerns and after some negotiation the Police Service created two Aboriginal Liaison officer positions in the Griffith area. The Ombudsman doubts that the degree of frankness shown by the Aboriginal communities in these meetings would have been there

without the presence of the Aboriginal investigation officer.

During her visits to prisons and juvenile institutions, Ms Clague has elected an outpouring of complaints from Aboriginal inmates that were never voiced before.

Freedom of Information : The first year

Ombudsman's dual role

The New South Wales Freedom of Information (FOI) Act came into force on 1 July 1989. The Ombudsman has dual functions under the Act. On the one hand, he must consider requests for access to information that is held by this office; on the other hand, he has a function of "external review".

The most significant and time consuming of the two roles is that of external review. Persons who are dissatisfied with the way their requests for information have been dealt with by other government agencies can seek an internal review of the matter by the relevant agency. If they remain dissatisfied after an internal review, they can request an external review by the Ombudsman. Such requests become, in effect, complaints under the Ombudsman Act and are dealt with under that Act in the same way as other complaints made about the administrative conduct of public authorities.

The Ombudsman is also obliged to receive and consider applications for information that is held by his office. However, in October 1989 the Ombudsman's Office was bought under section 11(1)(e) of the FOI Act by gazettal of a regulation. The effect of this meant that the Ombudsman was no longer able to consider applications for documents held by this office which were created by another agency; such documents are deemed to be held by the agency which created them. Applications for access to such documents must be considered by the agency that created them and not by the Ombudsman. Documents which the Ombudsman himself creates, however, remain open to

application under the FOI Act.

Report to Parliament

The likelihood of conflict arising between the Ombudsman's roles under the FOI Act and the Ombudsman's Act was foreshadowed in the 1988-89 Annual Report.

In this respect, the ombudsman made a special report was tabled in parliament on 23 May 1990 and highlighted some of the operational problems that have arisen between his functions under the FOI Act, and his investigative functions under the Ombudsman Act and the Police Regulation (Allegations of Misconduct) Act.

The Ombudsman's report to Parliament, amongst other things, strongly recommended that the FOI Act be amended so that the Ombudsman's "complaint handling and investigative functions" be made exempt from the provisions of the FOI Act. Despite an initially encouraging response to this recommendation from the Premier, the government has yet to act on it.

Staffing Review

In 1989, prior to the commencement of the FOI Act, the Treasury approved funding to employ two Investigation Officers, an Assistant Investigation Officer and a General Scale typist, in order to establish a Unit to carry out the Ombudsman's new functions under the FOI Act. The approval was conditional on the positions being reviewed after twelve months.

On 14 May 1990 the Ombudsman made a report to the Treasury and recommended that the four positions be maintained permanently. The Ombudsman was advised on 27 June 1990 that approval had been given to retain these positions on "a temporary basis" only.

The uncertainty of continued funding for the Ombudsman's FOI Unit has hampered the ability of the office to maintain and recruit staff. Unless this issue can be satisfactorily resolved in the coming year, the Ombudsman may have to consider declining most external review complaints and, instead, refer those seeking such review to the District Court, which also has the power of external review.

FOI Statistics

During the year the Ombudsman received ten FOI applications for documents held by this office. There were thirteen "informal" requests for information, twelve written inquiries and more than three hundred telephone inquiries (relating to both FOI applications and FOI complaints).

Fifty four formal FOI complaints were received during the year. Of these, twenty nine cases were finalised; the remainder were still under inquiry or investigation as at 30 June 1990.

The following table shows the outcome of finalised complaints by category:

<u>OUTCOME</u>	<u>NUMBER</u>
No jurisdiction	9
Declined without any inquiry	2
Declined after preliminary inquiry	11
Resolved after preliminary inquiry	6
Investigation discontinued	<u>1</u>
	29

Although time consuming to deal with, the number of FOI applications received has not been significant. This is in part due to the restrictions imposed on applications to this office because of its inclusion under the provisions of section 11(1)(e) of the act. Applications tend to be either requests for information held about the applicant or requests for more sensitive information relating to on-going investigations.

There has been a gradual increase in the number of complaints received by the Ombudsman's Office as applications filter through the process of determination and internal review by agencies. This increase is consistent with the early experiences of the Victorian and Commonwealth FOI units. This office expects that the number of FOI complaints that it receives will substantially increase over the next few years, particularly as public awareness of FOI develops.

The many telephone inquiries received point to the public's perception that the Ombudsman's Office is an agency from which information about government can be obtained. The FOI Unit has performed an educative role in providing information and advice on FOI issues and in dealing with FOI complaints.

Complaint Handling

Predictably, most FOI complaints are about refusal of access to documents. However, there have also been complaints about delays, missing documents, the level of fees charged, the form of access provided, and refusals to amend personal records.

Where possible, the FOI Unit attempts to resolve matters informally. Inevitably, however, some matters have progressed to formal investigation.

Assessment of an FOI complaint usually begins with inspection of the notices of determination issued by the relevant agency. To date, very few notices that have been examined by the FOI Unit have satisfied all of the requirements stipulated in the FOI Act. Most importantly, many agencies are not providing to the applicant the facts on which their decisions to deny access to documents were based; instead they have merely quoted or paraphrased the exemption clauses set out in the Act, or have relied upon unsupported assertions to justify their decisions. When an agency denies access to a document, or to part of a document, it is the explanation of the decision-making process which led to the refusal of access which should be the most crucial component of the

determination notice.

Local government authorities, too, are subject to the FOI Act; but only in relation to applications which relate to the applicants personal affairs. Because the term "personal affairs" is not defined in the FOI Act, much confusion has resulted. Some councils who have open policies towards the provision of information have adopted a broad interpretation of the term; others have adopted a very restrictive interpretation. This disparity between the approaches being adopted by councils towards freedom of information will continue to give rise to an increasing number of complaints. The problem might well be overcome if local authority's were made subject to the FOI Act in all respects.

Matthew Moore and the Premiers Department

Following the introduction of the Freedom of Information Bill on 2 June 1988, the Premier addressed a seminar on Freedom of Information and made the following statement:

The Government sees the Bill as one of vital importance because it will enshrine and protect the three basic principles of democratic government, namely, openness, accountability and responsibility.

It is anticipated that evidentiary certificates will only be issued in unusual circumstances where the seriousness of the circumstances warrants it. The Bill has been drafted on the basis that there are areas of Government where, on occasions, the highest public interest could be put at risk if information were released. It is proposed that a certificate will only be issued as a "last resort".

As an added safeguard, the New South Wales Bill allows only one minister, namely me, to issue certificates. Accordingly, it will be necessary for me to consider each request for a conclusive certificate and weigh up the government's commitment to open government with the possibility that effective government or critical law enforcement operations may be compromised.

The document which prompted the Premier to issue the first Ministerial Certificate under the FOI Act was a document entitled "Review of Ministerial Conduct" dated 31 March 1989.

Mr Matthew Moore, State Political Correspondent for the Sydney Morning Herald, lodged an FOI complaint with the Ombudsman after being refused access to a document he requested from the Premier's Department concerning any pecuniary interests of National Party MP's in relation to northern NSW coastal development. The report was later identified as being the document mentioned above. The Premier's Department refused Mr Moore access to the document on the basis that it was prepared for submission to Cabinet.

A document which has been prepared for submission for Cabinet can be deemed to be an exempt document by virtue of schedule 1, clause 1 of the FOI Act. However, even where a document meets the requirements of an exemption clause, the FOI Act confers a discretion to release such documents.

The objects of the Act require that the discretions conferred by the Act shall be exercised, as far as possible, so as to facilitate the disclosure of information.

In considering whether access is to be given to a document, the decision-maker needs to assess whether it is possible to provide access to parts of a document which don't contain exempt matter. Clause 1, schedule 1, states that a document is not an exempt document if it merely consists of factual or statistical material that does not disclose information concerning any deliberation or decision of Cabinet. In light of this provision, it would be expected that any information in the report of a factual or statistical nature would not be considered exempt.

In his letter to the Ombudsman, Mr Moore claimed that the Premier had announced an inquiry into the pecuniary interests of National Party MP's in January 1989. Mr Moore said that on at least two occasions after the report was completed in March 1989, Mr Greiner stated that he was planning to make the report public. Mr Moore claimed that at no time had the Premier ever suggested that the report would go to Cabinet, that it contained Cabinet discussions or that it would not be made public.

After making preliminary inquiries regarding this matter, the Ombudsman issued a notice of investigation requiring the Director-General of the Premier's Department to produce a statement of information and specific documents to the Ombudsman. In his response the Director-General advised the Ombudsman that the Premier had issued a ministerial certificate under section 59 (1) of the FOI Act in respect of the document sought by Mr Moore.

A ministerial certificate is taken to be conclusive evidence that the document is exempt, subject only to review by the District Court.

A certificate under section 22 of the Ombudsman Act was issued in respect of the requirement upon the Director-General to provide the Ombudsman with the reasons for refusing access to the document and to provide the facts underlying the reasons for that decision. The Director-General stated that this information related to the confidential proceedings of Cabinet. This was only the second occasion on which a certificate under section 22 of the Ombudsman Act had ever been issued.

The effect of these certificates was to significantly restrict the Ombudsman's investigation of the complaint. The investigation was discontinued; it was considered that the matter could be more appropriately handled by the District Court.

Department of Education

In the first few months that the FOI Act has been in force, this office experienced a situation where there was multiple involvement with one applicant/complainant. This experience highlighted the potential and actual conflict between the Ombudsman's roles as an agency subject to the FOI Act and as an avenue for external review of FOI determinations made by other agencies.

In late August 1989 Mr A, on behalf of the Public Education Association, lodge a FOI application for access to all complaint files held by the Ombudsman concerning school closures. In the course of

the Ombudsman's inquiries into those complaints, a number of documents had been obtained from the Department of Education.

Mr A had already made a FOI application to the Education Department for access to its documents relating to school closures. Dissatisfied with the initial determination of his application, Mr A applied to the Education Department for an internal review. That determination was made whilst the Office of the Ombudsman was processing Mr A's FOI application.

As an agency subject to the FOI act, this office assessed Mr A's FOI application, giving consideration to the release of documents, including those created by the Education Department but held by this office. Despite the department having deemed a number of those documents to be "exempt", this office was obliged to make its own determination about access to the documents.

The Director-General of the Education Department wrote to the Acting Ombudsman on 18 and 19 October 1989 requesting that this office deny Mr A access to documents supplied by the Education Department. Just prior to the Acting Ombudsman making his determination, the Executive Council gazetted the Office of the Ombudsman as an agency under Section 11(1)(e) of the FOI Act on 27 October 1989. The gazettal of the regulation had the effect of deeming documents held by the Ombudsman, but created by another agency, to be held by that agency.

On 25 October 1989, the Director-General of the Cabinet office had informed the Ombudsman of the proposal to prescribe the Office of the Ombudsman pursuant to Section 11(1)(e) of the FOI Act. That proposal was based on a recommendation which had previously been made by the Ombudsman in a submission to the Premier's Department in September 1988 about the then FOI Bill. The proposal was at that time rejected by the Premier's Department.

The timing of the decision to prescribe the Office of the Ombudsman under Section 11(1)(e) was, therefore, interesting. It was taken without

any consultation with the Ombudsman and at a time when the government feared the release of documents which might embarrass the department and the Minister. Mr A's application was determined within the constraints of Section 11(1)(e) and access was provided to all documents relating to his request, other than those created by the Department of Education.

Mr A then lodged a FOI application for access to all documents relating to the processing of his previous FOI application by this office. At the same time he sought an external review by the Ombudsman of the Department of Education determinations of his FOI applications.

The Ombudsman was placed in an invidious position; having already considered the documents in his possession with a view to making a determination, he was now asked to review the Education Department's determination in regard to similar documents. This situation was further compounded by the FOI application for the previous FOI file, as documents on that file contained further analysis of the documents requested, but refused by the department.

The conflict between the Ombudsman's roles in regard to the FOI Act led to a situation where, had the Ombudsman investigated Mr A's FOI complaint, this office would have been open to an allegation that it had substantially predetermined a matter, prior to commencing an investigation. In this instance Mr A withdrew his FOI complaint and lodged an appeal to the District Court. However, this course of action may not always be available to complainants who do not have adequate financial resources to take such action.

The gazettal of this office under Section 11(1)(e) of the FOI Act has gone some way towards resolving the conflicts which occurred in dealing with Mr A's applications and complaint. However that change does not address the fact that FOI applications can still be made for the Ombudsman's own documents which have been generated during the course of his inquiries and bear directly on documents created by other agencies.

Child Abuse issues

The 1988-89 Annual Report outlined a number of issues that had arisen in the area of child abuse. This year, problems have again been raised in a number of cases in this area. One case investigated during the year raised several problems.

The complainant alleged that evidence relating to the possible sexual abuse of her four year old child may have been lost, because of a failure by officer's of the Department of Family and Community Services to make prompt arrangements for the child to be medically examined.

This particular case, in fact, raised a number of specific issues:

Delay

It was Friday afternoon. The complainant picked up her four year old daughter from the baby-sitter. On the way home, her daughter told her that the fifteen year old son of the baby-sitter had done certain things to her. Based on what her daughter told her, the mother suspected that her daughter might have been sexually abused. The account suggested that there may have been digital penetration of the vagina and/or anus. That same day, after consultation with her husband, the complainant notified the department.

It was not until four days afterwards that the child was finally medically examined. No clear evidence of sexual abuse was found. Subsequently, the police interviewed the boy concerned; he denied that he had been involved in any improper conduct towards the child. Given the boy's denial, together with the lack of corroborative medical evidence, the police did not take the matter further.

In the department's initial response to enquiries made by this office, it suggested that, on the Friday night, when the notification was made, the complainant had shown a reluctance to the suggestion that an early medical examination be arranged. This was denied by the complainant. The Deputy Ombudsman, in a draft report which he has sent to the

Minister, has said that, if the couple had been told that there was a need for a medical examination, either on the Friday night or sometime later, they would have been prepared to immediately consent to it.

In a still later submission to this office, however, the department presented a somewhat different argument. This time, it put the view that it was the complainant's desire for a medical examination, (rather than the department's belief that, apart from the mother's fears, a medical examination was necessary), that had led the department to decide to arrange an examination. Indeed, in that submission, the Director-General said:

It is most unlikely that a medical examination would have provided forensic evidence.

Given the view expressed by the Director-General, this office sought expert advice from Dr. Suzette Booth, Staff Paediatrician, Child Protection Unit, at the Childrens Hospital.

After being provided with relevant information, she was asked:

- . whether, if the child had been sexually assaulted, a prompt medical examination may have provided evidence, corroborative of the child's disclosure; and
- . whether, from an evidentiary perspective, it was important for the medical examination in this case to have been arranged as early as practicable.

In response to the first question, Dr Booth said:

In view of the child's complaints of discomfort on urination, there may have been physical signs of her sexual abuse which would have been detected on examination at the time of her disclosure. However, it should be made clear that even in the absence of any medical evidence i.e. an examination performed immediately after an abuse, that no physical signs may be found and yet the child's allegation would be true.

In relation to the second question, she expressed the view that, from an

evidentiary perspective, a medical examination should have been arranged "as early as practical."

Having regard to all of the evidence available to him, the Deputy Ombudsman in his Draft Report has concluded that there was an unreasonable delay before arrangements were made by the department for the child to be medically examined.

The rating system

When a child abuse notification is received at a departmental District Centre, it is assigned an "urgency rating" by the District Manager. The rating to be applied in each particular case is determined according to departmental policy. But, when examining evidence in connection with the complainant's allegations, the Deputy Ombudsman found a serious deficiency in the department's rating policy. For this reason, the conduct of the department in this regard was also investigated.

The investigation revealed that, in a significant number of cases, the policy required a quicker response to a child abuse notification if the notification was received on a weekday, rather than on a weekend.

During the course of the investigation, the department amended its policy to overcome this problem. Therefore, no recommendations have been made by this office concerning this issue. Nevertheless, in his draft report the Deputy Ombudsman has found that the department's conduct in relation to its former policy was unreasonable.

A co-ordinated response

The complainant alleged that, until she insisted on a prompt response from the Police Department, it was clear that police were going to take an inordinate amount of time to investigate the matter. However, because the complainant's major concerns were directed against the Department of Family and Community Services, this office decided not to specifically pursue her allegation about police inaction.

But when the relevant papers were referred to Dr Booth for advice, she chose to raise some very serious issues about delays in cases of suspected criminal abuse of children. She said:

In addition the comments [made by the complainant] about the delay in the police proceedings is not restricted to [this locality] ... We have had difficulties also with investigation of cases in all of the Child Mistreatment Units due to their severe lack of staff. It is not that those officers involved are being obstructive or reluctant to take on the cases but the sheer workload has become such that there is often a quite serious delay before offenders are questioned. As this family has described, this produces great stress on the family as they are usually advised not to continue contact with the offender and their family who may well be personal friends or, as in this situation, child minders.

In light of the serious concerns raised by Dr Booth, the Deputy Ombudsman in his Draft Report said:

It is clear that the delays have the capacity to not only seriously affect possible criminal proceedings, but also to affect the "well being" of the relevant children and their parents. Moreover, an unjustified delay is unfair to the accused. Consequently, I believe that F.A.C.S should seek to obtain from the Police Department an agreement which provides that, in all cases involving both departments, as soon as possible after both departments are made aware of an abuse notification, a case plan be jointly developed dealing with, among other things:

- 1 the maximum period before any medical examination will be arranged, if such action is considered appropriate;
- 2 the maximum period before the alleged perpetrator will be interviewed; and
- 3 the maximum period before any other relevant evidence will be obtained.

The Minister is currently considering the Deputy Ombudsman's draft report and this office is awaiting advice about whether the Minister wishes to consult before the report is finalised.

Juvenile justice and the Ombudsman

During the year public interest and concern has focussed on the juvenile justice system in New South Wales. Detention centres for juvenile offenders have come under increasing strain. Much media attention has been devoted to spectacular escapes from custody and suicides of juvenile offenders. Some magistrates from the Children's Court have publicly voiced their concern about the facilities, or lack of them, in juvenile detention centres and about the lack of alternatives to custodial sentences when the court has to deal with offenders. The year has seen juveniles placed or transferred into the custody of the Department of Corrective Services on a scale never previously witnessed nor contemplated.

The Standing Committee on Social Issues of the New South Wales Parliament is holding an inquiry into the juvenile justice system. The inquiry's terms of reference include the implications of -

- (a) pre-sentencing and court diversion schemes;
- (b) selection and training of staff in relevant youth services; and
- (c) community-based options for the management and care of young offenders.

The Ombudsman's Office has a responsibility in the area of juvenile justice. It conducts investigations into complaints received about the administration by the Department of Family and Community Services, of detention centres and about other relevant issues involved in this particular area of public administration. However, there are significant limitations on the Ombudsman's ability to effectively discharge his role.

The principle method of maintaining the Ombudsman's profile in juvenile institutions, and of making available to young offenders the services he provided, has been by making regular visits to them. This allows officers of the Ombudsman to inspect facilities first hand, and provides opportunities for residents to raise complaints in an informal

manner. It also facilitates discussion of general issues with local Superintendents and develops the context within which complaints can be assessed. In each of the three previous years, the office made eleven or twelve visits to juvenile institutions. During the year 1989/90, only five visits were made. Because of the expense involved in making visits and other resource problems, country institutions received little attention from this office.

A report of a study by the Youth Justice Coalition funded by the Law Foundation of New South Wales entitled "KIDS IN JUSTICE - a blueprint for the 90s", which was published during the year, among other things, concluded:

Substantial improvements need to be made to review and complaints mechanisms to ensure that the decision of officials in the juvenile justice system are accountable to clients, government and the public.

The report goes on to make a series of recommendations; these include consideration of a system of notification by the department to the Ombudsman of complaints made against departmental staff; establishment of a departmental complaints unit; and a range of measures to make the Ombudsman's office more accessible and effective to young people who wish to complain about their treatment in the juvenile justice system. The reports suggests specific strategies to achieve more effective complaint detection and handling by the Ombudsman's office. These include the establishment of a Children's Ombudsman or Deputy Ombudsman (Children); the creation within the office of a position of Youth Liaison Officer; and the establishment of a separate unit within the office to deal with complaints by children and young people.

To implement any of these strategies would be quite beyond the current budget resources of this office. The Ombudsman agrees that the recommendations, if implemented, would improve accountability in the juvenile justice area. The need for effective systems of accountability is obvious and appears to be becoming more urgent. The present level of resources available to the office, however, does not enable the

Ombudsman to say that his office is in a position to provide services that will ensure that such accountability is or will be provided.

Official Visitors for juvenile detention centres

The *Sydney Morning Herald* of 19 December 1989 reported that the then Minister for Family and Community Services, the Hon Virginia Chadwick, had appointed a team of "independent" visitors to "ensure that New South Wales juvenile detention centres are operating effectively and humanely". The report went on to say:

Mrs Chadwick said yesterday the visitor scheme, which is similar to a program operating in NSW adult gaols, would enhance the protection and advocacy rights of young offenders.

She said the visitors would have the power to scrutinise standards and conditions at all detention centres, and to deal with complaints from inmates and staff.

The visitors would report directly to her, bypassing the department, she said.

"The team of visitors will regularly attend my department's ten detention centre, examine general conditions and standards of care, and will have the power to deal with grievances and concerns of both residents and staff," she said.

This office understands that the scheme will be similar to the Official Visitor Scheme operated by the Department of Corrective Services. As has been noted elsewhere in this report, that scheme is currently experiencing difficulties. Whilst this office supports the introduction of the scheme for juvenile detention centres as a palliative measure in terms of allowing detainees to express their grievances at the earliest opportunity, it hopes that the problems now facing the prison Official Visitor Scheme will be avoided.

Most of the Visitors were appointed in January 1990. They are empowered by the Community Welfare Act to enter and inspect the juvenile detention facility for which they have responsibility at any time; to confer privately with residents, employees or detainees of that facility; and to furnish advice and reports to the Minister on any matters

relating to the conduct of the facility.

Unlike the statutory powers conferred on Official Visitors to prisons, the Community Welfare Act does not appear to provide, in specific terms, for Visitors to deal with complaints that residents or detainees may make. But the Visitors, in fact, do mediate complaints, as part of their right to confer privately with juvenile detainees; and the ability to take complaints is strongly implied, as part of that right. Complaints that they receive are the subject of mediation during discussions between Visitors and the superintendents of the detention facilities.

It is only a few months since the Visitor scheme commenced, and it is too early for this office to determine how effectively the scheme has been functioning. From discussions between the Visitors that have been appointed and Ombudsman officers, this office is led to believe that the scheme has been well received by departmental staff and that no serious difficulties have been met by Visitors in attempting to conciliate complaints that residents or detainees have made.

One constant theme announced by the Visitors is that they value their ability to be able to express directly to the minister any concerns that they might have, without having to submit reports to the department. Hopefully, this direct access can be maintained in order that the scheme can remain beneficial from the view point of both the Visitors and the detainees.

The Ombudsman intends that this office will initiate and maintain contact with the Visitors in order to assess the usefulness and effectiveness of the scheme. One obvious benefit of the scheme is that the Visitors should come to have a detailed knowledge of the operations of the facility for which they are responsible, which, by dint of lack of resources, staff from this office do not have.

It is envisaged that some complaints that are initially sent to this office will, more appropriately, be referred to the Visitor, rather than be made the subject of enquiries by this office. On the other hand, there may be matters which first come to the attention of the Visitors which might be

best dealt with by referral to this office. Therefore, it is hoped that by closer co-operation between this office and the Visitors, a better overview of the operation of detention centres, and a more effective use of resources will be achieved.

"Own motion" investigation on use of unflued gas heaters in schools

The Ombudsman can commence an investigation even if he has not received a complaint about the conduct to be investigated. This is provided for in section 13 of the Ombudsman Act and such investigations, called "own motion" investigations, are usually commenced in matters which involve significant public interest. Often, the impetus for "own motion" investigations comes from facts which are discovered during an investigation of a citizen's complaint about an unrelated matter. Sometimes, it comes from media reports about important public issues involving the conduct of public authorities; the Ombudsman's investigation about the use of gas heaters in schools was one such case.

Comments made in the press and on radio in June 1989 drew the attention of the office to a public debate about the possible dangers involved in the use of unflued gas heaters in public schools in New South Wales.

It was publicly alleged that the Department of School Education (the Department) had failed to act on recommendations made in a report on a study of the use of unflued gas heaters issued by a working party led by the State Pollution Control Commission (SPCC). The study, it was alleged, had found levels of nitrogen dioxide (NO₂) in classrooms where unflued gas heaters were being used, of such degree as to cause concern. The report, it was said, included recommendations about interim measures to achieve substantially reduced NO₂ levels for the 1989 winter.

Because he saw the matter as one involving significant public interest, the Ombudsman, of his own motion, commenced an investigation. The investigation disclosed that the issue of NO₂ emissions had been the subject of attention for some time. The Department had been aware

of health concerns associated with the use of unflued gas heaters at least since 1988 after the completion of a study of selected schools made by AGL Gas Companies which, in turn, had to report to the Public Works Department.



In mid-March 1989 a meeting attended by the heads of the Departments of School Education, Health, Public Works and SPCC and the General Manager of AGL, together with senior executives of these organisations was convened to discuss the AGL study. The fact that the levels of NO_2 found in the schools sampled in the AGL study had ranged from "acceptable" to "unusually high", was brought to urgent notice. In addition, the meeting was told that primary school children were particularly vulnerable to the effects of NO_2 ; because of their age and stage of development; that the problem was compounded because they were located in "home base" classrooms (that is, they were not moving from room to room for lessons); and that they were being subjected to prolonged periods in heated rooms. The Public Works Department recommended to the meeting that a direction be issued to schools on the importance of ensuring adequate ventilation in classrooms and that ceiling fans where installed should operate continuously, in addition to windows being opened.

The public authorities involved in the meeting met again two days later to finalise arrangements for a study of the heaters. Phase 1 of the study was to be conducted urgently during the forthcoming Easter period - it was designed to obtain information about levels of NO₂ in classrooms, under a variety of ventilation conditions; Phases 2 and 3 would follow later. The working party to conduct the study included officers from all of the public authorities, as well as a representative of the manufacturer of gas burners.

On 22 March 1989 the Director General of School Education issued a memorandum to all School Principals. It said:

The Director of Public Works has drawn to my attention the need to provide adequate ventilation in school buildings at all times. This requirement is particularly relevant with the onset of cooler weather and the use of heating appliances.

When school buildings are in use, windows shall be open to ensure that adequate cross flow ventilation is maintained and when ceiling fans are fitted they should be operated continuously at low speed to assist air circulation
...

The memorandum, as an information and instruction exercise, was inadequate. It referred to "heating appliances"; it did not mention unflued gas heaters. It did not draw attention to concern about NO₂ emissions. The memorandum conveyed the advice recommended by the Public Works Department about opening windows and running ceiling fans.

Very shortly after the issue of the memorandum, the operation of ceiling fans in rooms using unflued gas heaters was found to be ill-advised. The tests conducted during the Easter period in 1989 ascertained that the use of ceiling fans actually increased the NO₂ concentration at occupant level. This information was furnished to the Director General's Secretariat on 31 March 1989. But nothing was done to correct the information about the operation of ceiling fans issued to schools in the memorandum of 22 March 1989.

SPCC sent the report on Phase 1 of the study to the Department on 28

April 1989. The report, amongst other things, recommended that the Department:

- send a directive to all schools indicating in the strongest terms that the operation of flueless gas heaters in closed rooms would not be permitted;
- include in the directive instructions that all classrooms using flueless gas heaters must be cross-ventilated. Windows and/or the doors on opposite sides of the room must be open. On calm days the opening on each external wall should need to be at least a total of 1600 sq cm and twice this amount for internal walls If the corridor or enclosed area were heated by a flueless gas heater, it too would need to be ventilated at a similar rate;
- indicate in the directive that circulation fans not be used with flueless gas heaters;
- attach an external label, indicating that the heaters only be used where there was cross ventilation, to all flueless gas heaters;
- include in the directive instructions emphasising that children must not be seated closer than 1 metre to heaters while in operation;
- include in the directive diagrams of typical window openings regarded as suitable for a cross-section of commonly occurring window types.

Notwithstanding the obvious need to deal urgently with the matter, the recommendations in the report were not acted upon.

The Department, however, had considered the budgetary implications of the problem; a briefing document outlining these implications estimated that:

- it would cost \$2-\$3 million to implement a planned maintenance programme;
- if low NO₂ burners were fitted to all heaters, it would cost approximately \$25 million;

to replace unflued heaters with flued gas heaters would cost approximately \$160 million, and to change to electric heaters would cost over \$500 million.

On 7 June 1989 after criticism for allegedly withholding information was levelled at the Department in the Sydney media, files on the unflued gas heater problem were activated in the Department's Secretariat. A memo to all school principals was authorised and a letter purporting to accept the recommendations made in the report of April 1989 was sent to SPCC. Despite its formal acceptance of the recommendations in the report, as conveyed to SPCC, the Department's memorandum to all school principals issued on 7 June 1989 failed to implement all of the measures contained in the recommendations. It said:-

1. Ensure that there is adequate cross ventilation in all rooms. I wish this to be a mandatory requirement;
2. Disregard my request of March 23, 1989 to operate ceiling fans in an effort to improve ventilation when heaters are in use. It has now been shown that the fans may increase the level of NO₂ near students and staff;
3. Ensure that no person is seated closer than 1 metre from a flueless gas heater.

The memorandum made no reference to the recommended minimum window opening limits, nor to instructions regarding rooms with internal walls or rooms with adjacent corridors similarly heated. As well, the memorandum was misleading in other ways. It said that there was insufficient evidence to suggest any hazard associated with the use of gas heaters, and it cast doubt on the results of the tests conducted in a range of ventilation conditions as were detailed in the April 1989 report.

The memorandum said that a coloured instruction sticker for attachment to every heater, to explain pictorially the extent of ventilation necessary, was being prepared. These stickers were despatched to schools on 6 July 1989.

A further memorandum sent to all school principals on 10 July was also misleading. It said that initial NO₂ emission tests had been undertaken in completely closed, unoccupied classrooms, with heaters operating at maximum settings, and that the purpose of the tests was to determine the maximum possible level of nitrogen dioxide that would occur in a classroom. In fact, the testing programme had been designed to record levels of NO₂ in classrooms exhibiting a range of ventilation conditions.

The Director General of Education, when responding to the Ombudsman during the investigation, said that the "cautious approach taken to these matters was a considered course of action". The delay that had occurred in informing schools of the possible problems, and of the interim measures to be taken during the 1989 winter, had not been due, therefore to mere oversight. The Director General added:

To react precipitously to this matter, in my opinion, may have resulted in unnecessary disruption to the education of students.

The explanation advanced by the Department for its delay was difficult to understand given that there had been abundantly clear evidence of the existence of unacceptable levels of NO₂ under certain conditions, and that these represented health risks to school children.

A statement of provisional findings and recommendations was sent to the Department for comment. In his response, the Acting Director General said:

There is little, if any, evidence of actual harm to the health or safety of any student, teacher or member of the public as a consequence of the conduct contended to be wrong.

Towards the end of the Ombudsman's investigation, the report on Phases 2 and 3 of the study of gas heaters was completed and sent to the Department.

Phase 2 of the study involved conducting tests in occupied classrooms with ventilation settings as chosen by teachers in accordance with the Department's directive to all school principals that had been issued in

June 1989. The study found levels of NO₂ that were lower than those that had been found in the study of unoccupied classrooms (Phase 1), but a significant number of tests disclosed levels which were not acceptable. Minor leaks were found at stopcocks, around pipe connections and at poorly constructed burners.

The report highlighted the inadequacy of the Department's directives on the use of unflued gas heaters and that the memorandums to all school principals:

- . had not properly informed staff;
- . on their own, were insufficient as a method of communicating instructions to all teachers in public schools on matter of such importance and where they were individually involved.

On the issue of ventilation, the report said:

Many teachers did not follow the recommendations as set out in the second directive, adding that the degree of compliance was frequently dictated by the structural limitations of the classrooms ...

In March 1990 the Ombudsman sent a draft report on the investigation to the Minister for Education and Youth Affairs and offered to consult about the matter if the Minister wished. The report contained a number of recommendations, including:

- . that the Department release information regarding unflued gas heaters contained in the reports on Phases 1 and 2 of the study, by way of memorandum to all school principals;
- . that a special committee be set up to establish an information and instruction programme to ensure that schools received and understood the information; and
- . that the committee monitor the impact of the programme.

The Minister, whilst not wishing to consult, wrote to the Ombudsman in April 1990 and said that following action either had been taken or put in train by the Department:

- . All principals had been informed of the current situation, and a survey of schools had been commenced to determine the numbers and types of heaters present;
- . A programme of leak detection and maintenance had been initiated; schools in the colder areas of the State would be dealt with first;
- . Funds had been approved to enable the manufacture of the first batch of low NO₂ burners and an order had been issued for their manufacture and for their placement in schools to commence;
- . The Department had forwarded copies of the final report on the study of gas heaters (Phases 1, 2, 3) to regional offices and to clusters of schools; and
- . Each school had been provided with a copy of the Executive Summary of the Report.

The Ombudsman considered that the Department had satisfied his draft recommendations regarding the release of information to schools.

The question of the establishment of a special committee to support the information and remedial programme on unflued gas heaters, and to ensure compliance with the Department's directives remained. Recommendations on the establishment of a special committee were included in the Ombudsman's final report which was issued in July 1990. In that report, the Ombudsman found the conduct of the Department of School Education to be unreasonable in terms of Section 26 (1)(b) of the Ombudsman Act in that it had:

- . failed to provide sufficient information on the use of gas heaters in its memorandum to all school principals of 22 March 1989;
- . failed to correct information circulated in that memorandum;

- not expeditiously provided proper or sufficient information to schools about the possible dangers involved in the use of unflued gas heaters, despite having had since 28 April 1989, a report of Phase 1 of the study on gas heaters;
- provided misleading and incorrect information in its memorandum to all school principals of 7 June 1989.

The Ombudsman in his final report also referred to the need to set a safe indoor upper limit of NO₂. At that time, the National Health and Medical Research Council announced that it was considering an indoor goal of 0.16 ppm of NO₂ and the proposal was open for public comment.

The extent of the Department's remedial programme and the conditions which will need to apply to the use of unflued gas heaters will ultimately depend on the determination by the National Health and Medical Research Council of a maximum indoor level for NO₂.

This office will continue to monitor the action taken by the Department to deal with the unresolved issues associated with the use of gas heaters in schools.

Denial of liability - new wrinkles to an old problem

Previous Annual Reports¹ have set out the view of this office that people who make claims against public authorities are entitled to be given an adequate statement of reasons when their claims are rejected. A lengthy, state-wide investigation of the practices of local government authorities in this regard was completed in 1986. Cases which demonstrate that some authorities deal with claims in an inappropriate way continue to arise from time to time.

During the year, some variations of the problem came to notice. The

¹ Annual Reports 1981/82 to 1986/87 inclusive.

Ombudsman is at present investigating, on his own motion, whether the Government Insurance Office gives adequate reasons to claimants when, as public liability insurer for a local government authority, it denies liability on the authority's behalf. A statement of provisional findings and recommendations has been distributed but the investigation is not yet complete.

Three other matters dealt with during the year illustrate the sorts of problems and frustrations that citizens can face in attempting to have their claims dealt with sensibly.

Two matters concerned the Hunter Water Board. In the first case, a woman (Mrs R) complained about the Board's handling of a claim for damage caused to her landscaped yard by a burst water main. The rupture had caused considerable damage, including the destruction of three retaining walls. The complainant's yard had been painstakingly landscaped by the woman's husband in the healthy years of his retirement. Unfortunately, by the time the damage occurred, his health had deteriorated to such an extent that he was physically and financially incapable of rectifying the problem himself.

The complainant had initially contacted the Board seeking its agreement to meet the cost of restoring the yard to its previous condition. Mrs R claimed that the Board had excessively delayed turning off the water supply, thereby exacerbating the damage which resulted.

The Board, in accordance with its usual procedures for handling such claims, referred the matter to its insurers for processing, along with other claims received from residents of the area over the same incident. The insurers, in turn, recommended that the Board deny liability:

...in the first instance [because] the various residents affected by the main failure have not pursued the matter since the initial incident and our subsequent site inspection.

Presumably, the insurers were hoping that the affected residents had lost interest in their claims. The complainant, however, contacted the

Ombudsman when she failed to get satisfaction from the Board.

After the Ombudsman's investigator commenced enquiries and the Board's Managing Director had reviewed the matter, the Board approved the necessary repairs, and the restoration work was carried out by the Board's staff.

In the second case, Mrs W complained about the Board's handling of her claim in respect of damage caused to her property by water from a main which burst three times in eighteen months. The Board denied the claim, which was for \$367, and, in doing so, advised the complainant:

...investigations of the incident failed to disclose any negligence by the Board. Accordingly, the Board disclaims liability in this matter.

In its response to preliminary enquiries made by this office, the Board provided three cogent reasons for its decision to deny liability. The Board was told that the need for the Ombudsman's involvement could have been avoided if, at the outset, the complainant had been informed of the reasons for rejection of her claim. Finally, the Board agreed that:

...it is important that in all cases where liability is denied that the reason(s) are made very clear to the claimant.

Another complaint came from a man who alleged that his boat had been damaged by Ryde Municipal Council workers; the complainant waited two years to get a straight answer from council about his claim for compensation.

He had submitted his claim to council; council had forwarded it to the council contractor who had undertaken the work which damaged the boat. But the contractor did not deal with the claim, and council failed to tell the complainant whether council itself denied liability in the matter.

Following the Ombudsman's intervention, council formally advised the complainant of its position on the claim and provided him with details of the contractor's insurance so that, at last, he knew where he stood.

This office expects that all public authorities with public liability claims made against them will ensure that they are properly and fairly dealt with and that claimants are given fast, meaningful answers to their claims. It expects, too, that public authorities will hold their insurers accountable for giving accurate, comprehensible reasons to claimants for their decisions to reject claims.

Regrettably, it seems that some public authorities are too willing to accept without question their insurers' decisions to refuse the payment of claims, even when those decisions are made more on the basis of an estimation of the claimant's likelihood of pursuing the matter through litigation than on any objective evaluation of whether or not the claim is justified.

Toothless regulatory agencies revisited

The 1984/85 Annual Report (p.19) was critical of the failure of some government authorities to prosecute other government agencies for breaches of the law. This failure was apparently based on a memorandum issued to all Ministers in 1959 by the then Premier, the Hon J J Cahill, which decreed that litigation between government authorities was to be avoided wherever possible. The avoidance of litigation between government agencies meant that regulatory bodies like the State Pollution Control Commission could not go beyond persuasion in dealing with other government bodies, such as the Water Board, when they breached the law. The then Ombudsman said:

...legislation, except that which specifically does not bind the Crown, should be enforced by the appropriate regulatory body. There should not be available to any government body the ability to circumvent the law.

It was pleasing to note, therefore, the present government's recent

decision to cease this practice. The way is now clear for regulatory bodies, where the circumstances warrant, to prosecute government instrumentalities which commit breaches of the law and public authorities might now think twice before breaching regulations with which private organisations and individuals are required to comply. The resultant increase in public accountability should bring a more responsible approach from those government agencies which have, in the past, sometimes flouted the law with impunity.

Rural Land Protection Boards

The 1988-89 Annual Report noted that the legislation covering Pasture Protection Board's was under review by the Department of Agriculture.

As a consequence of this review, the new Rural Land Protection Act 1989 came into force on 1 July 1990. The new Act appears to have addressed many of the concerns expressed by rural people to this office in recent years.

Water Board charges

During late 1989 and early 1990, several complaints were received about excess water charges levied by the Water Board. In essence the complainants claimed that either:

- . the Board had wrongfully calculated excess water charges for that year;
- or
- . The leaflets that the Board had issued, with its rate notices for the years 1988-89 and 1989-90 were misleading.

The 1988-89 leaflet said:

In 1989-1990 the annual residential water allowance will fall to 250 kilolitres, with usage charges remaining [the

same]

Prior to 1989-90 the water allowance stood at 300 kilolitres per annum; if more than 300 kl were used, excess water rates had to be paid on the difference.

There was no mention in the leaflet, however, of the fact that the reduction would take effect for meters read after 30 June 1989, rather than to usage after that date. The complainants had all interpreted the leaflet to mean that the reduction would be applied to water used after 30 June 1989; as well, they had assumed that the new reduced allowance would be applied on a pro-rata basis to meters read after 30 June 1989.

In response to preliminary enquiries the Board asserted:

[The Board] adopted the practise of announcing water prices a year earlier than previously. The changes operated so that meter reading periods commenc[ed] ... a full annual period after the announcement of the changes ...

It might seem reasonable to interpret both the leaflet and the first sentence quoted above to mean that the Board had given consumers over twelve months notice of the change that was to occur. However, the reality would appear to be that, at best, the Board had given a few months notice to consumers to reduce their consumption to below 250kl or else incur excess water charges.

In May 1990 the following conduct by the Water Board was made the subject of an investigation:

- . the implementation by the Water Board of its decision to change the free annual water allowance from 300kl to 250kl from 1 July 1989.
- . the manner in which the Water Board

communicated this change in policy to its consumers.

The investigation is continuing and the Board's response is at present being considered.

**Conversion of older buildings to strata title:
legislation amended at last**

In December 1989 the Strata Titles (Leasehold) (Registration of Plans) Amendment Act 1989 received assent.

This decision was the culmination of seven years of Ombudsman's involvement in difficulties experienced by owners in converting older buildings to strata title. The amendments enable councils to ensure that, before a building is converted to strata title, it can be passed as fit for occupation. Minor encroachments of floors or walls will now not be an impediment to conversion to strata title.

The path to the new legislation began in 1983 following the Ombudsman's report in an investigation which pointed out a situation which allowed developers to strata a property with scant regard to the requirements of the Local Government Act or ordinances. This report recommended the establishment of a committee to examine this and other issues related to strata titles. Some action was taken by the Department of Lands to establish this committee during 1985 and an inter-departmental working group, under the control of the Department of Local Government was also mooted. With these bodies on the verge of commencement the Ombudsman decided that the issue was being adequately dealt with.

However by September 1985 no progress had been made; the working groups in fact had never met. The Ombudsman reopened the investigation into the matter in mid-1986 and a report in July 1986 reiterated the earlier recommendation. Finally in October 1986 a joint committee comprising staff of the Department of Local Government and the Department of Lands was established. This committee finally

resolved to pursue an amendment to the Strata Title Act to rectify the problem.

Unfortunately it took another three and a half years for the amendment to be passed. In March 1990 the legislation came into effect.

Sydney Harbour Foreshores Management

The 1988-89 Annual Report expressed the hope that, with any luck at all, regional environmental plans to deal with problems associated with the planning management and control of the Harbour and the Parramatta River might be finalised within ten years of the Ombudsman first having made in 1982 recommendations about the Harbour's management.

Accordingly, the Ombudsman noted with some satisfaction a report in the *Sydney Morning Herald* of 17 July 1990 that, at last, guidelines which identified all areas suitable for marinas and moorings and which pinpointed features which should be preserved for heritage, cultural and recreational reasons had been released the previous day. The guidelines, it was reported, also extend by twenty-five per cent the Harbour's environment protection zone, which limits development on the foreshores.

It seems that this particular matter can at long last be closed.

All creatures great and small

The alleged sins of public authorities, whether of omission or commission, against our furred or feathered brethren are often brought to the attention of the Ombudsman. Regrettably, such complaints, which often seem to engender a particular brand of zeal among complainants, are usually the sorts of complaints least amenable to investigation. During the year, the Ombudsman has been obliged to decline, among others, complaints:

by an elderly lady in a semi-rural area that the local council's failure to enforce stringent drainage conditions on a building program by her neighbours had caused a flood of water onto her property, drowning two prize peacocks. Preliminary inquiries revealed that a tortuous and bitter neighbour dispute existed, contributed to in no small measure by incessant noise from the old lady's blacksmithing workshop;

by an amateur poultry and pigeon fanciers club about cut-throat pricing of the poultry pavilion at the local showground, and a claim that the local council was using underhand means to promote the interests of a rival poultry club;

that a local council refused to relax a "no dog" policy in its seaside caravan parks, even when the dogs in question were long haired chihuahuas whose calming presence (the complainant believed) was the only reliable means of staving off her husband's asthma attacks;

from a woman whose goat had become entangled in a fence. She said that she had rung the police to assist her, but when they arrived they had been of little assistance with the goat and, instead, had taken fright at the barking of her dog and had threatened to shoot it. Police denied this. The lady threatened to chain herself to the police station fence in protest. The goat eventually freed itself;

from a woman complaining about her local council's inaction in respect of large white patches which had appeared on the skin of her blackfish;

from a woman who was irritated by the noise from her neighbour's flock of budgerigars. Preliminary inquiries revealed some possible cause for her irritation, because the contentious budgerigars numbered in the hundreds. The local council acted swiftly to require reduction of the flock. An aggrieved telephone call was then received from the owner of the budgerigars, complaining about persecution by the council and the decimation of his flock. No end to this feathery fracas is in sight.

Serious misconduct, matter concluded

The 1988-89 Annual Report, set out details of an anonymous complaint and of the investigation of that complaint about the conduct of the then Superintendent at Mount Penang Training School, a juvenile detention centre.

In his final report in October 1988, the Acting Ombudsman recommended that the then Public Service Board proceed against the

Superintendent for misconduct, that the Superintendent be removed from his post and that apparent breaches of the Liquor Act, Crimes Act and Public Finance and Audit Act be referred to the Director of Public Prosecutions.

The Department of Family and Community Services acted on the latter recommendation and referred the matter to the Director of Public Prosecutions; he, in turn, referred the matter in December 1988 to the Commissioner of Police for investigation. It was not until March 1990, however, that the Police Department provided the Department of Family and Community Services with its report.

The police investigation concluded that there was "no evidence to support the institution of criminal proceedings against [the Superintendent]". This conclusion, however, should be understood in its proper context. The police investigation revealed a clear breach of the Liquor Act, admitted to by the Superintendent, but the Statute of Limitations prohibited the laying of criminal charges against him. In addition, the investigation found that certain funds from the sale of silt, sand and bush rock had been misapplied. This might have constituted an offence under the Public Finance and Audit Act; but, once, again action could be taken because of the time that had passed. The police also investigated a number of other irregularities, such as the use of funds for overseas travel, but concluded that they had resulted from "honest mistakes".

Contrary to the Acting Ombudsman's recommendation the Superintendent was not removed from his post. But he was charged with negligence under the Public Sector Management Act and was reprimanded. He was also fined \$500.

In the light of the disciplinary action taken against the Superintendent and the time which had elapsed since this office issued its final report, the Ombudsman informed the Director General of Family and Community Services that he proposed to take no further action in the matter.

It might be noted that, at the conclusion of the police investigation, the Superintendent was promoted to a more responsible position.

**Delays in processing annulment and remission applications;
Ombudsman's jurisdiction questioned**

When people experience delay in having the Attorney General's Department process their applications for annulment of convictions or remission of penalties imposed by the courts, they often approach the Ombudsman. The Ombudsman's jurisdiction to look into such complaints was recently questioned. Decisions to annul a conviction or remit a penalty involve the exercise of the Royal prerogative of mercy. Such decisions are conduct which, by virtue of clause 9 of Schedule 1 of the Ombudsman Act, is outside the jurisdiction of this office.

Traditionally, while being careful to not enquire into the actual decision made, the Ombudsman has been prepared to look into complaints about excessive delays or inaction in reaching a decision.

The Secretary of the Attorney Generals Department has long maintained that the Ombudsman lacks the jurisdiction to reinvestigate such delays. This is because Clause 9 of Schedule 1 refers to conduct of a public authority **relating to** the exercise of the Royal prerogative. The Secretary contends that these words encompass any delay or inaction in his department in this area. This view has been supported by opinions that the Secretary has received from both the Crown Solicitor and the Solicitor General. But he has refused to provide copies of those opinions to this office.

The Ombudsman has previously sought legal advice concerning the words **relating to** where they appear in Schedule 1 of the Ombudsman Act. Without determining the question of jurisdiction, the matter is arguable. The Ombudsman does not propose to spend more scarce budgetary funds in obtaining legal advice. Moreover, having regard to the strained investigative resources of the office generally, he has decided to refer all such complaints to the Attorney General's

Department to be dealt with internally.

Accordingly, in future complainants will be advised to contact the department directly with their complaints in this area. Should complainants fail to receive satisfaction from the department by adopting this approach, the Ombudsman will review his position and may need to test the question of his jurisdiction in the appropriate area.

LOCAL GOVERNMENT AREA

Complaints about local government

New complaints

During the year 716 new complaints were received. In addition, 172 complaints already under enquiry or investigation were carried forward from 1988-90, giving a total of 888 active cases.

Finalised complaints

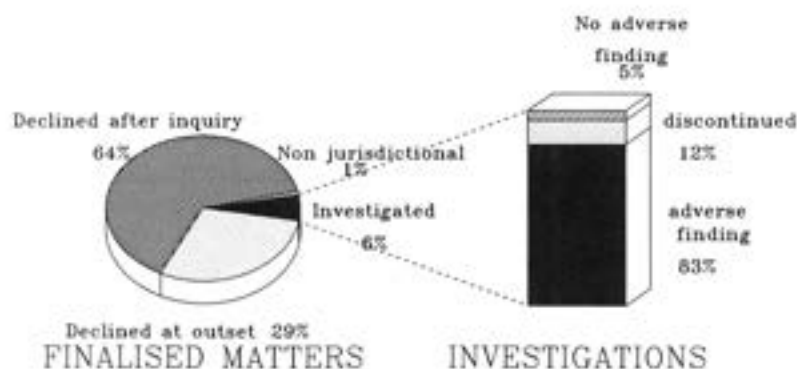
A total of 711 matters were finalised during the year, leaving 177 cases still under enquiry or investigation.

The following table gives the category of outcome for cases finalised during year:

<u>Outcome</u>	<u>Number</u>	<u>%of total</u>
No jurisdiction	6	1%
Declined without any enquiry	209	29%
Declined after preliminary enquiry	358	50.4%
Resolved after preliminary enquiry	59	8%

No prima facie evidence of conduct described in section 26	38	5.3%
Discontinued	5	1%
No adverse finding	2	0.3%
Adverse finding	<u>34</u>	<u>5%</u>
	711	100%

LOCAL GOVERNMENT



Total complaints finalised 711

Soliciting of donations

During the year the year the office completed a major investigation into the conduct of Baulkham Hills Shire Council, in soliciting from developers who had applications before the council for approval, donations towards the Hills Entertainment Centre.

It was found that in a number of cases negotiations concerning a proposed donation to the Centre were intimately linked to the approval process for applications that were before the council.

In one case which involved a proper change of land zoning from "open space" to "residential", members and officers of council entered into negotiations to secure a donation from the Hooker Corporation in tandem with council's consideration of the proposed rezoning. Following negotiation, the Hooker Corporation agreed to "donate" \$250,000 to the council on the basis that the land would be rezoned within six months. When the matter came before the council, however, it did not proceed pending "further discussion" with the Corporation.

Given the lapse of time since the original offer and the massive increases in the price of residential land that had occurred, it was felt by certain councillors that the Hooker Corporation ought to make a greater "contribution to the community". Over a working lunch, the Shire President suggested that \$400,000 might be a more appropriate amount and, although he denied that the rezoning would have been affected had Hooker Corporation not cooperated, it was clear from the circumstances, and certainly clear in the minds of the Hooker representatives, that the donation and the rezoning were inextricably linked.

Hooker Corporation agreed to the larger donation and the council proceeded with the process for rezoning at its next meeting. The Ombudsman found the conduct of the Shire President and Clerk to be oppressive, in that their conduct could reasonably be seen as leading Hooker Corporation to believe that the rezoning of its land would be facilitated by a donation to the Centre.

The case which brought the conduct under the investigation into sharp relief was the soliciting of a donation from Copeland Mercantile Ventures. (The Ombudsman's final report said that the donation in this case had been solicited from Cedra Constructions, but this was erroneous; Cedra had only acted as agent for the Copeland Group and had never been approached for a donation.) Copeland's development was for 74 industrial units, and its application was before council for some time, despite reports from council planning staff recommending approval. The developer simply could not understand the reasons for the delay, nor how he was meant to satisfy council's concerns. Finally, after a further deferral of the application, Copeland's principal was approached by Councillor Trevor Pearson.

The Ombudsman's Inquiry found that Councillor Pearson had told Copeland's principal that, if a substantial donation was forthcoming, the development would go through as proposed; if not, the developer could expect the imposition of conditions which would hinder the commercial viability of the project. The investigation also found that the Shire Clerk had failed to take any action after the developer had telephoned him and told him of Councillor Pearson's approach.

In a vigorous defence of its position, council argued that, so far as the Hooker matter was concerned, the law did not specify what factors should be considered and, therefore, that a donation by Hooker Corporation was a relevant matter to take into account. One of the recommendations flowing from the investigation was that the Environmental Planning and Assessment Act be examined to remedy this situation.

Following the release of the final report and its tabling in Parliament, the Minister for Local Government announced that his department would undertake a thorough investigation of the council's affair, including the financing of the Entertainment Centre. An apparent shortfall in funding for the centre seemed to prompt the approaches to developers.

At the time of writing, the full report of the Local Government Department was yet to be released. An interim report was tabled in parliament in early September which recommended that council seek legal advice about whether the shire president should be prosecuted for breaches of the Local Government Act.

Early in the ombudsman's investigation, the Shire President wrote to the office and chided it for proceeding with inquiries; he suggested, rather, that the council should be applauded for its approach to fund-raising. As he said in his letter:

[Hooker's] contribution is, I consider, testimony of the council's entrepreneurial flair and our resolve to have sufficient social and community infrastructure accompany urban development.

There was never any suggestion that anyone on council had acted for personal pecuniary gain and it may even be conceded that the people involved felt that they were acting in the best interests of the community. What the conduct amounted to, however, was the gaining of a benefit by using the council's power and position where there was no legitimate means by which to acquire that benefit.

There has been a great deal of debate since the publication of the investigation which emphasises the difficulties inherent in assessing and, if need be, legitimising this sensitive and contentious area. There have been a number of public comments in support of the council by people concerned with local government. The Deputy Mayor of a neighbouring council was reported as sending a letter to the Baulkham Hills Shire President congratulating him "on the methods used to finance your fine Entertainment Centre" and adding that he was "appalled at the lack of practical knowledge displayed in the critical [Ombudsman's] report." The letter, according to the news report, went on "may I say that I could document case after case in western local government and my own council of similar action during my 20 odd years of experience as an alderman."

As if to prove the point, a complaint was received following publication

of the Baulkham Hills report, from the President of yet another local council alleging that his predecessor in office had solicited donations from developers towards a council bi-centennial project in circumstance similar to those set out in the Baulkham Hills report.

It is clear that a strong case can be made for the argument that developers who are making substantial profits from developments within an area should be bound to contribute towards the provision of community facilities in that area. In effect, the existing law recognises this; but it requires that contributions be assessed on an equitable basis which accounts for the scale of the development and the likely need for the future provision of community facilities. Where there is a need for facilities other than those directly created by the impact of developments, then contributions to satisfy such a need should also be levied on a fair and equitable basis.

No matter how common the practice has become in local government, if it involves the ad hoc levy of contributions from developers to satisfy or fund particular projects in return for favourable consideration of applications, then the practice should be discontinued.

The Ombudsman recognises that substantial "grey areas" are involved in trying to set down principles to govern these situations. A council may depart from its usual course in accommodating a development which it believes will benefit the area. As a result of council's co-operation and to cement the goodwill of council for the future, the developer may decide to contribute a donation of money or land to the council. In such a case, the connection between the donation and council's conduct is tenuous and unlikely to attract allegation of impropriety. There will also be cases, however, where the connection between a contribution and favourable consideration will be sufficient to raise serious questions as to whether the contributor's application has been dealt with impartially.

At a time when pressure is on local councils to make limited funds stretch to satisfy increasing demands, the temptation to turn to entrepreneurial fund-raising is great. Members of councils, however,

should be aware of the long term damage which may result from apparent short term gains. Once it becomes common knowledge, or the subject of rumour, that favourable treatment can be gained by contributing to a council project, confidence in the impartiality of public administration is undermined. As the Baulkham Hills case demonstrates, the immediate perception of those involved, namely, that they are acting in the public interest, may not be the best guide on how to act in such situation, and may not be perceived in the same way by the public whose interest are allegedly being served.

The business of your local council

A significant development in local government which is being increasingly reflected in complaints to the office concerns the general issue of local government acting to generate finance in ways that augment the more traditional sources of income from rates and grants. As the demands on councils increase the usual sources of funding become stretched, a number of councils have ventured into development projects with the aim of making a profit and increasing the funds available to satisfy ratepayers demands.

Such projects have included the rezoning of land for residential purposes; subdivision and sale of land on the open market; construction of factories; sale of land for construction of a shopping centre by a private developer; and, in one case, the construction and management of a shopping centre by a local council itself.

Complaints in such cases can come from business competitors in the area in which the council is operating, and often include allegations that councils have failed to comply with the proper planning processes with respect to its own projects; and that councils have imposed harsh and unreasonable conditions on developers whose projects are in competition with their own. Complaints also come from residents, who claim that ratepayers' money should not be used in entrepreneurial ventures in the commercial sector at the expense of the provision of basic services to the community.

Such complaints are often difficult to assess and, in some cases, would involve a complete survey of a council's financial administration and its priorities in expenditure. Such an exhaustive process would only be undertaken where there was very strong evidence of misconduct. Generally, however, each development proposal is unique and can only be assessed by looking at the facts in each particular case. Developers who complain that unreasonable conditions have been imposed in their development projects also have a right of appeal to the Land and Environment Court, and this office would require that right to be exercised unless there were exceptional circumstances involved.

The Ombudsman takes no particular position on the merits of local government authorities venturing into commercial areas and development projects in order to generate income. The purpose in raising this issue here is to point out that such activity seems to be producing complaints to this office. While the pressures which lead councils into activities of this nature can be readily understood, it is appropriate to point out some of the issues which arise where an authority, charged with the approval and control of developments, is also itself in the business of development and may sometimes be in competition with proposed developments which it has a duty to impartially consider.

The types of problems which can arise are graphically illustrated by the allegations contained in complaints made to this office. These are that councils have a conflict of interest when considering competing developments; that councils are not in a position to properly consider development applications which they submit to themselves for approval; and that necessary developments are unreasonably delayed or curtailed because of perceived competition with some future project of a council.

The issues noted above must arise in many cases, and the proportion which are referred to this office is, no doubt, relatively small. It may well be testimony to the awareness of local government about these problems that the number of complaints made to the Ombudsman is no greater.

The prevention of such complaints in total may well be impossible. But

where local government is aware of the pitfalls and takes care, not only to act with fairness, but to demonstrate to its constituency that it is acting in such a manner, then the level of complaints should be greatly reduced.

This is an area which this office will continue to watch with interest.

Local Government Code of Conduct

The Ombudsman, since 1982², has advocated the adoption of a code of conduct for members of councils. Following discussion with the Local Government and Shires Associations, a code was circulated by the Associations to all councils as long ago as April 1984 and was adopted by many. This office regarded that code as representing a reasonable standard of behaviour on the part of members, and applied that standard to its assessment of complaints alleging conflict of interest.

In subsequent years, and despite extensive amendments to section 46 of the Local Government Act in 1987 which required compulsory disclosure by council members and staff of financial interests in land and companies, conflict of interest complaints have continued to be made, not only to this office, but to the Department of Local Government and its minister and, more recently, to the Independent Commission Against Corruption.

In April 1989, the Minister for Local Government invited this office to be represented on a working party to develop a more detailed code of practice for council members and staff. The minister was concerned that many members of councils remained uncertain of their obligations under section 46 and about whether there were wider statutory and/or ethical considerations than those set out in the Act about which council members should be concerned.

The purpose of the code was to help ensure that elected members and

² See Annual Reports 1982, pp.62-63; 1983-84 pp.72-73; 1984-85, p.74; 1988-89 pp.145.150.

staff act (and are seen to act) honestly, fairly, and professionally in the interests of the councils and the public. Further, the code was intended to help guide members and staff as to the standards of conduct required of them, and to provide an explicit public standard and common point of reference for various external review authorities, the general public, members and council staff.

The code was developed in two parts - a set of principles and a reference manual setting out the relevant objectives, legal requirements and guidelines for the implementation of the code. The document setting out the basic principles was distributed by the minister in January 1990 and councils were urged to adopt them, subject to any minor variations which might be considered appropriate in the light of local conditions. An extensive draft manual was subsequently developed and was later revised and issued following consultations with, and comment by, various interested groups.

The Ombudsman is fully supportive of the code which should assist local government members and staff to ensure that their conduct and that of their councils, is legal, ethical and appropriate. Regrettably, the code has not been given Statutory force and its adoption has been left on a voluntary basis.

Drainage problems will never go away

The last year has seen a significant increase in the number of complaints to this office about drainage problems. There seem to be two major reasons for this. The first is that there has been considerable urban development of land in areas where drainage was, previously, quite adequate but can no longer cope with the rapid increase in housing density. The second is that the rainfall pattern for much of New South Wales has changed dramatically over the last few years.

Bureau of Meteorology records show that rainfall in New South Wales has been above average for each of the last seven years; 1988 was the fifth wettest year in Sydney on record, while the period between January

and August of 1990 was the wettest for 131 years, since records were first kept in 1859. However, higher yearly average rainfalls are not necessarily cause for concern, because long periods of rain, in themselves, may not constitute a problem for drainage authorities. The worst rainfall patterns for those authorities, particularly local councils, are severe "rainfall events"; these are periods of extremely heavy rainfall that can last anything from five minutes to several days. Heavy downpours of this nature cause severe overloading of drainage systems leading to surcharging and flooding. The water will eventually flow away; but while the downpour is on, much damage can be done to land and property. It is the severity and duration of these "events", rather than "rainfall per month or year", which will mostly effect the severity of flooding

The most severe rainfall "event" in 1990 for the Sydney region was the 244mm which fell one morning in early February 1990. Again, on 1 August 1990 more than a month's average rainfall fell in one morning. The average number of severe rainfall "events" which occur is three or four each year. Sydney, alone, had eight or nine such "events" up until September of 1990; thus 1990 has been for thousands of people a disastrous year as far as drainage problems are concerned. Naturally, councils receive a huge number of complaints after each severe rain "event" and many of these eventually come to the Ombudsman.

In order to minimise problems associated with building on damp or soggy ground, or on land which is prone to flood, councils now often require developers to raise the level of the land with fill in order to ensure proper drainage of the site. Although this is sometimes an excellent solution to the problem which exists for the land to be developed or built upon, it is not so good for neighbouring properties. This was well demonstrated by a complaint investigated during the year.

Gosford City Council approved the development of two dual occupancy flats in a low lying, sandy, undrained part of Woy Woy. The complainant, whose home was adjacent to the two developments, had built his house many years ago, at a time when the area was relatively undeveloped and council requirements were less stringent. He said

that the area had always been a natural catchment area during heavy rain, but that the water drained rapidly away through the sandy soil before and had never been a particular problem.

The development approved by council involved the construction of two substantial dual occupancy flats and resulted in much of the land comprising the two blocks being covered with concrete. As well, council required the developer fill the blocks so as to raise the level of them by 600mm and to provide a retaining wall for the fill. Soon after this work was completed it became obvious, particularly to the complainant, that the development had altered the course of the flow of surface water during heavy downpours; it was now concentrated on the complainant's property and was unable to seep away. Flooding of the ground floor dining, kitchen and laundry areas of his house had become a problem.



In the past, the two blocks had acted as informal retention basins for excess water. The water had seeped away through the sandy soil before it became a problem for the complainant. In fact, Gosford City Council had relied on this seepage effect to take the place of proper drainage in the district, most of which was originally rolling sand dunes.

This sort of problem is by no means an isolated one. The Land and Environment Court recently brought down a judgment about a similar situation in nearby Umina. The senior conciliation and technical assessor said that, since the 1960's, the council had allowed various developers to fill in three swamps which had originally formed a natural drainage system for the district. However, council had not carried out the engineering works needed to prevent flooding.

In his report on the case dealt with by this office, the Ombudsman said:

.....as more and more dwellings direct their stormwater onto the road, and where Council allows that water to flow onto undeveloped land to drain away through the sand, it is totally imprudent to then allow development to proceed on the sites which were previously retention basins and absorption areas for this water, unless action is taken to provide other means to deal with the problem.

Councils, of course, are in the position of wanting new developments to proceed in areas which, previously, had very low density housing. The government said in 1988 that one of its policies was to encourage councils to approve higher density occupancy on residential land. The policy, it is said, is designed to reduce the urban sprawl, and to allow cheaper home ownership.

In the case involving the Ombudsman's Woy Woy complaint, Gosford City Council said that it had followed the government's lead by readily processing dual occupancy dwelling applications. Government policy, however, does not give local authorities a licence to ignore the adverse effects that increased development can have on existing residents. In fact, the Local Government Act contains mandatory provisions which require councils to consider possible drainage problems which might be caused for neighbouring properties when they are considering building applications. Gosford City Council, in accordance with the Ombudsman's recommendations, agreed to negotiate to purchase the complainant's property.

But not all drainage complaints are reasonable

Not all complaints about drainage can be dealt with by this office.

There are a number of reasons why the Ombudsman may decline to investigate a drainage complaint. Some of these are:

· The standard of drainage required in an area changes

Drainage systems constructed many years ago used the best technology available at the time. New technology now allow areas that once were not usable because of drainage complication to be properly drained and used. But it does not automatically follow that it is reasonable to expect councils to immediately update existing drainage systems of the surrounding district when approving nearby new developments. Such drainage improvements may have to occur over many years, and councils have to consider their funding priorities and where best to expend ratepayers' money. Many complaints which involve considerations of this nature are declined.

· Community attitudes change

At one time, people were more prepared to be flooded out occasionally in order to build in areas which provided views, for example on poorly drained land near a beach.

Often, people who purchase these existing homes expect that their local council ought to provide improved drainage systems that will cope with all drainage and flooding eventualities. Often, too, such expectations are unreasonable particularly when people buy such a property knowing full well what the drainage problems are.

· Natural surface water flow

Water which causes a nuisance to a landowner may be no more than that which would have naturally flowed onto the land before any houses were built. The level of surface runoff from higher land which would have reached lower properties in any event, even before development

occurred, is the landowner's responsibility to deal with, for example, by the use of prudent drainage systems around or on the property.

It is not always mandatory for councils to act

Section 403 of the Local Government Act provides:

The council may control and regulate the draining of any land, whether built upon or not, and may require the construction of sufficient drains for that purpose and may, at the cost of the owner, construct drains to dispose of roof, surface and other waters from the land so as to conduct the water to the most appropriate gutter or water channel under the control of the council.

Thus, whilst councils have the power to regulate and deal with drainage problems, they are not obliged to use them. The powers are purely discretionary, not mandatory. Legal action which might have to be taken to enforce section 403 powers can often be very expensive; and it is reasonable for councils to consider this when making decisions about the use of ratepayers' money. Councils are more likely to use their powers, and, where necessary, to take legal action to enforce them, when several properties are affected rather than just the property of one ratepayer. An affected landowner can still use the legal system on his own account to remedy a problem caused by his neighbour.

A complaint made against Warringah Shire Council was an example of this. The complainant represented several ratepayers who were concerned that water from the very steep land above them was flowing along the rear of their properties and eroding their land. The water was

directed into a deep open drain which ran along the rear boundaries of the properties until it reached a council drain. The complainant maintained that property owners had changed the direction of a natural watercourse over the years in order to keep the water confined to the rear boundaries. He said that the council, many years ago, had decided to allow houses to be built over the watercourse, and it, therefore, was responsible for the effects of the water flow.

The matter was quite complex and involved people both above and below a natural watercourse. A road had been reconstructed some ten years previously and provision had been made at that time for the street drainage system to collect run-off from the watercourse at a common boundary. Council maintained that, below this point, the watercourse was not a "natural" one, and was, claimed that it in reality, a man-made ditch constructed over the years as a result of successive development of the adjoining properties.

However, council recognised that the problem not only involved many people, both those contributing to the water flow from upstream and those affected by it; but that it would be difficult for the property owners to solve the problem between themselves. Council decided to try to help by co-ordinating the group of ratepayers who had petitioned the council about the matter.

Council proposed that it provide drainage works for all affected properties at a cost of \$19,000; it offered to canvass the property owners to determine their willingness to contribute towards these works. The complaint made to this office was that council's request for contributions from the property owners was a "form of blackmail", and that council itself should fund the works entirely.

The complaint was declined on the grounds that section 403 of the Local Government Act clearly gave council the power to request contributions for such works. In fact, council was empowered under section 393 of the Act to do the work itself and to recover the "sums so apportioned from such owners as debts". This would have involved the creation of a Local Drainage Area for which a local drainage rate would be struck. Council decided against this latter course of action, but agreed to survey the residents as it had previously offered to do.

The result of the survey conducted by council showed that, of the fourteen people involved, one property owner agreed to contribute, four were not willing to contribute and nine failed to reply. This was a disappointing result; and in view of the fact that it had received a development proposal which would affect the situation, council, as well as this office, decided not to pursue the matter further.

Notification adjoining owners - Courts vindicate Ombudsman's view

In every Annual Report since 1981-82, with the exception of that for 1986-87, the Ombudsman has set forth his view that councils should notify land owners about building applications lodged for adjoining properties. The courts have now vindicated this view. In the Land and Environment Court on 6 November 1989, His Honour, Mr Justice Cripps, in his judgement in a case involving Hornsby Shire Council said:

...the [neighbours] had a legitimate expectation that before the building application was determined by the Council they would be notified of it and given a chance to put material to the Council with respect to it.

and

The legislative provisions and the evident purpose of them lead me to the conclusion that the expectation of a reasonably minded member of the public could scarcely be other than that adjoining owners would be notified of building applications in order that they could inspect plans and make submissions to the Council before a decision was made.

He went on to address the certain arguments advanced by the council, which reflected objections that had previously been raised with this office by some councils, against the practice of notification:

I have been cautioned, implicitly at least, that to recognise the entitlement of [the neighbours] to be given notice of the application so as to permit them to make submissions will be to open the flood gates in council administration. As I have said, the expectation arises by reason of the legislation itself and the short answer to the caution is that the flood gates have been opened by the Parliament. Nonetheless, one can scarcely forebear from asking who are behind the flood gates. As far as I can see, they are, for all practical purposes, next door neighbours who, having no third party rights of appeal, wish the Council (or, as is more common, the delegated member of its bureaucracy) to be aware of any submissions they wish to make before it decides building applications. So far as the councils are concerned, they will come under a not very onerous obligation to notify those people when a building application is lodged.

I have not ignored the circumstance that the definition of

"building" in the Local Government Act means that councils will be required to give notice of building applications which will not greatly affect adjoining owners. But it is not irrelevant, on this aspect of the matter, to note what happens when councils are not required to give notice at all. The present case is an illustration of the problem. Furthermore, it should be recorded that many councils in New South Wales have a policy of notifying adjoining owners of building applications and of inviting them to inspect plans at the council's chambers. The practice does not seem to have adversely affected good administration in, for example, in [sic] the Woollahra Municipal Council or the North Sydney Municipal Council. Finally, it would seem to me, that a council, or as is more commonly the case with respect to building applications, the delegated member of the bureaucracy would be better able to discharge its or his function under Part XI by actually knowing the views of the adjoining land owners.

On 19 March 1990, the Ombudsman made a Special Report to Parliament about the refusal of Ryde Municipal Council to adopt some of his recommendations concerning an earlier investigation into, among other things, council's failure to notify adjoining owners about a building application³.

In his report, the Ombudsman drew attention to Mr Justice Cripps' decisions. The Report to Parliament recommended that the council adopt a practice of notifying adjoining land owners and other properly interested persons of proposals before it which were likely to affect them. The Ombudsman also recommended that council adopt "rigorous inspection procedures for works in progress in order to assess compliance with council approvals". Councils cannot be sure that conditions of consent that they impose are complied with unless checks are made to ensure that this is the case. The report to Parliament recommended that the Local Government Act be amended to make explicit the requirement that councils notify adjoining owners of building applications, and that they consider any objections lodged by properly interested persons before determining such applications.

The Land and Environment Court's decision was appealed against by Hornsby Shire Council and by the property owner whose building

approval had been nullified by the decision. The Court of Appeal unanimously dismissed the appeals on 19 June 1990. In his judgement, His Honour, Mr Justice Kirby said in part:

The amendment of the Act to permit certain specified owners of land to inspect plans of a proposed erection or alteration of a building on adjoining land (or where that building might detrimentally affect the enjoyment of their land) imports the necessary implication that such owners should be notified by the local government authority which has them of the existence of such plans. Otherwise, the right of inspection which Parliament has conferred would be a comparatively empty one. It would be virtually devoid of effectiveness. The owner would not ordinarily be aware of the existence of such plans, still less of their contents. The fulfilment of the statutory purpose in providing such a beneficial right of inspection of the plans would then depend, for the most part, upon chance factors. It would rely on attention to neighbourly gossip. It would necessitate noticing surveyors or builders on the land. Or it would reward perennial inquisitiveness which just happened to take the owner, a neighbour or friend, to the local authority building department on the off-chance that plans existed which it would be useful to inspect.

In his judgement, His Honour, Mr Justice Samuels said:

It is beyond question that the purpose of s 312A was to enable adjoining occupiers to inspect the plans of a proposed building which might detrimentally affect their enjoyment of their own land. In particular, by identifying those plans which show the height and external configuration of the proposed building in relation to the site on which it is to be erected, it indicates its concern with problems such as the obliteration of views and overshadowing caused by the construction of buildings close to the boundaries of adjoining lots. I would have thought that the only purpose in granting such a right was to enable its beneficiaries to ascertain from the plans whether their apprehensions were justified and, if they were, to permit them to make submissions to the Council which the Council was bound to entertain. The Council was not, of course, bound to accede to such representations, but the right which the section plainly confers would be quite empty unless the perceived consequences of the plans could be drawn to the Council's attention after the statutory inspection, with a correlative obligation on the Council's part to listen.

...it seems equally plain that the section would be robbed of any efficacy which it might have if there were no obligation on the council to inform adjoining land owners

of the fact that an application likely to affect them detrimentally had been made. So far as I know there is no way in which occupiers can find out with certainty what building plans their neighbours might harbour. Without notice, therefore, the section would be wholly ineffective.

His Honour went on to say:

There is no ground for concluding that notice, if required, would involve Councils [sic] in any inordinate expense, or applicants for building approval in any expense at all. I see no reason to suppose that it would involve unreasonable delay.

His Honour, Mr Justice Priestley agreed, in general, with Justice Samuels.

Now, councils should be in no doubt whatsoever that adjoining owners must be notified of building applications and that any objections lodged by such owners, or any other properly interested persons, must be properly considered in the decision making process.

Rural rates

As reported last year, the 1988 amendments to the Local Government Act have replaced "rural rates" with "farm land rates".

The new provisions seem generally to have been accepted by the rural community; but one main issue of concern continues to arise - the failure of councils to provide adequate justification when they reject applications for the lower rate. Many councils remain hesitant about providing their ratepayers with full and frank explanations of their decisions.

This office has previously stressed, on more than one occasion, the importance that giving of reasons has in terms of good administration. The government, too, has recognised this principle because it is positively reflected in the new provisions for "farm land" rating. Section 118AC(6) of the Local Government Act makes it mandatory that councils give reasons when rejecting applications.

Some councils, until recently, have considered it sufficient to merely restate the provisions of the legislation when advising ratepayers of their decisions to reject applications for "farm land" rates. At the request of this office, the Department of Local Government has advised all councils that a mere restatement of the legislation is insufficient to fulfil their obligations under the Local Government Act.

Removal of council's discretion

Regrettably, the way in which the new legislation has been drafted has removed councils' discretion to consider late applications for the "farm land" rate; that is, applications lodged after 1 January each year. This provision has particular significance in some cases where rural land changes ownership.

The legislation provides that any declaration that land is "farm land" lapses on the transfer of title to that land. If transfer of title occurs after 30 September in any year and the new owner occupies the land after the following 1 January, then the new owner would not have received an application to enable him to apply for the lower rate, and he would not, after 1 January, be able to apply for the lower rate for that year.

One council at least, has addressed the problem by advising recipients of S.160 Certificates⁴ of the necessity for new owners to apply for the lower rate before 31 December if they wish to have it applied in the following year.

The Minister for Local Government has expressed the view that the number of people affected by this anomaly in the legislation would be very small and, therefore, amendment to the legislation was not warranted. However, the minister said that he was concerned to ensure that a standardised approach to the problem was adopted by all councils

⁴ These are certificates issued by council under Section 160 of the Local Government Act, at the request of intending purchasers of land, that provide information on outstanding rates and charges applying to the land.

so as to minimise disputation between council and their ratepayers.

This office remains unconvinced that an amendment to the legislation, to cater people becoming new owners of farm land rated property during a rating year, ought not be made.

Rural Land Protection Boards

The 1988-89 Annual Report noted that the legislation covering Pasture Protection Boards was under review by the Department of Agriculture.

As a consequence of this review, the new Rural Land Protection Act 1989 came into force on 1 July 1990. The new Act appears to have addressed many of the concerns expressed by rural people to this office in recent years.

PRISONS AREA

Complaints about the Department of Corrective Services

New complaints

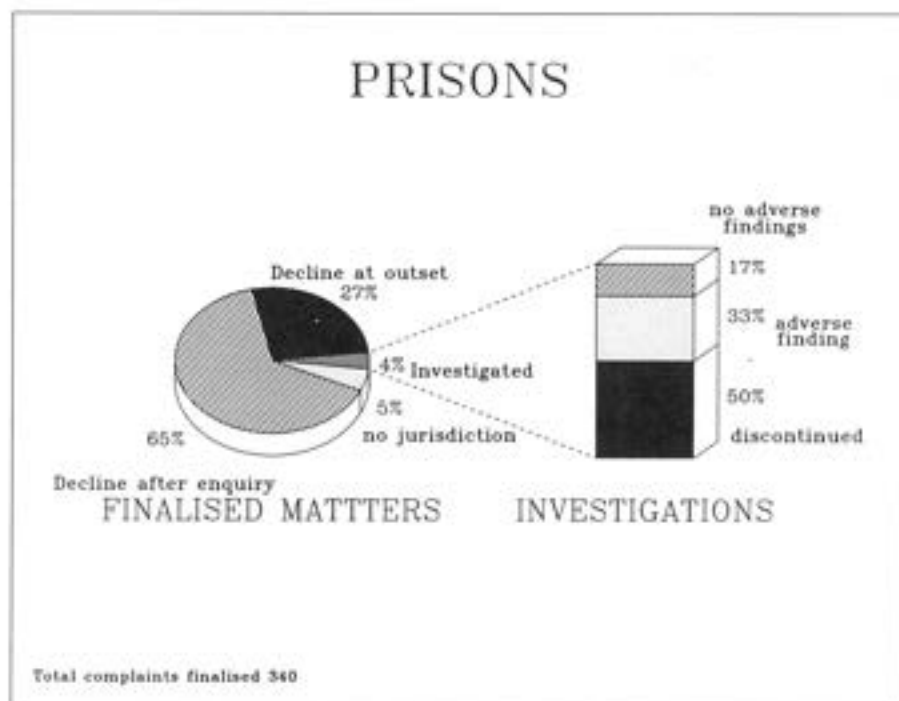
During the year 310 complaints were received about the Department of Corrective Services. In addition, 91 complaints already under enquiry or investigation were carried forward from 1989-90, to create a total of 401 active cases.

Finalised complaints

A total of 340 matters were finalised during the year, leaving 61 cases under enquiry or investigation.

The following table gives the outcomes for cases finalised during year:

<u>Outcome</u>	<u>Number</u>	<u>% of total</u>
No jurisdiction	17	5%
Declined without any enquiry	91	27%
Declined after preliminary enquiry	175	51.5%
Resolved after preliminary enquiry	33	9.5%
No prima facie evidence of conduct described in section 26	12	3.5%
Discontinued	6	2%
No adverse finding	2	0.5%
Adverse finding	4	1%
	<u>340</u>	<u>100%</u>



Nature of complaints

The majority of complaints made by prisoners to the Ombudsman concern the Department of Corrective Services. The nature of the complaints received this year and last year is as follows:-

Complaints against Department of Corrective Services

Nature of complaint	Number	
	1/7/88 - 30/6/89	1/7/89 - 30/6/90
Record keeping	28	71
- wrongful calculation of release date		(30)
- failure to grant/wrongful calculation of remissions		(14)
- failure to process appeal/bail applications		(7)
- delays/mistakes re private cash accounts		(9)
-other record keeping		(11)
Transfers (forced transfers and delay in transfers)	33	32
Property (including loss of; delay in transferring; failure to compensate for loss)	36	25
Complaints against prison officers (including assault; harassment; unfair treatment; racial prejudice)	59	24
Failure to ensure physical safety	11	22
Classification	14	21
Daily routine (including time out of cells; access to telephone calls and activities)	6	21
Mail (delays in; opening of; confiscation of)	22	20
Security measures (strip and cell searches; random urine testing)	6	11*
Inadequate physical facilities	22	8*
Failure to obtain medical assistance	10	7
Segregation	10	6

Nature of complaint	Number	
	1/7/88 - 30/6/89	1/7/89 - 30/6/90
Visits	22	6
Buy ups	6	5
Food and diet	4	4
Work and education	5	3
Legal	5	3
Unfair discipline	5	1
Day and study leave	3	1
Probation and parole	7	0
Escorts	1	0
Other	0	2
No jurisdiction	—	<u>17</u>
	<u>321</u>	<u>310</u>

- * One of these complaints consisted of a petition from 289 prisoners at the Remand centre complaining about the manner in which members of the Malabar Emergency Unit conducted searches.
- * One of those complaints consisted of a petition from 77 prisoners complaining about overcrowding at Goulburn X wing.

The significant increase in complaints concerning record keeping by the department related directly to the introduction of the Sentencing Act 1989. That Act abolished remissions and a number of prisoners complained about problems in accounting for the remissions they had previously earned or were entitled to under the transitional provisions. All had their sentences re-calculated by the Offenders Review Board as a consequence of the Act. The sentences were in fact re-calculated by the Prisoners Index section of the department and the information provided to the Board for its approval. Many prisoners complained about the department's calculations as the Act prohibits challenges to

the Board's re-determinations by any court.

Most other significant increases from the past year related to pressures arising from the serious overcrowding in the prison system and cut backs in services. With increased numbers, particularly in those seeking protection, it is becoming more difficult for prison administrators to ensure the physical safety of all prisoners. Cut backs in staff have also resulted in increased delays in transfers, longer hours in cells, delays in mail delivery and restriction on activities in some gaols.

The number of complaints about individual prison officers dropped significantly from last year's figures.

Ombudsman's role in prisons

In dealing with citizen's complaints the Ombudsman has traditionally functioned a little like an archeologist - he digs around in the records and other artefacts left by administrators to determine the truth. Where that truth reveals unreasonable or otherwise wrong conduct he makes suitable recommendations. The role has generally been a reactive one. The limited resources available to the Ombudsman has also meant that citizens have been encouraged to use the office as an avenue of last resort wherever possible.

The Ombudsman also has an "own motion" power which he can use in a proactive way in limited circumstances. He does not need to have a complaint from a citizen before starting an investigation. If he believes that conduct of a public authority may be wrong for one of the reasons set out in section 26(1) of the Ombudsman Act, he can initiate an investigation to see if that is true. This power is often used in conjunction with a citizen's complaint. For example, a complaint may need to be re-defined for clarity or related issues may be included for investigation that appear to the Ombudsman to have implications for better administration. It may also be used to investigate issues that may come to his attention in other ways.

While the role of the Ombudsman in dealing with complaints from

prisoners is limited by the general provisions of the Ombudsman Act, the Ombudsman believes he has a public duty to make sure the resources of his office are known to and available to persons in custody, both adults and children. There is an attempt to visit every adult gaol and juvenile detention centre in NSW at least twice a year for this purpose when resources allow. The visits also enable investigation officers to be informed of conditions and developments throughout the states' gaols.

Prisoners do not have available to them the routine avenues of complaint available in the community. Nor do they have the usual support networks that many people use to deal with their problems. Their rate of illiteracy is also much higher than in the general population. Furthermore, there is very little informed public scrutiny or knowledge of gaols.

The Ombudsman has therefore adopted the view that whilst observing the requirements and limitations of the legislation, he should endeavour to fulfill to some extent a general monitoring and reporting role in addition to discharging his responsibilities in dealing with individual complaints.

In the past he has done this by using his "own motion" power to investigate matters that came to his notice through prison visits or through making inquiries into particular complaints. Recent examples include investigations into the supervision of works release prisoners (referred to in detail elsewhere in this report), the limitations on contact visits and buy ups for prisoners held in the High Security Unit at Goulburn Gaol, and the alleged practice of reducing prescribed medication for misbehaviour.

In correspondence and reports on particular complaints, the Ombudsman has also drawn the department's notice to general deficiencies in procedures and governing legislation and recommended amendments where appropriate. It is fair to say that the Department and the Minister for Corrective Services have been generally receptive to such recommendations whenever made. The intended changes to the

segregation provisions of the Prisons Act outlined in the 1989 Annual Report (p.217) are a good example. The support by both the Departments of Health and Corrective Services of a provisional recommendation for the establishment of a standing liaison committee to develop a set of principles to guide administrators and decision makers dealing with forensic patients and to develop assessment criteria for use in programs for forensic patients is another.

A number of radical changes have been introduced into the prison system in the past year which have caused serious unrest among prisoners. Many prisoners have looked to the Ombudsman to overturn such decisions and have been bitter when their calls have had to be rejected. Few prisoners fully understand the proper role of the Ombudsman and the limitations on his powers. They see him as some sort of 'moral guardian' who should intervene to prevent abuses in the system and to keep the minister and senior departmental officers, who they consider misguided or worse, in check.

The Ombudsman has no power, however, to intervene in major policy changes by the department that arise from Ministerial or Cabinet decisions. He is restricted to investigating cases of maladministration in their implementation.

Examples of prisoner complaints that raise this dilemma are changes to the classification system and new rules about prisoner's private property. The classification system was totally revised in 1990. Previously, the department recognised the importance of placing prisoners as far as practicable, in gaols nearest to their homes, relatives and friends. This was to facilitate the maintenance of family relationships which was well accepted as being critical to rehabilitation and the likelihood of prisoners becoming more responsible members of the community upon release. Classification committees therefore made informed recommendations about a prisoners placement as well as his security rating.

Under the new system introduced from 1 July 1990, placement decisions are now made by the escort co-ordinator and are dependent strictly

upon availability of cell space. Prisoners may elect preferences but they will be activated only if the availability of cell space on the day their escort to a gaol of their security classification coincides with their preference.

A case in point is that of a prisoner who came from Emu Plains where there is a prison camp. He complained about his placement at Brookfield Afforestation Camp near the Victorian border to serve a ten month sentence. Under the new system he is unlikely to be transferred during his sentence. His placement was more efficient than under the previous system in that he spent less time waiting in a maximum security institution before placement in a minimum security gaol that was appropriate for his crime and length of sentence. The department will also save on transport costs by leaving him at the camp at Mannus. The breakdown of his family, however, has a much higher probability due to the inability of his wife and child to visit him regularly because of the distance and cost.

The new rules about prisoner's private property introduced in September 1990 were responsible for widespread disturbances and damage to Bathurst and Parklea Gaols in particular. Telephone calls were made to the Ombudsman's office prior to some of these disturbances asking him to intervene before the prisoners went on strike or took other action. He was not able to do that.

The Ombudsman is not able to investigate the conduct of a Minister of the Crown or that of Cabinet. The government is entitled to introduce new policies to meet particular contingencies and it is not the Ombudsman's role to criticise those policy decisions or to substitute his views. Consequently, his role is to investigate, where warranted, the implementation of such policies and to identify any maladministration or other unreasonable conduct in that implementation.

Unfortunately, this distinction is often difficult for many prisoners to comprehend. As a consequence, the general regard held by prisoners for the Ombudsman, and the practical utility of complaining to the Ombudsman usually plummets at times of major changes. Investigation

officers often have to deal with volatile and dissatisfied complainants as a result.

Supervision of work releases

Early in 1989 the Ombudsman received a complaint from a prisoner about an incident which had occurred during his placement on the work release programme. The complaint was dealt with and the file was closed. However, during the course of enquiries about the complaint, the attention of the office was drawn to possible deficiencies in the nature and extent of the department's supervision of prisoners on work release and an investigation was commenced by the Ombudsman on his own motion.

The investigation focussed on a general review of the relevant administrative procedures, and was assisted by a case study of one prisoner who had been granted work release. An inquiry was conducted to assist the investigation and the Superintendent of Silverwater Detention Centre, the Assistant Superintendent (Work Release), a Field Liaison Officer and a number of Prison Officers gave evidence to the inquiry. A number of civilian witnesses who had had some involvement in the employment of the case study work releasee also gave evidence.

The Programme

The work release programme has existed for twenty years; it has been widely commended. The programme is cost effective because:

- prisoners selected for the programme represent low security risks and require less expensive supervision facilities;
- the work releasee contributes to the cost of his imprisonment; and
- the prisoner has the opportunity to improve his educational and employment skills, and to develop ties with the community, which will assist him when he is released and improve his chances of not offending again.

The Ombudsman's investigation confirmed that the programme is held in high regard. Regrettably, it also disclosed that the department had not allocated sufficient resources to the programme; nor had adequate administrative procedures been put in place. The scheme, in fact, was being run with too much reliance on trust alone.

Supervision

The Superintendent at Silverwater has overall responsibility for the work release programme; the programme, however, is administered by the Assistant Superintendent (Work Release) and two Field Liaison Officers (one for the morning shift and one for the afternoon shift).

Approximately one hundred prisoners go out from Silverwater to work each week. There is a regular turnover of work releasees and, on average, fourteen new prisoners enter the programme each month.

The investigation found that work releasees, including life sentence prisoners, were not supervised sufficiently at their places of employment. The Field Liaison Officers said that, because of the limited time available to them, specific and urgent matters which arose had to be given first priority; second priority had to be given to finding jobs for the work releasees, and to the associated paperwork. Security checks on the work releasees had to be carried out when everything else was done.

The investigation found that the frequency of security checks was far below the level that senior management assumed was being maintained.

Records on supervision

The investigation disclosed that, whatever field checks were being conducted, no record of them was being kept on prisoners' files. The Superintendent's believed that the Assistant Superintendent (Works Release) was keeping a record of the frequency of security checks, including by whom they were carried out; and he believed that Field

Liaison Officers were keeping diaries. This was not the case, however. In fact, there were no procedures in place to record the number of times a prisoner was checked, nor to require that a minimum number of supervisory checks be carried out in order to ensure that work release conditions were being complied with.

Payment of wages

The amount of wages to be paid to a work releasee, as well as the method of payment, is discussed at a job interview between the employer, the prisoner and the escorting officer before the prisoner starts work. The department requires that work releasees be paid wages in accordance with appropriate awards and, in the case of sales positions, the payment of a retainer plus commission is considered acceptable. Some positions gained by prisoners are well paid; this can usually be related to the prisoner's level of education or training or previous employment experience.

Deficiencies were identified, however, in the system used for the handling and banking of prisoners' wages. Many prisoners are paid in cash. In fact, at the time of the Ombudsman's investigation, the majority were paid in that way. On pay day, the prisoner hands his pay envelope to the Prison Officer rostered at Silverwater House. The money is counted by the officer and a receipt is issued to the prisoner. The money handed in by each prisoner is credited to him and the department holds it in trust in a Public Monies Account whilst the prisoner remains in custody. "Board" of \$60 is debited against each prisoner weekly.

The investigation concluded that the need to handle 100 pay packet each week, with each containing amounts from \$200 to \$1,500 mostly in cash, demanded a high degree of accuracy in checking amounts of pay and, by the sheer numbers involved, checking of the work releasees pay advice as part of the supervision of the placement. In addition, it was considered that the present system of cash handling involved considerable risks.

A draft report on the investigation was sent to the minister for Corrective Services in June 1990. The Minister advised that he wished to consult about the report and, at the time of writing, such consultation is still awaited.

Delay of mail in prisons: the postman always knocks twice (a month)

Over the past year or so, a considerable number of oral and written complaints have been received from prisoners concerning delay in the processing of their mail. The complaints all alleged excessive delay, both in the receipt and despatch of mail.

Inmates are encouraged to maintain community ties in a number of ways; the most basic and important of these include written and telephone communication particularly for those prisoners who encounter difficulty in having contact visits with their families. It is in the public interest that recidivism rates be kept to a minimum; this is alleged and helped by preparing an inmate for assimilation into society after release. The onus to enable such communication to take place as freely as possible lies with the prison system. Whilst impediments to this process can take many forms, the most annoying for prisoners is an inordinate delay in the forwarding on and receipt of their mail.

Not all prisoners experience long mail delays, only those attached to the Long Bay Prison Complex at Malabar. Because this complex houses over one third of the current prison population, the issue is one of some importance. The other prisons in the state are quite small and self contained, when compared to the Malabar complex; and this is the main reason why problems in the processing of mail do not arise to the same extent in those institutions.

Some of the delays that prisoners have experienced are ridiculous; they have involved, in some extreme cases, a wait of two to three weeks. Clearly, to take such a long time to process mail is intolerable, especially where prisoners have little other means of contact with distant family and friends.

Most prisoners have had to accept that delay in the processing of mail is part and parcel of daily prison life. Understandably, though, they see the delays as further "punishment".

The Department's explanation is that it is short-staffed and that, for the purposes of security, staff who would ordinarily process the mail as it comes into the complex have to "fill in" on security posts. This appears to be the main reason why there is a systemic problem in the processing of the mail in the complex. The superintendents at Long Bay would, in the normal course of business, be the ones who should handle complaints concerning such day to day matters. The evidence available to this office indicates that they are well aware of inmates' complaints about the processing of mail but that they are not able to do anything about it other than refer the complaints to this office. They hope, with some justification, that the intervention of this office will in some way force the issue of the department's lack of funds which, in turn, is giving rise to the mail delays. The allocation of resources within a department, however, is usually not an issue that this Office is well placed to investigate, because the matter involves the exercise of managerial powers. So it is the inmates that suffer.

One inmate complained about the delay in the processing of mail with his fiance. He said:

This whole system is completely unsatisfactory. I implore you to intervene in this matter and endeavour (sic) to establish a consistant (sic) workable system'.

The prison legislation provides that prisoners can correspond with the public and with other inmates on certain terms. Division 6 of the Prisons (General) Regulation provides for the right of such correspondence generally, the only proviso being that all correspondence is to be forwarded or received through the governor of the prison or through a prison officer authorised by the governor for that purpose. Apart from prohibiting the sending of material that is either indecent, obscene, abusive, threatening or offensive, the inmates's mail is largely unfettered. But the legislation remains silent about how long it ought to take for the mail to be processed.

It is not as though inmates do not pay for the privilege of sending out their mail. In the New South Wales prison system, an inmate is entitled to buy six stamped letters or aerograms from their weekly buy-up, with an upper limit of twelve letters or aerograms that can be held by the inmate at any one time. In the Victorian prison system, an unlimited number of letters can be sent, so long as the prisoner pays for the cost of postage. As part of the procedures adopted by the Victorian Office of Corrections, a "statement of principle" has been enunciated to the effect that mail will be forwarded to a prisoner or despatched with as little delay as possible. The American Correctional Association has issued Standards for Adult Correctional Institutions and, in relation to the processing of mail, standard 2-4374 provides:

Written policy and procedure require that incoming and outgoing letters and packages are not to be held for more than 24 hours, excluding weekends and holidays. [As part of the guideline the following discussion note is appended] : Inspection for contraband should not take any longer than 24 hours to complete, so that incoming mail should be distributed to inmates and outgoing mail sent to the post office within 24 hours of receipt.

It is also interesting to note that the American Standards do not prohibit the volume of mail that is either sent or received by an inmate; nor, for that matter, are limitations imposed on the length, language, content or source of mail or publications, save to the extent that prison authorities have a reasonable belief that limitation is necessary in order to protect public safety or institutional order or security.

Both of these standards are worthy of consideration for adoption by the department. However, if the problem of a delay in the sorting of mail is to be addressed, the department will need to genuinely look at other ways to deal with its current budgetary constraints. Regrettably for prisoners, there is little that this office can do to resolve this annoying and unfair situation.

Appeals Fees

When a prisoner is convicted or sentenced an appeal can be lodged with

the appropriate court. Appeals can cost up to \$50. The Justices Act, however, provides that if someone cannot pay the fee "for want of means", it can be waived or postponed. The power to waive the fee rests with the police, Clerks of Petty Sessions or Gaolers (that is, Superintendents of prisons).

Unfortunately, within the Department of Corrective Services the term "want of means" seems to have been defined in somewhat variable ways. At the Long Bay Complex, for example, if an inmate does not have enough money in his account to pay the fee, it is entered into the Postponed and Remitted fee book and no money is collected from the inmate. This system has operated for over forty years. In 1989, seventy eight of the eighty one appeals lodged at the Long Bay Complex were treated in this way; in the other three cases, the prisoners concerned had sufficient funds to allow the fee to be paid.

In April 1990, however, two complaints received from prisoners pointed to fundamental problems with this arrangement in other prisons. At Cessnock Corrective Centre, the appeal fee is "deducted" from the inmate's account, while ever there is the prospect of the prisoner earning further income, even if at the time the prisoner has insufficient funds to pay the fee. This means that someone with only \$20 in their account who has to pay an appeal fee of \$50 will be debited an amount of \$30. On prison wages it could take an inmate more than a month to "work off" the debt and he would as a consequence have no opportunity or means of buying "luxuries" like soap, shampoo or additional food. It seems somewhat ludicrous for a "gaoler", in the terms of the Justices Act, to argue that someone with no money in their account does not suffer from "want of means".

At Parramatta Gaol another twist was added. A prisoner signed the appropriate form to allow the appeal fee to be deducted from his account. Because the account did not contain enough money to cover the fee, the form was filed to await the arrival of some money. More than eight weeks later, the money arrived in the form of funds sent in by the inmate's mother for the prisoner to have a tooth mended. The money for the appeal fee was then deducted from the account, despite

the fact that the appeal in the meantime had been rejected because the statutory period had expired.

Negotiations are currently taking place to redraft the Corrective Services guidelines to make sure that the Justices Act is applied fairly and consistently in all prisons. No prisoner should be disadvantaged simply because they happen to be in Cessnock rather than in Long Bay.

Banning of "Rogues" magazine

The fundamentals of good decision making requires the proper consideration of all the basic facts of a matter, of the various options that are available and of the implications that attach to each course of action which might be taken. Unfortunately, when they are pressed to make urgent decisions, busy administrators sometimes overlook such fundamentals and their decisions can appear to be arbitrary and unsound to those they affect, particularly if reasons are not given.

The banning of the prisoners' magazine "ROGUES" was a case in point.

"ROGUES" magazine was produced by prisoners at the Reception Prison, Long Bay. It began in May 1989; two issues were produced before the Deputy Director General of Corrective Services ordered its closure. "ROGUES" contained mainly letters and articles from prisoners and information articles contributed by staff and organisations funded by the department. It was similar in content to "IN LIMBO", another magazine that had been produced at the Remand Centre for several years.

"ROGUES" came under the scrutiny of the Special Operations section of the Department in September 1989. Concern was raised about its editorial content and the management of financial contributions made to the magazine by outside bodies and individuals. The cover of the second issue, the editorial, and a satirical article about the breed of animal known as "mongrelous humananus caninious" titled "In the wild", were all directed against prisoner informers who, in gaol parlance are known as "dogs". Special Operations staff considered that all of these

were calculated to inflame already entrenched animosity towards protection prisoners.

The matter was brought to the attention of the department's Deputy Director General. He took exception to other particular articles in this edition of "ROGUES" as well, on the basis that they were "a tactic to destroy confidence in the system of justice in New South Wales". He ordered the closure of both "ROGUES" and "IN LIMBO". The Superintendents of the gaols where the magazines were produced were later told of the decision, but were given no reasons for it. Consequently, they were not able to explain the decision to either the prisoners or the staff who helped produce the magazines.



A few days later the editor of "ROGUES" found himself on an unexpected escort to Goulburn Gaol. He was due to appear before the Program Review Committee at the Reception Prison that day. He had a Sydney court appearance a few days later as well.

A third "underground" edition of "ROGUES" was produced outside the prison system some weeks later. Most of the copies of this edition that were posted to prisoners were confiscated by gaol authorities unbeknown to the prisoners. This action was taken on the instructions of the

Assistant Director and Director of Prison Operations.

A solicitor representing the editor of "ROGUES" complained about the matter and each of the issues involved was made the subject of an investigation. An inquiry was held for that purpose.

It was clear that the second issue of "ROGUES" contained material that was offensive and threatening to protection prisoners, and this alone provided sufficient reason for impounding that issue. The Prison Regulations, however, did not authorise the prohibition of unseen, future editions. The way in which the decision to ban the magazine was made became the focus of the investigation.

Because the department had no policy or guidelines about controlling prisoner publications, the Deputy Director General, in making his decision, had to use his discretion, guided only by the general objectives of the department for managing offenders whilst in prison. Those objectives include not only the containment of prisoners in a humane and disciplined manner at appropriate levels of security, but also the maintenance of their health and well being consistent with community standards and the provision of programmes to assist them to become more responsible community members upon their release.

The investigation found that, while it was reasonable for the question of the contentious material in the magazine to be referred to the Deputy Director General for assessment, his assessment should have included a proper consideration of the broader context of the department's multifaceted objectives and responsibilities towards prisoners.

In his evidence to the investigation, the Deputy Director General said that he "had practically no knowledge of the magazines" before the matter had been referred to him. He read "two or three articles" from the offending issue of "ROGUES", to which he took exception, before deciding that the magazine should be banned. He banned "IN LIMBO" at the same time, even though he was not shown any copies of it and

had never read it before; and although he was told that it was causing some problems, he had not been told what those problems were, because the staff member who referred the matter to him did not know himself.

The Assistant Ombudsman concluded that the Deputy Director General's decision making had been defective to the extent that he had failed to take into account other relevant considerations such as those relating to the possible beneficial effects of the production and distribution of "ROGUES" within the gaol system. Evidence to the inquiry identified the magazine's chief value as being a particularly effective medium of communication between prisoners and staff in the education, health, welfare and custodial areas. This had even been recognised by the Deputy Director General himself by the time he gave his evidence to the inquiry. The Assistant Ombudsman also concluded that the decision to ban "IN LIMBO" was defective, because the Deputy Director General had not had a sufficient base of knowledge upon which to properly found his decision to prohibit the publication of that magazine. The fact that reasons for the decisions were not given was also unreasonable. Although the Deputy Director General said that he had expected these to be conveyed, he had taken no steps to ensure that they would be. Consequently, when communicated to the prisoners and staff that they affected, the decisions appeared arbitrary. The Superintendent of the Reception Prison which had encouraged production of the magazine, had not been consulted about its being banned. The Assistant Ombudsman was also critical of the Deputy Director General's failure to tell the Superintendent that the former believed that the Superintendent had made an error of judgement in allowing the offending edition to be printed.

Neither had the Superintendent been consulted about the decision to transfer the editor of "ROGUES" for the "good order and discipline of the gaol". In his opinion, the prisoner did not constitute in any way a threat to the good order of the prison. He had been transferred, as a matter of "caution", by another Superintendent in Special Operations, in case the decision to close the magazine encouraged him to misbehave. The Superintendent in Special Operations had no first hand experience

of the prisoner and had not possessed contemporaneous information about his behaviour in the gaol. The Ombudsman found that the decision to transfer the prisoner was unreasonable. He said that the Superintendent in Special Operations could not have properly formed the opinion that the transfer was necessary for the "good order and discipline of the gaol" unless he had first consulted the Superintendent of the Reception Prison who had responsibility for the management of that institution, the good order and discipline of which, supposedly had been under threat.

The investigation also found that there was no power in the Prison Regulations for the Assistant Director and Director of Prison Operations to direct superintendents to impound the "underground" copies of "ROGUES". The regulations relating to written communications with prisoners require individual superintendents or authorised officers to make independent judgements on separate articles received in their gaols. This had not happened although the Assistant Ombudsman considered this action to be reasonable in the circumstances. The failure to inform the prisoners whose mail had been impounded however was not in accordance with the Prison Regulations.

The final report issued on 14 May 1990 recommended that the department develop guidelines and policy for prisoner publications and that the decision to ban "ROGUES" and "IN LIMBO" be reviewed in light of that policy. At the time of writing (early August 1990) the new draft policy and guidelines were still under consideration.

By the time the final report was issued the department had already acted on some other provisional recommendations. These involved ensuring that the impounding of the copies of the 'underground' edition of "ROGUES" was brought into line with the requirements of the Prison Regulations. This involved informing the prisoners concerned and transferring the articles into their property. The appearance before the Program Review Committee of the editor of "ROGUES" was also brought forward by three months. This was to compensate for the delay in reviewing his classification which had resulted from his unjustified transfer to Goulburn Gaol.

Personal Prejudice and Official Duty

When Ombudsman officers visited a country goal, a prisoner complained to them about certain comments that had been made at a Programme Review Committee (PRC) meeting by the Chairman of the Committee. The PRC was responsible for reviewing the prisoner's progress in the prison system, and for making recommendations about his future prison placements. The Chairman of the Committee, in fact, was the then Deputy Director of Prisoner Classification in New South Wales.

After an Investigation Officer had conducted extensive preliminary enquiries in connection with the complaint, the Deputy Ombudsman decided to investigate comments that had been made by the Chairman at a number of PRC meetings, including comments about the ethnic origins of certain prisoners, as well as about the nature of the offences for which they had been imprisoned.

Among other things, the Chairman admitted that he could recall saying to prisoners at a number of meeting that he "had an intense personal dislike, not as individuals but certainly as a group, of prisoners convicted for serious drug importation and/or supply offences." Furthermore, he admitted that after one of the meetings he had told an Official Visitor:

... I make no apologies for my prejudice.

His said that his reasons for making these kinds of comments were based on his "personal concern as a responsible citizen" about the effect of drug use on society. He added:

... by making these views public, I believe this helps to ensure both mine and Committee member decisions are not unfairly biased because of the nature of the offence.

In his final report, the Deputy Ombudsman acknowledged that it was reasonable and understandable for people in society to have strong personal views about such matters. However, he disagreed that it was appropriate for the officer to express his personal views at the PRC Committee meeting when discharging his official duty. The Deputy

Ombudsman said:

... it is not proper for him to voice these personal opinions regarding this type of offence at P.R.C. meetings. Each committee member has the responsibility to have regard to only those considerations relevant to a prisoner's classification. A judge or magistrate, in the performance of his/her Public duty, has already made a determination concerning the appropriate sentence a prisoner should receive for his/her offence. The Committee must have regard to the nature of the offence, as the lowering of a prisoner's classification can mean the placement of a prisoner in a less secure environment. The type of offence a prisoner has committed would be, among other things, relevant to whether or not a Committee decides to recommend a less secure custodial environment. But it is clear that the consideration by the Committee of the particular offence that a prisoner before it has committed must be based on relevant factors. [A Committee member's] personal opinion of drug offenders, and his personal view of appropriate sentences for such offenders, is a totally irrelevant matter for a P.R.C. to consider.

Moreover, the Deputy Ombudsman did not accept the argument advanced by the Chairman that, by publicly stating his view at committee meetings, he was helping to ensure that his decisions, and the decisions of the Committee, were not unfairly biased.

On this point the Deputy Ombudsman said:

If [the Chairman] or any Committee member, can not put his or her personal opinions aside and consider only those matters relevant to a prisoner's classification, that he or that other Committee member should not sit on a Classification Committee. But if he, like all Committee members properly exercising their public duty, is sure that he can put aside his personal views, then there is obviously no need for him to express such views. Further, in my opinion, the expression by [the Chairman] of his personal views had the potential to cloud the real issues which needed to be considered. By expressing his personal view, [he] ran the risk of leaving the prisoner, and his fellow Committee members, with genuine concern regarding his motivation for so doing. Given [his] senior position, any comments he might make will be likely to influence other Committee members. Therefore, it is essential that he only makes comments on matters relevant for the Committee to consider.

The Deputy Ombudsman found that the officer had made improper and

irrelevant statements at certain committee meetings. He recommended that instructions be issued to all members and potential members of Programme Review Committees, emphasising the need to consider only those matters of relevance to a proper review of a prisoner's classification.

In response the department published in its Information Bulletin of 7 February 1990 the following instruction:

It is important that only matters relevant to a proper review of a prisoner's classification be considered by Committees when formulating their recommendations. Broadly, these are the matters which will be raised by the divisional representatives. Members of committees should disregard any remark by a member of a committee or a prisoner which does not have any clear relevance to classification proceedings.

The classification process should not be influenced by any disparaging and irrelevant remarks about a prisoner's ethnic or religious background, or any other matter which are not relevant to classification. Members of committees should refrain from making any remark which may tend to suggest to any prisoner that proceedings of the committee will be other than totally fair and impartial.

In light of the action taken by the Department in response to his report, the Deputy Ombudsman took no further action and concluded the investigation.

Let them eat meat, and then throw it out!

A number of women prisoners at the Mulawa Training and Detention Centre complained to the Ombudsman in 1988 about the removal of beans, seeds and grains from the "buy-up list" in all prisons across the State. The buy-up list comprises a list of items which prisoners are allowed to purchase, using their own funds. It was used by many vegetarian prisoners to supplement the food provided by the prison kitchen. The women at Mulawa also complained that the food supplied by the prison catering service did not adequately meet the needs of non-vegan vegetarians. (Vegans are those vegetarians who do not eat any animal products whatsoever).

The Ombudsman started an investigation of the prisoners' complaints using his "own motion" powers. The investigation focused on the alleged failure of the Department of Corrective Services to conduct proper research about the likely effects of its actions on the vegetarian inmates of Mulawa before introducing the buy-up restrictions. It looked, as well, at the department's alleged failure to take account of the special dietary needs of female prisoners as opposed to those of male prisoners, or at the unique situation at Mulawa, a prison catering for female inmates of all classifications, before issuing a new menu to be used in all maximum and minimum security institutions. It also looked at the department's alleged failure to consult the superintendent and kitchen officer at Mulawa before introducing the changes.

The department said that the reason for withdrawing beans, seeds and sprouts from the buy-up list was that those items might be used in the manufacture of gaol "brews", that is home-made alcohol. However, the department was unable to produce evidence that any of those particular items had ever been used for the manufacture of alcohol at the gaol. In fact, investigation revealed that the instances of gaol brews at Mulawa were very few indeed; and those which had been discovered had been made primarily from fruit products.

In response to enquiries made by the Ombudsman's office, Mr N. Day, the then Acting Director-General of the department, said:

It is true that items including rice, beans and seeds have been removed from the buy-up list. However, it should be remembered that items such as beans and rice are included in the meals provided to prisoners through the institutional menus. Buy-up items cater to prisoners' desires for snack foods to eat between meals, but the meals provided for prisoners from the kitchens are intended to provide all the nutrients required to maintain health and fitness. Menus have been checked for nutritional adequacy by qualified dietitians.

However, in a submission to the Minister for Corrective Services on 10 January 1989, the department's Director-General, the same Mr Day, then made the following somewhat startling remarks:

...the minority of prisoners who are health-conscious are

correct in assuming that prolonged consumption of the present prison diet exposes them (and all other prisoners) to the risk of premature death or serious and permanent debility as a result of illnesses such as coronary occlusion and arteriosclerosis.

The department's action in allowing such a situation to continue would appear to contravene Prison Regulation 44, which provides:

44. (1) A prisoner shall be supplied each day with food in accordance with a diet designed to provide a dietary intake generally in accordance with the dietary intakes recommended for the time being, and published, by the National Health and Medical Research Council.
- (2) The diet for prisoners shall-
- (a) be varied;
 - (b) provide adequate amounts of each essential nutrient from basic foods; and
 - (c) be planned to ensure optimal nutritional health.
- (3) The diet of a prisoner having special dietary needs shall be planned having regard to those needs.

The then superintendent of the gaol had written to the Acting Director of the Custodial Services Division requesting the restoration of the banned items to the buy-up list. The letter was neither acknowledged nor acted upon.

When interviewed by the Investigation Officer, the prison superintendent said that she did not consider brews to be a problem at Mulawa.

She added that the standard buy-up list was not appropriate for women because they had little use for "jockettes", "shaving cream" or "herbal steroids". She said that there was a need for these to be some flexibility in the standard list in order to cater for women's needs.

In November 1988, when the summer menus were introduced into gaols, the vegetarian menu was amended to cater for "vegans". The vegetarian inmates complained about the lack of variety in the menu and commented that it seemed to have been designed to "turn people off" being vegetarians. They said that things like soya beans were being prepared by non-vegetarian staff who were not soaking them beforehand; this meant that the beans were like bullets - totally inedible and indigestible. They added that, even though "on paper" the menu might appear to be nutritionally correct, by the time that frozen vegetables had been cooked, then reheated and kept warm before serving, there were very few nutrients left in them. These factors, coupled with the removal of vegetarian items from the buy-up list, prompted some of the vegetarians to switch to the "meat diet"; they simply left the meat serving, or their plates and this was then thrown out.

When interviewed by investigation staff, the then kitchen officer at Mulawa added that giving women what they did not want to eat only led to waste. She expressed the opinion that the kitchen officer, in consultation with the superintendent, should have control of the food allowance, and claimed that the allowance would then be better spent, that there would be less waste, and that the department would be saved money as a result.

In November 1988, a dietitian/nutritionalist retained to report on matters associated with prison diets said:

...the vegetarian menu included many items which were unpalatable and unpopular resulting in considerable waste, in particular [of] the...meat substitutes. The alternative protein source was predominantly soya beans giving the menu a lack of variety and imagination. There was a limited choice of fresh vegetables for all inmates which limited the vegetarian menu further. Sadly no allowance was made for seasonal availability of vegetables, an important factor for budgeting as well as variety.

The Ombudsman's investigation found that:

the department had acted unreasonably in failing to conduct any research about the likely effect of its actions

on the vegetarian inmates of Mulawa before introducing the new vegan menu and removing beans, seeds and sprouts from the buy-up list.

- . the reasons given by the department for standardising the buy-up list did not apply to Mulawa.
- . the department's failure to take account of the unique situation at Mulawa, as an institution catering for all classifications of female prisoners, was unreasonable, as was its failure to consult with the superintendent and the kitchen officer about the possible consequences of the changes.

In his final report the Ombudsman recommended that a promised review of prison catering practices and procedures be completed without further delay, and that the recommendations made by the dietitian, which had not been implemented by the department, be addressed by the review. He also recommended that the department conduct research about the ingredients used for making gaol brews and that it restore those items not commonly used to the buy-up list. He further recommended that the standardised buy-up list be modified to cater for the special needs of women prisoners.

In January 1989, the Acting Director-General of the department recommended to the Minister for Corrective Services that an "urgent investigation" of dietary issues be undertaken. The Minister approved the department's recommendation promptly, yet it was not until June 1990, eighteen months later, that a draft report of the dietary review was completed. At the time of writing, the department's final report of the dietary review had still not been finalised!

**Missing services: still missing -
the plight of the disabled in the "justice" system**

Late last year the Ombudsman received an exceptionally well documented and thoughtful complaint which highlighted the particular problems faced by the intellectually disabled once they are caught up, for whatever reason, in the justice system.

The complaint related the history of a young man, who we will call Fred, whose career revealed the gaping holes in the safety net provided by the welfare state.

Fred, who was both intellectually disabled and hyperactive, had begun his anti-social career in his early teens with a series of minor nuisance offences - annoying and invasive behaviour on trains, stealing very small amounts of money, and the like. Although it was clear that he had very little comprehension of the consequences of his actions, and even less capacity to modify his behaviour in the face of normal social sanctions, he was brought under the eye of the juvenile justice system; and eventually committed to stints in the juvenile detention centres of the State. There is no evidence whatsoever that any useful programs for Fred were brought into place by the then Department of Youth and Community Services. Indeed, there is evidence that, even at this early stage, Fred was regarded as an impossible problem whose steady deterioration was inevitable.

Fred encountered predictable brutalisation in detention centres, and his highly impressionable nature meant that, from each period of detention, he learnt more aberrant and intractable behaviours. His multiple offences were still of the nuisance variety, but by the time he was old enough to come before the courts, his offences were of a degree of nuisance such as to render him liable to quite extended periods of imprisonment.

Strangely enough the rigid discipline of prison, at times, appeared to provide a "rough and ready" program of behaviour modification of the type that psychologists agreed offered Fred his best chance. Those involved with his case over the years have not been slow to point out the bitter irony of this circumstance; that prison warders were called upon to provide the type of therapy an army of psychologists and welfare workers could not provide in the community.

Predictably, though, the limitations of prison resources, and the brutality of the gaol environment, meant that programs designed to help Fred in

gaol eventually broke down. Bashing or abuse by other prisoners meant that Fred had to be kept in the "protection" areas of the gaols. Such areas are, by definition, more confining than even the normal prison environment. Movement and recreation tend to be very restricted. Due to the very high staff ratio required to guard protection prisoners, prisoners tend to be denied facilities that are freely available to other inmates and to be locked in their cells for a longer time each day than other inmates.

After each prison term, Fred would be let loose with a new repertoire of anti-social behaviours. His restless and volatile nature meant that his supervision by the Probation and Parole Service was largely illusory; all too soon he would re-offend, and it would be left to the court to make the unenviable choice between a further custodial sentence for Fred or releasing him once more into an unsupportive community.

By this stage, almost every eminent psychologist or doctor in the field had seen Fred and each had added a further sensible, well researched and intelligent report to his capacious dossier. Proposals for behaviour modification within a highly structured environment were the most common recommendation, but all agreed that Fred would never remain voluntarily within such an environment. In the somewhat "cosmetic" post Richmond Report environment, there was no mechanism for coercing Fred to stay within such a therapeutic community; and, in any case, coercion was anathema to the therapeutic goal.

The prospects for Fred have steadily deteriorated over his decade of involvement with the justice system. It seems likely that his only periods of treatment will be during gaol terms. In an era of global budget restriction, it seems unlikely that the Department of Corrective Services will dedicate the very considerable resources required to cater for the very special needs of Fred and others like him.

Is there any answer?

In 1985 a joint working party of the (then) Department of Youth and Community Services and the Department of Corrective Services

produced a report entitled "The Missing Services: A report detailing how services fail to adequately reach intellectually handicapped adult offenders in New South Wales with Strategies and other action required to expand such services".

The report sounded good and canvassed the special problems of such offenders and, in particular, the lack of coordinated programs for them, which could often see an intellectually handicapped juvenile 'progress' along a steady path from minor nuisance offences to a lifetime career of short gaol terms. The report contained recommendations for reforms, coordinated action by departments and the first systematic survey of such offenders. It was referred for comment to various departments and bodies and for two years, appeared to have sunk without trace - a not uncommon fate for reports of this type.

The Disability Coordination Unit within the Premier's Department made a valiant effort to revive the report in 1987. The most tangible result of those efforts was the production of a training video which was designed to alert those within the justice system to the issues surrounding intellectual disability.

Implementation began to move more swiftly when the matter was placed in the hands of the Ministerial Committee on Disability. In recent times, a number of special units for inmates with intellectual disabilities have been set up in the State's gaols. Such units may not cater to the very special needs of an inmate like Fred, but their existence is nevertheless a positive step. A recent report produced by a working party within the Department of Family and Community Services on services to young persons with intellectual disabilities in the juvenile justice system may have a positive outcome. Only relatively recently, the broader question of juvenile justice itself has also been referred to the Standing Committee on Social Issues.

The Ombudsman has considered the plight of the intellectually disabled offender, and Fred in particular, at great length. In view of the multiplicity of reports and committees at present considering this matter, no formal investigation is being undertaken at this time, pending the

result of these inquiries. The plight of Fred and others like him, however, can not afford to be forgotten. The need of such people for urgent intervention upon their first contact with the juvenile justice system is dramatically illustrated by Fred's decline.

No society can ignore the consequences of such neglect and continue to call itself civilised or caring. No society can "solve" the problems associated with cosmetic deinstitutionalisation of intellectually disabled people, merely by allowing them to get on the best way that they can in a community that has too little to offer by way of essential support services for them.

Death of a Scheme?

Official Visitors to Gaols

The 1988-89 Annual Report outlined how the usefulness of the Official Visitors Scheme was in the process of being eroded as a result of cost saving measures which had been adopted by the department. Of concern was the fact that the department had decided to restrict payments for visits to one day each month.

If the scheme fails as a result of lack of support from the department, it will be the end of a very effective program which has allowed inmates to express their dissatisfaction with certain remediable aspects of prison life.

When the scheme was first introduced on 1 January 1985 as a six month pilot program in three gaols, this office applauded the positive action taken by the department. Up until that time, the department had no internal grievance mechanism to handle complaints, apart from inmates directly expressing their dissatisfaction to the Superintendent.

When the scheme was initially set up, its objectives were twofold; official visitors were to perform an inspectorial role independently of any similar departmental function and, they were to provide an outlet for enquiries and complaints from inmates and staff. Mr Akister, the former Minister for Corrective Services, circularised the gaols at the

time the scheme was being set up, indicating that official visitors were to act independently of the department and were to be responsible to the Corrective Services Commission (as it then was) with direct access to the minister. Clearly then, the scheme was envisaged as a method for the minister to be kept informed of grass roots complaints that inmates had about the prison system and for the department to determine what action, if any, it would take on complaints made to the official visitor.

In 1988 the Prisons Act, 1952 was amended to provide for the statutory appointment of official visitors. It is to be noted however that the role of the official visitor was not spelled out in a systematic way as part of the legislative change which, on consideration of the recent turn of events, proved to be a potentially fatal flaw.

Deprived of an effective legislative basis, the official visitors had to rely on their personal relationship with the superintendent of the prison in order to mediate complaints. Where that relationship faltered, so too did the official visitor scheme.

The essential complaint of some official visitors is that the prison hierarchy shows reluctance to listen to their concerns. The only gauge that this office has to measure the effectiveness of the scheme is by visiting various gaols and talking to the inmates. The inmates of certain institutions do not place much faith in lodging or discussing a complaint with the official visitor.

Unless the situation improves between the official visitors and the department, this office will have to reconsider its support of the scheme. As the 1984-85 Annual Report noted:

The effectiveness of the Prison Visitor scheme will be monitored with interest by this Office insofar as that is possible. If the scheme is not effective, the Ombudsman believes that further consideration will need to be given to some internal complaints unit in the prison system.

Private prisons: effective grievance procedures essential

The Ombudsman's Office plays a crucial role in handling grievances of inmates in State prisons. In late 1989 it appeared that the New South Wales government was contemplating the introduction of private prisons in New South Wales. The Ombudsman believed that it was important to understand the implications of such a system should it be introduced here. His concern was limited to the exercise of his statutory role, and he decided to look more closely at the grievance procedure that existed in private prison systems wherever they operated. It was not his intention to look at issues other than that of grievance handling procedures, and he specifically determined to take no part in appraisals of aspects outside the area affecting his statutory duties.

The Ombudsman visited Borallon, a gaol operated in south east Queensland by a private corporation; and while in the United States on other business, was able to visit some American prisons which were run by private corporations.

In America, as in Australia, laws differ from state to state. However, the concept of independent or outside oversight of grievance handling in prisons is not apparent in the American system. This was not particularly surprising. The many differences that exist in administrative practices between Australia and America make it imperative that the New South Wales government sets out what it requires of private operators if private prisons are to be introduced here.

The Ombudsman assumes that, so far as grievance handling procedures are concerned, the intention of the New South Wales government will be to set up a uniform system within the state, and that not less than current methods will remain. If that is so, the system in New South Wales will be distinguished from the American system by providing access both by prisoners, to the Ombudsman and to the Official Visitor program. The Official Visitor program has, in the past, been seen to be very effective in this state, so far as the Ombudsman's Office is concerned. The current problems with the scheme are dealt with elsewhere in this report. Failure to maintain the Official Visitor system

would be a false economy and a retrograde step and would result in much more costly ways of dealing with the bulk of prisoner complaints.

On 19 July 1990, the Ombudsman wrote to the Minister for Corrective Services, expressing his views about this matter. In his letter, the Ombudsman said:

The Ombudsman process that requires my Office to receive and assess complaints has worked effectively and has provided a window into the system for the administration, particularly on issues of public significance.

The system that I have viewed in the United States differs from New South Wales in that no provision is made for outside or independent oversight. The process is:

- . complaint to the head of the Institution;
- . if still unsatisfied the complaint goes to the Corporate Head Office for adjudication;
- . if still unsatisfied the State Prison Board reviews the complaint.

The Court system may also be involved in some States, but otherwise the concept of independence has not penetrated the American system so far as my studies indicated.

To provide for continuation of access of the Ombudsman process should not involve undue problems to the operator or the contractual process. Indeed, such oversight would continue to supply the safety valve and the independent view into the administration that has been the hallmark of the Ombudsman system.

He went on to raise another issue that he perceives will be important in any scheme of private prison operation in this state, namely the role to be played by the person who, on behalf of the state, monitors the performance of the private prison operator. This person, usually referred to in the United States as "the monitor", has the role of objectively evaluating the day-to-day performance of the private prison contractor. The Ombudsman said:

It was my observation that in terms of administration the monitor's role is extremely important but administratively vulnerable. The monitor is in daily contact and at close

quarter with the corporation administration. The risk of becoming captive to the corporation is apparent, not only due to the close and constant contact experienced but due to the fact that the private corporation offers an alternative career path.

As this is an important area of administration I draw it to your attention.

Inquiry into use of force by prison officers

In May 1990, in what, by all accounts, was an interesting encounter, the Minister for Corrective Services debated the former Chairman of the Corrective Services Commission, Professor Tony Vinson, at the University of New South Wales. During the debate, Professor Vinson raised concerns about the use of force by prison officers. He subsequently asked the Ombudsman to investigate a series of complaints prisoners had made to him alleging assaults by prison officers. The Minister, as well, asked the Ombudsman to investigate the claims made by Professor Vinson.

Following preliminary inquiries, the Ombudsman decided to conduct an investigation. The Assistant Ombudsman commenced an investigation and conducted an inquiry using the Ombudsman's "Royal Commission" powers.

The inquiry has focused on allegations of assault on nineteen individual prisoners. All but one of the prisoners' allegations involved members of the special response units of the Department of Corrective Service. The alleged assaults on thirteen of the prisoners occurred during and subsequent to two disturbance at the Parramatta Gaol on and around Anzac Day 1990, when fires were set in two of the main gaol wings.

Oral evidence has been taken from 149 witnesses over twenty four hearing days. A report on the investigation is currently being prepared.

CONSTRUCTIVE ACTION BY PUBLIC AUTHORITIES

Previous Annual Reports have mentioned that this office rarely takes further action where a public authority admits that it has made a mistake and acts constructively to rectify this. In those cases where a formal investigation has not been commenced, the office usually treats the matter as having been resolved.

Specific examples of public authorities that have taken constructive remedial action during the year follow. Some statistics are set out later in the report under the heading **Performance indicators**.

Crown Solicitor's Office

A man asked for help to resolve a claim for witness expenses. He and his wife had been subpoenaed twice by the Crown Solicitor's Office to appear as expert witnesses in Sydney. They lived in Queensland, so accommodation and air travel were arranged by the Crown Solicitor's Office. The man's first claim for expenses was paid promptly; but after waiting four months for settlement of the second claim, which included a claim for reimbursement of lost income, he wrote to the Ombudsman.

The matter was settled quickly once this office contacted the Crown Solicitor's Office. The man received full reimbursement for expenses and compensation for loss of income. The Crown Solicitor's Office apologised for the delay and the complainant was delighted with the outcome.

Office of State Revenue

Through the year a number of letters were received complaining about delays in the payment of refunds by the Office of State Revenue. The delays complained of were

anything from nine months to three years.

An example of the successfully intercession of this office is in the case of Mr and Mrs Z who overpaid the stamp duty on the Contract for Sale of their house. After numerous advances to the Office of State Revenue, the very small amount of \$129.50 that they wanted refunded remained unpaid. Not even their solicitors had been able to retrieve the money.

This office made a number of phone calls and finally established that the problem was primarily that the receipt number which would have readily identified the transaction was not visible on the contract as it should have been. The problem having been identified, alternative means of establishing the grounds for a refund had to be found. The only other way that the Office of State revenue could verify the overpayment was to go through the cash register roll for the relevant day. This they did and within a few days a refund cheque was posted to Mr and Mrs Z who, although not much richer, were much happier.



Western Lands Commission

If people owning property in the Western Division of NSW wish to clear their land of trees, they have to obtain a clearing licence from the Western Lands Commissioner, which allows them to destroy by ringbarking or poisoning trees which have no economic value.

Some property owners complained about the time taken by the Western Lands Commission to issue a clearing licence. They had gone ahead with poisoning some trees because they had been given verbal confirmation that their licence had been approved and was "in the mail"; this was more than six months after they had made their application and paid the necessary fee. The property owners were summonsed for illegal poisoning.

Enquiries by this office revealed that a number of government authorities usually had to be consulted before a licence could be issued. In this case, the relevant authorities were the Soil Conservation Service, the National Parks and Wildlife Service and the Forestry Commission. Each authority had been asked by the Western Lands Commission to comment on the application within six weeks.

The most significant delay was that on the part of the National Parks and Wildlife Service, which took twenty six weeks to respond. The Western Lands Commissioner told this office that this was not unusual and that, as a consequence, the relevant ministers had held discussions about speeding up the process. After those discussions, the commission altered its procedures to provide that, if no response had been received from a relevant authority within eight weeks, and no extension of time had been sought, the commission would assume that the authority had no contribution to make and would proceed to

process the licence.

The legal action taken against the property owners was outside the Ombudsman's jurisdiction, and enquiries focussed on the delay in granting the clearing licence. The decision to alter the commission's procedures for processing licences addressed the need to eliminate such long delays in the future.

Police Department

Ms K complained to the Commissioner of Police about the rudeness and insensitivity shown to her and a friend by a constable of police. They had gone to a police station to get information about the hearing date for a matter involving an application for a domestic violence order against the friend's spouse.

The Ombudsman agreed with the Police Department that the best way to deal with the complaint was to have it conciliated, rather than investigated. Ms K said that she would be happy to conciliate the matter if the constable was counselled about his conduct.

The constable was spoken to and he gave an assurance that he would display more understanding and sensitivity in his dealings with members of the public in future.

Some (fortunately, not many) complaints take an awfully long time to resolve. In one case a prisoner complained in January 1988 but his complaint was not finally resolved until July 1989.

The prisoner was in custody at Long Bay Gaol. He was taken to a police station, appeared in court, and was then returned to the gaol. During his travels, his overnight bag containing a number of personal items was lost.

The Police Department made preliminary enquiries and concluded that the bag had been left in the prison and so disclaimed responsibility. This office made enquiries with the Department of Corrective Services. Documents relating to the receipt and release of prisoners' possessions showed that the bag in fact had made its way back to the police station.

The matter was referred back to the Police Department and, after more extensive enquiries were made, the police finally accepted responsibility for losing the prisoner's possessions.

The Police Department recommended that the police officers who had escorted the prisoner to court and who should have looked after his possessions be paraded before their respective District Superintendents and be counselled about their responsibilities. The department also proposed to make an ex gratia payment to the prisoner to cover the loss of his property.

Unfortunately, all of these enquiries had taken so long that, by the time the matter had been concluded, the prisoner had been released and could not be found. Consequently, he has not, as yet, received his compensation - nor the summons that the police are waiting to serve on him.

The co-owners of a car purchased from a licensed motor trader in Albury took it to the local Motor Registry. They were told that a stolen vehicle search would have to be made on the car because it was registered in Victoria; so they took the car to the local police station.

The police impounded the car in order to check its bona fides and it remained in police custody for six weeks. The vehicle was then returned to its owners after a "Stolen Vehicle Clearance" was issued.

A year later, police asked the owners of the car to present it to the local police station again for a further inspection concerning its bona fides. The car was again impounded when it was found to be a "composite" vehicle (that is a vehicle made up of parts from several vehicles), and it remained in police custody for another fourteen months before it was again released to its owners.

In the meantime, solicitors complained on behalf the owner of the car about the delay on the part of the police in establishing the bona fides of the vehicle, and about the failure of the police to reply to their correspondence.

Enquiries with the Police Department found that police had confirmed that the car had been "built up" of various parts from other vehicles of similar make, and several parts had been identified as having come from stolen vehicles.

Nevertheless, from its enquiries the Police Department was satisfied that the owners had purchased the car in good faith and that they were in no way connected with the stolen parts. In view of this and the loss of the use of the vehicle suffered by the owners over such a long time, the Department recommended that they receive an ex gratia payment of \$3,465. The ex gratia payment was made, the owners of the car signed a form indemnifying the department against further claims and the Ombudsman marked the case "resolved".

Department of Corrective Services

Often the role of this office is of facilitator, ensuring that action is taken by the appropriate body, just by bringing a problem to its attention. This role is readily illustrated in the following cases.

- . An Aboriginal prisoner in Long Bay Gaol sent a submission to the Royal Commission into Black Deaths in Custody. Prison staff did not send it to the Royal Commission but instead sent it to the Aboriginal and Ethnic Affairs section within the Department of Corrective Services. This not only caused a long delay but appeared to represent an unreasonable interference with a prisoner's mail.

When the complaint reached this office, the investigator contacted Royal Commission staff to ensure that they interviewed the prisoner without any further delay. The Royal Commission staff brought the matter to the attention of the department. As a result, the Director of Custodial Services issued a direction to all correctional institutions that all communications to the Royal Commission be despatched without delay.

- . The Assistant Ombudsman visited Goulburn Training Centre in February 1989. A number of the prisoners being held in the High Security Unit complained to him about the denial of contact visits. The Acting Superintendent confirmed that there was a standing practice of not allowing contact visits to inmates until they had been in the unit for 12 months, except in special circumstances.

The Assistant Ombudsman did not believe that this practice was in accordance with the department's policy on segregation since it had never been the subject of a formal determination. It seemed, therefore, that the practice was

an arbitrary and informal denial of a normal privilege. As a result of the Ombudsman's decision to investigate the matter, the Director of Custodial Services issued just such a determination. This brought the existing practice into line with the provisions of the Prisons Act and Prison Regulation 99.

This determination did not make an enormous practical difference to prisoners, except that they would now be formally informed about the practice via the rule sheet issued to them on their arrival at the High Security Unit. The Director-General also confirmed that the Superintendent of the High Security Unit could recommend contact visits for any inmate where, in his opinion, there were extenuating circumstance. This at least clarified the matter for all concerned.

Part of the rationale for denying prisoners contact visits had been the limitations in facilities and staff which might have resulted in security difficulties for the prison and its good order. The department also notified the Ombudsman that the question of contact visits was to be re-appraised in preparation for the move of the High Security Unit to new special purpose premises.

A prisoner complained about the failure of the Department of Corrective Services to finalise his claim for compensation for property that had been lost at the prison nine months earlier.

The department had originally offered the prisoner \$100 compensation but he felt that this was not enough. Preliminary enquiries were made by this office after which the department agreed to increase its offer to \$130. The department, however, made it clear that this was its final offer and, if the prisoner declined it, he would have to

sue. When the prisoner was informed of the department's position, he accepted the increased offer.

A prisoner wrote seeking the Ombudsman's help to recover his computer printer which, he alleged, another prisoner had stolen. The complainant claimed that the serial number plate on his printer had been "swapped" with the serial number plate on the other prisoner's printer. The reason for this, he said, was that his printer was the better of the two.

A simple phone call from this office to the prison resolved the matter. The Superintendent's secretary checked the prison records which showed type of the printer that each of the prisoners had purchased. The "best" computer printer was soon returned to its rightful owner.

Kempsey Shire Council

Resolution of a matter sometimes takes more than "one go"; and sometimes the complainant remains dissatisfied anyway. Mrs C's complaint is a case in point.

Mrs C complained that her next door neighbour had erected a 40 foot awning without council permission; the awning was causing roof water to flow onto her property. She had contacted the council and they had confirmed that the structure was illegal because it was not properly guttered or drained. A building inspector told her that it was a civil matter and she would need to take legal action against her neighbour. Mrs C felt that, because the awning involved a breach of building regulations, council should be responsible for any legal action that might be necessary.

An Investigation Officer contacted a health and building inspector at the council. He said that the neighbour had constructed a double layer of bricks along the path between the two properties to redirect the water flow. He pointed out that Mrs C had been asked to build a rubble drain as part of building approval given to her own excavation plans, but she had not done this.

Mrs C was told that the office would not pursue her complaint because it appeared that council had taken the necessary action. A couple of days later, Mrs C telephoned and said that no work to redirect water flow had been done by her neighbour; she added that she wasn't able to dig a drain because her land was waterlogged.

Another call was made to council. The council inspector agreed that the work hadn't actually been done; it appeared that bricks had initially been set up, but not cemented, and had since been removed again. The inspector agreed to contact the neighbour.

The council sent the office a copy of the notice that it had served on the neighbour; the notice required him to provide either proper guttering and piping, or brickwork to redirect the flow of water across the ground. We again wrote to Mrs C and declined to take her complaint any further, since it appeared that council had at last taken appropriate action. Mrs C responded by claiming that the redirected water was still spilling onto her property. Council rebutted this; it said that the roof water was being directed into the neighbour's garden where it could be reasonably expected to be absorbed by the lawn. It was believed that any water spillage into Mrs C's garden was the result of natural seepage following an extended rainy period. Council also reconfirmed that Mrs C needed to

build a rubble drain to protect her property from excessive water flow, as she had been told to do originally.

The Ombudsman's final letter to Mrs C explained that no further action would be taken on her complaint because it was now clear that council had taken steps to ensure that the building regulations were complied with. The letter also pointed out that, although council had a responsibility to see that guttering and piping were provided where necessary, it had no responsibility, to deal with the natural flow of water across a neighbour's property. Mrs C was told that, if she was still unhappy with the seepage onto her land, she would have to take her own legal action.



Parry Shire Council

An aged pensioner wrote to this office about the vacant block adjoining his property. He felt that the condition of the block constituted a fire hazard and that the rubbish left on it was a haven for vermin. After he had contacted the shire council, an inspector came and had a look at the block, but he did not agree that it was a fire hazard. The complainant had heard nothing more.

In response to an approach by this office, the council had said that it had acted on the original complaint; it had written to the owner several months earlier and had asked him to remove the rubbish. Because the owner had done nothing, council said that it would serve a notice requiring him to comply with council's request. If he did not then clean up the block, legal action would follow.

This office, other than to inform the complainant, took no further action pending the result of council action. The complainant wrote some weeks later to say that the block of land had been cleaned and that he was entirely happy with the council's efforts, and very grateful for the intercession of this office.

Ku-ring-gai Municipal Council

Mr B applied to council for permission to remove two liquid amber trees the roots of which, he claimed, were breaking up his front path, his back path, his rear fence, some steps, the driveway of the house next door and were threatening the foundations of both his and his neighbour's houses.

When, after three months, he had after not received any reply from council, Mr B wrote to the Ombudsman and

sought assistance.

An Investigation Officer telephoned council who immediately wrote to Mr B and apologised for any inconvenience that its tardiness had caused. As well, council's Parks and Landscape Manager, personally assessed Mr B's application, and gave permission for the two trees to be removed.

Parramatta City Council

A firm of solicitors complained on behalf of their clients, Mr and Mrs D. They claimed that council was insisting that Mr and Mrs D pay legal costs which council had incurred in pursuing the recovery of outstanding rates owed by the previous owner of Mr and Mrs D's property.

Preliminary enquiries showed that the relevant legal costs amounted to \$294. Mr and Mrs D, however, had overpaid their own rates by \$89. The council, therefore, applied the \$89 to the amount for legal fees it had incurred and sent Mr and Mrs D an account for the difference, \$205. Eventually council, after seeking advice from its solicitors, [A]cconceded that it would be unreasonable to try to recover the legal costs from Mr and Mrs D. Council informed them that there were no rates or extra charges outstanding in respect of the property. As well, council refunded the overpaid amount of \$89 to them.

Campbelltown City Council

A company complained that, although it had written twice to Campbelltown City Council about the poor state of the roadway adjoining its premises, it had not received a response.

Enquiries with council revealed that the company's letter had been inadvertently filed. The council promised to send a reply straight away. This it did and, for good measure, sent a copy of its letter to this office.

State Rail Authority

Mrs A wrote an impassioned letter to the Ombudsman complaining about the awful noise being caused by the State Rail Authority. The authority was replacing wooden sleepers on the railway line near her home with concrete ones. She had been trying for over two years to have the authority properly assess the noise, but instead had received only assurances that the noise had been "reduced" by the authority's actions.

This office wrote to the SRA and asked both about its investigation of the noise problem and about any action it proposed.

The SRA's reply indicated that it had taken noise level measurements on three occasions. The tests had shown that all the train "pass-by" noise measured at Mrs A's property boundary fell well within the State Pollution Control Commission's recommended guidelines. The SRA inspectors, however, had observed that there was a "tonal quality to the noise ... which could cause annoyance". This annoying noise was caused by the outside wheel of the trains skidding on the running face of the rail where the concrete sleepers held the rails to a tight curve.

The authority said that it had recently hired a rail grinding machine which was working in another area. The authority promised that, as soon as its present work was complete, the machine would be transferred to the area

where Mrs A and her neighbours were experiencing problems. As well, the authority promised to inform the residents of its proposed actions; including the news that the grinding itself would cause short term, but unavoidable, noise.

This office passed on this information to Mrs A and told her that no further action was proposed because it seemed that the authority was attending to the problem. As no more was heard from Mrs A, it was assumed that the problem was resolved to her satisfaction.

Road and Traffic Authority

In December 1987 Mr M, by private sale, paid \$7000 for a modified 1969 Volkswagon convertible. He was confident that the vehicle was roadworthy and in good repair because it had been inspected and certified fit for registration at the Beverly Hills Motor Registry in October 1987.

The very next morning after buying the car, however, Mr M found an oil leak under the vehicle; he took it to a nearby workshop for inspection. This private inspection, as well as a subsequent inspection at the Ryde Motor Registry, disclosed not only major mechanical problems, but advanced rust in substantial areas of the car's chassis. One inspector noticed pin holes of rust. He probed these areas, without using undue force, and metal around the pin holes of rust crumbled and fell away from the vehicle. A defect notice was issued.

Understandably, Mr M felt that the presence of rust at such an advanced stage should have been detected during the inspection of the vehicle at Beverly Hills two months earlier, and he complained to the Ombudsman. The report received from the then Department of Motor Transport acknowledged that "signs of rust should have been evident at the time of the original

inspection". The investigation by the Ombudsman, however, went further and found that the inspection at Beverly Hills had been inadequate and negligent.

By the time the Ombudsman made his report, the department, now the Road and Traffic Authority, had already acted to improve its inspection procedures and the inspector involved no longer worked at the Motor Registry. The Ombudsman, however, recommended that the Authority negotiate fair and reasonable compensation with Mr M. Instead of long, costly court proceedings, which would have involved Mr M suing the Authority, a simple recommendation from this office led to a resolution of the matter.

In January 1990, the Roads and Traffic Authority offered Mr M \$1170 in compensation; the full cost of having the vehicle repaired.

Department of Education

A mother complained that because her son had left school a week before the permissible finishing date he had not been awarded his School Certificate. She did not think that this was fair because her son had left school to take up a rare and valuable job opportunity. The Board of Secondary Education would not, however, even allow the young man to appeal against the decision, since he had left school before the exemption period which had been established to allow for exactly this sort of situation.

The Director-General of the Department was asked to clarify the rules applying in this situation, and to outline the steps taken to ensure that parents were aware of the necessary attendance dates.

The Director-General, in his reply, explained the board's rules and their history and rationale. He also enclosed a

copy of the 1988 Student guide to the School Certificate and outlined the specific actions of the principal of the young man's school to make the rules very clear. This had included the distribution of a calendar of important dates for School Certificate and Higher School Certificate students.

Although it was obvious that the young man had not conformed to the set procedures, the Director-General reconsidered the decision not to award him the School Certificate. Because of his highly satisfactory achievement and attendance (prior to leaving early) and because only six days were involved, the young man received his School Certificate.

Department of Housing

Mr J paid a "preliminary deposit" on a house offered for sale by the Landcom section of the Department of Housing; he then applied for a building society loan. The loan was approved and contracts for sale were exchanged with the department.

The loan agreement with the building society included a provision that the loan would be rescinded if it was not taken up within two months of the date of approval. The contract for sale contained a clause permitting the department to charge a "licence fee" of \$100 per week for any period in excess of four weeks between the date of exchange of contracts and settlement of the sale. Mr J, not unreasonably, assumed that the "licence fee" clause in the contract was intended to dissuade purchasers from unnecessarily or unreasonably delaying settlement and, being keen to complete the sale as soon as possible, he agreed to sign even though he had no intention of occupying the property until after the settlement had occurred.

Settlement, however, could not quickly proceed because the department had failed to register a Plan of Subdivision; this

should have been done prior to the property being released for sale to the public. The delay in settlement resulted in the building society, already having granted one extension of time, rescinding the loan approval.

Mr J successfully re-applied for another loan. Then the department told him that he would have to pay a \$1400 "licence fee" before settlement would be permitted to proceed, despite the fact that the property had never been occupied and that the delays in effecting completion had not been due to any tardiness on the part of Mr J. Settlement finally occurred some seven months after Mr J had paid the preliminary deposit and after he had reluctantly paid the "licence fee" of \$1400.

Understandably, Mr J was unhappy with the way the sale had been handled by the department. He complained to the Ombudsman about the department's refusal to refund the "licence fee" that he had been forced to pay because of the department's failure to register the Plan of Subdivision. Preliminary enquiries were conducted and the department agreed to refund the \$1400 licence fee "within the next 14 days". The promised refund was finally sent some four weeks later. As well, the department agreed to amend the terms of future sale agreements so that purchasers will not be liable to pay licence fees in circumstances where default or delay is the fault of the department. Because of the action taken by the department the Ombudsman considered the matter resolved.

Department of Housing and Water Board

Complaints received by this office often involve more than one public authority. Mr A's complaint was such a case.

After he moved into his Department of Housing residence in January 1988, Mr A received an excess water account which was dated October 1987, for more than \$200.

Mr A wrote to this office requesting assistance after the Water Board used debt collectors to pursue the outstanding account. Mr A claimed the Water Board knew the account was being disputed and was in the process of negotiation with the Department of Housing.

In response to an enquiry from this office, the Director of Housing said that a recommendation had been made that the department pay the amount in full, but a delay had occurred when Mr A's file had been accidentally sent to the department's filing section instead of the accounts section.

The director said the excess account would be paid in full on this occasion. This office drew Mr A's attention to the Department of Housing's further advice that "a pattern of high consumption of water has continued to exist and unless there is evidence of a concealed leak or a faulty water metre, Mr A will be obliged to pay for excess water from 14 February, 1989".

University of Wollongong

Ms S's appeal was against a clause in the University of Wollongong Regulations for the control of motor vehicles entering the grounds of the University of Wollongong. She felt that the clause was unclear, ambiguous and had caught many people unawares.

Ms S was a member of the Faculty at Wollongong University. She applied for and obtained a parking permit, which she affixed to the windscreen of her car with blue-tac. The permit, which was not transferable to another vehicle, was of the adhesive transfer type. She later received an infringement notice imposing a fine for "failing to display the permit correctly".

Ms S felt that she had been the subject of an unjust administrative decision by the university, so she wrote to this office.

Phone calls from this office to the administration of the university resulted in the fine being waived. An administration officer said that the university intended to include, on the reverse side of the parking permit, instructions which would set out the way in which the permit should be affixed to vehicle windscreens.

Public Trustee

A firm of solicitors complained on behalf of their clients over various aspects about the Public Trustee's lack of progress in finalising an estate.

Following enquiries from the office, a senior officer of the Public Trustee reviewed the matter; he conceded that progress had been slow because the officer originally dealing with the case had been under considerable pressure of work. The matter was given high priority, a distribution of available funds was made and a cheque was sent to the solicitors for payment to their clients.

Attorney General's Department

In 1984 a man was issued with a traffic infringement notice, involving a penalty of \$60, by the Police Department. Because the man believed that the circumstance surrounding the incident were "very strange", he made enquiries with the local police, the local Clerk of Petty Sessions and the Traffic Section of the Police Department. All of this was to no avail; the man was told to pay the fine because "you can't fight the system".

The man paid the penalty of \$60 but, because of the enquiries he had made, payment was a few weeks late. In the meantime, the matter had been to the court and the man received a summons for \$88. He paid the fine after he was told that the original penalty fine of \$60 would be refunded. He then waited, and waited, and waited ...

Six years later, 1990, the man's wife wrote to the Ombudsman; no correspondence or refund had ever been received from the Police Department, she said.

An officer of the Ombudsman determined that the problem appeared to be with the Attorney General's Department, and he phoned an officer in the Remission Section of the Department.

The officer in the Remission Section acknowledged that there had been "a long delay" but said that this was because the court had taken a long time to forward the relevant papers to the department. However, the Governor had approved remission of the man's penalty in January 1990; a refund cheque was being prepared and would be sent to the man in the near future.

POLICE AREA

Police complaint statistics

The combined total of complaints against Police and the Police Department this year was 2403, an increase of 8%. The following table is a comparison of complaint totals, this year with last year.

	1988/89	1989/90
* Complaints under the Police Regulation (Allegations of Misconduct) Act	2091	2329

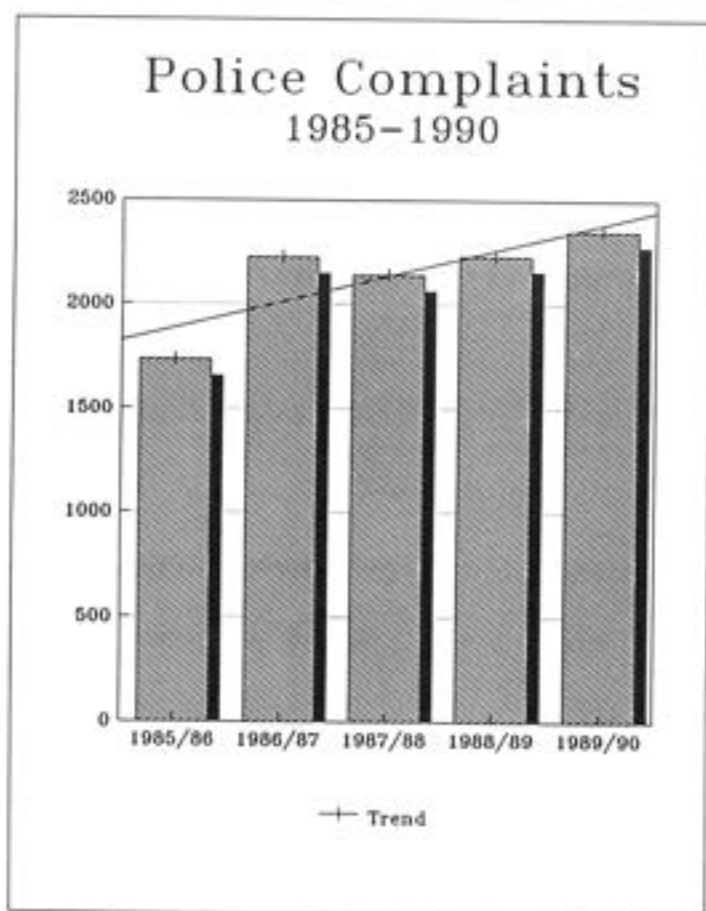
• Complaints against Police dealt with under the Ombudsman Act	87	51
• Complaints dealt with under both Acts	-	1
• Complaints outside jurisdiction	53	22
	2231	2403

The following sections give an overview of police complaint numbers and outcomes for complaints in each area of jurisdiction ie. complaints which involve the conduct of members of the Police Service under the Police Regulation (Allegations of Misconduct) Act and complaints under the Ombudsman Act involving conduct relating to matters of administration.

**Complaints against Police Officers
(Police Regulation [Allegations of Misconduct] Act, 1978)**

Complaints against police increased by 5% during the year to a total of 2352. In the past five years complaints numbers have grown by 36% (1731 to 2352).

The following chart shows the continuing trend for an increase in complaints:

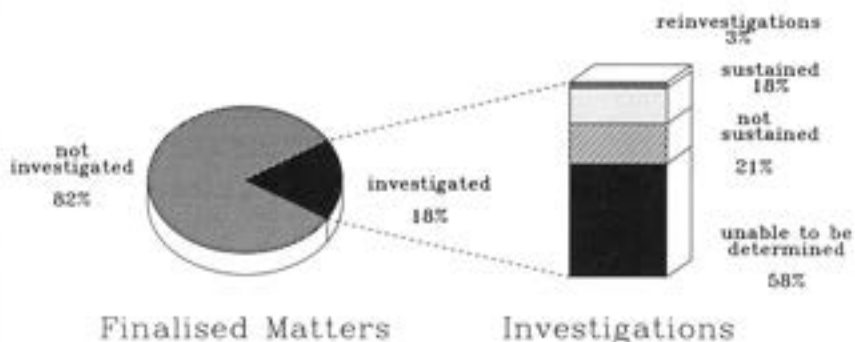


The increase in numbers cannot be attributed to a single factor. In the past year significant issues arose that no doubt generated complaints from citizens who had unresolved concerns about similar experiences. These issues include complaints about the raid on houses at Everleigh Street in Redfern, the arrest and 'media walk' of ex-Superintendent Blackburn, the shooting of David Gundy and media attention given to other Tactical Response Group activities.

The following charts show :

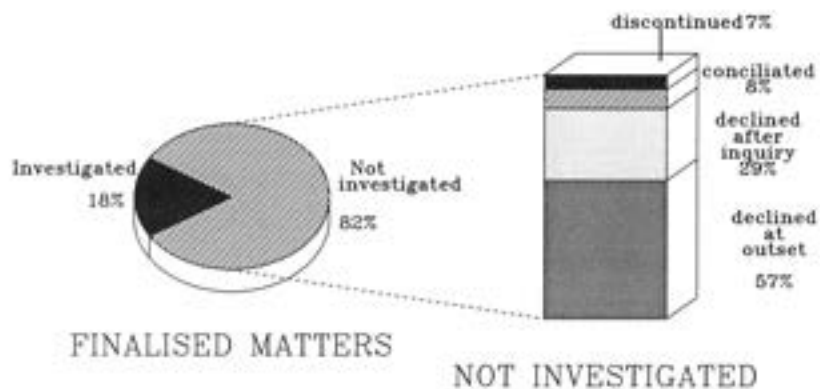
- A. Investigations and the categories and proportional value of investigation outcomes
- B. Complaints not investigated and the proportional value of cases finalised by means other than investigation

POLICE COMPLAINTS Investigations



Total complaints finalised 2077

POLICE COMPLAINTS NOT INVESTIGATED



Total complaints finalised 2077

More cases were finalised this year despite a number of disruptive influences that occurred during the latter part of 1989 and into the first half of this year. These events need acknowledgement.

The office underwent a major restructuring in the latter part of 1989 in accordance with its commitment to implement change introduced through the Structural Efficiency Principle.

The office relocated in October-November 1989 to its new address at 580 George Street. Planning for the move occupied a number of staff over several months.

In March 1990 the office began implementation of an office automation project which was commissioned in June.

These three projects caused a significant disruption to the workflow and organisation of the office during the period August 1989 to June 1990. Staff were able to produce a creditable end of year result despite all of these intrusive projects.

Complaints finalised

The number of complaints investigated this year fell to 18% of all complaints finalised. The office has long applied a policy of closely screening new complaints to ensure that investigations of trivial issues do not occur.

Of those complaints not investigated, cases declined at the outset represent 47% of all cases finalised, and 30% of cases were finalised through pre-investigation enquiry or successful conciliation. A further 5% of cases were begun as investigations but discontinued prior to completion. A total of 82% of all cases were finalised by means other than investigation.

Complaints about the Police Department (Ombudsman Act 1974)

New complaints

During the year 65 complaints were received against the Police Department. These involved matters of administration rather than allegations of misconduct against individual members of the Police Service. The latter allegations are dealt with in terms of the Police Regulation (Allegations of Misconduct) Act, 1978, and are reported on in the previous section.

Finalised complaints

A total of 51 matters were finalised during the year, leaving 14 cases under enquiry or investigation.

The following table gives the outcome of cases finalised during the year:

<u>Outcome</u>	<u>Number</u>	<u>% of total</u>
No jurisdiction	6	12%
Declined without any enquiry	26	51%
Declined after preliminary enquiry	14	27%
Resolved after preliminary enquiry	4	8%
No prima facie evidence of conduct described in section 26	-	-
Discontinued	1	2%
No adverse finding	-	-
Adverse finding	-	-
	51	100%

The Ombudsman's Office and Police Internal Affairs Branch (PIAB)

Monthly working meetings between the Deputy Ombudsman, the

Assistant Ombudsman (Police) and senior officers from the Ombudsman's Office and the Assistant Commissioner (Professional Responsibility) and some of his staff continued up to the time that Mr A R Lauer was appointed Deputy Commissioner and State Commander.

These meetings, which for the most part focussed on operational matters related to investigations, were regarded by both sides as generally beneficial. Their value has been as a "dialogue" between the Ombudsman's Office and the Police Service, and they are particularly useful for "problem-solving".

Meetings were temporarily suspended following the appointment of Mr C R Cole as Assistant Commissioner (Professional Responsibility), because of his absence on extended sick leave. The Ombudsman recognises that there is a cumulative effectiveness of these meetings which may be strengthened by consistency in the personnel involved and weakened by frequent changes. The failure to have such meetings at all, however, for a period of many months, was a matter of some concern. Meetings recommenced in August following Mr Cole's return from sick leave and a number of important issues dealt with elsewhere in this report have been considered.

Among the changes to procedures which resulted from discussion at the earlier meetings were:

- . Agreement that preliminary inquiries undertaken by the police under S.52 of the Police Regulation (Allegations of Misconduct) Act would in future, be completed within a maximum period of 60 days.
- . Agreement that the "status reports" which previously were provided monthly during the course of full investigations by the police would be replaced by a more detailed report provided at the 90 day point.

While not in itself a direct cause of the introduction of a 60 day time limit for preliminary inquiries, mention was made of one preliminary

inquiry which took 15 months for the police to complete.

The old-style "status reports" were thought by Ombudsman's investigators to have become formularised to the point of being little use. The office was concerned that the reports often did not reveal the full focus and extent of the investigation being undertaken by the police and that the efforts of the police could be ending up "off track".

In each case, the changes have been the subject of a circular issued to police by the Commissioner. An evaluation of the effectiveness of these changes is being undertaken by the Ombudsman's Office.

The Ombudsman has a statutory responsibility to ensure the quality and effectiveness of police investigations. The office's investment in upgraded computer facilities will provide a greater capacity to focus attention on clustering of complaints, either of a particular type or in a particular location. This will make it possible for the Ombudsman to respond more effectively to, for example, requests by the Commissioner that he not be required to investigate complaints which he believes relate essentially to management practices, a matter discussed in last year's Annual Report and elsewhere in this report.

The Ombudsman has taken steps to reduce even further the incidence of "unable to be determined - deemed not sustained" findings. He has been helped in this by the increased level of positive findings yielded by police investigations, something remarked upon in last year's Annual Report. Nevertheless, there continue to be cases where, when the police have finished their investigation, there remains an unresolved conflict in the available evidence. Where reinvestigation by the Ombudsman is not recommended, the Ombudsman's investigators are now routinely required to identify instances where, in their view, a strict application of the former guidelines may produce an anomalous result, having regard to the nature and extent of the conflict in the available evidence, and to put such matters before the Ombudsman for further examination and review. So far this initiative has revealed no great incidence of such perceived anomalies, but of cases reviewed in this fashion, a significant increase in positive findings, one way or the other,

has been achieved. This initiative will also be monitored closely.

Police internal complaints

The 1988/89 Annual Report (pp. 268-71) described how complaints against police that are generated from within the Police Service were dealt with and said that such complaints were referred to as "police nominal complaints". That term could be regarded as being somewhat misleading in that the use of the word "nominal" failed to reflect the seriousness of a considerable number of complaints which arose in this way. Now, where a serving police officer, or the police administration itself, generates a complaint under the Police Regulation (Allegations of Misconduct) Act [the Act] the complaint is described as a "police internal complaint".

Such a complaint may arise, for example, where it is discovered that an item of property, previously found and handed to the police, is missing. The officer discovering the discrepancy must report it. That report is considered a complaint in writing under the Act which must be forwarded to the Office of the Ombudsman for consideration.

Many such complaints concern purely administrative matters which the Ombudsman leaves to the Commissioner of Police to deal with. This is possible because section 18(1) of the Act provides that the Ombudsman, in determining whether a complaint should be investigated, may have regard to "such matters as he thinks fit". These "matters" include (at section 18(1)(d)) whether an alternative and satisfactory means of redress "is or was" available to the complainant.

If the Ombudsman consents to a request from the Commissioner that a police internal complaint be dealt with under section 18(1)(d), he takes no further action on it, and leaves final action on it to the Commissioner. If the Ombudsman refuses the request, formal investigation of the complaint under Part 4 of the Act is necessary.

Between 1 July 1989 and 30 June 1990 the Commissioner of Police advised this office of 191 "police internal complaints"; of these, in 71

cases investigation had commenced, or had already been completed. Applications to have complaints dealt with under section 18(1)(d) of the Act were made in 105 instances; the Ombudsman consented to 88 requests and refused 17.

Some of the matters in which the Ombudsman agreed to the Commissioner dealing with complaints included complaints that:

- an officer was employed as a flight steward when off duty "sick";
- an officer failed to take proper care of a criminal case exhibit;
- an officer displayed a disrespectful attitude to a more senior officer;
- an officer improperly used a car pool vehicle; and
- officers were employed as payroll escorts without the Commissioner's permission.

Matters in respect of which the Commissioner's requests were refused included complaints about:

- the theft of a portable computer from a vehicle in police custody;
- the conduct of an officer charged with indictable assault under section 61 of the Crimes Act;
- the refusal by a sergeant of police to allow a constable to attend court;
- the conduct of an officer summonsed for using "offensive language" and "driving with the prescribed content of alcohol"; and
- the conduct of an officer who, while reversing a police vehicle, allegedly knocked down a prison officer.

These matters were considered by the Ombudsman to be serious, to reflect badly on the image of the police force in terms of the public interest and/or were, in themselves, matters of public interest which

required investigation on that basis.

It is clear that some police internal complaints are of a purely managerial or administrative nature or are so minor in nature that formal investigation of them would be of little utility and wasteful of resources. Other complaints, however, raise issues which go beyond those considerations.

The Ombudsman believes that the public interest is, and should be, of paramount importance when he considers a request that a complaint be dealt with under section 18(1)(d). For example, it should not be considered axiomatic that the laying of criminal or departmental charges against a police officer automatically provides "an alternative and satisfactory means of redress". Such may well be the case; but only if public interest elements are not ignored and if no questions concerning the officer's overall suitability as a police officer arise.

Late notification of complaints against police

The Ombudsman's role in the police complaints system is not confined to monitoring the effectiveness and impartiality of investigations by police of complaints against members of the New South Wales Police Service.

Reciprocal provisions in the legislation are designed to ensure that the Ombudsman and the Commissioner of Police notify each other of complaints that they each receive. Section 18 of the Police Regulation (Allegations of Misconduct) Act gives the Ombudsman wide discretion to either decline to require an investigation of a complaint, or to direct the Commissioner to investigate a complaint. This discretion cannot be exercised if the Ombudsman is not told of a complaint that the Commissioner has received.

Section 8 of the Act provides:

8. (1) A member of the Police Force who receives a complaint that has not already been sent to the

Commissioner shall -

- (a) unless he is a member of the Internal Affairs Branch, forthwith by telephone notify the Internal Affairs Branch of particulars of the complaint; and
 - (b) send the document incorporating the complaint to the Commissioner.
- (2) The senior officer who is on duty at the Internal Affairs Branch at the time the Branch is notified of or receives a complaint shall, as soon as practicable, cause the Ombudsman to be notified of brief details of the complaint.

(emphasis added)

Section 9 of the Act provides:

9. The Commissioner shall, as soon as practicable after receiving a complaint.
- (a) where he receives the complaint pursuant to section 8(1)(b) - cause a copy of the document incorporating the complaint to be sent to the Ombudsman; or

(emphasis added)

- (b) except where he receives the complaint pursuant to section 8(1)(b) or from the Ombudsman - cause the Ombudsman to be notified by telephone of brief details of the complaint.

There has been an alarming upsurge in recent months in the failure of the Commissioner of Police to notify the Ombudsman "as soon as practicable" of complaints he has received. In many instances, complaints have been notified to this office only after the police investigation has been completed; these were sent to the office accompanied by the Commissioner's report of the police investigation under Section 24 of the Act. The problem appears particularly relevant to, but not confined to, complaints by police against police; such complaints are within the ambit of the Act, as decided by Mr Justice Lee in Ombudsman v Commissioner of Police.

Because of his concern about these continuing and increasing breaches of the legislation, on 20 June 1990 the Ombudsman wrote to the Commissioner and said:

In *Ombudsman v Commissioner of Police, Lee J.* held that a complaint by a member of the police force against another member of the police force was a complaint within the meaning of the Police Regulation (Allegations of Misconduct) Act. Since that time complaints falling within this category have been described by your Department as "Police Nominal Complaints".

Section 9 of the Act provides that the Commissioner shall, as soon as practicable after receiving a complaint, cause a copy of the documentation incorporating the complaint to be sent to the Ombudsman. This provision is mandatory. I am extremely concerned that, recently, there have been frequent instances, particularly in relation to police nominal complaints, where this provision has not been adhered to. In these instances, this office has been provided with the report of an investigation of an allegation of misconduct against a member of the NSW police force. On some occasions, the covering letter has suggested that this office should, pursuant to section 18(1)(d) of the Act, decline to require an investigation under Part 4. On other occasions, the covering letter has referred specifically to the provision of Section 9 regarding notification. It is not clear to me whether your officers are deliberately flouting the requirement of Section 9 of the Act or whether it is a matter of neglect on their part. In these cases the original allegations have arisen often up to six months prior to any notification to this office, and the Ombudsman has been deprived of the opportunity to exercise his statutory duty at the time obviously required by the legislation. In such circumstances, the practical effect of Mr Justice Lee's decision is being undermined.

I would be pleased if you would advise all of the Regional Commanders of their responsibilities under Section 9 of the Police Regulation (Allegations of Misconduct) Act. In the meantime, I intend to monitor this provision of the legislation closely and in the event that there is continued failure to honour the obligations cast on you as Commissioner, I propose to report to Parliament on this matter.

I have written to the Minister for Police advising him of this matter and enclosing a copy of this letter.

On 21 June the Commissioner advised the Ombudsman:

As requested, I am arranging for all Region Commanders to be reminded of the requirements for the prompt reporting of complaints received against Police including those allegations of misconduct raised by other members of the Force as set out in the Police Regulation (Allegations of Misconduct) Act.

Action has also been taken to bring your concerns in this matter to the notice of the State Commander and the Assistant Commissioners, Personnel and Education, and Drug Law Enforcement, so that they too, in turn, can remind Police under their control.

The Commissioner enclosed a copy of his memorandum to all Region Commanders. It said:

In his communication of 20 June 1990, copy attached, the Ombudsman, Mr Landa has expressed concern in regard to delays in notifying his office of allegations of misconduct made against Police by other members of the Force.

As indicated in Circular Memo No. 88/97, copy also attached, the decision of Mr Justice Lee in the Supreme Court (Administrative Law Division) in an action brought by the Ombudsman against the Commissioner and handed down in December 1987, clearly identified complaints by members of the Police Force against other members of the Force as being within the ambit of the Police Regulation (Allegations of Misconduct) Act.

The need to promptly bring such matters to notice is no different from a written complaint received from any other member of the community. To that end, it was advised that Police generally, and Commissioned Officers in particular, should be fully conversant with the provisions of Section 8(1) of the legislation which deals with the notification of complaints to the Police Internal Affairs Branch and the transmission of the documents incorporating complaints to the Commissioner.

As Commissioner, I have an obligation under Section 9(a) of the Act to ensure that, as soon as practicable, after receiving such documents copies are conveyed to the Ombudsman.

Given the concern expressed by the Ombudsman, I require, as a matter of urgency, that all members of the Force under your command be reminded of their obligation under the Police Regulation (Allegations of Misconduct) Act and Section 8(1) in particular. Further, I require that you take appropriate steps to ensure that those obligations are fully met in future.

As advised in the penultimate paragraph of the Circular Memo referred to, in cases of doubt, the matter in question should be referred to the Police Internal Affairs Branch for adjudication and, if appropriate of course, transmission to the Ombudsman.

The Ombudsman expects that the Commissioner, Regional Commanders and all other delegated officers will adhere to their obligations under the legislation. The Ombudsman will continue to monitor this issue closely and, if necessary, will report to Parliament should the issue continue to cause concern.

Police and Aboriginal community

When dealing with the Aboriginal community, the police are faced with the duty of reconciling their requirement to enforce the law fairly and to protect the rights of all citizens, with the special needs of the local Aboriginal community which is struggling to salvage its identity and the self respect of its individual members after two hundred years of oppression and division.

Australian police forces are tackling problems which they have never had to deal with before, and there is a pressing need for them to develop appropriate and flexible responses.

The object remains to obtain a healthy, safe and law-abiding community, where the rights and property of all are protected. It is the methods adopted in obtaining such a result that must change, and the police, and the rest of the community, must realise that there are no easy, instant solutions; there will be many serious difficulties, long periods of unrest, sacrifices and concessions to be made on all sides.

The Ombudsman is currently investigating a number of complaints about police activities in relation to the Aboriginal Community. In particular, the events of 8 February 1990, when police "raided" ten premises in and around Everleigh Street in Redfern, brought a flood of complaints to this office.

Without the presence of the Aboriginal Investigation Officer in this office, the task of locating and interviewing relevant witnesses in this investigation would have been severely hampered.

Crucial to police-Aboriginal relations are the few Aboriginal police officers and Aboriginal community liaison officers employed by the Police Department. Statewide consultations have revealed that this area is fraught with problems and a great deal of work will need to be done before the system can function as intended.

Training and procedures of the Special Weapons Operations Squad

On 1 May 1989, the Ombudsman made a report to the Minister of Police on a complaint by Constable Blackshaw about Sergeant Brazel. Both of these police officers were members of the Special Weapons Operations Squad (SWOS) at the time of the incident subject to complaint. The nature of the complaint and the history of its investigation are discussed in detail in the Ombudsman's 1989 Annual Report (p. 294 - 302).

The Ombudsman recommended that the procedures and instructions of SWOS be reviewed immediately to ensure that every member of SWOS was made aware of the police guidelines for arrest, detention and interrogation, and that the Commissioner of Police report to the Ombudsman on any action taken in this respect within one month of the report. On 17 April 1989, the Minister for Police had indicated that he would implement the recommendations of the report.

In view of the significance of the matter, the Ombudsman repeated this recommendation in a special report to Parliament entitled "Inadequate training and procedures of the Special Weapons Operations Squad", which was dated 2 May 1989.

On 23 May 1989, the then Assistant Commissioner (Professional Responsibility), Mr Lauer, advised the Ombudsman that Executive Chief Superintendent Parrington had "initiated action" to conduct a review of

the SWOS procedures. Mr Lauer had previously advised the Ombudsman, in February 1989, that he had requested Mr Parrington to carry out such a review. A status report by Mr Parrington, a copy of which was enclosed with Mr Lauer's letter, indicated that some of the work connected with the review should have been completed by 15 May. However, Mr Lauer's letter did not reveal the outcome of that work.

In August, September and October 1989, the Ombudsman requested the Commissioner's advice about the result of the SWOS review. On 30 October, the Acting State Commander advised that the SWOS procedures were still under review.

In December 1989 and January 1990, the Ombudsman again requested the Commissioner's advice about the review. On 2 February 1990, the Ombudsman received a letter from Mr Parrington dated 24 January 1990, enclosing a document entitled "Guidelines for the Management of SWOS". The letter stated that the review had been completed and that the guidelines were "approved in principle by the Commissioner". The guidelines referred to a variety of material contained in a Manual for SWOS. However, none of this material was supplied to the Ombudsman. Without access to the missing documents the Ombudsman could not assess the extent of the review.

On 23 February 1990, the Ombudsman wrote to the Commissioner advising him that, if the material referred to in the guidelines was not made available by 2 March, the Ombudsman would report to Parliament.

On 28 February, the Deputy Ombudsman raised the matter during a meeting with the Deputy Commissioner of Police, Mr Lauer, who stated that the Commissioner had not approved the guidelines, which were also subject to review by the Royal Commission into Aboriginal Deaths in Custody. Nevertheless, Mr Lauer undertook to make the requested material available to the Ombudsman on the basis that they were draft or discussion documents.

On 14 March, the Deputy Ombudsman wrote to Mr Lauer requesting

a copy of the outstanding material.

On 16 March, Mr Lauer wrote to the Ombudsman advising that he had reviewed his undertaking to the Deputy Ombudsman and stating:

The general situation is that Mr Parrington convened a Working Party which met on several occasions. That Working Party produced draft guidelines (which you now have) and various supporting documents. However, that documentation has not been officially sanctioned and may yet be subject to considerable review or alteration.

The situation has been further clouded by the involvement of the Royal Commission into Aboriginal Deaths in Custody following the death of David John Gundy. The Royal Commission has called for production of all existing documentation relating to the operations of the Special Weapons and Operations Section.

It can be reasonably assumed therefore that the Royal Commission will examine this aspect and some recommendation may well be forthcoming in due time. Any such recommendation would of course be reviewed in this Department and could lead to further amendment of Mr Parrington's proposals.

On reflection therefore, I feel it would be premature to now release any further documentation as compiled by Mr Parrington. Indeed, any such documentation could possibly be subject to extensive alteration and its consideration in your Office could therefore be quite misleading. I would not like to see such a situation arise.

I am conscious of the time that has passed in this case. Nevertheless, any action to date has clearly been overtaken by events with the introduction of the Royal Commission's review. Whilst, with some regret, I do not propose to make further documentation available at this time, you can be assured that I will not lose sight of the matter and every effort will be made to finalise deliberation once the Royal Commission's views are known.

On 4 April 1990, the Ombudsman made a special report to Parliament about the failure of the Commissioner of Police to take satisfactory action on the Ombudsman's recommendation about the review of SWOS procedures. The special report included the following:

The history of the review of SWOS procedures and operations recommended by the Ombudsman is one of inaction and gross delay. The obvious reluctance on the

part of the police hierarchy to supply this Office with any meaningful documentation has frustrated the Ombudsman's assessment of this matter and the proper exercise of his duty of independent oversight.

I recognise that the procedures to be reviewed are both complex and sensitive. I have considered any legitimate concern that the Commissioner of Police might have about the information sought. It is for this reason that I was prepared to accept material on the basis that it was in draft form only. I now believe that all reasonable avenues open to me to obtain this information have been exhausted. The matters put forward by the Deputy Commissioner in justification for the withdrawal of his clear undertaking, do not, in my opinion, have substance. The Ombudsman's report of 1 May 1989 followed a lengthy consideration of a matter which highlighted the inadequacy of SWOS procedures. The subsequent decision of the Royal Commission into Aboriginal Deaths in Custody to inquire into the circumstances surrounding the death of Mr Gundy is not a reason for the Commissioner to now withhold from the Ombudsman the information sought.

The special report concluded with a recommendation, in effect, that the Commissioner of Police furnish the Ombudsman with the complete SWOS Manual.

On 21 June, the Deputy Commissioner of Police, Mr Lauer, wrote to the Ombudsman in the following terms:

I... wish to deal with the matter raised by you regarding provision of material relating to the review of the operations of SWOS. The reluctance of this Service to provide copies of the provisional operation manuals has been dealt with in earlier correspondence... The amended manuals were examined by me today and I have given formal approval for them to be taken into use forthwith.

Further, in view of the requirement for the Royal commission into Aboriginal Deaths in Custody to submit a report by 30 September, 1990 and the fact that there has been no indication whether police, including members of SWOS will be called to give evidence, the Commissioner ... and I have discussed our stance regarding no-release of the material. We now accept your advice that this should not be a bar to supply of these amended manuals.

I must point out that some of the material contained in these manuals is highly confidential ...

The manuals are provided on the understanding that all documents be afforded the highest security and strict access must apply to them within your Office. ...

On 26 June 1990, Inspector Burke, the Commander of SWOS, personally delivered the SWOS Manual to the Ombudsman.

On 10 August 1990, during a discussion between the Ombudsman and Inspector Burke about the recommendation made in the report on Constable Blackshaw's complaint, Inspector Burke advised the Ombudsman that it was not the responsibility of SWOS members to question people whom they have arrested, but rather to deliver such people into the custody of other police officers for the purposes of post-arrest procedures.

Inspector Burke's advice raised a number of issues of concern to the Ombudsman. Constable Blackshaw's complaint about Sergeant Brazel had arisen out of Sergeant Brazel's treatment of Constable Blackshaw while questioning her following her "arrest" during a training exercise for SWOS personnel. The Ombudsman's recommendation in his report on the complaint was therefore based on the reasonable assumption that SWOS personnel may be involved in post-arrest procedure. The recommendation itself was designed to eliminate improper conduct by SWOS personnel in their conduct of such procedures. Yet it was not until Inspector Burke's advice of 10 August 1990 that any police officer had told the Ombudsman that SWOS personnel are not supposed to be involved in the questioning of people whom they have arrested. In particular, no such advice was given to the Ombudsman at any stage of the investigation of Constable Blackshaw's complaint.

Furthermore, the Ombudsman is of the view that any objective reading of the amended SWOS manual would confirm that there had been no implementation of his recommendation in his report on Constable Blackshaw's complaint.

Accordingly, on 27 August 1990, the Ombudsman wrote to the Commissioner of Police outlining the full history of the matter and raising the following issues:

... Inspector Burke's advice of 10 August 1990 prompts the following questions:

- (i) Are SWOS personnel involved in any way in post-arrest procedures with respect to people whom they have arrested? If so, in what manner? What are the relevant guidelines covering this issue? I have been unable to find any clear indication in the SWOS Manual of the scope and limits of the responsibilities of SWOS personnel in relation to these questions.
- (ii) If SWOS personnel are not involved in post-arrest procedures, why did the training exercise referred to in the Blackshaw complaint contemplate that they was be so involved?
- (iii) Does the current training of SWOS personnel contemplate that they will be involved in a post-arrest procedure? If so, in what manner?

I request that you give me your answers to the above questions within 14 days.

Furthermore, I am of the view that my recommendation in the final report on the Blackshaw complaint has not been implemented. ... I request your comments on this issue within 14 days.

I would add the following remarks:

First, even if SWOS personnel are not supposed to be involved in the questioning of people whom they have arrested, I am still of the opinion that my recommendation should be implemented, in view of the importance of the police guidelines governing arrest and detention to the operations of SWOS personnel. Second, the fact that the Police Tribunal is to inquire into the functions and management of SWOS should not mean that improvement of the SWOS manual and of the training of SWOs should be deferred on a matter as important as this.

At the time of writing, the Ombudsman had not received a reply to this letter. The issues raised in the letter will be pursued.

Investigation into the events leading to the death of Mr D J Gundy

Mr David Gundy was shot during an operation by the Special Weapons Operations Squad (SWOS) on 27 April 1989. He later died of his injuries.

The Ombudsman received a large number of complaints about the shooting of Mr Gundy and the conduct of the police involved in the SWOS operation. On 2 May 1989, the Ombudsman took up the first of these complaints and directed the Commissioner of Police that an investigation of the complaint should be carried out under the Police Regulation (Allegations of Misconduct) Act.

The history of the investigation of the complaint until 31 August 1989 is outlined in the Ombudsman's 1989 Annual Report.

In September and again in October 1989, the Ombudsman wrote to the Commissioner requesting a report on the investigation. However, the Commissioner did not provide that report.

On 31 October 1989, the Royal Commission into Aboriginal Deaths in Custody stated that it proposed to inquire into the circumstances of Mr Gundy's death. In December 1989, the Commissioner of Police asked that the Ombudsman consent to a discontinuance of his investigation in view of the "referral" of the circumstance of Mr Gundy's death to the Royal Commission. The Ombudsman refused this request and asked that the Commissioner provide his report on the investigation by 12 January 1990.

On 22 January 1990, the Commissioner advised the Ombudsman that the report had not yet been completed. On 9 February, the Ombudsman requested the Commissioner to provide his report within seven days. When the Commissioner did not respond to this request, the Ombudsman wrote to the Commissioner, again requesting the report within seven days and advising the Commissioner that, if the report was not received, the Ombudsman would report to parliament.

On 28 February 1990, the Acting Commissioner of Police told the Ombudsman that for the Commissioner to provide the Ombudsman with a report could amount to a contempt of the Royal Commission into Aboriginal Deaths in Custody. The Ombudsman did not agree with this view, on the basis that it would be anomalous if the fulfilment of the Commissioner's statutory duty to provide the report could constitute a contempt of the Royal Commission. He advised the Acting Commissioner of Police accordingly and also wrote to the Royal Commission in an attempt to resolve the issue.

On 15 March 1990, the Royal Commission invited the Ombudsman to appear before it on 19 March, together with the parties to the inquiry into Mr Gundy's death, so that the Ombudsman could make appropriate submissions on the scope of the Commission's inquiry. On the same date, the Ombudsman finally received a report from the Commissioner of Police advising that, in the Commissioner's view, the complaint about the shooting of Mr Gundy was not sustained.

On 19 March 1990, the Royal Commission indicated to the Ombudsman that, in its view, the extent of the Ombudsman's investigation into the shooting of Mr Gundy was a matter for the Ombudsman in the exercise of his powers under the relevant legislation.

The Ombudsman was nevertheless of the opinion that it would be inappropriate for both his office and the Royal Commission to conduct investigations into the shooting of Mr Gundy to the extent that those investigations would overlap. Unfortunately, an early resolution of this issue was delayed by a legal challenge to the jurisdiction of the Royal Commission to inquire into the circumstances of Mr Gundy's death. On 12 April 1990, the Federal Court decided that the Royal Commission had no such jurisdiction. However, on an appeal from this decision, the Full Court of the Federal Court decided on 23 April that the Royal Commission did have jurisdiction to inquire into Mr Gundy's death. On 31 May the High Court of Australia refused special leave to appeal against the Full Court's decision.

As a result, the position was that the Royal Commission technically did

have jurisdiction to inquire into Mr Gundy's death. Unfortunately, the requirement that the Royal Commission should report by the end of September 1990 meant that it was uncertain whether and, if so, to what extent the Royal Commission would be able, at a practical level, to conduct an inquiry into Mr Gundy's death. As at the date of writing, this question has not been resolved.

A further complication was the fact that, on 25 June 1990, the Minister for Police requested the Police Tribunal under section 45 of the Police Regulation (Allegations of Misconduct) Act to inquire into the circumstances of the shooting of Mr Darren Brennan by the Tactical Response Group and also to review the functions and management of the TRG and SWOS. The fact that the Police Tribunal is to review the functions and management of SWOS means that the Tribunal's inquiry also has the potential to overlap with any investigation that the Ombudsman might undertake into the shooting of Mr Gundy. Indeed, the tribunal requested the Ombudsman to provide it with a copy of the Ombudsman's file on the shooting of Mr Gundy for the purposes of its inquiry. The Ombudsman complied with this request. As at the date of writing, the Police Tribunal had not commenced its inquiry into its term of reference concerning the functions and management of SWOS.

Investigation into the shooting of Mr Darren Brennan

On 17 June 1990, Mr Darren Brennan was shot during an operation by the Tactical Response Group.

The Ombudsman received a large number of complaints about this incident. On 22 June 1990, the Ombudsman directed the Commissioner of Police to investigate the first of these complaints under the Police Regulation (Allegations of Misconduct) Act.

On 25 June 1990, the Minister for Police requested the Police Tribunal to conduct an inquiry under section 45 of the Act. The terms of reference for the inquiry were as follows:

- A. Matters connected with the sustaining of injury by Darren Leslie Brennan during the course of entry into and a search by members of the Police Force, including members of the Tactical Response Group, of premises at 106 St Johns Road, Glebe, on 17 June, 1990.
- (1) Whether the use of members of the Tactical Response Group and in connection with the entry into the premises was -
 - (a) justified in the circumstances; and
 - (b) organised and reported on in accordance with any procedures laid down for the Police Force in relation to the use of members of the Group for such a purpose.
 - (2) Whether the manner in which police officers entering the premises were armed, and the manner in which entry into the premises or any part of them was effected, were justified in the circumstances.
 - (3) Whether the manner in which Darren Leslie Brennan came to be injured involved any deliberate infliction of injury on him by any officer, or, if unintended, involved the handling by any officer of a firearm in a manner not justified in the circumstances.
 - (4) Whether any action or inaction on the part of any police officer subsequent to the sustaining of injury by Darren Leslie Brennan has destroyed any evidence, or otherwise adversely affected the ascertainment of the circumstances in which Darren Leslie Brennan came to be injured, and, if so, whether that action or inaction had that purpose or was otherwise not justified.
 - (5) Whether any police officer should be charged with any offence or disciplinary offence arising out of any of the matters referred to in paragraphs (1)-(4) and, if so, who, and upon what charge or charges.
- B. The functions and management of the Tactical Response Group and the Special Weapons Operations Squad of the Police Force in connection with operations involving

the use of weapons or harmful substances, and whether -

- (a) having regard to your findings on the matters referred to in paragraph A; and
- (b) with a view of minimising the risk of death or injury to members of the public in such operations,

any, and if so what, changes ought to be made in those functions or that management, or in the rules (statutory or otherwise) governing such operations.

The Police Tribunal began to take evidence on the circumstances of the shooting of Mr Brennan on 7 August, 1990. At the date of writing the inquiry is continuing. The Ombudsman will take no further action in the investigation which he has directed until the tribunal has reported to the Minister for Police.

Seconded police officers : a change in direction

The handling of complaints against police is the Ombudsman's most onerous duty. Approximately half of all complaints received in each year are complaints about the conduct of members of the New South Wales Police Service. Since 1984, the Office of the Ombudsman has had the ability to reinvestigate complaints against police if, after the police have completed their initial investigation, the Ombudsman is unable to determine whether a complaint is sustained or not sustained.

Nevertheless, in extending to him the power to reinvestigate such complaints, the government imposed restrictions on the Ombudsman. All reinvestigations had to be conducted by the police officers who were seconded to the Office of the Ombudsman; civilian investigations could not be involved. The system of secondment of police officers became well established, and for a number of reasons, was considered by both the previous and present Ombudsman to be essential for the effective investigation of complaints against police.

The principal reason was that the experience of serving police provided essential knowledge and expertise that the office needed to uncover undesirable practices and to identify particularly poor police investigations of complaints, either at district level or through the Internal Affairs Branch. So important was the emphasis placed on the need to have experienced police in the office, that a complement of ten seconded officers was initially approved and, for a time, was maintained.

Previous Annual Reports, however, have set out the difficulties that the office faced in recruiting suitable serving police officers¹. The 1988-89 Annual Report detailed the steps that had to be taken in order to make secondment to the office more attractive to police officers. The selection eventually adopted was to pay seconded officers an additional allowance equal to 10% of their salary. Nevertheless, recruitment difficulties have persisted despite this financial incentive.

In 1987 legislative amendments were enacted which enabled the reinvestigation of complaints to be conducted by civilian investigators, and not merely by seconded police officers. However, there was no immediate "rush" to change from the established practice, because the advantages of having police in the office were self-evident and highly desirable. In a measured process, civilian investigation officers were able to become experienced in the field of reinvestigation, and investigation "teams" that involved civilian and seconded police officers side by side were set up, with great success.

Because of the continuing difficulty in recruiting suitable police officers, and because of the sensitivity some community groups have to police officers, whether they be seconded to the Office of the Ombudsman or not, dealing with their complaints, a change of direction was called for. In more recent times, the office has tried to recruit people with policing experience but who were not necessarily currently serving police officers. The people had left the Police Service and had become civilian employees, but they possessed the desirable policing experience by virtue

¹ 1988-89 Annual Report : pp 278-9

of their former backgrounds. As a first step, two positions were advertised on this basis and the office was successful in attracting candidates of a high calibre to fill them. The two successful candidates, both former serving police officers brought considerable experience and expertise to the office.

The Ombudsman's ability to tap resources outside of the Police Department is an important initiative. It is hoped that, while-ever suitable candidates are available, to always maintain a presence of seconded serving police officers within the office.

The change in direction will be monitored continually; but, to date, the initiative appears to have been entirely successful.

The end of the affair

The 1988/89 Annual Report (pp 290-294) detailed a complaint made by two men concerning their assault, unlawful detention and harassment by police officers at Molong in March 1984.

The complaints had been initially investigated by the Police Department and had been found to be not sustained. A reinvestigation by the Ombudsman, however, found that both complainants had been assaulted and unlawfully detained. On the recommendation of the Ombudsman, the papers were forwarded to the Director of Public Prosecutions who, in turn, recommended that both police be charged with "assault, beat and otherwise ill-treat".

The charges were heard at Orange Local Court in November 1987 and were dismissed on the basis that the Magistrate was not satisfied that the evidence was capable of satisfying a jury beyond a reasonable doubt. On that basis, the Police Department proposed taking no further action against either of the police officers involved.

One of the complainants took civil action against both police officers. Those proceedings were heard before Judge Dunford at Orange District Court in November 1988. Judge Dunford found for the complainant; he determined that the complainant had been assaulted by one of the police officers and had been unlawfully detained by both. The Judge awarded damages of \$24182 for the assault and \$22440 for the unlawful detention. He further ordered that the police officers pay the complainant's legal costs.

Despite the fact that the Police Department had already indicated that no further action would be taken against either of the police involved, in the light of Judge Dunford's findings, the Ombudsman raised the matter during a meeting with the Assistant Commissioner (Professional Responsibility) on 15 June 1989. Shortly afterwards, the Assistant Commissioner told the Ombudsman that both officers would be departmentally charged with three counts of misconduct.

On 27 April 1990, both police officers appeared before His Honour Judge Cooper, of the Police Tribunal, who found all of the charges proved. In summing up, Judge Cooper said:

The delay of six years was little short of scandalous. It occurred because of an inappropriate, ineffective and flawed investigation by Internal Affairs. It was fortunate for the citizens of this State that legislation enables the Ombudsman to go behind the investigations of Internal Affairs.

On 3 July 1990, the Assistant Commissioner wrote to the Ombudsman notifying him of the decision of the tribunal. He said that, as had been suggested by the tribunal, one of the officers, a sergeant, had been fined \$200 on each matter, while the other officer had been fined \$125 on each matter. As well, as an education initiative, material relating to the complaint had been referred for possible inclusion in the Police Service Weekly and in Internal Affairs training courses.

The corruption of silence

From time to time the Ombudsman has to deal with the issue of corruption within the Police Service. The Independent Commission Against Corruption Act also specifically requires the Ombudsman to report to the Commission:

Any matter that the Ombudsman suspects on reasonable grounds concerns or may concern corrupt conduct.
[S.11(2)]

The majority of complaints about police that the Ombudsman receives do not involve allegations of corrupt conduct; nevertheless, 616 matters were reported to the Independent Commission Against Corruption (ICAC) in the year to June 1990. Alleged corrupt conduct reported to ICAC covers allegations of assault in certain circumstances, misuse of office or power and a range of matters that, on the face of it, normally fall outside the field of corruption in terms of the popular meaning of the term. In carrying out investigations, the Ombudsman has been concerned in recent times with conduct that appears to stem from what might be termed "the police culture" syndrome; this often gives rise to a very particular form of corrupt conduct, namely the "corruption of silence".

There is no easy solution to this problem; but the spread of this "corruption of silence", of misplaced loyalty or ill-conceived solidarity has to be addressed.

One case dealt with during the year illustrated the problem. Anonymous allegations, both in writing and by telephone, claimed that a person arrested for a driving offence and taken to a police station had been assaulted and throttled to the point of unconsciousness. The nature of the anonymous information made it almost certain that the

complaint had come from one or more police officers who were present when the assault occurred and who were concerned about what had been done. The alleged assault had taken place at a time of change of shifts at the police station and it was clear that there would have been many witnesses to the incident.

The person who had been assaulted was unsure about the identity of his assailant; but his account of the assault was confirmed by the anonymous information received.

The Internal Affairs investigation was most thorough, but the investigators met with consistent denials by all police officers present in the station of any knowledge of the matters alleged. With an obvious sense of frustration, the Internal Affairs inquiries were completed without any conclusive result being reached. The Ombudsman decided to reinvestigate the matter.

A hearing under section 19 of the Ombudsman Act was held and all possible witnesses were called to testify. As a result of his inquiry, the Ombudsman was satisfied that an assault had undoubtedly taken place. While he was unable to determine which officer was responsible for the assault, he was able to conclude that the police officer who at one point had been nominated by the victim as his assailant was not the offender.

The alarming aspects of this case were that an innocent police officer had been under suspicion, for some time, of having perpetrated a serious assault, that other police officers who had been present were aware that he was innocent yet had conspired, by their deliberate silence, to allow that officer to remain under serious suspicion. The anonymous complaints, in fact, had suggested that another officer had been responsible, but the author or authors of these complaints were not prepared to come forward at any stage, to tell what they had seen. In fact, it was not possible for the Ombudsman to determine who was responsible for the assault. Equally disturbing was the fact disclosed from the evidence that relatively senior officers had been present in the station when the assault occurred. The Ombudsman was in no doubt that they must have known what had happened. These officers not only

failed to testify truthfully but, according to the anonymous allegations, either actively instructed their juniors to do likewise or, by their inaction and silence, failed to counsel junior officers what to do to discharge proper obligations.

A further case highlighted an important ancillary issue. This case involved investigation of a complaint of assault, again of someone who was in custody in a police station at the time. The police investigation was unable to obtain any evidence from the many police officers who had been present, all of whom firmly denied that the assault had taken place. The complainant's evidence, and certain conduct that corroborated the allegation, together with medical evidence, left the Ombudsman in no doubt that the assault, as described, had taken place. Nonetheless, a "not sustained" finding had to be made by the police investigators; they believed that criminal charges could not be laid with any prospect of success and that there was insufficient evidence to justify recommendations for departmental charges against any officer.

The Ombudsman reinvestigated this matter too and, again, held a section 19 hearing. The complainant, his witnesses and all of the relevant police gave evidence. It became clear during the hearing that the assault as alleged had taken place. It became equally apparent that at least one and possibly two junior police officers had decided to resign from the Police Service. It appeared that the ethos of silence had offended and worried them, and that they had decided to leave the service partly, if not wholly, because of this kind of corruption. In a situation of this nature the Commissioner not only loses the very considerable resources spent in the recruitment and training of officers but, as well, potentially good and honest officers who must always provide the backbone of any good Police Service.

It may be that consideration should be given to the establishment of a counselling service for young and inexperienced officers, who have often revealed the dilemmas they can face in such circumstances as have been outlined, and who would wish to disassociate themselves from conduct of this kind. As it stands, their fear of offending their fellows, their fear of breaching an unspoken, unwritten ethic, leads them into danger

areas which could leave a mark on their future actions and their future careers.

Both of these matters are typical of cases which often come to the notice of the Ombudsman. The Ombudsman believes that the Commissioner shares his view about the "culture of silence" and is heartened by the statistical evidence of greater investigative effectiveness by the department in certain areas. The problem remains a serious one, however, and there is no reason for complacency. The Ombudsman believes that there should be ongoing reviews of present procedures and ongoing consideration of new approaches to deal with the problem. Some way has to be found to assist those police, particularly the young and inexperienced officers, who wish to disassociate themselves from the "culture of silence". The present climate within the Police Service is not conducive to eliminating the fear of offending fellow officers by breaching the entrenched unwritten ethic of never "giving up" another police officer.

Applications for extension of "Relevant Period"

Amendments to the Police Regulation (Allegations of Misconduct) Act introduced in August 1987 required the Commissioner of Police to complete an investigation of a complaint within a period of 180 days (the "relevant period") of a decision in writing, by the Ombudsman or by the Commissioner, to commence the investigation.

Section 24B of the Act provides that the Commissioner may apply to the Ombudsman for consent to extend the relevant period. More than one application may be made. Most applications are for extensions of 30 or 60 days, although applications for 90 day extensions are sometimes received.

The legislation provides no guidelines or criteria which should be considered by the Commissioner in making an application or by the Ombudsman in granting or refusing the application. The history of these amendments and the circumstances in which they were introduced

provide a clear picture as to the sort of matters that should be considered.

Sections 24A, 24B, 24C were introduced following sustained criticism by the former Ombudsman at delays in police investigations, particularly delays by the Internal Affairs Branch. The former Ombudsman recommended a time limit of 90 days, (the equivalent provision in Western Australia is 45 days) so the period of 180 days is more than generous. The delays which were previously a feature of the system have gradually been eliminated, principally because of the commitment of the Ombudsman and the Commissioner of Police to ensure that the new amendments worked effectively.

There is considerable variation, of course, in the time needed to complete any given investigation and this is dependent on the nature and complexity of the complaint. Many investigations are routinely completed within the relevant period; other investigations may require the interviewing of large numbers of witnesses who may be scattered geographically, and may involve other protracted and complex inquiries by the investigator. The flexibility needed to cope with these requirements is provided by S.24B and the Commissioner's right to apply for an extension of time. In assessing an application the Ombudsman will review the factors usually set out by the police investigator in a report in support of the application.

Recently, however, a worrying trend has emerged where IAB investigators have been citing "level of workload" as the principal factor in support of an application for extension of time. The Ombudsman does not believe that such a criterion is either a proper basis on which to seek an extension or a proper basis on which to consent to the extension. Such applications, if consented to, would quickly become routine and would ultimately subvert the very provision designed to eliminate delay and encourage efficiency. Accordingly, the Ombudsman has declined to consent to applications based on overall workload and will continue to monitor this issue closely.

The Ombudsman is conscious of the demands on IAB investigators who

are required to investigate other serious matters involving police, eg. deaths in police custody; discharging of firearms by police. The principal work of IAB officers remains, however, the investigation of serious complaints about police. The types of complaints investigated by IAB officers are determined by a written agreement between the Ombudsman and the Commissioner provided for under S.19(1)(c) Police Regulation (Allegations of Misconduct) Act. In an effort to assist in the reduction of the IAB workload, the Ombudsman has directed his officers to look closely at all complaints and consider whether they fall within the guidelines of matters to be investigated by IAB.

Conditions for Prisoners in Police Cells

It has been evident for some time that the number of prisoners being kept in police cells has been increasing because there is not room for them to proceed to gaol. Some three-quarters of these prisoners are on remand and in normal circumstances an overnight stay in police cells is not unusual.

Police cells are very spartan, providing only the most basic amenities, and it was never contemplated that they would be used for longer than overnight accommodation. The trend, however, is that some prisoners are being held for longer periods; sometimes running into many weeks.

In May 1989 this office received a complaint about the condition in the cells at the Sydney Police Centre and preliminary enquiries in terms of Section 52 of the Police Regulation (Allegations of Misconduct) Act were made. Two months later, a reply was received from Acting Assistant Commissioner Chapman, Commander South Region, enclosing a copy of a report by Senior Sergeant Webber. The Acting Assistant Commissioner said in his letter:

I am satisfied that the Sergeant has addressed the issues raised by Mr H. and that no benefit will be gained through further investigation. I consider that no further action is warranted.

The Sergeant's report had in fact revealed that a large number of

remand prisoners were held at Sydney Police Centre for long periods awaiting transfer to Corrective Services' institutions, during which time they had very limited access to exercise or fresh air, and even more limited access to visitors and phone calls.

Another complaint was received about the conditions of the cells at the Campsie Police Station. On 28th September 1989, the Commissioner was asked for his comments so that a decision could be made whether or not to launch an investigation pursuant to Section 13 of the Ombudsman Act.

On 5th December that report was received and the police investigator noted that the complainant had been kept for a period of 23 days and that the Police Department did provide a change of clothing nor clothes washing facilities at Campsie Police Station. He said the food supplied was considered adequate and consisted of "quality" frozen dinners. He went on to say that the lack of secure facilities available for visits by relatives and friends of prisoners had led the Patrol Commander to direct that such visits only be allowed under exceptional circumstances.

The Senior Sergeant pointed out that there was no record of the prisoner complaining regarding any of the issues he had now raised.

The Ombudsman decided to carry out an investigation in terms of Section 13 of the Ombudsman Act. On 16th February 1990 notice was given and Mr Avery was advised that the conduct to be made subject of investigation was:

- . The condition under which prisoners are detained in NSW in police cells.
- . The adequacy of guidelines issued to ensure certain standards are maintained while prisoners are in police custody (if any) and what is done to monitor adherence to those guidelines.

In addition, the Commissioner was asked to make whatever comments he wished about the matter, together with answers to the following questions:

- . What steps the Department has taken to monitor the number of remand prisoners kept in police cells and the delays in transferring those prisoners to the custody of the Department of Corrective Services, together with advice on any initiatives the Police Department has taken to deal with the problems arising from the current situation.

- . It is noted that a lack of secure facilities causes prisoners' access to personal and legal visits, bathing facilities, exercise and, in some cases even daylight to be severely limited. What steps have been taken to monitor and address these difficulties in light of the apparently increasing number of prisoners detained in police cells for more than 48 hours?

- . Is there a system of checking the quality, quantity and variety of food and drink provided by private contractor. Is so, what is this system?

- . It is noted that a nursing officer is available 5 days per week at the Sydney Police Centre cells. What facilities are available in other Police Stations, besides emergency hospital attendance? What gauge is used to ascertain whether medical treatment is urgent or not? Who makes that decision?

- . During peak periods is there provision for officers at other cell complexes to have access to the Corrective Services Liaison Officer from the Sydney Police Centre?

- . Please nominate any officer(s) who are conversant and/or responsible for dealing with these issues who could be called upon to provide further information, if necessary.

On 11th May, Assistant Commissioner L. Sturton advised that:

... the aspects raised are currently being canvassed on a statewide basis.

... It is envisaged that a response to the aspects raised will be forwarded to your Office within 30 days.

No report had been received from the Police Service by the end of July 1990.

Police stress

The Ombudsman is not an "advocate" for complainants; his role is to investigate complaints and to make recommendations about the conduct of New South Wales public authorities, including members of the Police Service, that, hopefully, will ultimately improve public administration. In this respect, the Ombudsman in the past has made recommendations to the Commissioner of Police about the establishment of a continuing programme of stress management which should be available to all serving police officers.

No one would deny that policing can be a stressful occupation. Not only is it often dangerous, but there are a number of other factors which can cause stress to police. These factors include:

- . Police routinely deal with people who have been either robbed, raped, bashed, assaulted or arrested. They deal with people, therefore, who are often extremely agitated; and even when these people are later, on reflection, grateful to police, at the time of initial contact their own stress can put the police who deal with them under stress as well.
- . There is a high incidence of crisis situations that police have to deal with and, as far as the Ombudsman is aware, there are few, if any, critical-incident stress debriefing services available to them.
- . The stress levels experienced by police and the effects these can have "on the job" are not always necessarily understood by their supervisors. For example, in one matter involving a complaint that a sergeant of police had breached a Domestic Violence Order, then Assistant Commissioner Lauer wrote to this office and said:

.....this in no way relates to his performance as a

member of the Police Force.

Such conduct, however, ought to alert senior police that private conduct of such a nature might be likely to produce public misconduct or, at least, to affect the performance of the officer concerned.

It seems likely, as well, that some stress is suffered by those police officers who are unable to decide how to cope with misconduct on the part of their colleagues or superiors. Certainly, there appears to be no guarantee that, if they report such actions they themselves will not be victimised in some way. This aspect is discussed in more detail in the topic The Corruption of Silence elsewhere in this report.

Information provided to this office by the department from time to time indicates that twelve officers are employed in the Welfare Branch of the Police Department. The Police Department Medical Branch employs two psychologists, two alcohol counsellors and three full-time senior chaplains, as well as almost forty part-time chaplains. The Medical Branch provides a confidential counselling service and refers officers when that is appropriate.

Stress management is covered in police recruit training and in the Highway Patrol education programme, as well as in on-the-job training programmes. It is doubtful, however, whether this does enough for the 13,000 members of the Police Service. The Ombudsman believes that stress management is not regarded by police officers, generally, as a necessary part of their jobs, nor by police managers, in particular, as central to their role. There appears to be a tendency for police officers to regard fellow officers who seek assistance or advice with some reservation and to place stress management low on their priority lists.

It seems to the Ombudsman that the various services made available by the department are more in the nature of "crisis management" services and even they appear to be inadequate on occasion.

There seems to be a clear need for a programme of preventative and on-going stress management to be introduced in the New South Wales Police Service. Stress management is a specialised field. The Ombudsman is in no position to judge the quality of any one programme over another but he strongly believes that the present system, such as it is, is not implemented as an integral part of police management and, therefore, is inadequate. This is mainly because stress management and counselling services are not generally perceived by police officers to be relevant to their policing duties; nor are they seen by police management to be as important as the investigation of complaints.

Services of this nature should not be based on "crisis intervention"; monitoring of stress indications and counselling of police officers should be available before crisis point is reached.

Police not only need to know that a Departmental Stress Management programme exists, but need to be actively encouraged to regard such a programme as important to them in coping with their daily tasks. The programme must be seen to be important and must be approved, supported and actively promoted by the departmental hierarchy. The Ombudsman is firmly of the view that the Commissioner should direct that a detailed analysis be undertaken in order to determine the department's requirements in this area and to identify the best programme to meet those requirements.

Unprofessional investigations

Senior Constable P and Constable D were called to a house in the early hours of the morning. The householder told them about a fight he had with another man. After leaving the house, the police officer saw two people getting into a truck that was parked in the street.

Senior Constable P, who was driving the police vehicle, noticed that one of the headlights on the truck was not working, so he followed the truck and tried to stop it. The truck accelerated and the police chased it,

until the truck turned into a driveway in a nearby street and stopped. The driver of the truck jumped out and was chased by Senior Constable P with Constable D not far behind. Senior Constable P then drew his gun and fired a shot over the head of the runaway driver. Constable D pursued the driver over several paddocks and a number of fences finally tackling the driver who was subdued and subsequently charged. The driver lodged a number of complaints, the most serious of which was that the Policeman shot at him.

The investigation was conducted by an Inspector from a nearby district who found the complaint to be not sustained, on the grounds that the complainant had pointed a pistol at the Senior Constable.

The complainant denied having a pistol in his possession and the police investigation failed to produce the alleged weapon. The police investigation gave no explanation as to why the Senior Constable fired a warning shot in circumstances contrary to police instructions which, in effect, state that when a policeman's life is endangered in circumstances such as the pointing of a weapon by an offender at a policeman, two shots from the crouched position are to be fired directly at the largest part of the target/offender to kill or disable that person.

The lack of any explanation for this contradiction raised the question, in the Ombudsman's mind of whether a cover-up to excuse the discharge of a firearm in a traffic matter had taken place. Accordingly an inquiry to reinvestigate the complaint was held.

After hearing all the evidence the Ombudsman accepted that Senior Constable P firmly believed that the complainant had pointed a gun at him when he fired his revolver. The Ombudsman accepted that, had he aimed at the offender, he undoubtedly could have hit him, but that his intention at the critical moment was not to inflict injury. The Ombudsman was particularly concerned by the ineptitude of the police investigation and the fact that the Senior Constable's firing over the complainant's head, in disregard of the standing instructions, was not addressed by the police investigation. Had it been, the necessity for a reinvestigation by the Ombudsman's Office would probably have been

avoided.

Police instructions concerned with the discharge of firearms by members of the Police Service in the execution of their duty, contain procedures to be adopted following those incidents, including the necessity for the Chief Inspector in charge of the division in which the incident took place, to investigate the incident, regardless of where the officers involved are stationed. In addition, the Police Health and Welfare Unit is required to arrange with the police medical officers for police involved in shooting incidents to be medically examined as soon as possible after the incident, and that those officers attend an initial counselling session within a few days of the incident.

What was further disturbing to the Ombudsman was that Senior Constable P was given no assistance for two weeks after the event and, even then, appeared to have had no counselling for his post-shooting trauma. He readily admitted that he handled the situation badly and that he was left to deal with the incident as best as he could.

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 approved staff establishment was 74. During the year the office restructured resulting in the creation and deletion of a number of positions. Details of the restructure are discussed later in this report. As at June 1990 the approved staff establishment was 74.

During the year the Public Employment Industrial Relations Authority (PEIRA) or the Ombudsman under delegation from PEIRA approved the following changes in the establishment:

Position Created	Position Deleted
Senior Investigation Officer (General) Clerk Grade 9/10 (4 positions)	Senior Investigation Officer (General) Clerk Grade 9 (2 positions)
Assistant Investigation Officer Clerk Grade 4/5 (2 positions)	Investigation Officer Clerk Grade 7/8 (2 positions)
Senior Investigative Assistant Clerical Officer Grade 3/4 (7 positions)	Interviewing Officer Clerk Grade 3/4
Investigative Assistant Clerical Officer Grade 1/2 (15 positions)	Assistant Interviewing Officer Clerk Grade 2/3
Administrative Clerk Clerk Grade 2/3	Officer in Charge of Records Clerk Grade 1/2

Position Created

Investigation Officer (Police
Complaints) Clerk Grade 7/8
(2 positions)

Senior Investigation Officer
(Police) Clerk Grade 9/10

Position Deleted

Seconded Police Officer
(2 positions)

Senior Investigation Officer
(Police) Clerk Grade 9

Administrative Clerk Grade 1/2

Administrative Clerk
General Scale

Clerical Assistant
General Scale
(4 positions)

Information Officer
Clerical Assistant
Grade 2/3

Administrative Assistant
(Word Processing Supervisor)
Clerk Grade 1/2

Stenographer Grade 1

Typist (10 positions)

Stenographer General Scale
(3 positions)

The Ombudsman approved the renaming of the following positions:

Current Designation

Senior Administrative Officer
(Police) Clerk Grade 9/10

Assistant Investigation Officer
Clerk Grade 4/5

Assistant Investigation Officer
(Aboriginal Complaints) Clerk
Grade 4/5

Assistant Investigation Officer
(Freedom of Information) Clerk
Grade 4/5

Assistant Investigation Officer
(Telecommunication Interception
Inspection Unit) Clerk Grade
4/5

Previous Designation

Senior Investigation Officer
(Police) Clerk Grade 9/10

Interviewing and Investigation
Officer Clerk Grade 4/5

Interviewing and Investigation
Officer (Aboriginal Complaints)
Clerk Grade 4/5

Interviewing and Investigation
Officer (Freedom of Information)
Clerk Grade 4/5

Interviewing and Investigation
Officer (Telecommunications
Interception Inspection Unit)
Clerk Grade 4/5

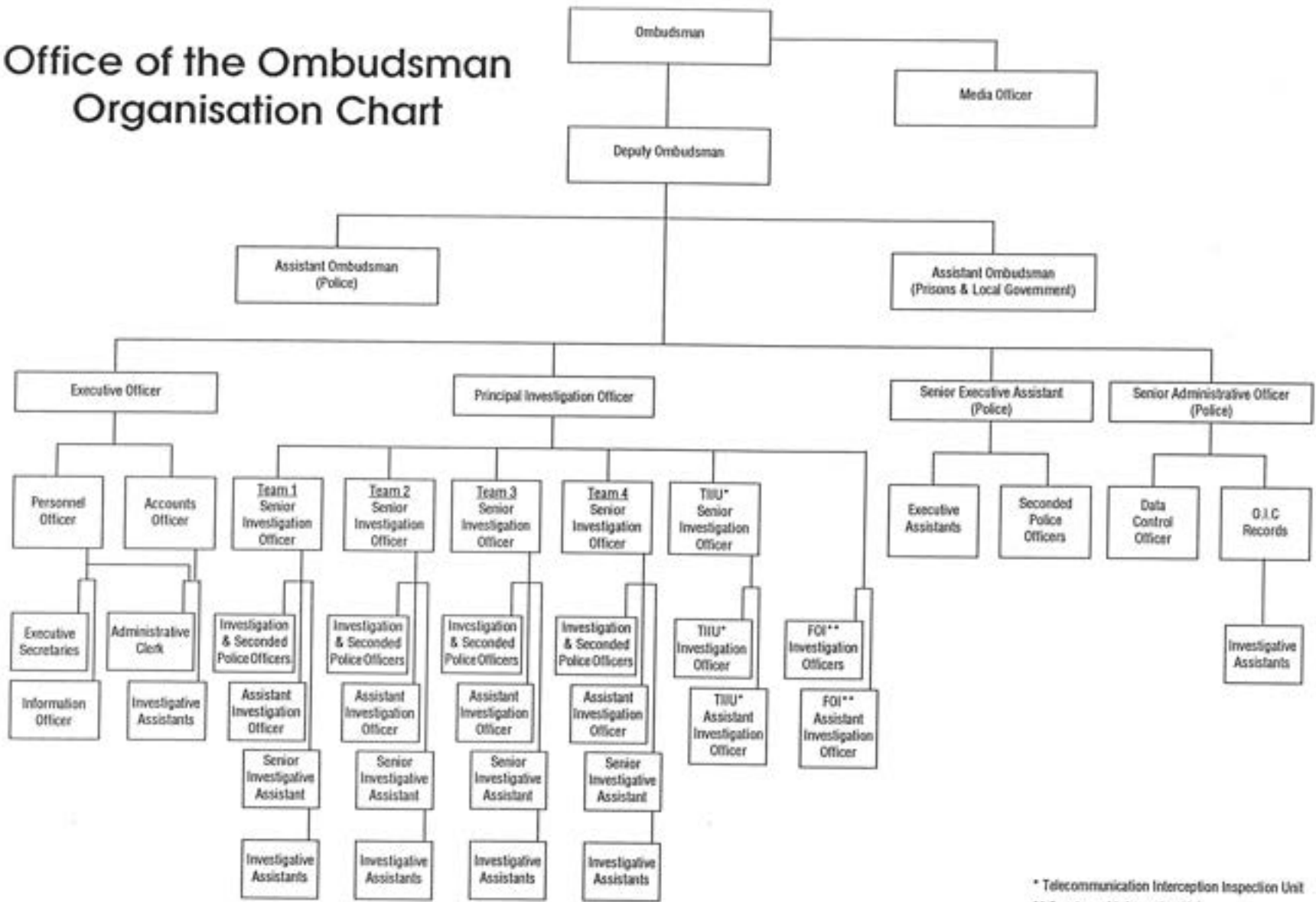
Categories of officers and employees are shown in the following table:

	At 30/6/90	At 30/6/89	At 30/6/88	At 30/6/87
<u>Statutory Appointees</u>				
Ombudsman	1	1	1	1
Deputy Ombudsman	1	1	1	1
Assistant Ombudsman	2	2	2	2
<u>Officers</u>				
Principal Investigation Officer	1	1	1	1
Executive Officer	1	1	1	1
Senior Investigation Officer Grade 9/10	4	-	-	-
Senior Administrative Officer (Police)	1	-	-	-
Senior Investigation Officer Grade 9	1	4	4	3
Investigation Officer	16	17	15	14
Investigation Officer (Police)	2	-	-	-
Special Officer of the Ombudsman (Seconded Police Officer)	8	9	9	9

	At 30/6/90	At 30/6/89	At 30/6/88	At 30/6/87
Executive Assistant (Police)	3	3	3	3
Public Relations Officer	1	1	-	-
Data Control Officer	1	1	-	-
Accounts Officer	1	1	1	1
Personnel Officer	1	1	1	1
Administrative Assistant	1	1	-	-
Interviewing Officer	-	6	5	3
Administrative Clerk	1	2	1	1
Officer in Charge Records	-	1	1	1
Information Officer	-	1	1	1
Keyboard Staff and Stenographers	-	16	16	15
Executive Assistant (Ombudsman Secretary) (formerly included as part of Keyboard Staff)	1	-	-	-
Assistant Investigation Officer	6	-	-	-

	At 30/6/90	At 30/6/89	At 30/6/88	At 30/6/87
Investigative Assistant (Teams)	10	-	-	-
Investigative Assistant (Records)	3	-	-	-
Investigative Assistant (Administration)	2	-	-	-
Senior Investigative Assistant (Records)	1	-	-	-
Senior Investigative Assistant (Teams)	4	-	-	-
Senior Investigative Assistant (Executive Area)	1	-	-	-
Senior Investigative Assistant (Information)	1	-	-	-
	74	74	67	62

Office of the Ombudsman Organisation Chart



* Telecommunication Interception Inspection Unit
 ** Freedom of Information Unit

Wage movements

In December, 1989 the Industrial Commission of New South Wales awarded the first 3% Structural Efficiency Principle pay increase to public sector employees. This increase was granted as the Industrial Commission was satisfied with the framework for public sector reforms proposed by the Public Employment Industrial Relations Authority (PEIRA) and the unions. Details of the implementation of the Structural Efficiency Principle within the Office of the Ombudsman are discussed later in this report.

A second payment of up to 3% was possible under the principle if public sector organisations could show considerable progress in the implementation of Structural Efficiency. The Industrial Commission considered the payment of the second instalment in June 1990. The Commission was satisfied that progress had been made and in July 1990, it granted the second 3% increase to certain public sector employees.

On 26 April 1990 the Premier directed, pursuant to section 14 (1) of the Statutory and Other Offices Remuneration Act, 1975 that the Statutory and Other Offices Remuneration Tribunal make a determination in relation to the remuneration of the offices of Ombudsman, Deputy Ombudsman and Assistant Ombudsman.

On the 24 May 1990 the Statutory and Other Offices Remuneration Tribunal determined that the level of remuneration of the Ombudsman, Deputy Ombudsman and Assistant Ombudsman is to be in line with 'Court Officers and Related Groups'. The Tribunal's determination resulted in salary increases of 18% for all positions effective 2 February 1990.

Personnel policies and procedures

The creation of a team structure has resulted in some changes to personnel procedures. The team supervisors, the Senior Investigation Officers, have input into decisions about matters such as leave absences, increments and staff performance. These changes will result in better management of staff resources.

The Public Employment Industrial Relations Authority (PEIRA) delegated a number of functions to the Ombudsman including the power to set commencing rates of pay for staff appointed from within the public service.

Recruitment

During the 1989/90 reporting year, forty nine established positions were filled. In addition, a number of temporary staff were employed to provide assistance in times of high workload or to replace permanent staff whilst absent on leave. At the close of the financial year five positions were vacant. Advertising action had commenced on three of those vacancies.

The level of recruitment, which was higher than previous years, can be attributed to the restructuring of the office. The creation of positions affected recruitment action as the Public Sector Management Act, 1988 and sound equal employment opportunities policy requires that, except in certain circumstances, all vacant positions be advertised and filled on a competitive basis.

Twelve of the positions filled were promotional positions created by the restructure. In addition, the Public Employment Industrial Relations Authority (PEIRA) approved the direct appointment of twelve existing keyboard and clerical staff to base grade non promotional positions, whilst the Ombudsman transferred two staff into vacant positions.

Previous reports have mentioned the difficulties associated with recruitment of serving police officers. To overcome these problems, the Ombudsman created two positions of Investigation Officer (Police Complaints) which have, as an essential requirement, knowledge and experience in police practice and procedures. Two police officer positions were deleted.

The office continued to fill base grade positions through the Government Recruitment Agency as required by the Public Sector Management Act, 1988.

It is the policy of the office to advertise vacant promotional positions as widely as possible in order to attract the most competitive range of applicants. Statutory, investigative and senior administrative positions are advertised in both the Public Sector Notices and the press. Other administrative positions are advertised in the Public Sector Notices only. Advertisements for vacancies in the investigative area are also distributed to various organisations such as law faculties and community based agencies.

Industrial Relations

It was reported in last year's Annual Report that the Ombudsman and unions were discussing the introduction in Parliament of the Ombudsman (Amendment) Bill. The purpose of this bill was to establish the office of the Ombudsman as a corporation, independent of the public service. The amendment altered the employment status of current staff and would have affected a number of conditions of employment including mobility to promotional positions within the public service. At the commencement of the reporting year the Ombudsman was meeting with staff, union representatives and Cabinet Office staff concerning the proposed incorporation. These meetings resulted in changes to the legislation being either made or proposed. On 29 August 1990 the Premier informed the Ombudsman that the bill would not proceed.

The implementation of the Structural Efficiency Principle (SEP) required the formation of a Joint Consultative Committee (JCC) comprising equal

numbers of union and management representatives. Since its formation, the JCC has undertaken a number of tasks required under the SEP agreement including a review of functions and work arrangements. Details of the activities of the SEP Committee are discussed later in this report.

There were no industrial disputes involving the office during the year however the Public Service Association did meet with the Ombudsman to discuss actions taken by the office concerning an adverse notation on a personnel file.

Representatives of the Workplace Group continued to participate in weekly management meetings.

Staff Training

In April 1990 the Ombudsman approved the creation of a Training Committee to co-ordinate training activities in the office. The committee, which meets monthly, sets the office's training agenda, allocates funds and researches training proposals. The committee comprises representatives of the investigation staff, investigative assistants, administration and management.

Training and information sessions for investigative staff are held at least monthly. Sessions for non investigative staff were held on an irregular basis. During the year, topics covered in these sessions have included:

- . policy and procedural changes - Department of Housing
- . police response to domestic violence
- . freedom of information
- . media training

- . practical legal research
- . section 16 notices
- . police discipline
- . section 19 hearings - procedures
- . how to handle complaints from Aboriginal people
- . office computerised systems - electronic mail and diary
- . emergency evacuation procedures
- . Ethnic Affairs Policy Statement (EAPS)
- . cultural awareness

Where possible, outside experts conducted or participated in monthly training sessions. For example, Mr Robert Watt, a law lecturer from the University of Technology presented the practical legal research workshop; four staff members from the Department of Housing presented the session on policy and procedural changes at that department; Mr Kashman and Mr Goodstone from the Ethnic Affairs Commission presented the sessions on EAPS and cultural awareness; and a training officer from the NSW Fire Brigade presented the session on emergency evacuation procedures.

In addition to these information sessions, a number of training courses were conducted in-house. Ms Duane Buon, Assistant Investigation Officer, designed and presented a "Working on the Front Line" training course for newly appointed Senior Investigative Assistants, Investigative Assistants and some administrative staff. This course was designed to provide the participants with the necessary skills, attitudes and knowledge to handle enquiries effectively. Two courses were conducted

each over five days with participants also undertaking a period of on-the-job training.

Two "English in the Workplace" courses were also conducted during the reporting year. The initial course, which dealt with oral communication skills including telephone skills, assertiveness training, job interview techniques and understanding Australian slang, was held from July 1989 to December 1989. The second course, which was held from February 1990 to April 1990, covered written communication skills including memo and letter writing. The Adult Migrant Education Service has been most helpful in the organisation and delivery of the "English in the Workplace" courses.

An induction course for new staff members, a selection techniques course and a job seeking skills course were also designed and conducted in-house during the reporting year.

Staff also participated in courses conducted by external agencies. In most instances the Ombudsman approved the office meeting the cost of attendance. Those courses included:

- . systems administration
- . techniques of investigation
- . skills audit training
- . women in management
- . word perfect training
- . freedom of information
- . marketing for a multicultural society
- . first aid

- . planning and budgeting techniques
- . accrual accounting
- . use of fire extinguishers

Other training opportunities have been available to clerical support staff through job rotation and the opportunity to act in higher graded positions.

The Training Committee is organising a number of courses for the next reporting year including Letter and Report Writing Course, a Supervision Course and a Clerical Skills Course.

Restructuring

When the Ombudsman (Amendment) Bill was introduced into Parliament in November, 1988, the office commenced discussions with the union, Cabinet Office and the Public Employment Industrial Relations Authority (PEIRA) concerning conditions of employment and staffing issues. At the same time, the implementation of the Structural Efficiency Principle was being negotiated between PEIRA and the Labor Council.

It was the view of PEIRA that incorporation and the Structural Efficiency Principle could be implemented at the same time creating a more flexible workforce at the office and increasing productivity through multiskilling and enhanced career development opportunities. The Ombudsman agreed with PEIRA and commenced discussion with all staff on how the Structural Efficiency Principle should be implemented at the office. During the period of discussion the Ombudsman (Amendment) Bill was withdrawn.

In October, 1989, the management committee developed a proposal that recommended a new office structure which promoted the Structural Efficiency Principle as well as enabling closer supervision of the work

and work load of all staff. This proposal involved adopting a team structure as a basic management unit for investigations, creating a new re-investigation group for police complaints, creating broad salary and grading bands for support staff enabling multiskilling, job rotation and promotional opportunities. The role and responsibilities of a number of positions were redesigned.

The management proposal was discussed at length with all staff and a number of refinements were made after suggestions from staff. On 21 November 1989 the Ombudsman approved the new structure and pursuant to the provisions of the Public Sector Management Act, 1988 sought the approval of PEIRA to the classification and grading of the positions created. That approval was given on the 24 November 1989. The current structure is outlined in the Organisation Chart and more details on the implementation of the Structural Efficiency Principle is set out elsewhere in this report.

The restructure formalised the system of investigative teams or "groups" that were being trialed within the office.

Implementation of the group system required the appointment of Senior Investigation Officers to head each of four investigative teams. This occurred concurrently with restructuring and multiskilling positions which had previously focused almost exclusively on keyboard duties, so that those positions would form part of each team, in order to create feasible career paths within the office, enhance job satisfaction and provide greater opportunities for advancement.

The investigative teams are under the overall supervision of the Principal Investigation Officer and are led by Senior Investigation Officers. Each team includes a number of Investigation Officers, (including seconded police officers), an Assistant Investigation Officer, a Senior Investigative Assistant and a number of Investigative Assistants. On average, each team consists of twelve people.

Senior Investigation Officers work on some of the more complex investigations and oversee the work of the team. Investigation Officers

do most of the day-to-day investigation work. Assistant Investigation Officers deal with telephone enquiries, interviews and carry out some investigation work. Senior Investigative Assistants oversee the work of the Investigative Assistants; both groups perform some keyboard work and assist with routine investigations. Training has commenced to enable Senior Investigative and Investigative Assistants to become more involved in dealing with telephone enquiries and interviews and in preparing the more routine investigative correspondence.

Complaints received by the office are distributed to each of the four teams. Each team deals with complaints about all areas of administration, police, prisons, councils, and other government departments and authorities. Each case is discussed in general terms by members of the team at group meetings; each complaint is allocated to an individual Investigation Officer who takes responsibility for dealing with it.

Allocations are made according to the interests, expertise, experience and current workload of the officers within the team. Once allocations have been made, Investigation Officers exercise significant discretion about the way in which the complaint will be processed. They may, of course, seek the assistance of their colleagues or of senior officers at any time.

The high level of autonomy afforded to Investigation Officers carries with it the danger that this office might be accused of making inconsistent decisions in certain cases. However, the group system offers a counterbalance to this criticism by facilitating consistency within the teams. Further, regular meetings between the Principal Investigation Officer and Senior Investigation Officers ensure that the dissemination of information about complaints also takes place across the groups.

The office contains a number of talented people from a variety of private and public sector backgrounds. The advantages associated with allowing these officers a high degree of independence and autonomy by not arbitrarily confining their activities are considered to outweigh the disadvantages. Of course, there are certain parameters imposed on their

freedom, both by the relevant legislation and through directions issued from time to time by the Ombudsman. Further, the review processes adopted by senior officers when dissatisfaction is expressed about an Investigation Officer's decision are seen as sufficient to correct any anomalies. Naturally, new staff are more closely supervised by Senior Investigation Officers during their initial period of employment within the office.

The group system provides:

- . a forum for the provision of training for new and existing staff;
- . a means of disseminating information from management meetings;
- . an arena for the discussion of investigation strategies and issues;
- . an opportunity for staff to share information gained during the course of investigations;
- . a mechanism to facilitate some consistency in the handling of complaints across the group; and
- . an avenue for the fair distribution of new complaints.

In addition to the general investigative teams, there is a re-investigation team which focuses exclusively on re-investigation of the more serious complaints against police. This team becomes involved only after the Police Department has completed its investigation of a particular complaint and there are significant public interest issues involved in the matter, which the Ombudsman may be able to resolve through the use of his own investigative staff.

The personnel, records, and accounts sections, statutory officers and some administrative staff work outside the group system - providing the administrative infrastructure to allow the investigative arms to operate efficiently and effectively.

Ethnic Affairs Policy Statement

The commitment of the office to the Ethnic Affairs Policy Statement has continued during the year. New staff appointed to the office are given detailed information about the EAPS at individual induction sessions and at formal Induction Course.

A staff development course "Working on the Frontline" was held for staff to assist in their dealing with complaints from members of the public. There was an emphasis in this course on communication and assertiveness skills, with special reference to the needs of people from non-english speaking backgrounds.

The internal training course for staff from non-english speaking backgrounds, organised and presented by the Adult Migrant Education Service, on advanced communication skills was continued this year. At the Speech Day in late 1989, the Ombudsman was delighted with the increased confidence and skills exhibited by the staff who had attended the course.

Throughout the year, staff presented talks and seminars to various government departments and organisations. The aim of such presentations is to increase the level of awareness and knowledge of the role of the Ombudsman. Many of the presentations were to organisations which have a large client base of non-English speaking background and it is hoped that these client groups receive the benefit of an increased knowledge of the role of the Ombudsman.

The EAPS Committee continues to meet monthly to review, implement and evaluate ethnic affairs policy issues. Another staff representative was appointed to the committee at an election held in March 1990. The new committee member has been actively engaged in updating the office's list of staff who have community language skills and in identifying those staff who may be eligible for recompense under the Community Language Allowance Scheme.

As was foreshadowed in the 1988-89 Annual Report, arrangements were made for representatives of the Ethnic Affairs Commission to participate in in-house training sessions for staff. In August 1989, Mr A Kashmer, a Project Officer with the commission, talked to staff about Ethnic Affairs Policy Statements generally, and Mr L Goodstone, Co-ordinator of the Community Information and Interpreter Service conducted a cultural awareness training session. The Ombudsman thanks those people for their assistance.

Occupational health and safety

An Occupation Health and Safety Committee has continued to meet on a regular basis. The term of the previous committee expired in March 1990 and a new committee was elected by all staff. The committee comprises representatives from each of the office's functional areas, that is, Management, Administration, Investigative Assistant, Investigation Officers and Seconded Police Officers.

Issues canvassed by the committee during the year included:

Fire and emergency evacuation procedures

As a result of the move to the Coopers and Lybrand building a new emergency evacuation plan was put in place and new area wardens were elected. Members of the NSW Fire Brigade attended the office in November to lecture staff about high rise evacuations, and a successful fire drill took place on the same day. In addition, some staff attended a fire extinguishing course at the NSW Fire Brigades Training College.

Computer terminals and keyboard equipment

Ms Erica Pumpa from the Occupational Health and Safety Unit of Sydney Hospital attended the office in November 1989 to advise keyboard staff on the correct use of keyboard and ergonomic equipment. Because of the installation of the new computer system, all staff now have

access to terminals and arrangements were being made for Ms Pumpa to return to the office in July 1990 to provide training session for all staff. The office introduced a program of eye testing all staff at the Medical Examination Centre every two years. The first group of staff were examined June 1990 with results being retained on personnel files.

Training of First Aid Officers

One staff member was trained in administering first aid during the year and action was in hand at the end of the year to train a further two people. All first aid officers in the Ombudsman's Office are trained by St John Ambulance of Australia and are awarded certificates valid for three years. Qualified First Aid Officers are sent for refresher courses every three years.

Training of new OH&S Committee members

Under the Occupational Health and Safety Act 1983, all members of Occupational Health and Safety Committees are required to undergo training. When the new committee members and backups were elected in March 1990, only three had undergone training. Arrangements have been made for committee members to attend training courses. The first of these were held in July.

Regular meetings with staff

A number of meetings in which staff participate are regularly held in the office.

1. A formal staff meeting is held monthly. Attendance is mandatory for all Statutory Officers, Investigation Officers, the Executive

Officer and administrative staff; with the introduction of an Investigative Team structure and multiskilling strategies, all Assistant Investigation Officers and Investigative Assistants are strongly encouraged to attend as well. The meeting aims to provide information on current investigative issues and dealings with various government departments, local councils and the police, as well as changes to policies or procedures. Information is also provided on administrative matters, such as budgetary allocations, expenditure and staffing issues.

2. Senior Investigation Officers and the Principal Investigation Officer meet regularly to discuss allocation of new complaints and to deal with issues relating to the investigative process and the operation and supervision of the Investigation Teams.
3. Meetings of Senior Investigation Officers and Senior Investigative Assistants are held monthly. The restructure of the office into four Investigative Teams and the implementation of SEP and multiskilling strategies necessitated regular meetings of the senior members of the teams to enable them to discuss areas of concern and training needs and to attain a consistency in approach across the teams.
4. Meetings of all Investigative Assistants and Administrative staff with the Executive Officer occur monthly. The purpose of these meetings is to ensure that staff are kept informed of developments in the office, including new activities, policies and procedures. Staff are encouraged to express their views and discuss areas of concern to them.
5. Arising out of an SEP consultation with investigative staff, it was agreed that all Investigation Officers should meet regularly to discuss areas of current investigative interest or importance. The meetings aim not only to provide information about current investigations in the office, but learning opportunities for Investigation Officers as well.

Structural Efficiency Principle (SEP)

In May 1989 the Public Employment Industrial Relations Authority (PEIRA) and the Labor Council of New South Wales signed an agreement setting the parameters for regulation between public sector departments and unions and outlining the ways and means by which structural efficiency should be accomplished. Following this, staff from the Office of the Ombudsman held several meetings with the PEIRA to identify areas where change to the current structure of the office could increase efficiency, provide multiskilling opportunities and create career paths.

On 2 February 1990, the Ombudsman joined with the Director-General of the Department of Industrial Relations and Employment and with the Labor Council of New South Wales and affiliates in signing a "Memorandum of Understanding" regarding the establishment of Joint Consultative Arrangements on Structural Efficiency. As a result, a Joint Consultative Committee (JCC) was established to assist in the implementation of SEP within the office. The committee comprises six members; three are nominated by the Ombudsman and three are nominated representatives of the Public Service Association Workplace Group. The committee met for the first time on 1 March 1990.

The context in which SEP was introduced to this office was usual. Even before the formal commitment of the organisation to SEP, there was an organisational climate and a desire for change and improvement. A thorough review of the functions and operations of the office had been undertaken late in 1989 with a view to improving efficiency and effectiveness. The review was undertaken with the knowledge, involvement and commitment of union and management. Given the fertile soil in which it grew, the Joint Consultative Committee has worked extremely well in publicising and promoting understanding of SEP in the organisation. There has been across the board agreement and a spirit of co-operation and it is clear that most staff in the office have a commitment to the implementation of SEP.

The committee has agreed that its objectives for the implementation of SEP should be to:

- . improve the efficiency and effectiveness of the Office of the Ombudsman;
- . provide improved levels and quality of service;
- . provide greater career opportunities for staff and hereby enhance promotional prospects both within and outside the organisation;
- . provide a framework by which the functions and policies of the office can be regularly reviewed and monitored;
- . provide a framework within which management and union can consult and develop proposals to deal with restructuring issues and changes.

Implementation of SEP requires that the organisation undertake six specific processes. These are listed below, together with the achievements of this office to date:

Process 1 - Communication and Education. Information and education on SEP has been achieved through such mechanisms as staff meetings, the issue of memoranda, small group consultations and briefing sessions. Members of the JCC have also attended formal briefing sessions on SEP.

Process 2 - Review of Functions. A major functional review of the office took place between August and November 1989. The review occurred with management/union involvement and consultation, and culminated in the eventual restructure of the office.

The review made it clear that any realistic restructure of the office and the implementation of SEP could not occur without a major re-assessment of the office's information processing strategies. As a result an Information Processing Strategic Plan commenced in October, 1989. The plan has been substantially implemented; all the computer hardware has been purchased and installed and the customisation of the associated software has been largely completed.

Process 3 - Review of Work Arrangements in Present Form. This process involved a thorough review of current work arrangements for all staff aimed at identifying work practices and operations which could be carried out more effectively. Staff were involved in evaluating their own work practices and statements of duties, and undertook this process in small groups.

No examination of work arrangements or re-organisation of work practices could be undertaken without reference to the principles of Equal Employment Opportunity (EEO). For example, the redesign of jobs and the restructure of the office into teams had the clear goal of, in particular, improving career opportunities for people in the lower graded positions, and of providing not only opportunities for development of new skills, but of developing the strategies to increase the variety of tasks to be performed within each new position. The guidelines provided by the Director of Equal Opportunity in Public Employment were rigorously applied.

Process 4 - Skills Analysis and Training. A skills analysis of staff is currently being undertaken by a sub-committee of the JCC. Small group panels have completed an analysis of all positions in the office and the results of this analysis are currently being validated. Progress on this process is significant, given that the guidelines were only issued by the Department of Industrial Relations and Employment on 23 April 1990.

Process 5 - Job Evaluation. At the time of writing, the guidelines for Job Evaluation Methodology have not been provided by the Department of Industrial Relations and Employment. Consequently, no formal work has been commenced on this process.

Process 6 - Application to the Industrial Authority. This process required the identification of efficiencies resulting from the implementation of SEP. The following achievements have resulted in efficiencies:

- re-organisation and classification of base and lower graded clerical positions, particularly

keyboard positions, have resulted in such positions being "multiskilled". Staff occupying these positions, although still providing keyboard assistance, now have other investigative duties. This has not only increased the variety of work of Investigative Assistants, but has enabled Investigation Officers to concentrate on the more complex tasks associated with investigations;

- . the introduction of an investigative team approach has led to more consistent decision making throughout the office. Staff also receive more supervision and guidance than was previously the case;
- . the career opportunities of staff have been greatly enhanced through multiskilling. This has occurred across the board, i.e. Investigation Officers are learning how to retrieve information from our data bases and how to operate word processing systems, while Investigative Assistants (formerly keyboard operators) are becoming involved in the investigative process;
- . the training needs of staff have been more easily identified and there is firm commitment to address those needs. As a direct result of SEP, a Training Committee has been established and when the Skills Analysis process is completed, a clearer picture of training needs will be available; and
- . as a result of the review of functions, it was obvious that the Information Processing Systems within the office were both inefficient and ineffective. Instead of several different and incompatible data bases, there is now one integrated system. Although time must now be spent for staff to learn the new system, already more staff are seeking information. Staff are becoming more efficient.

The progress and achievements of the office in implementing SEP were reported to the Acting Premier, the Hon W Murray, MP, on 5 June 1990. By letter of 8 June 1990 the Acting Premier advised that he was "convinced that substantial progress had been made" and he was in agreement that our case be referred to the Industrial Commission for consideration in relation to payment of the second 3% wage increase.

A Notice of Motion and Affidavit supporting the office's case for the second 3% pay increase was prepared and forwarded to the Department of Industrial Relations and Employment in mid-June 1990. The department approached the Industrial Commission on behalf of public sector organisations and the Industrial Commission recently granted the second 3% instalment under the Structural Efficiency Principle.

Consultants

During the year, the Ombudsman utilised the services of a number of consultants to provide expert advice and assistance in the following areas:

Freedom of Information (FOI)

Ms H Mueller provided her services to the office during 1988-89 and her association with the office continued in 1989-90. She assisted in the establishment of the FOI unit, training of the new officers, the ongoing review of FOI and the preparation of a special report to Parliament calling for amendments to the FOI Act and Ombudsman Act.

Staff training and development

Social Change Media presented a course in the form of two workshops in February 1990. The workshops were designed to equip investigative staff to effectively deal with the media.

Image Media specialise in media presentation and communication training and they provided a half day course for the Ombudsman in November 1989.

Ms E Pumpa from the Occupational Health and Safety Unit of Sydney Hospital attended the Office in November

1989 to advise keyboard staff on the correct usage of keyboard equipment and ergonomic furniture. Due to the relocation of the office and the installation of an integrated office computer network, arrangements were underway at the close of the year for Ms Pumpa to visit the office to advise all staff on the use of the new equipment.

Computerisation

Tachyonics provided valuable advice about the types of computer networks available and about which system would best suit the needs of the office. Staff of Tachyonics were involved in the installation and programming of the system as well as providing information to staff in the office.

Office relocation

The office continued to employ a consultant to co-ordinate the relocation of the office to the Coopers and Lybrand building, including the purchase of furniture and liaison with other government departments. The Ombudsman's Office opened in its new premises in October 1990.

Investigations

Consultants were used in providing advice in investigation matters.

- Chris Anderson and Company undertook forensic document analysis for the office on two occasions.

- Dr Brian Jenkins of the University of New South Wales Water research laboratory

provided the office with drainage calculations in relation to an investigation.

Dr Suzette Booth, Staff Paediatrician, Child Protection Unit, Children's Hospital Camperdown, provided advice on child abuse issues.

New office computer systems

The office embarked on a major redesign of its office systems during the year to provide a technology framework to compliment goals set for restructuring.

The project began with advice from consultants on how best to integrate existing systems and extend wordprocessing and database information to all of the office. Like many organisations the office had collected a number of incompatible computer and wordprocessing systems that were inefficient because of their disparity.

The design settled on is based on a Digital Vax minicomputer linked to 34 terminals. These are placed so that a terminal is shared between, at the most, two investigation officers. A second system of 16 personal computers and a separate small database network are linked to the Vax cluster via a "bridge" created through communication cards. This secondary system can stand alone or each personal computer can be made to emulate a terminal on the Vax. High quality printing can be achieved through a range of laser printers connected to the office system.

All staff in the office now operate on a common wordprocessing package and have access to electronic mail, a diary system, telephone messaging and typing tutor. An advanced records management system has also been installed which has a sophisticated information retrieval capability enabling research on all office databases

Investigation staff can reliably retrieve information about past complaints

and outcomes on issues going back several years. Precedent cases can be more easily identified and retrieved to be applied to decisions on current cases.

As the system will eventually become the statutory complaints register of the office, it is critical that the stored information be safeguarded in the event of a computer failure or some other disaster. This has been addressed by having copies of the system software and backup copies of databases and wordprocessing files stored offsite at a city bank. Also securely stored offsite are copies of the system startup sequences, system map and other information necessary to rebuild the entire information package in the event of unforeseen disasters.

The original intention was that the project would be spread over two budget periods starting from a small pilot installation. The abolition of the Computer Funding Committee in December 1989 and new arrangements for funding from within office savings or by borrowings, meant that the office had to swiftly rethink the terms of the project. The uncertainty of savings in future budgets forced the decision to implement as much of the project as possible in this financial year. The total project budget was \$232,000 achieved through unusual one-off savings and, with the exceptional cooperation of staff, redirecting other items within the office's operating budget.

Despite the inevitable disruption to office routines associated with the introduction of new technology this project has been successful with a core system installed and commissioned within the three months ended 30 June 1990.

Accounts payable policy

The Office of the Ombudsman continues to implement an "Accounts Payable Policy". The aim of this policy is to ensure that all claims for payment are processed within the time allowed by government contract or within the supplier's terms. Suppliers are notified of the policy in writing when orders for goods and services are placed with them.

A major aspect of the policy is the provision for payment of penalty interest where there is an unjustified delay in the payment of an account. Interest can be charged for each day an account is overdue and details of such payments are required to be reported in the Annual Report. To date no penalty interest payments have imposed on this office.

Accrual Accounting

As part of financial management reform within the public sector, the Premier has directed that all inner budget departments are to move to accrual accounting over the next five years. The Office of the Ombudsman, with the assistance of external experts, has formed a committee to examine specific needs of the office and to review and recommend suitable accounting software packages and training programmes. It is envisaged that a new accrual accounting system will be implemented early in 1991.

Witness Expenses

Section 19(3) of the Ombudsman Act was enacted in March 1990. It provides, in part that:

a witness appearing before the Ombudsman shall be paid such an amount as the Ombudsman determines but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

During 1989-90, two witnesses appearing at hearings conducted by the Ombudsman, were reimbursed expenses by the office.

Financial Summary

Funds allocated by the Treasury for the operation of the Office of the Ombudsman, for the year ending 30 June 1990, totalled \$4,186,000. Expenditure for the year totalled \$4,267,791. The significant expenditure items were as follows:

Item	Expenditure \$	Percentage of Total Expenditure
Salaries and other employee payments	2,735,965	64.11
Rent	610,765	14.31
Fees	145,887	3.42
Stores	64,869	1.52
Postage and Telephone	43,306	1.01
Printing	30,669	0.72
Travel	59,183	1.39
Motor Vehicles	77,355	1.87
Capital Works	231,962	5.44
Allocation for New Furniture	150,000	3.50

Total expenditure for the financial year was \$81,791 less than budget allocation, for the following reasons:

1. As advised in the 1989 Annual Report, the office transferred \$150,000 from the previous financial year to the 1989/90 financial year for the purpose of purchasing new furniture related to the office relocation. This amount was not included in the allocation figure.
2. Savings occurred in protected items such as the allocations for Freedom of Information salaries, national wages increases and for the State Mail Service. These savings were unavailable for relocation and were

subsequently returned to the Treasury.

3. For the last four months of the financial year, the office was understaffed after three seconded police officers transferred back to the Police Service. In addition, for a combined period of three months, two other positions were effectively vacant when officers proceeded on leave-without-pay. From March to 30 June 1990 the office was also without one statutory officer. These factors resulted in under expenditure in salary related items and those items related to staffing, such as travel and stores.
4. The restructure of the investigative staff of the office into teams, as detailed in the 1988-89 Annual Report, and elsewhere in this report, together with consequent reassessment of workload priorities, further contributed toward savings being achieved in travel and stores items.
5. Legal costs relating to the finalisation of court proceedings and obtaining of legal advice, were carried over to the 1990-91 financial year because the office sought clarification of the services provided. This resulted in savings in the fees item.
6. Rent for the first month of occupancy of the office's new premises at 580 George Street, Sydney was unexpectedly met by the Property Services Group as part of relocation costs. This resulted in savings in this item.
7. With the Treasurer's approval, savings made earlier in the financial year, as identified in paragraphs 2-5, were used to fund the implementation of the office's Information Processes Strategic Plan.

Value of recreation and extended leave

The monetary value of recreation leave and long service leave owed in respect of persons employed within the Office of the Ombudsman, for the 1988-89 and 1989-90 financial years were as follows:

	Year ended 30 June 1989	Year ended 30 June 1990
Recreation Leave	\$161,381	\$159,575
Extended Leave	\$251,627	\$325,625 *

* The calculation for extended leave liability for the year ending 30 June 1990 was based on an accrual after five years. Previous calculations were based on ten years.

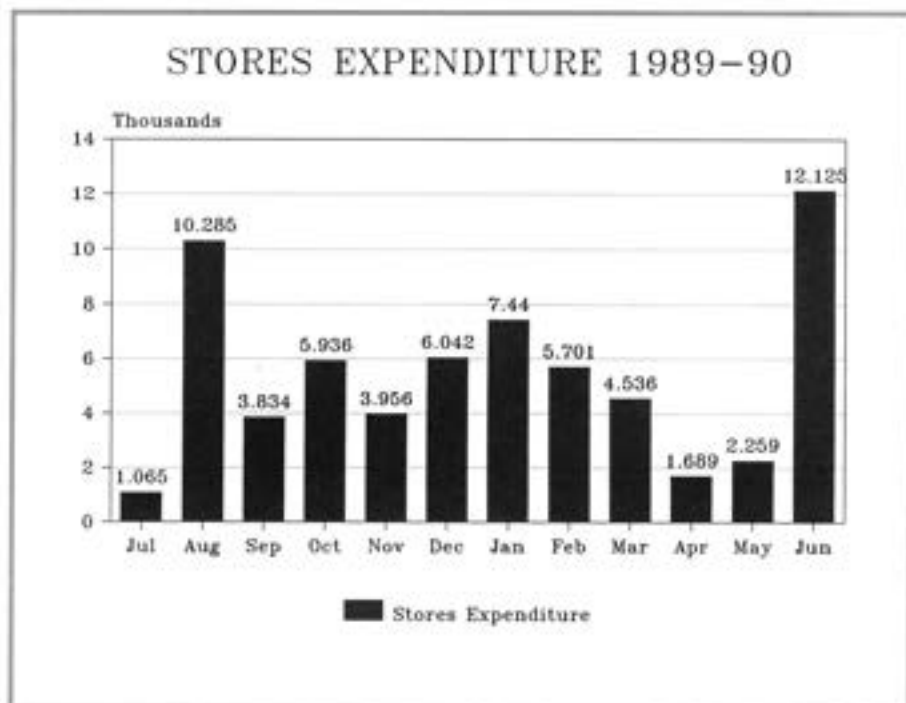
Major assets on hand as at 30 June 1990

Type	Quantity on Hand	
	1988-89	1989-90
Motor Vehicles	6	6
Photocopiers	5	5
Computers and Related Equipment		
-Sanyo	13	13
-Unisys	11	11
-IBM	7	7
-Compaq	--	12
-Wyse	--	31
-Digital	--	1

Expenditure on stores

The following graph indicates expenditure trends in the stores item. The graph indicates a relatively stable expenditure pattern for stores compared to previous years. This is because as the office utilised this item primarily for the purchase of replacement stationery and stock items. Larger expenditure items that, formerly, would have been paid for from the stores item, were funded from the amount of \$150,000

transferred from the 1988-89 allocation for the purchase of new furniture, and an amount of \$232,000 allocated for the office's Information Processes Strategic Plan. The slight increase expenditure in June reflects the purchase of hardware related to the implementation of the Information Processes Strategic Plan.



FINANCIAL STATEMENTS**1 JULY 1989 - 30 JUNE 1990**



BOX 12 GPO
SYDNEY NSW 2001

AUDITOR-GENERAL'S CERTIFICATE

OFFICE OF THE OMBUDSMAN

The accounts of the Office of the Ombudsman for the year ended 30 June 1990 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 Office.



J.R. MITCHELL, FCPA
ASSISTANT AUDITOR-GENERAL

SYDNEY,
20 September 1990

Office of the Ombudsman
Year Ended 30 June 1990

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. Guest
ACCOUNTS OFFICER

- 8 JUN 1990

OFFICE OF THE OMBUDSMAN

Table A

**SUMMARISED RECEIPTS AND PAYMENTS OF THE CONSOLIDATED FUND
AND THE SPECIAL DEPOSITS ACCOUNT BY ITEM
FOR THE YEAR ENDED 30TH JUNE 1990.**

DETAILS	NOTE	1988/89 ACTUAL	1989/90	
			ESTIMATE	ACTUAL
RECEIPTS:(a)		\$000	\$000	\$000
Repayments to Previous Years Vote		19	...	7
Unclassified Receipts		...	...	...
Commission on Deductions		1	...	1
Salary Deductions		...	...	9
Balance of Salaries Adjustment		14	...	7
Prov.- Outstanding Commitments		150	...	...
Total Receipts		184	...	24
PAYMENTS:(a)				
Salaries and other employee related payments	10	2219	2779	2736
Maintenance and working expenses		1081	1175	1150
Plant and equipment Purchase of Motor Vehicles		19	...	...
Purchase of Computers and Related Payments		79	...	...
Capital Works and Services Office of the Ombudsman		...	232	232
Advances to be Recovered		...	...	3
Provision for Outstanding commitments		...	...	128
Total of Payments		3398	4186	4249
Excess of Payments over Receipts		3214	4186	4225

(a) Inter-fund transfers have been offset in the preparation of this table.

OFFICE OF THE OMBUDSMAN Table B

**SUMMARISED RECEIPTS AND PAYMENTS OF THE CONSOLIDATED FUND AND THE SPECIAL DEPOSITS
ACCOUNT BY PROGRAM FOR THE YEAR ENDED 30TH JUNE 1990**

DETAILS	NOTE	RECEIPTS			NOTE	PAYMENTS		
		1988/89	1989/90			1988/89	1989/90	
		ACTUAL	EST.	ACTUAL		ACTUAL	EST.	ACTUAL
PROGRAM 5.1 DESCRIPTION		\$000	\$000	\$000		\$000	\$000	\$000
Investigation of Citizen's Complaints & Monitoring & Reporting on Telecommunic- ation Interception Activities								
Consolidated Fund		...	...	...	3,336	4,186	4,118	
Special Deposits		...	...	...	62	...	...
Gross Total Program 5.1		...	...	...	3,398	4,186	4,118	
less Inter-Fund Transfer		...	...	...	...	...	...
Net Total Program 5.1		...	...	...	3,398	4,186	4,118	
NON PROGRAM								
Consolidated Fund	20	...	...	8	...	...	...
Special Deposits	199	...	n/a	78	682	n/a	990	
Gross Total Non-Program	219	...	...	86	682	...	990	
less Inter-Fund Transfer	...	...	...	...	672	...	797	
Net Total Non-Program	219	...	...	86	10	...	193	
TOTAL								
Consolidated Fund	20	...	...	8	3,336	4,186	4,118	
Special Deposits	199	...	n/a	78	744	n/a	990	
GRAND TOTAL	219	...	...	86	4,080	4,186	5,108	
Less Inter-Fund transfer	...	...	...	...	672	...	797	
GRAND TOTAL - Note 11	219	...	...	86	3,408	4,186	4,311	

(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 figure 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 AS AT 30TH JUNE 1990

PREVIOUS YEAR			ACCOUNT	NOTE	CURRENT YEAR		
CASH \$000	SECURITIES \$000	TOTAL \$000			CASH \$000	SECURITIES \$000	TOTAL \$000
...	1121 Advances to be Recovered		-3	...	-3
49	...	49	1140 Balance of Salary Adjustment	10	56	...	56
66	...	66	1196 Salary Deductions		76	...	76
150	...	150	1820 Provision for Out- standing Commitments		22	...	22
265	...	265	TOTAL - All Special Deposits Accounts		151	...	151

**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 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, 1990, 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 1990, and comparative amounts as at 30th June 1989, for the following items are as follows:

1988/89		1989/90
\$		\$
...	Advertising	2,764
294	Books	220
...	Electricity	...
10,502	Fees	276
...	FOI Refunds	30
175	Motor Vehicles	174
207	Postal/Telephone	...
350	Stores	...
<u>1,042</u>	Travel	<u>...</u>
12,570		3,464

Note 4 Contingent liabilities

The Office of the Ombudsman does not have any contingent liabilities.

Note 5 Amounts repayable on outstanding loans and advances

The Office of the Ombudsman has no form of Public Borrowings, all funds being provided from the Consolidated Fund.

Note 6 Debts written off

The Office of the Ombudsman had no bad debts to be written off during the financial year ending 30th June 1990.

Note 7 Commitments

Commitments on hand as at 30th June 1990, and comparative amounts as at 30th June 1989, are as follows:

1988/89		1989/90
\$		\$
150,000	Stores	...
...	Capital Works	21,700 *

* This amount has been transferred to a Special Deposits Account at the Treasury for the purpose of completing the implementation of the Office's Information Processing Strategic Plan.

Note 8 Material assistance provided to the Department

No material assistance was provided to the Office during the financial year ending 30th June 1990.

Note 9 Sums of money held for two years or more

There were no monies held by this Office as at 30th June 1990 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 \$2,735,965 which includes an amount of \$56,408 for the final six days of the year to reflect the full year's salary costs.

Note 11 Dissection of Program

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	Advances to be Recovered \$000	Provision for Outstanding Commitments \$000	Other \$000	Total Receipts \$000
...	Program 5.1 Investigation of Citizens Complaints and Monitoring and Reporting on Telecommunication Interception Activities	...	...	...	...	...
219	Non-Program	56	...	22	8	86
219	TOTAL	56	...	22	8	86

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	Maintenance & Working Expenses \$000	Other \$000	Total Payments \$000
3,398	Program 5.1 Investigation of Citizens Complaints and Monitoring and Reporting on Telecommunication Interception Activities	2,736	1,150	232	4,118
10	Non-Program	40	...	153	193
3,408	TOTAL	2,776	1,150	385	4,311

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 STATEMENT

PERFORMANCE INDICATORS

AND

STATISTICAL TABLES

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

	Assistant Investigation Officers	Receptionist	Total
Telephone enquiries	4473	2049	6522
Interviews with prospective complainants	528	-	528

COMPLAINTS RECEIVED - Comparative Table**Ombudsman Act:**

	<u>1989/90</u>	<u>1988/89</u>	<u>1987/88</u>
Departments and Authorities (other than Corrective Services)	1097	969	1067
Local Councils	716	633	672
Department of Corrective Services	310	321	257
Outside Jurisdiction	302	345	505

Police Regulation (Allegations of Misconduct) Act:

Complaints against police	2352	2231	2138
<u>TOTAL:</u>	4777	4499	4639

REFERRALS TO ICAC

GENERAL:	2
PRISONS:	-
COUNCILS:	3
POLICE:	616
NJ:	1
	—
	622
	—

Police**Sustained Complaints -****No Recommendations Made; Action by Police Accepted**

**Nature of Action Taken -
Accepted by Ombudsman****Number of Cases
Involved: 42 ***

Change in procedure	1
Disciplinary action	29
Ex gratia or other payment	5
Other	13

- * More than one action may have been taken on an individual case.

REPORTS TO PARLIAMENTNon Compliance with Recommendations

Departments and authorities	-
Local Government councils	1
Prisons	-
Police	1

Other (Not Relating to Recommendations)

Ombudsman Act	2
Police Regulation (Allegations of Misconduct) Act	1
	—
Total	5

VISITS

No of hours spent by Investigation
Officers

	Oral Complaints Received	No. of Visits	Travel	Interviewing and follow-up	Totals
Prisons	275	22	138	232	667
Juvenile Institutions	43	4	19	23.75	89.75
Community Awareness Programmes	274	14	133.5	202	623.5
Totals	592	40	290.5	457.75	1380.25

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	76	32	-	= 108
Other general enquiries made and advice given to complainant	49	-	18	= 67
Advised to make written complaint	52	6	64	= 122
Written complaint taken	8	1	30	= 39
Referred to other service	25	-	25	= 50
Declined	39	8	70	= 117
No jurisdiction	15	-	74	= 89
Enquiry re existing complaint; advice given/arranged	11	1	4	= 16
Totals	275	48	285	608

* In some instances more than one action has been taken on an oral complaint.

CONSTRUCTIVE/REMEDIAL ACTION TAKEN BY PUBLIC AUTHORITIES

1 July 1989 - 30 June 1990

	Departments and Authorities	Councils	Prisons	Police
Nature of action taken				
Apology made	11	7	-	-
Account paid or adjusted or refund made	7	5	1	-
Information provided/promised	14	6	1	-
Procedures changed	6	1	5	1
Case reviewed (or review promised)	-	1	-	-
Liability admitted/action to remedy taken	7	2	1	1
Damage repaired	4	1	-	-
Delay resolved	22	9	1	-
Inspection or personal visit to complainant made	-	-	-	-
Case reconsidered and action favourable to complainant taken	23	8	3	-
Claim met or application approved	8	14	1	1
Repairs/Work/Action/Notices to resolve problem	4	14	-	-
Payment made	13	1	1	-
Ex gratia payment made	-	-	1	-
Negotiations commenced	1	2	-	-
Service or benefit reinstated, officer counselled, reprimanded or disciplined	-	-	-	1
Direction to staff issued	7	-	4	-
Investigation commenced by authority	-	-	-	-
Facilities provided	-	-	-	-
Financial assistance given/promised	1	-	-	-
Matter re-opened and action taken in accordance with approved procedures	1	4	1	-
Other	5	-	1	1
No. of cases involved *	103	35	13	5

* 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	L O C A T I O N				
				Office of Ombudsman	Other Sydney	Newcastle/Wollongong	Country town/city	Inter-State
Departments and authorities	2	2	6	1.5	-	-	-	.5
Local government councils	1	2	6	2	-	-	-	-
Prisons	1	5	9	3	-	-	2	-
Police	6	33	110	27.5	1	-	4.5	-
Totals	10	42	131	34	1	-	6.5	.5

NUMBERS OF FORMAL REPORTS

OMBUDSMAN ACT

	<u>S 26(1) Conduct</u>		<u>No Adverse Finding</u>
	<u>Draft</u>	<u>Final</u>	
Departments and authorities	2	17	4
Local government councils	1	34	2
Prisons	1	4	2
Totals	4	55	8

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT

	<u>Sustained</u>		<u>Not Sustained</u>	
	<u>Reinvestigated</u>	<u>Not reinvestigated</u>	<u>Reinvestigated</u>	<u>Not reinvestigated</u>
Police	10	68	1	

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 1988 - 30 June 1989

Number of cases involved	Departments and Authorities (excluding prisons)		Prisons		Local Government Councils		Police		Totals	
	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted
	13		4		10		22		49	
Nature of recommendations	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted	Accepted	Not Accepted
Change in action:	1				1	3			2	3
Change in legislation:	1								1	
Change in policy:	1				1	2			2	2
Change in procedure:	6	1	3		4	1	4		17	2
Disciplinary action:	3	1	2				16	1	21	2
Ex gratia or other payment:	5		1		1	2	4	1	11	3
Review/investigation:	3						5		8	
Issue direction or instruction to staff:	6		2		3		6	1	17	1
Provide information to public:	3				3		1		7	
Other:	1						2	1	3	1
TOTALS	30	2	8		13	8	38	4	89	14

* In some instances more than one action may have been taken on an individual case.

Result categories - complaints under Ombudsman Act

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 conduct under s.26 of the Act (NPFE) - Complaint is concluded after preliminary enquiries because there is no prima facie evidence of conduct described under s.26 of the Act. 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 Adverse Findings (NAF) - After investigation, no conduct as described under s.26 of the Act is found.
- Adverse Findings (AF) - After investigation, conduct as described under s.26 of the Act is found.

PUBLIC AUTHORITIES

<u>AUTHORITY</u>	(NJ)	(DECO)	(DECI)	(RIS)	(NPII)	(DIS)	(NAP)	(AP)	(CURR)	TOTAL
Aboriginal Land Council			1						1	2
Agriculture and Fisheries		8			1	1			6	16
Albury Wodonga (NSW) Corporation			1							1
Anti Discrimination Board			1	1					1	3
Attorney General's Department	7	7	3	4					4	25
Australian Gas Light Company		1	2							3
Building Services Corporation		14	11	3	1				5	34
Business and Consumer Affairs	1	10	12	5	2	1			3	34
Charles Sturt University		1	3							4
Chief Secretary's			1		1					2
Chiropodist Registration Board				1				9*		10
Coal and Oil Shale Mine Workers Tribunal	2	1								3
Consumer Claims Tribunal	2									2
Corrective Services Department	17	91	175	33	12	6	2	4	61	401
Council of Auctioneers and Agents		2		1	1				0	4
Crown Solicitors Office		2	1							3
Dairy Corporation		2	1	1	1					5
Darling Harbour Authority		1								1
Dental Technicians Reg. Board of NSW	1									1
Electricity Commission		1	1						1	3
Ethnic Affairs Commission								1		1
Family And Community Services		20	33	5	3	1		1	19	82
Fire Commissioners Board		2								2

PUBLIC AUTHORITIES

<u>AUTHORITY</u>	(NJ)	(DECO)	(DECE)	(RES)	(NPP)	(DIS)	(NAF)	(AF)	(CURR)	TOTAL
Fish Marketing Authority		2								2
Forestry Commission		2	2						3	7
Geographical Names Board									1	1
Government Insurance Office		27	18	5				1	7	58
Greyhound Racing Control Board		1								1
Health Department	1	19	20	6	2				6	54
Heritage Council of NSW		2							1	3
Home Care Service of NSW			1	1	1					3
Housing		29	58	20	10	1			22	140
Hunter District Water Board		1	1	2						4
Hunter Institute of Higher Education			1							1
Industrial Relations and Employment		4	5	1		2			1	13
Lands Department		4	10	2	1	1	1		7	26
Land Titles		1	1							2
Liquor Administration Board			1							1
Local Government Department			2							2
Local Government Grants Commission									1	1
Long Service Payments Corporation		1	4			3				8
Legal Aid Commission	2	26	22	3	2				5	60
Macquarie University		1							1	2
Maritime Services Board		3	5	2	1				4	15
Meat Industry Authority			1							1
Medical Appeals Board		1								1

PUBLIC AUTHORITIES

<u>AUTHORITY</u>	(NJ)	(DBCO)	(DBCE)	(RES)	(NPPE)	(DIS)	(NAI)	(AF)	(CURR)	TOTAL
Medical Board of NSW		1	3							4
Mental Health Review Tribunal				1						1
Mineral Resources and Energy	1		1	1					2	5
Ministry of Education and Youth Affairs		1								1
Mitchell CAE Bathurst			1							1
Music Examination Advisory Board		1								1
National Parks and Wildlife Service		3	7	3					3	16
Office of Aboriginal Affairs			1							1
Office of Minister for the Environment		1								1
Office of the Minister for Natural Resources		1								1
Office of State Revenue		15	11	5	1				5	37
Parole Board of NSW	2	2	1					0	2	7
Pastures Protection Board		3	1							4
Planning Department		5	2		1	1			1	10
Police Department	6	26	14	4		1			14	65
Police of Citizens Youth Club			1			0			0	1
Premiers Department				1						1
Prison Medical Service		2	5	1	2				11	21
Public Prosecutions Office									1	1
Protective Office	1									1
Public Trust Office	1	2	7	3					2	15
Public Works Department	1	5	2	1		1			1	11
Registry of Births, Deaths and Marriages	1	1	6	3						11

PUBLIC AUTHORITIES

<u>AUTHORITY</u>	(NJ)	(DECO)	(DECE)	(RIS)	(NPPE)	(DIS)	(NAP)	(AF)	(CURR)	TOTAL
Rental Bond Board			1	1						2
Riverina Murray Institute of Higher Education		1								1
Road and Traffic Authority		39	34	11	1			1	17	103
Royal Botanic Gardens and Domain Trust			1							1
School Education	2	19	31	6	1	1		1	6	67
Serious Offenders Review Board	1									1
Soil Conservation Service			2	2						4
Sporting Injuries Committee									1	1
State Authorities Superannuation Board		7	17	6	1				3	34
State Bank	4	3	1						3	11
State Compensation Board			2	1	1					4
State Contracts Control Board		2								2
State Electoral Office			1							1
State Emergency Services		1								1
State Library			1	1						2
State Lotteries Office		3	1			1			1	6
State Pollution Control Commission		2	3						2	7

PUBLIC AUTHORITIES

AUTHORITY	(NJ)	(DECO)	(DECE)	(RIS)	(NFFE)	(DIS)	(NAP)	(AP)	(CURR)	TOTAL
State Rail Authority	1	20	17	6	1	1		1	6	53
State Transit Authority	1	4	2	1					3	11
Strata Titles Office		1	3							4
Sydney Cricket and Sports Ground Trust			1							1
Sydney Market Authority			1							1
Technical and Further Education Department	1	3	4	2					1	11
Totalisator Agency Board		1								1
Transport, Ministry of		3	2						3	8
University of New England		1	1							2
University of New South Wales		1	2						1	4
University of Sydney				1					1	2
University of Western Sydney, Nepean		2								2
University of Wollongong									1	1
Upper Parramatta River Catchment Trust		1	1							2
Valuer General's Department		2	4						1	7
Veterinary Surgeons Board	1									1
Water Board		13	25	13	3				11	65
Water Resources Department		2	5					2*	4	13
Waste Management Authority of NSW			1						1	2
Western Lands Commission			1							1
Workcover Authority			1		1				1	3
Workers Compensation Commission			2						1	3
Zoological Parks Board of NSW			1							1

53	484	635	172	52	19	6	22	270	1712
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Less Current as at 30/6/89

291

Total Received

1421

* One report issued on 2 related complaints

COUNCILS

AUTHORITY	(NJ)	(DUCCO)	(DUCEI)	(RES)	(NPPE)	(DIS)	(NAP)	(AF)	(CURR)	TOTAL
Albury City		1	1							2
Armidale City		3	1							4
Ashfield Municipal			1					1		2
Auburn Municipal					1				1	2
Ballina Shire		1				1			2	4
Bankstown City		1	5						1	7
Barhurst City		2	3			1				6
Baulkham Hills Shire		5	11	1		1		1	5	24
Bega Valley Shire		1	6	1					4	12
Bellingen Shire		5	2						2	9
Berrigan Shire				1						1
Blacktown City		8	6							14
Blue Mountains City		4	7	1	1				4	17
Boorowa Shire			1							1
Bombala Shire		1								1
Botany Municipal		1	1							2
Broken Hill City		2								2
Burwood Municipal					1					1
Byron Shire		1	4						3	8
Cabonne Shire		3								3
Campbelltown City		1		4					2	7
Casterbury Municipal		1	3						1	5
Carrathool Shire								1		1

COUNCILS

AUTHORITY	(NJ)	(DECO)	(DECI)	(RES)	(NPPE)	(DIS)	(NAP)	(AF)	(CURR)	TOTAL
Casino Municipal		1								1
Cessnock City		1	3	1					2	7
Cobar Shire			2							2
Coffs Harbour City		3	9						2	14
Concord Municipal		1							3	4
Coolah Shire									1	1
Cooma Monaro Shire									2	2
Coonabarabran Shire			1							1
Coonamble Shire			1							1
Copmanhurst Shire		1							1	2
Crookwell Shire									1	1
Drumoyne Municipal		2		1					1	4
Dubbo City		1	3							4
Dumaresq Shire									1	1
Eurobodalla Shire				1						1
Evans Shire		1				1			1	3
Fairfield City		1	4	1						6
Far North Coast County			1							1
Forbes Shire			1							1
Glen Innes Municipal			1							1
Gosford City		7	12	1				1	10	31
Grafton City Council		2	2					1	1	6
Great Lakes Shire		3	4	1	2				3	13

COUNCILS

AUTHORITY	(NJ)	(DECO)	(DECE)	(RES)	(NPPE)	(DIS)	(NAF)	(AP)	(CURR)	TOTAL
Greater Lithgow City		2								2
Greater Taree City		2	1							3
Griffith City		1	1							2
Gunnedah Shire			1						1	2
Gunning Shire			1							1
Hastings Municipal		3	9	1	1				2	16
Hawkesbury Shire		2	3	1	1					7
Holroyd Municipal		1	1	1						3
Hornby Shire		1	4						4	9
Hume Shire			1							1
Hunters Hill Municipal		1	1	1						3
Hurstville Municipal	1	2	1						2	6
Illawarra County		1	2							3
Inverell Shire									1	1
Jerrilder Shire		1	1							2
Kempsey Shire			2	1						3
Kiama Municipal		1	1							2
Kogarah Municipal		2	1	2					1	6
Ku-ring-gai Municipal		5	12	2	1	1			3	24
Kyogle Shire			1							1
Lake Macquarie City		5	10	3					8	26
Lane Cove Municipal	1		3							4
Leeton Shire			1							1

COUNCILS

AUTHORITY	(NJ)	(DECO)	(DECE)	(RIS)	(NFFE)	(DIS)	(NAP)	(AP)	(CURR)	TOTAL
Leichhardt Municipal	|	| 2	| 5	| 3	| 1	|	|	|	| 1	| 12
Lismore City	|	| 1	| 4	|	|	|	|	|	| 1	| 6
Liverpool City	|	| 1	| 3	|	|	|	|	|	|	| 4
Lockhart Shire	|	|	| 1	|	|	|	|	|	|	| 1
Lower Clarence County	|	|	| 2	|	|	|	|	|	|	| 2
Maclean Shire	|	| 5	| 1	|	|	|	|	|	| 3	| 9
Macquarie County	|	|	| 1	|	|	|	|	|	|	| 1
Maitland City	|	|	| 3	|	|	|	|	|	| 2	| 5
Manly Municipal	|	|	| 1	|	|	|	|	|	|	| 1
Manilla Shire	|	| 2	| 1	|	|	|	|	|	|	| 3
Marrickville Municipal	|	| 1	| 5	|	| 1	|	|	|	| 3	| 10
Moree Plains Shire	|	| 1	| 1	|	|	|	|	|	|	| 2
Mouman Municipal	|	| 1	| 2	| 1	|	|	|	|	| 1	| 5
Mudgee Shire *	|	| 1	| 1	|	|	|	|	| 22*	|	| 24
Mulwaree Shire	|	| 1	|	|	|	|	|	|	| 2	| 3
Murray Shire	|	| 1	|	|	|	|	|	|	|	| 1
Muswellbrook Shire	|	|	| 2	|	|	|	|	|	| 2	| 4
Nambucca Shire	|	| 5	| 6	|	|	|	|	|	| 1	| 12
Narrabri Shire	|	| 2	| 1	|	|	|	|	|	|	| 3
Narromine Shire	|	|	|	|	| 1	|	|	|	|	| 1
Newcastle City	|	| 2	| 5	| 1	| 2	| 1	|	|	| 2	| 13
Northern Rivers Electricity	|	| 1	| 1	|	| 1	|	|	|	| 2	| 5
Northern Riverina County	|	|	| 1	| 1	|	|	|	| 1	|	| 3

COUNCILS

AUTHORITY	(NJ)	(DUCCO)	(DUCE)	(RES)	(NPPE)	(DIS)	(NAP)	(AP)	(CURR)	TOTAL
North Sydney Municipal		1	6		1					8
North West County		1	1							2
Nymboida Shire			1							1
Oberon Shire			2							2
Orange City			1							1
Orley County		1	6							7
Parkes Shire			1						1	2
Parramatta City		3	8	1	1				2	15
Peel Cunningham County					1					1
Perry Shire		1		1						2
Perrin City		2	7						1	10
Port Stephens Shire		1	2		1			1	6	11
Prospect Electricity	1	6	4	1	1			2		14
Queanbeyan City			1						1	2
Quindi Shire			1							1
Randwick Municipal	1	3	14	3	3				2	26
Richmond River Shire			1	1						2
Rockdale Municipal			1	3				2		6
Ryde Municipal			5	4	1				2	12
Rylstone Shire									1	1
Scone Shire			1						1	2
Shellharvest City			6	9	1	1			1	18
Shellharbour Municipal			1	2	1					4

COUNCILS

AUTHORITY	(NU)	(DECO)	(DECE)	(RIS)	(NPPE)	(DIS)	(NAF)	(AP)	(CURR)	TOTAL
Shortland Electricity		1			1					2
Singleton Shire			3							3
Snowy River Shire		1								1
Southern Riverina County									1	1
Southern Tablelands County			2							2
South Sydney		3	5	2	1				1	12
Strathfield Municipal		1	1							2
Sutherland Shire	1	5	6	2	1				8	22
Sydney City	2	2	4						2	10
Sydney County		6	9	2	1				4	22
Tallaganda Shire		1								1
Tamworth City									1	1
Temora Shire									1	1
Tumut Shire		1	1							2
Tweed Shire		7	7		1		1		8	24
Ulmara Shire			1		1				1	3
Ulan County		1							1	2
Wagga Wagga City			1							1
Wakool Shire		1								1
Walgett Shire									1	1
Warren Shire		1								1
Warringham Shire		5	10	1	1				7	24
Waverley Municipal			1	1					1	3

COUNCILS

<u>AUTHORITY</u>	(NJ)	(DECO)	(DECE)	(RES)	(NFFE)	(DIS)	(NAJ)	(AF)	(CURR)	TOTAL
Wellington Shire		1								1
Willoughby Municipal		2	3	4	1				1	11
Wingecarbee Shire		1	8						4	13
Woolahra Municipal		1	1	1	1		1		2	7
Wollondilly Shire			4	3	1			1	2	11
Wollongong City		6	6	1				2	8	23
Wyong Shire		4	10	1	4				4	23
Yass Shire									1	1
Young Shire			1						2	3
Yarrowfuaia Shire		1			1					2
	6	209	358	59	38	5	2	34*	177	888
Less Current as at 30/6/89										172
Total Received										716

* One report covered 22 cases of conduct as described under s.26 of the Act.

SUMMARY

<u>AUTHORITY</u>	(NJ)	(DECO)	(DECE)	(RES)	(NPPE)	(DIS)	(NAP)	(AP)	(CURR)	TOTAL
Departments/Statutory Authorities	53	484	635	172	52	19	6	22 **	270	1712
Unscheduled Bodies (Outside Jurisdiction)										
I. Australian Government Departments	73									73
II. Employer/Employee	52									52
III. Private Organisations/Individuals	177									177
Local Government Authorities	6	209	358	59	38	5	2	34 *	177	888
Total from All Sources	361	693	993	231	90	24	8	56	447	2902
Less Current as at 30.6.89										463
Total for year ended 30.6.90										2439

** Of which 10 were related complaints
 * Of which 22 Were related complaints

POLICE COMPLAINTS

	Declined	1480
NOT OR NOT FULLY INVESTIGATED	Conciliated	128
	Discontinued before Ombudsman reinvestigation	99
	Discontinued during Ombudsman reinvestigation	1
	Not sustained finding without reinvestigation	75
NOT SUSTAINED	Deemed not sustained - no request for reinvestigation (Section 25A (2))	200
	Deemed not sustained by Ombudsman - Ombudsman decided reinvestigation not warranted despite request	15
	Not sustained finding following reinvestigation	1
	Sustained finding without reinvestigation	68
SUSTAINED	Sustained finding following reinvestigation by Ombudsman	10
	TOTAL	2077

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COMPLAINTS AGAINST DEPARTMENTS AND AUTHORITIES**LANDS DEPARTMENT****Breach of confidence**

Two complaints dealt with during the year related to the way in which the department handled objections to a proposed road closure. In each case the complainants had sent written objections to the department in response to an advertised proposal to close a road. They were understandably upset when, instead of receiving a response from the department, they received a reply from the company that had applied to have the road closed.

The complainants had not even been forewarned or notified that their letters of objection would be referred to a third party for comment and they felt that the department had no right to reveal their names to the development company. The complainants believed that their privacy had been breached and they were worried that the development company might put pressure on them to withdraw their objections to the road closure.

Enquiries revealed that the department considered the letter of objection to be a matter of public interest and not a private matter between the department and the objectors. The department's normal procedure was to send letters objecting to an application for road closure or road opening to the applicant, so that an agreement could be reached between the parties without the need for the department to become involved. This procedure was aimed at avoiding referral of the matter to the Local Land Board and at speeding up the conciliation process. If no agreement could be reached between the parties, then the matter would be referred to the Local Land Board for arbitration.

In response to further enquiries by this office, the department decided to alter its procedures to ensure that objectors were made aware that their names and addresses, together with the grounds for their objection, might be referred to the applicant for the road closure (or opening), in the hope of resolving the matter. The department produced new forms

for use by the public and these now clearly state that any objection received is a matter of public record.

WORKCOVER AUTHORITY

Like blood from a stone...

To ensure that its clients did not submit incorrect wages declarations, a firm of accountants rang the State Compensation Board (now the Workcover Authority) and asked for clear definitions of which payments were subject to workers compensation. When requested to do so, the firm put its queries in writing. The firm said in its letter that more information could be provided if required.

The firm waited, then telephoned, then wrote again, and then telephoned again; six months later, it received a letter from the Compensation Board (unsigned and not even on letterhead) asking for more information. Understandably upset about this, the firm complained to this office.

Senior officers in the new Workcover Authority very quickly offered an explanation (an inexperienced legal officer, understaffing and the transition to the new authority), an apology and the opportunity for the firm to obtain an answer to its queries. As the matter was resolved, this office concluded its enquiries.

DEPARTMENT OF SPORT, RECREATION AND RACING

Canoe help?

A manufacturer of canoes complained that the department, having called tenders for 57 new canoes for use in its fitness centres, had rejected his Australian product in favour of a product made in the United States. The manufacturer claimed that the American product was inferior to his, and he alleged that officers of the department had prepared a biased and inaccurate comparison of the two products.

An investigation was conducted; this included a "road test" of the two canoes in question by the intrepid Investigation Officer.

In his report on the investigation, the Ombudsman found that certain officers of the department had demonstrated bias toward the American product, and against the Australian one. He recommended that a full and independent expert assessment of the two canoes be undertaken, and that, should the Australian made canoe prove to be equal or superior to the overseas product, a supply of the Australian canoes be purchased immediately.

These recommendations were fully complied with, and extensive technical and practical tests were undertaken.

Although the complainant's product, was, after all of these tests, still rated as "less suitable" than its overseas competitor, several damaging misapprehensions about his product appear to have been resolved. More importantly, the process of evaluation has been improved and is now more responsible and equitable.

BOARD OF SECONDARY SCHOOL STUDIES

HSC appeal problems

A woman who was pursuing her son's Higher School Certificate assessment mark in General Studies turned to the "1989 Student Guide to the HSC Examination" for assistance. In the section dealing with assessments, school reviews and appeals to the Board of Secondary School Studies, the guide suggested that, if a student's school reviewed an assessment mark, the outcome would be notified by **6 December 1989**. If the student wished to appeal to the board, however, the appeal needed to be lodged by **5 December 1989**. Clearly, some students could be still awaiting the result of a school review after the closing date for lodging an appeal. The woman complained about this.

Enquiries showed that the form which students had to complete failed to make it clear how a school review could become an appeal to the

board. Nor did the available literature explain that the board would take a flexible approach if a student was unhappy about an assessment but was prevented from lodging an appeal in time.

The board agreed to examine the appeal procedures and these were changed to allow one day between notification of the result of school review and the closing date for appeals. As well, the board said that it would design a new appeal form and more information would be made available, through schools, to students who might wish to appeal. The board, fully aware of the potential problems inherent in the process, said that it was prepared to consider appeals by students who were caught out by the extremely short time available in which to have an assessment mark re-examined.

SOIL CONSERVATION SERVICE

Informality no longer appropriate

Sometimes formal procedures have to be applied in place of informal practices which have developed over the years; the latter, while suitable at one time, can often prove to be inadequate in a changing society, when available resources are often in high demand.

Informal practices used by the Soil Conservation Service to allow agistment on lands under its control were a case in point. The service controls land around a dam near Singleton and, over a long period, permitted farmers to agist cattle at very reasonable rates. Although a document entitled "Conditions of Agistment of Stock" existed, it was never signed by either party of agistment arrangements, which were organised on a "gentleman's agreement" basis. As well, when the service wished to organise the movement of stock, this was done orally, usually by telephone. This method worked well and seemed appropriate in country areas where distances between homesteads can be considerable and the telephone is the quickest and easiest form of communication.

However, when disagreements between an agistee and the service arose and could not be settled, the lack of formal agreements and of written

records of requests by the service for stock to be moved left both parties at a disadvantage. As a result of enquiries by this office in the face of a complaint that the service was breaking terms of agistment conditions, the service has begun the process of developing more formal procedures.

When the new procedures are in place all requests for the movement of stock, or for the reduction of numbers of stock, will be in writing and the agistment agreement will be a formal document, signed by both parties. This will at least ensure that both parties are sure of their position at all times.

DEPARTMENT OF HOUSING

Intimidating Note

A Department of Housing tenant complained that a Tenancy Manager had placed in her letterbox a "slanderous and intimidating" note which said:

...I have noticed on several occasions including today a male person at your residence.

As I have told you in the past, you can have others there BUT they must be approved and new rebates lodged.

Please contact me to discuss the matter as soon as possible.

Should you not contact me I will cancel your rebate and the longer you leave it the further we have to backdate and the more arrears that you will owe.

The department, in response to preliminary enquiries, said that the Tenancy Manager had not acted in accordance with departmental procedures for handling cases involving suspicion of rental fraud. The department added:

[The] note was an inappropriate method of follow up action. The matter should have proceeded by reference to the Estates Management Supervisor.

The relevant Operations Manager has fully discussed all aspects of this matter with [the Tenancy Manager] who is now completely aware of the correct procedures to be followed.

In light of the department's advice, no further action was taken on the complaint.



Improvements undervalued

Ms T had lived in a department-owned home for a considerable time, and had made extensive improvements and renovations to it. She wished to negotiate the purchase of the home under the Affordable Home Loans Scheme. Ms T complained that, when the dwelling was valued prior to purchase, the full value of the improvements she had made were included in the valuation, and only a very minimal discount in the purchase price was offered to her.

Preliminary inquiries were made to which the Department of Housing responded with deafening silence.

When, five months after initial inquiries were made and after many telephone calls and reminder letters, not so much as an acknowledgment had been received from the department, an investigation was

commenced. An investigation officer met with the departmental officer in charge of the case, who indicated that there was no explicit precedent or policy to cover cases such as Ms T's; the delay had been caused, in effect, by the need to create such a policy.

With many subsequent delays and with agonising slowness, a response was at last produced by the department, almost eight months after inquiries had commenced, and almost eighteen months after Ms T had commenced negotiations to purchase her home. The department acknowledged that Ms T's improvements to her home had not been adequately valued and said that a cheque for almost \$4,000 had been sent to her.

The final word came from Ms T, who said:

I believe things have come to a fair and satisfactory conclusion and I'm sure this would not have happened without the help of your Office.

WATER BOARD

Keep that receipt!

Ms S, a pensioner, went to the Rockdale Office of the Water Board to pay her account. The computers, including the cash registers, were all "down"; the office was full of impatient customers awaiting service, and harassed staff were making manual calculations for all transactions.

Ms S said that, after waiting a long time, she paid her account in full, which, less her pensioner rebate, came to \$163, and she obtained a receipt for that amount.

She thought no more of the water until some time later when she received another account for "arrears" of \$80. She made enquiries and was told that, on the day of her visit to Rockdale, she had paid only \$83. Apparently, although computer records were not available, the Board's cash balances at the end of the day showed an \$80 deficiency

and this, in some way, had been traced to her transaction. Ms S pointed out that her receipt showed that she had paid \$163; the Board made various ripostes based on "internal financial records". The argument escalated from there culminating in exchange of threats of legal action.

After Ms S complained to this office and preliminary inquiries were made, the Board eventually conceded that there had been an element of "human error" involved in the case and agreed to "waive" the \$80 "arrears".

Passing the buck for non-existent easements

Mr C owned land affected by rights-of-way to provide access to an unmade road. The road was not used because alternative access through a public reserve was available. The Water Board had constructed a water main within the rights-of-way, but had neglected to create an easement to protect its interest.

In connection with an application for subdivision of the land, Mr C and several of his neighbours negotiated with the local council to transfer various parcels of land to council. In return, council agreed to construct a public road to remove the need for the access through the public reserve. Because this road would also obviate the need for the rights-of-way, action was initiated to have them extinguished and this was achieved in May 1989. In the meantime, Mr C's application for subdivision was approved by council, subject to a number of conditions. One condition was that Mr C submit to council a compliance certificate pursuant to section 27 of the Water Board Act. Mr C dutifully applied to the board for a certificate.

In its response, the board told Mr C that it would require an easement to cover the existing water main, at his expense, and that he meet other requirements which the board would specify in due course. It was not until August 1989, after many telephone calls and, finally, a letter from Mr C's engineering consultant, that the board finally provided details of

its requirements. These included the creation of an easement, at no expense to the board, 1.3 metres wide and centred over the existing water main; as well, Mr C was to be responsible for creating the full extent of the easement and for obtaining the approval of all affected land owners, and the final plan for the proposed easement was to be submitted to the board for approval prior to lodgement with the Land Titles Office.

Mr C, through his engineering consultant, told the board that its requirements were unacceptable and that the easement problem, far from being Mr C's responsibility, was the board's because it had laid the mains originally without the protection of an easement. At the same time he offered to provide an easement for the board across his land, as long as the board paid the legal costs; and he suggested that the board liaise with the other land owners to arrange for the other easements it required. The board did not respond and, despite a verbal promise of an answer by the end of December 1989, had still not responded at the beginning of January 1990. The consultant complained to the Ombudsman about the unreasonableness of the board's requirements and about its failure to reply to correspondence, causing delay which could result in the development consent for Mr C's subdivision lapsing.

Preliminary enquiries were made by telephone and an officer of the board said that the board's failure to reply to Mr C's letter was because legal advice was being sought; in addition, the officer who had been responsible for the matter had been transferred. A subsequent phone call to the officer who had been dealing with the matter brought an acknowledgment that there had not been general agreement, at the time, that the requirements set out in the board's letter of August 1989 were justified and that these had now been reconsidered. Mr C, was, now, only required to provide an easement at the back of his property, in accordance with a suggestion that he himself had made previously.

When this advice had not been formally conveyed to the complainant by the beginning of March 1990, the investigation officer made further telephone enquiries and was told that the matter had been "shifted

sideways" for updated costings. Mr C's engineer finally received the board's reply on 19 March. The reply included an Additional Works Agreement, setting out the board's new requirements; these were substantially in accordance with Mr C's original proposal. In a letter to Mr C advising of the board's new requirement, the engineer, said: "We have the Ombudsman's office to thank for the board's change of heart".

Whether the actions of this office actually resulted in the board's change of heart or simply served as an incentive for the board to get on with doing what it had already decided to do, we may never know. What is certain, though, is that the intervention of this office had a positive outcome and the complainant was satisfied that his appeal for assistance had achieved the desired result.

DEPARTMENT OF SCHOOL EDUCATION

Perserverence pays off

The father of a year 12 pupil at a state high school complained that newsletters issued by the Ladies Auxiliary at the school were misleading parents of students into believing that the payment of school fees was compulsory. The newsletters regularly included requests that school fees and charges associated with elective subjects be paid and even set out procedures by which parents could claim relief from payment because of hardship.

The Department of School Education policy on school fees emphasised that payment of those fees which are used for general education is not compulsory, but a matter for decision by individual parents. The policy states:

Schools should take care therefore, to ensure that circulars and other communications to parents or guardians do not convey the impression that school service fees are compulsory, but rather should encourage parental support ...

The complainant objected to the clear impression being generated by the newsletters that the payment of all fees was compulsory. It appeared that the Ladies Auxiliary had decided to do what it could to

maximise fee payments. The fact that some parents would be aware of the non-compulsory nature of the general service fees, while others would not, created an unfair situation.



The complainant tried to have this unfair situation corrected by contact, firstly with the Principal of the school, then with the District Inspector and finally with the Regional Director. His requests that Education Department policy be adhered to were met, incredibly, with either a direct refusal or a lecture on the need to use as much "influence" as possible in order to maximise the amount of fees paid. All officers of the Department of Education that he spoke to said that publication of the fact that some fees were non-compulsory would impede the collection of fees. The complainant, in desperation, wrote to this office.

After a protracted investigation, the Ombudsman issued a report and recommended that the newsletters should in future include an explanation of the use to which general service fees were put and should make it clear that the payment of such fees was not compulsory. This action was finally taken in March 1990, some three years after the complainant's original representations to the Principal. Persistence, sometimes, pays off!

ROADS AND TRAFFIC AUTHORITY**Pensioner concessions granted**

Mr S complained that although his application for an invalid pension had been approved and backdated by some ten months, local Roads and Traffic Authority (RTA) staff had refused to give him a pro rata refund of his five-year licence fee, which had been paid shortly before his pension had been approved.

Preliminary enquiries were made and the RTA agreed to provide a pro rata refund of the licence renewal fee as well as a refund of the concessional amount which Mr S was entitled to for his motor vehicle registration, and apologised to Mr S for the inconvenience he had suffered.

In its reply to this Office, the RTA said:

All persons who hold a Pensioner Health Benefits Card are entitled to registration concessions on a single motor vehicle and an exemption from paying a driver's licence fee. It seems that the person whom Mr S approached...was either unaware of the above or misunderstood Mr S's request. The Registry Manager has personally ensured that all of his staff are now aware of the policy on concessions.

UNIVERSITY OF SYDNEY**Academic impasse**

In 1977 Ms A completed an honours degree at the University of Sydney. When she moved to Britain in 1986, she asked the university to complete a form which would allow her qualifications to be recognised by the British Department of Education and Science (DES).

That simple request triggered an exchange of paper between the two institutions over more than three fruitless years. The relevant form was completed four times during that period but, on each occasion, failed to satisfy DES. On one occasion the university forwarded the much

travelled form by surface mail to the wrong address. Having received no answer to her most recent plea for the matter to be resolved, in November 1989, Ms A complained to the Ombudsman.

Once this office intervened, genuine communication began between the university and DES and, because the business hours of the two bodies do not overlap, this involved more than one late night international phone call. A brave step! Despite the new-found spirit of co-operation, the matter still was not resolved until March 1990, when DES (who could hardly be said to be blameless) accepted the form.

Hopefully, it might in future occur to both bodies that delay and inefficiency can often cause distress and financial hardship.

COMPLAINTS AGAINST COUNCILS

COPMANHURST SHIRE COUNCIL

Biting the dust

In 1984 the M family fled the pesticide drenched plantations of the North Coast for the clean air of an inland rural community. They purchased a large, newly subdivided lot and began to build a house with pleasant views across the countryside.

At the time of purchase, there was a track across their land which showed little sign of frequent use. Council assured them that the track had no official status and they could close it off if they wished. Reassured, they proceeded with their building plans.

It soon transpired that recent purchasers of adjacent properties wished to use the track as a convenient access while building their own houses. As well, they discovered that one of their neighbours, a road construction contractor, wished to use the track to gain access to some gravel pits in the hinterland, and council itself used the track for access to the selfsame gravel pits, and had done so for two decades or more.

The M's granted access to all of these sundry folk, but with mounting reluctance. An ever increasing number of vehicles rattled along the track each day, raising dust, ruining washing, and exacerbating the dust related health problems of a number of family members. A pet chihuahua met a grisly end. Soon, a neighbourhood feud was in full spate.

Eventually, cooperation broke down completely, and the gravel contractor and other neighbours put a development application to council which included the dedication of a public road parallel to the disputed track, but not on the M's land. Nevertheless the proposed route was very near to the M's house and the dust problem would in no way diminish.

Council undertook extensive consultation concerning this development application, including public meetings, the preparation of a number of reports and consideration of written submissions from the residents. Finally, the application was approved, subject to a number of conditions. One of these was that the road should be sealed where it passed the M's house. It seemed that the problem was solved, but this was not to be.

Work on the road proceeded slowly and, eighteen months after the approval had been given the developer sought amendment of the consent conditions on the basis that, among other things:

the young man alledged (sic) to be an asthmatic is now nearly 18 years old and could leave home any time for any number of reasons

Confronted with this request, council reacted in a manner totally contrasting with their earlier policy of careful consultation. An inspection was made without speaking to the M's. Local rumours concerning the occupancy of the M family home were improperly taken into account. The M's were not consulted. The condition requiring the road to be sealed was lifted.

The Ombudsman investigated the matter and found that council's failure to consult when considering the proposed modification of the development consent was unreasonable; and that the revocation of the condition requiring part of the road to be sealed was based on unsubstantiated and irrelevant considerations. He recommended that council adopt a consistent policy of consultation, and that council should itself, and at its cost, now proceed to seal the stretch of road involved.

Currently, the health problems of the M's continue, and the gravel trucks continue to roar.

WYONG SHIRE COUNCIL

Bogged down

A number of people owned land on an unmade subdivision in the Wyong area. Most of the properties spent considerable periods of the year underwater. In Ms M's case, there was also an outstanding rates bill for more than \$3000. Council proposed that the property be sold to satisfy the outstanding rates.

At the same time the Department of Planning made an offer to purchase all of the properties for incorporation in an open space area. The department did not pursue its original offer to Ms M, however, because it believed that the land had been auctioned to pay for the rates. For its part, council believed that the department was still pursuing its original offer. In fact, nothing was happening.

The briefest of enquiries with both authorities was enough to re-start negotiations. Ms M finally received an offer which included payment of her rates and transfer costs, as well as \$2000 for her piece of swamp.

HASTINGS MUNICIPAL COUNCIL

Bubble, bubble, toil and trouble...

The proprietor of a restaurant in Port Macquarie complained that Hastings Municipal Council had failed to take appropriate action in

relation to drainage problems experienced at her rented business premises. She alleged that council and its officers had;

- . over a long period of time, failed to ensure that a drainage overflow problem at the premises was permanently rectified;
- . ignored her requests to take proper action to make the owner of the premises rectify the problem;
- . failed to ensure that a notice issued by council under the Public Health Act was complied with;
- . been negligent in failing to take action to correct a situation likely to constitute a public health risk; and
- . ignored illegal connections and modifications to the drainage system, which may have exacerbated the problem.

The complainant alleged that, on numerous occasions, sewage had overflowed onto the restaurant floor. She had suffered significant financial losses as a consequence of the problem and, eventually, the business had been forced to close.

Investigation was hampered by the absence of council records of visits to the premises by its Health Inspectors. Notwithstanding this, the Ombudsman was able to conclude that council had;

- . approved variations from Local Government Ordinance requirements in relation to the drainage system at the premises, after the work had been completed;
- . required the property owner to accept responsibility for a reduced gradient of the

drainage pipes from that usually required by council, and this implied that council was well aware of the risks associated with the departure from its usual standards;

accepted the word of a plumber, who had laid and later maintained the non-conforming pipes, that defects and blockages had been remedied. Council had accepted the plumber's verbal advice as sufficient evidence that the requirements of a notice issued under the Public Health Act had been satisfied, without conducting an independent inspection to satisfy itself that this, indeed was the case.

The Ombudsman recommended that, "in future, follow up inspections be conducted by Health Inspectors following issue of any notices pursuant to the Public Health Act to ascertain compliance with the notice or otherwise, and that appropriate action, as prescribed by the Public Health Act 1902, be taken when non-compliance is apparent."

It was also recommended that council instruct its Health Inspectors to, in future, make records of all inspections conducted prior to the issue of such notices. Those records should include details of the date and time of the inspection, and any follow up action taken, as well as any other relevant information.

Council, to its credit, acted quickly to instruct its staff to comply with the Ombudsman's recommendations.

ROCKDALE MUNICIPAL COUNCIL

Poor records and short memories

Early in 1983, Rockdale Council twice refused applications to allow certain premises to be used as a restaurant. The premises, one of a group of three properties consisting of residential units and shops with

existing commercial use rights, were situated in a residential area adjacent to a block of home units. Later in 1983 council approved an application to use two of the premises as a milk bar and take away food outlet, subject to no restaurant type activity being conducted and hours of operation being restricted to 8 am to 8 pm, Monday to Sunday. When a further application to conduct a restaurant was rejected by council, the applicant appealed to the Land and Environment Court. The appeal was dismissed and council's case was supported by the evidence of a number of neighbouring residents.

In February 1984, council informed residents of an application from the proprietor for an extension of his trading hours. The residents submitted a petition to council and the application was rejected. The approved trading hours remained at 8 am to 8 pm.

An application to change the use of another of the premises to a take-away chicken shop, with operating hours of 9 am to 9 pm, was approved in September 1985; residents were not notified of the application. However, a development application by the new owners, late in 1986, for extensions to the premises was advertised and later refused by council. Among the reasons that council gave for refusal of the application was that the proposed changes would entrench a non conforming existing use and this would be contrary to council's longer term planning approach for the removal of non-conforming uses. An amended application was later submitted, advertised and eventually approved.

The owners later sought approval to incorporate a take-away pizza service with the existing take-away chicken shop, and to extend their trading hours. The application was supported by two of the aldermen and the Town Planner's report recommended that council approve the selling of take-away pizzas and give favourable consideration to the extension of trading hours. No reference was made to the non-conforming use, nor to the issues raised in the judgement of the Land and Environment Court in relation to the previous application. Residents were not notified of the application and, when they learned that it had been approved, several of them complained to council.



As a result of the residents' objections, the matter went before council again; the Town Planner on this occasion prepared a more comprehensive report with the result that council, realising that it had "inadvertently" approved the extended hours, resolved to take action to amend the conditions of approval to allow for trading only between the hours of 8 am and 8 pm as originally approved. Council believed that it had the power under Section 103 of the Environmental Planning and Assessment Act to modify conditions of consent so long as the applicant who would be adversely affected by such modification was advised and was given the opportunity to show cause why the modification should not be enforced. Council advised the Department of Environment and Planning and the residents who had objected to the approval of the action that it had taken.

The applicant objected to the modification and advised council, through his solicitors, that he would be appealing to the Land and Environment Court. He warned that he would be seeking compensation in relation to losses incurred because of the delay by council in advising him of the modification. When this advice was put before council, considerable concern was expressed about the implications and council resolved to seek legal advice. Residents, in the meantime, continued to send letters

to council objecting to a number of aspects of the operations on the premises, and asked that they be kept informed.

Legal advice received by council in November 1987 was to the effect that it had no power to amend the consent. Council then wrote to the applicant confirming that the extended trading hours approved in July 1987 would operate. The resident objectors to the approval were also informed of the nature of council's legal advice.

Over the next few months, residents continued to complain to council about noise, smell, rubbish and parking problems and the failure of the pizza shop to close at the approved time of 10 pm. In April 1988, contrary to advice from its Building Planning and Development Committee, and without notifying residents of the application, council approved yet another application to extend trading hours to 11 pm. At the same meeting, it refused an application from one of the other premises to extend its hours to 9 pm. In the face of these events, one of the residents complained to the Ombudsman.

Investigation of the complaint identified problems in council's filing system; these had resulted in confusion about the exact premises involved, difficulties with cross-referencing, and an inability to access critical historical data. The investigation also disclosed that some of the Town Planner's reports to council had been inadequate and that some of his advice to council had been dubious. The relevance of some of the matters that council took into account when approving the application for an extension of trading hours was found to be questionable. These matters included:-

- . comparison with the trading hours of other pizza shops (most of which were in appropriately zoned areas);
- . a petition signed by the local State Member of Parliament and other unaffected residents;
- . an unfounded opinion that an appeal by the applicant to the Land and Environment Court would almost certainly be successful;

- . a comment that the issue of noise was not relevant as the area was, in any case, affected by aircraft noise.

At the same time, the investigation showed that relevant considerations apparently had not been taken into account. These included:

- . the residential zoning of the property;
- . the history of the premises, including the judgement of the Land and Environment Court;
- . the views of neighbouring residents;
- . although council had a policy of notifying adjacent residents of applications of the nature made in this case and had done so with previous applications relating to the premises, it had not done so in this case and was not able to provide a reasonable explanation for its failure to do so.

As a result of the investigation, and following the retirement of the Town Planner and the appointment of a new Town Clerk, council implemented changes in its file management systems and engaged a Records Management Consultant to undertake a full review of its records system. It also introduced a policy of notifying adjoining properties of applications for a change of an existing use, and undertook to take into account all relevant considerations, should any further application for an extension of trading hours at any of the three premises be made.

PORT STEPHENS SHIRE COUNCIL

Sorry about that but ...

Two neighbouring families in the Port Stephens area became aware that a house being built on water frontage land between their homes and outstanding ocean views was going to be 10.5 metres high, in an area where 8 metres was the maximum height permitted under the local planning instrument.

They wondered how on earth this could be and went to the council to complain. They discovered that "a mistake" had been made and that the approval given for the building, in fact was "illegal." A council building inspector had given approval for a two-storey, brick veneer and tile building with a pitched and gabled roof, to be built on absolute water frontage land, without referring the matter to council.

This incredible situation had come about because in the Port Stephens Shire, prior to December 1987, no height restriction had been imposed on two-storey dwelling houses erected in residential zones. In December 1987, however, a new Local Environmental Plan (LEP) came into force. The LEP specified a height limit of 8 metres for all dwellings. As well, it delegated to building inspectors the authority to approve building applications provided that the height of the proposed building did not exceed 8 metres. However, for buildings higher than 8 metres, the LEP required a development application to be properly submitted and to be considered by council in accordance with the provisions of the Environmental Planning and Assessment Act. This procedure had not been followed.

The building inspector who had given building approval for the house in question had acted under the old planning instrument and had failed to take into account the new provisions contained in the LEP.



When it was realised that a mistake had been made in granting the building approval, the council adopted something of a "head in the sand" attitude. Council staff told the complainants that, even though a mistake had been made, nothing would be done about the building; even worse, they said that council would request the owners to apply for development approval for the "illegal" building, and that such approval would be given retrospectively. The complainants believed that the situation made a mockery of the concepts of consultation with affected parties and detailed consideration by council, so they complained to the Ombudsman.

The Ombudsman's investigation showed that soon after the introduction of the LEP in December 1987, a briefing session to explain its provisions to council officers had been held and a memorandum had been circulated by the Deputy Town Planner. However, neither the briefing session nor the memorandum mentioned the change in planning rules which limited the height of dwellings to 8 metres. Nor had the effects of the LEP on the ability of building inspectors to approve building applications under delegated authority been adequately explained. In fact, the memorandum from Council's Deputy Town planner included the sentence:

There will be no need in the future to refer Building Applications for single dwellings to the Planning Department for comment.

The failure of the Deputy Town Planner to properly inform staff of the changes and their effect was compounded by the failure of the building inspector to familiarise himself with the new LEP, even though he would have to act in accordance with it on an almost daily basis when exercising his delegated authority to approve building applications.

The Ombudsman's report recommended that Port Stephens Shire Council seek legal advice about appropriate ways for it to require an alteration to the roof line of the building concerned, even if this meant

seeking an order from the Court. As well, the Ombudsman recommended that council meet the cost of any necessary alterations.

To date, council has given no indication that it intends to act in accordance with the Ombudsman's recommendations.

In fact, its most recent advice was that council had resolved to "proceed to amend Local Environmental Plan, 1987 to remove the height limitation which applies to one and two storey buildings."

The Ombudsman is considering whether he should make a report to Parliament about the matter.

WOLLONGONG CITY COUNCIL

The long path to success

For two years, Mr H complained to Wollongong City Council that adjoining neighbours had encroached upon a public pathway leading to a nature reserve near his home to such an extent that very few members of the public used either the walkway or the reserve itself. Mr H wished to walk his dog in the reserve, but said that the various encroachments made him feel as though he was trespassing on private property rather than walking on public land.

Council made soothing noises to Mr H but the offending encroaching structures; - a fence, an incinerator, a barbeque, and a pile of bricks remained. So Mr H finally complained to this office about council's inaction.

An extended series of preliminary inquiries, site inspections and discussions took place. Many times, when council proposed various actions acceptable to the complainant it appeared that the matter had been resolved. However, with the stately regularity of the change of seasons a further letter from the complainant would arrive at the office,

advising that the promised action had not eventuated, and inquiries would resume. Formal investigation commenced in May 1989.

After much further correspondence, a further inspection by this office, and a site meeting of councillors, council staff, the complainant, his dog and the encroaching neighbours, a compromise was finally hammered out whereby a clear "rustic" pathway and steps were to be constructed into the reserve; the pathway was to partly traverse the land of one of the adjoining landowners, who agreed to pass title of this portion of his land to council in exchange for the land upon which he had already built his garden. The cost of all work and legal expenses were to be borne by the adjoining landowners.

The matter now appears to be resolved and the Ombudsman's investigation has been discontinued.

WOLLONDILLY SHIRE COUNCIL

Messy business

The managing director of a company in the business of supplying aerated sewage treatment systems complained that council had failed to act impartially when dealing with applications for approval of the system or in monitoring the servicing of the systems. The complainant also alleged that council and its officers had harassed his company and that a council employee, Mr X, had engaged in improper dealings with both his and another rival company.

The Ombudsman investigated the complaint and an inquiry was held for this purpose.

Approval for its design of an aerated sewage treatment system, a relatively recent invention, was granted to the complainant's company in April 1985. In Wollondilly Shire the number of the company's systems being installed increased rapidly. For example, in 1984 only 7% of 519 septic tank applications involved this system; 65% of 376 applications received by council in 1989 involved it.

Following his investigation, the Ombudsman found that the council's practices in relation to monitoring and servicing of the systems were inconsistent. This was mainly because the systems had only recently come into use and council's practices had developed on an "ad hoc" basis. As well, although the Department of Health had approved servicing of the septic units by any person approved by the local authority, the position concerning the modification of one manufacturer's units by another was far from clear, and the department had not formulated clear guidelines in that regard.

This was of some importance, because Mr X had admitted that he was "involved" with a rival company as a "service consultant". The rival company was run by a former employee of the complainant and he was familiar with Mr X through his previous dealings with him. Mr X said that he had assisted the rival company to improve its system. Furthermore, the rival company had modified the complainant's systems, and the complainant alleged that Mr X was soliciting this modification work for the rival company. The investigation, however, did not find any convincing evidence that Mr X was a paid agent of the rival company.

The Ombudsman recommended that council agitate to have relevant regulations and guidelines amended in such a way that they would deal more effectively with contemporary domestic sewage treatment technology.

In relation to the general allegations against Mr X, the complainant gave evidence that Mr X had called him on the telephone, claiming that he usually obtained a fee for recommending to ratepayers the unit made by the complainant's company. Mr X said that the fee was obtained through the former employee of the company (who was now involved with the rival company). In fact Mr X claimed that, pursuant to these arrangements, he was still owed \$300. The complainant said that he had paid this amount to Mr X.

Mr X, at the time, was the council's District Health and Building Surveyor, and part of his job involved giving advice to ratepayers who were contemplating the purchase of septic systems.

The Ombudsman found that Mr X had demanded and had received the sum of \$300, and he recommended that council refer the matter to the police for consideration of possible criminal proceedings against Mr X.

The Ombudsman also recommended that council consider whether it should dismiss Mr X. However, Mr X resigned from council before the Ombudsman's final report was issued.

At the time of writing, council has refused to refer the matter to the police and the Ombudsman is obtaining legal advice in relation to the council's refusal to do so.

FREEDOM OF INFORMATION AND THE OMBUDSMAN

As explained elsewhere in this report, the Ombudsman has a dual role under the Freedom of Information Act. On the one hand, he is bound by the Act so far as the release of information is concerned; on the other hand, he has the role of investigating complaints about freedom of information decisions made by other government agencies. This is known as "external review".

Two cases dealt with during the year illustrate the Ombudsman's different roles under the Act.

Yes, we have no documents.

The release of information from the Office of the Ombudsman is governed by both the Ombudsman Act and the Freedom of Information Act. The extent of information that the Ombudsman can release, and the people to whom that information can be released, differs depending on which Act the Ombudsman is operating under at the time the information is sought.

Because of the secrecy provisions of the Ombudsman Act, the Ombudsman is able to provide information about an investigation to very few people. In general terms, apart from reporting to the responsible minister, and to Parliament as required, the Ombudsman, in most cases, gives information about an investigation only to the complainant and the government authority complained about, and then only where he thinks that to do so will assist his enquiries and enable him to discharge his functions.

By contrast, under the Freedom of Information (FOI) Act, which commenced in July 1989, **any person** has a right of access to documents held by the Office of the Ombudsman. Under that Act, however, documents which are in the possession of the Ombudsman, but which were created by other New South Wales government agencies are deemed to be held by the agency which created them, and not by the Ombudsman. Consequently, the Ombudsman cannot give access to those documents under the FOI Act. A "person" is defined in the FOI Act as including bodies corporate and bodies politic and, as a result, local and other public authorities may apply for access to documents held by other government agencies.

In 1990 Mulwaree Shire Council applied to the Ombudsman for access to documents relating to an investigation, then being conducted by the Ombudsman, of a complaint into the council's activities surrounding a development application.

Council applied for copies of notes taken by investigation officers during an interview with the Shire Clerk and for copies of all material supplied to the Ombudsman by the complainant. The Shire Clerk had previously requested a copy of a "transcript" of the interview, and the Ombudsman had informed him that no "transcript" existed, but the information obtained would be incorporated into his final report on the investigation. The investigator's notes of the interview were, however, supplied in full by the Ombudsman's FOI Officer.

The complainant in this matter, Mr N, had undertaken considerable research into the matters giving rise to his complaint and, to support his letters of complaint, had supplied the Ombudsman with a considerable number of documents. Those documents included copies of documents and correspondence, created by council itself, as well as copies of correspondence with other government agencies.

Many of the documents had been supplied to council for comment during the course of the Ombudsman's enquiries. Under the FOI Act, however, the Ombudsman's Office was unable to give the council access to documents created by government agencies other than the Ombudsman:- not even those documents **created by council itself**, or documents that had already been provided to council in the course of the investigation!

The Ombudsman's FOI Officer made a determination in relation to documents that had been provided by Mr N and which had **not been created by other agencies** and decided to release virtually all of them, some 74 pages. The material not released fell into two exemption categories and, in all, amounted to approximately one page of information.

Most of the information not released was exempt because its release would prejudice the investigation of possible contraventions of the law by council. The remaining exempt matter had been obtained in confidence and, it was decided, its release would prejudice the future supply of such information, and was contrary to the public interest.

The council was dissatisfied with the decision to refuse access to the exempt information and sought an internal review of the decision, as it was entitled to do under the FOI Act. Council also requested that a hearing planned as part of the Ombudsman's investigation under the Ombudsman Act be postponed until the review had been completed. The Ombudsman refused to grant a postponement of the hearing on the basis put forward by council, but did grant a postponement to allow council more time to prepare for the hearing.

In its request for an internal review, the council argued that it was a denial of natural justice not to provide it with the opportunity to consider all of the evidence to be called against it. Council also claimed that it knew the identity of a "secret informant" - naming one of its own councillors - and said that the councillor had no objection to the Ombudsman supplying the council with that information. After internal review, all information, with the exception of information which might identify the "secret" informant (who was not the councillor named) was supplied to council.

Complaints resolved

This office does not investigate all of the complaints it receives. Preliminary enquiries are usually conducted to decide whether or not an investigation is warranted. Many complaints are resolved at this stage without the need for formal investigation.

In 1989 the University of Newcastle, the Hunter Institute and the Newcastle Conservatorium were amalgamated into the new University of Newcastle. The former university council ceased to exist and a new university council was formed, called the Interim Council. The Interim Council consisted of five ex officio members and 15 members appointed by the Minister for Education and Youth Affairs. Prior to the amalgamation, the then minister, Dr Metherell, had stated in parliament that he would obtain the advice of the chief executive officers of the existing institutions before appointing members to these interim governing bodies.

When the Interim Council was appointed on 1 September 1989, its composition caused local controversy, particularly as there were no women appointed to it. In his defence, the minister's office was reported in the local media as saying that no women had been nominated by the chief executive officers.

Mr S. made an application, under the FOI Act, for a copy of the letter(s) containing the advice of the vice chancellor to the minister regarding the composition of the Interim Council.

It was determined that the subject document was an exempt document in accordance with Schedule 1, Clause 9(1)(a) and (b). This is the exemption clause relating to internal working documents. In accordance with the FOI Act it was determined that access could be given to a copy of this document from which exempt matter was deleted. In this instance, the names and designations of those persons put forward to the minister, but who were not appointed to the Interim Council, were deleted. Therefore the document released under FOI did not clarify whether or not the names of any women had been put forward.

The arguments presented to justify the refusal of access to parts of the documents were :

it would be contrary to the public interest to release the document in full as release would or could be reasonably be expected to;

- (1) damage the necessary understanding of confidentiality between the minister and his advisers; and
- (2) deter suitable candidates from public office by the public discussion of proposed appointments of named individuals, particularly in the event of certain candidates not being ultimately appointed.

In the course of preliminary enquiries the university provided this office with a full copy of the subject document. A meeting was held at the university to discuss the determinations with the decision-makers.

Enquires had revealed that the names of all persons that had been elected to the previous university council had been put forward in the vice chancellor's advice to the minister. Further it was revealed that copies of the document subject of the FOI request, were distributed and discussed at a special meeting of the university council on 20 September

1989. The document, however, was not tabled and copies of the document were collected at the end of the meeting. In attendance at that meeting were most of the people whose names had been put forward in the advice to the minister. Information was received that a number of the people named in the document, who were not ultimately appointed to the council, did not object to the release of this information.

In light of the above information, the vice chancellor acceded to a further release of information. He agreed to release the names of those people who had previously been elected to the university council as they had already subjected themselves to public scrutiny. This included the names of several women. The vice chancellor subsequently provided Mr S with a copy of the document from which only two names were deleted.

At this stage Mr S informed this office that he had received sufficient information to meet his purposes. It was decided that there was no utility in pursuing the matter further.

COMPLAINTS ABOUT THE DEPARTMENT OF CORRECTIVE SERVICES

Diabetic problems

A diabetic prisoner complained about the discontinuation of the practice of providing a supplementary diet to diabetics. He said that the termination of this practice had caused his health to deteriorate.

The Department of Corrective Services has the responsibility to adequately feed prisoners and to care for their health. This latter responsibility, in effect, is discharged by the Prison Medical Service. Enquiries with the service showed that the prisoner had sufficient access to a variety of foods to properly balance his diet. Additionally, there was no "across the board" supplementary diet for issue to diabetics. On

that basis, it appeared that the complaint did not warrant formal investigation.

However, information later supplied to this office suggested that the prisoner's access to food, and particularly his ability to withhold certain portions for in-between-meal snacks, was hampered by local gaol orders. Enquiries were made once again with the Prison Medical Service. The director of the service said that a recommendation had been made to the Director-General of the Department of Corrective Services, for the reintroduction of supplementary diets for diabetics.

This office took up with the Director-General the delay surrounding the implementation of the director's recommendation. Finally, after four months, all prison superintendents were directed to ensure that diabetic inmates were issued with dietary supplements.

Ombudsman's letters privileged

A prisoner complained that mail from this office sent to him at his home address, but redirected to him at Long Bay had been opened by prison officers. He said that when he raised the matter with a senior prison officer he was told that, unless letters from this office were accompanied by a specific request for privilege, they could be opened.

This statement, if it was made, was clearly in error in that it contravened the provisions of Prison Regulation 118 (2). The matter was taken up with the Director-General of Corrective Services and he was asked to consider issuing a suitable reminder to staff concerned with prisoners' mail.

In his response, the Director-General apologised for the incident and said that he had ordered that a notice be inserted in the department's Information Bulletin which is circulated to all officers.

The relevant notice appeared in the bulletin of 16 May 1990 and said:

... I wish to take this opportunity to remind all officers, especially those involved in the handling of mail, of the provisions of clause 118(2) of the Prisons (General) Regulation 1989.

There is provision in clause 118(3) for a Member of Parliament or a qualified lawyer to send a letter to a prisoner in a sealed envelope, accompanied by a letter addressed to the governor of the prison which indicates that privilege is claimed in respect of the letter in the sealed envelope. However, there is no such provision in clause 118(2). The Regulation clearly states that any letter addressed to a prisoner by any of the authorities listed in clause 118(2) is privileged in terms of that clause, and there is absolutely no requirement that any accompanying letter be sent.

Officers should therefore carefully note that, unless they have the prisoner's authorisation, they must not open, inspect or read any letter addressed to a prisoner by the Ombudsman, the Commonwealth Ombudsman, the Judicial Commission, the National Crime Authority, the State Drug Crime Commission, the Independent Commission Against Corruption or the Privacy Committee of New South Wales. They may only open, inspect or read any such letter if the prisoner chooses to authorise them to do so, and they have no power to require the prisoner to give such authorisation.



Problems with release

Prior to September 1989 when the Sentencing Act 1989 commenced, it had been traditional for prisoners who were to be released during the Christmas period to receive a "Christmas remission". This enabled prisoners to be released before the Christmas public holidays began so that they could arrange to apply for social security benefits. However, all remissions were abolished under the Sentencing Act. As a result, prisoners due to be released on public holidays would not have immediate access to financial assistance from the Department of Social Security.

A prisoner from Oberon Afforestation Camp complained that, because he was due for release on Christmas Day, he would not be able to receive benefits from the Department of Social Security until after the public holiday period. He claimed that he had no alternative means of support. His situation was aggravated by the isolation of the camp.

In response to enquiries made by both the Official Visitor to the camp and this office, a pilot programme was introduced at Oberon Afforestation Camp in December 1989. Under this programme, a social security field officer attended the camp to interview prisoners due for discharge during the following fortnight. Social security benefits, in cash, were then paid to inmates on the day of their discharge.

COMPLAINTS AGAINST POLICE**Alleged assault**

A woman complained to police that a man who had been involved in a motor vehicle accident with her had abused her and had maliciously damaged her vehicle. This had been witnessed by another person who was able to corroborate the woman's claims.

Several days later, two police officers went to the errant driver's home and spoke to him at the front of the premises. One of the officers outlined the nature of the complaint to the man who said that he

wanted to call his solicitor. The police officer then told the man that he was under arrest and took hold of his arm. The man broke away, ran inside the house, and tried to close the door behind him. The police officers pursued him and, after a struggle, handcuffed and placed him in the police vehicle. The man's wife and twelve year old son were present during the incident.

The man later complained that the police had assaulted him.

The man was later charged with causing malicious damage, assaulting police and resisting arrest; he was convicted on all charges.

Although there were no independent witnesses to the alleged assault, the man's own statement to the investigating police did not assist his cause. At one point he said:

... they were trying to arrest me and I was trying to get out of it.

The man's son said that his dad had thrown the first punch because the police were pulling him.

The only obvious injury that the man had received was a cut to the head which required two stitches. According to the police, this had occurred during the struggle to arrest the man.

In considering the man's complaint, the Ombudsman had the benefit of being able to refer to comments made by the Magistrate during the proceedings against him. The Magistrate said:

Mr J is guilty on his own evidence and the evidence of his wife. He was told he was under arrest, he broke away, ran inside, and the Police were entitled to go inside after him. He quite clearly resisted to the extent of a violent assault. All injuries suffered by him were his own fault, he should have gone quietly.

The Ombudsman provided the man with all of the material disclosed by the police investigation and sought his comment. The man neither withdrew nor modified his allegations; he simply failed to reply to the Ombudsman at all.

The Ombudsman was confident of his ability to determine the truth of the matter, and, on the evidence, he was satisfied that the alleged assault had not occurred. He therefore found that the complaint was not sustained.

Bad driver, big shock

A taxi driver complained that a police officer had assaulted him and had damaged the taxi cab he was driving by breaking the driver's window. The complaint was initially investigated by the Police Internal Affairs Branch and was found to be not sustained.

The Ombudsman decided to reinvestigate the complaint and, for this purpose, held an inquiry.

The taxi driver told the inquiry that his "vacant" taxi was stationary at the pedestrian lights outside the Hilton Hotel in George Street. He looked in his rear vision mirror and saw a man getting out of a yellow car which had pulled up behind him. The man approached the driver's door of the taxi, said "You don't know how to drive" and then struck the glass area of the driver's door of the cab. This caused the window and the rear vision mirror attached to the door to break.

The taxi driver said that he was showered with broken glass and suffered facial injuries, but he got the registration number of the other vehicle. He reported the incident at the Rocks Police Station and it was ascertained that the driver of the yellow car was a police officer.

The police officer had evidence that the taxi had swerved into the lane in which he was travelling and he had to take evasive action in order to avoid a collision. He said that he got out of his vehicle, approached the taxi and tapped on the driver's window. The taxi driver had opened

the door and a brief conversation had ensued. During the conversation, the police officer said he was holding onto the top of the open door and, when the taxi driver gave the hard jerk he let it go. At that point, he said, the window "just fell in".



The Assistant Ombudsman who heard the evidence believed the taxi driver's version of events to be the more credible and he found the complaint sustained.

The Ombudsman in his report recommended that urgent independent legal advice be sought on the question of criminal charges being preferred against the police officer, that the taxi driver be paid \$1000 compensation for the injuries that he had suffered and that the owner of the taxi-cab be paid compensation sufficient to cover the cost of replacing the broken window.

Independent legal advice obtained by the police department was to the effect that insufficient evidence existed to support criminal charges against the police officer who was later discharged as medically unfit from the Police Force.

At the time of writing the question of compensation was still being considered by the Minister for Police.

Mystery assailant

Early one autumn morning, a council officer, after several previous unsuccessful efforts to serve a writ of execution on the managing director of a company, tried yet again. The door to the premises was unlocked so he walked in, only to be greeted by the managing director who asked him to leave. He noticed another man standing a few metres away and identified that person as a police officer.

Because he did not have the writ with him he left, returned to his office, obtained a copy of the writ and went back to the premises. Again the door was unlocked and, again, he walked in. This time he was confronted by the man he had noticed on his earlier visit. The man told the council officer to get out. The officer tried to talk to the man but received no replies to his questions. The officer then told the man that he believed him to be a police officer. The man neither confirmed nor denied this. The council officer was then pushed, or guided, (depending on who is telling the story) from the building.

That same day, the council officer made a statement in which he complained that he had been assaulted by a police sergeant.

When he was later interviewed, the council officer said that he had never actually seen the sergeant whom he identified as his assailant, and that he had based his identification and complaint on:

- . the refusal of the person confronting him on his second visit to the premises to confirm or deny his suggestion that the person was a police officer;
- . a business association between the police sergeant nominated as the assailant and the managing director of the company;
- . telephone conversations he had with the police sergeant.

The council officer conceded that he had no direct evidence to support his assertion that the sergeant was his assailant.

The police investigation of the complaint obtained evidence from three people who said that they had been the only people present at the premises when the council officer visited. None of these was the police officer nominated, and one of them said that it was he who had "guided" the council officer from the premises. Evidence obtained from the sergeant and from his work colleagues indicated that, on the day and at the time at which it was suggested the assault occurred, the sergeant had been some 150 kilometres away from where the assault occurred. One might think that sufficient evidence existed to enable a reasonable person to have some confidence that the sergeant nominated had not been present at the scene of the assault.

Despite this the council officer maintained that his identification of the sergeant as his "assailant" was correct and he expressed the view that he was the only person providing a correct version of the events that had occurred.

The Ombudsman determined that the complaint was not sustained.

Overkill!

A couple complained that a policewoman came to their home while she was on duty and in uniform, and "served" on them a "Notice of Demand" which related to a business dispute between the couple and the policewoman's mother. The policewoman had been accompanied by three other police officers and the couple said that the presence of so many police had caused them to feel that they were being harassed.

The couple also alleged that one of the police officers had bent down and looked under motor vehicles parked in the front yard of the couple's home. He had then stood up and, looking at the front door of the house, had formed one of his hands into a fist and punched it into the open palm of his other hand. The couple claimed that those actions had added to their feeling of harassment.

The police investigation found the aspect of the complaint relating to the service of a civil notice to be sustained; so far as the allegation of harassment was concerned, the police said that there was insufficient evidence to warrant a sustained finding.

The Ombudsman reinvestigated the complaint during which the policewoman admitted that she had served the "Notice of Demand" while in uniform and while on police duty.

The Assistant Ombudsman who conducted the reinvestigation found that the second constable had punched the fist of one hand into the open palm of the other, and this action had caused the couple to feel harassed.

The reinvestigation also found that the second constable had untruthfully recorded in the relevant police motor vehicle log book that he had gone to another location on the day and at the time in question and that he had made no reference whatsoever to the incident.

So far as the other police officers were concerned, the Assistant Ombudsman took the view that they had been unwittingly led into the incident by the policewoman.

The Ombudsman adopted the Assistant Ombudsman's findings and recommended that the policewoman and the second constable be paraded and counselled. Those recommendations were complied with.

Passing the buck

A man complained that, among other things, he had been held in police custody unnecessarily. Police had arrested him and had taken him to the local police station. A constable was in charge of the station on the day in question and he discovered that a warrant existed for the man's arrest. The constable arranged to get a copy of the warrant before he placed the man before the court. Because of delay in obtaining the copy of the warrant, the man was kept in custody overnight.

The police investigation of the man's complaint disclosed that it had not been necessary for the constable to get a copy of the warrant before placing the man before the court and that his detention in custody had been unlawful. The constable said that he had not known that he did not need a copy of the warrant and he explained that, at the time, he had only eighteen months experience in the service.

The police investigator recommended that the constable be paraded and counselled. His report was reviewed by a chief superintendent and by the Region Commander's office; all agreed that the blame for the incident should lie with the constable.

When this office reviewed the case, it found that the inexperienced constable had been left in charge of the station, without any supervision, while more experienced officers were out performing duties in patrol cars. The patrol commander was also absent from the station but had made no arrangements for the proper supervision of the station, or of the constable, before he left. Even though two sergeants of police were on duty at the time (one out in a patrol car and the other on restricted duties in an office at another location), neither of them had been directed, nor had felt the need, to check on or supervise the constable throughout the course of the day. The constable had been placed in circumstances where he could err, simply because the patrol commander had failed to arrange for his proper supervision, a task in which the sergeants on duty that day also had an obligation to take an active part.

All senior police involved in the matter appeared to take the view that responsibility for the error that had been made lay solely with the constable; there appeared to be no recognition of the fact that lack of proper supervision had played an important part. Senior police appeared content to fix blame at the lowest point, and to be unwilling to acknowledge the responsibility attached to command rank.

This office concluded that the Police Department had failed to make senior officers adequately aware of their responsibilities. The Ombudsman recommended, among other things, that disciplinary action be taken against the two sergeants; that the Commissioner issue

instructions regarding the adequate supervision of police stations in the absence of patrol commanders; that future police investigations address the issue of whether management deficiencies had led to the conduct being investigated; and that police statements of duties be amended to show clearly the responsibilities attached to the position to which such statements refer.

Because the patrol commander concerned had retired from the service, no recommendations were made about his conduct.

At the time of writing, all of the Ombudsman's recommendations have been or are in the process of being complied with.

Police action often sufficient

On some occasions, even though a complaint against police is found to be sustained, the Ombudsman makes no recommendations. This is usually because the Police Department has already taken appropriate disciplinary or other action against the officer or officer's involved, or because the action taken by police, although technically improper, was taken in good faith.

Three complaints dealt with during the year illustrate the types of complaints that fall into this category.

In the first matter, a man was arrested and charged in December 1987. A considerable amount of the man's property was taken into police possession and entered in the exhibit book at the local police station. A black plastic folder belonging to the man, and which contained an extensive personal history and some personal documents, was taken from the police station by two police officers (one of whom later left the force) when they went to have an evening meal.

When the police returned to the police station after their meal, it was closed. They returned to Sydney, with the folder in their possession, and it was not until April 1988 that the folder was returned to the

man's solicitor. The man complained about the delay in returning his folder to him.

The Ombudsman found that the action of the police officers in removing the folder from the police station and in delaying its return to the man was unreasonable, and the complaint was held to be sustained.

Because the Ombudsman was satisfied that there had been no intention to permanently deprive the complainant of his property and because it had been returned to him, no recommendations were made regarding action against the police officers involved.

In the second case, a motorist complained that he had been stopped by the driver of a police car for driving in a manner that the police officer himself had driven. The Police Department decided to try to conciliate the motorist's complaint and he made a statement withdrawing his complaint; this was sent to this office by the Police Department.

The motorist, Mr S, however, also wrote to the Ombudsman. He said that all he had signed was a blank form; the Senior Sergeant attempting to conciliate the matter had said that he would write on the form that the motorist wished to withdraw his complaint.

The motorist's claims constituted a new complaint. The complaint was investigated and was found to be sustained because the Senior Sergeant admitted that he had the motorist sign a blank statement form.

The Police Department directed that the Senior Sergeant be paraded before his District Commander and be severely reprimanded. The Ombudsman was satisfied with that action and he made no further recommendations.

The third case concerned a probationary constable who, in order to obtain an air ticket from a domestic airline without having to pay for it, pretended to be an employee of American Airlines.

The probationary constable admitted that he had signed for the ticket in a fictitious name and had placed that name upon, and had signed, a New South Wales Police Identification Certificate. The complaint, of course, was sustained.

The Deputy Commissioner of police told the Ombudsman that the probationary constable had been convicted of "concur in making a false statement" and that he directed that the probationary constable be dismissed from the Police Service.

Given the action that had already been taken, the Ombudsman made no further recommendations.

A different sort of police harassment

The complainant was employed in a clerical capacity at a suburban police station. One evening, when she was alone in the station, an off-duty sergeant from a neighbouring police station entered and asked for a telephone book. While she was looking for the telephone book, the sergeant approached and stood very close to her causing her to lean backwards, away from him, until she was leaning against a desk. The sergeant then leant over the top of her, pressed his legs against her and made a number of offensive and lurid suggestions.

The complainant said that there was a strong smell of alcohol on the sergeant's breath, and she believed that he was "extremely inebriated". The complainant immediately made a verbal complaint about the incident to a senior constable on duty at the station. She did not, at that time, make a written complaint or ask that any action be taken against the sergeant.

Several weeks later, the complainant was once more working the evening shift, when the sergeant attended the police station again. This time he was in full uniform and was accompanied by two civilians who wished to report a theft. The civilians remained on the public side of the reception counter while the sergeant walked around it and stood

beside the complainant. He asked the complainant to help him by typing a Police Incident Report while he obtained details from the civilians. The complainant agreed.

After a few minutes, the sergeant said "Oh I've dropped my pen", and he knelt down behind the counter, out of sight of the civilians. He grabbed the complainant's ankle and ran his fingers up her leg to the knee. The complainant said that she was surprised by the sergeant's actions and she moved away from him, sliding the typewriter with her along the counter top. The sergeant partially stood up and then said, "Oh I've dropped it again". He crouched back down behind the counter and, again, ran his hand up the complainant's leg. Once more the complainant moved away from the sergeant.

The sergeant stood up and, in the presence and hearing of the civilians, said;

"You must be a randy, racy, raunchy little thing....You are a randy little thing".

The complainant again moved away from the sergeant, sliding the typewriter with her.

The sergeant made a number of other distasteful comments to the complainant. She continued to move away from him until, eventually, she had moved so far along the counter that she was pressed against a wall. At that time she told the sergeant to complete the form himself, left the station area and reported the incident to the Patrol Commander.

The complainant said that she was particularly embarrassed that the incident had taken place in front of members of the public. Later that night, in fact, one of the civilians who had witnessed the incident contacted her to talk about what had happened.

As a result of the Police Department's investigation the sergeant was charged with two counts of assaulting the complainant. He was convicted and fined \$200 in each case. No departmental action was

taken against the sergeant because, by that time, he had been dismissed from the Police Force following a separate conviction for indecently assaulting a female police officer.

The Ombudsman in finding the complaint sustained, decided that there was no utility in pursuing the matter and took no further action.

The case of the wounded dog

In February 1988 the Executive Director of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) in New South Wales complained to the Commander at Dubbo Police Station about the actions of a police officer while destroying a dog. The complaint was supported by a report prepared by an RSPCA Inspector.

The Inspector's report concerned an incident that occurred in Gilgandra on 21 January 1988, which involved a constable of police and a council employee, when a dog was destroyed after being shot by the constable and then struck on the head a number of times by the council employee. A summons had been issued by the RSPCA against the council employee for Aggravated Cruelty to an Animal pursuant to section 6 (1) of the Prevention of Cruelty to Animals Act.

The conduct of the constable that concerned the RSPCA and caused the complaint was :

- . the distance from which he had attempted to shoot the dog;
- . the danger that the constable had posed to the public when he had attempted to shoot the dog;
- . the number of shots that the constable had fired;
- . his failure to prevent an act of aggravated cruelty by the council employee, which had occurred no more than one metre from where the constable had stood and watched;
- . his failure to ensure that the dog was dead after the incident;

- . his failure to administer a final and fatal 'headshot' to the dog;
- . that police officers, in an attempt to pervert the course of justice had interfered with the Inspector's enquiries.

A copy of the complaint was sent to the Ombudsman in March 1988.

The Police Department conducted some preliminary enquiries into the matters complained of and subsequently determined that a full investigation was required. The Acting Divisional Commander of Mudgee Police conducted an investigation into the following issues:

- 1) that the constable had aided and abetted the council employee in the cruel ill treatment of a dog;
- 2) that the constable had hindered the RSPCA Inspector in the execution of her duty.

The Acting Divisional Commander found the first issue of the complaint to be sustained and the second issue to be not sustained. He concluded, however, that the constable had not intended to be cruel to the dog. In his letter to the Ombudsman in July 1988, the Assistant Commissioner (Review) endorsed the conclusions reached by the Acting Divisional Commander. He said that he had directed that the constable be paraded before his Divisional Officer and that he be counselled about the correct way to destroy a dog.

The Deputy Ombudsman considered the Acting Divisional Commander's report but found it to be deficient, because in respect of the second issue, a vital witness, another RSPCA inspector, who was in a position to offer corroborative evidence, had not been interviewed. The Police Department was asked to address this deficiency and in October 1988 the Acting Divisional Commander interviewed the other RSPCA Inspector.

In November 1988, the Assistant Commissioner wrote to the Ombudsman and provided a copy of the second RSPCA Inspector's statement. The Assistant Commissioner said that, although the second

RSPCA Inspector corroborated evidence of the first RSPCA Inspector, he believed that the second issue remained not sustained because the allegation involved could not be proven.

After considering the comments made by the Executive Director, RSPCA, on the Police Department's investigation, the Ombudsman decided that the evidence relating to the complaint was conflicting and that he was not able to be satisfied that the complaint was either sustained or not sustained. On 18 January 1989 the Ombudsman decided, pursuant to Section 25A of the Police Regulation (Allegations of Misconduct) Act, to reinvestigate the complaint.

The Ombudsman's reinvestigation examined the following conduct:

- 1) that the constable had committed an act of cruelty upon the dog;
- 2) that the constable had aided and abetted the council employee in cruelly ill-treating the dog; and
- 3) that the constable had hindered the RSPCA Inspector in the execution of her duty.

The reinvestigation involved an Inquiry under section 19 of the Ombudsman Act and evidence was taken at the Office of the Ombudsman on 21 February 1989, in Dubbo on 22 February 1989 and in Gilgandra on 23 and 24 February 1989.

The Ombudsman's reinvestigation established that:

- on 21 January 1988, a resident of Gilgandra complained to the Shire Engineer about a bull terrier which had strayed into his yard. The bull terrier had twice attacked his own dog, causing some minor lacerations that did not require veterinary treatment.
- the Shire Engineer wrongly believed the bull terrier to be another dog of the same breed from the area that had previously attacked and killed local dogs. Because of this, he arranged for the council employee, the dog catcher to come to his property.
- the council employee arrived but, because the dog appeared vicious, he and the Shire Engineer decided not to try and approach it and they contacted the police. The

constable attended but the dog ran out of the yard and across the street.

the constable followed the dog and from a distance of about three metres away fired a shot at it. The bullet hit the dog, but it ran away for about one kilometre and crawled under a shed in a car park behind the town pharmacy.

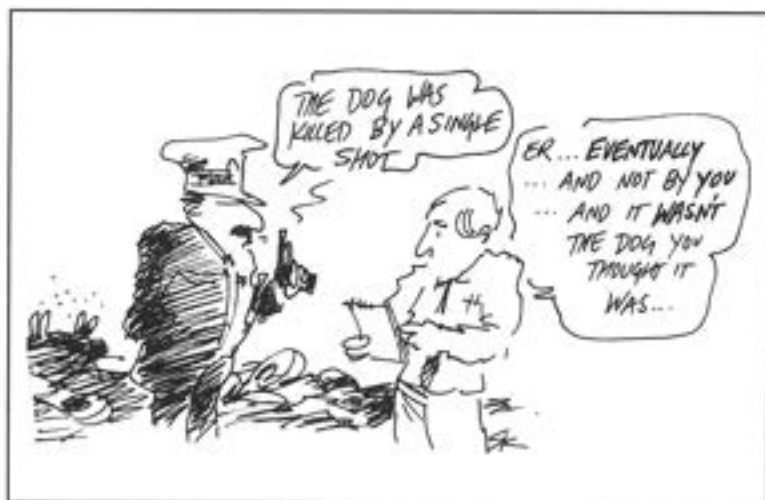
the constable and the council employee followed the dog; the constable fired two or three more shots at the dog, all of which missed. The dog was dragged out from under the shed by hooking an iron bar under its collar, but the dog got up again and ran to the rear of a stock and station agent's store, next to the pharmacy. There, in the presence of the constable, the council employee struck the dog on the head two or three times with an iron bar.

the council employee lifted the dog onto the back of his utility and drove to the Gilgandra Park, where he had his morning tea. Later, when he returned to the utility, the council employee found the dog still alive; it was sitting up and bleeding heavily. The council employee then took the dog to the council tip and, there, he shot it in the forehead with a rifle. The dog, at last, died.

a person at the pharmacy who had witnessed the events complained to the RSPCA about the way the dog had been treated. The RSPCA Inspector made enquiries and charged the council employee with Aggravated Cruelty to an animal. She did not issue a summons against the constable because she had been told by the local Inspector of Police that it would be more appropriate for her to make a formal complaint about the constable's behaviour to the Commissioner of Police. In that way, she was told, an internal investigation would be conducted and appropriate action would be taken against the constable by the Police Department.

following the incident, the constable made an Occurrence Pad entry; this was the only official police record about the matter. The Occurrence Pad entry, however, was false in several respects. In particular, the entry made no mention of the dog having been hit with an iron bar; it said that the dog was destroyed when the constable fired a shot into its head while it was under the shed at the rear of the pharmacy. It was clear from the evidence, however, that all of the shots fired by the constable, while the dog was under the shed, missed. Further, the Occurrence Pad entry said that the dog had caused serious injury to another dog when, in fact, only minor lacerations were inflicted on the other animal. Finally, the constable recorded that he fired only one shot at the dog under the shed at the rear of the pharmacy but all of the evidence contradicted this.

the council employee appeared before the Gilgandra Local Court on 24 November 1988; he was convicted and placed on a \$500.00 bond to be of good behaviour for a period of eighteen months. The Magistrate commented that the Constable "should consider himself fortunate not to be charged as a principal in the second degree".



The Deputy Ombudsman found that, despite the constable's assertion that he was a weapons expert and a member of the local Special Weapons Operation Unit, he had discharged his revolver at the dog with complete disregard for public safety. Police Instruction 40.01 states:

Police are to take a keen and diligent interest in the prevention of any form of cruelty to any animal, and take action in any case coming under their notice, whether due to wilfulness or negligence, and give every assistance to officers of Societies for prevention of cruelty to animals in order to bring offenders to justice.

In respect of the first two aspects of the investigation, the Ombudsman found that the constable had cruelly ill treated the bull terrier and had aided and abetted the council employee in the cruel ill treatment of the dog.

So far as the third aspect of the investigation was concerned, the Ombudsman concluded that, on the day following the incident, after the council employee had told the constable that he had made a statement to the RSPCA Inspector, the Constable had made a remark which the council employee took to be a suggestion that he should not co-operate further with the RSPCA, and that the constable had made that remark conscious of his own failure to act properly, with the knowledge that he had falsified the Occurrence Pad entry and with the intention of persuading the council employee not to co-operate with the RSPCA Inspector. However, when the constable made the comment to the council employee the RSPCA Inspector's investigation had been substantially completed. Therefore, while the Ombudsman found that the conduct of the constable warranted the severest censure, it, in fact, did not amount to hindering. Accordingly, that aspect of the complaint was found to be not sustained.

In making his findings, the Ombudsman was critical of the Police Department's investigation of the complaint. Firstly, there had been sufficient evidence to charge the constable as well as the council employee, but the RSPCA had not done so on the assumption that the police would do so following their investigation. The result was that the council employee went before the court and was convicted of an offence, but the constable was merely "counselled" about the correct way to destroy animals. This was clearly inequitable, particularly when the constable had a duty to destroy animals humanely and to prevent acts of cruelty. Secondly, a number of material witnesses had not been interviewed during the police investigation.

In his final report, the Deputy Ombudsman recommended that the Commissioner of Police review Police instructions in relation to the destruction of animals. That review has since been completed. He further recommended that the Commissioner obtain competent legal advice, independent of the Police Department, on the question of whether sufficient evidence existed to bring disciplinary proceedings against the constable. The Commissioner forwarded the papers to the Office of the Crown Solicitor for advice in October 1989; but, as yet, no decision has been made.

Insecurity

A man whose stolen vehicle had been found by police and impounded until enquiries were completed, complained that when the vehicle was released to him equipment had been stolen from it, and it had suffered damage because of exposure to the elements.

The police investigation concluded that police had reasonably impounded the vehicle but that it had been left in a police holding yard for six months without protection from the elements.

The investigation papers supplied by the police department contained reports dating back three years which had requested that security at the holding yard and at the police station be upgraded. The reports showed that thefts from other vehicles held in the yard, as well as damage to the police station itself, had occurred. It seemed obvious that security measures at the police station and holding yard were inadequate and that police who had reported this fact had been frustrated because no interest had been exhibited by the police administration.

This office made recommendations about upgrading security at the police station and about providing adequate protection for vehicles stored in police custody. The police department complied with the recommendations; lighting and fencing have been upgraded, the police station now operates for longer hours and two new security systems, both of which run, bark and bite, have been installed.