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*NSW
Ombudsman's
Annual Report
1992-1993*

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Ombudsman's
Annual Report
1992-1993

The material in this annual report was written by the Ombudsman, the statutory officers and the investigation and administrative officers of the Ombudsman.

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Your reference:

The Hon Max Willis MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

Mr R K Rozzoli MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Gentlemen,

Pursuant to S.30 of the Ombudsman Act, I submit the Ombudsman's Annual Report for 1992-93.

I draw your attention to the provisions of S.30(3) in relation to the tabling of the report.

Yours faithfully,

David Landa
OMBUDSMAN

26 October 1993

Contents

Chapter One Management..... 1

Introduction	2
Charter	2
Aims and Objectives	3
Access	3
Management and Structure	4
Overview - The Challenge of Change	4
Program Evaluation	8
Disputes, Complaints and Managing Better	9
Installation of Sponsored Computer System	11
Guarantee of Service	12
Customer Survey	13
Consumer Satisfaction	15
Legal Changes	17
Corporate Performance	18
ICAC Investigation	22
Recommendations of the Royal Commission into Aboriginal Deaths in Custody	23
Public Awareness	24
Aboriginal Outreach	24
Publications	26
Reports to Parliament	26
Speaking Engagements	27
Reaching Youth	27
Significant Office Committees	28
Telecommunications Interception Inspection Unit	30
Asset Maintenance	30

Chapter Two Complaints About the Police Service..... 31

Overview	32
The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993	33
Conciliation	34
Police Evidence - Collaboration, Collusion, Perjury	36
Access and Release of Confidential Information	38
Police Powers of Arrest	40
Deaths and Injuries in Custody	43
Race Relations - Turrumurra Incident	45
Racist Language - is it Just Talk?	46
Radar Detector Detectors	47
Security of Drug Exhibits	49
Commitment Warrants and Fine Enforcement System	50
Lost Property	51
The Ainsworth Investigation	52
Helping Out a Mate	58

Seeing Justice Done	59
A Man's Best Friend	59
Mardi Gras	60
Ex-gratia Payment	60
A Friend in Deed	61
A Free Ride	61
A Long Hard Road	62
The Code of Silence	62
On the Inside	63
An Arresting Situation	63
Conference	64
Police Training	64
Police Complaint Statistics	65
Police Complaints Profile	69

Chapter Three

Complaints About Local Government 75

The New Local Government Act 1993	76
Nature of Complaints	77
New Complaints	78
Bogged Down	80
Existing Use - Fast and Loose	81
Civil Wars	82
Going it Alone	84
Conflict of Interest Circular	85
Tourism Promotion	85
Singing in the Rain	86
What a Phone Call can do	87
Here Today...Gone Eventually	88
Offensive Odours	88
Do Not Swim Here Finale	89
Bureaucratic Runaround or Not a Hole in One	90
Conditions of Consent and Dividing Fences	90
Birds of a Feather	91
Southern Mitchell County Council	91

Chapter Four

Complaints About Public Authorities 93

Overview	94
Nature of Complaints	95
Residential Unit's Funds were Manager's Magic Pudding	96
Investigation of Child Abuse Cases	98
Legislation By Stealth Robs Ombudsman Of Jurisdiction	100
Kariong Juvenile Justice Centre	103
Board Games - Round Two	104
Juvenile Health Issues	105
Local Government and Community Housing Program	106

The State Electoral Office	108
Boost to Business Results in Bust	109
Resolution of Noise Complaint	111
That's for Us to Know and for You to Find Out!	112
The Grass is Always Greener	114
Dirty Washing Aired	114
No Light at the End of Six Tunnels	115
State Rail Authority and Signalling Safety	116
HomeFund	117
Isolated Schools No Longer Left Right Out	118
Vat Attack	119
Change of Policy	119
Delay Acknowledged	119
SRA - Property, Prices and Policy	120

Chapter Five

Complaints About Corrective Services 121

Overview	122
Statistics	123
Complaints About Corrective Services	125
Procedural Amendment	127
Periodic Detention	127
Junee - NSW's First Private Gaol	128
Management of Diseases	129
Human Rights for Women Prisoners Attending Hospital	131
Access to Library	132
Guardianship Rights for Prisoners	133
Legislative Update	134
Delayed Refund	135
Diet or Die	136
Farewell to CIP	136
An Alarming Situation at Long Bay	137

Chapter Six

Freedom of Information 139

FOI Statistics	140
Introduction	140
Ombudsman's Note	141
Some Features of the New Zealand Official Information Act	142
The Positive Outcome of Resolution	143
Amendments to the FOI Act	144
State Rail Saga	146
Corrective Services Correct?	147
Second Schedule Hospitals - FOI Too Much?	148
SES Contracts - To Release or Not?	149
The Neighbour Always Makes Too Much Noise	150
Procedural Pitfalls	152

Summary of Cases	154
The Exemption Clauses	160

Chapter Seven

Operational

Human Resource Management	165
---------------------------	-----

Wage Movements	166
Training and Development	166
Staff	166
Performance Management	166
Senior Executive Service Performance Management	166
Ombudsman's Performance Statement	167
Senior Executive Service	167
Industrial Relations	168
Downsizing/Redundancies	168
New Awards	168
Part-time Work	168
Trainees/Apprentices	168
Absenteeism	168
Structural Efficiency Principle (SEP)	168
Grievance Procedures	169
Code of Conduct	169
Occupational Health and Safety	169
Ethnic Affairs Policy Statement (EAPS)	169
Equal Employment Opportunity (EEO)	169
EEO Strategies for 1993/94	170
Functional Organisation Chart Part 1	171
Function Organisation Chart (Part 2)	172
Financial Management	173
Major Works in Progress	173
Land Disposal	173
Research and Development	173
Funds Granted to Non-Government Organisations	173
Risk Management and Insurance	173
Overseas Travel	173
Consultancies costing less than \$30,000	174
Consultants	174
Consultancies costing at or in excess of \$30,000	174
Value of Recreation and Extended Leave	174
Accounts Payable Policy	174
Stores Expenditure	175

Financial Statements	177
----------------------	-----

Performance Indicators	191
------------------------	-----

Publications Order Form	203
-------------------------	-----

Chapter One
Management

Introduction

Under section 30 of the Ombudsman Act, the Ombudsman of New South Wales is required to submit an annual report to Parliament. This is the eighteenth 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 1993.

This report also includes an account of the Ombudsman's functions under the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 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 1993) have been mentioned in some cases in the interest of updating material.

The case material contained in the report covers the broad range of complaints made to the Ombudsman from the significant and complex to the ordinary. The report aims to give the flavour of the cross section of matters dealt with by the Ombudsman.

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 of direct reinvestigation of

complaints about the conduct of police officers.

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 expanded this role even more (see police section).

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 need for independence of the Office of the Ombudsman was 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.

The introduction of the Ombudsman Amendment Bill in April 1989 proposed that ap-

proval for the appointment of the Deputy Ombudsman and Assistant Ombudsmen be removed from Cabinet to allow the Ombudsman control over those appointments.

A further amendment in 1993 enabled the Ombudsman to present reports directly to the presiding officer of each House of Parliament.

As well, a joint parliamentary committee was established in December 1990 to oversee the Ombudsman's office.

In November 1987, 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. The Ombudsman is precluded by law from reporting the results of inspections in the annual report.

cont page 3

On 1 July 1989, the New South Wales Freedom of Information Act commenced. Changes to the Ombudsman Act in January 1991 meant the Office of the Ombudsman was no longer subject to the FOI Act in relation to its complaint handling, investigative and reporting functions.

The Office maintains its role as a body of external review under the FOI Act.

Aims and Objectives

Traditionally the Ombudsman was created to bring the lamp of scrutiny to the actions of the executive to protect the citizen from unfair actions. While there may be alternative means of redress in some cases, the Ombudsman has been seen as a means of achieving resolution that is less formal, less costly and more expeditious.

The primary function of the Office is to receive and, where appropriate, investigate complaints about matters of administration, including determinations about the release of information

under the Freedom of Information Act, within the NSW public sector, and about the conduct of police and to report the findings and recommendations arising from these investigations to the authority concerned, the responsible minister and if necessary to Parliament.

To support this mission, the Office has the following corporate goals:

Complaint Assessment

To give priority to those complaints which identify structural and procedural deficiencies in NSW's public administration, and individual cases of serious abuse of powers especially where there are no alternative and satisfactory means of redress.

Complaint Resolution

To resolve complaints about defective public administration.

Investigations

To promote practical reforms in public administration through recommendations arising from effective and resource-efficient investigations employing fair procedures.

Complaint Handling in the Public Sector (CHIPS)

To promote the development of effective internal complaint handling in public authorities to ensure accountability and customer satisfaction.

Internal Management and Accountability

To improve management systems and practices to enhance service delivery and to provide effective accountability mechanisms to meet the Ombudsman's statutory obligations and corporate objectives.

Financial Services

To make the most effective use of financial and physical resources through improved financial planning and controls.

Organisational Environment

To ensure productivity, staff development and a creative, safe and satisfying work environment.

Access

To increase community awareness of the role of the Ombudsman and to promote access for disadvantaged groups. ●

Access

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

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

3rd Level	Telephone: (02) 286 - 1000
580 George Street	Toll free : (008) 451 - 524
SYDNEY NSW 2000	Facsimile : (02) 283 - 2911

The Office is open to the public between 9 am and 5 pm, Monday to Friday.

Appointments outside these hours can be arranged. ●

Management and Structure

The principal officers of the Office of the Ombudsman are:

- ▶ David Landa, Attorney at Law - Ombudsman
- ▶ John Pinnock, BA LLM (Syd) - Deputy Ombudsman
- ▶ Gregory Andrews, BA (Hons) - Assistant Ombudsman
- ▶ Kieran Pehm, BA LLB - Assistant Ombudsman
- ▶ Sue Bullock, B Soc Stud (Syd) - Executive Officer
- ▶ Jennifer Mason, BA (Hons), - Principal Investigation Officer

B. Soc Work (Hons)

No staff member of the Office of the Ombudsman is a member of a significant statutory body by virtue of any association with this Office. The Assistant Ombudsman, Gregory Andrews, is a non voting member of the Prisoners Legal Service Advisory Sub Committee of the Legal Aid Commission. ●

Overview - The Challenge of Change

When I look back at the past year, the dominant impression is one of change and its impact, not just on this Office, but right across the NSW public sector. More often than not these changes are in response to a range of factors, particularly fiscal restraint. But I have also noted, as a factor, the beginnings of a new responsiveness to community needs and concerns.

Within this Office, I have reviewed my approach to our chronic financial problems. Traditionally, I have reported to Parliament on the consequences of inadequate funding, most importantly a reduction in our ability to meet an increasing number of cries for help from the public. The Government's response generally has been negative.

Some savings have been achieved by increasing efficiency, but the effort has been overwhelmed by the upsurge in the number of public complaints.

A New Approach

It is time for a change. Sticking to the old ways is no answer. It is not enough for an Ombudsman merely to find fault, without contributing to the improvement of the systems and the attitudes which so often produce the faults and the complaints we receive.

A mediation course I undertook at Harvard University last year convinced me even more strongly of the value of an open and more responsive approach to complaints and complainants, and the office has pushed ahead with a number of initiatives to encourage this approach across the public sector.

Out of this has come a changed approach on our part toward the government. I am endeavouring to demonstrate to the Government that there is more than enough reason, in dollars-and-cents terms, to recognise the profitability of much of what the Office does and its unique capacity to do it.

Although the response to date has been mixed, there is no doubt that the economics of our investigations of public complaints and of our special projects more than pays for itself.

Brougham Report

My Office's recent report on the Department of Community Services and Brougham House, for example, while not exactly welcomed by the minister, the department or its director-general was not only accepted, but was acted upon with a thoroughness and speed which I expect should save the department a great deal of money in improved procedures, the closing-off of a major leakage of funds and the cost of recurrent similar problems.

When one considers that the Brougham Report could be seen by the department as akin to a consultant's report, the cost of which might well have been a hundred thousand dollars in fees, the overall benefit is even greater.

Such positive outcomes are indicative of a new attitude within

Overview *cont*

the public sector and my Office will continue to advance the positive side of its work in the belief that as a quality control mechanism, the Ombudsman in fact, saves the government many times the cost of our budget.

CHIPS

Projects such as our Complaint Handling in the Public Sector program and its associated mediation training, have contributed to a greater receptiveness by much of the public sector to this Office's work.

The CHIPS program itself has been well received. It is an essential aspect of the Government's Guarantee of Service. Without such an initiative, the Guarantee of Service risks being seen as mere rhetoric. CHIPS, however, will give government departments the tools needed to deliver service and solutions promised in their guarantees, corporate plans and mission statements.

As almost 30 per cent or more of the complaints about government departments coming to this Office relate to service-delivery issues, CHIPS has the potential to reduce this category of complaints and to free up our resources for the more serious and the major systemic issues.

Although I believe that reports which clearly reveal maladministration and other deficiencies should be viewed by both Government and public sector managers as valuable performance audits, this has not always proved to be the case. In my report on Toomelah and the Office of Aboriginal Affairs (OAA), I highlighted the considerable deficiencies in the advice the Premier, as the responsible minister, was receiving and the

shortcomings in the performance of the OAA. Although this report was received with hostility and denial, its major recommendations were nevertheless subsequently implemented.

In micro-economic terms, better handling of complaints and reduced investigation costs can add up to significant savings and can benefit everyone concerned.

By introducing better systems in this area and securing their acceptance throughout the public sector, my Office saves the government many times the cost of our budget.

Consultation

To help achieve this kind of outcome, I have embarked on a program of personal consultation with chief executive officers of government agencies to explain the value of the CHIPS program and to underline the advantages available from my Office's involvement in this process of accountability and openness in dealing with complaints and complainants.

I am also consulting with CEOs of agencies involved in complaints about denied access under the Freedom of Information (FOI) Act, in an endeavour to increase the use of alternative dispute resolution (ADR) wherever possible. From our experience to date and from a review of the New Zealand system, ADR is a more effective form of resolution than investigation in many cases.

The Office also will survey agencies on their perceptions of the function of the Ombudsman's Office to pinpoint problems with investigation processes and to correct any inefficiencies.

On the police side, the Of-

fice continues to encourage and to support the use of conciliation in resolving the lower level police complaints.

Hopefully, these contacts will encourage a more open attitude to customer needs, both generally and for FOI.

Budget

Once again, I must report that while complaints continue to increase, resources continue to decline. Future funding for the Ombudsman's Office looks precarious, with budget projections indicating a 1994/1995 deficit of \$235,000 followed by \$446,000 in 1995/1996.

It is too early for our initiatives to impact on our financial position. To meet the problem, we can cut staff and cut services to the public. But, when my Office is the last resort for so many people, this is hard to accept. To work within Treasury's current allocation in 1994/1995, up to five positions may need to be lost and in 1995/1996 there may need to be a decrease of up to ten positions. For the total staff of 71, clearly the future of the Office looks bleak.

Office Review

After strenuous efforts over the past three years, the adequacy of the Office's resources was examined recently by the Joint Parliamentary Committee on the Office of the Ombudsman. In addressing the Committee in December 1992, I said:

Three key changes to the Office of the Ombudsman in my term to date have been undoubtedly in order:

cont page 6

Challenge of Change *cont*

1. The setting up of the Joint Committee on the Office of the Ombudsman.

2. Complaint Handling in the Public Sector (CHIPS)

3. The Tink Committee - legislative changes to the police complaints system (effective 1 July 1993)

The fourth has not I trust yet come about, but surely is about to become manifest. That is, the loss of public credibility in the Office of the Ombudsman - and a return to the days when it was perceived as a token - "A Toothless Tiger".

The Committee's role is crucial in keeping a balance between the administration, the executive arm of government and the Ombudsman.

I do not mean the committee is an advocate of the Ombudsman, but rather it be seen as an arbitrator to determine the conflict currently apparent between the executive of the NSW Government and the Ombudsman.

The stakeholder in the dispute is the Parliament and the public. This is possibly the most important hearing the Committee is likely to have for many years. It is not just simply a review of the resources of the Ombudsman, because in assessing that the Committee needs to judge just what the Office has to do and how we are performing in the delivery of service expected by the public. The Committee's role is to help and to improve the office's function in any way appropriate.

Letters to the editor

Ombudsman office no place for politics

THE personal vindictive attack in Parliament last week (9/9) by the former chairman of the parliamentary committee of the ombudsman, John Turner, was outrageous, particularly when contrasted with the performance of his predecessor Andrew Tink.

Mr Tink's committee produced a meaningful and valuable contribution that will produce dividends for the public for years to come.

Mr Turner showed himself unable to rise above petty party politics. This is unjustified and unforgivable when dealing with the institution of the ombudsman.

My term of office concludes in 18 months, around the time the Government faces the polls for re-election. Long after I and the present Government have faded from memory, the im-

portance and significance of the Ombudsman's Office will be reinforced.

Mr Turner served his fellow committee members poorly, as he did the institution of the ombudsman, and the NSW public. His personal attack raised issues that he had the power to raise in committee and to resolve, yet he chose not to do so.

His attack discredited himself and his hardworking fellow committee members. If this committee is to continue the meaningful role as in the days of Mr Tink, party politics must of necessity be left outside the committee room and total honesty must prevail.

After all, the office of the ombudsman, as well as its leader, is a non-political office.

DAVID LANDA
NSW Ombudsman

Reckless Slander

Any hopes of the committee fulfilling its role as an independent arbiter were destroyed on the 9 September 1993, when the committee's report was handed down by Chairman John Turner.

In tabling the report, Mr Turner attacked the Office of the Ombudsman on a range of issues, none of which were examined in the report. Consequently, none of the issues covered in the funding inquiry, such as the demand driven nature of the Of-

ice's workload and the needs of the public, were dealt with in Mr Turner's address.

If Mr Turner had any shred of belief in the truth of his allegations, he was duty bound to raise them during the proceedings and to call for answers. Yet, he did not. Instead, he recklessly slandered both the Office and my reputation under the cover of Parliamentary privilege.

I have no doubt the Chairman's attack was as much a surprise to his fellow committee members as it was to the

cont page 7

Challenge of Change *cont*

Ombudsman's Office. I responded publicly on the issue and immediately wrote to the editors of the Sydney Morning Herald and the Australian.

Besides seriously damaging the reputation of this Office, Mr Turner effectively destroyed the operation of the Joint Parliamentary Committee on the Office of the Ombudsman. My confidence in its essential importance has been undermined. I do not believe it can effectively function during the remainder of my term of office.

The cost of servicing the committee, providing it with a wealth of detailed information, has been extremely high. It is hard to see how, in the future, scarce resources could be committed with any confidence to a process now so severely tainted.

Bipartisan Function

Joint Parliamentary committees concerning Ombudsmen have always been bipartisan. The rationale is, of course, that the institution of the Ombudsman is not only a valuable public asset, but an institution of the Parliament itself.

This Office is a relatively young institution, yet with its role of watchdog and investigator it is emerging as a crucial building block in an effective and accountable public sector. The Ombudsman is a truly independent quality control mechanism, not paralleled in the private sector.

This is not to say that the committee should be uncritical. Indeed if the committee were to believe in the truth of any of what Mr Turner said in the Parliament, its clear duty would be to investigate.

Interestingly, neither the Premier, the Deputy Premier nor

the Attorney-General gave any support to Mr Turner. The former Police Minister, the Honourable E P Pickering, MLC, although admitting he suffered from time to time when on the receiving end of critical reports about his department, acknowledged the efforts made in bringing about constructive change in recent years, and I thank him for his remarks in the House.

ICAC

Unfortunately, Mr Turner was not the only parliamentarian to resort to the shoot-the-messenger technique during the year.

Following a major inquiry into a police complaint by Mr L H Ainsworth (refer police chapter), the present Minister for Police, Mr Griffiths, announced in Parliament that a complaint against my office by a police officer who was named in the report had been referred to the Independent Commission Against Corruption (the ICAC).

The office was put to considerable expense to rebut what was a totally unsubstantiated attack.

Rather than have those necessarily-incurred legal costs reimbursed by the government as is commonly the case where parliamentarians and public authorities are called before the Commission, the office is left to bear a substantial proportion of the costs ourselves. My requests for reimbursement and for budget supplementation have been unsuccessful to date.

From these attacks, together with our continual underfunding, one can only conclude that the Office of the NSW Ombudsman does its job too well!

It is also disturbing that the Committee's report, by its refer-

ences to evidence given before it, gives the impression that I have resisted an external management review of his Office. The correct position, as made clear by me as long ago as July 1990 (Special Report to Parliament - Independence and Accountability of the Ombudsman), is that I was opposed to a review conducted by the Office of Public Management, a division of the Premier's Department and a public authority subject to my jurisdiction.

Comprehensive Review

On a more positive note, the resources inquiry by the Parliamentary Committee on the Ombudsman was the first comprehensive review of the Office since it was established in 1974.

One valuable aspect was the management review by the committee's consultants - KPMG Peat Marwick. Their report, produced through consultation and discussion with the Office, will form the basis of a major reorganisation for the Office.

In particular, the Peat Marwick report concluded that the Office's procedures for the handling and assessment of complaints are both efficient and consistent with legislative requirements.

Even more importantly, the consultants concluded that my argument for the demand driven nature of the Office's work is correct. Notwithstanding the detailed analysis of this issue by Peat Marwick, the committee failed to accept the consultant's conclusion. ●


DE Landa

Program Evaluation

Resources devoted to program evaluation this year primarily were taken up in examining the basic performance of the Office and its performance management system for submissions to the Joint Parliamentary Committee's inquiry into the adequacy of the funds and resources available to the Ombudsman.

Two detailed reports were presented as submissions to the Committee on 28 August 1992 and 8 December 1992 and are now part of the public record.

Management Review

As part of this inquiry, the Committee engaged KPMG Peat Marwick to conduct a comprehensive management review of the Office.

The review concentrated on complaint handling and other procedures used by the Office, its staffing arrangements and structure, the desirable performance measures the Office should use and other related matters.

As foreshadowed in last year's annual report, fundamental changes to the Ombudsman's role in investigating complaints against police were likely to necessitate a re-evaluation of the organisational structure of the Office. Work on this was delayed pending the finalisation of the management review, but has proceeded since the findings and recommendations of the review were tabled.

Complainant Expectations and Satisfaction

A comprehensive survey of complainants expectations and levels of satisfaction with service from the Ombudsman's Office was carried out during March/April 1993. Further details are given in this report.

The purpose of the survey was to acquire information on complainants reactions to existing procedures so that they might be modified where possible to ensure greater customer service and satisfaction.

Access by Aboriginals

A further evaluation of the position of investigation officer (Aboriginal complaints) was commenced. The evaluation consisted of a survey of key Aboriginal groups to obtain information on awareness and levels of satisfaction with various aspects of the Ombudsman's handling of complaints from and about Aboriginal people; together with an analysis of complaint statistics and procedures employed in the Office for handling such complaints.

Freedom of Information

An evaluation also was commenced late in the financial year of the procedures involved in processing FOI complaints. The initial part of the evaluation comprised a comparative analysis of procedures used in this Office and those used by the New Zealand Ombudsman under the Official Information Act. ●

Disputes, Complaints and Managing Better

Last year's report outlined an Office Initiative, the CHIPS (Complaint Handling in the Public Sector) program, designed to improve complaint management across the NSW public sector.

Several strategies are now completed or are well underway, including introductory seminars and guidelines and, notably, intensive training in dispute reso-

lution techniques for public sector management.

Three seminars in August and September 1992 conducted with the Office of Public Management (OPM) outlined the linkages between the government's Guarantee of Service, complaint-management, best practice in the resolution of complaints and disputes and the use of media-

tion in appropriate cases.

Guidelines

After consulting agencies involved in our original survey, the office published *Guidelines for Effective Complaint Management* to assist agencies to set up

cont page 9

Disputes, Complaints and Managing Better *cont*

or to modify complaint-handling systems. Initial distribution was at the joint seminars. Demand from NSW and other states has been strong and a second, revised edition is planned.

Standards and Reporting

Standards and common formats for annual reporting of complaints were developed by the Office in consultation with a range of agencies. A committee constituted from the Office of Public Management, Auditor-General, Treasury and the Ombudsman's Office accepted the standards and decided they could be implemented within the scope of the existing reporting requirements, by means of a joint directive of the Office of Public Management and Treasury (which has responsibility for the Annual Reports Act).

Agencies will now divide complaints into three basic categories. At one end of the range will be complaints involving allegations of criminal and/or corrupt conduct, which may have to be dealt with by the police or the ICAC.

At the other end of the spectrum will be service-delivery complaints (about a third of the complaints brought to this Office). If these are handled effectively "in-house", we can concentrate the Office's investigative expertise on the more significant matters. When resources are tight and complaints which warrant attention have to be declined, this assumes increasing importance.

In the middle, fall complaints of varying seriousness, where individual decisions will have to be made as to how the problems raised by complaints may best be dealt with.

Alternative Dispute Resolution

Of the range of alternative dispute resolution (ADR) techniques, mediation was selected as the most suitable, as anyone mastering mediation can readily use lower-level techniques in appropriate situations.

Three intensive four-day courses in mediation have been run, training ninety people from thirty-eight public-sector or related organisations. As expected, the training has drawn potential mediators and, significantly, also has attracted a high proportion of relatively senior managers. This confirms the acceptance of mediation as both a productive management strategy and a valuable managerial competency.

Realising the full potential of the Guarantee of Service will involve changes in public sector culture. While the Guarantee of Service sets goals and some objectives, to move from policy to implementation obviously needs more than just discussion.

Projects like CHIPS and the associated mediation training are concrete initiatives which support the public sector in its essential shift to a customer-focused culture.

The Role of CHIPS

All organisations get complaints (trying to avoid them by doing nothing eventually attracts complaints of inaction). The CHIPS program provides strategies for managing complaints. Instead of viewing complaints as problems, CHIPS challenges managers to view complaints as a resource provided by their customers.

Market Research

One of the best (and cheapest) forms of market research is available from the complaints made about organisations.

Complaints are commonly quite concrete and tightly-focused on specific problems. They usually avoid the "wish-lists" which may come from lobby groups or consultative councils or which may surface in orthodox market research. They are often representative - for every complaint made, there are many which go unvoiced.

Recording and Reporting

To make proper use of the resource represented by complaints, there has to be enough of a system to record, classify, aggregate and analyse, and then report in ways that will provide feedback to drive necessary change.

The Office has reviewed complaint management systems and currently is testing an interactive computer system, the cost of which may be defrayed by savings in handling both enquiries and complaints more economically. (see next article)

Achieving Savings

If complaints are a fact of life, there is still the choice of suffering from them or benefiting from them. In the private sector, there is the capacity to enhance profits; in the public sector, the capacity to enhance the organisation's public image, win public goodwill and, in times of economic stringency, save money.

An early apprehension about putting resources into com-
cont page 10

Disputes, Complaints and Managing Better *cont*

plaint-management was that this would reduce capacity to carry out core functions or that it simply couldn't be afforded. Except on the narrowest of short-term views, it cannot be not afforded.

Savings come in two basic ways. Complaints commonly highlight dysfunctions between policies and implementation. Remove these, and inefficiencies of one kind or another are eliminated. Money is saved or output goes up. Complaint-handling serves that purpose. Complaints, themselves, need to be handled effectively but they can also be handled more or less economically. In both areas ADR generally, and mediation in particular, can enhance performance.

The Role of Mediation

One of the best ways of extracting maximum benefit from complaints is an interactive approach to resolution and in that, mediation (and the lower-level approaches mediation equips people to use) offers the most effective interaction.

Too often the Office sees situations where in the relationship between the public and an agency, a contact produces a dissatisfaction, the dissatisfaction, if not handled properly, turns into a complaint and a complaint leads to an investigation, where someone (possibly everyone) loses. This costs money. It also costs goodwill.

If this process never starts, or can be stopped early, everyone benefits. This is just one way an effective in-house complaint-handling system pays its way.

While use of mediation is

common enough in the private sector, it has either not been available in the public sector or not affordable. Yet, the overwhelmingly positive response to the mediation courses shows that public sector managers are quick to see it as a valuable resource.

We saw immediate benefit in creating a pool of trained peo-

Sticking to the old ways is no longer the answer. It is not enough for an Ombudsman merely to find fault, without contributing to the improvement of the systems and the attitudes which so often produce the faults and the complaints that are received.

ple who could use mediation or lower-level resolutions "in-house" where appropriate. Being trained, they could recognise situations where mediation was not appropriate or where mediation had to be undertaken by someone from outside the organisation. That need could then be met by providing a mediator from the pool who was and would be seen to be independent, with the Ombudsman's Office operating as a resource of last resort.

The Office is well on the way to formalising such a pool under the provisional title of a Public Sector Mediation Group. Support for it has been widespread. In many cases, co-mediation, two mediators sitting together, will be desirable to pair newly-trained mediators with those having more experience, to take advantage of particular expertise, to achieve gender-balance or to balance cross-cultural needs.

Apart from practitioners, a group of this kind is attracting interest from managers who simply want to manage better, who want to know and to keep abreast of what is happening in the field and who want to be properly equipped to make necessary decisions about channelling problems into the most appropriate area for resolution.

They also want more training. From the evaluations of the most recent courses, 96 per cent of participants were interested in further training. Seventy five per cent said the course would have a substantial impact on their skills, and would thus benefit their agencies.

The Future

Sticking to the old ways is no longer the answer. It is not enough for an Ombudsman merely to find fault, without contributing to the improvement of the systems and the attitudes which so often produce the faults and the complaints that are received.

This Office is uniquely placed for an overview of complaint-handling policies and procedures of public authorities and to make constructive comparisons.

The Office thus has the capacity to move information, ideas, experience and skills between authorities, promoting a higher general standard of in-house complaint-handling by the authorities themselves, to their benefit and that of the community generally.

There is no reason why NSW should not be recognised as a leader in what is a new field for the public sector in Australia and perhaps beyond. ●

Installation of Sponsored Computer System

During the year the Office agreed to trial a specialist customer service software package developed by TARP Information Systems and distributed by Wang Australia.

From a very early stage of the CHIPS project the Ombudsman has been championing the use of complaint information as a means of measuring customer satisfaction and providing information and feedback for improving service delivery. In public talks given over this period, use had been made of customer satisfaction research by a number of bodies including the TARP Institute, a body initially set up at Harvard University that consults on solutions to needs and problems associated with providing quality service.

The role of the Ombudsman in promoting customer service and effective complaint management came to the notice of Wang Australia in 1992 and they invited the Ombudsman, among many other public sector representatives, to a luncheon in July 1992 where the guest speaker was John Goodman, the President of the TARP Institute in the USA. Later, in August, on a privately funded trip to the United States the Ombudsman observed the use of the TARP Customer Response Information System (CRIS) at the US Office of Consumer Affairs. At the time the Office as part of its CHIPS project was examining systems for the recording and reporting of complaints.

In subsequent discussions between Wang and the Office of the Ombudsman concerning the system, Wang was informed that the Office saw no prospect of being able to purchase the system despite its likely usefulness in handling the thousands of telephone enquires received each



year by the Office. Wang on the other hand saw a specific use for the software in improving communication between government agencies and their public customers in line with the Government's "Guarantee of Service" initiative. They were interested in being able to demonstrate how the software, which was originally designed for manufacturing/commercial environments, could be modified for use in a public sector environment.

Wang subsequently proposed that they develop and test an application of the CRIS system within the Office, if the Office consented to act as a reference site. The Office accepted the sponsorship on the basis that it would make the system accessible for demonstration purposes to public sector agencies exploring technological assistance for solving complaint handling problems. The Office sees value for the public sector in being able to examine an operating system for improved complaint management. As such the system provides a platform for the Office as part of its CHIPS program to expound the principles of good complaint management. Inquir-

ers are also informed about other systems known to the Office.

The sponsored installation comprises a five user PC network, the CHRIS software and twelve months maintenance. The Office has to meet maintenance costs thereafter. The application of the software is being progressively developed in house to meet the specific needs and demands of the Office of the Ombudsman's inquiries section and has provided significant capabilities and efficiencies to that section.

The sponsorship of the system has in no way imposed or implied conditions that have or are likely to limit the Office's ability to carry out its functions fully and impartially. Nor does the sponsorship involve an endorsement of Wang Australia or the particular product. The Office has agreed simply to provide objective feedback on the usefulness of the system in complaint management as it does for all the other systems currently in use in the Office subject to the convenience of the Office and the limitations on disclosure of information contained in the Ombudsman's Act. ●

Guarantee of Service

"If you have a complaint about a NSW government authority or public servant, my staff will guarantee to give it the most careful attention.

If it is something we can and should investigate, we will do this as quickly as possible, acting fairly and independently. If your complaint is justified we will recommend changes to fix the problem.

If we don't investigate your complaint, we will explain why. If we can suggest another way to solve your problem, we will tell you.

There are limits to our powers and resources, but within those limits we will do whatever we can to help you.

David Hurst.

This is the Ombudsman's promise to citizens of New South Wales which is published in the Office's brochure on the Guarantee of Service.

The brochure also briefly outlines the services available from the Ombudsman's Office, what people can expect in terms of the standards of those services, and methods of contact, including where to send suggestions and complaints about those services.

The Ombudsman is very supportive of the concept of the Guarantee and the Office has

continued to work closely with the Office of Public Management in promoting the concept, particularly those aspects that relate to dealing with customer complaints. More general details on the initiatives taken by the Office in the specific area of encouraging better complaint handling in the public sector can be found in the section on CHIPS.

The rationale of the Guarantee of Service, together with information on general associated trends in public sector reform both here and overseas, have been the subject of staff training sessions during the year.

Other initiatives such as contact names on correspondence and officers identifying themselves with callers have long been the practice of this Office.

In order to be more responsive to its customers, the Office also commissioned a survey of the expectations and levels of satisfaction of its complainants, details of which are reported elsewhere in this report.

The Office is committed to a policy of continual improvement of its practices and procedures to ensure better service and performance. ●

Customer Survey

One of the most valuable sources of feedback on the efficiency and effectiveness of any public sector authority is likely to come from regular surveys of clients. To this end the Office commissioned its first complainant survey this year.

The aim of the survey was to gain information on the expectations and levels of satisfaction of complainants with existing Office procedures so that they might be modified to ensure greater customer service and client satisfaction.

Methodology

AGB McNair conducted the survey. A stratified sample of complainants whose complaints were finalised during the 1992 calendar year was designed to represent different complaint groups (police complaints and other complaints) and types of service or response offered by the Ombudsman (assessment and decline at the outset, preliminary enquires, conciliations and formal investigations).

A four-page self completion questionnaire was mailed to 1783 complainants representing approximately 31 per cent of the total complaint population. The response rate was a reliable 34 per cent.

Based on the established criteria people use to judge quality of service, the questionnaire included information covering five broad areas: tangibles (communications); reliability (and expectations); responsiveness (timeliness and service); assurance (satisfaction and understanding with determination); and empathy (and attention given to their complaint). Opportunity was also given for complainants to give general advice or suggestions about the way the Office could improve its service to the public.

The responding sample had the following characteristics:

Age: six per cent under 24, 29 per cent 25-39 years, 35 per cent 40-54 years, 28 per cent 55+

Gender: 64 per cent male, 32 per cent female, four per cent not stated

Language spoken: English 84 per cent, other 14 per cent, not stated two per cent

Location: Sydney metropolitan 51 per cent, country NSW 42 per cent, interstate four per cent

Major Findings in Brief

Most people had sourced the Ombudsman via the media (27 per cent) or through friends/relatives (27 per cent) and 70 per cent of complainants reported locating the Ombudsman easily.

Role

Perceptions of the Ombudsman's role were basically accurate. The main roles expected of the Ombudsman was as an investigator, independent assessor and the last resort to get justice.

Complainants from non-English speaking backgrounds (NESB) generally saw the Ombudsman as someone to argue the case for themselves (46 per cent) compared with only 22 per cent among English speaking complainants.

Correspondence

Nine out of ten complainants reported finding the Ombudsman's correspondence easy to understand, only 10 per cent felt it was not. This percentage was predictably higher among the NESB complainants (24 per cent).

Time

Most complainants expected their matters to be finalised within two months (59 per cent), 18 per cent expected three months and only four per cent expected it to take over six months. Forty nine per cent of complainants said it actually took less than two months to finalise their matters. For nine per cent it took within three months and 13 per cent from three - six months. Fourteen per cent had matters that took longer than six months to finalise.

Most initial assessment only and preliminary enquiry matters were finalised within the customers expectations, while most matters the subject of formal investigation took longer than expected.

Three quarters of all complainants felt the Ombudsman initially responded quickly enough to their complaint. This was consistent across all types of complaints.

One third of complainants who were very dissatisfied with their outcome/finding reported the initial response was not quick

cont page 14

Customer Survey *cont*

enough. Generally, two thirds of all complainants felt the Ombudsman took no longer than necessary to deal with their complaints. Twenty three per cent felt he did take longer than necessary and around 40 per cent of that group were involved in police preliminary enquiries or formal investigations where the length of time taken is not controllable by the Ombudsman.

Staff Contact

People who had more complex matters leading to formal investigations expected to have extensive contact with staff handling their cases. Generally 61 per cent of complainants expected only a minimal level of personal contact from Ombudsman staff. Sixty three per cent of respondents reported that staff were courteous and polite, only six per cent felt they were not. Over half of complainants felt the Ombudsman's staff were helpful, 22 per cent felt they were not and 27 per cent could not say. Those people whose complaints were declined at the outset understandably were the least likely group to feel that staff were helpful or polite.

Complaint Management

Just over half of the respondents to the questionnaire felt the Ombudsman met their expectations in handling the complaint, but 42 per cent felt their expectations were not met. Failure to meet expectations was higher than average among the older complainants, men over women, those whose complaints were declined at the outset, NESB complainants and those very dissatisfied with the outcome.

Most complainants (68 per cent) expected either a formal report based on preliminary enquiries or a detailed investigation from their complaint, with only 21 per cent expecting simple written correspondence.

Generally those who were satisfied with their outcome or had the matter resolved in their favour did not have high or lofty expectations of how their complaint was to be handled. Part of the reason for some clients' dissatisfaction with their outcome appears to be related to not being regularly informed of progress. Thirty three per cent of the respondents felt this was the case.

Perceptions of the Ombudsman's role were basically accurate. The main roles expected of the Ombudsman was as an investigator, independent assessor and the last resort to get justice.

Two thirds of all complainants (66 per cent) accepted the reasons for the Ombudsman's final decision were clearly explained, but 26 per cent felt they were not.

Sixty two per cent of the respondents saw the outcome of their complaint as no resolution achieved. Twenty one per cent saw it as partly or substantially resolved in their favour, 20 per cent saw the outcome as providing advice or useful information, while only 18 per cent saw it as resolved not at all in their favour.

The reports of no resolution achieved appeared to be associated largely with complaints that received initial assessment but were declined without action, while the complaints resolved positively related mainly to police conciliations (51 per cent) and formal investigations (to a lesser degree).

Just over half of all complainants (52 per cent) were dissatisfied with the finding or decision made about their complaints and slightly more were dissatisfied with the overall outcome (58 per cent). The satisfied customers were 26 per cent and 21 per cent respectively.

Police Complaints

Among all groups, those who made police complaints which were conciliated were generally satisfied with the finding or decision (65 per cent), with only 15 per cent dissatisfied. Police complaints that were formally investigated produced a dissatisfaction rate of 42 per cent, with only 33 per cent satisfied with the finding or decision. Generally those people whose complaints were declined at the outset reported dissatisfaction with the decision. Similar findings were reported about satisfaction levels with the overall outcome of their complaints.

The above findings give only a brief summary of the results of the survey and a good deal of work needs to be undertaken to tease out the implications of the findings for modifying the practices and procedures of the Office where possible to increase satisfaction levels. As the report on the raw results of the survey was only received in June, this task will be a priority for the 1993/94 year. ●

Consumer Satisfaction

An effective complaints system is an essential part of the provision of quality public sector service. Studying the complaints we receive measures customer and client satisfaction and provides information for improving our service. The customer survey, outlined on the previous pages, is of course another way of measuring effectiveness and gauging what the public really wants and expects from the office.

Complaints

From time to time letters are received which complain specifically about the conduct of an officer or the policies of the Office.

Some are very reasonable, and rightly raise concerns about the limited power of the Ombudsman. This was particularly so under the Police Regulation (Regulation and Amendment) Act which operated until the end of the financial year. Complaints were received that the Ombuds-

man was in effect a toothless tiger, "well meaning but ineffective" in the words of one complainant; or, in the words of another:

Little wonder that your office is held in such scant regard and no wonder at all that the Police Force is regarded with open contempt. Despite all the legislative paraphernalia they still get to investigate themselves.

Complaints Received

Of 36 complaints received, the outcome was as follows:

Thirteen were complaints about a newspaper report that the Ombudsman had recommended compensation to Angus Rigg (typically: "I am writing to object strongly to the recommendation that Angus Rigg be paid compensation. He deserves everything he got"). As no such recommendation had been made, complainants were clearly advised of this.

real and important to those immediately affected, can seldom be investigated as the cost of sending investigation officers to site inspections is prohibitive, and the wider public interest in terms of maladministration is limited.

Not surprisingly, the aggrieved rural citizen takes a dim view of such a resource based decision.

To ensure requests for review are treated fairly, and to ensure that the request has not identified a genuine deficiency in the original correspondence determining the complaint, all such requests are reviewed by the Principal Investigation Officer.

Correspondence is then prepared by the most senior available officer. In many cases, the matter is reviewed by the Ombudsman himself.

Fifty two per cent of matters are reviewed within seven days, and 74 per cent of matters are reviewed within 28 days. A percentage of matters require additional preliminary inquiries, interviews or telephone calls before the review officer is satisfied that the matter has been correctly determined - two per cent in the police area and 17 per cent in the general area. In nine cases further inquiries resulted in the resolution of the complaint. In only one case was a declined matter turned into an investigation after a review.

This is a very expensive and time consuming process, but requests for review need to be taken seriously, as a resource for the Office to monitor the quality of its decisions.

The Ombudsman's internal complaints system records three distinct types of responses:

- 1 requests for review of decisions by complainants;
- 2 outright complaints, ie, where a sense of grievance about the way in which a matter was handled, our policies, procedures or quality of service is clearly articulated; and
- 3 suggestions and appreciations.

Requests for Review

Over the past year, 5 754 complaints were finalised and 378 requests for review of the decision were received, an effective review rate of 6.6 per cent. In the police area the rate of review per determination is 4.7 per cent, while in the smaller general area the rate is 10 per cent. Almost half the requests for review are in the local government area, meaning that complainants queried 15 per cent of all determinations made in the local government area.

Given the Office's very high complaint decline rate, it is not surprising that many complainants are dissatisfied with a decision that their case should not be investigated.

Local government complaints, for example, often come from small country councils and may concern a dispute over an access road or a drain which only affect the lives of one or two citizens. Such complaints, very

Customer Satisfaction *cont*

Six were complaints about referring the complaint to the public authority for comment/internal investigation; explanation of procedures to complainant.

Four were complaints about insufficient rigour in investigation - taking the word of the public authority at face value, allowing public authorities excessive period to respond and prepare a case; all reviewed by Ombudsman, explanation re procedural fairness, etc.

Four were complaints of bias/lack of procedural fairness (from public authorities); all reviewed by senior officer and not sustained; full explanation provided.

Three complaints of brusqueness/rudeness on telephone; investigated by a senior officer and found not sustained.

Three complaints of excessive delay; one found sustained and officer counselled; one officer already disciplined, apology to complainant; one still to be determined.

Two complaints of unanswered correspondence; file checked by senior officer; letters never received.

One complaint of inadequate investigation: three months further investigation undertaken by Principal Investigation Officer and investigation officer (Aboriginal); new determination issued to all parties.

Most frequently complaints about lack of procedural fairness come from public authorities the subject of complaint. While any such complaints are treated seriously, and in many cases additional opportunities for comment are extended, it is often noteworthy that public authorities are zealous in seeking for themselves rights which they have not granted the complainants.

While all complaints are given serious attention by senior staff, many such complaints come from distressed citizens at the end of a long line of bureaucratic knockbacks who simply need to vent their distress at an uncaring system.

One man's complaint was that he had no friends at school, that his passport photographs had turned out badly, that his mother had had him committed and that the Prime Minister refused to answer his letters. In response to a sympathetic letter explaining that the Ombudsman could do nothing about his complaint, he responded "Your platitudinous letter disgusted me..if this happened to Paul Keating's son would you act differently".

Appreciations

Not all the news is bad, however. Many more complainants write in to express their thanks than to complain. Often, even if a matter has not been resolved, complainants write in to offer thanks for the information that was provided or the promptness of the response.

- ▶ *Thank you for all your efforts on our behalf, the report you produced has caused some major problems to be sorted out. Good luck for the coming year, and we will keep you up to date with developments in community housing.*
- ▶ *Thank you for taking the time and trouble to act on what is probably to you a very small matter...whilst the police named in our complaint said making a complaint to the Office of the Ombudsman would be a waste of time we feel ..that the time has been*

well invested because it has registered..a justifiable complaint against the conduct of police..once again we thank you for your diligent efforts and appreciate and support the purpose of your office.

- ▶ *This is the first time I have had the occasion to refer to your office and I have been delighted not only with the result but with the speed with which you took action.*
- ▶ *I am very sorry I have not wrote before but I have been away. We would like to thank you very much. My boys have had no more trouble with the police since I wrote to you. It is good to know that there is some one you can turn to when there is trouble.*
- ▶ *I would like to take this opportunity of thanking you for the great deal of work you and your staff, particularly Ms A Radford, have put into this investigation. It is gratifying to know that it is still possible to change things that need to be changed.*
- ▶ *I feel sure that without your help I would not have received any compensation at all so please Ms Flanagan keep up the good work and I wish you all the very very best for this coming year. PS the extra (r)s is the sign for riches and could not be wished more upon a person.*
- ▶ *We were surprised to hear from your office. One good thing comes out of this unpleasant episode is this: our realisation that there*

cont page 17

Legal Changes

During the year the following legislative amendments were introduced:

- ▶ Police Service (Complaints, Disciplines and Appeals) Amendment Act 1993.

Details of the effect of this legislation are discussed in the Police chapter of this Report.

- ▶ Community Services (Complaints, Appeals and Monitoring) Act 1993.

This legislation is discussed under the topic **Legislation by Stealth Robs Ombudsman of Jurisdiction** in the Public Authorities chapter of this Report.

- ▶ Homefund Select Committee (Special Provisions) Act 1993.

See note on Homefund in this report in chapter 4.

- ▶ Ombudsman (Amendment) Act 1993

This legislation was introduced as a result of the Memorandum of Understanding between the Government and Independent Members of the Legislative Assembly and following recommendations by the Ombudsman.

The most important reforms established by the Act are:

- ▶ to enable the Ombudsman to make his Annual Re-

port and Special Reports direct to the Presiding Officer's of the Parliament.

- ▶ to give the Ombudsman greater access to documents held by public authorities previously subject to claims of privilege (other than legal professional privilege).
- ▶ to give the Ombudsman access to documents held by public authorities which have been exempted on the grounds of legal professional privilege, when reviewing a determination to refuse access under the FOI Act. ●

Customer Satisfaction *cont*

is another source of appeal. The Australian government is to be congratulated for making such mechanisms available to the public (from a Malaysian national complaining about police).

- ▶ *I do trust you, I trust your judgement I watched you on television when you were accused of certain doings, certain connections...I knew the inquiry and investigation with the ICAC would not bring up anything against you, this is just the work of your enemies who are afraid of you, God bless you.*
- ▶ *Thank you for your efforts on behalf of the local aboriginal community. I hope this matter can now be*

resolved with the cooperation of the NSW Aboriginal Land Council.

- ▶ *I appreciate the quick response, it is pleasing to see a Department which is prepared to act in an efficient manner to a customers request (a declined council matter).*
- ▶ *Your findings provided the catalyst for a breakthrough in the ongoing difficulties between the department and myself..without the assistance and prompt response to this matter by your office none of this would have been possible...I thank you...for your excellent professionalism.*

One letter advising a successful resolution of a prisoner's problem provoked a rather un-

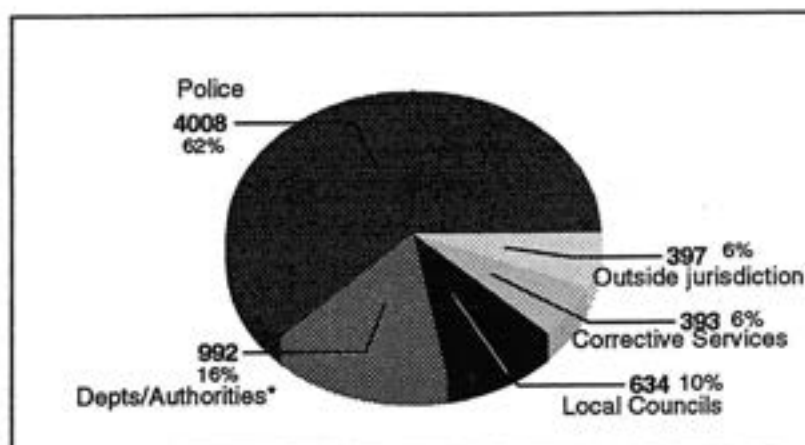
expected response, involving particularly pungent abuse.

After the file was reviewed, and a letter explaining the resolution sent by a senior officer, the following letter was received:

- ▶ *I apologise this has taken me so long but the truth is I've felt quite embarrassed and haven't known where to start...I write now as I feel I was very quick to make a complaint when I felt I was being unfairly treated and think it only fair that I admit that my judgement of you and in particular Mr Milne's efficiency over this matter was wrong. I commend you..for acting as quickly, efficiently and as diplomatically as you have..I was not kind in my last letter and an apology is extended. ●*

Corporate Performance

Total Complaints Received
1992 - 1993



Total complaints received 6424

*Includes complaints under the Freedom of Information Act

Telephone Enquiries and Interviews

	Enquiry Staff	Receptionist	Total	% change from 1991/92
Telephone enquiries	8 506	3 565	12 071	-14%
Interviews with prospective complainants	486	-	486	-35%

Formal Reports

Ombudsman Act

	S 26(1) Conduct (Final)	No Adverse Finding
Departments and authorities	26	2
Local government/councils	8	-
Prisons	9	-
Total	43	2

Police Regulation (Allegations of Misconduct) Act

	Sustained		Not Sustained	
	Reinvestigated	Not Reinvestigated	Reinvestigated	Not Reinvestigated
Police	4	178	-	431

Corporate Performance

The mission of the Office of the Ombudsman is to safeguard the public interest by

- ▶ providing independent redress of complaints
- ▶ promoting better complaint handling and responsiveness by public authorities.

It strives to fulfil this mission through various strategies linked to eight corporate goals. These goals evolved from the Office's initial strategic plan produced in 1992. They are currently set out in the Corporate Plan 1993-1995 which was developed mid-financial year and published in March 1993. The following tables of performance information draws on performance indicators from both plans.

Complaint Assessment

Goal To give priority to those complaints which identify structural and procedural deficiencies in NSW public administration, and individual cases of serious abuse of powers especially where there are no alternative and satisfactory means of redress.	
Performance Criteria	Outcome
Publication of complaint assessment/management policy	Policy completed by target date
Publication of key issues and priorities to staff	Key issues and priorities identified and communicated to staff by target date
Percentage of investigation staff with identified research/interest area	Target of 90% of investigation staff reached by August 1992
Percentage increase in Ombudsman Act investigations	3% drop in number of formal investigations - target not achieved
Percentage of complaints assessed within 24 hours of receipt	59% (74% assessed within 48 hours)
Percentage of complaints actioned within seven days of allocation	60%
Percentage of Ombudsman Act preliminary enquiries completed within four months	86.7% (30.6% in less than two weeks; 55.4% in less than one month; 72.3% in less than two months; 81.3% in less than three months)
Percentage of police preliminary enquiries actioned within one month's receipt of police report	87.5%
Percentage of complaints reopened after review request	Additional preliminary enquiries made in 11% of review cases and original decision affirmed in all but 0.5% of cases

Complaint Resolution

Goal: To resolve complaints about defective public administration	
Performance Criteria	Outcome
Percentage increase in complaints resolved or conciliated	21%
Percentage of reduction in average turnaround time for Ombudsman Act preliminary enquiries	30%
Percentage of investigation officers receiving professional mediation training	20% of investigative staff trained by June 1993
Percentage of respondents to complainant satisfaction survey reporting satisfied or highly satisfied with outcome	21% satisfied with overall outcome - ranges significantly depending on whether complaint declined (14%), conciliated (53%) or investigated (54% for Ombudsman investigation but only 16% for police investigation)

Investigations

Goal To promote practical reforms in public administration through recommendations arising from effective and resource-efficient investigations employing fair procedures.	
Performance Criteria	Outcome
Percentage of recommendations in Ombudsman Act reports that involve changes to law, policy or procedures	72%
Percentage of recommendations made in Ombudsman Act reports implemented	93%
Percentage of reduction in average turnaround time for investigations under Ombudsman Act	14%
Percentage of complainants who express confidence in manner their complaints handled and competence of staff	41% complainants generally confident about handling of complaints and 44% confident about knowledge and expertise of staff

Complaint Handling in the Public Sector

Goal Promote the development of effective complaint handling in public authorities to ensure accountability and customer satisfaction.	
Performance Criteria	Outcome
Number of public sector officers completing Ombudsman mediation training courses	52
Publication of CHIPS guidelines for complaint management	Published by target date
Seminars on complaint handling held	Two seminars conducted by target date in conjunction with OPM
Percentage of complaints declined at outset referred for internal complaint resolution	16%

Corporate Services

Goal To provide quality management support to enhance service delivery and provide effective accountability mechanisms to meet the Ombudsman's statutory obligations and corporate objectives	
Performance Criteria	Outcome
Implementation of performance management systems	SES performance system in place. Staff performance appraisal system drafted and being tested. Code of conduct issued by target date
Revised corporate strategy	Corporate plan for 1993/95 financial years developed by target date
Guarantee of Service	Issued by target date
Customer survey	Complainant survey completed June 1993
Integrated strategic management cycle documented and implemented	Management cycle developed by target date

Financial Services

Goal To make the most effective use of financial and physical resources through financial planning and control	
Performance Criteria	Outcome
Review of financial management reports	Completed by target date and new formats implemented

Financial Services continued

Costing exercise of 500 complaints	Substantially completed by target date
Costing of major investigations	Costing of Rigg and Homefund "major" investigations completed
Document accounting policies and revise manuals	Not completed by target date - in train
Trial job cost	Deferred pending restructure
Issue of unqualified certificate by Auditor General	Achieved
Establishment and implementation of internal audit plan	Plan developed by target date and implemented
Percentage of accounts processed on time	Target of 90% achieved
Percentage of financial returns and reports to Treasury made on time	100% target achieved

Human resources

Goal To ensure productivity, staff development and a creative, safe and satisfying work environment	
Performance Criteria	Outcome
Percentage of staff who have attended at least three training courses per year	100% target achieved
Expenditure on staff development as percentage of total salaries expenditure	2.4%
Percentage of staff turnover	26% - well above expectations
Percentage of respondents to organisational climate survey who report having clear idea of their job goals	89%
Review of delegations	All administrative and investigative delegations reviewed by target date and changes made

Public image

Goal To increase community awareness of the role of the Ombudsman and promote access to the Office for disadvantaged groups	
Performance Criteria	Outcome
Number of visits to adult and juvenile correction centres	41 visits completed - 36% increase
Public awareness visits to country centres	16 visits completed - no visits made 91/92
Outreach visits by Investigation Officer (Aboriginal Complaints)	Target achieved
Issue of updated multi-lingual pamphlets	Five new pamphlets issued by June 1993 - translations in progress
Number of special reports to Parliament	Six - 50% above target
Percentage of respondents to complainant survey reporting accurate perception of Ombudsman's role	Majority reported accurate perception
Percentage increase in complaints lodged by Aboriginal people	40% increase in non-police complaints and 34% increase in police complaints
Publication of resource kit	Legal studies curriculum resource kit developed and distributed to all NSW high schools by target date

ICAC Investigation

On the afternoon of 10 May 1993 the Office was besieged with calls from journalists asking the Ombudsman to respond to an announcement by the Minister for Police, the Hon Terry Griffiths, that a complaint about the Ombudsman had been referred to the Independent Commission Against Corruption.

The complaint was made by a police officer the subject of an adverse finding in a report by the Deputy Ombudsman Mr Pinnock (for further details, refer to the article in the police chapter, *The Ainsworth Investigation*, in this report).

In speaking in the Parliament on this issue, Mr Griffiths referred to the former professional relationship between the Ombudsman and the complainant and said:

...the Ombudsman would welcome this opportunity to clear the air once and for all...

In his subsequent report, Commissioner Temby stated that this statement was:

...calculated, at least in the sense of likely, to cast doubt upon the integrity of not just Mr Landa, but also Mr Pinnock, staff of the Office of the Ombudsman, and the Pinnock Report.

The Commissioner, recognising that such doubts should be confirmed or dispelled without undue delay, immediately commenced a formal investigation, partly at the request of the Ombudsman, on 12 May 1993.

The ICAC terms of reference were whether, in the course



of the investigation of Mr Ainsworth's complaints,

...the honest and impartial performance of the functions of the Deputy Ombudsman, Mr John Pinnock, or any other officer of the Ombudsman, was affected, or attempted to be affected, by Mr David Landa, the Ombudsman.

In the course of the investigation the ICAC examined the Office's files on the matter and heard evidence from the police officer, Detective Sergeant Robert Clark, the Ombudsman, Deputy Ombudsman and Assistant Ombudsman Greg Andrews (who had conducted the investigation) during two days of hearings.

Mr Temby reported on 16 June 1993 that his investigation:

...revealed no impropriety of any sort in the processes which led to the preparation of the Pinnock report on the parts of Mr Landa, Mr Pinnock, or other staff of the Office of the Ombudsman.

In fact, even Counsel for Detective Sergeant Clark conceded during the hearing that:

...there's no suggestion whatsoever, nor could there be on the evidence, of dishonesty on the part of anyone involved, whether the Ombudsman, Mr Pinnock, Mr Andrews or anyone.

In his evidence, Detective Sergeant Clark said he had no personal knowledge of any failure to exercise functions in an honest and impartial fashion or any attempt by the Ombudsman to lean on anybody in the Office concerned with the investigation.

In the light of this evidence and the attestation by Sergeant Clark's Counsel, it was understandable that the Ombudsman and his officers were somewhat bewildered that such a baseless complaint could embroil the Office in so much wasted time, cost and potential damage to the reputation of the Office and its office holders.

The Office is obviously pleased that the ICAC investigation has vindicated the integrity of the Office in its handling of the investigation of the Ainsworth complaints.

At the time of writing this report, the Office of the Ombudsman has paid \$31,983 in legal fees related to the proceedings before the ICAC.

The Ombudsman has sought the Government's assistance to meet these legal costs. While it is hoped the costs will be recouped from the Treasury, current indications are that the Ombudsman's budget will be further severely depleted to cover these legal costs. ●

Recommendations of the Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody made a series of recommendations, with numbers 176 and 226 having particular relevance to the Ombudsman's Office.

Prisons

Recommendation 176 is that each prison within a state or territory establish a complaint officer. This officer's responsibilities include:

- ▶ attending the prison regularly to receive complaints
- ▶ requiring any person to make enquiries and report to the officer
- ▶ attempting to settle a complaint
- ▶ reporting to the complainant, the senior officer of the prison and the appointing Minister the terms of the complaint.

The Assistant Ombudsman (Local Government and Prisons) and the Ombudsman have re-

viewed implementation of recommendation 176 and are satisfied that there is substantial implementation.

Police

Recommendation 226 is that in all jurisdictions, the processes for dealing with complaints against police need to be urgently reviewed.

The present system only satisfies a small number of the criteria on which the Royal Commission recommends the legislation should be based. The most significant difference between the present system and the commission's recommendation is that complaints are substantially investigated by police.

The newly proclaimed Police Service Act gives the Ombudsman a power of direct independent investigation and the power to be present as an observer during internal police investigations. While these powers may restore some credibility

to the system for Aboriginal complaints, there has been no funding provided for the implementation of these new powers and, effectively, the Office's ability to directly investigate complaints is limited.

The Ombudsman wrote to Mr H Eagleton, Assistant Director-General of the Premier's Department, on 11 January 1993 advising that on balance, he could not agree that recommendation 226 had been implemented. No response was received until August 1993 when a draft of a proposed report to the Premier on the implementation of recommendations of the Royal Commission into Aboriginal Deaths in Custody was delivered.

The proposed report simply noted recommendation 226 as "implemented". The obvious question is whether the Royal Commission's recommendations are being implemented in reality or merely in the pages of government reports. ●

Public Awareness

In 1991-92, for reasons outlined in the last annual report, no public awareness trips of any kind were undertaken, even the comparatively inexpensive Newcastle and Wollongong trips.

The concern was not so much with the cost of travel, as the inability of the office to deal with the extra work generated, especially in view of the opportu-

nity cost of having experienced staff out "on the road" for up to a week, instead of processing files.

In late 1992 two low cost outreach campaigns were undertaken, in conjunction with other agencies.

Between November and December 1992, at the invitation and at the cost of the Department of Community Service

(DOCS), staff from the Office, including the Ombudsman himself, participated in forums organised by DOCS in Liverpool, Grafton, Narrandera, Parramatta, Armidale, Chatswood, Newcastle, Narooma and Orange.

The purpose of the meetings was to discuss proposals for a new complaints and ap-

cont page 24

Public Awareness *cont*

peals mechanism for DOCS, with a particular focus on issues arising from the new disability services legislation.

The forums were not designed in such a way that written complaints could be taken, but the opportunity was taken to inform those attending about the role and functions of the Office.

Several complaints have been received from disability services providers and persons with a disability since the seminars, including peak disability bodies.

Westfield

From 23-28 November 1992, in conjunction with the Commonwealth Ombudsman, staff were available at Westfield Shopping Square for a six day campaign.

The Commonwealth Ombudsman's Office paid for all costs, including publicity, translation of material into community languages and so on.

Twenty three written complaints were taken and many other people referred to other agencies and advised about the role and functions of the Office.

Public Awareness Campaign - 1993

In early February this year, the Office's management committee decided to launch a formal public awareness campaign into country areas, allied to a program of visits to country gaols, some of which had not been visited for over 18 months.

The chief aim of such visits was defined as an educational role. Numbers of complaints are inevitably taken on such visits, but the main aim is to educate local authorities, community workers and the public generally about the role of the Office and the service it provides.

In this sense, evaluation of the success of a public awareness campaign is defined in the short term by such factors as the amount of public coverage in the

media, and in the long term by the number of worthwhile and jurisdictional complaints received or referred to the Office.

As well as the country visits, regular visits have been recommenced to Newcastle and Wollongong.

These visits have been well attended by members of the public seeking advice. Up until 30 June 1993, a total of 85 people had been seen at the monthly Newcastle visits, and 22 at the bi-monthly Wollongong visits.

The great preponderance of complaints and queries concern local government, and many of these can be resolved on the spot by a telephone call to council.

Frequently, complaints concern matters that are not within the jurisdiction of the Ombudsman - court decisions, the amount of a Telecom account, the conduct of a neighbour, etc. Nevertheless, experienced staff are usually able to offer some advice or refer the complainant appropriately. ●

Aboriginal Outreach

The investigation officer (Aboriginal) within the Office performs investigation and preliminary inquiry functions, with a specific focus on complaints involving Aboriginal people.

A higher proportion of her time, however, is spent on outreach and public awareness functions than is the case with other investigation staff.

The Ombudsman views it as very important for this investigation officer to be especially

responsive to the needs of Aboriginal prisoners and juveniles in juvenile justice centres. To this end, the Aboriginal officer attended a number of these institutions during the year, and a more comprehensive program of visits is planned for the next financial year.

The investigation officer (Aboriginal) also participated in a number of interdepartmental committees and working parties, particularly with the Police Service.

Police

Last year, she participated in a visit sponsored by the NSW Police Service to the Northern Territory, focussing on the Night Patrol Program. This program incorporates Aboriginal mechanisms for social control, whereby Aboriginal people take a key role controlling antisocial behaviour and minor criminal infractions in their own communities.

The visit was part of the NSW Police/Aboriginal Working

cont page 25

Aboriginal Outreach *cont*

party examining strategies to encourage improved relations. The investigation officer (Aboriginal) brought to the meetings the distinctive perspective of a young, female Aboriginal civilian - a perspective otherwise lacking.

At the time of writing it was unclear what recommendations would flow from the working party, which has not been convened since October 1992.

The investigation officer (Aboriginal) participated in two committees with police developing training videos to sensitise police to Aboriginal issues. She also participated in the Office of Juvenile Justice Advisory Council working party on Aboriginal perspectives.

In February 1993 the Office of Aboriginal Affairs convened a committee of Aboriginal people to coordinate the NSW government's approach to Aboriginal issues. This committee, however, is apparently now defunct.

Taree

On February 15 and 16 1993, a community awareness visit was made to the Taree/Purfleet Aboriginal community by the Ombudsman and the investigation officer (Aboriginal).

The Taree Aboriginal community's major allegations were the treatment they received from local police, such as overzealous patrolling of the area, the harassment of Aboriginal youth and the conditions of the cells at Taree Police Station.

All these issues were raised at a meeting with the Chief Inspector who is based at Port



David Landa, NSW Ombudsman 1993

Macquarie and a number of undertakings made. The matter of the cells has been resolved with new cells being built that would conform to the Royal Commission recommendations.

The other matter raised was in regard to the collection of garbage from the Purfleet community. This had not occurred for over twelve months, with the Aboriginal people having to remove the garbage themselves, although the local council rates had been paid.

The Ombudsman met with the town clerk who immediately made inquiries with the contractor, it was discovered that the garbage had not been collected and the contractor was severely reprimanded.

Women and Legal Issues

The final public outreach event for the year was the participation of the investigation of-

icer (Aboriginal) in the organisation of the Aboriginal Women's Legal Issues Conference held on the 19 June 1993 at Parramatta Town Hall. There was a good response to the conference with about 100 women, both Aboriginal and non-Aboriginal, attending. These women represented both government and non-government agencies from across the State.

The conference provided a forum for Aboriginal women and those non-Aboriginal women who work with Aboriginal women to voice their concerns and frustrations and, together to develop recommendations and strategies.

A major concern raised was that in most instances Aboriginal women are unable to obtain legal advice and representation. Women spoke about the difficulties they faced in accessing Aboriginal Legal Services as victims of violence.

cont page 26

Publications

A series of Fact Sheets on the Office of the NSW Ombudsman was introduced this year to replace the existing pamphlets, which had not been updated for five years.

Titles currently available are:

- ▶ General - an overview of the Office
- ▶ Police
- ▶ Local Government
- ▶ Prisons
- ▶ Guarantee of Service

Other subjects to be covered in the series include the History of the Ombudsman, Understanding the Public Sector and the Art of Complaining, Aboriginal Access, Youth and Freedom of Information.

Both the Police and the General brochure will be translated into the major community languages.

Under the new Police Service (Complaints, Discipline and Appeals) Act, 1993, the Office is required to provide both the Police Service and the Department of Courts Administration with a supply of the police pamphlets for distribution to all police stations and courts.

Information on the Ombudsman and the police complaints system should now be available to the public from all police stations and district courts.

The Office also published *Guidelines for Effective Complaint Management*, a booklet mainly designed for public sector managers and originally distributed at our seminars on complaint handling.

Six reports to Parliament also were published this year (refer to table).

Pricing Policy

In an attempt to recover some of the costs involved in publishing our reports, the Office reluctantly introduced a pricing policy for publications this year. Basically, unless directly involved in an investigation, interested members of the public are charged \$10 for a copy of a report. The pricing policy also covers our annual reports.

Copies of reports are lodged with all major libraries and all Members of Parliament are issued a summary of the reports.

An order form for our publications is included at the back of this report. ●

Outreach *cont*

Aboriginal Legal Services mainly represent people who have been charged with a criminal offence and as such, are defendant focussed. Ethically, no legal service can represent the victim if they are acting for the defendant in the case.

The major recommendation from the conference is that Aboriginal women need a legal service, which can cater specifically for the needs of Aboriginal women, especially as victims of violence.

Aboriginal women asked for a service which can provide advice, referral and representation.

A document currently is being produced which will list all the issues and recommendations arising out of the conference. This document will then be for-

Reports to Parliament

29.9.92	Complaints by Mrs Carolyn Rigg about the conduct of the NSW Police Service
9.11.92	Report on Toomelah
25.1.93	Inquiry into the circumstances surrounding the injuries suffered by Angus Rigg in police custody and into the subsequent police investigations
25.2.93	Ombudsman's Report on the Local Government and Community Housing Program
9.3.93	Ombudsman's Report on the State Electoral Office
25.6.93	Ombudsman's Report on Allegations of Police Bias Against Asian Students.

warded to all relevant government and non-government agencies for comment.

As 1993 is the Year of Indigenous People, all Government

agencies involved in service delivery to Aboriginal people should look at whether or not their approach and the type of service delivery is appropriate and practical for Aboriginal people. ●

Speaking Engagements

Speaker: David Landa

Date	Venue	Topic
17 August 1992	IIR Conference - Sebel Town House	Customer Satisfaction - Public Sector
27 August 1992	IIR Conference Savoy Hotel - Melbourne	Customer Satisfaction - Public Sector
28 August 1992	Cabramatta Community Centre	Role of the Ombudsman - Police Complaints
18 November 1992	ACISA Annual Conference - Sydney University	Role of the Ombudsman
2 December 1992	SES Orientation Program - Premier's Department	Role of the Ombudsman
9 December 1992	SES Orientation Program - Premier's Department	Role of the Ombudsman
28 January 1993	ACDC Police Seminar	Police Complaints
11 March 1993	Address Clerks of the Local Courts - YWCA Conference Centre	Role of the Ombudsman
19 April 1993	Address Senior Executive Council - Department of Health - Manly Pacific	Mediation
29 April 1993	University of NSW - Law Society	Role of the Ombudsman
5 May 1993	Opera House Management Board	CHIPS and Mediation
4 June 1993	Department of Health, Police and Corrective Services	Seminar on "Suicide and Self Harm in Custody"
7 June 1993	University of NSW - Law School	Role of the Ombudsman

Speaker: Greg Andrews

Date	Venue	Topic
July 1992	RIPPA Conference - Canberra	Consumer complaints and the determination of Customer Satisfaction
September 1992	Senior Manager's Workshop - National Parks and Wildlife Service - Sydney	Customer complaints and Client Satisfaction
February 1993	Public Sector Management Course - Sydney	Bringing a Customer focus into the public sector
May 1993	IIR Conference on Total Quality Service in the Public Sector	Monitoring Service Quality in the Public Sector

Reaching Youth

The major contact the Ombudsman Office has with youth is through visits to juvenile detention centres.

Spreading the word to youth at large about the Ombudsman's role and availability, calls for different strategies.

The major initiative taken by the Office this financial year was the sponsoring of a special edition of the national *Legal Eagle* on the role of the Ombudsman.

Published by the Law Society of NSW with the support of the Law Foundation, *Legal Eagle* is a curriculum support publication for legal studies, the fastest growing secondary school subject in NSW.

The Ombudsman is already mentioned in the syllabus under the section "*Individual and State*", but also is relevant to other areas of study relating to legal controls on state power and issues of law and justice.

With the provision of the detailed curriculum support edition on the Ombudsman, the chances that students would choose the topic of the Ombudsman for specialist study is greatly increased.

Copies of the special edition were sent to all national subscribers to *Legal Eagle* as well as every high school in NSW. ●

Significant Office Committees

During the reporting year, a PSA/Management Consultative Committee and Information Processing Strategic Plan Committee were established. There were no significant committees abolished during the year.

Management Committee

Membership:

David Landa - Ombudsman

John Pinnock - Deputy Ombudsman

Greg Andrews - Assistant Ombudsman (Prisons and Local Government)

Kieran Pehm - Assistant Ombudsman (Police)

Jennifer Mason - Principal Investigation Officer

Sue Bullock - Executive Officer

Purpose: Management of the Office. Consider matters relating to the functions of the Office, strategic planning, policies, budget, priorities and overall administration. The committee meets weekly.

Corporate Planning Committee

Membership:

David Landa - Ombudsman

John Pinnock - Deputy Ombudsman

Greg Andrews - Assistant Ombudsman (Prisons and Local Government)

Kieran Pehm - Assistant Ombudsman (Police)

Jennifer Mason - Principal Investigation Officer

Sue Bullock - Executive Officer

Geoff Pearce - Manager Information Systems

Anita Whittaker - Human Resource Manager

Alison Turnbull - Financial Accountant

Jennifer Knox - Investigation Officer

Purpose: Development and review of the corporate plan. The committee meets as required.

Training Committee

Membership:

Greg Andrews - Assistant Ombudsman (Prisons and Local Government)

Jennifer Mason - Principal Investigation Officer

Sue Bullock - Executive Officer

Geoff Pearce - Manager Information Systems

Anita Whittaker - Human Resource Manager

Purpose: Plan and co-ordinate training. The committee meets bi-monthly or as required.

Joint Consultative Committee**Membership:**

John Pinnock - Deputy Ombudsman
Sue Bullock - Executive Officer
Anita Whittaker - Human Resource Manager
Maria Girdler - Workplace Group
Jo Flanagan - Workplace Group
Debra Rhodes - Workplace Group
Anne Milson - Public Service Association

Purpose: Implementation of the structural efficiency principle. The committee meets every two months.

PSA/Management Consultative Committee**Membership:**

John Pinnock - Deputy Ombudsman
Greg Andrews - Assistant Ombudsman (Prisons and Local Government)
Sue Bullock - Executive Officer
Maria Girdler - Workplace Group
Wayne Kosh - Workplace Group
Anne Milson - Public Service Association

Purpose: The committee, established in January 1993, aims to improve communication channels between management and the staff, provide information on new initiatives and ascertain staff views on issues affecting them. The committee meets monthly.

Information Processing Strategic Plan Committee**Membership:**

Greg Andrews - Assistant Ombudsman (Prisons and Local Government)
Kieran Pehm - Assistant Ombudsman (Police)
Jennifer Mason - Principal Investigation Officer
Geoff Pearce - Manager Information Systems
Sue Bullock - Executive Officer

Purpose: This committee was established in May 1993 to review and further develop the Office's information processing strategic plan for the next three years.

In addition to the above committees, the following committees meet on a regular basis.

- ▶ Equal Employment Opportunity Committee
- ▶ Ethnic Affairs Policy Statement Committee
- ▶ Occupational Health and Safety Committee

Telecommunications Interception Inspection Unit

The functions of the Ombudsman's Unit have been explained in previous annual reports. As required under the Telecommunications (Interception) (New South Wales) Act 1987, the Ombudsman inspects records relating to telephone intercepts by the Police Service, Crime Commission and Independent Commission Against Corruption. Reports of these inspections must be presented to the New South Wales Attorney-General by 30 September each year at the latest.

S.19(2) of the Act prohibits the Ombudsman from revealing in this Report any details of his Office's activities under the legislation. ●

Asset Maintenance

The Office submitted an Asset Maintenance Plan to the Premier's Capital Works Unit in October 1991. A modest infrastructure of assets exists in terms of office equipment. The maintenance plan put in place a cycle of acquisition, maintenance, renewal and disposal so that the small resources of the Office are best placed to serve the corporate objectives.

The plan will be reviewed in the latter part of 1993 as a part of developing a three year Information Technology Strategic Plan. ●

Chapter Two
Police

Overview

The general themes covered in previous annual reports have continued to occur in complaints during this year. In addition, however, there were a number of spectacularly public cases which dominated the area of police complaints.

Angus Rigg

The attempted suicide of Angus Rigg in a police cell at Milton, as well as highlighting the problem of deaths in custody, exposed fundamental weaknesses in the internal investigation of complaints against police.

The police internal investigations into the hanging of Angus Rigg displayed confusion in responsibilities between police involved and inadequate allocation of resources to the investigating police.

It also demonstrated that complicated command and supervision structures allowed senior police to avoid direct responsibility by passing the matter elsewhere.

All of this resulted in extreme delay which, together with the unjustified suppression of the investigation material from the complainant, created the impression of a "police cover up".

The features of the internal police investigation into Mrs Rigg's complaint were not unique. Delay has been a constant problem in the investigation of complaints against police and concern has been expressed by both complainants and police under investigation.

In the Angus Rigg case, the considerable trauma experienced in the original incident was exacerbated by the inordinate delay in finalising inquiries and the number of times witnesses had to be re-interviewed, and re-experience the incident, because

of the poor quality of previous investigations.

The fallout from the Angus Rigg case produced an internal restructure of Police Service investigations, the central feature being the splitting of Internal Affairs into regional units under the direct control of the four region commanders rather than a single unit with central responsibility to the Assistant Commissioner (Professional Responsibility).

While the restructure reduces the potential for confusion in responsibility at senior levels, it increases the possibility of inconsistent approaches to internal inquiries. There will be increased responsibility on the new Assistant Commissioner (Professional Responsibility) and the Ombudsman to monitor the approaches of the separate regional units.

Frenchs Forest

In February 1993, a story broke in the media concerning the shooting of a young police officer while on duty at Frenchs Forest police station in June 1992. There was speculation that the shooting was drug related and that police at the station were improperly involved with drugs.

The matter was referred to the State Crime Commission by the Minister for Police and an investigation was conducted.

Media coverage of the results of that investigation reported the minister as alleging a "cover-up" by senior police. Proceedings relating to the misuse

of drug exhibits by police and failures in supervision were instituted and the former Assistant Commissioner (Professional Responsibility) has not returned to duty. The shooting remains unsolved.

The failure to promptly investigate the issues as they arose from Frenchs Forest police station was compounded by the failure of the Police Service to report the allegations to the Ombudsman.

The complaints legislation requires the Police Service to notify the Ombudsman of allegations of misconduct which arise from within the Police Service even though there is no written complaint from a member of the public.

For example, an internal audit of a police station which discovers a missing drug exhibit should result in a complaint being referred by the Police Service to the Ombudsman. These matters are referred to as "internal complaints".

The Police Service has consistently opposed the notification of internal complaints arguing that such matters should be dealt with as "in house" management issues.

The failure to report the Frenchs Forest matters to the Ombudsman was highly publicised in the media. Following this publicity it appeared that the number of internal complaints was increasing.

The Frenchs Forest story first became public on 25 February 1993.

cont on page 33

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993

Last year's annual report set out the recommendations of the Joint Parliamentary Committee on the Ombudsman following its inquiry into police complaints. The central features of the recommended reforms were statutory amendments to facilitate the greater use of conciliation, stronger powers for the Ombudsman to monitor internal police investigations and a power of direct investigation for the Ombudsman without prior referral of the matter to police.

On 1 July 1993, the Police Service (Complaints, Discipline and Appeals) Amendment Act became law. It implements the central recommendations of the Parliamentary Committee for reform of the complaints system. A full report on the operation of the new system will be given in next year's annual report. At this stage there remains

a great deal to do in practical implementation and in developing arrangements with the Police Service for the proper administration of the legislation.

The Ombudsman proposes to use the new legislation to take a greater role in the conciliation of complaints against police. Given the limited resources available, however, that role will necessarily be limited to a small number of more complex matters.

Complaints amenable to conciliation or mediation will be identified at the assessment stage and dealt with by trained conciliators within the Ombudsman's Office.

The primary responsibility for the great bulk of complaints will remain with the Police Service. The new Professional Responsibility command is display-

ing a willingness and developing strategies to increase the rate of conciliation.

The new investigatory powers of the Ombudsman must also be exercised sparingly.

Under the present economic constraints they will primarily be used as an adjunct to the pre-existing investigation structures to expedite previously cumbersome procedures.

Close monitoring of internal police investigations will be reserved for cases involving issues of public concern which the Police Service has not traditionally recognised as important and in cases where complainants come from groups with a traditionally hostile or suspicious relationship with police, such as Aboriginal or juvenile complainants.

cont page 34

Overview *cont*

The figures for notification of internal complaints during the year are as follows:

1 July 1992 - 25 February 1993:

479 internal complaints

26 February - 30 June 1993:

533 internal complaints.

The rate of notification in the first period was 1.99 complaints per day. In the second period the rate was 4.26 per day,

more than double. While there was an increase in the number of internal complaints concerning self-injury in custody, it is not significant enough to explain the dramatic increase in rate of notification of internal complaints by the Police Service.

Drug Exhibits

Internal complaints concerning missing or mishandled drug exhibits, a central issue in

the Frenchs Forest matter, are worth a particular note. The number of internal complaints in this area received in 1991/92 was only two. In the 1992/93 year, the number was sixteen, all received either as part of the Frenchs Forest matter or later.

It appears that the motivation for increased reporting may be concern at becoming embroiled in a scandal such as arose out of Frenchs Forest police station. ●

Police Service Act *cont*

The power of direct investigation, in recognition of its resource intensive nature, will be reserved for cases where it appears that the Police Service is not in a position to conduct an unbiased inquiry. Typically, that perception arises in the case of complaints against the very senior officers of the Police Service.

Some Remaining Problems

Admissibility of Evidence

A draft of the new legislation contained a proposal to remove one of the existing restrictions on the admissibility of evidence obtained by an investigation under the legislation from being used in court. The previous provision was re-inserted into the Act following concern by the Police Association.

The relationship of material gathered under the complaints legislation to the criminal justice system is a complex issue. There are recognised public policy arguments that the effectiveness of an investigation agency is reduced if persons giving evidence to it are fearful of ending up in court. On the other hand, where complaints allege criminal conduct, it does not seem reasonable that material gathered during an investigation which supports such an allegation should be unable to be used in a criminal prosecution.

The precise balance of public interests in this area is difficult to determine. Cases which illustrate anomalies with the operation of the present system will be drawn to attention with appropriate recommendations for change.

Redefinition of "Conduct"

The new complaints legislation amended the definition of "conduct" which may be investigated under it. The previous law simply defined conduct under its jurisdiction as "any alleged action or inaction of [a] member of the Police Force." The new Act defines it in similar terms but with the added qualification that the conduct must be "of a police officer when acting as a constable". The legal effect of the amendment is, at present, unclear. The amendment had no attention specifically drawn to it and is not referred to in the reading speeches when the legislation was presented to Parliament. The Police Service has published its interpretation that the amendment excludes from the legislation conduct of a member of the Police Service while off-duty.

While there would be little dispute that the legislation should not be used to investigate the private affairs of police, the dividing line between police conduct off or on-duty is not always clear. There are cases of misconduct which involve conduct both off and on-duty and cases of criminal misconduct which occur entirely off-duty. The issues have been raised in detail with the Ministry for Police and legal advice on the issue is being sought.

Overall, the new complaints legislation is a significant improvement of the system under which complaints against police are handled. There is an increased capacity for minor complaints to be dealt with speedily and a raising of the level of the public accountability of the Police Service. ●

Conciliation

Complaints finalised by conciliation this year rose from 424 to 529. Although this is a significant numerical increase, the percentage rise on last year's number given the overall increase in complaints, was two per cent, from 12 to 14 per cent.

The survey of complainant attitudes to conciliation of their complaints which began last year was continued and ran throughout the reporting year. Of the 529 complaints where conciliation was successful, 240 returned the survey, a response rate of 45 per cent.

The responses are broadly consistent with last year's results and indicate a degree of complainant satisfaction with the process which is rarely, if ever, achieved through formal investigation of complaints.

- ▶ 197 respondents (82 per cent) were satisfied with the way their complaint was handled. Only 38 (16 per cent) expressed dissatisfaction.
- ▶ 116 respondents (48 per cent) thought that the Police Service might improve as a result of the conciliation process. 112 (47 per cent) believed that there would be no change.
- ▶ The overwhelming majority of respondents, 207 (86 per cent), were satisfied with the manner and approach of the police officer who handled the conciliation. Only 29 (12 per cent) were dissatisfied with the manner of the police conciliator.

cont page 35

Conciliation *cont*

Apology

It appears from the survey that the factors which play the greatest part in a complainant's agreement to resolve their complaint are an apology by the Police Service or a proposal that a senior officer speak to the police officer the subject of complaint.

- ▶ 143 (60 per cent) of respondents felt that an apology played some part in their agreement to conciliate.
- ▶ 187 (78 per cent) felt that a senior officer speaking to the officer under complaint played a role in their decision to conciliate.
- ▶ While conciliation seems to be an effective method of resolving individual complaints, only 66 (28 per cent) of complainants felt that there would be any wider impact such as the Police Service thinking about its future procedures or methods. The majority 138 (58 per cent) felt that there would be no general changes.

The role of negative factors playing some part in complainants agreeing to conciliate remains, although for the large majority of respondents such factors did not play a part.

- ▶ The apprehension of damaging the career of the police officer under complaint played no part for 156 (65 per cent) of respondents, but played some part for 68 (28 per cent).
- ▶ The fear of becoming involved in a long disciplinary or court process

played no part for 161 (67 per cent) of respondents, but played some part for 60 (25 per cent).

- ▶ Intimidation or threat by the police officer conducting the conciliation played no part for 206 (86 per cent) of the respondents, but played some part for 13 (5 per cent).
- ▶ The fear of future police harassment for failing to conciliate played no part for 147 (61 per cent) of respondents, but played some part for 76 (32 per cent).

The last figure is worrying. It must be acknowledged that perceptions of possible police harassment are not necessarily based on fact and the generation of such a perception by the conduct of a particular police officer is not often able to be substantiated by investigation. Nevertheless, this aspect of police conciliations will remain under scrutiny.

Police Resistance

Last year's annual report set out some of the reasons why police under complaint may be uncomfortable with the conciliation process and resist it.

Simply, their work environment often involves dealing with the public in an adversarial context where any admission of fault carries possible disciplinary consequences.

It must be said that, on the whole, police under complaint remain hostile to apologising to a member of the public or to admitting fault.

Conciliation, of course, requires some concession from each party to a dispute. This resistance has been overcome in practice by the Police Service conciliating with a complainant rather than the actual police officer under complaint being a direct party to the conciliation agreement.

The positive outcomes of participating in the conciliation process, both to complainants, the Police Service and police officers are obvious.

Although the number of complaints conciliated during this year is not a large percentage increase from last year's figure, the numerical increase is encouraging.

A few senior police officers have attended conciliation training courses organised in conjunction with the Ombudsman's Office and the Police Association appears willing to explore the increased use of conciliation. It is hoped that the association's understanding of the process will contribute to its greater acceptance by individual police.

Overall, there are signs that conciliation of complaints is becoming accepted and entrenched as an essential feature of complaint management.

A target for conciliation of 25 per cent of complaints is a minimum expectation which should be reached within the relatively short term.

The conciliation rate of complaints should be seen by the Police Service as a measure of its adoption of the principles of community policing. ●

Police Evidence - Collaboration, Collusion, Perjury

The greatest single challenge for any tribunal or investigatory agency is assessing the quality of evidence put before it. When it comes to considering police evidence, the challenge takes on characteristics which make judgement particularly difficult.

A complaint from a police prosecutor which was considered during the year related to statements prepared by three constables for the purposes of a criminal prosecution. The prosecutor felt that, on the basis of a previous conversation with one of the constables and the terms of the fact sheet prepared for the prosecution, it appeared that the three constables had "*conspired to prepare a brief of evidence that is false, with the sole purpose of convicting the defendant*". It appeared from the complaint that the prosecutor did not hold the constables primarily liable but requested an investigation "*to ascertain what forces were exerted on these constables to prepare what appear to be statements made up of lies*".

The hearing of the case the subject of the prosecutor's complaint resulted in the dismissal of the charge against the defendant. The magistrate described the statements of the constables as "*the worst verbal that I have come across in my years of experience*" and found that the police had been "*quite untruthful in the content of their evidence*".

The failure by senior police officers to report the prosecutor's complaint to the Ombudsman, along with the complaint itself, has been taken up by the Independent Commission Against

Corruption. Although the case is unusual in that the alleged misconduct was reported by a police officer, there are other examples which point to the forces which facilitate such an approach to the giving of evidence.

Adverse Comment

Magistrates, it appears, are becoming far less inclined to accept the evidence of police witnesses as inherently truthful simply on the basis it is given by police. Complaints which are generated by magistrates' adverse comments on police evidence before them are becoming far more frequent. The laborious process of combing court transcripts and comparing them with other evidence, means that the investigation of such complaints is inherently time consuming. When the ultimate decision concerns perceptions of truthfulness, very strong evidence of untruthfulness is necessary to establish malpractice.

It does appear, however, to be almost standard police practice to collaborate as to the evidence that individual police present. Such collaboration does not necessarily involve alteration of evidence or presentation of fabrications to obtain a conviction.

Identical Statements

An investigation of a complaint arising out of a hearing before the Licensing Court partly concerned virtually identical statements presented to the Court by two police officers. Despite the obvious collabora-

tion which occurred in the preparation of the statements, the second officer asserted that her statement was prepared independently and denied copying it from the first officer.

The police investigation, although not squarely addressing the issue, recommended that the officer be "*counselled*" regarding the "*proper preparation of evidence for court*".

The magistrate responded:

the problem...was not so much her evidence but the manner in which it was delivered. That is, it was her persistent failure to admit that the document in question was a copy of [the other constable's] statement that was unacceptable to the Court, rather than the fact that it was a copy.

It is to be expected that if one officer is taking notes contemporaneously with the events that lead to a subsequent prosecution, then the corroborating officer may seek access to those notes when preparing his or her statement for presentation to the Court. If however, there is some police "culture" that demands of constables that they do not admit that this has taken place or that, as in this case, the other officer's statement itself has been used as the basis of the preparation of the corroborating officer's statement, then that culture should be addressed and corrected.

cont page 37

Police Evidence *cont*

Last year's annual report (at page 60) noted a similar case. Again, there was no evidence that the police were lying about the content of their evidence, although it was clear that their denial that the evidence had been prepared in collaboration was false.

In that case, the Police Service response was to treat the matter as minor and to "counsel" the police as to their preparation of evidence. There were also indications that the conduct of the constable went beyond an individual aberration. The police prosecutor in the case noted:

...it is not uncommon to see in court officers of a far more senior nature than [the constable concerned] giving similar versions as to statement compilation.

In both cases, although there was nothing to suggest that police were lying about the facts behind the prosecution, the lies as to the way in which their evidence was prepared saw the cases thrown out of court.

Recollections

It is only human for witnesses to the same event to vary in the detail of their recollection. It is also natural that witnesses to an event, where they are in frequent contact, will later discuss the matter between themselves and compare their recollections. It is also probable that, if their recollections differ on detail, there is a tendency to iron out the differences so that a consistent picture is presented to the court or tribunal. The process is commonly referred to as "getting the stories together".

Police witnesses may lie about this process because of

the adversarial nature of the proceedings in which they present their evidence. An extract from a handbook for young lawyers in 1992 on local court criminal proceedings advises defence lawyers as follows:

Two or more police corroborating each other frequently copy from each other's statements but seldom admit doing so. Failure to admit copying and having it demonstrated to the court that copying took place, is destructive of the credit of the police officer who copied.

The strategy suggested is to ask the second officer if his or her statement was copied.

If he agrees that he copied and the statements are identical you may be bold enough to ask him to agree that his recollection of the facts is dependent upon his statement. Whether you are so bold or not, you will certainly submit at the end of the proceedings that the independent recollection of this officer (if any) was permanently and irrevocably contaminated by using his partner's statement as an aide memoire.

If the second officer denies copying, the strategy is to painstakingly go through the two statements so as to demonstrate collaboration.

Every so often ask the officer, "Do you still say it was not copied?" or "Do you still assure the Court that the similarity is entirely co-incidental?"

Denial

It must appear to police witnesses that they cannot win. It appears, from the cases referred to the Ombudsman's Office, that they therefore pick the simplest course: deny collaboration and maintain the denial under questioning.

Once they admit co-operating in the preparation of their evidence they are open to a series of complex questions as to the extent their collaboration has effected their evidence and, in the hands of a clever lawyer, are easily tripped up.

British Experience

The British police, recovering from the exposure of malpractice in the investigation and prosecution of a series of bombings, are beginning to wrestle with the problem.

In his address to police in November 1992, the Chief Inspector of Police for England and Wales, Sir John Woodcock, admitted the service was "shot through with corner cutting and expediency".

He refused, however, to accept that police were totally to blame and was reported as saying:

changes in police culture will be extremely difficult without changes in the wider criminal justice system which tolerates...and even requires some types of police malpractice. For years police officers had to tell the courts that they had both independently performed the amazing feat of memory involved in recording a complete conversation with a

cont page 38

Access and Release of Confidential Information

In July 1992 the Independent Commission Against Corruption (ICAC) completed its report on unauthorised use of confidential information. It was an extensive inquiry which exposed "a widespread corrupt trade" in official information.

In addition to criminal prosecutions, numerous cases were referred by the ICAC to the Police Service for consideration of disciplinary action. Those referrals constituted complaints and twenty-five such cases were notified to the Ombudsman.

As the internal police investigations proceeded, significant inconsistencies in the way the matters were being treated by the Police Service emerged. In December 1992, the Ombudsman wrote to the Police Service expressing concern about the inconsistent disciplinary penalties being proposed. In February, a reply was received stating that each case would be dealt with on its merits. Below are two examples.

Case One

A detective sergeant admitted to accessing and releasing confidential information on 25-30 occasions. The only admissible evidence against the

detective sergeant were his own admissions that he released the information to a private investigator on a "quid pro quo" basis, believing that the investigator would supply him with useful information in return. The Ombudsman recommended that the detective sergeant be departmentally charged over the matter. The Police Service decided that he would be "counselled" and "paraded" by a senior officer.

Case Two

A detective senior constable admitted to accessing and releasing confidential information on 35-40 occasions. Again, this was the only admissible evidence and the information was released on a "quid pro quo" basis.

The officer was suspended from duty from September 1992 until January 1993. The Police Service took up the Ombudsman's preliminary recommendation that the officer be depart-

mentally charged. On receipt of this advice, the Ombudsman wrote back to the Police Service on the question of consistency in discipline, citing the numerous other cases where minor penalties such as counselling had been proposed. The Police Service responded that the officer would be paraded and counselled.

During the year the Ombudsman received 157 complaints about police releasing confidential information, including the 25 arising out of the ICAC inquiry. While the ICAC inquiry revealed a corrupt trade for monetary or other gain, there were other grounds for complaint. In some cases information was released carelessly, without regard to the impact on the complainant.

In others, police officers released information to friends or family members both with and without knowledge of the purposes to which it could be put. In yet other cases, there were

cont page 39

Police Evidence *cont*

suspect and that they had not collaborated... The result is malpractice, not out of malice or desire for personal gain, but which begins out of good intentions. Once an officer has lied in one case and got away with it, then he or she feels less compunction another time.

Police Response

The NSW Police Service is not immune from the forces which lead police to lie about both the content of their evidence and the manner in which it was prepared. The response of the Police Service has been to treat such cases as exceptions and to instruct the offenders "not to do it again". It should be clear that the issue is

crucial to the proper administration of justice and needs to be addressed on an institutional rather than an individual basis.

The matter has been raised with the Assistant Commissioner responsible for police training and further discussions will take place. Obviously, there will be no overnight successes. ●

Confidential Information *cont*

motives of personal revenge by police who accessed and released information to damage people they held grudges against.

Complaints of this nature can have devastating consequences for complainants: social consequences, particularly in close-knit communities, and employment consequences, where the information comes to the attention of an employer.

In 1990 the Crimes Act was amended to specifically introduce the offence of accessing and releasing confidential information. Before this, police officers were forbidden to release confidential information by clause 55 of the Police Regulations.

Given the public sensitivity of the issue, the laws against such use of confidential information, the consequences to complainants and the inconsistencies in the police disciplinary approach, the Ombudsman recommended, with some exceptions, that sustained complaints against police in this area should proceed to the Police Tribunal for a hearing and recommendation as to penalty.

The Police Service, however, has dealt with the majority of complaints as a minor disciplinary issue with the usual penalty being "counselling" or the slightly more severe "parading" (a more formal kind of counselling). The contention that the Police Tribunal was unlikely to recommend anything more severe was advanced as a justification for this approach.

One case, however, did proceed to a hearing by the tribunal. It involved the release of confidential information by a police officer to embarrass the partner of a woman with whom the

police officer had formerly been involved. The complainant in this matter is claiming compensation, supported by a letter from his employer stating that he was transferred from his existing position, resulting in a loss of salary, because of *the adverse pub-*

The constable was dismissed in line with the Tribunal's recommendation but appealed the decision to the Government and Related Employee's Appeal Tribunal (GREAT).

GREAT determined the appeal on 31 March 1993. It



licity surrounding [the matter]".

In recommending the dismissal of the police officer from the Service in December 1992, His Honour Judge Sinclair said:

The obligation on a police officer to refrain from improper use of confidential police records is clear and I am certain that the ordinary man in the street would be appalled that a police officer would access private and confidential information held in police records for personal purposes. Such records should be regarded as sacrosanct and any violation of the security of such records for improper purpose is a matter of great concern.

agreed with the Police Tribunal's assessment of the gravity of the offence but also took into account a great deal of evidence in support of the constable from his colleagues and supervisors.

It determined that dismissal was too harsh a penalty but still decided that he should not receive any pay for the period of his dismissal and that he not be considered for promotion for an extra two years on top of the usual period of service for eligibility.

The trade in confidential information was a widespread practice, both within the Police Service and other government departments, and that it was tacitly approved at senior levels.

cont page 40

Police Powers of Arrest

The discretion to arrest is the most important power available to police. While arrest is obviously crucial in assisting police to maintain the peace and to bring offenders before the courts, the use, and at times, misuse of the power continues to concern the Ombudsman.

Involving as it does the denial of liberty, the power of arrest should always be used sparingly. This principle is reflected in official police policy. Regulation 9(8) of the Police Service Regulations states that

...police officers should not arrest a person for a minor offence when it is clear that a summons will ensure that the offender will be dealt with by a court.

Still, evidence before the Ombudsman suggests the police have an entrenched preference for proceeding by way of arrest rather than by summons or other means. Previous annual reports have detailed instances where police have arrested for ostensibly very minor offences, such as offensive language or minor traffic offences, and this practice of the police continues.

Police Circular No 87/133 proposes that, before arresting any person, officers take into account the probability that the person will appear in court, the

necessity of preventing the repetition or continuation of the offence, the requirement of preserving evidence, the safety of the public or of the offender and the prevention of interference with police investigations. The circular preserves the criterion of seriousness as the first and most important factor to consider, however.

The Ombudsman considers that the seriousness of the offence is an unsuitable criterion for arrest. Since arrest can often be considered as an additional form of punishment, it may be seen as a usurpation of the role of the courts to take the nature of the offence as the most relevant criterion in the decision to arrest.

It also allows police officers to continue to interpret any offence as a 'serious offence', including offences which are, in legal terms, minor ones. The Ombudsman hopes to promote in the Police Service an attitude that arrest is a last resort. This is particularly important for the

Police Service which is moving towards a policy of 'community policing' in which officers must be seen to be acting appropriately.

Case One

In May 1993, a man who was well known in the Gosford area through his high profile media position, was stopped by police for speeding. The driver apparently cooperated with police and provided appropriate identification.

Nevertheless, he was arrested and charged and his fingerprints and photograph remain on police records. The complainant pleaded guilty to the offence with which he was charged, but has complained about the police action in arresting him for such an offence.

This matter has not yet been determined by the Ombudsman, but on the face of the complaint, it would appear that

cont page 41

Confidential Information *cont*

While the impact of the ICAC's inquiry and report on the practice is difficult to assess, there can be little doubt that improper use of confidential information continues.

Under the current system nearly all operational police have the ability to access police and RTA computers. In order to access, the officer has to log in his

service number and a secret password which is changed once a month for security purposes.

In a large number of investigations, police officers, when shown a log of their access could not recall the purpose for which they accessed the information. On 12 May 1993, the Ombudsman recommended that the Police Service add an extra field to

the computer access program.

The extra field would require police to enter the purpose for the access. It is felt that implementation of this recommendation would greatly improve the accountability of police accessing confidential information. No response has been received from the Police Service. ●

Powers of Arrest *cont*

the police had alternatives to arresting, charging, fingerprinting and bailing the complainant to appear in court.

Case Two

There are several practical reasons why it is considered necessary for police to restrict the use of arrest. The first is obviously the trauma and disruption

sive and she was arrested by the second police officer for offensive language.

There is some dispute as to the level of disturbance the complainant caused prior to her arrest, but it seems no one else heard the conversation. Even the officer who arrested her did not hear the substance of the conversation, only the offensive words.



caused to suspects. This often results in further charges being laid against a person who has come to the attention of the police; these are usually charges of hinder police, resist arrest or assault police.

On 5 September 1992, a woman was stopped by police for the offence of riding her bicycle without a helmet, and one of the two police officers proceeded to write a Traffic Infringement Notice. The complainant remonstrated with police, saying that she could not afford a ticket. In doing so it is accepted that she used some adjectives that are usually considered to be offen-

It is debatable how offended were the two police officers. At the time of the arrest, the complainant was restrained by her arms and handcuffed. The complainant strained in the grip of the police officers.

She was taken to the police station and charged not only with the original traffic offence and offensive language, but also with resist arrest.

These latter two matters were defended at court. The charge of resist arrest was dismissed, and the offensive language was found to be proved but no conviction was entered against the complainant pursu-

ant to section 556A of the Crimes Act.

The Police Service has decided that the allegation of unreasonable arrest, as well as the ancillary complaints, were not proved.

The Ombudsman disagrees. It is considered that the discretion to arrest is overused, often resulting in a greater disturbance of the peace than would overlooking such a minor infringement.

Case Three

Another reason why it is considered necessary for the police to restrict the use of arrest is the link between arrest and attempted suicide or deliberate self harm in custody.

While it is accepted that the Police Service has taken steps to reduce the incidents of attempted suicide, it is undeniable that many of the people who do make such attempts need not have been in custody at all.

In May 1993, a woman was arrested in Coffs Harbour for offensive language and taken to Coffs Harbour Police Station.

She was placed in the dock and kept under constant surveillance. The woman was seen to remove her bra, place it around her neck, and try to strangle herself. Police removed her bra and stockings, but within a short time the woman was observed trying to scratch at a fresh abdomen scar with her fingernails.

Once the woman was processed, she was taken to hospital for examination and later released.

Although this case has not yet been finalised, it would appear that the police had taken

cont page 42

Powers of Arrest *cont*

all appropriate steps to prevent the woman from harming herself.

The trauma of being detained in police custody can be sufficient to lead a person to contemplate self harm.

Alternatives to Arrest

The Ombudsman continues to stress the necessity for developing alternatives to detention in police custody.

The move away from police detention depends upon legislative or policy changes as much as upon alterations in the attitudes of individual police officers.

Until recently, arrest has been the least labour intensive method of bringing people before the courts. Often the only alternative is to summons a person, and this has required many more hours of police time to complete than does the arrest procedure.

Add to this the fact that arrest gives the police the option of fingerprinting and photographing a suspect, and it is not difficult to see why arrest is the preferred police option.

However, it may be that there is a change of attitude towards arrest becoming apparent among police, at least in relation to some offences. Many cases of unreasonable arrest dealt with by the Ombudsman involve instances of offensive behaviour, offensive language, as well as resist arrest.

In 1992, the New South Wales recorded crime statistics showed a drop of 17 per cent statewide for offensive behaviour charges, and in the Far West

statistical division, which has a significant Aboriginal population, the reduction in such charges was in the order of 40 per cent.

While the Bureau of Crime Statistics could not be definite about the cause of such a reduction, it noted that:

A decrease on recorded rates of offensive behaviour could ... result from a change in the way in which police perceive or react to such behaviour.

A lower rate of such charges should mean a lower arrest rate and, hopefully, a decrease in the complaints about unreasonable arrest.

In several reports the Ombudsman has recommended that

The move away from police detention depends upon legislative or policy changes as much as upon alterations in the attitudes of individual police officers.

alternatives to arrest be developed. Rather than restrict the discretion of police officers to arrest, it is considered preferable to add to the array of options available to police, so that police response is more tailored to the particular circumstances of each case.

Recently, very short but important amendments to the Justices Act 1902 have been introduced that will give all police officers in the field the power to

issue summonses or Court Attendance Notices. These should be able to be issued on the spot in a procedure similar to that of Traffic Infringement Notices.

Trial of New Procedures

The new procedures will be trialled in five police stations in New South Wales: Taree, Narrandera, Sutherland, Manly and Waverley, each of which has been specifically targeted for a particular reason.

It is hoped that at the end of the two month trial, the procedure can be introduced statewide. Commissioner's Instructions have been prepared, but have not yet been issued, and the portable Notice books are ready to be used.

It has been suggested that the Notices need not necessarily be served at the time of the offence.

An example of an innovative use of the notices would be in relation to an intoxicated and offensive person. The person could be removed from the area where he or she was disturbing the peace, and either taken home or to a proclaimed place for detoxification, and then served with a Court Attendance Notice later when sober.

It is in the interests of neither the police nor the public that intoxicated people be detained in police custody.

The Ombudsman looks forward to the statewide introduction of these notices, and it is to be hoped that police officers use them innovatively and in the spirit in which they are intended to be used. ●

Deaths and Injuries in Custody

Angus Rigg's brief and much publicised detention in the Milton cell complex again thrust into the public arena the issue of deaths and injuries in police custody. Angus hung himself with two torn strips of worn woollen cell blanket fastened to a protruding tap in the exercise yard.

Since that incident there has been an upsurge in the number of prisoners self-inflicting injury. Whether media coverage has acted as a contagion for this type of behaviour or there are other causes for this increase, the Police Service is now faced with a significant problem.

Why Self Injury?

Self injury is not always motivated by a desire to commit suicide. Sometimes it is used as an escape from the isolated, depressing confines of a police cell, resulting in a trip to the local hospital or doctor's surgery. Some prisoners will do anything to get out.

An 18 year old girl had been detained by police, though not arrested, for allegedly activating a fire alarm at the local fire station.

She was initially placed in the charge dock but, after shouting and abusing police, was placed in the exercise yard of the cell complex without being searched. Once there her behaviour escalated.

An officer informed her that she would be placed in a cell. She said "put me in there man and I will cut myself, I got a blade you know". The officer said "don't be stupid if you have anything give it to me now" and left the cell. The girl then removed a razor from her back pocket and

slashed her wrists. As to her intention she said:

I didn't want to kill myself when I cut my wrist . . . I only done it so that I could get out of the cells, I can't stand being locked up, I do it every time I am put in the cells.

Police records, not checked at the time of her detention, confirmed her assertion.

Duty of Care

Police are charged with the unenviable, and onerous, duty of caring for persons in their custody. Some police feel overwhelmed:

We now are paid baby-sitters to ensure all prisoners are properly cared for. But where does the liability end, or doesn't it. At what point does our responsibility end and the individual's own responsibility begin. . . I think the system is totally unfair towards police.

The public expectation, however, is only that the Police Service will adopt strategies to minimise injuries and deaths in custody and that individual police will properly perform their duties.

No criticism can be levelled at police where this has occurred.

Strategies to Minimise Injuries

- ▶ **Arrest less people - the eagerness with which police exercise their power of arrest should be restrained.** The serv-

ice's new Field Court Attendance Notices are described elsewhere in this report. The widespread use of notices will lessen the number of people in police custody and possibly lessen the number of injuries in custody.

- ▶ **Screen prisoners and give special attention to those likely to injure themselves.**

The Prisoner Admission Form, adopted by the Police Service in 1990, is intended to identify persons who are high risk for self injury or have serious medical problems. It requires custody officers to record their visual observations of prisoners, including whether the prisoner appears agitated, aggressive, mentally ill or under the influence of alcohol or drugs or has scars to the neck or wrists or made threats of self injury.

The custody officer must also ask the prisoner questions concerning their condition and record their responses. Affirmative responses require positive action, such as locating the prisoner to facilitate easy and frequent observation. Observations must be recorded on the back of the form.

The success of the prisoner admission form has, however, been seriously weakened by police failing to properly complete the form or to take appropriate action with high risk prisoners.

cont page 44

Deaths and Injuries in Custody *cont*

In one incident, a 38 year old mother of three was found hanging from her pantyhose in a police cell. It was discovered during the Police Service's internal investigation that the prisoner admission form was blank except for two signatures.

When interviewed, the custody officer insisted that he had made the necessary observations and asked the required questions while recording her property. He had merely omitted to later record the details.

This incident to some extent reflects the low priority that has been attached to prisoner welfare and custody procedures when compared to other policing duties. The admission form is seen as an additional burden on police time.

Several incidents involved prisoners who were described as aggressive/agitated and possibly under the influence of alcohol or drugs.

While appropriate notations were made on their admission forms, no consideration was given to special placement or observation.

Police at times appeared to be unaware or uncertain as to their duties once a person had been identified as high risk. Consequently, nothing was done.

To remedy this, the Police Service has developed a new prisoner admission form which is now being trialled.

- ▶ **Limit access to means -** desperate, determined persons will resourcefully employ anything to self inflict injury, such as foil pie plates or toilet paper platted to form a noose. Reducing the range of items available to persons detained in cells is there-

fore one way of reducing injuries.

The majority of incidents notified to the Ombudsman involved police failing to remove items either from prisoners, such as shoelaces, belts, razors and rope, or that were in the cell, such as towels, plastic cutlery, metal food containers and razors. Greater vigilance in searching prisoners and clearing items from cells clearly will lessen the number of injuries.

Shoelace Hangings

Police instructions direct police to remove all items from prisoners that may be used to inflict injury, specifying items such as belts and shoelaces. Of concern has been the practice of police, mistakenly believing they have some discretion, of allowing prisoners to retain their shoelaces when they are not considered high risk. Prisoners have subsequently hung themselves.

A woman was detained by police for conversing with trees outside a police station. She was mentally ill and intoxicated and was detained in the exercise yard until a mental health worker arrived. She was allowed to retain her shoelaces and attempted to choke herself by wrapping them around her neck.

When asked whether he was aware of the instruction requiring the removal of shoelaces, the officer responsible stated:

I do not believe in this case that it would have been correct to remove her shoe laces and search her further for any belt that she may have had as she was not in custody, in my view, on a charge but was simply detained until some person took charge of her

or took care of her.

As to her risk for self injury, he stated:

She struck me as a person who had been mentally ill . . . a harmless person who had given me no reason to believe she would harm herself in any way.

The officer's failure to appreciate the woman's mental condition and intoxicated state made her a high risk for self injury and his rejection of the instructions on the basis that he knew better was the subject of adverse comment by the Ombudsman.

In response to the spate of shoelace incidents the Police Commissioner issued a circular in March 1993 reminding police of their duties.

Shoelaces, however, continue to be a problem suggesting the message has not penetrated to the grass roots.

Progress

Since Angus Rigg's self injury, no major inroads have been made to lessen the number of self inflicted injuries and deaths in police custody.

Numerous police task forces and committees have been established to reform the current system, but it is apparent that strategies adopted by the Service are not carried through to the patrol level.

The Police Association has recognised that:

Competing policing demands regularly relegate the "care of prisoners" to a secondary task.

The Service is clearly faced with an enormous challenge to improve its custodial procedures and practices. ●

Race Relations - Turrumurra Incident

In October 1991, a confrontation between Asian and non-Asian students on the North Shore rail line raised significant concerns about the police response to the incident.

When police attended, Asian students were arrested and later charged while the non-Asian students were let go. This was despite independent eyewitness evidence that the Asian students were vastly outnumbered and appeared to be the victims.

During the year, a report was made to Parliament following a re-investigation into the police handling of the matter.

The report detailed the apparent bias and mistreatment of the Asian students and was well reported by the media.

What has not been reported, however, was the failure of the Police Commissioner to properly respond throughout the whole incident, a failure which brings into serious doubt the police commitment to an area of great public sensitivity, formally recognised by the Police Service itself, in its Ethnic Affairs Policy Statement, as requiring serious attention.

The failure to respond to community concerns in this instance is well illustrated by the following chronology of events.

The matter was drawn to the Commissioner's personal attention not only by the Ombudsman, but by the Chairman of the Parliamentary Committee on the Ombudsman at the very outset of the inquiry.

The failure to respond adequately, and to ensure that the internal investigation was handled expeditiously and got to the

truth of the matter, indicates either a lack of concern or a failure in Police Service management to communicate important issues to the Commissioner and even the Minister.

The complaints had to be re-investigated by the Ombudsman and when a provisional report was issued both the Commissioner and Minister failed to consult or to address the report in any way.

The publication of the report to Parliament finally brought a public response from the Commissioner, but the reality remains that, at the end of August 1993, no meaningful contact had been made with community leaders, many of whom remained concerned about the issue.

Corporate Plans and Policy Statements are all very well, but to assess achievements one must measure the outcomes. The Commissioner's Policy Statement is as follows:

...there is a need to ensure that all members of the New South Wales community regardless of their language, ethnic, racial or cultural background have equal access to government services, and that such services are culturally appropriate and non-discriminatory.

Clearly, visible achievements and measurable, positive outcomes are needed in this area if police are to claim that they are responsive to the needs of the community they serve. ●

Chronology of Events

Ombudsman's Report on Allegations of Police Bias Against Asian Students

1. Complaint to Police Commissioner letter of 16 January 1992.
2. Personal letter to Police Commissioner 11 February 1992.
3. Letter from Parliamentary Committee to Police Commissioner 26 February 1992 - drawing concern.
4. 15 July 1992 letter to Police Commissioner advising that statutory period had expired.
5. Police investigation completed and received by us 22 July 1992. Police cleared themselves.
6. Provisional report to Police Commissioner February 1993.
7. Final draft to Minister 13 April 1993 "do you want to consult" - no reply.
8. Further letter to Minister 12 May 1993 - no response.
9. Report final and sent to Minister 31 May 1993.
10. Report to be made public 25 June 1993.
11. Report made public 1 July 1993.

Racist Language - is it Just Talk?

Some disturbing examples of the prevalence of police use of racist and offensive language came to the Ombudsman's notice during investigations into two complaints against police.

The first involved police stations in an area that has been home to many migrants, including a large Italian community and more recently many Indo-Chinese migrants.

The racial and cultural mix of this community is evident and clearly requires from the police, in terms of hands on, face to face policing, a real appreciation of, and sensitivity to, the needs, concerns and contributions of the people they serve.

Community Standards

However, from the evidence of this investigation, the Ombudsman is concerned that police are not meeting the high standards of community policing, so heralded in the media.

The police investigation disclosed conversations of police referring to a man of Vietnamese origins as a "gook" and another man of Italian parentage as a "wog".

At no stage in the two internal investigations conducted by senior police did they raise this racist and offensive language with the police concerned.

To the Ombudsman's re-investigation, the police stated that such derogatory and offensive language was commonplace amongst themselves, but was never used when dealing professionally with the public. Their commanding officer was aware of the situation, but ignored the

language as a "symptom" rather than a cause.

Cultural Awareness

In the second case the police investigation concerned a complaint from a north-west NSW country town with a large Aboriginal community.

conversation amongst themselves and around the police station.

As in the first case, police believed that because the use of the offensive language was in private, this exonerated them. The Ombudsman, however, does not consider that such qualification in any way reduces the



Again it would be expected that police had an awareness and understanding of the Aboriginal community's culture and concerns, particularly with regard to their relationship with police. The infamous legacy inherited by today's police officers has created a relationship of mutual distrust and suspicion that requires positive and sensitive approaches from police towards Aborigines.

However it was apparent from this investigation that a significant proportion of police commonly used such offensive terms as "coon", "black cunt", "black bastard" and "nigger". More than half the police asked about such pejorative labels stated that they were used, but only in private

discriminatory effect of the use of the words.

Firstly, the use of racially offensive language, regardless of the context, is an indication that police hold racially discriminatory views which in theory and rhetoric have been denounced by the NSW Police Service. It is a small step to see these views manifest themselves in practice through the prejudicial use of police powers and discretion.

Secondly, how can police guarantee that these words, meant for the private ears of police alone, will not be overheard by civilians or relatives of police, as in the case of an Aboriginal wife of a police officer who was offended by overhearing an officer use the term "nigger"?

cont page 47

Radar Detector Detectors

Last year's annual report referred to the use by police of the VG-2 Interceptor, a radar detector detector. In particular, enquiries were underway to establish whether the reliance placed on the interceptors by police to detain motorists and to issue infringement notices was justified. The Ombudsman's investigation of the matter found that it was not.

Several complaints were received about the conduct of police in detaining motorists, ranging from alleged bullying tactics to rude or offensive behaviour.

One complainant was travelling from Gosford to Canberra with his wife and children. His vehicle was detained in Sydney by two constables, who claimed he had a radar detector in the car and requested him to surrender it.

When he informed the officers that there was no such device in his car, one officer requested permission to search the vehicle. The complainant refused.

He handed the officer a copy of a letter which he had received from the Infringement Processing Bureau (IPB) which stated that there was no power of search under any Act of Parliament to carry out a search of a motor vehicle suspected of having a radar detector illegally fitted.

The officer informed the complainant that he would have to consult with his supervisor. He was then detained at the side of the road for approximately 30 minutes, until a senior officer arrived.

The senior officer informed him that despite the contents of

the letter, *Regulation 93(1)* empowered the police to search a vehicle for the purpose of determining whether it complies with the requirements of the *Traffic Act 1909*. He accordingly directed the officers to carry out a search, but they failed to find a detector.

Because the issues raised in the complaint were not limited to the alleged misconduct of the police officers, but extended to issues of administration, the Ombudsman investigated all issues of the complaint in terms of the *Ombudsman Act 1974*.

Included in the investigation was the matter of motorists being issued with infringements and orders to surrender devices that they did not have.

The issues covered were:

cont page 48

Racist Language *cont*

Thirdly, how can police ensure these racially offensive terms are not carried over into their usual speech when serving their local community, especially given the strains created by the often adversarial, hostile and suspicious contact they have with members of the public.

The Ombudsman, in his report on the police investigation into the second complaint, concluded:

The inflammatory potential for increasing racial tensions, through the inadvertent or intended use of racially offensive terminology is obvious and cannot be ignored.

Accordingly, the Ombudsman in this case has recommended that:

The patrol commander instruct all staff under his supervision that racist and offensive language not be used by Police Service employees in any circumstances, nor in any place.

The patrol commander instruct all staff that racist language and racist conduct in any form will not be tolerated...

The Police Service institute a regular in-service training program to en-

courage empathy and understanding with Aboriginal and minority groups for all staff at the patrol.

Police use of racist language is never acceptable and should be seen for what it is, the tip of the iceberg of deeper seated racist attitudes and behaviour which serve to undermine police and community relations in this State.

Cultural integration of the Police Service with the community it serves, particularly a greater number of police from minority groups, is essential to meaningful community policing. ●

Radar Detectors *cont*

- ▶ the issuing of a misleading letter to the above motorist by the IPB;
- ▶ the use of the VG-2 Interceptor to detect radar detectors when it was known that the device was capable of being triggered by instruments other than radar detectors, where the interceptor was not a precise instrument and was not capable of being used in a court; and
- ▶ the issue of instructions to some highway patrol police regarding the bluffing of motorists suspected of having a radar detector into revealing its whereabouts.

It became illegal for motorists to use a radar detector on 1 January 1991. The Police Service told the Ombudsman that on 25 November 1991, police generally were advised by way of a departmental publication, that:

It must be emphasised that the VG-2 Interceptor radar detector is only to be used as an enforcement aid.

These devices have no legislative support and police powers to search vehicles on the basis of a positive signal from these devices is doubtful.

In the absence of an admission by the driver that such equipment is fitted/conveyed in the vehicle, and there is no visual evidence that would support the alleged breach, police should take no further action in relation to the matter.

The Ombudsman also was informed that:

Any microwave signal operating on the same spectrum as the VG-2 interceptor may cause a false alert. Examples of potential interference include alarm and surveillance systems, microwave relay towers for TV and telephone communication systems. Police mobile radios can also cause a false alert.

vices] . . . causes intermittent beeps so that a steady and prolonged signal such as from a radar detector does not occur.

- ▶ A continuous alert from the interceptor along with the proper identification of the target vehicle is a good indication that the vehicle is fitted with a radar detector.
- ▶ If the operational guidelines



As part of the investigation, the Ombudsman asked the Commissioner why the use of the VG-2 device had been approved, given that its operation may not provide a reasonable suspicion to search vehicles following a positive signal from the VG-2 Interceptor. The Police Service replied that:

The original devices were provided to the NSW Police Service by the Roads and Traffic Authority and were brought into general use following extensive trialing and technical advice provided by Sergeant Wallace, (technician) Radar Engineering Unit, to the effect:

- ▶ Generally, the type of interference [by other de-

are observed, police operators will be able to have confidence in the operation of the VG-2 interceptor.

The Police Legal Service responded on behalf of the officers involved in the principal complaint, stating that:

The VG-2 Interceptor was received in October 1991 together with the maker's instructions. No advice or formal instruction was received on the legal implications of the use of the device. Circular 91/57 [a police circular containing an item on the use of the devices] was, of course, in existence at the time...

In response to a separate complaint concerning the use of

cont page 49

Security of Drug Exhibits

An area of significant public concern is the need for maximum security over illegal drugs seized by police.

The rationale includes the need to ensure continuity of possession of the exhibits for court purposes, the potential for allegations about the integrity of officers involved with exhibit security and the temptations that inadequate security of the exhibits may place before police.

A number of well publicised incidents during 1993 have highlighted the need for continued vigilance concerning the security of drug exhibits, in particular the events at the Frenchs Forest and Lismore patrols.

The publicity over these incidents has resulted in an increase in scrutiny and audit activity by police over exhibits on hand and, in turn, an increase of



reports to this Office. In 1991-1992, two reports were lodged and in 1992-1993 there have been 16 reports.

While recent investigations are yet to be completed, the majority of complaints result from officers not dealing with drug exhibits in accordance with guidelines or in a negligent manner. Examples of these incidents include failing to record

lodgements/movements/destructions correctly; storing drug exhibits in personal lockers and other inappropriate locations; mistakes as to the weight of the substances; incorrect handling of auditable drug bags and poor auditing/destruction procedures and controls.

In one particular incident, 93 cannabis plants were discovered to be missing when police

cont page 50

Radar Detectors *cont*

the VG-2 Interceptor, a police report on the use of the device stated that:

The Radar Detector Detection Device has some inherent flaws, it is not a precise instrument, nor can a reading from same be used as evidence. It can be triggered by other devices and because of this Highway Patrol Police have been instructed to attempt to bluff motorists suspected of having a Radar Detector into revealing its whereabouts.

However, reference was made in the same report to cur-

rent instructions to the highway patrol - which were:

...if they don't sight the detector or have some evidence, other than the electronic detection device, indicating its existence, then the motorists should receive the benefit of the doubt and an infringement notice should not be issued.

As the Ombudsman's investigation progressed, former Assistant Commissioner Cole advised that:

...in recognition of the difficulties which may be experienced in the use of

radar detector detectors an explanatory Commissioner's Circular is to be issued shortly. The Circular sets out guidelines for the use of the VG-2 Radar Detector Detectors, the electronic interference likely to be encountered, the inspection procedures required and amends Commissioner's Instruction 107.15.

The Commissioner's Instruction relating to the use of the interceptor device and the inspection of vehicles suspected of having a radar detector/jammer illegally fitted or carried was amended in March 1993. ●

Commitment Warrants and Fine Enforcement System

A complaint was received from a social worker at a minimum security correctional centre, alleging that two males approximately 18 years of age had been gaoled for unpaid fines imposed for push bike offences.

There was considerable public outcry in late 1987 following the brutal bashing of a Long Bay inmate, serving commitment warrants for Traffic Act offences.

A decision was made to attempt to identify a common penalty, apart from imprisonment, which would encourage people to pay outstanding fines. As a majority of people in NSW are licensed drivers and/or registered vehicle owners, the Roads and Traffic Authority (RTA) was identified as having a potential role in the enforcement of fines.

The fine default system in NSW was modified in early 1988 and the issue of commitment warrants for unpaid traffic and parking fines was dramatically reduced. The RTA became a

pivotal part of the reformed system for fine enforcement, involving the cooperation of the RTA using its DRIVES computer, the NSW Police Service and the courts.

When traffic and parking fines are not paid within the time allowed, the offender's details are referred to the RTA. The RTA then matches fine details with existing RTA license and registration records.

If the RTA correctly matches its record with unpaid fine details, a notice is sent out advising that if the fine and additional enforcement costs are not paid by the specified date (at an RTA motor registry) the licence or registration will be cancelled.

Any cancelled license or registration will not be renewed unless all outstanding fines recorded on the RTA computer are paid. The RTA acts as a collection agency for the Police Service and Courts and does not have the power to grant any additional time to pay.

Not everyone over 17 years of age in NSW has a registered vehicle or a drivers license: the two push bikers for example. When the RTA computer cannot match fine details with its records, those matters are referred to the courts for the issue of commitment warrants. These warrants are issued in terms of Section 87 of the Justices Act 1902.

There are two phases in the commitment warrant process. A first issue commitment warrant is signed by an authorised justice at a court and later recorded on a computer system at the Police Service's Warrant Index Unit. The warrant is valid for 12 years! If the person described on the warrant comes to the attention of police, the police are required to give seven days oral notice that the warrant is in existence (see S. 89B of the Justices Act).

When police are speaking to a person subject of a first issue commitment warrant, they should give information similar to the following:

cont page 51

Security of Drug Exhibits *cont*

went to destroy them. The subsequent police investigation was unable to ascertain exactly what happened to the plants, but found that it was "...more likely that the exhibit was inadvertently destroyed with the other exhibits...".

As a result the police have recommended that departmental charges of neglect of duty be laid against an inspector and the senior sergeant responsible for the destruction and another sergeant be paraded and counselled

over the failure to promptly notify this Office.

During this investigation, a comprehensive audit of the station's drug exhibits was conducted and further discrepancies were identified in the methods of recording and handling of these exhibits.

This has resulted in the Police Service recommending that a further six charges of neglect of duty be laid against the station's exhibit officer and

counselling of a detective senior constable as to the correct procedures for signing for and taking possession of exhibits.

A final determination is yet to be made by the Ombudsman in both these matters.

The Ombudsman is maintaining a watching brief over complaints involving the security of drug exhibits, to identify any systemic issues and problems and to make suggestions to the Police Service on ways to improve exhibit security. ●

Commitment Warrants *cont*

You have an outstanding warrant in your name for the offence of...on...(date). The warrant/s is/are to the value of \$...(amount). You have seven days from now to pay the outstanding amount or attend a Local Court and apply for more time to pay or a community service order. If you fail to do anything about the warrant within the required seven days you may be arrested on the warrant after that time.

If the warrant is paid in full, or an application is made at a Local Court for additional time to pay or to accept a community service order, the warrant is revoked.

Failure to take one of these options within the seven day period will result in imprisonment at a rate of \$100 per day until the cumulative amount of all warrants is satisfied.

If a time to pay arrangement or community service order is not complied with, a final commitment warrant will be issued for the outstanding amounts. There is no second chance to apply for time to pay or to enter a community service order, and police are not required to give seven days notice before arresting the person subject of the warrant (see Section 89C(4)).

Staff of this Office received a small number of informal verbal complaints alleging that police might not have been giving seven days notice in terms of the Justices Act before executing the first type of commitment warrant.

If this type of situation occurs, it may not be possible for this Office to act quickly enough to assist in individual cases, particularly as the person may be taken to a correctional centre and have cut-out the warrants by the time the Ombudsman can

act on the complaint.

As a consequence, the Assistant Ombudsman (Police) asked the Assistant Commissioner (Professional Responsibility) to arrange for the issue of a circular to ensure that the provisions of Section 89B of the Justices Act are brought to attention and appropriately re-enforced with all police.

This was done and a circular was published on 8 March 1993 in the Police Service Weekly.

While the complicated system now in operation has dramatically decreased the number of fine defaulters in prison, it simply cannot cater for all individuals in society.

The two hapless young push bikers each served a brief period of imprisonment in respect of properly issued commitment warrants and were released. ●

Lost Property

Another concern of the Ombudsman has been the number of complaints over recent years from people who, following their arrest, allege that property, including cash, is confiscated by police, not returned to them upon their release from police custody and that such property is never seen again.

One complainant alleged that when he was arrested by police for various offences, he had in his possession two large bags of personal property.

He claimed the arresting police officer did not record the bags containing his belongings, which should have occurred in accordance with existing property recording procedures.

Within a number of days, the complainant was extradited to

Queensland to face outstanding warrants.

A property list recorded by Queensland police following his extradition identified two bags.

The complainant was reunited with all his property at the Queensland police station, having not seen his two bags since his arrest in New South Wales nearly a week earlier. He was of the belief his bags had disappeared.

As a result of the complaint, the Ombudsman recommended to the Commissioner of Police that prisoners be given the opportunity to sign a property docket book attesting to the correct entry of all of their property confiscated when they are taken into custody at a police station.

Subsequently, the Ombudsman was informed by the Commissioner that the Police Instructions were to be amended to ensure prisoners have the opportunity to sign for the correct entry of all their confiscated property following arrest.

Previously, individuals could only sign a property docket book for their property upon their release from police custody. Now they will sign for their property when they are arrested and when they are released.

Such amendment will significantly reduce the number of allegations by prisoners about disappearing property following their arrest and can also be seen as an anti-corruption measure. The amendment is welcomed by the Ombudsman. ●

The Ainsworth Investigation

In May 1993, this Office completed its investigation into a number of complaints made by Mr Leonard Hastings Ainsworth about the conduct of police.

The investigation itself is noteworthy for several reasons - the nature of the issues investigated, the duration and complexity of the investigation, the need for an amendment of the Ombudsman Act to enable the effective pursuit of the investigation, and a legal challenge to the conduct of the investigation by the police officers the subject of complaint.

The aftermath of this Office's report on the matter was an investigation by the Independent Commission Against Corruption (ICAC) into whether the Ombudsman, Mr Landa, had affected or attempted to affect the proper consideration of the matter by the Deputy Ombudsman, Mr Pinnock, and other officers involved in the investigation.

Conduct of the Investigation

At the outset, it must be noted that the present Ombudsman, Mr Landa, had acted as a solicitor for Mr Ainsworth prior to taking up his appointment as Ombudsman in February 1988. Mr Landa therefore disqualified himself from involvement in the investigation of Mr Ainsworth's complaints and all responsibility for the conduct of the investigation rested with the Deputy Ombudsman, Mr Pinnock, and the Assistant Ombudsman, Mr Andrews. The present note about the investigation has been prepared by Mr Pinnock.

Amusement Device Dealer's Licence

Mr Ainsworth's companies manufacture poker machines. In 1984, one of his companies applied to be licensed as an amusement device dealer under the Liquor Act. This application was investigated by the Police Service's Licensing Investigative Unit, which was under the command of the Superintendent of Licences. As a result of this investigation, the Superintendent of Licences lodged a number of objections with the Licensing Court to the grant of a licence. The basis of the objections was that Mr Ainsworth was not a "fit and proper" person to hold a licence.

The Licensing Court heard the contested application in August 1985 and decided to grant a

licence to Mr Ainsworth's company. The Superintendent of Licences successfully appealed against this decision to the Full Court of the Licensing Court, but the Full Court's decision was overturned by the Supreme Court in 1986. The Superintendent of Licences then appealed to the Court of Appeal against the grant of the licence.

In May 1987, Mr Ainsworth complained to this Office about certain aspects of the Police Service treatment of his company's licensing application. First, he alleged that the Superintendent of Licences had acted "unfairly" against Mr Ainsworth's company in the manner in which he and the Licensing Investigative Unit had dealt with the company's application. His second complaint was that the appeal by the Superintendent of Licences to the Court of Appeal had been made "unreasonably and without justification".

The Ainsworth Report

Mr Ainsworth also made a complaint about the publication of an anonymously authored report about him dated September 1984. According to Mr Ainsworth, this document (the Ainsworth Report) contained allegations against him which were "scurrilous and inaccurate". The Ainsworth Report had been circulated to a number of overseas gaming authorities, resulting, Mr Ainsworth claimed, in adverse consequences for his business.

The significant feature of the Ainsworth Report was that it contained, amongst other papers, copies of documents prepared by New South Wales police officers.

Mr Ainsworth alleged that police had been responsible for providing that material and other information to the author of the Ainsworth Report or, indeed, had themselves been responsible for the preparation and publication of the report.

In particular, Mr Ainsworth alleged that the police officers responsible had been, or included, any or all of Sergeant Lionel Hanrahan, Detective Sergeant Robert Clark and (former) Detective Constable Peter Vincent.

All of these officers had been involved in a criminal investigation of Mr Ainsworth while working with a task force investigating criminal activity in registered clubs, and Detective Sergeant Clark and Detective Constable Vincent were subsequently attached to the Licensing Investigative Unit which had investigated Mr Ainsworth's

Ainsworth *cont*

application for an amusement device dealer's licence.

The Puerto Rico Connection

In late 1985, the Ainsworth Report was supplied to the Department of Justice in the American protectorate of Puerto Rico. The Department of Justice gave a copy of the report to another governmental authority, the Puerto Rico Tourism Company, which was responsible for assessing tenders for the supply of poker machines in Puerto Rico. Following its receipt of the Ainsworth Report, the Tourism Company rejected the tender submitted by an Ainsworth company and awarded the contract to two of the company's competitors. In June 1986, Mr Ainsworth instituted legal proceedings challenging the Tourism Company's decision.

When the Puerto Rican Department of Justice received the Ainsworth Report, it sought confirmation of the report's allegations about Mr Ainsworth from the New South Wales Licensing Investigative Unit. This led to both telephone and written communications between the Unit and, initially, the Department of Justice and, subsequently, the Tourism Company.

In July 1986, three representatives of the Tourism Company visited Sydney to obtain evidence for the purposes of the legal proceedings in Puerto Rico. The representatives of the Tourism Company met the then Superintendent of Licences, Mr Robert Jones, and a senior police officer in the Licensing Investigative Unit, Sergeant Les Burden. Sergeant Burden arranged further meetings with Sergeant Hanrahan and Mr Eric Richter, an investigative accountant used by the Licensing Investigative Unit.

Towards the conclusion of their visit, the representatives of the Tourism Company met with then Commissioner of Police, Mr John Avery, and his Chief of Staff, Chief Superintendent Ken Drew. Detective Sergeant Clark and Detective Constable Vincent were not present at any of these meetings, being overseas at the relevant time.

Commissioner Avery and Chief Superintendent Drew were subsequently involved in a decision to authorise Detective Sergeant Clark to travel to Puerto Rico to give evidence on behalf of the Tourism Company in the legal proceedings instituted by Mr Ainsworth. The Police Service also facilitated Mr Richter's attendance in Puerto Rico for the same purpose. (It transpired that a decision by the court in Puerto Rico on a jurisdictional



question denied Detective Sergeant Clark and Mr Richter the opportunity to give evidence in the proceedings.)

Mr Ainsworth made a number of complaints about these events. One complaint was that police officers had improperly disclosed confidential Police Service information and documents to the Puerto Rican authorities. A second complaint was that Detective Sergeant Clark's attendance in Puerto Rico was "without proper or adequate reason, justification and/or authority". Finally, Mr Ainsworth made a complaint about the allegedly improper authorisation of Mr Richter to travel to Puerto Rico.

The Police Service Investigation

Mr Andrews had the initial responsibility for dealing with Mr Ainsworth's complaints. He directed the Police Service to investigate all but one

cont page 54

Ainsworth *cont*

of the complaints, having declined an investigation of the complaint about the propriety of the appeal by the Superintendent of Licences to the Court of Appeal.

The Police Service investigation of the complaints was not completed until December 1988. The length of time taken for this investigation was not only the result of the complexity of the investigation, but also was caused by the need for the Police Service to remedy deficiencies in its initial investigation of the complaints.

Police Treatment of Licensing Application

Following receipt of the Police Service report, Mr Pinnock and Mr Andrews themselves inspected files in the Licensing Investigative Unit concerning the Unit's investigations of the various applicants for licences. This inspection satisfied Mr Pinnock that the Unit's treatment of Mr Ainsworth's application had not been unreasonable and, accordingly, he decided that Mr Ainsworth's complaint about this aspect of the matter was not sustained. This determination was made in April 1989.

The Re-investigation of Remaining Complaints

As to the other complaints investigated by the Police Service, Mr Pinnock was unable to determine on the basis of the material disclosed by the investigation whether or not the complaints should be found sustained. He decided to re-investigate those matters.

A re-investigation of a complaint about police misconduct by this Office is generally made by conducting an inquiry under section 19 of the Ombudsman Act. That section confers the powers of a Royal Commissioner upon the officer conducting the inquiry. Accordingly, the officer can require witnesses to attend the inquiry and, except in specified circumstances, can require such witnesses to answer questions.

However, at the time Mr Pinnock decided to re-investigate the matter, the powers available under section 19 could only be exercised by the Ombudsman himself. Accordingly, Mr Pinnock sought from both Mr Ainsworth and the police officers the subject of complaint their cooperation in the conduct of his inquiry simply because he could not exercise the compulsive powers available to the Ombudsman under section 19.

Initially, this cooperation was forthcoming. However, the day before the scheduled commencement of the inquiry in July 1989, the solicitor for some of the police officers the subject of complaint indicated that his clients had received legal advice that they should not cooperate with the inquiry.

It subsequently emerged that all of the police officers from whom Mr Pinnock had proposed to hear evidence declined to attend the inquiry on the basis of the unavailability to them of certain protections which would normally have been conferred on them in an inquiry under section 19.

Amendment of section 19 of the Ombudsman Act

With a view to enabling the re-investigation to proceed, the Ombudsman, Mr Landa, made a special report to Parliament in August 1989, notifying the Parliament that he had disqualified himself from involvement in the investigation of Mr Ainsworth's complaints and recommending the amendment of the Ombudsman Act to permit the delegation of the powers conferred by section 19 to the Deputy Ombudsman and the Assistant Ombudsmen.

The special report was tabled in Parliament in October 1989 and the Ombudsman Act was subsequently amended in January 1990 in accordance with the recommendation contained in the special report. Mr Landa then delegated to Mr Pinnock and Mr Andrews the exercise of the powers available under section 19 for the purposes of the re-investigation of Mr Ainsworth's complaints.

The amendment of section 19 not only allowed Mr Pinnock to conduct an effective re-investigation of Mr Ainsworth's complaints, but also has enabled statutory officers in this Office other than the Ombudsman himself to hold inquiries under section 19 for the purposes of both re-investigating complaints about the conduct of police and investigating complaints about the conduct of public authorities.

The Inquiry

The inquiry, conducted jointly by Mr Pinnock and Mr Andrews, began in March 1990 and heard evidence from Mr Ainsworth, the seven police officers the subject of complaint and eight other relevant witnesses over a number of days until

Ainsworth *cont*

May 1990. At that time, counsel for the police officers advised Mr Pinnock that his clients proposed to institute proceedings which would challenge the legality of certain aspects of the conduct of the re-investigation.

Legal Proceedings

In June 1990, proceedings of the type foreshadowed by counsel for the police officers were commenced in the Supreme Court. The Court granted an application for an expedited hearing, which was listed for November 1990.

At the hearing, a submission was made on behalf of this Office that the Court had no jurisdiction to hear the proceedings by virtue of sections 35A and 35B of the Ombudsman Act which limit the circumstances for litigation against this Office.

The Court decided in December 1990 that it was not yet persuaded that it could not hear the matter and the proceedings were subsequently listed for a hearing on the merits in April 1991.

Towards the conclusion of this later hearing, an agreement was reached between this Office and the police officers as to the further conduct of the re-investigation which obviated the need for the Court to deliver a judgment on the matter.

The Re-investigation Continues

Following the resolution of the proceedings, the inquiry was resumed and heard evidence from a further six witnesses in the latter half of 1991.

By this stage, the investigation had collected an immense amount of material: the documentation was voluminous and the transcript of evidence ran to over 800 pages.

Mr Pinnock and Mr Andrews, with the assistance of an investigation officer also involved in the re-investigation, then prepared a Summary of Evidence of over 600 pages which set out in considerable detail the evidence relevant to the determination of the complaints.

The Summary was sent to Mr Ainsworth and the police officers the subject of complaint in March 1992 with a view to obtaining submissions from them as to how the complaints should be determined.

The Summary was also sent to the Commissioner of Police with a request for detailed information about Police Service guidelines and

procedures on a number of matters, such as confidentiality of information, both current and as at the time of the events the subject of complaint.

In May 1992, submissions were made on behalf of Mr Ainsworth both in writing and by way of oral argument from Senior Counsel representing Mr Ainsworth. However, it was put by the solicitor for the police officers the subject of complaint that it would be inappropriate for them to make submissions until such time as the inquiry had obtained all the evidence which Mr Pinnock wished to hear and the Summary of Evidence was supplemented and revised accordingly. Mr Pinnock acceded to this argument and therefore heard further evidence from Detective Sergeant Clark on a number of crucial matters.

Following the issue of a revised Summary of Evidence, submissions on behalf of Mr Ainsworth and the Commissioner of Police were received in October 1992 and those from the police officers the following month.

The Final Report

Mr Pinnock then prepared a report on the matter of almost 800 pages. The report was in two volumes, the first including a summary of the history of the matter and the relevant evidence, the second (of over 140 pages) containing Mr Pinnock's findings and recommendations.

Because Mr Pinnock found two of the complaints sustained, he was required to send the report to the Minister for Police for the purposes of a possible consultation about the matter before any further publication of the report. A draft report was therefore sent to the Minister on 30 March 1993.

In May 1993, the Minister advised this Office that a consultation was unnecessary and Mr Pinnock then sent copies of the report to Mr Ainsworth, the police officers the subject of the investigation and the Commissioner of Police.

Improper Supply of Information

Mr Pinnock found that the complaint about the alleged improper release of Police Service documents and information to the Puerto Rican authorities was not sustained. Specifically, Mr Pinnock found no evidence that Detective Sergeant Clark, Detective Constable Vincent or Sergeant Hanrahan had improperly provided the authorities with Police Service information or documents.

cont page 56

Ainsworth *cont*

Although Sergeant Burden and Mr Richter had given the visiting representatives of the Tourism Company access to certain documents held by the Licensing Investigative Unit, Mr Pinnock found that such access had been authorised by Superintendent Jones in the form of a written direction and hence there was no impropriety in that respect.

Although the complaint was found not sustained, Mr Pinnock's report did contain criticism of the Police Service guidelines and of the senior officers involved in the decision to give the Tourism Company access to certain documents:

... the propriety or otherwise of the disclosure of certain information to the representatives of the Tourism Company ... ultimately turned upon whether there was authority conferred upon police to disclose that information. In those circumstances, it was particularly important that there be adequate general guidelines within the Police Service to regulate the conferring of such authority or careful thought given about whether, to what extent and in what terms that authority should be conferred. In my opinion, neither of these conditions was adequately fulfilled in the circumstances of this matter.

Nevertheless, Mr Pinnock went on to observe that a comparison of the past and present Police Service guidelines concerning confidentiality of information, particularly within the current equivalent of the former Licensing Investigative Unit, revealed a "significant improvement" in Police Service procedure and that there was therefore no need for him to make any recommendation for changes to the present procedure.

Detective Sergeant Clark's Attendance in Puerto Rico

Mr Pinnock found that the complaint about the authorisation of Detective Sergeant Clark to travel to Puerto Rico was sustained as against both Commissioner Avery and his adviser, Chief Superintendent Drew. The basis for this finding was that the authorisation involved a breach of an assurance to Mr Ainsworth by Commissioner Avery to the effect that Detective Sergeant Clark would not give evidence in the proceedings in Puerto Rico unless the Police Service received a subpoena or similar "process" from Puerto Rico purporting to require Detective Sergeant Clark's

attendance there. Although no such process was ever issued, Commissioner Avery recommended to the Minister for Police that the Minister approve Detective Sergeant Clark's trip to Puerto Rico.

The investigation revealed that the Police Service had apparently failed to recoup from the Puerto Rican Tourism Company the amount of Detective Sergeant Clark's salary for the period of his trip to Puerto Rico. Mr Pinnock concluded that this omission was the result of administrative oversight rather than any deliberate impropriety.

The authorisation of a police officer to give evidence in legal proceedings outside Australia must raise concerns about whether the Police Service is effectively able to attempt to prevent the disclosure of confidential information by police officers in the course of such proceedings. Mr Pinnock was of the view that Chief Superintendent Drew's consideration of this issue had been reasonable in the circumstances of this particular matter.

However, Mr Pinnock recommended that the Police Service should seek legal advice on the problem to assist the Commissioner of Police in determining future applications from police officers for permission to give evidence in jurisdictions outside Australia.

Mr Richter's Attendance in Puerto Rico

Mr Pinnock found that the complaint about Mr Richter's attendance in Puerto Rico was not sustained on the ground that Mr Richter was not a police officer or an employee of the Police Service and that there was therefore no occasion for the Police Service to grant or refuse authorisation of his trip to Puerto Rico.

However, because that was the situation, Mr Pinnock was critical of the fact that the Police Service had nevertheless provided substantial practical assistance to Mr Richter for the purposes of his trip to Puerto Rico by organising his air travel and arranging the issue of a passport for him.

Again, there was concern about the possible disclosure in overseas legal proceedings of confidential Police Service information obtained by civilians working as consultants to the Police Service. Mr Pinnock was critical that the Police Service had failed to consider this issue at the time of the events in question but also acknowledged that more recent Police Service guidelines and procedures had addressed the problem.

Ainsworth *cont*

Improperly Disclosed Documents

The complaint that police had improperly "leaked" some of the documents appearing in the Ainsworth Report was undoubtedly the most controversial of Mr Ainsworth's complaints.

Although the inquiry had obtained a considerable amount of evidence relevant to the matter in 1990, it was in June 1991 that crucial new evidence was produced to the inquiry by Mr Ainsworth.

This evidence was in the form of an affidavit by Mr Philip Quigley, who stated that he was the author of the Ainsworth Report and that he had obtained the Police Service documents reproduced in the report from a Mr William Prehn.

According to Mr Quigley, he had been commissioned to prepare such a report by an American competitor of Mr Ainsworth and, for this purpose, had come to Sydney in 1984 to obtain information and documents which would assist him in compiling the report. What was most significant about Mr Quigley's evidence was his claim that he had met with Detective Sergeant Clark with a view to obtaining information adverse to Mr Ainsworth and that Detective Sergeant Clark, while declining to supply him with such information, had referred him to Mr Prehn.

According to Mr Quigley, he subsequently met with Mr Prehn, who indicated that he had access to relevant Police Service documents and that he would supply them to Mr Quigley for a fee of \$20,000. Mr Quigley agreed to this arrangement and, following his return to the United States, received an envelope, apparently sent by Mr Prehn, containing copies of Police Service documents and explanatory notes.

Prior to the receipt of Mr Quigley's affidavit, all of the police officers the subject of the complaint, including Detective Sergeant Clark and (former) Detective Constable Vincent, had denied that they had improperly released the documents reproduced in the Ainsworth report and had suggested a variety of other sources through which the author of the Ainsworth Report might have obtained the documents.

In his initial evidence, Detective Sergeant Clark had acknowledged that he had met with Mr Quigley but had denied that Mr Quigley had sought information from him about Mr Ainsworth.

Following receipt of Mr Quigley's affidavit, Mr Pinnock sought Mr Quigley's agreement to appear

at the inquiry to give further evidence in person and on oath. Mr Quigley initially agreed to do so but, after he allegedly received an anonymous death threat over the telephone, he refused to come to Australia. However, Mr Pinnock and Mr Andrews were able to question Mr Quigley about his version of events by means of a telephone conference interview.

Mr Pinnock subsequently heard evidence from Mr Prehn from whom Mr Quigley claimed to have received the Police Service documents.

Mr Prehn initially denied reaching an arrangement with Mr Quigley to supply him with documents but, when confronted with forensic evidence obtained by this Office that his fingerprints were on some of the documents, he admitted to the arrangement. Mr Prehn denied that one or more of the police officers the subject of complaint had supplied him with the documents and claimed that his source was a Mr William Corkill, an investigative accountant used by the Licensing Investigative Unit.

In light of Mr Prehn's evidence, Mr Pinnock recalled Mr Corkill to give further evidence at the inquiry. Mr Corkill denied that he had ever supplied Mr Prehn with the documents in question; indeed, he said that he had not even known Mr Prehn at the time in question and would not have been in a position to obtain the relevant documents at that time.

Mr Pinnock then took further evidence from Detective Sergeant Clark, who conceded that he must have had a discussion with Mr Quigley about Mr Ainsworth but denied that he had referred Mr Quigley to Mr Prehn for information on Mr Ainsworth. Detective Sergeant Clark also denied that he had ever supplied Police Service documents to Mr Prehn and said that he was not aware of Mr Prehn having access to such documents.

Mr Pinnock concluded either that Detective Sergeant Clark (and perhaps Detective Constable Vincent) had improperly provided Mr Prehn with Police Service documents or, at least, that Detective Sergeant Clark had been aware that Detective Constable Vincent had already provided, or would be prepared to provide, such documents to Mr Prehn.

Accordingly, Mr Pinnock found Mr Ainsworth's complaint sustained and recommended that the Commissioner of Police seek independent legal advice on whether an appropriate departmental charge should be preferred against Detective

cont page 58

Helping Out a Mate

Late one night a woman was driving her car when she observed the car in front of her driving erratically. She spoke to the driver at a set of lights which were red. She smelled intoxicating liquor on his breath and formed the opinion that he was drunk. She made a citizen's arrest, took the man to the local police station and went home.

As he had left his glasses in her car, she rang the number on them. The number was that of the police station and she confirmed the driver was in fact a police officer.

After a positive alco-test at the station, the sergeant spoke to two constables about the inebriated officer: "We will have to look after him. He has a lot of problems. There hasn't been an accident. Can you put him under?". The breath analysis equipment was then manipulated by one of the constable's to give a reading of 0.03 which was then recorded as the sample.

Next day, the woman called the police station and when informed of the blood alcohol reading recorded for the man, complained to the officer in charge.

As well, the sergeant's conscience got the better of him and he confessed his indiscretion of the night before. Internal Affairs Branch initiated an investigation and the driver was charged with driving under the influence. He pleaded guilty to the charge before a magistrate. The offence was proved but the conviction discharged with a good behaviour recognisance for two years.

After a Crown appeal on the inadequate penalty, he was convicted and disqualified from driving for three months. The other officers involved were found guilty by the Police Tribunal of 'misconduct' and 'neglect of duty' and the sergeant lost his seniority and rank for two years.

One of the constables made a pointed comment in his record of interview with Internal Affairs:

...I believe that if he had been subject to the correct procedures in relation to what occurred on the night ..., the outcome would have been in the long run, much more to his benefit and obviously, not carried the detrimental effects that have occurred to the other police involved in this matter.

The driver has since been discharged from the police service, medically unfit and is on a service pension from the Department of Veterans Affairs. He has written since to the Ombudsman:

I do wish to convey my deepest regrets to any discredit I may have brought upon the Service and even moreso on the harm I have caused to the careers of my then fellow officers. This matter shall weigh heavy on my conscience for many years to come. ●

Ainsworth *cont*

Sergeant Clark. (There was no possibility of recommending any disciplinary action against Detective Constable Vincent in view of his resignation from the Police Service in 1987.)

The Commissioner has referred the matter to the Police Service's General Counsel for advice. As at the date of writing, that advice has not been received.

In reaching his finding on Mr Ainsworth's complaint, Mr Pinnock also concluded that Detective Sergeant Clark, Mr Vincent and Mr Prehn had lied on oath at the inquiry. He has therefore referred a copy of his report to the Office of the Director of Public Prosecutions for its consideration of whether criminal charges of perjury or like offences should be preferred against any of those individuals. The DPP has not yet made a decision on that issue.

The ICAC Investigation

Following his receipt of Mr Pinnock's final report on Mr Ainsworth's complaints, Detective Sergeant Clark made a complaint to the Independent Commission Against Corruption on 10 May 1993.

In his report on the subsequent ICAC investigation, Commissioner Ian Temby QC concluded:

The investigation ... revealed no impropriety of any sort in the processes which led to preparation of the Pinnock Report [Mr Pinnock's report on Mr Ainsworth's complaints] on the part of Mr Landa, Mr Pinnock, or any other staff in the Office of the Ombudsman.

Further details of the ICAC investigation are given in chapter one in this annual report. ●

Seeing Justice Done

An important principle of the system of justice is that the conduct of court hearings should be open to public scrutiny. Therefore, other than in certain exceptional circumstances, the courts are open to the public.

On 7 May 1992, a Local Court at Campbelltown heard a plea of guilty to a charge against a police officer. During the hearing, the doors to the courtroom were locked.

What is significant is the doors had been locked, not at the direction of the magistrate hearing the matter, but, it would appear, by somebody inside the courtroom who had not wished the public to have access to the hearing.

This incident was brought to the attention of the Attorney General, who referred the matter to the Minister for Police for enquiries as to whether any of the police officers present in court during the hearing had been responsible for "...a very grave interference with the administration of justice".

The Minister in turn referred the matter to the Commissioner of Police, who initiated a formal investigation into the complaint.

The investigation included interviews with all of those who had been present in the courtroom, each of whom denied locking the doors and any knowledge of who had been responsible for locking the doors.

Despite careful analysis of this and other relevant evidence, this Office was unable to determine who had locked the doors and, in particular, whether it was a police officer who had been responsible.

This Office decided that its own re-investigation of the matter would not be justified because a re-investigation was unlikely to determine the identity of the person responsible, a view with which the Attorney General agreed.

Accordingly, the ultimate result of the investigation was that the complaint, insofar as it concerned the possible conduct of police, had to be deemed "not sustained". ●

A Man's Best Friend

The New South Wales Police Dog Squad provides support to operational police on a 24 hour, seven day a week basis.

It was originally formed in 1932, but disbanded in 1954 until reformed in 1979. There are now four regional dog squads and a police dog training centre attached to the Police Academy.

There are high levels of commitment required of police dog handlers to ensure the welfare and "operational standard" of their dog is maintained.

To ensure the latter, police dog handlers attend training two days per fortnight with their assigned dog. The work and training demands for the dog and the handler heightens the natural

friendship between both parties.

Police dogs accompany their handlers on and off duty. It is not uncommon for the dogs to spend considerable time in the rear of police stationwagons.

One such officer, while spending time at his girlfriend's flat, left his dog in the vehicle. As it was summertime, the vehicle quickly became hot and proved fatal for the dog as an increase in the animal's temperature of three degrees above normal becomes critical.

Regrettably, the precautions taken by the police dog handler were quite inadequate



on the day leading to the needless death of a highly trained police dog.

The officer has been charged criminally with aggravated cruelty upon a dog.

The police investigator and the Ombudsman have made recommendations to ensure an adequate supply of fresh air to dogs in police vehicles sufficient to ensure temperatures do not escalate to critical levels. ●

Mardi Gras Ex-gratia Payment

In early 1993, during the Sydney Gay and Lesbian Mardi Gras festival, a tourist was arrested by police and charged with offensive conduct.

The incident, together with allegations of police misconduct, was reported on the front page of the *Sydney Morning Herald*.

An investigation was conducted by the Internal Affairs Branch into allegations that a police officer involved in the arrest and charging of the tourist had solicited a bribe from him.

It was alleged that the bribe was made in return for the police officer inserting an incorrect date of birth on the court attendance notice, thus permitting the tourist to leave Australia without having to face the charge against him.

Following the investigation, the matter was referred to the Director of Public Prosecutions for advice as to whether any criminal charge should be preferred against the police officer.

The DPP subsequently directed the preferment of charges of soliciting and receiving a bribe. These charges have not yet been determined.

The investigation also revealed deficiencies both in existing administrative practices at Paddington police station and in general Police Service procedure which could have facilitated the ability of the police officer to organise the payment of the alleged bribe.

The Assistant Commissioner (Professional Responsibility) has taken appropriate steps to remedy these deficiencies. ●

A complainant alleged he had been unfairly and improperly interrogated, that petty assaults had been committed and threatening words spoken to him after he was arrested.

As a result of the police investigation, a constable and a sergeant were brought before the Police Tribunal which found charges of misconduct proven.

The complainant, however, had incurred considerable expense in order to defend himself against false charges laid by the offending police.

In the circumstances it seemed appropriate to make a recommendation for an ex-gratia payment of \$5,000.

The Assistant Commissioner, Professional Responsibility, however took the view that:

...it is understood that the Magistrate, Mr D Kearney, when dismissing the information against Mr R, considered the question of costs and made an award to the defendant in the sum of \$1,500. As this matter has already been dealt with in the appropriate forum I do not propose to seek additional funds for Mr R.

Improper Charges

In his reply the Ombudsman pointed out that:

...had the charges been properly brought I would have agreed with those comments. Indeed, I would not have made such a recommendation because when charges are prop-

erly brought it is not at all unusual for defendants to bear a proportion of the cost of proving their innocence and it is not my function to comment on such outcomes.

I refer you, however, to the allegations found to be sustained, viz; an assault by police officers who used intimidation to force the signature of false statements without which no charges could have been brought.

It is my belief that those actions constituted a gross abuse of police authority resulting in significant financial and emotional costs to the complainant for which there has been no recompense in terms of the award by the court.

Costs

The Assistant Commissioner requested details of the costs incurred by Mr R and the Ombudsman was able to advise him that these amounted to \$6,403.

If costs awarded by the court of \$1,500 were deducted, it would appear that Mr R was approximately \$4,900 out of pocket.

The Ombudsman was sure that the Assistant Commissioner would agree that his recommendation for an ex-gratia payment of \$5,000 was not excessive and that, indeed, it was too low to reflect adequately the emotional damage suffered by Mr R.

This argument was persuasive and action was taken for a \$5,000 cheque to be drawn. ●

A Friend in Deed

One of the more difficult areas for the Ombudsman to address and to resolve is where a police officer remains in attendance with persons who are the subject of investigation.

One such case involved a senior officer on duty who called into a cafe for coffee and to see the owner/manager whom he described as a friend. The premises were the subject of a raid by the gaming squad because of alleged gambling devices in a back room.

The detective sergeant remained at the side of the manager and proceeded to ask questions of the investigating police, examine search warrant material and provided a lift to the cafe manager from the police station where he had been taken for questioning back to his cafe.

The detective sergeant spent further time while on duty, clocking up overtime, socialising with the manager and his wife at

the cafe. He stated that his purpose in staying was "public relations".

The Ombudsman found there had been a misuse of police resources and time because the sergeant allowed his personal interest as a friend of the manager to conflict with his police duty.

A recommendation was made for the detective sergeant to be counselled on the necessity of avoiding apparent conflicts of interest and, in particular, to distance himself from people who are the subject of police inquiry and investigation while on police duty. Furthermore the sergeant should be counselled on the need to limit social contact while on duty.

The Police Service undertook to parade the sergeant and remind him about the "inherent dangers of becoming involved in investigations involving family or friends".

As a matter of policy, police officers should not allow themselves to be put in situations of apparent conflict of interest. The importance of police policy on "conflict of interest" cannot be underestimated.

Many police do not understand where or how such conflicts arise. Furthermore, they often do not understand the consequences, such as the deterioration of the public perception of police integrity.

Such public perceptions are not based narrowly on actual conflicts of interests but may arise from apparent or perceived conflicts of interest by the public. Police must understand their primary obligation as police officers.

The issue of conflict of interest is not separately addressed in the Commissioner's Instructions despite the Ombudsman's recommendation that the Police Service clarify policy on "conflict of interest" by issuing a police instruction. ●

A Free Ride

An audit of motor vehicle diaries and fuel card accounts at Revesby Police Station revealed several anomalies relating to the records and use of three petrol cards. This led to an internal police complaint.

The matter was investigated and it was found that a person or persons had stolen and fraudulently used the petrol cards, obtaining \$395 worth of petrol.

Despite the fact that the investigation involved the inter-

viewing of 38 police officers, the identity of the person(s) who stole and fraudulently used the cards was not discovered.

At the outset of the investigation, all fuel cards issued to vehicles attached to the Revesby Patrol were removed from their relevant vehicles and locked away in the custody of the station controller.

A record of movement of the cards is now maintained and a driver needing petrol is required to sign for the relevant card. Stricter supervision of the trans-

action documents also is carried out.

The police contend that the adoption of these strict guidelines will prevent a recurrence of the fraudulent activity.

The police recommended that the *Commissioner's Instruction* in relation to this area be reviewed and amended accordingly, and that the procedures adopted at Revesby Police Station be made part of the *Instruction*. The Ombudsman agreed with the police recommendations. ●

A Long Hard Road

On the 18 March 1988 at 10.50 pm a young man from a large north coast town was arrested by police for "failing to quit licensed premises".

He was escorted to the police station where he was charged with this offence plus, "offensive behaviour", "malicious injury", two counts of "resist arrest" and two counts of "assault police".

At the station, the young male offender was placed in the charge dock and then, because of his alleged behaviour, was placed in the cells.

He was charged some hours later and admitted to bail. One of the police on duty at the station knew the family well, but did not contact his parents as requested.

A complaint about police conduct was laid by the young man's mother.

Preliminary inquiries were conducted by the Police Service and the complainant was unhappy with the inquiries.

The complainant wrote to her local member and the complaint was sent for a full internal investigation by the Police Internal Affairs Branch in April 1989.

The investigation papers were received in September 1989 with the transcript of court proceedings which were determined in February 1989.

The young man was convicted of some offences and others were dismissed.

In summing up, the magistrate was critical of the police conduct.

Yet, the police investigating officer found all the issues of complaint "not sustained".

In September 1990 the Ombudsman issued a provisional report finding three matters sustained against three police.

Ombudsman's Report

A draft report was issued by the Ombudsman in March 1991, with a recommendation that the Commissioner seek independent legal advice regarding the police conduct.

The Minister advised that he did not wish to consult in this matter and the report was made final in April 1991.

A lengthy legal advice from the State Crown Solicitor's Office in July 1991, decided that there was insufficient evidence to support departmental charges against the three police named.

Civil Action

The complainant then commenced civil action against the police for "unlawful detention" and "false imprisonment".

She objected to the Crown Solicitor's advice on the basis that the Crown Solicitor had conflict of interest because it was appearing for the police involved.

The matter was referred to the Attorney General, Mr Peter Collins, who advised the Minister for Police and Emergency Services to put aside the Crown Solicitor's advice and obtain advice from an appropriate alternative source.

In May 1992 a lengthy memorandum of advice was received from an independent barrister indicating the material available did not warrant the laying of departmental charges against police.

The complainant was informed of this advice and then pursued her civil claim against the Police Service.

In mid 1993 the legal representatives of the complainant were advised by the Crown Solicitor's Office that her claim would be settled out of court for an undisclosed amount. The terms of the agreement were not to be disclosed.

The complainant's battle for her son took over five years. Despite the Ombudsman's findings, the Police Service fought her every step of the way.

Finally, when her case was about to go to court, it was decided to settle.

The case shows the amount of perseverance necessary to succeed in a claim against police.

Despite some settlement for the complainant, no disciplinary action was taken against the police. ●

The Code of Silence

On the 11 April 1990 a firm of solicitors lodged a complaint to the Ombudsman on behalf of a client.

In the early hours of the morning a young male was arrested and taken to a Sydney western suburbs police station.

He was charged with offensive language and two counts of resist arrest. At the time of arrest, he was affected to a

cont page 63

On the Inside

A 15 year old girl from a broken home ran away from her father's house in the Lithgow area. Once found she met with a local police sergeant, her father and her step-mother at Lithgow Police Station.

In order to obtain an order under the Children (Care and Protection Act) all three were driven to Katoomba court by the sergeant and a female constable.

The young girl was taken to the cells at the court and locked up. She had not been charged; there was no intention to charge her and no reason to do so, she had committed no crime. She was kept in the cell for more than two and a half hours and released only to be brought up to the court.

The sergeant in mitigation said he had permission from the girl's father and he had taken care to have the female constable monitor the girl while she was in the cell. Regardless of his obvious concern for the family and the safeguards he took, the

sergeant should not have placed the juvenile in a cell.

In connection with a complaint in July 1991 the Police Legal Services Branch said "...I am strongly of the view that prisoners should generally not be placed in police cells until after a bail determination is made unless very special circumstances exist....".

In this case not only had the girl committed no crime, but she was of an age where serious consideration should have been given to not locking her up even if she was to be charged.

As a result of the 1991 complaint the Ombudsman recommended changes to police instructions which stressed the need to:

...exercise extreme caution before placing any prisoner in a cell who has not been charged or a bail determination made.

No one should be placed in a cell unless it is absolutely necessary, least of all a child. ●

Code of Silence *cont*

degree by intoxicating liquor. As well, he had no injuries and was in the company of three other persons.

The person was detained at the police station for some time and then released on bail and was met by two friends outside the police station.

On release he was distressed, his nose was bleeding and he had cuts to nose and face. He was taken immediately to hospital where it was diagnosed he had a broken nose and bruising to arms and to his body. His broken nose required surgery.

The Police Internal Affairs had no doubt that the person arrested received his injuries at the hands of police. Numerous police present at the station were interviewed and none saw an assault upon the complainant. One officer admitted to seeing injuries.

On 23 September 1992 the Ombudsman recommended compensation in the amount of \$5,000.00 for the complainant.

It was referred to the Office of Solicitor, Police Service, for advice on the payment. Some eight months have elapsed and no decision on the compensation aspect has been reached. ●

An Arresting Situation

After a domestic dispute over her boyfriend a young woman went to the police station and alleged she had been assaulted by her parents.

Accompanied by police, the woman and her boyfriend returned and police approached the woman's parents outside the house.

The parents now put their side of the story and the situation, inflamed by the daughter and her boyfriend, became heated.

To defuse the situation the two junior constables informed the parents that they were under arrest and would be taken to the station for questioning. Both parents and the 14 year old son who also was present were taken to the station.

Half an hour later they were released without being charged. In the meantime the daughter had gone back to the house, picked up her clothes and left.

Although the police were faced with a difficult situation, they did not manage it well. The young constables had no power to arrest the parents simply to question them. In fact, they acted unlawfully.

In examining this issue the local chief superintendent recognised the officers' error and recommended that they be counselled not to exceed their powers in future.

Going a little further, the chief superintendent arranged for the family to be visited by a senior officer who explained what had happened and extended a formal apology to the parents. ●

Conference

On 20-21 May 1993, the Royal Institute of Public Administration Australia (RIPAA), in conjunction with the Ombudsman's Office held a conference entitled *"Keeping the Peace - Police Accountability and Oversight"*. The conference was host to distinguished international visitors and to influential figures within the Australian context.

Papers were presented by police, legal practitioners, civilian oversight authorities and academics. Not surprisingly, there was vigorous discussion on many

issues and, in some cases, significant clashes of opinion. The themes explored by the various speakers were complex and it would be inappropriate to attempt to do them justice here. It would be naive, if not unhealthy, to expect harmony to prevail in this particularly sensitive area.

Despite some hostile reaction by police participants to criticism, the general police approach was positive.

External oversight of police agencies is here to stay and, it seems, is growing worldwide. Police Commissioners from NSW, South Australia and the Northern Territory, all recognised and accepted the trend to exter-

nal accountability and acknowledge it as a further mechanism of accountability for police. As the Northern Territory Commissioner noted, however, external accountability will always be of limited effect.

The real challenge for police is to instil accountability at every point within a police organisation.

Thanks are due to RIPAA and all the participants for the organisation of and contributions to the conference. The level of discussion and debate was generally high and reflected some of the difficulties in determining the right balance between external oversight and self-regulation in police accountability. ●

Police Training

The Ombudsman's Office continues to participate in internal police training courses for police officers handling complaints. The Ombudsman's Office attends to explain the role of the Office and to emphasise particular aspects of internal inquiries which are raised during reviews of internal investigations.

This year the following courses, showing date, police and location of the course, were attended:

8 July 1992	Eastern Suburbs Police	City of Sydney Police Station
15 July 1992	State Intelligence Group	City of Sydney Police Station
14 October 1992	Goulburn District Police	Goulburn Police Academy
28 October 1992	Inner West District	Rozelle Ambulance Academy
11 November 1992	Liverpool District	City of Sydney Police Station
9 December 1992	Police Academy Staff	Goulburn Police Academy
16 December 1992	South Region Crime Squad	Headquarters, Avery Building
6 January 1993	Bankstown District	Headquarters, Avery Building
20 January 1993	Penrith District	Penrith Police Station
3 February 1993	Parramatta District	Granville RSL
10 February 1993	Sydney District	City of Sydney Police Station
23 February 1993	Kings Cross (General Duties)	Kings Cross
24 February 1993	Prospect District	Westpoint, Blacktown
21 April 1993	St George/Sutherland District	Avery Building
5 May 1993	Sydney District	City of Sydney Police Station
26 May 1993	Eastern Suburbs District	Headquarters, Avery Building
23 June 1993	North West Crime Squad	Rydalmere Bowling Club
23 June 1993	Professional Integrity Branch	Goulburn Police Academy

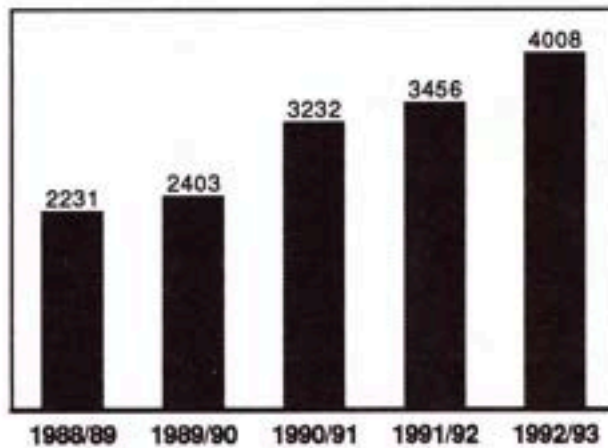
Attendance by the Ombudsman's Office at training courses is largely confined to the urban area of Sydney given the expense involved with travel and accommodation in country locations. ●

Police Complaint Statistics

Complaints Received

Police

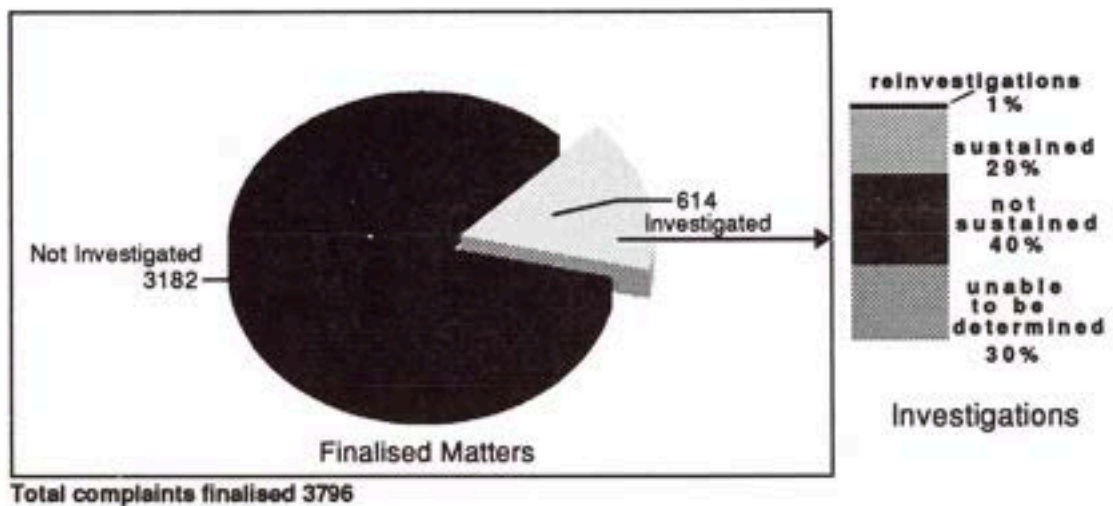
Five Year Comparison



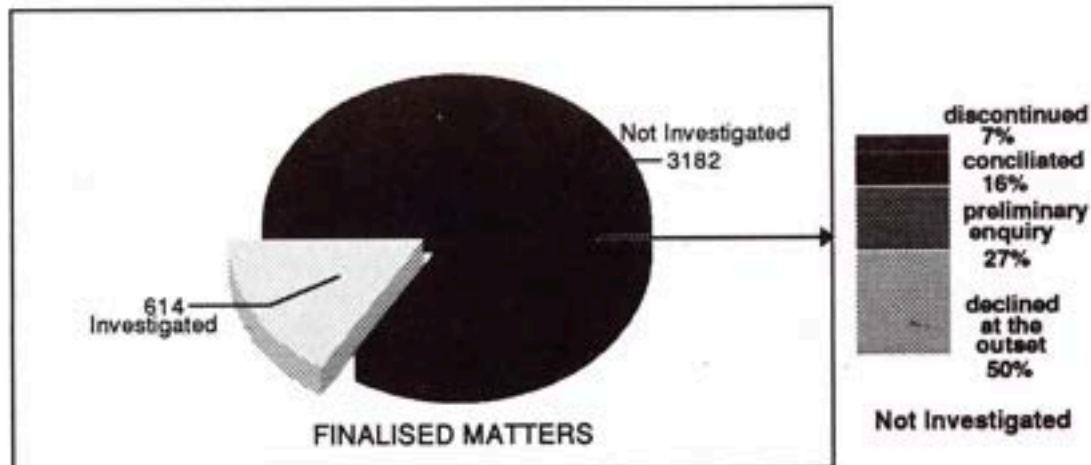
The chart on the left shows a five year comparison of complaints received.

Police Investigations

Investigations



Police Complaints Not Investigated



Total complaints finalised
3796

In 1992 - 1993, 3796 complaints were determined. The following table shows the results for these complaints.

Determined Police Complaints		1992/93
Not Investigated	Declined at the outset	1587
	Declined after enquiry	851
	Conciliated	529
	Discontinued before Ombudsman investigation	215
	Discontinued during Ombudsman investigation	1
Not sustained	Not sustained finding	249
	Deemed not sustained (Unable to determine)	182
	Not sustained finding following reinvestigation	-
Sustained	Sustained finding without reinvestigation	178
	Sustained finding following reinvestigation by Ombudsman	4
Total		3796

Comparison of complaints received with complaints determined

Year	Complaints received	Complaints determined
1988/89	2 231	1 960
1989/90	2 403	2 077
1990/91	3 232	2 656
1991/92	3 456	3 624
1992/93	4 008	3 796

Complaints Determined - Investigations And Non-Investigations

Year	Complaints determined	Not investigated		Investigated	
1988/89	1 960	1 500	(77%)	460	(23%)
1989/90	2 077	1 708	(82%)	369	(18%)
1990/91	2 656	2 071	(78%)	585	(22%)
1991/92	3 624	2 879	(79%)	745	(21%)
1992/93	3 796	3 182	(84%)	614	(16%)

Determinations - Results Of Complaints Not Investigated as a % of Total Determinations

Year	Total not investigated		DECO (decline at outset)		DECE (declined after inquiry)		DISC (Investigation aborted)		Conciliated	
1988/89	1 500	(77%)	819	(42%)	499	(25%)	67	(4%)	115	(6%)
1989/90	1 708	(82%)	977	(47%)	503	(24%)	99	(5%)	128	(6%)
1990/91	2 071	(78%)	1 069	(40%)	696	(26%)	135	(5%)	169	(6%)
1991/92	2 879	(79%)	1 529	(42%)	696	(19%)	229	(6%)	424	(12%)
1992/93	3 182	(84%)	1 587	(42%)	851	(22%)	215	(6%)	529	(14%)

Determinations - Results Of Complaints Investigated

Year	Investigated	Sustained	Not sustained	Unable to determine	Reinvestigate
1988/89	460 (23%)	83 (4%)	91 (5%)	275 (14%)	11
1989/90	369 (18%)	68 (3%)	75 (4%)	215 (10%)	11
1990/91	585 (22%)	136 (5%)	197 (7%)	244 (9%)	8
1991/92	745 (21%)	198 (5%)	318 (9%)	222 (6%)	7
1992/93	614 (16%)	178 (5%)	249 (6%)	182 (5%)	4

Police Internal Complaints - Complaints by Police Officers or arising during a Police Internal Investigation

Year	Total
1988/89	78
1989/90	185
1990/91	561
1991/92	692
1992/93	1009

Police Complaints Profile

Complaints about police to the Ombudsman are managed by creating a file for each letter of complaint. Each complaint file may contain a number of allegations about a single incident. For example, a person arrested following a brawl at a hotel may complain of unreasonable arrest, assault and failure to return property. One incident, one complaint, many allegations.

In cases determined this year, 6153 allegations were made and the following tables list these in categories showing the outcome achieved for each.

Ombudsman Determination - Breach of Police Rules/Procedure

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/Resolved	Total
Fail to provide or delay legal rights	35	2	15	26	7	85
Inappropriate disclosure	71	6	23	17	5	122
Fail to provide information/notify	41	12	16	6	14	89
Provide false information	57	25	18	16	12	128
Failure to return property	71	6	6	10	15	108
Unreasonable treatment	233	9	33	51	123	449
Drinking on duty	14	4	8	4	1	31
Fail to identify/wear number	10	1	6	11	5	33
Fail to take action	181	23	49	20	104	377
Other traffic/parking offences	84	5	9	17	17	132
Faulty policing	39	-	3	1	7	50
Misuse of office	21	10	8	6	2	47
Accidental property damage	9	-	-	5	6	20
Other	454	118	67	28	11	678
Total	1 320	221	261	218	329	2 349

Ombudsman Determination - Assault/Harassment

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/Resolved	Total
Physical/Mental Injury - outside police premise	77	19	70	87	-	253
Physical/Mental Injury - inside police premises	50	7	52	93	-	202
Minor Physical Mental Injury - outside police premises	69	3	20	26	5	123
Minor Physical Mental Injury - inside police premises	39	-	14	30	3	86
Threats/Harassment	210	14	59	52	49	384
Sexual Harassment	4	2	5	3	-	14
Total	449	45	220	291	57	1 062

Ombudsman Determination - Management Issues

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/Resolved	Total
Condition of cells/premises	4	-	-	1	-	5
Delay in answering correspondence	8	-	1	1	3	13
Inappropriate permit/ licence action	13	1	1	-	2	17
Other	46	1	-	-	14	61
Total	71	2	2	2	19	96

Ombudsman Determination - Investigation/Prosecution

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/Resolved	Total
Forced Confession	7	-	3	10	-	20
Suppression of Evidence	-	-	2	-	-	2
Suppression of Evidence (Traffic)	1	-	-	2	-	3
Fabrication	46	3	12	8	-	69
Fabrication (Traffic)	16	2	2	1	-	21
Unjust Prosecution	95	1	15	14	7	132
Unjust Prosecution (Traffic)	426	-	4	2	6	438
Faulty Investigation/Prosecution	91	15	21	4	4	135
Faulty Investigation/Prosecution (Traffic)	29	2	8	1	6	46
Failure to Prosecute	56	4	4	2	8	74
Failure to Prosecute (Traffic)	19	2	3	2	7	33
Total	786	29	74	46	38	973

Ombudsman Determination - Arrest/Detention/Warrant

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/Resolved	Total
Improper Detention - Intoxicated person	4	-	3	-	2	9
Unreasonable Use of Arrest/Detention powers	90	5	23	32	13	163
Faulty Search Warrant Procedure	33	3	7	7	7	57
Unjustified Search/Entry	30	2	13	10	14	69
Unnecessary use of Force/Damage/Resources	66	3	31	44	9	153
Improper use of Summons/Enforcement Order/Warrant	77	1	2	-	5	85
Fail to Withdraw Warrant/Accept Fine Payment	1	-	-	1	1	3
Total	301	14	79	94	51	539

Ombudsman Determination - Abusive Remarks/Demeanor

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/Resolved	Total
Race Related	118	-	2	9	8	137
Social Prejudice	4	-	-	11	1	16
Traffic Related	230	-	1	3	52	286
Other	84	11	32	50	78	255
Total	436	11	35	73	139	694

Ombudsman Determination - Criminal Conduct

Category	Not Fully Investigated	Sustained	Not Sustained	Unable to Determine	Conciliation/ Resolved	Total
Murder/Manslaughter	4	-	2	-	-	6
Sexual Assault	11	1	8	8	-	28
Bribery/Extortion	50	4	24	13	-	91
Theft	44	8	40	25	-	117
Drug Offences	54	4	25	5	-	88
Dangerous/Culpable driving	2	-	1	-	-	3
Telephone Tapping	-	-	-	-	-	-
Conspiracy/Coverup	2	4	15	6	-	27
Other eg,perjury	34	6	25	14	-	79
Total	201	27	140	71	-	439

Chapter Three
Local Government

The New Local Government Act 1993

This landmark Act brings a new vision of local government to New South Wales, with the introduction of modern management structures and practices and a re-focussing of the part councils play in the community.

The Act significantly strengthens the accountability of local government and is likely to impact on the work of this Office in a number of ways.

Accountability

The new Act requires councils to develop management plans and policies about their operations which must be the subject of public consultation.

While hopefully this process will assist local communities to have realistic expectations of their councils, it will also mean that councils will be forced to articulate standards against which citizens can then hold them accountable. Such moves often involve an initial upsurge in complaints to this Office.

The Ombudsman will also consider such standards when evaluating conduct of local government bodies which is the subject of complaint and investigation.

Pecuniary Interest

Another innovation in the Local Government Act likely to significantly impact on this Office is the new arrangements for the reporting, investigation and taking of proceedings for breaches of the pecuniary interest provisions of the Act.

The Ombudsman is able to investigate complaints made di-

rectly to him about alleged breaches. He can also be requested to investigate complaints about contravention of the pecuniary interest requirements of the Act by the Director General of the Department of Local Government.

The Act empowers the Ombudsman to notify the Director General of any complaint received by him and to report to him on the outcome of any investigation.

Such reports must be presented by the Director General to the Pecuniary Interest Tribunal which has the function of conducting hearings and taking disciplinary action against a person if a complaint against the person is found to be proved.

There already appears to be an upsurge in the number of pecuniary interest complaints lodged with the Ombudsman since the passage of the new Act and it is an area that the Ombudsman will give some priority to in the coming year.

Freedom of Information

Concurrent changes to the Freedom of Information Act also will impact on councils and this Office.

Significant among these is the repeal of section 16(2) which limited the right of people's access to information held by local councils to those documents which concerned an applicant's personal affairs.

Councils often relied upon this provision to refuse access to documents when it was placed in an invidious position, eg. as

the meat in the sandwich in a neighbourhood dispute or where the information could increase the likelihood of action against council.

In many of the complaints referred to the Ombudsman, preliminary examination revealed inappropriate use of this exclusion.

The repeal of this section hopefully will overcome such problems in the future.

For those councils that traditionally have had a guarded attitude to disclosure of information, however, the change will be something of a shock. The widening of the application of the Act to local government is likely to result in an increase of formal FOI applications to councils.

It is also likely that there will be an increase in requests to this Office for external review of determinations as a result.

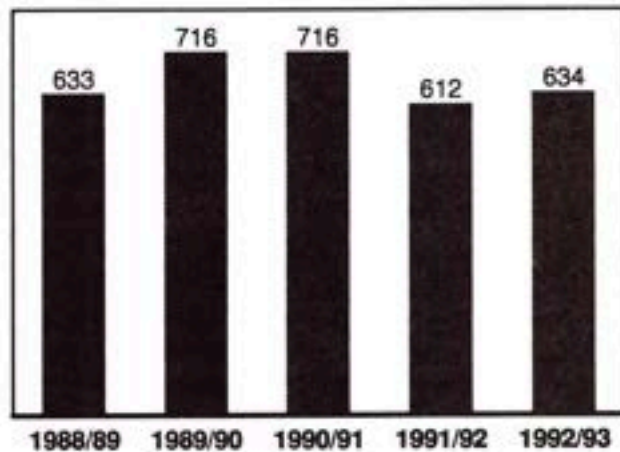
Some councils have already adopted open access policies, providing many categories of documents over the counter. No doubt this significantly reduces the number of formal applications made to them under the Freedom of Information Act and is more cost effective.

It appears it is the experience of these councils that open access policies do not hamper their operations.

This Office believes such policies should be widely introduced provided they result in processes which are quicker than formal assessments under the FOI Act and which provide all information requested without exception. It is only under the FOI Act that refusal of access to information should be considered. ●

Nature of Complaints

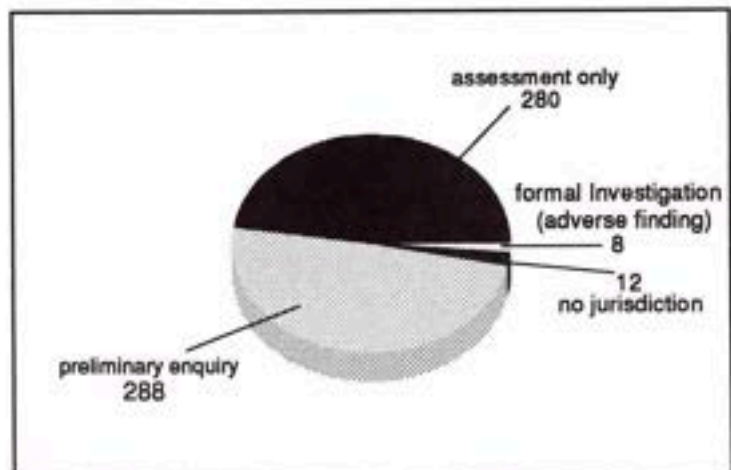
Complaints Received
Local Government Authorities
Five Year Comparison



A total of 634 new complaints about local government authorities were received by the Ombudsman during 1992-1993.

The level of complaints against councils and authorities over the past five years is illustrated in the graph on the right.

Local Government
1992 - 1993



Total complaints determined 588

The chart on the right shows the outcome of complaints finalised during the year.

New Complaints

The breakdown of complaints received in the 1992-1993 year by type together with comparison figures for the previous year is as follows:

Nature of Complaint	1992/93	1991/92
Development	118	79
- objection to DA	51	33
- failure to properly consider DA	4	14
- failure to notify	11	3
- delay in processing/refusal of DA	22	15
- objection to DA conditions	10	4
- failure to enforce DA conditions	20	10
Rates	55	62
- objection to rate increase	7	7
- calculation of (including complaints about excess water/electricity accounts)	15	17
- rate notice	11	3
- instalments/interest charges	7	9
- rate recovery	11	12
- differential rates	-	3
- rural/farmland rates	2	5
- rebates/refunds	2	6
Misconduct	47	38
- alderman/councillors	17	7
- council staff	21	16
- pecuniary interest	4	7
- conflict of interest	5	8
Building	44	57
- objection to BA	12	19
- failure to properly consider	3	10
- failure to notify	4	5
- delay in processing/refusal of BA	10	6
- objection to BA conditions	7	6
- failure to enforce BA conditions	8	11
Roads	37	29
- road closure/access	19	11
- failure to maintain	8	11
- traffic and other	10	7
Unauthorised developments/building work	33	29
Fail to take action	29	5
- neighbour nuisance	6	
- other	23	
Services and charges	28	33
Denial of liability	23	23

New Complaints (Continued B)

Nature of Complaint	1992/93	1991/92
Unfair treatment	22	9
Objection to orders/notices	21	26
- parking	6	12
- works	3	6
- dogs	1	4
- demolition	4	2
- other	7	2
Drainage and flooding	18	33
Failure to reply to correspondence	15	15
Noise	15	27
- barking dogs	4	11
- other	11	16
Information	13	12
- failure to provide/inaccurate	10	12
- s149 certificates	3	-
Rezoning	12	11
- objections to	8	8
- refusal to	4	3
Tenders/leases	11	8
Resumption	10	14
Pollution/noxious weeds	8	12
Garbage collection/charges	8	9
Trees	7	8
- tree preservation orders	1	1
- failure to act	6	7
Bonds/Interest on deposits/refunds	7	3
Inadequate inspection	6	5
Easements/right of ways	6	4
Kerb and guttering	5	12
LED/DCP procedures	5	5
Cemeteries	5	3
Fences	4	3
Unsatisfactory handling of complaints	3	4
Council works	2	2
Council elections	-	5
Council entrepreneurial activity	-	4
Libraries	-	2
Parks/reserves	-	2
Fail to issue license	-	4
Uncategorised	17	15
Total	634	612

Bogged Down

On 15 December 1991, Mr A wrote a letter to Port Stephens Shire Council, seeking formal approval to service domestic aerated septic systems in the shire.

Almost two years later, after strenuous efforts on his own behalf and by the Ombudsman, his application finally was determined by council.

Mr A's case was foreshadowed in last year's Annual Report:

...it appears the department [Health] has left the question of accreditation in the hands of local councils. This means ...Mr A must apply separately to every municipal and shire council in the state if he wishes to service units statewide. Each will have its own, idiosyncratic conditions and approval process, some will have fees, some will set onerous conditions and with some it will be purely a formality. Such a procedure is obviously inimical to commercial operations and will result in a mound of useless paperwork for Mr A.

In the case of Port Stephens Shire Council, these words have proven to be prophetic.

Until recently, owners of aerated septic tanks were locked (by administrative fiat of the Department of Health) into servicing agreements with the manufacturers of the units. When a manufacturer was negligent or dilatory in carrying out such services, major problems could occur with the systems, with consequent public health risks. In such a case, councils and owners had little recourse other than to complain to the Department of Health, which could exercise power over the manufacturers by threatening to withdraw or

suspend approval of the units.

The Department of Health from 1989 onwards began advising that local councils could approve personnel other than manufacturers to service the units.

The aim of Mr A's company was to fill this new market niche and to provide an inexpensive and reliable servicing arrangement for the systems. The catch, however, was that manufacturers did not wish to relinquish

proceeded smoothly.

Port Stephens Shire Council, however, responded to the manufacturers' campaign like a wallaby in the headlights of an oncoming truck. Council froze.

Mr A's application was not considered by council until March, when it was presented in the context of a grand scheme to accredit service personnel and charge them a fee of \$10 per tank to operate in the shire. Proof



their effective monopoly over the servicing of their units. Councils received a mini avalanche of letters from manufacturers, urging that Mr A's company should not be accredited. They painted an alarming picture of the possible public health risks that could (literally) flow from a damaged system and leakage of effluent into the streets.

Many councils paid no heed to this scare campaign and, satisfied with the technical credentials of Mr A and his colleagues, accredited his company.

There was some variation in the conditions applied (as foretold by the Ombudsman last year) but on the whole accreditation

of competency, among other factors, would be accreditation from the manufacturer.

The unlikelihood of a manufacturer accrediting a rival company did not appear to strike council with any great force. It struck Mr A, however, who commenced a long exchange of correspondence with Port Stephens Shire Council on the issue. In a letter to this office, he apostrophised:

Enough is enough! We have been exhorted to be the clever country. What a joke! How can small business soar like an eagle when it's surrounded by

cont on page 81

Existing Use - Fast and Loose

This Office currently is investigating complaints about a number of councils concerning their alleged improper recognition of existing use rights.

Existing use rights can be recognised for an ongoing activity commenced before the introduction of an environmental plan.

The key feature is that recognition of existing use rights allows the activity to continue without the development approval (often involving an environmental impact statement) that would be necessary if the activity was proposed after the introduction of the environmental plan.

The activities usually are of a substantial commercial nature and can be as diverse as pig farming and quarrying, with

cont page 82



Bogged Down *cont.*

the turkeys that we've got running government!

For over eighteen months, Mr A's company remained unaccredited in Port Stephens, despite being approved and working without apparent complaint in many neighbouring councils. It was unreasonable that an application to service septic tanks could remain effectively unanswered for such a period. The shire has over 300 of these systems in the ground and these existing systems must be serviced for the sake of the occupants of the houses where they are installed. The dangers of infection from leaking or badly treated effluent are immense.

While council delayed, Mr A's company had no approval to operate in the shire and money was foregone through lost busi-

ness opportunities.

Council's current proposal, in limbo though it appears to be, is that any person servicing aerated septic tanks in the shire should pay a fee of \$10 per tank. This office has analysed council files and even on a full cost recovery basis this cannot be justified. The reports are not being analysed or studied by council, they are simply being filed in large batches.

The fee as proposed is not only unworkable, it runs totally contrary to the main purpose of council's involvement, which is to safeguard public health. The systems are dangerous if not serviced. If manufacturers and their agents are to be levied an additional fee simply for the pleasure of sending a report in and having council file it, there will be a new disincentive for the

systems to be properly serviced - and no conceivable gain.

The legal powers vested in council with regard to this industry are there to ensure that the public health is adequately safeguarded. Government regulation, at whatever level, which functions only to frustrate and delay small business, without any tangible gain whatsoever to the public interest, is not good government but a public menace.

The Ombudsman investigated this matter and made a report to the Minister for Local Government and Cooperatives. Although broader issues remain unresolved, it is pleasing to note that on 1 October 1993 a letter was received from council advising that in response to recommendations from the Ombudsman, Mr A was granted his license. ●

Civil Wars

In 1982, a shopping centre was built in Richmond. The development contained seventeen shops and a condition of the development consent issued by Hawkesbury City Council, was a carpark for 30 vehicles.

Council commenced discussions with the proprietors of the shopping centre in 1985 to purchase the carpark. Despite a willingness to sell, no agreement could be reached on the compensation payable.

Council considered that the carpark was a condition of development consent and, accordingly, was essentially worthless to the developers.

The proprietors argued that even by meeting the requirement for a carpark, the land enjoyed significant development potential.

Council compulsorily resumed the carpark a short time later and the question of com-

penensation was heard by the Land and Environment Court.

The Court considered council's approach unrealistic and agreed that the proprietors of the carpark were entitled to compensation which recognised that the land could be developed and include a carpark.

The proprietor's example of such development was an office building on the land with an underground carpark. As a result of the hearing the proprietors were awarded the sum of \$204,500, plus interest and costs.

Council's solicitors later told council that there was no error of law in the decision that could be appealed. The solicitors, however, pointed out to council that with the subject carpark now owned by council, it was open to council to prosecute the proprietors for failing to comply with the development consent by not providing a carpark.

Shortly after receiving this advice, council received the tapes of the proceedings. These were requested by council so that they could review the proceedings in Court.

The tapes disclosed that in the course of drawing a hypothesis in argument, counsel for the shopping centre suggested that the resumption of the land left the proprietors open to suit for failing to provide a carpark.

In response, the judge hearing the matter said:

No it doesn't. Could you imagine? The Council resumes the land and rushes along to the Court and says give us an injunction because they are in breach of their conditions....It would be laughed out of Court...down the stairs and ordered to pay costs.

cont on page 83

Existing Use *cont.*

gravel extraction producing the most complaints.

The burden of each complaint is that the activity carried on pursuant to existing use rights would be unlikely to receive development approval if it was subjected to proper current development assessment procedures.

From a commercial point of view, the stakes involved in obtaining recognition of existing use rights are high, often involving six or even seven figure sums. It is, therefore, not surprising that most complainants also al-

lege some councillors, who have voted to grant existing use rights, are involved in conduct which ranges from cronyism to outright corruption.

Several major judgments from the Land and Environment Court and the Court of Appeal (but in cases not subject to current Ombudsman investigation) have spelled out the constraints on existing use rights.

That litigation appears to have arisen not so much as a result of the law being genuinely unclear, but because some interests were prepared to defend

to the last the advantages they obtained from exploiting recognitions that were defective.

In view of the case law available, one aspect of these investigations has been to look at councils' use of legal advice obtained by them in relation to granting or continuing to recognise a grant of existing use rights.

This aspect relates to the subject of legal costs to local government which attracted comment in this Office's annual report last year. The investigations are continuing. ●

Civil Wars *cont*

Some five months after being advised by its solicitors about this possible alternate litigation, and some two and a half years after having resumed the land, council considered a report from its general manager on the matter.

The report was inaccurate in numerous respects, the most serious by far was the assertion that "consideration was not given in the judgement with regard to the provision of carparking".

It is clear that the judgement does make reference to the development condition requiring carparking to be provided, and indeed this point was a fundamental component of the Judge's reasoning in the case.

Despite this fact, council decided to prosecute the proprietors for failing to provide the carpark since resumed by council if they didn't reply.

In reply to the letter from council's solicitors giving notice of prosecution failing compliance, the proprietors of the shopping centre expressed their understandable indignation and, pointing to the bench comments reported above, claimed that council was acting with malice.

The shopping centre advised that unless the threat was withdrawn they would seek an injunction to restrain council.

After considerable litigation, and suffering from a sudden outbreak of commonsense, council decided it had sustained enough damage in the face of the proprietors spirited defence, and abandoned its intentions to prosecute the owners of the shopping centre.

By this time, council's legal costs (which included the shopping centre's costs in several hearings) amounted to over \$103,000.

The Council did not welcome the Ombudsman's investigation. Displaying a concerning case of issue blindness, as if legal disputes had not caused enough problems by that time, council twice sought to challenge the jurisdiction of the Ombudsman to investigate the matter.

as council did, to suborn a valuation decision made by the Court was not an intended purpose of prosecution powers, and was an abuse of that power. The Ombudsman also found that for a public authority to suborn a decision of a court was a breach of public trust.



Council, at all times, failed to admit the error of its ways and asserted that it was entitled to take the prosecution action.

The Ombudsman found that council maintained a defective policy in blindly following legal advice and, in this case, council failed to exercise commonsense in deciding whether to institute further litigation.

The Ombudsman found there was no public interest motivation for the prosecution attempt but perceived a blind attempt to recover some component of the valuation award to which the council, with no good reason, believed itself to be entitled.

The Ombudsman found that to use prosecution powers,

Although council's inability to admit wrong in this matter supported an ex gratia payment, in the light of the already significant burden placed on the public purse by council in this matter, the ex gratia payment recommendation was limited to \$5000.

On the general issue of legal services provided to local government, the Ombudsman noted the contribution made by the Parliamentary Accounts Committee in this area, and recommended the matter be referred to the Department of Local Government. The investigation could be used in the formulation of training material for councils. As well, council's procedures and expenditure on litigation and other legal advice should be an issue in management audits of council. ●

Going it Alone

A survey by the Ombudsman as far back as 1985 showed the majority of local councils notified adjoining owners of building and development applications. For those that did not, the 1989 case of *Porter v Hornsby Shire Council* enshrined the need for the practice, certainly as far as building applications go, as failure to do so might be grounds to void a consent.

Following the judgement, Orange City Council adopted the practice but resolved to charge a service fee per building application to cover the cost. The legality of this fee was called into question by subsequent advice from the then Minister for Local Government and council's solicitor. As a result council re-

solved to fix a fee of \$30 payable by persons who inspected building plans. Complaints followed and staff recommended the fee be dropped. The council then dropped this fee, allowing free inspection of plans, but imposed a fee of \$30 for the processing of any objections lodged in writing

about building applications. A complaint to the Ombudsman was then made by a citizen of Orange.

The charging of this fee was found to be unreasonable by the Assistant Ombudsman. The whole purpose of allowing persons affected by building applications to view plans is so that they may lodge objections if warranted. Councils must have the opportunity to consider objections so that they may make informed decisions about applications and are obliged to do so. Councils need to have the opportunity of understanding the implication of building proposals that come before them so that all issues are decided as objectively

of the building application process, it is considered unfair to charge objectors. Rightly, the cost should be factored into the application fee as it is the applicant who is wanting to alter the environment for their private benefit and who should bear the principal costs associated with processing their application, including mandatory notification and consideration of objections.

The then Minister for Local Government advised the Assistant Ombudsman that his department agreed that Orange Council was acting without legal authority in imposing the fee.

He also said it was contrary to the spirit of the Government's reforms in bringing increased accountability and transparency of decision making within local government.

Further, as a matter of public policy, objectors should not be deterred by a council placing an obstruction in the form of a fee which is not within the general intent of the policy under which notification of applications are made. The Minister said his department knew of no other council that charged a similar fee and he urged Orange Council to adopt the Assistant Ombudsman's recommendation that the fee be dropped.

Despite the finding and recommendations made in the Ombudsman's report and the urging of the then Minister, Orange Council was intransigent and resolved again in March 1993 in response to the report that a \$30 fee for objections in writing to building proposals or alterations be fixed. The decision clearly was not in the public interest and Orange City Council appears to be totally out of step with other NSW councils on this issue. ●



solved to fix a fee of \$30 payable by persons who inspected building plans. Complaints followed and staff recommended the fee be dropped. The council then dropped this fee, allowing free inspection of plans, but imposed a fee of \$30 for the processing of any objections lodged in writing

as possible. Residents may in fact provide a service to council by this process by pointing out potential effects which a council may not otherwise have been aware.

As councils are obliged to consider such objections as part

Conflict of Interest Circular

In last years annual report, an investigation into the fund raising practices associated with Narrabri Shire Council's social club was reported.

The investigation arose after the council became aware that employees were approaching council suppliers requesting donations of cash and goods for the council staff club.

The investigation confirmed that staff were approaching suppliers and that some of the employees making such approaches were also making decisions about where council supplies were purchased.

The conflict of interest between their private fund raising on behalf of the club and their public duties as council employees should have been apparent.

The main findings of the report were:

- ▶ that council officers failed to recognise the division between their professional responsibilities and private interests;
- ▶ that council officers used information gained during

their employment for private purposes; and

- ▶ that the shire clerk failed to adequately advise staff about appropriate standards of behaviour.

While the investigation focused on one council, evidence was given that the same problems existed in a number of other councils.

A decision was taken not to pursue a number of separate investigations but rather to use the one investigation to highlight systemic problems.

One of the report's recommendations was that the Department of Local Government issue a circular to all councils and shires on appropriate standards of behaviour for fund raising practices and reminded them of the minimum standards of the Local Government Code of Conduct.

In compliance with this recommendation the department issued a circular in March 1993.

The circular advised councils that problem areas for fund raising included:

- ▶ activities undertaken with-

out the council's knowledge

- ▶ activities which had the appearance of being linked to council business
- ▶ use of confidential records on suppliers to target those suppliers
- ▶ employees in positions in which they made decisions about purchases also signing letters about donations
- ▶ approaching companies on the basis of their business links with council
- ▶ failure to publicly acknowledge donations
- ▶ failure to record donations.

With the issuing of the circular, all councils were asked to examine their activities to see that their administrations conformed to the code.

Councils were also reminded that the local government code was the minimum required standard of conduct for members and staff endorsed by the ICAC, the Ombudsman and the department. ●

Tourism Promotion

Armidale Council was considering a recommendation to only allow organisations that contributed to the Armidale Investment Program to place their promotional material in the Visitors' Information Centre.

The Visitors' Information Centre is a community centre funded by ratepayers. Consequently, this Office considered it unreasonable and unfair to limit access of promotional material at the centre.

If such a practice were adopted, tourists and other visitors to the area could be deprived of information about the full range of tourist and associated services within the area.

Following preliminary enquiries, council responded in part as follows:

Council, being responsive to community expectations and visitor needs

recognised the issues in [the] comments [by the investigation officer] and therefore did not proceed to implement the recommendation to remove non members brochures from the Visitor's Centre.

Visitors to Armidale will now be able to choose from a wider selection of services and facilities than may otherwise have been the case. ●

Singing in the Rain

In January 1988, this Office issued a report in terms of Section 26(1) of the Ombudsman Act 1974 containing a finding of wrong conduct against Newcastle City Council and the then Hunter Water Board (now a corporation).

The report concerned the failure of both authorities to rectify inadequate stormwater drainage in the Merewether area. One of the recommendations in that report was:

...[by 28 July 1988] the Government take action to establish clearly which authority or authorities have responsibility for stormwater drainage in the Newcastle area.

In mid 1992, following a complaint to this Office by 23 residents of Merewether, it seemed little had been done by either authority in the spirit of the 1988 recommendations. Following brief telephone enquiries, an investigation was commenced immediately by the Deputy Ombudsman.

Detailed submissions were received from both authorities, together with the complainants. However, due to the lack of resources available to this Office and other competing priorities, site inspections and a meeting between representatives of council, the corporation, and investigative staff of this Office did not take place until May 1993.

The Merewether area, and indeed many parts of Newcastle, have housing developments on land which is below the high tide level. Some homes are built at ground level, without the benefit of raised land or foundations to elevate them above even minor flood levels.

The combination of king tides and heavy rains prevent the efficient operation of tidal flaps throughout Newcastle and allow for stormwater backwash to low lying areas via street drainage systems. The inevitable result is flooding through many homes.

flooding problems were apparent even before the present authorities subject of investigation were established, creating an inheritance which nonetheless had to be considered in the allocation of limited resources.

Acting on the specific prob-



This investigation has established that at the time of the 1988 report by this Office neither council nor the corporation could negotiate cordially on drainage issues for the benefit of the citizens of Newcastle. Arguments about the commitment of resources appear to have been a major stumbling block.

More recently, detailed flood studies were undertaken by one or both authorities and a priority list drawn up for major flood mitigation works, identifying 32 areas likely to be worst effected by flooding (Merewether ranks approximately number 30 on that list). That data, however, is now outdated.

Admittedly, in a number of areas throughout Newcastle,

blems raised by the complainants, council borrowed an internal drainage camera from the corporation.

Inspection of the street drainage systems in Barr, Frederick, Helen and Robert Streets, Merewether, were conducted. With the exception of a blockage in Barr Street, all other underground pipes were found to be intact and functional.

Council has since undertaken extensive repairs in Barr and Coane Streets, improved stormwater pits, formed new kerbing and combined these works with regular visual inspections.

Cont on page 87

Singing in the Rain *cont*

Council allocated \$93,000 from its 1992-1993 budget to conduct a major flood study to compile a detailed brief to engineering consultants by August 1993.

The consultant engineers will then use this current data to identify flood patterns combined with land/property levels and the effects of any new development, in order to present an accurate picture of the magnitude of the flood problems in the Newcastle area.

The consultants will then assist both authorities in the development of a management plan based on sound economics and equity, from which priorities will be identified and acted upon.

Included in such priorities will be the acquisition of flood effected homes and/or the raising of floor levels in suitable homes. Costs will be met by both authorities.

As a result of the May 1993 meeting between investigation staff of this Office and representatives of both authorities, the invaluable site inspections, and subsequent correspond-

ence, it has been ascertained that both authorities have specified stormwater drainage responsibilities in the Newcastle area, including (but not limited to):

- ▶ The Hunter Water Corporation will design and construct flood mitigation works within each of its gazetted stormwater catchments in the Newcastle City Council area, namely Cottage Creek, Throsby Creek, Dark Creek and Wallsend-Plattsburg SWC. Flood mitigation works shall include tidal flooding considerations in these catchments.
- ▶ Flood mitigation works shall mainly encompass stormwater detention basins, trunk drainage improvements, removal of obstructions and flow improvement, the construction of new channels and major trunk drainage (eg, Mayfield) and the acquisition, modification (eg, raising of floors) of flood affected properties.
- ▶ The Corporation will pro-

vide funds for the investigation, design and construction of flood mitigation works (including land acquisition). Assistance in funding may be given by the Hunter Valley Catchment Management Trust.

- ▶ Council will provide public land for flood mitigation works.

The hibernation period for the investigation, while regrettable, seems to have actually been of benefit to the complainants, in that both authorities have taken positive steps not only to work together, but to be seen to be working together.

Relations between both authorities have strengthened and they are now clearly cooperating for the benefit of the public they jointly serve.

Given that the Ombudsman generally does not pursue issues regarding the allocation of resources, and taking into account the positive action initiated by both authorities to date, it was considered that there was no utility in proceeding to report. The investigation was discontinued. ●

What a Phone Call can do

Mr W complained to the Ombudsman that he had written to the Mayor of Parramatta Council concerning an important local issue and had not received a reply.

Mr W claimed this was despite a conversation he had with the mayor who assured him he would forward a written reply.

Mr W also claimed he had had a number of conversations with the mayor's secretary re-

garding a reply to his letter, but despite the passage of several months, he had still not received anything in writing from the mayor.

Upon receiving the complaint, an investigation officer telephoned the council's city manager to inform him of Mr W's complaint.

Following the conversation between the investigation officer and the city manager, the mayor

decided to pay a personal visit to Mr W regarding his concerns about the construction of basketball courts in a park near his property.

As a result of the mayor's visit, the dispute over the basketball courts was resolved to the satisfaction of Mr W. Mr W was of the belief the quick intervention of the Ombudsman led to the personal visit by the mayor and the resolution of the problem. ●

Here Today...Gone Eventually

A complainant alleged that Wollongong City Council had been less than enthusiastic in its pursuit of two individual busi-

Councils have a general responsibility to control and monitor development. In this case, advertising signs were

authority by not demanding the removal of the signs, issuing any formal notices to the owners, or taking legal action during a period of five years.



Preliminary enquiries by investigation staff found the signs had indeed been erected without the permission of council.

Council admitted that its staff had conducted a site inspection in August 1992, and had telephoned the sign owners to request removal.

However, no action was taken between mid October 1992 and June 1993 by council. In fact, council's most recent action was only prompted by the intervention of this Office.

In mid June 1993, council advised this Office that the illegal advertising signs had finally been removed. Better late than never.

This Office suggested that council examine its file re-submit systems to ensure that matters requiring action are regularly monitored. ●

nesses responsible for illegally erecting advertising signs in the Otford area.

In fact, the complainant had repeatedly raised the issue with council for over five years. However, the offending signs remained.

erected without the consent of council.

One of the offending signs had been erected without permission on council property. The complainant alleged council had failed to exercise its regulatory

Offensive Odours

A petition was received by the Ombudsman from Bourke residents alleging council had failed to take action on the vile smell emitted from a sewerage pump situated between some houses.

Councillors and staff had apparently been contacted to rectify the problem and they had said they were doing everything possible.

Residents felt that as neither staff nor the councillors lived

near the offensive pump they could not really appreciate that more had to be done to fix the situation.

An investigation officer wrote to council seeking an explanation of what action, if any, it had taken to alleviate the problem. Additionally, council was asked to indicate what action it proposed to address the situation.

Bourke Council promptly replied assuring this Office that it

takes residents' concerns seriously, and that it had endeavoured to eliminate the offensive smell, although this had not been completely successful.

Eventually, council inspection revealed a fault in a valve, which was thought to be the cause of the odour problem. On a trial basis, an activated carbon filter was installed at the top of the ventilation shaft to reduce the escape of offensive smells. Residents' of Bourke can now breathe easy. ●

Do Not Swim Here Finale

Last year's annual report contained a case study of a complaint about Warringah Council's handling of an illegal swimming school operating in a residential area.

Following an investigation it was found that councillors' agreement for the swimming

eral manager advise all councillors and council staff involved in the development control process that council does not have the power to allow an illegal use to recommence once it has come to council's attention, particularly if an application has been refused.



school to operate after development consent had been refused, was based on a mistake of law or fact, because they lacked authority to give such permission.

Their actions were inconsistent with the spirit of the Environmental Planning and Assessment Act. Additionally, it was concluded that the delay in council instigating legal action to rectify the non-compliance with the Act and with council's planning instruments was unreasonable.

Illegal Land Use

A total of five recommendations were made. Firstly, it was recommended that the gen-

Council policies in relation to illegal land uses, determination of development applications and correspondence received by councillors about matters before the council, should be reviewed to lessen the likelihood of the situation recurring.

Compensation

In order to compensate the complainant for the inconvenience caused by council's handling of this matter, it was recommended that council make an ex-gratia payment for the total legal costs incurred in taking action before the Land and Environment Court.

Council reviewed the relevant policies and made appropriate amendments. Staff and the councillors were advised of council's powers in dealing with illegal land uses.

Despite this, council indicated that it would not make an ex-gratia payment to the complainant as recommended. The principal reason given by council for non-compliance was that the complainants could have sought costs in the Land and Environment Court.

Council concluded that:

...the right to legal costs of proceedings can only arise from conduct which breaches the Environmental Planning and Assessment Act.

No Question of Legal Liability

In order to give council an opportunity to reconsider the matter, the Ombudsman wrote back explaining the basis of the recommendation, and the fact that an ex-gratia payment does not involve the question of legal liability.

As set out in the Ombudsman's report, the ex-gratia payment was intended to compensate the complainant for the disturbance to their amenity partly caused by council's lack of decisive action in restraining the illegal use adjoining their property.

Unfortunately, council ultimately chose not to comply with the ex-gratia recommendation. Council's stance in this matter was disappointing. ●

Bureaucratic Runaround or Not a Hole in One

On 9 June 1991, Mr P's car was damaged when it hit a manmade hole on Parramatta Road, as were other cars which were travelling by at that time. Mr P and another driver agreed to contact the RTA the next day and, in the meantime, they alerted both the police and Sydney City Council to the presence of the hole and its potential danger to drivers.

Workers from Sydney City Council arrived and placed barriers around the hole, but stated that the area was not the responsibility of council.

Mr P then contacted the RTA, and was advised to repair his vehicle and provide the RTA with details of the damage and cost of the repairs.

However, on 31 July 1991 the RTA wrote to Mr P, informing him that he should direct his claim to Leichhardt Council. Mr P then wrote to the council and was informed that council would contact him in due course.

In December 1991 Mr P followed the matter up with council and was told that his letter had not been received by the relevant person, so he faxed a copy of his earlier letter.

After several weeks he again contacted council and was informed that the matter had been passed to the engineering section.

Mr P wrote to this Office in April 1993, having contacted council several times and hav-

ing been informed that any damage caused by the hole in the road was the responsibility of the Water Board.

This Office made enquiries into the matter and was informed by the town clerk of Leichhardt Council that he considered the matter had been poorly dealt with, but the matter was the responsibility of the RTA.

The RTA recently informed this Office that contrary to its earlier advice to Mr P, it appeared that the authority responsible for the maintenance of the road is Sydney City Council which uses South Sydney Council for works.

Enquiries are now being made of South Sydney Council. ●

Conditions of Consent and Dividing Fences

Hornsby Council included, in appropriate circumstances, a condition of development consent which read in part:

Adjoining owners' consent is required for boundary fencing.

An owner of land adjoining a property for which a development consent had been granted which incorporated this condition, complained to the Ombudsman. Essentially, she claimed that her neighbour had not obtained her consent as required by council.

Following some enquiries of council it was discovered that technically council did not have the power to impose such a condition under the Environmental Planning and Assessment Act. The condition was intended to alert the applicant that they should obtain the consent of the adjoining owner in the spirit of the Dividing Fences Act.

In this particular case, the council was concerned to ensure some degree of privacy between the two properties and had, therefore, sought to con-

trol the scale and type of dividing fence.

This aspect was addressed by the first part of the condition of consent, but the second part may not have been enforceable at law.

Subsequently, Hornsby Council amended the wording of the condition so that it clearly relates to the Dividing Fences Act and is not a requirement under the actual development consent. While council's intentions were in good faith, the wording was ambiguous and, as illustrated in this case, could have lead to false expectations. ●

Birds of a Feather

In early November 1992 a new concrete water tank was commissioned by Nymboida Shire Council to supply water to the 450 people of the village of Coutts Crossing.

Shortly afterwards a local breeder of rare native birds had several expensive specimens die without apparent reason. An examination of the dead birds revealed a high level of bacterial infection.

Continuing tests and inquiries by the bird breeder convinced him that lime leaching from the new concrete tank had poisoned his birds.

Council tested the water just prior to Christmas 1992, found it infected and asked residents to boil water until further notice.

The Ombudsman made extremely detailed enquiries of council, the Department of Water Resources, the Department of Health Laboratories who tested the water, and Public Works who built the tank.

It became obvious that the water quality of Coutts Crossing had been variable before the new tank was built.

Council was unwilling to admit to poor testing or inadequate post construction procedures for the new tank, but they did confess that a chlorinator had worked imperfectly for some time. An air lock meant that the Coutts Crossing water was not properly disinfected for periods over the last five years.

Council took steps to replace the chlorinator and to in-

crease the level of testing in an effort to ensure the drinking water was potable.

They also provided a detailed explanation for the way they handled the problem. There was little practical purpose in this Office pursuing the matter further.

While no particular individuals in council were singled out for comment, it was clear that an unacceptable situation had been allowed to continue for too long. Not enough had been done to ensure that water quality was maintained at all times.

The Ombudsman discontinued the investigation saying that the situation had apparently been rectified and the complainant could take his own civil action to recover damages for the loss of his birds. ●

Southern Mitchell County Council

As a result of a power surge on 15 July 1992 in the village of Raglan, residents suffered almost \$16,000 damage to electrical equipment.

Residents alleged that Southern Mitchell County Council employees had been at fault and that council was responsible for their losses. Council said the surge was caused by an outside agent which shorted the 11kV and low voltage power lines.

They suspected a lightweight piece of steel wire was conveyed between the power lines by an outside agent, such as a bird or a vandal.

Preliminary inquiries made on 10 December 1992 revealed that there was a basic conflict between council's evidence and that of the residents.

As an investigation by this Office would not resolve that conflict, the complaint was de-

clined on 24 March 1993. However, this Office referred the matter to the Office of Energy, who investigated the matter independently and submitted a report to this Office on 27 May 1993. The report stated:

During the course of the investigation SMCC indicated that they would consider helping those affected residents to replace their damaged appliances in whatever way possible. ●

Chapter Four
Public Authorities

Overview

Three aspects concerning complaints about public authorities are striking when reviewing the work of the Office during the past year.

Firstly, in looking at the nature of complaints set out in the table on the next page, it is notable that there have been changes in the categories of complaints received, despite the number of complaints being virtually static.

It is pleasing to see significant decreases in complaints concerning quality of service and procedural objections, particularly given the governments commitment to the Guarantee of Service and the Ombudsman's implementation of the Complaint Handling in the Public Sector (CHIPS) project, the aim of which is to encourage public authorities to develop their own complaint handling procedures.

However, there have been increases in all other categories of complaints. The most important of these are the increases in complaints about regulatory

agencies, contracts/prices/tenders and in the area of policy. The last mentioned category often raises complaints that are either at the margins of, or outside, the Ombudsman's jurisdiction.

Many of the complaints, however, refer to the reasonableness/adequacy/correctness of advice provided to ministers by their departments or individual public servants. Investigations of these complaints are often difficult and frequently of little utility. As in the past year, the Ombudsman continues to pay close attention to the increases in complaints about regulatory agencies and those relating to contracts, etc.

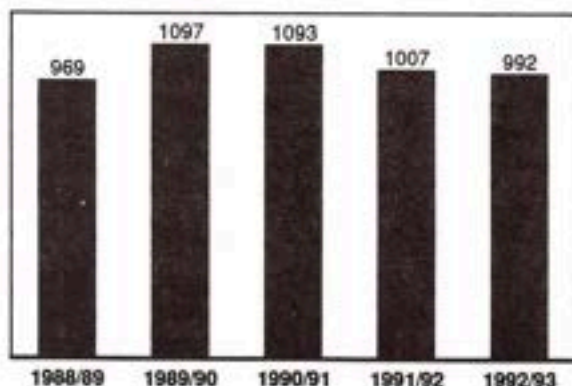
The second striking feature when reviewing the Office's work in investigating complaints about public authorities, is involvement of large resources in

several investigations - the Local Government and Community Housing Program (LGCHP), Electoral Office, Brougham, Board of Studies, and the Health Complaints Unit.

All these investigations have required tremendous enthusiasm and dedication by investigation staff, together with rigorous and objective analysis. The standards of these investigations without exception, remains high and in several cases exceed the best of past years.

Thirdly, increased emphasis is being given to attempting to resolve complaints by way of conciliation/mediation in the context of preliminary inquiries. Although the number of complaints the subject of mediation is still relatively small, the trend is increasing. Apart from the immediate benefits to the complainants and public authorities concerned, there are long term cost benefits and rewards to the Ombudsman's Office in the allocation of scarce investigative resources. ●

Complaints Received
Departments
Five Year Comparison



The chart on the left shows a five year comparison of complaints received about government departments, excluding prisons, local government and police.

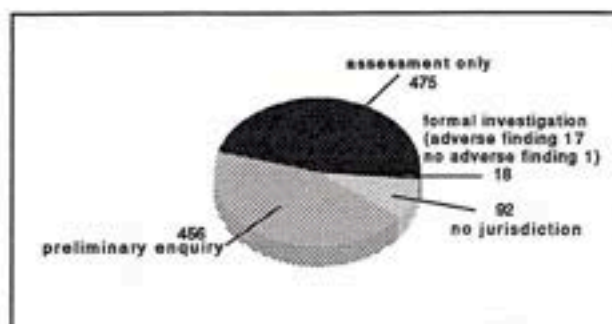
Nature of Complaints

Complaints about public authorities, other than police, local government and prisons, totalled 992 this year. The type of conduct complained about is shown in the following table compared with numbers for 1991/92.

General Complaints 1991/92 - 1992/93 (excluding Councils and Corrective Services)

Analysis by type of conduct	1992/93		1991/92	
Quality of service (No reply, delays, rudeness, inaction)	259	26%	390	38.7%
Procedural objections	115	12%	217	21.5%
Wrong decisions (Includes exercise of discretions)	217	22%	176	17.5%
Action or failure of regulatory activity	164	16%	115	11.4%
Contracts/prices/tenders	70	7%	50	5.0%
Policy/legislation (Objections to government policy/law)	86	9%	21	2.1%
Management (Broad issues associated with operation of authority)	54	5%	15	1.5%
Other	27	3%	23	2.3%
Total	992		1 007	

Departments 1992 - 1993



Total complaints determined 1041

The chart on the left shows the outcome of complaints finalised during the year.

These complaints do not include complaints about prisons, local government or members of the police service.

Residential Unit's Funds were Manager's Magic Pudding

In late December 1991 the Office received information about Brougham, the Department of Community Services' residential unit for children in Sydney's Woollahra.

Allegations included abuse of petty cash and departmental accounts, misappropriation of property and abuse of the escort system and of departmental cars. It also was alleged that complaints to the department about these and other matters were made in the past, but nothing effective had been done.

After preliminary inquiries the Ombudsman, in the absence of a formal complaint, and on his own initiative, launched a formal investigation on 15 January 1992. In terms of the Ombudsman Act this is called an 'Own Motion' investigation.

Simultaneous unannounced visits by Ombudsman officers were made to Brougham and to the regional and head offices of the department, and the officers removed numerous relevant documents.

Missing Files

However, many files sought were not produced and the then Director-General of the Department, Mr V Dalton, subsequently said such files for Brougham (and all other operational units in the Metropolitan East Region) had been destroyed during that region's integration into the Metropolitan North Region. No satisfactory explanation for this manifestly unlawful destruction emerged during the remainder of the investigation.

The investigation found gross shortcomings in the department's procedures for originating, maintaining and archiving files.

The investigation then moved to examine the documents obtained (including this Office's complete reconstruction and computer analysis of Brougham's accounts for a six

ing of the petty cash system operating at Brougham. In this regard, she coerced members of her staff to sign and fill in details on fraudulent petty cash claims by such means as threats to their employment and emotional pressure through fits of screaming and tears.

Similarly the manager had abused departmental charge



month period) and formal hearings were held at which Brougham's manager and 12 former and current departmental employees were examined on oath.

Petty Cash Abuse

The investigation found that the manager engaged in a remarkably persistent campaign of petty cash abuse, amounting to a wholesale robbing and defraud-

accounts to obtain goods for personal use and to obtain cash. She did this by collecting cash register receipts unrelated to Brougham from various sources, and using this to support a fraudulent claim for payment to the purported supplier.

Using her authority as manager she would arrange the drawing of a cheque, which, while showing in the books of account as being drawn to the supplier, would in fact be drawn to cash, for her benefit.

Cont page 97

Property

The investigation also found that the manager removed substantial quantities of departmental property from Brougham for her own or her family's personal benefit and that she had, at times, misappropriated pocket money from the children resident at Brougham.

The manager abetted her pillage of Brougham property by presiding over the persistent failure to record the acquisition of goods allegedly purchased for the legitimate purposes of Brougham.

Screaming

The investigation also found that the manager had exhibited emotional instability and tantrums involving screaming at both staff and children, making threats, bursting into tears and extreme mood swings between being friendly and caring one minute and swearing and raving the next.

Whatever the cause and whether calculated or involuntary, my Office found that the manager did exhibit the above behaviour alleged.

My Office considers that such behaviour is entirely inappropriate in a person charged with the sensitive task of managing an institution such as Brougham.

My Office considers that such behaviour, when directed at or exhibited in the presence of the already emotionally damaged children committed to Brougham's care, constitutes serious emotional mistreatment of those children.

Systemic Issues

While substantial individual shortcomings attract keen interest from the Ombudsman, his

pre-eminent focus is upon systemic failings.

In Brougham's case the systemic problems concerned the way in which the department failed to keep and preserve records, and, more importantly, how warnings to the department, via internal audit reports and specific complaints from Brougham staff, remained unheeded.

Operations managers kept personal unregistered operational files for individual units and this ad hoc system effectively prevented the consolida-

In Brougham's case the systemic problems concerned the way in which the department failed to keep and preserve records, and, more importantly, how warnings to the department, via internal audit reports and specific complaints from Brougham staff, remained unheeded.

tion and cross-referencing of information about units which is essential for effective management.

As to complaint and grievance handling procedures it was found that where Brougham casual staff complained to the operations manager, they were punished by the unit manager effectively terminating or reducing their employment.

A permanent officer was also denied promotion. In these circumstances senior depart-

mental management always fell in behind the manager.

Managerial Confusion

The investigation found there was serious dysfunction in the supervision structure for Brougham.

Operations managers believed (falsely) that the regional executive officer was responsible for following up audit reports and maintaining a watching brief on the manager's compliance with financial and property record-keeping requirements.

This longstanding confusion persisted until clarified during the hearings of this inquiry.

It was a confusion which the investigation found contributed to the *fraud-friendly* environment at the residential unit.

Since the issue of the draft report to the Minister of Community Services, the department has provided a list of actions already taken to address some of the shortcomings identified by the investigation.

These include introduction of a new records management system, tightening of procedures, additional training and augmented supervision of records management.

In the audit area a two year audit cycle has been introduced and quality review and additional control procedures established.

The evidence about the manager's frauds has been referred to the police and a working party of appropriately senior officers has been established:

to review the recommendations of the Ombudsman's report and to develop remedial strategies and plan and monitor their implementation. ●

Investigation of Child Abuse Cases

The public authorities with the legal responsibilities for child protection services engage in one of the most intrusive forms of government intervention in our personal lives.

The two main investigative agencies involved in child protection are the Department of Community Services and the Police Service.

The role of the department is to receive notifications concerning the assault, abuse and neglect of children and to investigate those notifications to ensure the safety of the child. This may involve commencing care proceedings in the Children's Court.

The role of the police is to investigate alleged criminal offences and initiate criminal proceedings against alleged offenders.

While there is a clear distinction between the roles, there can be considerable overlap in the investigative processes of both organisations, particularly where the alleged perpetrator is a family member or there is a close association with the child victim.

Both investigative agencies operate with different priorities, time frames for response, procedural frameworks and require different standards of evidence to establish cases in the respective legal proceedings.

While the Department of Community Services is responsible for coordinating case management when both or more agencies are involved, it has no authority to direct police investigations in any way. Given the standard of evidence required in criminal proceedings, police investigations tend to take precedence over departmental investigations.

Yet the department generally has the capacity to respond to notifications quicker than the police, and efforts to involve the police at the initial stage can impede the department's investigation and action to protect the child.

As a result the Ombudsman has received a range of complaints involving delays and the lack of coordination between the investigative bodies.

Case Study

In one case recently finalised, the department investigated the alleged sexual abuse of a young child by the adolescent son of the child's day carer.

The department's inquiries revealed considerable conflict in the evidence and it was not possible to reach a conclusive finding. However, contrary to departmental guidelines, departmental officers failed to formally notify the police of the allegations at the time.

When the department concluded its investigation, the supervising officer informed the carer and her son that because of the equivocal nature of the evidence the department was obliged to keep a record of the allegation. They were informed that while the department had decided not to involve the police, that option was still open to them, presumably if they wished to take that avenue in an effort to clear the son's name.

Almost twelve months later the department received a second notification involving the carer's son. At this point both

matters were notified to the police. Inquiries concerning the later notification were thwarted because the mother of the alleged victim refused to have her daughter interviewed. The police then proceeded to investigate the earlier allegation, and the alleged perpetrator was subsequently arrested and committed for trial. He was later found not guilty after a trial in the Supreme Court.

The investigation revealed a number of deficiencies in the handling of this case by both agencies. However, the most concerning aspects were the failure of the department to notify the police in the first instant and the failure of both agencies to share relevant information concerning this case. Examination of the records indicated the department had more extensive information about the matter than the police.

The police investigation relied only on the evidence of the alleged victim, corroborating evidence from his father concerning the child's disclosure, and medical evidence which supported the child's disclosure but was not conclusive. The police made no effort to obtain the alleged perpetrator's version of events or evidence from other people present in the house at the time of the incident.

The committal hearing transcripts revealed the police were not aware another child was present in the room at the time of the alleged assault, or that the alleged victim had been interviewed up to eight times before they took his statement. Other vital evidence, including whether there was the opportunity to com-

mit the assault, was not addressed as part of the police investigation. This information was readily available on departmental files.

When questioned on the issue of information exchange the officers involved remained intransigent that the responsibility for providing or requesting the information lay with the other investigative body. Departmental officers stated they were only obliged to provide brief details and a contact name for the police. The police stated that under normal circumstances all they need from the department is sufficient information about the identity of the alleged victim, as it is their role to investigate criminal matters.

Generally they consider that much of the evidence obtained by the department is inadmissible in criminal proceedings and therefore there is little value in viewing this information. However, the police officers failed to address the distinction between relying on statements and evidence collected by the department and seeking access to all relevant information on which to base their own inquiries.

Clearly, officers of both agencies should have made efforts to ensure there was proper liaison concerning this case. Their responses indicated not only a lack of communication, but a misunderstanding on the part of both authorities of the procedures and practices of the other.

In this particular case, the failure of the investigative bodies to coordinate their response exacerbated the effects of the intervention on the children and families involved.

The delay by the department in formally referring the notification to the police resulted in two separate investigations of

the same matter. The first investigation was completed a considerable time before the second investigation began, creating the false impression that the matter had been finalised.

Bearing in mind that the alleged perpetrator was an adolescent, it was obviously distressing for his family to find that there was a second investigation of the same allegation by a different authority, which had taken no regard to the evidence obtained in the earlier investigation and did not even seek to obtain their version of events prior to the arrest.

Similarly, the trauma for alleged victim and his family during this period would have been enormous. Had it been the case that the assault occurred as alleged, the likelihood of establishing the case, based on the evidence of a child so young, would have been significantly reduced by the delayed investigation.

The lack of adequate planning and the failure to exercise due care led to a situation which has largely been to the detriment of all parties concerned.

Future Directions

In various reports the Ombudsman has focussed on the need for the police and the department to coordinate their responses to child abuse cases.

In 1991 the Ombudsman issued a report concerning the Department of Community Services, recommending the department seek to obtain from the Police Service an agreement to develop joint action plans for all cases that involved both agencies.

The Ombudsman recommended that the action plan be formulated as soon as possible after both agencies were made

aware of the abuse notification and that the plan define maximum periods for medical examinations to be arranged (if considered appropriate), for the alleged perpetrator to be interviewed and for other relevant material to be obtained.

At that stage the Police Commissioner advised the department that he agreed in principle to the concept of joint action planning, but he was not prepared to stipulate maximum periods for interviewing perpetrators and obtaining relevant evidence. This effectively undermined the joint planning process.

The Ombudsman issued a further report this year which again focussed on the lack of coordination and liaison between the department and the Police Service. As well as addressing the specific complaint outlined in the case study, this report looked at what progress had been made in recent years.

The Police Service published its initial child protection guidelines in November 1990 and an updated version of those guidelines in June 1991. The Interagency Child Protection Guidelines were published by the Child Protection Council in 1991. Since at least March 1992, the Department of Community Services has been revising its entire child protection guidelines and policy.

Guidelines

Those guidelines reflect an awareness of the need for a coordinated and systemic response to allegations of abuse by all departments and agencies involved. However, on a practical level, significant change is not evident.

In some areas police and the department seem to have

Cont page 100

Legislation By Stealth Robs Ombudsman Of Jurisdiction

Background

In late 1992, the Department of Community Services requested the assistance of the Office of the Ombudsman in proposed consultations with client groups and other interested parties on the manner and form of complaints and appeal mechanisms for the delivery of community services in NSW. Officers of the Ombudsman assisted by attending consultative meetings to answer questions and to comment as required.

Apart from hearing informally that these consultations had led the Department to recommend to its Minister that a mechanism involving a Commissioner for Community Services

and a Tribunal be implemented, no other advice was received from the Department about the matter until April 1993.

On 14 April 1993 the Office of the Ombudsman was provided with a copy of the Community Services (Complaints, Appeals and Monitoring) Act 1993 by the Department. Up until then, there had been no advice on the terms of any draft Bill or its parliamentary timetable. By the date on which the Bill was provided to the Ombudsman, both chambers of the NSW Parliament had passed the Bill and it had received Royal Assent on 8 April 1993. The complaints and appeals mechanisms of the Act will operate from its date of proclamation.

It is the view of the Ombudsman that the Community Services (Complaints, Appeals and Monitoring) Act has, without the benefit of consultation, seriously diminished the jurisdiction conferred by the Ombudsman Act to investigate complaints about the Department and its officers.

This lack of consultation is a matter of concern, exhibiting as it does the hallmarks of administrative cat burglary. Failing to be advised or consulted about the proposed Bill or indeed not to be advised of its presentation and carriage before the Parliament, especially in the light of ongoing investigations that included allegations about corrupt

Cont page 101

Child Abuse Cases *cont*

developed a close working relationship. But, it would appear that the level of cooperation and coordination between the agencies depends largely on the interest and commitment of the individuals involved. There is no formalised joint planning process operating between the two agencies.

The Department of Community Services' draft guidelines and procedures emphasise a planned approach to investigations. This includes ensuring there is a clear understanding between the police and departmental officers concerning roles and responsibilities, determining an accepted time frame for the completion of the investigation, and establishing a stated feedback mechanism.

Obviously, for the planned approach to be implemented the cooperation and support of the Police Service is required. Not only agreement in principle, but action to implement new procedures and commitment in terms of ensuring the adequate allocation of trained and professional staff.

There are on-going meetings planned between the agencies to discuss these approaches and the Ombudsman will continue to monitor these developments.

Where government authorities are involved in cases concerning child abuse, it is essential that they develop a coordinated, systematic and timely response.

The public have a right to expect that such sensitive areas will be adequately resourced and monitored to ensure investigations are conducted thoroughly and with the least possible disruption to the lives of the families involved. If such a degree of coordination and accountability cannot be provided under the current system, consideration should be given to the creation of one investigative body to conduct investigations for both care and criminal proceedings.

The creation of a separate agency staffed by a range of professionals including investigators, legal workers, prosecutors, health workers and counsellors may well be a more focussed and effective way to serve the needs of the community. ●

Legislation by Stealth *cont*

complaint handling procedures, seems contemptuous of the experience of the Office of the Ombudsman in both complaint handling and advanced investigation techniques, and more particularly, the role of the Office up to that time in investigating complaints about the Department of Community Services.

It should also be noted that such lack of consultation with this Office represents an appalling failure of the procedures which the Cabinet Office is meant to enforce. The position of this Office that consultation did not take place has remained undisturbed by recent assertions to the contrary, lacking any substantiation, on the part of the Department of Community Services and the Cabinet Office.

In the circumstances, it is opportune at this time to advise the Parliament of what this Office sees to be the effective jurisdiction retained in respect of the Department of Community Services, having regard to the provisions of the Community Services (Complaints, Appeals and Monitoring) Act.

To this end, it is noted that section 12 of the Ombudsman Act provides that:

12.(1) Subject to this section, any person (including a public authority) may complain to the Ombudsman about the conduct of a public authority unless:

- (a) the conduct is of a class described in Schedule 1;
- (b)-(d) conduct excluded because of its age].

Further, section 13 of the Ombudsman Act provides that:

13.(1) Where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under section 12 may be conduct referred to in section 26, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act.

Section 26 of the Ombudsman Act is relevant in this regard. In short, section 26(1) of the Act details possible findings that can be made following investigation of a complaint. Section 26(1) provides that:

26.(1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of investigation, or any part of the conduct, is one or more of the following kinds:

- (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory;
- (c) in accordance with any law or established practice, but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;
- (d) based wholly or partly on improper motives, irrelevant grounds or irrelevant consideration;
- (e) based wholly or partly on mistake of law or fact;
- (f) conduct for which reasons should be

given but are not given;

(g) otherwise wrong,

the Ombudsman is to make a report accordingly, giving his or her reasons.

Section 121 of the Community Services (Complaints, Appeals and Monitoring) Act provides that:

121. Conduct of a public authority that could be, or is or has been, the subject of a complaint to the Commission or of an appeal to the Tribunal may not be subject of a complaint under the Ombudsman Act 1974.

The effect of section 121 of the Community Services (Complaints, Appeals and Monitoring) Act, when read in conjunction with sections 12 and 13 of the Ombudsman Act is that any conduct that can be the subject of complaint to the Commissioner for Community Services or appeal to the Community Services Appeals Tribunal respectively lies outside the jurisdiction of the Ombudsman.

In this regard, the jurisdiction of the Tribunal is to hear and determine appeals under the Community Services (Complaints, Appeals and Monitoring) Act, and other community welfare legislation. Community welfare legislation is defined in section 4 of the Act to mean:

- (a) this Act and any other Act administered by the Minister within the Department; and
- (b) the Home Care Service Act 1988; and
- (c) any instrument in force under those Acts;

The Act defines the term "community service". A commu-

cont page 102

Legislation by Stealth *cont*

nity service is defined in section 4 of the Act to mean:

- (a) a service rendered under the community welfare legislation; or
- (b) a service rendered by an organisation that is covered by an arrangement referred to in paragraph (d) of the definition of "service provider in this section;

Section 4 of the Act defines the term "service provider" to mean:

- (a) the Department or a person or organisation funded by the Minister to provide a service; or
- (b) a person or organisation authorised by the Minister to provide a service; or
- (c) the Home Care Service of New South Wales or a person or organisation funded by the Home Care Service to provide a service; or
- (d) a person or organisation that is covered by an arrangement (made after the commencement of this section) between the Minister and a State or Commonwealth Minister and whereby that State or Commonwealth Minister agrees to the person or organisation being a service provider for the purposes of this Act;

It is apparent that the matters and persons about which and from whom complaints may be made is limited by sections 12 and 13 of the Community Services (Complaints, Appeals

and Monitoring) Act. Section 12 of the Act provides that:

12. A person may make a complaint to the Commission that a service provider has acted *unreasonably*:

- (a) by not providing a community service to *a particular person*; or
- (b) by providing a community service to *a particular person*; or
- (c) in the way in which a community service was provided to *a particular person*; or
- (d) by varying or withdrawing a community service to *a particular person*; or
- (e) in the administration of a community service in relation to *a particular person*.

[italics are Office emphasis]

What Conduct Can Be The Subject of Complaint?

Section 13 of the Community Services (Complaints, Appeals and Monitoring) Act provides that a complaint may only be made by a person demonstrating to the satisfaction of the Commissioner that he or she has a genuine concern in the subject matter of the complaint.

Accordingly, and with particular regard to section 12 of the Act, it appears that the only conduct that can be the subject of complaint is in respect of unreasonable acts in respect of not providing, providing, or the way of providing a commu-

nity service to a particular person, or the administration of a community service in relation to a particular person.

It is the view of the Ombudsman that where a complaint concerns systemic misconduct or maladministration (and is not involved with or related to a particular person entitled to, or the recipient of, a service) such concerns could not be the subject of a complaint to the Community Services Commission (or the Community Services Appeals Tribunal), and accordingly would remain within jurisdiction of the Ombudsman.

Further, and with particular regard to section 12 of the Act, complaints may only be made when a service provider has acted unreasonably. Accordingly, alleged conduct on the part of a public authority service provider that was for example unlawful, malicious, or based on improper motives may not necessarily be able to be made the subject of complaint to the Community Services Commission.

It has been and remains the policy of the Ombudsman to have regard to section 13(4)(b)(v) of the Ombudsman Act when assessing complaints. In other words, when deciding whether or not to investigate a complaint, consideration is given to the availability to the complainant of an alternative and satisfactory means of redress. Given the avenues of redress available, this Office takes up relatively few complaints about the Department of Community Services. When investigations do take place, they often spring from the Ombudsman's obligation to serve the public interest. In the absence of amendments that might have been suggested to the Community Services (Complaints, Appeals and Monitoring) Act 1993, it is intended to continue to exercise jurisdiction where appropriate (albeit subject to the new restrictions). ●

Kariong Juvenile Justice Centre

In last year's annual report the Ombudsman reported on a visit to Kariong Juvenile Justice Centre on 22 January 1992 by investigation officers. The visit had been at the request of detainees after a period of riotous behaviour at the centre.

One of the detainees interviewed during the visit complained he had been put at risk by centre staff who had placed him in a damaged isolation room on 20 and 21 January 1992 for misbehaviour. The detainee (AB) had a lengthy history of self mutilation and had used glass obtained from the damaged armouguard observation window to cut himself during his first period in isolation on 20 January 1992. He was placed in the same room the following day.

The investigation officers inspected the isolation room during their visit. They reported seeing a lot of windscreen type glass on the floor and also a lot of blood - both on the floor and on the bed. AB had been released from the room early that morning.

The Ombudsman used his own motion powers to investigate the use of the damaged isolation room. However the findings were inconclusive.

Use of the Damaged Isolation Room

According to the report from the Office of Juvenile Justice, AB had been placed in the Keiran South isolation room on 20 January 1992 for three hours and then again on 21 January 1992 for 12 hours.

During his initial placement in the room he dislodged a shower tap handle and part of the spindle and threw it at the observation window numerous times over a one hour period.

This resulted in the top layer of the armouguard glass be-

coming punctured and gave him access to slivers of glass with which he cut himself. During this time he also threatened to harm staff if they entered the room. When he calmed sufficiently to allow a staff member to enter the room he was taken for medical attention.

The cuts were recorded in the medical records as being superficial but requiring seven stitches to his arm and three stitches to his buttock.

The Office of Juvenile Justice said it was a *risk management* decision to put AB in the isolation room. In the isolation room he had no access to ordinary glass because the external window had been removed after it was broken earlier in January; had he been placed in an ordinary cabin he could easily have smashed a window which would have given him lengths of glass with which to self mutilate or use as weapons.

The wardrobe and bench had been removed and the security shower head had been removed after being damaged, also earlier in January. The toilet and handbasin fittings were stainless steel and not porcelain as in the cabins.

AB had only been able to get slivers of armouguard glass after continually striking the observation window over a sustained period of time.

The Office of Juvenile Justice said that AB was again placed in the isolation room on 21 January 1992 because it was a safer environment than any other room, even with the damaged armouguard window.

They also said that the unit staff had cleaned the room prior to his entry and it was verbally reported to the acting superintendent that the observation room had sustained impact shatters but was still intact and structurally sound.

However the Ombudsman has expressed his doubts to the Office of Juvenile Justice, as to whether the isolation room had been adequately cleaned and made safe between AB's two periods of confinement.

The isolation room records for 21 January 1992 indicated that AB entered the isolation room at 7.10pm. At 9.25pm they recorded AB *smashing window and bleeding*. A senior staff member entered the room at 10.00pm and stayed until 10.25pm. AB appeared settled after that time and eventually went to sleep until 7.20am when he was returned to his unit.

No records indicate what AB was using to smash the glass - whether he had armed himself with any metal objects as on the previous occasion. Presumably the shower tap handle and spindle previously used had been removed. With steel bars on the observation window and without a weapon, it is difficult to see how AB could have smashed the armouguard glass sufficiently to account for the amount of glass observed by the investigation officers.

The Office of Juvenile Justice report stated that AB did not incur any fresh wounds during the second period of confinement but that he removed his stitches from the day before and

cont on page 104

Kariong *cont*

reopened the wound. The medical records for 22 January 1992 stated that his stitches were intact and that his wound was clean.

The isolation records noted he was bleeding at 9.25pm. It is certainly possible that AB picked at his wound and made it bleed without removing the stitches. However the amount of blood in the isolation room when viewed by the investigation officers, appeared to indicate a more significant injury; or that the blood remained from the previous day's injury (20.1.92). This issue could not be clarified through the investigation.

Accuracy of Records

Isolation Room Records

The isolation room records for 20 January 1992 indicated that observations were made at approximately five minute intervals up to 2.55pm. The 2.55pm observation indicated that AB

was *shouting/throwing items*. The next observation was at 3.05pm and stated he was *sitting quietly*. None of the observation notes record that AB cut himself at all throughout his period in the room.

A separate report submitted by the chief youth worker (CYW) stated that at approximately 3.00pm AB cut his arm with a piece of glass. Obviously this report constitutes a written record of a very serious occurrence. However the observation notes should be an accurate record of incidents which occur in the isolation room. Therefore it is essential that all incidents are recorded as they occur. As the records appear now, either the CYW's report was in error or the observation notes failed to record the 3.00pm incident.

The Chief's Log

The chief's log is written up by the CYW at the completion of each shift. The chief's log notation for the 2pm - 10pm shift on

21 January 1992 recorded AB as being in the isolation room. It also stated AB was *eating glass & continuing to smash glass*.

Presumably if AB was observed eating glass some action should have been taken to prevent such behaviour. There was no record of any such action.

There was in fact no record of AB *eating glass* in the observation notes from the isolation room; nor was it commented on in the Office of Juvenile Justice report. The chief's log entry recording AB continuing to smash glass was made at or just after 10pm - at the end of the shift. However the isolation room observation notes record him *smashing glass* at 9.25pm - no later observations record him smashing glass.

These discrepancies in the records raised concern about the questionable accuracy of the isolation room observation notes or the chief youth worker's report or the chief's log. This issue has been raised with the Office of Juvenile Justice. ●

Board Games - Round Two

The previous annual report referred to the case of a student denied award of his HSC by the Board of Studies following allegations that he had foreknowledge of the HSC maths exam questions.

The issues concerned the way in which the board had informed itself of the facts of the case, whether the student had been denied procedural fairness, whether there had been prejudgment of the case, whether the decision of the board was one for which reasons should be given and whether a recommended \$25,000 reward should be paid to an informant.

After investigation, this Office's Provisional Findings and Recommendations were forwarded to the board on 29 June 1992. The board responded through the Crown Solicitor on 31 August 1992. That response sought for the board and its officers the maximum advantages of procedural fairness which the board conceded it had not extended to the student during its consideration of his case.

As a result, the Deputy Ombudsman conducted a series of formal hearings at which the informant, the student, the student's mother and two board officers were examined on oath.

This has been a quite extraordinarily complex investigation covering analysis of mathematical exam questions, types and provenance of notepaper, meteorological conditions, tainting of recollections and manufacture of evidence. A second set of Provisional Findings and Recommendations, revised in the light of the formal hearings and acquisition of additional evidence, has been issued.

At the time of writing, the board's second response is awaited and it is anticipated the final report of the investigation should be issued within several weeks of the appearance of this annual report. ●

Juvenile Health Issues

This year the Juvenile Justice Advisory Council released a green paper *"Future Directions for Juvenile Justice in New South Wales"*, in which health issues for juveniles were specifically addressed. This report contained recommendations about programs and services for juveniles with particular needs, such as mental illness or physical disability.

Complaints received during this year have revealed shortfalls in the availability of specialist medical services to juveniles in custody, as well as a lack of clear guidelines for specific health issues.

Psychiatric Services for Juvenile Detainees

A critical area identified by the Office of the Ombudsman is the lack of secure psychiatric services for juveniles in custody.

All juvenile justice centres employ a full-time psychologist plus a full-time or part-time drug and alcohol counsellor. A major problem for detention centre staff is access to specialist psychiatric services for children experiencing acute behavioural disorders. Public hospitals are unwilling to accept juvenile offenders for assessment due to security considerations. A person cannot be detained in a hospital against their will unless specific criteria under the Mental Health Act are satisfied. Currently, access is to adult general psychiatric units only.

These treatment constraints resulted in two seriously ill boys being admitted to Long Bay Prison Hospital last year as

hospitals in the local area refused to accept psychiatric patients from juvenile justice centres.

In recognition of these problems, the Office of Juvenile Justice (OJJ) has encouraged individual centres to establish links with local area health services in an effort to avert similar problems and to maintain continuity of residence and support systems for affected youth.



The Department of Health has confirmed that two secure units are planned for the care of acutely disturbed mentally ill adolescents in NSW. One of these will be located at Westmead, the other at Liverpool.

Parental Notification of Accident or Illness

In November 1992 a complaint was received about the failure of staff at a juvenile justice centre to notify a parent of their child's broken arm following an accident. Letters sent to parents on a child's admission to a juvenile justice centre advise that parents will be notified in the event of accident or illness. Enquiries by this Office revealed that although a longstanding practice existed whereby par-

ents would be notified of any accident or illness, no department instruction existed requiring this to be done.

The Office of Juvenile Justice acknowledged that an oversight had occurred in not contacting the parents concerned, but noted that the seriousness of the child's injury was not determined initially.

In light of this lack of a clear instruction to staff, the Ombudsman asked that guidelines for notification in the event of illness or injury be provided to staff working in juvenile justice centres. This suggestion has been adopted by the OJJ.

Handcuffing for Security

In February 1993 enquiries were made with the Office of Juvenile Justice following a complaint from a juvenile about the use of handcuffs as a restraint after surgery, causing severe pain. The Office of Juvenile Justice supplied the Ombudsman with copies of the OJJ's general guidelines about the use of handcuffs plus a copy of the Department of Community Services memo about the use of handcuffs as a passive restraint and for security purposes. These notes discussed the use of handcuffs as a temporary restraint, such as during escort duties, rather than as a tool for providing longer term security.

The Office of Juvenile Justice has acknowledged that separate protocols need to be developed which are sensitive to residents medical treatment needs, including clinical safety and privacy issues. A handcuffing policy is now being developed. ●

Local Government and Community Housing Program

As reported in last year's annual report, the Ombudsman has been investigating the Department of Housing's administration of the Local Government and Community Housing Program (LGCHP). This investigation commenced formally in June 1991 and culminated in a special report to Parliament on 25 February 1993. It focused on the department's administrative procedures which had resulted in major underspending of program monies.

The investigation substantiated complaints made about all aspects of the program. These complaints ranged from the particular problems being experienced by groups applying for funding, to general concern about the department's obstruction of the program's objectives.

And indeed, the investigation revealed a demonstrable lack of commitment on the part of the most senior officers in the department, resulting in conduct which ranged from neglectful to wilfully obstructive.

The results of this lack of commitment were immediately evident. For example, when the formal investigation began, a total Federal allocation of \$36,458,000 had been made to New South Wales for the seven years since the program's inception.

Although \$36,361,035 had been approved for expenditure, only about \$19,363,046 had actually been spent. The balance of \$16,997,989 was being held by the department, largely unspent because of bureaucratic incompetence.

Particular issues addressed by the Ombudsman were delays at all stages of a project; lack of explanation for delays; the failure of departmental officers to communicate with project managers; lack of information about the department's intentions, results of project re-

views, meetings and submissions.

It also became clear that on more than one occasion the minister and the advisory committee were provided with inadequate and sometimes wrong advice.

Other substantial concerns included the department's practice of charging a disputed administrative fee which, in some cases, jeopardised the cost-effectiveness and, therefore, the future of a project; and the department's channelling of interest earned on unspent tied-grant funds into its general purpose revenue.

As the special report to Parliament noted:

That the department believed itself justified in charging for services which regularly resulted in delay, mismanagement and the failure of projects is quite extraordinary. That it did not consider unethical its raising of general revenue at the expense of community housing is almost beyond belief.

Summary of the Ombudsman's Recommendations

The department should provide concrete proposals for pro-

cedures designed to achieve the program's objectives.

The State Advisory Committee should research alternative models by examining the administration of the program in other states.

The role of the committee should be strengthened to ensure some independent oversight of the program, and the protocol between the department and the committee should be clarified to provide for appropriate communication.

Appropriate pro forma legal instruments should be drafted forthwith.

Once funding for projects has been formally approved, the allocated monies should be transferred to the NSW Community Housing Trust until expenditure is required. Failing this, accounting mechanisms should be established which allow accrued interest to be reapplied in line with program objectives.

State and federal departments should together clarify the legality and ethics of charging projects for capitalised overheads (the disputed administrative fee).

The Director of Housing should review the practice of the department bearing the cost of failed projects without at least assessing the liability of consultants.

A New Look Department

This investigation coincided with the Royal Commission into the Building Industry and the Mant report on the Department of Housing commissioned in light of the findings of the royal commission. By mid 1992, following the appointment of a new Minister for Housing and new Director of Housing, it very quickly became clear that a new era for the department was beginning.

In terms of the Ombudsman's investigation, the most obvious effect was that instead of denying that a problem existed, the Director of Housing provided concrete proposals for improvements in the functioning of the program.

In response to the Ombudsman's provisional report, ie. without waiting for a final report on the investigation, the Director of Housing advised of the following initiatives. A special task force was established to report fortnightly to executive management; closer links with the commonwealth department were forged, and a concerted effort was made to speed up the department's pre-funding administrative and assessment procedures.

The department's response to the Ombudsman's final report indicated complete compliance with the recommendations of that report within the structure of the newly established Community Housing Program.

Federal Response

Despite the commendable response by the new administration to the Ombudsman's criticisms, the long standing problems of the program led to a decision by the federal government, in December 1992, to withhold \$5.8 million program fund-

ing for the 1992/93 financial year. This decision was quite explicitly a reaction to significant levels of underspending in previous years.

However, it is worth noting that by April 1993, the department had spent \$10,695,000 of monies available in the 1992/93 financial year and anticipated that \$17.5 million would be spent by the end of that year. According to the director, this represented an improvement of almost 300%

While the tenets of the programs are consonant with those of LGACHP, specific changes have been made to the way the new program is administered in order to make the program more flexible.

These changes include the payment of funds to the state on a cash management basis just prior to program expenditure being incurred, a more broadly representative advisory commit-



on the performance in the previous year.

Some aspects of the recommendations made by the Ombudsman were also affected by federal government actions.

The renegotiation of the Commonwealth/State Housing Agreement meant that a completely new strategy for financing social housing was developed and initiated in early 1993 - the Community Housing Program.

tee, and the intention to encourage the development of a much more involved and responsible community sector.

Community Housing Sector

The department has also made significant improvements to the administration of the Community Tenancy Scheme (CTS) and the Crisis Accommodation Program (CAP).

cont page 108

Local Government *cont*

Complaints about these programs had been referred by the Ombudsman to the Minister for Housing for the department's attention prior to any active investigation by the Ombudsman.

This was believed to be an appropriate course of action given the positive indicators provided by the new administration. A full response to the Ombudsman's concerns was requested so that the need for formal investigation could be properly assessed.

Some of the less well considered decisions of earlier directors were reversed following examination of the consequences for the programs.

For example, leasing payments inappropriately debited to CAP in past years have been repaid, and no leasehold costs currently charged.

In relation to the CTS, capital properties which had been removed from the CTS were restored from 1 January 1993; a new funding agreement was negotiated and procedural and reporting requirements modified.

Perhaps most significantly, resources have been provided to establish and support an advisory committee pending the establishment of a broadly based peak organisation.

These signs of improved consultation and administration are very hopeful.

It would appear that the Department of Housing in 1993 has a much stronger client focus, particularly in the community housing sector, and many of the outmoded welfare-based bureaucratic philosophies are finally being revised.

The development of a strong community housing sector can only support the work of the Department of Housing. ●

The State Electoral Office

The Ombudsman made a Special Report to Parliament in March 1993 concerning the failure of the State Electoral Office (SEO) to enforce the Parliamentary Electorates and Elections Act (the Act). The report also raised some concern as to whether the Electoral Commissioner accurately informs the public regarding his limited role and responsibility for enforcement action.

The report followed complaints by Mr John Hatton MP and Alderman Doug Sutherland that the SEO failed to act on breaches of the legislation during the 1991 local government elections.

The investigation revealed that the Electoral Commissioner does not consider he has responsibility to enforce the Act, except where the Act specifically prescribes that action be taken by him. Those provisions are section 120C (failure to vote) and section 180 (negligent action by electoral officials). The only people who have ever been prosecuted are those who fail to vote.

The source of most complaints to the SEO concern the distribution and contents of electoral material. The SEO has a blanket approach not to prosecute such matters and limits itself to directing candidates to correct the apparent breach. The Ombudsman's concern is that the SEO's policy could create an open slather situation for anyone wishing to abuse the electoral system. Because once the illegal material has been distributed, the substantial damage has been done, whether later corrected or not. Knowing that no penalty will result, abusers of the electoral process could exploit such an opportunity.

Mr Dickson, the State Electoral Commissioner, stated that traditionally electoral commissioners have directed the correction of any irregularities by candidates without resorting to the actual institution of proceedings. He said that the Crown Solicitor has consistently advised his office that under section 184 of the Act any person can initiate proceedings for most breaches, therefore there is no specific duty imposed on the Electoral Commissioner to do so.

Yet the fact that no such proceedings have been brought by members of the public in the last 20 years indicates that candidates and others who breach electoral laws are effectively immune from prosecution and penalty.

Apart from tradition and the legal advisings, the most crucial argument offered by the Electoral Commissioner to support the existing practices was the need to maintain the perception of the impartiality of his office. He said:

The Electoral Commissioner is indeed in the public forefront throughout any election campaign and is frequently demanded by the media to advise or offer opinions in respect of candidates, parties and other interested organisations in electoral proceedings.

It is apparent that the Electoral Commissioner must make every effort to maintain his impartiality throughout the election because to do otherwise could give rise to serious allegations that he has interfered with the proper running of the election process and seriously hindered the electoral opportunities of a particular party or candidate.

It is difficult to appreciate the degree of importance the Electoral Commissioner places on the need to maintain the impartiality of his position. Particularly when in order to achieve this end he sacrifices the effective monitoring and enforcement of the legislation. The question of impartiality should not arise. If the provisions of the Act are breached, there should be an effective sanction in the form of prosecution action. The public interest in prosecuting such matters is to ensure the integrity of the electoral process and to create a deterrent against future breaches.

Section 184 of the Act states that a prosecution must be commenced within 12 months of the offence being committed. To safeguard against any perceived tainting of his role or manipulation of his position, the initiation of proceedings could be delayed until after the expiration of the 40 day period to lodge appeals to the Court of Disputed Returns.

Mr Dickson argued that successive Parliaments and the great majority of candidates are aware of and have accepted the appropriateness of his office's enforcement practices. However, the mere reporting of complaints indicates there is a widespread belief that the Electoral Commissioner's responsibilities include all matters relevant to elections and his office is the authority to which electoral complaints should be submitted.

As the situation currently stands there is no public authority enforcing most provisions of the electoral legislation in NSW. The Ombudsman concluded that it would be reasonable to assume that the legislature intended to designate a responsible authority to ensure breaches were appropriately penalised. Consequently, Parliament was considered the appropriate forum to consider the question of enforcement. However, little interest has been apparent concerning this issue. ●

Boost to Business Results in Bust

The Department of Transport administers the Passenger Transport Act 1990, intended to encourage competition in the passenger transport industry, mainly covering bus, taxi and hire car services.

Any person or company seeking to use a vehicle to transport passengers for hire or reward is required to make application to the department for accreditation to operate such a service.

The Tuk Tuk is a three wheeled vehicle capable of conveying a driver and two passengers, often used in India and South East Asian countries as taxis.

The complainants, trading as Tour With Tuk Tuk (TWTT), purchased two Tuk Tuks from an Australian importer.

They applied to the Department of Transport in October 1990 for approval and subsequent accreditation under the Passenger Transport Act to operate tours of Sydney's Rocks, Darling Harbour and Opera House areas.

Approval was granted by the department on 23 November 1990 for the operation of two Tuk Tuks subject to any restrictions or conditions which might be set by other relevant public authorities.

TWTT then compiled necessary documents, purchased a third Tuk Tuk vehicle, and applied for formal accreditation to operate a public passenger service.

On 16 January 1991, the department issued operator accreditation to TWTT covering the

three vehicles, classifying the Tuk Tuks as a *tourist vehicle*.

Believing that the business venture was in full swing, TWTT entered into a contract to purchase a further 20 Tuk Tuks, and began negotiations to expand the venture.

On 5 February 1991, the first of a number of crushing blows was delivered by the department. In a letter signed by the then Acting Director-General, TWTT was told:

It has become apparent that as the law presently stands, the Department of Transport had no power to issue that accreditation as Tuk Tuk vehicles are not vehicles which can provide a tourist service as defined under the [Passenger Transport] Act. Therefore I regret to inform you that the accreditation which was issued to you is null and void...Tuk Tuks may only be used as private vehicles...

In short, officers involved in the process of approval and accreditation had not complied with the legislation they administered. The department provided no detailed explanation of how such gross errors could have occurred.

TWTT was left with three Tuk Tuk vehicles registered for use on NSW roads, without the sanction of the department to take paying passengers on scenic tours of Sydney. TWTT claimed that lacking income from the three vehicles, it was left with virtually no means to pay for the further 20 vehicles ordered under contract.

cont on page 110

Boost to Business *cont*

Following a written complaint to this Office, preliminary enquiries were made, followed by formal investigation pursuant to the Ombudsman Act 1974. The Ombudsman made his final report under Section 26(1) of the Act on 23 March 1993.

Between the November 1990 "approval" and the February 1991 declaration that the "accreditation" issued on 16 January 1991 was "null and void", doubts about the safety of the vehicles had been canvassed with the department by officers of the Roads and Traffic Authority, and the Federal Office of Road Safety.

Australian Design Rules for Tuk Tuk vehicles were at that time undergoing major re-definition at a national level. While the three TWTT Tuk Tucs were registered for private use on NSW roads, the department became increasingly concerned about passenger safety regarding Tuk Tucs, given that they were to be used for hire by paying customers.

The Ombudsman found that the department had not followed the legislation it administered throughout the processing of TWTT's application, in that:

- ▶ there was no category of "tourist vehicle" in the legislation, and therefore Tuk Tuk vehicles could not be recognised by the legislation;
- ▶ Tuk Tucs could not comply with government safety standards, as (at that time) no such standards had been set by the department or any other NSW Government authority with respect to Tuk Tuk vehicles; and
- ▶ while the department had the power under section

7(3)(b) of the Act to specify and publish its own passenger comfort and safety standards specific to Tuk Tuk vehicles, it did not do so.

The inconvenience caused to the complainant's in this mat-

view, to accept that they had lawful permission to offer a public passenger service using 3 Tuk Tuk vehicles...as such permission had been obtained in writing from officers of the department on 16 January 1991.



ter is obvious. The Passenger Transport Act was established by the NSW Government to introduce competition to the passenger transport industry in NSW and allow for unique innovations in the services available to the public.

The maladministration of the Act has resulted in virtual financial ruin for TWTT. The Ombudsman said in this regard:

TWTT could...logically have expected that officers of the department who dealt with the application knew or should have known the powers and responsibilities bestowed upon the department by the Passenger Transport Act 1990. The complainants were entitled, in my

While TWTT's complaint was based on the department's 5 February 1991 declaration that the accreditation issued on 16 January 1991 was null and void, the Ombudsman found that the accreditation had not been lawfully issued and was therefore not legally binding. The Ombudsman described the 5 February 1991 decision as:

an appropriate and necessary determination, having regard to the erroneous nature and lack of legislative provision for the 16 January 1991 accreditation.

However, the department's administrative blunders did not escape sharp criticism. The Ombudsman said:

cont page 111

Resolution of Noise Complaint

On 5 November 1991, Mr C lodged a complaint about a noise problem from a nearby railway bridge and the failure of the State Pollution Control Commission (SPCC) to deal with his complaint.

Mr C had taken the matter up with his MP and had also written directly to the SPCC. He was surprised when the commission replied that it was not in a position to comment on his complaint and had merely referred the matter to the State Rail Authority (SRA) for attention. Mr C complained because he saw it as the commission's responsibility to enforce noise pollution standards.

Enquiries made of the SPCC confirmed that it had

procedures for referring noise complaints to the SRA and that such matters were usually dealt with by a special noise committee. However, the SPCC also stated the committee had not met for a year and there were no immediate plans for it to meet. It appeared that Mr C's complaint was effectively on hold and that the mechanism for dealing with complaints had been shelved.

As a consequence of these enquiries, on 4 March 1992, a notice of investigation was served on the Environment Protection Authority (EPA - the successor body to the SPCC).

On 27 April 1992, the EPA responded to the notice and confirmed that it was aware of the

noise problems at the bridge and had been discussing a solution with the SRA for some years. Following further representations from an MP, it had written to the SRA on 15 April 1992 and was awaiting a reply. In this letter, the EPA directed the SRA to undertake further investigation of the noise problem urgently, including another test of the noise levels and report on how to solve the noise problem.

On the issue of a mechanism to deal with complaints, the EPA said that the noise committee had been disbanded on 6 February 1990. Despite its role in dealing with noise complaints, the EPA said the committee was disbanded because the SPCC

Cont page 112

Boost to Business *cont*

I find that the DOT's failure to provide appropriately detailed rationale to support its decision of 5 February 1991, in order to avoid exposing the erroneous nature of the 23 November 1990 and 16 January 1991 decisions, and thus seek to evade censure and litigation, was unreasonable, unjust, oppressive or improperly discriminatory, within the terms of Section 26(1)(b) of the Ombudsman Act 1974, as TWTT was left without an appropriate apology or a sufficiently tangible explanation as to how that decision was reached.

As a result, five recommendations were made in the Ombudsman's final report, four of those requiring amendment to administrative practices and procedures relative to the process-

ing of applications under the Passenger Transport Act. Advice has been received from the department that the recommendations regarding administrative change have been implemented in full.

The first, and perhaps most significant recommendation (as far as TWTT is concerned) reads:

In view of the obvious inconvenience caused to the complainants in this matter, I consider that TWTT is entitled to be compensated for the department's administrative errors. However, I do not see it as my role to enter into a debate on quantum, particularly as I am not in possession of a detailed breakdown of costs claimed by TWTT which can be proven to have been incurred as a direct result of the conduct sub-

ject of complaint. Having regard to the high cost of litigation via the courts, and in the interest of efficient expenditure of public resources, I recommend that the Department of Transport immediately enter into mediation with the solicitors for TWTT on the subject of compensation for economic losses incurred as a direct result of the decisions of 23 November 1990, 16 January 1991, and 5 February 1991. The process of mediation may well prove to serve the best interests of both parties, and should be carefully considered as a cost effective alternative to litigation.

On 25 June 1993, the department's Director-General advised that mediation of the compensation issue would soon commence. ●

That's for Us to Know, and for You to Find Out!

Mrs L and her husband bought a restaurant for \$150,000 from the owner of a shopping complex, who then became their landlord. They soon discovered that the pipes underneath the restaurant had a distressing habit of discharging sewage up through drain holes in the floor.

The impact on the popularity of the restaurant was dramatic. On one occasion, a crowd of customers who had been waiting for their meals to be served left hurriedly without staying to dine. Constant appeals to the landlord and to the health inspectors at the local council failed to have any effect.

Eventually Mr and Mrs L closed the business and handed over the keys, broken in health

and financially almost ruined. They purchased a diner for \$4,750, and attempted to rebuild their fortunes. However, two months later, the landlord obtained a court order for rent arrears and then bankrupted them. At the time of their application for legal aid, the total income of the couple was \$240 per week and their only asset was a car valued at \$1,000.

Mrs L complained to the Ombudsman about the local council. The investigation found that council had not checked that the landlord had complied with notices about the faulty pipes. Also, council had allowed the landlord, when building the shopping complex, to lay drainage pipes on a very flat gradient,

below the standard set down in the ordinance.

Mr and Mrs L applied for legal aid to take civil action for damages against the council and the landlord/vendor. An initial grant of aid was made so that the opinion of counsel could be obtained on the prospects of success. Counsel stated that there was a strong case against the landlord and a reasonable case against council, provided a report could be obtained from a drainage engineer that the overflowing drains were caused by defective pipes. The landlord and his plumber, who had installed the pipes, alleged that the problem had been caused by fat and grease being poured down the drains. Mr and Mrs L denied this

Resolution of Noise Complaint *cont.*

had been unable to allocate adequate staff resources to service the committee and that the EPA had not made a policy decision about reconvening the committee or establishing any other liaison body.

While waiting for the EPA to get this information from the SRA, this Office also contacted the SRA directly and asked it to provide documents on the noise problem and its dealings with the former SPCC.

Among the documents sent were two reports of noise testing at the bridge undertaken in 1986 and 1988. These reports confirmed that in both series of tests the noise levels recorded at the bridge exceeded those recommended.

There was also a copy of a letter of 2 May 1986, from the SPCC to the SRA saying that the

SPCC considered the noise complaint to be substantiated and requesting the SRA to investigate noise control measures. The existence of this letter was further evidence that both authorities had been aware of the problem for a number of years but had been unable to resolve it.

After the EPA wrote in April, this office continued to deal with the EPA by letters and telephone to get progress on the complaint.

A breakthrough came in February 1993, when the EPA wrote and enclosed a letter from the SRA saying that the bridge was to be replaced and that it had re-established a liaison committee with the SRA.

From its letter, it appears that the Chief Executive of the EPA took the matter up with the SRA verbally and in writing. The EPA also had raised the issue at

a meeting of the liaison committee on 10 February 1993 and told the SRA that it would issue a notice under the Noise Control Act if the SRA did not respond to its letter of 15 April 1992 within a week. The letter advising of the bridge's replacement was dated 18 February 1993.

This letter was the first advice that a mechanism to deal with noise complaints had been re-established. With this information and in recognition that the replacement of the bridge should reduce the noise, it was decided that the investigation would be discontinued.

While making this decision, this Office also criticised the EPA for the way it dealt with Mr C's complaint. In particular criticism was made of the failure to have a visible complaint mechanism and for the delay in dealing with the complaint. ●

That's for us to Know *cont*

and produced evidence that the used oil was poured into drums through a tap in the cookers and collected by a contractor each week.

there were *reasonable prospects of success in the proceedings*.

Mrs L then complained to the Ombudsman, who wrote to the commission asking for the

of these was that he represented to the review committee that a report from a council health inspector had stated that the blocked drains were caused by food and cooking fat, not sewage.

In fact, that statement had been made by the landlord's plumber! In addition, important evidence in support of Mr and Mrs L had been totally ignored.

When the commission received the report of the investigation, they acknowledged that the solicitor had been mistaken, but claimed that his mistakes were minor. The commission then said that the application had been rejected because no report had been obtained from a drainage engineer.

Until then they hadn't considered it necessary to share this piece of information either with Mr and Mrs L or with the Ombudsman. As a result, the applicants were not given the opportunity of obtaining an engineer's report.

The Ombudsman recommended that the application for legal aid be reconsidered by the commission and also that reasons for any decision to reject an application are provided to the unsuccessful applicant in a form that explains the basis of the decision.

In reply, the Commission advised that the applicants' solicitor had been contacted and asked to provide further information, including an engineer's report, in support of the application.

The commission said that Mr and Mrs L could apply for legal aid to pay for this. The commission says that from the end of August all rejection letters will provide reasons in a *clear and straightforward fashion*. ●



Counsel's opinion was sent to the commission and Mr and Mrs L were then told that their application had been rejected because the commission was not satisfied that there were *reasonable prospects of success in the proceedings*. Legal aid, they were told, is only granted in such matters if the application discloses cogent reasons and there would be undue hardship in the event of a refusal.

They and their solicitor were at a loss to understand this decision. They appealed to the Legal Aid Review Committee, only to be told that their appeal had been rejected, because the committee was not satisfied that

reasons that both the application and the appeal had been rejected. The answer was that the application did not disclose cogent reasons and undue hardship and that the review committee had not been satisfied that *there were reasonable prospects for success in the proceedings*.

As neither Mrs L nor the Ombudsman were then any the wiser, a formal investigation was commenced and the Commission was required to deliver its file to the Ombudsman's Office.

It was immediately apparent that the solicitor who had rejected the application had based his decision on mistakes of fact. Perhaps the most glaring

The Grass is Always Greener

For 17 years, Mrs H had periodically grazed her cattle on grass growing in the laneway alongside her property. Her cows kept the grass low and reduced the fire risk. In times of drought, the lane afforded Mrs H additional feed for her cows.

At the time of the complaint, an area which included Mrs H's property was declared drought stricken by the then Minister for Agriculture and Fisheries.

By reason of a complaint made to the local council by a neighbour, Mrs H was contacted by the council and told that unless she had a permit to graze the cows on the lane, she would have to stop the practice.

Mrs H was told she could apply for a permit from the Yass Rural Lands Protection Board. She contacted the Board and after explaining the situation, an employee granted her a temporary grazing permit over the phone. When the secretary of the Yass Rural Lands Protection Board was told, he instructed the employee to visit Mrs H and tell her that the permit was revoked. When Mrs H contacted the secretary to ask why the permit was revoked, she was told the lane had been grazed out.

Mrs H disputed this point and then was told that the Yass Rural Lands Protection Board would not issue grazing permits, as the local council had the power to issue them, and the board had decided it would not exercise their statutory discretion to issue permits.

This view was confirmed by the board at later meetings, and in correspondence to the Department of Agriculture and to the complainant.

Having been referred to the Yass Rural Lands Protection Board by council (who thought the matter to be the responsibility of the Yass Rural Lands Protection Board), and noting the policy of the Yass Rural Lands Protection Board to not consider such applications but leave them to council, Mrs H was placed in the invidious position of having two bodies able to deal with her application but enjoying the services of neither.

In essence, Mrs H and her application seem to have become the ball in a game of bureaucratic ping-pong.

After investigation, the Ombudsman concluded that in situations of drought and hardship, graziers may place great store on permission to graze cattle on roadsides and other public land. Such permission may amount to the difference between cattle surviving or cattle dying.

He concluded that the rules of procedural fairness should apply to the consideration of such matters, and that the Yass Rural Lands Protection Board had struck an unreasonable policy,

and considered irrelevant matters when deciding this application.

The Ombudsman recommended that the board ought to give reasons for the decisions made in such matters.

In considering the policy of the board not to issue permits at all, the Ombudsman recommended that unless written agreement can be reached with councils concerning division of responsibilities in this area, the Yass Rural Lands Protection Board must consider all applications on merit.

It also was recommended that the Yass Rural Lands Protection Board obtain advice about striking such agreements and where such agreements exist, graziers that inquire about the procedures should be told that despite any agreement, they can still request that the board deal with the application rather than a council.

Further the Ombudsman recommended that minutes of board meetings record the reasons for decisions made, and note the material and reports upon which its decisions are based. ●

Dirty Washing Aired

Mrs S complained that her two children were constantly ill and her washing permanently stained due to the poor quality of the water supplied to her home.

The complaint was sent to the Water Board which was asked to review the situation and take action.

The Water Board informed this Office that, in the interests of good public relations and as an 'Act of Grace' it would pay the complainant \$219.00 for the damage to her washing and relocate her water service to alleviate the problem. ●

No Light at the End of Six Tunnels

Around May 1992 a couple with a property in Tumut Shire made an application to Tumut River Electricity (TRE) for power connection to their property.

A quote was prepared with a plan to source the power lines along an old stock route running parallel to the property.

As it would be necessary to clear some trees, permission would have to be obtained from the local council.

Local Council

The applicants duly applied to Tumut Shire Council and eventually were granted permission subject to conditions, one being that as Crown Land was involved permission also had to be obtained from the Department of Conservation and Land Management (CALM).

Crown Land

A letter dated 31 December 1992 was sent off to CALM seeking permission and a reply dated 12 February 1993 received by the applicants. No objection was raised by CALM, however, notice was given to the applicants that as all timber on Crown land was the property of the Forestry Commission it might be necessary to obtain permission also from that authority for the removal of the trees.

And so, on 1 March 1993, the frustrated applicants wrote to the Forestry Commission seeking permission and explaining that TRE had recently requested full and final instructions within 60 days or the offer of power could be withdrawn and the applicant's deposit refunded.

The Forestry Commission replied on 8 March providing authority to remove the trees in

question but pointing out that approval would also be required from

- i) the National Parks and Wildlife Service;
- ii) the Rural Land Protection Board (Gundagai); and
- iii) the District Soil Conservationist (Gundagai).

Other Authorities

One can only imagine the bewilderment of the applicants at this stage. Nevertheless, they wrote off to the three authorities on 10 March for approval for the tree removal and hoped for a prompt response. The first reply came from the District Soil Conservationist office at Gundagai. The letterhead on the paper said CALM.

The CALM office at Wagga Wagga was the first authority to grant approval for the tree removal. At that stage it looked like the applicants had gone full circle. They were informed that consent from that Department was not necessary!

The next response, dated 25 March, was from the National Parks and Wildlife Service at Tumut, withholding permission.

The applicants appealed and after further consideration the authority granted permission, on 13 April 1993, to proceed with tree clearing.

In the meantime, TRE informed the applicants that the quote given for power connection in February 1993 was valid only until 5 May 1993 and that rates could vary after that time.

Having had no indication as yet from the Rural Lands Protection Board the applicants wrote again on 12 May requesting approval for tree clearance.

Permission Refused

A letter dated 14 May was dispatched from the board refusing permission for the request without providing any reasons for this decision. The applicants immediately appealed the decision and pointed out that permission had been granted by the five other public authorities involved.

A few days later the applicants made a formal complaint to the Ombudsman, submitting copies of the correspondence from the various authorities.

Attempted Resolution

As a result of intervention by the Ombudsman, an on site meeting was arranged between one of the applicants, a representative from TRE and the Chairman of the Gundagai office of the Rural Lands Protection Board with a view to resolving the problem.

Unfortunately, as permission was steadfastly refused by the board, agreement could not be reached and the applicant's found themselves back where they started a year previously.

Although it is difficult to lay blame on any one public authority for the inordinate delay and run-around experienced by the applicants, one wonders why they could not have been informed at the outset of the numerous authorities that would be involved in such a situation.

Having discussed this issue with the General Manager of TRE, the Ombudsman's Office was assured that this particular case would be kept in mind in similar situations whereby the potential client would be alerted to the rigmarole involved. ●

State Rail Authority and Signalling Safety

Recently, the Ombudsman presented a Special Report to Parliament outlining his concerns about safety standards of railway signalling, following complaints by Mr Vincent Neary, a former signalling engineer with the State Rail Authority (SRA).

Mr Neary first complained to the Ombudsman in May 1990, alleging unsatisfactory action by the Chief Executive of the SRA on his complaints about safety standards and other matters.

After taking up the complaint with the SRA, the then chief executive, Mr Sayers, assured the Ombudsman that signalling safety standards on State Rail were being addressed urgently. Consequently, the Ombudsman declined to take further action on Mr Neary's complaints.

Then, in January 1991, Mr Neary again complained to the Ombudsman about signalling safety standards, citing a number of rail incidents that had occurred in late 1990.

In response, the SRA agreed to have Mr Neary's concerns examined by an independent signalling expert and in April 1991 the SRA directed Mr Neary to submit a report. While preparing his report Mr Neary was denied access to essential records and statistics.

Mr Neary's report was reviewed by Mr Brian Hesketh, a retired signalling design engineer from British Rail in the UK.

Although the Hesketh report supported Mr Neary's allegations of unsafe standards, Mr Neary was demoted and relegated to menial duties two weeks after the report was published. He had worked for the SRA for 17 years.

In June 1991, the manager of the SRA's Rail Safety Audit, Mr Boland, produced an updated

report on the Hesketh review, implying that many of the Hesketh recommendations had been put into effect. On the other hand, Mr Neary claimed the situation had deteriorated markedly.

Eventually Mr Neary was removed from the signalling area permanently and later directed to stay at home on special leave with pay.

Given the serious nature of Mr Neary's complaints and the response of the SRA, the Ombudsman issued a notice of investigation into the conduct of the SRA on 31 January 1992.

Mr Neary's complaints go to the fundamentals of safe signalling practice, in the design, testing, certification, commissioning and operation of the signals system. The complaints squarely raise the issue of the safe operation of the rail network and the Ombudsman concluded that it is in the public interest that they be ventilated.

Mr Neary's complaints covered alleged continuing problems in the following areas:

- ▶ signalling design deficiencies
- ▶ incorrect spacing of signals
- ▶ reliance on testing prior to certification and commissioning to detect design errors
- ▶ instances of irregular signalling operations
- ▶ out of date signalling records
- ▶ incorrect, confusing and contradictory signalling manuals.

Each of these areas was examined in the Ombudsman's report, in light also of a written response by the SRA to a draft on the report, following consultation between the Ombudsman and the minister.

The Ombudsman concluded that Mr Neary had at all times acted in good faith in his dealing with this Office and had been motivated by continuing concerns about rail safety. He had presented his evidence and arguments in a sober and objective fashion.

Yet, disciplinary charges were preferred against Mr Neary by the SRA in relation to alleged breaches of the SRA's Code of Conduct and on 19 May 1993 he was dismissed from the SRA.

Mr Neary's case highlights a major flaw in the proposed Whistleblowers Protection Bill, which provides certain protections for a public official who discloses maladministration by a public authority to the Ombudsman. But the Bill does not enable the Ombudsman to investigate a public authority's victimisation of a whistleblower.

Some of the arguments presented by Mr Neary and the information provided by the SRA are in conflict; other aspects are not. In each case, however, the Ombudsman concluded that there was sufficient concern to warrant an independent technical assessment and investigation of Mr Neary's complaints.

The Ombudsman recommended a public inquiry by the Director-General of the Department of Transport under the Rail Safety Act 1993. ●

HomeFund

On 20 April 1993 the Legislative Assembly resolved to establish a Select Committee to inquire into and report on all matters concerning HomeFund and FANMAC. The relevant paragraphs so far as the Ombudsman was concerned were:

(2) That the Auditor General and the Ombudsman be requested to make such inquiries and provide such advice on such matters as the Committee may determine and that the Government provide necessary financial resources to undertake such inquiries.

(3) That the Auditor General and the Ombudsman separately and in co-operation inquire into and report upon -

- ▀ *the rationale for the establishment of the HPAF (Home Purchase Assistance Fund)*
- ▀ *the rationale for the growth of the HPAF's activities*
- ▀ *the likely exposure of the Government flowing from these activities.*

(4) That the Auditor General and the Ombudsman be granted access to the FANMAC and associated Trusts financial papers and report and make recommendations to the Committee within three months from the date of any request for information as required by the Committee.

The possibility of jurisdictional and operational problems was foreseen in the Assembly's resolution and the HomeFund

Select Committee (Special Provisions) Act, which resolved those issues, commenced on 8 June 1993. This Act authorised the Ombudsman:

... to exercise the Ombudsman's functions (either at the request of the Select Committee or on his or her own initiative) in connexion with any matter that is within the Select Committee's terms of reference under the Special Resolution, and

... to furnish information, documents and reports to the Select Committee.

Independence

The HomeFund Select Committee (Special Provisions) Act also made it clear that it was within the Ombudsman's discretion to deal with the reference as if the matter was the subject of a complaint under the Ombudsman Act and the Select Committee was the complainant.

It is fundamental that the Ombudsman be entirely independent and free to determine, unfettered by political or administrative direction, what matters might be investigated.

The Ombudsman decided it was appropriate to investigate the matters under reference, but in a way which would complement rather than duplicate the Select Committee's own inquiries.

As a result, the investigation was directed towards determining the extent to which there was documentary evidence held by either the NSW Treasury or the Department of Housing of conduct which may be of a type

described in section 26 of the Ombudsman Act, in connexion with the establishment, operation and administration of the Department of Housing's FANMAC funded Home Lending Program.

Existing Complaints

In taking the decision to investigate the operation and administration of the Home Lending Program the Ombudsman was also mindful that complaints had been received by his Office about various aspects of the administration of the scheme prior to the Legislative Assembly's resolution.

Jurisdiction

Although satisfactory outcomes were achieved in some of those matters, the Department of Housing had questioned the Ombudsman's jurisdiction, and suggested that the conduct complained of ought properly be construed as the commercial conduct of the Co-operative Housing Societies which originated and managed the loans and was thus not something which the Ombudsman should, or even could pursue.

Similarly, the jurisdiction of the Commonwealth Trade Practices Commission and the NSW Department of Consumer Affairs was unclear because HomeFund was seen to be a Department of Housing (ie, state) program.

The increasing tendency to contract out services, or as in this case develop complex hybrid service delivery models can lead to uncertainty for clients and other agencies alike about whether the organisations delivering those services are outside

cont page 118

Isolated Schools No Longer Left Right Out

In 1990, the Department of School Education reviewed two schemes which assist schools in country areas.

It recommended an increase of 103 in the number of schools participating in the Commonwealth funded Country Area Program (CAP) and changed the eligibility criteria for the State funded Isolated Schools Grants Scheme (ISGS) to target very isolated schools more effectively.

Despite the minister's assurance that

... no school which was previously eligible for funding from ISGS or CAP or both has lost eligibility for funding from one source or the other,

ten schools in the North West Region missed out on any funding and a parent with children at Ashford Central School near Inverell complained to the Ombudsman.

Although the North West Regional Office offered an assortment of explanations and excuses, other regional offices with the same difficulties and choices did ensure affected schools in their areas had access to funding.

The Director-General of School Education acknowledged that the transition process from ISGS to CAP omitted ten schools in the North West Region and agreed that, whatever the reason, this was not acceptable.

The ten schools which transferred from ISGS to CAP were reimbursed with an amount equivalent to what they would have received in the 1991 ISGS funding allocation.

Shortly before the Ombudsman received the department's response, a delighted complainant rang the office to say Ashford had just received about \$10,000 from the department.

The director-general is to be congratulated on allowing the clear light of commonsense to prevail in such a case, rather than retreating into the stygian gloom of bureaucratic defensiveness as too many other heads of departments are wont to do. ●

Homefund *cont*

the jurisdiction, either in whole or in part, of bodies like the Ombudsman, the Auditor General and consumer agencies such as the NSW Department of Consumer Affairs and the Trade Practices Commission.

HomeFund as a hybrid mechanism was simply not accountable in all its component parts to any one agency or authority and neither the Ombudsman nor consumer agencies have resources to pursue matters where ab initio they face a substantial threshold cost to simply establish even limited jurisdiction.

In the course of a normal investigation, officers would interview the many and various people able to provide primary evidence about the matter under investigation.

It was, however, always clear that the Select Committee would be better equipped to call and examine witnesses and to explore the conduct of ministers and senior bureaucrats, past and present, and was planning to do so as its Inquiry progressed.

In these circumstances the Ombudsman's investigation was directed towards developing and

understanding the documentary records which resided in the Treasury and the Department of Housing.

The Ombudsman's Report was made pursuant to subsection 4(2) of the HomeFund Select Committee (Special Provisions) Act 1993 and section 29 of the Ombudsman Act 1974 and should help the Select Committee identify some areas which might be productively pursued with witnesses, including participants who may be outside the Ombudsman's jurisdiction. ●

Vat Attack

Ms L, an Austrian lawyer, was briefed by the NSW Legal Aid Commission (LAC) to act on behalf of an Australian citizen living in Austria.

The client was being sued for divorce in Australia.

When Ms L presented LAC with her fee statement, the amount of \$247 for Austrian Value Added Tax (a goods and services consumption tax) was disallowed. In its short reply, the LAC stated that *"the policy of the Commission is not to pay the tax liability of a solicitor"*.

In several letters to the LAC, it was explained that the VAT was payable by the consumer of the services and was not a tax liability of the provider of the service, who merely acted as the collector of the tax.

The commission's refusal to pay the VAT meant that the Austrian tax authority would take the tax out of the remainder of the fees paid.

For more than two years Ms L attempted to explain how the VAT worked, that the LAC was the ultimate consumer of the legal services and was liable for the tax levied.

An investigation officer contacted the LAC and explained the similarity between the VAT and the proposed GST.

It was also stressed the public resources spent studying and arguing the commission's policy had far outstripped the value of the tax liability.

The commission has since agreed to the pay the tax. ●

Change of Policy

Mr C complained to this Office about the discriminatory nature of the Special Acquisition Policy, adopted by the RTA in relation to certain properties affected by the proposed F2 North-West Link.

The policy stated that the RTA was prepared to become the purchaser of residential zoned properties, purchased prior to 1987, which adjoined the proposed freeway or were separated from it by a low trafficked road.

Mr C owned a property which fell within this description but was informed by the RTA that it would not consider pur-

chasing his property as he was not a resident owner but rented out his property.

After commencing an investigation into the authority's application of the Special Applications Policy the RTA advised that:-

Should it be decided to proceed with the construction of the F2, non resident property owners, whose properties are affected by the Special Acquisition Policy, would be afforded the same opportunity as resident owners to sell their property to the authority. ●

Delay Acknowledged

Mr & Mrs S lodged an application for the purchase of a road adjoining their property. Due to legislative changes and staff reductions there was a delay in the processing of the application by the Department of Conservation and Land Management.

Eleven months after lodging their application Mr & Mrs S were notified of finalisation of the road purchase. The notification contained details of monies owed by Mr & Mrs S to the department and included the sum of \$338.50 for Land Titles Office fees.

Mr & Mrs S queried their obligation to pay this fee of which they had no prior knowledge.

Enquiries by this Office revealed that two months prior to finalisation of the road purchase the Department of Conservation & Land Management introduced a procedure whereby applicants were responsible for fees payable to the Land Titles Office for the lodgement and registration of plans and the creation of the title.

As the delay in processing their application resulted in an added fee for Mr & Mrs S, the department decided that, in view of the special circumstances of the case, it would not recoup the Land Titles Office fee from the complainants. ●

SRA - Property, Prices and Policy

Mr S complained to this Office through his solicitor that unnecessary delay by the SRA had led to the increase in asking price for the purchase of the SRA property in which he lived.

Mr S, a former SRA employee, made an offer to purchase his home, a former station master's residence, in March 1990.

For Sale

As the SRA had decided that the property was no longer required, it sought a valuation from the Valuer General. The Valuer General's report dated 31 July 1990 stated the property was worth between \$18,000 and \$22,000.

The SRA advised Mr S on 15 October 1990 that the sale had been approved for \$20,000. A contract for sale was prepared and Mr S returned this contract together with a 10 per cent deposit in June 1991.

Industrial Trouble

At about this time, the Combined Rail Unions threatened industrial action because they objected to the sale of employee residences.

The SRA decided that to avoid any possible strike action, it should suspend all sales pending further negotiations with the union. Because no exchange of contracts had taken place with Mr S, the sale of his property was suspended.

The Industrial Court resolved this matter in favour of the SRA. After discussions with union representatives it was agreed that Mr S's property could be offered for sale - some 18 months after the original negotiations.

Reevaluation

Based on government policy which states that sales are to be at current market value, a new Valuer General's assessment of the property had to be made.

Because Mr S had made alterations and improvements to the property, the Valuer General's office assessed that the market value of the property had increased to \$30,000 as at 22 January 1992.

This new sale price was conveyed to Mr S. However he was later issued a contract by the SRA's agents showing the original price of \$20,000 instead of the revised market value. The agents later advised Mr S that the price was now \$31,500.

New Rules?

Mr S's solicitors complained that they were concerned the SRA had changed their rules in the middle of a transaction.

This Office made some preliminary inquiries with the SRA and ascertained that the policy had always been that the sale of any SRA property be priced at current market value.

They also said that the delay in the negotiation of the sale was caused by the industrial action and was in no way deliberate.

On review of the matter, the SRA did see that it was possible for Mr S to be concerned about the delay and the increase in sale price.

Fairness Prevails

They did not want Mr S to perceive the increase in sale price as an attempt to make him pay twice for the improvements he had already made to the property.

Without taking this incident as a precedent, the SRA graciously decided to revert to the original sale price of \$20,000.

The SRA maintains that it acted properly and in accordance with government policy in this transaction. It made the decision to revert to the \$20,000 asking price taking into account:

- ▶ the delay caused by the industrial dispute;
- ▶ Mr S's apparent ignorance of the terms of his lease regarding reimbursements for alterations or improvements made to SRA property; and
- ▶ the confusion created by the incorrect advice given by SRA agents. ●

Chapter Five
Prisons

Overview

Access to the Ombudsman

Apart from complaints against the police, the Ombudsman receives more complaints against the Department of Corrective Services than any other single public authority.

There are legal obligations on the department for prisoners to have free access to the Ombudsman and for the Ombudsman to be responsive to complaints from prisoners.

Section 12(3) of the Ombudsman Act requires prison supervisors to take all steps necessary to help inmates and detained persons to make a complaint to the Ombudsman if they wish. Additionally, the Prisons (General) Regulations provides for privileged correspondence between prisoners and the Ombudsman.

Prison Visits

Officers of the Ombudsman visit correctional centres and juvenile institutions to hear complaints and to give general advice.

As these visits are infrequent, the primary purpose is to enable investigation officers to be informed of conditions and developments throughout each of the State's correctional centres and to make personal contact with senior staff.

This helps improve assessment of written complaints about particular institutions and provides contacts necessary for speedy resolution of complaints wherever possible. The visits also provide an opportunity to make inmates aware of their rights under the Ombudsman Act.

Thirty special visits were made to 23 of the main gaols in the State during the financial year, including all but three of the country gaols and those were last visited in June 1992. The most isolated correctional centres including Mannus, Grafton and Broken Hill were all included in the visiting program this year.

The Ombudsman still considers this level of service is inadequate, but is restrained by inadequate staff and financial resources.

Telephone Contact

Prisoners are free to telephone the Ombudsman as are all members of the general public.

forgo ringing their family or friends in order to discuss a matter with the Ombudsman's Office.

While some prison governors have had a relaxed attitude about this and have permitted prisoners to make such calls in addition to their weekly entitlement, the policy of the department only ever recognised inmate calls to the Ombudsman as a private matter.

Negotiations with Deputy Commissioner Sulman by the Assistant Ombudsman brought a change to this policy in June 1993.

Prisoners are now entitled to phone the Ombudsman with their calls countered as addi-



In the past the Department of Corrective Services required prisoners to use their telephone call entitlement to do so and to pay for the call if it was STD. In many gaols, inmates are allowed only one phone call a week and, unless a problem is extremely serious, few prisoners would

tional to their normal entitlement and paid for by the department. This policy is welcomed and accords with the spirit of section 12(3) of the Ombudsman Act. It is too early to report whether this policy change will result in any significant increase in telephone contact by prisoners.

Complaint Form

A prisoners' complaint form was developed with the support of official visitors in early 1992 and was approved by the Commissioner for use in correctional centres in June of that year.

The form was designed to stem the flow of minor and premature complaints to this Office by directing inmates to take their grievance in the first instance to gaol governors or to official visitors.

Specific instructions to this effect are contained on the form, together with other information on matters the Ombudsman is unable to investigate and a statement indicating that priority is given to complaints that are serious or affect a number of prisoners.

The Commissioner undertook to publish the form in the *Corrective Services Bulletin* with an accompanying instruction that it was to be photocopied and

made available to inmates. There was a one year delay in this occurring, although there was some ad hoc internal distribution of the complaint form in a few gaols.

The department finally published the form in the 17 June 1993 issue of the *Bulletin*. The department also agreed to a number of arrangements for the use of the form as a condition of its introduction into correctional centres. They are:

1. The forms are to be available to inmates from a variety of outlets in each correctional centre, ie, wing office, general office, welfare office, etc.
2. The existence and availability of the forms is to be advised to inmates on reception and a notice is to be placed on inmate notice boards throughout each centre informing inmates of the same.

3. Envelopes are to be made available for use with the forms and the cost of the envelopes and postage is to be met by the department.

4. Inmates should not be prevented or obstructed from corresponding with or telephoning the Ombudsman even though they choose not to use a complaint form or have not seen the official visitor or the Governor to discuss their problem first.

The instruction also included the announcement of the new policy on telephone calls to the Ombudsman Office.

The department recognises that it can benefit from this new system, as it will ensure that inmates have pursued all available avenues to resolve a problem before referring matters to the Ombudsman.

The use of the complaint form will be monitored closely during the coming year. ●

Statistics

During the year 393 written complaints were received about the Department of Corrective Services.

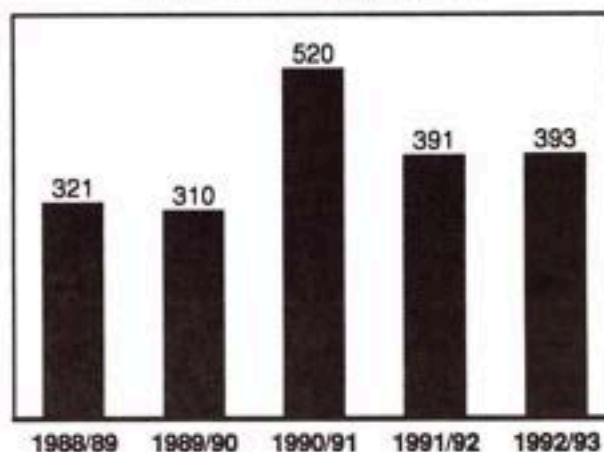
These included eight petitions from a total of 349 prisoners.

A further 267 prisoners made oral complaints to Ombudsman officers during visits to correctional centres. These complaints were generally resolved by further enquires or immediate advice.

Sixteen complaints were received about the Corrections Health Service, formerly known as the Prison Medical Service.

One written complaint was received about the Probation Service and one about Australian Correctional Management.

Complaints Received
Corrective Services
Five Year Comparison

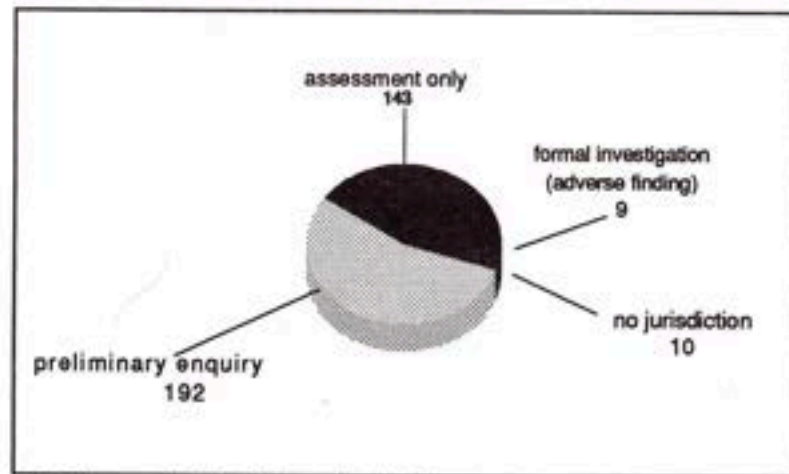


The fluctuation in written complaints received against the department of Corrective Services over the past five years is set out in the above graph.

Outcome

The chart on the right shows the outcome of complaints finalised during the year.

Corrective Services 1992 - 1993



Total complaints determined 354

Health Service

Complaints received about the Corrections Health Service over the past five years are detailed in the table on the right.

Complaints received about the Corrections Health Service over the past five years

1988/89	1989/90	1990/91	1991/92	1992/93
-	13	22	27	16

The nature of complaints about the Corrections Health Service this year and the previous year are detailed in the table on the right.

Complaints about Corrections Health Service

Nature of Complaint	July 1992 to June 1993	July 1991 to June 1992
- standard of care	12	25
- dental service	1	2
- other	3	-
Total	16	27

Where do the Complaints Come From?

The top ten gaols the subject of complaint were the following:

Mulawa Correctional Centre	60
Goulburn Correctional Centre	59
Cessnock Correctional Centre	25
John Moroney Correctional Centre	22
Industrial Centre	21
Training Centre	17
Reception Centre	15

Bathurst Correctional Centre	14
Grafton Correctional Centre	12
Maitland Correctional Centre	11

Mulawa and Goulburn Correctional Centres account for 30 per cent of all complaints received about the Department of Corrective Services.

Mannus Correctional Centre was the only gaol that was not directly the subject of written complaints during the year. ●

Complaints About Corrective Services

The nature of the written complaints received in the past financial year is set out in the following table, together with comparable figures for the previous year.

Nature of Complaint	July 1992 to June 1993	July 1991 to June 1992
Officer Misconduct	55	50
- threats/harrassment	32	17
- assaults	16	18
- other criminal	7	15
Property	40	47
- private property policy	4	2
- confiscation of/lost	25	30
- delay in transferring	3	4
- failure to compensate for	8	11
Transfers	38	33
- unreasonable transfer/refusal to	35	23
- delay in effecting	-	1
- form of transport	1	6
- interstate	2	3
Daily Routine	38	18
- access to amenities/activities*	11	4
- access to telephones	2	5
- general treatment (including time out of cells)**	25	9
Record Keeping/Administration	26	40
- sentence calculation	6	8
- failure to reply to applications	3	4
- remissions	2	9
- private cash accounts	6	8
- failure to process appeal papers	2	3
- other	7	8
Mail	22	24
- delays in delivery	11	8
- interception of/missing	11	15
- interference with Ombudsman's	-	1
Visits	19	21
- ban on visitor	14	9
- access to	5	12
Segregation	20	32
- unreasonable	20	31
- failure to give reasons	-	1

* Included in complaints this year was a petition from eight inmates in the developmentally delayed unit at John Moroney Correctional Centre complaining about access to amenities and excessive lock-in times and another petition from 21 inmates on remand at Goulburn Correctional Centre about access to activities.

** One complaint received this year was a petition from 50 inmates of the Remand Centre protesting about unreasonable lock-in times. Another was a petition from 46 inmates at Maitland Correctional Centre complaining about the same issue.

Complaints about Corrective Services (Continued B)

Nature of Complaint	July 1992 to June 1993	July 1991 to June 1992
Security measures (including cell/strip searches urinalysis)***	19	4
Unfair discipline	16	16
Work and education (access to/removal from)****	15	10
Classification	15	41
Failure to ensure physical safety	14	12
Day and other leave*****	14	-
Buy ups	12	1
Physical	7	10
- unhygienic conditions	3	3
- lack of basic provisions (eg beds, clothing etc.)	4	7
Medical	5	13
- access to/denial of	4	12
- methadone	1	1
Food and diet	4	7
Legal	4	3
Probation and parole	3	3
Periodic detention*****	3	3
Other	4	3
Total	393	391

*** One complaint received this year was a petition from 114 inmates at the Long Bay Remand Centre complaining about the requirement to squat during strip searches.

**** One complaint received during the year was a petition from 15 inmates of the Special Purposes Prison complaining about the removal of the gaol's education officer.

***** One complaint received was a petition from 73 inmates at Silverwater Correctional Centre complaining about accommodation and weekend leave provisions.

***** One complaint received during the year was a petition from 22 inmates at Merinda Periodic Detention Centre complaining about inadequate access to showering facilities.

Procedural Amendment

An inmate at Long Bay Correctional Centre, complained to the Ombudsman that his application for bail and notice of appeal, submitted at the general office of Long Bay Complex, had not been received by the court.

Consequently, he had to submit a second application some two months later, thereby delaying his release from custody.

Enquiries by this Office revealed that staff in the general office had assessed his application as being out of time and did not forward it to the court.

The complainant was appealing a decision made the day

before he submitted his application. Long Bay office staff were unaware of these court proceedings and wrongly assumed the appeal related to an earlier court decision concerning the cancellation of a periodic detention order.

Three months after submitting his original bail application and notice of appeal, he was granted bail and leave to appeal to the District Court.

During enquiries into this complaint senior personnel from both the Local and District Courts stated that it is a matter for the court to determine whether an appeal can be heard and all appeals lodged by inmates should

be forwarded by the correctional centre to the appropriate court.

As a result of this complaint, the Department of Corrective Services published in the Corrective Services Bulletin an amended procedure for notices of appeal. It states:

No determination as to the merits of a notice of appeal should be made by officers of a Correctional Centre All notices of appeal submitted by inmates of Correctional Centres should be processed and forwarded to the appropriate court as quickly as possible. ●

Periodic Detention

Every week hundreds of people attend periodic or week-end detention in gaols around NSW as part of their sentence.

Until recently absences were tolerated to an extent. Many prisoners rang in sick or simply didn't show up.

However as a result of some media attention, a review of the periodic detention scheme and changes to the legislation, inmates are being breached for unexplained absences.

Now going absent without leave from periodic detention can mean a full-time prison sentence.

An inmate recently complained that in early January he had completed his period of detention and had been given a discharge certificate.

Some six weeks later he received a summons to defend a charge of failing to report for detention during the sentence from which he had just been discharged.

The complainant said the governor of the detention centre had refused to accept some valid medical certificates for the absences.

It turned out that the medical certificates testifying to the

prisoner's ailments were written several days after the absences and stated only that the complainant had told the doctor he was sick.

However the governor of the periodic detention scheme readily admitted that to issue a discharge certificate while planning to breach the prisoner for an absence during that period was misleading and unfair.

It was agreed that governors of detention centres would be reminded that inmates should be informed of what action was planned and no discharge certificates issued under these circumstances. ●

Junee - NSW's First Private Gaol

There has been spirited debate in the community over the desirability of private prisons since they were first proposed for NSW. The Ombudsman entered this debate early, outlining his concerns that grievance handling procedures be not less than those currently available to prisoners in the State run gaols.

The Government responded positively and the Prisons (Contract Management) Amendment Act 1990 provided that prisoners in any prison managed by a corporation can direct complaints to the Office of the Ombudsman. The Act also included provisions relating to the appointment of official visitors to such prisons.

Consequently, the jurisdiction and investigation powers of the Ombudsman apply to the management company and to the governor of privately run prisons, including directors or other officers of the management company and any employee of the management company authorised by the Commissioner of the Department of Corrective Services to perform custodial duties or in any other capacity prescribed by the regulations.

Junee Correctional Centre is the State's first privately managed prison. Run by Australasian Correctional Management, it is designed to hold 600 medium and minimum security prisoners making it the largest gaol in NSW. It also will be the major medium security prison in the correctional system. Most prisoners with medium to long term sentences are likely to pass through the centre at some time during their incarceration.

The centre opened in March 1993 and was visited by an Assistant Ombudsman and an investigation officer in late April. Free access to inmates, staff and the gaol was provided by the governor. Correspond-

have warranted a formal investigation by this Office.

On that first visit, 28 inmates requested interviews with my staff and their complaints were dealt with on the spot or



ence to and from prisoners and telephone contact with this Office has been unimpeded.

The general practices and procedures of the prison relating to standard of care and conditions, including inmate access to amenities, are expected to mirror those in the state run prisons. Beyond a few minor hitches in its early months of operation, this appears to be the case. To date, there has been no serious complaints received involving the management of the gaol that

through follow up correspondence. Most matters raised by inmates concerned issues outside the management of Junee Correctional Centre.

Almost all the inmates seen on that visit and in written complaints received following the visit protested at their forced transfers to Junee. The gaol is extremely isolated from the families of most prisoners and its location is inexplicable in terms of the correctional system as a whole.

cont page 129

Management of Diseases

In January 1993 the Department of Corrective Services published its policy on the management of HIV/AIDS/hepatitis infected inmates.

The opening paragraphs of this policy state:

Government policy is that HIV/AIDS/Hepatitis infected inmates are to be integrated as far as practicable within the mainstream correctional population. (In accordance with this policy the Department had introduced infection control guidelines and a number of other Occupational Health and Safety measures, such as "AIDS pouches".)

A pro-active approach to the management of HIV/AIDS/Hepatitis infected inmates is essential to maintain a safe environment for all staff and inmates, and to minimise the necessity for segregating these inmates on the basis of unacceptable behaviour ...

The policy also details the management procedures to be employed if an infected inmate requires segregation.

of an inmate's HIV status within the correctional system. This information was sought because a complaint was received that a



This Office was sent a copy of this policy when it requested information about the disclosure

notice was displayed in the wing office of a segregation unit which stated:

cont page 130

Junee *cont.*

A subsidised bus service from Sydney does little to relieve the pressures placed upon visitors. Visitors using this service face an 11 hour journey for a visit lasting a maximum of four hours.

For many prisoners, their transfer to Junee in practical terms will mean severe disruption of visiting relationships. That has been the principal complaint from prisoners, although the lack of work is another problem and

is likely to cause unrest if it is not addressed quickly.

Enquiries were conducted into the procedures followed by the department in selecting inmates to be sent to Junee.

Fewer than 100 inmates volunteered to be transferred to the new gaol and not every one of the volunteers met the selection criteria, which excluded methadone patients, inmates with imminent court appearances

and inmates with short terms to serve.

Given the imperative placed upon the department to fill the gaol, it appears the department made reasonable attempts to take visitor access considerations into account in the initial selection process.

Almost six months after the gaol was opened, one official visitor was appointed. This Office intends to visit the gaol on a regular basis. ●

Management of Diseases *cont*

[inmate's name] is an HIV prisoner. He is to be let out first in the mornings and last in and be placed in B yard at all times.

The note was signed by the assistant superintendent. The complaint was from the named inmate's solicitor, who was with the Australian Federation of AIDS Organisations Legal Project.

The notice was taken down by a member of the then Prison Medical Service who believed it to be a breach of confidentiality and a contravention of legislative provisions.

The department did not appear to totally agree, its response when questioned was that

...there is no provision which allows custodial staff to display a notice identifying HIV positive inmates...

but then directed the Ombudsman's attention to the relevant governor's explanation which referred to his duty of care and the need to alert his officers that the prisoner was potentially dangerous.

Concern for the safety of staff is obviously extremely important. It should be properly exhibited however. Yet, the notice in question only described the inmate's HIV status, his medical condition; it did not describe him as potentially dangerous.

If the department's policy of integration has any chance of success, the distinction must be made very clear.

Examination of Policy

This complaint also led to an examination of the department's policy concerning the disclosure of the HIV/AIDS/hepatitis status of inmates.

The medical condition of an inmate is considered to be confidential information.

The prison regulations clearly define the persons that may be informed. They are:

- ▶ commissioner,
- ▶ deputy commissioner,
- ▶ director of the Corrections Health Service,
- ▶ assistant commissioner - operations,
- ▶ governor of the correctional centre where the inmate is held,
- ▶ medical officer attached to that centre,
- ▶ manager of inmate classifications and placement and,
- ▶ where relevant, chairpersons of either the Serious Offenders Review Board or the Offenders Review Board.

The holders of those offices are prohibited from disclosing this information to any person except for the purpose of exercising the functions of that office. Generally, the policy concerning disclosure was deemed to be on a needs to know basis.

However, there were no guidelines identifying situations where disclosure to other persons would be justified and the form that the disclosure should take.

Proposed Policy

In June 1993, in response to this investigation, the department provided a copy of its proposed policy and procedures for the disclosure of an inmate's HIV/AIDS/hepatitis status.

It stipulates that in a correctional centre, the only persons (other than the governor) who need to know are the deputy governor (who performs the duties of governor in the governor's absence) and the area manager(s) in whose areas the inmates are housed.

This is to enable the area managers to ensure that other procedures relating to the sharing of cells and the provision of heating, warm clothing and bed clothes for HIV positive inmates are followed.

The policy states that this information is to be transmitted verbally.

No written records of the inmates HIV/AIDS/hepatitis status are to be maintained (other than medical records) and the information may not be disclosed to any other person.

Where a person is segregated as a result of the HIV/AIDS/hepatitis policy, the segregation admission form will state the reason for the segregation (eg. good order and discipline of the institution or personal safety of the officers and/or inmates) and will detail any special instructions for the management of the inmate. However, this form will not contain any reference to the inmate's HIV/AIDS/hepatitis status. ●

Human Rights for Women Prisoners Attending Hospital

The Ombudsman, Westmead Hospital and the Department of Corrective Services have negotiated a solution to the abysmal state of the department's hospital escort procedures for women.

After preliminary inquiries disclosed the appalling state of what could loosely be termed the department's hospital escort procedures, the Ombudsman began an investigation into the Department of Corrective Service's guidelines and procedures for hospital escorts for women prisoners seeking obstetric and/or gynaecological treatment.

These procedures consisted of four separate documents, unworkable in form and archaic in substance. It was clearly apparent that further consolidation and improvement was needed to bring the department's treatment of women prisoners in this area, into the twentieth century.

The investigation concentrated primarily on the experience of Westmead Hospital staff in its daily treatment of patients under escort from Mulawa Correctional Centre.

About eight women per year from Mulawa attend the special care nursery and six Mulawa women delivered babies at Westmead in the year November 1991-1992. In total there were 216 attendances at out-patients from women prisoners at Mulawa Correctional Centre.

Yet for all concerned, the women, their prison guards and the attending health professionals, there appeared to be little understanding of what their rela-

tive rights were in the absence of a clearly defined protocol.

Sixteen of the eighteen persons interviewed at length during the investigation, specifically supported the need for an accessible protocol which clearly



identifies everyone's rights and restrictions.

Some very disturbing and degrading examples of the failings of the current procedures were disclosed to the Ombudsman's investigation:

- ▶ Guards refused to leave the delivery suite during a woman's delivery.
- ▶ Guards refused to allow an expectant mother to be examined in privacy and protested at the curtain being pulled across.
- ▶ A male guard refused to allow a woman the use of the toilet in privacy and watched while she changed her sanitary napkin.

- ▶ Guards insisted upon being present during termination and sexual assault counselling sessions.
- ▶ A woman was handcuffed during an internal examination.

- ▶ A guard insisted upon staying in the room with a woman during her termination, making remarks such as: "You'll get out of here and get pregnant again".
- ▶ Guards insisted upon accompanying a mother into the very confined and glassed-in space of the Special Care Nursery where she sought some privacy with her newborn baby.

Shocked by such humiliating incidents, the Ombudsman set about drafting an escort protocol that recognised some respect for the inherent dignity of prisoners, in particular women prisoners seeking obstetric and gynaecological treatment.

cont page 132

Human Rights *cont*

Through the negotiation process and with the assistance and expertise of staff from Westmead Hospital, a new escort protocol was negotiated with the department which included the following reforms:

- ▶ While the escorting officers have the responsibility and authority of the law to ensure inmates do not escape from lawful custody, they should also have due regard in the circumstances to decency, self respect and privacy of inmates during the course of any medical consultation, examination and treatment. Accordingly, the escorting officer may permit a patient to be consulted, examined and treated outside an officer's view.
- ▶ Escorting officers are to remain outside the door of the patients room in circumstances where the patient is...in delivery or operating suite, in intensive care, visiting neo-natal intensive care or a special care nursery, receiv-

ing termination or drug and alcohol counselling...

- ▶ Provided the escorting officer has satisfied themselves that the continued charge and supervision of the patient and the security of the hospital will not be jeopardised, the patient should be allowed to use the toilet in private, without locking the door...
- ▶ Firearms should be enclosed in full holsters and the holsters should remain concealed at all times...
- ▶ Whenever possible female prison officers are to attend when escorting a female inmate as an out-patient or in-patient for any obstetric and/or gynaecological treatment.
- ▶ Under normal conditions a sedan should be used to escort pregnant women to and from a hospital facility.
- ▶ Escorting officers are to endeavour, in every way, to preserve the dignity of the individual who, during their time at the hospital

or medical facility, is firstly a person, secondly a patient and thirdly an inmate.

The Ombudsman has received advice from Westmead Hospital that since the negotiations, health professionals have noticed a marked difference in the approach and attitude of the escort officers enabling their treatment of women patients from Mulawa to be less problematic and more humane.

The Ombudsman has also received advice from the Department of Corrective Services that it is intended the reformed hospital escort procedures be promulgated state-wide for use in all correctional centres. We have come somewhat then toward achieving the ultimate aim as expressed by a doctor to the investigation:

It would seem to me that what you are trying to do with the guards is that you want them to work for the common good of the patient, just as are the doctors and nurses... You need to use discretion and negotiation. The two groups should not be in conflict. ●

Access to Library

When there are personnel shortages in prison, the staffing of security posts remains paramount. To ensure that there are guards on every tower and every gate, the mail room, transfers to education classes, telephone monitoring, the library and other non-custodial activities are progressively closed down.

Sometimes, if sick leave among prisoner officers takes a sudden jump, the entire prison might be locked down for the

day, or even several days.

Effectively, no inmates are allowed out of their cells because there are not enough prison officers to supervise them.

For periods of time in late 1992, the library was unopened at the (then) Industrial Centre and at the Remand Centre at Long Bay for at least two and sometimes more days a week.

Quite a number of inmates complained, but Corrective Serv-

ices responded initially that whenever possible, given the staff restrictions, the library would be open.

However, in March 1993 the deputy commissioner recognised the need for access to the library at the Industrial Centre and announced that a permanent part-time librarian would be appointed and that the supervisory role of a guard post may be extended to cover the library. ●

Guardianship Rights for Prisoners

During her long trial Mrs K did not speak in either her native language or in English and spent most of her time playing in a childlike fashion. This behaviour said Mrs K's family, was due to brain damage suffered in a fall in 1983. Despite this, Mrs K had been found fit to plead and was later, convicted following her trial.

At Mulawa it was obvious from the outset that her childish but compliant behaviour put her at great risk in the normal discipline.

She was placed in the therapeutic unit, a separate section of the prison adjacent to the segregation cells.

As well as Mrs K, there are those in this unit with psychiatric ailments, a few inmates looking for time out after distressing experiences, those unable to fend for themselves in the main gaol and those who just don't fit in.

The staff to prisoner ratio is a bit higher than elsewhere in the prison and a domiciliary (psychiatric) nurse works in the unit. The unit is a relatively quiet, safe area.

When Mrs K first arrived at Mulawa a psychiatrist, who had been an expert witness at her court case giving evidence about her state of mind, assessed her.

Mrs K's daughter believed that a psychiatrist who had formed a particular view of her mother's behaviour should not be involved in her mother's treatment.

She made an application to the Guardianship Board for guardianship and financial management of her mother.

The application was made in order to prevent any unneces-

sary or intrusive medical treatment and questioned a prison regime which forced her mother to participate in activities when, according to her daughter, Mrs K did not comprehend what was happening.

Put simply Ms K believed that medical staff and prison officers thought her mother did not have a genuine psychiatric ailment and were inappropriately trying to force her to carry out activities of which she was incapable.

There also were suggestions that Mrs K may have been subject to physical abuse, as there was evidence of unexplained cigarette burns on her body.

The Guardianship Board referred Ms K's complaints about the treatment of her mother to the Ombudsman and set about resolving the legal relationship between the Disability Services and Guardianship Act and the Prisons Act.

A senior investigator from this Office visited the therapeutic unit, despite a less than cooperative attitude from Corrective Services at the time, and in January 1993 detailed written enquiries were made of both the Corrections Health Service (through the Department of Health) and Corrective Services.

The primary aim was to ensure Mrs K was not subject to abusive treatment and that her medical care was the best available.

The Ombudsman satisfied himself that while it might not be ideal for a treating psychiatrist to have formed a prior view of an inmate's mental state, in this case there was no hint of impropriety.

No evidence was discovered to prove Mrs K was being physically or psychologically abused by staff or prisoners.

However, it was clear that most people involved with Mrs K believed she was capable of much more than her daughter maintained.

No specific incidents had been documented, but it seemed likely that Mrs K had been encouraged to carry out simple tasks around the unit and participate in activities. Her contribution to these activities varied and perhaps some inmates were upset by what they thought was her feigning an ailment.

What is quite clear is that Mrs K has not (except in one disputed instance) spoken in all her time in prison.

It might be difficult to organise treatment for such a problem outside prison; inside prison it is almost impossible.

This is particularly true as Mrs K's assessors seemed to assume that her election not to speak and her childlike behaviour were not genuine psychiatric illnesses.

After examining all the available documentation, including court judgements and medical records, the Corrections Health Service decided that Mrs K was able to consent to medical treatment. In other words she understood, through sign language or otherwise, enough about her medical condition to agree to or refuse proposed treatment.

The issues of consent, future treatment and the legal niceties raised by this complaint were the subject of considerable

cont page 134

Guardianship Rights for Prisoners *cont*

discussion over the following months.

The Ombudsman's Office monitored the situation and kept in touch with Corrections Health Service, Corrective Services, the Guardianship Board and the complainant.

After responses to the written enquiries were finally received in June 1993, the Ombudsman's investigator attended a meeting involving all interested parties.

The Guardianship Board, Corrections Health Service and Corrective Services were able to substantially agree that there was no major legal impediment to the granting of a guardianship order over a prison inmate if the situation demanded it.

Of course the circumstances under which such an order would be the most practical management arrangement for an inmate are quite rare.

A policy memorandum endorsed by Corrective Services and the Department of Health

will now be produced with the assistance of the Guardianship Board for the staff of both departments.

In emergency situations the Corrections Health Service retains the power through section 16 of the Prisons Act to compel treatment if a person's life is in danger.

The Corrections Health Service also agreed to arrange a meeting with Mrs K, her daughter, and with an Ombudsman's representative present to attempt to explain to Mrs K the need for minor surgery related to some medical ailments which have developed during her time in prison.

Obviously there would be no reason for concern in the future if there was an appropriate place within the NSW prison system for people like Mrs K.

Whatever the final diagnoses, and disregarding any considerations of consent to treatment, Mrs K is a middle aged woman whose original language was not English, who is now

electively mute and who's comprehension of instructions is imperfect.

The therapeutic unit with the domiciliary nurse and quiet routine is probably the best available placement for Mrs K. It, however, would be a brave person indeed who said that the grouping of 12 - 15 excessively vulnerable inmates in a small isolated wing of Mulawa was the best solution to the problem.

With even a reasonable level of resources those with psychological problems would have available a properly equipped activities area, more regular specialist assessment of inmates and individual therapy/counselling or treatment plans.

That the appropriate level of resources is not available is, sadly, not at all surprising, but it is not a situation to admire.

Ms K and the Guardianship Board have been invited to contact this office once more if they have concerns about Mrs K's treatment in the future. ●

Legislative Update

Last year's Annual Report detailed recommendations for legislative changes following investigations into the Parklea Riot and into the procedures governing the use of the powers of segregation.

The Parklea investigation revealed that there was no positive duty on prison officers to report any misconduct of fellow officers that comes to their attention.

The Assistant Ombudsman recommended that the Prisons

(Administration) Regulation be amended to include rules similar to those governing police officers, which require the reporting of misconduct that comes to an officer's attention either directly or indirectly and a rule outlawing any discrimination against officers for reporting such conduct.

The department has acted on this recommendation and the matter currently is with the Parliamentary Counsel for drafting.

The investigation into segregation procedures recom-

mended additional safeguards to protect against abuses of the segregation power. This was also the subject of a report to Parliament¹.

The department also acted on this recommendation and included a provision for appeals over segregation decisions in its proposals for the restructuring of the Serious Offenders Review Board.

The proposed amendments will allow a person segre-

cont page 135

Delayed Refund

Mishaps in the administration of inmates private cash accounts can cause high degrees of anxiety and frustration. When the mistakes involve large scale amounts, it's even worse.

An inmate at Parramatta had \$350 removed from his account to purchase a television set. The cost of a television is roughly equivalent to six months wages of an unskilled prison worker.

The inmate, however, didn't receive his TV before being transferred to another prison.

After a period without the TV or receiving a refund at the new gaol, he arranged for relatives to put further monies into his account and he purchased another television at the new gaol.

Despite applications to the department and complaints to the governor, welfare officers, Prisoners Aid and the official visi-



tor, four months went by without the \$350 being refunded. In desperation, the prisoner wrote to the Ombudsman.

Enquires by the Ombudsman resulted in the department crediting the missing money to the inmates private cash account. ●

Legislative Update *cont.*

gated for more than two weeks to apply to the proposed Serious Offenders Review Council for a review of the direction, or a direction to extend segregation.

The council is to allow a personal hearing with legal or other such representation if requested by the inmate.

In reviewing an inmate's segregation, the council must take into consideration whether the direction was made in accordance with the Act, was reasonable in the circumstances, was necessary to ensure the

personal safety of the inmate or prison staff or other inmates at the correctional centre, and was in the interests of the public.

The council will be able to confirm, amend, revoke the direction, or give a new direction.

The proposed amendments also enable the Minister to review and, if considered necessary, amend any decision relating to extension of segregation.

These amendments were placed before the Legislative Assembly on 19 May 1993 in the

form of the Prisons (Amendment) Bill and Sentencing (Amendment) Bill.

Together with the revised procedures governing segregation that also arose from recommendations made in the Assistant Ombudsman's report on the investigation, these proposed changes constitute a significant and much welcomed administrative reform. ●

¹ Report Concerning the Prisons (Segregation) Amendment Bill 1992, dated 4 May 1992.

Diet or Die

Mr C, a prisoner, complained about being removed from the day leave program after his first outing because he had inadvertently breached the program rules.

Mr C said a printed sheet headed Rules and Conditions of Day Leave was provided to him but the rules he breached were not on the sheet and at no time had he been advised of the rules in question.

Mr C had been in gaol for about three years before his day leave and had put on weight. When he went home on his leave he wore a shirt which had been held in his property at the gaol during his sentence.

The shirt was uncomfortable and pulling at the buttons because of his extra weight, so he changed the shirt for a better fitting one (and a different coloured one) which he wore back to the gaol that afternoon.

Mr C also wore a different watch back to the gaol because the watch he had been using was not working and he left it with his mother to have it repaired.

She gave him a plastic replacement watch to use while the other was being repaired.

His mother also gave him \$10.00 to put into his private cash at the gaol and which he declared to the prison officers at the gate prior to undergoing the standard strip search conducted on every prisoner returning after day leave.

As a result of these three technical breaches Mr C was put on punishment for two days by the governor.

Mr C also was called before the Program Review Committee to discuss what had occurred and to consider his position on the day leave program.

The committee agreed that as Mr C had not been informed of all the rules he could not be expected to know all the rules.

The committee, with the support of the governor, decided to recommend Mr C be allowed to continue on the program and approval for this was subsequently given by the classification unit.

Although Mr C had approval to be on the day leave program, each time he was eligible for a day leave, an order had to be raised at the gaol and signed by the governor or his deputy giving Mr C permission to be absent from the gaol for a specific period that day.

When Mr C's next day leave became due, the order was raised and sent to the deputy governor to approve and sign - he refused. He also advised Mr C he would be off the program

for three months because he had been punished for breaching the rules and this automatically meant his day leave was suspended.

Mr C attempted to have the impasse resolved at the gaol but as this appeared more and more unlikely, he wrote to the Ombudsman for assistance.

Our enquiries revealed that the deputy governor had been on leave from the gaol when Mr C's problems with day leave had first begun and his only knowledge of the matter was that a breach had occurred.

When the order had been sent to him for approval, the supporting documentation had apparently not accompanied it so he was unaware that the classification committee had already agreed to allow Mr C to continue - he thought their approval was still outstanding and on that basis, refused the day leave.

Mr C has now been reinstated to the program with no further problems. ●

Farewell to CIP

For more than a generation the Central Industrial Prison at Long Bay (CIP, or the sip) was seen as one of the toughest prisons in NSW, if not Australia.

All of NSW's most notorious prisoners spent some time there. It retained its reputation even after the name was changed to the Reception Centre in 1992.

However, as of 18 June 1993 the CIP is no more. With the new private prison at Junee

taking almost 600 prisoners, the Reception Prison and Industrial Centre were amalgamated to form the Reception and Industrial Centre, currently accommodating about 470 inmates.

Only two wings of the old CIP are still open, now converted

cont page 138

An Alarming Situation at Long Bay

An asthmatic prisoner complained to the Ombudsman that the duress alarms in cells at the Reception Prison at Long Bay usually were out of order and were rarely serviced.

The inmate was worried that if he needed medical assistance during the night he would be unable to raise the alarm.

As the department is under a duty of care to the inmates, there needs to be a reliable method of alerting staff to prob-

The Department of Corrective Services' official response to this recommendation was that it was supported and implemented.

The Department claimed that all maximum and medium security institutions have cells equipped with an alarm and or intercom system which gives direct communication to prison officers. All minimum security prisoners have access to alarms or are contained in se-

the worst being the Remand Centre at Long Bay, where 70 per cent of the alarms had failed.

Subsequently, the superintendent of the Reception Prison directed repairs to be made as best as possible given that the system was old and in a bad state of repair.

A follow up inspection in February 1993 satisfied officers of the Ombudsman that the problem was under control especially as three of the five wings in the Reception Prison would shortly be closed.

The alarm system at Long Bay's Remand Centre was antiquated and considered to be unreliable and beyond economical repair.

The Ombudsman's investigation spurred the Corrective Services Department into commencing the instalment of a modern computerised alarm system.

However, as of April 1993 only eight of the 232 cells at the Remand Centre had the new system. When asked how inmates who might need urgent assistance during the night could attract attention in the meantime, the department replied that they could "use the tried and tested method of creating a noise (kicking doors, banging windows, calling out)".

Clearly, the department is aware that the situation is unsatisfactory but has been hampered in remedying the problem quickly by resource constraints and other priorities.

The department has requested funds to fit out the remaining cells in its 1993/1994 minor works budget. ●



lems during the long hours when the inmates are locked in their cells.

Given the high rates of self-inflicted injuries and infectious diseases among prisoners, the need for cell duress alarms is irrefutable.

The recent Royal Commission into Aboriginal Deaths in Custody recommended that as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians.

care units with ready access to correctional staff during emergencies.

Preliminary enquiries showed this not to be the case.

Following an inspection of the Reception Prison an investigation into the maintenance of the duress alarm system at the prison was commenced.

The investigation confirmed the inmate's claim and also revealed similar problems in other correctional centres,

Farewell to CIP *cont from page 16*

to quite specific cells for reception, screening, induction and assessment of new inmates.

This new centre will now process most new prisoners in the NSW system, providing a more thorough evaluation of their progress through the system and eventual placement.

Most prisoners will spend no more than 10 days in the prison while they are interviewed, tested and classified.

On paper the new arrangements offer a more thorough initial assessment for new inmates. They also increase the opportunity for prison staff to identify any early problems, which could possibly reduce suicide and self harm attempts in prison; an issue of major concern.

There also will be cells for both segregation and strict protection inmates who have no real place in the Remand Centre. As well, the centre continues to be a full-time working prison with several successful industries.

While the renovations bring certain improvements, the amalgamation itself has created potential problems.

Entry for pedestrians is now through what was the Industrial Centre gate and you have to walk through a tunnel at the rear of that prison through to the new reception area. It's apparently a long trek unpopular with staff and inmates. Vehicles can still enter through the old CIP gate.

While the need to supervise two physically separated

areas has created some new management problems, neither the CIP nor the Industrial Centre were exactly perfect examples of 20th century goals in the first place.

They were (and the new prison still is) the result of almost a century of unsatisfactory renovation and compromise. Fortunately, staff ratios have been maintained.

Obviously these changes, particularly in Corrective Services in NSW, do not come easily. The staff, particularly, have some adjusting to do.

Nevertheless, any system that allows better first up assessment of inmates can not be all bad. We await the result with interest. ●

Chapter Six

Freedom of
Information

Introduction

The following chapter comprises the Ombudsman's Annual Report on his obligations under the Freedom of Information Act 1989, as required under section 68 of that Act (as amended on 17 December 1991).

This report includes commentary on FOI issues, annual statistics, a summary of a significant number of FOI complaints received during the year, and a section - *Procedural Pitfalls* - detailing some questionable FOI procedures uncovered when examining various FOI complaints. It is hoped this information will illustrate how the FOI Act is being used and will contribute to a better understanding of the Act in the community generally. The report is also aimed at FOI specialists and practitioners attempting to interpret and apply the Act regularly without the assistance of a centralised and coordinating FOI unit.

FOI Statistics

During the financial year of July 1992 - June 1993 the Ombudsman received a total of 81 complaints under section 52 of the FOI Act. This figure is an increase of one third in the number of complaints received in the previous financial year. The increase appears to be a result of a rise in public awareness of freedom of information issues.

During the year, 76 complaints were finalised by the Ombudsman.

- ▶ **Twelve** complaints were not within the jurisdiction of the Ombudsman (for example, the complainant had not sought an internal review).
- ▶ **Two** complaints were withdrawn.
- ▶ **Fifteen** complaints were resolved as a result of the intervention of the Ombudsman.
- ▶ **Seven** complaints were declined due to the limited resources of the Ombudsman.
- ▶ **Sixteen** complaints were declined after preliminary enquiries because the Ombudsman agreed with the determination of the

agency to exempt or to refuse to amend the subject documents.

- ▶ **Nineteen** complaints were declined because there was no utility in pursuing the matter (for example, in four cases the complainant alleged the agency held further documentation and the Ombudsman found no evidence to support such an allegation; in two cases the complainant sought a subpoena for the documents in related court proceedings; in two cases the complainant could easily obtain the documents under the provisions of another Act; in two cases the Guardianship Board provided documents outside the provisions of the FOI Act, claiming exemption from the Act under section 10; in two cases the application for documents had been made nearly three years before and was therefore considered too remote in time; in one case the complainant had no interest in the matter).
- ▶ **One** investigation was

discontinued because some documents were released by the agency during the investigation and the complainant had lost all interest in the matter.

- ▶ **Four** complaints proceeded to a report of conduct under section 26(1) of the Ombudsman Act.

The Ombudsman is attempting to resolve as many complaints as possible by conciliation. The success of such a policy is reflected in the above figures, where fifteen complaints were resolved as a result of the intervention of the Ombudsman.

It is the intention of the Ombudsman to become more personally involved in FOI complaints with a view to changing the culture of government in NSW to make it more publicly accountable and to extend the philosophy of open government, and the provision of information to the public.

The Ombudsman is currently investigating eight complaints and anticipates delivering up to five final FOI reports under section 26(1) of the Ombudsman Act within the next twelve months.

During the year, the Ombudsman did not receive any FOI applications for documents held by his Office. ●

Ombudsman's Note

During a business visit to New Zealand I became interested in the New Zealand Ombudsmen's approach to complaints received under the Official Information Act, the New Zealand equivalent to our state and federal FOI Acts.

I had been considering the application of alternative dispute resolution techniques to the Office's complaint handling generally, including the majority of FOI complaints. The New Zealand complaint-handling structure incorporates such techniques, emphasising resolution of complaints rather than formal investigative procedures. Subsequently, I sent an investigation officer experienced in FOI to New Zealand to study their methods in detail.

The officer's report affirmed my belief that the Ombudsman's external review function under the FOI Act should emphasise, where possible and appropriate, resolution rather than investigation. To this end, I intend to make FOI a personal priority. Where possible, I will speak with the chief executive officers of agencies if it appears a determination may be incorrect, my aim being to actively change the culture of secrecy which continues to pervade our state bureaucracy.

Resources permitting, I am involving my Office more actively in FOI training and information provision. This was once the role of the Premier's FOI Unit, which introduced FOI to this State and was closed down far too early, as I have often stated previously. If the unit had continued, the objectives of the FOI Act would have more successfully become part of government habitude and practice.

Last year's annual report commented upon the closure of the FOI Unit in the context of the lack of any regulations governing the information to be included in agencies' FOI annual reports, the lack of any provision for a compilation of FOI statistics statewide, and the lack of any regular analysis of the operation of the Act. I concluded that the lack of regulations would lead to FOI annual reports of seriously inadequate content and format, and to many agencies failing to report at all as no central unit existed to monitor and to report upon specific FOI compliance.

The Director General of Premier's Department responded in a report which defended the dissolution of the FOI Unit on the grounds that it had been established to facilitate the introduction and implementation of the FOI Act, and that these objects had been achieved, by all criteria, very effectively and smoothly, at the time of the unit's closure.

The report admitted that a regulation covering the content of FOI annual reports should have been made, but that a circular of June 1991 pointed to the agencies' obligations to report.

Unfortunately, while that circular stated those obligations quite strongly, it did not impose a legal obligation to comply with them as they were not regulations. Strong anecdotal evidence points to the "obligations" as having been honoured more in the breach than the observance. Since I pointed to the lack of regulation, a regulation has been made, which requires standardisation of FOI reporting.

However, there remains no provision for regular compilation

and analysis of each agency's statistics. Agencies' FOI annual reports will continue to be published individually.

The Director General's report claimed the FOI Practitioner's Network was in the process of gathering a central bank of FOI statistical information from over 40 agencies which would "provide a significant sample that will give a guide to the operation of FOI in NSW". This is not really so.

Since 1989 there has been an FOI software package used by some agencies. Under the initiative of Mr Phillip Youngman, FOI Manager of the RTA, that package was recently updated and improved with funds provided by Premier's.

The network has indicated its willingness to act as a repository for the annual results of the revamped FOI software package, once distribution rights have been negotiated and installation in agencies has occurred.

While I hope the package will be adopted by sufficient agencies to make collation of results useful, I think such an outcome is doubtful.

I also think it is questionable that the members of the network would have the time to do the necessary work. By way of comparison, a one-off research project undertaken by Dr Margaret Allars of the University of Sydney's Law Faculty into the operation of FOI in NSW has employed a full time professional assistant and the task has proved most demanding.

While I wish the network well in its efforts, in my view only a continuing unit with statutory power and sufficient resources can adequately collate and

cont on page 143

Some Features of the New Zealand Official Information Act

The New Zealand Official Information Act could fairly be said to be radical in comparison to the NSW Act. Its purposes are wide-ranging and the exemption clauses are few, with a public interest requirement applicable to most of them.

The Act's purposes are to increase progressively the availability of official information so that the people of New Zealand can participate more effectively in their government, to promote the accountability of ministers and officials, to provide proper access to personal information and to protect official information to the extent consistent with the public interest and the preservation of personal privacy.

There is no internal review process in the New Zealand Act and no district court or Administrative Appeals Tribunal option, so most initial refusals by government result in complaints to the Ombudsmen.

The New Zealand Act provides access to most types of information, including cabinet documents, and applies to all government bodies except for some aspects of Internal Revenue's work. The Act has consequently gained a very high profile. One news bulletin broadcast recently in Wellington contained reference to four separate sets of information released under the Official Information Act.

Under the New Zealand OI Act the Ombudsmen need only form the opinion that the request for information should not have been refused to make a final report. Such reports will recommend the release of documents

and under the New Zealand Act such recommendations must be implemented within 21 working days, unless an Order-in-Council is imposed. Few if any ministers have ever sought an Order-in-Council, which must be signed by the Governor General.

The High Court is the only avenue of appeal from the Ombudsmen's decisions. On three occasions an Ombudsman's recommendation that certain information should have been released has been challenged in court. In each case the court found in favour of the Ombudsman.

Investigation Processes Compared

The New Zealand Act authorises the Ombudsmen to investigate and review decisions made under the Act, including refusals to release information.

If the NSW Ombudsman chooses to investigate, the FOI Act stipulates that the investigation be of the conduct of persons or bodies in relation to the determinations.

The New Zealand Ombudsmen are required to make reports when they are of the opinion that a request should not have been refused. The NSW Ombudsman Act, under which all FOI investigations must occur, requires the Ombudsman to report when he identifies "wrong" conduct as defined in the Act.

The NSW model, therefore, restricts the Ombudsman to findings directed at people or organisations, whereas the New Zealand framework allows findings directed at decisions. While

clearly every decision is linked to the person who made it, there is considerably less threat contained in an investigation of a decision than in an investigation of someone's conduct.

The resolution procedures generally adopted by the New Zealand Ombudsmen no doubt benefit greatly from this lesser personal threat. Authorities will be more prepared to listen, feel less attacked, and will be more willing to discuss their decisions openly when the inquiry only relates to interpretation of the law.

The NSW Ombudsman is required, if he proceeds to investigation, to identify by formal notice the conduct and the individuals under investigation. The procedural fairness requirements of the Ombudsman Act, which the notice is designed in part to meet, were devised many years before the Ombudsman gained an FOI function.

The notice is at best intimidating and may well be inappropriate in the FOI context, especially when the investigation is looking only at the merit of a decision to refuse documents.

At present no way has been devised to meet the requirements of the Ombudsman Act and at the same time reduce the ominous tone of the notice of investigation.

Consequently, the Alternative Dispute Resolution (ADR) processes which are being developed will be, wherever possible and appropriate, pursued prior to investigation, with the Ombudsman seeking to speak personally with chief executive officers as early as possible in the process. ●

The Positive Outcome of Resolution

The following articles contain references to exemption clauses in Schedule One of the Freedom of Information Act. The clauses mentioned are given in full at the end of this chapter.

The Ombudsman's emphasis on ADR processes is in line with an increasing trend within the general community towards alternative dispute resolution. ADR can allow for a quick, inexpensive and satisfying solution. The following complaint received under the Freedom of Information Act exemplifies the value of alternative dispute resolution.

The applicant in this case was a non-profit organisation -

the Homeless Children's Association. In the early 1980's, the association was provided with Crown Land in the Gosford area, known as Mangrove Mountain, to accommodate homeless children. A board of trustees was appointed to manage the land, although the association maintained effective day to day management.

After a number of years, there was general concern about the level of care for the children at Mangrove Mountain. Following extensive negotiations and consultations, the minister responsible for the Department of Conservation and Land Management began legal action to have the association removed from Mangrove Mountain.

Solicitors acting on behalf of the association subsequently

applied to the Department of Conservation and Land Management under the FOI Act for extensive documentation relating to the management of the land at Mangrove Mountain and the decision to evict the association.

The department provided access to a lot of material, but withheld sixteen documents under clause 9 of Schedule 1, claiming that the documents were prepared for the course of decision making functions of the department and the minister, that a release of the papers could damage an understanding of confidentiality between senior officers and could adversely effect the future range and quality of advice offered by relevant personnel. For these reasons, the department claimed a release of the documents was not in the public interest.

cont on page 144

Ombudsman's Note *cont.*

analyse FOI statistics and maximise compliance with the new annual report regulations.

I will continue to experience difficulty in my external review function while there is no regular analysis of the operation of the Act. My decisions continue to be made without an up-to-date context and there remains a dearth of jurisprudence from the NSW District Court.

In New Zealand, the Ombudsmen distribute to all agencies they have contact with in relation to the OI Act, their *Practise Guidelines*. The Guidelines are also published in newsletters of organisations such as the Local Government Association and the School Board Trustees


Association. These distribution measures pay handsome dividends by enabling agencies to "think like the Ombudsmen" in determining official information applications.

This reduces the number of complaints, shows the Ombudsmen to be completely open with their current interpretation of the Act, and is a valuable educative tool for practitioners. Appropriate resources for a similar educative initiative by this Office would contribute to more open government in NSW.

A preferred scenario, however, would be the reinstatement of the FOI Unit. I believe FOI, being a valuable and potentially powerful tool in achieving a pro-

gressively more open and accountable bureaucracy, requires a **continuing** strong guide and educator, because secrecy, paranoia and patronising attitudes continue to characterise much of the bureaucracy.

Such attitudes are so firmly entrenched that they are likely to remain in place unless FOI principles are, **for a long period**, brought energetically and regularly to the attention of the government's administrative arm. ●



David Landa

Resolution *cont*

Following a complaint from the solicitors representing the association, the Ombudsman made preliminary enquiries with the department. As a result of examining all relevant issues, as well as the sixteen documents, the Ombudsman concluded that many of the documents were not appropriately exempt, even allowing for the fact that the papers contained submissions from ministers, senior departmental personnel and a senior magistrate. An important factor influencing the Ombudsman's view was that a final decision on the issue had been taken, in that it had been decided to remove the Association from Mangrove Mountain.

Rather than begin a formal investigation of the matter, an officer of the Ombudsman met with the acting Director-General of the department and two other senior officers to try to resolve the matter.

The Ombudsman said the argument that officers would be less forthcoming in their future advice should the documents be released was not sufficient reason in itself to exempt the material.



Such an opinion is supported by a number of important judicial decisions handed down in FOI appeals.

As a result of the meeting, the acting Director-General undertook to review his determination, stating that as a result of the new information presented by the Ombudsman, he now felt much of the material could be released to the association.

Following the meeting, the solicitors for the association were

invited by the Director-General to examine all sixteen documents and to make copies.

Clearly, the matter has been resolved to the benefit of all parties. A lengthy, costly investigation by the Ombudsman was avoided, with the applicant receiving access to the documents.

The conciliatory approach of the acting Director-General of the department, Mr Michael Ockwell, is to be applauded. ●

Amendments to the FOI Act

On 1 July 1992 the FOI Act was amended in a number of significant ways and the precise changes were detailed in last year's annual report.

From the Ombudsman's experience, it appears that the changes have worked well and can be seen to extend the public's right to information held by the government.

The twenty one days provided for an agency to determine

applications for documents has naturally led to the faster provision of information to applicants in a lot of cases. However, as expected, the Ombudsman has seen an increase in the number of deemed refusals, owing to the shorter response period.

In two recent complaints, the agencies did not provide a determination within the initial twenty one day period as the agencies were unaware that the

FOI Act had been amended, believing they still had forty five days to respond. In these two cases, the applicants applied for an internal review of the deemed refusals, leading to the agencies discovering they should have determined the applications within twenty one days.

The refusal of an agency to deal with an application because it had not received an advance deposit from the applicant can

Amendments to FOI Act *cont*

now be reviewed by the Ombudsman. Such an expansion in the external powers of the Ombudsman is welcome and the Office currently is considering complaints where the applicants have objected to the imposition of an advance deposit.

The introduction of section 52(6)(a) of the Act provides the Ombudsman with the discretion to recommend that the release of a document would, on balance, be in the public interest even though access has been refused because it is an exempt document. At this stage, the Ombudsman has not invoked the provision, however, consideration is currently being given to its use. In deciding upon the merits of an agency's determinations, the Ombudsman is examining whether the public interest would be served by a release of the exempt document. This is not only in relation to those clauses, such as 9 and 13(b), which contain a public interest sub-clause, but indeed is the case with respect to all the clauses of Schedule 1. The Ombudsman is committed to the concept of open government and he views the public interest as the ultimate test as to whether documents should remain exempt or not.

Since the FOI Act was introduced in 1989, section 16(2) limited the right of people's access to documents held by local councils to those documents which concern the applicant's personal affairs. Section 16(2) was an unwieldy and confusing provision. The involved nature of the Act, as far as councils are concerned, was made even more complex by section 16(2). Authorities and applicants alike were confused as to, firstly, what constituted personal affairs and, secondly, as to how an application for documents held by coun-

cils was to be determined or dealt with under the Act. Many councils drafted their own, idiosyncratic FOI policies.

On 1 July 1993 section 16(2) of the Act was repealed following the proclamation of the new Local Government Act 1993. Councils are now subject to the full provisions of the Act and applicants have the right to request documents from councils which concern information other than their personal affairs.

on the right of individuals to seek information from local government but also as a burden which resulted in unnecessary work for his Office, councils and applicants generally.

Councils also are now obliged, like all other agencies, to regularly publish copies of their statements of affairs and summaries of affairs as described in section 14 of the FOI Act. Previously, councils were exempt from such publication under section 13 of the FOI Act. On 1 July 1993 section 13 was amended to bring councils under the publishing provisions of the Act.

Also mentioned in last year's annual report was a proposal by the Department of Local Government to include councils in the provisions of section 30 and clause 5 of Schedule 1 of the FOI Act, which cover documents relating to intergovernment relations. Such an amendment would have meant that an agency holding documents concerning the affairs of a council, and vice versa, would have been re-

quired to consult with the council prior to releasing the documents in response to an FOI request.

As a result of submissions by the Ombudsman to the department arguing against such an amendment, councils have not been included under the provisions of section 30 and clause 5 of the FOI Act. ●

FREEDOM OF INFORMATION ACT 1989 No. 5	
NEW SOUTH WALES	
	
TABLE OF PROVISIONS	
PART 1—PRELIMINARY	
1.	Short title
2.	Commencement
3.	Act binds Crown
4.	Relationship with other Acts
5.	Objects
6.	Definitions
7.	Public authorities
8.	Public offices
9.	Certain bodies etc. exempt from operation of Act
10.	Act not to apply to judicial functions of courts and tribunals
11.	Documents in certain agencies
12.	Default agencies
PART 2—PUBLICATION OF CERTAIN INFORMATION	
13.	Application of Part
14.	Publication of information concerning affairs of agencies
15.	Availability of certain documents
PART 3—ACCESS TO DOCUMENTS	
Division 1—General	
16.	Right of access to agencies' documents
17.	Applications for access to agencies' documents
18.	Persons by whom applications to be dealt with etc.
19.	Incomplete and wrongly directed applications
20.	Transfer of applications
21.	Agencies may require advance deposits
22.	Agencies may refuse to deal with certain applications
23.	Information stored in computer systems etc.
24.	Determination of applications
25.	Refusal of access
26.	Deferral of access
27.	Forms of access
28.	Notices of determination
29.	Division to be read subject to Division 2
NO 11-4316 (53)	

While the Ombudsman agrees with the repeal of section 16(2), a move which should have occurred well before 1993, he anticipates an increase in applications to councils and, consequently, an increased number of complaints to his Office. From his experience in dealing with FOI complaints relating to councils, the Ombudsman viewed section 16(2) not only as a limit

State Rail Saga

Case Study

Last year's annual report detailed an investigation into the conduct of certain officers of the State Rail Authority (SRA) following a complaint received from Mr Vincent Neary.

Mr Neary, who was a senior engineer with the SRA, had originally submitted an FOI request for three documents.

The first document concerned two SRA task force reports relating to irregular practices in the expenditure of SRA capital works funds, while the second document was also a report, drafted by the SRA's internal audit section, on selected consultancy payments to private companies. The third document comprised papers relating to the awarding of a tender for the Sydney/Strathfield/Sydenham Train Describer System. Mr Neary claimed the tender for the system was based upon very poor quality specifications.

Initially, the SRA refused Mr Neary access to virtually all the material, except for some information in the third document.

During the course of the investigation, the SRA obtained legal advice from the Crown Solicitor regarding exemption of the documents. Based on such legal advice, the SRA released to Mr Neary all information in the documents except material in the two task force reports relating to the business or personal affairs of third parties.

In January 1993 the Deputy Ombudsman handed down his final report into Mr Neary's complaint. The Deputy Ombudsman found that the original determination by the SRA to withhold virtually all information from Mr Neary was wrong.

The only information the Deputy Ombudsman felt may be appropriately exempt was information contained in the task force reports concerning the business or personal affairs of individuals or companies.

As such, he recommended that the SRA release, in full, the task force reports to Mr Neary, but that individuals or companies who objected to the release of their business or personal affairs be given the opportunity to

Ombudsman, however, was not of the opinion such conduct stemmed from improper motives.

In attempting to comply with the Deputy Ombudsman's recommendations, the SRA submitted that if information in the task force reports was released to Mr Neary, the SRA may be exposed to actions for defamation or breach of confidence by third parties.

Section 64 of the FOI Act provides protection to public au-



appeal to the District Court against such release.

In an effort to guard against the problems experienced in this matter, the Deputy Ombudsman also recommended that the SRA make clear to outside consultants, when seeking reports, that any document they provide to the SRA may be the subject of an FOI application.

The Deputy Ombudsman also found that the manner in which one SRA officer dealt with his enquiries into Mr Neary's complaint was unreasonable and could be described as misrepresenting the facts. The Deputy

authorities in respect of actions for breach of confidence or defamation as a result of the release of a document in accordance with a determination.

However, in this instance, the SRA would not be releasing the documents in accordance with a determination, rather, the release would be as a result of the Deputy Ombudsman's recommendations, hence the protection under section 64 would not apply.

In order to gain the protection of section 64, and to comply with the Deputy Ombudsman's

Cont page 147

Corrective Services Correct?

Case Study

Last year's annual report mentioned an investigation into the processing of a Freedom of Information application by the Department of Corrective Services.

The applicant was the chief of staff of the Leader of the Opposition. The application was for information documenting ministerial expenditure from June 1988 to December 1990.

The applicant's complaints to the Ombudsman included the imposition of excessive charges (more than \$5000 after a 50 per cent public interest reduction), delays in the provision of access, inappropriate access procedures, and that the copying of information was prevented despite access having been given by inspection.

The Ombudsman issued his report on the matter on 10 June 1993.

He made the following recommendations:

- ▶ compensation of \$4,112 be paid to the Leader of the Opposition via the appropriate Premier's Department program.
- ▶ the Freedom of Information Act be amended and regulations changed so that an upper limit be placed on charges for FOI applications and that activities for which charges may and may not be made are prescribed in reasonable detail.
- ▶ the Commissioner for the Department refer the recommendations relating to the amendments to the Act and regulations, and a copy of the report, to the Premier, as Minister administering the Act.

- ▶ copies of certain files be released to the Chief of Staff of the Leader of the Opposition in their entirety, and that transaction reports of the Minister's cost centre for the period covered by the application be printed and given to the applicant.
- ▶ the Department devise and adopt a policy in relation to FOI charges and other procedures. The essential content of the policy was outlined in the recommendation.

The report also identified a number of administrative practices in the processing of the application which were of concern. Four of these are dealt with in the section of this chapter entitled Procedural Pitfalls. ●

State Rail Saga *cont.*

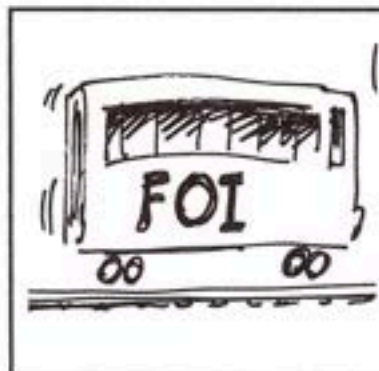
recommendations, Mr Neary was invited to make fresh FOI applications for the task force reports so the SRA could provide him with a formal determination.

On 19 July 1993, the SRA informed the Deputy Ombudsman that it had released to Mr Neary, after determining his fresh FOI application, complete copies of the task force reports.

Mr Neary subsequently confirmed he had indeed received the reports. Such release meant the SRA had complied with both the recommendations of the Deputy Ombudsman, fi-

nally bringing the investigation of Mr Neary's complaint to an end.

As a result of the problems



experienced with Mr Neary's complaint, the Ombudsman intends to recommend to Parliament that the protective provisions of section 64 of the FOI Act be extended to include release of a document by an authority as a result of a recommendation made by the Ombudsman.

He also intends to recommend that sections 65 and 66 of the FOI Act, which give similar protection in relation to, respectively, certain criminal actions and personal liability as a result of the release of documents, be amended in the same way. ●

Second Schedule Hospitals - FOI Too Much?

Case Study

An applicant made an FOI request to a country hospital for access to all documents relating to his employment history and proposed employment at the hospital, including board documents relating to an interview panel.

The applicant received a minimal amount of documentation, while other information was exempted under clause 6 of Schedule 1 of the FOI Act.

The applicant remained convinced that the hospital still held documents that were subject of his application which had not been addressed.

This Office made written preliminary inquiries of the hospital asking questions and requesting copies of the FOI file and of the exempt documents.

Sixteen weeks and a number of phone calls later, only a faxed response to the questions had been received. The Ombudsman personally wrote to the CEO of the hospital seeking a reply within seven days. More than three weeks later, as no response had been received, an investigation was commenced of the determination of the FOI application and of the apparent failure to respond to correspondence.

Answers to questions, such as whether any information other than that released to the applicant existed, were required by a certain date. More than a month after that date the CEO requested an extension of time.

More than a month after the extended time the information had still not been received and the action of summoning the CEO to Sydney to answer questions was considered. However his response was received on the same day.

That response revealed, among other things, that there were interview notes covered by the application that had not been dealt with under the application. It was concluded the interview notes fell within the ambit of the application and that failure to deal with the notes amounted to deemed exemption.

This Office required copies in order to complete its external review function.

The CEO, while claiming he had no problem releasing the notes directly to the applicant and promising to release them, did not.

When contact was attempted he was on leave; he then did not respond to a message, and, finally, when contact was made it was his last day of employment at the hospital.

He advised he had not been able to send the interview notes to the applicant because they had been sent more than a year earlier, in his absence, to the regional office.

The regional office, predictably, had no knowledge of the notes and they were never found.

When the response to preliminary enquiries was seriously delayed, it was abundantly clear to this Office that the hospital had neither the time nor the resources to appropriately deal with FOI applications and certainly was not able to deal with an investigation by the Ombudsman.

It appeared that, while in this specific case there was obvious inefficiency on the part of the CEO, rural second schedule hospitals in general would be likely to have problems dealing with the requirements of the FOI Act.

Consequently, in his report the Ombudsman not only made adverse comment in relation to the CEO's conduct, but also addressed the general issue by recommending that the FOI function of principal officers be removed from second schedule hospitals and given to the Department of Health.

Prior to the issue of the report, the Minister for Health Services Management advised action had already been taken on the recommendation. The minister's approach slightly amended the recommendation, giving delegations for initial determinations to the regional director or a senior regional officer, and internal review determinations to the Director-General, who, it was anticipated, would in most cases delegate the determination to the appropriate regional director.

The minister sent his recommendations to the Premier on 9 April 1992. As at time of writing (early July 1993) the regulations remain unchanged.

However a restructure of the second schedule hospital system has in the view of the Department made a change to the regulation unnecessary.

The approximately 130 second schedule hospitals have been organised into 23 Rural Health Districts each with a general manager. Individual hospitals in country NSW are no longer listed on the schedule of the Public Hospitals Act. Instead the Rural Health Districts are now listed in that schedule. Consequently for the purposes of the FOI Act, the department anticipates the districts will be large enough to maintain sufficient FOI expertise. ●

SES Contracts - To Release or Not?

Most of the details of employment contracts between Senior Executive Service (SES) staff and government authorities are generally not known to members of the public. The following complaint highlights some important public interest concerns regarding SES contracts.

A large public sector union applied to Pacific Power for the entire SES contract of Pacific Power's Manager of Employee Relations.

All that was released to the union was a pro forma copy of the contract, which contained nothing more than standard clauses of any SES contract.

The material specifically relating to the contract of the Manager Employee Relations was withheld from the union under clauses 6, 7(1)(c) and 9 of Schedule 1.

Pacific Power argued that a release of some of the information would be an unreasonable disclosure of the personal affairs of the Manager of Employee Relations, while the disclosure of other material would be likely to have an adverse effect on Pacific Power's administration and would prejudice the conduct of industrial relations.

It was further claimed that a release of the documents would reveal material recorded for decision making functions and would be contrary to the public interest.

Following release of the pro forma copy, the union indicated to the Ombudsman they were not seeking any information in the contract which related to the personal affairs of the Manager Employee Relations, such as details about his remuneration and employee benefits.

What the union sought was

information relating to the duties and performance criteria of the position.

Soon after receiving the complaint, an officer from the Ombudsman's Office made preliminary enquiries into the matter and found that the reasons Pacific Power relied upon to ex-

"As there was no information in the contract which was sensitive, the exemption of the documents by Pacific Power was considered to be unreasonable."

empt much of the contract could not be sustained. As such, a formal investigation of the determination to refuse access to the documents was commenced.

The Deputy Ombudsman concluded that Pacific Power's exemption of the statement of duties and performance criteria of the position was wrong.

None of the documents involved were of a preliminary nature which contained opinion, advice or recommendations obtained for decision making purposes. Therefore, clause 9 could not be applied to any of the information.

As the union did not seek any information in the SES con-

tract which related to the personal affairs of the Manager Employee Relations, the exemption of information under clause 6 was no longer relevant.

Additionally, the use of clause 7(1)(c) was not considered appropriate because a release of the statement of duties and performance criteria could not reasonably be expected to have an unreasonable adverse effect on Pacific Power's business affairs.

It was observed that the performance criteria for the position had been compiled from written material circulated among a number of staff for comment prior to the formulation of the SES contract.

As there was no information in the contract which was sensitive, the exemption of the documents by Pacific Power was considered to be unreasonable. There was no evidence to show that release of the material would adversely effect the conduct of industrial relations by Pacific Power.

Following the release of the Deputy Ombudsman's preliminary report, the General Manager of Pacific Power advised he was prepared to release to the union those parts of the SES Contract concerning duties and performance criteria. The union received all the documents soon after.

The Deputy Ombudsman's final report noted the release of the material and made no further recommendations. ●

The Neighbour Always Makes Too Much Noise

Councils throughout New South Wales regularly receive complaints objecting to the activities or proposals of people or businesses. In many instances the person or company complained about wants to know who has complained and what exactly has been said about them. The most expedient way to find out is to apply to the council under the FOI Act for the written complaint or documents identifying the complainant.

Over a period of several months in 1992, Wollondilly Council received a number of written complaints from Mrs S who was unhappy about the way in which a transport business was operating next door to her property. She claimed there was too much noise emanating from the site and that the operators were in breach of the development consent for the business.

A short time later, an application under the FOI Act seeking access to Mrs S's letters of complaint was lodged with the council. The council consulted with Mrs S under the consultation provisions of the Act as to whether she felt a release of the letters would be an unreasonable disclosure of her personal affairs. Mrs S did not consent to the release of the letters. The council was of the opinion a release of the letters was not an unreasonable disclosure of Mrs S's personal affairs under clause 6 of Schedule 1 of the Act and proposed to release the material to the applicant. Mrs S complained to the Ombudsman about council's decision to release all of the letters in full.

In deciding whether or not the letters should be released, the Ombudsman had to consider

the right of the applicant to information held by the council as opposed to Mrs S's claim that disclosure of the letters would be unreasonable. Mrs S believed she had submitted the information to the council in confidence and was concerned she would be perceived as a 'troublemaker' should her identity be revealed to the applicant. She also felt ratepayers have the right to forward correspondence on relevant matters to councils without the worry that such correspondence will be provided to third parties.

There also was no evidence to show that the applicant intended to use the information in the letters for malicious purposes or intentions not considered to be in the public interest. Conversely, there was some evidence to show the applicant wished to use the information productively. It was felt a release of the letters would not necessarily stop ratepayers complaining to councils about issues which affect them. Each application for documents must be looked at individually and the provisions of



The Ombudsman had to consider whether or not a release of the letters would amount to an unreasonable disclosure of Mrs S's personal affairs. After careful consideration, the Ombudsman agreed with the determination of the council to release the documents to the applicant on the basis that such release would not be an unreasonable disclosure of Mrs S's personal affairs.

There was no evidence to indicate Mrs S had submitted the letters to the council in confidence, whether explicitly or implicitly, despite her later assertions, or that the council had received the complaints on a confidential basis.

the FOI Act mean that complainant confidentiality cannot necessarily be maintained in every case.

The decision of the Ombudsman about Mrs S's complaint must be seen in context. It is not necessarily the case that all written complaints received by councils about third parties should be released in full. Each case, where the FOI Act applies, must be examined individually. It should also be pointed out that a number of councils with open access policies for documents held by them will provide letters of complaint about third parties to applicants outside the provisions of the FOI Act, without requiring an FOI application. ●

Procedural Pitfalls

FOI practitioners are public officers who have been given the FOI responsibilities of their agencies as part or all of their duties. The lack of NSW FOI case precedent and the absence of a support unit specifically charged with helping the public and agencies understand and properly use the FOI Act means these officers operate largely in a vacuum.

Fortunately, a network of practitioners meeting every three months under the auspices of the Royal Institute of Public Administration Australia plays an important part in providing regular forums for discussion and information sharing.

The FOI investigative staff of the Ombudsman attend these meetings and usually give brief presentations which may, for example, outline recent review decisions of the Office (no identifying information being given).

The practitioners suggested it would be helpful if the Ombudsman's Annual Report on FOI provided examples of what not to do in the processing of FOI applications. This section seeks to identify some pitfalls.

Corrective Services

On 10 June 1993 the Ombudsman issued a report on an investigation into the processing of an FOI application by the Department of Corrective Services. The central issues raised in the report are dealt with in the case note *Corrective Services Correct?*, but there were a number of questionable administrative practices identified in the report. Four are outlined here.

Notices of Determination - Signature and Date

The letter conveying the determination of the internal review of the application was not signed by the decision maker and was not signed within the period for the making of the determination.

Technically the requirements of the Act were met, as the determination itself was said to have been made within the 14 day timeframe.

However, the Ombudsman considered that such a practice was unreasonable and could lead to accusations that a determination had in fact been made at a later date - the date of the letter

notifying the determination - rather than the deadline date.

The Ombudsman also considered it inappropriate for a delegate to sign on behalf of the decision maker in FOI matters. In this matter there was no proof that the Director General had even considered the matter.

The only memorandum of advice with a recommendation in relation to the internal review application did not bear the Director General's assent to the recommendation and there was no other documentation which showed his participation.

The Ombudsman concluded this was, at best, an indication of sloppy procedure which was clearly open to abuse and to accusation. While the report did not refer to it, section 18(3) of the FOI Act would seem to indicate the legislature's intention that the initial determination of applications should actually be signed and posted or delivered to the applicant within the period specified in the section. A strong argument could be made that the same principal applies to the internal review process.

An Onus to Consult

The application was of broad scope, but this did not become clear to the department until just before the end of the 45 day period.

Despite eventually realising that a very large number of documents were involved in a literal interpretation of the application and that time was running out, the department chose to locate every document subject of the application and charged the applicant for the vast majority of that time.

There was no evidence to suggest the department ever attempted to negotiate a reasonably specific request.

During the investigation the department argued that considerable time and resources could have been saved if the applicant had narrowed the ambit of his request.

The Ombudsman firmly rejected this position, accepting the applicant's argument that it was the department's duty to seek to do this by consulting with the applicant, not his to approach the department.

cont on page 152

Procedural Pitfalls *cont*

The Ombudsman held that the applicant will almost never be in a position to know how extensively an application reaches into an agency's information systems, approximately how much information needs to be recovered, how much effort will be required to recover it, and whether efforts to narrow the ambit of the application should be made.

In this matter the evidence strongly suggested that the department did not devise or offer a reasonable alternative to the costly exercise it chose to pursue, even though an excellent and obvious alternative existed.

As the applicant continued in his commitment to obtain the documents he was, he argued, effectively locked into the exercise.

Role of FOI Manager

The Ombudsman found that it was unreasonable of the department to reduce to a considerable extent, in relation to the processing of the application, the influence the FOI manager customarily exercised.

The manager was not given the task of examining the majority of the documents, nor of providing written advice to the decision maker after the examination had occurred, nor of drafting the letter of determination.

These tasks were undertaken by two senior officers inexperienced in FOI matters. At least one of the officers had never dealt with FOI before. The FOI manager was not even aware that advice had been sought from the FOI Unit of Premier's Department.

While an agency clearly has the prerogative to decide who will deal with a particular FOI application, it would seem inappropriate for senior officers with-

out much FOI understanding to take over, in a specific FOI matter, the duties of the officer practiced in and employed for that role.

Access by Inspection

The method of access to the documents agreed upon by both parties was by inspection, with the applicant tagging those documents he wanted photocopied.

As there were a large number of documents, this saved the department a lot of time in photocopying and saved the applicant both money and the inconvenience of copies of a plethora of marginal material.

The investigation revealed that the department conducted, at the end of each day of the access period, an inspection of all the documents set aside by the applicant for photocopying.

The department justified this process by stating:

It would be irresponsible of the Department not to be forewarned of any possible problems bearing in mind the nature of the documents. The documents may have been used publicly and it was in the best interest of the Department to be aware.

The daily inspections occurred after the granting of access and purportedly after 96 hours of inspection of the documents prior to access.

The Ombudsman concluded that this process indicated a disturbing and unjustified over-interest in the copies requested by the applicant.

More importantly, one result of the process was that documents were identified which the department did not consider were covered by the application, despite the fact that so many hours

had already been spent identifying and examining the documents.

Photocopies of these were subsequently refused. The department argued that it would not have been "in the spirit of the Act for [the applicant] to gain advantage from the inadvertently included documents".

It was, in the Ombudsman's view however, quite contrary to the spirit of the Act for the department to gain advantage by the daily inspection of documents of which copies had been requested.

The Ombudsman found that the instruction to examine the documents set aside for photocopying was unreasonable, oppressive and improperly discriminatory. The department rejected the finding, arguing that:

...it would appear reasonable for the Department to inform itself and/or the Minister of matters which might be likely soon to become the subject of public debate, provided that,

(a) [the applicant's] access to documents was not impeded,

(b) there was no intent to deprive [the applicant] of copies to which he had the right,

(c) he was not charged for the additional examination.

The Ombudsman argued that the point was not that the department's examination of documents which the applicant had set aside for photocopying impeded his access to the documents, or cost him more, but that the Department used the fact that access was by inspection to discover which particular information the applicant was interested in, to, in effect, gain an advantage over him.

Procedural Pitfalls *cont*

This was entirely inappropriate. An agency's opportunity to gauge the sensitivity of material requested under FOI is given **before** access.

The fact that access can be given in different ways, as by inspection, is primarily for the convenience of the applicant, and to provide some flexibility to the agency on the occasions section 27(3) may need to be invoked. It is not in order to allow an agency to gain advantage and an agency should not use it to do so.

The Ombudsman's conclusion is relevant to all agencies in NSW. He said that it would seem reasonable to conclude that, as a contribution to information freedom and fair and open debate, the department's FOI practitioners should be encouraged not to place on permanent record a list of requested photocopies when access has been by inspection, but conversely should ensure a list is made for the applicant as confirmation all copies have been provided.

Alternatively, if such a list is kept, departmental policy should ensure it is used only for necessary purposes associated with the application, such as to confirm with the applicant in future which copies were given and to replace copies the applicant has lost.

In another investigation, which was discontinued, an agency was advised that the widespread practice of granting access by inspection and then providing copies of a much smaller number of the documents is acknowledged by both agencies and by applicants as a sensible approach which saves both time and paper.

The point was made, however, that to disallow photocopies after inspection is a wrongful distortion of the practice and the fact it may save an agency inspection time is no justification whatsoever.

Schedule Essential

It is best FOI practice, recommended by the FOI manual and by this Office, for every document covered by an FOI application to be listed on a schedule which shows the decision as to release or exemption for each document.

Without such a schedule, neither the agency nor certainly the applicant will be in a position to know exactly what documents, and how many, are covered by the application.

As a matter of procedural fairness that knowledge is essential to an applicant. For an agency, the schedule clarifies exactly which documents were released and which exempt.

Exemptions

Any exemptions made by an agency must relate specifically to an exemption clause, and in terms of section 28(2)(e) of the Act full reasons for exemption, and the basis of those reasons, must be given.

Agency Policies

The Summary of Affairs of an agency must contain all policies of the agency as defined in the Act and every policy must be available for inspection and purchase.

The purpose of the summary is to enable individual policies to be immediately identified by the public.

Some summaries are quite lengthy and, appropriately, the result of considerable research to catch all relevant policies, which has resulted in summaries of significant use not only to the public but also to the agencies.

General umbrella titles covering a large number of documents would probably not be

appropriate in a Summary of Affairs, but if included there should at least be a specific procedure for accessing such policies and a careful explanation of that procedure included in the summary.

FOI Training

The experience of this Office suggests that those given FOI responsibilities should undertake a training course as soon as possible.

At present courses are offered only by one consultant. There is also an FOI Practitioners Network which meets quarterly.

Details of the meetings should be available from FOI staff at the Premiers Department and members of that network generally are happy to provide ad hoc support and advice regarding FOI matters.

Information Provision Outside the FOI Act

When following information access procedures outside the Act, it is important to ensure applicants are not disadvantaged by a level of service less than that required under the Act.

For example, provision of the information provided under informal procedures should be well within the time frame of the Act, which, as of 1 July 1992, is 21 days. If the information is not provided in that time, the applicant may as well have applied for it under the Act.

It is important to note that the FOI Act does not require reasons to be given by applicants as to why they are requesting information and, therefore, applicants whose applications are dealt with by informal procedures should not be required to give reasons for their applications.

cont on page 154

Procedural Pitfalls *cont*

Whenever an agency is unwilling to release information informally, the applicant should be told in a timeframe as close as possible to, preferably immediately upon, the receipt of the request, that an FOI application for that information could be made.

The applicant should also be helped to make that application quickly so that any time disadvantage suffered by the applicant due to the initial informal procedures is minimised.

Deemed Refusals

In one matter a large agency failed to make a determination within the required time.

The applicant requested an internal review of the deemed refusal. The agency apparently ignored his legitimate request for review and made an initial determination instead, apparently believing this was the fairest action to take.

This Office believed it was a questionable practice. Not only did the ignoring of the applicant's review request seem very patronising, but its effect was to delay his access to the external review avenues provided in the Act, and this in addition to an already significant delay.

Separate Applications

An agency informed an applicant, who had made a wide ranging application, that each matter should be the subject of a separate application. In this Office's view this approach is questionable. It would appear reasonable for an application to specify information relating to a number of separate matters. ●

Summary of Cases

Below are summaries of a significant number of FOI complaints completed during the year.

Ambulance Service of New South Wales

The applicant, an ambulance officer, was alleged to have sexually abused a patient while on duty. The allegation, made by another ambulance officer, generated an investigation.

The applicant applied for all documents relating to the investigation. In determining the applications, the Ambulance Service refused to provide any documents to the applicant. Clause 16(a)(iii) was relied upon, but reasons provided for the use of this clause were insufficient.

The service also wrongly consulted with the officer who made the allegation as to whether the documents should be released. The Ombudsman commenced an immediate investigation of the determinations, whereupon the Ambulance Service released all documents to the applicant. It was revealed the allegation against the applicant was baseless and was made maliciously. Because all the documents were released to the applicant, the investigation was discontinued.

Annandale Nursing Homes and Community Services

The applicant sought access to his mother's medical records. Access to all documents was to be given, but only on the condition that a doctor was present during examination of the documents.

The applicant wished to examine the documents alone and complained to the Ombudsman.

The Ombudsman informed Annandale Nursing Homes that it could not compel the applicant to examine the documents in the presence of a doctor. The applicant was subsequently permitted to examine the documents alone.

Bellingen Shire Council

The council released a retyped facsimile of a letter of objection to the development of a flood plain gravel extraction business. Information identifying the objector was deleted.

The FOI applicant objected to the deletions in his internal review request. Council decided as a result of the review to release the objector's name and informed him of his appeal rights to the Ombudsman and the District Court.

He subsequently appealed to this Office, by way of a complaint, against council's decision. This effectively halted the release of the information until a decision was reached by this Office.

In the meantime, however, the developer (the FOI applicant) lodged an appeal with the Land and Environment Court against the council's deemed refusal of his development application and served a subpoena on council, which included a requirement for the names of all objectors to the development. For the names to be withheld from release under the subpoena, council would have had to argue against their release in Court.

Given council's internal review decision, it was highly unlikely such a position would have been adopted by the council and the complaint was declined on the basis of utility, as it appeared likely the FOI applicant would have had access to the complainant's name in the near future. The complainant was told he could request the file to be reopened if his name was not released under the subpoena.

Broken Hill Base Hospital

The applicant requested three reports concerning the quality of medical service in the Broken Hill area. The hospital's determination, which was very poor, exempted all documents under clauses 13(b)(i)(sic), 13(b)(ii)(sic), 9(i)(sic). The Ombudsman commenced an immediate investigation of the complaint. As a result of the resignation of the hospital's chief executive officer, with whom the applicant had been in dispute and the intention of the new chief executive officer to release some of the material, the applicant withdrew the complaint. The investigation was discontinued and the matter largely resolved.

Building Services Corporation

The applicant sought documents detailing exact details of the corporation's minor building maintenance licence. He was provided with one document, but was unhappy with its content. As a result of negotiations by the Ombudsman, the corporation produced publicly available information on the maintenance licence, which clearly satisfied the complainant's request. The complaint was resolved.

Byron Shire Council

The applicant requested a tape of a council meeting. The council maintained that the tape was not a council document and refused the applicant access. Following discussion between the Ombudsman and the council, it was established that the tape of the council meeting was a document in accordance with the FOI Act. The council subsequently agreed to provide the applicant with access to those sections of the tape which concerned his personal affairs according to (the now repealed) section 16(2) of the Act. The complainant was satisfied and the matter was resolved.

Charles Sturt University

The applicant, a former tutor, sought amendment of a large number of documents held by the university, claiming they were incorrect and misleading. The university amended two documents but refused to amend others.

The Ombudsman agreed with the determinations of the university. The applicant wanted all references to himself, in dealings he had with staff and a former student, removed.

The Ombudsman concluded that such references were factual material and could not be perceived as incorrect or misleading. Additionally, it was felt the reasons the applicant provided for amending the documents were insufficient.

Department of Community Services

The applicant, a parent, had requested extensive documentation held relating to notification received by the department that her children were at risk from parental abuse. While she was provided with some documents, all information which could identify the person who notified the department was withheld under clauses 13(b) and 4(1)(b). The Ombudsman decided that clause 4(1)(b) was inappropriately used but that the documents were exempt under clause 13(b) owing to the sensitivity of the issue and the strong public interest requirement that the department be informed, in confidence, of children at risk. There was no evidence the notification was made in bad faith.

Department of Conservation and Land Management

The applicant, an employee of the department, had requested access to a letter forwarded to a senior departmental officer by a former fellow worker of the applicant. The department refused access under clause 13(a), claiming release could found an action for breach of confidence. The applicant believed the letter contained untrue and malicious allegations regarding himself. The letter detailed problems occurring in the regional office where the applicant worked. The Ombudsman declined the applicant's complaint on the basis that there was no prima facie evidence to show that the department's determination was wrong. It was concluded that the content of the letter was confidential and that it was probably supplied to the department in confidence in an implicit sense. The Ombudsman was of the view that the author of the letter may have suffered detriment if the document was released.

Department of Conservation and Land Management

The applicant requested extensive documents about a draft land assessment of Crown Land carried out in northern NSW.

cont page 156

The department refused access to all documents under clause 9 as it was felt the documents contained preliminary views and recommendations and that, if the material was released, officers would be less forthcoming with their preliminary advice. The department claimed the release was contrary to the public interest. The Ombudsman wrote to the department seeking further reasons for exemption. Soon after the department reviewed its decision and decided to release all documents to the applicant. The complaint was therefore resolved.

Department of Corrective Services

A prisoner requested information relating to an attack which had taken place in a prison. After the attack he had been interviewed, along with a large number of other prisoners and then placed in segregation.

He wanted the investigation documents including names of all prisoners interviewed, and the documents pertaining to his segregation. Most were refused under clause 4(1)(c) which allows exemption where disclosure could reasonably be expected to endanger the life or physical safety of any person.

Where these criteria apply, for exemption to be inappropriate it must be shown that the public interest in favour of disclosure outweighs that in favour of exemption. The prisoner argued a public interest in release of the documents based upon his claim that there had been corruption in the investigation, evidence of which he wished to find to place before ICAC.

It was considered that, while the complainant's stated reasons for wanting the information did not imply any threat on his part to the life or physical safety of anybody, the release of much of the information, whether to him or to anyone else, could reasonably be expected to constitute such a threat.

Such information released to someone within the prison system would undoubtedly identify third parties also within the system, and those identified may be thus endangered. Once released no control could have been exercised over the information's use. It could have possibly fallen into the hands of others. It was considered that this possibility was quite a strong one in the context of the prison system, as was, clearly, the possibility of physical attack resulting from that outcome.

Consequently, it was not thought the department had been unreasonable in concluding that reasonable expectation of endangerment to life or physical safety would exist if the information was disclosed.

Clause 4(2)(b) nevertheless allowed the release of such information if on balance its

disclosure would be in the public interest. The prisoner had foreshadowed a complaint to ICAC using the information, and there was the possibility of an investigation arising from such a complaint, or of such a complaint contributing to an existing investigation. Such an investigation could be seen to be in the public interest. No other major public interest in the disclosure of the information could be discerned.

Balanced against this was the public interest in the government taking reasonable steps to protect the lives and physical safety of inmates. The view taken by the Office was that the public interest in the latter was not outweighed by the former.

For clause 4(2)(b) to be met the public interest in release would have to outweigh the public interest in exemption and, consequently, it was decided the department had acted reasonably in exempting the majority of documents under clause 4(1)(c).

Department of Courts Administration

The applicant, a former employee with the department, applied for a large number of documents relating to an audit carried out at a court house where the applicant worked in 1985. Many documents were provided to him, but a series of inspector's notes of interviews with staff at the court house were exempted under clauses 6, 13(b) and 16(a)(i) and (b). The Ombudsman declined the applicant's complaint and agreed with the department's determination. It was concluded that the information from staff was implicitly given in confidence and, if released, could impair the effectiveness of the department's audits in the future. The Ombudsman believed that detriment may be suffered by the staff who provided the information, should the material be released. Importantly, the Ombudsman decided it was contrary to the public interest to release the document.

Department of Industrial Relations, Employment, Training and Further Education

The applicant, a former employee with a subsidiary of the department, requested various reports containing allegations of corruption involving a training scheme administered by the department.

The applicant was denied access to the documents under clause 4(1)(a) as the matter had been referred to the Independent Commission Against Corruption and it was felt a release of the documents may prejudice the commission's investigation. The Ombudsman was subsequently informed that the commission was not to carry out an investigation into the matter.

As a result, the department released the documents to the applicant. The complaint was resolved.

Department of School Education

The applicant had requested extensive documentation concerning an ongoing dispute he had with the principal of the local school. The applicant's son attended the school.

Many documents were provided to the applicant while some were refused under clause 10. The applicant alleged defamatory remarks had been written about him on certain documents by the principal and the cluster director.

Such documents, he claimed, had been destroyed or were being hidden. The Ombudsman found documents exempted under clause 10 should not be released, as they had been drafted for the sole purpose of a court case where the department was opposing the applicant. There was no evidence that documents had been destroyed, or were being hidden, by the department. The complaint was declined.

Forestry Commission

A complaint was received that the commission had refused to supply a copy of the Wingham Management Area Environmental Impact Statement in IBM personal computer compatible disc format. The application was not made under the FOI Act and, consequently, the complaint was declined as they were able to apply for the disc under the FOI Act.

However the applicants' arguments for access via computer disc are worthy of note.

They stressed they were not requesting new information, but rather already published information in a more accessible format. The EIS had been prepared over several years making full use of computer technology and refusal to supply it in computer readable form was to stifle any serious study of the document.

Provision of the EIS on disk would be cheaper, more compact, and more accessible to all, including those with vision disabilities.

There are half a million computers in Australian households and information circulation by disk and modem is now as normal as by paper.

Kogarah Council

The applicant, a former employee, had applied for access to his staff file. The applicant claimed the council would not let him photocopy the documents on his file.

Following discussion with the council by the Ombudsman, the applicant was permitted to photocopy any documents on the file, leading to quick resolution of the complaint.

Kogarah Council

The applicant requested all documents held by the council on his building application file. A number of documents were provided to the applicant, but many were denied under clause 10. However, council did not clearly stipulate in its determination as to precisely which documents were held to be exempt under clause 10. The Ombudsman commenced an investigation of the complaint, whereupon the mayor undertook to allow the applicant access to all documents sought. The complaint was resolved and the investigation was therefore discontinued.

Land Titles Office

The complainant wanted copies of a large number of folios from registers kept under the Real Property Act 1900. The folios were available to any member of the public free via inspection or for \$3.80 a copy, but the complainant, a pensioner, wanted copies free of charge. In refusing the application the Land Titles Office relied upon section 25(1) of the FOI Act, which allows agencies to refuse to provide access under the Act if the requested documents are available for inspection, whether or not that inspection is subject to a charge, or if the documents are available for purchase. Despite the apparent inability of the complainant to pay, there was no legal basis for this Office to uphold his complaint. The determination of the Land Titles Office was upheld.

Maritime Services Board

The applicant requested all documents held by the Board relating to changes in staffing numbers, establishments and structures of various port authorities. The board refused access to all documents under clauses 9 and 16(v). The Ombudsman decided that the documents were exempt under clause 9 as the responsible minister was yet to decide on the restructuring, meaning the documents were still of a preliminary nature and it would not be in the public interest to release preliminary documents before a final decision was made. The Ombudsman concluded the documents were not exempt under clause 16(v) as the board did not present sufficient argument with respect to clause 16(v). The board merely argued that a release of the documents would have a substantial adverse effect on the conduct of industrial relations by the board. No reasoning as to why this would occur was given nor were reasons as to why such release would, on balance, be contrary to the public interest, as demanded by clause 16(v)(b).

cont page 158

Maritime Services Board

This matter was mentioned in the summary of cases in last year's annual report. It was, at that stage, in the process of investigation. An attempt was made to resolve the matter by narrowing the issue of complaint to those documents which the applicant believed were covered by the application but which had not been addressed by the board in their processing of the application.

A list of three substantial information sources was arrived at after careful deliberation with the applicant. The documents related to the applicant's houseboat and mooring. Many were very old and related to previous owners of the houseboat and its mooring site license.

The Board cooperated by seeking to identify those documents, with the help of clear descriptions from the applicant. The board identified an old register - the Harbour Masters Register - which it became clear had no relevance to the application, a card index system which for the period prior to 1972, in which the applicant was interested, had been lost, and a legal file. The latter file had already been accessed by the applicant, who was certain, however, another similar file existed with additional information. The Board insisted the file was the only such file in existence, and that the only information which had been removed from the file had been provided to the applicant in the form of copies with exempt material deleted. This Office was satisfied with the Board's efforts to locate all outstanding documents which had been identified by the applicant and discontinued the investigation, considering it resolved. The applicant was not similarly satisfied, requesting a review of the decision. However, the Ombudsman confirmed the decision.

Pacific Power

The applicant, a company, had requested a large number of documents relating to a contract between a computer firm and Pacific Power. The company applying was a sub-contractor to the computer firm and alleged substantial breach of contract by that firm. The documents were held to be exempt under clauses 7(1)(b), (c), 16(a)(iv)(b) and 10. The complaint was withdrawn because the applicant decided to subpoena the documents in a related Supreme Court hearing.

Police Service

The applicant sought amendment of criminal records held concerning himself. When arrested a number of years earlier, the applicant had used a name, which he had subsequently changed by deed poll. He now claimed his former name was incorrect. On that basis,

he requested that his former name be changed to his current name. The Police Service refused to amend its records on the basis that the name used by a person at the time of their arrest is recorded, even if it is not their correct name. Such recording allows for the use of aliases and false names. The Ombudsman agreed with the determination of the Police Service in that the records were not incorrect or misleading. A notation was placed by the applicant on the records, in accordance with section 46 of the Act, attesting to how the applicant felt the police records to be wrong.

Police Service

The applicant, a former police officer, had unsuccessfully sought compensation from the Police Service for work related injuries. He applied for documents relating to enquiries carried out into his injuries by members of the Medical Investigation Unit of the Police Service.

The service determined the documents were exempt under clause 10, as they were privileged from production in legal proceedings, having been produced for the sole purpose of contesting the applicant's compensation claim in the courts. The applicant alleged the Police Service had breached legislation in its enquiries into his condition. In declining the complaint, the Ombudsman agreed with the exemption of the documents under clause 10 and saw no evidence of a misuse of power by the Medical Investigation Unit.

Police Service

The complainant requested "all documents, pieces of paper, computer data, photographs, tape recordings, anything at all that the NSW Police Department" had on record about him.

He was not satisfied with the initial determination. In its internal review the service said "As your explanatory comments in the application made it quite clear that inquiries were required throughout the entire state, the work involved...would...unreasonably divert the resources of the Police Service..."(section 25(1)(a1)).

The review determination went on to explain that, instead of refusing access on the basis of section 25, access had been given to a subset of documents which had been located either on computer, in other records held at head office, and at one police station.

The complainant was not satisfied, claiming that the most important documents had not been addressed by the police. He was not prepared, however, to be more specific, believing that it would take only a couple of hours for the police to find everything they had about him.

Preliminary inquiries revealed that there were many types of documents held by the service which could have held references to the complainant given his circumstances, and that most of these, such as police duty books and note books, were kept at police stations, and ordered by date. Consequently, without definite dates of incidents, it was a "virtual impossibility" to comply strictly with the application. The complainant himself admitted that he had not mentioned particular incidents, and the service had certainly asked him to do so. The complaint was declined primarily because it was agreed in this case the extent of police records and the way they were organised did effectively preclude strict compliance with the application.

Randwick Municipal Council

The basis of this complaint was the deemed refusal of the complainant's application. Council had not replied to either the initial application or the application for internal review. They had, however, asked her to indicate whether her desire for the information was in relation to her personal injury claim against council.

The complainant wanted documents relating to the repair of a section of footpath which she claimed had caused her injury, and to council's policy on road openings. It transpired that the complainant's solicitor gained access to most of the documents via inspection or copy from council's solicitors.

This was considered to be a satisfactory resolution of the complaint, which was then discontinued. There was not seen to be any utility in pursuing council's failure to provide determinations, given that the detriment to the complainant which had resulted, namely the refusal to provide access to the documents, had been removed. The final letter to council drew attention to certain points of correct FOI procedure. These have been outlined in the Procedural Pitfalls section of this chapter, although without reference to council.

Roads and Traffic Authority

The applicant requested documents identifying a police officer whom she alleged had inappropriately accessed details of her car registration and driving licence records.

The authority used section 28(3) of the FOI Act on the basis that to confirm or deny the existence of a document would be to make the determination notice exempt. It ensued that the authority did not hold the document she wanted. The allegation was dealt with as a general complaint regarding the conduct of the police officer.

Roads and Traffic Authority

The applicant sought documents relating to the termination of his employment with the authority. Personnel files were provided in full. Reports concerning interviews with authority staff regarding the applicant were held to be exempt under clauses 4(1)(c), 6, 13(b) and 16(c)(iii) and (b). The authority claimed release of the documents could endanger the physical safety of authority staff and that information in the documents was supplied in confidence. The Ombudsman declined the complaint, agreeing with the authority's determinations. It was concluded release of the documents would not be in the public interest.

Scone Shire Council

An application was made for all documents concerning two development applications by a piggery, one 10 years old and the other very recent. The more recent application was available for inspection by the public, but the applicant wished for historical information on which it was based. Council refused to release either that information or the old development application under section 16(2) of the FOI Act on the basis that the documents did not relate to the applicant's personal affairs.

The applicant on the other hand claimed that her lifestyle was severely affected - presumably whenever she was downwind! A phone call from this Office determined that, independently of the applicant, a consultant to an action group opposed to the development had pointed council to its obligation, of which it had been unaware, under the EP&A Act to release the old DA. Council had released it to the consultant, assuming the applicant would also benefit from this release, as she was a member of the group. For whatever reason, however, she had not received a copy of the DA. When this was explained to council, they undertook to release the documents to the applicant and the complaint was considered resolved. Fortunately the issue of whether or not the documents related to the applicant's personal affairs did not have to be addressed. The withdrawal of section 16(2) as of 1 July this year means that similar applications in future will have to be addressed by councils under the full provisions of the FOI Act.

Shoalhaven City Council

A complaint was made to the Ombudsman that the council intended to release to an applicant documents from the complainant's building application file. The complainant argued that the documents would disclose his plan for a type of building, and that release would diminish the commercial value of his

cont page 160

The Exemption Clauses

The Case Studies and Summary of Cases mention a number of clauses of Schedule 1 of the FOI Act which agencies have used to exempt documents.

For ease of reference, these clauses mentioned in the cases are detailed here in full.

Documents Affecting Law Enforcement and Public Safety

4. (1) A document is an exempt document if it contains matter the disclosure of which could reasonably be expected:

- (a) to prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case; or
- (b) to enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (c) to endanger the life or physical safety of any person; or
- (d) to prejudice the fair trial of any person or the impartial adjudication of any case; or
- (e) to prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law); or
- (f) to prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety; or
- (g) to endanger the security of any building, structure or vehicle; or
- (h) to prejudice any system or procedure for the protection of persons or property; or
- (i) to facilitate the escape from lawful custody of any person.

plans and be an unreasonable disclosure of his business and commercial affairs. The council determined the plans were of a standard nature and were not exempt under clauses 7(1)(b) or (c).

The Ombudsman agreed with the council in that he felt the complainant would not suffer commercial disadvantage should the documents be released, nor that such release would unreasonably affect his business affairs. The complaint was declined.

University of New England

The complainant sought amendment to a statement on university correspondence, addressed to another university, that it was unlikely he would be permitted to start a PhD at the University of New England. The university refused to amend the statement, arguing it was an opinion based on authoritative advice and given to assist the other university in its deliberations on a related matter. The com-

plainant submitted that the statement was incorrect and misleading as it was conjectural, did not conform to the university's PhD regulations, based on private advice not intended to be published and that the author of the statement had no authority to make it. The Ombudsman, in rejecting the complainant's assertion, argued that the statement was provided in good faith, was authoritative, a rational interpretation of the facts and was, therefore, not incorrect or misleading. The complaint was therefore declined.

Water Board

The complainants had applied to the board for the whole file relating to a sewer failure which they claimed had caused damage to their property. They complained that their FOI request had not been answered. As it turned out the application had been mislaid in a suburban office, but was located, processed and the documents released after this Office notified the board's head office of the complaint. ●

(2) A document is not an exempt document by virtue of subclause (1):

(a) if it merely consists of:

- (i) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
- (ii) a document containing a general outline of the structure of a programme adopted by an agency for dealing with any contravention or possible contravention of the law; or
- (iii) a report on the degree of success achieved in any programme adopted by an agency for dealing with any contravention or possible contravention of the law; or
- (iv) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law); or
- (v) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation; and

(b) if disclosure of the document would, on balance, be in the public interest.

(3) A document is an exempt document if it is a document that has been created by:

- (a) the State Intelligence Group of the Police Service; or
- (b) the Special Branch of the Police Service or the former Bureau of Criminal Intelligence.

(4) In this clause, a reference to the law includes a reference to the law of the Commonwealth, the law of another State and the law of another country.

Documents Affecting Personal Affairs

6. (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (whether living or deceased).

(2) A document is not an exempt document by virtue of this clause merely because it contains information concerning the person by or on whose behalf an application for access to the document is being made.

Documents Affecting Business Affairs

7. (1) A document is an exempt document:

(a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or

(b) if it contains matter the disclosure of which:

- (i) would disclose information (other than trade secrets) that has a commercial value to any agency or any other person; and
- (ii) could reasonably be expected to destroy or diminish the commercial value of the information; or

(c) if it contains matter the disclosure of which:

- (i) would disclose information (other than trade secrets or information referred to in paragraph (b) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
- (ii) could reasonably be expected to have an unreasonable adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency.

(2) A document is not an exempt document by virtue of this clause merely because it contains matter concerning the business, professional, commercial or financial affairs of the agency or other person by or on whose behalf an application for access to the document is being made.

Internal Working Documents

9. (1) A document is an exempt document if it contains matter the disclosure of which:

(a) would disclose:

- (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and

(b) would, on balance, be contrary to the public interest.

(2) A document is not an exempt document by virtue of this clause if it merely consists of:

- (a) matter that appears in an agency's policy document; or
- (b) factual or statistical material.

Documents Subject to Legal Professional Privilege

10. (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document by virtue of this clause merely because it contains matter that appears in an agency's policy document.

Documents Relating to Judicial Functions

11. A document is an exempt document if it contains matter the disclosure of which would disclose:

- (a) matter relating to the judicial functions of a court or tribunal; or
- (b) matter prepared for the purposes of proceedings (including any transcript of the proceedings) that are being heard or are to be heard before a court or tribunal; or
- (c) matter prepared by or on behalf of a court or tribunal (including any order or judgment made or given by the court or tribunal) in relation to proceedings that are being heard or have been heard before the court or tribunal.

Documents Containing Confidential Material

13. A document is an exempt document:

- (a) if it contains matter the disclosure of which would found an action for breach of confidence; or
- (b) if it contains matter the disclosure of which:
 - (i) would otherwise disclose information obtained in confidence; and
 - (ii) could reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
 - (iii) would, on balance, be contrary to the public interest.

Documents Concerning Operations of Agencies

16. A document is an exempt document if it contains matter the disclosure of which:

- (a) could reasonably be expected:
 - (i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency; or

- (ii) to prejudice the attainment of the objects of any test, examination or audit conducted by an agency; or
 - (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
 - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
 - (v) to have a substantial adverse effect on the conduct of industrial relations by an agency; and
- (b) would, on balance, be contrary to the public interest. ●
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Chapter Seven
Operational

Human Resource Management

Staff

As at 30 June 1993 the Office of the Ombudsman employed a total of 71 staff. A comparison of staff levels over the past four financial years is as follows:

Staff Levels				
Category	June 1993	June 1992	June 1991	June 1990
Statutory Appointments	4	4	4	3
Investigative Staff	48	52	53	52
Administrative Staff	17	18	16	15
Trainees	2	2	1	1
Total	71	76	74	71

The above figures include staff on leave without pay and their replacements.

Wage Movements

The Statutory and Other Offices Remuneration Tribunal determined a 3.4 per cent salary increase for the Ombudsman in March 1993. There were no other exceptional movements in wages, salaries or allowances.

Training and Development

During the year a number of internal training courses were organised including:

- ▶ Wordperfect
- ▶ Police Discipline
- ▶ Local Government Training
- ▶ Annual Report Training

Staff also attended courses conducted by external agencies.

Courses included:

- ▶ Improving Written Communication
- ▶ Practical Legal Research
- ▶ Management/Team Building
- ▶ Job Evaluation/Job Analysis

A major training course for investigation officers was organised by the Principal Investigation Officer for the 1993/94 year. This course covers police investigation techniques and is being developed by this Office and the Australian Federal Police.

The average number of days spent on training per staff member is six days. The Office of the Ombudsman met its obligation under the Training Guarantee Act.

Performance Management

The Principal Investigation Officer and the Human Resource Manager were given the responsibility to develop a performance management system for the Office. A draft system has been developed and endorsed by the Ombudsman. Prior to the adoption of this system, consultation was undertaken with staff and the Public Service Association.

The system has been designed to facilitate communication between the staff member and their supervisor; to promote a results orientated work outlook that will identify poor, satisfactory and outstanding performance and initiate appropriate action; and to identify staff development needs.

As part of this process, position descriptions have been reviewed. It is anticipated that the Performance Management System will be in place by October 1993.

Senior Executive Service Performance Management

A Senior Executive Service Performance Management System was developed during the reporting year.

Staff will be attending training for this system conducted by the SES Unit of the Premier's Department.

The system links the SES officer's performance agreement to the corporate plan and budget.

The Ombudsman has extended the current performance agreements for his SES officers

and delayed finalising their agreements for 1993/94. The new agreements will be finalised once the Ombudsman has considered fully the report of the Joint Parliamentary Committee on the Ombudsman's Inquiry into the Adequacy of Funding and Resources.

The Office currently is being restructured and the new structure will become operational in January 1994.

These agreements for the SES officers will reflect the responsibilities under the new organisational structure.

Ombudsman's Performance Statement

This has been a year of great change and many challenges. As reported in my Overview, I have also changed my approach to Government. I am endeavouring to demonstrate to the Government that there is reason alone in monetary terms to recognise the profitability of much of the work of the Office and its unique capacity to improve the efficiency and effectiveness of the public sector. There is no doubt that this Office's investigation of public complaints and our special projects more than pays for itself.

My work on the Complaint Handling in the Public Sector (CHIPS) program and its associated mediation training has continued. CHIPS provides public sector agencies with the tools they need to deliver service and solutions promised in their Guarantee of Service, corporate plans and mission statements.

As I have previously reported, nearly 30 per cent of the complaints to this Office relate to service delivery issues. CHIPS therefore has the potential to reduce this category of complaint and free up our resources for

Senior Executive Service

Number of CES/SES Positions

Total	Total CES/SES End of Current Year	Total CES/SES End of Previous Year
8	-	-
7	-	-
6	-	-
5	-	-
4	1	1
3	-	-
2	2	2
1	-	-
CEO under S.11A*	1	1
Total	4	4

*CEO positions listed under S. 11A of the Statutory and Other Offices Remuneration Act 1975, not included in Schedule 3A of the Public Sector Management Act 1988.

There were no SES positions being filled by women.

more serious and major systemic issues.

During the year I appeared on a number of occasions before, and provided submissions to, the Joint Parliamentary Committee on the Office of the Ombudsman. My contact with the committee related mostly to its Inquiry into the Adequacy of the Funds and Resources Available to the Ombudsman, although the committee held a number of other general meetings.

In previous years I have reported on my desire to have a Parliamentary Committee on the Ombudsman. I have seen the committee's role as crucial in keeping a balance between the administration, the executive arm of Government and the Ombudsman.

The committee's inquiry into the Office's funds and re-

sources, I welcomed as the first comprehensive and independent review of the Office since it was established in 1974.

My enthusiasm for the committee's role and work unfortunately was severely dented recently with the unprecedented attack on the Office and myself by the Chairman of the Joint Committee, Mr Turner, when he delivered the Committee's Report on the Adequacy of Funds and Resources Available to this Office.

Despite this setback to the committee and my relationship with it, I am pleased to report that arising out of the consultant's management review of this Office on behalf of the committee, a restructure proposal has been adopted and is underway. I believe that this restructure will greatly enhance my office's work performance.

Industrial Relations

In October 1993 the Public Service Association lodged a notification of a dispute at the Industrial Relations Commission.

The dispute was centred around the Ombudsman's decision to restructure the inquiry section of the Office and to advertise the newly created positions in the press in addition to the Public Sector Notices.

The Ombudsman was represented at the commission by the Public Employment Industrial Relations Authority (PEIRA).

The matter was delayed due to jurisdictional argument, however a settlement was reached by the Public Service Association and PEIRA outside the commission. The Ombudsman continued to fill the inquiry positions through advertisements in the press in addition to the Public Service Notices.

Downsizing/Redundancies

As a consequence of budgetary restrictions, the Ombudsman had no choice but to reduce the number of positions on establishment. The Ombudsman identified four positions of investigative assistant, clerical officer grade 1-2 as positions that could be shed with least impact on the provision of services to the public.

Strategies put in place to facilitate the reduction of staff included seeking transfers to other public sector departments and offering voluntary redundancies.

One investigative assistant accepted the offer of voluntary redundancy.

As no other officer wanted to transfer or take voluntary redundancy the Ombudsman had to identify three officers as excess to requirements.

The identification process involved the formal assessment of investigative assistants so that the decision as to who was to be identified as excess could be based on the merit principle.

The three staff identified have voluntarily left the Office or have secured a transfer to another department.

The Ombudsman wishes to acknowledge the assistance of Maria Kapelas and Karen Thompson of the Public Employment and Industrial Relations Authority in the redeployment of staff.

New Awards

No new awards were negotiated. In June 1993 the management and staff of the Office commenced discussions regarding the development of an enterprise agreement.

Part-time Work

During the reporting year one employee sought part-time work after resuming duty from maternity leave. This application was approved.

In June, an investigation officer was employed part-time to provide assistance on a short term basis. One part time staff member resumed duty on a full time basis.

Trainees/Apprentices

The Office of the Ombudsman employs clerical trainees under the Australian Traineeship System. Two trainees successfully completed both the on- and off-the-job components of their traineeships in December 1992 and another two trainees were employed in the same month. The Office does not employ apprentices.

Absenteeism

It is the Office's policy that staff absences on sick leave are reviewed on a quarterly basis and, if the need arises, staff with an unsatisfactory record are counselled. During 1992/93, a substantial number of staff continued to forfeit unpaid hours on a regular basis.

Structural Efficiency Principle (SEP)

The Structural Efficiency Principle Joint Consultative Committee (SEPJCC) continued to work on the implementation of the structural efficiency principle.

The membership of the committee changed during the year following the election of a new Public Service Association Workplace Group Executive.

At the time of reporting the job evaluation process is all but completed.

The consulting firm, the Hay Group, assisted with the training and implementation of the job evaluation process using ten benchmark or peg positions.

The next step is for the Hay Group and this Office to report the evaluation results to the Department of Industrial Relations, Employment, Training and Further Education.

The Skills Audit, also one of the SEP processes, will be completed by the end of September 1993.

The results of this process will enable the current skills levels of the Office to be assessed against our skills needs with the view to identifying training needs.

Grievance Procedures

The elected grievance handlers did not deal with any official grievances during the reporting year.

While there were minor grievances during the year, these were handled by alternate dispute resolution measures, such as through the EEO Co-ordinator, through supervisors and through the PSA/Management Consultative Committee monthly meetings.

The PSA/Management Consultative Committee was established in January 1993 and meets monthly. Its aims are to:

- ▶ improve communication channels between management and staff
- ▶ to provide information on new initiatives and discuss implications for staff
- ▶ ascertain the views of staff on issues affecting them and where appropriate, to make recommendations to the Ombudsman.

Code of Conduct

The Code of Conduct for the Office of the Ombudsman was published in the 1991 - 1992 annual report.

There were no significant alterations or additions in this reporting year.

Occupational Health and Safety

The Occupational Health and Safety Committee elected in February 1992 continued its work during the 1992/93 reporting year.

During the year the committee dealt with a number of issues including:

- ▶ the conduct of a review of the Office's restricted smoking policy which made recommendations resulting in the closure of the Office's smoking room. The Ombudsman's Office is now a non-smoking workplace
- ▶ engaging Sydney Hospital Occupational Health and Safety staff to conduct a workplace inspection in terms of proper use of computer based equipment, set up of work areas and preventive strategies for injury
- ▶ the checking of all fire extinguishers in the Office.

Ethnic Affairs Policy Statement (EAPS)

On 3 March 1993, the Chairman of the Ethnic Affairs Commission wrote to the Ombudsman in relation to the Commission's evaluation of the Ombudsman's 1991/92 Ethnic Affairs Policy Statement Annual Report.

The Chairman commended the Ombudsman on *"the current strengths in service delivery to clients of non-English speaking background"* and thanked him for the commitment shown by the organisation to the implementation of the EAPS program.

The office continued its efforts to implement the strategies of the Ethnic Affairs Policy Statement during 1992/93. In his EAPS Annual Report for this period, the Ombudsman noted that his office's overall operations have been constrained by budgetary restrictions and this

had impacted on the ability to vigorously implement the EAPS strategies. Despite these budgetary difficulties, the Ombudsman's Office was still able to produce new promotional material which will be printed in multi-lingual form.

Of great importance during 1992/93 was the commencement of an Inquiry by the Joint Parliamentary Committee on the Ombudsman into the issues of access and understanding about the Ombudsman by young people, Aborigines and members of ethnic communities and minority and disadvantaged people. The results of this Inquiry are awaited as its conclusion will undoubtedly impact on the Ethnic Affairs Policy Statement.

Throughout the year new staff to the office have been given and will continue to be given detailed information about the EAPS at individual induction sessions and at formal induction courses.

Equal Employment Opportunity (EEO)

The major EEO achievements for the year were:

- ▶ increase in the number of staff with a disability
- ▶ development of SES and non SES performance management systems specifically incorporating EEO goals and aims
- ▶ continuation of the rotational program for investigative assistants
- ▶ attendance of staff from non-English speaking backgrounds at courses on improving written communication, English grammar and language for non-native speakers

- ▶ implementation of job evaluation
- ▶ review of the goals and aims of the investigation officer (Aboriginal complaints) position.

EEO Strategies for 1993/94

As a result of the Joint Parliamentary Committee on the Ombudsman's Inquiry into the Adequacy of the Office's Funding and Resources, there will be

a major restructure of staffing arrangements within the office. This has implications for EEO implementation and the EEO Management Plan, particularly in terms of position descriptions, performance management, career paths, training needs and ensuring EEO target groups are not disadvantaged. The restructure involves further staff reductions and obviously the Office of the Director of Equal Opportunity in Public Employment's suggestions on redirecting excess staff will be followed.

During the year there will be an emphasis on increased training for investigation officers in investigative techniques and addressing other identified training needs as a result of the skills audit.

Induction courses will continue to be conducted and new procedures and policy manuals devised to reflect the new structure and its aims.

Attempts will be made to recruit additional Aboriginal staff.

Representation of EEO Target Groups within Levels

	1992/93				1991/92			
	Total Staff	Women	NESB		Total Staff	Women	NESB	
Below Clerical Officer Grade 1	2	2 100.00%	2 100.00%		2	2 100.00%	0 0.00%	
Clerical Officer Grade 1 - Clerk Grade 1	12	10 83.33%	12 100.00%		13	11 84.62%	10 76.92%	
A & C Grades 1 - 2	6	6 100.00%	3 50.00%		8	8 100.00%	7 87.50%	
A & C Grades 3 - 5	7	5 71.43%	2 28.57%		8	6 75.00%	5 62.50%	
A & C Grades 6 - 9	37	22 59.46%	7 18.92%		36	24 66.7%	5 13.51%	
A & C Grades 10 - 12	3	2 66.67%	0 0.00%		4	2 50.00%	0 0.00%	
Above A & C Grade 12	4	0 0.00%	1 25.00%		5	0 0.00%	1 20.00%	
Total	71	47 66.20%	27 38.03%		76	53 68.83%	28 36.36%	

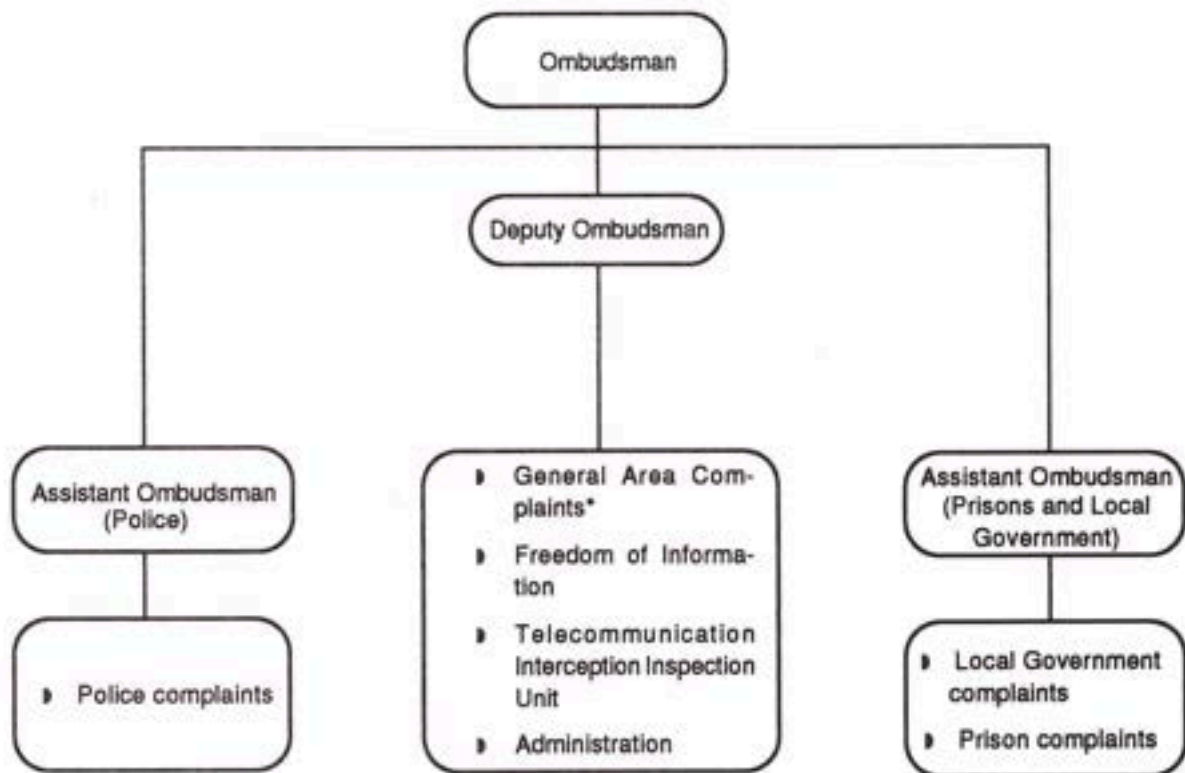
Non-English speaking background

Representation and Recruitment of Aboriginal Employees and Employees with a Physical Disability

	1992/93				1991/92			
	Total Staff	Aboriginal	PWFD*		Total Staff	Aboriginal	PWFD*	
Total Employees	71	1 1.41%	9 12.68%		76	3 3.90%	9 11.80%	
Recruited in the year	19	0 0.00%	1 5.27%		12	0 0.00%	0 0.00%	

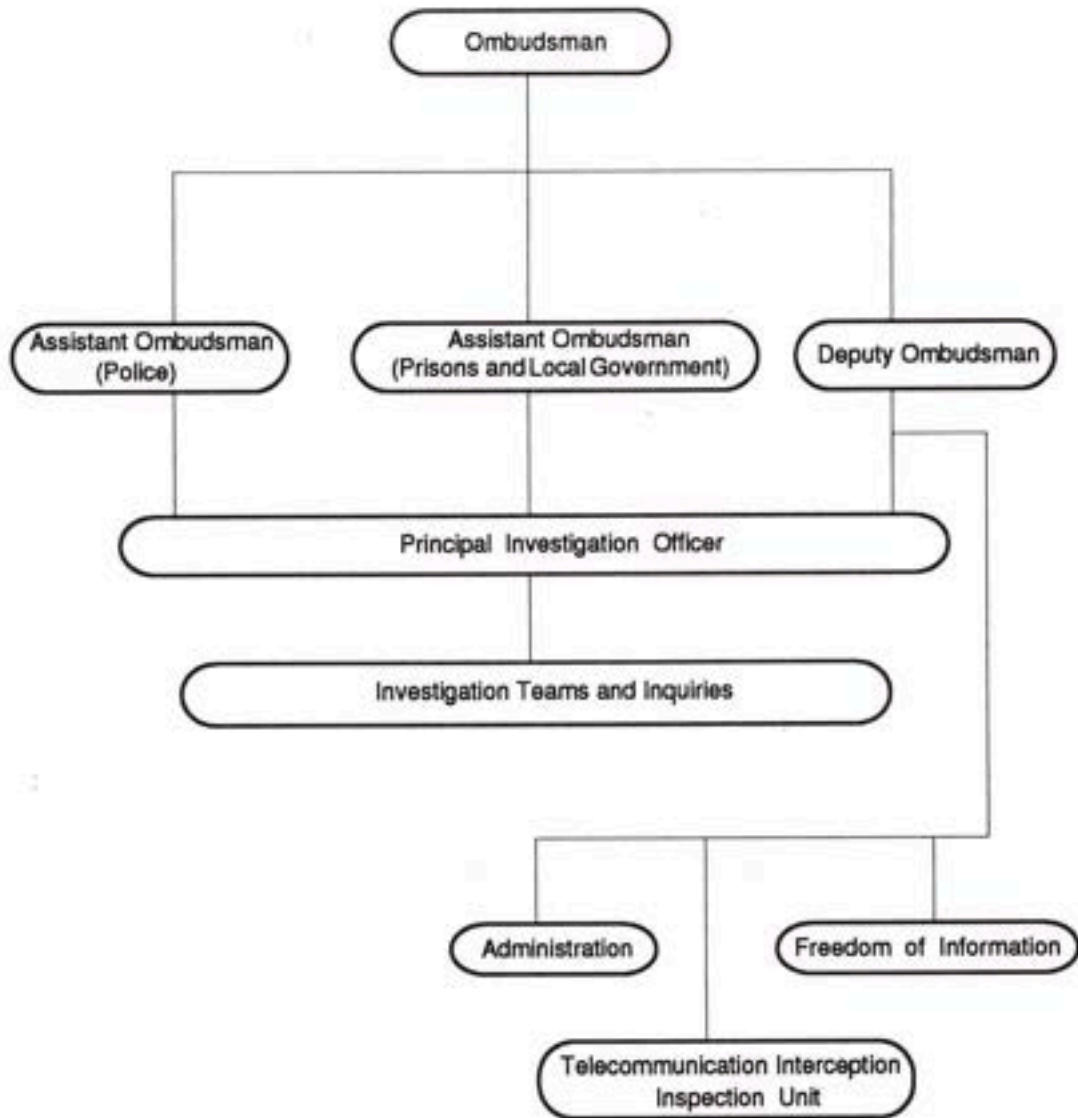
*People with a physical disability

Functional Organisation Chart Part 1



*General refers to all complaints except police, prisons and local government

Function Organisation Chart (Part 2)



Financial Management

Major Works in Progress

The Office had no major works in progress.

Land Disposal

The Office did not dispose of any land or properties.

Research and Development

The Office of the Ombudsman was not involved in any research and development projects.

Funds Granted to Non-Government Organisations

No funds were granted by the Office to non-Government organisations.

Risk Management and Insurance

Coopers and Lybrand were engaged in 1989 to undertake a Risk Identification Survey for the Office of the Ombudsman. The main areas of risk for the Ombudsman's office are security, to protect personnel, information, computers, the offices and other assets.

The Ombudsman's office participates in the Treasury Managed Fund and aims to improve our risk management performance. The Deputy Ombudsman is currently the officer responsible for risk management in the Office, with day to day activities being administered by the financial accountant, executive officer and other administrative staff.

All employees are involved in some way in risk management processes including reduction of waste, reduction of workers compensation and motor vehicle claims. Any insurance claim is analysed and risk reduction strategies examined in an attempt to minimise future risks.

During the past two years, the Ombudsman's Office has achieved incentives in the form of rebates from the Treasury Managed Fund of:

- ▶ \$1,956.74 for 1991/92
- ▶ \$2,117.46 for 1992/93

During the year the Occupational Health and Safety Committee arranged workplace inspections by occupational health professionals to improve safe use of screen based equipment, set up of workspaces and the like.

The Office's data bases are essential to efficient performance and records maintenance and during the year our disaster recovery program was reviewed and steps taken to improve security, off-site storage and other security issues, such as virus scanning.

Overseas Travel

During the year, the Ombudsman commenced travel in October 1992 to Vienna to attend the International Ombudsman Conference. This conference is held every four years and seen as the most significant world meeting of Ombudsmen.

Because of the Ombudsman Office's scarce financial resources and the Government's unwillingness to assist the Ombudsman to be represented at this important conference, the Ombudsman funded his own

travel costs. Unfortunately, due to events back in New South Wales concerning the Angus Rigg matter, the Ombudsman was required to return to Sydney prematurely for the purpose of holding an Inquiry and was not able to attend the conference in its entirety.

This was the second occasion on which the Ombudsman funded his own travel costs. The first occasion occurred in June 1992 when the Ombudsman travelled to the USA to attend a negotiation/conciliation course at Harvard University Graduate Law School. It is indeed a matter of grave concern when the Ombudsman is unable because of the Office's limited funding to obtain supplementation from the Government to attend conferences or forums which are directly related and fundamental to the pursuit of his official duties and major initiatives.

In March 1993 the Ombudsman and Assistant Ombudsman (Police) visited Wellington, New Zealand, to hold discussions with the New Zealand Police Complaints Authority concerning their direct investigation powers of police complaints. This was just prior to the proclamation of the Police Services Act on 1 July 1993, which gave the NSW Ombudsman direct powers of investigation in relation to police complaints.

In May 1993, one of the Office's Freedom of Information investigation officers visited the New Zealand Ombudsmen in Wellington to discuss their procedures for handling the equivalent of our FOI complaints under the New Zealand Official Information Act.

Consultants

During the year, the Office of the Ombudsman used a number of consultants to provide expert advice and assistance. The total cost of all consultancies was \$84,430.

Consultancies costing at or in excess of \$30,000

The Office's police data base was redesigned and enhanced during the year. The consulting firm Tangent was engaged for this project. The total cost as at 30 June 1993 is \$30,000. There is a further piece of work on this project to be completed.

Consultancies costing less than \$30,000

There were twenty six consultants engaged on individual projects at a total cost of \$54,430.

Value of Recreation and Extended Leave

The monetary value of recreation (annual) and extended (long service) leave owed in respect of all staff of the Office of the Ombudsman for the 1991/92 and 1992/93 financial years is as on the table on the right.

Accounts Payable Policy

The Office of the Ombudsman continues to implement an accounts payable policy. The policy states that all accounts shall be paid within the agreed payment terms or within 30 days of receipt of invoice if terms are not specified. Suppliers are notified of the policy in writing when orders for goods or services are placed with them.

Where there is unjustified delay in the payment of an account, the supplier can bring the matter to the attention of the Minister, who may award a penalty interest rate. Details of any penalty interest imposed must be included in the annual report.

Accounts on Hand as at 30 June 1993

Current (ie within due date)	\$98,150
Less than 30 days overdue	2,965
Between 30 and 60 days overdue	900
Between 60 and 90 days overdue	-
More than 90 days overdue	-
Total Accounts on Hand	\$102,015

The Office regularly reviews its payments policy. The Office aims to pay all accounts within vendor credit terms 98% of the due date. The variance is due to further consultation with vendors.

As the Office maintains vendor credit terms, complaints regarding the non payment of accounts to the Minister, have been non-existent. Consequently, the Office has not been required to pay penalty interest on outstanding accounts.

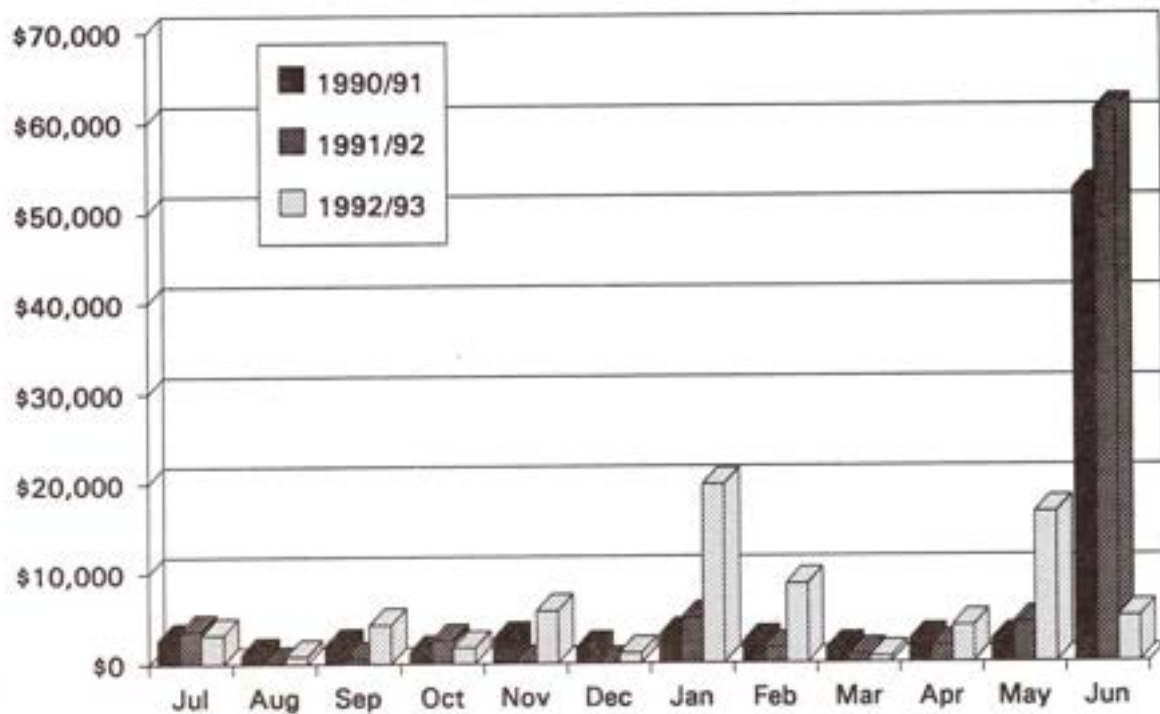
Value of Recreation and Extended Leave

	Year ended 30 June 1993	Year ended 30 June 1992
Recreation Leave	\$217,808	\$207,006
Extended Leave	\$387,786	\$379,006

Major Assests on Hand

Description	As At 30 June 92	Acquisition	Disposals	As at 30 June 93
Computers and related equipment				
Mini computers	2	-	-	2
Terminal servers	2	-	-	2
Personal computers	25	13	1	37
Terminals	45	5	3	47
Printers	21	2	-	23
Photocopiers	5	2	1	6
Television and video equipment	7	-	-	7

Stores Expenditure





Auditor-General's Office
New South Wales



The Ombudsman
Office of the Ombudsman
Level 3
580 George Street
SYDNEY NSW 2000

Telephone: (02) 285 0155
Fax: (02) 285 0100
Extension: 101

Contact Name:

Our Reference: Z349/CW

Your Reference:

7 October 1993

**Accounts of the Office of the Ombudsman
for the year ended 30 June 1993**

Enclosed herewith are your financial statements together with the Auditor-General's opinion.

K.T. FENNELL PSM BA FCPA
DEPUTY AUDITOR-GENERAL



BOX 12 GPO
SYDNEY NSW 2001

AUDITOR-GENERAL'S OPINION

OFFICE OF THE OMBUDSMAN

To Members of the New South Wales Parliament and The Ombudsman

Scope

I have audited the accounts of the Office of the Ombudsman for the year ended 30 June 1993. The preparation and presentation of the financial statements, consisting of the accompanying statement of financial position, operating statement and statement of cash flows, together with the notes thereto and the information contained therein is the responsibility of The Ombudsman. My responsibility is to express an opinion on these statements to Members of the New South Wales Parliament and The Ombudsman based on my audit as required by Sections 34 and 45F(1) of the Public Finance and Audit Act 1983. My responsibility does not extend here to an assessment of the assumptions used in formulating budget figures disclosed in the financial statements.

My audit has been conducted in accordance with the provisions of the Act and Australian Auditing Standards to provide reasonable assurance as to whether the financial statements are free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with the requirements of the Public Finance and Audit Act 1983, and Australian accounting concepts and standards so as to present a view which is consistent with my understanding of the Office's financial position, the results of its operations and its cash flows.

This audit opinion has been formed on the above basis.

Audit Opinion

In my opinion, the financial statements of the Office of the Ombudsman comply with Section 45E of the Act and present fairly in accordance with Statements of Accounting Concepts and applicable Accounting Standards the financial position of the Office as at 30 June 1993 and the results of its operations and its cash flows for the year then ended.

K.T. FENNEL PSM BA FCPA
DEPUTY AUDITOR-GENERAL

(duly authorised by the Auditor-General of New South Wales
under Section 45F(1A) of the Act)

SYDNEY
7 October 1993

Statement by Ombudsman

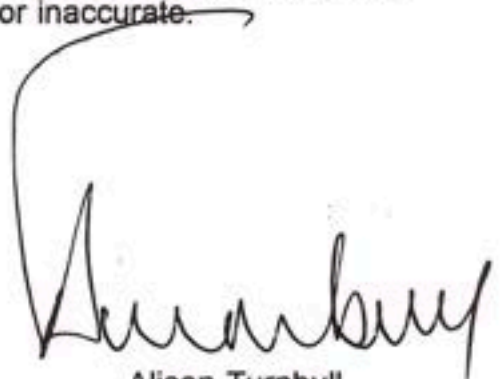
Pursuant to Section 45F of the Public Finance and Audit Act, 1983, I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act, 1983, the Financial Reporting Code under Accrual Accounting for Inner Budget Sector Entities, the applicable clauses of the Public Finance and Audit (Departments) Regulation, 1986 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position and transactions of the Department; and
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.



David Landa
Ombudsman

10 August 1993



Alison Turnbull
Financial Accountant

10 August 1993

**Office of the Ombudsman
Operating Statement**

For the year ended 30 June 1993

	Notes	Actual 1993 \$	Budget 1993 \$	Actual 1992 \$
Expenses				
Operating expenses				
Employee related	4(i)	3,309,314	3,498,600	3,444,096
Other operating expenses		1,133,757	1,100,700	1,011,221
Depreciation	4(ii)	179,219	184,000	162,914
Total expenses		<u>4,622,290</u>	<u>4,783,300</u>	<u>4,618,231</u>
Revenues				
User charges	5(i)	1,977	1,000	764
Other	5(ii)	6,984	-	19,108
Grants	5(ii)	22,441	16,000	-
Total revenues		<u>31,402</u>	<u>17,000</u>	<u>19,872</u>
Net gain/(loss) on sale of plant and equipment		(7,177)	-	1,074
NET COST OF SERVICES		<u>4,598,065</u>	<u>4,766,300</u>	<u>4,597,285</u>
Government Contributions				
Consolidated Fund recurrent appropriation	14	4,165,000	4,237,000	4,246,092
Return to Crown on sale of assets		-	-	(1,074)
Acceptance by Crown of Office liabilities	14	336,809	339,000	299,162
Surplus/(deficit) for the year		<u>(96,256)</u>	<u>(190,300)</u>	<u>(53,105)</u>
Accumulated surplus/(deficit) at the beginning of the year		680,478	680,478	733,583
Accumulated surplus/(deficit) at the end of the year		<u>584,222</u>	<u>490,178</u>	<u>680,478</u>

The accompanying notes form part of these statements

Office of the Ombudsman
Statement of Financial Position

As at 30 June 1993

	Notes	Actual 1993 \$	Budget 1993 \$	Actual 1992 \$
Current Assets				
Cash	6,13	92,044	181,786	195,786
Receivables		3,933	179	179
Prepayments	7	92,022	74,859	75,849
Total Current Assets		<u>187,999</u>	<u>256,824</u>	<u>271,814</u>
Non Current Assets				
Plant and equipment	8	702,518	668,092	819,392
Total Non-current Assets		<u>702,518</u>	<u>668,092</u>	<u>819,392</u>
TOTAL ASSETS		<u>890,517</u>	<u>924,916</u>	<u>1,091,206</u>
Current Liabilities				
Creditors	9	88,487	208,732	203,722
Provisions	10	217,808	226,006	207,006
TOTAL LIABILITIES		<u>306,295</u>	<u>434,738</u>	<u>410,728</u>
NET ASSETS		<u>584,222</u>	<u>490,178</u>	<u>680,478</u>
Equity				
Accumulated surplus/(deficit)	11	584,222	490,178	680,478
TOTAL EQUITY		<u>584,222</u>	<u>490,178</u>	<u>680,478</u>

The accompanying notes form part of these statements

**Office of the Ombudsman
Cash Flow Statement**

For the year ended 30 June 1993

	Notes	Actual 1993 \$	Budget 1993 \$	Actual 1992 \$
Cash Flow from Operating Activities				
Payments				
Employee related		(3,140,885)	(3,140,600)	(3,071,005)
Maintenance and working		(1,089,741)	(1,094,700)	(1,074,845)
		<u>(4,230,626)</u>	<u>(4,235,300)</u>	<u>(4,145,850)</u>
Receipts				
User charges		1,977	1,000	764
Other		6,984	-	19,108
Grants		22,441	16,000	-
		<u>31,402</u>	<u>17,000</u>	<u>19,872</u>
Total Net Cash Outflow on Operating Activities	13	<u>(4,199,224)</u>	<u>(4,218,300)</u>	<u>(4,125,978)</u>
Cash Flow from Investing Activities				
Purchases of plant and equipment		(70,116)	(32,700)	(65,189)
Proceeds from the sale of plant and equipment		598	-	1,510
Total Net Cash Outflow on Investing Activities		<u>(69,518)</u>	<u>(32,700)</u>	<u>(63,679)</u>
Net Cash Outflow from Operating and Investing Activities		<u>(4,268,742)</u>	<u>(4,251,000)</u>	<u>(4,189,657)</u>
Government Funding Activities				
Consolidated Fund recurrent appropriation		4,165,000	4,237,000	4,246,092
Total Net Cash provided by Government		<u>4,165,000</u>	<u>4,237,000</u>	<u>4,246,092</u>
Net Increase/(Decrease) in Cash		(103,742)	(14,000)	56,435
Opening Cash Balance		195,786	195,786	139,351
CLOSING CASH BALANCE	13	<u>92,044</u>	<u>181,786</u>	<u>195,786</u>

The accompanying notes form part of these statements

Office of the Ombudsman

Supplementary Information

Cash Flow Statement for reconciliation with Operating Statement

For the year ended 30 June 1993

	Notes	Actual 1993 \$	Budget 1993 \$	Actual 1992 \$
Cash Flow from Operating Activities				
NET COST OF SERVICES		(4,598,065)	(4,766,300)	(4,597,285)
Adjustments for items not involving cash:				
Depreciation		179,219	184,000	162,914
Provision for recreation leave		10,802	19,000	23,006
Acceptance by Crown of liabilities		336,809	339,000	299,162
(Increase)/decrease in receivables		(3,755)	-	(179)
(Increase)/decrease in prepayments		(16,173)	990	(75,849)
Increase/(decrease) in creditors		(115,238)	5,010	63,327
Net (gain)/loss on sale of plant and equipment		7,177	-	(1,074)
Net Cash Used on Operating Activities	13	<u>(4,199,224)</u>	<u>(4,218,300)</u>	<u>(4,125,978)</u>
Funded by:				
Consolidated Fund recurrent appropriation		4,165,000	4,237,000	4,246,092
Net Increase/(Decrease) in Cash from Operating Activities (A)		<u>(34,224)</u>	<u>18,700</u>	<u>120,114</u>
Cash Flow from Investing Activities				
Purchases of plant and equipment		(70,116)	(32,700)	(65,189)
Proceeds from sale of plant and equipment		598	-	1,510
Net Cash Used on Investing Activities		<u>(69,518)</u>	<u>(32,700)</u>	<u>(63,679)</u>
Funded by:				
Consolidated Fund capital appropriation		-	-	-
Net Increase/(Decrease) in Cash from Investing Activities (B)		<u>(69,518)</u>	<u>(32,700)</u>	<u>(63,679)</u>
Net Increase/(Decrease) in Cash (A+B)		<u>(103,742)</u>	<u>(14,000)</u>	<u>56,435</u>
Opening cash balance		195,786	195,786	139,351
CLOSING BALANCE	13	<u>82,044</u>	<u>181,786</u>	<u>195,786</u>

This statement links cash flows with the Operating Statement via the Net Cost of Services and reconciles between Net Cost of Services, which is an accrual concept, and Consolidated Fund support, which is a cash concept.

The accompanying notes form part of these statements

NOTES TO AND FORMING PART OF THE STATEMENTS

1. THE DEPARTMENTAL REPORTING ENTITY

The Office of the Ombudsman comprises all the operating activities of the Office.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Office's Financial Report has been prepared in accordance with Statements of Accounting Concepts, applicable Australian Accounting Standards, the requirements of the *Public Finance and Audit Act, 1983* and Regulations, the Treasurers Directions and the Financial Reporting Directives published in the Financial Reporting Code for Inner Budget Sector Entities.

The Operating Statement and Statement of Financial Position are prepared on an accruals basis. The Cash Flow Statement is prepared in accordance with AAS 28 - "Statement of Cash Flows", using the "direct" method. The supplementary Cash Flow Statement is prepared using the "indirect" method.

The Financial Report is prepared in accordance with the historical cost convention. All amounts are rounded to the nearest whole dollar and are expressed in Australian currency.

Accounting policies adopted for the preparation of these financial statements are consistent with those used in 1991/92.

(a) Employee related expenses

The cost of employee entitlements to long service leave and superannuation are included in employee related expenses. However, as the Office's liabilities for long service leave and superannuation are assumed by the Crown, the Office accounts for the liability as having been extinguished resulting in non-monetary revenue described as "Acceptance by Crown of Office liabilities".

The amounts expected to be paid to employees for their pro rata entitlement to recreation leave are accrued annually at current pay rates.

(b) Government allocations

Monetary and non-monetary resources which are allocated to the Office by the Government and which are controlled by the Office are recognised as revenues of the financial period in which they are received. Non-monetary allocations are recognised at fair value.

(c) Acquisition of assets

The cost method of accounting is used for all acquisitions of assets regardless of whether resources are acquired separately or as part of an interest in another entity. Cost is determined as the fair value of the assets given up at the date of acquisition plus costs incidental to the acquisition.

(d) Depreciation

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

3. BUDGET REVIEW

The actual Net Cost of Services was less than budget by \$168,235. This favourable result was largely due to the downsizing of the Office of the Ombudsman.

4.	<u>OPERATING EXPENSES</u>	1993	1992
		\$	\$
	(i) Employee related expenses comprise:		
	Salaries and wages	2,759,052	2,900,101
	Superannuation entitlements	242,394	242,214
	Long Service Leave	94,415	56,948
	Workers Compensation insurance	18,018	13,235
	Payroll tax and fringe benefits tax	194,358	230,296
	Other	1,077	1,302
		<u>3,309,314</u>	<u>3,444,096</u>
	(ii) Depreciation is charged as follows:	1993	1992
		\$	\$
	Computer equipment	80,264	66,279
	Furniture and fittings	12,981	12,909
	Office equipment	40,894	42,833
	Leasehold improvement	45,080	40,893
		<u>179,219</u>	<u>162,914</u>
	(iii) Fees for Service		
	Expenses relating to consultancies and audit fees (external) amounted to \$102,640 and \$9,300 respectively. Comparative figures for 1991/92 amounted to \$42,457 for consultancies and \$9,300 for audit fees.		
5.	<u>OPERATING REVENUES</u>	1993	1992
		\$	\$
	(i) User charges comprise the following items:		
	Commission on payroll deductions	705	764
	Sale of pamphlets	1,272	-
		<u>1,977</u>	<u>764</u>
	(ii) Other revenue and Grants comprises:		
	Trainee subsidy	22,441	16,594
	GIO managed fund distribution	-	1,957
	Sale of reports, books, etc	6,984	557
		<u>29,425</u>	<u>19,108</u>
6.	<u>CURRENT ASSETS - Cash</u>	1993	1992
		\$	\$
	Cash at Treasury	-	195,786
	Cash on Hand	500	500
	Cash at Bank	91,544	(500)
	Total Cash	<u>92,044</u>	<u>195,786</u>
7.	<u>CURRENT ASSETS - Prepayments</u>	1993	1992
		\$	\$
	Salaries & Wages	14,221	-
	Rent	52,803	48,792
	Training	6,285	7,836
	Subscription/Maintenance	9,764	11,841
	Consultancies	4,450	-
	Other	4,499	7,380
		<u>92,022</u>	<u>75,849</u>

8. NON-CURRENT ASSETS - Plant and equipment

	Computer Equipment		Furniture & Fittings		Office Equipment		Leasehold Improvement		Total	
	1993 \$	1992 \$	1993 \$	1992 \$	1993 \$	1992 \$	1993 \$	1992 \$	1993 \$	1992 \$
At cost or valuation										
Balance 1 July	384,413	326,724	129,483	128,963	221,068	215,120	490,924	490,924	1,225,888	1,161,731
Additions	35,230	58,721	393	520	34,493	5,848	-	-	70,116	65,189
Disposals	(5,820)	(1,032)	-	-	(25,589)	-	-	-	(31,409)	(1,032)
Balance 30 June	413,823	384,413	129,876	129,483	229,972	221,068	490,924	490,924	1,264,595	1,225,888
Accumulated depreciation										
Balance 1 July	146,707	80,824	34,402	21,494	116,337	73,504	100,049	66,157	406,495	243,979
Depreciation for the year	80,256	66,281	12,983	12,908	45,088	42,633	40,892	40,892	179,219	162,914
Writeback on Disposal	(3,615)	(398)	-	-	(20,022)	-	-	-	(23,637)	(398)
Balance 30 June	223,348	146,707	47,385	34,402	141,403	116,337	149,941	108,049	562,077	406,495
Written Down Value										
At 1 July	237,706	245,900	95,081	107,469	104,731	141,616	381,875	422,767	819,393	917,752
At 30 June	190,475	237,706	82,491	95,081	88,569	104,731	340,983	381,875	702,518	819,393

9.	CURRENT LIABILITIES - Creditors	1993	1992
		\$	\$
	Salaries and Wages	30,291	191,497
	Accrued Expenses	58,196	12,225
		<u>88,487</u>	<u>203,722</u>
10.	CURRENT LIABILITIES - Provision for leave entitlements	1993	1992
		\$	\$
	Balance 1 July	207,006	184,000
	Paid during year	(177,215)	(230,805)
	Provided during year	188,017	253,811
	Balance 30 June	<u>217,808</u>	<u>207,006</u>
11.	EQUITY - Accumulated surplus/(deficit)	1993	1992
		\$	\$
	Balance 1 July	680,478	733,583
	Operating Result for the year	(96,256)	(53,105)
	Balance 30 June	<u>584,222</u>	<u>680,478</u>
12.	COMMITMENTS FOR EXPENDITURE	1993	1992
		\$	\$
	(I) Lease Commitments	1,060,789	1,643,338
	Aggregate operating lease expenditure contracted for at balance date but not provided for in the accounts:		
	Not later than one year	637,103	620,038
	Later than one year but not later than 2 years	423,686	616,967
	Later than 2 years but not later than 5 years	-	406,333
	Later than 5 years	-	-
		<u>1,060,789</u>	<u>1,643,338</u>
	Representing:	1993	1992
		\$	\$
	Cancellable operating leases	11,226	18,005
	Non-cancellable operating leases	1,049,563	1,625,333

13. NOTE TO CASH FLOW STATEMENT

(i) Reconciliation of Cash

For the purposes of the Statement of Cash Flows, cash includes Cash on Hand, at Bank and at Treasury. During the year, Treasury revised its banking arrangements and amounts previously held at Treasury were transferred to the Office's bank account.

(ii) Reconciliation of Net Cash used on Operating Activities to Surplus/(Deficit) for the year.

	1993	1992
	\$	\$
Surplus/(Deficit)	(96,256)	(53,105)
Depreciation	179,219	162,914
Provision for Leave Entitlements	10,802	23,006
Decrease in creditors	(115,238)	63,327
Increase in prepayments	(16,173)	(75,849)
Increase in Debtors	(3,755)	(179)
Government appropriation	(4,165,000)	(4,246,092)
(Gain)/Loss on sale of assets	7,177	(1,074)
Return to Crown on sale of assets	-	1,074
Net Cash used in Operating Activities	<u>(4,199,224)</u>	<u>(4,125,978)</u>

14. PROGRAM INFORMATION

(i) This Office operates on one program "Investigation of citizens' complaints and monitoring and reporting on telecommunications interception activities".

The objective of the Program is to permit an independent inquiry into citizens' complaints against decisions and actions of State public sector bodies and/or their officers. To ensure eligible authorities compliance with telecommunications interception legislation. To perform an external review function under the Freedom of Information Act.

(ii) Government Allocations

	1993	1992
	\$	\$
Consolidated fund recurrent allocation	4,165,000	4,246,092
Crown acceptance of liabilities	336,809	299,162
Return on sale of assets	-	(1,074)
	<u>4,501,809</u>	<u>4,544,180</u>

15. CONTINGENT LIABILITIES

The Office is aware of a potential claim being made by a third party in respect of the ownership of office equipment supplied to the Office. If such a claim were brought, the Office would seek an indemnity from the supplier in respect of any loss and damages arising from such claim.

The potential claim is approximately \$120,000.

16. UNCLAIMED MONIES

There are no unclaimed monies at balance date.

END OF AUDITED FINANCIAL STATEMENTS

Result of Complaints - Local Government															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Albury City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Armidale City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Ashfield Municipal Council	0	0	1	0	0	0	2	0	0	0	0	0	0	0	3
Auburn Municipal Council	0	0	0	2	0	0	0	2	0	1	0	0	0	0	5
Balranald Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Bankstown City Council	0	0	1	0	0	0	0	2	1	1	0	0	0	0	5
Bathurst City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Baulkham Hills Shire Council	1	1	2	0	0	0	0	0	0	2	0	0	0	0	6
Bega Valley Shire Council	0	1	0	0	0	0	1	0	0	0	0	0	0	0	2
Bellingen Shire Council	0	0	2	0	0	0	1	1	0	0	0	0	0	0	4
Berrigan Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Blacktown City Council	0	0	1	2	0	0	2	2	0	3	0	0	0	0	10
Blue Mountains City Council	0	1	1	5	0	0	3	2	3	1	0	0	0	0	16
Bogan Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Botany Municipal Council	0	0	1	2	0	0	1	0	0	0	0	0	0	0	4
Bourke Shire Council	1	1	1	2	0	0	1	0	0	1	0	0	0	0	7
Burwood Municipal Council	0	1	1	0	0	0	1	0	1	0	0	0	0	0	4
Byron Shire Council	0	0	0	0	1	0	2	0	0	1	0	0	0	0	4
Cabonne Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Camden Municipal Council	0	0	0	0	1	0	2	0	0	1	0	0	0	0	4
Campbelltown City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Canterbury Municipal Council	0	1	2	1	0	0	0	1	0	1	0	0	0	0	6
Central Darling Shire Council	0	1	0	0	0	0	1	1	0	0	0	0	0	0	3
Central Tablelands County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Central West County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Cessnock City Council	0	0	0	1	1	0	0	1	0	1	0	0	0	0	4

Performance Indicators

Operational

Result of Complaints - Local Government

Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Clarence River County Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Cobar Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Coffs Harbour City Council	0	1	1	5	2	1	0	2	0	0	0	0	0	0	12
Concord Municipal Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	2
Cooma Monaro Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Coonabarabran Shire Council	2	0	0	0	0	0	1	0	0	0	0	0	0	0	3
Corowa Shire Council	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Culcairn Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Drummoyne Municipal Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Dubbo City Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Dumaresq Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Eurobodalla Shire Council	0	0	1	4	1	0	7	0	1	0	0	0	0	0	14
Evans Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Fairfield City Council	1	0	2	1	0	0	0	0	1	0	0	0	0	0	5
Forbes Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Glen Innes Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Gosford City Council	0	2	5	6	0	0	3	1	0	2	0	0	0	0	19
Goulburn City Council	0	0	0	1	0	0	0	1	0	1	0	0	0	0	3
Grafton City Council	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Great Lakes Shire Council	0	1	0	3	2	0	1	0	0	1	0	0	0	0	8
Greater Lithgow City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Greater Taree City Council	0	0	1	0	0	0	1	1	0	1	0	0	0	0	4
Griffith City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Harden Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hastings Municipal Council	0	0	1	3	0	0	3	2	0	1	0	0	0	0	10
Hawkesbury Shire Council	0	0	1	0	1	0	1	0	0	0	0	0	0	0	3
Holroyd Municipal Council	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2

Result of Complaints - Local Government

Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remotely/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Hornsby Shire Council	0	1	3	2	1	0	5	0	0	1	0	0	0	0	13
Hume Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Hunters Hill Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hurstville Municipal Council	0	0	0	2	1	0	1	1	0	1	0	0	0	0	6
Illawarra Electricity	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2
Kempsey Shire Council	0	1	1	0	0	0	2	2	0	0	0	0	0	0	6
Kiama Municipal Council	0	0	1	2	0	0	3	0	0	0	0	0	0	0	6
Kogarah Municipal Council	0	0	2	2	0	0	2	1	0	1	0	0	0	0	8
Ku-Ring-Gai Municipal Council	1	0	1	3	1	0	4	1	0	1	0	0	0	0	12
Kyogle Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Lake Macquarie City Council	1	2	4	4	0	0	2	2	4	0	0	0	0	0	19
Lane Cove Municipal Council	0	0	0	1	0	0	0	2	0	0	0	0	0	0	3
Leichhardt Municipal Council	0	0	0	1	2	0	2	1	0	1	0	0	0	0	7
Lismore City Council	0	0	0	1	1	0	2	0	0	0	0	0	0	0	4
Liverpool City Council	0	0	1	1	0	0	1	2	0	0	0	0	0	0	5
Lockhart Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Lower Clarence County Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Maclean Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Maitland City Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Manilla City Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Manly Municipal Council	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Marrickville Municipal Council	0	0	2	2	1	0	2	3	0	0	0	0	0	0	10
Monaro Electricity	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Moree Plains Shire Council	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
Mosman Municipal Council	0	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Murray River Electricity	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2
Murrumbidgee County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1

Result of Complaints - Local Government															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Nambucca Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Narrabri Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1	2
Narrandera Shire Council	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
New England Tablelands County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Newcastle City Council	0	2	1	3	1	0	3	4	1	1	0	0	0	0	16
North Sydney Municipal Council	0	1	2	0	1	0	2	1	0	0	0	0	0	0	7
North West Electricity Board	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Northern Rivers County Council	0	0	0	1	1	0	1	0	0	0	0	0	0	0	3
Northern Rivers Electricity	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Oberon Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Orange City Council	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Oxley County Council	1	0	0	0	0	0	1	0	0	0	0	0	0	0	2
Parkes Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Parramatta City Council	2	1	1	3	0	0	0	1	0	1	0	0	0	0	9
Parry Shire Council	0	0	1	1	0	0	2	0	0	0	0	0	0	0	4
Penrith City Council	0	0	0	1	0	1	2	0	0	1	0	0	0	0	5
Pittwater Municipal Council	0	0	1	1	1	0	0	0	0	0	0	0	0	0	3
Port Stephens Shire Council	0	0	2	2	0	0	3	1	0	0	0	0	0	0	8
Prospect Electricity	0	0	0	1	2	0	1	0	0	1	0	0	0	0	5
Queanbeyan City Council	0	1	1	1	0	0	0	0	0	0	0	0	0	0	3
Randwick Municipal Council	0	1	1	0	0	0	3	0	1	0	0	0	0	0	6
Rockdale Municipal Council	0	0	4	1	0	0	0	0	0	0	0	0	0	0	5
Ryde Municipal Council	0	1	1	1	0	0	0	0	1	0	0	0	0	0	4
Rylstone Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Scone Shire Council	0	0	1	0	0	0	0	0	1	1	0	0	0	0	3
Seymour Shire Council	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2

Result of Complaints - Local Government

Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/ remote/ insufficient interest/ commercial matter	Right of appeal/ alternative redress	Explanation/ advice provided	Premature - referred to authority	Formal investigation declined on resources/ priority grounds	Complainant assisted	Withdrawn/ investigation not warranted	Formal investigation declined on resources/ priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Shellharbour Shire Council	0	1	1	1	0	0	0	0	0	0	0	0	0	0	3
Shoalhaven City Council	0	1	1	4	0	0	3	3	1	1	0	0	0	0	14
Shortland Electricity	0	0	1	2	0	0	1	0	2	0	0	0	0	0	6
Singleton Shire Council	0	0	1	0	0	0	1	1	0	1	0	0	0	0	4
Snowy River Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
South Sydney City Council	0	0	0	0	0	0	2	3	0	1	0	0	0	0	6
Southern Mitchell County Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Strathfield Municipal Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Sutherland Shire Council	0	0	1	1	0	0	4	2	2	2	0	0	0	1	13
Sydney City Council	0	1	1	0	0	0	0	1	0	1	0	0	0	0	4
Sydney Electricity	0	1	0	3	3	0	4	1	1	2	0	0	0	0	15
Tamworth City Council	0	0	0	3	0	0	0	0	0	0	0	0	0	1	4
Tenterfield Shire Council	1	0	0	1	0	0	1	0	0	0	0	0	0	0	3
Tumut Shire Council	0	0	1	1	1	0	0	0	0	0	0	0	0	0	3
Tweed Shire Council	0	0	2	0	0	0	3	0	0	1	0	0	0	0	6
Ulan County Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Walcha Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Walgett Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Warren Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Warringah Shire Council	1	0	1	3	0	0	3	3	1	1	0	0	0	1	14
Waverley Municipal Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Wellington Shire Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Wentworth Shire Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Willoughby Municipal Council	0	0	1	2	0	0	1	2	0	1	0	0	0	0	7
Wingecarribee Shire Council	0	1	1	0	0	0	2	0	0	1	0	0	0	0	5

Result of Complaints - Local Government															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Wollondilly Shire Council	0	0	1	0	0	0	2	1	0	0	0	0	0	3	7
Wollongong City Council	0	0	4	2	0	0	5	2	1	0	0	0	0	1	15
Woolahra Municipal Council	0	0	1	1	1	0	2	1	0	1	0	0	0	0	7
Wyong Shire Council	0	0	3	1	0	0	5	1	0	1	0	0	0	0	11
Yallaro Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Yarrowlumla Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Yass Shire Council	0	1	0	0	0	0	1	0	0	0	0	0	0	0	2
Young Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1

Result of Complaints - Public Authorities

Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remota/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Aboriginal Affairs, Office of	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Aboriginal Land Council	1	0	1	2	0	0	0	4	1	0	0	0	0	0	9
Adult Migrant Education Service of NSW	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Anti-Discrimination Board	1	0	0	1	0	0	1	1	1	0	0	0	0	0	5
Attorney Generals Department	3	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Board of Studies	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Broken Hills Water Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Building Industry Task Force	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Building Services Corporation	0	2	3	6	2	0	10	3	1	4	0	0	0	0	31
Charles Stuart University, Riverina	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Chief Secretary's Department	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Community Corrections	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Community Services Department of	4	4	7	12	21	0	19	7	5	6	0	0	0	3	88
Consumer Claims Tribunal	6	0	2	2	0	0	0	1	0	0	0	0	0	0	11
Corporate Affairs Commission	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Corrective Services Department	10	21	15	83	19	5	83	51	22	36	0	0	0	9	354
Dairy Corporation of NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Darroola Joint Water Authority	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Darling Harbour Authority	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dental Board of NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Department of Conservation and Land Management	1	0	1	1	0	0	4	1	2	3	0	0	0	0	13
Department of Consumer Affairs	0	0	4	2	1	0	5	1	0	1	0	0	0	0	14
Department of Courts Administration	2	0	0	3	0	0	3	0	0	0	0	0	0	0	8

Result of Complaints - Public Authorities															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/ advice provided	Premature - referred to authority	Formal investigation declined on resources/ priority grounds	Complainant assisted	Withdrawn/ investigation not warranted	Formal investigation declined on resources/ priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Department of Mineral Resources	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Environmental Protection Authority	0	2	1	0	1	0	1	2	3	0	0	0	0	0	10
Ethnic Affairs Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Forestry Commission of NSW	1	3	1	0	2	0	3	1	0	0	0	0	0	0	11
Government Insurance Office	1	2	2	0	0	0	0	1	0	0	0	0	0	0	6
Government Supply Office	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Greyhound Racing Control Board	2	0	0	0	0	0	1	0	0	0	0	0	0	0	3
Guardianship Board	3	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Harness Racing Authority of NSW	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Health Department (Corrections Health)	0	0	0	1	4	0	8	2	0	4	0	0	0	0	19
Health Department of NSW	9	3	10	9	9	2	11	6	2	1	0	0	0	2	64
Heritage Council of NSW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Home Care Service of NSW	1	0	0	0	0	0	0	0	0	1	0	0	0	0	2
Housing Department of NSW	6	4	8	16	8	2	19	9	4	17	0	0	0	10	103
Hunter District Water Board	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Hunter Water Corporation	0	1	0	2	0	0	1	0	0	0	0	0	0	0	4
Industrial Relations and Employment, Department of	0	0	1	2	0	0	1	2	0	1	0	0	0	0	7
Joint Coal Board	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Land Titles Office	1	0	0	1	0	1	0	0	0	0	0	0	0	0	3
Legal Aid Commission of NSW	0	1	10	17	1	0	10	6	0	5	0	0	0	0	50
Liquor Administration Board	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2
Local Government Department	2	0	0	1	0	0	0	0	0	0	0	0	0	0	3

Result of Complaints - Public Authorities															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remotely/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Local Government Qualifications Committee	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Macquarie University	0	0	2	0	0	0	1	0	0	0	0	0	0	0	3
Maritime Services Board	1	0	2	2	2	0	2	1	1	0	0	0	0	0	11
Medical Board of NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Minister for Environment, Office of	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Minister for Health, Office of	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Ministry for the Arts	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Music Examinations Advisory Board of NSW	0	0	0	1	0	0	0	1	0	0	0	0	0	0	2
National Parks and Wildlife Service	0	1	2	2	1	0	1	1	1	2	0	0	0	0	11
Northern Rivers Electricity	0	0	0	1	1	0	2	0	0	0	0	0	0	0	4
NSW Agriculture	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
NSW Fire Brigades	0	0	0	0	0	0	0	3	0	0	0	0	0	0	3
NSW Fisheries	0	0	0	2	1	0	1	1	0	0	0	0	0	0	5
NSW Special Education Co-ordinating Committee	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Offenders Review Board	2	0	0	0	0	0	3	0	0	0	0	0	0	0	5
Office of Juvenile Justice	1	0	0	4	0	0	10	3	1	8	0	0	0	0	27
Office of State Revenue	0	0	2	4	4	1	6	1	0	1	0	0	0	1	20
Office of the Protective Commissioner	2	0	0	0	0	0	0	1	0	0	0	0	0	0	3
Office of the Sheriff	2	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Pacific Power	0	1	0	0	0	0	1	1	0	0	0	0	0	1	4
Pharmacy Board of NSW	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Planning Department	2	2	0	0	1	0	1	5	0	0	0	0	0	0	11
Police Department of NSW	4	29	0	0	0	0	31	0	0	21	0	0	1	1	87

Result of Complaints - Public Authorities															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remotes/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Power House Museum	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Premiers Department of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Public Prosecutions Office	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Public Trust Office	3	0	1	2	1	0	4	2	1	0	0	0	0	0	14
Public Works Department	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Real Estate Services Council	0	0	0	2	0	0	2	0	0	1	0	0	0	0	5
Registrar of Co-operatives	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Registry of Births, Deaths and Marriages	0	0	1	2	1	0	3	0	0	0	0	0	0	0	7
Rental Bond Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Residential Tenancies Tribunal	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Roads and Traffic Authority	1	1	17	31	8	2	11	11	1	5	0	0	0	2	90
Rural Assistance Board	0	1	0	1	0	0	0	1	0	0	0	0	0	0	3
Rural Lands Protection Board	0	0	0	0	0	0	1	0	0	0	0	0	0	1	2
School Education, Department of	10	2	8	7	3	0	3	4	1	1	0	0	0	2	41
Serious Offenders Review Board	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
State Authorities Superannuation Board	1	0	1	1	2	0	0	1	1	0	0	0	0	0	7
State Bank	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
State Electoral Office	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2
State Emergency Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
State Library	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State Lotteries Office	0	0	0	1	0	0	2	0	0	0	0	0	0	0	3
State Rail Authority	2	3	6	5	2	2	1	6	0	4	0	0	0	1	32
State Superannuation Board	0	0	0	0	1	0	2	0	0	0	0	0	0	0	3
State Transit Authority	0	1	1	0	6	0	0	0	0	0	0	0	0	0	8

Result of Complaints - Public Authorities															
Public Authority	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remotely/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Strata Titles Office	1	0	1	0	1	0	1	0	0	0	0	0	0	0	4
Sydney Market Authority	1	0	0	1	0	0	1	0	0	0	0	0	0	0	3
Technical and Further Education, Department of	0	2	1	2	0	0	2	2	0	1	0	0	0	0	10
Tobacco Advertising Prohibition Committee	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Totalizator Agency Board	0	0	1	1	1	0	2	0	0	0	0	0	0	0	5
Transport, Department of	0	1	1	5	2	0	3	1	0	1	0	0	0	1	15
Universities and Colleges Admissions Centre	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
University of New England	1	0	1	2	1	0	2	1	0	1	0	0	0	0	9
University of New South Wales	1	0	1	0	0	0	1	1	0	0	0	0	0	0	4
University of Sydney	1	0	1	0	0	0	0	0	0	0	0	0	0	0	2
University of Technology	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2
University, Western Sydney, Nepean	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Valuer Generals Department	0	0	2	3	0	0	3	0	0	0	0	0	0	0	8
Water Board	1	3	5	11	2	0	10	5	1	5	0	0	0	0	43
Water Resources Department	0	0	2	1	1	0	1	2	0	0	0	0	1	0	8
Western Lands Commission	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Workcover Authority	0	2	2	3	0	0	0	1	0	0	0	0	0	0	8

Summary of Result Tables

	Assessment Only						Preliminary Enquiries Only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal/alternative redress	Explanation/advice provided	Premature - referred to authority	Formal investigation declined on resources/priority grounds	Complainant assisted	Withdrawn/investigation not warranted	Formal investigation declined on resources/priority grounds	Resolved to Ombudsman's satisfaction	Discontinued matter resolved during investigation	Discontinued - no utility in investigating further	No adverse finding	Adverse finding	
Departments/Statutory Authorities	102	97	131	264	116	10	300	157	56	135	-	-	1	26	1 395
Local Government	12	35	88	126	29	2	140	70	27	51	-	-	-	8	588
Outside Jurisdiction	384	2	1	6	1	-	3	-	-	-	-	-	-	-	397
Total	498	134	220	396	146	12	443	227	83	186	-	-	1	34	2 380
+ Current as at 30/06/93															452
2 832															
- Current as at 30/06/92															386
Total for the Year Ended 30/06/93															2 446

In an effort to increase accountability and more accurately reflect the work performed by the Office, more detailed statistics are presented this year of the breakdown of determinations made on non-police complaints. For comparison with previous years' statistics, Assessment Only refers to DECO results in previous reports, and Preliminary Enquiries Only refers to DECE results.

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