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NSW Ombudsman

safeguarding your interests

19th Annual Report 1993 - 1994



OFFICE OF THE OMBUDSMAN

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

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

Dear Gentlemen,

Under section 30 of the Ombudsman Act, the Ombudsman of NSW is required to submit an annual report to Parliament. This is our 19th annual report and contains an account of our work and activities for the twelve months ending 30 June 1994.

This report also includes an account of the Ombudsman's functions under the *Police Service Act 1990* and material required in terms of the *Annual Reports (Departments) Act 1985*. Developments and issues current at the time of writing (September 1994) 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.

I am pleased to note that during the year the office determined many more complaints than the previous year, with about the same resources.

I draw your attention to the provisions of s.30(3) of the Ombudsman's Act in relation to tabling this report and request that it be made public forthwith.

Yours sincerely

David E. Landa
NSW Ombudsman

October 1994

Who We Are

The Office of the NSW Ombudsman was established in 1974. We are an independent authority and can report directly to Parliament.

What We Do

The Ombudsman's Office protects the rights and interests of consumers of government services. We also help to ensure public officers act fairly and reasonably.

We do not have enough resources to investigate every complaint. We give priority to complaints that affect many people or where there is a serious abuse of powers.

When we investigate a complaint, our prime responsibility is to get the facts and to recommend solutions. We are not on anyone's side. When allegations are made, it's our job to find out the truth.

If a complaint is justified, we will recommend action to fix the problem. This may solve an individual's complaint but more often will focus on fixing deficiencies in the law or with administrative practice, procedures or policies.

To Our Readers

Our annual report is a public record of our accountability. We are accountable to the people of NSW through the state parliament. The first part of our annual report looks at our people, performance and organisation. The remainder of the report is structured around the type of work we do. Investigating complaints is central to our role and this report examines in detail the types of complaints we received last year. It also examines how we communicate with our clients and how we manage our resources.

Front Cover

The front cover cartoon was inspired by a comment by Mr Justice Lee who said in the court case *Moroney v the Ombudsman*:

"[the Ombudsman] can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds."

Most of the cartoons in this report were drawn by Steve Panozzo.

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Overview

Our Charter

The Office of the NSW Ombudsman was established by the *Ombudsman Act* on 18 October 1974. Part 3 of the Act, which enabled us to investigate the conduct of public authorities commenced on 12 May 1975.

From 1 December 1976 the Ombudsman was empowered to investigate certain complaints against local government authorities. In December 1986 that power was extended, allowing us to investigate members and employees of such authorities.

The Ombudsman's powers to investigate complaints against police came into force in 1978 with the *Police Regulation (Allegations of Misconduct) Act*. This role was significantly expanded in February 1984 when we were given the power to directly reinvestigate complaints about the conduct of police officers. The *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993* replaced that Act and amended the *Police Service Act 1990*. The new Act expanded our role in the investigation of complaints about police officers even further.

The *Ombudsman Amendment Act 1989* improved our independence by removing the power to approve the appointment of Deputy Ombudsman and Assistant Ombudsman from Cabinet. Under this Act, this control was given to the Ombudsman.

In November 1987, the Ombudsman was declared to be an inspecting authority in terms of the *Telecommunications (Interception) (New South Wales) Act 1987*. As such, we regularly inspect the records of authorities which intercept telephone calls. The Ombudsman is precluded by law from reporting the results of inspections in the annual report.

On 1 July 1989 the NSW *Freedom of Information Act* commenced. Our office has an external review role under that Act.

Changes to the *Ombudsman Act* in January 1991 meant we were no longer subject to the *Freedom of Information Act* in relation to our complaint handling, investigative and reporting functions. A further amendment in 1993 enabled the Ombudsman to present reports directly to the presiding officer of each House of Parliament.

A Joint Parliamentary Committee was established in December 1990 to oversee the Ombudsman's Office, with a power of veto over the appointment of the Ombudsman.

Our Mission

Our mission is:

"To safeguard the public interest by providing for the redress of justified complaints and promoting fairness, integrity and practical reforms in public administration in NSW."

Our Guarantee of Service

Our Guarantee of Service states:

"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."

Our Values

Our key values are to:

- ◆ act with integrity;
- ◆ vigorously pursue truth, without fear or favour;
- ◆ set aside personal interests and views in the discharge of functions;
- ◆ discharge all duties and responsibilities conscientiously and competently;
- ◆ treat our clients courteously, attentively and sensitively;
- ◆ implement fair procedures; and
- ◆ use our resources efficiently and effectively.

Key Result Areas

The following are some of the key result areas and goals identified in our Corporate Plan (as revised this year).

Investigations

When assessing complaints we aim to give priority to complaints which identify structural and procedural deficiencies in NSW's public administration; individual cases of serious abuse of powers, especially where there are no alternative and satisfactory means of redress; and to ensure the timely and accurate assessment of complaints.

When handling complaints we aim to ensure that all complaints are dealt with promptly, appropriately, effectively and efficiently; to achieve our Guarantee of Service; to develop and promote the effective mediation and conciliation of complaints, where appropriate; and to promote the development and implementation of effective internal complaint handling in public authorities to improve accountability and customer satisfaction.

In relation to complaint outcomes we aim to identify, investigate and report on, in particular: structural and procedural deficiencies in public administration; and individual cases of serious abuse of powers; to achieve improvements in public administration in NSW through such things as informal negotiation, advice, guidelines, information and recommendations; and to resolve complaints about defective public administration through mediation, conciliation or explanation, where appropriate.

Freedom of Information

To ensure agencies implement the *Freedom of Information Act* in accordance with its terms and objects.

Telecommunications interception

To ensure compliance of eligible authorities with the *Telecommunications (Interception) (NSW) Act 1987* in order to provide a balance between the interest of the community in having serious crimes solved and the privacy of individuals.

Access and awareness

To increase Parliamentary and community awareness of the role and functions of, and services offered by, the Ombudsman.

To promote access for Aboriginal and Torres Strait Islanders, disadvantaged and ethnic groups, and people with disabilities.

The Corporate Plan also contains human resources, finance and information technology goals.

Safeguarding public interests by redressing justified complaints and promoting fairness, integrity and practical reforms in NSW's public administration.

Ombudsman's

Surviving and Thriving into the 2000's

As this is my last annual report as Ombudsman it is appropriate I report on some of the major changes to my office during my stewardship.

In this overview I outline how my office has met the challenge to survive as a healthy body, giving value to the public it serves, while positively impacting on the state's administration service delivery. It is an outline of giving value for money - a return on funds invested in the institution.

The Challenge

When I first became Ombudsman, there were few guidelines to cope with the challenge of change. As a product of the early 1970's, the institution was extremely new to Australia.

When adopted, the Ombudsman was valued more by politicians and governments as a symbolic feature of a mature democratic system. By the late 1980's that enthusiasm had waned. Pressing financial problems confronting all governments brought about a change of emphasis. Governments started questioning whether they could still afford such institutions and whether they were still performing functions of value. The Ombudsman, a creation of Parliament, could not look to its parental body for the financial and moral support it had come to expect.

Funds were curtailed and as the public sector was down-sized, more, rather than less was expected of the Ombudsman. In addition, the government saw that by giving the office new functions, the cost of setting up separate bureaucracies could be avoided. In NSW, auditing the records of the agencies authorised to intercept telecommunications

was added to my responsibilities as a curious additional function. Freedom of information and jurisdiction over Aboriginal Land Councils soon followed. Now whistleblower legislation is about to be effected. On the one hand such actions demonstrate confidence in the office. However, it tended to raise public expectations and the opportunity to disappoint our client base grew.

Added to this, the public were confused by the use of the term 'Ombudsman' in private industry.

How Could We Survive?

While it was unlikely the Ombudsman would disappear, it seemed possible that expansion of its principles was handicapped.

Our first reaction was instinctive and protective. Our attention focused on advising Parliament through a series of reports of the financial difficulties confronting the office. It is easy to see now that this was a naive approach which could have eroded public confidence in the office. The public had come to expect the Ombudsman to be effective in its purpose - negative reports tended only to cut away this hard won confidence. It became clear that the way to survival was to **prove the value of the office.**

Establishing Our Value

There are two ways to establish the office's value. They may seem to run counter to one another but they need not - and indeed will only be effective if they do not. The Ombudsman must establish:

1. a public position so government threats of funding cuts or reduction of jurisdiction will be politically impossible; and
2. acceptance within the public service as a valuable management tool.



Achieving these goals requires a fine but not impossible balance. The Ombudsman's Office most at risk is that which has no public profile. Even if it is a useful management tool, in times of economic stringencies such an office will still be seen as a luxury that can be done without. If there is no public to make a fuss, an Ombudsman's Office can quietly disappear.

Good media relations

Under my stewardship we developed strategies to keep our work in the media spotlight. While partially handicapped in this endeavour by strict secrecy provisions and

lacking the legislative power to make public statements, we highlighted notable cases of public interest in a series of special reports to parliament. We also put significant resources into producing annual reports that show the work we do and achievements made.

The Commonwealth Ombudsman carried out a significant survey in 1991. The NSW Ombudsman had the highest public identification rate in Australia. Our own research shows the media is the main source of information for potential complainants to learn about the Ombudsman's existence.

Report

Furthermore, publicity is the Ombudsman's ultimate weapon to influence public authorities to implement recommendations. Developing good media relations is, therefore, a fundamental survival strategy.

A valuable management tool

Before 1992 we identified key target areas where we could be of value to the public sector.

Firstly, we developed a strategic focus for assessing complaints. Given that our resources only allow us to make inquiries or carry out investigations on slightly more than half the complaints we receive, we started giving priority to complaints that indicated systemic deficiencies in public administration and individual cases of serious abuse of power.

The search for system fixes became our focus over and above, but without forgetting the need to redress the individual grievances of the complainant.

This year I am able to report to Parliament that 79 per cent of the recommendations made in the reports under the Ombudsman Act involved changes to law, policy or procedures.

With 91 per cent of recommendations implemented, this is a substantial achievement in terms of the Ombudsman contributing to real public sector reforms and not simply being a body to mollify unhappy customers of government services.

Secondly, we recognised we were in a privileged and unique position to use the data, intelligence and corporate knowledge gleaned from the complaints we receive. This information is a valuable public sector management tool and we embarked on putting this knowledge and data to good use. We set about a proactive program to improve communication with public sector agencies and encourage better complaint handling and the provision of quality service by those agencies.

Complaint handling in the public sector (CHIPS)

The first major initiative was to survey the NSW public sector to examine how agencies identified and managed grievances. Agencies willingly cooperated but the exercise revealed that less than 20 per cent had

systems in place. They were nevertheless receptive to the implementation of systems suited to their needs. Drawing on our vast experience of grievances and the resolution of complaints we saw we would be able to provide useful guidelines. Thus began the Complaint Handling in the Public Sector (CHIPS) program. The first phase of CHIPS was the production of a booklet *Guidelines for Effective Complaint Management*. These basic guidelines were very well received and are still in high demand. A second edition is being prepared. Some agencies have incorporated these principles into their own internal complaint systems and others have endorsed them. The Department of Local Government for example has issued a practice note on complaint handling to all councils in NSW. About 90 per cent of that practice note is taken verbatim (with acknowledgment) from our booklet.

Introducing agencies to mediation

The next logical step was to create a training model, introducing agencies to alternative dispute resolution skills. Initially, courses were designed to train mediators. To date more than 150 public servants have been trained to accredited standards as mediators and are now registered to a central panel and available for use across the whole of the state's public sector. My office is now designing courses for other aspects of the process. By introducing better systems in this area and securing their acceptance through the public sector, my office saves the government many times the cost of our own budget. Consultation involving the CHIPS program has opened up greater contact between the Ombudsman and most agencies. It is freeing up, as a result, formalities that otherwise protract the process of investigations. It has expanded into direct consultation between myself and CEO's on complaints about denial of access under FOI legislation in an endeavour to bring about more rapid resolution through alternative dispute resolution. Success has been notable here.

Streamlining external review of FOI complaints

I am introducing another tool to facilitate freedom of information external reviews. Up to now, where my office disagrees with a

determination the approach has been to prove our view. I now intend to focus more on the clearly stated objects of the *Freedom of Information Act*, and as a further method of external review reverse the onus of proof at the beginning of the process. Agencies may be asked to justify to my office why access to documents has been refused. If the forthcoming justification fails to convince my office, the general presumption will be that the documentation should have been released, and this is likely to be the recommendation in any report. To assist agencies I will soon publish my first *FOI Policies and Guidelines*.

Freedom of information is of significantly less use if disclosure of information cannot be achieved in a reasonable time frame. We are currently re-engineering our external review procedure in an effort to speed up turn around times and increase the procedure's credibility with users.

Informal assistance in customer relations

In a further search of ways to upgrade performance, we offered one of our senior investigation officers to a complaint prone agency. The officer worked within the agency's customer relations section to identify problems and advise remedial administrative action. This three day exercise proved valuable. It identified areas for reform that were readily adopted to good effect by the agency. Significantly the investigation officer was able to identify that progress had been made by the agency in recent times. This indicated that much of the perception of its poor performance was historical baggage - the agency was already on the way to upgrading its performance. This acknowledgment was, I hope, encouragement to further pursue improved service qualities.

Customer response information system

It must be recognised that to make proper use of the resources represented by complaints, that there has to be enough of a system to record, classify, aggregate and analyse, and then report in ways that will provide feedback and drive necessary change. My office has installed and now trialled for almost a year a specialist customer service software package (CRIS) which is demonstrated on an ongoing basis to agencies as part of the

education process. The system is designed to speedily log details of all telephone complaints and prompts our inquiry officers with relevant information and advice which they can give to the complainants. This ensures consistent and high quality advice is provided to the public. The sophisticated statistical reporting features of the software mean we can also track complaint trends easily and use that data to target our investigation resources.

Complainant satisfaction survey

In promoting the right of citizens to expect quality service from government agencies, we have been telling public sector agencies they must get to know the expectations and satisfaction levels of their customers. They must start evaluating their services through the eyes of the customers and be prepared to change their procedures as far as possible, and where appropriate, to better meet those expectations to increase the quality of service they provide.

In delivering that message I have not been afraid to apply the same principles of accountability to my own office. A major survey of complainants carried out last year canvassed issues of:

- ◆ how people found out about the Ombudsman;
- ◆ their understanding of my role and function;
- ◆ their expectations about what we would do and how long we should and actually did take to do it;
- ◆ how well we identified the crucial issues in their complaint;
- ◆ the ease of understanding our correspondence;
- ◆ the helpfulness and courtesy of my staff; and
- ◆ among many other things, their overall satisfaction with the outcome of making their complaint.

We are now using that feedback to fine tune our procedures and plan information campaigns to target specific groups who were revealed by the survey as having special needs or having unrealistic expectations.

One significant finding of our complainant survey was that the highest levels of complainant satisfaction came from those

This illustration by Jenny Coopes appeared in the Sun Herald, 10 April 1994. It accompanied a profile article by Elizabeth Wynhausen "Reined-in power without the glory".



complainants whose complaints were either subject to the long and relatively costly in-depth formal investigations under the Ombudsman Act (less than five per cent of all complaints) or whose complaints about police misconduct were conciliated without the need for investigation.

This has given further impetus to my attempts to get the police to conciliate more complaints as opposed to conducting costly, and usually nonproductive investigations.

Public authority satisfaction survey
We have now done a similar survey of all public sector agencies. We are intent on examining our performance in light of agencies' perceptions in the same way as we adjusted procedures to our complainants' responses. Without customer surveys an Ombudsman's Office cannot measure its performance and satisfaction rating.

Data from these surveys has also given us reinforcement for pursuing our proactive program to encourage alternative dispute resolution in public sector agencies.

Conciliation of police complaints

The police currently absorb 64 per cent of our resources. The Joint Parliamentary Committee on the Office of the Ombudsman emphasised

the need to lift conciliation above the six per cent rate achieved by police over the first five years of my term. I had reported adversely to Parliament on two occasions in this period, on the failure by police to emphasise this most basic tool of customer satisfaction.

Recently, working closely with the Police Association and police management in the area of professional responsibility, a 300 per cent improvement was achieved. Conciliations are now running at 22 per cent of total police complaints. This success rate, however, is still not considered adequate. Together we identified the obstacles and effected a change of process that undoubtedly will now clear the way to reaching the current target of 40 per cent.

When this happens, resources of both my office and the Police Service will be freed to move into areas of greater need. It is a reform that has the potential of saving hundreds of thousands, and possibly up to several million, dollars now spent by the police and my office conducting and monitoring formal police investigations of complaints.

Major investigations of public interest

A further strategy to reinforce our value and credibility has been my preparedness to conduct major investigations of public interest issues with the cooperation of, or at times at the request of, Ministers of the Crown and Parliamentary Committees.

In 1990 my Assistant Ombudsman conducted an investigation into allegations of systematic bashings in the NSW prison system at the request of the then Minister for Corrective Services. It was a major investigation utilising Royal Commission powers in which evidence was taken from 149 witnesses. Special supplementation was approved by Treasury to fund the inquiry.

Last year my office conducted a major preliminary investigation of the Department of Housing and Treasury's involvement in the Homefund housing loans saga. This investigation, designed to complement the

work of the Parliamentary Select Committee, involved examining hundreds of files and provided the documentary base upon which the Select Committee relied. The investigation was funded by the Select Committee and cost a mere \$52,000.

Currently, I am conducting a major review of race relations and the NSW Police Service. The inquiry is a major undertaking. A discussion paper identifying issues for public submissions was released in June. This is the first time an investigation by the Ombudsman has invited submissions from the public. The inquiry is partly funded by the Ministry of Police, indicating a commitment from the government to address the problem and is expected to cost no more than \$100,000.

This may seem a departure from traditional roles played by the Ombudsman, but such inquiries are an important role for an organisation uniquely placed to identify problems and recommend changes.

Have We Met the Challenge?

Does all this work achieve recognition? The answer of course is mixed. I feel confident in saying the existence of the Ombudsman's Office in NSW is unlikely to be questioned in the immediate future due to our quality of work and our public visibility. Our procedures and approaches have been subject to several inquiries by Parliamentary Committees over the past five years and the quality of our investigations have never been faulted.

After a long battle, I have recently been granted a substantial capital grant to upgrade the information technology used by my office to better equip us to do business. I have not received any extra funds for the implementation of my new police powers.

Relations with government are never easy for an Ombudsman and their responses do not always make sense in terms of administrative logic.

On the positive side, however, the outcome of the new proactive approach, has already provided undoubted benefits, not the least of which is improvements to the financial situation of the office assisting it to function more effectively.

It might be said also at this time that the office has been forceful in forging its own destiny. It is not appropriate to detail here the major administrative changes to my office, however, it may be noted that we have undertaken major administrative reforms which have produced savings equivalent to five per cent of our total budget, which have been transferred into investigation resources to deal with the increasing complaint load. I raise this here simply because if the Ombudsman is to survive, the office must demonstrate it functions efficiently as well as effectively, if it is to command respect for its process. Above all, I believe my office is now better equipped by this change of focus. I believe it will remain a resource for the public sector, relevant to government and to Parliament, while not losing sight of the complaint-handling role itself. The basic thing is that an Ombudsman can never take jurisdiction and function for granted. An Ombudsman must continually question, "What are we here for? What outcomes should we be achieving? How can we do things better?"

Conclusions

I have confidence the Office of the Ombudsman will continue to play an important role in the administrative framework of NSW. It has met and risen above all of its challenges to date, and has come through stronger than before. That is as it should be, because in my view the concept is one of the most exciting additions to the administrative framework that has come about this century.



David Landa
NSW Ombudsman

The year at

Notable Achievements

- ❖ 7,364 complaints determined - over 1,000 more than 1992-1993.
- ❖ 56 per cent increase in number of police complaints conciliated.
- ❖ 4 per cent decrease in average turnaround time for investigations since 1992-1993.
- ❖ Ombudsman vindicated in Supreme Court challenge by Police Commissioner in relation to our investigation and proposed adverse comments about the Commissioner's decision to drop Raymond Denning from the Witness Protection Scheme.
- ❖ Christopher Barnes awarded his Higher School Certificate.
- ❖ RTA transfer of vehicle registration system improved to better protect owners.
- ❖ Building Services Corporation implements new consumer protection procedures.
- ❖ Police allow telephone call following arrest.
- ❖ Police notify parents of child's attendance at police station.
- ❖ Department of School Education reviews notification procedures for child sexual assault allegations.
- ❖ Department of Community Services commissions independent investigation into a state run accommodation service for children with disabilities.
- ❖ Wollongong City Council transfers land, acquired in questionable circumstances, back to residents.

- ❖ Maclean Council reviews procedures for dealing with unauthorised work.
- ❖ Lord Howe Island Board develops new tender procedures.
- ❖ Ashfield Council appoints risk manager to deal with liability claims.
- ❖ Inmates compensated for lost property worth more than \$34,000.
- ❖ Department of Corrective Services reviews buy ups policy and process of internally charging inmates.
- ❖ Improved security of urine testing by the Department of Corrective Services.
- ❖ New contact visit area planned for Maitland Correctional Centre.
- ❖ More than one third of our investigation staff receive professional mediation training.

Challenges

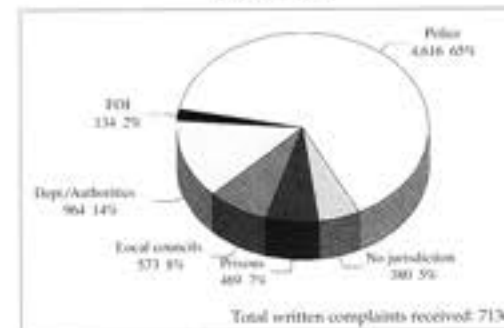
- ❖ Continuing legal action from authorities attempting to prevent the Ombudsman investigating their conduct.
- ❖ No resources provided to implement new direct investigation powers in relation to police conduct.

The Future

In the coming year we will aim to:

- ❖ increase the number of disputes resolved through mediation and conciliation;
- ❖ further develop our public awareness programs;
- ❖ improve our liaison with other investigative agencies; and
- ❖ improve agencies' compliance with the terms and objectives of the *Freedom of Information Act*.

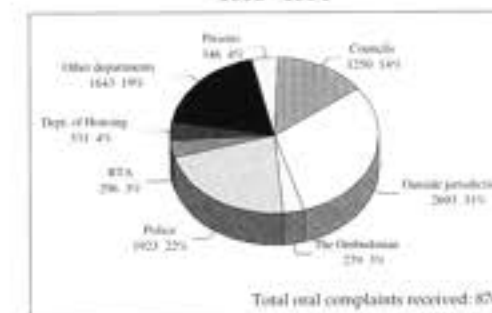
Total Written Complaints Received
1993 -1994



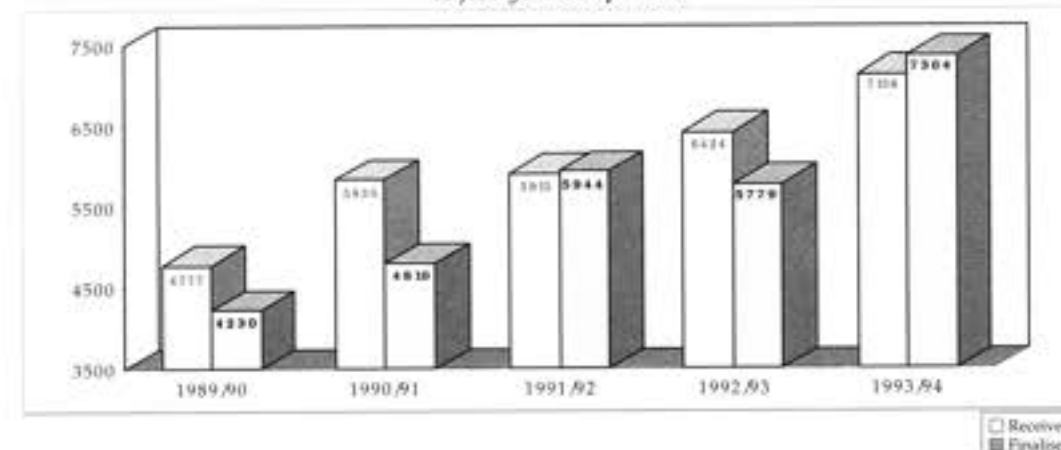
Formal Reports
1993 - 1994

Departments and authorities	6
Local councils	6
Prisons	1
FOI	1
Police	
Sustained	424
Not sustained	400
TOTAL	838

Subject of Oral Complaints
1993 -1994



Written Complaints Received Compared to Complaints Finalised
A five year comparison



a glance

Our

We are organised around the types of complaints our clients bring to us. Most complaints are about the police service and its officers. Therefore more than half of our people work in a team which specifically deals with complaints about police. Complaints about other state government authorities are dealt with by our general team.

The type of people who work for us as investigators come from a wide range of backgrounds, including:

- ❖ state, federal, Hong Kong and military police;
- ❖ local government and town planning;
- ❖ specialist local government and environmental law
- ❖ youth and community work,
- ❖ parole work,
- ❖ mediation;
- ❖ journalism, teaching, policy advice, librarian, accounting, management consulting; and
- ❖ other investigative agencies.

The unique mix of people and expertise within the office ensures the workings of the public sector are thoroughly understood and positive and useful recommendations are consistently made.

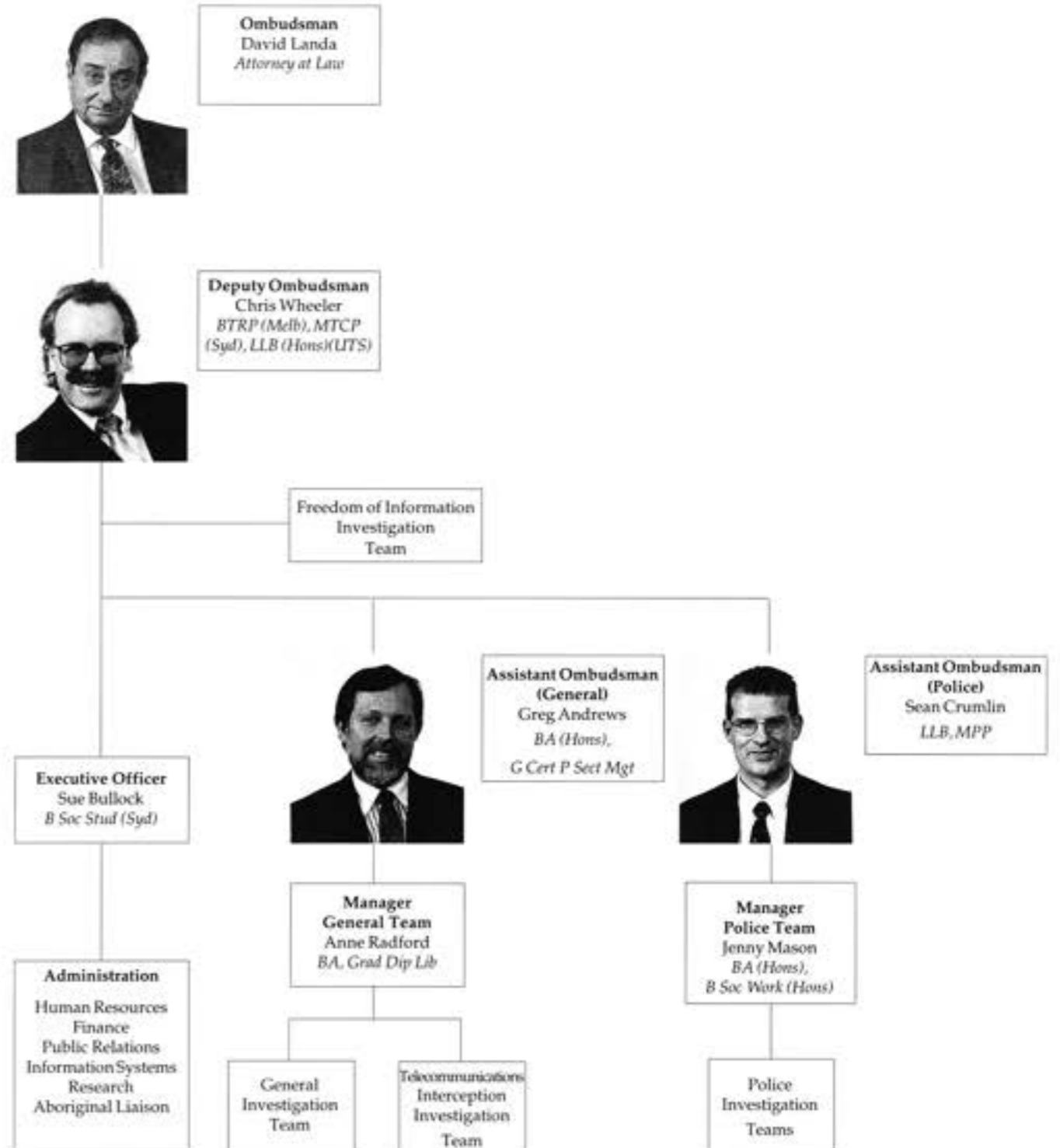
The principal officers for the period of this report were:

- Ombudsman**
David Landa, Attorney at Law
- Deputy Ombudsman**
John Pinnock, BA LLM (Syd), (to 28.6.1994)
Chris Wheeler, BTRP (Melb), MTCP (Syd), LLB (Hons)(UTS) (from 29.6.1994)
- Assistant Ombudsman (General)**
Greg Andrews, BA (Hons), G Cert P Sect Mgt
- Assistant Ombudsman (Police)**
Kieran Pehm, BA LLB, (to 5.5.94)
Sean Crumlin, LLB, MPP, (from 23.5.94)
- Complaints Manager (General)**
Anne Radford, BA, Grad Dip Lib
- Complaints Manager (Police)**
Jennifer Mason, BA (Hons), B Soc Work (Hons)
- Executive Officer**
Sue Bullock, B Soc Stud (Syd)

The Ombudsman is a member of the Community Services Review Council by virtue of his office. The Assistant Ombudsman (General), Greg Andrews, is a nonvoting member of the Prisoners Legal Service Advisory Sub Committee of the Legal Aid Commission.

Parliament

Joint Parliamentary Committee of the NSW Ombudsman



Organisation

Our

The Ombudsman has the power to call on witness to give evidence. We conduct about 12 major hearings each year as part of our investigative process (left).



Our inquiries people provide the first point of contact for most of our clients. Our inquiries section took nearly 9,000 oral complaints during the year (right).



We are particularly concerned in making authorities more accountable to their clients and proactive in their complaint management. We work with them whenever possible to ensure this occurs (left).



Our officers finalised nearly 7,000 written complaints last year, so although we work in the field as often as possible, most work was done in the office (right).



Formal investigations often take longer than most people think. They are usually very time and resource consuming. Evidence must be gathered from various sources and witnesses interviewed.



Our officers visit all correctional centres throughout the state on a regular basis to take complaints from prisoners and discuss issues with staff. During the year officers visited every centre in the state at least once.

People

Our

Corporate Goals	Achievement Indicators
<p>Complaint Assessment To give priority to complaints identifying structural and procedural deficiencies in NSW's public administration and individual cases of serious abuse of powers especially where there are no other means of redress.</p>	<p>92% of complaints under <i>Ombudsman Act</i> assessed within 24 hours of receipt.</p> <p>90% of complaints under <i>Police Service Act</i> assessed within 48 hours of receipt.</p> <p>Average time taken to send acknowledgements on <i>Ombudsman Act</i> complaints: 4.6 days</p> <p>Police complaints declined at outset: 80% notified within 14 days</p> <p>Requests for review of determinations as percentage of total complaints finalised: <i>Ombudsman Act</i> complaints 7% Police complaints 3.7%</p> <p>Complaints within jurisdiction declined at outset: <i>Ombudsman Act</i> complaints 35% (44% in 92/93) Police complaints 35% (42% in 92/93)</p>
<p>Complaint Resolution To resolve complaints about defective public administration.</p>	<p>61% of complaints within jurisdiction of <i>Ombudsman Act</i> resolved through provision of information/advice or constructive action by public authority (23% increase over 92/93 results).</p> <p>56% increase in number of police cases conciliated.</p> <p>84% satisfaction rate among complainants with police complaints conciliated.</p> <p>Over one third of investigation staff have received professional training in mediation.</p> <p>82% of complaints made under <i>Ombudsman Act</i> finalised in less than 60 days (average: 51 days).</p> <p>Only 7% of complaints within jurisdiction of <i>Ombudsman Act</i> declined at outset for reasons of resources or priority.</p>

Note: These corporate goals relate to our Corporate Plan prior to its revision in mid 1994.

Corporate Goals	Achievement Indicators
<p>Investigations To promote practical reforms in public administration through recommendations arising from effective resource efficient investigations employing fair procedures.</p>	<p>91% of recommendations made in reports under s.26 <i>Ombudsman Act</i> implemented.</p> <p>87% of recommendations made under Police Services Act implemented.</p> <p>79% of reports under <i>Ombudsman Act</i> and 14% of reports about police misconduct under <i>Police Service Act</i> contain recommendations involving changes to law, policy or procedures.</p> <p>4% decrease in average turnaround time for investigations since 92/93.</p>
<p>Complaints Handling in Public Sector To promote the development of effective internal complaint handling in public authorities to ensure accountability and customer satisfaction.</p>	<p>120 public sector officers have completed Ombudsman mediation training courses since inception.</p> <p>11% of complaints within jurisdiction of <i>Ombudsman Act</i> declined as premature and referred for internal complaint resolution.</p> <p>Customer Response Information System implemented to log telephone complaints and demonstrated to range of public authorities.</p>
<p>Corporate Services To provide quality management support to enhance service delivery and provide effective accountability mechanisms to meet the Ombudsman's statutory obligations and corporate objectives.</p>	<p>Review of organisational structure completed and reforms implemented.</p> <p>Performance management system developed and being progressively implemented.</p> <p>Review of work practices in light of complainant satisfaction survey results completed.</p> <p>Information technology strategic and tactical plans developed.</p>

Performance

Corporate Goals	Achievement Indicators
<p>Financial Services To make the most effective use of financial and physical resources through financial planning and control.</p>	<p>Activity based costing implemented.</p> <p>Issue of unqualified certificate by Auditor-General</p> <p>98% of accounts processed on time.</p> <p>100% of financial returns and reports provided to Treasury on time.</p>
<p>Human Resources To ensure productivity, staff development and a creative, safe and satisfying work environment.</p>	<p>Investigation techniques course developed with Australian Federal Police and attended by 80% of Ombudsman investigation staff.</p> <p>73% of staff participated in formal training activities.</p> <p>3.65% of total salaries expenditure dedicated to staff development.</p> <p>Negotiations for an enterprise agreement begun.</p>
<p>Public Image To increase community awareness of the role of the Ombudsman and promote access to the office for disadvantaged groups.</p>	<p>All adult and juvenile correctional centres visited.</p> <p>13 major country towns received public awareness visits in addition to regular visits to Newcastle and Wollongong.</p> <p>Multilingual information pamphlets produced.</p> <p>Specialist investigation teams created.</p> <p>Lectures delivered to 7 police training courses and 8 intakes of prison officers.</p> <p>Audits of conciliation records conducted at 6 police stations.</p>

Joint Parliamentary Committee

Amendments to the *Ombudsman Act* in 1990 created a committee known as the Joint Parliamentary Committee on the Office of the Ombudsman. The committee has broad functions relating to the monitoring and review of the exercise by the Ombudsman of his functions under various Acts. This power does not extend to reconsidering the exercise of the Ombudsman's discretion to investigate or not investigate matters, or determinations he makes relating to particular investigations or complaints.

The committee carried out two major inquiries during the year:

- ❖ **Inquiry into the Adequacy of the Funds and Resources Available to the Ombudsman** was completed with the issue of the committee's report in September 1993.

This was the first major external review of the operations of the Ombudsman's Office since its inception. As part of its inquiry, the committee commissioned KPMG Peat Marwick to carry out a management review of the office.

The major recommendations arising from the inquiry including an organisational restructure of the office were adopted and have since been implemented.

- ❖ **Inquiry into the Level of Understanding of Young People, Aborigines, Members of Ethnic Communities and Minority or Disadvantaged groups, of the Role of the Ombudsman and the Extent of Their Access to His Office** was completed with the issue of the committee's report in September 1994.

The report was supportive of a number of initiatives of the Ombudsman including client satisfaction surveys and outreach visits and made a series of recommendations to strengthen these approaches. These were under consideration at the time of writing.

The committee also holds regular meetings with the Ombudsman during which members have the opportunity to raise particular matters of interest and responses to the recommendations arising from the committee's inquiries are monitored.

Complaints About Our Office

The Ombudsman encourages public sector agencies to view complaints as an opportunity to measure client satisfaction. Complaints are a source of information and useful feedback for improving services. An organisation's ability to respond to complaints in a positive and constructive manner is an essential component of providing quality service and strengthening public support for the agency. Similarly complaints about this office are viewed as an opportunity to enhance our effectiveness. The 15 complaints received this year were dealt with in the following manner.

- ❖ Five complaints were received about refusal to provide assistance and two of the complaints included allegations of rudeness. The complainants were contacted and in each case it was established that the complaints were either outside jurisdiction or that there was an alternative and more appropriate course of action. An explanation was provided concerning the office's procedures and the options available.
- ❖ Four complaints were received from public authorities about bias or lack of procedural fairness. One complaint was referred to an eminent QC to conduct an independent inquiry, while the others were reviewed by senior officers. None of the complaints were found sustained. However explanations of our procedures were provided.
- ❖ One complaint was received concerning the improper use of the office E-mail system. This complaint was included as a term of reference in the formal inquiry mentioned above. The inquiry found there had been an unintentional breach of this office's code of conduct by an officer. The Ombudsman sent a letter of apology to the public authority concerned and issued an instruction to all staff regarding the use of the E-mail system.
- ❖ One complaint was received about the referral of a letter of complaint from a prisoner to the Department of Corrective Services. The matter was investigated and it was found that the complainant's letter was ambiguous in that he had asked for the public authority to be informed of the

matter. Nevertheless the complainant was provided with an explanation and the guideline to staff on disclosure of information in the office's procedures manual was amended to further highlight the need to exercise discretion when determining what information needs to be released when issues of security and possible harassment are involved.

- ❖ One complaint was received about the unreasonable disclosure of information to the wife of a person who was subject of an Ombudsman's investigation. Inquiries were made and it was established that only general information about our procedures had been provided when attempting to contact the husband. Nevertheless we apologised for any distress caused.
- ❖ Three complaints were received about delay. Two were found to be sustained. The caseloads of the officers involved were reviewed and an apology and explanation provided. In one case a written complaint had not been received. The office procedures were explained.

Police

Overview Achievements

Increased productivity

With the same resources, the police team finalised about 900 more complaints compared to the previous year. At the same time we also investigated over 200 more complaints.

In terms of volume and quality the police area team provides one of the best value for money complaint handling services of any agency in the state. With 20 staff, the team finalised 4,718 complaints over the year. In the same period, the rate of requests for review of decisions fell from nearly five per cent to three per cent, indicating increased satisfaction of complainants with outcomes.

Conciliation

The Ombudsman believes punitive measures are appropriate only in cases of obvious misconduct by police officers. We are working to promote conciliation as an alternative way to resolve disputes. Our advances are reflected in the increase of conciliations from 14 per cent of total complaints determined in the previous year to 18 per cent last year.

During the year we encouraged the Police Service to develop what we hope is a genuine commitment to conciliation. We helped develop a conciliation agreement between ourselves, the Police Service and Police Association. Staff then worked with the service to develop a consistent and comprehensible procedure.

Consultation

We successfully improved our dialogue with the community and the Police Service. Representatives of the police area team regularly addressed public and police groups. In addition we regularly met with senior management from the Police Service and ICAC to identify and resolve policy and process issues of mutual concern.

Systems approach

The police team took a systems approach to improving police processes.

The Commissioner's Instructions guide police in their daily duties. We have continued to focus on the instructions as a means of effecting change in police conduct. Some of the changes recommended by our office and adopted by the Commissioner follow.

Telephone call after arrest

For many years people who were arrested and demanded a phone call were told "you've been watching too many movies". Following representations from the Ombudsman the Police Service has agreed to amend the Commissioner's Instructions so officers must now tell people arrested they may make a call. Previously a telephone call was only allowed after a person was charged.

Parents to be notified

Following representations from the Ombudsman, police are now to notify parents if their child attends a police station, voluntarily or otherwise, in relation to police matters involving them. Previously police notified parents or guardians only if the child was to be interviewed.

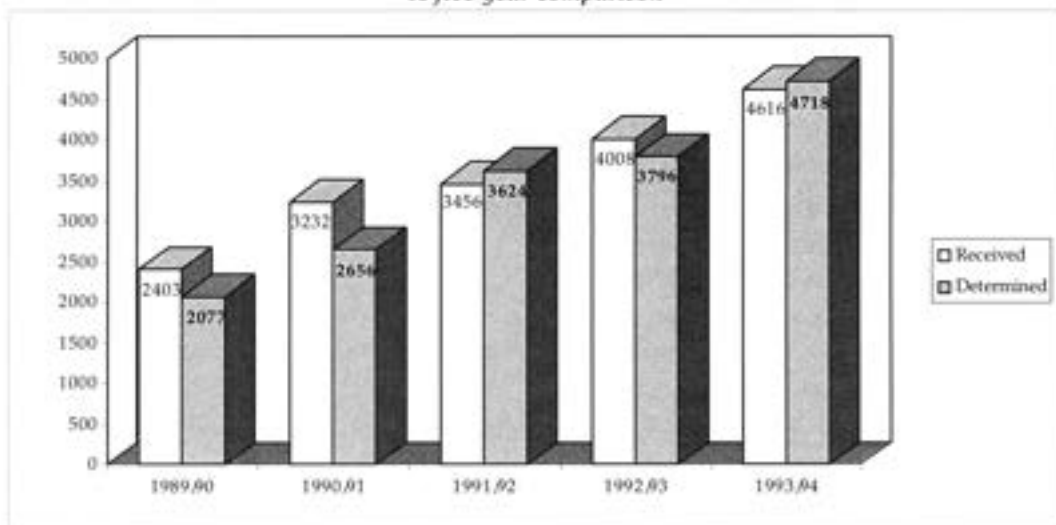
Maintaining ethical standards

We recommended the Commissioner's Instructions define when police should not involve themselves in investigations concerning their neighbours, friends or family. As a result the Ombudsman is pleased the Commissioner has adopted the following instruction.

Be aware that situations can arise where there is a conflict between your duty as a police officer and the demands of members of the community to act, or omit to act, in a manner which is in contradiction to your official

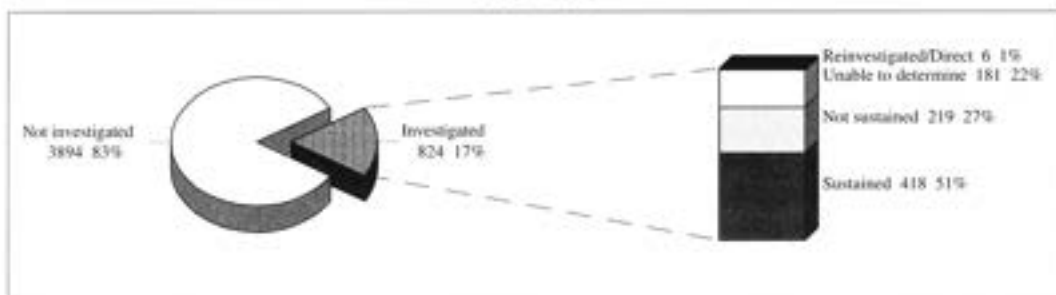
Police Complaints Received Compared with Complaints Determined

A five year comparison



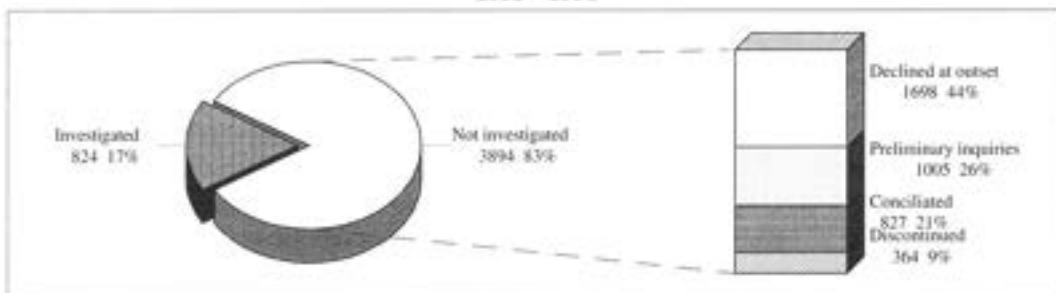
Police Complaints Investigated

1993 - 1994



Police Complaints Not Investigated

1993 - 1994



position. These demands could come from family or friends. Do not allow yourself to be put in a position where there is an apparent conflict of interest and be conscious of the community's perceptions of the police role. Where persons with whom you are closely associated or are the subject of a police inquiry, you should seek to distance as far as practicable, from that inquiry.

In addition, the instruction advising police not to involve themselves in neighbourhood disputes has been amended. The instruction states officers should not become involved in police matters concerning friends or relatives or in which they have a direct personal interest. Such cases should be referred to other members of the service for action.

Releasing confidential information

Police are not permitted to release confidential information without proper authority. Following representations from the Ombudsman, the instructions were amended to advise police not to release information obtained from police computer systems to anyone outside the Police Service without the written authority of the officer's Commander or Branch Manager.

Powers of arrest

For many years the Ombudsman recommended changes to the guidelines for police exercising the powers of arrest. The Commissioner has now listed key points officers should consider when deciding whether to arrest.

For example, in many circumstances police need not resort to arrest to prosecute an offender. These guidelines will ensure a person is not arrested when a summons or court attendance notice would suffice. The seriousness of the matter will remain an essential factor for police to take into account when deciding whether to make an arrest.

Protecting 'whistleblowers'

Protecting a police officer's right to complain anonymously is crucial. Police are compelled to report the misconduct of other police and they can be departmentally charged for failing to do so. The *Police Service Act* provides for anonymous complaints and many police complainants conceal their identity, fearing victimisation, harassment or ostracism if they are seen as a complainant.

The Ombudsman recommended the Commissioner's Instructions clearly define a police officer's right to complain anonymously and prohibit police from attempting to identify such complainants. This has been adopted.

Clearly we have come to recognise that whistleblower legislation and regulation provide only a partial and flawed solution. It is becoming increasingly obvious that a 'safe house' totally remote from the Police Service needs to be established if honest police are to be encouraged and protected when performing their duty - if it involves blowing the whistle on corrupt police.

Challenges

Resources

Our primary challenge is lack of resources. Staff carry heavy workloads and staff turnover is high. Workload and turnover rates mean we can't give every case as much attention as we would like. In addition, **we have not been able to fully use the new powers granted to us under recent changes to the *Police Service Act* because of resource limitations.**

The reality is that powers without necessary resources are not true powers.

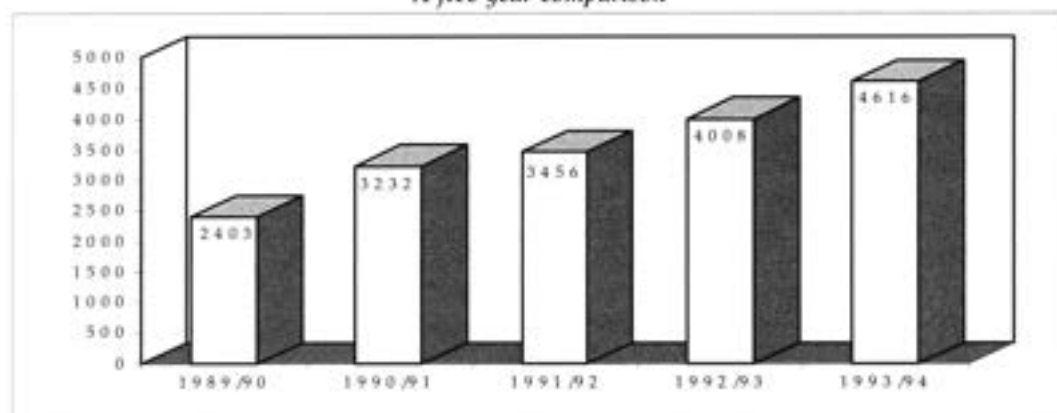
Our figures indicate we sustained 429 cases last year, compared to 182 in the previous year. This statistic indicates we have been using our scarce resources with maximum efficiency.

Litigation

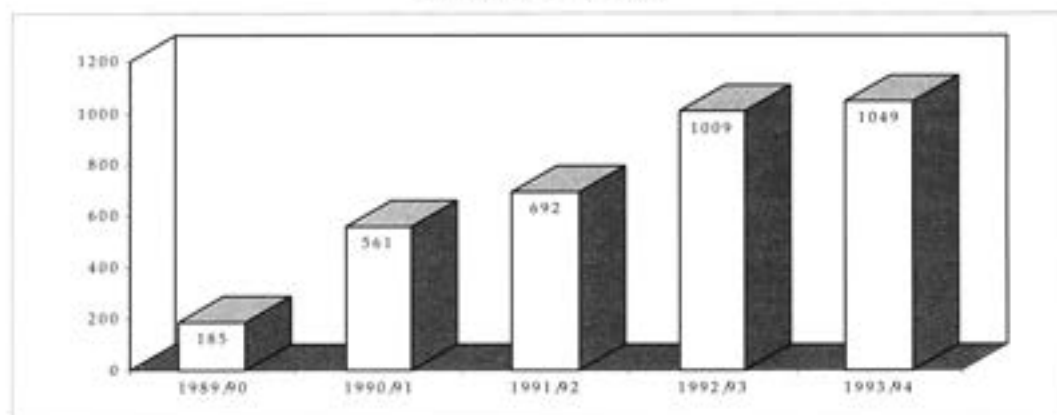
An emerging challenge is the recent police tactic of engaging in litigation to prevent or hinder the completion of important investigations.

We aim to provide a speedy, inexpensive, alternative means of redress. The Police Service appears to be using the courts to frustrate this aim. A pattern is emerging of police lawyers demanding, in significant investigations, a right to cross examine every witness appearing under oath before the Ombudsman and/or full details of all information available to the Ombudsman at the start of investigations. The police claim their demands are made on the basis of procedural fairness. We have always scrupulously provided procedural fairness and have evolved a system to ensure procedural fairness is observed without affecting the speed and effectiveness of our investigations. We are concerned that by

Police Complaints Received
A five year comparison



Complaints by police officers or arising during an internal investigation
A five year comparison



Determination of Complaints Not Investigated
A five year comparison

Year	Total	Declined		Investig'n discor'd	Conciliated
		At outset	After inquiry		
1989/90	1,708	977	503	99	128
1990/91	2,071	1,069	696	135	169
1991/92	2,879	1,529	696	229	424
1992/92	3,182	1,587	851	215	529
1993/94	3,894	1,698	1005	364	827

Investigations and Non-investigations
A five year comparison

Year	Complaints determined	Not investigated		Investigated	
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%
1993/94	4,718	3,894	83%	824	17%

Determination of Complaints Investigated
A five year comparison

Year	Total investigated	Sustained	Not sustained	Unable to be determined	Reinvestigate/direct investigation
1989/90	369	68	75	99	11
1990/91	585	136	197	135	8
1991/92	745	198	318	229	7
1992/92	614	178	249	215	4
1993/94	824	418	219	181	6

granting the police demands, we will slow down and compromise our investigations, make them more expensive, increase the involvement of lawyers in the process, make the proceedings more adversarial, deter complainants from coming forward and generally frustrate our mission. If we refuse to accede to these demands, however, we foresee a continuing recourse of litigation by the police. In the unequal struggle between the slender resources of our office and the very considerable resources of the Police Service the rights of complainants to a quick, inexpensive alternative means of redress will suffer.

Future Directions

In the coming year our police area team will be aiming for achievements in four key areas.

Better value for money

We will aim to provide even better value for money by continuing and intensifying our systems approach strategy. We will use incoming complaints to focus on important police procedural issues and problems and to develop realistic and positive recommendations to overcome those problems. Ethics training for police will be a primary focus.

Improving consultation

We will aim to further improve consultation with the Police Service, complainant representative bodies such as the Legal Aid Commission, and the other relevant investigative agencies such as ICAC and the Royal Commission into the Police Service. To this end we have requested an amendment to the *Ombudsman Act* to remove legal restrictions which limit our ability to consult with other investigative bodies.

Improved consultation will reduce delays and duplication and promote a systematic overall approach to the investigation of police complaints.

Intensify use of powers

We will aim to use our new powers more extensively, energetically and creatively within the limited resources available to us.

In particular we will be using conciliation to ensure minor complaints are handled efficiently and, wherever possible, in a non-adversarial way. We will monitor our direct investigation and reinvestigation powers to

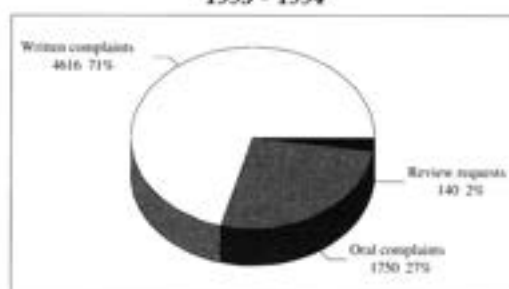
ensure more serious complaints are handled in a suitable manner. We will also vigorously defend, in court and parliament, any attempt to limit or restrict the jurisdiction of the Ombudsman by legal challenges.

Improving processes

We will continue to improve our internal processes to increase efficiency and maximise customer satisfaction. We have analysed the results of our last customer survey and are planning significant changes to our process to improve our customer satisfaction rates.

We will continue to look critically at our approach to conciliations, class or kind agreements with the Police Commissioner, our declines policy, and preliminary inquiries and investigation procedures to identify further opportunities for improvement wherever possible. We will also critically examine our public awareness strategy to identify ways of increasing our exposure to the public and in particular to disadvantaged groups.

**Police Complaints Received
1993 - 1994**



**Determined Police Complaints
1993 - 1994**

Not	Declined at outset	1,698
Investigated	Declined after inquiries	1005
	Conciliated	827
	Discontinued before Ombudsman investigation	364
Not	Not sustained finding	219
Sustained	Unable to be determined	181
	Not sustained following investigation	0
Sustained	Sustained finding without reinvestigation	418
	Sustained finding following reinvestigation by Ombudsman	6
Total		4,718

Police Complaint 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 last year 8,195 allegations were made. The following tables list these in categories and show how each was determined.

Breach of Police Rules or Procedure

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Failure to provide or delay legal rights	40	5	18	27	6	96
Inappropriate disclosure of or access to confidential information	74	44	35	109	10	173
Failure to provide information or notify	37	22	20	9	34	122
Providing false information	71	45	14	20	17	167
Failure to return property	87	9	7	5	23	131
Unreasonable treatment	328	21	52	67	224	692
Drinking on duty	13	6	7	5	0	31
Failure to identify or wear number	11	2	4	7	7	31
Failure to take action	195	19	42	34	151	441
Traffic or parking offences	97	29	15	7	32	180
Faulty policing	38	1	0	0	20	59
Misuse of office	31	11	10	7	8	67
Accidental property damage	6	1	0	0	5	12
Breach of police rules and regulations	646	298	107	28	16	1,095
Total	1,674	513	331	226	553	3,297

Arrest/Detention/Warrant

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Improper detention of intoxicated person	1	1	0	0	0	2
Unreasonable use of arrest or detention powers	112	17	48	40	16	233
Faulty search warrant procedure	56	8	20	13	8	105
Unjustified search or entry	44	17	36	13	16	126
Unnecessary use of force, damage or resources	70	10	32	43	14	169
Improper use of summons, enforcement order or warrant	63	2	2	0	1	68
Failure to withdraw warrant or accept fine payment	8	1	3	0	0	12
Total	354	56	141	109	55	715

Abusive Remarks or Demeanour

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Race related	14	1	7	15	18	55
Social prejudice	8	0	1	7	3	19
Traffic related	120	1	3	6	184	314
Other	132	18	42	53	95	340
Total	274	20	53	81	300	728

Criminal Conduct

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Murder or manslaughter	2	0	3	0	0	5
Sexual assault	11	11	2	3	0	27
Bribery or extortion	111	3	36	12	0	162
Theft	81	31	49	35	0	196
Drug offences	164	9	28	9	0	210
Dangerous or culpable driving	5	0	1	0	0	6
Telephone tapping	2	0	0	0	0	2
Conspiracy or cover-up	20	9	7	10	0	46
Other (eg perjury)	77	28	22	8	0	135
Total	473	91	148	77	0	789

Assault and Harassment

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Physical or mental injury outside police premises	90	40	74	86	2	292
Physical or mental injury inside police premises	49	5	57	59	0	170
Minor physical or mental injury outside police premises	121	11	38	50	3	223
Minor physical or mental injury inside police premises	95	3	28	36	0	162
Threats or harassment	298	12	73	75	73	531
Sexual harassment	12	7	1	2	6	28
Total	665	78	271	308	84	1,406

Management Issues

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Condition of cells or premises	6	0	0	0	0	6
Delay in answering correspondence	16	0	0	0	6	22
Inappropriate permit or licence action	13	4	1	0	2	20
Administrative matter arising from investigation	0	4	0	0	0	4
Other	46	2	6	0	15	69
Total	81	10	7	0	23	121

Investigations and Prosecutions

Category	Not fully investigated	Sustained	Not sustained	Unable to be determined	Conciliation/resolved	Total
Forced confession	12	1	0	14	1	28
Suppression of evidence	9	1	0	0	1	11
Suppression of evidence (traffic)	1	0	1	0	0	2
Fabrication	77	3	21	16	2	119
Fabrication (traffic)	16	10	5	2	3	36
Unjust prosecution	94	1	13	19	6	133
Unjust prosecution (traffic)	263	0	3	4	13	283
Failure to properly review prosecution	3	1	0	1	1	6
Faulty investigation or prosecution	137	39	25	16	32	249
Faulty investigation or prosecution (traffic)	29	15	2	0	14	60
Failure to prosecute	130	6	13	3	40	192
Failure to prosecute (traffic)	11	0	1	0	8	20
Total	782	77	84	75	121	1,139

Legal Proceedings by the Police Commissioner

The NSW Supreme Court recently dismissed an attempt by the Commissioner of Police, Mr Lauer, to challenge a provisional report by the Ombudsman critical of the Commissioner's decision to remove Raymond Denning from the Police Service's witness protection program.

The proceedings raised two important issues. The first was the jurisdiction of the court to entertain a legal challenge of the type attempted by the Commissioner. The second concerned the merits of the Commissioner's challenge to the Ombudsman's provisional report. The Ombudsman raised no objection to the court considering the merits of the matter prior to determining the threshold jurisdictional issue.

The court found in the Ombudsman's favour on both issues. In relation to the jurisdictional question, the court held the Commissioner had no entitlement to bring the matter before the court. As to the merits of the challenge, the court rejected the Commissioner's claims that the Ombudsman had denied him "procedural fairness" and that the Ombudsman was not entitled to find the Commissioner's decision to remove Mr Denning from witness protection "unreasonable" and "oppressive".

The judgment is noteworthy in a number of other respects:

- ❖ the court specifically referred to "the special position of the Ombudsman in the framework of government" and acknowledged our "unique role" in scrutinising and reporting on the conduct of police and other public authorities;
- ❖ the court recognised our ability to effectively investigate complaints and to issue appropriate reports was not to be impeded by legal challenges to our procedures and findings by public authorities the subject of investigation; and
- ❖ finally, the court articulated the scope and boundaries of the requirements of "procedural fairness" imposed on the Ombudsman.

The Denning matter

Raymond Denning's admission to the Police Service's witness protection program was approved in 1991 as a result of serious threats to his life following his decision to provide evidence in criminal matters. Given Denning's criminal history, he was in a position to provide police and Crown authorities with substantial assistance in criminal investigations and prosecutions. On his release from prison in April 1993, Denning received protection under the program.

However, the following month, Commissioner Lauer decided to overrule the decisions of the Witness Security Assessment Committee and remove Denning from the witness protection program. As the Ombudsman's investigation discovered, the decision was made despite lengthy submissions from the committee that Denning should remain on the program and after considering a one-line recommendation supporting Denning's removal from the program. Denning was given no notice of or reasons for the decision nor an opportunity to arrange alternative means of protection.

On 10 June 1993, Denning telephoned an investigation officer with our office to complain about the decision to deny him witness protection. The following day, Denning was found dead. On 7 July 1993, Denning's family made a formal written complaint to our office about the matter.

The Ombudsman's investigation

The Ombudsman immediately commenced an investigation into the complaint. The investigation included a hearing at which the Commissioner gave evidence about the reasons for his decision to remove Denning from the witness protection program. The Commissioner sought to justify the decision on the basis of his view that Denning could compromise the security of the program. This view was based on an assumption by the Commissioner that Denning would re-offend and a further assumption that Denning would then be in a position to disclose details of the witness protection program to other prisoners, thereby undermining the security of the program.

In a detailed provisional report, the Ombudsman found the Commissioner's assumptions were unreasonable. On this basis,

the Ombudsman concluded the Commissioner's decision to remove Denning from the witness protection program was itself unreasonable.

The Commissioner was given a confidential copy of the provisional report in February 1994 and invited to make submissions. There followed a considerable exchange of correspondence and the hearing of oral submissions in relation to the matters canvassed in the provisional report.

The Ombudsman then prepared a revised 'provisional report'. This document reiterated the findings critical of the Commissioner's conduct. A copy of the revised provisional report was provided to the Commissioner in May 1994. On the same day, the Ombudsman also provided a copy of that report to Denning's family on a confidential basis and invited their comments on the matter. Following receipt and consideration of those comments, the Ombudsman was about to prepare a final report on the outcome of his

investigation. Under the relevant legislation, the Ombudsman was required to inform the Minister of that report for the purposes of a possible consultation.

The legal proceedings

On 18 July 1994, before the Ombudsman could prepare his final report and advise the Minister, the Commissioner instituted his legal challenge in the Supreme Court.

The basis for this challenge was twofold. Firstly, the Commissioner claimed the Ombudsman had failed to provide the Commissioner with "procedural fairness" in preparing the provisional report. Secondly, the Commissioner argued the Ombudsman was not entitled to make findings that the Commissioner's decision was "unreasonable" and "oppressive" to Denning. On these grounds, the Commissioner sought an order from the court preventing the Ombudsman from sending a report on the matter to the Minister for Police.

There was a high level of media interest in the Denning matter.

Lauer 'unreasonable'
Landa slams 'frivolous' court case
Police fears of Ombudsman
Ombudsman criticises police chief
Lauer is thwarting me: Landa
Denning quiz: rap for Lauer
Lauer bid to gag me, says Landa
Ombudsman attacks police chief over dead informer
Lauer attacked for bid to gag Denning report
Lauer tries to gag Landa's critical report
Lauer blocks ombudsman's report
Dumping put key witness in danger
Lauer 'had report for six months'

Following receipt of the summons initiating the proceedings, the Ombudsman took steps which were designed to, and did, prompt an early hearing of the proceedings in late August 1994.

In its judgment on 9 September 1994 the Supreme Court dismissed the proceedings.

The jurisdiction of the court

The court held that the Commissioner's challenge was not a matter which the court was even entitled to entertain. It is important to explain the basis for the court's decision in this respect.

There are two provisions in the *Ombudsman Act* which are specifically concerned with the circumstances in which legal proceedings can be brought against the Ombudsman. The first of these provisions is section 35A:

"The Ombudsman shall not, nor shall an officer of the Ombudsman, be liable, whether on the ground of want of jurisdiction or any other ground, to any civil or criminal proceedings in respect of any act, matter or thing done or omitted to be done for the purpose of executing this Act unless the act, matter or thing was done, or omitted to be done, in bad faith."

The second provision is section 35B, which enables an application to be made to the Supreme Court "[w]here any question arises as to the jurisdiction of the Ombudsman to conduct an investigation or proposed investigation".

The court decided the effect of these two provisions, properly interpreted, is that the only circumstances in which the Ombudsman is liable to legal challenge is where there is an allegation of bad faith on the part of the Ombudsman or it is claimed the Ombudsman has no jurisdiction to initiate an investigation. The court observed in this respect:

"... Parliament [has] used an appropriate form of words to give effect to the view that the Ombudsman should be immune from judicial review, unless there is bad faith or an attempt to embark on an unauthorised investigation."

In reaching this interpretation, the court had particular regard to "the special position of the Ombudsman within the framework of government", stating:

"... the important point is that the Ombudsman has a unique role to play in scrutinising the conduct of government agencies, reporting to Parliament on the results of investigations and proposing such remedial action as may be required."

The court also recognised:

"Parliament might well take the view that, if the Ombudsman is liable to judicial review, the limited resources of the Office might be diverted or dissipated by repeated challenges in court to his or her powers or procedures."

In the present matter, the Commissioner had not alleged bad faith on the part of the Ombudsman and had no occasion to challenge the Ombudsman's jurisdiction to investigate the Commissioner's conduct. Rather, the Commissioner was attempting to attack the Ombudsman's procedures and findings. This was not a challenge of the type which the court was permitted to entertain.

Procedural fairness

One of the grounds for the Commissioner's attack upon the Ombudsman's provisional report was that it had been prepared without the Ombudsman affording the Commissioner "procedural fairness".

In order to deal with this submission, the court was required to address the nature and extent of the requirements of procedural fairness imposed upon the Ombudsman. The court therefore considered the provisions of section 24(2) of the *Ombudsman Act*, which provides:

"Where ... the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as is practicable:
(a) inform that person of the substance of the grounds of the adverse comment; and
(b) give him an opportunity to make submissions."

The court decided that section 24(2) "is intended to specify the content of the Ombudsman's obligation to accord procedural fairness to a person at risk of an adverse comment". The court went on to state:

"That seems to me to be the point of Parliament addressing the issue. As I have

noted earlier, the Ombudsman has a unique role to play in monitoring government administration and dealing with complaints about administration. The legislation must strike a balance between ensuring that limited resources are used effectively to increase governmental accountability and protecting individuals from the risk of unjustified harm to their reputations and even livelihoods. Section 24 reflects Parliament's resolution of this issue."

Accordingly, the court held that section 24(2) "should be read as defining the extent of the Commissioner's entitlement to procedural fairness in the circumstances of the present case".

On this basis, the court rejected a claim by the Commissioner that it was necessary for the Ombudsman to provide the Commissioner with records of the Ombudsman's discussions with an independent expert and material obtained from the United States Marshal's Service. The Ombudsman had accorded the Commissioner appropriate procedural fairness by summarising and explaining the relevance of these matters in the first provisional report and providing him with an opportunity to make submissions on the report.

The court also disposed of a complaint by the Commissioner that he should have been provided with further details of comments made by some prisoners in response to a survey about the witness protection program. It is worth noting the manner in which the court dealt with this aspect of the matter:

"In my view, what the prisoners did or did not know about the witness security program was peripheral to the critical questions identified in the draft report. These were: why did the Commissioner form the view that Mr Denning could obtain information that would jeopardise the program; and were the Commissioner's reasons sound? ... [T]he Ombudsman clearly put the Commissioner on notice that the issue he should address was how any information obtained by Mr Denning could adversely affect the witness security program. At no stage in the correspondence did the Commissioner address this issue ... [T]he Commissioner was advised of the substance of the grounds for adverse comment ... Furthermore, he was given an opportunity to make submissions on that issue. In my opinion, that opportunity was not

rendered nugatory or ineffective by the absence of detailed information concerning the extent of the prisoners' knowledge of the program as revealed by the survey in the Special Purposes Centre."

The court concluded its discussion of this issue with the pithy observation: "Procedural fairness is not a one way street".

The attack on the Ombudsman's findings

Section 26 of the Ombudsman Act entitles the Ombudsman to make a finding that the conduct of a public authority is "unreasonable". The Commissioner argued that it was not open to the Ombudsman to find that the Commissioner's decision to remove Mr Denning from the witness protection program was "unreasonable" unless there was evidence to support the view that the Commissioner had reached a conclusion no reasonable person in his position could have reached.

The court rejected this "narrow" view of section 26, referring to the broad scope of the findings which the Ombudsman was entitled to make under the section, such as findings that conduct was "unjust" or "wrong":

"... it is at least open to the Ombudsman to find that conduct is unreasonable if there is material to support the view that the relevant decision-maker has acted otherwise than in conformity with the standards reasonably to be expected of such an office holder."

And, in the present case, the court determined that there was material upon which the Ombudsman was entitled to conclude that the Commissioner's decision was "unreasonable".

Some final observations

The Ombudsman's Office has always taken considerable effort in its investigations to afford public authorities procedural fairness, particularly in circumstances where there is the possibility of adverse findings against an authority. In recent times, there has been an increasing trend on the part of some authorities, particularly police, to attempt to convert investigations into an adversarial process. This trend has been marked by demands for access to all documentary material gathered during the course of an

investigation and the right to cross-examine all witnesses. The refusal of the Ombudsman to accede to these demands has met with claims that there has been a denial of procedural fairness and threats of legal challenges. It is to be hoped that the recent judgment of the Supreme Court will assist in a proper understanding of the role and functions of the Ombudsman and, in particular, the obligations of procedural fairness which apply.

Discipline

Complaints against police officers are an important part of police accountability. The role of the Ombudsman is to provide integrity to the complaints system and ensure public confidence through independent determination and review.

Where there is sufficient evidence for the Ombudsman to find a police officer has acted improperly or illegally, he may make recommendations to the Commissioner for disciplinary action. The Commissioner has a number of disciplinary options under the *Police Service Act*. Where a departmental charge or criminal charge has been proved, the Commissioner may direct the officer be counselled, reprimanded, fined, subjected to a loss of seniority, subjected to a reduction of salary, demoted or dismissed. The Commissioner is restricted, when considering demotion or dismissal of commissioned officers, (rank of inspector or above) to making recommendations to the Minister.

Where a departmental or criminal charge has not been proven the legislation limits disciplinary action to admonishment. It is understood from the service's Office of Professional Responsibility that officers may also be spoken to or counselled, in addition to the admonishment option provided in the *Police Service Act*.

While this is our understanding, recent correspondence from the Police Service demonstrates that some confusion remains concerning the sanctions available to the Commissioner. The Ombudsman is still receiving suggestions from the service that officers be paraded, counselled, spoken to, admonished, reprimanded or a combination of these options.

In one particular case the Ombudsman recommended an inspector be admonished and reminded of his duties by his Region Commander concerning access to confidential information. The acting Region Commander decided, however, that counselling was more appropriate, commenting that *"in terms of current police policy, prior to a member being paraded and reprimanded by way of disciplinary penalty, a departmental charge has first to be found proven."*

In another matter, however, the police investigator recommended a constable be departmentally charged with misconduct but the Region Commander arranged for the officer to be paraded before his District Commander, severely reprimanded and reminded of his responsibilities. These two decisions would appear to directly contradict each other.

In another complaint, the Aboriginal Legal Service claimed a police officer had told a number of people being held at Armidale Police Station that their client had AIDS. The matter was found sustained and the Police Service advised the officer had been counselled. The Ombudsman questioned whether a more severe penalty might be considered. Correspondence received stated the Police Service currently deems the counselling option to be a harsher penalty than admonishment. In yet another matter, it would appear that admonishment was equated with counselling.

Until a clear disciplinary policy is adopted the Ombudsman will continue to recommend that, where a matter is sustained but a departmental charge is not appropriate, admonishment or management counselling be imposed. However, there may be circumstances where other management prerogatives should be considered. These may include re-education, transfer, restricted duties and special supervision or simply reminding officers of relevant instructions or policy.

There is a further problem of recording actions. While service records are maintained, there are no options under the Act for an adverse entry to be made in the absence of a criminal conviction or a sustained departmental charge. The Ombudsman considers that such an option should be

available and discussions with the Police Service are currently being held on this issue.

The Police Service could gain a great deal by adopting a clear and concise disciplinary policy. The Ombudsman will continue to pursue this issue with the Commander of Professional Responsibility.

Conciliations - Slow but Steady

Overview

Conciliations of complaints have progressed slowly but steadily. During the year 18 per cent of complaints were conciliated, four per cent more than the previous year.

Aware of the slow progress, the Ombudsman held lengthy meetings with the Police Service and the Police Association. Late last year, the Ombudsman visited Queensland with members of the Police Association to examine the informal resolution procedures used by the Queensland Police Service and the Criminal Justice Commission. As a result, the NSW Police Service will introduce some of the features of the Queensland program into this state.

We have recently noted the benefits of a strong commitment to increasing conciliations. Over the past few months, more than one quarter of complaints have been resolved through conciliation. Given the groundwork which has been laid, the Ombudsman believes this level will be maintained or exceeded next year.

Importantly, the Police Service has also recently demonstrated its commitment to increasing the effectiveness of conciliations by upgrading the training of its officers. It is hoped the commitment to training continues, as particular skills are required to successfully conciliate complaints. With improved skills, more complaints should be open to conciliation. The quick and efficient resolution of matters by the Police Customer Assistance Unit, demonstrates the benefits of good training.

Problems

During the year problems arose including:

- ❖ a conciliator requesting the complainant sign a blank conciliation form;
- ❖ a continued failure by police officers to see the value of an apology;
- ❖ certain conciliators focusing on issues of contention not relevant to an effective

- resolution and, as a result, inflaming rather than resolving complaints; and
- ❖ a failure in certain cases to inform complainants of the implementation of agreements reached in conciliations.

Although there have been problem cases, it must be noted that, by any assessment, the level of satisfaction of complainants involved in the conciliation process is very good. Accordingly the Ombudsman is committed to increasing the number of conciliated matters.

Conciliation survey

We continued to survey complainant attitudes to conciliation. Of the 827 successful conciliations, 349 returned the survey, a response rate of 42 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:

- ❖ 290 respondents (84 per cent) were satisfied with the way their complaint was handled;
- ❖ 187 respondents (54 per cent) thought that the Police Service might improve as a result of the conciliation process; and
- ❖ most respondents, 312 (89 per cent), were satisfied with the manner and approach of the police officer who handled the conciliation.

As with previous surveys it is clear the factors which play the greatest part in a complainant agreeing to conciliate 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:

- ❖ 192 (58 per cent) of respondents felt that an apology played some part in their agreement to conciliate; and
- ❖ 271 (80 per cent) felt that a senior officer speaking to the officer under complaint played a role in their decision to conciliate.

The role of negative factors played some part in complainants agreeing to conciliate:

- ❖ The apprehension of damaging the career of the police officer under complaint played no part for 242 (73 per cent) of respondents but played some part for 88 (27 per cent);

“ Thank you for your interest in my case. Without your involvement, I am sure the injustice meted out to me by the New South Wales Police Service would have gone unchallenged. You are truly involved in providing an invaluable service to the public....”
(From a complainant)

- ❖ the fear of becoming involved in a long disciplinary or court process played no part for 262 (78 per cent) of respondents but played some part for 74 (22 per cent);
- ❖ intimidation or threat by the police officer conducting the conciliation played no part for 314 (94 per cent) of respondents but played some part for 21 (6 per cent); and
- ❖ the fear of future police harassment for failing to conciliate played no part for 255 (76 per cent) of respondents but played some part for 79 (24 per cent).

We will continue to scrutinise this last figure.

Conciliation audits

The Police Service Act requires the Ombudsman to conduct random audits of conciliated police complaints. We audited the conciliation records of Coffs Harbour, Tamworth, Armidale, Broken Hill, Dubbo and Wagga patrols. A more intensive program is planned for the coming year.

The audit ensures there is a proper record of all oral and written complaints involving conciliation. It provides an excellent opportunity for our staff to meet patrol commanders and discuss the conciliation process and related issues. The audit examines who conducts conciliations in the patrol, if all the staff know how the process operates and whether the conciliation forms are easily accessible at the counter.

An important focus of the audits has been to ensure complainants are notified of the follow-up action taken by the patrol commander as a result of the complaint. The Ombudsman believes a person who conciliates a complaint, should be advised in writing of the action taken as a consequence of the complaint. Some audits have revealed that many conciliations have not been signed by the complainant or their signature is undated. It is recognised that oral complaints sometimes do not provide an opportunity for complainants to sign. These issues have been raised with patrol commanders to address.

A Force or Service?

In December 1993, we received a number of disturbing allegations concerning police use of racist and offensive language, assault and the overuse of police powers of arrest. The complaints emanated from the Western

Aboriginal Legal Service on behalf of constituents from Wilcannia, a NSW country town with a large Aboriginal population.

Police transferred to locations with high populations of Aboriginal people should be culturally aware and sympathetic to their customers' needs. It is apparent that some police are assigned to highly sensitive areas of policing with a view to being transferred to a patrol of their choice once their tenure has been completed. Their motivation is not necessarily one of assisting the community in which they serve.

Lessons from the past are not readily digested by some members of the service. It is clear derogatory, insulting and racist language is still used by police to refer to members of the Aboriginal community. This language is designed to cause offence and distress, hampering any attempts for reconciliation and understanding. The creation of a hostile environment can only act as a catalyst for the degeneration of what is clearly a finely balanced situation.

The Ombudsman continues to stress the need for the Police Service to emphasise alternatives to arrest and detention. In a recent case police noticed a number of townspeople drinking late at night in 'alcohol free zones'. They were asked to move on and a man was arrested after urinating on one of the police vehicles. The arrest sparked dissatisfaction amongst the locals and three off-duty police were recalled to duty. The initial single offence of offensive conduct grew to three cases of assaulting police, three cases of resisting arrest, and one case of offensive conduct and offensive language. The cost in overtime was 11 hours and many more hours were spent on the resulting internal investigation. Our report on the case questioned the proper management of the police response in the first instance and suggested alternative means for resolving the matter.

The capacity to be flexible and provide the optimal response demanded by the public appears to be hampered by any real commitment to change. The transition from a Police Force to a Police Service requires the full cooperation and commitment by all members of the service, a commitment that still has to be impressed on some members.

Coordination of Child Abuse Cases

In last year's annual report the Ombudsman drew attention to the lack of coordination and liaison between the Department of Community Services and the Police Service in response to child abuse investigations. Of particular concern was the ignorance of both agencies of the procedures and practices of the other, and their failure to coordinate timely interviews and share relevant information.

The Ombudsman stated:

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.

In January, Mr Griffiths, then Minister for Police and Emergency Services, wrote to the Ombudsman in response to that article:

I have noted the concerns you raised in the 1993 Annual Report in relation to the investigation of child abuse cases, in particular, your suggestion that one investigative body conducts investigations for both care and criminal proceedings.

Recently, the Police Service produced an action plan to set a new strategic direction in relation to the management of child abuse cases. A copy of that action plan is attached.

One of the major features of the plan is to trial a new approach which would involve the joint investigation of child abuse notifications by Department of Community Services personnel and police officers.

I envisage that there will be two teams established at locations considered suitable by both the Police Service and the Department of Community Services. It is proposed that the teams be located in premises that are

appropriate for the interviewing of children. A launch of the initiative is planned to take place in early February.

The NSW Police Service's action plan for the investigation and management of child abuse, *Working with Others for the Care and Protection of Children*, was issued in December 1993. It emphasises that a paramount issue relating to child abuse management is the need for high level interagency cooperation.

The action plan outlines eight strategies and 30 recommendations.

A multi-agency implementation team has been formed to put the strategies into effect. This team has two full-time staff from the Police Service and an officer seconded from the Department of Community Services. The team also includes other representatives from the Police Association, Department of Community Services, Child Protection Council, the Office of the Director of Public Prosecutions and the Health Department. An interdepartmental steering committee headed by Assistant Commissioner Peate oversees the team.

As part of the action plan, the Police Service and the Department of Community Services are conducting a 12 month pilot program trialing the concept of a team of police officers and departmental district officers working together to investigate care and criminal matters. Two joint investigation teams are to be established by November. They will be located in the Wyong and Bankstown local government areas. Initially, each team will comprise three officers from each agency. Policy and procedure manuals have been developed for the trial teams and joint training will be provided before implementation.

Other implemented recommendations in the action plan include:

- ❖ two four-day joint child abuse investigation training courses for community services and police officers were held at Sutherland and Penrith in July;
- ❖ the Child Mistreatment Unit of the Police Service has been renamed the Child Protection and Investigation Team;
- ❖ police from the Child Protection and Investigation Team are now involved in

homicide investigations that are related to child abuse; and

- ♦ a report has been completed by the task force set up to review the advantages and disadvantages of video-taped evidence.

It has been encouraging to note the Police Service has recognised the need for positive action and the agencies involved should be commended for their work. However, much work is still to be done. At the time of writing the implementation program had fallen behind schedule. Outstanding areas needing to be addressed included reviews of staffing levels and supervisory support, interagency policies, legislative change and community education programs. We will continue to monitor developments in this area.

Monitoring Investigations

The *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993* commenced on 1 July 1993. A notable inclusion, which had not existed in the previous legislation, is the power to monitor on-going investigations carried out by the Police Service into complaints about police conduct.

Section 144 of the Act states:

- (1) *The Ombudsman may monitor the progress of the investigation of a complaint if the Ombudsman considers it is in the public interest to do so.*
- (2) *The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purpose of an investigation and confer with those officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.*
- (3) *The Commissioner is to provide the Ombudsman with such documents and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation.*

This power has been used on 12 occasions. We feel it has been quite positive, particularly for juveniles or people from a

non-English speaking background who in many cases have considerable reticence, even fear, when questioned by a police officer.

Once we have notified the Commissioner of our intention to monitor a particular investigation, the Commissioner has agreed to give us 72 hours notice of relevant interviews.

We have agreed the investigation officer carrying out the monitoring will clearly identify him/herself to the person being interviewed by police as an observer from the Ombudsman's Office.

In addition to the reassurance this monitoring offers the public on the integrity of investigations, many other practical benefits are evident.

Firstly, the procedure gives our officers an opportunity to discuss particular concerns with police in a timely manner. This is clearly better than picking up the issue after the police investigation has been completed. Investigations can be lengthy and it can take months to see a result. Monitoring can save time and resources and help avoid the inconvenience of recalling witnesses to pursue a line of inquiry earlier overlooked.

Secondly the investigation officer is able to get an immediate and on-going feel for the progress of the matter under scrutiny. This can greatly assist our assessment of an investigation submission and our determination of whether a complaint is sustained.

While the process has distinct benefits, it must also be said that the monitoring of investigations is a major drain on the limited resources of our office. In one case, an investigation officer was away from the office for well over a working week. It is therefore a power we need to exercise with some care in order to ensure that the maximum gains are achieved with the most efficient expenditure of resources.

It is pleasing to report that, in the overwhelming majority of cases where monitoring has occurred, investigation officers reported a willingness and openness on the part of the police officers to cooperate in the process.

The procedure will continue to be scrutinised with a view to streamlining the benefits available from it. We hope to report more fully

and in an equally positive fashion in next year's annual report.

Police and Intellectual Disability

A small but constant stream of complaints continues to highlight the difficulty police experience in dealing with people with an intellectual disability. Police have a responsibility to ensure people with disabilities are treated fairly and their rights are not adversely affected. However, through lack of knowledge and inexperience in dealing with people with an intellectual disability, fair treatment is not always achieved.

The following complaint illustrates some of the problems.

A solicitor complained to our office about the police treatment of her client, a 19 year old man with an intellectual disability. He had been interviewed without an 'appropriate adult' being present on two occasions contrary to the Commissioner's Instructions, continued to be interviewed even though police had received legal advice that he did not wish to continue the interview, was pressured into answering questions and also questioned before the interview without being cautioned.

Commissioner's Instruction 37.14 states:

If you suspect the person being questioned is developmentally delayed or drug affected, question the person in the presence of an appropriate adult, unless there is a proper and sufficient reason for not doing so.

The man was well known to police in his area and several references to his intellectual disability had been made in police reports and occurrence pad entries.

Consequently, when the man was first interviewed, police tried to locate an appropriate adult and, failing to secure such a person, video recorded the interview so that the man's capacity to participate in an interview alone could later be professionally assessed.

Twelve days later, the man's mother attended the station with her son to be interviewed concerning another matter. He was asked some 'preliminary' questions concerning an alleged offence but no caution was given. A detective formed the view that the mother:

... influenced the manner in which [the man] answered the questions. She was answering the questions for [him]. . . it was clear that [he] was unlikely to tell the truth with her being there . . .

The mother was subsequently asked to leave but she insisted police instructions allowed her to be present. Unfortunately, the detective she spoke to was unaware of the relevant instruction. The mother then left the station to seek legal advice.

An electronically recorded interview was then commenced in the absence of an appropriate adult. When questioned during the Police Service's investigation, the police officers involved were unable to satisfactorily explain why they did not comply with the Commissioner's Instruction when 12 days earlier they had considered it appropriate. One officer said he didn't think the man needed an appropriate adult present.

More disturbingly, police continued the interview after receiving legal advice that the man wanted the interview stopped. After the advice was given, the man was asked whether he wanted the interview to continue and answered "yes". Instead of seeking to clarify that the man understood that he could refuse to be interviewed or enabling him to secure further legal advice, police carried on.

The Ombudsman's report was highly critical of the way police handled the interview and failed to caution the man when questioning him before the interview.

This complaint is typical of the difficulties police find themselves in when dealing with people with an intellectual disability. The problem in part stems from police not being sufficiently sensitive to the needs of those people and failing to comply with the relevant instruction. Police often believe when a person is able to respond to questioning this obviates the need for an appropriate adult to be present. Problems are also encountered with the role of the appropriate adult and to what extent family members can appropriately fulfil that role.

Clearly the issues are complex and not easily addressed. The Ombudsman therefore welcomes the work currently being undertaken by the NSW Law Reform Commission. It is hoped the commission's

*"...I certainly appreciated your prompt attention and help with this problem. I just seemed to be getting nowhere. I have always been a strong advocate of the Office of the Ombudsman, and I now have a more personal confirmation of it's value. Thank you again."
(From a complainant)*

work will raise public awareness of the difficulties faced by people with an intellectual disability and generate meaningful discussion, debate and possible solutions to the problems they face when dealing with police and the criminal justice system generally.

Access and Release of Confidential Information

A body of complaints continuing to cause considerable concern relate to the unauthorised access and release of confidential information. The Ombudsman received 173 complaints about police officers improperly accessing or releasing confidential information during the year, which is comparable to the 186 complaints received in 1992/93.

The circumstances of these improper accesses varied greatly in nature and seriousness. A detective senior constable accessed personal information relating to his ex-wife to ascertain her financial position and the identities of her acquaintances. A detective inspector accessed the criminal history of his former daughter-in-law's new husband, ostensibly out of concern for the security of his grandchildren. A senior constable accessed RTA records relating to a female public servant employed by the Police Service to establish her age. A constable accessed the driving history of a person from whom he intended to purchase a vehicle. Another constable, summonsed for assault, accessed the system to obtain information relating to persons due to appear as witnesses in the assault case.

The potential for misuse of computerised information systems by police officers is now greater than ever. The Computerised Operational Policing System (COPS) which became operational in April 1994, now centralises a large amount of information which was previously held in separate files or less accessible data bases. Much of this information is now instantly accessible to police officers, posing a serious threat to privacy and other basic rights if not used for legitimate reasons.

It should be noted that the Police Service has taken some important preventive steps in an

effort to reduce the incidence of abuses in this area. A *'Code of Best Practice and Guidelines for Management of Information and Information Systems'* has been drawn up and distributed to system users and all Police Service employees are required to read and sign a *'Statement of Responsibility'*, acknowledging their obligations with respect to accessing these systems.

Following a recommendation made by the Ombudsman, the warning which appears on screen when an officer logs onto the computer system has now been amended to remind the user that accessing the system for personal reasons and/or disclosing confidential information to unauthorised persons is subject to severe penalties under the Crimes Act. Relevant Commissioner's Instructions have been amended to reflect this warning and to forbid the release of confidential information without the written authority of a Commander or Branch Manager.

Police Association addresses the problem

It is also encouraging to note that the Police Association has recently addressed its members by way of circular, warning them that random audits of COPS are being carried out and that access of the system must only be in connection with bona fide official purposes. The association has advised officers to make appropriate entries in their official diaries recording the reasons why they accessed the system, in order to satisfy any queries which may arise out of future audits.

The Ombudsman is currently engaged in consultation with the Police Service over this very issue, advocating a change to the Commissioner's Instructions to ensure that such entries, where appropriate, are made. Should this be implemented, the problem of officers being unable to recall the purpose of accesses when confronted with audit results will disappear.

In spite of these commendable preventive efforts, the Ombudsman is greatly concerned by the reluctance of police management to treat abusers of the system with a sufficient severity. The attitude of Police Service Command appears to be that the appropriate manner of dealing with the majority of such sustained complaints is to treat them as minor

disciplinary matters with offenders deserving of the penalty of counselling or, at most, admonishment. An example follows.

Consorting with criminals

In May 1993, the Victorian Police received information from a reliable source indicating a serving NSW police constable was associating with a convicted criminal believed to be involved in illegal drug activities. This information was passed to the NSW Police Service and the Ombudsman was notified in accordance with the Police Service Act.

During the ensuing investigation, the constable admitted to having known the criminal for some eight months, to have been aware of his criminal history, to have engaged in secondary employment for this person without the necessary approval of the Commander (Professional Responsibility), and to having been introduced by this person, on a social occasion, to other members of the local criminal fraternity.

The constable's supervising officer, who first raised the issue of this improper association with him, also alleged the constable indicated to him that he was aware the criminal with whom he was associating was subject to police surveillance at the time.

The constable denied this association was improper and denied having indicated to his supervisor any knowledge of a surveillance operation being directed at the person with whom he was associating.

An audit was conducted in respect of the constable accessing the NSW Police Information and Intelligence computer systems as part of the investigation into this complaint. This audit revealed the constable had accessed on two occasions the criminal record of the person he was improperly associating with, as well as confidential details

relating to a large number of people on some 200 occasions during the period in question. Some of these improper accesses related to members of the constable's own family, some to 'old flames', and some to people with whom he had gone to school.

Most accesses, however, related to a large number of well-known public figures. These included, among numerous others, a former world boxing champion, an internationally famous model, various television personalities, a former NSW premier and a high-profile Sydney solicitor.

The constable admitted to having accessed the records and partly explained his actions by stating that he "possibly looked these records up to see what suburbs these people lived (sic), possibly out of envy, perhaps because of their lifestyles".

Advice was sought from the NSW Police Service Solicitor, who advised there was sufficient evidence to support four departmental charges relating to improper access of computer records and another charge relating to his association with the criminal.

In spite of this advice, the Commander (Professional Responsibility) informed the Ombudsman that "there is no real evidence of criminal intent on the part [of the constable] over his access of the Police computer nor does it



seem he would have received any financial gain". The entire incident was viewed by the Commander as *"an immature approach to professionalism on the part of the Constable"*, and he advised that he did not propose to formally charge the officer but rather to have him admonished by his District Commander and reminded of the need to adopt a more professional approach to his work.

The Ombudsman rejected this course of action as being inappropriate and instead recommended the Commander seek advice from the Director of Public Prosecutions regarding the possibility of preferring criminal charges against the constable. The Ombudsman has further recommended the officer be departmentally charged for his association with and employment by the criminal.

This matter has not yet been determined but clearly demonstrates a reluctance on the part of the Police Service to treat instances of abuse relating to the accessing of confidential information with the gravity they deserve.

Gravity of offence

It is the view of the Ombudsman that where it is proved that officers have improperly accessed confidential information, regardless of the motive, in general departmental charges should follow. Unauthorised accessing of confidential information without lawful excuse constitutes an offence contrary to section 309 of the Crimes Act. Where serious circumstances exist, officers should be criminally charged.

High Speed Pursuits

The decision to fire a service revolver at a suspect is considered one of the most crucial and drastic decisions a constable can make. Most members of the public never see a service revolver out of its holster. On the other hand most people have seen a police vehicle in a high speed pursuit or 'urgent duty' run. It is alarming that in Australia over an 18 month period during 1990 and 1991, six people were killed as a result of incidents involving police and firearms, whereas for the same period, 20 people were killed as a result of high speed pursuits or urgent duty driving.

In response to growing public concern the Ombudsman has focused attention on the subject of high speed pursuits. The Ombudsman must now be notified of any high speed pursuit which results in injury or damage to property so it may be reviewed. In addition the Ombudsman has reviewed the Police Safe Driving Policy, launched in December 1992. This policy outlines categories of police drivers' licences, actions required on commencing a pursuit and considerations to be made when conducting pursuits.

Last year the Ombudsman received 50 high speed pursuit notifications, 14 of which required further examination. The format of notifying our office of high speed pursuits is currently being examined and it is expected that a formal high speed pursuit notification form will be developed in the near future. It is hoped the process of refining and reviewing the use of high speed pursuits to apprehend suspects will result in an increased level of awareness by all police of the dangers and constraints of such activity.

Difficulties Conducting Direct Investigations

Recent amendments to the *Police Service Act 1990* have enabled us to deal with complaints directly, rather than having to rely on the traditional method of using the Police Service to investigate complaints. In 1993-1994 we conducted three direct investigations under these new powers.

There are a number of benefits in conducting 'direct investigations' but essentially they provide a guarantee of impartiality and the ability to obtain evidence not ordinarily available to police internal investigators through the use of the various powers available to the Ombudsman under the *Ombudsman Act* and the *Royal Commission Act*.

There are, however, difficulties in conducting 'direct investigations'. Due to our very modest funding, it is unfortunately not possible to conduct more than a few direct investigations each year, far less than we would like. Direct investigations are very time and resource consuming. Even a relatively straightforward matter can require up to six of our officers to have some direct input into the investigation.

Major difficulties are encountered when the allegations involve corruption by police. Invariably these allegations link police to civilians and there are limits to the Ombudsman's powers in respect of gathering evidence in relation to these matters from civilians. In this regard, however, the Ombudsman has the power to require any person to appear before him in a section 19 hearing and answer questions put to them by him.

Other means normally used by the police or ICAC when investigating corruption allegations are electronic and physical covert surveillance. Electronic surveillance is not available to the Ombudsman and our office is not funded or staffed to carry out physical covert surveillance.

When we undertake 'direct investigations' of police matters, the role of investigation officers is broadened from review and assessment to that of investigators in the full sense of the word (similar to their role in relation to non-police investigations under the *Ombudsman Act*). Evidence must be directly gathered by them, including interviewing witnesses and the gathering of documentary evidence.

Our officers attended a comprehensive investigators course designed for the office in conjunction with the Australian Federal Police. This course, along with their investigatory experience, equips our officers to handle an investigation from its inception to the final outcome.

The Ombudsman appreciates the difficulty of conducting direct investigations. In a recent case it was necessary for the services of a barrister to be used in conducting proceedings. This course was adopted partly due to the fact that the police not only raised numerous objections to the processes of the hearing but attended the hearing in full force (the Police Commissioner funded a barrister as well as a solicitor). This use of the service's vastly superior resources was seen by the Ombudsman as an attempt to daunt the office. It is hoped the judgment in the Denning case will force a much needed reappraisal by the service of this approach to the Ombudsman's exercise of his jurisdiction.

Jurisdictional Problems

The new police complaints legislation redefined the type of "conduct" by police which the Ombudsman could investigate. Under the previous legislation, the Ombudsman had the power to investigate complaints about "any action or inaction" of a police officer. However, under the new legislation, the Ombudsman was only entitled to investigate complaints about such conduct when the police officer was "acting as a constable".

In last year's annual report, published shortly after the new legislation came into effect, the Ombudsman expressed concern that the amended and more restrictive definition of police "conduct" could create problems with respect to his jurisdiction to investigate complaints about police. Over the past year, these problems were indeed realised and the process of resolving them proved to be particularly difficult.

Definition of police "conduct"

The precise origins and purpose of the new definition were initially unclear. However, it appears that the new definition was designed to preclude the Ombudsman from investigating complaints about the "off duty" conduct of police.

This reading of the definition would, in itself, have raised concerns in connection with the proper scope of the Ombudsman's jurisdiction. But the Ombudsman was also concerned that the new definition gave rise to a number of practical problems which could interfere with the effective oversight of police complaints and the manner in which they were dealt with. A further and major concern was that the definition might prevent the Ombudsman from commencing or continuing the investigation of complaints about criminal misconduct by police. It could be argued that a complaint of this type was not a complaint about the conduct of a police officer "when acting as a constable" and therefore outside the Ombudsman's jurisdiction.

The Ombudsman raised these concerns with the Ministry of Police in July 1993 and suggested that the Ministry seek the Crown Solicitor's urgent advice on the meaning and effect of the new definition.

Police challenge to the Ombudsman's jurisdiction

In August 1993, our office commenced an investigation into two serious and related complaints. The first complaint involved an allegation by a man that he had been assaulted and robbed by three police officers. The complainant's allegations had been the subject of inquiries by other police, who had ultimately charged the complainant himself with a criminal offence. This charge was dismissed by a magistrate who made a complaint about possible perjury and an attempt to pervert the course of justice by the police involved.

Our investigation of the two complaints proceeded to the stage of a formal hearing. In October 1993, the police involved were summoned to give evidence. At the hearing, the police were legally represented and a submission was made on their behalf that our office had no jurisdiction to investigate the matter. The basis for this submission was that the complaints in question, because they alleged criminal conduct on the part of the police involved, were not complaints about the conduct of the police "when acting as a constable" and hence were incapable of our investigation. This was the very jurisdictional argument which the Ombudsman had feared would result from the new definition of police "conduct".

Legal advice

At this stage, the Ministry of Police had still not provided the Ombudsman with the Crown Solicitor's advice on the meaning of the new definition. Accordingly, the Ombudsman sought urgent advice from Queen's Counsel on the matter. That advice was to the effect that, as from the commencement of the new legislation on 1 July 1993:

"... it is not possible to investigate complaints that a police officer has committed a crime, if that allegation is one which accuses the police officer of conduct which could not have been an honest attempt to exercise his or her powers as a constable"

On this basis, Queen's Counsel advised that the Ombudsman's Office was not entitled to pursue the investigation the subject of challenge by the police.

The Ombudsman provided Senior Counsel's advice to the Ministry of Police, emphasising the advice reinforced the concerns previously raised by the Ombudsman about the ramifications of the new definition of police "conduct". The Ministry in turn sought the Solicitor General's advice on the matter.

The Solicitor General's advice was that:

"... the expression 'conduct of a police officer when acting as a constable' ... should be given a broad meaning, being anything which is connected with the ostensible carrying out of the function or exercise of a power given to a police officer at common law or by statute ... whether or not the police officer was on duty at the time. It could include conduct which amounts to a criminal offence but it would not include the conduct of a private person where such conduct (whether lawful or not) is unconnected with the fact that he or she is a police officer."

Relying on this advice, the Minister suggested that the Ombudsman's concerns about his jurisdiction in relation to complaints about police had "no basis".

Special report to Parliament

As the issue was unclear and open to argument either way, in the circumstances the Ombudsman was forced to make a special report to Parliament about the matter, recommending that the definition of "conduct" in the existing legislation should be amended by deletion of the phrase "when acting as a constable" with provision being made to confirm the Ombudsman's jurisdiction to investigate all complaints about police. In support of his position, the Ombudsman referred to the difficulties involved in the investigation in question where the police had challenged the Ombudsman's jurisdiction and pointed out:

"The delay and cost of litigation, at the public expense, is not the appropriate way to resolve what is evidently a complex and highly arguable matter."

Further developments

The police who had challenged the Ombudsman's investigation persisted with that challenge, notwithstanding provision to them of the Solicitor General's general advice. In an attempt to resolve this impasse, further

advice was sought from the Solicitor General on the Ombudsman's jurisdiction to investigate the particular complaints. In January 1994, the Solicitor General advised that transitional provisions in the new legislation preserved the Ombudsman's jurisdiction to investigate the complaints. Despite provision of this further advice, the police still maintained the Ombudsman had no jurisdiction to investigate the complaints about their conduct. We notified the police that, in reliance on the Solicitor General's advice, the investigation would be resumed.

During this time, the Ministry of Police informed the Ombudsman that, as a consequence of the Ombudsman's special report to Parliament, a minute to Cabinet was being prepared with a view to the amendment of the definition of police "conduct" in the existing legislation. However, the Ministry advised that, contrary to the Ombudsman's recommendation, the phrase "when acting as a constable" would not be deleted: instead, the definition would be clarified to reflect its "original intention". The Ombudsman objected to this course, "particularly when explanations sought for the insertion of the phrase have been that there was no original intention".

Nevertheless, the Ministry subsequently informed the Ombudsman that the government had approved proposed amendments to the legislation which would reflect the intention that complaints about the "private" conduct of police should be excluded from the Ombudsman's jurisdiction. The Ombudsman again expressed his objections to the Ministry:

"I will not traverse again the arguments for the complete removal of the offending phrase. They are amply documented in correspondence between our offices and in my report to Parliament. I can only express my dismay at the apparent attempt to redefine conduct which may be the subject of investigation without full public discussion and consideration of the relevant issues. Given the debacle resulting from the last redefinition ... I can only wonder at the reasons for the proposed redefinition."

On 15 March 1994, the police who had challenged the Ombudsman's investigation instituted proceedings against the Ombudsman in the Supreme Court.

Second special report to Parliament

The following day, the Ombudsman made a special report to Parliament describing these further developments. That report concluded as follows:

"[The new definition of police conduct], in limiting the conduct which the Ombudsman may investigate, has created substantial and real problems. If the original intention was to exclude the Ombudsman from investigating complaints about 'private' police conduct, then that intention has gone hopelessly astray. The issue of complaints about off duty police was considered in detail by the Joint Parliamentary Committee on the Office of the Ombudsman in its report on the police complaints system in April 1992. My opinion remains consistent with the recommendation made by that Committee: that such complaints continue to be notified and declined when they are trivial or do not relate to police duties.

The Ombudsman's Office is now faced with a legal challenge where the main point of dispute has been the meaning of [the new definition]. The Police Service is funding the challenge to the investigation and the Solicitor General is defending the Ombudsman.

... Should the argument be accepted that complaints of deliberate criminal misconduct by police are beyond the Ombudsman's jurisdiction, then around 30% of complaints to the Ombudsman would be excluded. The commencement of litigation now leaves me with the difficult decision as to how such complaints are to be dealt with. Since the transitional provisions do not cover complaints made after 1 July 1993, I am now faced with the position where the status of complaints of criminal misconduct is thrown into doubt until the legal proceedings are resolved."

Accordingly, the Ombudsman again recommended the urgent amendment of the existing definition of police "conduct".

Legislative amendment

On 21 March 1994, the Ministry of Police sent the Ombudsman a preliminary draft of amendments to the legislation. Following

consultation about the terms of the proposed amendments, a bill was introduced into Parliament on 14 April 1994. The resulting legislation, the Police Service (Complaints) Amendment Act, came into operation on 4 May 1994.

The legislation removed the definition of "conduct" to which the Ombudsman had been opposed and replaced it with the following, much clearer, definition:

- "... 'conduct' of a police officer means any action or inaction (or alleged action or inaction) of the police officer, whether or not:*
- (a) it occurs while the police officer is officially on duty; or*
 - (b) it involved the commission of an offence by the police officer; or*
 - (c) it is within the usual functions of a police officer.*

The legislation also included a provision appropriately stipulating that the Ombudsman will not investigate a complaint about police conduct "if of the opinion that the conduct the subject of complaint is unconnected with the fact that person concerned is a police officer". A further provision removed any questions as to the Ombudsman's jurisdiction to investigate complaints prior to enactment of the amending legislation.

Footnote

The amending legislation would appear to have removed any basis for the Supreme Court challenge by the police to the Ombudsman's jurisdiction to investigate the two specific complaints discussed above. However, the police are persisting with that challenge. In these circumstances, the Ombudsman has taken steps which, it is hoped, will force an early resolution of the proceedings and the resumption of the investigation.

A Comparison of Investigatory Agencies

One of the Ombudsman's major functions is the general oversight of police conduct. However, there are two agencies with more specialised roles, the Independent Commission Against Corruption and the Royal Commission into Police, which also have jurisdiction to investigate certain serious aspects of police conduct. This cartoon, by Warren Brown of the Telegraph Mirror, provides one view of the relationship between the agencies.



Internal Affairs Investigates conduct of police officers	NSW Ombudsman Investigates administrative conduct of most public authorities and the conduct of police officers. External review of FOI complaints.	ICAC Investigates corrupt conduct by public officials. Corruption prevention and education	Royal Commission To investigate and report on the nature and extent of corruption within the Police Service and certain other matters.
Figures are not available as the Internal Affairs Branch is regionalised and many matters are dealt with at a local level.	Budget \$4.43 million	Budget \$13.16 million ⁽⁵⁾	Budget \$20.54 million ⁽¹⁰⁾
	Staff 71	Staff 145 ⁽⁶⁾	Staff 125 ⁽¹¹⁾
	Complaints finalised 93/94 7,364 ⁽⁷⁾	Complaints finalised 93/94 6,887 ⁽⁸⁾	Complaints finalised No figures yet available
	Formal complaints about police 93/94 4,616 ⁽⁹⁾	Formal complaints about police 93/94 4,900 approx(7/08)	
	Major formal investigation reports 93/94 45 (01 about police)	Major formal investigation reports 93/94 5 ⁽⁹⁾ (3 about police)	

Notes: (1) & (2) most complaints from members of the public; (3) & (4) figures from 1994 Budget Papers; (5), (7) & (9) figures from ICAC; (6) & (8) most complaints referred to ICAC by public authorities; (10) & (11) figures from 1994 Budget Papers. [The table above highlights certain statistics and is not intended to provide a comprehensive comparison of the output or functions of the bodies concerned.]

"...I refer to the letter of complaint against a decision of the New South Wales Police Service, not to remit to me an amount of unclaimed 'found' moneys. I am pleased to advise that as a result of your intervention, the New South Wales Police Service have re-considered their initial decision not to pay to me the subject money. As this was obviously my ultimate goal, I do not wish to further pursue any remaining issues emanating from my complaint, and I am happy to treat the matter as resolved. I wish to take this opportunity to thank you for your assistance in this matter. I will realise that without your timely and professional intervention, my objection might never have been adequately dealt with, and my objection would most probably have been lost in a plethora of red tape and police internal communications. Certainly, it is very doubtful that I would have achieved such a pleasing result without your assistance, and I remain grateful for your professionalism and fair minded approach."
(From a complainant)

Investigations

The Cone of Silence

On 22 December 1990 a man of Vietnamese descent, Mr V, was driving with his cousin past a Sydney police station. He stopped to allow a police four wheel drive to execute a three point turn and then continued to drive on, causing the police to brake. The police pursued him and stopped his car. A second police car also attended. The man was removed from his vehicle, searched and given a traffic infringement notice. During the search the man alleged he was assaulted.

The incident was watched by several residents, in particular an Italo-Australian family, one of the members of which, Mr C, came forward and remonstrated heatedly with police. Mr V left the scene and attended his doctor and later his Member of Parliament who lodged a complaint on his behalf.

After some delay, the initial investigation into this matter was conducted by a relatively inexperienced local police sergeant, who interviewed Mr V and his cousin, Mr C (but none of the other family members), and the police involved. The police evidence was remarkable for its consistency and, in contrast the sergeant formed the view that the civilian evidence was "confused and conflicting". A strong element of ethnic stereotyping appeared to be the basis for police statements in this matter, with description of Mr C as having an "attitude problem" and "putting on a show" for his family. In any event the sergeant formed the view that the complaint was not sustained and this was the police view forwarded to the Ombudsman.

The Ombudsman considered the police investigation was of a very low standard, although not remarkably worse than many others performed by police investigators at the local level. A reinvestigation was under active consideration when all action came to a halt with the unexpected death of the alleged victim, Mr V.

However, as part of another investigation, telephone transcripts were forwarded to the Ombudsman which contained details of conversations between the investigating sergeant and the police subject of

investigation, conversations which indicated collusion had taken place and police stories had been fabricated. There were remarks such as "get those stories together" and "back to the cone of silence". Other calls suggested that police should search the local patrol commander's office looking for evidence about the complaint. The tapes were also replete with racist abuse and stereotyping, a fact commented upon by none of the police investigators.

A superintendent of police undertook the initial investigation of issues arising from the tapes. Incredibly, he found the issues either not sustained or totally ignored them, although he admitted that in some instances the sergeant had shown "poor judgement".

The Ombudsman required further investigation, this time by Internal Affairs. The inspector from Internal Affairs found some wrong conduct on the part of the police subject of investigation but cleared the sergeant of any wrong doing.

After this expenditure of an unknown sum from the very extensive police budget the Ombudsman then conducted his own investigation, obtaining in the process evidence obtained by none of the police investigators. Doorknocks, conducted in the street, unearthed a number of witnesses police investigators had not bothered to locate. The other members of Mr C's family, several of whom had eyewitness accounts, were interviewed. There was no explanation for the failure of police to interview these witnesses other than a form of "ethnic blinkers" - stereotyping Mr C and his family as excitable, unreliable and of no consequence, in marked contrast to their actual demeanour as witnesses when questioned by the Ombudsman. He concluded the investigating sergeant had actively assisted the police subject of complaint to frustrate the inquiry and was aware of their conduct in doing so. He further concluded the original action in stopping, searching and detaining the late Mr V was on an insufficient basis, and that police had both assaulted Mr V and had illegitimately threatened Mr C when he tried to intervene. The investigation pointed to a sorry pattern of inadequacy in each

succeeding layer of police investigation, indicating that the strength of police culture led to a reluctance to really examine the conduct of other police, which could blind even experienced investigators to the evidence before them. The inquiry also found that there was a culture of racist language and belief at the police station in question which had no doubt contributed to the events complained of.

The Ombudsman criticised the lack of precautions taken by experienced police investigators to guard against collusion, and noted the existence of procedures which appeared to facilitate collusion between police witnesses. Investigations were criticised for being conducted at the convenience of the police involved, with witnesses

interviewed over days. Criticism by the Ombudsman was met with an offended response from police.

It is common practice for police to confer and "get their stories together" whether for proceedings in court or for internal investigations. At its most innocent, this means conferring with other police to refresh each other's memory and produce an accurate and truthful account of events. At its worst, it means fabricating evidence to present a false, but consistent story to a court or tribunal. The dividing line between the two is difficult to determine and easy to cross.

Police loyalty exists for very strong reasons; policing requires and generates a strong network of trust and mutual support. Many police feel isolated from the general public because of the nature of their work and what Fitzgerald described in the Queensland context as "public indifference, mistrust, hostility and resentment".

The police turn in on themselves and develop strong ties of loyalty to one another.

However, when this loyalty is abused, the reasons for its existence become corrupted and it prevents the detection and control of police misconduct. It sets police against the community they police.

But for the electronic evidence, the investigation of this complaint would have failed. The more experienced police officers

the subject of the investigation maintained the "cone of silence" even when confronted with the taped evidence. Younger, less experienced police appeared to be still struggling with conflicting loyalties and were not yet adept in the art of collusion - an art fostered, it must be added



by the (then) practice of police legal representatives taking instructions from all police witnesses to an Ombudsman inquiry in groups. The practice of joint representation and conferences with police who are under investigation, particularly when allegations of collusion are already an issue, does nothing to dissuade police from "getting their stories together". The Ombudsman welcomes advice from police legal representatives that this practice has ceased.

The strongest lesson drawn by the Ombudsman from the case was the importance of civilian oversight and, where necessary, direct civilian investigation for major public interest matters. The Ombudsman continues to believe police must take responsibility for the majority of investigations, but in cases such as that of Mr V, the combination of police blindness to police collusion and ethnic stereotyping produced no less than three fundamentally

flawed, and very expensive, police investigations. Civilian investigations are not 'Claytons' investigations. Given appropriate training and resourcing civilians can identify many issues to which police investigators are professionally blind.

Race Relations and Our Police

On 18 October 1993 the then Minister for Police and Emergency Services the Hon Terry Griffiths MP announced the Ombudsman would conduct an inquiry into race relations and the NSW Police Service. The announcement reflected the Minister's and Ombudsman's concerns about recurring incidents from which police bias against minority groups or racism might be inferred. These included incidents such as:

- ❖ Operation Sue, which involved a dawn raid by 135 police on the Aboriginal community in Redfern;
- ❖ Cop It Sweet, an ABC documentary which showed Redfern police working the beat;
- ❖ the Bourke Outback Trek incident, in which some officers attending a bad taste party portrayed themselves as Aborigines who had died in custody;
- ❖ the Turramurra incident, in which the Asian students who were the victims of a confrontation on Turramurra Railway Station were arrested, whilst no action was taken against the non-Asian perpetrators and worse, the subsequent police internal investigation was designed to justify the police action taken rather than reveal the truth;
- ❖ the Cabramatta incident, in which a Vietnamese motorist was assaulted; and
- ❖ more recent incidents still under investigation.

On 10 December 1993 the Ombudsman notified the Commissioner of Police of his intention to conduct an investigation and exercised his coercive powers to require the Police Service to produce documents in relation to its efforts to address issues of concern.

Based on the material produced by the Police Service and information from various sources, the Ombudsman produced a

discussion paper *Race Relations and Our Police*. The paper set out past and developing police conduct in some detail and gave some indication of what the Police Service has done and is trying to do to ensure access and equity for minority groups. The paper was widely circulated to minority groups for comment.

The Ombudsman invited minority group members to address general issues of access and equity in their submissions such as;

- ❖ Is the police commitment to these issues adequate in all the circumstances? If not why not?
- ❖ What changes need to be made to ensure Aboriginal, NESB and minority issues are properly serviced?
- ❖ If minority groups have experienced change, is it because these groups have adapted, or has the Police Service become more responsive? For example, if established immigrant groups are now more comfortable with police is it because the police have changed or because the community group is now more comfortable or familiar with the language and Australian law and custom?
- ❖ Are South-East Asian immigrants, for example, now facing the same problems that European immigrants faced when they were newly arrived?
- ❖ Have police really become more tolerant of diversity or have minority groups just learnt how to stay out of the view of police?

Are minority organisations satisfied:

- ❖ with police attitudes towards their racial, ethnic or minority group;
- ❖ with police policies and programs to service their people's needs;
- ❖ with the consultations they have with the Police Service, for example in community consultative committees; and
- ❖ that the Police Service has regard for the organisations' views and particular needs in developing police policies and programs?

The Police Service has been trying to change its recruiting so that it has roughly the same make up as the community at large. The Police Service says that the reasons it has not been able to recruit more police officers from racial and ethnic minorities, and change as quickly as it wants to, include:

- ❖ a lack of suitably qualified applicants from racial and ethnic backgrounds; and
- ❖ minority group unwillingness to deal with police or to encourage or permit community or family members to join the Police Service.

Why is the Police Service less successful in attracting applicants from ethnic or racial backgrounds than applicants from white Anglo male backgrounds? If there are cultural objections based on bad past experience with police in other countries how can community organisations help to bring about a change in the approach here in Australia? Has the Police Service made a sufficient commitment to ethnic and Aboriginal affairs and to recruiting police officers from amongst people of racial or ethnic groups?

The Ombudsman also invited respondents to address the following questions to assist him gauge levels of community satisfaction:

- ❖ Do people from visible minority communities continue to experience language or cultural barriers in seeking assistance from the police?
- ❖ Have they developed trust and confidence in the Police Service?
- ❖ Have they increased their willingness to report crime to the police?
- ❖ Are they more willing to seek assistance from the police?
- ❖ Are they more aware of police services being provided?
- ❖ Have they increased their participation in community policing programs such as Community Consultative Committees, Neighbourhood Watch, etc?
- ❖ Are members of visible minority communities given equal police protection as the majority of citizens?
- ❖ Do they feel that they have been unfairly treated by the police, either through negative stereotyping, harassment, use of excessive force, or abuse of power?
- ❖ Are they disadvantaged by police procedures which do not take into account cultural differences or lack of language facility?
- ❖ How does present experience in relation to these indicators compare with experience five, ten and even fifteen years ago?

The bulk of submissions were received by 8 August 1994. In August and September the Ombudsman received evidence orally from organisations unable to make submissions in writing.

While it should not be assumed that the final report will make adverse as opposed to constructive comment, considerations of procedural fairness require the Police Service be provided with an opportunity to comment on any proposed adverse comment before the publication of the final report and recommendations. It is intended a draft of the report will be provided to the Police Service in early November. The final report will take the form of a Report to Parliament and is expected to be tabled in December 1994.

Access and Admissibility of Police Documents

Complainants' access to documents obtained during *Police Service Act* investigations and the use of those documents in court proceedings has been an area fraught with difficulty.

Under s.166 of the Act, the Commissioner may suppress the publication of material or information he is required to provide to the Ombudsman if he believes such publication "might prejudice the investigation or prevention of crime or otherwise be contrary to the public interest". In these cases the Ombudsman is prohibited from releasing the information to the complainant or any other person.

Equally restrictive, section 172A renders all documents brought into existence under part 8A inadmissible as evidence in any proceedings with few exceptions (eg disciplinary proceedings). Historically, the section was intended to prevent complainant-defendants from undertaking fishing expeditions to obtain evidence for use in related proceedings and protect police, directed by senior officers to respond to questions during an investigation, so their compelled statements cannot be used as evidence in criminal proceedings against them.

An interesting twist has emerged in the courts' interpretation of section 172A which appears to have frustrated its intent. Courts will allow investigation documents to be subpoenaed for proceedings provided a

legitimate forensic purpose can be shown. Furthermore, where such a purpose has been demonstrated, a party may examine whether those documents disclose material that may be established in some other admissible form as evidence in the proceedings. There therefore appears to be disagreement between the legislature and courts as to when parties should have access to investigation documents and how they may be used in related proceedings.

While the policy arguments involved in this debate are complex, the following complaint highlights how the current system can operate unjustly.

Three boys attending a rowdy New Year's eve party in a quiet coastal town were arrested and charged with various minor offences. The father of one of the boys complained to the Ombudsman that police had beaten the boys with batons and unlawfully arrested them. As the allegations were serious, the Ombudsman directed the Police Service to investigate the complaint under the *Police Regulation (Allegations of Misconduct) Act 1978* (PRAM Act (now repealed)).

The District Inspector assigned to the investigation interviewed one of the boys alone as he had just turned 18. Adopting normal procedure, the inspector gave the boy an undertaking that the record of interview would not be used in the criminal proceedings against him. The boy subsequently signed a record of interview which, on the face of it, supported the police version of events.

Later in the investigation, the Police Service applied to the Ombudsman to defer the investigation until the criminal proceedings against the boys had been finalised. Accompanying that application was advice that section 26(1) of the PRAM Act (now section 166) had been invoked. The Police Service considered that the release of the investigation papers would prejudice the outcome of the criminal proceedings and would therefore be contrary to the public interest. Consequently, the Ombudsman could not release the investigation papers to the complainant or any other person. This of course did not stop the inspector from

releasing the papers. He released the 18 year old's record of interview to the police prosecutor who had carriage of the proceedings against him.

The prosecutor realising the record of interview would greatly assist her case sought to use it in the proceedings. Owing to section 59 of the PRAM Act (now section 172A), she could not admit the record of interview directly into evidence. To circumvent this, she called the inspector as a witness to give direct evidence of his interview with the boy. To save the court's time, the magistrate allowed the inspector to read the record of interview into evidence. His evidence was, however, excluded on the basis that the record of interview had been induced by the inspector's undertaking that it would not be used in the criminal proceedings against him.

Eventually, however, the contents of the record of interview were admitted into evidence. The 18 year old, in giving evidence before the court, denied he had ever given a version of the incident inconsistent with his evidence to the court. This denial paved the way for the prosecutor to cross examine him on the apparent inconsistencies between his evidence and the information contained in his record of interview. The boy failed to adequately explain the inconsistencies and was convicted of the charges against him.

The boy's solicitor and the original complainant formally complained to the Ombudsman about the inspector's release of the record of interview to the prosecution and the breach of his undertaking to the boy that the record of interview would not be used in the criminal proceedings.

As this was a fresh complaint, the Ombudsman, not having the power to undertake a direct investigation at that time, directed another police investigation. The investigator concluded that the inspector had carried out his investigation with the 'highest integrity'. However, the Ombudsman was not satisfied that broader issues had been addressed. A document obtained through the police complaints system had been used in criminal proceedings to the detriment of a defendant notwithstanding section 59 of the PRAM Act excluded the document from evidence. Furthermore, the invocation of

section 26(1) meant the Ombudsman could not provide the investigation papers to the complainant even though the inspector could release documents to the police prosecutor to assist in her case. Such was the Ombudsman's concern over these issues that a reinvestigation was conducted into the inspector's investigation and release of the record of interview.

The Ombudsman's report was highly critical of the inspector's handling of the investigation and found it was biased in favour of police, evidenced in part by the inspector pursuing the criminal allegations against the boy instead of the alleged police misconduct. The Ombudsman also found that the inspector's conduct in releasing the record of interview to the prosecution, after having assured the boy it would not be used in the criminal proceedings against him and seeking to invoke section 26(1) to prevent the complainant from having access to the investigation papers, was unreasonable, discriminatory and oppressive.

The Ombudsman's report focused on seeking reforms to the legislative framework and recommended:

- ❖ expanding section 172A to render **all documents and information** brought into existence or obtained for the purposes of Part 8A of the Police Service Act **inadmissible in any proceedings** other than disciplinary proceedings or inquiries undertaken by the Police Tribunal;
- ❖ excluding from the operation of the section, that is, making admissible as evidence, all statements voluntarily made by a person **after** a criminal caution had been given, where criminal allegations were involved, or a criminal jurat had been adopted; and
- ❖ retaining the exceptions currently contained in section 172A(2).

The above framework would have significant benefits including:

- ❖ eliminating the artificial way in which documents and their contents are currently dealt with;
- ❖ protecting police by making directive memoranda and other responses procured under direction inadmissible in criminal proceedings while still enabling them to be

admitted in disciplinary proceedings and tribunal inquiries; and

- ❖ most importantly, safeguarding persons who participate in investigations by making their statements and records of interview inadmissible unless a criminal caution has been given or a jurat adopted.

The Ombudsman believes that such an amendment would provide the protection section 172A was originally intended to provide while protecting complainants and civilian witnesses and is currently pursuing these amendments with the Minister for Police and Emergency Services.

Romancing the Law

A man, estranged from his wife, found police very helpful in his property disputes. On one occasion a police officer accompanied the man when he went to his wife's home to take an inventory and on another, two police went with him to the house while she was away on holiday. On this second occasion, the man removed various items of property, the ownership of which was in dispute.

Despite the disputes between them, the man and his wife were discussing reconciliation. After one such discussion overnight at a luxury hotel, the woman visited her husband early in the morning. When he did not answer the door, she climbed up to his balcony and walked through an open door into his flat. The man was upset by this visit and asked his wife to leave but she went to his bedroom instead, where she found a woman in a T-shirt lying on the floor beside the bed. This woman jumped up and presented police ID, saying that she was a police officer and that the man's wife was trespassing and should leave. The constable was the same officer who had accompanied the man to his wife's home when he had taken the inventory. At this point police arrived in response to a call the constable had made earlier when she heard the man's wife at the front door. Identifying herself as a police officer, the constable had asked police to come and remove the man's wife. After talking to police, the woman left.

" I thank you very much for your letter. It was good to see that at last Government departments are taking notice of consumers' complaints...."
(From a complainant)

The constable was not satisfied that police had allowed the woman to leave without charging her and about a week after the incident, she spoke to her supervisor, an inspector. The inspector rang the police station involved and was told the constable in charge of the matter was not on duty. The inspector then rang the constable at home. Though the inspector denies pressuring the constable to initiate action against the woman, after speaking to him the constable went to work on his day off and issued a summons for trespass. This sense of urgency had been absent the week before the phone call. The woman's solicitor rang the constable. According to the solicitor's account, the constable said that he had not intended to take any action but after the inspector's call he had decided that he needed to protect his own "ass". The solicitor then complained to our office and we investigated the matter.

The constable admitted she had arranged for police to accompany the man when he had removed furniture from his wife's home but the police investigation found the complaint that the constable had misused her office not sustained. The Ombudsman disagreed and issued a report recommending the constable be departmentally charged. He also recommended the inspector and a number of other police officers be counselled about their actions.

As a result, the constable was charged with misconduct and the other officers were admonished. The trespass charge against the woman was dismissed.

Whose fault?

Police were called to a Catholic boys' college around midnight to remove some young people swimming in the school pool. The four boys who had been in the pool panicked and ran. Two girls who had been sitting nearby, walked over to police, giving themselves up. Meanwhile the boys had stopped trying to get away and had turned and walked back towards police. One of them was grabbed by a senior constable and struck on the leg. The young man said he was struck with a long torch, but the senior constable said he used his baton to strike a

blow on the upper shin, because he believed the young man was about to strike him.

All the young people were taken to the police station. In breach of Commissioner's Instructions in relation to juveniles, the young people were put into the exercise yards of the adult cells. No entries were made in the cell books and no prisoner admission forms were completed.

The senior constable asked the girls, both 17, if they were menstruating. According to the girls' account, the senior constable then said *"If I had seen blood anywhere, I would have taken out my gun and shot [the young man injured]."* Spinning the chamber of his gun around, he said *"This is a powerful gun and it could easily kill someone, and if I had shot one of the young fellers it would have been the fault of you girls."* The senior constable denied taking his gun out but admitted the substance of the conversation and that he had told the girls *"the use of firearms by police could have been initiated ...I did not say that I would have taken out my gun and shot [the young man injured] as I did not know his name at the time."* The senior constable said he *"did mention that it was common for a woman menstruating who got into water that the blood may show quite visibly."*

The following morning, the young man flew to England to take up a job as a sports coach. He immediately noticed problems with his knee but did not go to a doctor until two months later. A complaint was lodged and an investigation commenced. Advice was received from a chief inspector from the Legal Services Branch that there was evidence to support two departmental charges of misconduct against the senior constable, in that he used more force than was necessary when he struck the young man and in that his conversation with the girls brought discredit upon the Police Service.

The Assistant Commissioner (Professional Responsibility) was not satisfied with this advice and sought another advising. Six months later, the second advice stated the opinion that the Police Tribunal would conclude the senior constable had only used as much force as was necessary to effect the arrest of the young man. On the second issue, it stated: *"It is noted that the females are 17 years of age, and as such reasonably mature. It is not*

suggested that the words were sexually motivated gratuitous comments. Rather the language used was of a medical nature and consistent with educational language."

One of the girls had stated: *"I was embarrassed and humiliated and insulted by the private nature of the questions [the senior constable] asked me, as I didn't believe they had anything to do with what had occurred."*

The Ombudsman agreed with her. Rejecting the second police legal advising, he said in his report: *"The scenario constructed by [the senior constable] was so bizarre and unlikely that it is clear that there was no good reason, medical or otherwise, for his remarks. 'Sexually motivated gratuitous comments' is in fact exactly what they were."*

A priest stated that he heard the senior constable say to the girls *"You could have been shot."* The Ombudsman's report expressed concern that a police officer would contemplate using guns against teenagers taking a midnight swim. The report recommended that two departmental charges be preferred against the senior constable in accordance with the original legal advice. As a result, the Police Service sought further advice from their General Counsel, who advised that one charge only of misconduct in relation to the use of the baton should be preferred.

The senior constable admitted this charge and was paraded before the District Commander, in the presence of his Patrol Commander. The senior constable and another officer were admonished by the Region Commander, North West, for their failure to follow Commissioner's Instructions in relation to the detention of juveniles.

" Again, thank you for your prompt and courteous reply to my questions. I only wish that we had more people in our public service organisations who reacted positively and with such professional integrity as you have in this matter.

As you might suspect, this case is very important to the lesbian and gay communities. Our community relationships with the New South Wales Police Department have not always been good. These relationships are, obviously getting better with the creation of the lesbian and gay community officers in so many of the metropolitan police districts.....I also believe that the Office of the Ombudsman has created a more positive atmosphere for discussion of issues."

(From a complainant)

Case Studies

The Night Shift

Police officers have a great deal of responsibility. Often operational police are young and have little employment or life experience before being given these responsibilities. It is apparent from the two cases below that without a proper network of supervision or the belief that they may be asked to account for their whereabouts or actions at any given time, individual police officers can often find themselves in unenviable and often illegal situations.

Hot August night

"...I made him put his gun away, because I was worried I might cop one, and also to stop him doing anything else. I spose [sic] I just panicked and just wanted to get away from the place as quick as I could. I think this is the point where he started to make dog sounds on the radio, I'm not sure. Then he tried to rip the radio receiver out of the dash. I was trying to stop him doing that and drive at the same time. I didn't have a clue what to do. I knew the next job on the list was a break and enter, which I could do on my own and leave [him] in the car where he couldn't do any harm. It would also give me time to try and think."

At 3.00pm on a sunny, Sunday afternoon, two young, on-duty constables were invited to attend a barbecue.

Once at the party and aware that they were 'on-duty', the officers justified their salaries by attending to a domestic dispute or more specifically, a slight argument between two people at the barbecue. At 5.30pm, despite their own level of intoxication, they attempted to drive three of the guests home, placing them in the rear of the caged truck.

On their way they were called to attend an armed hold-up, which they drove to at high speed. When interviewed later, the constables alleged their efforts to attend the armed hold-up scene resulted in the truck lurching so violently the portable police radio simply flew out the window. Therefore pity the poor occupants in the rear of the truck.

As one of the officers initially stated "the portable radio may have slid across the dashboard and fallen out the passengers window."

However, it appears the radio did not accomplish this feat unassisted. The same constable later admitted "I had a feeling that [my partner] threw it from the vehicle with a folder belonging to me."

The radio was later found by a schoolgirl and dutifully returned to police by her father. However the search for the radio became a useful excuse. One of the officers implied the search was sufficiently important to override police attendance at the following incidents, listed in order of appearance: scene of a shoplifting; a break enter and steal; a report of a suspicious person; two further break and enters; and another suspicious person.

After attending the armed hold-up scene, the constables returned into their station and then headed to another address to drop off their illicit passengers. In a gesture of thankfulness for surviving their harrowing trip, the passengers invited the police inside where in the words of one "we had something to eat and I had a couple of beers and [he] had a few beers and we stayed there talking for a couple of hours." The police also appear to have drunk some port. The non-driving police officer had now consumed a large amount of alcohol and was beginning to act strangely.

At around 9.00pm the constables ferried two of their previous passengers back to the site of the original barbecue. By this stage the least intoxicated constable, who presumably was the designated driver for that evening, observed his partner was "fairly well affected" by alcohol. After dropping off these passengers the two officers headed off into the night, towards the location of one of their overdue responses and an appointment with some unwanted publicity.

Meanwhile, an increasingly short distance away, a father had pulled his car over to the side of the road to attend to his crying son, who was in the back seat. The man leant between the two front seats to lift his son through and place him in the front when he felt his car shake. In a statement made later he said, "...as I turned my head to the right, the window of the car just blew out. I looked to the left and saw a bullet hole in the rear drivers side window, about the size of a twenty cent piece and then that's when I heard the car ... I saw the rear of

a Landcruiser, white four wheel drive with no lights with illuminated 'Police' across the back in blue on white."

Inside the police vehicle the scene was understandably chaotic. The constable driving the Landcruiser later reported, "I instinctively accelerated at the same time leaning towards [his partner] as far as I could stretching out my left hand I grabbed his arm and said, 'Put your f...ing gun away you f...ing idiot' [...] I think I might have said 'What the f...ing hell [are] you doing?' He said, 'Fox' or something similar." As far as the police in the vehicle were concerned, it appeared the situation could get no worse.

However, wishing to continue with the canine theme, the heavily intoxicated constable, who had just fired his service revolver out the window of the police vehicle, then broadcast his best dog impersonations over the police radio, much to the confusion of other radio users.

Realising his partner appeared to be reverting down the evolutionary chain and perhaps being in two minds over the meaning of the ambiguous monosyllabic

statement: "Fox", the constable drove him home with consummate timing. "I saw him go through the back gate, I then returned to the police station. When I got there it was just knocking off time, so I started to clear the truck out."

Both police attempted to cover their tracks by making false statements and untruthful entries in police record books. Eventually, however, conscience got the better of one of the constables and he admitted his conduct, allowing the strong suspicions of his supervisors to be verified. Appropriate charges were laid.

Ombudsman's recommendation

One of the recommendations made by the Ombudsman in his report of July 1993 as a result of this incident, was that the supervision of mobile patrols be properly exercised and a system implemented to monitor the activities of officers not at the station while on duty. This report was sent to the Minister for Police and Emergency Services and to the Commissioner of Police.

The latest correspondence from the Police Service indicates the State Commander has still not finalised a "review of procedures relative to the supervision of mobile patrols whilst not at Police Stations."

Less than two months after the report, the

following incident occurred at another metropolitan police patrol.

Operation middle

'It was a dark and stormy night...' was effectively the excuse given by a Senior Constable assigned to conduct random breath testing in a Sydney metropolitan

district, when explaining why the duty had not been conducted. "It was overcast, with a black sky, bordering on the point of raining, and also windy and the light of the night was very dark." Thus it appeared the drink-drivers of the mid-west would escape detection due to the reliability of the night to create a darkening effect, in particular, the night of the 26th of August.

'If we can't beat 'em let's join 'em' could well have been the philosophy adopted as the two police officers drove their mobile RBT unit to engage in what can only be described as an attempt to infiltrate the problem at its very source, the pub. With a devotion to duty



rarely found in other spheres, the constables appear to have thrown themselves into their work. They even continued their research after leaving the hotel by making use of the takeaway facilities of the bar. Providing grounds for the changing of the RBT acronym to stand for mobile Random Beer Tasting, one of the officers admitted to consuming "two cans of beer" while patrolling the area.

The police vehicle and occupants having been 'off the air', in more ways than one, raised suspicion in the mind of the Supervising Sergeant. He monitored the radio transmission, on a lesser used channel, between the station's two patrol cars, both of which he had directed to conduct the RBT operation that evening. The two police vehicles were unaware they were being monitored by the sergeant, who interrupted the transmission to ask the vehicle occupants for their specific location. The hiss of static was all that greeted the diligent Sergeant's request.

The Sergeant then attended to duties more urgent than explaining the simultaneous malfunction of two police radios. He would shortly encounter a similarly chilling episode which was to defy logical explanation.

At 3:30 that morning, the sergeant parked his police vehicle in the driveway of his police station, facing the road. While still in the car he requested the radio operator to contact the crews of his wayward vehicles. Vehicle 1 (the car without the beer cans rolling on the dashboard) appears to have given its correct location. Vehicle 2 radioed its location as the corner of two metropolitan streets, *located directly outside the police station*. The sergeant presumably rubbed his eyes, blinked and looked harder, but was still unable to see the vehicle in question. He asked the radio operator to obtain a second opinion from the Senior Constable. The reply the operator received, was that Vehicle 2 had proceeded along the street and was about to go 'off the air', *having turned into the driveway of the police station*. The driver was unknowingly stating that he had driven, in a ghostlike manner, *through another police vehicle*, parked in the driveway, without its occupant, the Sergeant, being aware of the fact.

Vehicle 2, in reality, returned to the station 10 minutes later. The Sergeant alleges he observed the Senior Constable "stagger" out of the passenger seat of the police vehicle, while the other Constable remained in the vehicle "and made no comment", perhaps unsure of his future. When questioned by the Sergeant as to his location over the previous four hours, the Senior Constable responded, "Out of the area" and then staggered into the station.

Having solved the mystery of one of his crew's location, the Sergeant attempted to locate Vehicle 1. As he drove down the street he noticed in his rear-vision mirror, the occupants of Vehicle 2, who he had just spoken to, sneaking back out the driveway of the police station. The Sergeant turned his vehicle around and followed Vehicle 2 for a short distance. Using his better judgement, the Sergeant did not engage in a high speed pursuit of a marked police vehicle driven by two serving officers, however he decided it was time to contact the Patrol Commander, who attended at 5:00am.

If the current situation were not ironic enough, one of the officers indicated his knowledge of breath testing requirements when returning to the station at 5:25am. When directed by his patrol commander to submit himself to a breath analysis, he replied, "Two hours have expired, I am to be given the same rights as a citizen." When asked again why he was refusing a lawful direction, the constable stated, "I don't think its lawful because two hours have expired." This will be decided in forthcoming proceedings by the Ombudsman and the Police Tribunal.

Reprehensible Fabrication

Chris Murphy's column in the Sun Herald on 18 September 1994 carried the following report:

Three years ago police stopped an invalid pensioner on driving charges in a Western suburbs street. While one held him the other punched him. When he fell to the ground he was kned. He was thrown into a police wagon, slashing open his scalp.

With the arrogance of absolute power, the police then used the law as a weapon for further punishment. They charged Joseph Twigg, 35, a father of two, at Mount Druitt police station with assaulting them and resisting arrest.

When the charges were heard against Mr Twigg in 1991, two local residents who had watched the arrest from their homes came forward. Magistrate Roger Dive accepted their evidence, saying of the police involved: *"There can be no reliance placed on anything that Mr Snell and Mr Tucker tell me."* He awarded \$5,500 costs against police and referred the papers to the Commissioner of Police to investigate the officers' conduct.

Inspector Dick of the Internal Affairs Branch conducted the investigation and submitted a report which concluded that the police officers were innocent of the alleged assault. His report stated:

The Magistrate Mr R Dive in his handling of this matter has shown incompetence. The decision was based on his weighing of the consistent evidence of the Constables on one side, with the inconsistent evidence of the defence witnesses on the other.

We did not agree and reinvestigated the complaint. After hearing evidence from all the witnesses, the Assistant Ombudsman found that the officers had assaulted Mr Twigg as alleged. As a result, both officers were charged.

Chris Murphy describes the outcome:

Last week justice stood up against the police when thug constables Scott Tucker and Wayne Snell were convicted over their actions.

They must have been cocky. Too powerful to care or confident in the dominance of police court routines, they had no qualms about beating the man as alarmed Wilmot residents watched from their homes. Two bravely came forward.

When Mr Twigg was taken to court the police testified that he resisted and they needed the help of other police to get him into the van.

The independent witnesses slayed them. One described Snell striking the handicapped man six times before dropping on his knees on to the man on the ground. The other, a neighbour, described how Mr Twigg was thrown into the van. Both heard him groaning and pleading: "I'm not that bad. I'm not that bad."

Magistrate Pat O'Shane declared the police evidence *"a complete fabrication."* She found Snell and Tucker's behaviour was

"reprehensible in the extreme" and said it *"brings not only themselves into disrepute but the police service of NSW."* Both officers were sentenced to 12 months periodic detention. Had it not been for the Ombudsman's reinvestigation, it is unlikely the officers would have been charged.

Deliberate Lies

On the evening of 29 May 1985 an Aborigine, Mr Bruce Thomas Leslie, was found lying unconscious outside a hotel in Tamworth. Ambulance officers were called to the scene and, determining that Leslie was simply intoxicated, arranged for the local police to attend. Leslie was taken to Tamworth Police Station for detention as an intoxicated person. The next morning, Leslie was found unconscious in his cell. He was taken by ambulance to the Tamworth Base Hospital, where an examination revealed he had a fractured skull. Accordingly, Leslie was transferred to the North Shore Hospital in Sydney, remaining there in a coma until his death on 6 June 1985.

A coronial inquest held into the circumstances surrounding the death found Leslie had *"died of the effects of head injuries when he had apparently fallen back onto the footpath or laneway, fracturing his skull"*. Leslie's death was examined by the Royal Commission into Aboriginal Deaths in Custody. Mr J H Wooten QC, the Royal Commissioner, published his report on Leslie's death on 17 October 1990. In his report the Royal Commissioner found *"that three police officers who have knowledge of an important part of the relevant facts combined to give false accounts of the matter ... False evidence has also been given by the police officers to this Commission, although it is by no means the same evidence as was given to the police investigation and the coroner"*. Accordingly, he recommended the matter be referred to the Commissioner of Police to determine whether disciplinary proceedings should be instituted.

Upon receiving the Royal Commission's report, the then Commander (Professional Responsibility), Assistant Commissioner Cole, directed an investigation into the matter. At this point, pursuant to section 9 of the former Police Regulation (Allegations of

Misconduct) Act 1978, the Commissioner of Police should have notified the Ombudsman of the existence of a complaint about the police. In fact, the Ombudsman was to know nothing of this complaint until 10 March 1994 when he was eventually notified by Mr Cole's successor, Assistant Commissioner Jarratt.

Assistant Commissioner Cole also sought advice from the Police Department Legal Services Branch. Mr Burgess, a Legal Officer within that branch, advised that *"there is a basis upon which a number of Departmental charges can be preferred against the principal police officers involved ..."*

On 16 July 1991 Chief Superintendent Donnelly, the Tamworth District Commander, submitted his own report on the matter, based on his reading of the Royal Commission Report and his attendance for brief periods as an observer during the Commission hearings. Donnelly criticised in detail the findings of the Commission, commenting that *"whether the Commissioner acted in good faith and did not make findings in contravention of the requirements of natural justice is, to say the least, questionable"*. Donnelly opined that it would be *"grossly unfair to recommend firm disciplinary action"* against the officers concerned. Donnelly's report was duly endorsed by the North West Region Commander, who also opined that the Royal Commissioner *"may have made some critical and damaging findings contrary to factual evidence in this case."*

The Police Service internal investigation into the matter, however, found the police officers had not exercised the strictest honesty and truthfulness.

In spite of this, the Region Commander went on to state that *"in view of the length of time since the incidents referred to ... it may be appropriate to dispose of the matter by counselling of the police concerned"*.

On 19 May 1992, Mr Burgess of Legal Services Branch reviewed the file and considered the recommendations that the officers concerned be counselled. His comment was *"that any officer who is not truthful to a Royal Commissioner should be subject to a Departmental charge of 'not exercise the strictest honesty and truthfulness'. I so recommend."* Assistant Commissioner Cole

accepted this advice and accordingly directed the preferment of these charges against the officers concerned.

On 7 July 1992, in response to this action taken by the Commander (Professional Responsibility), Chief Superintendent Donnelly submitted a further report. He refused to have the charges preferred against the officers and commented that:

"Apart from the fact the charges are flawed and ill prepared, it concerns me that the Assistant Commissioner (Professional Responsibility) has seen fit to put the recommendations of senior operational police to one side and accept the recommendations of a Legal Officer. Effectively, Mr Burgess would not know enough to know how little he does not know about the background and politics of this particular Royal Commission".

The Acting Region Commander largely endorsed Donnelly's views, and requested the Assistant Commissioner (Professional Responsibility) reconsider the appropriateness of departmental charges. The whole matter was then reviewed by Mr N Ball, Acting Principal Legal Officer of Legal Services, who advised *"there is sufficient evidence available to ground departmental charges of failure to exercise the strictest honesty and truthfulness against those officers"*.

It is not clear what transpired over the next year, but on 20 May 1993, an officer within Internal Affairs submitted a report to the Police Service hierarchy summing up the present position in relation to this matter. Included in his report was the following alarming observation:

"No evidence can be found of the Ombudsman being notified of this matter ... no policy or decision was made to notify the Ombudsman of matters arising from the Royal Commission. Including Mr Leslie, a possible nine cases are concerned. Inquiries are now underway to determine how many other cases were not reported to the Ombudsman as required by the Police Regulation (Allegations of Misconduct) Act".

This officer further recommended that the Ombudsman be notified of the Leslie matter as a matter of urgency.

On 10 March 1994 the Commander (Professional Responsibility) formally notified the Ombudsman in writing of the existence of this complaint arising out of the Royal Commission of Inquiry into the death of Mr Leslie. He stated:

"... the matter was not previously referred to your office as it was originally determined that as the issues were subject of inquiry by the Royal Commission it was not required that you be notified ... the incidents the subject of the charges occurred in 1985. The Royal Commission sat in 1988. While I believe that the charges should have proceeded when first directed by my predecessor, I have in mind that the application of a charge and penalty is to bring about modified police behaviour. I cannot see that being achieved in this case at this time by preferring charges. Thus, I have directed ... that the officers concerned be sternly admonished by their Region Commander as soon as possible".

After carefully reviewing the police file on the Leslie matter, the Assistant Ombudsman expressed his dissatisfaction with the way the Police Service had dealt with this complaint. He informed the Commander (Professional Responsibility) in writing that there was a clear legislative requirement to notify our office under the PRAM Act, which existed at the time of the publication of the Royal Commission's Report into Mr Leslie's death.

Quite apart from the delay, the apparent resistance of senior police to appropriately discipline officers found to have lied to a Royal Commission is cause for great concern. The suggestion by the former Tamworth District Commander that the Royal Commissioner may not have acted in good faith in reaching his findings and that the findings themselves were possibly made "in contravention of the requirements of natural justice" is clearly unwarranted. He further sullies the integrity of the Royal Commission by his remark alluding to its "background and politics". We are not concerned with the perceived politics of the Royal Commission but with the facts presented before it. Based on those facts, the Police Service's own Legal Services Branch recommended the officers be departmentally charged and the then Commander (Professional Responsibility) directed these

charges to be preferred. It is cause for considerable concern that a District Commander was able to obstruct this process based on his own peculiar interpretation of the facts.

On 4 July 1994, the Assistant Ombudsman informed the Commander (Professional Responsibility) that our office did not accept his decision to 'admonish' the officers concerned:

"I cannot accept that to deal with the officers by admonishment, in the face of prima facie evidence which suggests these officers lied under oath to a Royal Commission, is appropriate. I endorse the spirit of Mr Burgess' original advice that 'any officer who is not truthful to a Royal Commissioner should be subject to a Departmental charge'. I view this matter most seriously, and with another major Royal Commission into police corruption almost upon us, I am sure you would share my concern that officers be left in no doubt that those who give false evidence will be severely dealt with."

To support our view, a recent decision of the Court of Criminal Appeal, in which Justices Badgery-Parker, Carruthers and Finlay declared that as a general principle anyone found to have lied to a court, Royal Commission or the ICAC should be jailed as a deterrent, was brought to the attention of the Commander (Professional Responsibility). In reply, the Commander (Professional Responsibility) wrote to us on 22 August 1994, stating that "with the benefit of hindsight, it is clear that the decision to admonish these officers was in all circumstances not appropriate". At the same time, however, he provided legal advice from the Police Service General Counsel to the effect that as the officers have already been admonished, any further disciplinary action would now constitute 'double jeopardy'. It is ironic that after almost four years of inaction and obfuscation, at the very time the Ombudsman is finally notified of the existence of the Leslie complaint, action is peremptorily taken by the Police Service which effectively precludes him from making any meaningful recommendations in respect of this matter.

Sexual Harassment

In December 1991, a woman complained her daughter, a student police officer at the Police Academy at Goulburn, had been sexually harassed by three other probationary constables. She alleged the young men masturbated themselves and each other during class and made obscene suggestions. On one occasion she was a passenger in a car and one of them sat in the back seat with his hand down his pants and masturbated.

The student did not report the harassment because she was afraid of what the harassers would do to her. Other members of the class supported the student's account, recalling that the three harassers would fondle their genitals in class and talk in loud voices about their sexual experiences.

The Ombudsman found the complaint of sexual harassment sustained and recommended that the harassers be counselled and required to undertake further training and assessment to demonstrate their understanding of the Police Service's equal employment opportunity policy.

The matter was referred to the police EEO Branch and the probationers were required to write 3,000 word essays on the issue of unlawful discrimination and sex based harassment in the workplace, with particular regard to the impact of such behaviour on the victims. The probationers were then required to attend a tutorial with the Commander, EEO Branch and the Branch Education Officer, to present the findings of their research and discuss their understanding of EEO principles.

At the tutorial, each probationer spoke for about 30 minutes on EEO policy, discrimination and sex based harassment in the workplace. They were then questioned on their presentations. Each probationer related the knowledge they had gained through their research to the complaint made and to their behaviour to the student, addressing the impact of their actions on her and on themselves.

"Into the Woods"

The Ombudsman received a complaint from Wingham Forest Action Group representatives in December 1993. They complained of police actions during a nonviolent protest against logging in Doyles River State Forest. Police had used forestry workers to help topple tripods with protesters perched aloft. Private forestry company bulldozers were also used to dismantle the protesters' campsite. In one instance, a woman chained herself to a large piece of concrete and was chipped free by police with no attempt to shield her from flying debris.

Police are often put in the unenviable position of weighing the safety and civil rights of peaceful protesters, against the rights of property owners. The problem is complicated by protesters who are willing to put themselves in potentially dangerous situations which require expensive rescue operations and tie up resources.

It became obvious after the first attempt at conciliation that the Police Service was unsympathetic to the merits of peaceful protest. There are certain classes of complaint which cannot reasonably be resolved in the traditional sense of conciliation. The best that can be hoped for is that both sides understand the rights and responsibilities of the other side and that an agreed set of rules can be laid down for future encounters. The police were directed to attempt a second conciliation, one that employed an element of *"finesse and an ability to convey information about police procedures and the respective rights and duties of protesters."*

A successful conciliation was achieved on the understanding that police would be educated on the protocol related to forestry protests. The specific agreement included:

- ❖ a directive to police stating that the safety of logging protesters be paramount in their removal from the disputed area;
- ❖ that police confer with the anti-logging liaison officer prior to and during any future disputes;
- ❖ the education of police regarding their role at forestry logging protests, with particular attention to safe working procedures;
- ❖ that rescue squad staff be used whenever possible;

- ❖ that all protesters in dangerous positions be removed with the aid of a cherry-picker; and
- ❖ that female police be rostered for duty whenever possible.

Film at Eleven...

State Rail employees were cleaning a vacant warehouse in Redfern when they came across a bag containing plastic packets of a white powdery substance. The man who found the powder assumed it was an illegal drug because it was packaged just "as seen on T.V." and reported the matter to the police. Two Constables from Redfern Police Station arrived to take statements and then took possession of the suspicious packets. The police officer who took the packets declined to search the vacant warehouse but stated that the powder would be analysed and then destroyed.

When State Rail contacted the police to check on the results of the analysis, no record of the suspicious exhibit could be found. When questioned, the officer who took the bag said he was sure the powder was harmless and had decided to destroy the powder himself. Instead of entering the property in the Drug Exhibit Register, he said he flushed the contents of each packet down the toilet and then threw the plastic bags into a wastebin.

After formal investigation by Internal Affairs, the constable pleaded guilty to departmental charges of neglect of duty. The investigation also revealed the packets of white powder were, in fact, harmless. State Rail had rented the premises to a film production company two weeks earlier. The property master confirmed he had used several similar bags filled with icing sugar to look like drugs. The film *"The Custodian"* is a drama about police corruption.

Who's Calling Please

A highway patrol constable was observed doing a U-turn at speed and appeared to lose control after the vehicle blew tyres on hitting a pedestrian island. The vehicle being pursued got away leaving a nearby council road gang gawking at the fishtailing police vehicle. A complaint was made and the issue of dangerous driving was found sustained against the constable. He was transferred from highway patrol to general duties for three

months but the driving offence became statute barred before any infringement notice could be laid. The officer was required to attend remedial driver training to be re-certified to drive police vehicles. This might have been the end of the matter except the constable took it on himself to contact the complainant after being notified of the complaint. The complainant's evidence is as follows:

On the 9 October, I was at my home address in the garage working about 9.30 at night when my wife called out "Ron there's a guy on the phone for you." I picked up the phone in the garage and this voice said to me in a quiet tone, "I believe you are Ron" and I said, "Yes." and he said, "I believe you witnessed an accident?" "I am Constable," I cannot remember his name, "from Fairfield Police," and I said, "Yes one of your blokes," and he said, "I am the bloke who was in the accident." He said, "I am on holidays, I've just cancelled them." I said, "If you want to play that game I'll play it with you," and he then hung up. On Monday the 12th I phoned the Ombudsman Office and I informed them of the phone call I received from the Constable on Friday night.

This aspect of the complaint caused the complainant and his wife considerable distress. The Ombudsman did not accept the Constable's reason for telephoning the complainant as seeking to confirm that a complaint was made against him. The Constable was departmentally charged with misconduct and has been counselled. Contact with complainants is not covered by the Commissioner's Instructions or the legislation. The only legislative references are to restrictions on the release of the name of a complainant. A recent amendment to the Commissioner's Instructions provides that police who are given a directive memorandum are not to release the identity of the complainant. In this case, the officer asserted that he was unaware a complaint had been made.

The Office of the Ombudsman receives many complaints and inquiries from the public concerning police conduct. Among some members of the public there is an underlying fear of possible harassment if they complain. The Ombudsman views any unofficial

contact between a complainant and police officers the subject of the complaint very seriously and will continue to press the Police Service for an appropriate amendment to ensure the Commissioner's Instructions expressly prevent unlawful contact with complainants by officers who are the subject of a complaint.

Strip-Searching

A continuing concern

Our 1991 annual report reported a case which led to the acceptance by the Police Service of recommendations clarifying the guidelines which previously applied to search powers and a circular was issued which strengthened the heads of consideration which police must take heed of when in this situation. Shortly after this circular was issued the police rules were amended and superseded by the Commissioner's Instructions. The language used in the instructions is simpler and much more accessible but the provisions of the earlier circular were largely ignored.

Early in 1992, two Aboriginal women complained to our office of having been stopped by the side of the road on the outskirts of the large country town in which they lived. The incident occurred at 1.30 in the morning.

The two male police officers relied in part on the fact that the two complainants were travelling back from a service station which has a reputation for being a 'drug exchange spot' and that one of the women was known to police although she had never been arrested.

The two women cooperated with the instruction to stop their car and the two officers searched the vehicle without success. The officers then made the decision to carry out a strip-search and, in adherence to the Commissioner's Instruction, radioed for assistance from a female police officer. When this officer arrived, the complainants were led one by one in to the shrubbery on the side of the street, where they were asked to strip completely, despite protests from one complainant and a request that the search be carried out at the Police Station. The female officer stated she did not need a torch to

carry out the search and relied on the street illumination. Nothing was found.

The inappropriate choice of location to carry out the search would surely have offered **more rather than less** opportunities for someone wishing to discard any illegal substances they may have been hiding. The above incident also highlights the dilemmas thrown up by the current legislation, namely the legal advice that the power to stop, search and detain does not extend to removing the person detained from the immediate location. As a direct consequence of this, if the detention continues to allow the arrival of either a suitable officer or a suitable vehicle for the strip search, when does the detention become unreasonable?

These concerns must be addressed carefully, in order to achieve, on the one hand, an acceptable level of consideration to the privacy and dignity of the person being searched and, on the other hand, the retention by police of a useful tool in the detection and prevention of crime.

To this end the Ombudsman has recommended that the current definition of the term 'detain' be carefully reconsidered and, if necessary, clarified.

Where to hide the proceeds of robberies

In another case a juvenile known to police for very minor breaches of the law, such as travelling on public transport without a ticket, was stopped by two officers from Sydney Transit Police. At the time he was walking along the streets of Waverley in the early hours of the morning with a number of companions.

The juvenile complained to us that police ordered them to take everything out of their pockets and take their shoes off. *"They were searching our cigarette packets closely in the back part. The cop took me to the front of the truck and he was looking for something in the front of the car. He had his torch and said something about finding a microscope. He then said 'Drop them' I knew he meant my pants and underpants. I dropped my trousers and lifted my shirt and turned around. Nothing was found."*

The constable then asked the complainant to pull his underwear open and shone his torch into his clothing. This was witnessed by at least one of the complainant's companions.

The police officer who carried out the strip search stated to the police investigator:

" I think [the complainant] asked me why he was being searched. I believe my answer was because of the time of the night, a number of robberies in the near vicinity. I knew that [the complainant] had been arrested for Possession of Prohibited Drugs a few days earlier."

At first glance, one may be tempted to conclude that the police officer was acting reasonably. On deeper consideration, the logic of such thinly founded excuses for the highly invasive practice of strip searching, allows its use on anyone who may have had prior contact with police and who decides to take a walk in the middle of the night.

The interesting defence chosen by the officer was that asking someone to drop their trousers in the middle of the main street of Waverley was firstly not really a strip search and secondly was not an attack on the complainant's privacy because there were very few cars travelling along the street at that time of the night.

Equally interesting was the fact that neither the police investigator nor the internal legal advice appeared to appreciate this last point which is clearly addressed in the Commissioner's Instructions.

The Ombudsman recommended that both officers be paraded and admonished for their actions and that, together with the police investigator, they be reminded of the legislative and procedural guidelines relating to the detention and searching of persons.

Safe Custody

Small, isolated police stations in rural areas face many difficulties. A significant number of these problems occur in single officer police stations during the arrest, charging and holding of prisoners. It is obviously an unenviable task to try and process an alleged offender and ensure safe custody of the person, while attending to any other duties which may arise. The difficulties are compounded by the fact that smaller country stations are often in areas of proportionally high Aboriginal populations, who have been recognised by the Royal Commission into Aboriginal Deaths in Custody as having specific needs.

In one case, the complaint was that police had assaulted an Aboriginal man while in custody. The police investigation of the incident did not identify the issue of unsupervised custody, however when the matter was reviewed by the Ombudsman, it became clear the alleged offender, an epileptic who was heavily intoxicated, had been left unattended for a completely unacceptable period of time.

In our report to the Minister for Police and Emergency Services, this concern was outlined in the strongest terms. As a result the issue was addressed at a local level by the Police Service and the officer responsible was counselled by the District Commander. Clearly however, circumstances may confront other police with difficult decisions to make in future incidents. Therefore, the Ombudsman will be further examining the difficulties surrounding small, country police stations.

The Wrong Look at the Wrong Time

A complaint by an English tourist of assault by police in Darling Harbour in the early hours of New Years Day 1991 has finally been resolved. The tourist has been granted \$5,000 for loss of his glasses, watch and gold neck chain. The police investigator stated that due to the tourist's physical appearance he was genuinely mistaken as a member of a group of drunken islanders who attacked police. The report stated it is most likely that the tourist was hit on the head with a baton by a Sergeant who at the time was performing his duty to the best of his ability. The Police Sergeant has been counselled on the use of his baton. Charges were not preferred because there has been a lack of clear identification of the police involved. Nevertheless payment was made on the basis of police responsibility. The irony in this matter is that the tourist was actually trying to conciliate with members of the group and physically restrained one from throwing an empty bottle at police. It's a case of being the wrong physical appearance at the wrong time.

"...Now that I have over two and a half years of service, I can look back and realise that within this profession, there are so many variables and unknowns....there are any number of legal, moral, ethical and procedural obligations which must be strictly adhered to....once again I would like to thank you for all of the time and effort to which you have committed to this inquiry, I hope that this is the one and only time that my name is mentioned to you in regards to this type of inquiry for the remainder of my service."

(From a serving police officer)

Public

Overview

This section covers complaints about government departments and statutory authorities other than police, prisons, local government and reviews of FOI matters.

This year has been a period of consolidation and assessment following the restructuring of the office. During the year we received a total of 964 written complaints and 2,270 oral complaints about public authorities other than those listed above. We also received 90 requests for review of initial determinations. A further 380 complaints were received about authorities, organisations or individuals not within the Ombudsman's jurisdiction.

The level of complaints in this area remains stable and in contrast to other areas seems to have reached a plateau. Again this year we have seen a significant reduction in complaints relating to the quality of service. While it is too early to draw any strong conclusions about this, it may indicate government authorities are becoming more focused on providing quality service and consequently more responsive and adept at dealing with their own complaints.

This year a more detailed categorisation system for complaints has been adopted. This should allow us to monitor complaint trends in this area more accurately. In this period 1,043 complaints were finalised. It is pleasing to note that despite the disruption caused by the restructure of the office and the resulting large scale reallocation of files, a high level of output has been maintained.

The restructuring process provided an opportunity to thoroughly assess our work practices and procedures. A great deal of work has been undertaken to develop strategies for delivering better outcomes for both complainants and public authorities.

This reassessment has allowed us to enhance our mediation service. After carefully

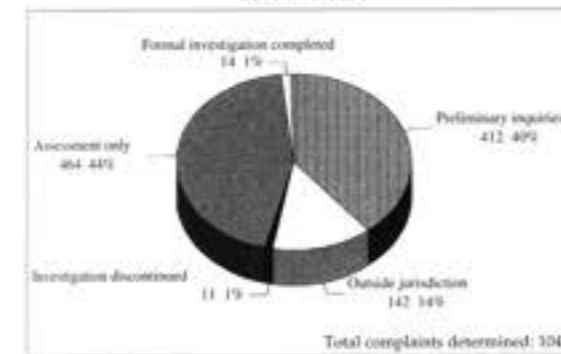
developing the procedures to ensure adherence to our legislative responsibilities, we have established a workable mediation process with highly successful outcomes. The mediations conducted to date have resulted in successful outcomes for both complainants and the public authorities involved. These outcomes have included:

- ❖ expeditious and inexpensive resolution;
- ❖ agreements reached which have been satisfactory to the parties as distinct from the imposition of a 'solution' by an external body; and
- ❖ creating an environment in which the public authority is able to learn directly from the complainant in an open and non adversarial situation.

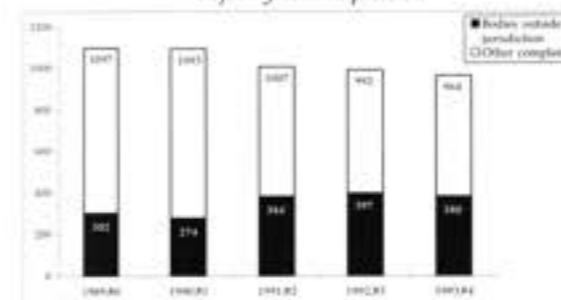
Another development has been a greater emphasis on the informal resolution of complaints. This has included an increased use of preliminary inquiries where it appears our intervention may assist in an expeditious outcome, providing improved advice to complainants concerning other avenues of redress and useful information to assist them in making their complaints. The Ombudsman sees the office as having an important role in ensuring people feel empowered in relation to their dealings with public authorities. As a corollary of this educative role to members of the public, the office actively continues its campaign of educating authorities about their responsibilities to the public.

Finally, in light of our focus on outcomes, it is important to note that the office remains committed to its investigative function; particularly with regard to matters raising issues of broad public interest. Accordingly, resources have been allocated to ensure priority is given to complaints involving issues of systemic deficiencies in public administration or serious abuse of powers.

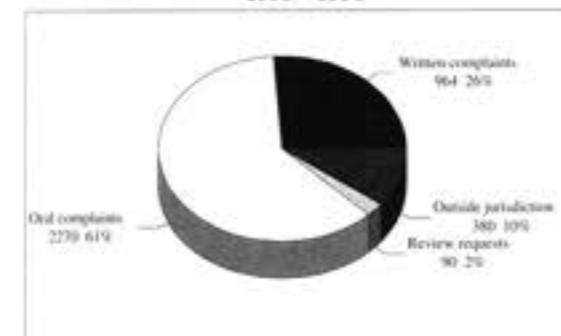
Outcome of Public Authority Complaints Determined 1993 - 1994



Public Authority Written Complaints Received A five year comparison



Public Authority Complaints Received 1993 - 1994



Nature of Public Authority Written Complaints Received 1993 - 1994

No replies, delays in action, general rudeness, poor or inadequate service	142
Failure to act	94
Failure to enforce or investigate breaches of regulations or legal obligations	77
Unreasonable, unjust or discriminatory enforcement of regulations	34
Denial of procedural fairness	20
Failure to provide reasons or explanations for action or inaction	5
Other procedural objections	80
Wrong decision: objection based on prejudice, malice or bias	21
Wrong decision: objection based on incomplete or misinterpretation of facts	21
Wrong decision: other reasons	142
Matters relating to contracts, tenders, leases or resumptions	32
Level of charges, fees, penalties or refunds	52
Matters relating to policy or legislation	27
Official information: refusal to disclose or alter and improper disclosure	34
Management: broad issues not covered above including general supervisory failure	39
Other	14
Authority outside jurisdiction	380
Finding of outside jurisdiction	133
Total	1344

authorities

Licensing Lives

How many reports will it take?

The front page of the Sun-Herald on 12 September 1993 ran a picture of a frail, elderly man looking dejected and hopeless as he sat on what presumably was his bed - a torn mattress on a metal frame with some old blankets but no sheets. The story accompanying it by Martin Warneminde described the appalling substandard conditions of the boarding house in which this man lived. It stated:

"[People with disabilities] are handing over \$300-plus fortnightly invalid pension cheques to sleep in the vomit and urine-soaked filth of an inner city Sydney dosshouse...

The officials said the premises come under the definition of a boarding house for people with intellectual disabilities. These must be licensed, which means legal action could be taken to shut it down..."

This article was enclosed with a complaint received by the Ombudsman in October 1993. The complaint was made jointly by two peak community groups representing the interests of people with intellectual and psychiatric disabilities in NSW. The complaint alleged inaction and neglect by the:

- ❖ Department of Community Services (which has a licensing power in relation to boarding houses for people with intellectual disability and which has responsibility for people with intellectual disability in NSW);
- ❖ NSW Department of Health (which has a general responsibility for people with mental illness in NSW);
- ❖ police; and
- ❖ Sydney City Council (which has powers to inspect and close premises within its boundaries that do not meet reasonable standards of public health).

The allegations contained in the complaint greatly concern the Ombudsman. Initial inquiries revealed that soon after the article was published, the premises had been quickly closed down by the authorities and the residents offered alternative accommodation. The need for action on this boarding house had apparently passed.

Preliminary inquiries were made with the police concerning their awareness of the state of the premises. On the basis of their response and the fact that prime responsibility lay with the other three public authorities named in the complaint, the Ombudsman chose to take no further action in relation to the conduct of the police.

The article referred to a taskforce which was inquiring into boarding houses and hostels for people with disabilities. This taskforce was established by the Minister for Community Services in response to an earlier article which had appeared in the Sun Herald on 28 March 1993. The article, "Hostel of Horror" depicted the plight of 150 people with disabilities living in a private hostel near Newcastle.

As the inquiry was on foot, the Ombudsman delayed action until the taskforce report was presented to the Minister and the authorities concerned had time to consider its recommendations. A letter was sent to the Director General of the Department of Community Services requesting a copy of the report as soon as it had been completed.

The report was presented to the Minister in mid December 1993. Responses received to telephone requests for a copy of the report initially suggested that less than five copies of the report were produced and that the report was not a public document, but was for the Minister alone. The Ombudsman eventually received a copy in mid January 1994. He was also advised the Minister's response to the report would not be available for some months.

A further article appeared in the Sydney Morning Herald on 14 December 1993. It recounted evidence given at a coronial inquiry into the death of a resident at a private hostel in Annandale, an inner city suburb of Sydney. The reporter, Ms Jennie Curtin, stated:

"The Coroner noted allegations about the way the hostel was run, including claims by some of the patients that a 70 year old schizophrenic resident gave them their daily medication.

The resident ...had a set of keys to the medicine cabinet, made breakfast and lunch for the residents, and every morning gave medications to another schizophrenic resident, [the deceased].

For this, [the owners] gave her a couple of packets of cigarettes every week."

The Ombudsman is aware of the complexity of the systemic issues raised in this complaint. Appropriate accommodation for people with disabilities is in short supply in NSW as it is throughout Australia. Problems with adequate standards of care in private for-profit boarding houses and hostels that accommodate people with disabilities has been highlighted in many reports over the years. These have criticised public authorities for inadequate regulation and monitoring of such accommodation.

Notable reports are:

- ❖ the Human Rights and Equal Opportunity Commission Report on Human Rights and People with Mental Illness, 1993, which was critical of the implementation of the NSW licensing system for boarding houses and hostels;
- ❖ the Report of the Royal Commission into Deep Sleep Therapy, (the Chelmsford Report), 1990; and
- ❖ the Waddy Report, 1991, prepared for the then NSW Department of Health and Community Services, set out some of the significant issues in relation to boarding houses in NSW.

The recommendations contained in the 1993 report of the taskforce set out a five year strategy to deal with the current problems. It involves cooperation and coordination between various public authorities at a state and federal level, including the NSW Departments of Community Services, Health, Housing and Local Government and Cooperatives.

The Minister for Community Services is reported in the Sun-Herald on 26 December 1993 as having "pledged drastic action" and "immediate action" in response to the report.

Inquiries made in March 1994 revealed that matters were proceeding slowly and that it was still too early for the report to have been fully considered. Formal written inquiries have now been sent to the Department of Community Services, the Department of Health and Sydney City Council seeking their responses to the report and asking what action they have taken or intend to take on the recommendations it contains. The view of the complainants is that little has actually changed. The Ombudsman awaits the authorities' responses.

HOSTEL OF HORROR

Abuse of mentally ill

Shame of Sydney, 1993

Residents suffer amid killings, sex assault

Jail threat over slum hostels

Five year clean-up plan unveiled

Mentally ill left alone, court told

ELIZABETH ST, SYDNEY: 1993

The Sun-Herald has shown particular interest in the appalling substandard conditions of boarding houses and hostels for people with disabilities. An article from the Sun-Herald accompanied a complaint from two community groups about this issue.

Mediation

New directions in complaint handling

The results of our mediation service have been extremely encouraging. Parties in dispute have reached settlement in every mediation conducted by our office to date. In the majority of cases, the complainant had been in dispute with the authority for at least 12 months. Frustrated by the conduct and response of the authority to their complaint, they approached us to complain.

Mediation is voluntary, confidential and free. It places the solution of a dispute into the hands of the parties, often resulting in an outcome which is better suited to the needs of the parties than one which is imposed on them or recommended to them by an outside authority such as a court or this office.

Complaints successfully mediated include matters relating to:

- ❖ land acquisition for road widening purposes;
- ❖ management of cultural resources within a national park;
- ❖ council planning provisions and pollution; and
- ❖ an alleged defective building inspection report issued by a local council.

The future

It is hoped that representatives of authorities who attend the mediation sessions organised by our office will recognise the benefits of this approach to dispute resolution. Settlements can be reached quickly, cheaply and informally, parties can gain a better understanding of each other and of any constraints or pressures that may exist, and a greater range of solutions can be explored by all parties in dispute.

Land Councils

A significant number of complaints were received during the year about matters relating to Aboriginal Land Councils. It was decided to hold a meeting with representatives of the NSW Aboriginal Land Council to discuss complaints and general issues relating to land councils. This meeting was very useful, and provided a forum to discuss individual complaints and talk to the

council about its jurisdiction, the types of complaints it receives and how it deals with them.

The council does have a legislative role to conciliate certain local land council disputes. However, despite popular belief, it does not have any statutory power to direct councils to act in any way. Complaints to this office often reflect the general misapprehension in the wider community about the state council's power.

Generally, the administration section of the state council handles complaints, however, the councillors also have responsibilities in this regard. Often complaints can be dealt with by providing advice or by referring the matter to the local land council for attention. However, where there are complaints about serious financial matters, there is a different approach, which could include a comprehensive examination of audit reports before a decision is made about future funding.

The future

While we do have jurisdiction over some areas of the operation of land councils, the established procedure is for complaints to be referred in the first instance to the state council for attempted resolution. This is in line with the concept of the Ombudsman being an avenue of last resort in resolving complaints. We will continue to monitor the overall pattern and number of complaints about land councils and investigate unresolved matters in cases that warrant such intervention.

A Stitch · and Not Before Time

The Ombudsman is often contacted by complainants before they have received a "final" decision or result to their complaint by the public authority concerned. In most instances, we decline the complaint on the basis that it is premature. The public authority's own internal review or investigation may result in an outcome that is satisfactory to the complainant. The Ombudsman does not wish to duplicate effort where this can be avoided.

As with all rules, of course, there are exceptions. There are always a few complaints where the issues raised are of great concern to the Ombudsman, yet the matter is still before the public authority for resolution. It has often

proved useful for the Ombudsman to write to the public authority concerned setting out particular issues or questions which concern him and requesting these matters be dealt with in the authority's own investigation. In most instances, the public authority is willing to incorporate these points in its inquiry, if for no other reason than to possibly forestall further inquiry by the Ombudsman. In many cases the Ombudsman's letter adds weight to the individual complaint. It can ensure certain important issues are not overlooked and that the public authority deals fully and fairly with the complaint at the time, rather than having to reopen the matter when the still unresolved complaint is taken to the Ombudsman.

One such complaint was received in December 1993 by a couple living in the Illawarra. They were most distressed by alleged repeated abuse and possible neglect experienced by their young son who was living in a supported accommodation service for children with disabilities. It was operated by the Department of Community Services. Their complaint detailed numerous instances of injuries and bruising sustained by their son while in care. It described repeated attempts made by the couple to have the instances reported and investigated, and the alleged indifference by senior staff at the service to their complaints. One letter sent by the service advised that the father would no longer be able to visit his son at the service following an oral complaint made by the father when he arrived to find his son with dried faeces caked on his legs. The letter stated the father's conduct towards staff was not acceptable.

Letters and reports enclosed with the complaint showed the parents to be unusually persistent in their approaches to the department. The department had not been entirely deaf to their complaints and copies of reports of previous inquiries were included with the complaint - along with detailed criticisms of the inadequacies in each. To add to their stress, the couple received threatening phone calls which they believed to be a direct result of their efforts to have the matters fully investigated.

When the couple complained to us, they had also taken their complaint to the Minister for Community Services, Mr Longley. The Minister had referred the matter to the Director General of the department, Mr Semple, for his

consideration. No response had been made by Mr Semple when the complaint was received by the Ombudsman. According to our policy, their complaint was therefore premature.

The complainants wanted their complaint to be investigated by an independent consultant. They had lost faith in the department's ability to fairly and fully deal with their complaint.

The picture of the service created by the complaint was grim. The allegations of neglect and abuse were serious, particularly as they related to children with disabilities dependent on others for care. It was apparent other children may also have been abused and that little had been done to report or investigate concerns. Investigations by the department appeared to focus on particular instances of alleged abuse by staff members, with little result. The Ombudsman considered significantly larger issues needed to be addressed - including:

- ❖ the role of management in the day to day operations of the service;
- ❖ the relationship of staff and management, and of staff and management with parents, schools, and other people connected to the children;
- ❖ procedural issues such as reporting and investigative procedures; and
- ❖ monitoring of individual progress and development.

It was clear an independent investigation was required.

These concerns and issues were raised with the Director General of the department in the same letter which advised that we would not commence an investigation while the matter was still being considered by him. On 31 December 1993 the Ombudsman received the Director General's response. He advised an independent consultant would be employed and confirmed the issues that had been outlined would be included in the review.

The complainants were delighted to finally have their concerns and complaints taken seriously by the department.

The Ombudsman has subsequently been informed that the size and extent of the investigation has been further expanded and that a small team will be retained to conduct the review.

"I am writing to thank you for your efforts and assistance in helping me with my complaints.

I am delighted to inform you that last Friday 20 May 1994, I received satisfactory compensation and I feel sure that this would not have happened without the intervention of your office."

(From a complainant)

The complainants were advised the Ombudsman would not take any action on their complaint as it was premature and that they should await the outcome of the further, independent investigation. They were advised they could lodge a further complaint with the Ombudsman if they were dissatisfied with the outcome of that investigation.

Ousted from Community Services

April 1994 saw the establishment of the Community Services Commission and the Community Services Appeals Tribunal. It also saw a reduction in our jurisdiction to investigate conduct of the Department of Community Services, the Home Care Service and their officers.

Excluded jurisdiction

The newly formed Community Services Commission is able to receive complaints about 'service providers' who unreasonably provide, withdraw, vary or administer a community service. The term 'service providers' includes the Department of Community Services, the Home Care Service of NSW and non-government organisations funded by the minister or the Home Care Service. Matters that can be made the subject of complaint to the commission are now excluded from our jurisdiction. However, this could not prevent the Ombudsman making conduct the subject of an investigation on his own motion.

Certain matters may be appealed in the Community Services Appeals Tribunal, including certain decisions of the Minister, the Director General or a service provider.

Continued jurisdiction

Apart from his own motion powers, certain functional areas within the Department of Community Services continue to come within the Ombudsman's jurisdiction, including the department's licensing powers.

As the commission itself is a public authority within the Ombudsman Act, we can investigate complaints about its conduct.

Need for clarity

A number of jurisdictional issues are still to be resolved. This is partly due to the fact that as the commission and the tribunal have been so recently established, the interpretation of certain sections of the legislation are yet to be tested. The Report of the Taskforce on Private 'For Profit' Hostels presented to the Minister for Community Services, Mr Longley, in December 1993, states:

"The text of the Community Services (Complaints, Appeals and Monitoring) Act 1993 is not altogether clear on whether the Commission has the ...complaint handling, monitoring, review and inquiry functions in relation to the Department's role as a funding body, as opposed to a funded agency's role in the delivery of services."

A continuing concern of the Ombudsman is the effect the new jurisdiction will have on complaints involving the action of a number of public authorities, including those now within the purview of the Community Services Commission. The Ombudsman regularly receives such complaints. These often raise issues of the adequacy of coordination between authorities such as the police, Department of School Education and the Department of Community Services. It is unclear how such matters will be effectively dealt with in future.

Links with the Community Services Commission

The Ombudsman recognises the Commissioner, Mr Roger West, and the commission's staff have a most difficult task in establishing systems and processes which will provide effective and timely responses to complaints, and appropriate monitoring of community services. It is clear the tasks are many and the resources currently allocated to the commission and tribunal are limited. The Ombudsman has made available to the commission information about complaint procedures and guidelines used within our office to assist the commission in formulating its own policies and procedures.

The future

Friendly and open communications have been established with commission staff and it is hoped that this will continue to typify future relations.

The Ombudsman will be closely monitoring the development of these two bodies and intends to work cooperatively with the commission and tribunal to ensure no significant matters fall between the jurisdictional cracks.

Working with Youth

The Ombudsman maintained a program of visits to each juvenile justice centre during the year. During these visits investigation officers take complaints from young people and staff if requested, and inspect the centre.

Fifty complaints about conditions in centres were made to Ombudsman's officers during visits, including two from staff members. None of these complaints warranted formal action by the Ombudsman as officers were able to resolve all issues after discussions with relevant superintendents. Eight other complaints about police and courts were also taken.

During the visits officers noted the program of renovations being undertaken by the Department of Juvenile Justice. In some instances the building program is extensive, particularly at Reiby and Minda. This is partly a result of the decision to develop a specific program for young women at Yasmar rather than have them as a minority group at Reiby. The renovation of Paterson House is long overdue but it appears this will finally be completed as part of a larger program of work at Minda. Generally, however, the facilities are much improved.

Of particular concern was the continuing use of old intercom or buzzer systems rather than duress alarms at a couple of the centres. At Yasmar intercoms are in each room as well as in common areas and detention cells. Our officers were advised that faulty intercoms take several days to fix. Alarms and intercoms in common areas are reliant on being plugged into a wall socket; when trying to test the alarm, our officers found it was disconnected. The ease with which this can happen is of some concern. At Minda, buzzers are also used in the segregation cells and officers noted that one of the buzzers did not work at all. As a working system is an essential safety feature, the Ombudsman hopes that more modern duress alarms will be installed at all centres in the near future.

The generally low level of complaint to the Ombudsman seems to indicate that the Official Visitors to juvenile justice centres deal with the majority of the young people's concerns. Given that the Ombudsman does not have the resources to visit centres more than twice a year (at best) while most Official Visitors go to centres fortnightly, this is clearly appropriate.

The future

The Ombudsman recognises that there is still a significant problem with the accessibility of our office to young people, including young offenders.

Concerned to address this problem, we intend to develop an awareness program for youth during the coming year. Rather than working in isolation, we hope to develop this program in consultation with people more directly involved in youth affairs.

"Thank you for your letter.

Our predicament, as detailed in our complaint, highlighted an omission/oversight in the relevant statute law. As a direct result of our complaint, together with the support of your predecessor in the Office of the Ombudsman, the Act is about to be amended.

Whilst there will be no 'improvement for the complainant', we have achieved 'some meaningful reform' and there will be an 'improvement ... for the public at large'."
(From a complainant)

Investigations

Building Services Corporation

The Building Services Corporation was set up in 1987 to protect the public by licensing tradespeople, resolve complaints about licence holders and provide a cheap, compulsory insurance scheme for all residential building work. Since then, the corporation has been the subject of criticism from consumers and those in the building industry alike. Indeed, although residential building work was outside its terms of reference, the Royal Commission into Productivity in the Building Industry in NSW nonetheless criticised the corporation for failing to adequately help consumers. The government then commissioned a wide ranging inquiry into the corporation. In February 1993 Dr Peter Dodd recommended the corporation focus on licensing and inspecting building work, leaving insurance to the private sector and disciplinary action to the Building Disputes Tribunal.

Complaints to the Ombudsman have reinforced the findings of these inquiries. An investigation was undertaken following a complaint from a Newcastle couple who had a swimming pool built in 1990. They thought they had signed an agreement with a licensed swimming pool installation business. It was not until they experienced problems with the concrete around the pool that they found the business was not in fact licensed. The licence number they had been quoted was that of the person who put the pool in, but he swore he did so as an independent subcontractor and had no other relationship to the business. The owner of the business had since died, leaving no one willing to accept responsibility for the defective concrete. In June 1991, the couple complained to the corporation.

After making some initial inquiries, the corporation refused to follow up the complaint, saying that as the written contract was with an unlicensed business and as the owner of that business was deceased, the contract was 'illegal' and nothing else could be done.

We took a different view and began an investigation into the corporation's handling

of the couple's complaint. Two issues arose during the investigation. One was the corporation's actions in following up the allegations of fraud and misrepresentation over the licence number quoted in the contract. Once the true licence holder denied authorising the use of his number, the corporation took no further action. The Ombudsman believed there were enough doubts about his role and about the role of the business' sales representative to warrant further inquiries. This was even more so after these two set up their own pool installation business from the address of the previous business using an almost identical business name. The business later folded leaving many people with lost deposits. Had the corporation followed the matter up earlier it is possible the latter situation may not have arisen.

The second aspect of the investigation concerned the corporation's actions over the defects in the couple's pool, which were caused by the concreter who held a corporation licence and was subject to the corporation's powers. However, as he was only a subcontractor the corporation refused to order him to fix it, arguing such orders should only be given to whoever the agreement was with - in this case, the unlicensed business whose owner had since died. Legally, however, the corporation is well within its rights to order **any** licence holder to fix up his or her defective work. The corporation finally agreed to change its policy to be more flexible and to actively resolve consumer complaints. The couple's pool was repaired in May 1994, some three years after first complaining to the corporation.

The Ombudsman found the difficulties experienced by the couple were not the result of the actions of a few individuals but rather long standing corporation policy. Indeed, during the course of his investigation the Ombudsman found it difficult to obtain timely and correct advice about limits to the corporation's power and what its policies and procedures exactly were. Answers to the Ombudsman's requests for information were often incomplete, requiring further inquiries and research on the part of our staff. The investigation found corporation inspectors -

responsible for checking on work standards and issuing notices to repair work where appropriate - had inadequate knowledge of their powers and of the corporation's public function as a consumer protection agency. This was not surprising given the investigation manual issued as a guide to inspection staff was confusing, inadequate and, in at least one instance, wrong.

When the results of the investigation were sent to the corporation, Mr Mostyn, the General Manager, personally undertook a comprehensive review of the corporation's files. His detailed response was critical of many aspects of the matter. He conceded the corporation had not acted to protect

consumers and expressed concern at the way the corporation had responded to the Ombudsman's investigation. He immediately arranged for the training manual to be withdrawn from use and undertook to review all training of corporation staff. He also withdrew a public brochure describing the functions of the corporation which the Ombudsman believed was misleading. Steps were taken to compensate the complainants' costs incurred because of the corporation's failure to deal with their original complaint effectively. Mr Mostyn also instituted a full disciplinary inquiry into the matter, to look at the corporation's handling of the complaint and at the various responses to requests and demands for information made by the Ombudsman. This degree of responsiveness by the corporation following an investigation is something the Ombudsman hopes will be emulated by other public authorities.

After the Royal Commission and the Dodd Inquiry, the government made fundamental changes to the role and operation of the corporation. Recently the corporation moved to the portfolio of the Minister for Consumer Affairs. Amendments to legislation are to be considered by Parliament later in the year. The proposals will change the corporation's focus to providing an advisory service to

consumers, and to mediating complaints about building work. The corporation as it currently stands will be replaced by a Home Building Advisory Council, whose function is to advise the Minister of consumer issues connected with the home building industry. The power to order licence holders to



fix defects will be given to the Building Disputes Tribunal, on application by corporation inspectors. Disciplinary proceedings against licence holders will be determined by the Commercial Tribunal. Two Task Forces are to consider the current scheme of licensing, and to consider the question of privatising insurance. All of these changes will, if implemented, require comprehensive training of all corporation staff, and a revision of training and guidance manuals.

While the Ombudsman supports separation of the corporation's different functions, potentially the proposed system may cause some difficulties for consumers and builders alike. The Ombudsman's jurisdiction will be limited, as he will be unable to investigate conduct relating to the corporation's role in carrying on proceedings in the Building Disputes Tribunal (although conduct leading

up to that point may be considered). Of greater concern are the potential limitations of appeal rights for licence holders whose livelihood may be affected by way of a fine, suspension or cancellation of his/her licence. Currently, disciplinary proceedings are heard by the corporation, with a right of appeal to the Commercial Tribunal. The current legislation will remove one step in that process, as the Commercial Tribunal will in most instances be the final arbiter over disciplinary hearings.

In insurance matters, the Ombudsman has some concerns that privatisation may increase the cost of premiums, and impose even more stringent limits on claims. He believes any insurance scheme should provide for discretionary and *ex gratia* payments to be made where appropriate. Guidelines should be in place to ensure these powers are exercised reasonably, and that there is a mechanism for the review of these decisions. The Ombudsman would also like to see some safeguards relating to the cost of home building insurance and to the payments which may be made.

Health Complaints

After four complaints to the Ombudsman about excessive delays in dealing with complaints lodged with the Health Complaints Unit of the Department of Health, a formal investigation of the unit began in January 1993. During the investigation a further 15 complaints about Health Complaints Unit delays were received and considered as part of the investigation.

The conduct initially investigated was:

"The manner in which complaints are investigated including the administrative procedures of the Complaints Unit for dealing with complaints, with particular focus on any unnecessary delays and on whether complainants' letters and phone calls are properly responded to."

This was later expanded to include Unit Director Merrilyn Walton's conduct in managing the unit.

The Minister for Health informed the Ombudsman on 7 December 1993 that the draft investigation report had been referred

to the Independent Commission Against Corruption (ICAC) on the grounds of alleged bias in its production without specifying the details of that allegation. The Minister sought deferral of release of the report until the *"views of the Commission are to hand"*.

On 10 December 1993 the Ombudsman told the minister he regarded the reference to ICAC as *"an attempt to hinder or obstruct the Ombudsman in the execution of his functions in relation to the completion of this investigation"*. The Ombudsman said he would not be deflected and issued his final report on 13 December 1993. It found the conduct of the complaints unit was unreasonable:

- ❖ in delaying investigation of complaints;
- ❖ in not giving proper attention to returning phone calls or answering letters; and
- ❖ in allocating large resources to a minority of cases, which has resulted in inadequate resources being assigned to the majority, and in delays.

The report recommended an independent management review be undertaken of the complaints unit by an external agency, such as the Office of Public Management and that such review be completed and assessed before the Health Care Complaints Commission commenced operations.

Following the investigation, KPMG Management Consultants were engaged to conduct a structural review of the Complaints Unit, identify training needs and suggest criteria for a performance measurement framework. The review was reported to have criticised many aspects of the unit's operations, including failures in control mechanisms, a significant lack of investigative skills or training and a need to scrap and rewrite the staff procedure manual.

Also on 13 December, the then ICAC Commissioner Ian Temby QC wrote to the Chairman of the Parliamentary Committee on the Ombudsman noting investigation of the matter by the ICAC was not warranted and seeking committee examination of it. This reference was based on certain Ombudsman internal electronic mail (E-mail) messages (which had been printed and supplied without authorisation to Ms Walton) which in his view could suggest *"that the author of the draft report,*

or alternatively a person centrally involved in the investigation which led to the draft report, conducted herself in a manner which demonstrated bias adverse to a public official”.

The next day Mr Temby wrote to the Ombudsman urging him to prevent the report becoming public until it was independently assessed. He also said “It is at least strongly arguable that the report is vitiated by bias.” The same day, Mr Gibson MP told Parliament of a letter from Mr Temby to Mr Kerr MP of 21 April 1993 in which Mr Temby had stated “Ms Walton is a friend of mine.”

On 15 December 1993 the Ombudsman commissioned The Hon Trevor Morling QC, former Federal Court Judge, to conduct an inquiry into the authoring and release of the E-mail messages, the appropriateness of our Code of Conduct and whether the Health

Complaints Unit investigation report was “vitiating or affected by actual bias or a reasonable apprehension of bias.”

After questioning witnesses and considering submissions from Ombudsman staff, Ms Walton and the Director General of Health, Mr Morling reported on 18 January 1994.

In relation to E-mail he found it was a practice of certain staff members to circulate such messages often containing small-talk. The messages were widely circulated within the office. While those sending such messages had a right to expect that the messages would not be circulated outside the office, the wide circulation did give rise to the risk of leakage - a risk which should not have been taken.

Mr Morling found that a staff member had printed out certain E-mail messages, most of which contained references adverse to Ms Walton and arranged for their delivery to Ms

Walton. The staff member provided Mr Morling with no satisfactory explanation for her action.

As to the views expressed in these E-mail messages, Mr Morling noted such were not expressed until the investigation was well advanced and after the issue of the summary of evidence and proposed adverse comment. **In his view the officers involved were entitled to have formed adverse views at that stage.**

Mr Morling found our Code of Conduct

“both informative and appropriate”.

He also said, in the face of Ms Walton’s allegations to the contrary, that he was “in no doubt that procedural fairness was afforded by the Ombudsman” during the investigation.

Mr Morling’s conclusion was as follows:



“The Ombudsman’s report is very critical of the Complaint Unit’s performance in the handling of complaints made to it. Whether the findings and expression of opinion contained in the report are justified or not is not for me to say. Plainly the Department and Ms Walton believe they are not justified. They will therefore be disappointed with this report. But, in my opinion, it cannot be said that there is no basis upon which the Ombudsman could have properly reached the views in his report. His critical views are not of themselves indicative of bias, and there is no evidence which could justify a finding of actual bias against him or any of his officers. moreover, for the reasons given above, I do not think there is a reasonable apprehension that the investigation which gave rise to the report, or the report itself, were affected by bias.”

Barnes Investigation

A complaint was made about the Board of Studies' decision to withhold mathematics marks, and hence the Higher School Certificate, from Mr Christopher Barnes.

Just before the 1988 HSC exams, various exam papers were stolen from the house of an exam supervisor. The board formed the view that Mr Barnes was involved in the theft or at least had foreknowledge of some of the HSC maths exam questions. The board gave Barnes no reasons for its decision, initially taken on 6 February 1989 and confirmed on 29 October 1991 shortly after Barnes' acquittal on a charge related to the theft.

The day after the theft the government offered a \$25,000 reward for information leading to a conviction. A maths tutor, Mr John Koutsounadis, told police and Mr John Cook from the board on 5 November 1988 that Barnes had asked him a series of questions in a tutorial on 3 November 1988 which were similar or identical to questions in the HSC maths exam held the following day.

Police visited Barnes' home that night and asked him to produce the papers used at the tutorial two days earlier. Barnes said despite several searches of his study that he could not find the papers. To assist police who were pressing him, he eventually reconstructed in his study some questions which he says he told police were similar but not identical to the tutorial questions. Police say they were under the impression, though not told explicitly, that the sheets of questions Barnes gave them were the actual sheets used at the tutorial.

On 8 November 1988 maths papers from Barnes' school were re-marked and an examiner picked out a question - 3(b) - on Barnes' script as having an answer not justified by the working. Later, expert opinion from Dr David Hunt of the University of NSW strongly disputed that assessment.

Koutsounadis made a formal police statement on 6 November 1988 and was interviewed on 10 November 1988 by Ms Robin Baxter from the board. Baxter had with her Barnes' maths exam scripts. Koutsounadis, on seeing Barnes' solution to question 5(b) on circle probability, said (with apparent

embarrassment) it was the same wrong solution in relation to the selection of pairs that he had given Barnes during their tutorial.

On 5 January 1989 Cook and Baxter interviewed Barnes and on 11 January 1989 he was summonsed on charges of attempting to cheat the Department of Education, break, enter and steal, and misprision of felony.

On 6 February 1989, after refusing a request by Barnes' solicitor for representation at its meeting, the board considered a report by Cook and a written submission by Barnes. It decided to withhold Barnes' maths marks and to *"reconsider its decision in the light of any evidence which may emerge from the proceedings of court in this matter."*

With the two other charges withdrawn, on 19 June 1989 Barnes was committed for trial for misprision of felony.

On 1 January 1991, as a result of housemoving, Barnes discovered the papers containing the questions and all but one of Koutsounadis' answers produced at the 1988 tutorial. These questions differed significantly from Koutsounadis' previous descriptions of them. The answer to the question similar to HSC question 5(b) was missing from the papers Barnes found. However, that discovered question could not have prompted the tutorial error Koutsounadis said he made, since the question involved no selection of pairs.

Four weeks later police showed Koutsounadis photocopies of the discovered papers and asked about their provenance. In a formal police statement of 9 May 1991 Koutsounadis described a second tutorial, inferentially dated on 3 January 1991. There, a mysterious person identifying himself only as Walker had sought solutions to maths questions ostensibly on behalf of his sister.

This second tutorial was allegedly the source of Barnes' discovered papers and explained how the answers were all in Koutsounadis' handwriting and one of the question sheets (in Barnes' handwriting) contained a comment in Koutsounadis' handwriting. This account required acceptance that "Walker" was Barnes' accomplice in a daring deception.

Confronted with the impossibility of Barnes finding papers on 1 January that were not

written until 3 January 1991, Koutsounadis subsequently said the "second tutorial" may have occurred a month earlier but extensive questioning on the point could not pin down Koutsounadis on a date.

Following Barnes' court acquittal on 9 September 1991, Cook and Baxter again interviewed Barnes before Cook presented a report considered first by a board committee and then by the board itself. Despite legal advice that assessing the credibility of Barnes and Koutsounadis was central to the case, the board refused Barnes' request to appear before it and confirmed the 1989 decision to withhold Barnes' maths marks.

After commencing a formal investigation, Ombudsman officers visited the board on 30 March 1992 and required the production of all relevant files. It later emerged the board had not produced all documents required and more were produced on 8 and 31 April 1992. Documents obtained indicated the investigation would be highly complex.

The preliminary findings and recommendations (PF&R) of the investigation were issued to the board and Mr Koutsounadis on 29 June 1992.

As a result of the board's extensive submission (made through the Crown Solicitor) concerning the PF&R it was decided to conduct formal hearings pursuant to section 19 of the Ombudsman Act. Mr Barnes, Mr Koutsounadis, Mr Cook, Ms Baxter and Barnes' mother gave sworn evidence at these hearings in December 1992 and February 1993.

A revised PF&R was issued on 4 August 1993 and comments sought. A draft report was then prepared for the purpose of consultation with the responsible Minister and issued to The Hon.

Virginia Chadwick MLC on 24 November 1993. The Minister advised she did not wish to consult and the investigation report was finalised and issued to all parties on 17 February 1994.

The key issues in the report related to how Mr Cook conducted the board's investigation of Barnes' case, how evidence gathered was selected and presented to the board and the manner in which the board considered the information available to it.

The crux of the case was whether Barnes' or Koutsounadis' account of how the discovered questions were produced was correct. One of these alternative accounts must be true since there was no other possibility. Assessing the credibility of these two witnesses was the key to the board reaching the proper decision in this case.

For the 8 October 1991 meeting of the board committee, Mr Cook produced a six-page summary of the case which included a *Sequence of Events* and a *Comment on Evidence Considered*. To this summary was appended a selection of documents. The Ombudsman's report found the summary contained a number of important errors and was misleading.

The findings of the Ombudsman's investigation were as follows.

- ◆ The conduct of John Cook in presenting material for consideration by the



committee and board caused prejudice to Christopher Barnes during committee and board deliberations on his case, was the product of incompetence on Mr Cook's part and was unjust and unreasonable in terms of section 26(1) of the Ombudsman Act and in terms of what the board had a right to expect from a person in Mr Cook's position.

- ❖ The conduct of the board in denying Christopher Barnes' request to appear before it during its consideration of his case was unjust, unreasonable and based partly on a mistake of law in terms of section 26(1) of the Ombudsman Act.
- ❖ The failure of John Lambert to disclose that he had written a letter to Koutsounadis assuring him that his officers were pursuing payment of the reward, and the failure of John Cook to disclose that he had written to Koutsounadis assuring him that the board would act to ensure provision of the reward, and that the positions expressed in those two letters remained current, was conduct that was unjust in terms of section 26(1) of the Ombudsman Act.
- ❖ The conduct of the board in refusing to grant Christopher Barnes his 1988 HSC mathematics marks was unjust in terms of section 26(1) of the Ombudsman Act.
- ❖ The conduct of the board in deciding that Christopher Barnes' 1988 HSC mathematics marks be withheld was conduct for which reasons should be given but were not given in terms of section 26(1) of the Ombudsman Act.

The report recommended the Board of Studies:

- (a) forthwith grant Christopher Barnes his 1988 Higher School Certificate mathematics marks; and
- (b) seek independent legal advice as to whether there is a case for prosecuting John Cook under the disciplinary provisions of the Public Sector Management Act for breach of duty in relation to his conduct in the case of Christopher Barnes.

The report noted that:

in relation to recommendation (a), the Board has submitted that the grant of HSC maths

marks to Barnes "is ultimately a matter for the Board to determine in all the circumstances" and it suggests that the Ombudsman investigation has been inadequate and that in order itself to re-traverse that investigation path, the Board should be supplied with all the primary material gathered by the Ombudsman. While recognising that only the Board has the legal power to grant HSC marks, nonetheless the word "Forthwith" was added to the original text of recommendation (a) because (i) this investigation has raised serious doubts about the Board's capacity to properly carry out this investigation, but far more importantly, (ii) the Board in its conduct and submissions during this investigation has shown itself to be so intent on preserving a pre-determined adversarial position as to have forfeited any confidence in the Board's ability to objectively assess and reach a fair judgment on evidence before it relating to Barnes' case.

The report also recommended that Mr Koutsounadis not be paid the \$25,000 reward.

At its 22 February 1994 meeting the board considered the Ombudsman report and decided to award Mr Barnes his mathematics marks and his 1988 Higher School Certificate and to treat all his examinations taken after police visited his home on 5 November 1988 as misadventure cases and to adjust his marks accordingly. The Board President, John Lambert, presented the HSC to Mr Barnes on the afternoon of the board meeting.

The board accepted the Ombudsman recommendation concerning payment of the reward. It also decided to ask the Crown Solicitor to review the procedures applied to the assessment of allegations of cheating in exams conducted by the board. The review led to the adoption of a set of new procedures by the board on 4 July 1994.

The Executive Director of the Ministry of Education commissioned Mr R Hodgkinson, former Director, Land Titles Office and Registrar-General, to conduct an inquiry into the conduct of Mr Cook pursuant to provisions of the Public Sector Management Act. While largely supportive of the Ombudsman's conclusions, the inquiry effectively found responsibility for the injustice to Barnes was sufficiently diffuse as to not justify the singling out of Mr Cook by charging him.

On 8 March 1994 it was announced the Minister was to terminate the contract of the Board President. The Minister's spokeswoman was quoted as saying this was "unfortunately due to irretrievable differences". On 11 March 1994 the Premier, on the advice of the Minister, established a review under section 48 of the Public Sector Management Act to examine the administrative structures supporting the board. The review was conducted by Mr H C Eagleton, former Assistant Director-General of the Premier's Department, with the participation of Professor L M Birt, former Vice Chancellor of the University of NSW. The review was severely critical of existing board administrative structures and recommended substantial changes.

Raw Prawns in Red Tape

We previously reported the sorrowful saga of a company and its director who met with bureaucratic hurdles and delays while attempting to obtain a lease to establish a fish farm on a NSW waterway. The conduct of the Department of Agriculture and Fisheries and the Department of Lands in this case, was made the subject of investigation by the Ombudsman.

Material gathered as part of the investigation revealed there had been unwarranted delays, confusion between government agencies about their roles and responsibilities, and communication problems between authorities and the applicant.

The lease application had been made under a section of the *Fisheries and Oyster Farms Act*, which had recently commenced.

This section was one of a number of amendments to the Act which were to assist the development of the newly emerging aquaculture industry. From the documents obtained as part of the investigation, it appears this was not fully understood by

the agencies involved in granting approval for the lease. The concerns of the Department of Lands, which is vested with responsibility to protect and conserve Crown land for use by the public, conflict in some ways with the Department of Fisheries' aim to assist the planned development of new fisheries ventures. The absence of agreed policies and guidelines in relation to fish farm leases of Crown land, together with few staff and no prior experience to draw upon caused extensive delays in the approval process. After more than three years of negotiation and expending considerable time and money the company and its managing director in particular were left feeling extremely frustrated. If the proposal had gone ahead, the fish farm would have netted him a tidy profit and been a significant commercial asset.

Since this time, NSW Fisheries has taken a number of steps to improve the chances of future lease applicants. It has increased the number of policy staff involved and has established an interdepartmental committee to advise potential applicants. Proposed legislation should also resolve some of the questions concerning relative roles and responsibilities of government authorities. It would appear NSW Fisheries accepts it could and should have dealt more effectively with the particular application. The changes implemented to date however, have done little to streamline the application process or



remove the possibly conflicting concerns of the various relevant authorities.

Amendments to procedures and clarification of the rates and responsibilities of the authorities are required.

One can but sympathise with the applicant in this case and hope that matters can be improved so that the aquaculture industry will indeed develop in an ordered and environmentally sensitive manner.

Government departments who are charged with regulating commercial industries must recognise the need to streamline those regulatory requirements so that matters are considered appropriately and effectively. To do otherwise is to stymie business investment and development within NSW.

HomeFund

Last year the Ombudsman conducted a preliminary investigation into the role of the Department of Housing and Treasury in the HomeFund saga.

This followed a resolution by the Legislative Assembly to establish a Select Committee to inquire into and report on all matters concerning HomeFund and First Australian National Mortgage Corporation Limited (FANMAC).

Potential jurisdictional and operational problems were overcome by the *HomeFund Select Committee (Special Provisions) Act 1993* which 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 own initiative) in connexion with any matter that is within the terms of reference under the Special Resolution, and ... to furnish information, documents and reports to the Select Committee.

The Ombudsman's report:

- ❖ set the Home Purchase Assistance Fund (HPAF) in context as part of the scheme to establish a secondary mortgage market corporation in Sydney, looked at the original objectives, the decision to establish FANMAC and the use of FANMAC as a vehicle to fund geared, government "supported", market-funded public housing programs;
- ❖ discussed the rationale for the decision to move away from direct lending of Commonwealth State Housing Agreement funds in the Home Purchase Assistance Account to a geared program model using the cash-flow (interest and principal repayments) of the existing pool of directly funded mortgages to span shortfalls in a much larger market-funded public housing scheme, through the HPAF;
- ❖ examined the development of what was essentially, a cautious, limited, but from the very beginning, expanding pilot program into a major quasi-governmental quasi-commercial financial institution lending to lower income earners;
- ❖ looked at the conduct of the Department of Housing in administering aggressively marketed, commercially funded home finance products, represented as NSW Government finance, through a diverse, unregulated retail network which lacked clear lines of control or responsibility;
- ❖ examined the relationship between the Treasury and the Department of Housing as envisaged and documented in the Principles and Operations Agreements and compared that with practice;
- ❖ considered the statements on which investors' and borrowers' may have relied, the rights and obligations as set out in the documentation and as in practice; and
- ❖ raised lines of inquiry which might be pursued by the Select Committee if it so chose when taking oral evidence from witnesses.

As the Ombudsman's investigation was designed to complement the committee's inquiry and was limited to an examination of documents, the Ombudsman did not believe it was appropriate for him to make definitive findings or recommendations. This he felt was the province of the Select Committee when addressing the substantive issues before it.

The Ombudsman did however note he had received complaints in relation to various aspects of the administration of the HomeFund Scheme before the resolution of Legislative Assembly. Although he had achieved satisfactory outcomes in some of those matters, the Department of Housing questioned the Ombudsman's jurisdiction. It suggested the conduct complained of ought be construed as the commercial conduct of the

Cooperative Housing Societies and was something which the Ombudsman should not and could not pursue.

A similar issue followed an article in the Sydney Morning Herald about an impending Commonwealth Trade Practices Commission investigation. The Department of Housing advised the government it had obtained legal advice that it was not subject to the Trade Practices Commission's jurisdiction, although the status of FANMAC and the Cooperative Societies was unclear in this regard.

In another HomeFund matter which the Ombudsman had been investigating before the Legislative Assembly's resolution, the Department of Consumer Affairs had advised the complainant that it could not investigate because HomeFund was a Department of Housing program.

In these circumstances the Ombudsman felt it was appropriate to advise the Parliamentary Select Committee of his concerns about jurisdictional issues and noted that:

"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 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 is simply not accountable in all its component parts to anyone agency or authority and neither the Ombudsman nor consumer agencies have the resources to pursue matters where ab initio they face a substantial threshold cost in simply establishing even limited jurisdiction."

The Ombudsman's report of the investigation of the roles of the Department of Housing and Treasury in relation to the HomeFund scheme 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 furnished to the Select Committee in August 1993.

Consumer Affairs

A deliberative meeting of the Parliamentary

Select Committee Upon the Operations of HomeFund and FANMAC held on 15 September 1993 resolved:

to request the Ombudsman to provide an analysis of the role of the Commissioner of Consumer Affairs relative to the HomeFund Program. Specifically the Committee is interested in your assessment of the following:

the nature and scope of the Commissioner's powers relative to the HomeFund program and how those powers are affected by the admixture of public-sector agencies and private organisations

and dependent on the first issue,

the Commissioner's decision not to exercise his powers in relation to section 5 of the Credit (Home Finance Contracts) Act 1984.

The Commissioner advised us that his department first became aware of allegations of misleading conduct and unfair practices in relation to the marketing and administration of the HomeFund program when they were raised in the media. It was also clear from an examination of the department's records that the Department of Consumer Affairs had not been overwhelmed with complaints about the HomeFund scheme. This was probably because borrowers were finding their way directly to the Mortgage Relief Scheme which was the responsibility of the Department of Housing. Thus emerging trends in relation to problems with the HomeFund program were neither directly nor immediately apparent to the Commissioner for Consumer Affairs from complaints or inquiries.

No doubt hybrid structures like the HomeFund scheme will continue to emerge. They potentially offer efficiencies to government and the people of NSW. The cost of these efficiencies however should never reduce the rights of individuals or discount accountability.

The Ombudsman recovered \$52,000 of the cost of conducting these investigations from the funds made available to the Parliamentary Select Committee.

Such externally funded investigations provide a useful opportunity for the Ombudsman to step outside the reactive complaint driven regime which is the basis on which the office is normally funded.

"From the day I sent by fax my complaint, to having the matter resolved, eight days passed. As I am somewhat used to the government departments here in Canberra delaying their replies, I was caught by surprise at the speed of your action. Thank you for your speed and efficiency regarding my complaint."
(From a complainant)

Case Studies

Licensed to Complain

A resident in the Tweed Heads area applied for his standard drivers licence to be renewed at his local motor registry and was told over the counter that it would take two to three weeks to process. The amount of time it would take was important to him, as he was due to go on an overseas holiday.

Over the next two weeks however, the complainant received inconsistent advice about how long a licence takes to process. Two weeks after his application, when he called to check on whether it was ready, he was told it can take up to four weeks; a week later, he was told it always takes five to six weeks.

As his licence was not ready when he was due to go overseas, he was given an interim licence, which served his purpose. However, by this time, he was concerned at the inconsistency of advice and the length of time taken to process the licence.

The complainant had been advised the problem was related to the processing of the photos being contracted out and processed in bulk. In his complaint, he suggested the RTA should have a camera which allows the registry to process photos on-the-spot for greater time efficiency.

After our staff contacted the registry, the RTA's Northern Region Motor Services Manager investigated the complaint. The manager wrote to the complainant apologising for the inconvenience and explaining that the delay had arisen from technical problems in the photo processing camera. He acknowledged the current system was inadequate and advised the RTA was looking at ways to improve the system.

This will be done by introducing new technology which will allow the issue of on-the-spot renewed licences.

By taking the complainant's suggestions on board and acknowledging the present unsatisfactory system, the RTA is showing its complaints handling policy brings results.

Aged Action

A retired woman living on the central coast held power of attorney for her 96 year old friend who lived in a nursing home nearby. In August 1991 the Department of School Education wrote to the woman advising her the department had resumed a number of

houses in western Sydney, including one which had been the elderly woman's home since her marriage at 36 years of age. Soon after this, the woman instructed solicitors to assist her in a claim for compensation on behalf of her elderly friend.

The land and a number of surrounding properties had been in the woman's family for some time.

Unfortunately, the house was still registered in the name of the woman's mother who had died some decades before. Her father had also died. Neither had left a will. While the elderly woman's name was not on the title, there was evidence to show that she had lived in the house for many years and since vacating it, had received rent from the property and paid all rates. No one had made a claim against her for the property in all those years. It would appear that the woman may well be entitled to some form of compensation.

In April 1994 the retired woman contacted the Ombudsman. She appeared distressed and confused as to why the matter was still not



resolved. Initial inquiries revealed the Department of School Education had referred the matter to the State Crown Solicitor's Office in early 1992. All negotiations were to be conducted by the State Crown Solicitor. Further inquiries discovered the Crown Solicitor's Office had sent a letter to the woman's solicitors in April 1992 setting out the type of evidence required to support the claim. They further stated that they were waiting for a response from the woman's solicitors.

When the solicitors were contacted, they advised us they were no longer instructed by the woman and had not acted for her since 1992. This information was conveyed to the Crown Solicitor's Office, with a suggestion that they may wish to liaise directly with the complainant to try to resolve the matter. It was pointed out that timely action would no doubt be most welcome by the 96 year old woman. While this was acknowledged, the initial response was to say that no contact could be made with the complainant until formal notice had been received from the woman's solicitors stating that they no longer acted in the matter. Fortunately both parties have access to fax machines and with a little prompting, this detail was soon attended to.

The Ombudsman has subsequently been advised that the Crown Solicitor's Office have been most diligent in responding to the complainant's correspondence. It is hoped the matter will be resolved without further delay.

Waiting with Interest

A young couple from the Newcastle district sold their first home in June 1989. Their solicitor had agreed to make the final payment of some \$220 for stamp duty under the First Home Owners' Scheme. Under this scheme, payments are staggered, rather than being paid at the time a home is purchased. The couple did not find out this amount remained unpaid until they received court documents summoning them for the amount, plus some \$200 in interest and costs, in July 1993.

The Office of State Revenue, the body responsible for collecting stamp duty, argued it had sent a letter to the couple asking for payment in October 1992. Because of staff shortages, it had taken nearly three years to

ask for payment and when this went unanswered, another year to begin court action. The complainants stated they never received any letter. After we negotiated with staff from the Office of State Revenue they conceded it was unfair to charge interest on a debt which the couple did not even know about. Finally, both parties happily agreed to split the interest owing on the amount and the couple made their final payment.

Better Letters

A complaint was received from a Department of Housing tenant in the central western district of NSW. She complained her rent had not been adjusted although she had filled in multiple forms notifying a change in her income. After many requests the problem was fixed but she then received a series of letters demanding payment of a large debt. The complainant resented the tone of these letters as well as the demand for immediate payment since the debt had been caused by the department's administration.

After we intervened, the department agreed they should not have issued her a letter demanding immediate payment of all money owed. They agreed to waive the overdue amount and gave an assurance that the department's rent recovery methods and letters would be reviewed. Draft copies of the new letters were later sent to us.

After considering the contents and tone of these letters, we sent the department suggestions about their use of language and layout. The department adopted most of these suggestions.

Taken to the Cleaners

A male client of the Protective Commissioner's office was sick while visiting the office. Some time later his sister examined a print-out of his account and noticed a deduction of \$65 for cleaning. The office confirmed the charge of \$65 had been made to clean up after her brother. It was suspected by the officer dealing with his matters that he had overdosed on his medication, resulting in him being sick. The sister was very upset, especially as her brother suffers from schizophrenia and takes

"On behalf of my father and myself, I would like to thank you for your input into this situation. I am certain that the action to date would still be forthcoming if not for your intervention. I am now hopeful that we will not have to call on your services again."
(From a complainant)

medication daily. The male client and his sister both protested to the Ombudsman who, after expressing grave concern to the Office of the Protective Commissioner, was informed the money would be reimbursed to the complainant's account.

Winning Suggestions

Citizens can find it difficult persuading government authorities to consider suggestions relating to operations. As customers of government authorities, citizens' complaints can often provide valuable perspectives. Where a resident has a genuine concern and has taken steps to alert the authority of these concerns without success, the Ombudsman has a role in ensuring that these are addressed adequately through the organisation's complaints handling procedures. While this may not necessarily lead to a citizen's suggestions being taken on board, it is important that they are at least considered.

In 1994, we received a complaint from a resident in the Hunter region where sewage lines were being installed by the Hunter Sewage Project. A cliff at the back of his property had erosion problems. When he saw the plans for the sewage line, he was concerned they would be installed too close to the cliff face, given the erosion problem.

Before contacting us he had written to notify the authority of his concern and spoken to an officer. Six weeks after sending a second letter and receiving no reply he contacted us. After our preliminary inquiries the Hunter Sewage Project undertook to ensure the complainant's ideas were considered and to write to him explaining how his concerns were being addressed. As a result of the concerns raised, the pipeline will now be placed further from the cliff face.

Getting Good Results

A woman who had completed her HSC at Sydney Technical College in 1979 had lost her HSC results. She decided to commence further study and so needed her HSC certificate.

She did have a document which showed the results of a Diploma Entrance course, undertaken in 1978. The subjects recorded on this document were all the same as her HSC subjects except science - the subject she did best in.

Mistakenly, she thought this document was a record of her HSC results and wanted a copy of her results which included her best mark - in science. So, for two years she pursued the matter with TAFE, trying to find out whether they had a record of her studying that subject - so that they could amend her certificate.

Over this period she was given various advice by TAFE, including that they had done a search and could not find any record of her studying science; the records had been lost when they moved premises; and that they could not find their records for 1979!

Finally, in frustration she contacted our office, knowing that she did study science and that a record of this must exist. Our staff found it similarly confusing trying to get information from the records section of TAFE and so tried the NSW Board of Studies.

The board then checked her HSC records and confirmed her HSC certificate did have all her subjects, including science, recorded on it. They pointed out the mistake that the



document was not her HSC results but appeared to be results from TAFE for the previous year.

Normally the board charges a small fee for a copy of an HSC certificate but in this case, despite the fact that they were in no way at fault, they sent the complainant a copy of her HSC certificate. She was thankful for this action and can now apply for tertiary courses knowing that her record is straight.

Checking Cheques

A Brisbane resident with a NSW licence sent a cheque to the closest NSW RTA office to pay a fine. While the cheque arrived in time, he unfortunately did not include any accompanying details.

The RTA office was unable to process the cheque as they did not know who it belonged to or what it was for. The gentleman rang the RTA office to check on certain details and found his licence had been cancelled. He tried unsuccessfully to resolve the situation with the RTA office he sent the cheque to.

After discussions between our office and the RTA, a decision was made that although there had been no way to process the cheque, it had been received in plenty of time and, the cancellation would be rescinded from the date the cheque was processed.

Heavy Handed Funders

The Ombudsman periodically receives complaints from staff or management of local community associations who claim the independence of their organisation is jeopardised by demands from government bodies that provide funding to the organisation. Some government bodies apparently mistake their role as funder with that of 'controller' of the organisation.

One such complaint was received from the honorary secretary of a non-profit community association. The body, an incorporated association, received funding from the Department of Planning to employ a youth worker. Criminal charges had been brought against the then President of the association, who also owned a house used by the association. The President subsequently

stepped down from the presidency due to the charges but continued on the management committee. The Department of Planning took the view that the criminal charges could seriously undermine the potential success of the project. It subsequently met with the management committee and advised the committee that it required a clear separation between the project's staff and premises and the former president. It also required:

"[the former president] is to have no role in the management of [the organisation], formally or otherwise, until the charges are resolved."

The organisation complained the department had acted beyond the scope of its authority in attempting *"to regulate the internal operation of an independent legally constituted incorporation. ...[and] to regulate the relationship of staff to members of management."*

A funding body clearly has a duty to ensure the aims and funds provided for a project are not jeopardised. A funding body should raise any concerns it may have with the organisation that has been funded to provide that project. The concerns may be so great that the funder may consider it necessary to inform the body that funding may be withdrawn. It is not appropriate for a funding body to attempt to control the management of that organisation. This is a matter for the organisation and can only be decided by the membership of the body through its usual processes. It is for the organisation to decide whether it will accommodate the concerns of the funder or risk the loss of funding. These decisions are usually made by the organisation's management which is accountable to the members of the organisation for those decisions. Government funders must recognise and respect the independence of the many incorporated community associations funded within NSW.

It is pleasing to note that when the particular case was taken up with the Department of Planning, it agreed it had been overly zealous and that its demand that a certain person be excluded from the association's management was inappropriate.

"Thank you for your letter of 23 June 1994, together with the final report of this investigation. We would like to express our appreciation to your office for your conscientious investigation and comprehensive report. The case obviously has broad public policy implications."
(From a complainant)

Sold Up and Sold Out

Unfortunately it is a fact of life that relationships break down. It is also unfortunate that a few people act dishonestly to deceive either their former partners or friends, leaving the innocent party out-of-pocket. Two complaints highlight how deception and loopholes in the RTA's registration procedures resulted in administrative errors.

The first complainant and her husband were the joint owners of a late model car. The car was registered in both their names. Following their separation, the complainant was concerned her husband, who had the car and registration papers, may try to sell the car and keep all the proceeds himself. She wrote to the RTA explaining her situation and asking that an embargo be placed on the transfer of the car's registration to prevent her husband selling the car without her knowledge. The RTA wrote back advising that an embargo had been placed on the transfer of the car until the car's registration expired. Unfortunately, the embargo was placed on her husband's name and not the car. Soon after, the husband sold the car to a third party without informing the RTA. That third party re-sold the car to another person. The third party, applied to the RTA to have the registration transferred to the new owner. Because the embargo was only on the husband's name and he did not sign any of the transfer papers, the embargo did not work. His wife wrote to the Ombudsman, claiming that as the RTA had breached its undertaking to her, it should compensate her for financial loss.

In the second matter a complainant decided to sell her old car to a friend. An agreement was made that he would pay her for the car at a later date. Unfortunately, the complainant left the registration papers in the glovebox. Despite many attempts to contact her former friend, the complainant was unable to find him. She then rang the RTA and asked them to place an embargo, which was done, on the transfer of the car's registration to prevent her former friend from selling the car without her permission. When she did not receive any forms from the RTA allowing her to renew the registration

on the car, she contacted the local RTA office and was told that the RTA will not send out the renewal forms if an embargo has been placed on the car in case the forms are sent to the wrong party. She was told by the RTA officer that the embargo would remain on the car indefinitely. About a year later, she found out that her former friend had sold the car to someone else and, at the same time, renewed the registration of the car and transferred it to the new owner.

The Ombudsman felt the RTA had breached its own undertakings to the complainants. Rather than formally investigate the RTA's conduct, the Ombudsman invited the RTA to resolve the disputes. The invitation was taken up and the RTA decided to compensate both parties. The complaints were clearly resolved to the satisfaction of all parties, without the need for a formal, costly investigation by the Ombudsman. Yet again, the positive results of alternative dispute resolution are highlighted.

These two complaints highlight problems facing the RTA on the issue of car registration and ownership. To prevent the transfer of registration in a situation where a couple separate and one party attempts to transfer registration of the car to another person without the other owner's permission, the RTA now insists that, where both people's names appear on the registration forms, both people must sign the transfer of registration papers. In addition, the RTA has now advised the Ombudsman that embargoes placed upon the transfer of registration will remain indefinitely, even if the registration expires. The RTA's conciliatory approach to both complaints is to be applauded.

Money Down the Drain

When the drains of a Blacktown home became blocked the resident rang a tradesperson for assistance. The plumber quoted \$165 for the job which included two hours labour. To unblock the drain the plumber relied on maps provided by the Water Board. The maps were incorrect and as a result it took 10 hours to locate and remove the blockage. The plumber's bill was \$646. The resident complained to the Water Board who told him to pay the bill before making the claim.

The resident paid the bill and 10 months later wrote to the Ombudsman because the Water Board had not resolved the complaint. After discussions with our staff the Water Board accepted liability for the errors in the maps and fully reimbursed the Blacktown resident.

Coal Jam

In late June our inquiries section received several complaints from people trying to contact the Coal Compensation Board. The telephone switch at the board had become jammed by callers who had seen a story on the 7.30 Report on ABC television the previous night. The report publicised the deadline for compensation applications, which fell at 5pm the following day. We attempted to contact the board but were also unsuccessful. After a couple of hours of attempted contact a fax message got through to the Chief Executive Officer. The demand on the board's switch was so great that the CEO had no option except to ring through on a car phone in the car park. He explained the board had been overwhelmed by the response. He provided information for our callers including the news that the board would stay open until midnight and accept expressions of interest received by the post office before the deadline.

What's up DOCS?

In early 1993, a complaint was made to the Armidale office of the Department of Community Services about the way a young couple was caring for their children. The complaint

apparently included concerns over the children not wearing hats in summer and being unsupervised while in the backyard. The department investigated the allegations and sent a two paragraph letter to the couple stating the allegations were not confirmed. The couple then asked the department to

give them the opportunity to explain to the person who made the complaint (called a "notifier") that they put sunscreen on the children and that the backyard was visible from inside the house. A month later, in June 1993, the department refused the request, explaining legislation prevented it from giving out any information relating to a complaint of child abuse. The letter also said the notifier had been informed the matter had been investigated but had not been given exact details of the investigation. The couple were still distressed, believing the notifier had not been told his/her complaint was unsubstantiated and continued to request an explanation of their child raising techniques be forwarded to the notifier. Repeated written and verbal pleas, from themselves and from their solicitors, beginning in June 1993 until April 1994, went unanswered. Throughout this period the couple were under intense stress, believing from the nature of the complaint that the notifier was a close relation, friend or neighbour.

In desperation, the couple approached Ombudsman staff on a public awareness visit to Armidale in March 1994. While the department was prohibited by legislation from releasing details of notifiers, the couple clearly deserved a response to their repeated requests to at least consider sending a letter from them to the notifier. Further, the Ombudsman believed the legislation did allow the department to forward the couple's letter to the notifier and to advise him or her



of the outcome of the complaint. It took several phone calls to extract a promise from departmental staff to reply to the solicitor's letter of June 1993. When no reply was received, the couple again contacted the Ombudsman. More phone calls and the intervention of the department's Client Liaison Unit finally resulted in the department sending a letter over a week later. This letter did state the notifier had been told the complaint was not upheld, but in a twist on the couple's written history of correspondence referred only to the couple's most recent letter, with no acknowledgment that the couple had been writing since June 1993.

The letter stated the department had finally acceded to the couple's request to have their story put before the notifier, who had indicated s/he wanted nothing further to do with the matter. Some 10 months after first seeking a response the couple were reassured that the notifier had been told that his or her complaint had been found to be unjustified. Much anxiety and distress could have been avoided had the department done this when the couple first wrote, in June 1993.

Educators not Investigators

The concerned mother of a young school girl wrote to the Ombudsman in mid 1993 complaining of the actions of her daughter's school principal. She stated her daughter had come home from school one afternoon and told her that she and a number of her classmates had been interviewed by the principal in the presence of a nun from a nearby school. The day before, the girls had complained to the principal about being touched on the breasts by a volunteer scripture teacher during scripture classes.

The mother had expected to receive a call from the principal about the matter but when no call came, she reported the matter to the Department of Community Services as a child sexual assault notification. The following day, three days after the children had spoken with the principal, the principal called the mother. He told her that the matter had been taken care of and the volunteer teacher would not be returning to the school. He was alleged to have said there was no need to notify the Department of Community

Services or the police and became very angry when the mother told him that she had already done so. He claimed her actions would cause unnecessary trauma for the children.

The mother wrote to us complaining about the principal's attitude and actions, which appeared to be unreasonable and against the Department of School Education's own guidelines. She was particularly concerned at his decision to conduct his own "mini-investigation" of the incident, his failure, or at least delay in notifying the Department of Community Services and his failure to inform parents about the alleged assaults on their children.

Written preliminary inquiries were made with the Director-General of the Department of School Education in June 1993. His response was received on 18 August with copies of departmental procedures relating to the notification of child abuse and procedures to be followed in cases of alleged improper conduct of a sexual nature with a student by a teaching or public service employee of the Department of Education. The Director-General also advised that the principal was on long service leave and would not be available until September.

The department had reviewed the principal's conduct, based upon a brief report he had written in May 1993. The Director-General acknowledged there had been a day's delay in the principal's notification to the Department of Community Services. Such notification was required under the department's procedural guidelines. The Director-General however accepted the principal's explanation for the delay - that differences in the stories of the girls made it difficult for him to determine if "reasonable grounds" existed for it to be reported, and his desire to consult with the deputy principal who was not available until the following day. It seemed there were two conflicting stories concerning the notification. The principal asserted he had notified the Department of Community Services and denied the conversation the mother had reported in her complaint had taken place. There was little chance of being able to establish the actual reasons for the principal's notification - if it was his considered, albeit delayed decision to notify in accord with

policies, or if it was to protect himself from further trouble after discovering the mother had already notified the authorities. This point was therefore not pursued by the Ombudsman.

The Director-General's response also noted that the procedures specifically stated it was for the Department of Community Services, and not employees of the Department of School Education, to advise parents of possible sexual abuse. This was presumably determined to be appropriate where the matter may have involved assault within the family. It is not clear if this should be the case where there is no suggestion of family involvement in the alleged abuse.

We felt it was appropriate that the department attempt to conciliate the complaint directly with the complainant. A letter confirming this was sent to the department in early October. In January 1994 the Ombudsman received a further letter from the Director-General informing him that the matter had been resolved with the complainant. The letter also advised that the procedure for notification of child abuse was scheduled for review and that a key area "will be the appropriateness and the nature of information to be provided to parents or guardians in circumstances where a notification of child sexual assault is made and does not involve parents or guardians as the alleged perpetrators. The policy, *"Procedures to be followed in cases of alleged improper conduct of a sexual nature with a student by a teaching or public service employee of the NSW Department of Education"* was also being reviewed. The Ombudsman was advised that the revised draft *"states that the principal will advise the parents of students directly involved of the complaint. The Director of Schools...is to be contacted before a decision is made not to inform parents of the complaint."*

The complainant subsequently said that while she appreciated the meeting held with representatives of the department, she was still concerned at the actions of the principal, and the low level of communication between the school and parents. The Ombudsman suggested that these were management issues which would be more appropriately raised at a local level.

The alleged assailant in this case was a volunteer, not an employee of the department. The question was therefore raised with the department as to what, if any, controls it has in relation to the selection or screening of volunteers who may enter the class room situation in a similar role to a teacher. The department has stated that it would be difficult to institute a screening procedure in such circumstances and that it relies upon the particular religious organisation to select appropriate individuals. This aspect is still to be resolved.

Not in the System

A woman enrolled in a TAFE course was unhappy about the treatment she received from the TAFE system. She had completed two subjects during the 1st semester of 1993 in the Animal Care - Domestic course. The student had attended all the lessons, completed all the assignments and examinations and paid the fees for the year. TAFE later refused to recognise her attendance and would not issue her with marks nor would they allow her to continue the course. She was told she was "not in the system".

Telephone preliminary inquiries were made with TAFECOM. A reply was promptly received from the Deputy Managing Director explaining that the Animal Care - Domestic course was under review. During the review process, no new enrolments should have been accepted in 1993. The subject was deleted from the computer system. However



somewhere down the line, not all schools were notified. When the school could not enrol the students on the computer, they enrolled them manually. Unfortunately, a number of enrolments were inadvertently accepted.

The Deputy Managing Director advised that action had been taken to ensure the woman's enrolment was entered into the TAFE student records system. She was credited with her results from first semester and would be accepted into the next phase of the course. Other students affected by this mistake were also notified and properly processed.

TAFECOM regretted the distress caused to students over this mistake and made formal apologies to all affected students. The student who originally made the complaint wrote to this office saying "your actions on my behalf are much appreciated."

Widow Worries

A woman had lived in a Department of Housing unit at Maroubra since 1962. As the tenant of a ground floor unit, she had sought assistance from the department for many years to address the problem of broken windows caused by children playing ball games near her unit.

She said that during the 31 years she had been there, the department had failed to address any of her concerns. As a widow, the tenant had no family nearby on whom she could call to assist her if the windows were broken again.

Telephone preliminary inquiries prompted the Operations Manager from the department's Maroubra office to visit the woman. He was able to offer her some hope that she would be rehoused in suitable accommodation in the Wyong area, near her daughter. More importantly, the department agreed to organise for a laminate film to be applied to her windows which would render them virtually shatterproof.

The Maroubra tenant was delighted with the prompt results and thanked us for our efforts.

Seaweed Update

The reasonable application of rules, regulations and by-laws by the Public Health Division of the Health Department was covered extensively in a previous annual report. Despite previous experience it came as no surprise to receive a complaint from two suburban import/trading companies concerning the alleged over-zealous nature of health inspectors.

It was claimed by the companies that the NSW Health Department inspectors were checking imported edible seaweed on supermarket shelves, even though the same seaweed had already been subject to checking and clearance by the Australian Quarantine Inspection Service (AQIS) when it entered Australia. There were instances where tests by both AQIS and the Health Department on the same batch of seaweed provided different results. This could have resulted in the retailer being prosecuted. This is despite the fact that seaweed is known as a non-homogenous substance and bits of the same sample could provide different test results.

The department advised the Ombudsman that the random sampling of imported edible seaweed by AQIS did not, in its view, relieve the State of its responsibility to ensure the purity of food offered for sale in NSW. The department was not convinced that the random nature of the AQIS checking was appropriate, even though the testing by both the state and commonwealth bodies operated under the same standard.

During the investigation the Director General of Health informed the Ombudsman that he had consulted with AQIS and the National Food Authority (NFA) about the reasonableness of the testing arrangements and the potential for mutual recognition. As a result, an officer of AQIS was nominated as a liaison person representing both AQIS and the NFA to ensure information exchange with the state, in an effort to promote better coordination of the respective inspection programs.

The department also established a Food Task Group to consider public health, consumer protection and fair trading issues. That task group recommended the establishment of a Food and Nutrition Policy Unit. This unit was set up to liaise with relevant state and national bodies about the implementation of the Food Act and related acts. The then Acting Director General of Health advised the Ombudsman that it was expected the new unit would be able to manage issues such as those that had arisen concerning imported edible seaweed.

With the establishment of the unit, it was decided to discontinue our investigation. If the Food and Nutrition Policy Unit functions as was outlined to the Ombudsman, complaints such as those made by the two companies will be able to be dealt with at the outset by the Health Department.

"I wanted to express my gratitude for your endeavours on my behalf and for the happy outcome you achieved. I really was at my wits end, so I really do appreciate the fact that the Office of the Ombudsman does exist and that you took an interest in what was probably in the overall scheme of things of nuisance value only, to parties other than myself. Thank you once again, and best wishes!"
(From a complainant)

Prisons

Overview

Written complaints about prisons jumped from 393 in 1992-1993 to 469 in 1993-94. We also responded to 346 telephone complaints and interviewed a further 529 prisoners during visits to gaols throughout the state. A further 38 written complaints were received about the Corrections Health Service.

Internal restructuring of our investigation teams led to a greater specialisation of staff. As a result more matters were able to be made the subject of telephone or written inquiries. Preliminary inquiries rose to 309, 117 more than the previous year. These inquiries have also been conducted more swiftly than in the past and more matters have been satisfactorily resolved with the Department of Corrective Services (DCS). In fact our office determined 492 prison related files in 1993-94, 138 more than the previous year.

We were requested to review our determination on 28 prison complaints. Most reviews affirmed our original decision. In one case we resolved the matter, in two cases we amended our decision and one matter is ongoing.

The most significant increases in complaints came from the areas of:

- ❖ property (40 complaints in 1992-93 to 62 in 1993-94);
- ❖ transfer and transport (38 in 1992-93 to 58 in 1993-94);
- ❖ classification (15 in 1992-93 to 36 in 1993-94); and
- ❖ daily routine/access to amenities/lock-ins (38 in 1992-93 to 50 in 1993-94).

Over the last few years complaints about officer conduct such as assaults and harassment have declined as a percentage of total complaints.

The NSW correctional system was placed under great pressure throughout 1993-94. The introduction of new internal management arrangements, increases in inmate numbers along with staff restrictions and a scarcity of other resources have made life very difficult for inmates and officers. So difficult that cracks in the system are becoming more obvious.

The introduction of new management structures within DCS involves fundamental changes not just to practices and procedures but to attitudes. In the long term the changes should yield significant benefits for the department and ultimately inmates. In the meantime the process of introducing these changes has been painful.

In 1993-94 there was a daily average of 6,423 prisoners in NSW prisons and more than 1,200 on periodic detention. This first figure has jumped from 6,181 in 1992-93 and 4,124 in 1987-88 (a 56 per cent increase in prison population in seven years). The continuing increase in prisoner numbers seems to be a result of the complex influences of the 'truth-in-sentencing' legislation, increased police activity and tougher sentencing generally.

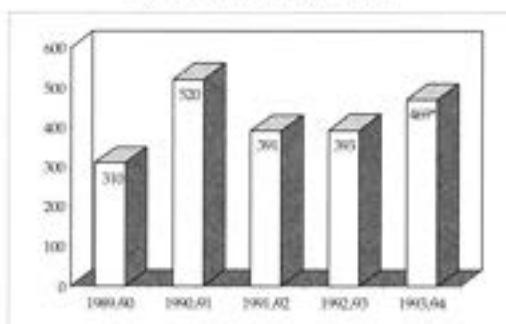
DCS reported in its 1992/93 annual report that it no longer sees inmate overcrowding as a significant problem. However the continuing increase in prisoner numbers is a major contributor to problems within the system.

Every NSW prison has a limited monthly staff overtime budget. Once this has been spent the process of 'post stripping' starts. This means security posts (towers, gates, escorts) are maintained at the expense of other duties. A reduction in these 'other duties' almost invariably involves the loss of some inmate

Prison Complaints Received by Institution
1993 - 1994

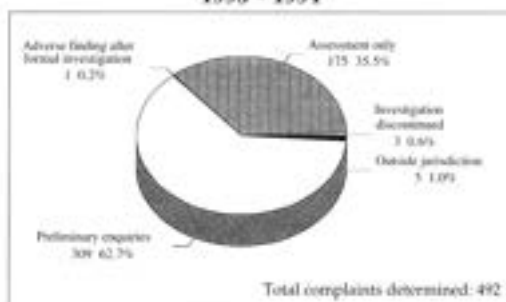
Goulburn	42
Mulawa/Norma Parker	42
Reception Industrial Centre	40
Junee	32
Prison Hospital	21
Remand Centre	20
Cooma	18
Bathurst	17
Maitland	16
Cessnock	15
Parramatta	15
Training Centre	15
Silverwater	14
Grafton	14
Special Purposes Prison	11
Tamworth	10
Lithgow	9
Parklea	7
Kirkconnell	7
John Morony	6
Emu Plains	6
Special Care Unit	3
St Heliers	3
Glen Innes	2
Oberon	1
Mannus	1
Broken Hill	1
Periodic Detention Centres	3
Department of Corrective Services	41
Others	33
TOTAL	469

**Complaints about Department of
Corrective Services**
A five year comparison

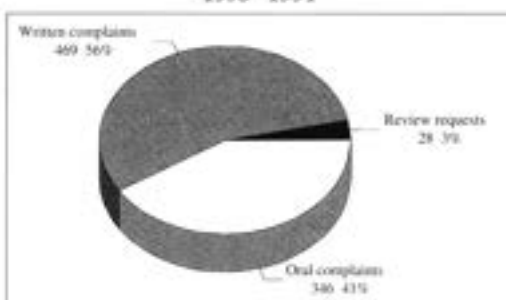


*Includes complaints about Australasian Correctional Management

Prison Complaints Determined
1993 - 1994



Prison Complaints Received
1993 - 1994



amenity; access to recreation or education, access to phone calls or the library, restricted movement around the prison, delays in seeing visitors or even legal representatives; delays in the sorting and distribution of mail, delays in transfers. There have even been instances of delays in getting medical advice or treatment.

If significant numbers of staff are absent, the prison is either partially or fully 'locked down'. This means inmates can be locked in their cells for more than two days at a time. It is under these conditions where the greatest risk lies. Not just a risk to the health of inmates but to their civil rights.

It boils down to the fact that situations arise where lack of resources can govern the conditions in which prisoners are kept. In the past, the Ombudsman has sometimes taken the view that the allocation of resources within departments or between institutions will not be examined by this office. However, in circumstances where staffing or other deficiencies in an institution lead to improper conduct, it is within the power of this office to make an adverse finding. It is against this background that the increase in complaints from prisoners during the year must be viewed.

The Department of Corrective Services has been very responsive to our recommendations and suggestions during the year. It is hoped this situation continues. Staff reductions in the DCS's ministerial liaison unit (partly made in response to an expected reduction in complaint levels) unfortunately led to some severe delays in receiving responses to correspondence from the Ombudsman. Some relatively simple requests for information went unanswered for up to six months, despite reminder letters. Where possible we will continue to deal with institutions directly by telephone or face-to-face to reduce delays.

A glimpse of the complaints received by the Ombudsman and the major issues arising from these follows.

Corrections Health Service

Along with complaints against DCS, complaints about the Corrections Health Service (CHS) rose in 1993/94 from 16 to 38. There was also a considerable increase in the number of complaints determined by this office. This was partly due to the finalisation of a small backlog from 1992/93. A considerable number of the 529 prisoners spoken to on regular prison visits raised general concerns about medical treatment.

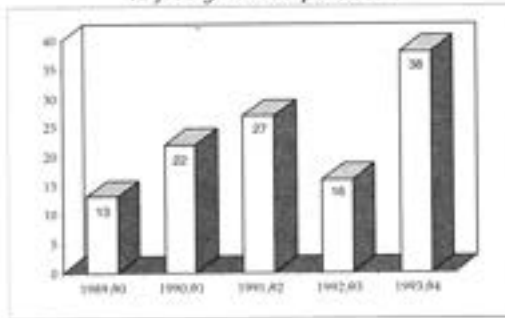
Complaints covered a range of issues but were commonly associated with the level, quality and frequency of medical care provided in NSW prisons. Delays in appointments were mentioned along with the overall lack of psychiatric and dental care. Clearly there are continuing problems in providing specialist care in the more isolated country gaols.

Current arrangements with the Department of Health provide for all approaches on matters concerning prisoner health to be sent via the Director-General to the head of the CHS. This has meant in some cases that minor matters have not been dealt with promptly and that information has not been readily made available. The Ombudsman hopes these problems will be resolved by a meeting proposed between our officers and senior Department of Health staff and the creation of a new position in Health which will deal with, amongst other things, Ombudsman complaints.

Finally, the Ombudsman trusts the level of cooperation between DCS and the CHS will continue to grow. The authorities now meet regularly at the most senior level but examples of poor communication, intra-service rivalry and short-sighted or nonexistent planning practices linger. While major steps have been taken to exchange knowledge that will be beneficial to staff of CHS and DCS as well as inmates, there is still some distance to go.

**Nature of Written Prison Complaints
1993 - 1994**

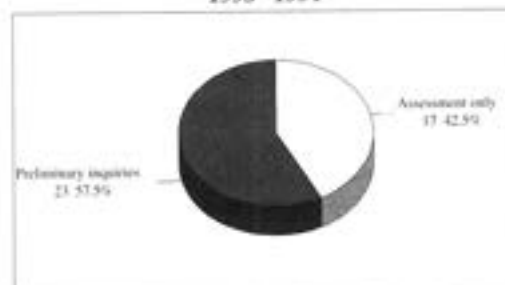
**Complaints Received About
Corrections Health Service
A five year comparison**



**Nature of Written Complaints About
Corrections Health Service
1993 - 1994**

Standard of care	32
Dental services	5
Other	1
TOTAL	38

**Corrections Health Service
Complaints Determined
1993 -1994**



Officer Misconduct	51
Threats/harassment	20
Assaults	17
Racist abuse	7
Other	7
Property	62
Loss	34
Delay in transferring	9
Confiscation	5
Failure to compensate	5
Private property policy	4
Other	5
Transfers	58
Unreasonable/refusal to	44
Form of transport	9
Interstate	2
Delay	3
Daily Routine	27
Access to amenities/activities	13
Access to telephones	10
General treatment (including time out of cells)	5
Record Keeping & Administration	22
Inaccurate records	9
Private cash accounts	8
Sentence calculation	1
Warrants	1
Appeal papers	1
Failure to reply	1
Others	1
Mail	17
Delays in delivery	11
Interception/missing	6
Visits	23
Treatment of visitors	8
Ban on visitor	6
Access to visitor	7
Searches of visitor	2
Segregation	15
Unreasonable	14
Failure to give reasons	1
Security	19
Urine analysis	14
Cell and strip searches	5
Unfair Discipline	16
Work and Education (access/removal)	10
Classification	36
Failure to Ensure Physical Safety	17
Day and Other Leave	3
Buy-ups	5
Physical	19
Unhygienic conditions	8
Lack of basic conditions	9
Yarding	2
Medical	2
Access	1
Methadone	1
Food and Diet	12
Legal	3
Probation and Parole	17
Periodic	2
Staff levels/Lock Ins	23
Other	9
TOTAL	469

Lost in the Ozone

Prisoners are allowed limited possessions in prison. For many inmates the loss of a single item can be a crushing blow. In 1993-94 the Ombudsman received more complaints about property than about any other aspect of prison operation. Property has long been a matter of concern for prisoners but the 62 complaints received in 1993-94 represents a 35 per cent increase over the previous year.

When offenders enter prison they surrender their civilian clothes, valuables and documents to Corrective Services. Prison clothes are issued and certain electrical items, books, stationery and other property can be bought or rented depending on the security level of the institution. Prisoners' property follows them when they move to other prisons. DCS has responsibility for an inmate's property when it is stored and transported but not once it is issued and in a cell.

All acquisitions and property movements are recorded on cards held by each prison. The cards move with the inmate when they are transferred. A gaol dictum is 'if it's on the card and signed for, you own it; if it's not you don't'. The system is a very long way from foolproof.

Record keeping is often sloppy, inaccurate or illegible. Lack of space on transport often prevents property accompanying prisoners and frequently trails

across the state behind them: sometimes weeks or even months behind. Storage areas are often poorly organised, understaffed and insecure.

Tracking down missing property and seeking compensation can be a frustrating and sometimes unbelievably tortuous process. Application forms follow inmates

around the state, compensation requests are passed from gaol to gaol and 'investigations' of how and why things were lost can take many months.

After one of his many movements between Goulburn Correctional Centre and the Reception Industrial Centre (RIC) at Long Bay in early 1993 a prisoner noticed that some of his solid gold jewellery had been replaced with 'cheap plastic imitations'. Missing were an 18 ct gold ring with a 2 ct diamond, a gold bracelet and a chain. The inmate was able to show that the pieces were worth \$30,000. The Corrective Services Investigation Unit (CSIU) concluded the jewellery was substituted at the RIC reception room but was unable to discover who was responsible. The report noted that valuable evidence was lost and inconclusive because reception room records were inadequately kept or indecipherable. Whenever property is checked or handled, officers are required to make a note on the property card. In this instance there were "scribble" signatures which contained no appended names and in some cases, [the card] contained absolutely no signature or entry at all". More than 12 months after the theft with our help the prisoner received the \$30,000 compensation. A limit has now been placed on the value of property which can be stored in prison.



In September 1992 another RIC inmate reported jewellery had been lost from his property. His efforts to gain compensation were hindered by his relatively poor English. After several attempts over quite a few months to find the items the DCS conceded that they were liable for the loss. The inmate claimed \$5,000. The DCS offered him \$50. Not surprisingly the prisoner refused. That is where the matter rested until the owner approached our officers during a regular visit to the RIC. Inquiries revealed the file relating to the property loss had itself been lost. After a further delay the matter of compensation was referred to the department's insurers who ratified the claim and in July 1994, almost two years after the jewellery was lost, paid the inmate \$4,000.

After a disturbance at Glen Innes Afforestation Camp an inmate was transferred out with a broken jaw. His property did not follow him on his way to Grafton. In this case the property was not worth thousands, or even hundreds, of dollars. It was cell gear, clothes and some vitamin tablets. Initially the DCS was unwilling to compensate the inmate because it claimed it was impossible to determine how full the vitamin bottles were. Our inquiries revealed officers had not followed the specific property handling procedures set down for non-routine transfers. The inmate was compensated.

In October 1992 a canvas bag went missing between Parklea Correctional Centre and Long Bay. The prisoner's early inquiries failed to reveal where or how the bag had been lost. Neither prison would acknowledge responsibility. Six months later the bag was still missing and the inmate, who was about to go on work release, was keen to have his suit replaced. He lodged several applications for compensation in April and May 1993. No action was taken on these applications. In February 1994, nine months after the first compensation application and getting close to his release date the prisoner approached our office. Details of the property claim were forwarded to DCS who finally paid the prisoner - almost 18 months after the bag went missing.

Complaints about property related matters are commonplace and very time consuming for

everyone involved. It is clear the existing administrative arrangements are often inadequate as is the security of storage areas in many gaols. The DCS, of course, is well aware of the problem and is conducting a major review of property handling policy in NSW prisons. This review is at least partly prompted by the stream of complaints to the DCS via our office. A solution cannot come too soon.

Self Damage

Suicide, drug related deaths, assaults, fights and self harm are increasing in NSW gaols. Media reports suggest the causes are simply increases in the prison population or uncontrolled drug trafficking. While both factors have had a significant influence on the frightening level of violence within prisons, the causes of violence are complex and difficult to determine.

The causes

Lack of access to activities is one reason. Whether caused by lock-ins, not enough TVs to hire, too few weights to work out with, limited education facilities or too little equipment for craft and hobbies, all of these can be contributing factors.

The lack of noncustodial staff; welfare workers, drug and alcohol counsellors, probation and parole officers and psychologists can be other causes. These people are under tremendous pressure. There are simply not enough of them to go around. Their workloads often force them to ignore the preventative aspects of their jobs. At present they are struggling to monitor what is happening in the system, let alone have an influence on it.

As every prison officer knows, if an inmate can commit an offence without expecting to be observed or punished, it is inevitable violent incidents will increase. Staffing changes in many prisons mean that simple security measures are harder to implement than in the past. In prisons built last century security considerations like electronic surveillance, lines of sight and response times can be made far less manageable by the architecture and the age of the buildings.

While the dramatic increase in prison populations of recent years did not continue last year, the number of NSW prisoners is still rising. It is not just the numbers themselves that might have an impact. Overcrowding may no longer be seen as a significant problem in NSW gaols but that does not mean the relatively cramped condition of prisons like the Remand Centre at Long Bay and the women's prison, Mulawa, has not been a factor in the number of violent incidents.

No matter how justified, particular policy decisions can also have a decisive influence on inmate behaviour. Changes in classification guidelines, new transport arrangements, the introduction of a committee to oversee work release or even a new visiting arrangement at a particular prison can trigger a suicide attempt or a fight. This is not to mention the myriad of personal issues that might influence behaviour.

The Corrections Health Service has also been under enormous pressure over the last few years. Despite an effort to provide care at a standard comparable to that of the community in general, there are real problems getting staff in country institutions, and providing psychiatric care and a good standard of dental care. In a system where inmate health standards are poor at the outset there can be little doubt this situation puts some inmates under additional pressure.

Clearly, there are no simple explanations for why more prisoners might be involved in violent incidents. To begin addressing these problems the public discussions and policy developments must acknowledge the complexity of the issue and address it in the context of the whole system.

Mulawa

In March 1994, 29 women committed acts of self harm at Mulawa. The number may seem small but it represents about 10 per cent of women in the prison harming themselves in a single month! And the figures do not include those who attempted self harm more than once in that time.

A chief cause mentioned in complaints received by our office is the level of illegal and legal drug use within prisons. At one point last year more than half the women

tested for drug use at Mulawa were on legal or illegal drugs - some were on both. The problem is not simply one of security, it is also one of welfare, relating to how and why women prisoners might want or need drugs, one of access to advice and help services and one of staff selection, training and supervision.

The incidence of self harm is one of a number of issues currently the subject of a major investigation into conditions at the Mulawa Correctional Centre.

Classification and Placement

When someone is convicted of a crime in NSW they are assessed, given a classification and sent to an appropriate prison. This would be a simple process except that there can be a world of difference between, for example, a minimum security place at the Training Centre at Long Bay, at an afforestation camp outside Tumbarumba or in the private prison at Junee. The way that decision is made is therefore of vital importance to prisoners and a crucial element of the management of any prison system.

Classification

Prison regulations stipulate several categories into which inmates can be placed once they are sentenced.

"A" category (maximum security) prisoners must be confined at all times in "special facilities within a secure physical barrier that includes towers".

"B" category (medium security) prisoners within a "secure physical barrier".

"C" category (minimum security) within a "physical barrier unless in the company of an officer". "C2" category "need not be confined within a physical barrier at all times but need some level of supervision". "C3" category "need not be confined by a physical barrier at all times and need not be supervised".

Escapees, no matter what the circumstances of their escape, never become minimum security prisoners.

Unsentenced prisoners (held mainly at the Remand Centre at Long Bay and at Parramatta) are notionally assessed on the basis of the charges against them with a view to ensuring prisoner safety.

Life sentence prisoners, prisoners serving 12 years or more, convicted murderers, escapees and other nominated prisoners are managed throughout their sentence by the Serious Offenders Review Council (SORC). This statutory body is chaired by a judicial member and is beyond the Ombudsman's jurisdiction.

However, a Reception Committee made up of custodial officers, noncustodial staff and representatives of the Classification and Placement Section at Long Bay sees all other inmates when they are sentenced and assesses their security needs. This initial classification takes into account the length of sentence, the nature of the crime, any previous prison record and a variety of personal factors.

A prisoner's classification will also help determine which of the 29 institutions across NSW they will be placed into.

Nominating a particular prison depends on the initial classification level and the nature of the particular prison. Some gaols, like Goulburn for instance, have a number of different facilities within the same institution. Goulburn can accept high, medium and minimum security prisoners while the afforestation camps without boundary fences can only take minimum.

Once located in a prison, the Program Review Committee (PRC) every six months sees each inmate not labelled a serious offender. PRC consists of prison staff and examines assessment, custodial, education and work records along with any psychological profiles and other details. It is here recommendations are made about a prisoner's progression through the classification system. Decisions of all PRCs and Reception Committees are ratified by the Prisoner Classification Committee which consists of officers from the Classification and Placement Section of the DCS.

Placement

Beyond the matching of classification and institutions, the prison an inmate lands in reflects a mixture of luck and management. In the absence of compelling reasons otherwise, inmates are sent to the first available space in an appropriate prison. Other factors considered include:

- ❖ forthcoming court dates;
- ❖ medical appointments;
- ❖ fresh warrants;

- ❖ security and safety of public, staff and prisoners;
- ❖ program needs of the prisoners (including the level of protection required);
- ❖ the welfare needs of the prisoners and their families;
- ❖ educational and employment possibilities; and
- ❖ prison labour demands and skill requirements.

The classification manual stresses cost effectiveness, emphasising that best use should be made of officers and vehicles in placing inmates. In addition, monitoring "accommodation levels" at medium and maximum security prisons is seen as important.

Family circumstances are a consideration but not a governing factor in the placement of prisoners. This is a matter of considerable pain for many inmates and the subject of scores of complaints each year to the Ombudsman. It was not always such a vital issue. Two decisions have had a powerful impact on the placement of prisoners.

The first was the determination of DCS to reduce the cost of transporting prisoners around the state. Several years ago, soon after the beginning of the rapid growth of the prison population, the DCS decided that to minimise costs, movement of prisoners would be more restricted. Unless there is some demonstrable reason, inmates go to the first available vacancy in a prison of the correct classification. The location of a prisoner's family has little impact on this decision unless the prisoner is Aboriginal in which case the chances of reducing the remarkably high risk of self harm or suicide is improved by placing these prisoners close to family.

A more powerful factor was the government's decision to construct a medium security prison at Junee; a decision in no way influenced by the fact that the vast majority of prisoners live or are arrested in Sydney or on the coast and that the facility is extremely inaccessible. Most medium security inmates in NSW are now located at Junee or Bathurst. Spaces at Bathurst are at a premium. There is enormous pressure on DCS to make sure Junee is full. After all, as

inmates are fond of pointing out, it costs the government for cells at Junee whether they are filled or not. This means a large number of inmates classified B in NSW are faced with the threat of being separated by several hundred kilometres from their families.

Obviously the prison must be filled now it has been built but exactly how, and more particularly by whom it is filled, is a crucial issue. The degree to which family circumstances are considered in deciding who is placed in what gaol is continually challenged by prisoners. They cite traumatic family problems including life-threatening family illnesses, troubled children and financial hardship caused by the cost of travelling to far flung places, as reasons for being moved closer to home. There are many examples of inmates transferred or retained despite substantial support from doctors, welfare workers, the clergy and even prison Governors. There is an overwhelming impression that the DCS is losing the battle to be fair and consistent in how placements are made.

There are very good reasons for ensuring family contacts are maintained. While many marriages or family situations disintegrate during a prison sentence **it is universally acknowledged that family support is the chief spur to the rehabilitation of prisoners. The chances of a return to crime and subsequently to gaol are reduced if ties with families can be maintained or developed while individuals are in prison. In addition, prisoners who can maintain or re-establish outside relationships are much less likely to pose a security risk within the system.** With more careful placement of inmates, there is the potential to reduce the prison population and the dangers within institutions. Unfortunately, when placing prisoners, long term goals are often sacrificed for short term savings.

In response to some preliminary inquiries, Corrective Services recently stated:

"Although welfare grounds such as family contact are part of an overall picture this does and cannot be an exclusive reason for location of inmates."

Perhaps 'welfare grounds' cannot be the governing factor in placing prisoners.

However, at the point it becomes administratively too difficult to check if there is a more appropriate prisoner to move in cases where family contacts will be broken, the system becomes self defeating.

In February 1994 the number of medium security prisoners at Junee had dropped below acceptable levels and a number of gaols were asked to nominate inmates to fill the spaces. At Bathurst an inmate with an unblemished prison record had just been recommended for a C2 minimum security classification at the same prison. The prisoner had received regular visits from his family, including three young children, who lived in Bathurst. Nevertheless he was chosen to be transferred to Junee. The recommendation for the C2 classification was overlooked in making this decision. His family ties were considered but rejected as a reason for keeping him at Bathurst. On the day he was told of the decision the prisoner tried desperately to avoid the move. Finally he said, *"I will not be on the truck to Junee"*. This statement was treated as a possible threat of self harm and the inmate was separated and observed before the transport arrived to take the prisoner to Junee. He was still able to slash his arms badly enough to need 40 stitches.

We are currently investigating this case to examine the selection procedures and protocol used by DCS in such forced transfers.

Punishment by Classification?

The classification arrangement in NSW prisons are framed in legislation as security measures. The greater the likelihood of escape or violence by a prisoner, the greater the need for securing. The placement of a prisoner is not a punishment, or is it?

A prisoner on work release (a C3 classification) can receive a range of punishments if the order allowing them out of prison unsupervised is breached. In most cases the prisoners are immediately removed from the program, confined in cells for a number of days, perhaps lose some other privileges and are increased to a C2 in the same prison.

However, sometimes after six months of good behaviour the prisoner can be transferred from the minimum security camp because of their earlier breach. If the offender became a

security risk immediately as a result of the offence it is then that the action should be taken. To punish, in this case to increase the classification, after such a delay must damage any progress made during the intervening six months.

The Prisoner Classification Committee at Long Bay has a vital role in deciding where inmates are housed and at what security level. The committee has an unenviable job assessing prisoners for the most part on the basis of written reports put before them by staff within gaols. Many inmates write to the committee seeking to have decisions altered. In July 1993 an inmate from Maitland Correctional Centre, re-entering prison for a reasonably short breach of parole sentence, wrote about his classification. He got a reply from an officer of the Classification and Placement Section who frequently sits on committees.

"Your letter of 5 July 1993 has been received and your comments noted.

However, your gaol record, which extends over a seven year period, indicates a total absence of regard for the safety and welfare of other members of the community. The Classification Committee could not help noticing your disgraceful criminal history in making you a medium security inmate and your complaint cannot be taken seriously by the Committee. It is strongly urged that you seek counselling during your current sentence and continue it if you should be re-paroled."

The prisoner later received a letter answering his questions about his classification and acknowledging that the previous letter's tone was "not in keeping with the Department's general practice of response to inmate enquiries".

The classification and placement process is too important for inmates on a personal level and for the best operation of the system to allow the process of assessing and locating prisoners to become simply a prejudged mechanical exercise. The DCS is currently reviewing the classification guidelines. It is to be hoped that the results will temper necessity with humanity.

Discharged

More than 50 complaints relating to the way internal disciplinary charges are brought against inmates were made to the Ombudsman this year. The internal charging

process was also mentioned in many other complaints, such as those concerning transfers. Allegations of this type have been a small but increasingly significant proportion of complaints over many years.

In 1993 9,070 charges were brought against inmates for offences committed in NSW prisons. Of those charges, 21 per cent resulted in a reprimand and caution. Some nine per cent resulted in no action or were dismissed. Interestingly, between June-July 1993, 47 per cent of the 144 charges brought against prisoners at Protection Prison Junee were dismissed.

Some of these offences were serious matters dealt with by police and resulted in criminal charges. Other matters, most often assault or drug related charges, were dealt with by visiting justices who conduct hearings in prisons. Most offences were breaches of the Prison (General) Regulation and heard by prison Governors. Breaches of the regulation ranged from abusive language, failing to comply with an order and keeping an untidy cell to not answering at muster, participation in a riot and harbouring equipment for an escape.

The penalties for these indiscretions can include restricting access to various activities, preventing purchase of goods, removing the right to all but legal phone calls or halting participation in day leave, weekend leave or contact visits. All these penalties can be imposed for up to 28 days. In addition inmates can have their prison wages stopped for up to 14 days and can be confined to a cell for up to three days. For failing to provide a urine sample or returning a positive sample a prisoner can be taken off amenities for up to six months.

One should not underestimate the effect of such punishments. In a setting where minor incidents assume enormous importance, the loss of visits or phone calls can be devastating. Even more shattering can be the loss of liberty for a prisoner reclassified and removed from the work release or weekend leave program.

Section 24(3) of the *Prisons Act* sets out the procedures for the handling of prison offences. Essentially the charges must be heard as informally and as speedily as

*"I can't express my gratitude to you for your valuable support. Thanks, ever so much."
(From a complainant)*

possible. Reports about incidents are submitted by prison officers. Prison Governors read all charges. Prisoners are "entitled to be heard at any hearing during the inquiry and to examine and cross-examine witnesses". A prison Governor is not bound by the rules of evidence and "may inform himself or herself of any matter in such a manner as the Governor thinks fit". Prison officers or 'other persons' may be allowed to be present by the Governor and can be heard during the inquiry. Prisoners may 'cross examine' witnesses.

More recently 'hand up briefs' have been used. These aim to relieve Governors of the need to address minor infringements, particularly those to which inmates have pleaded guilty. Within this process, area managers (responsible for wings, units or programs) rather than Governors can complete the relevant paperwork, make a judgement and nominate a punishment before putting the papers to the Governor for a final decision.

At the Training Centre at Long Bay, authority was further delegated to allow unit managers to remove from inmates who commit 'minor infringement' any privileges which have been earned over and above those normally available.

Steps are underway to alter the *Prisons Act* to allow area or unit managers to adjudicate on minor offences. Not a surprising direction considering the ever increasing pressure on prison Governors to concentrate on 'management' in the form of budget and staff control and broader policy issues. The DCS Deputy Commissioner has stated:

"... with the introduction of regionalisation and area and case management, an aim of the Department is to devolve authority downwards including the responsibility for the carriage of disciplinary matters."

Notwithstanding the changes currently taking place the Ombudsman has for some time had reservations about the way offences are dealt with in NSW prisons.

Prisoners continually speak of 'kangaroo courts' where prison officers simply read their reports. These reports are accepted at face value and never tested, nominated

witnesses are never called, not-guilty pleas are passed over in a moment and punishments allocated without discussion. It is alleged that sometimes even the prisoner subject of the charges is not present. Inmates also complain that punishments ignore previous good conduct and seldom take into account whether family circumstances will be damaged by loss of visits or phone calls. Prisoners frequently compare their punishment to others charged with the same offence and point to radically different results. Others speak of officers using the opportunity to 'get square' for real or imagined infractions in the past.

While most charges are dealt with appropriately, there are growing signs that inquiries and the hearing of the charges themselves are becoming increasingly perfunctory. A number of complaints point to lack of detail in prison officers' reports. Others refer to inadequately completed documentation, the use of incorrect forms and changes made to charge documents after the event.

In one instance the charge documents noted an offence which was identified on the basis of an outdated section of the prison regulations. A technical matter perhaps but one that brings into question the legality of the final decision. It also raises questions about the requisite knowledge of those hearing the charges. How can the offence be clearly delineated if those preparing the papers are unfamiliar with the legislation?

In relation to another complaint examined by our office the charges were heard by the Deputy Governor of an institution. As experienced and competent as the officer may have been there is currently no delegation which allows anyone other than a prison Governor to adjudicate on such matters. The charge was later erased.

The setting and circumstances in which such charges are heard can also create problems. In the presence of accusing officers and the prison Governor (or area manager initially) prisoners are asked to defend themselves, often against charges that can eventually lead to loss of classification, transfer from the gaol and can even influence consideration of parole. There is no entitlement for inmates to call witnesses; that decision is entirely up to the Governor. There appears to be no

guidance concerning the type of information that should be included in misconduct reports or other documents made available to Governors in making their decisions. There are only general guidelines about how such hearings should be held and the manner in which information should be brought forward. The entire process has the capacity to intimidate and antagonise the inmate and sometimes to inflame the situation. It is easy to see how some inmates dismiss the proceedings as lacking any real procedural fairness.

Inmates who speak little or no English or are unable to represent themselves can be represented or assisted if the Governor agrees. There is no indication that this possibility is canvassed with inmates when the charges are raised and no statistical records to show when it happens. From cases we have examined it appears to be a rare occurrence.

Charges can also be dealt with by a new prison Governor after an inmate is transferred from the prison where the offence occurred. It is unclear how this process is meant to work fairly when officers and/or witnesses are not available.

Arising at least partly from some complaints examined by this office in 1993-94 the Department has indicated it will be reviewing how internal charges are dealt with in NSW prisons. General principles the Ombudsman hopes will be addressed in that review include:

- ❖ reinforcement of the need for comprehensive and accurate documentation;
- ❖ a comprehensive guide to ensure punishments match the offence and the prisoner's circumstances; and
- ❖ ensuring Governors and other officers avoid prejudgment and apply themselves to assessing situations thoroughly and giving the benefit of the doubt where it is deserved.

Foolproof?

Since the introduction of compulsory urine tests in NSW prisons there have been consistent complaints of tampering, sloppy handling of samples and poor record keeping. However the process of taking and assessing samples has remained largely unchanged.

During the year we conducted inquiries into testing standards and security of samples provided to the laboratory. While we were

satisfied with the measures employed at the testing laboratory, the security of samples left something to be desired.

The system used asked inmates to offer a sample in the presence of at least one prison officer and sign a form saying the sample was theirs. The sample was then heat sealed. The long-standing allegation is that the seals can be removed and replaced without anyone knowing.

In certain institutions, particularly those where there were staff pressures, supervision of some sampling appeared to have become a little lax. Samples were not stored securely, immediately after being taken, and inmates were not always asked to sign the appropriate forms.

Any existing problems should be solved by new testing procedures introduced this year. Samples are still to be taken in the presence of an officer who will now accept the sealed sample and offer inmates a red coded strip to place over the lid and the seal of the plastic container. Prisoners will then sign opposite the appropriate code number on a sheet to attest that they have provided the sample. If the strips are removed a distinctive mark appears on the sample jar and the strip shows the word 'opened'.

At the same time, tests at the laboratory are now conducted by piercing the plastic top of the sample and withdrawing fluid with a syringe. These positive changes to the testing procedures make the whole process significantly more secure and should go a long way towards preventing further complaints.

Australasian Correctional Management - Junee

Junee, NSW's first private prison, and the largest prison in Australia commenced operation in April 1993. The legislation allowing prison management functions to be contracted out, also ensured the Ombudsman would have jurisdiction over these services and their staff. As the largest gaol in the nation, Junee is obviously an important element in the incarceration of prisoners in NSW. Our officers have made several visits to Junee to take complaints and to monitor the development of the prison.

"Thank you for your letter.

Your suggestion has borne fruit.

This would not have happened without your efforts, for which I thank you most sincerely. I now know that your office exists not only to handle big complaints, but also very small ones such as mine."

(From a complainant)

During each visit a large number of inmates have presented to complain. Not surprisingly the major objection was being sent to the gaol in the first place; a decision made by DCS not Australasian Correctional Management (ACM), the private company that runs the prison. Beyond complaints about the isolation of the institution, complaints have been little different to those encountered in other prisons. In fact during the year, we received 32 written complaints about Junee, fewer than some other large institutions. Property and freedom of information matters were noted as important. Prison staff have, for the most part, cooperated to resolve complaints.

There are a number of aspects of the operation at Junee that initially appeared to offer DCS an instructive model for prisons in NSW. The great majority of staff came to their positions with some training organised by ACM but no corrections experience.

Aside from the obvious drawbacks associated with inexperience, there was a noticeably different and refreshing approach by staff to inmates. At the outset, at least, relationships between staff and prisoners were less formal and more open without seeming to affect discipline.

The design and physical outlook of the prison allows prisoners a largely unobstructed view through wire fences to the surrounding countryside. Regardless of the restrictions inside the institution, to be unconfined by walls can lift a significant burden from some inmates. Within the prison itself there are exercise and relaxation facilities which are not necessarily available in the older NSW prisons.

The medical and dental care provided by a full-time doctor, and other medical staff compares well to the service in most NSW prisons.

Despite these positive aspects of the prison, the second full year of operation for Junee will be a very testing one indeed. Corrections is an area noted for very high staff turnover rates. In that context, staff turnover at Junee is at a rate that puts it above most NSW gaols and rising. Not surprising perhaps, given that it is a new facility and most staff came from outside the corrections system. Nevertheless the high turnover no doubt also reflects the existing security arrangements and the isolation of the prison from the major job markets. This will certainly place greater strain on the recruitment, hiring and training resources of ACM. Already the prison is having problems recruiting specialists, particularly psychologists and other non custodial staff.

There are about 300 inmates working at Junee and the available space is all but taken up with the manufacture of electrical cords for a large firm. At the moment there looks to be little

As Australia's largest and first privately run gaol, Junee's development has been watched with interest by the media.

Isolation a deadly extra burden

Judge cites Second Fleet horror in criticism of private prisons

Keeping it in the can



**Private prison
"first of many"**

It's jackpot for some

in bottom-line jails

**A public interest
in private jails**

prospect of additional work. Coupled with increased pressure on education and inmate activities, the lack of useful work could mean that order will be more difficult to keep in the long term.

The number of assaults and other acts of violence at Junee appear to be rising. However, so is the incidence of such acts in the prison system as a whole. Whether the current situation is related to the much publicised lower staff to inmate ratio at the gaol remains to be seen. Certainly there have been a number of particularly nasty bashings and a murder in the last six months. Not unusual in a prison setting, but worrying nevertheless.

Inquiries started recently into the response by prison staff to a serious assault on two inmates and the procedures and contingency plans implemented at Junee to ensure the safety of prisoners and staff.

"Thank you for your advice and for the prompt attention given.

I have now received an explanatory letter which includes an appropriate apology for the communication problems experienced in this matter.

I wish to place on record my appreciation of the efforts that you have expended on my behalf."

(From a complainant)

Investigation

Unlawful and Unreasonable Treatment

Our last annual report referred to an investigation of a complaint made on behalf of a HIV positive inmate. Our investigation included an examination of the DCS policy on the management of HIV/AIDS/hepatitis infected inmates published in January 1993 and its proposed policy for the disclosure of an inmate's medical status. It also examined, once again, failures in the implementation of segregation procedures.

The complaint

In September 1992 our office received a complaint from the inmate's solicitor, who was with the Australian Federation of AIDS Organisations Legal Project. The solicitor complained:

- ❖ his client (the complainant) was being unreasonably segregated;
- ❖ the conditions under which he was being segregated were unusually harsh and punitive;
- ❖ his applications for a written explanation of why he was being segregated were not appropriately attended to;
- ❖ his HIV status had been disclosed in a manner which was not only a clear breach of confidentiality but contravened regulation 14A of the Prison Regulations and section 17 of the Public Health Act.

Background

On 8 August 1992 there was a needle stick injury to a prison officer in the wing of the Remand Centre where the complainant was housed. The next day, an officer of the department's Internal Investigation Unit (IIU) received information that the complainant was responsible for taping the needle under a handrail where it injured the officer. An intelligence report was prepared and passed to the Governor of the Remand Centre who then decided to have the complainant segregated. On 12 August the complainant was removed from the Remand Centre and put in segregation in what was then known as the Industrial Centre.

Segregation

Segregation is not meant to constitute a form of punishment. It is used in circumstances where the separation of inmates is considered necessary for their own safety and/or the safety of others or to remove inmates from opportunities to sabotage the purpose and operations of a correctional centre. In this instance the grounds for the complainant's segregation, based on the intelligence report, were that he constituted a threat to the security of the centre, and to the preservation of good order and discipline in the centre. The complainant was verbally advised that he was being held in segregation while the needle stick injury was investigated.

Due to an 'administrative oversight' the complainant was placed into stage I segregation rather than stage II. The procedure at that time was for inmates from other centres to be automatically placed on stage II, unless otherwise directed by the Governor. Being on stage I of the segregation program meant, not least, that the complainant had only one non-contact visit a week. It also entailed him being kept away from even other segregation prisoners, spending 18 hours a day in his cell and another six hours a day in a separate yard. Segregation itself meant no access to the library or weekly mass.

The Governor only became aware that the complainant was on stage I segregation when our office rang to make inquiries. At that stage he had been on stage I for more than a month without anyone noticing the mistake. This was despite procedures which required inmates on stage I to be assessed for inclusion in the stage II program every two weeks.

Further, on 20 August after earlier requests for a written explanation of the reasons for his segregation, the complainant received the following response from a senior assistant superintendent.

"In answer to your application, notwithstanding that explanations that had been given to requests on previous application on the same matter will again be forthcoming, however, not on an oral basis, but in the form of symbols representing words.

In the very early stages of your self denial of material for mental work it was ultimately necessary for enforced separation as this constitutes in itself a threat to your state of functional change peculiar to organised matter..."

The response included a further two paragraphs of similar gibberish. Suffice to note that the complainant's question was not answered, nor the situation reviewed.

The senior assistant superintendent stated the complainant's requests for written reasons had become intolerable. He said his written response was "somewhat colourful...however in no way incorrect nor derogative". It was our view that the only way the superintendent could accurately describe his response as not inaccurate was on the understanding that it meant nothing at all and therefore could neither be correct or incorrect. We considered the response to be abusive and oppressive and one of a series of omissions and errors of judgement which contributed to the unreasonable treatment of this particular inmate.

Despite the safeguards built into the system, no reviews of the complainant's segregation were conducted. He was first segregated for a period of 14 days on 12 August. On 26 August an additional three month period of segregation was recommended by the Governor of the Industrial Centre and approved by the Regional Commander. According to the policy directive at that time "requests for an extension of a segregation period are required to be supported by sound reasons as to why such extension is necessary..." In this case his segregation was extended purely on the basis of the pending inquiry. No new information was provided and nor does it seem that the request for extended segregation stimulated any officer to establish the status of the inquiry into the needle stick injury.

Investigation of the needlestick injury

Our office began to make telephone inquiries about the progress of the internal investigation on 30 September. On that day no-one appeared to know who was conducting that inquiry, including the officers in charge of the

IU and the Corrective Services Investigation Unit (CSIU), a special investigative unit of the NSW Police Service.

Our investigation found that in effect there was no formal investigation of the allegation, only an administrative paper shuffle between different levels of the bureaucracy and the two investigation units. Until our office became involved there was no evidence to suggest there was any real coordination in relation to the oversight of the segregation and the inquiries relating to the needlestick injury.

Disclosure of medical status

While the complainant was held in segregation a notice was displayed in the wing office of the unit which stated:

*[complainant's name] is an HIV prisoner.
He is to be let out first in the mornings and
last in and be placed in 8 yard at all times.*

The note was signed by a senior assistant superintendent. It was taken down by a member of the then Prisoner Medical Service who believed it breached confidentiality and contravened the legislative provisions.

We considered the notice to be a serious breach of confidentiality and an inappropriate vehicle to warn of potential danger. Not only was it visible to every person going into the wing office, but the form of the notice was misleading and offensive. It did not refer to the complainant being potentially dangerous, only to his being HIV positive, an inference that HIV positive equals danger.

Remedial action

This investigation highlighted a number of administrative blunders in relation to the complainant's segregation, a lack of coordination and effective monitoring of the segregation and investigation processes, an excessive delay in reaching a determination concerning the allegation and serious deficits in the department's file tracking procedures. These added to the deeply unreasonable nature of the response to the complainant's request for information about his segregation and the disclosure of his medical status, resulted in a situation where clearly this inmate was abused.

Without detracting from the seriousness of these violations, it is encouraging to note the department has acted quickly in response to our investigation and recommendations. A letter of apology was issued to the complainant, who was released from prison before the investigation was completed. The senior assistant superintendent was counselled by the Governor soon after this office brought the matter to the department's attention.

On a broader level a number of important systemic changes were made including:

- ❖ the handing over to CSIU of the responsibility to investigate all needle stick injuries in the first instance;
- ❖ the introduction of a computerised work book system in the IJU to record and monitor work flow;
- ❖ the requirement that progress reports be submitted on all IJU jobs after each 14 day period;
- ❖ the introduction of fortnightly reviews of all inmates placed on administrative segregation at the Industrial Centre;
- ❖ Regional Commanders are required to generate, on a fortnightly basis, a report for each correctional centre to ensure that appropriate documentation is in existence to allow the continued segregation of the inmate(s) identified in the report.

In March 1994 an audit of the IJU's file management system was conducted and a number of recommendations were made by the Director of the Audit Branch to improve the effectiveness and efficiency of controls over the storage, movement and archiving of IJU's files.

Another initiative implemented, although not directly as a result of this investigation, will also contribute to the oversight of inmates on segregation. Regional Commanders are required to forward to the Assistant Commissioner, Operations, Mr Woodham, a weekly segregation return listing all inmates in their region who are the subject of a segregation order. The returns are then compiled into one report which is reviewed by the Assistant Commissioner, before being forwarded to the Commissioner.

In his response to the Assistant Ombudsman's report, Mr Woodham stated:

The Department considers that the procedures outlined above, together with the change of legislation (which came into effect in January 1994) which enables inmates to appeal against their segregation, will prevent an inmate being inappropriately held in segregation in the future.

The proposed policy and procedures concerning disclosure of an inmate's HIV/AIDS/hepatitis status were also reviewed and modified as a result of our report.

The policy published in the Corrective Services Bulletin on 4 August 1994:

- ❖ reminds staff of their obligations and responsibilities concerning the confidentiality and disclosure of an inmate's HIV/AIDS/hepatitis status;
- ❖ extends the list of positions that can be informed of an inmate's medical status;
- ❖ confirms that information concerning an inmate's HIV/AIDS/hepatitis status is only to be transmitted verbally to restricted personnel within correctional centres; and
- ❖ amends the procedures for HIV positive and negative inmates applying to share a cell.

There is provision for inmates infected with HIV/AIDS/hepatitis to be segregated if their behaviour is such that they are considered to be a danger to any other person. For example if there is a threat of an inmate infecting or attempting to infect any person with HIV/AIDS/hepatitis. The segregation admission form and segregation direction form will not contain any reference to the inmate's HIV/AIDS/hepatitis status. However, the special instructions on the admission form must include those in the procedures manual under "Directive for handling inmates segregated as a result of HIV/AIDS/hepatitis policy".

Notionally the department has introduced this procedure to ensure an inmate's confidentiality is maintained. However, in these cases it is unlikely to be achieved. The Assistant Ombudsman pointed out in his report, that although no direct reference is made to the inmate's medical status, it is clearly indicated by the substance of the special instructions. Given the very nature of the prison environment, policies relating to

privacy and confidentiality are difficult to implement, particularly if different procedures are used in relation to certain inmates.

The Department's response to this issue was that it already is implementing universal infection control (it was already doing this) procedures in accordance with Health Department policy and that inmates segregated on the basis of their unacceptable behaviour will continue to be handled in the manner outlined in the policy.

While acknowledging the need to ensure the safety of staff and other inmates, we believe a more appropriate action is to identify particularly dangerous inmates as that - very dangerous - and treat them with all possible caution. Simply because a person has not been identified as HIV/AIDS/hepatitis infected does not mean that infection does not exist or that precautions should not be taken. If such precautions are only taken with identified persons, then the general standard of safety will inevitably drop.

"This letter is to thank you for your kindness in helping me get my prosthesis. Congratulations for the good work you do for people like me, that need help of people like you so much."
(From a complainant)

Case Studies

Prosthetics and Logistics

In October 1993 our officers spoke to a long-serving inmate at Junee Correctional Centre. The prisoner complained that although his right arm had been amputated above the wrist and he could only partially use the remaining digits on his left hand, he was having trouble getting a prosthetic limb. He was having problems eating and performing simple hygiene tasks without assistance and was worried about straining the remaining digits. No doubt the situation had not been helped by the fact that the inmate spoke very little English and had to communicate mainly through interpreters.

What certainly made the situation difficult was an assessment by a staff specialist at Prince Henry Hospital who agreed that the patient needed an artificial arm but said:

My opinion is the fitting of a prosthesis is not logistically possible while the subject remains in prison.

The Ombudsman's view in his letter to the Director of Corrections Health Service was somewhat different.

With due respect to [the doctor's] comment my understanding is that the "logistics" of the matter would normally be assessed by Corrections Health Service and Corrective Services. This is particularly true where the crucial issue seems to be the attendance of the patient at a rehabilitation program; a matter for Corrections Health Service.

Corrections Health Service went on to explore the options for the patient and accepted responsibility for helping the prisoner get his prosthesis. In March 1994 the Acting Director-General of the Department of Health told the Ombudsman that the inmate was going through the extensive rehabilitation process to fit an artificial arm.

In June 1994 the Ombudsman received a letter saying:

This letter is to thank you for your kindness in helping me get my prosthesis. Congratulations for the good work you do for people like me, that need help of people like you so much.

In September, however, we received a further letter saying that the inmates prosthesis had been taken away. A DCS officer at Long Bay decided the prosthesis could be used as a weapon and removed it from the prisoner. It took a move to Junee and the intervention of the Corrections Health Service to have it returned.

Poor Form

An inmate at the Remand Centre complained about a form being used by gaol authorities. The form required inmates to give reasons for requesting a telephone call to their solicitor. There was also a note on the base of the form which stated that calls to a solicitor would be counted as one of the three telephone calls usually granted to remand inmates.

We sent a letter to the Commissioner, Mr Smethurst, querying the need for inmates to give reasons for telephoning their solicitor. We suggested to the Commissioner that the use of the form had the potential to encourage the release of confidential information and could well result in a breach of privacy between a solicitor and a client. The need to assess the urgency of an inmate's call to a solicitor was acknowledged. However as there was provision on the form for recording the next court date there was no apparent legitimate need for prison officers to know why an inmate needed to call their solicitor.

The letter to Mr Smethurst also raised the issue of a call to a solicitor being counted as one of the three phone calls usually granted to remand inmates. It had been our understanding that legal calls were given in excess of the three regular calls. It was suggested the DCS seek legal advice about both issues.

The DCS replied a short time later. They agreed that use of the form was inappropriate and that it had been withdrawn.

In another similar case our staff received a complaint about inmates' ability to make telephone calls to legal advisers while on a visit to the Training Centre at Long Bay. At the centre, telephone calls were restricted from 12 and 1pm, and between six and 9.30pm. It was often difficult for inmates, particularly those working in the industries, to contact their legal advisers during the day.

After receiving a letter from the Ombudsman, the department reviewed its entire phone policy. The previous short entry in the procedures manual was replaced with over two pages clearly listing the entitlements of inmates.

The Governor at the Training Centre undertook to give inmates greater access to telephones during office hours where calls are made to legal advisers. The department also advised that phone calls to the Ombudsman

are paid for by the department and are in addition to the normal weekly entitlement.

More recently following representations from the Assistant Ombudsman, DCS agreed to instruct Governors that prisoners' telephone calls to the Ombudsman not be monitored to preserve their confidentiality.

Keeping in Contact

In March of this year Ombudsman officers on a routine visit to Maitland Correctional Centre were inundated with complaints about visiting arrangements. The particular points raised were:

- ❖ inmates were cut off from visitors by the wide bench dividing the room with no possibility of physical interaction making nonsense of the 'contact' aspect of the visit;



- ❖ although there was no glass between the inmate and his visitor, glass between the 'boxes' made the visit seem quite similar to a 'box' visit;
- ❖ inmates were unable to cuddle children older than five years. Investigation officers were told that young children of primary age were supposed to be permitted to sit on the bench close to the inmate but inmates claimed that this 'privilege' was discouraged to the extent that it did not happen; and
- ❖ one inmate described the conditions as being so devastating to his continued relationship with his wife and young children that the visits had become painful emotional experiences for them all. He was unable to comfort his wife by having close physical contact when she became distraught, nor was he able to nurse his five year old daughter who had just begun school.

Commissioner Smethurst agreed with the particular points raised in the subsequent correspondence from this office and visited Maitland Correctional Centre to meet with inmates and the Governor. As a result of discussions extensions to the contact visiting area were agreed upon and the benches were removed and replaced with tables and chairs. The extensions are due to be completed by October 1994. It is pleasing that the new visiting area was a result of a letter of inquiry from our office rather than an expensive formal investigation. This type of cooperation is of benefit to all parties.

Overcharged

An inmate at Goulburn Correctional Centre complained he had three unaccounted departmental charges on his gaol record. He believed false information had been put on his record to prevent his progression to a lower security rating and the opportunity for day leave with his family. The complainant said he and a number of other inmates had pleaded guilty to an internal charge of 'refuse to work' around the time these other misconducts were alleged to have occurred

but that none of the new charges were for refusing to work. His attempts to sort out the problem at the gaol had failed.

Our inquiries revealed the three unaccounted charges did in fact relate to the single 'refuse to work' incident. The confusing and inaccurate manner used to record the charges had resulted in the inmate and the Programme Review and Classification Committees misunderstanding the number and nature of the charges.

A number of issues are considered by Programme Review Committees when deciding whether to reduce an inmate's security rating. Overall work performance and conduct, participation in education or other programmes are all considered. Committees also check each inmate's departmental record for any charges which may have been received since the last review.

To be reduced to a C3 security rating and be eligible for day leave, an inmate's general performance must be above average. Inquiries by this office revealed that the complainant's performance was not above average and a reduction in his classification, even without any departmental charges, would have been improbable. However if his or any other inmate's work and conduct reports were in fact above average as required, the fact that three charges or misconducts had been received rather than one could well be significant.

The inaccuracies revealed during our inquiries were raised in writing with the Commissioner, Mr Smethurst.

In his reply Mr Smethurst agreed the department's records were confusing and inaccurate. Two of the breaches were removed from the complainant's record. The only breach to remain on his record was one which related to not complying with a direction by a prison officer. In this case, the direction was to return to work. The complainant had pleaded guilty to this charge and had never disputed its legitimacy. The records of the other inmates charged with breaching regulation 64(3) were also corrected.

Mr Smethurst also agreed that each of the breaches should have been recorded separately and to prevent further problems occurring, a circular will be issued clarifying the fact that breaches are to be dealt with separately.

Run-Around

An inmate from a minimum security gaol complained three rings, which he was wearing when he entered gaol several years before, had been confiscated by gaol authorities. It was alleged he had stolen them from other inmates' property while he was employed in the reception room of the gaol.

The inmate had returned to the gaol after his weekend leave and was observed by the receiving officer to be wearing three rings. When he was questioned about them, the inmate said they were his rings and were recorded on his property card. When the card was checked it confirmed three rings had been issued to the inmate from his personal property. However since this contravened departmental property policy, the officer confiscated the rings pending further investigation.

In a report of an internal investigation it was 'found' the inmate had stolen the rings from other inmates' property and that he had altered official records, namely his property card. The basis for these findings appeared to arise from differences in his property from one institution to another.

When the inmate was transferred from Cessnock to St Heliers, Cessnock completed a list of property transferred with him. On receipt at St Heliers, another list was completed and some of his property issued to him. There were more items of property on the St Heliers list than on the Cessnock list. As the inmate was employed in the reception room of the gaol for about six months during his time at St Heliers, it was believed he had altered his property card over a period of time to account for property stolen from other inmates.

While this may or may not have been true, copies of the inmate's property cards showed further discrepancies when he was moved

between St Heliers and the Training Centre and then the Training Centre and Cessnock. These moves took place over two weeks, eight months after his employment in the reception room ceased. He had no opportunity to alter the property cards on these occasions yet it appears from the property cards that the card and property which left St Heliers was not exactly the same as that which returned. There was no record of him receiving the property from a visit or via the mail so the discrepancies could really only have occurred when the cards were noted by gaol staff.

Several inmates who had been at St Heliers had submitted claims on the department because property had gone missing from the reception room. However the rings at the centre of the dispute did not fit the description of any of the jewellery subject to claims.

An inventory of inmates' property conducted at the gaol had not raised any questions about the complainant inmate's property. The new private property policy was implemented some six months after the inmate had finished working in the reception room. The question of him having, according to his property card and contrary to the new policy, three rings in his possession in the gaol was not raised.

The officer in charge of the reception room during the time in question was unable to shed any light on the situation. He had left his employment during an investigation of his work practices.

One of the recommendations made in the internal investigation report was that the inmate be held in the segregation area of the gaol and his security rating be increased to a B. He was a C3 at the time of the allegations. The reason given for this fairly drastic action was that he had previously escaped.

The inmate had in fact escaped from Silverwater gaol 19 years earlier. Departmental policy covers the issue of escapes and what security classification inmates may be reduced to if convicted of escape. Inmates convicted of escape before

November 1988 are not prevented by legislation of progressing to a C3 security rating. The policy says in part:

... However, prior to making a decision to classify such a prisoner below a B rating PRC's or Reception Committees must be satisfied that the risk factor of a further escape has been reduced by ensuring that behaviour, stable emotional state and family/community support are evident. [sic]

However, those Committees who recommend inmates with escape records below B or C1 must provide reasons of a positive nature to support their decisions. Similarly, if no progression in ratings is recommended the reasons for these opinions should also be expressed.....

The complainant had been a minimum security inmate for some time and was within the last few months of his sentence. He had progressed through the security ratings to reach C3 over a considerable period of time. Obviously the gaol had no concerns about him being a security risk or he would not have reached C3 and been granted day leave to spend with his family. We considered the decision to increase his security rating on the basis of unsubstantiated allegations was unreasonable.

Our inquiries resulted in a review of the inmate's case by the Regional Commander. He agreed the decision to increase the complainant's security rating to a B was not in line with departmental policy and that there was no justification for such an increase. As a result of the review the inmate's security rating was reduced and he was returned to a minimum security institution. He was released to parole shortly after. His property which had been held by St Heliers was returned to him but not until he had left gaol.

Improved Protection

In every prison there are inmates who must be separated from each other, for their own safety or for the safety of others. Many of these prisoners, sex offenders, informers and

those easily preyed upon, must also be separated even further, put on strict protection from those inmates already protected. Many of these prisoners would be in genuine physical danger in the main gaol, many have no choice in whether or not they are protected. The number of inmates on protection in NSW prisons has been rising over many years. Now there are hundreds of inmates on protection in NSW prisons, most of them in Goulburn.

Some of these protected prisoners exist in the worst possible conditions. During a regular visit to the Remand Centre at Long Bay, our officers were appalled at the conditions for strict protection prisoners. After conveying these views to the new prison Governor the Ombudsman wrote to the Commissioner:

"The strict protection inmates... occupy what was once the segregation area of the prison. They are mostly 2 out in old cells designed to hold one prisoner only. The cells are cramped to the point where it is barely possible to place a table... This means, according to inmates, that it is not possible to even eat the evening meal without discomfort... During the day inmates are put in yards ...adjoining their cells ...prisoners are no longer allowed to associate in the space between the yards and the cells This means that they are locked, 2 out in most cases, in small yards throughout the day. It is debatable whether prisoners could be said to be getting [the statutory] 1 hour exercise per day whilst in the yards. The yards themselves are without sun and the prison officers confirm that they are very cold in winter... The yards are supervised from the wing office by way of a video camera. To reach an inmate in trouble officers might need to run 30 metres and open 3 doors. This is presuming that they were to immediately observe the incident on the monitor... According to the inmates they have little contact with the officers in the wing... [there are] difficulties in getting access to noncustodial services, D&A counselling, library and legal aid assistance... I realise that there is no easy solution to the problems associated with housing strict protection inmates. However I believe it is imperative that those problems be addressed. I ask you and

the staff of the Remand Centre... to put forward any suggestions that might alleviate the situation."

The Commissioner's response was swift and decisive. He wrote to the Ombudsman on 16 June 1994 saying:

"This area [the strict protection yards at the Remand Centre] has been of concern to us for some time. All strict protection inmates have now been relocated to the programs unit where amenities and exercise are available. All inmates should be able to participate in work program within four weeks."

The old area is now empty and cells and yards will be cleaned and painted before being used for short term segregation of no more than 14 days. As well as this refurbishment, new furniture including beds, tables, shelving and a television will be provided and cell alarms installed.

"I am writing to thank you for the lengths and efforts you and your office went to resolve the problems I have been up against regarding my medical condition. These problems have now been resolved, and I am satisfied with the efforts you and your office went to on my behalf."
(From a complainant)

Local

Overview Council Complaints

In 1993-1994 we received 573 written complaints about councils. In addition to written complaints, we received a further 1,250 oral complaints and inquiries about council matters.

During the year we determined more complaints than we received. About half the complaints were resolved by conducting preliminary inquiries. We also conducted eleven formal investigations, six of which resulted in reports with adverse findings.

Complainants asked us to review 50 of the decisions we made. While most of these reviews affirmed our original decision, in five instances we resolved the complaint or amended our decision.

A Year of Change

The year was one of profound change and challenge for local government with the commencement of the *Local Government Act 1993* and the new regulations made under that Act. In last year's annual report the Ombudsman commented on the overall structure and intent of the new Act. It was noted the Act attempts to modernise management of local councils and introduce greater accountability.

The future

Many of the changes introduced by the new Act are still being implemented. Some have been so dramatic that it would be unreasonable to expect trouble free implementation. As a result, we have been flexible when examining compliance by councils with the new Act. In the coming year, we will expect councils to fully comply with the requirements of the new Act.

Accountability

The new Act requires councils to formulate and articulate policies and plans in relation to a large number of their activities. For instance, councils are now required to formulate a policy on approval of building applications. This policy must deal with various matters including the required approvals, matters to be considered when assessing an application for approval and who is notified about an application. Another example is the requirement that councils formulate management plans detailing activities for the following three years with a revenue policy for the following year.

A feature of these policy and plan making responsibilities is the public consultation process to be observed before the policies and plans are capable of implementation. Such processes involve exhibition of the draft policies and plans and the consideration of public submissions on their contents.

The future

We are anxious to ensure councils actively inform their local communities of these new processes to maximise public awareness of and input into the formulation of these policies and plans. Once implemented, councils' compliance with these policies and plans will be a focus in the assessment of complaints.

Internal Complaint Handling

In the modernisation of council management, the Ombudsman recommends all councils adopt a comprehensive internal complaints handling program. The benefits of such a program are enormous. As a form of customer satisfaction research, internal complaints handling systems can be used to improve service and operations.

Nature of Local Council Written Complaints Received
1993 - 1994

	93/94		93/94
Development		Engineering Services	
Objection to issue of DA	50	Road closures/access problems	10
Unsatisfactory processing of application	16	Failure to carry out work	24
Objection to refusal or conditions of DA	23	Adequacy of council work	12
		Orders to meet the costs of or carry out work	14
Building		Drainage and flooding	12
Objection to issue of a BA	20	Traffic and parking	14
Unsatisfactory processing of application	18	Bonded work	2
Objection to refusal or conditions of BA	8	Orders relating to parking	10
Inadequate inspections of work	3		
		Community Facilities and Services	
Zoning		Parks and Reserves	3
Objection to decision to rezone	13	Other facilities and services	12
Objection to refusal to rezone	5		
Objection to rezoning procedures	3	Conduct	
Section 149 certificates	3	Misconduct of councillors	13
		Misconduct of staff	18
Enforcement		Non-pecuniary conflict of interest complaints	3
Failure to enforce DA conditions	19	Pecuniary interest complaints	10
Failure to enforce BA conditions	9		
Unauthorised development/building work	41	Corporate and Customer Services	
Objection to orders relating to development or building work	13	Tendering	3
		Insurance/liability claims	9
Rates and Charges		Contracts and entrepreneurial activities	12
Objection to level of rates	2	Failure to reply to correspondence	16
Objection to level of charges	13	Provision of information	12
Disputed calculation of rates and charges	10	Unsatisfactory complaint handling	7
Interest charges	5	Resumptions	10
Recovery action	7	Elections	7
Refunds	2		
Farmland rates	5	Other	14
		TOTAL	573
Environmental Services			
Garbage service	4		
Noise complaints	8		
Other pollution complaints	18		
Orders relating to dogs	3		
Tree preservation orders	7		

councils

The future

In the course of dealing with various councils in the past year, staff have detected a strong interest in the guidelines on internal complaint handling we prepared as part of our Complaints Handling in the Public Sector (CHIPS) project. Next year, we will monitor developments in internal complaint handling by local councils. In late 1994 we will survey public authorities, including councils, to determine how they manage complaints. We will also work with the Department of Local Government to develop a complaint handling workshop for local councils.

Good Conduct Guidelines

Our office is currently preparing guidelines on good conduct and administrative practice in local government. These guidelines are based on the findings and recommendations made in our reports over the years, the corporate knowledge and experience of our office, recommendations in ICAC and Department of Local Government and Cooperatives reports, the 1990 Local Government Code of Conduct manual, the recent Code of Conduct published by the department and the *Local Government Act 1993*.

Litigation Alternatives

We are monitoring with interest the alternative ways local councils resolve disputes about development and building applications. In particular, section 100 of the *Local Government Act* now provides applicants with the right to request a review of a decision to refuse a building application. Interest will be taken in councils' steps to inform applicants of the availability of this right and the actual conduct of such reviews.

The willingness of councils to discuss and otherwise assist applicants before and after a decision is taken on the application is also of interest to us. Lines of communication of this sort can often prevent applications being refused and then escalating to the point where appeal rights are exercised, to the cost of both council and applicant.

As noted earlier, we strongly endorse use of a local approvals mediation scheme, where external mediators are used to assist in resolving disputes between applicants and objectors.

Once appeal rights are exercised, optional mediation of matters before the Land and Environment Court is available. We hope that councils embrace the opportunity to explore a mediated settlement to matters before the court, particularly where there is dispute only on conditions imposed on development or building approvals.

Legal Services

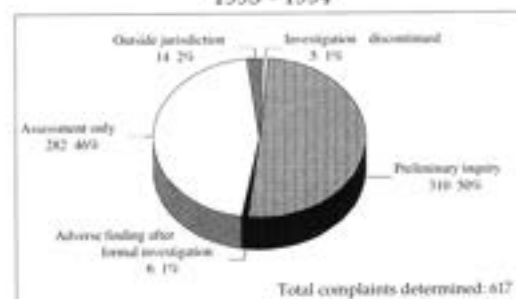
In our last annual report we noted our support for the recommendations of the *Parliamentary Public Accounts Committee Report on Legal Services provided to Local Government*. Since then we have continued to receive many complaints about the tendency of councils to engage in costly litigation, particularly in relation to decisions made contrary to the recommendations of councils' technical staff.

We will continue to scrutinise this matter until there is discernible improvement. In doing so, we do not seek to deny councils the right to defend sound planning and building decisions.

Another problem in the area of legal services encountered on an alarmingly regular basis is the reliance placed on legal advice by many councils in justifying their conduct to the Ombudsman. One case currently being investigated typifies the problem. Council sought advice in response to a claim by a resident that a large amount of fill had been dumped adjacent to his property in order to form an elevated sports oval without proper notification. As a result the value of his property had substantially diminished.

Council responded by seeking legal advice. It first asked "whether it would be proper and reasonable" to pay the resident compensation. Council later amended its instructions, asking for advice on its legal liability.

**Outcome of Local Council
Complaints Determined
1993 - 1994**



The first set of instructions, asking whether compensation was proper and reasonable, would have been more appropriately directed at a moral philosopher than at a legal adviser.

The advice from council's lawyers was based on a chronology of events provided by council rather than council's files and was flawed. Fortunately, further advice, again on council's legal liability, was then sought from another law firm, this time based on council's files. This advice was that council was not legally liable to the resident but contained an important qualification. The advice suggested council could be liable if it encouraged the resident to rely on its advice on the height of the completed sports oval. In the process of considering this advice, little evidence has emerged demonstrating that council sought to explore whether this qualification was relevant to its liability.

The case underlines a number of problems with legal advice. Legal advisers may not be capable or suitable to advise on non-legal issues such as the reasonableness of council's conduct - a key criterion which the Ombudsman must consider when judging conduct. In the cases where legal advice obtained is qualified, it is for council to show that those qualifications have been considered and eliminated.

Positive Planning

We have traditionally not examined the merits of planning and building decisions on the basis that these are matters for determination by councils in accordance with the relevant

legislation. However, we will continue to investigate complaints that reveal improper practices and abuses of the assessment and review process. Similarly, we will continue to criticise councils who make such decisions in order to fulfil an agenda not compatible with the council's legal responsibilities or in order to appease local protest at the expense of those responsibilities.

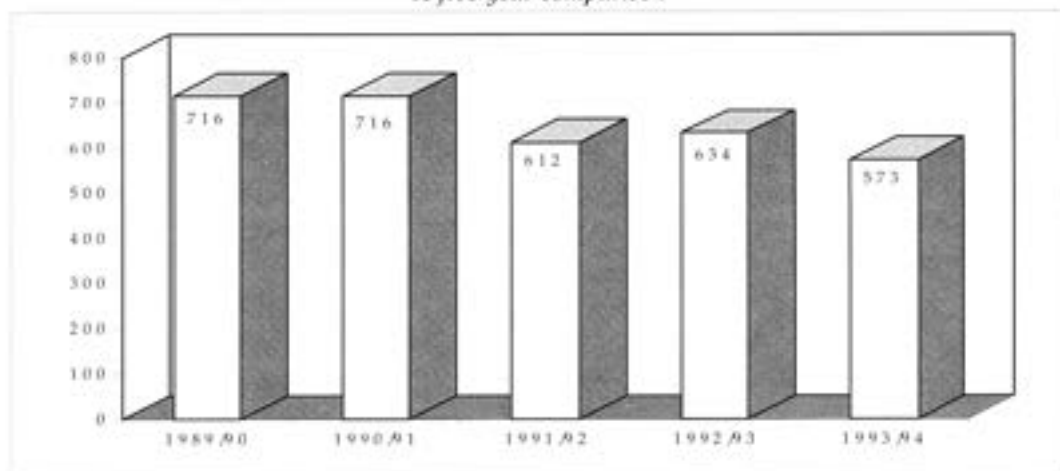
Equally open to censure are councils which decline to make a decision in relation to contentious proposals, preferring to leave the applicant to exercise their rights of appeal.

Both phenomena are contrary to councils' planning and building control responsibilities. Both almost inevitably generate large numbers of appeals against the decisions or non-decisions of such councils. This in turn wastes councils' resources on legal costs and places unfair financial burdens on applicants.

The future

We will monitor with interest the effect of section 179 of the Local Government Act which gives the Land and Environment Court a discretion to award compensation to applicants for building approval where the court is satisfied council's delay or refusal to grant consent was unduly influenced by vexatious or unmeritorious submissions or council acting vexatiously. This section underlines for councils the dangers in making decisions for reasons other than those relevant to the issue as outlined in the relevant legislation.

Local Council Complaints Received
A five year comparison



Conduct Unbecoming

Council decisions often flow from councillors voting in council meetings. Decisions are made collectively, in contrast to the decision making of many other public authorities, where decisions are made by a single person. We have therefore been most concerned to learn of several occasions where, although the council as a body has been made the subject of an Ombudsman's investigation, not all of the councillors have been informed of the investigation or been given an opportunity to comment on the matters under investigation.

Under the *Ombudsman Act* written notification of an investigation must be given to the head of the relevant public authority. For local government authorities, the head is defined as the person who presides at the council meetings. Such notices address the Mayor by name and title, and clearly state whose conduct is to be the subject of investigation - the council as a whole, or, in some cases, particular councillors or staff.

In one case recently brought to our attention the Mayor was sent a notice outlining the conduct to be investigated and asking a series of questions. A copy was also sent as a courtesy to the General Manager. Soon afterwards the Mayor stated in the local newspaper the Ombudsman was looking into council's conduct but provided little detail about the investigation. When asked by a councillor about the matter, the Mayor said the notice had been addressed to him personally for comment and declined to elaborate or provide a copy. He had misconstrued the fact that while the notice was addressed to him by name, it was clearly sent to him in his capacity as the head of the council and was a notice to the council. It was clear the purpose of the notice was to advise of an Ombudsman investigation into the conduct of the council, not that of the Mayor as an individual.

In such cases, the councillor may have voted on matters which are subject to investigation, but remains unaware of the exact nature of the investigation and of the Mayor's formal response to our office. If the Mayor's response in such circumstances purports to be the collective response of the council, it is misleading.

In another case, a council's solicitors disputed the validity of an Ombudsman's investigation. As with the previous case, some information about the dispute made the local newspapers. Despite repeated requests by a councillor at council meetings, the Mayor refused to disclose either the existence of an investigation or the dispute about it.

In yet a third case, the Ombudsman had sent the Mayor a summary of the evidence obtained in an investigation and a summary of the grounds of proposed adverse comment. In the interests of natural justice, the legislation requires the Ombudsman to give the subject of an investigation the opportunity to comment on his evidence and preliminary findings before finalising an investigation. As with the previous cases, the subject of the investigation as detailed in the notice of investigation was the conduct of the council. The Mayor and General Manager of this particular council, however, sought to have the council delegate to them the task of responding to these documents, without the councillors having ever seen them. A councillor's request for a copy of the documents was denied by the Mayor.

These cases show a disturbing tendency for some Mayors to act as autocrats. The new Local Government Act gives the Mayor powers to act without the direct authority of the council only in cases of necessity or under delegated authority. This does not cover the actions described in the cases noted above. We believe Mayors in these cases have, possibly deliberately, misunderstood their responsibilities.

The failure of a Mayor or General Manager to keep the full council informed of an Ombudsman investigation into the conduct of the council and to not allow councillors opportunity to comment on the matters under investigation could itself be the subject of formal investigation by this office. In some circumstances it may also amount to a breach of s. 37(1) of the *Ombudsman Act* which prescribes penalties for hindering or obstructing an Ombudsman investigation.

In an endeavour to overcome such problems, the Ombudsman has changed the form of his notices to councils to further minimise the possibility of information being kept from council members.

Existing Use Rights

Existing use rights complaints escalated last year and consumed substantial investigative resources.

A council can recognise existing use rights for an ongoing activity commenced before the introduction of a planning instrument. We received twelve complaints about five councils involving uses as diverse as operations of a quarry, piggery, fish shop and printery, and the extraction and storage of river gravel.

A key feature of existing use rights is that recognition requires the use to have been continuous and to have been lawful immediately before the relevant planning instrument came into effect.

The Environmental Planning and Assessment (EP&A) Act distinguishes two classes of what is loosely referred to as existing use. The definitions are firstly in section 107 of the Act which concerns existing use where the current planning instrument now *prohibits* the development comprising the use, and secondly, in section 109 which concerns "existing consent" where the current planning instrument now *requires development consent* for the development comprising the use.

Unfortunately the distinction between existing use and existing consent is not well understood by councils or some of their legal advisers. In fact, many of the complaints related to what is properly defined as existing consent but these complaints are still widely referred to as existing use matters.

Following four complaints about a council's improper recognition of existing consent/use rights relating to gravel extraction, we launched an investigation.

Gravel extraction is often controversial. It can impact either positively or negatively on river bank erosion, may degrade river bed levels and involve massive truck movements and dust problems. For both extractors and extraction site owners, very large sums of money may be at stake.

We are currently considering submissions from the parties involved in the investigation and preparing a draft report. The issues under investigation have provoked intense public debate and unfortunately at times our procedures have been grievously misrepresented.

In 1991 the NSW Court of Appeal considered amendments made to the EP&A Act in 1986 concerning expansion of extractive industry use. It found mine and quarry operators who benefit from existing consent rights could not use land set aside for future mining without complying with current planning requirements.

Since mining frequently needs new areas (once existing sites have been exhausted) the court decision would have required many operations to negotiate the formal process of seeking council consent immediately. The government responded to the court decision with State Environmental Planning Policy 37: Continued Mines and Extractive Industries (SEPP37), instituted from 18 June 1993.

SEPP37 aims to give quarry and mine operators claiming the benefit of existing consent rights and requiring expansion, a two year moratorium before they need development consent. The policy allows them to expand operations during this period, within certain limits.

SEPP37 does not affect councils' obligation to ensure operators prove existing consent rights by showing uninterrupted lawful activity from a time before planning controls were introduced. Indeed, the policy clearly requires operators to provide extensive proof of past activity, supported by details of past production levels and the exact area of mined land by surveys, royalty returns, taxation and employment records. Such information must be kept on a register available for public inspection.

Once a council is satisfied the operation has existing consent rights, SEPP37 allows an operator to increase both the area of land used and the annual production level up to defined levels. The policy sets out a method of calculating these levels, requiring proof of relevant data.

Operators achieving the benefit of the SEPP37 moratorium must submit detailed returns of their production to councils every three months. At the end of the two year period, all favoured operators will be required to obtain development consent, irrespective of their current existing consent rights. Operators who propose significant increases in the level of extraction, or a

significant level of environmental change, will be treated as requiring consent for a designated development, involving environmental impact assessment, and prescribed notification and advertising.

The council already being investigated in relation to its recognition of existing consent for gravel extraction, attracted further complaints about its application of SEPP37 to gravel extraction operations. It is alleged the council has not properly considered the numerous SEPP37 applications received and has not required operators to stop work until they had provided enough evidence to prove their claim to existing consent rights.

It is further alleged the council has a conflict of interest, being active in gravel operations to support its own roadworks. For example, a complainant alleged the council had extracted gravel for local land care groups without regard to SEPP37 requirements or environmental considerations and fabricated an application for SEPP37 registration without consulting the relevant landowner. Such complaints raise serious issues about the way council discharges its SEPP37 obligations. The investigation is continuing.

Another complaint came from a residents action group concerned by the noise and damage to their homes caused by blasting and other work undertaken at a nearby gravel and rock quarry. Their council had recognised existing consent rights for the quarry which had been opened in the 1940s, before planning instruments required development consent. Previously, the quarry had been worked and half-owned by the council. The residents allege the quarry had not operated continuously as required by the Act. They say council stopped blasting in 1980. Apart from strictures about abandonment, the Act limits increases to the amount of activity covered by existing consent. The residents allege council flouted the existing law, allowing the quarry to continue operation.

Other issues concern council's consideration of an application by the quarry operator under SEPP37. Information is being sought from council, the Department of Conservation and Land Management and the Environment Protection Authority. The investigation continues.

Another case concerned a council's recognition of existing consent rights for a piggery. It was alleged council had granted existing consent rights for the restarting of the piggery some years after the complainant had bought the adjoining property. He particularly objected to the piggery odours. The investigation highlights the issue of the level of proof required to support council's recognition of continuity of use, especially where there is a conflicting assertion of abandonment. At the time of writing, responses from the parties to the summary of evidence of the investigation were awaited.

At the heart of many existing consent/user rights cases is the clash between the strong commercial interest of an often well-funded use operator, the interests of the environment and one, or even many, residents of modest means. A council is called on to make decisions often under threat of costly litigation if council does not accede to an operator's requests to recognise existing consent/use. Furthermore councils are aware that even where the operator loses in court there is little prospect of council recovering its legal costs in full, if at all.

However, public interest and public duty dictate that councils must apply the law as well as acting fairly to all parties in the process.

Jurisdiction Challenge

The Ombudsman has again been required to examine the limits of his jurisdiction to investigate complaints about the conduct of local councils.

Two Wahroonga residents complained to the Ombudsman in June 1993 about the conduct of Ku-ring-gai Council in handling two development applications lodged by them for dual occupancy subdivision of their property.

The first application was approved unanimously by council in March 1993. This was in accordance with the recommendation of council's town planner. Soon after, the decision to approve the application was rescinded by council. The reason given for this rescission was the assertion by a neighbour that he had been denied the right to address council on the night the decision to approve the application was made. Council reconsidered the application some weeks later and surprisingly decided that it should be rejected.

The Wahroonga residents appealed the decision of council in the Land and Environment Court. These court proceedings were later discontinued and an amended development application was lodged. After a delay of some months, this application was also refused by council in December 1993. The residents, so near to obtaining the approval, were devastated by the change in circumstances. They again appealed council's decision to refuse their application. This appeal was successful and their development will now proceed.

The complaint alleged council had acted unfairly and that the protesting neighbour and the neighbour's representative had been given favourable treatment by council while the development applications were being considered.

Following preliminary inquiries, we started an investigation in March 1994. Council responded by challenging the power of the Ombudsman to investigate the complaint. The council argued that Section 13(5) of the *Ombudsman Act 1974* precluded the investigation. This section states:

"...the Ombudsman shall not investigate the conduct of a ...local government authority, if that conduct is subject to a right of appeal or review conferred by or under any Act unless the Ombudsman is of the opinion that special circumstances make it unreasonable to expect that right to be or to have been exercised."

The council argued the complainants in this case had rights of appeal or review and in fact had exercised them. It was therefore not possible for the Ombudsman to find special circumstances. It was the Ombudsman's view that some of the conduct was not subject to a right of appeal or review. That conduct which was subject to such a right could still be investigated provided special circumstances existed. In this case, the Ombudsman found special circumstances.

The Ombudsman has commented in several previous annual reports on the scope of his local government jurisdiction in light of section 13(5). Most recently in his 1991-92 report, the Ombudsman expressed the view that 'rights of appeal or review' are best understood to principally mean rights to appeal a decision relating to a development application or a building application. The

Ombudsman added that section 123 of the *Environmental Planning and Assessment Act 1979* and section 674 of the *Local Government Act 1993*, both of which confer standing on any person to take action to remedy or restrain breaches of those Acts, do not amount to rights of appeal or review. Finally, the Ombudsman commented that 'special circumstances' were matters for him to define in his discretion.

Since that time, we have been required to reconsider our position on section 13(5).

- ❖ There is no doubt that specific rights of appeal conferred by legislation on people affected by decisions of local councils are 'rights of appeal or review' within the meaning of section 13(5). Most notably, these include the 'merits' appeal rights referred to above.
- ❖ Conduct the subject of 'a right of appeal or review' will usually be a decision of a council. This will not preclude an investigation into the circumstances of a council's assessment of the matter for decision.
- ❖ Where, in making a decision, a breach of the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993* may have been committed, it could be argued that the right to take proceedings to remedy or restrain that breach amounts to a 'right of ... review'.
- ❖ In considering whether special circumstances exist, the Ombudsman must have regard to the position or circumstances of the person having the right of appeal or review.

In this case, the matter has been referred to the Supreme Court of NSW for a determination. We welcome the opportunity for judicial guidance on the meaning of this section of the Act.

"I write to thank your Officer for her help and intervention in this matter - after eight months of trying the matter was finally resolved at the beginning of May."
(From a complainant)

Investigations

Dual Occupancy Dilemmas

Despite receiving many complaints about the handling of development and building applications by local councils, the Ombudsman seldom investigates such matters.

It is appropriate, however, to bring the Ombudsman's "lamp of public scrutiny" to cases where there appears to be abuse of the assessment and determination processes, especially when such matters cannot or are unlikely to be canvassed in merit appeals.

One such case investigated this year involved Ku-ring-gai Council and a dual occupancy development. The complainant alleged the council had unreasonably deferred determining the applications to frustrate the applicant who had otherwise cooperated with councils' requirements. The complaint further alleged the council was purposefully failing to implement the state government's dual occupancy development policies and avoiding its responsibilities in making difficult and unpopular decisions by unreasonably forcing costly appeals to the Land and Environment Court.

Our investigation examined the general decision making procedures adopted by the council in respect of development applications and looked at the question of whether council had acted fairly in its processing of the dual occupancy application.

Since 1980 the NSW government has encouraged dual occupancy development throughout the Sydney metropolitan area through a series of planning policies. In Ku-ring-gai's case, the council found itself having to apply laws on dual occupancy it generally opposed. While it objected to various policies, usually with strong community support, the council is obliged to apply the planning law and applicants have the right to be treated fairly under those laws.

In the case under investigation, the complainant became alarmed when after modifying the design to meet relevant state and local policies, the council's building and development committee deferred consideration of the application. The committee reasoned this was so councillors could meet to discuss the dual occupancy

legislation and formulate a municipal strategy to deal with it. Such actions are commendable from a strategic planning viewpoint. However, council unduly delayed determination of the application when it placed the rules in abeyance to formulate better ones. Applicants can only prepare applications in accordance with prevailing rules and advice from council's professional officers. Accordingly, the desire to formulate a better strategy was irrelevant and the delay led the complainant to incur substantial extra costs.

With the benefit of hindsight, the council's decision to refuse the applications against advice of its professional staff was unwise as it was overturned by the court. The Ombudsman found, however, that the reasons for refusing consent were reasonable.

Even so, he found that while there was insufficient evidence to suggest that the overall decision of council was ultimately provoked by its general attitude to the dual occupancy issue, some individual councillors had based their votes on irrelevant considerations. One councillor voted on the grounds of his public stand against such developments and listed several other reasons, none of which could properly be construed to fall within the exhaustive list of considerations under the legislation governing the determination process. Another councillor's vote was coloured by her consideration of the impact of a multitude of similar developments on the whole municipality whereas at law she was only entitled to consider, amongst other things, the impact of the particular development upon the future amenity of the neighbourhood of the site. The Mayor during the debate also made reference to the appeal which was then on foot and advised his fellow councillors that in rejecting the proposal council could still "capitulate later on". To suggest the council could later revisit its decision was manifestly inconsistent with the finality of a council determination recognised by law and was an irrelevant matter for council to consider in reaching its decision - it invited members to 'buck-pass' the matter to the appeal process with little regard for the substantial legal costs such proceedings would incur for the applicant and council alike.

Both the Ombudsman and the NSW Parliament's Public Accounts Committee have criticised similar cases in the past where councils reject applications that meet all relevant planning criteria simply because they are unpopular with some residents, knowing that the applicant will appeal.

Council was latter to be put on notice of the difficulty it would have in defending the appeal when its solicitors had great difficulty in obtaining the services of a consultant planner to argue council's case. Three consultants had rejected the brief. A majority of councillors, however, unreasonably voted to pursue a defence which was manifestly untenable with scant regard to the potential legal costs. Council duly lost its case in court.

Good management practice would dictate that a council in such circumstances should have an open mind and make a pragmatic decision based on the case itself and council's consideration of its wider corporate duty to use resources wisely and effectively. Council's failure to pursue the path of alternative dispute resolution and to terminate the proceedings was unreasonable in the circumstances. Council abrogated its responsibility to its ratepayers to act in a cost-efficient and reasonable manner.

While the applicant was entitled to appeal the decision of council, the Ombudsman found that it could not have reasonably foreseen that the dispute would escalate as far as it did, together with the legal costs involved. In maintaining its inflexibility and continuing its tenuous defence, the council went beyond the point of reasonableness.

For these reasons the Ombudsman recommended that the council make an ex-gratia payment of compensation to the applicant.

The Ombudsman was also critical of a number of features of council's decision making systems which were revealed during the investigation. Among other things he noted that a review of costs and the desirability of carrying on of legal proceedings was not a matter of systematic review at Ku-ring-gai by the council or any committee.

On the other hand, the Ombudsman found that the council was being buried in its

consideration of too many development applications that should have been dealt with by staff or a committee under delegated authority, leaving the council time to develop better policies to guide the exercise of such delegations. In short, the council was not managing well.

The Ombudsman commented that the referral of applications to a full council, due to lack of confidence in staff decision making, was an indictment of council's own failure to develop appropriate policies and guidelines for staff to follow. The Ombudsman said council's valuable time should be spent developing and reviewing policy, including the development control framework, not embroiling itself in the details of individual applications.

The Ombudsman also strongly recommended that council investigate with outside assistance the opportunities available to it to resolve disputes outside the traditional mechanisms such as costly proceedings in the Land & Environment Court. He found the council had a limited understanding and use of alternative dispute resolution procedures.

Finally, the investigation addressed whether the council was deliberately frustrating the state government's dual occupancy initiatives. The Ombudsman said the council was entitled to use political means to pursue its objectives (in this case getting the government to reconsider its approach), provided such activity did not unreasonably or unlawfully interfere with its statutory duties. He noted, however, the growing perception in the community that the council was biased against dual occupancy and the council's political agenda meant it was sailing perilously close to acting unreasonably in terms of its statutory duties as a consent authority in regard to dual occupancy development applications.

This perception was reinforced by a refusal rate for dual occupancy development applications of 35 per cent, which was three times the refusal rate for other types of development applications and was atypically high when compared with a random sample of other councils. While recognising the

"I thank you very much for your detailed letter, analysing my anxiety with X Council. Your letter to Mr X as the General Manager of X was exceptional and asked all the questions that I had sought over the last three years."
(From a complainant)

limitations on such comparisons, it is clear that Ku-ring-gai Council refuses a significantly higher percentage of dual occupancy development applications than other councils, which together with its own record on other types of development indicated prima facie evidence of bias.

The investigation also found that council's *Development Control Plan No 15* and council's *Dual Occupancy Development and Associated Subdivision* policy was more restrictive and in certain areas contravened the overriding state and regional planning policies. The Ombudsman said that such inconsistencies may mislead the public and where such provisions are relied upon by the council to refuse applications, they were also likely to invite successful appeals, the effect of which was only to cause unnecessary delays, stress and additional costs to the applicants and council alike. The policy was also found to be erroneously labelled as a development control plan. The Ombudsman considered it appropriate to reissue the plan as a council policy, which provides matters for consideration but is not legally binding.

In addition to the above recommendations, the Ombudsman also called upon council to formally adopt the Local Approvals Review Program principles, provide training for its members on their legal responsibilities in determining development applications and to set up a working party with the Department of Planning to develop strategies to increase choice and stock of housing in its area with a view to seeking exemption from the dual occupancy policies.

A few days before releasing the final report, council initiated proceedings in the Supreme Court in an attempt to prevent another Ombudsman investigation. This case is referred to earlier in this section and involved a question as to whether council's development application process had been subject to undue influence and abuse.

Buyer Beware

Purchasers of property rely heavily on local councils to alert them to potential problems that will affect development and use.

A complainant was outraged when Auburn Council refused his application to erect a

house because of the flood liability of his land. He had relied on council's information as to whether it was flood liable before buying it.

The land was adjacent to the main tributary of the Haslams Creek stormwater channel. The susceptibility of the catchment to flooding had clearly been a matter of local knowledge for some time. A recent management study of the catchment estimated the cost of flood damage to be about \$314 million annually.

A consultant's report had in 1989 provided data for council's management of the area's development. Supplementing an earlier investigation, it estimated the 20 year and 100 year flood levels. It also noted that localised flooding along the major drainage system flowpaths would be expected at a number of locations.

Council staff prepared a map from data in that report which it used to identify land within the one in 100 year flood level for council purposes. The map was also used by counter staff to identify flood prone blocks of land when handling inquiries from the public. The map, however, omitted the information on localised flooding along the main drainage flow paths which indicated that the complainant's lot was susceptible to flooding.

The complainant made reasonable inquiries as a prudent purchaser about the property he intended to buy. A certificate issued under s. 149 of the *Environmental Planning and Assessment Act* by the council was attached to the contract for sale. It disclosed that council had not adopted any policy to restrict development of the land by reason of the likelihood of flooding, but noted:

the absence of a specific Council policy as to these risks should not be relied upon as evidence that these risks do not exist.

To be on the safe side, the complainant went to council to confirm the land was not flood prone before committing himself to purchase. Counter staff consulted the map which revealed the block was not in the shaded area that indicated flood-prone land and the staff did not indicate any other information to suggest it was. Relying on this information he entered the contract to purchase.

At the request of his lending authority he also applied for a further s.149(5) certificate to

make certain that the land was not, among other things, subject to flooding. It gave identical information to the previous certificate and no additional information to indicate the land's susceptibility to flooding.

When his development application was submitted, the same map was consulted by council's planning staff. Because the block was close to the shaded areas, it was referred to the council's engineers for comment. Using the same data from the consultant's report, they indicated the site was liable to flood in one in 20 and one in 100 year flood events and recommended minimum floor levels and restrictions on filling. These were made conditions of consent.

After further unsuccessful attempts to get the council to modify its consent conditions and being refused access to the consultant's report, the complainant was forced to redesign his house and build a more expensive design. Because of the escalation of costs and his limited funds, a number of planned features could not be finished.

Council denied any liability in the matter. It first sought to defend itself by claiming the map was not of sufficient detail to properly identify flood affected land and was not made public for that reason. It conceded however, that the map was used by staff "to assist in determining whether a site may be affected by flooding" - precisely the purpose it was used for when the complainant made his inquiries at council. The only problem was, that the map did not

reflect the true situation. During the investigation, the original consultant who wrote the Haslams Creek Flood Study identified further defects in the flood map drawn by council staff. Contour lines had not been accurately followed and well known areas of flooding were also omitted, including the flowpaths clearly identified in the study.

While our investigation did not suggest council was wrong in requiring the complainant to elevate his house, he should have been warned of this possibility and advised to seek independent engineering advice.

Our investigation also rejected council's argument that the information provided on the section 149 certificates was considered accurate at the time of issue. Section 149(5) provides an opportunity for a council to give extra information to an applicant on a range of matters including flooding. Where councils are aware land is flood-prone, they have a duty to disclose that to interested parties. If a council is uncertain about the potential flooding of a property, there is no reason why it should not alert applicants on s.149 certificates to that fact. This is the practice of a number of councils and a very sensible one.



In this particular case council had information at the time that indicated the flooding risk of the area which it eventually used to restrict development of the property. It should have been disclosed in the s.149 certificates.

Council denied liability for the additional costs and losses suffered by the complainant. Auburn Council relied on section 582A of the then *Local Government Act* which exempts councils from liability in relation to flood related matters where they acted in good faith. We did not share this view. Council had an obligation to make the complainant aware of the flood information they had when they issued the s.149 certificates. The state government's *Floodplain Manual* states that councils should promote flood awareness by supplying flooding data and advice to potential purchasers and others.

Having been notified of the land's flood-proneness we found the council was negligent in failing to warn the complainant of this when it had the opportunities to do so.

Council also relied on legal precedent that no liability in tort arose as a result of incorrect information being provided pursuant to section 149(5) because of the immunity in 149(6) for information provided in good faith.

The investigation however found that the Flood Study clearly indicated, among other things, which streets in the council's area were subject of localised flooding from the drainage system flow paths and the report was adopted by council that same year. This information was not properly communicated to staff responsible for dealing with counter inquiries about flooding matters, nor staff responsible for dealing with s.149 applications.

Furthermore, a defective map was developed on partial information from the report which was then used by council staff as a guide to deal with public inquiries. In the circumstances, the information provided to the complainant may have been given in good faith by the staff involved but it was information based on carelessness and negligence.

We found that while the council may have had a defence in law it was morally culpable.

As a result it was recommended council compensate the complainant to cover the

difference in building costs of the redesigned house, the subsequent drop in the land's valuation once its flood liability was confirmed and his legal costs in dealing with the council over the dispute.

At the time of writing the council had instructed its insurance broker to make a partial offer which was not acceptable to the complainant. Negotiations were still proceeding.

Recommendations about council updating its data base used for processing s.149 certificates and the guidance map as well as introducing other procedures to address deficiencies identified during the investigation were implemented by the council.

Principle or profit?

For some 30 years, Wollongong City Council proposed to extend Foothills Road at Balgownie. It would no doubt improve public access if implemented but by its nature it was a long term proposal. By 1988, however, the circumstances and needs of the community had changed and council realised it had not acquired enough land for the extension. As a result, it resolved to discontinue its policy to extend the road.

Various acquisition strategies had been tried over the time of the proposal. Most envisaged affected owners would be compensated in some way. Due to the slow rate of acquisition, in 1971 council devised a policy requiring affected owners proposing to subdivide their land to convey to council at nil or nominal consideration the portion of land needed for construction of the road extension as a condition of consent. Some 10 parcels of land were acquired in this way.

The complainant had received development consent to subdivide her father's land in 1985 to create a battle-axe block at the rear upon which the complainant built a house. The far back portion of this lot faced the proposed road extension and was conveyed to council for \$1 as a condition of consent. Other blocks were subdivided in similar ways. On some blocks new houses were built facing the proposed road.

The complainant had protested about the condition at the time and had endeavoured to get council to modify the consent. Council refused and in the end she acted upon the

consent to overcome the delay and its effect on increased building costs.

When it came to the complainant's notice that land acquired for the extension of the road was to be sold by the council, she and her partner wrote enquiring if they could repurchase the lot for the original purchase price. Council indicated it was willing to sell the land but at market price. Some of the other blocks were sold at market price, one for \$54,000, but not to the same people they were acquired from at nominal sums.

At this point they complained to us.

The investigation found it unlikely council ever had the power to impose the condition requiring transfer of the land. Council claimed it relied upon section 94 of the *Environmental Planning and Assessment Act* for its actions, but this was never communicated to the applicant and appeared to be a post facto justification. For a condition of consent to be valid the courts have held it must:

- ❖ relate to a planning purpose;
- ❖ fairly and reasonably relate to the development; and
- ❖ be reasonable.

The transfer condition did not meet these criteria. The creation of the battle-axe block did not rely on access to the road extension and the subdivision does not appear to have generated any need for increased public amenities or services. Furthermore, even if it had, the works would have to be expected to be carried out within the foreseeable future and this was not the case. Subsequently, the dedicated land could not be put to the purpose for which it was obtained because the proposal was abandoned.

Council also claimed that once the development consent had been acted upon it was deemed that the party had agreed to all conditions. The Assistant Ombudsman did not accept that proposition. The complainant had complied with the condition under protest and section 102 of the EP&A Act makes clear there is scope to modify and delete conditions of consent after consents are acted upon.

Essentially council was enriched by obtaining the land in question for a nominal sum of \$1 at the expense of the complainant and her father. This was also true of the other



residents whose land was acquired in the same manner and who are still resident on the adjoining lots. Although the council was attempting to implement perhaps a legitimate plan at the time when the need for the road extension was identified, it exceeded its authority in requiring surrender of land at nil or nominal consideration. The fact that council was requiring market value to return those parcels compounded the injustice.

Principles of equity also applied to the case. The bargain struck by council where consent was granted for transfer of the lot for a nominal amount was unconscionable. Council and the complainant had met on unequal terms.

In the circumstances the Assistant Ombudsman said it was proper for council to transfer the lots back at the nominal amount for which they had been obtained and that it had a moral duty to do so. This recommendation did not extend to cases where land had been acquired by voluntary acquisition or where original owners had moved on.

The Assistant Ombudsman was also highly critical of council actions relating to another of the blocks acquired by the same means. In that case, by administrative oversight, the council had not in fact obtained title to the block. However, after council had informed the original owners that the block was no longer required and after the Ombudsman's provisional report had been given to council with a recommendation that the condition of consent in relation to that block be deleted, council wrote to the owner's solicitors requesting that arrangements for transfer of the lot be made.

After taking a fairly intransigent view during the investigation in justifying its actions, council subsequently adopted the Assistant Ombudsman's recommendations. This involved transferring the lot the subject of the investigation back to the complainant. Other residents in similar positions were to be treated in the same way. Council also agreed to delete the transfer condition from the development consent of the other resident where the transfer had not actually been completed.

In Your Interest

Hunters Hill Council operated a two pronged scheme designed to help aged pensioners pay their rates. Firstly, the council offered a 50 per cent rebate of their rates liability. This rebate was originally funded dollar for dollar by the State Treasury to a maximum of \$250. The upper limit of Treasury's funding was reduced to a maximum of \$125. The balance was funded by council.

Secondly, the council allowed aged pensioners to defer paying their rates until they sold their property or died. This deferred liability incurred no interest. Pensioners who chose to defer their rates liability were from 1990 no longer required to re-apply for deferment.

In 1990 the council's auditors recommended that deferred rates should in fairness attract interest. In early 1991 the council resolved to accept this recommendation. Following this recommendation, applications for deferment continued to state no interest would be charged on deferred rates. Pensioners who previously accepted the offer to defer payment of rates did not become aware of the change in council policy on interest until they received their rates notices for 1992. These rates notices disclosed the interest accrued on deferred rates in 1991.

In the face of considerable protest, council resolved in 1992 to write off interest accrued in 1991 on rates deferred up to and including 31 December 1990. No other concessions were offered.

A pensioner ratepayer complained to the Ombudsman and a formal investigation was started in March 1993. Our investigation focused on the council's failure to properly notify affected ratepayers and the fairness of charging interest on amounts of deferred rates which did not attract interest at the time the decision to defer payment was made.

At the conclusion of the investigation, a summary of evidence was forwarded to the council together with a document foreshadowing recommendations that the council take steps to abandon its previous decision to charge interest on rates deferred prior to the decision of council to charge interest. In light of these proposed recommendations, the council resolved to:

- ❖ write off all interest accrued on rates deferred up to 31 December 1991;
- ❖ preserve rates deferred up to that date from interest until recovery of the deferred rates on transfer of title to the property; and
- ❖ notify all affected ratepayers by personal letter.

We are pleased the council acted swiftly in light of the proposed recommendations to rectify what it had previously acknowledged was a major failure in its rates administration.

"Thank you for your letter ... and your final report. In an earlier letter I expressed appreciation on behalf of my client Mrs H for your efforts in achieving a just result for her. However, I think it would be wrong to let go unremarked the worth of the service that your office provides to the people of New South Wales. Anyone who takes the time to read your report thoughtfully will be struck by the powerlessness of the 'little person' when up against political arrogance and a stubborn bureaucracy. Cogent argument alone will not cure the imbalance in power. We see here how the Council was able to call to its aid the weight of a lawyer's opinion that defied both logic and gravity to shore up an unworthy practice born of expediency. What hope would the Mrs H's of the world have to finance a challenge in court in a case like this? The cost of the pursuit would always exceed the value of the prize. But when all the minor wrongs are aggregated the injustice can be seen to be substantial. I can think of no remedy available to Mrs H other than through your office. I congratulate you and your officers on the quality and importance of your work and thank you for a job well done."

(From a complainant's legal representative)

Case Studies

Fencing Duel

In 1992, a Coffs Harbour couple's back fence was removed during road works by the Roads and Traffic Authority and Coffs Harbour Council to widen the Pacific Highway. As their house was at the top of a steep embankment, no fence was potentially quite dangerous. By March 1994, the fence had not been replaced even though the road works had long since been completed. At this point, the couple approached Ombudsman staff during a public awareness visit in the area.

The two public authorities involved agreed a fence was necessary in 1992 but in more than 18 months neither had provided one. Late in 1992, council suggested the replacement be delayed pending completion of the road works, in case the highway was so noisy the fence would need noise reduction properties. The couple agreed to this proposal. By September 1993 the highway had been finished for months and they still had no idea when they could expect a new fence. Council told them a noise study had been commissioned but could not begin until there was good weather, a point the couple found strange as they understood the area was in drought. The RTA agreed the fence should include noise reduction properties but gave no indication when they could expect this, indicating other properties in the area also needed new fences. By March 1994, the couple were desperate to have a new fence, since they were planning an overseas trip in April and their young grandchildren were to stay in the fenceless and dangerous house.

After interviewing the couple, Ombudsman staff promptly contacted both authorities. Within a few hours, it was clear the RTA had long ago approved funds to build a safety and noise fence but that council had never received this advice and had done nothing to follow it up. A brand new, permanent fence which was both safe and inhibited noise was built by council and paid for by the RTA within a week of our involvement.

Is Silence Consent?

A suburban railway news stall proprietor complained that Marrickville Council was refusing to prosecute a nearby newsagent who set up pavement newspaper stands near the railway entrance each morning.

Council ordinance inspectors had on numerous occasions reported breaches of the law by the pavement sellers, had issued warnings and recommended prosecution.

Our preliminary inquiries elicited no real basis for council management declining to proceed with prosecutions. From a public safety standpoint, the narrowness of the footpath being potentially obstructed was a relevant circumstance. Another factor was that a longtime councillor (a newsagent) may have acquired a conflict of interest through his vigorous representation of the interests of the allegedly offending newsagent.

A decision not to prosecute or persistent deferral of such a decision is often seen publicly as condoning an allegedly illegal activity. In this case there was the additional factor of serious implications for the commercial health of the rival news-sellers.

A formal investigation examined the issues of how decisions are made about prosecutions, the use of legal advice by council and the conduct of a councillor in relation to the Local Government Code of Conduct. At the time of writing, a summary of evidence had been issued and we were considering submissions from the parties.

Paying to Object

Last year's annual report outlined an investigation into Orange City Council's practice of charging a \$30 fee to process written objections to building applications. The Ombudsman said in his report that it was contrary to the spirit of the legislation that objectors be charged for making a written objection and so perhaps deterred from making an objection. As noted in last year's annual report, despite the findings and recommendations made in the Ombudsman's report and the urging of the then Minister, Orange Council was intransigent. In fact, after the issue of the Ombudsman's annual report

and the subsequent publicity, council resolved to increase the fee to \$100.

In response we asked the Department of Local Government and Cooperatives what could be done to preserve the rights of objectors. The department agreed to amend clause 10 of the Local Government (Approval) Regulation to provide that the fee payable for an application to erect a building includes payment for particular functions performed by council in relation to that application. One such function is the consideration of submissions made to councils concerning the building application. As a result of Orange City Council's continuation of the fee in spite of all attempts to have it dropped, the Department of Local Government and Cooperatives also issued information about building regulations to all councils in the form of a question and answer guide.

The department later wrote to Orange City Council supporting the views of the Ombudsman in his report on the investigation and comments made in his annual report. The department informed council of the amendments to the regulations which would have the effect of making council's fee illegal. The General Manager recommended council continue to charge the fee until June 1994 when it would become illegal but another dissenting report prepared by council officers recommended council give up and drop the fee. To its credit, council followed this advice and dropped the fee in January 1994. It's a pity that on this occasion the process of consideration of people's rights took so long.

Water - Who Pays?

Wingecarribee Council's water charging system appeared to be fair for all concerned. However, problems arose when homes were bought or sold. When someone buys a home their solicitor routinely applies to council for a certificate, showing the money owed for rates and charges. Under the old *Local Government Act* this certificate was known as 'section 160 certificate' (under the current Act, a section 603 certificate). The system should ensure rates and charges incurred up to the date of settlement are paid by the seller. The certificate provided by council can be relied on to bar

any further claims by the council against the new owner for rates and charges levied on the land in the past.

The solicitor of an elderly lady purchasing a house in the Wingecarribee Shire applied to council for a section 160 certificate. The certificate was issued showing no rates or charges were due or payable. The sale was completed 24 days after the certificate was issued. As it turns out, the normal meter reading was carried out just one day **after** council issued the certificate. Accordingly, the new owner received an account for \$186.10 for water consumed six months before she bought the house!

The solicitor argued with council that the certificate should be a true and accurate measure of sums owing and pointed out that the certificate was dated some four days after the meter reading. Council replied that the details of the meter reading had not reached council's office before the processing of the certificate and said the new owner could have requested a special meter reading.

After a great deal of correspondence between the solicitor and council officers which went nowhere, the solicitor wrote to the Ombudsman requesting the issue be taken up as a public interest matter.



It appeared part of the problem for council was that at the time there was an \$18 set charge for providing the certificate. Council had attempted to keep down costs by providing an information sheet attached to the certificate drawing attention to the availability of a special water meter reading for \$40 or allowing for the purchaser to read the meter themselves. Certificates issued by council after correspondence between the solicitor and council were changed to show the last water meter reading and its date to allow purchasers to calculate charges themselves. However, this is a partial solution and had the effect of making the certificate a 'Claytons' certificate with no protection to the buyer who had paid for this protection.

The outcome of this particular case was a victory of common sense. Council resolved to change its procedures and included an amount for water consumption on the certificate. The set fee for the certificate was changed to include the costs of a special water meter reading. This reduced the overall charge for those who had previously required a reading and provided a certificate that could be relied upon to disclose all debts. Council dropped the disputed charges for our elderly complainant.

Lost: One Bus Shelter

The owner of a street furniture advertising company complained in February 1994 about the run-a-round he was experiencing with CityRail, the Department of Transport, Gosford City Council and a Department of Transport contractor. His complaint was in relation to the disappearance of a bus shelter owned by his company and provided free of charge to Gosford City Council in return for the advertising space. As a result of the redevelopment of the Gosford CityRail Interchange, a contractor working

for the Department of Transport removed the new shelter and apparently took it to the tip. No one involved would accept liability and each authority claimed it was the other's fault.

When more than one authority is involved it appears to be all too common for each authority to deny responsibility and blame the others. We receive many such complaints and often it requires quite a deal of persistence on our part to determine which authority should be held responsible.

In this particular case the company had provided council without charge 24 aluminium bus shelters, each worth \$2,400 and had signed a contract covering various aspects of the transaction. The bus stop was on council's road reserve near the Gosford railway station and preliminary inquiries revealed that although the development application for the Bus Rail Interchange had been considered by council on 14 November 1991, the company was not informed of the impending railway station construction.

After we sent two letters of preliminary inquiry, the council and Department of Transport agreed to share the cost of a new shelter.

Weedy Problems

Councils are responsible for keeping land under their control free of noxious plants and maintaining adequate visibility on roads. If noxious weeds are not eradicated a council may be prosecuted by NSW Agriculture. Some members of a small community in Kalang were strongly opposed to the use of herbicides and requested council leave their valley out of a spraying program. However, NSW



Agriculture had told the council earlier it was likely that funding to assist council with its noxious plants eradication would be reduced if it did not support the program.

Council investigated the implications of having a 'no spray' zone along Kalang Road and agreed to refrain from spraying provided the owners would sign a deed of indemnity and remove and eradicate the noxious plants themselves. Unfortunately all property owners did not agree and the proposal lapsed.

This type of conflict is not unusual. What is council to do? Carry out its duties according to the law and upset part of the community or ignore its obligations under the law and hope that other ratepayers do not sue? In this case of Bellingen Council versus the *Noxious Weeds Act* and NSW Agriculture, the disagreement had lasted some years and showed no signs of going away. After our preliminary inquiries, a meeting was held between elected councillors, council officers, and representatives of the Environment Protection Authority, NSW Agriculture, the Soil Conservation Service and the various environment groups of the shire.

As a result, council agreed to refrain from using one particular chemical to which the group were objecting, notify the local radio station in advance of any spraying program, not undertake blanket spraying of roadside vegetation and make sure that the Noxious Weeds Advisory Committee represented all groups within the community. This proved to be a satisfactory solution for all.

Erosion Stalemate

A Merriwa farmer first approached his local council in 1992 about erosion problems on a portion of his land that ran next to a road. He maintained he had not had a problem with erosion until Merriwa Council reformed the road. He also felt council's failure to maintain a culvert, which was overgrown, had contributed to the problem.

Council's engineer and a soil conservationist from the NSW Soil Conservation Service inspected the affected land in February 1992. The conservationist's report advised Merriwa Council the erosion damage was quite minor. Consequently, the council advised the farmer it did not intend to undertake any work in relation to the problem.

The farmer asked the conservationist to return and inspect the land with him. When the conservationist returned, areas were inspected that had not been previously seen. In one area the erosion of the land had left a long scour a metre deep in parts. After this second inspection the conservationist recommended remedial work and sent a copy of his findings to the Mayor.

Despite the conservationist's report, council advised the farmer of its decision not to carry out any works in the area.

A year later the farmer decided to tackle the problem again. He engaged a consultant to assess the area and produce a report that would detail the cause/s of the erosion and the appropriate remedies.

The consultant noted tabledrains were overgrown, silted and almost inoperative. He also noted a culvert had not been maintained and was also silted and inoperative. He concluded council had been negligent and had a duty of care to make good the drainage.

The consultant sent his report to council in April 1993. Merriwa Council agreed to set aside \$700 for the construction of a diversion bank. This remedial work had originally been recommended by the soil conservationist after his second inspection of the site in February 1992.

As a condition of the construction however, Merriwa Council wanted the farmer to sign a deed of release. Council did not accept liability for the erosion damage and wanted the farmer to sign the deed to avoid any further claims. Council believed erosion damage could occur in the future, due to the pre-existing drainage line, in the event of a high intensity rainfall.

The farmer refused to sign the deed, maintaining he had never had an erosion problem in the area until council reformed the road. He believed the drainage works constructed at the time had not been maintained by council and that this was the cause of the erosion.

The farmer wrote to the Ombudsman to complain that the council's requirement for him to sign the deed was unfair. The council's response to our inquiries was that the deed of release was not unfair.

We made further inquiries and advised the council our preliminary view was the deed was unfair. In response, Merriwa Council advised it did not accept the farmer's view that the road drainage system had impacted on the erosion.

Things appeared to be at a stalemate. We suggested the matter could be resolved fairly quickly if council and the farmer could reach agreement on the cause of the erosion. We pointed out to council that without consensus on the cause of the erosion, it was unfair to expect the farmer to agree to the one off remedial work council was offering by signing the deed.

We suggested council and the farmer appoint an independent expert to assess the site, to determine the cause of the erosion. Council and the farmer agreed to this suggestion at the end of June. It is hoped this will help them negotiate a fair solution to the problem.

No Such Thing as Free

One Saturday morning a qualified Austswim teacher was giving swimming lessons to her friends' children, free of charge at a council pool in the Newcastle area. She was approached by the superintendent of the pool who told her she was not allowed to give swimming lessons as she would be impinging on existing coaching rights. He informed her she could only give lessons to her own children and that entry would be refused to her in the future if she returned to continue with the lessons.

The woman rang Newcastle Council to check on this advice and was told she was allowed to give lessons, providing she did not charge for them. A couple of weeks later she returned to the pool to continue with the lessons. Once again the superintendent approached her and informed her he had received recent confirmation from council that her lessons were not allowed.

The woman continued to give the lessons and to receive advice from staff at the pool that she was not permitted to do so. She rang council again to check on her rights, and was told she could give lessons to her friends' children providing she was a qualified instructor, had public liability insurance and a letter of permission from the General Manager of Newcastle City Council.

Although she was a qualified teacher and had public liability insurance, she remained curious about how council policed this regulation. Concerned that the policy meant that others would be denied the opportunity to gain a valuable and potentially life saving skill and concerned that her rights were being denied, she approached our office.

Council responded promptly to our inquiries by organising a meeting with pool staff from all council swimming pools to ensure they were clear on council's policy.

Council confirmed providers of informal lessons are not required to possess qualifications, insurance or a letter of permission from the General Manager. Council confirmed the woman had the right to give lessons to her friends' children, providing she obeyed the standard rules of the pool and did not adversely affect the amenity of other pool users. Council issued an apology, via us, to the woman and the parents concerned.

Tipped Off

It is gratifying to find organisations prepared to swiftly resolve complaints upon our involvement. In 1985, an Ilford resident leased some land to Rylstone Council for a rubbish tip. The lease had a term of 20 years.

The resident complained to council on a number of occasions about breaches of the conditions of the lease. These included inadequate maintenance of the site and unlawful burning off. In an effort to resolve the matter, council began negotiating with the resident to purchase the site in 1993. The negotiations had stalled after six months. The lease terms continued to be breached. The resident, who described herself as an octogenarian pensioner, finally complained to the Ombudsman.

After contacting council and securing a commitment to resume negotiations over the sale of the land, we contacted the resident. She advised that following our intervention, council had agreed to ensure the lease terms were observed, finalise the purchase and consider resolving other outstanding issues relating to the management of the site.

The complaint was resolved and no further action was taken.

The Root of the Problem

The son of an elderly woman wrote on behalf of his mother who had written to Canterbury Council over a year ago complaining about a large tree situated on the footpath area outside her home. The roots of the tree appeared to have cracked her brick fence and concrete driveway and were growing towards the foundations of her house.

She heard nothing from council for five months. The woman's son then became involved. After several site meetings and telephone calls it was clear to the son that council did not consider they were responsible for the damage. Council insisted that it was inferior concrete which had caused the cracking. In May 1993, the woman's son was finally able to show council that a root from the council's tree was under the concrete driveway and had caused it to crack.

Weeks later council officers cut the root saying they would return to fix the concrete driveway. The woman and her son waited and waited. Nothing happened.

During our preliminary telephone inquiries council assured us the driveway would be fixed. They were still adamant that the

damage to the driveway was caused largely by years of use. A month after this assurance, the son rang this office to say that still nothing had been done. A follow up call to council was made. The council officer said he thought work had already been carried out. He was told this was not the case. The driveway was finally repaired a couple of weeks later.

A letter of thanks was received from the son and his mother, enclosing some photographs of the work. He went on to say, "as further evidence of the incompetence of the council and the particular council officer, two months after the driveway has been repaired, the council officer has written to the Local Member, Mr Kevin Moss telling him that the matter is in hand and will be completed at the earliest possible moment."

Rate Debate

Ratepayers often complain of receiving little or few services in return for their rates. While the Ombudsman takes the view that rates provide funding for council operations generally and are not tied to services specifically for each rated property, instances arise where there is reason for us to make



inquiries with council regarding such complaints.

A couple living in Sydney bought a bush property in the Shoalhaven area some time ago. At the time of the purchase there was an old paper plan for the area showing proposed development which included roads and shopping centres.

This particular block however was zoned rural, which prevented any buildings for dwelling purposes. The couple nevertheless hoped some day to be able to build on the land, by perhaps having the zoning changed, and at various times sought advice from council to this end.

In 1992 the couple complained to the Ombudsman raising several issues relating to their land. The land had recently been the subject of a flood study, the result of which was part of the land being zoned as liable to a one in 100 year flood. In addition to the zoning which prevented building, the flood zoning lessened the likelihood of any zoning change and so the possibility of building was also lessened. The complainants felt their land was useless to them due to this and previous advice from council officers had falsely raised their hopes of being able to build.

In the meantime, council was charging the couple water and sewerage loan rates - extra rates which are levied over a whole area, to enable the provision of those services. However, this land had neither sewerage nor water and was not likely to ever have either of these services due to the zoning.

The complaint was resolved with council in December that year when council agreed to consider purchasing their property, to arrange for a valuation for that purpose, and to stop charging them the extra rates.

In mid 1994 the couple wrote back to us, saying that after their initial contact with council, they had no further reply. They had written again in February 1994 and council had not replied to that letter or let them know whether it had received the valuation and was still considering purchasing the property.

After a we contacted the council to find out what it was doing, the council responded by

replying promptly to the couple's February letter. At the time of writing, it appeared unlikely that the council would recommend purchasing the property, however, council did agree to credit their rate account with the excess rates paid.

Rezone Rethink

A businessman from the central coast complained Maitland Council had rezoned two parcels of land he owned without being notified of the proposal. Preliminary inquiries were made with the council. The land was rezoned as part of a new Local Environmental Plan (LEP) for the Maitland area in 1993. The council had advertised the draft plan in local papers and it had been on public exhibition for a period of time. The council decided the public notices were sufficient and had not sent written notices to all landowners. Unfortunately the complainant did not live in the Maitland area and so did not have an opportunity to learn of the proposed LEP.

The Ombudsman questioned whether the public notice was sufficient. It was eventually decided that while this situation could have been avoided if notification was sent to each individual landowner, making individual notification of all landowners affected by draft LEPs mandatory in all cases would be too onerous for many councils.

This particular case was complicated by the fact that the council had written to the complainant in February 1992 in response to a request for approval to rebuild a structure on one of the parcels of land. In the letter he was advised of the draft LEP but was told "*The subject land is zoned 4(a) Light Industrial under Maitland Local Environmental Plan 1986 and 4(a) General Industrial under Council's Draft LEP 1993.*" Based on this information, the complainant considered there was no need to enquire further, as he was not opposed to the change. When the LEP was subsequently passed however, this land was zoned 1(b) Secondary Rural Land - quite a change and one against which the complainant would undoubtedly have objected.

The complainant was of the view that the changed zoning for his land had no foundation and that he was being discriminated against for his past success in having the land zoned in a manner favourable

to him, over the objections of some members of council.

Further inquiries were made unnecessary when the office received a letter from the complainant saying he had met with the General Manager of the council:

"The result was an agreement to rezone all my properties to the appropriate zoning ...I wish to thank you for your interest in the matter and if promises are kept there should be no further need to bother you again. However, your intervention or inquiries may have helped to remind those responsible that there are avenues open to Landowners who are targeted by certain persons in Local Government".

Sold Up - Again?

It is not only the apparent failings of the public sector which form the basis for complaints to our office. One complaint received last year tells the story of a friendly financier which forgot to sell up all of a borrower's seized property and, when reminded of its mistake, proved reluctant to assist the borrower.

In 1978 a company owned by a Casula businessman defaulted under a loan with its financier. The loan was secured by a mortgage over a commercial property at Tuggerah. The financier took possession of the property and, so it seemed, sold the property in order to meet the outstanding debt. A shortfall of \$12,000 remained. The businessman's company repaid this shortfall and naturally assumed the matter was resolved.

In the mid 1980's, to the businessman's considerable surprise, Wyong Council approached the businessman about outstanding rates owing on 15 car parking spaces forming part of the Tuggerah property. Council was referred by the businessman to the financier for payment of the rates.

In 1993, council again approached the businessman, demanding his company repay a debt of over \$8,500 in unpaid rates on the car parking spaces. Council rightly claimed that the 15 car spaces remained the legal property of the businessman's company. Incredibly, the financier appeared to have forgotten to sell the car spaces. The businessman sought an explanation from the financier, which had by this time been sold to another company. None

was forthcoming. Finally, council instituted legal proceedings for the recovery of the rates. The businessman complained to the Ombudsman as summary judgment was just about to be entered against the company.

The complaint was outside our jurisdiction, however, we asked council to adjourn the proceedings to give the businessman more time to sort out why his company's financier had seemingly forgotten to sell the 15 car spaces. Council agreed. The businessman was then advised to explore a number of possible solutions to the problem. No further action was taken.

Speedy Service?

Efforts by the public sector to improve service delivery are to be applauded. As one recent complaint shows, these efforts can have unintended and undesirable consequences if made without flexibility.

Two Wahroonga residents obtained consent from Ku-ring-gai Council to subdivide their residential property. The residents then applied for consent to subdivide their property under the *Strata Titles Act 1973*.

Council advised that it would not consider the application for strata subdivision until the earlier subdivision was completed and registered. It was clear aspects of this second application could not be finalised until the earlier subdivision was complete. The residents were then advised by council to withdraw their second application or it would be refused. Council indicated that it was under pressure to process applications within 40 days.

The residents complained to the Ombudsman. They felt it was unsatisfactory that they were made to withdraw their application and incur further expense on its relodgment. Preliminary inquiries were made of the council. It confirmed pressure was placed on councils to process applications quickly. This is partly due to the need for better service and partly due to the right of an applicant to appeal to the Land and Environment Court if an application for consent is not determined within 40 days of its lodgment. While we support efforts by councils to process applications promptly, we note that in circumstances such as this,

"Thank you for your letter; I found that referring my complaint to your office worked wonders."
(From a complainant)

speedy processing may have been incompatible with the overall interests of the residents.

We asked council to consider waiving the application fees payable by the residents on re-submission of their development application. Council agreed. This was considered to have satisfactorily resolved the complaint and no further action was taken.

Generating Jobs - But What Else?

Under State Environmental Planning Policy No. 34 - Major Employment Generating Industrial Development, the Minister for Planning is given power to determine applications for certain types of major development. Under the policy, applications for development consent relating to developments involving capital investment of \$20 million or more or which will generate 100 or more new jobs are for the Minister to determine.

One such application related to extending a colliery in the Newcastle area. The application was approved by the Minister subject to various conditions.

The colliery had previously operated under a consent issued by the former Minister. This consent permitted coal to be temporarily hauled through surrounding residential areas until a suitable road system was in place. With the completion of the Newcastle Link Road, the colliery operator was required to meet the cost of construction of a road link between the colliery and the Newcastle Link Road.

When determining the application the Minister was asked by Newcastle City Council to ensure the haulage of coal was limited to the Newcastle Link Road. However, the Minister determined to allow haulage along the existing and supposedly temporary route.

Council appealed against the Minister's decision. After some negotiation, the matter was settled on the basis the haulage route was to combine parts of the new link road and parts of the affected residential areas.

A Wallsend resident living in an area which would remain affected by haulage

complained to the Ombudsman about the decision of council to settle the litigation. Inquiries of the council revealed the colliery operator claimed the colliery would not be viable should the road linkages be required. Council had for many years been heavily criticised by affected residents about the noise and dust caused by coal haulage. Nevertheless, council decided a compromise to guarantee the colliery continued to operate and reduce the impact of haulage on residents was appropriate. We accepted this explanation and declined the complaint.

Council was highly critical of the development assessment procedures adopted by the Department of Planning on behalf of the Minister. The department, council claimed, only notified residents living on the alternative haulage routes and not those residents living in immediately adjoining areas who would also have been seriously affected by the development. Council claimed this was totally inadequate and called into question the ability of the department to carry out development assessment on major projects.

With the Department of Planning, on behalf of the Minister, having a greater number of development assessment tasks it is the Ombudsman's intention to monitor complaints about the assessment procedures of the department with particular emphasis on notification procedures. We have long advocated a broad approach to notification of affected residents and are concerned to ensure proper notification is given to affected residents, particularly with major developments such as those determined under SEPP 34.

When Yes Means No

A Sydney consulting engineer complained to the Ombudsman in May 1993 about Wollongong Council's decision to rezone the southern part of Helensburgh.

The future development of Helensburgh has been a controversial issue for several years. The Hacking River which runs through the town is a critical catchment area for the nearby Royal National Park. Many fear further urban expansion will increase pollution pressure on the river which will in turn threaten the National Park.

The complaint centred on the assertion that council had actively encouraged a large number of landholders to engage in a process known as 'land pooling' where holders of uneconomical large blocks of land 'pool' their lots in order that more efficient subdivision of the land can be achieved. Council's encouragement, the complaint alleged, was tied to a promise to favourably consider a proposal to rezone the affected land for residential purposes.

As a result of this encouragement, it was alleged that landholders had invested considerable effort and money into the finalisation of a land pooling agreement and the preparation of a rezoning application which was made and refused. Indeed the council itself acted to facilitate the land pooling process. In May 1993 council resolved to rezone the affected area 'Environment Protection' effectively prohibiting residential development. This resolution was made contrary to the recommendations of council's own planning staff.

The council's response to our preliminary inquiries was under assessment in February 1994 when the Minister for Planning announced a Commission of Inquiry into the zoning of land in Helensburgh. It was determined at that time to discontinue our inquiries.

A number of landholders have written to the Ombudsman expressing appreciation for his interest in the complaint. Many landholders also felt that the intervention of the Ombudsman played a part in the Minister's decision to hold a Commission of Inquiry, an outcome the landholders had sought for some time.

The Minister for Planning has said he does not intend acting on the recommendations of the Commission of Inquiry. Instead Wollongong Council will be left to act on these recommendations. We will maintain an interest in the outcome of the Commission of Inquiry and the response of the council to its findings and recommendations.

When your help was called upon in 1993 it seemed as though you were our only chance of a fair go and a just deal in the saga of our land in Helensburgh. I believe that the effort you and your staff put in, in seeking justice for people like me, played no small part in the calling of a Commission of Inquiry by the Government. I say thank you for taking up our cause, a cause which only the Ombudsman could shoulder, and achieve a result we as individuals could not."
(From a complainant)

Freedom

Introduction

Unlike previous years, most of this year's freedom of information material will be published in a separate annual report under the *Freedom of Information (FOI) Act*. The report will be available from our public relations unit.

The separate publication contains the first *Ombudsman's FOI Policies and Guidelines*. That document sets out for the first time the Ombudsman's approach to FOI complaints, his interpretation of the Act's various provisions and his external review procedure.

Background

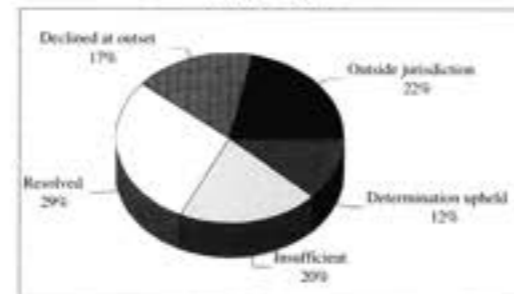
It is five years since the FOI Act commenced. A brief five year overview of the Ombudsman's external review function is given in the following table. Some of the figures vary slightly from those published in previous annual reports because we have varied file descriptions and changed from reliance on a manual system to reliance on the office's database. Apart from these small differences there is one variation which should be mentioned. The correct number of complaints completed in 1990/91 was 53, not 37 as reported in the annual report for that year.

As can be seen, we continue to receive increasing numbers of complaints about the non-release of information. The last two years have seen increased levels of

complaints received and completed. We were very pleased with last year's result, a 78 per cent increase in the number of matters finalised over the average for the past years.

Most complaints are 'declined after preliminary inquiries'. The percentage does not indicate the level of agreement with agency determinations. **In fact only five per cent of this category represents agreement by the Ombudsman with the exemption of documents by agencies and in only 6 per cent of all complaints did the Ombudsman find the agency determination to exempt documents was correct.** In total, the Ombudsman agreed with agency determinations, whether in relation to exemptions or other matters, on only 12 occasions (11.9 per cent).

FOI Complaints Completed
1993 - 1994



Overview of FOI Complaints
A five year comparison

Year	Number of complaints	Percentage increase over average for previous years
1989/90		
Received	53	
Completed	27	
Carried over	26	
1990/91		
Brought forward	26	
Received	62	17%
Completed	53	96%
Carried over	35	
1991/92		
Brought forward	35	
Received	63	10%
Completed	71	78%
Carried over	27	
1992/93		
Brought forward	27	
Received	81	37%
Completed	76	51%
Carried over	32	
1993/94		
Brought forward	32	
Received	134	107%
Completed	101	78%
Carried over	65	

Completed FOI Complaints
1993/94

	Number	% of total
Assessment Only		
No jurisdiction	22	22%
Trivial, remote, insufficient interest or commercial matter	8	
Right of appeal redress	2	
Explanation or advice provided	2	
Premature, referred to authority	0	
Investigation declined on resource or priority grounds	5	
Total	17	17%
Preliminary Enquiries Only		
Complainant assisted	10	
Withdrawn, insufficient evidence or no utility	17	
Investigation declined on resource or priority grounds	4	
Resolved to Ombudsman's satisfaction	28	
Total	59	59%
Investigation		
Resolved during investigation	2	
Investigation discontinued	0	
No adverse finding	0	
Total	2	2%
Adverse finding	1	1%
Total	101	100%

of information

The remainder of the complaints declined after preliminary inquiries were because:

- ❖ there was insufficient evidence and/or utility to warrant an investigation (8 per cent);
- ❖ there was no evidence the documents the complainant requested existed (6 per cent); and
- ❖ the complaint was withdrawn (5 per cent).

These reasons also occurred in other outcome categories. In 10 per cent of all matters finalised in the year there was no evidence that documents existed. In a further nine per cent there was insufficient evidence and/or utility to warrant an investigation.

To help clarify the use of 'insufficient evidence and/or utility to warrant an investigation' to decline matters, two examples are set out below of matters finalised for that general reason.

In one complaint the complainant had received all requested documents but experienced delays. In the particular instance it was decided not to pursue the procedural inadequacies and delays. In another matter the documents at issue were very similar to documents in a previous complaint which had been the subject of incorrect determinations and subsequently an investigation and report by the Ombudsman. There was no use conducting another investigation and so the agency was simply informed of the Ombudsman's view. The agency released the documents.

The release of documents by agencies was the greatest single reason for complaints being finalised. More than 25 per cent of matters ended because all documents were released and another three per cent when some documents were released. These matters were primarily counted as 'resolved', but some were 'withdrawn' and one was 'discontinued'. The 'resolved' category also included two matters where the agencies provided explanations to the complainants, and one where the FOI matter was really subsidiary to the main point of contention, and the agency undertook rectifying work to

the complainant's satisfaction. **In all, about 29 per cent of matters were finalised after documents were released or complaints about issues other than the exemption of documents were resolved.**

This percentage reflects the success of the Ombudsman's emphasis on alternative dispute resolution mechanisms.

About 17 per cent of matters were declined at the outset, without preliminary inquiry. Five of these, given available resources, were not considered to be of enough significance or public interest to pursue. Others in the category related to:

- ❖ determinations which were too old;
- ❖ determinations which raised statutory issues no longer relevant given recent amendments; or
- ❖ matters where it was immediately clear the determination was reasonable, for example the use of s.25(1)(a1)(allowing refusal of access on the basis of a substantial and unreasonable diversion of resources) in relation to an application of obviously enormous proportions.

The final significant category was 'no jurisdiction' at 22 per cent. The great majority of these were premature as the complainant had not yet requested that the agency review its decision. Under s.52(2) of the FOI Act we cannot investigate such complaints.

In summary, of FOI complaints finalised in the year:

- ❖ 22 per cent were outside jurisdiction;
- ❖ 17 per cent were declined without any inquiries being made for reasons such as lack of resources and remoteness in time;
- ❖ about 29 per cent were ended because documents were released or complaints were otherwise resolved;
- ❖ upwards of 20 per cent were completed because there was insufficient evidence and/or utility to investigate (counting those where there was insufficient evidence of the existence of documents); and

- ♦ about 12 per cent were declined because the Ombudsman agreed with agency positions - whether in relation to exemptions or other matters.

FOI Applications

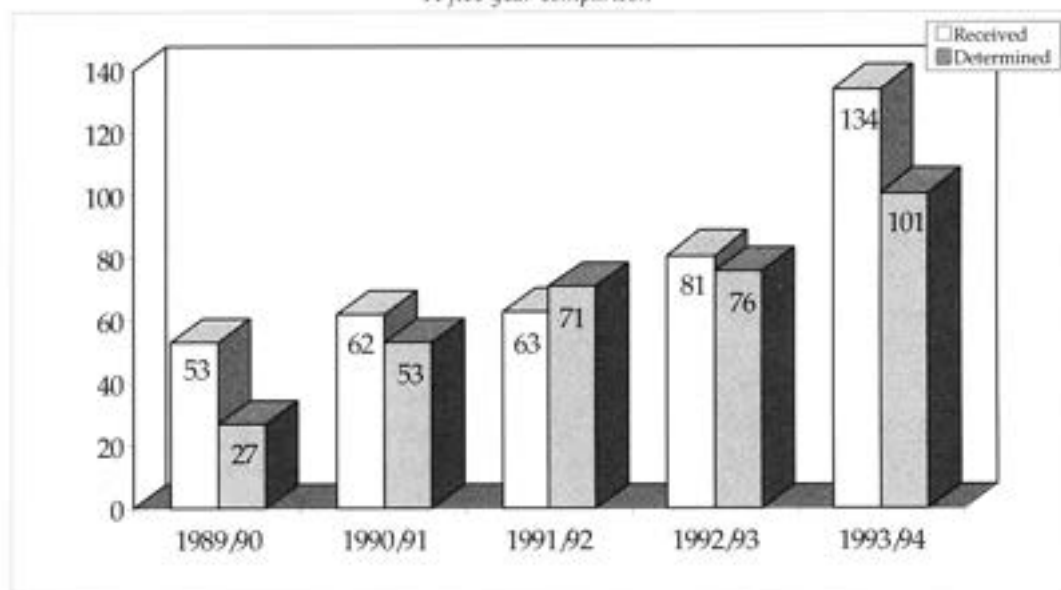
We received three FOI applications for access to documents held by this office.

Two were for documents related to functions specified in schedule 2 of the FOI Act and were therefore not processed and the application fees returned. Under schedule 2 the Ombudsman is exempt from the operation of the FOI Act in so far as his complaint handling, investigative and reporting functions are concerned.

The third application was for a consultant's report on the operation of our office. However the applicant obtained the document from the Parliamentary Committee on the Ombudsman soon after applying and the application was consequently withdrawn.

FOI Complaints Received and Completed

A five year comparison



Access &

Media Relations

The media are extremely important to the functioning of the office.

Our complainant survey indicates the media are the main source of information for potential complainants to learn about the Ombudsman's existence. A survey by the Commonwealth Ombudsman carried out in 1991 showed the NSW Ombudsman had the highest public identification rate in Australia. While it is often difficult to meet the needs of the media, because our legislation strictly limits the type of information we can release, we do provide information and briefings whenever possible. We also maintain a program of highlighting notable cases of public interest in special reports to Parliament and put significant resources into producing our annual reports.

In addition to playing an educative role, use of the media is the Ombudsman's ultimate weapon and is often the only way to influence public authorities in their decision to implement recommendations.

To ensure the long term survival of the office, the Ombudsman must also establish a public position so government threats of funding cuts or reduction of jurisdiction will be politically impossible. If there is no public to make a fuss, an Ombudsman's Office can quietly disappear. Developing good media relations is, therefore, a fundamental survival strategy.

During the year, we developed a media policy for the office. The policy centralises media liaison and helps to ensure the media receives consistently accurate and timely information.

We also implemented a recording system of media inquiries. This will enable us to better meet the needs of the media and plan our own campaigns more efficiently. We hope to report more fully on the frequency and type of media inquiries we receive in next year's report.

Awareness Campaigns

Awareness is of great importance to our equitable functioning. We are obviously of no use to people who do not know about us.

The Joint Parliamentary Committee's inquiry into access and awareness of our office among disadvantaged groups supported a number of our initiatives including client satisfaction surveys and outreach visits. We are currently preparing a draft Access and Awareness Plan which will incorporate a number of recommendations made by the committee to strengthen these approaches.

The plan will include awareness and access programs targeting:

- ◆ Aboriginal and Torres Strait Islander people;
- ◆ young people;
- ◆ people from a non-English speaking background;
- ◆ women;
- ◆ people who have a disability; and
- ◆ people who have a low level of literacy.

In September 1994 we prepared and distributed an information kit for electorate officers. Electorate officers play a vital role in

complaint resolution for constituents. The kit will hopefully make the resolution of more complex complaints easier for electorate officers and help reduce complaints made to our office while at the same time ensuring our office is accessible to more people across the state.

Country Outreach Program

We once again instituted a country outreach program throughout the year. Officers visited most major regional centres throughout the year and visited Newcastle monthly. During the visits we were able to provide many people with advice and took a number of formal complaints. We ensured our officers were available outside of normal working hours to allow access to as many people as possible.

The success of our program will ensure its continuation next year.

Our Inquiries Section

The Inquiries Section is the first point of contact between the public and the Office of the Ombudsman. The section includes the office receptionist and three inquiry officers. This year the section responded to 8,761 telephone complaints and inquiries and conducted 449 interviews. The main function of the section is to advise complainants about the Ombudsman's jurisdiction and the operation of the office.

If the circumstances of a telephone complaint are simple or straightforward the inquiries section attempts an immediate resolution. Many complaints arise from a failure of communication or a lack of correct information and can be adequately resolved by an officer contacting the public authority concerned.

The officers are responsible for maintaining a network of contacts within public authorities to facilitate this process. This approach has advantages for the complainant, the public authority, and the office. A quick resolution saves the time and resources of all three parties by avoiding a formal written complaint.

In accordance with the Ombudsman's Guarantee of Service the section also provides information to assist complaints outside the jurisdiction of the office.

CRIS Computer System

Last year's annual report announced the introduction of a computer system to the office. The system, known as CRIS (the Customer Response Information System) has now been in use in for a year.

CRIS is a computer register that records data on all complaints and inquiries received by the section either by telephone or personal visits to the office. The system allows the inquiry officers to input the data as it is received and to provide complainants with consistent advice.

Awareness

We aim to further develop the report functions of CRIS over the next year. It can measure the frequency and trends of complaints and give early warning of areas of public concern or procedural deficiencies in particular public authorities. It also provides an important method of measuring the workload and performance of the section.

CRIS can also be programmed to provide up to date information about complaint procedures such as internal and administrative appeal mechanisms, as well as referral advice for non-jurisdictional complaints. The information varies in detail from simple contact phone numbers and addresses for referrals, to advice on specific subject areas and relevant legislation. The benefit of this system is that the information is readily available and enables staff to provide consistent and accurate advice.

Information Sessions

As part of the Ombudsman's CHIPS (Complaint Handling in the Public Sector) program the Inquiries Section has conducted monthly information sessions with various public authorities. Managers from authorities including the Roads and Traffic Authority, Department of Housing, Department of Local Government, Building Services Corporation and the Police Customer Assistance Unit have already participated. The sessions have been an opportunity to provide feedback to authorities on the type and number of complaints received as well as promote the Ombudsman's CHIPS policy. The officers demonstrate the CRIS computer, exchange information and ideas on complaint handling, and aim to build networks between the office and the public authorities.

Speaking Engagements

Presenting papers to conferences, giving lectures, speaking at training courses and talking to community and school groups provides us with an important opportunity to promote awareness. During the year the Ombudsman and members of our police and general teams spoke to a wide variety of people in various situations. These occasions are listed below.

The Ombudsman

- ◆ 6 July 1993
Newcastle Business Club Inc., *"The Role of the Ombudsman"*
- ◆ 7 July 1993
SES Orientation Program at Premier's Department, *"The Role of the Ombudsman"*
- ◆ 21 July 1993
RIPAA Conference - The Media & Government, *"The Media, The Ombudsman and FOI"*
- ◆ 13 August 1993
NSW New Local Government Act Conference, *"Local Government & the NSW Ombudsman"*
- ◆ 27 August 1993
Sydney University - Public Interest Law Conference, *"The Role of the Ombudsman"*
- ◆ 20 September 1993
Cabinet Office staff - The New Accountability Seminar at Wentworth Hotel Sydney, *"The Role of the Ombudsman"*
- ◆ 24 September 1993
Australian Society of Association Executives at Wynyard Travelodge Sydney, *"The Ombudsman When All Fails"*
- ◆ 28-29 Sept. 1993
IIR Asean Conference on Quality of Service in Public Sector at Omni Marco Polo Hotel, Singapore, *"Quality of Service in the Public Sector - Towards Excellence"*
- ◆ 9 October 1993
LEADR Conference - Alternative Dispute Resolution, *"Dispute Management Systems Design"*
- ◆ 21 October 1993
SOCAP 3rd Annual Conference at Regent Hotel Melbourne, *"Education of Service Providers About Stakeholders' Needs - Prevention is Better than Cure"*
- ◆ 29 October 1993
ADRA Conference at Marriott Hotel Sydney, *"Complaint Handling in the Public Sector"*
- ◆ 9 November 1993
SES Orientation Program at Premier's Department, *"Role of Ombudsman"*
- ◆ 4 February 1994
Addressed Local Government Association of NSW, Executives, *"The Role of Ombudsman in Regard to Local Government"*

- ◆ 28 February 1994
Seminar - The UK Citizen's Charter and Its Relevance to NSW at Remington Building Sydney, "A Downstream Perspective"
- ◆ 2 March 1994
Public Sector Standards Conference at Sheraton Wentworth, "Complaint Procedures and Performance Indicators of Service Standards"
- ◆ 28 March 1994
Addressed Police Executives on police conciliation, Lane Cove Park, West Chatswood.

Police Team

We continue to participate in internal police training courses for police officers handling complaints. We attend these training courses to explain the role of our office and to emphasise particular aspects of internal inquiries which are raised during reviews of internal investigations.

The courses our police team officers attended during the year are listed below.

- ◆ 14 July 1993
Dee Why District, School of Artillery North Head
- ◆ 28 July 1993
Bathurst and District Police, Bathurst Police Station
- ◆ 25 August 1993
Internal Affairs Course, Police Headquarters
- ◆ 16 September 1993
District Commanders, North Region, Police Headquarters
- ◆ 28 September 1993
District Commanders, North West Region, Police Headquarters
- ◆ February 1994
Inner West Police, Darling Harbour Police Station
- ◆ 1 March 1994
Walgett and District Police, Walgett Council Chambers
- ◆ 8 March 1994
Address on conciliation, Lane Cove Park, West Chatswood
- ◆ 9 March
Internal Affairs Investigation Course, Ambulance Headquarters, Rozelle
- ◆ 13 March 1994
Management of Major Incidents Course, Police Academy, Goulburn
- ◆ 13 March 1994
Senior Police Course, Australian Police Staff College, North Head
- ◆ 28 March 1994
Address Police Executives, Police Headquarters
- ◆ 26 April 1994
Address Police on Ombudsman's role and function of complaints conciliation, Police Headquarters
- ◆ 4 May 1994
Police and Technical Areas, Fingerprint Bureau, Parramatta
- ◆ 15 May 1994
Internal Affairs Training Course, Macquarie Fields Police Station
- ◆ 20 June 1994
Barrier District Police Management Team, Broken Hill Police Station

The Ombudsman endeavoured to attend training courses in the country for the benefit of police in isolated areas. Police team representatives mostly attended courses in the Sydney Metropolitan area.

General Team

During the year Assistant Ombudsman, Greg Andrews, gave a keynote address *The Challenge for Local Government* at the annual state conference of the Australasian Institute of Environmental Health and Building Surveyors on 23 August 1993. The Assistant Ombudsman and other senior officers also spoke to the graduating class at Corrective Services Academy on eight occasions. The talks included aspects of the Ombudsman's role as well as discussions on the nature of complaints about Corrective Services.

In addition officers visited the four annual regional meetings of the Official Visitors nominated to visit NSW prisons.

Two special sessions were also arranged in the Newcastle area for local government officers and the staff of other public authorities.

Three other presentations were made to TAFE classes and to Rotary groups.

Our freedom of information officers spoke regularly to practitioners meetings and on one occasion addressed a regional meeting of local government freedom of information officers.

Resources

Significant Office Committees

Due to changes in work practices, responsibilities and delegations, the number of internal committees were significantly reduced. Current committees are listed below.

Management Committee

The Management Committee manages the office. It considers matters relating to the functions of our office, strategic planning, policies, budget priorities and overall administration. The committee meets weekly.

Membership

David Landa - Ombudsman
Chris Wheeler - Deputy Ombudsman
Greg Andrews - Assistant Ombudsman (General)
Sean Crumlin - Assistant Ombudsman (Police)
Jennifer Mason - Complaints Manager (Police)
Anne Radford - Complaints Manager (General)
Anita Whittaker - Human Resource Manager

PSA/Management Consultative Committee

The committee aims to improve communication channels between management and staff, provide information on new initiatives and ascertain staff views on issues affecting them. The committee meets regularly when required.

Membership

Chris Wheeler - Deputy Ombudsman
Greg Andrews - Assistant Ombudsman (General)
Anita Whittaker - Human Resource Manager
Beverley Willis - Workplace Representative
Wayne Kosh - Workplace Representative
Anne Milson - Public Service Association

Committees abolished

The following committees were abolished last year.

- ❖ Training Committee
- ❖ Equal Employment Opportunity Committee
- ❖ Ethnic Affairs Policy Statement Committee
- ❖ Occupational Health and Safety Committee
- ❖ Corporate Planning Committee
- ❖ Information Processing Strategic Plan Committee

Human Resources

Staff

As at 30 June, 1994 we had a total of 71 staff. A comparison of staff levels over the past four financial years is shown in the table below:

Staff Levels
A four year comparison

Category	June 1991	June 1992	June 1993	June 1994
Statutory appointments	4	4	4	4
Investigative staff	53	52	48	48
Administrative staff	16	18	17	18
Trainees	1	2	2	1
Total	74	76	71	71

The above figures include staff on leave without pay and their replacements.

Wage movements

The Statutory and Other Offices Remuneration Tribunal determined a six per cent increase for the Ombudsman and SES staff to compensate for changes to fringe benefit tax increases.

All public sector staff received a four per cent salary increase in January 1994 as a result of the Public Service Association successfully arguing in the Industrial Commission that such an increase should be paid. A further three per cent increase will be paid in November 1994.

There were no other exceptional movements in wages, salaries or allowances.

Restructure

On the 16 September 1993 the Ombudsman announced his decision to restructure the office. The key features of the restructure were:

- ❖ the creation of two large specialised investigation teams, one to deal with complaints about police and the other to deal with complaints about all other public authorities, including local councils;
- ❖ the creation of two team manager positions to oversee the activities of the teams;
- ❖ the creation of additional Senior Investigation Officer positions to provide supervision and support to Investigation Officers and deal with more complex matters; and
- ❖ all investigative positions were to be filled on a permanent basis rather than by temporary contract arrangements that had been the practice for a number of years.

The decision of the Ombudsman to fill positions permanently required all positions to be spilled, advertised and filled by a competitive selection process. Most positions were permanently filled by the end of December, 1993.

Administrative and investigative delegations were also reviewed in light of the change in structure. Team Managers were given the necessary authority to manage their teams. The Premier's approval was also obtained to delegate to these new positions a suitable level of financial delegation.

Job evaluation

As a result of successfully introducing our job evaluation process, the Ombudsman was delegated the authority to classify and grade newly created positions. This delegation was made in December 1993 by the Director General, Department of Industrial Relations, Employment, Training and Further Education. Before receiving this delegation the Ombudsman was required by the Public Sector Management Act to refer classification and grading matters to the Public Employment Relations Service.

Performance management

Due to the restructure of the office, the introduction of performance management was deferred until all appointments under the new structure had been made.

At the time of writing, agreements had been negotiated with all general area staff and negotiations were underway between supervisors and staff in the police team and administration area.

Training and development

Staff attended a variety of courses throughout the year. The major focus and commitment of training resources was to investigation courses held twice during the year. The courses, conducted by the Australian Federal Police in consultation with our office, will be held again later this year and will include investigative staff from another agency.

Another key training area is mediation. During the year, 12 staff members attended an external training course focusing on the mediation of complaints.

Once again, we used the resources of the Adult Migrant Education Service under the Skillmax program to provide English language skills to staff from non-English speaking backgrounds.

The average number of days spent on training each staff member was 3.34 days. We met our obligation under the Training Guarantee Act.

Occupational health and safety
During the year a workplace inspection was conducted and identified problems were dealt with. No major occupational health and safety issues arose during the year, nor were there any significant worker's compensation claims.

Occupational health and safety matters have been more immediately and effectively dealt with by referring them to administrative staff for action. For this reason, the OH&S workplace committee was disbanded and overall responsibility for health and safety matters is now delegated to the Human Resource Manager.

Equal employment opportunity (EEO)

Our major EEO achievements for the year were:

- ◆ the introduction of performance management system for staff;
- ◆ the finalisation of the job evaluation process; and
- ◆ attendance of staff at English language/skills courses.

Representation of EEO Target Groups within Levels

	1992/93			1993/94		
	Total Staff	Women	NESB	Total Staff	Women	NESB
Below Clerical Officer						
Grade 1	2	2 100%	2 100%	1	1 100%	0 0%
Clerical Officer						
Grade 1 - Clerk Grade 1	12	10 83%	12 100%	13	12 92%	10 77%
A&C Grades 1-2	6	6 100%	3 50%	5	5 100%	3 60%
A&C Grades 3-5	7	5 71%	2 29%	12	9 75%	3 25%
A&C Grades 6-9	37	22 59%	7 19%	31	14 45%	5 16%
A&C Grades 10-12	3	2 67%	0 0%	5	3 60%	0 0%
Above A&C Grade 12	4	0 0%	1 25%	4	0 0%	0 0%
Total	71	47 66%	27 38%	71	44 62%	21 30%

Representation and Recruitment of Aboriginal Employees and Employees with a Physical Disability

	1992/93			1993/94		
	Total staff	Aboriginal	PWPD*	Total staff	Aboriginal	PWPD*
Total employees	71	1 1%	9 13%	71	0 0%	8 11%
Recruited in the year	19	0 0%	1 5%	26	0 0%	0 0%

* People with a physical disability.

Future EEO initiatives include:

- ❖ reviewing the EEO Management Plan;
- ❖ updating goals, strategies and responsibilities to reflect the objectives of the revised corporate plan and the delegation of responsibility achieved under the office restructure.

Industrial Relations Policies and Practices

Enterprise agreement

Staff voted to begin negotiating through the Public Service Association with management for an enterprise agreement. At the time of writing, discussion between the parties was still taking place.

Unfair dismissal claim

A former staff member lodged papers in the Industrial Commission claiming unfair dismissal from the office. The matter was settled to the satisfaction of the Industrial Commission, by negotiations between the parties.

Restructure

The Public Service Association and workplace group raised a number of issues affecting staff as a result of the Ombudsman's decision to restructure the office. Issues included advertising and filling positions and management's proposed method of dealing with staff not selected for appointment to positions in the new structure.

New awards

No new awards were negotiated. However, during the year a new position of Senior Investigation Officer (Legal) was created. The specialist legal nature of the position led to its classification as a Departmental Professional Officer - the first such classification in our office.

Part-time work

During the reporting year two staff members sought part-time work after resuming duty from maternity leave. Both applications were approved. A total of three permanent staff now work part-time.

During the year, an Investigation Officer was also employed part-time to provide assistance on a short term basis.

Grievance Procedure

Our grievance procedure handling policy was reviewed and revised during the year to ensure it complied with the provisions of the Industrial Relations Act procedure.

Absenteeism

Sick leave absences of staff are reviewed regularly and staff with an unsatisfactory record are counselled.

The workload is such that staff continue to forfeit unpaid hours on a regular basis.

Trainees/Apprentices

During the reporting year, two trainees successfully completed both the on and off the job components of their traineeships. As at the 30 June, 1994 we were employing one trainee under the Careerstart program.

We do not employ any apprentices.

Chief and Senior Executive Officers

Number of CES/SES positions

SES Level	Total CES/SES at 30/6/93	Total CES/SES at 30/6/94
Eight	-	-
Seven	-	-
Six	-	-
Five	-	-
Four	1	1
Three	-	-
Two	2	2
One	-	-
CEO under S11A*	1	1
Total	4	4

*CEO positions listed under S11A of the Statutory and Other Offices Remuneration Act 1975, not included in Schedule 3A of the Public Sector Management Act 1988.

No SES positions were filled by women.

Ombudsman's Performance Statement

The Ombudsman's performance statement is found on pages four to nine of this report.

General Management

Cultural statement of intent

During the reporting year we were required to develop a document identifying how we would implement the government's Charter of Principles for a Culturally Diverse Society. This document is known as the *Statement of Intent* and is available from our office. In addition, we have been identified by the Ethnic Affairs Commission as a key agency and therefore must develop a strategic plan on how the *Statement of Intent* will be implemented. This strategic plan will be monitored by the Ethnic Affairs Commission.

Research and development

The Office of the Ombudsman was not involved in any research and development projects.

Overseas travel

The Ombudsman travelled to Singapore in September 1993 to deliver a paper at an international conference *Quality of Service in the Public Sector - Towards Excellence*. The conference organisers paid the travel and accommodation costs of the Ombudsman.

In January 1994 the Ombudsman travelled to Canada and the United States of America to further his inquiries into race relations and law enforcement agencies in connection with his inquiry into race relations and the NSW police. The cost of the travel was paid for by the Police Service as part of their commitment to pay the Ombudsman's cost of the inquiry.

In May 1994 the Ombudsman travelled to the United Kingdom, Canada and the United States of America to further his enquiries into complaint handling in the public sector. The cost of the travel was met from our funds.

Consultants

During the year we used a number of consultants to provide expert advice and assistance. The total cost of all consultancies was \$48,890

Consultancies costing at or in excess of \$30,000

Doll Martin - information strategic plan for the Office. This plan assisted us to develop a bid for additional funding from the Treasury to improve our current technology. The cost of the consultancy was \$33,750

Consultancies costing less than \$30,000

There were five other consultants used by the Office during the reporting year. The total cost of these consultancies was \$15,140.

Code of conduct

The Code of Conduct for the Ombudsman was published in the 1991-92 Annual Report. No significant alterations or additions were made this reporting year.

Financial Management

Major works in progress

We have no major works.

Land disposal

We did not dispose of any land or property.

Funds granted to non-government organisations

We did not grant any funds to non-government organisations.

Risk management and insurance

The responsibility of risk management is devolved to individual managers in our office. Financial risk management is only one component of our overall risk management plan. Other areas where risk management principles are applied are the investigation area, where complaints are assessed to be further investigated or declined.

We participate in the NSW Treasury's Managed Fund which is the state government's self insurance scheme. The scheme is administered on behalf of the government by the GIO. We select the lowest layer of insurance offered, as the number of insurance claims we receive are negligible.

Value of leave

The monetary value of recreation (annual) leave and extended (long service) leave owed in respect of all staff the 1992/93 and 1993/94 financial years shown in the table below.

Value of Recreation and Extended Leave

	Year ended 30 June 1993	Year ended 30 June 1994
Recreation Leave	\$217,808	\$176,247
Extended Leave	\$387,786	\$313,540

Accounts payable policy

We continue to implement an accounts payable policy. The policy states that all accounts shall be paid within the agreed 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.

Accounts of Hand as at 30 June 1994

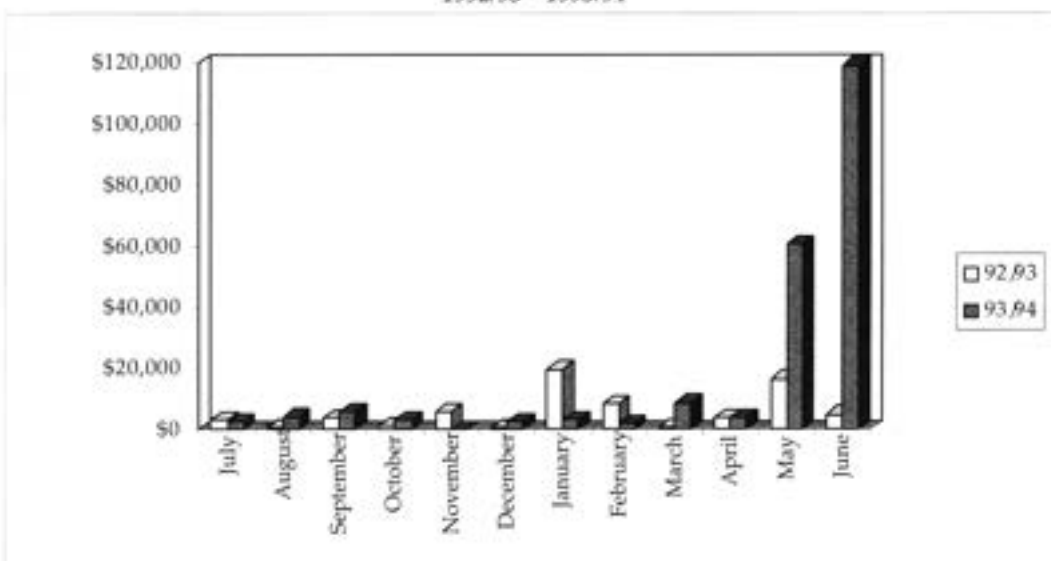
Current (ie within due date)	\$66,445
Less than 30 days overdue	-
Between 30 and 60 days overdue	-
Between 60 and 90 days overdue	-
More than 90 days overdue	-
Total accounts on hand	\$66,445

We regularly review our payments policy. We aim to pay all accounts within the vendor credit terms 98 per cent of the time. The variance is due to further consultation with vendors.

We have not been required to pay penalty interest on outstanding accounts.

Stores expenditure

Stores Expenditure 1992/93 - 1993/94



Note: Expenditure rose significantly in May and June as the office undertook a number of major projects including the purchase and installation of a new telephone system costing \$78,000. In addition, fit-out modifications were completed at a cost of \$20,000 and computer hardware was purchased

Major Assets

Major Assets on Hand

Description	As at June 93	Acquisitions	Disposals	As at June 94
Mini computers	2	-	-	2
Terminal servers	2	1	-	3
Personal computers	37	10	6	41
Terminals	47	8	3	52
Printers*	20	3	9	14
Photocopiers	6	-	1	5
Television & video equipment	7	-	-	7

*NB an adjustment was made to the opening balance as the disposal of a number of printers was not recorded in last year's report.

Recycling

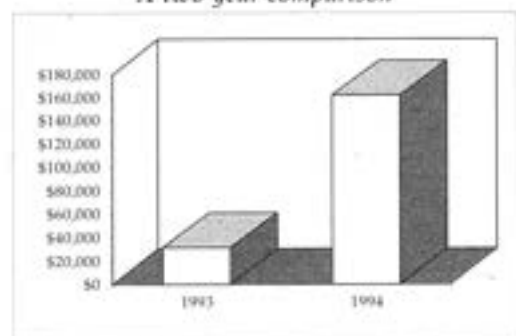
During the reporting year we formally established a recycling policy. Paper products were initially transported to a paper mill for pulping to ensure confidentiality was maintained. To streamline this system, we contracted a security shredding company to collect waste paper on a regular basis.

Financial

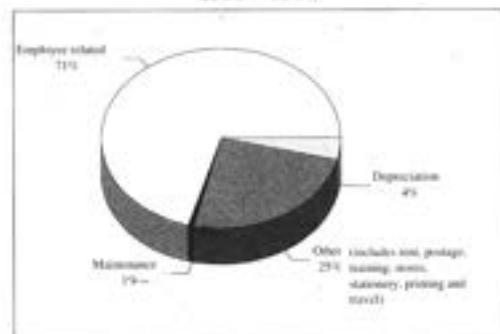
Most of our money (96 per cent) comes from the government in the form of a consolidated fund appropriation. We also generate revenue through the sale of publications, commissions on payroll deductions, trainee training subsidy, bank interest, an industry donation of hardware and special inquiries such as our 'Race Relations and Our Police' inquiry which is funded by the NSW Police Service. In comparison to the previous year, we generated significantly more revenue. This was mainly the result of funding for our special inquiries and also due to the computer hardware donation.

Most of our money (71 per cent) is spent on employee expenses. These expenses include salaries and wages, superannuation entitlements, long service leave, workers compensation insurance, payroll tax and fringe benefits tax. Last year we spent more than \$3 million on employee expenses. The day to day running of the office, including rent, postage, stores, training, printing and travel cost about \$1.18 million. Depreciation on computer equipment, furniture and fittings and other office equipment cost about \$185,000.

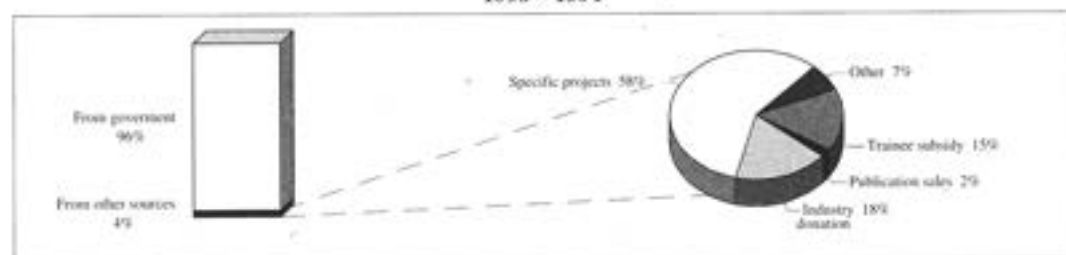
Self generating revenue
A two year comparison



Expenses
1993 - 1994




Revenue
1993 - 1994



summary

Financial



NSW 12 070
SYDNEY NSW 2001

INDEPENDENT AUDIT REPORT
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 1994. 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 45(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 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.

The audit opinion expressed in this report 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 applicable Accounting Standards the financial position of the Office as at 30 June 1994 and the results of its operations and its cash flows for the year then ended.


P. CARR, FCPA
DIRECTOR OF AUDIT
Jointly authorised by the Auditor-General of New South Wales
under Section 45(1) of the Act

SYDNEY
29 September 1994

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, 1985 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 Lenda
NSW OMBUDSMAN
 4 August 1994

Operating Statement

For the year ended 30 June 1994

Notes	Actual 1994 \$	Budget 1994 \$	Actual 1993 \$
Expenses			
Operating expenses			
Employee related	4(i) 3,392,925	3,494,000	3,309,314
Other operating expenses	1,183,779	1,203,000	1,098,686
Maintenance	39,875	26,000	35,071
Depreciation	4(ii) 184,923	185,000	179,219
Total expenses	4,801,502	4,908,000	4,622,290
Revenues			
User charges	5(i) 3,740	1,000	2,397
Other	5(ii) 134,191	67,000	6,564
Grants	5(iii) 23,315	16,000	22,441
Total revenues	161,246	84,000	31,402
Net loss on sale of plant and equipment	4(iv) (5,579)	-	(7,177)
NET COST OF SERVICES	3, 13 4,634,677	4,824,000	4,598,065
Government Contributions			
Consolidated Fund recurrent appropriation	14 4,227,000	4,227,000	4,165,000
Acceptance by Crown of Office liabilities	14 365,118	339,000	336,809
Surplus/(deficit) for the year	(42,559)	(258,000)	(96,256)
Accumulated surplus/(deficit) at the beginning of the year	584,222	584,222	680,478
Accumulated surplus/(deficit) at the end of the year	541,663	326,222	584,222

The accompanying notes form part of these statements

statements

Statement of Financial Position

As at 30 June 1994

	Notes	Actual 1994 \$	Budget 1994 \$	Actual 1993 \$
Current Assets				
Cash	6	5,283	1,000	92,044
Receivables		1,520	-	3,933
Prepayments	7	57,180	75,000	92,022
Total Current Assets		<u>63,983</u>	<u>76,000</u>	<u>187,999</u>
Non Current Assets				
Plant and equipment	8	730,610	548,000	702,518
Total Non-current Assets		<u>730,610</u>	<u>548,000</u>	<u>702,518</u>
TOTAL ASSETS		<u>794,593</u>	<u>624,000</u>	<u>890,517</u>
Current Liabilities				
Creditors	9	76,683	95,000	88,487
Provisions	10	176,247	227,000	217,808
TOTAL LIABILITIES		<u>252,930</u>	<u>322,000</u>	<u>306,295</u>
NET ASSETS		<u>541,663</u>	<u>302,000</u>	<u>584,222</u>
Equity				
Accumulated surplus	11	541,663	302,000	584,222
TOTAL EQUITY		<u>541,663</u>	<u>302,000</u>	<u>584,222</u>

Cash Flow Statement

For the year ended 30 June 1994

	Notes	Actual 1994 \$	Budget 1994 \$	Actual 1993 \$
Cash Flow from Operating Activities				
Payments				
Employee related		(2,959,374)	(3,219,964)	(3,140,885)
Other Operating		(1,255,937)	(1,136,925)	(1,089,741)
Maintenance		(39,875)	(43,500)	-
		<u>(4,255,186)</u>	<u>(4,400,389)</u>	<u>(4,230,626)</u>
Receipts				
User charges		3,740	2,000	2,397
Other		104,146	88,645	6,564
Grants		23,315	22,000	22,441
		<u>131,201</u>	<u>112,645</u>	<u>31,402</u>
Total Net Cash Used on Operating Activities	13(ii)	<u>(4,123,985)</u>	<u>(4,287,744)</u>	<u>(4,199,224)</u>
Cash Flow from Investing Activities				
Purchases of plant and equipment		(191,351)	(30,300)	(70,116)
Proceeds from the sale of plant and equipment		1,577	-	598
Total Net Cash Outflow on Investing Activities		<u>(189,774)</u>	<u>(30,300)</u>	<u>(69,518)</u>
Net Cash Outflow from Operating and Investing Activities		<u>(4,313,759)</u>	<u>(4,318,044)</u>	<u>(4,268,742)</u>
Government Funding Activities				
Consolidated Fund recurrent appropriation		4,227,000	4,227,000	4,165,000
Total Net Cash provided by Government		<u>4,227,000</u>	<u>4,227,000</u>	<u>4,165,000</u>
Net Increase/(Decrease) in Cash		<u>(86,759)</u>	<u>(91,044)</u>	<u>(103,742)</u>
Opening Cash Balance		92,044	92,044	195,786
CLOSING CASH BALANCE	6	<u>5,285</u>	<u>1,000</u>	<u>92,044</u>

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 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 1992/93.

(a) Valuation of Non Current Assets

The cost method of accounting is used for acquisitions and valuation of assets regardless of whether assets 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. Assets donated by Industry are valued at fair value at the time of receipt.

(b) Capital and Maintenance Expenditure

The Office did not receive capital funding in 1993/94. Maintenance expenditure (including periodic major maintenance) is accounted for in the Operating Statement and is specifically stated.

(c) 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.

(d) Employee Entitlements

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.

(e) Inventories

The Office has no inventories of material value. Any purchase of stock (viz consumables) are expensed during the year.

(f) Revenue Recognition

Funding from other agencies for the conduct of Special Inquiries is treated as revenue and is not offset against expenditure. Amounts received in 1993/94 were:

The Legislature (Homefund Inquiry)	\$51,979
NSW Police Service (Police/Race Relations Inquiry)	\$32,614

(g) 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.

(h) Reclassification of Previous Year's Data

Where necessary, previous year's data has been reclassified to facilitate comparison.

3. Budget Review

The actual Net Cost of Services was a decrease on budget by \$189,466. This favourable result was largely due to the Office restructuring as recommended by the Joint Parliamentary Committee; and also the funding of specific inquiries by various agencies.

4. Operating Expenses

	1994	1993
	\$	\$
(i) Employee related expenses comprise:		
Salaries and wages	2,807,821	2,759,052
Superannuation entitlements	268,305	242,394
Long Service Leave	96,813	94,415
Workers Compensation insurance	23,393	18,018
Payroll tax and fringe benefits tax	196,593	194,358
Other	-	1,077
	<u>3,392,925</u>	<u>3,309,314</u>

	1994	1993
	\$	\$
(ii) Depreciation is charged as follows:		
Computer equipment	86,221	80,264
Furniture and fittings	13,016	12,981
Leasehold improvement	40,957	45,080
Office equipment	44,729	40,894
	<u>184,923</u>	<u>179,219</u>

(iii) Fees for Service

Expenses relating to consultancies and audit fees (external) amounted to \$48,890 and \$9,300 respectively. Comparative figures for 1992/93 amounted to \$102,640 for consultancies and \$9,300 for audit fees.

(iv) Net Loss on sale of plant and equipment

Comprises profit on sale of equipment, and adjustment of minor expenditures previously capitalised.

5. Operating Revenues

	1994	1993
	\$	\$
(i) User charges comprise the following items:		
Commission on payroll deductions	610	705
Sale of Annual Report	1,020	420
Sale of Special Reports to Parliament	2,110	1,272
	<u>3,740</u>	<u>2,397</u>

	1994	1993
(ii) Other Revenue		
Trainee Training Subsidy	1,665	911
Bank Interest	3,437	-
Miscellaneous	7,053	5,653
Industry Donation by way of Computer Equipment	28,642	-
Specific Projects	93,393	-
	<u>134,191</u>	<u>6,564</u>

	1994	1993
(iii) Grants		
Trainee Salary Subsidy (ATS/Career Start)	23,315	22,441
	<u>23,315</u>	<u>22,441</u>

6. Current Assets - Cash

	1994	1993
	\$	\$
Cash on Hand	800	500
Cash at Bank	4,483	91,544
Total Cash	<u>5,283</u>	<u>92,044</u>

7. Current Assets - Prepayments

	1994	1993
	\$	\$
Salaries & Wages	3,384	14,221
Advertising	540	-
Maintenance	50	-
Other	355	-
Rent	39,979	52,803
Subscription/Maintenance	6,848	9,764
Training	991	6,285
Postal	2,443	-
Motor Vehicle	1,704	-
Telephone	886	-
Consultancies	-	4,450
Other	-	4,499
	<u>57,180</u>	<u>92,022</u>

8. NonCurrent Assets - Plant and Equipment

	Computer Equipment		Furniture & Fittings		Leasehold Improvement		Office Equipment		Total	
	1994	1993	1994	1993	1994	1993	1994	1993	1994	1993
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
At cost unless otherwise stated										
Balance 1 July	413,823	384,413	129,876	129,483	490,924	490,924	229,972	221,068	1,264,595	1,225,888
Additions	94,541*	35,230	-	393	33,242	-	84,967	34,493	212,750	70,116
Disposals	(31,188)	(5,820)	-	-	-	-	(3,691)	(25,589)	(34,879)	(31,409)
Balance 30 June	<u>477,176</u>	<u>413,823</u>	<u>129,876</u>	<u>129,876</u>	<u>524,166</u>	<u>490,924</u>	<u>311,248</u>	<u>229,972</u>	<u>1,442,466</u>	<u>1,264,595</u>
Accumulated depreciation										
Balance 1 July	223,348	146,707	47,385	34,402	149,941	109,049	141,403	116,337	562,077 ^a	406,495
Depreciation for the year	86,221	80,256	13,025	12,983	40,960	40,892	44,729	45,088	184,935	179,218
Writeback on Disposal/Scrapping	(29,105)	(3,615)	-	-	-	-	(6,051)	(20,022)	(35,156)	(23,636)
Balance 30 June	<u>280,464</u>	<u>223,348</u>	<u>60,410</u>	<u>47,385</u>	<u>190,901</u>	<u>149,941</u>	<u>180,081</u>	<u>141,403</u>	<u>711,856</u>	<u>562,077</u>
Written Down Value										
At 1 July	190,475	237,706	82,491	95,081	340,983	381,875	88,569	104,731	702,518	819,393
At 30 June	196,712	190,475	69,466	82,491	333,265	340,983	131,167	88,569	730,610	702,518

*Includes donated equipment valued at \$28,642.

9. Current Liabilities - Creditors

	1994	1993
	\$	\$
Salaries and Wages	784	30,291
Accrued Expenses	<u>75,899</u>	<u>58,196</u>
	<u>76,683</u>	<u>88,487</u>

10. Current Liabilities - Provision for leave entitlements

	1994	1993
	\$	\$
Balance 1 July	217,808	207,006
Paid during year	(308,144)	(177,215)
Provided during year	<u>266,583</u>	<u>188,017</u>
Balance 30 June	<u>176,247</u>	<u>217,808</u>

11. Equity - Accumulated surplus/(deficit)

	1994	1993
	\$	\$
Balance 1 July	584,222	680,478
Operating Result for the year	(42,599)	(96,256)
Balance 30 June	<u>541,663</u>	<u>584,222</u>

12. Commitments for Expenditure

	1994	1993
	\$	\$
Lease Commitments	2,320,295	1,060,789
Aggregate operating lease expenditure contracted for at balance date but not provided for in the accounts:		
Not later than one year	429,804	637,103
Later than one year but not later than 2 years	429,804	423,686
Later than 2 years but not later than 5 years	1,252,017	-
Later than 5 years	208,670	-
	1994	1993
	\$	\$
Representing:		
Cancellable operating leases	24,930	11,226
Non-cancellable operating leases	2,295,365	1,049,563

Non-cancellable leases are for space rentals that were negotiated in 1993/1994.

13. Note to Cash Flow Statement

(i) Reconciliation of Cash

For the purposes of the Statement of Cash Flows, cash includes Cash on Hand, and at Bank.

(ii) Reconciliation of Net Cost of Services to Net Cash Used for the year.

	1994	1993
	\$	\$
NET COST OF SERVICES	(4,634,677)	(4,598,065)
Adjustments for items not involving cash:		
Donations by Industry	(28,818)	-
Depreciation	184,923	179,219
Provision for recreation leave	(41,561)	10,802
Acceptance of Crown of liabilities	365,118	336,809
(Increase)/decrease in receivables	2,413	(3,755)
(Increase)/decrease in prepayments	34,842	(16,173)
Increase/(decrease) in creditors	(11,804)	(115,238)
Net (gain)/loss on sale of plant and equipment	5,579	7,177
Net Cash used in Operating Activities	<u>(4,123,985)</u>	<u>(4,199,224)</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

	1994	1993
	\$	\$
Consolidated fund recurrent allocation	4,227,000	4,165,000
Crown acceptance of liabilities		
Long Service Leave Expense	96,813	94,415
Superannuation Expense	268,305	242,394
	<u>4,592,118</u>	<u>4,501,809</u>

15. Contingent Liabilities

There are no contingent liabilities at balance date.

16. Unclaimed Monies

There are no unclaimed monies at balance date.

END OF AUDITED FINANCIAL STATEMENTS

Appendices

Appendix

Local Government Complaints Determined 1993-1994

Local council	Assessment only					Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal refused	Explanation advice provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	
Albury City Council	-	2	-	2	-	-	1	-	-	-	-	-	-	5
Armidale City Council	-	-	-	-	1	-	-	-	-	-	-	-	-	1
Ashfield Council	-	-	2	2	-	1	2	-	-	-	-	-	-	7
Auburn Council	-	-	1	-	-	-	-	-	-	-	-	-	1	2
Ballina Council	-	-	1	1	1	-	-	-	-	-	-	-	-	3
Bankstown City Council	-	1	-	-	-	-	1	1	-	1	-	-	-	4
Bathurst City Council	-	-	1	1	-	-	1	-	-	-	-	-	-	3
Baulkham Hills Council	-	1	1	4	-	-	3	-	1	1	-	-	-	11
Bega Valley Council	-	-	-	2	-	-	-	-	-	-	-	-	-	2
Bellingen Council	-	-	-	-	-	-	3	1	-	1	-	-	-	5
Berrigan Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Blacktown City Council	-	-	-	-	-	-	4	-	-	2	-	-	-	6
Blue Mountains City Council	-	1	2	3	1	-	4	1	-	1	-	-	-	13
Berrima Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Botany Council	-	-	-	-	-	1	3	-	1	-	-	-	-	5
Bourke Council	-	1	-	-	-	-	2	2	-	-	-	-	-	5
Broken Hill City Council	-	-	-	1	-	-	2	-	-	-	-	-	-	3
Burwood Council	-	1	-	1	-	-	3	-	-	-	-	-	-	5
Byron Council	-	1	1	-	1	-	6	-	1	2	-	-	-	12
Camden Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Campbelltown City Council	-	-	-	-	-	-	1	-	-	1	-	-	-	2
Canterbury City Council	-	-	1	-	-	-	5	-	-	3	-	-	-	9
Casino Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Central Darling Council	-	-	-	-	-	1	1	-	-	-	-	-	-	2
Cessnock City Council	1	1	1	-	-	-	5	1	-	-	-	-	-	9
Cobar Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Coffs Harbour City Council	-	1	2	1	-	-	3	1	1	1	-	-	-	10
Concord Council	-	-	-	2	-	-	-	1	-	-	-	-	-	3
Coolah Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Cooma Murrumbidgee Council	-	-	-	-	1	-	2	-	-	-	-	-	-	3

Local council	Assessment only					Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal refused	Explanation advice provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	
Coonabarabran Council	-	-	-	-	-	-	-	1	-	-	-	-	-	1
Coonamble Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Conswa Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Cowra Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Drummoyle Council	-	-	-	-	-	-	4	-	-	-	-	-	-	4
Dubbo City Council	-	-	-	1	-	-	1	-	-	1	-	-	-	3
Eurobodalla Council	-	-	1	2	2	-	-	-	-	-	-	-	-	5
Fairfield City Council	-	1	-	2	-	-	1	-	1	-	-	-	-	5
Glen Innes Council	-	1	-	-	1	-	-	-	-	-	-	-	-	2
Gosford City Council	-	1	3	1	1	-	3	1	1	1	-	-	-	12
Goulburn City Council	-	-	-	-	1	-	-	-	-	-	-	-	-	1
Great Lakes Council	-	-	1	1	-	-	1	-	-	1	-	-	-	4
Greater Taree City Council	-	-	-	-	-	-	1	2	-	-	-	-	-	3
Gundagai Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Gunnedah Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Hastings Council	-	-	1	-	-	-	2	-	1	-	-	-	-	4
Hawkesbury City Council	-	1	1	-	-	-	-	-	-	-	-	-	1	3
Hawkesbury River Council	-	-	-	-	-	-	-	-	-	1	-	-	-	1
Holbrook Council	-	1	-	-	-	-	-	1	-	-	-	1	-	3
Hobart City Council	-	-	-	-	-	-	-	1	-	-	-	-	-	1
Hornsby Council	-	1	2	5	2	1	7	2	1	-	-	-	-	21
Hume Council	-	-	-	-	-	-	1	1	-	-	-	-	-	2
Hunters Hill Council	-	-	-	-	1	-	-	-	-	1	-	-	-	2
Huntville City Council	-	-	-	1	-	-	1	-	-	-	-	-	-	2
Inverell Council	-	1	-	-	-	-	-	-	-	-	-	-	-	1
Jerilderie Council	-	-	-	1	-	-	1	-	-	-	-	-	-	2

one

Local council	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal refused	Explanation advice provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complaint assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Kempsey Council	-	-	-	-	1	-	1	-	-	-	-	-	-	2	
Kiama Council	-	-	-	1	-	-	-	-	1	-	-	-	-	2	
Kogarah Council	-	-	-	-	1	-	2	-	-	1	-	-	-	4	
Ku-ringgai Council	1	-	4	6	1	-	5	6	-	1	-	-	-	24	
Kyogle Council	1	-	-	-	-	-	-	-	-	-	-	-	-	1	
Lake Macquarie City Council	1	3	5	4	4	2	8	2	1	2	-	-	-	32	
Lane Cove Council	-	1	1	2	-	-	2	-	-	-	-	-	-	6	
Leichhardt Council	-	-	2	1	1	-	2	3	-	-	-	-	-	9	
Lismore City Council	-	-	1	3	-	-	1	-	-	-	-	-	-	5	
Liverpool City Council	-	2	-	3	-	2	1	-	-	1	-	-	-	9	
Lockhart Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Maclean Council	-	-	-	-	1	-	3	1	-	1	-	-	1	7	
Maitland City Council	-	1	-	-	1	-	-	1	-	1	-	-	-	4	
Manilla Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Manly Council	-	-	-	-	-	-	-	1	1	-	-	-	-	2	
Marrickville Council	-	-	-	1	1	-	1	1	1	1	-	-	-	6	
Merrima Council	1	-	-	-	-	-	2	-	-	2	-	-	-	5	
Monaro Council	-	-	-	-	-	1	2	-	-	-	-	-	-	3	
Moree Plains Council	-	-	-	1	-	-	-	-	-	1	-	-	-	2	
Mosman Council	-	-	-	2	-	-	-	-	-	-	-	-	-	2	
Mudgee Council	-	-	-	-	-	-	2	1	-	-	-	-	-	3	
Murrumbidgee Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Muswellbrook Council	-	-	-	-	1	-	-	-	-	-	-	-	-	1	
Nambucca Council	-	1	1	-	-	-	2	-	-	-	-	-	-	4	
Narramine Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Newcastle City Council	1	1	3	2	-	-	9	1	-	3	1	1	-	22	
Noth Sydney Council	-	-	3	2	2	-	4	1	-	-	-	-	-	12	
Nundle Council	-	-	-	1	-	-	1	-	-	-	-	-	-	2	
Nymboida Council	-	-	1	1	-	-	-	2	-	-	1	-	-	3	
Oberon Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Orange City Council	-	1	-	-	-	-	-	-	-	-	-	-	-	1	
Parkes Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Parramatta City Council	2	1	1	3	-	1	1	-	1	3	-	-	-	15	
Parry Council	-	-	1	-	-	-	1	-	1	-	-	-	-	3	
Penrith City Council	-	-	1	-	1	-	-	-	-	-	-	-	-	2	
Pittwater Council	1	-	1	2	1	-	3	-	-	-	-	-	-	8	
Port Stephens Council	-	-	4	4	1	2	2	1	-	-	-	-	1	15	
Randwick City Council	-	-	-	-	1	1	5	-	1	-	-	-	-	8	
Richmond River Council	-	1	-	-	-	-	2	-	-	-	-	-	-	3	

Local council	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal redress	Explanation advice provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Councilman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Rockdale Council	-	1	1	1	1	-	-	-	-	-	-	-	-	4	
Ryde City Council	-	1	-	1	2	-	2	2	1	-	-	-	-	9	
Rylstone Council	-	-	-	-	-	-	-	-	1	-	-	-	-	1	
Scots Council	-	-	1	-	-	-	-	-	-	-	-	-	-	1	
Shellharbour Council	-	1	-	1	-	-	-	-	1	-	-	-	-	3	
Shoalhaven City Council	1	1	-	3	1	-	9	1	-	-	-	-	-	16	
Singlers Council	-	-	2	-	1	-	-	-	1	-	-	-	-	4	
Snowy River Council	-	-	-	2	-	-	2	-	1	-	-	-	-	5	
South Sydney City Council	-	-	2	1	-	-	2	-	-	3	-	-	-	8	
Strathfield Council	-	-	1	1	-	-	1	-	-	-	-	-	-	3	
Sutherland Shire Council	-	-	3	3	3	1	2	1	-	1	-	-	-	14	
Sydney City Council	1	-	-	2	-	-	1	-	-	-	-	-	-	4	
Tamworth City Council	-	1	-	2	-	-	-	-	-	-	-	-	-	3	
Terrara Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1	
Tenterfield Council	1	-	-	-	-	-	-	-	-	-	-	-	-	1	
Tumbarumba Council	-	-	-	-	1	-	-	-	-	-	-	-	-	1	
Tweed Council	-	-	-	1	1	-	2	-	2	-	-	-	-	6	
Ulmara Council	-	-	-	-	1	1	-	-	-	-	-	-	-	2	
Wagga Wagga City Council	-	-	1	-	-	-	1	1	-	-	-	-	-	3	
Wakool Council	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Warragah Council	-	1	-	2	1	-	4	2	-	-	-	-	-	10	
Waverley Council	1	-	1	3	-	-	1	1	-	-	-	-	-	7	
Wellington Council	-	-	-	-	1	-	3	-	-	-	-	-	-	4	
Wentworth Council	-	-	-	1	-	-	1	-	-	-	-	-	-	2	
Willoughby City Council	-	-	1	-	-	-	2	-	2	-	-	-	-	5	
Wingecarbee Council	-	-	-	2	1	-	1	1	-	1	-	-	1	7	
Wollondilly Council	-	-	1	-	-	-	1	-	1	-	-	-	-	3	
Wollongong City Council	-	-	2	6	-	-	6	1	-	-	-	-	1	16	
Woolahra Council	-	1	3	1	-	1	1	1	-	1	-	-	-	9	
Wyong Council	1	-	-	-	1	1	2	-	1	-	-	-	-	6	
Yarrawonga Council	-	1	1	-	-	-	-	-	-	-	-	-	-	2	
Yass Council	-	-	-	-	-	-	1	-	-	1	-	-	-	2	

Appendix

Public Authority and Department Complaints Determined 1993-1994

Public Authority/ Department	Assessment only					Preliminary enquiries only			Investigation			Total	
	No jurisdiction trivial/remote/ insufficient interest/ commercial matter	Right of appeal redress	Explanation advice provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complaint assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Complainant's satisfaction	Resolved during investigation	Investigation discontinued		No adverse finding
Aboriginal Affairs, Office of	-	-	1	-	-	1	-	-	-	-	-	-	2
Aboriginal Land Council	1	-	1	1	1	6	-	1	1	-	-	-	12
Aboriginal Legal Service	1	-	-	-	-	-	-	-	-	-	-	-	1
Air Transport Council	-	-	1	-	-	-	-	-	-	-	-	-	1
Ambulance Service of NSW	3	-	1	-	1	1	-	-	-	-	-	-	6
Anti Discrimination Board	-	2	2	1	-	1	-	-	1	2	-	-	9
Attorney General's Department	1	-	-	-	-	-	-	-	-	-	-	-	1
Australian Correctional Management (Janet)	-	1	-	-	-	12	1	1	2	-	-	-	17
Bega Local Aboriginal Land Council	-	-	-	-	-	1	-	-	-	-	-	-	1
Board of Studies	2	2	1	1	-	-	-	-	-	-	-	1	7
Broken Hill Community Tenancy Scheme	1	-	-	-	-	-	-	-	-	-	-	-	1
Building Industry Task Force	-	-	-	-	-	1	-	-	-	-	-	-	1
Building Services Corporation	1	4	10	3	-	7	1	1	-	-	-	-	27
Bush Fire Council	1	-	1	-	-	-	-	-	-	-	-	-	2
Centennial Park and Moore Park Trust	-	1	1	-	-	-	-	-	-	-	-	-	2
Chief Secretary's Department	-	-	-	-	-	1	1	-	-	-	-	-	2
City West Development Corporation	-	-	1	-	-	-	-	-	-	-	-	-	1
Colar Rural Lands Protection Board	-	-	-	-	-	1	-	-	-	-	-	-	1
Community Corrections Service	-	-	2	-	-	1	-	-	-	-	-	-	3
Community Services, Department of	13	1	3	15	13	2	9	1	1	5	-	1	64
Community Welfare Appeals Tribunal	-	-	1	-	-	-	-	-	-	-	-	-	1
Conservation and Land Management, Department of	1	1	1	2	1	8	-	1	2	-	1	-	18
Consumer Affairs, Department of	1	1	1	1	-	13	1	1	1	-	-	-	20
Consumer Claims Tribunal	8	-	-	-	-	-	-	-	-	-	-	-	8
Corrective Services, Department of	5	17	13	84	37	22	203	38	8	44	2	1	475
Courts Administration, Department of	2	-	1	-	-	2	-	-	-	-	-	-	5
Dairy Corporation of NSW	-	-	-	-	-	1	-	-	-	-	-	-	1
Darling Harbour Authority	-	-	1	-	-	3	1	-	-	-	-	-	5
Derrigun Local Aboriginal Land Council	1	-	-	-	-	-	-	-	-	-	-	-	1

Public Authority/ Department	Assessment only					Preliminary enquiries only			Investigation			Total	
	No jurisdiction trivial/remote/ insufficient interest/ commercial matter	Right of appeal redress	Explanation advice provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complaint assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Complainant's satisfaction	Resolved during investigation	Investigation discontinued		No adverse finding
Entertainment Industry Interim Council	1	-	-	-	-	-	-	-	-	-	-	-	1
Environment Protection Authority	-	-	1	-	3	2	3	-	2	-	1	-	12
Ethnic Affairs Commission	-	-	-	-	-	-	-	-	1	-	-	-	1
Greyhound Racing Control Board	-	-	1	1	-	-	-	-	-	-	-	-	2
Guardianship Board	4	-	1	-	-	-	-	-	-	-	-	-	5
Harness Racing Authority of NSW	-	1	1	1	-	-	1	-	-	-	-	-	4
Health Department (Corrections Health)	-	2	1	5	9	15	2	3	3	-	-	-	40
Health Department of NSW	11	4	4	16	22	19	11	2	3	2	2	7	103
Heritage Council of NSW	-	-	-	-	-	-	-	1	-	-	-	-	1
Home Care Service of NSW	2	-	-	-	-	2	-	-	-	-	-	-	4
Home Purchase Assistance Authority	-	-	-	-	-	1	-	-	-	-	-	-	1
Housing Department of NSW	5	5	9	16	11	12	1	1	12	1	-	-	73
Housing, Planning and Urban Affairs, Ministry of	-	-	1	-	-	-	-	-	-	-	-	-	1
Hunter Catchment Management Trust	-	-	-	-	-	2	-	-	-	-	-	-	2
Hunter Water Corporation	-	-	2	-	-	3	1	-	2	1	-	-	9
I.C.A.C.	1	-	-	-	-	-	-	-	-	-	-	-	1
Illawarra Electricity	-	-	1	-	-	-	-	-	-	-	-	1	2
Industrial Relations, Employment, Training & Further Education, Dept. of	1	-	-	-	1	3	2	-	-	-	-	-	7
Juvenile Justice, Department of	-	1	1	2	-	7	3	-	1	-	-	-	15
Land Boards	-	-	1	-	-	-	-	-	-	-	-	-	1
Land Titles Office	-	-	-	-	-	-	2	-	-	-	-	-	3
Landscom	8	-	-	-	-	1	-	-	-	-	-	-	1
Legal Aid Commission of NSW	3	3	5	8	4	5	1	1	2	-	-	1	33
Liquor Administration Board	-	-	2	1	-	1	-	-	-	-	-	-	4
Local Government Department	-	1	-	-	-	1	-	-	-	-	-	-	2

two

Public Authority/ Department	Assessment only					Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remedy/ insufficient interest/ commercial matter	Right of appeal addressed	Explanation advice provided	Promature referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	
Long Service Payments Corporation (building & construction)	-	-	-	-	-	-	-	-	1	-	-	-	-	1
Lord Howe Island Board	-	-	-	1	-	-	-	1	-	-	-	-	-	3
Maritime Services Board	-	-	1	-	1	-	3	1	-	-	-	-	-	6
Mental Health Review Tribunal	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Mine Subsidence Board	-	-	-	-	1	-	-	-	-	-	-	-	-	1
Minister for Health, Office of	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Mogo Local Aboriginal Land Council	-	5	1	-	-	-	1	-	-	-	-	-	-	2
Motor Vehicle Repair Disputes Committee	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Motor Vehicle Repair Industry Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Murray River Electricity	-	-	-	-	-	-	-	1	-	-	-	-	-	1
Museum of Contemporary Art	-	-	1	-	-	-	-	-	-	-	-	-	-	1
Namoi Valley Electricity	-	-	1	-	-	-	-	-	-	-	-	-	-	1
National Parks & Wildlife Service	-	-	1	5	1	-	2	-	1	1	-	-	-	11
North West Electricity	-	-	-	-	1	-	-	-	-	-	-	-	-	1
Northern Rivers Electricity	-	-	1	-	-	-	-	-	-	-	-	-	-	1
NSW Agriculture	1	-	-	1	1	-	2	-	1	-	-	-	-	6
NSW Fire Brigades	1	-	-	-	-	-	-	-	-	-	-	-	-	1
NSW Fisheries	1	2	-	-	2	-	2	-	1	-	-	-	-	8
NSW Lotteries	-	-	-	2	-	-	-	-	-	1	-	-	-	3
Offenders Review Board	1	-	1	-	-	-	1	-	-	-	-	-	-	3
Office of State Revenue	1	-	-	2	1	-	6	2	-	4	-	-	-	16
Office of the Commissioners of Inquiry for Environment and Planning	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Office of the Protective Commissioner	5	-	-	-	-	-	-	-	-	-	-	-	-	5
Pacific Power	1	-	1	-	-	-	1	1	-	-	-	-	-	4
Planning, Department of	-	-	-	-	-	-	5	3	-	-	-	-	-	8
Premier's Department	-	1	-	-	-	-	-	-	-	-	-	-	-	1
Privacy Committee of NSW	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Prospect Electricity	-	-	-	2	2	-	1	1	-	-	-	-	-	6
Psychologists Registration Board	-	-	-	1	-	-	-	-	-	-	-	-	-	1
Public Prosecutions, Office of the Director of	8	-	-	-	-	-	-	-	-	-	-	-	-	8
Public Trustee	-	1	-	3	2	-	3	-	-	-	-	-	-	9
Public Works	-	-	1	1	1	1	1	2	-	1	-	-	-	8
Real Estate Services Council	3	2	-	-	-	-	2	-	-	1	-	1	1	10
Registry of Births, Deaths and Marriages	-	-	-	2	-	-	1	-	-	3	-	-	-	6
Registry of Cooperatives	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Rental Bond Board	-	-	-	-	1	-	1	2	-	-	-	-	-	4
Residential Tenancies Tribunal	1	-	-	-	-	-	1	-	-	1	-	-	-	3
Roads and Traffic Authority	5	3	6	23	17	-	17	2	4	15	-	-	-	92

Public Authority/ Department	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Territorial/remote/ insufficient interest/ commercial matter	Right of appeal realises	Explanation advice provided	Premature referred to authority	Investigation declined on resource / priority grounds	Complaint assisted	Withdrawn	Investigation declined on resource / priority grounds	Resolved to Comptroller's satisfaction	Resolved during Investigation	Investigation discontinued	No adverse finding	Adverse finding	
Rural Lands Protection Boards	-	-	-	-	-	-	-	1	-	-	-	-	-	1	
School Education, Department of	23	2	-	10	7	1	7	4	2	5	-	1	-	62	
Serious Offenders Review Board	1	-	-	-	-	-	-	-	-	1	-	-	-	2	
Sheriff's Office	2	-	-	-	-	-	-	-	-	-	-	-	-	2	
Sport Recreation and Racing, Department of	-	-	-	1	-	-	-	-	-	-	-	-	-	1	
State Authorities Superannuation Board	-	-	-	2	3	-	1	1	1	2	-	-	-	10	
State Bank	2	-	-	-	-	-	-	-	-	-	-	-	-	2	
State Contracts Control Board	-	-	-	-	-	-	-	1	-	-	-	-	-	1	
State Electoral Office	1	-	-	-	-	-	1	-	-	-	-	-	-	2	
State Emergency Service	-	1	-	-	-	-	3	-	-	-	-	-	-	4	
State Forests of NSW	-	1	-	-	4	-	2	-	1	-	-	-	-	8	
State Rail Authority	4	-	1	3	12	1	8	-	2	1	1	-	-	33	
State Superannuation Investment & Management Corp.	-	-	-	1	-	-	-	-	1	2	-	-	-	4	
State Transit Authority	1	1	-	-	2	-	2	-	-	-	-	-	-	6	
Strata and Tenancy Commissioner's Office	1	-	-	1	-	-	-	-	-	-	-	-	-	2	
Surveyors, Board of	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Sydney Electricity	1	1	-	3	1	-	-	1	-	3	-	-	-	10	
Sydney Market Authority	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Tamworth Local Aboriginal Land Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1	
Technical and Further Education Commission	3	3	-	3	3	-	1	-	4	-	-	-	-	17	
Totalizer Agency Board	-	-	-	1	1	-	2	-	-	-	-	-	-	4	
Tourism Commission	1	-	-	-	-	-	-	-	-	-	-	-	-	1	
Tow Truck Industry Council	-	-	-	1	-	-	-	-	-	-	-	-	-	1	
Transport, Department of	1	-	-	3	-	-	4	2	-	3	-	-	-	13	
Treasury Corporation	1	-	-	-	-	-	-	-	-	-	-	-	-	1	
Tumut River Electricity	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Universities Admissions Centre	-	-	-	-	-	-	-	1	-	-	-	-	-	1	
University of New England	-	-	-	1	-	-	1	-	-	-	-	-	-	2	
University of NSW	-	-	-	3	-	-	-	-	-	-	-	-	-	3	
University of Sydney	-	-	1	1	-	-	-	1	-	-	1	-	-	4	
University of Technology	1	-	1	1	-	-	-	-	-	1	-	-	-	4	
University of Western Sydney	-	-	-	1	-	-	2	-	-	-	-	-	-	3	
Valuer Generals Office	-	1	-	10	-	-	1	-	1	1	-	-	-	14	
Veterinary Surgeons Investigating Committee	1	-	-	-	-	-	-	-	-	-	-	-	-	1	
Visioncare NSW	-	-	-	-	-	-	1	-	-	-	-	-	-	1	
Water Board	2	3	-	7	7	-	8	3	1	9	-	-	-	40	
Water Resources, Department of	-	-	-	-	-	-	1	1	-	-	-	-	-	2	
Workcover Authority	-	-	-	1	-	-	6	-	1	2	-	-	-	10	

Appendix

Summary of Non-Police Complaints Determined 1993 - 1994

	Assessment only						Preliminary enquiries only				Investigation				Total*	
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Rights of appeal refused	Explanation advised provided	Premature referred to authority	Investigation declined on resource/priority grounds	Complaint assisted	Withdrawn	Investigation declined on resource/priority grounds	Resolved to Complainant's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding		
Departments and Statutory Authorities	142	51	50	192	145	26	227	55	29	101	5	6	2	12	1043	
Local Government	14	37	71	112	45	17	197	47	24	42	2	3	-	6	617	
Prisons	5	16	13	84	37	22	215	39	9	46	2	1	-	1	492	
Bodies Outside Jurisdiction	393	-	-	-	-	-	-	-	-	-	-	-	-	-	393	
Freedom of Information	22	8	2	2	-	5	10	17	4	28	2	-	-	1	101	
TOTAL	576	114	136	396	227	70	449	158	66	217	11	10	2	20	2646	
															+ current as at 30.6.94	326
															Sub-total	2931
															- current as at 30.6.93	452
															Total received for year ended 30.6.94	2520

three

Appendix

Publications

Special Reports to Parliament

1976-77

No. 207 22.8.77 Report concerning the resumption of land by Colo Shire Council. (Bosanquet)

No.206 24.8.77 Report concerning the destruction of trees by Lismore City Council.

1978-79

No. 76 29.11.78 Report concerning the investigation of certain complaints made by prisoners to the Royal Commission into NSW Prisons.

No. 98 21.2.79 Report concerning Inverell Municipal Council.(Bailey)

1981-82

No. 91 4.3.82 Report on the effectiveness of the role of the Ombudsman in respect of complaints against police.

1982-83

No. 21 11.8.82 Report on the limitations re handling complaints against police - Tow Truck Racket.

No. 57 14.9.82 Report on the limitations re handling complaints against police - Blank Search Warrants.

No. 59 9.6.82 Report on the assault of Maria Jason at Mulawa Training and Detention Centre

No. 60 24.6.82 Report concerning cell searches at Parramatta Gaol, January 1982.

No. 61 Sept.82 Report on Silverwater Bus incident.

No. 113 29.11.82 Report on inadequate compensation for the acquisition of land in open space, corridor and similar zones - Department of Environment and Planning.

No. 150 8.3.83 Report concerning complaint against police by CAMP Lobby Ltd.

No. 161 18.3.83 Report on complaint against police by Neil Andrews, Solicitor, Aboriginal Legal Service.

No. 162 18.3.83 Report on complaint against police by Mr Allan James Matheson

No. 163 18.3.83 Report on complaint against police by Mr E L Nam

No. 164 18.3.83 Report on complaint against police by the Aboriginal Legal Service obo May, Donn, Boyd & Bailey.

1983-84

No. 73 18.10.83 Report concerning Mr R C Osborne and the Department of Health.

No. 76 5.26 Report on the affairs of the Parramatta Police Citizens Boys Club (Azzopardi)

No. 88 18.11.83 Report concerning Dr M Wainberg, Dubbo Base Hospital and the Department of Health.

No. 118 23.11.83 Report concerning Ald. B Antcliffe and another and the Council of the City of Sydney.

No. 25 1.5.84 Report concerning Merriwa Shire Council and denial of liability.

No. 26 1.5.84 Report concerning Randwick Municipal Council and processing of claims.

No. 27 4.5.84 Report concerning Mr H S S Wills and the Department of Environment and Planning.

No. 28 1.5.84 Report concerning Mr I K Briggs and the Contracts Control Board.

No. 29 1.5.84 Report concerning citizens of Newtown and the Department of Environment and Planning.

four

No. 30	1.5.84	Report concerning the decision to sell parts of the Hermitage Reserve.	No. 289	13.6.85	Report on NSW Department of Health on procedural deficiencies in the laboratory of the Division of Forensic Medicine.
No. 31	1.5.84	Report concerning Mr S Jones MP obo Mrs W J Smith and the Department of Lands and the Land Commission.			
No. 33	4.5.84	Report concerning Mr D Roberts and North Sydney Municipal Council.			
1984-85					
No. 39	17.9.84	Report concerning the Secrecy Provisions and the need to amend the Ombudsman Act to introduce S.35A of the Commonwealth Act.	No. 229	22.7.85	Statement in reply to Minister for Education, Hon R M Cavalier MP, re Panania North Public School.
No. 51	25.9.84	Report concerning Administrative Procedures in the Traffic Branch of the NSW Police Department.	No. 317	30.10.85	Report on Sydney Cove Redevelopment Authority failure to comply with EP & A Act in giving consent for development - Grosvenor Place.
No. 52	25.9.84	Report concerning complaints against Police - Ainsworth and Vibert.		7.4.86	Report under S.31 & 32 Complaints by Miles & McKinnon.
No. 53	26.9.84	Report concerning the GIO and the failure to reply to a reasonable request for information.	No. 34	7.4.86	Report re Miss W S Machin MP obo Mr P Steward about delay in investigating complaint that police assaulted blind people.
No. 113	29.10.84	Report concerning Hurstville Municipal Council and failure to prevent alienation of public land.	No. 38	14.4.86	Report concerning Mulwara Shire Council failure to give opportunity to make submissions.
No. 155	1.2.85	Supplementary Report on Secrecy Provisions of the Ombudsman Act.	No. 39	14.4.86	Report on failure of the Department of Corrective Services to accept Ombudsman's recommendations for establishing command structure and guidelines for control of prisons during strikes by prison officers.
No. 187	25.3.85	Report on the Corrective Services Commission and the treatment and rights of protection prisoners (Own Motion).	No. 42	17.4.86	Report on failure of Department of Local Government to properly investigate a complaint.
No. 188	25.3.85	Report concerning the Overshadowing of Hyde Park (Own Motion).	No. 48	17.4.86	Report on failure of Department of Corrective Services to accept Ombudsman's recommendations for payment of compensation for illegal detention.
No. 189	25.3.85	Report concerning Mrs B Reardon and Mudgee Shire Council and water supply.	No. 59	28.4.86	Report concerning Council employees - whether Public Authority within Ombudsman Act.
No. 196	1.4.85	Report concerning injuries sustained by Mr Bogdan Ostaszewski.	No. 60	24.4.86	Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged police misconduct.
No. 208	1.4.85	Report concerning the need to amend the Ombudsman Act to make clear that Local Council Employees are within the definition of "Public Authority" under Section 5(1). See also report No. 59, 28 April 1986	No. 61	28.4.86	Report on delay in increasing rate of statutory interest on outstanding amounts of compensation.
No. 206	11.4.85	Report concerning Sydney City Council and actions concerning land known as the "Gateway Site".	1986-87		
No. 207	11.4.85	Report concerning ex gratia payments.	No. 138	13.10.86	Report on need to amend secrecy provisions.
No. 209	11.4.85	Report on complaint by Ms R Clayfield MP obo Wilson's Creek Action Group about the Forestry Commission of NSW failure to prepare EIS.		16.10.86	Report concerning the Board of Senior School Studies refusal to release marks to students who sat for Leaving & HSC exams prior to 1978.
No. 210	11.4.85	Report on continuing inquiries into complaints against Eurobodalla Shire Council (Hatton, MP)			

No. 259	27.10.86	Report on delay in investigation of a complaint by Paul Mortimer	No. 443	31.8.87	Failure to comply with recommendations contained in a final report under S.28 of the Police Regulation (Allegations of Misconduct) Act. (Marashlian)
No. 255	11.11.86	Report on Port Kembla Coal Loader - Maritime Services Board.	No. 444	1.9.87	Failure of Commissioner of Police to implement recommendations made by the Ombudsman in a report on the investigation of a complaint by Dr A Refshauge MP, about police conduct during the Redfern Riots of 2 & 3 November, 1983
No. 257	14.11.86	Report on failure of Tweed Shire Council to regulate activities of a quarry.	No. 445	3.9.87	Failure to implement Ombudsman's recommendations re arrest and police 'verbal' (Matthews)
No. 258	11.11.86	Report on ex gratia payments by NSW public authorities.	No. 446	4.9.87	Failure of Police Department to implement Ombudsman's recommendations arising from his reinvestigation of "Club 80" complaint.
	14.11.86	Report concerning failure of Builders Licensing Board to inform of unavailability of insurance benefits and to give reasons for denial of insurance claim.	No. 447	10.9.87	Report concerning proceedings conducted in the Police Tribunal arising from investigations conducted by the Ombudsman (Parker)
No. 325	25.3.87	Report concerning Bodgan Ostaszewski and the response of the Police Department to the report of the Ombudsman (refer report no. 195, 1.4.85)	No. 448	10.9.87	Report concerning the need to ensure the independence of the NSW Ombudsman's Office from restrictions of the Public Service Act and to increase its accountability to Parliament.
No. 335	27.4.87	Report concerning allegations appearing in various recent media reports and statements by the Minister for Police that the police complaint system is being abused. (S.32)	No. 449	10.9.87	Proposed amendment to the Ombudsman Act to limit application of Item 12, Schedule 1
No. 364 & No. 385	8.5.87	Report concerning delay by Water Resources Commission in processing an application for a joint water supply authority and failure to accept recommendation to pay compensation for delay.	No. 451	1.9.87	Failure to comply with recommendations contained in a final report under S.28 of the Police Regulation (Allegations of Misconduct) Act. (Power)
No. 365 & No. 384	8.5.87	Report on Mulwaree Shire Council's public liabilities claims procedures where liability in respect of claims has been denied.	No. 526	9.11.87	Failure to act on recommendations - Randwick Municipal Council. (Leonard)
No. 371	8.5.87	Report concerning incorrect imprisonment for a fine already paid and inadequate initial investigation by police (S.32)	No. 527	10.11.87	Decision to consent to discontinuation of investigation of complaint concerning the conduct of the Assistant Commissioner (Review), Mr R C Shepherd.
No. 372	12.5.87	Report concerning the Board of Optometrical Registration refusal to give reasons for any decision to reject an application.	No. 41	16.5.88	Special Report to Parliament on proposals to amend the Police Regulation (Allegations of Misconduct) Act, 1978.
1987-88	4.8.87	Special Report to Parliament on the First Three Years of the New Police Complaints System.	No. 67	31.5.88	Report concerning the refusal of the Commissioner of Motor Transport to comply with recommendations re stolen motor vehicles.
No. 442	12.8.87	Report concerning the failure by the Commissioner of Police to respond to a report made by the Ombudsman following the investigation of a complaint by Mr E Azzopardi about the conduct of police.			

No. 68	31.5.88	Report concerning the Council of the City of Lake Macquarie's failure to implement recommendations regarding unreasonable levy of rates.	19.3.90	Failure of Ryde Municipal Council to implement Ombudsman's recommendations that it adopt a policy notifying owners of adjoining properties of building applications
No. 69	31.5.88	Report concerning Bellingen Shire Council and failure to implement recommendations.	AND	Concerning amendments recommended to the Local Government Act to require councils to notify owners of adjoining properties of building applications and to consider the objections of properly interested persons before determining building applications.
	29.6.88	Report re complaints of police misconduct determined between 1 July 1987 and 31 May 1988 that were the subject of investigation under Part IV of the Police Regulation (Allegations of Misconduct) Act.		
1988-89			4.4.90	Failure of the Commissioner of Police to take satisfactory action in relation to previous recommendations of the Ombudsman concerning a review of the Special Weapons and Operations Squad procedures and instructions.
No. 18	29.7.88	Tallaganda Shire Council - failure to implement Ombudsman's recommendations to set a minimum amount of the rate under Section 126(2)(c)(iii) of the Local Government Act for vacant flood liable land.	23.5.90	Report concerning the operation of the Freedom of Information Act 1989 and the Functions of the Ombudsman.
No. 1	12.8.88	Misleading and inaccurate newspaper article alleging that the Ombudsman is investigating Mr J-Hatton, MP.	4.6.90	Soliciting of donations to a Council project from developers with proposals before the Council for determination. (Baulkham Hills Shire Council)
No. 32	31.8.88	Failure of the Darling Harbour Authority to fully comply with recommendations.		
No. 142	10.11.88	Failure to obtain legal advice regarding departmental charges. (anonymous & Love)	1990-91	
	29.11.88	Failure to obtain independent legal advice regarding departmental charges. (re Dept of Agriculture)	19.7.90	Report concerning the Independence and Accountability of the Ombudsman.
	31.3.89	Concerning a decision made on the basis of inadequate legal advice provided to the Commissioner of Police. (Hunt)	2.10.90	Appointment of an Assistant Ombudsman.
	31.3.89	Inaccurate media account concerning an investigation of Ashfield Municipal Council.	16.5.91	Section 31 Report: Public interest in Releasing the Ombudsmans Report on Operation Sue (Redfern Raid).
	1.5.89	Inadequate training and procedures of the Special Weapons Operations Unit. (Blackshaw)	21.6.91	The Effective Functioning of the Office of the Ombudsman
1989-90			1991-92	
	18.8.89	Request for urgent amendment to the Ombudsman Act to enable the Ombudsman to delegate to the Deputy or Assistant Ombudsman a function conferred by S.19(2) of the Ombudsman Act.	18.7.91	Report on the role of the Ombudsman in the management of complaints about police.
	24.1.90	Failure to obtain evidence adequate for the successful prosecution of a police officer charged with assault occasioning actual bodily harm.	2.12.91	Public interest in releasing the Ombudsman's Report on the failure by Officers of the then Dept of Family and Community Services to respond to allegations of assault of a detainee in a detention centre.
			2.12.91	Failure of the former Dept of Family & Community Services to issue instructions to Superintendents and staff on the requirement of the Children (Detention Centres) Act and its regulations, in terms of minor and

		serious misbehaviour and, in particular, instructions on dealing with assaults on detainees by detainees.
	6.12.91	Report concerning information sought in Questions on Notice by Mr J Hatton, MP Tabled 11.12.91.
	4.5.92	Report concerning the Prisons (Segregation) Amendment Bill 1992.
1992-93		
	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.
No.01/93	25.2.93	Ombudsman's Report on the Local Government and Community Housing Program.
No. 02/93	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.
1993-94		
No. 03/93	13.10.93	The Neary/SRA Report
No. 04/93	12.8.93	Report on the Department of Community Services and Brougham Residential Unit.
No. 05/93		WITHHELD
No. 06/93	13.12.93	Urgent Amendment to the Police Service Act.
No. 07/93	13.12.93	Report of Investigation into unnecessary and excessive delays in the handling of complaints by the Complaints Unit of the Department of Health.
No. 01/94	17.3.94	Proposed Amendment to the Freedom of Information Act 1989
No. 02/94	17.3.94	Urgent amendments to Section 121 of the Police Service Act.
No. 03/94	4.5.1994	Hawkesbury City Council's Conduct Relating to Orange Grove Mall Richmond
No. 04/94	14.4.94	Improper Access and Use of Confidential Information by police.
Note:		"Report concerning the decision to withhold the award of the 1988 Higher School Certificate mathematics marks to Christopher Barnes" was issued on 17.2.94 but not presented in parliament by the Ombudsman. It was, however, tabled in the Legislative Council by the Hon. Virginia Chadwick on 2.3.94.

Brochures

- NSW Ombudsman Information
- Sheet 1 - General
- Sheet 2 - Problems with Police
- Sheet 3 - Prisoners and Access
- Sheet 4 - Trouble with Council?
- Sheet 5 - Our Guarantee of Service
- Sheet 6 - Statement of Intent
- NSW Ombudsman "Your Watchdog, printed in:
 - Arabic
 - Chinese
 - Croatian
 - Greek
 - Italian
 - Serbian
 - Spanish
 - Turkish
 - Vietnamese
- NSW Ombudsman Statement of Intent for a Culturally Diverse Society
- Some Tips on Making a Complaint
- Race Relations and Our Police - Summary Brochure

Other Publications

- NSW Ombudsman Annual Report 1992 -1993
- NSW Ombudsman Annual Report Summary 1992 - 1993
- Race Relations and Our Police - Discussion Paper
- Electorate Officers Information Kit
- Guidelines for Effective Complaints Management

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Note: bc=back cover
ibc=inside back cover

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We had 1,500 copies of this report printed at \$8.26 per copy.

Need Help?

If you think a NSW public authority, individual public servant or police officer has acted in a wrong, unfair or unreasonable way you can tell the Ombudsman.

When to Complain

First try and resolve the problem yourself. If this fails, contact us for help.

How to Make a Complaint

Making a complaint is simple. Start by calling in or telephoning for advice.

If you decide to make a formal complaint, it must be in writing. You can write the letter in your own language. If you find composing the letter difficult, we can help. We can also arrange for translation and interpreter services.

Who Can Complain?

Any individual, company, organisation, association or public authority with an interest in the problem has a right to complain.

How Much does it Cost?

Nothing. The Office of the Ombudsman does not charge any fees to investigate a complaint.

How Long Does it Take?

The investigation of a complaint may involve just a few phone calls or may take several months, depending on its complexity and the evidence to be gathered.

How is My Complaint Investigated?

As a first step, we will usually ask the authority for an explanation of what happened. Most matters are resolved at this stage.

If the Ombudsman decides to investigate, it is done confidentially. We will ask the authority to comment on your complaint and to explain its actions.

Then we tell you what the authority has said and what we think of its explanation. We may also give you the chance to send more details or to raise other issues.

When we have finished gathering all the facts, we will contact you to explain our conclusions.

If we do not investigate, we will explain why.

How Can I Contact the Office?

You can contact our office from 9am - 5pm weekdays or at other times by appointment. We are located at Level 3, Coopers and Lybrand Building 580 George Street, Sydney, 2000.

You can call the office on (02) 286 1000 or 1800 451 524 for the cost of a local call.