NSW Ombudsman

Annual Report 1994-95

For fairness, integrity & improved public administration

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

The Hon. John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Gentlemen,

Under section 30 of the Ombudsman Act 1974, the Ombudsman is required to submit an annual report to Parliament. This is our 20th annual report and contains an account of our work for the twelve months ending 30 June 1995.

The report 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*, the *Freedom of Information Act 1989* and the *Disability Services Act*.

Developments and issues current at the time of writing (September 1995) have been mentioned in some cases in the interest of updating material.

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

The office continued to improve in performance despite severe resource restrictions and we received two significant awards for annual reporting and personnel policies during the year. I am concerned, however, that as complaint numbers continue to increase and our resources remain static the service we are able to offer the community will continue to suffer.

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

Yours sincerely

Irene Moss

Irene Moss AO
NSW Ombudsman
November 1995

NSW Ombudsman

for fairness, integrity and improved public administration

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Who is the Ombudsman?

The current NSW Ombudsman is Irene Moss. The office of Ombudsman was established in 1974. The Ombudsman is independent and can report directly to Parliament.

What does the Ombudsman do?

The NSW Ombudsman protects the rights and interests of consumers of government services. The Ombudsman also helps to ensure public officers act fairly and reasonably.

The NSW Ombudsman does not have enough resources to formally investigate every complaint. Priority is given to complaints that affect many people or where there is a serious abuse of powers.

If a complaint is justified, the Ombudsman 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 practices, 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 this 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, from the most serious to the relatively minor. It also examines our client services and how we manage our resources.

Front cover

This year we celebrated our 20th anniversary. The front cover shows a montage of clippings from Sydney newspapers in the lead up to and appointment of the first NSW Ombudsman. In the years before the first NSW Ombudsman was appointed a number of councils appointed their own Ombudsman. While NSW debated the plans to establish an Ombudsman a number of other states established similar watchdog positions. Determining who would be suitable for the job provided a challenge to the government of the time and created much public debate. The appointment of Kenneth Smithers, a Sydney solicitor, was enthusiastically greeted by the press.

Contents

Historic overview

Historic beginnings

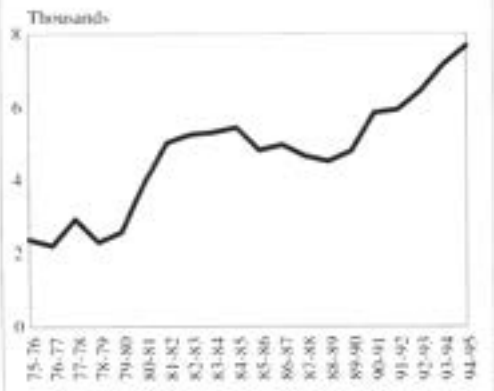
The word Ombudsman dates back to 1809 when the Swedish Parliament created a new official known as the Justitie-Ombudsman. This loosely translates as 'citizen's defender' or 'representative of the people'.

Today, about 50 countries have adopted the Ombudsman concept. In some countries the position has been given other titles suggestive of its role such as Mediateur (France), Protecteur du Citoyen (Quebec), Inspector Central of Government (Uganda) and Parliamentary Commissioner for Administration (United Kingdom).

This year marks the NSW Ombudsman's 20th anniversary. The first NSW Ombudsman, Kenneth Smithers, was appointed in 1975 and the legislation enabling him to take complaints became operative in May that year.

The NSW public sector is a very different animal to that of 1975. In 20 years there have been many changes. Governments have come and gone, public authorities have merged and separated and there have been four very different individuals appointed as Ombudsman.

A 20 year comparison of formal complaints received



20 years of righting wrongs

Over the 20 years since the establishment of the Ombudsman, the office has dealt with over 95,000 formal complaints and well over 100,000 informal complaints.

While in that time the Ombudsman has achieved much for individual complainants, there have also been significant achievements which benefit the public in general through improvements in public administration.

Examples of various improvements in public administration arising out of or stemming from the work of the Ombudsman follow.

In relation to **police**:

- people who are arrested are allowed to make a telephone call;
- parents are notified if their child attends a police station;
- police are required to record their reasons for accessing confidential records about members of the public held in COPS (the Computerised Operational Policing System);
- police are encouraged not to arrest people when a court order or summons will suffice;
- people are not subjected to strip searches unless absolutely necessary and, if necessary, they are conducted in private and by an officer of the same sex;
- intoxicated persons are only detained where they are a danger to themselves or to others;
- where a police officer records an oral admission in a notebook or other similar document, even in a situation where a suspect refuses to sign it, the police officer is required to have an independent senior officer countersign the document and to give a copy of the document to the suspect;
- police have been instructed to consider high speed pursuits as an option of last resort;

- police do not involve themselves in investigations concerning their family, friends or neighbours;
- police are no longer permitted to make representations on behalf of members of the public in relation to traffic and parking offences;
- there has been a significant increase in the number of complaints about police being conciliated with complainants; and
- the Ombudsman is notified of all reports of death or injury in police cells and of any high speed pursuits resulting in injury or damage to property.

In relation to **local councils**:

- councils are required to notify owners of land of building applications that are likely to adversely affect them;
- councils are required to consider the likely effect of a proposed building on adjoining land and buildings (now a requirement in a Regulation made under the *Local Government Act 1993*);
- councils are required to consider whether the erection of a building will adversely affect the drainage of adjoining sites (now a requirement under a regulation made under the *Local Government Act 1993*);
- adoption of codes of conduct by councils covering conflicts of interest, which supplement the statutory pecuniary disclosure requirements (the Ombudsman began pressuring for the adoption by councils of codes of conduct covering at least conflicts of interest in 1983 - now a statutory requirement);
- publication by the Ombudsman of comprehensive guidelines on good conduct and administrative practices for councils giving feedback based on 19 years experience in reviewing the conduct and administration of councils (a revised and significantly expanded edition of the guidelines is about to be published);
- adoption of proper procedures for dealing with insurance claims, including proper assessment of claims (no automatic denial of liability) and the giving of reasons where liability is denied; and
- greater council control over development on the foreshores of Sydney harbour.

In relation to **other public authorities**:

- public authorities can now be prosecuted by regulatory agencies for breaking the law (particularly prosecutions for pollution offences);
- public authorities are now regulated in the same way as private corporations in terms of the supply and advertising of goods and services (the *Fair Trading Act 1987* binds the Crown);
- public authorities are now generally implementing better internal complaint handling procedures to deal with citizen grievances (the Ombudsman has been promoting better complaint handling by public authorities since 1991);
- the Proof of Identity Scheme was introduced by the Department of Motor Transport (now the Roads and Traffic Authority);
- people whose cars are stolen can now get a refund on the Stamp Duty they paid when registering the vehicle;
- drivers of government vehicles are required to pay any traffic and parking fines they incur; and
- publication by the Ombudsman of comprehensive guidelines on good conduct and administrative practice by public authorities and public officials, giving feedback based on 20 years experience in reviewing the conduct and administration of public authorities and officials.

In relation to **prisons**:

- all remand prisoners awaiting committal hearing or trial are allowed to speak directly to their legal representatives, and not through intermediaries;
- improved care and treatment of prisoners detained in psychiatric hospitals or prisons because they are not medically fit to be tried for a criminal offence;
- protection is now available to prisoners against abuse of the power to segregate inmates against their will for long periods;
- protection of the human rights of women prisoners attending hospital for obstetric or gynaecological examination or treatment, against degrading practices;
- prisoners who work in prisons are now entitled to receive workers compensation if injured in the course of their work;
- exposure of systematic bashing of prisoners in various gaols;
- measures to improve preparedness of prison officers to deal with riots and reform of emergency / special response units;
- closure of the High Security Unit at Goulburn Correctional Centre (after finding that inmates of this Unit were the most sensory deprived prisoners in the NSW prison system);
- exposure of third world conditions at Long Bay Gaol resulting in significant improvements; and
- prisoners are now entitled to know the details of allegations made against them concerning breaches of codes of discipline, and are entitled to an opportunity to put forward their defence before a penalty is imposed.

History of jurisdiction and powers

1974 Ombudsman Act introduced.

1975 First Ombudsman appointed with powers to investigate the conduct of public authorities and officials.

1976 Ombudsman Act amended to extend jurisdiction to include local councils.

1978 Police Regulation (Allegations of Misconduct) Act came into force giving the Ombudsman a limited oversight role regarding internal investigations of complaints against police.

1984 Power given to re-investigate complaints about police, however, the Ombudsman could only use seconded police for this role.

1986 Ombudsman Act amended to extend jurisdiction to include elected members and staff of local councils.

1987 Telecommunications (Interception) (NSW) Act gave Ombudsman power to inspect the records of authorities that intercept telephone calls.

Ombudsman given power to commence a direct investigation of police complaints in cases where police investigations are not completed within 180 days.

1989 Freedom of Information Act commenced giving the Ombudsman power to investigate complaints about the determination of FOI applications.

Ombudsman given power to appoint Deputy Ombudsman and Assistant Ombudsman without State Cabinet approval.

1990 Joint Parliamentary Committee established to oversee the Office of the Ombudsman.

1993 Police Regulation (Allegations of Misconduct) Act repealed and Police Service Act amended to enable the Ombudsman to directly investigate complaints against police and monitor police investigations of such complaints.

Ombudsman Act amended to permit the presentation of reports directly to the presiding officers of Parliament.

1994 Ombudsman made an investigating authority under the Protected Disclosures Act in relation to disclosures which show or tend to show maladministration.

1995 Ombudsman Act amended to clarify Ombudsman's powers to conciliate complaints.

Methods

The primary methods used by the Ombudsman and her staff to deal with complaints are:

- mediation, where this is appropriate;
- providing explanation and advice to complainants and authorities;
- providing guidance, for example in the series of guidelines published by the office covering good conduct and administrative practice, FOI and complaint handling;
- providing an independent perspective on problems;
- identifying facts and issues;
- making suggestions for resolution;
- making recommendations in reports; and
- where all else fails, making reports to Parliament.

Focus

The focus of the work of the office over the years can be categorised under the following headings:

- protecting rights;
- ensuring fairness;
- promoting integrity;
- improving administration;
- improving access to government information;
- resolving disputes;
- exposing dangers to public safety; and
- conducting various public interest investigations.

NSW Ombudsman Vital statistics

Resources

Budget 94/95	$4.4 million
Funds attributed to police complaints 94/95	$2 million
Total funds allocated to NSW Ombudsman in the 20 years since establishment in 1974/75	$42 million
Total funds attributed to police complaints in the 17 years since jurisdiction was extended to cover police in 1978	less than $20 million
Increase in recurrent funding in real terms in the last decade	nil

Complaints

Formal written complaints received 1994/95:	
Police	5,056
Other	2,580
Total	7,636
Informal oral complaints received 1994/95	12,914
Complaints received since establishment in 1974/75:	
Formal	95,000
Informal	100,000+
Increases in complaints:	
Annual increase	7 - 10%
Since 1985/86	60%

Reports

'Wrong' conduct reports to public authorities and Ministers since 1974/75	2,000+
Reports to Parliament	100+

Staff

Ombudsman	1
Deputy Ombudsman	1
Assistant Ombudsman	2
Investigation staff	39
(21 of which are in the Police Team)	
Clerical and keyboard assistants to investigative staff	12
Inquiries officers	4
Publications/media staff	2
Human Resources, Accounts and Information Systems staff	11
Total	72

Overview

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

Our Guarantee of Service states:

> *"If you have a complaint about a NSW government authority or public servant, we 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 our functions;
- discharge all duties and responsibilities conscientiously and competently;
- treat our clients courteously, attentively and sensitively;
- implement fair procedures; and
- use resources efficiently and effectively.

Key results

The following are some of the key result areas and goals identified in our Corporate Plan.

Investigations

When assessing complaints we aim:

- to give priority to complaints which identify structural and procedural deficiencies in public administration or individual cases of serious abuse of power, 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; and
- to develop and promote the effective mediation and conciliation of complaints, where appropriate.

We also 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

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

Telecommunications interception

We aim to ensure compliance by eligible authorities with the *Telecommunications (Interception) (NSW) Act 1987* to ensure a balance between the public's interest in having serious crimes solved and the privacy of individuals.

Protected disclosures

In 1995 the Ombudsman's office was declared to be one of three investigating authorities under the Protected Disclosures Act, along with the ICAC and Auditor General's office.

Access and awareness

We aim to:

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

Functions

Our functions can be categorised into six core areas:

(1) dealing with complaints about the conduct of NSW public authorities (including NSW government departments, statutory authorities, local government councils, public officials and employees);

(2) regular visits to and inspections of gaols and juvenile justice institutions;

(3) civilian oversight of police investigation of complaints about police (which has included direct investigation of such conduct where this was considered appropriate and the necessary funds were available);

(4) external review of complaints about the determination of FOI applications;

(5) auditing of certain records of agencies authorised to intercept telephone communications; and

(6) advice on the Protected Disclosures Act.

While the Ombudsman's jurisdiction is broad, it mostly concerns matters of maladministration or conduct that may be contrary to law, unjust, unreasonable, oppressive or improperly discriminatory.

New directions

The Ombudsman's Report

Appointment

I was appointed NSW Ombudsman in February 1995. The first months of my appointment have been challenging and exciting.

I have now had an opportunity to closely observe the office and the way it functions. I am impressed by the efficiency of the organisation and the staff's dedication and commitment. The people who work here are battling under great resource restrictions.

I would like to thank them for their warm welcome and support, as well as for their continuing efforts to ensure the consumers of NSW government services get a fair deal.

Police complaints system

The system in NSW for the oversight of the conduct of police is currently the subject of significant public debate and review by both the Royal Commission into the Police Service and the Joint Parliamentary Committee on the Office of the Ombudsman. My office has made submissions to both of these bodies outlining deficiencies in the current system and recommending changes.

However, in the current debate I am concerned there is a real risk of "throwing out the baby with the bath water". The need to deal with serious corruption should not be at the expense of the public's right to have their complaints about day-to-day policing issues properly addressed.

What is often unappreciated or even misunderstood is that there is a fundamental difference between complaint handling and corruption fighting. The police complaints system was not designed as a corruption fighting system. The Ombudsman's primary role is to oversee police handling of complaints about the use or misuse of police powers.

Last year the Ombudsman received over 5,000 complaints about police. The vast number of complaints related to day-to-day policing issues. Such issues are the main concern of the ordinary citizen, whose only direct experience of police is through everyday policing. Most are customer service issues; they are the frontline of police work. How they are handled determines, to a large extent, public perception of the police and, as a result, impacts directly on morale within the Police Service.

Less than 10% of allegations made relate to matters such as bribery, extortion, drug offences, telephone tapping, conspiracy, cover-ups and perjury. Most complaints involving allegations of this kind contain very little real evidence to support the allegations, as matters such as these are unlikely to come to light through complaints.

Dealing with complaints and fighting corruption are two separate functions involving different procedures, different investigation techniques, different levels of communication with the public, different secrecy requirements and different natural justice requirements.

In relation to day-to-day policing issues, the NSW Ombudsman has an excellent reputation. Statistics in this and previous annual reports of the Ombudsman clearly show that the Police Service, under the oversight of the Ombudsman, has increasingly acknowledged and addressed unreasonable and inappropriate conduct of police officers identified through the complaint system. Over the years the Ombudsman's Office has developed highly efficient procedures for dealing with complaints across the public sector, and particularly in relation to complaints about the day-to-day conduct of police.

It is important to note that the Ombudsman has never had the powers or the funding necessary to address the corruption issues being uncovered by the Royal Commission. The Ombudsman's primary focus or charter has never been on weeding out serious corruption from the Police Service.

What must not be lost in the current debate is the need to meet two separate objectives. Firstly, there must be the power and the resources to effectively attack serious corruption by police and civilians. Secondly, the mechanism must also exist for ensuring that complaints from civilians about day-to-day policing issues are properly addressed. I strongly urge that the issues of day-to-day police conduct continue to be handled by the Ombudsman's office.

Funding

Complaints to my office continue to rise by about 7% or more, each year. This has meant that complaints have increased by around 60% since 1985/86. In that time, despite numerous submissions from this office to the Government and Parliament, there has been no real increase in recurrent funding (other than enhancements where new functions have been given to the Ombudsman or escalation factors for inflation).

As it appears this situation will not change in the near future, I would like to take this opportunity to outline the direction I envisage the organisation will take in the next 12 months.

The appointment of the first female NSW Ombudsman created a great deal of media attention and interest.

Geoff Shuberg, Assistant Commissioner of Police, Irene Moss and Clover Moore, MP at the launch of the *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials*. At the launch, NSW Premier the Hon. Bob Carr praised the work of the Ombudsman and recommended all ministers and authorities work with the office rather than against it.

Priorities

As we do not have sufficient resources to formally investigate most complaints, priority will be given to complaints raising systemic and procedural deficiencies in public administration or serious abuse of power. We will also focus on complaints likely to lead to recommendations resulting in practical and measurable changes.

Apart from matters formally investigated, the office will continue to carry out often extensive preliminary inquiries in the majority of cases often resulting in informal resolution of the problem.

Approach

Focus

In the non-police functions, my approach and that of my office could be loosely summarised as the three R's:

- **R**eview;
- **R**esolution; or
- **R**ectification.

My focus is to identify problems and mistakes to ensure that they are resolved or rectified.

In relation to police complaints, however, apart from matters where conciliation is appropriate, the system is more disciplinary in nature.

Resolution

Where appropriate I will emphasise the resolution of disputes rather than formal investigation and reporting.

This includes informal resolution through the intervention of my staff or by the process of mediation or conciliation. My power to mediate or conciliate complaints was recently clarified by an amendment to the Ombudsman Act. The amendment empowers the Ombudsman, whether or not a formal investigation is under way, to attempt to deal with a complaint by conciliation, which includes mediation.

While mediation can be particularly appropriate where more than one public authority is involved in a matter, there are circumstances in which mediation may be quite inappropriate, for example where a matter involves a significant public interest issue warranting formal investigation and report.

In relation to police complaints, emphasis is given to conciliation in all matters where this is considered appropriate.

Rectification

In reviewing the conduct of general public authorities and public officials the primary purpose of the Ombudsman is not to apportion blame. We are not after scalps and do not keep score by the number of "wrong conduct" reports that are issued. Rather, I consider our effectiveness should be measured by the results that are achieved.

In other words my emphasis is on rectification not 'retribution'.

The office tries to look at the broader picture. We question whether a problem is symptomatic of a larger problem.

Our focus is on what is reasonable. The Ombudsman Act empowers the Ombudsman to find an action legal but nevertheless unreasonable. Conversely there have been occasions when the office has declined to become involved in matters where it is clear that the conduct was reasonable, even though it was not necessarily in strict compliance with the letter of the law.

Formal investigations and formal reports are only one method to achieve a reasonable result. In fact my general practice will be to make formal "wrong conduct" reports only where I find:

- there has been a failure by a public authority or public official to properly address a problem;
- there has been a serious abuse of power; or
- there is an important public interest consideration involved.

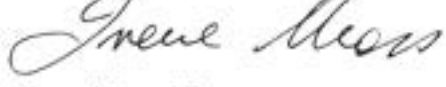
Conclusions

Accountability is a crucial requirement for the proper working of a democratic system. However, fears have been expressed in some quarters that the public watchdogs in this State have inhibited initiative and stifled risk-taking by public sector managers. This is certainly not the intention nor I would argue the result of the work of the office. As I have indicated above, the focus of the Ombudsman is on review, resolution and rectification, not retribution. It is also important to note that the primary watchdog bodies in the State (being the Ombudsman, Auditor General and ICAC) liaise closely to avoid unnecessary duplication of effort.

In the next reporting year my office expects to receive and deal with over 8000 formal complaints and over 13,000 informal complaints. I hope to deal with those complaints with the ultimate aims of improving public administration as well as obtaining appropriate redress for those citizens whose complaints are justified.

I would like to echo the words of Justice Michael Kirby in relation to the institution of Ombudsman:

> "[Her] *mandate and charter is, ultimately, good public administration.* [She] *looks at the administration from a position of independence.* [Her] *scrutiny provides a special opportunity to identify problem areas, to provide external stimulus to improvement, to encourage and promote self-criticism and to aggregate all this experience into the improvement of the administration.*"*



Irene Moss, AO
NSW Ombudsman

(*) Justice Michael Kirby, "Ombudsman - The Future?", RAIPA, Vol. XII No. 4, 1985, p.297.

94/95 at a glance

Achievements

- Average time to finalise general complaints reduced by 10 days.
- 30% increase in the number of police complaints conciliated.
- 100% increase in the number of police investigations monitored.
- Ombudsman vindicated in Supreme Court challenge by Ku-ring-gai Council. Powers in relation to local government jurisdiction clarified.
- Ombudsman vindicated in Supreme Court challenge by Commissioner of Police in relation to an investigation Raymond Denning's removal from the witness protection program.
- Ombudsman vindicated in Supreme Court and Court of Appeal challenge by Botany Council in relation to a recommendation arising from a freedom of information review.
- Mediation service established for use by government agencies.
- Publication of comprehensive guidelines on good conduct and administrative practice for public authorities and officials, giving feedback based on twenty years experience in reviewing the conduct and administration of public authorities and officials.
- The Ombudsman's 1993/94 annual report awarded a silver award from Annual Report Awards Australia for distinguished achievement in annual reporting.
- The Ombudsman received a Skilling Australia Award for our commitment to language training for staff from non-English speaking backgrounds.

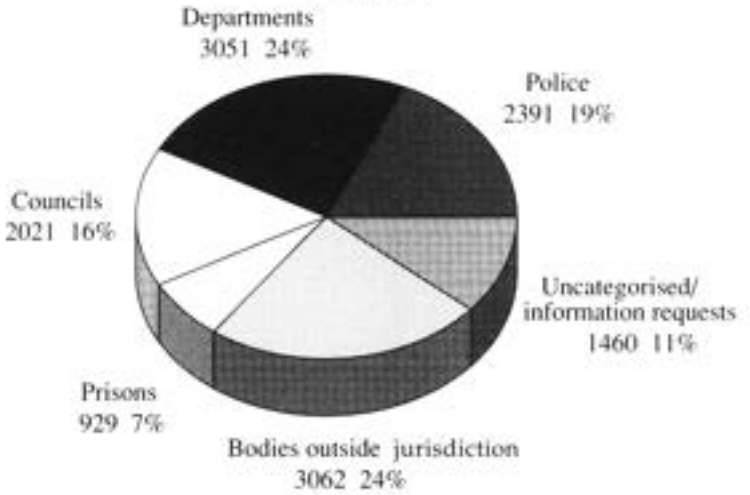
Challenges

- Maintaining efficiency and quality standards under increased workloads.
- Maintaining a dedicated workforce in an environment of increasing complaint levels and static resources.
- Implementing important initiatives such as the Joint Parliamentary Committee's access and awareness recommendations without additional resources.
- Dealing with further significant increases in complaint numbers without additional resources.

The Ombudsman received two awards acknowledging achievement in annual reporting and commitment to language training for staff from non-English speaking backgrounds.

Subject of Oral Complaints and Inquiries

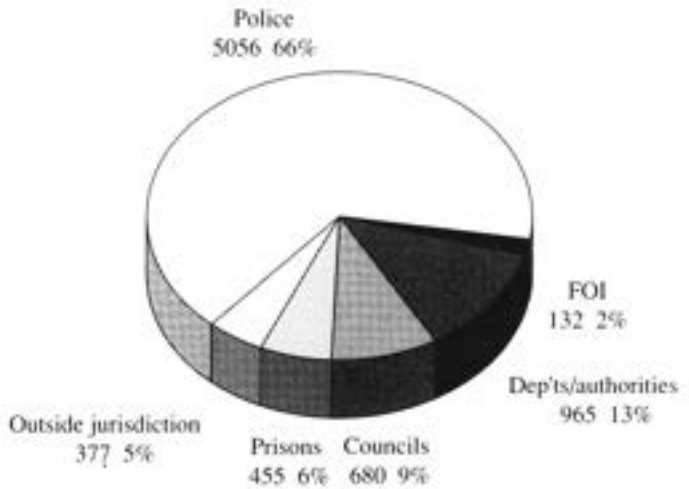
1994 -1995



Total oral complaints and inquiries received: 12,914

Subject of Written Complaints Received

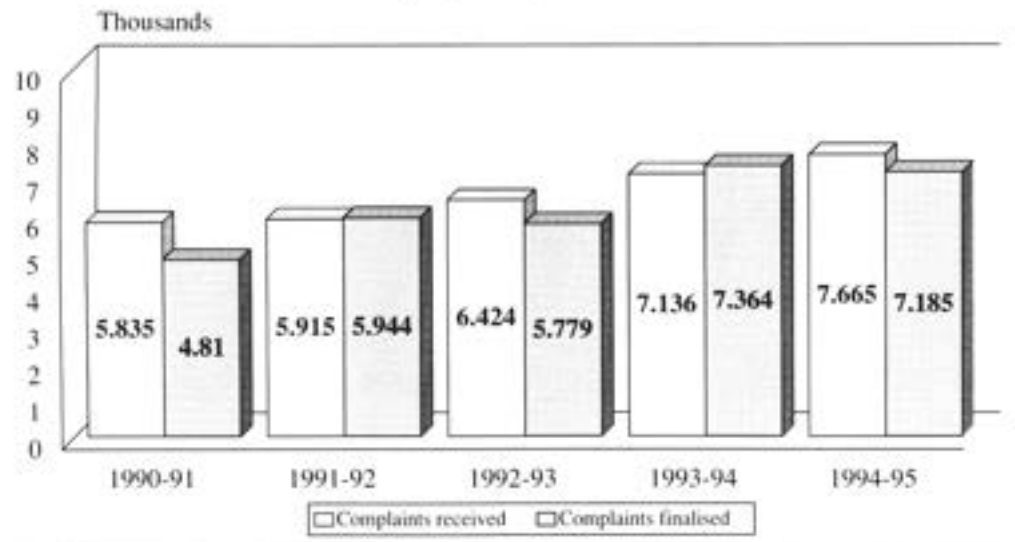
1994 -1995



Total written complaints received: 7665

Written Complaints Received Compared to Complaints Finalised

A five year comparison



Our organisation

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 investigators 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:

- former state, federal, Hong Kong and military police;
- local government and town planning;
- specialist local government and environmental law;
- youth and community work;
- mediation;
- journalism, teaching, policy advice, research, 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 that positive and useful recommendations are consistently made.

The principal officers for the period of this report were:

Ombudsman
Irene Moss AO, BA (Syd), LLB (Syd), LLM (Harvard) (from 1 February, 1995)

David Landa, Attorney at Law (to 31 January, 1995)

Deputy Ombudsman
Chris Wheeler, BTRP (Melb), MTCP (Syd), LLB (Hons)(UTS)

Assistant Ombudsman (General)
Greg Andrews, BA (Hons), G Cert P Sect Mgt

Assistant Ombudsman (Police)
Stephen Kinmond, BA, LLB, Dip Ed, Dip Crim (acting from 23 June, 1995 until position is filled permanently)

Sean Crumlin, LLB, MPP (to 16 June, 1995)

Complaints Manager (General)
Anne Radford, BA, Grad Dip Lib

Manager Police Team
Jenny Mason, BA (Hons), B Soc Work (Hons) (Seconded to the Minister for Corrective Services on 16 June 1995)

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

The Ombudsman is a Director of the Special Broadcasting Services (SBS), a member of the Committee to Review the Australian System of Honours and Awards and is Chair of the National Breast Cancer Centre. All fees owed to the Ombudsman for attending committee meetings are paid directly to the office.

Significant committees

The most significant office committee is the Management Committee. This committee manages the office dealing with matters relating to our functions, strategic planning, policies, budget priorities and overall administration. The committee meets weekly.

Membership includes:

Irene Moss - Ombudsman
Chris Wheeler - Deputy Ombudsman
Greg Andrews - Assistant Ombudsman
Stephen Kinmond - Assistant Ombudsman
Anne Radford - Manager General Team
Jenny Mason - Manager Police Team
Kim Swan - Senior Investigation Officer
Anita Whittaker - Manager Administration

NSW Parliament

Joint Parliamentary Committee
on Office of the Ombudsman

NSW Ombudsman
Irene Moss AO
BA (Syd), LLB (Syd), LLM (Harvard)

Deputy Ombudsman
Chris Wheeler
BTRP (Melb), MTCP (Syd), LLB (Hons)(UTS)

Administration
Public Relations
Information Systems
Research
Aboriginal Liaison

Assistant Ombudsman (General)
Greg Andrews
BA (Hons), G Cert P Sect Mgt

Assistant Ombudsman (Police)
Stephen Kinmond
BA, LLB, Dip Ed, Dip Crim
(Temporary appointment)

Manager General Team
Anne Radford
BA, Grad Dip Lib

Manager Police Team
Jenny Mason
BA (Hons), B Soc Work (Hons)
(Seconded 16.6.95)

Freedom of Information Investigation Team

General Investigation Team

Telecommunications Interception Investigation Team

Inquiries Team

Police Investigation Team

Our people

Top left: The installation of a new computer system will help to improve response times and the collection of statistics.
Top right: To ensure complaints are tracked effectively, every written complaint received is made into a file. We received more than 7,000 written complaints during the year.
Mid left: Investigation officers split their time between working in the office and in the field.
Lower: Our inquiries section provides referrals, advice and deals with informal complaints. During the year the team of three inquiries officers dealt with about 12,000 complaints, most were dealt with on the spot.

Top left: Officers regularly talk to groups of public officials about the role and functions of the Ombudsman.
Top right: The Ombudsman encourages the informal resolution of complaints. Forms and agreements have been prepared to facilitate the mediation process, and staff have been involved in an ongoing training program on advanced mediation skills.
Mid: During our country outreach visits we spoke to more than 250 people, providing advice, referral information or assisting them to lodge formal complaints.
Lower: We received more than 7,000 formal written complaints during the year.

Our performance

Key Corporate Goals	Key Achievement Indicators
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. To ensure the timely and accurate assessment of complaints	98% of complaints under *Ombudsman Act* assessed within 48 hours of receipt (91% within 24 hours). 90% of complaints under *Police Service Act* assessed within 48 hours of receipt. Average time taken to send acknowledgements on *Ombudsman Act* complaints: 7.8 days. Police complaints declined at outset: 66% notified within 14 days. Requests for review of determinations as percentage of total complaints finalised: *Ombudsman Act* complaints 6% Police complaints 2.3% Complaints within jurisdiction declined at outset: *Ombudsman Act* complaints 34% Police complaints 35%
Complaint Resolution To resolve complaints about defective public administration through conciliation, mediation or explanation where appropriate.	70% of complaints within jurisdiction of *Ombudsman Act* resolved through provision of information/advice or constructive action by public authority (15% increase over 93/94 results). 1,185 police cases conciliated. 53 conciliation audits conducted at police stations 81% satisfaction rate among complainants with police complaints conciliated. 92% of complaints made under *Ombudsman Act* finalised in less than 60 days (average: 41 days). Mediation service established.
Investigations 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 through such things as informal negotiation, advice, guidelines, information and recommendations.	91% of recommendations made in reports under s.26 *Ombudsman Act* implemented. 73% of recommendations made under Police Services Act implemented. 77% of reports under *Ombudsman Act* contained recommendations involving changes to law, policy or procedures. 24 police investigations formally monitored.

Key Corporate Goals	Key Achievement Indicators
Complaints Handling in Public Sector To promote the development and implementation of effective internal complaint handling in public authorities to improve accountability and customer satisfaction.	115 public sector officers completed Ombudsman training courses on effective complaint management. 11% of complaints within jurisdiction of *Ombudsman Act* declined as premature and referred for internal complaint resolution.
Corporate Services To improve management systems.	Review of administration area completed and reforms implemented. Performance management system implemented in general area.
Financial Services To make the most effective use of resources available to the office.	Unqualified certificate issued by Auditor-General. Nil over run in budget. 92% of accounts processed on time. 94% of financial returns and reports provided to Treasury on time.
Human Resources To maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment.	73% of staff participated in formal training activities. 1.75% of total salaries expenditure dedicated to staff development.
Public Image To increase parliamentary and community awareness of the role, functions and services offered by the Ombudsman.	All adult and juvenile correctional centres visited. 17 major country towns received public awareness visits in addition to regular visits to Newcastle and Wollongong. 6 special reports to parliament made. Lectures delivered to 5 intakes of prison officers and 2 meetings of prison official visitors.
Information Systems To maximise the use of information technology to enhance productivity and the achievement of internal management and accessibility goals of the office.	New strategic plan implemented. Capital bid for new network and case management system successful. Tender awarded and project commenced.

Police

Overview

The Ombudsman's role in complaints about police has primarily been to provide external civilian oversight - to ensure the Police Service properly handles complaints about the unreasonable use of police powers.

This year, we received 5,056 written and 2,391 oral complaints about police. This represents a 10% increase from last year.

As in the past, most complaints were about day-to-day policing issues, for example:

- unreasonable use of arrest and detention powers;
- abusive behaviour and harassment;
- excessive use of force;
- breaches of police rules and procedure;
- unjustified charges; and
- failure to take action.

About 10% of all allegations against police allege serious corruption such as bribery, extortion, theft, drug offences, conspiracy, cover-ups or perjury.

The Ombudsman is required to refer complaints about 'corrupt conduct' to the Independent Commission Against Corruption. The broad statutory definition of 'corrupt conduct' covers about 20% of all police complaints received by the Ombudsman.

How we deal with complaints

Complaints about police have doubled over the last eight years. Our funding, however, has remained static in real terms.

The Ombudsman screens complaints rigorously. In 1994/95 33% of complaints were declined without further action being taken. Most of these were less serious complaints by police against police which the Ombudsman felt should be dealt with as internal management issues.

This year 22% of complaints were finalised after preliminary inquiries were made with the Police Service. Each year most serious complaints (between 15 and 20%) are subject to the more formal and extensive process of investigation.

When the Ombudsman decides a complaint is sustained, she is able to recommend that appropriate remedial action is taken by the Police Service (e.g. disciplinary action and/or improvements to Police Service procedure). The Police Service is required to notify the Ombudsman of the action taken as a result of a report and in most cases the Police Service complies with our recommendations.

The conciliation of complaints by the Police Service has increased markedly. This year 22% of complaints were conciliated. Customer surveys indicate 80% of complainants were satisfied with the conciliation process.

Another example of the changing nature of the complaint handling system is the continued increase in the number of investigations which have resulted in a finding against police. In 1986/87, only 6% of complaints investigated resulted in such a finding. Over the past two years the rate of such findings against police has risen to between 40 and 50%.

Keeping the service responsible for the conduct of its officers

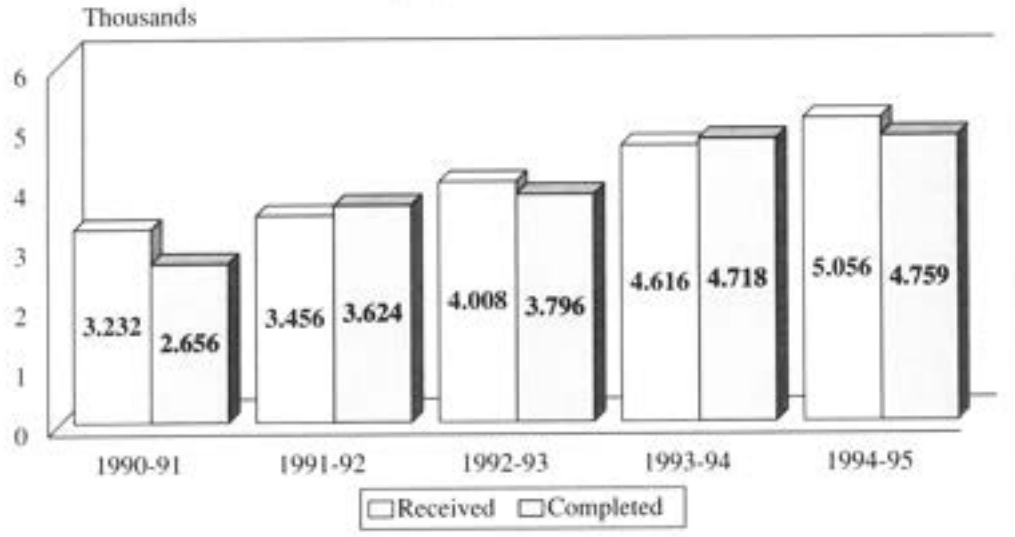
It is desirable that the Police Service continues to handle complaints about day-to-day policing issues under the oversight of the Ombudsman.

That the Police Service should have responsibility for handling complaints of this type is consistent with standard management principles. It results in the Police Service having 'ownership' of the issues raised by complainants. It also has an educative value for police. Above all, complaint handling reinforces to police that they are accountable to the public.

Continued independent oversight of complaint handling by the Police Service is essential, particularly in view of the inherent seriousness of complaints about poor policing, and the continued need for the Police Service to appreciate the issues involved from the community's perspective.

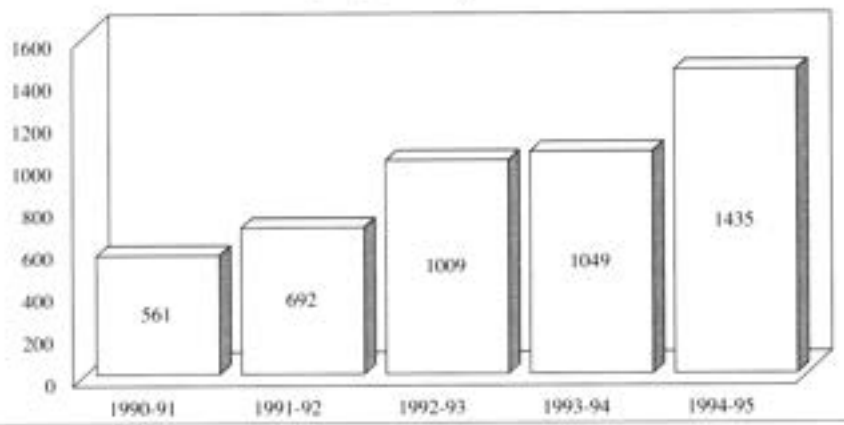
Police Complaints Received Compared with Complaints Determined

A five year comparison



Complaints by police officers or arising during an internal investigation

A five year comparison



Police Complaints Investigated

1994 - 1995

Police Complaints Not Investigated

1994 - 1995

Complaint handling & corruption fighting

Different problems, different solutions

The Royal Commission's inquiry has shown the problem of serious corruption by police has not been dealt with adequately to date. This must be addressed.

The Ombudsman has grave concerns about recent complaints alleging police have fabricated information on certain conciliation documents.

At the same time, the need to deal with serious corruption should not be addressed at the expense of the public's legitimate expectation that their complaints about day-to-day policing are properly and adequately dealt with. If these complaints from the general public do not continue to be addressed by the Police Service under the oversight of the Ombudsman, the public will be the loser.

The Ombudsman can only investigate a police matter if a complaint is made. As it is unlikely the parties to a corrupt relationship will make a complaint, a complaint handling process is not able to identify and weed out serious corruption.

Improving the system

The police team continued to work this year on improving the effectiveness of the complaints system.

Conciliation

For many months staff from the office worked with the Police Service and Police Association to improve the conciliation process. As a result, fresh policies and procedures were put in place. Following a report to Parliament by the Ombudsman in December 1994, a new training program was developed by the Police Service in consultation with a conflict resolution expert.

The significant increase in the rate of conciliations (14% to 25%) over the past two years, and the continued high level of complainant satisfaction, reflect the good work in this area.

On the other hand, it is critical the conciliation system is not abused. The Ombudsman has grave concerns about recent complaints alleging police have fabricated information on certain conciliation documents - these matters are under investigation. The Ombudsman's audits of all conciliations will continue to identify and address any abuses of the system.

Preliminary inquiries

Preliminary inquiries are conducted into many complaints before a final decision is made on how they should be dealt with. This year new policies were developed to improve the quality of these inquiries.

It was pleasing to note the Police Service's support for these new procedures which should lead to better communication with complainants; improved planning between our office and the Police Service; and a higher standard of reports.

Delayed investigations

This year the Ombudsman took up the problem of delays by the Police Service in its handling of a large number of cases. The Ombudsman's representations were met with only partial success. The response by the Police Service's Regional Commanders has generally been favourable. On the other hand, the area under the command of the Assistant Commissioner (Professional Responsibility) is struggling to overcome delays due to inadequate resources. This cannot be allowed to continue.

Internal restructure

The resources of the Ombudsman are stretched to breaking point as a result of ever increasing complaint numbers. Several years ago, our office restructured by creating a specialised police team. As a result, we were able to handle a much greater number of police complaints. Conciliation figures and sustained findings against police also improved dramatically.

However, we received nearly 300 more complaints than we were able to finalise this year, despite the police team finalising more police matters than ever before. In response to burgeoning caseloads, the Ombudsman has decided to further restructure the police team based on distinguishing investigation matters from non-investigation work.

Despite these efficiency initiatives, the Ombudsman's capacity to use direct investigations and physically monitor police investigations will continue to be hampered unless more resources are provided.

Ethics seminar

On 24-25 July 1995, the Police Service held an 'Ethics and Professional Standards' seminar for its most senior staff.

The Ombudsman addressed the seminar, emphasising that managers in the Police Service need to be more accountable. In this regard, she referred to the legal test for neglect of duty. The Ombudsman regards the current test for neglect as unacceptable. Under this test a supervisor can negligently fail to carry out his or her duties and yet not be open to any disciplinary sanctions.

The Ombudsman also spoke on the Police Service's need to develop a mechanism to deal with police who 'roll-over' and the service's failure to develop an adequate intelligence system to weed out corruption.

She also raised the disturbing number of matters dealt with which demonstrate a failure by police to maintain appropriate ethical standards. The failure by police to readily acknowledge mistakes and apologise for inappropriate conduct often compounds initial errors.

Finally, the Ombudsman noted positive developments in recent times which reflect a desire by the Police Service to work with her office to improve the effectiveness of the complaint handling process.

Aboriginal issues

The Ombudsman continued to receive disturbing numbers of complaints from Aboriginal people.

In April 1995 the Assistant Ombudsman (Police) and the Aboriginal Liaison Officer met with all Police Regional Commanders to discuss ways of improving relations between police and Aboriginal communities. As a result Regional Commanders have made a commitment to support practical endeavours by our office to develop better ways of dealing with disputes between police and Aboriginal communities.

In May 1995 our officers visited Moree, Walgett and other centres of the north west of NSW. In July, further visits were made to Cowra and Wellington in order to evaluate complaints and to assess policing practices. These visits confirmed the need for continued work to improve the relationship between police and Aboriginal people.

Determined police complaints
1994 - 1995

Not Investigated	Declined at outset	1,687
	Declined after inquiries	1,010
	Conciliated	1,185
	Discontinued before Ombudsman investigation	227
Not Sustained	Not sustained finding	278
	Unable to be determined	89
Sustained	Sustained finding without re-investigation	283
Total		**4,759**

Investigations and non-investigations
A five year comparison

Year	Complaints determined	Not fully investigated		Investigated	
1990/91	2,656	2071	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%
1994/95	4,759	4,109	86%	650	14%

Determination of complaints not fully investigated
A five year comparison

Year	Total	Declined at outset	Declined after inquiry	Investig'n discont'd	Conciliated
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
1994/95	4,109	1,687	1,010	227	1,185

Determination of complaints fully investigated
A five year comparison

Year	Total investigated	Sustained	Not sustained	Unable to be determined	Reinvestigate/ direct investigation
1990/91	585	136	197	244	8
1991/92	745	198	318	222	7
1992/93	613	178	249	182	4
1993/94	824	418	219	181	6
1994/95	650	283	278	89	0

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 8,220 allegations were made. The following tables list these in categories and show how each was determined.

(* Note: The category 'Not fully investigated' includes matters discontinued or declined after preliminary inquiries were made.)

Criminal conduct

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Murder or manslaughter	3	0	2	0	0	5
Sexual assault	15	4	4	6	0	29
Bribery or extortion	66	4	21	9	0	100
Theft	110	17	96	34	0	257
Drug offences	168	6	35	4	0	213
Dangerous or culpable driving	6	3	1	0	0	10
Telephone tapping	2	0	1	0	0	3
Conspiracy or cover-up	22	3	14	3	0	42
Other (eg perjury)	69	16	34	18	0	137
Total	**461**	**53**	**208**	**74**	**0**	**796**

Assault and harassment

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Physical or mental injury outside police premises	88	16	80	53	0	237
Physical or mental injury inside police premises	49	8	50	49	0	156
Minor physical or mental injury outside police premises	129	14	46	38	0	227
Minor physical or mental injury inside police premises	71	3	25	35	0	134
Threats or harassment	277	17	69	40	94	497
Sexual harassment	17	1	0	1	17	36
Total	**631**	**59**	**270**	**216**	**111**	**1,287**

Investigations and prosecutions

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Forced confession	8	0	2	5	0	15
Suppression of evidence	5	2	2	2	0	11
Suppression of evidence (traffic)	1	3	1	0	0	5
Fabrication	48	3	21	16	2	90
Fabrication (traffic)	13	4	6	0	2	25
Unjust prosecution	99	1	23	3	12	138
Unjust prosecution (traffic)	143	4	2	2	11	162
Failure to properly review prosecution	1	0	0	0	0	1
Faulty investigation or prosecution	138	41	45	6	67	297
Faulty investigation or prosecution (traffic)	35	7	2	0	35	79
Failure to prosecute	95	4	14	2	102	217
Failure to prosecute (traffic)	26	3	5	0	14	48
Total	**612**	**72**	**123**	**36**	**245**	**1,088**

Arrest/detention/warrant

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Improper detention of intoxicated person	1	2	0	0	0	3
Unreasonable use of arrest or detention powers	120	23	51	16	25	243
Faulty search warrant procedure	59	5	36	14	12	126
Unjustified search or entry	30	8	19	7	24	88
Unnecessary use of force, damage or resources	94	9	31	14	22	170
Improper use of summons, enforcement order or warrant	67	0	1	0	3	71
Failure to withdraw warrant or accept fine payment	3	0	0	1	0	4
Total	**382**	**47**	**138**	**52**	**86**	**705**

Abusive remarks or demeanour

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Race related	27	3	9	14	15	68
Social prejudice	7	1	2	5	4	19
Traffic related	47	2	1	0	265	315
Other	87	16	47	41	138	329
Total	**168**	**22**	**59**	**60**	**422**	**731**

Breach of police rules or procedure

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Failure to provide or delay legal rights	49	10	22	11	18	110
Inappropriate disclosure of or access to confidential information	121	46	33	16	7	223
Failure to provide information or notify	31	16	11	7	37	102
Providing false information	40	66	9	3	24	142
Failure to return property	55	4	7	6	25	98
Unreasonable treatment	287	13	73	31	288	692
Drinking on duty	22	6	14	5	4	51
Failure to identify or wear number	4	2	5	3	29	43
Failure to take action	149	11	32	6	200	398
Traffic or parking offences	89	13	13	1	63	179
Faulty policing	5	0	1	0	19	25
Misuse of office	43	10	22	4	12	91
Accidental property damage	4	4	2	1	5	16
Breach of police rules and regulations	898	319	104	12	14	1,347
Total	**1,797**	**520**	**348**	**106**	**746**	**3,517**

Management issues

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Condition of cells or premises	1	0	0	0	0	1
Delay in answering correspondence	7	1	0	0	2	10
Inappropriate permit or licence action	1	1	0	2	2	6
Administrative matter arising from investigation	0	15	0	0	0	15
Other	52	2	0	0	10	64
Total	**81**	**19**	**0**	**2**	**14**	**96**

Monitoring investigations

The Ombudsman's relatively new power to monitor police investigations into complaints about police is proving valuable. During the year, 24 investigations were monitored, a 100% increase on the previous year.

Monitoring police investigations provides us with an opportunity to keep in close touch with the progress and conduct of an investigation, an opportunity to discuss possible directions for the investigation and speeds up our final determination.

Some benefits are more intangible, such as the level of reassurance given to the individual complainant. While these indicators are more difficult to measure, they are important.

Although most monitored investigations were in the metropolitan area, some required extensive travel and, in one case, interstate travel.

With our extremely limited resources, the decision to monitor has to be careful and selective. Accordingly we have given priority to complaints by young people and people from non-English speaking backgrounds.

The overall impression of monitoring is very positive. However, in light of the ever increasing numbers of complaints, we are concerned it will become increasingly difficult to carry out this function.

Sexual harassment

During the year we received a number of complaints from female police officers and civilians working in the Police Service which alleged sexual harassment by their male colleagues. Frequently, the complainants in sexual harassment cases feel hurt and abandoned by the system.

Case one

A clerical officer complained she had been sexually harassed by a police officer for three years. She said he rubbed himself up against her, asked her about her sex life, made derogatory remarks about her breasts and buttocks, offered to show her pornographic videos he had brought to work, and on a number of occasions followed her home, once confronting her late at night as she garaged her car. She said that one day when she was going to the hospital to visit her mother, he asked her if she was going to the VD Clinic, another time he suggested that she was going to the hospital for an abortion.

Though the constable denied the harassment, many police working at the station confirmed that they had witnessed various incidents she described. Four charges of misconduct were heard by the Police Tribunal. Three of the charges were found proved.

A Senior Advocate from the Police Service Disciplinary Unit reported:

> *In delivering his decision His Honour commented that the allegations had in fact been established beyond reasonable doubt. His Honour also commented that he had observed an attitudinal change and found it comforting that the young officers both male and female who were witnesses involved in the proceedings treated each other as equals. His Honour stated that he would not be doing his duty if he did not recommend the dismissal of the constable.*

On 3 May 1994 the Assistant Commissioner, Professional Responsibility dismissed the constable from the Police Service.

The woman wrote to us saying she had reported the officer's harassment on many occasions to two senior sergeants. One of the officers, she said, would mostly just shrug his shoulders; the other told her that he felt she was quite an intelligent woman who could handle most things without any assistance from anyone. Finally she spoke to another senior officer, who took action. She concluded her letter:

> *I hope that I have enlightened you in some way and hope that when there is a real problem in the workplace with some other poor unsuspecting woman that she is treated in a manner fitting the complaint and not ignored and told to handle things my own way. Thank you for allowing me to be open with you as I still feel very hurt by the system.*

The two senior sergeants were subsequently admonished for their failure to deal properly with her complaint, and in addition were directed to complete assignments on sexual harassment and EEO issues.

Case two

A constable complained she had been harassed for two years by her colleagues. The harassment was always worse in the football season, when

a number of police drank together at local pubs after games. On one occasion she says she was getting into her car when a male officer yelled abuse at her. On another occasion she says she was at the pub when a policeman started calling her a *"lesbian slut"*. She got up from her seat but was pushed back down by the man who continued to abuse her. She says several members of the public who saw the incident told her she should report the man. These comments made her realise how much she had been putting up with and had simply grown used to. She wanted the complaint conciliated, hoping the men would be spoken to, which would stop the harassment.

Frequently, the complainants in sexual harassment cases feel hurt and abandoned by the system.

However, the complaint went to a full investigation. The senior sergeant who conducted the investigation found the complaint not sustained. However, he discovered in the course of his inquiry that the complainant had left work early one night, at about 10.30pm instead of 11.30pm, when her shift finished. The investigator found she had absented herself from duty and had been untruthful when she told him she had finished work at 11.30pm. As a result, the Service Solicitor recommended she be charged departmentally with neglect and misconduct. The Assistant Commissioner, Professional Responsibility, decided she should be admonished instead.

The complaint was then reviewed by the Human Resources section and identified as a case study representative of many of the problems associated with encouraging complaints of sex based harassment. Disciplinary action against the constable was not pursued.

Poor quality police investigations

In January 1995, the Ombudsman submitted a special report to Parliament *'Police Internal Investigations - Poor Quality Police Investigations Into Complaints Of Police Misconduct'*. The report was in response to concerns aroused by the not infrequent submission of flawed internal investigation reports by police to the Ombudsman.

Sixteen recent cases were profiled. Issues uncovered included:

- the failure of police investigators to obtain or properly consider vital evidence;
- the failure of investigators to impartially question witnesses or police the subject of investigation;
- investigators drawing inferences which were contrary to the available evidence;
- the tasking of inappropriate officers to carry out investigations or administer disciplinary action; and
- the imposition of charges or penalties which were not commensurate with the nature of the misconduct.

Specific examples included the failure of a police investigator to obtain or consider a medical report relating to a physical examination of the complainant in his investigation of a complaint of indecent assault. Investigators were found to have questioned witnesses in such a way as to lead them in a direction that was beneficial to the police officers the subject of investigation. One investigator found nothing improper in a sergeant investigating a traffic accident despite an obvious conflict of interest in that one of the parties involved was his own son.

An officer who was found to have improperly kept in his personal possession a seized packet of marijuana, in spite of an order issued one year previously by a magistrate for the drug to be destroyed, was merely departmentally charged. On our insistence the papers were referred to the Director of Public Prosecutions who advised the officer could be charged with possession of a prohibited drug. By the time we received this advice the six month time limit for prosecution had taken effect, preventing the preferment of criminal charges.

The report recommended placing all regional Internal Affairs Units under the command of the Commander (Professional Responsibility). It was hoped this would reduce the inconsistent approach to internal investigations encountered under the present system where the units are under the command of Region Commanders. The report also recommended a mechanism be established within Internal Affairs to monitor investigations. It noted the need to recognise positive performance by investigators and recommended the development of a strategy to ensure high quality

Thank you again for your time and most of all for helping my children and myself and your continuing support for my problem. I am very thankful your office is there to help people in my situation...to reach out a helping hand and give you justice.
A complainant

investigators would be attracted to Internal Affairs by making it an advantageous career path.

The report detailed the need for improved training of investigators. On a more general note it was felt a review should be undertaken of ethics and integrity training at the basic police recruit level.

Concerns were aroused by flawed internal investigation reports by police submitted to the Ombudsman.

The question of employing better investigative methodology in the area of complaint handling was also examined. Specifically, it was felt that a team approach to Internal Affairs investigations might be preferable to the current 'pairs' approach, whereby an Inspector is assisted by a 'driver/typist'. The possible employment of ERISP (Electronic Recording of Interviews with Suspected Persons) techniques commonly used in the general criminal investigation area was also mooted. Finally, the report stated that efforts should be made to better enlist the support of the Police Association by having it regularly address members regarding the pitfalls of police corruption and the need for members to cooperate in internal investigations and assist as witnesses when not directly the subject of a complaint.

The report was welcomed by then Minister for Police and Emergency Services, Mr West, who immediately asked Commissioner Lauer to instigate a review and report back as soon as possible. It is hoped the Commissioner will soon report on the result of the exercise.

Unauthorised access and release of confidential information

An ongoing area of concern involves the unauthorised access and release of confidential information.

While 173 such complaints were received during 1993/94, the figure rose to an alarming 217 complaints in 1994/95. This increase coincides with the new Computerised Operational Policing System (COPS) coming on line throughout the Police Service, allowing 13,000 officers and 3,000 supporting public servants instant access to a large amount of confidential information about members of the public.

The nature of these unauthorised accesses has continued to range from idle curiosity by officers in quiet stations to the organised selling of confidential information to private inquiry agents.

One sergeant checked the criminal history and licence details of his former wife who had taken out an Apprehended Domestic Violence Order against him. Another sergeant obtained the personal details of a woman he had met briefly, using them to obtain her telephone number and make allegedly harassing telephone calls.

With the introduction of COPS, the Police Service introduced a number of educative measures to prevent misuse of the system. These measures required all police and support staff to view a training video highlighting the illegality of unauthorised computer access and sign a statement, undertaking to abide by the service's *'Code of Best Practice and Guidelines for Management of Information and Information Systems'*.

On 14 April 1994, the Ombudsman submitted a report to Parliament which recommended police officers be required to record the reasons for accessing information when they log onto the computer, allowing more effective investigation of improper accesses. The Police Service argued the exercise would not be cost-effective.

As a substitute measure, police management agreed to implement our request to amend the Commissioner's Instructions, requiring officers to document all accesses in their note books to hold them accountable if audits of the system reveal accesses they cannot satisfactorily explain.

Commissioner's Notice 94/110 was published in December 1994, advising members to *"be aware they are required to keep a record in their official note book, duty book, diary and/or similar record book, in the case of non sworn officers, of the reason for computer inquiries"*. While this is a step in the right direction, it is regrettable that to date a similar amendment has not been made to the Commissioner's Instructions to facilitate disciplinary action should appropriate documentation of accesses not be made.

The most troubling aspect of this issue is the Police Service's failure to treat improper computer access with the severity it deserves.

The Police Service is reluctant to criminally charge staff involved in the misuse of confidential information. The Crimes Act stipulates that it is an offence for a person to intentionally obtain access to a program or data stored in a computer *"without authority or lawful excuse"*.

Another sergeant obtained the personal details of a woman he had met briefly, using them to ...make allegedly harassing telephone calls.

Of particular significance from a disciplinary viewpoint is a decision handed down by Police Tribunal Judge John Sinclair on 13 April 1995. This related to a case in which a young female constable had accessed the details of a number of rugby league stars to find out what make of cars they drove. Judge Sinclair stated that no penalty short of dismissal from the Police Service would be appropriate for the constable's actions. His summation reflects our view on the subject:

> *"The use of the Police Computer Information Service* [PCIS] *for any reason other than official purposes is a serious breach of the law and a serious breach of the responsibility expected and demanded of any police officer ... Improper access to information stored in this system cannot be tolerated. Excuses or claims in mitigation based on 'stupid games' and 'practical jokes' are quite unacceptable. Every citizen of this State is entitled to be confident that any personal information in the PCIS will be properly protected from unauthorised disclosure".*

Arresting situations

We continue to receive complaints about wrongful or unnecessary arrests and assaults in custody. Despite the introduction of court attendance notices and the availability of the summons procedure, police still make arrests in situations where it is not warranted.

Many police do not seem to appreciate the effect that arrest has on people, especially when it is accompanied by violence. This kind of complaint can be seen as trivial compared to high profile issues such as police corruption; it is anything but trivial for the people involved.

Case one

A nine year old boy reported to police that he had been punched and kicked by another boy. He had no bruises but the constable believed his story and immediately drove to the other boy's home to question him.

Within minutes of knocking on the door, the constable arrested the boy's 20 year old brother for hindering police and forced him from the house. On the way to the paddy wagon the constable allegedly rammed the young man's head into a pole supporting the carport. In defence of her son, the boys' invalid mother grabbed a broom and hit the constable. A neighbour saw the constable throw her against her car. The boy was then taken to the police station, where he says the constable punched him in the face twice. Immediately on his release, the youth attended a 24 hour medical centre, where the doctor noted injuries to his face and body.

This office formed the view that the constable had assaulted the boy and his mother and had entered their home without invitation. His mother said the incident left her son with nightmares and that he was afraid to leave the door to their home unlocked.

The Director of Public Prosecutions is examining the case to see whether the officer should be charged.

Case two

Two months later, the same constable was working on Christmas Eve. Another officer later reported that he saw him punch a prisoner who was in the dock. The prisoner said he told the constable that he didn't want to lose a ring which was being removed from his finger. The constable allegedly responded, *"What, this ring?"* and jumped on it. The prisoner then said *"You're a hero, aren't you?"* and was punched in the face. Criminal proceedings have been initiated for assault and malicious damage and the Police Service has advised that, if the officer is found guilty, consideration will be given to dismissing him from the service.

Case three

A prisoner who cut his wrist while in custody told the officer investigating the incident that he had been assaulted by police when he was arrested two days earlier. Bruises to his face and chest were photographed and the assault allegation was then investigated separately. It was found not sustained. The report stated it was possible the bruises were present before

Thank you very much for all you've done for us.
A complainant

the arrest and commented critically on the fact that the prisoner waited two days to complain of the assault.

The prisoner alleged that he was punched in the face just after being photographed. When we obtained the photograph, it showed no bruising to the face. We contacted the solicitor who had appeared for him in his bail application the morning after the alleged assault. The solicitor said that his client had complained to him and had showed him bruising to his face and body.

Despite the introduction of court attendance notices and the availability of the summons procedure, police still make arrests in situations where it is not warranted.

The allegations of assault were put to the court and the solicitor asked that his client be given access to a doctor so that his injuries could be properly noted. The magistrate noted that the prisoner needed to see a medical officer and that he *"should be given access to an officer to whom he can make a complaint"*. Neither of the magistrate's directions were complied with.

Subsequently, the solicitor obtained a transcript of the proceedings and sent this along with his own notes of the prisoner's injuries to the inspector from Internal Affairs who was supervising the investigation into the prisoner's self-inflicted injury to his wrist. Though he knew that another officer was investigating the allegations of assault, he did not provide him with this important evidence.

Instead, he passed the papers on to the sergeant investigating the slashed wrist incident, who did not include the documents in his report and did not refer them to the other investigator. We found the way the inspector and sergeant dealt with the documents was at best negligent and at worst a deliberate attempt to suppress evidence.

The Department of Public Prosecutions has recommended that the officer who allegedly punched the prisoner be charged with assault. The Service Solicitor is examining the papers to decide whether departmental charges should be preferred against the officer, the inspector and the sergeant.

Case four

A 19 year old boy was riding his push-bike home through a park after school when he was stopped by a police officer because he was not wearing a helmet. A conversation followed, and according to the boy the police officer said to him, *"Next time you address me you call me sir because I'm goddam f...ing God where you're concerned, you got that?"* He then said, *"I could take your bike if I wanted to"* and tugged at it. The boy said he was holding on to the bike, which seemed to infuriate the officer. The boy said, *"Immediately I was staggering backwards after he had punched me just below the left eye...As I was staggering backwards I muttered in shock 'Oh man fungulo'"*. According to the officer, the boy swore at police when stopped and tried to ride off. The officer grabbed the bike and the boy tried to pull it away, shouting, *"Get f...d, it's mine, I need it to ride to school"* and raised his fist above his shoulder in a threatening manner. The officer then pushed him away, striking his face.

The police officer could have dealt with this situation by issuing an infringement notice. Instead, it escalated into assault and the arrest and handcuffing of the boy. He was charged with using offensive language, assaulting police and resisting arrest. His solicitors wrote to the Police Service asking that the charges be withdrawn and providing character references which spoke of his courtesy and politeness and his lack of aggression. The charges were withdrawn.

The boy suffers from headaches, has difficulties sleeping, and is frightened of being in the house alone as a result of the incident.

Case five

A couple who bought a car from a woman became embroiled in a dispute with her about a parking fine she had left in the car. She rang police and told them that she had left a dictaphone in the car and that the new owners were refusing to return it to her. A police officer rang the couple and spoke to the wife. The wife says that he screamed at her to *"give the f...ing dictaphone back"* or he would come and arrest her. The officer denies he swore and claims the wife at first admitted having the dictaphone and then denied all knowledge of it.

About an hour later two police arrived at the couple's home and demanded they hand over the dictaphone. When the couple denied having

the dictaphone, the wife was arrested. The officer physically removed her from the house, while her two young children cried and clung to her.

At the station, she was asked her personal details, which she refused to answer. She was cautioned and asked some other questions. At this stage she began shaking violently, crawled into the corner of the interview room and became hysterical. At this point her husband arrived and was allowed to take her home. More than three months after the arrest, a summons was issued.

Many police do not seem to appreciate the effect that arrest has on people, especially when it is accompanied by violence.

The woman's doctor wrote a letter describing the effect on her patient:

> *"After her release, she had accepted that the arrest was a dreadful mistake, but still had not recovered from the anxiety and humiliation of the affair. Now to have been charged again has pushed her to the brink of a nervous breakdown."*

When the case went to court, the woman who owned the dictaphone refused to give evidence and the case was dismissed.

When he was asked why he had arrested the woman, the officer replied *"so that I could formally interview her about this matter."* It is unlawful to arrest someone for the purposes of interview. The officer's female partner told the police investigator that she thought it was unreasonable of the woman to refuse to answer questions. This is a basic civil right. The officer has since been admonished for the arrest.

Case six

A complaint was lodged by an Aboriginal man. He was walking through town early in the morning when he was stopped and searched by police. Police claimed there had been a number of break enter and stealing offences committed in the town and that he was a suspect. Nothing was found on him and he was released. Later that night, police drove past him again. The officers claim he swore at them. They stopped their car and an officer took a police baton from the door rack and approached the man. The man says that he was hit a number of times in his face and genitals. The officer admits striking the man three times with the baton but says it was in self defence. He says that when he approached the man, he seized hold of his shirt and threw him to the ground. The man was later charged with using offensive language and assaulting police.

While it is not possible to determine whether the man was struck in an unprovoked assault or in self defence, the whole incident could have been avoided. To confront someone with a baton because he swore on a deserted street in the early hours of the morning seems an excessive response.

Strip searching

Last year's report discussed a case where two women were held while police radioed for a female officer to come and conduct a strip search. The search was conducted in shrubbery on the side of the street. This case raised the question of whether the power to stop, search and detain allows police to remove the person detained from the immediate location.

In response to the Ombudsman's concerns, the Police Service obtained advice from the Crown Solicitor that the power to stop, search and detain extends to being authorised to remove the detained person to the nearest appropriate place where such a strip search can be conducted with the minimum of embarrassment to the person involved. This does not necessarily have to be a police station. The Ombudsman believes these powers must be exercised with appropriate sensitivity.

Drinking on duty

We received a significant number of complaints concerning police receiving free alcohol or meals from licensed premises and police drinking while on duty.

In the first group of these complaints there is evidence of either a misunderstanding or blatant disregard for Police Regulations which proscribes receipt by police of free alcohol or food by police from licensed premises. Some licensing police apparently believe they are entitled to accept drinks or meals offered while on duty. The Police Service and the Liquor Licensing Board have each printed, in their respective newsletters, the Police Service's policy along with comments on this issue from the former Commissioner of the ICAC.

I would like to express my appreciation in regard to your correspondence and the manner in which the matter was handled by the office. To be honest, in the beginning I did not really expect my complaint would be followed up properly. However, now I am very pleased there is someone I can rely on in such a situation.
A complainant

The Ombudsman is negotiating with the Police Service for strict limitations regarding drinking while on duty. The police regulations state that police must not be under the influence of liquor while on duty or in uniform. It is our view that police should not drink alcohol while on duty except in limited approved circumstances.

The Ombudsman is negotiating with the Police Service for strict limitations regarding drinking while on duty.

In view of media reports about evidence given by police to the Royal Commission concerning consumption of alcohol on duty, the Ombudsman believes a policy review in this area is timely.

Two complaints concerning drinking on duty illustrate some of the issues.

Case one

One complaint concerned an inspector who arrived at a crime scene holding a stubby of beer. He argued with the sergeant who was in charge of the offender and was seen to consume the beverage in front of several uniformed police. The inspector admitted to consuming stubbies in the police vehicle. Any alcohol consumed on duty undermines the public perception of police as professional and disciplined. The issues in this complaint were found sustained and departmental charges are pending.

Case two

Another complaint concerned a constable who completed his shift at 11pm and returned home where he remained on call. On his way home, a member of the public saw his police vehicle wandering between traffic lanes. Cars behind did not attempt to pass the police vehicle despite the fact that it was travelling slowly. At one stage the police vehicle sped up and then slowed down before driving over at least six large orange rubber witches hats placed across the left lane. The member of the public rang 000 and gave a description. The constable was interviewed sometime after he arrived home. He denied he had been drinking and stated his erratic driving was due to tiredness. The investigating police officer observed the constable was unsteady on his feet, that his speech was slurred and his breath smelt of alcohol. The constable was interviewed again about five days later. He asserted that his driving was due to tiredness and he only consumed alcohol after he arrived home. He claimed he had consumed four or five glasses of scotch whisky which he didn't usually drink. The Police Service has advised that the constable is to be served with a negligent driving charge, will be departmentally charged for being untruthful and will be admonished for consuming alcohol while on call.

Security of drug exhibits

In August 1993 the Comprehensive Audit Section of the Police Service conducted a random audit at a Police Station. The auditor discovered a number of anomalies concerning the Exhibit Register in which police record evidence for court proceedings, including drugs confiscated during or after arrest. An investigation revealed that in February 1993 a small quantity of drugs was discovered in the mail by a prison officer at a nearby correctional centre. A number of deficiencies were identified in the handling of the exhibit by police.

The exhibit was delivered to the Lidcombe Analytical Laboratory for analysis in a security bag. On arrival laboratory staff discovered the security seal had been broken. The laboratory staff refused to receipt the exhibit. The officer returned to the police station and the issue of the drug exhibit was discussed by the Patrol Commander and the Exhibits Officer. It was decided that although the security seal had been broken that the drug exhibit was 'intact'. The exhibit was removed from the bag and put into a new security bag so that it could be sent back to the Lidcombe Laboratory. The original security bag with its broken seal was destroyed. The Register was incorrectly endorsed with respect to the movement of the drug bags, and the detection of the broken security seal and refusal by the Lidcombe Laboratory were not reported to the District Commander.

While credit is due to the Police Service auditors who identified the deficiencies at the police station, the investigation revealed ongoing procedural weaknesses with respect to the security of drug exhibits. There is currently no procedure through which the Lidcombe Analytical Laboratory notifies the Commissioner or the Ombudsman of breaches to procedures relating

to security drug bags. The Police Service does not have security drug bags for larger volume exhibits. Large volumes of marijuana are stored in Multi-Ply Paper Bags which are sealed using staples covered by plastic sticky tape. The relative insecurity of the larger bags and the development of a protocol with the Lidcombe Analytical Laboratory are issues that need to be addressed by the Police Service.

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Failure to lay charges in time

There have been a number of cases where the Police Service's delays in investigation have led to criminal matters against some police officers becoming either statute barred or prejudiced in some other way.

Case one

An internal audit identified a police officer conducting improper computer accesses. An investigation found the allegation sustained against the officer. The police report was not forwarded to the Ombudsman until legal advice was obtained from the Department of Public Prosecutions (DPP) on the application of section 309 of the Crimes Act. This section provides for criminal prosecution for unlawful computer access. The advice from the DPP stated that prosecution could not be undertaken because the matter had become statute barred-more than six months had elapsed since the incident and a charge could therefore not be laid. The Ombudsman has sought further advice on the cause of the delay.

Case two

An on-duty officer had an altercation with patrons at the hotel where he had been drinking. Driving to the police station after the incident, he blew out two tyres and damaged the wheel rims of his car after apparently driving over the gutter more than once. Nevertheless, he continued to drive to the police station. The constable was described as being well affected by alcohol according to police witnesses at the police station. He failed to provide a sufficient breath sample for the alcometer when asked to do so, complaining of a sore mouth.

This matter became the subject of an internal police complaint and the investigator recommended the officer be charged with failing to undergo a breath test. Despite this finding, the Police Service did not charge the constable within the statutory time limit of six months. As a result of the night out, the constable has been departmentally charged with five counts of misconduct.

Case three

An off-duty officer allegedly directed offensive language at his neighbour. The complainant and two other witnesses made a statement to police in May 1994. In July the police investigator recommended the officer be charged. The Assistant Commissioner, Professional Responsibility is required to give approval before an officer is charged with an offence. The matter was referred to the DPP in September 1994. In October, the DPP provided advice that there was sufficient evidence to warrant a charge and warned that the matter would be statute barred on 1 November 1994. The Police Service failed to have the constable charged within the statutory time frame. The Police Service has since admonished the officer.

Case four

An unmarked police car hit a 15 year-old girl, throwing her into the air. As she came down, her head struck the rear vision mirror and she was thrown clear. The car did not stop.

The young constable who claimed he was driving says he did not stop because he thought the girl was a boy who had lunged at the car. He says he heard only a small bump, consistent with an object striking the car. He drove on and flashed his lights at another unmarked police car travelling in front of him. The two cars pulled over and the constable conferred with a middle-aged sergeant. Together they inspected the car and noted only a very small dent on the front nearside guard.

The constable claimed he noticed another dent and that the mirror was missing after he arrived home. He reported the matter to his supervisor and underwent a breath test.

An investigation by the Accident Investigation Squad, North West, decided the constable could be charged with not stopping after accident and rendering assistance. The report was

Thank you for your firm response to the police and it is hoped this may inspire the Internal Affairs to be more thorough in the further investigations.
A complainant

not delivered to the Ombudsman until more than six months after the completion of the investigation. By then, it was too late to prefer charges.

We assessed the investigation report and found that eye witnesses who had followed the accident car to get its number had seen the car parked by the side of the road with no other car nearby, and a man in his forties standing beside it. Because they only got half the number, they went around the block and came past the car again. They saw that a second car had now joined the accident car, and a young man in his twenties was standing by it. This evidence pointed to the accident car having been driven by the sergeant, not the constable. The sergeant was never breath tested.

We found other matters the police investigation had failed to identify. The police report stated that the victim was *"suffering only soft tissue injuries"*. In fact, she had to undergo an operation on her nose and months later still had problems as a result of injuries to her legs and feet.

We recommended that the papers be assessed by the DPP to see if charges for the indictable offences of furious or culpable driving, or any other criminal charges, should be preferred. About nineteen months after the accident, the DPP asked a police investigator to ascertain whether the witnesses would be able to identify the man they had seen standing next to the accident car. By that time, the answer was "no".

In response to concerns raised by the Ombudsman about delays causing matters to be statute barred, the Police Service has introduced new procedures to remedy this problem. We will continue to closely monitor this issue.

Conciliations

Conciliations are now an important and recognised part of the overall strategy for handling police complaints. Almost one third of matters were conciliated this year.

A strong commitment to conciliations is paying dividends in many ways. The process is simple, flexible and quick. More importantly perhaps, conciliation generally results in a high level of complainant satisfaction and can provide a valuable learning experience for the officer concerned. The process enhances the public's perception that the service is responsive to their needs.

An added benefit is that the resolution of complaints by conciliation is an efficient use of resources. This is important in an environment where increasing awareness amongst the public of the right to make a complaint has resulted in an increasing volume of complaints.

For conciliation to succeed it must be accepted that police officers sometimes make mistakes. It must also be recognised that the public does not always understand the role of the police.

Experience has shown that the role of the police conciliator is significantly different from the accustomed role of police officers. A major training exercise is currently underway to improve the skills of police conciliators. This accords with the Ombudsman's view that training is vital to the success of conciliations, which should ideally be undertaken by skilled conciliators equipped with adequate resources.

Conciliation survey

We have continued to survey complainant attitudes to conciliation. Of the 1038 successful conciliations, 471 returned the survey, a response rate of 45%.

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:

- 376 respondents (81%) were satisfied with the way their complaint was handled;
- 260 respondents (57%) thought that the Police Service might improve as a result of the conciliation process; and
- most respondents (402 or 86%) were satisfied with the manner and approach of the police officer who handled the conciliation.

It is clear that most complainants are happy to conciliate if an apology is offered by the Police Service. Our survey revealed that 61% (267) of complainants felt an apology was a factor in their decision to conciliate. More than 70% (317) of respondents felt that a senior officer undertaking to speak to the officer who was the subject of the complaint was a factor in their decision to conciliate.

For 24% (105) of respondents, the fear of damaging the career of the police officer concerned played some part in the decision to conciliate.

The fear of becoming involved in long disciplinary proceedings or court processes was a factor for 20% (83) of respondents but was not a factor for 80% (335).

...conciliation generally results in a high level of complainant satisfaction and can provide a valuable learning experience for the officer concerned.

Concern about possible intimidation or threats by police officers conducting the conciliation, was a factor for 6% (26) of respondents but was not an issue for 94% (387), and the fear of future harassment for failing to conciliate was a factor for 30% of respondents but played no part for 70%.

The Ombudsman continues to review the survey responses as a part of the monitoring of the conciliation process.

The integrity of the system

Due to recent agreements between the Ombudsman and the Police Service, all information relating to oral conciliations is now collected centrally by the Police Service and passed to the Ombudsman.

The Ombudsman continues to audit and survey all conciliations to ensure the integrity of the system.

This year, with the exception of some minor procedural problems, the audits showed that the process was being carried out correctly.

Despite this there are still problems with some specific conciliations. Examples of problems with conciliations include:

- police requesting complainants to sign blank conciliation forms;
- police arriving at complainants' homes uninvited and unannounced;
- one police officer forged the complainant's signature on the conciliation form; and
- a police officer, who was witness to the initial incident, appearing to conduct the conciliation.

The Ombudsman treats such breaches as serious and makes appropriate recommendations to the Commissioner.

Prosecution of a witness for untruthful evidence

A person who gave untruthful evidence at an inquiry by the Ombudsman has been prosecuted and recently pleaded guilty to criminal charges in respect of that evidence.

In May 1993, our office finalised a report on a major investigation into a complaint about the conduct of police. Included in that report was adverse comment on the untruthfulness of two police officers and a civilian during their sworn evidence at an inquiry held for the purpose of the investigation. Our office recommended that this aspect of the matter should be referred to the Director of Public Prosecutions for consideration of possible criminal charges of 'perjury' or similar offences. (For further details see our 1993 annual report, pages 52-58.)

The Director of Public Prosecutions was of the opinion that there was sufficient evidence to bring two charges of 'perjury' against the civilian witness. These charges were preferred. In the event, the witness pleaded guilty to 'false swearing' in July 1995. The court is yet to determine the penalty to be imposed for the offences.

This matter illustrates the sort of sanctions which are available against those who give untruthful evidence or make false statements in the course of investigations by our office.

I would like to thank you sincerely for the time and effort you gave my son's complaint.
The Office of the Ombudsman is certainly needed to help overcome the discrepancies and unfairness that appears often in our Law Courts.
I can now only hope your recommendations are acted upon.
A complainant's mother

All in the family

Police face ethical dilemmas when dealing with family and acquaintances. Where possible, another police officer should be given responsibility for an investigation where there is a real or perceived conflict of interest. In country areas there is an even greater likelihood that police may have to deal in an official capacity with a family member or friend.

A young driver was involved in a motor vehicle accident in the country. The driver telephoned the police station to report the accident and a patrol car was dispatched. At the accident scene, the sergeant in charge of the incident declared that the responsible party could not be established and no further investigation would be required. Several days later, the mother of the other driver telephoned the police station to question this decision and another police officer was sent to the accident scene. The young driver, the son of the sergeant originally dispatched to the accident scene, was eventually charged with negligent driving.

The Ombudsman was notified by an anonymous complaint, and the Police Service was asked to provide a background report in order to help decide whether an investigation was warranted. The first report was considered substandard and our investigation officer noted several discrepancies in the sergeant's story, including the fact that the sergeant had prepared two traffic collision reports. The first report contained the original finding that neither driver was at fault. The second report, dated to look as though it was completed on the date of the accident, showed that the sergeant's son was to be charged with negligent driving after the traffic officer directed the sergeant to do so. If an honest mistake had been made, the simple solution would be to amend the original report rather than produce a fresh report and back date it.

In lengthy correspondence the Ombudsman pointed out that the sergeant's actions were highly suspicious yet the investigating police continued to endorse the sergeant's actions. The Ombudsman wrote to the Assistant Commissioner, Professional Responsibility:

> *Notwithstanding the retinue of omissions, deletions and discrepancies apparent in the reports of inquiries, there is an obvious failing by* [the sergeant] *which is paramount in this matter. When* [he] *attended the accident involving his son it is reasonable that he should have declared his relationship with* [the driver] *and absented himself from further involvement. Such frank behaviour would have lent an air of innocence to the sergeant's actions and the subsequent police handling of the complaint. As it stands, there is an entirely different air about this matter.*

The matter was sent for formal investigation, including the allegation of substandard enquiries. The sergeant was eventually charged with neglecting his duty and misconduct and fined $1000 by the Police Tribunal. The police investigators were instructed by their District Commander on the requirements of thorough, independent and professional investigations of complaints about fellow officers.

Hard labour

A heavily pregnant woman and her friend were arrested for shoplifting early one afternoon. The women were taken to the police station and questioned and were then taken to their homes, which police searched. At about 6.45pm they were taken to Sydney Police Centre for charging. Shortly after their arrival, while the pregnant woman was talking to her husband on the phone, her waters broke. She was rushed to a clinic in the cell area where she gave birth around 7.15pm.

The woman says that she started to feel *"hot funny pains"* soon after her arrest. She told a constable about it, but she says that he *"did not take much notice"*. On the journey to her home, she told police she was having pains. At her home, she spoke to her husband about the pains and he asked the constables to look after her. One of them told him not to worry, that if there was any sign of anything happening, they would take her to the hospital or call an ambulance.

When they got back to the station, the pains were worse. The woman asked if she could call the hospital to see if the pains were normal but the police told her to wait. She says:

> *They might have thought I was pretending because at one stage when* [the constable] *was asking me questions I couldn't answer him because I was in the middle of a contraction and he turned around, and this is the only time he was nasty, he said, "Look, you can't get out of*

answering, you can't do anything to get out of answering the questions." And then I apologised and said "I'm sorry, I just couldn't talk then"...it was pretty bad, it was pretty heavy!

The constable's comment, apart from anything else, ignored her right to silence.

She asked police for a bit of paper to write down the times her pains occurred, to see if there was any pattern. The times she wrote down showed that she was having contractions at two to five minute intervals just prior to her transfer to the Sydney Police Centre. On the way there, she begged to be taken to the hospital, saying, *"Look, can you just take me there, you can wait with me because I'm going to have this baby."* The officer replied, *"Look...after they charge you...I'll take you up there...and they can have a check up or if not, I'll just drop you home."*

Once at the Police Centre, she found she could not walk. She had to be helped into the dock. She asked to ring her husband and it was then that her waters broke. One of the police described the baby's condition when it was born:

"He was blue..he'd swallowed...a lot of the placenta and the fluid and they couldn't get him to breathe properly and he was staying blue and getting bluer and bluer...he was in a fair bit of distress."

It was only when the ambulance officers arrived that the baby's airways were cleaned sufficiently for him to be removed with his mother to hospital. The baby remained in the hospital in a humidicrib for three days after the birth.

Had the ambulance officers arrived later than they did, the consequences could have been tragic. In addition, the woman was suffering from high blood pressure, which meant that there was the danger that she might suffer a stroke during labour.

The woman's husband had no idea what had happened to her after he had spoken to her on the phone. He had rushed to the hospital, but his wife wasn't there. He says:

"I rang the police station and I got the run around until about the third phone call. I got a sergeant I think. I told him who I was and that my wife was there and she was pregnant, whatever. He said, 'Oh yeh, you've had a son.' Over the phone I got told by a police officer that I'd had a son. I was just sickened...[the police] *come to the hospital and in the boot of their car they had her clothes and shoes that were all bloodied and wet and he just said, 'Oh, there's your stuff.'"*

The Police Service has complied with our recommendations that it apologise to the woman and her husband, and that the officers be admonished.

A sergeant prepared an occurrence pad entry and briefing note about the incident. Both emphasised that the woman had not shown any concern about her condition or the treatment she had received from police. The briefing note concluded jocularly: *"Mother and police are both doing well, as well as the baby"* and was faxed to the Police Service's Media Unit at 10.23pm that night. The unit subsequently issued a press release outlining the facts of the case and stating that the Office of the State Commander would be conducting a review.

The incident became the subject of widespread media attention, much to the distress of the baby's parents. It appears that journalists were able to identify the woman and her husband from details released to them by the Police Service, in contravention of the Commissioner's Instruction which requires police to protect the individual's privacy when providing information to the media.

Despite the report that the matter was being investigated, it was not until the woman appeared in court a year later that anything was done. When the magistrate heard what had happened, she said she was *"appalled"* at the treatment the woman received and she complained to the Police Service.

The subsequent Internal Affairs investigation found the complaint not sustained. We reviewed the matter and issued a report finding the constables' conduct in detaining the woman for four hours in police custody when she was in an advanced state of pregnancy, for a minor offence which could have been dealt with by summons was unreasonable, as was their failure to take her to hospital.

The Police Service has complied with our recommendations that it apologise to the woman and her husband, and that the officers be admonished.

I am extremely pleased with the work of the Ombudsman as I never believed that the matter would be handled in a manner as efficiently as it has been.
A complainant

Unhealthy relationship between police and insurance investigators

The owner of a fishing vessel on the southern NSW coast complained to the Ombudsman that his insurance company failed to settle his claim for the loss of the vessel in Victorian waters because a NSW police constable had telephoned the company and indicated that the owner had deliberately sunk his own vessel. The claim was for $640,000.

We directed the Police Service to carry out preliminary inquiries into the complaint. These inquiries revealed that *"when* [the] *constable was telephoned by insurance investigators, he indicated that he had heard rumours concerning* [the] *vessel. However, he further indicated that he could not substantiate these rumours. It should be noted that no official report has been given to the insurance company"*. The result of these inquiries was relayed to the owner, who then informed us that the insurance investigator responsible for investigating the vessel's loss held a copy of a report in the form of a signed statement made to him by the constable.

Based on the owner's insistence that a police report did in fact exist, we directed that the matter be investigated. The resulting Police Service investigation revealed the constable had allowed an insurance investigator to interview a former deck-hand from the vessel inside the local police station, but concluded that *"there is nothing to state that this is against departmental policy"*. The police investigation accepted that contact between the insurance company and constable had been initiated by the former, and confirmed the existence of a formal record of interview involving the insurance investigator and constable. The police investigation reiterated that "[the] *constable is adamant that he only related unsubstantiated hearsay to the insurance company and did not supply them with a report"*. There was no criticism of police conduct and no recommendations were made for procedural change.

We requested the Police Service to provide us with a copy of the constable's record of interview. In reply the Police Service informed us that the constable had somewhat conveniently shredded his copy of the record of interview, and that the insurance company refused to provide a further copy to either the constable or the Police Service. The Police Service was further asked why the police investigator failed to include in her report notes concerning the content of this document, viewed by her in the course of her investigation. In reply the Region Commander stated that he believed no notes had been made because *"the record of interview did not contain anything of significance"*.

We considered it essential that the contents of the record of interview be examined to establish if it was indeed *"an insignificant document"* as claimed by police. We decided to take over the matter directly in the form of a reinvestigation. The Ombudsman required the insurance company to produce a copy of the constable's record of interview which revealed the constable had contravened Commissioner's Instructions and Police Service Regulations relating to the release of confidential information.

Our reinvestigation found the constable had in fact initiated contact with the insurance company, contrary to the police assertion that the officer was merely responding to enquiries from the insurance company. We deemed such contact to be improper, for it must be remembered that there was no official NSW Police investigation into the loss of the vessel. It was further found that the constable had improperly arranged for a deck-hand to be interviewed by an insurance investigator (who was himself a former NSW police officer) inside the local police station, creating the impression that the insurance investigator was involved in a quasi-police investigation rather than pursuing his company's own commercial interests. It was also found that the police sergeant tasked to investigate the complaint had failed in her duty by making no adverse comment regarding the information contained within the constable's record of interview. Additionally, the constable was found to have failed to make any official documentation concerning his numerous contacts with the insurance company.

The matter has now been referred to the Service Solicitor for consideration to be given to the preferring of departmental charges against the constable and the complaint investigator. Recommendations have also been made for the Police Service to review its lack of instructions governing contact between police officers and insurance companies, the allowing of access to police buildings by non-police personnel, and the need for all significant incidents which occur in the course of an officer's duty period to be

documented in official police notebooks. While no evidence could be found to show that the constable had received any remuneration or benefit for assisting the insurance company to carry out its own investigation, it is clear that such a relationship between police and insurance companies is unhealthy and open to corruption.

The Assistant Ombudsman found the man had been assaulted and robbed as alleged and that the police perjured themselves at the Court hearing.

Assault, robbery and perjury

About nine o'clock on a Wednesday night in February 1992, an electrician finished work installing lights at a restaurant in Cabramatta. He travelled home by train and arrived at Bankstown about two hours later.

The man, a Vietnamese refugee, says he was walking from the railway station when he was stopped by three men in a Holden Commodore. Two of them got out and one hit him on the jaw and twisted his arm up his back. The other searched him and took his wallet, an electrician's screwdriver and a volt tester.

The man was pushed into the car and asked where he lived. He told the men but they drove past his house, parking their car in a nearby street. The driver stayed in the car while the other two men walked the man back towards his house. When almost there, the man who had assaulted him pushed him over. He scrambled up, ran into his house, called 000 and a few minutes later police arrived.

The man was taken to Bankstown Police Station. After making a statement he asked to go to the toilet. As he was returning, he saw the man who had taken his wallet. He identified the man to police. What he did not realise was that the man was a police officer, as were the other two men who had been with him.

The man was questioned further and then charged with possessing an implement capable of entering and driving a conveyance.

The three police officers told a very different story of their encounter with the man. They alleged that when they first saw him they were on foot and he was crouched at the door of a car, screwdriver in hand. When they approached him he ran away. They caught him and took him back to where he said he lived to check out his story.

When the case went to court, the police were confronted under cross-examination with some glaring anomalies in their evidence. The charges against the man were dismissed in April 1993. The Magistrate was scathing in her assessment of the police evidence, saying that they were either grossly incompetent in carrying out their duties, or they were telling lies. She referred a copy of the transcript to the Minister for Police.

The man had already complained to the Ombudsman and an investigation of his complaint had been completed by Internal Affairs in November 1992. In July 1993 he asked the Ombudsman to re-investigate his complaint and on the same date we received a complaint about the incident by the Magistrate.

We commenced our own investigation of the complaints and began hearing evidence in October 1993. The hearings were adjourned when Senior Counsel for the officers the subject of investigation challenged the Ombudsman's jurisdiction to investigate the complaint in the Supreme Court. Though the Ombudsman made a report to Parliament which resulted in an amendment being made to the Police Service Act to resolve the jurisdictional question, the legal proceedings were not discontinued.

On 9 September 1994, in a separate action brought against the Ombudsman by the Commissioner of Police, the Supreme Court held that the Office of the Ombudsman is immune from legal proceedings except where there is an allegation of bad faith on the part of the Ombudsman, or a question of the Ombudsman's jurisdiction to commence an investigation. The Assistant Ombudsman (Police) then notified the Police Service that he intended to resume the investigation.

When the first of the officers appeared before the Ombudsman's inquiry in November 1994, counsel objected to his clients answering any of the questions put, on the basis that they might tend to incriminate them.

During our investigation, material was identified which cast doubt on or contradicted evidence previously given by the officers. It was

Thank you very much for your efficient help in facilitating a satisfactory resolution.
A complainant

decided that questions on these matters should be put to the officers to give them the opportunity to explain. The officers refused to answer each question on the basis that their answers might tend to incriminate them.

A provisional statement of findings and recommendations was issued to police on 10 February 1995. The Assistant Ombudsman found the man had been assaulted and robbed as alleged and that the police perjured themselves at the Court hearing. He also found a number of Commissioners Instructions were breached by the officers and by the police officer to whom the man had reported his allegations. He recommended that the papers be referred to the DPP and the Service Solicitor for advice on whether criminal and departmental charges should be preferred. The police declined to make any submissions or comment on the provisional statement.

On 11 April 1995 the plaintiffs discontinued the Supreme Court proceedings against the Ombudsman and paid costs in the matter.

We are now awaiting the advice from the DPP and the Service Solicitor before finalising the report.

Unreasonable arrest

In July 1994 a young unemployed Aboriginal man was arrested for urinating on a police officer's lawn. He was charged with offensive conduct. Though the police could have made a bail determination, a senior constable decided to take the youth before a justice of the peace at the local court. Bail was granted subject to compliance with stringent conditions, including a $1000 cash deposit.

Not surprisingly, the young man was unable to raise the money. He was taken in the back of a police truck to Dubbo Police Station where he was detained overnight. The man complained the ride to Dubbo was rough and he had to struggle to hang on. This was made more difficult by the fact that he was handcuffed. The charge of offensive conduct was subsequently dismissed by the magistrate, who said that it would have been more appropriate to proceed by way of a court attendance notice.

Our direct investigation into the matter found that once the decision had been made to arrest the man, a rigid process was brought into play. The man's criminal history, including a failure to appear at court and his lack of a permanent residence all went against him. We found a number of police had behaved unreasonably and recommended that they be admonished. No evidence was found that the police actions were racially motivated or malicious. In fact, what occurred in this case was unfortunately not extraordinary and represented what many police would have done in the circumstances.

The Ombudsman's report of the investigation recommended the officers involved be admonished and given training in alternatives to arrest. The report also recommended amendments to the Commissioner's Instructions relating to accused people having access to lawyers and the handcuffing of prisoners.

Raymond Denning's removal from the witness protection program

In January 1995, this office issued a report on its investigation into the decision of the Commissioner of Police, Mr Lauer, to remove Raymond Denning from the Police Service's witness protection program.

Denning, who had provided assistance in criminal investigations and prosecutions, was admitted to the witness protection program in 1991. On his release from prison in April 1993, Denning received protection under the program. However, in May 1993, the Commissioner decided to remove Denning from the program. In June 1993, Denning was found dead.

The report on the matter took the form of a special report to Parliament. As the former Ombudsman observed:

> *"... it is in the public interest that this report be made public, given the publicity surrounding the litigation in the matter and the significance of the issues involved."*

The litigation

In July 1993, Commissioner Lauer instituted legal proceedings in the Supreme Court in an attempt to challenge the former Ombudsman's "provisional report" on the matter. The Court dismissed this challenge in September 1994. The litigation was discussed in detail in last year's annual report (at pages 28-32).

Following the judgment of the Supreme Court, the Police Service provided this Office with further submissions on the provisional report in October 1994. After consideration of those submissions, we prepared our report on the matter.

The Ombudsman's findings

The former Ombudsman's findings were summarised as follows in the special report:

> *...the Commissioner sought to justify his decision to remove Mr Denning from the Witness Protection Program on the basis that Mr Denning could compromise the security of the program. This view was said to be based on two premises. The first was that Mr Denning would re-offend. The second was that Mr Denning would then be in a position to disclose details of the Witness Security Program to other prisoners, thereby undermining the security of the program.*
>
> *I find that the Commissioner's premises for his decision were unreasonable. In particular, there was no convincing evidence that Mr Denning, even if he had re-offended and been imprisoned, would have been able to disclose to his fellow inmates details of the Witness Protection Program of which they were not already well aware. Accordingly, I find the Commissioner's ultimate decision to remove Mr Denning from the Witness Protection Program was itself unreasonable. I also find that the impact of the decision upon Mr Denning was oppressive and that no reasons were given to Mr Denning for the termination of his protection when such reasons should properly have been given.*

The witness protection program

The investigation canvassed the general criteria used by the Police Service for the admission of individuals to the witness protection program and, significantly, for their removal from the program.

At the time when the Commissioner decided to remove Denning from the program, the Witness Protection Plan stipulated the criteria for deciding when protection ought to be terminated. The Plan allowed for the termination of protection where the witness is "unsuitable to be afforded security".

As to this criterion, the report observed:

> *In practice, this ... is invoked where the person...does not abide by the security rules of the Program or the reasonable directions of the protecting officers. In theory, of course, this criterion could be construed very widely.*

Commissioner Lauer said the reason for his decision to remove Denning from witness protection was that Denning posed *"a risk to the organisation"*.

An audit of the Witness Security Unit was conducted following Denning's removal from witness protection. The report on the audit recommended *"that any assessment made of a potential client consider any risk factor to the Police Service"*:

> *If the risk to the organisation is greater than the danger* [to the potential client]*, that person should not be accepted onto the Program.*

The Ombudsman's report made the following comments on this aspect of the matter:

> *The audit of the Witness Security Unit ... has resulted in the introduction of the concept of 'risk to the organisation' to the operation of the Unit....The definition of the concept is informal and its application remains unregulated.*
>
> *...unfortunately, the concept seems to have been interpreted so as to include the risk of political damage to the Police Service, the Ministry or the State Government.*
>
> *The element of political damage is obviously not a valid consideration ... It is not the role of the Police Service to offer its services selectively depending upon its own perceptions of political damage. It is even less valid if it allows its actions to be dictated by what it perceives to be the interests of the government of the day. The amendments to the Plan ... do not entirely allay the suspicion that political considerations have become involved.*

The Ombudsman's recommendations

The recommendations in the Ombudsman's report were as follows:

> *The criterion of 'risk to the organisation' is vague and extremely subjective, and, in its present form, should have no place in the deliberations of the Committee. It is not sufficient to require its introduction as a criterion for assessment without providing any explanation of its meaning or training in its application. The concept should be formally and very specifically defined, or else excluded. ... I recommend that action be taken to rectify this situation.*
>
> *... the amended Plan includes an option for the State Commander to terminate protection where a person is "otherwise unsuitable for participation within the Program". If it is maintained that the State Commander should play a part in the ongoing assessment process, then substantial work should be undertaken to ensure that references are not made to the State*

I am writing to say thank you to your self and all the other staff members who have been involved in my complaint in regards the police department.
Whenever I called to ask for help or for an inquiry, the people I have dealt with have been thoroughly professional, extremely helpful and above all extremely courteous, polite and "down to earth".
It has been a nice surprise to find that there is a public service department that is still human.
Could you please pass on my thanks and gratitude to everyone at your department.
A complainant

Commander arbitrarily or in inappropriate circumstances. I recommend that steps be taken to provide to the Witness Security Assessment Committee clear guidelines as to the circumstances in which the State Commander is to be notified of the inclusion of an applicant within the Program.

The Police Service response

Following publication of the report, the Police Service advised this office:

The possibility that a potential client could represent a risk to the organisation is felt to be a legitimate concern and one which should be included in the assessment criteria. In accordance with your recommendation ... matters ... which could lead to this assessment have been clearly defined ...

These "matters" were outlined in a document entitled "Threat Assessment Principles in Witness Protection". Of particular significance is that under the heading of "organisational" threats is included the issue of "political embarrassment". This was the very matter which the Ombudsman had said should play no part in any assessment of "risk to the organisation".

As to the decision to terminate protection where an applicant was considered "unsuitable", the Police Service advised that it proposed to amend the Witness Protection Management Plan to permit termination of protection where:

- the Witness Security Assessment Committee is of the opinion that the person has placed him/herself in a situation where protection is unable to be provided for clearly stated reasons; or
- the State Commander is privy to information not available to the Committee and reviews the decision of the Committee in that light.

Concluding remarks

We are most concerned that the Police Service has not complied with the recommendations in this matter.

Although the concept of *"risk to the organisation"* has been clarified to some extent, the consideration of "political embarrassment" to which objection was taken has now been formally enshrined as a legitimate consideration in assessing the suitability of an applicant for witness protection. Furthermore, the State Commander may override the decision to admit a person to witness protection on the basis of "information" not available to the Witness Security Assessment Committee. There is no clear definition of the nature of the information which might be considered nor any real indication of how such "information" is to be taken into account.

The Police Service's failure to comply with the Ombudsman's recommendations ultimately poses the risk that an unreasonable and oppressive decision to deny witness protection, of the type taken in the Denning matter, will recur.

The sinking of the *Terrace Star*

In August 1994 the south coast community of Eden was devastated by the tragic sinking of a fishing trawler, the *Terrace Star*. Ollie Mannes and Guy Roberts drowned at Green Cape after their boat ran aground. The sole survivor of the incident, Dustin Garrett, was later charged by police with manslaughter in relation to the deaths of his two crewmates.

The conduct of police over the decision to charge Mr Garrett and in relation to the Police Sea Rescue on the morning of the tragedy quickly became issues of public interest. Local and Sydney based media reported on public demonstrations held in Eden in which supporters of Mr Garrett called for an independent inquiry. The legal proceedings against Mr Garrett prevented the NSW Coroner from conducting an inquiry into the deaths of the two fisherman.

The calls for an independent inquiry by members of the Eden community illustrated important weaknesses in the statutory powers of the Ombudsman to deal with complaints about the police. The absence of an 'own motion' power prevented the Ombudsman from acting in the public interest.

Own motion powers

The Ombudsman has an 'own motion' power in respect of the conduct of public authorities. The Ombudsman can commence an investigation pursuant to section13(1) of the Ombudsman Act whether or not a person has complained to her about the conduct of a public authority within the jurisdiction of the Act. There is no similar provision in the Police Service Act. The Ombudsman cannot investigate the conduct of police or direct the Police Service to commence an investigation without a written complaint

despite the fact that an investigation may be in the public interest.

In August 1994 the office received complaints by telephone from people in Eden and oral requests for an investigation by the Ombudsman. The callers were told of their right to submit a written complaint, however, a request for investigation was not received by the Ombudsman until late February 1995. The public calls for an inquiry could not initially be satisfied by the Ombudsman because of the absence of an 'own motion power'.

Monitoring the investigation

On 1 June 1995 the Ombudsman wrote to Commissioner Lauer to express concerns about the progress of the investigation. Our inquiries revealed the investigation had not commenced despite the direction of the Ombudsman on 22 March 1995. The Ombudsman also asked the Commissioner to respond to reports on ABC radio in which Assistant Commissioner Peate had denied a departmental inquiry was being conducted and claimed the Eden Police had been unfairly blamed for the deaths of the two fisherman.

Commissioner Lauer acted immediately in response and commenced an investigation into the conduct of Mr Peate. Responsibility for the investigation into police conduct related to the sinking of the *Terrace Star* was transferred to the Assistant Commissioner, Professional Responsibility.

On 15 June 1995 Commissioner Lauer notified the Ombudsman that investigation into the conduct of Mr Peate had sustained the issues raised in her letter of 1 June. Commissioner Lauer also advised that he would consult with the Chairman of the Police Board and the Service Solicitor in respect of disciplinary action. In October 1995 Commissioner Lauer advised the Ombudsman of his decision to admonish Assistant Commissioner Peate.

The Ombudsman has not yet received a copy of the police investigation report into the conduct of police in relation to the sinking of the *Terrace Star*.

Coronial inquiry

The charges of manslaughter against Dustin Garrett were dismissed at a committal hearing. As a result the NSW Coroner was able to commence an inquiry into the deaths of Mr Mannes and Mr Roberts. The Coroner's hearing is to commence on 30 October 1995.

Race relations and our police

In January 1995, we made a report to Parliament *Race Relations and Our Police*. The report was the product of an inquiry by this office prompted by concerns on the part of the Ombudsman and the Minister for Police about incidents from which police bias against minority groups or racism might be inferred.

Last year's annual report contains a discussion of the origins of the inquiry and the manner in which it was conducted. A significant feature of the investigation was the preparation of a 'discussion paper' by this office and its distribution to minority groups with an invitation for comments and submissions.

The report *Race Relations and Our Police* made a number of broad recommendations covering the areas of operations, recruitment, and education and training. These recommendations were designed to ensure that the NSW Police Service "better services the needs of the broad community, including the Aboriginal and ethnic communities and other minorities". The report also recommended that there be an audit of the Police Service's achievements in this respect.

The Police Service established a committee to review the Ombudsman's recommendations. That committee has completed its review and its report is currently under consideration by the Police Service.

As to the question of any "external" audit of the Police Service's achievements in the area of race relations, we are unable to exercise a comprehensive audit function as a result of funding constraints. A request for enhancement of our funds to carry out the recommended audit was unsuccessful.

Nevertheless, we have undertaken a number of initiatives as part of an ongoing commitment to the issues raised by the report. These have included consultation with the Police Service about the policing of various Aboriginal communities.

On behalf of our client and his mother we again take this opportunity of thanking your office for the thorough investigation.
A complainant's solicitor

Case studies

Aggressive driving

A caged van was called to transport two apprehended offenders. One detainee resisted, to the annoyance of the officer driving the van. On the return drive, the officer drove the van erratically, throwing the people in the back around violently. One of the men emerged from this rough ride with injuries to his ear which required stitching.

The police officer acting as observer in the caged van lodged a complaint about the actions of his colleague.

The investigation found the issue sustained and recommended that legal advice be sought in relation to possible criminal charges of assault occasioning actual bodily harm.

Immediately prior to issuing the final report on this complaint, we were informed the officer had been found guilty of two assault charges.

The action started in a telephone booth

We are not reluctant to offer praise when it is due and in this case, the speed and thoroughness of the investigation carried out by the Police Service deserves credit.

A woman on the mid north coast, engaged in a conversation from a public telephone, reported to police that she had overheard some juveniles planning a break and enter. As a result, an arrest was made on the same day.

The following day a complaint about an alleged assault by police during the arrest was lodged by one of the parties detained. Little more than an hour later, the region had allocated the investigation to one of its Internal Affairs members.

Two days later, the police investigator had interviewed four police officers involved in the complaint and five civilian witnesses. After a short break in proceedings, the police investigator then interviewed a further four police officers and two more civilian witnesses who were able to provide clear evidence that the injury sustained by the person detained had been self inflicted and in fact this had occurred some time before the arrest.

Eight days after the lodging of the complaint with the Police Service, the police investigator finalised his inquiries. This happened even before the paper work notifying our office of the complaint, as required by the legislation, had time to reach us.

Fortunately, we agreed with the suggestion by the Police Service that the complaint should be fully investigated. We considered the evidence accumulated through the investigation and determined that the allegation was not sustained.

We made a mistake but...

A complaint was received from a man that information tendered by police during his appearance at court was incorrect and did not all relate to him. We directed the Police Service to conduct preliminary inquiries into the complaint.

The inquiries revealed that information tendered at court did not relate to the man but to a person with the same surname and same date of birth. It was found that although the correct information was applied for, an incorrect record was returned. This error was not picked up by the Criminal Records Unit, the prosecuting police or the man's solicitor. While police admitted the record was tendered in error, it did not have a bearing on the penalty imposed. The investigator did however recommend that an appropriate system be implemented to ensure accurate antecedents are tendered by police to the courts.

This matter was referred to the Office of Professional Responsibility for consideration. Advice was received that while noting the circumstances of the case, it saw little value in either amending existing Commissioner's Instructions or arranging for the Commissioner to issue a memorandum. According to the figures and advice supplied, this was a "one-off" occurrence.

While we acknowledged that the situation in this case was somewhat rare and that it would be impossible to guarantee this type of human error did not occur again, it did not negate the fact that the Police Service had made an error in relation to the information tendered in court. It appeared that the Police Service was not willing to accept responsibility for an error it had made.

We recommended the Police Service write to the man and apologise for the error that had occurred. Although this was finally done eight months after the man's original complaint, he was happy the matter had finally been resolved.

Police officers reject High Court criticism

In August 1987, a 21 year-old Aboriginal man was arrested by Major Crime Squad detectives in connection with the arson of a local school.

At his arrest the man denied any involvement. However, within one hour of being transported to the local police station, he had signed a confessional statement admitting his guilt. This admission was the only evidence police had which would justify charges being laid.

The man was subsequently convicted at his trial in the District Court in June 1990, and was sentenced to 18 months hard labour, with an additional term of six months. He was released in December 1991 after serving his sentence. Appeals against conviction followed, both to the Court of Criminal Appeal and in May 1993 to the High Court of Australia.

The High Court found police had not intended to charge the man when they arrested him, and ruled that his arrest had been solely for the purpose of interrogating him. It followed that the arrest had been unlawful and that his confession had been signed while he was kept in unlawful custody. It was further found that the man had been denied the opportunity of contacting a lawyer, had not been given the option of declining to participate in the police interview, and that he had been deprived of the presence of a non-police witness during his interview by police.

The High Court found that this infringement of the man's rights had been both *"serious and reckless"*.

In May 1991 a Sydney Morning Herald article mentioned the critical comments of the High Court in relation to the police conduct. The Police Service subsequently notified us that the circumstances appeared to constitute a complaint about police and an investigation was commenced. The Internal Affairs Detective Inspector tasked to carry out the investigation subsequently applied to the Ombudsman for the investigation to be discontinued, commenting that the two senior detectives who had led the arresting party *"would now be well aware of their duties and responsibilities in relation to interviewing a suspected person and effecting an arrest"*.

In fact, it is clear that at least one of the detectives is not aware of this. When interviewed by the investigator about his role in the affair, he said, *"I further reject the findings of the joint judgement of the High Court of Australia ... and deplore the finding without being given the courtesy of addressing the Court as to the reasons of my actions..."*. Such a stance demonstrates the officer's arrogance and ignorance of the law and is a matter of concern. Furthermore, the application to discontinue the investigation into this complaint, which was refused by this Office, totally ignored the fact that a person judged to be innocent by the highest court in the land had been wrongfully imprisoned for 18 months of his life.

At our recommendation the investigation papers were referred to the Service Solicitor, resulting in the commencement of departmental charges of misconduct against the two senior detectives in charge of the police party that made the arrest. It is of interest to note that in the interim period between the notification of this complaint to the Ombudsman and its resolution, both officers had been promoted from the rank of Detective Sergeant to Detective Senior Sergeant. The Service Solicitor especially condemned these officers for *"their failure to recognise that they had made a mistake, and in particular the rejection of the findings of the High Court"*.

In addition, the Ombudsman has recommended an immediate review of custody procedures, to ensure that anyone who is arrested is brought before the officers-in-charge of a station upon arrival in order to ensure the arrest is legal.

Failure to act

Three teenage boys were assaulted and robbed by a gang of about 25 youths when returning home on the train in the early afternoon. After assistance from the guard and other passengers, the boys alighted at the next railway station and alerted the station master to their

I thank you for all your trouble in trying to provide a good Police Service for the public.
A complainant

plight. The boys had all sustained lacerations and one had a broken nose. They had been robbed of their money and watches. Although police were called, no-one attended the incident and the station master was informed that no police were available. A further call to local police also elicited no immediate action and again police advised that no-one was available. The boys' parents were informed that police would attend their homes later.

As a result of the police failure to act, the offenders continued their train journey unhampered and alighted further down the track. They were never caught. The boys' parents complained about the police inaction to their local member of parliament who forwarded the complaint to the Ombudsman.

Inquiries revealed the police had breached a number of procedures, including failing to respond immediately to a serious incident; failing to provide adequate support to the victims or appropriate follow-up; and failing to initiate appropriate investigation into the incident in an attempt to apprehend the offenders. The complaint was ultimately conciliated to the satisfaction of the victims and their families. However, the Police Service in conjunction with our office determined that the officers directly involved in the breaches would also be disciplined.

Conflict of interest

During an investigation into allegations of an assault on two men at a South Coast nightclub, a local police officer tried to use his influence to have a young man charged with assaulting his friends. He contacted the police station a number of times about the investigation, until he was told by a sergeant to *"butt out"*. A young man from the South Coast was charged with two offences of assault following the investigation, however, there was no inference the investigating officers were actually influenced by the other officer.

In cases such as this there are provisions in the Commissioners Instructions which guide police in the maintenance of ethical standards: *"Where persons with whom you are closely associated are the subject of a police inquiry, you should seek to distance yourself as far as practicable, from that inquiry"*. The police officer in this case did not distance himself from the inquiry, even though he was directed to, and as a result he was admonished by the Police Service for his actions.

We considered the issues raised by this complaint may be of particular importance to the development and training of police officers. As a result we recommended that the issue be brought to the attention of police during training days in the region concerned. That recommendation has been implemented and may help prevent future incidents of this nature.

Getting the story straight

Early one morning in a country town a young driver was pulled over for speeding in the main street. Several witnesses allege the highway patrol officer, a senior constable, struck the speedster with his torch. Assault proceedings against the officer have been initiated. When the officer returned to the police station he spoke with the probationary constable with him at the time. The senior constable wrote out on the back of a copy of the infringement ticket, a version for the probationary constable to copy and sign as his own. This only came to light because the junior officer gave investigating police information in relation to certain admissions the senior constable had made.

As a result of this investigation, the Ombudsman has recommended the senior constable be counselled on the importance of officers preparing separate statements without assistance from other officers who are party to a complaint incident.

Any discussion between officers after an incident should be for the sole purpose of aiding recall. Direct assistance should not be given, or requested, to prepare statements or responses to directive memorandums where each of the officers is a witness to an incident which has become the subject of a complaint or an investigation. This will reduce the propensity for collusion by officers and reduce the likelihood of such allegations regarding the preparation of statements or submissions compiled in response to directive memorandums. The Ombudsman has recommended the Police Service adopt this principle as policy. We await a decision on this matter.

Victim or criminal?

Female victims of violence and harassment often complain the victim is treated like the criminal.

A man was violent towards his wife for five years. When they separated in 1982, he continued to harass and threaten her. In 1991 when he threatened to *"blow her away"*, she took out an order restraining him from approaching her or their child. In the following months he breached the order many times, breaking into her home and branding her on the buttock with an iron, smashing a window, making threatening telephone calls, breaking into the home and cutting the telephone cord, and parking outside the house on a number of occasions.

On the last occasion, he followed his young son and his friend and showed them a bullet, telling them it was for his wife. The day that the boys attended the police station to make statements about the incidents, the man appeared before a magistrate seeking bail. He had been charged with 12 matters, including assault occasioning actual bodily harm.

The young friend and his mother say that during a break in an interview with a detective, the detective told the boy that the man had been released. When the boy told the woman, she became hysterical. Later that afternoon, her son's friend was leaving her house when he came back to say that he had just seen her husband's car. The woman immediately rang the police and then rang various members of her family. She was terrified. As she looked out the window she thought she saw her husband's car drive past, with him in the driver's seat.

When the police arrived, they did not tell her that the man she had seen could not have been her husband. His application for bail had been refused and he was at that moment in the cells. The uniformed police assigned to this call had been told by the two detectives in charge not to tell her this. Police interviewed her, then left.

A month later, the husband was convicted of nine of the charges against him and sentenced to nine months imprisonment. Some days later, police arrested his wife and charged her with public mischief. Later they added to this an indictable charge of making a false accusation.

When she appeared at court, the indictable charge was withdrawn and the magistrate dismissed the other charge, saying that her identification of the man who drove past her house as her husband could have been *"an honest mistake induced by fear"*.

The woman complained to us that police had deliberately lied to her in order to entrap her. Her complaint was investigated and the two detectives denied having told the woman her husband was free. They did acknowledge that they found out that he was in the cells shortly after the woman left the station and decided not to tell her to see if she would make false allegations. Her complaint was found not sustained by the Police Service.

However, we found the two detectives handling the case had acted unreasonably in failing to inform the woman that her husband was in custody as soon as they were aware of that fact. They were well aware of the history of violence involved and of the woman's distress on hearing that her husband had been released. Yet they chose to keep her in fear.

We recommended that both detectives be admonished for not telling the woman that her husband was in custody as soon as they became aware of the fact. This recommended action was adopted by the Police Service.

Domestic justice

A woman with two young children took out an apprehended violence order against her de facto. The man ignored the order and assaulted the woman as she tried to leave her house. He was charged and fined.

Police took the woman and her children to a refuge which she was too frightened to leave. The man continued to ignore the order and police attended the refuge twice to speak to the man about breaching the order. While police took the man to the police station he was released each time.

A refuge worker contacted the police to demand action be taken. Assurances were provided by the patrol commander that the offender would be arrested and charged with breach of the apprehended violence order. The senior constable involved in the matter was directed to find and arrest the man. The

Your officer's address to the gathering, concerning the roles and functions of the Ombudsman's Office and the requirements and handling of complaint files, was very interesting and of tremendous benefit to all Police personnel present.
I would like to take this opportunity to thank you for making him available to be present on the day. In addition, please convey my sincere appreciation to him for his presentation at the seminar and his continuing efforts to maintain and improve the excellent open channels of communication which currently exist between your office and the Police Service personnel in general.
A police officer

complainant rang and was given a personal assurance that she would be safe to go out. That night she went to a Leagues Club. Her de facto was there and he punched her in the face.

The man was arrested and charged. The patrol commander initiated a complaint against the senior constable. After being interviewed, the senior constable visited the complainant and said he was *"in a bit of trouble for not arresting* [the man] *at the refuge and if the Sarge comes to see you could you please say that you were happy with the police work at the refuge"*.

A range of departmental charges are currently being considered against the senior constable. These relate to neglect of duty and misconduct for attempting to influence a witness. The Ombudsman found each of the issues sustained and requested the Police Service review the evidence for further departmental charges for untruthfulness. The Ombudsman described the officer as disinterested, unprofessional and lacking the degree of commitment and motivation required for the rank of senior constable. The Ombudsman has recommended demotion or dismissal if any of the departmental charges are proved.

Injustice conciliated

One evening in June 1993, a middle aged man drove into a small town on the north coast of NSW. Although his job entailed extensive travel throughout NSW and Queensland, he had never visited this town. After he obtained a motel room, he drove to the town centre to look for a restaurant in which to eat. He spied a Chinese restaurant around the corner on the right. He indicated, turned right and parked.

A marked police vehicle, which had been behind the man's vehicle, also turned right. The police officer in the vehicle advised the man that he had turned right at a 'No Right Turn' sign. The man explained to the police officer that he was a stranger to the town. He also walked back to the intersection to examine the sign which he had failed to notice. The sign was bent back and could not be read. He also explained this to the police officer.

The constable advised him that this was irrelevant and proceeded to issue him with a traffic infringement notice.

The man was very upset. In over twenty-five years of driving, he had never received a traffic infringement notice.

The man returned home embittered and angry. He rang the Infringement Processing Bureau (IPB) where he was advised he would need to have photographic evidence that the sign was damaged in order to contest the fine successfully. As the town was several hundred kilometres from the man's home, it was not possible to obtain photographs. The man also wrote to the IPB but this letter was not acknowledged. He felt he had no option other than to pay the fine and he did so.

Over the next 18 months, the man campaigned to have the injustice remedied. He corresponded regularly with the Police Service and the IPB. He made many telephone calls. The incident had completely undermined his confidence in the New South Wales Police Service.

In February 1995, we received a copy of one of his letters of complaint. The matter was referred for conciliation which was conducted by a senior sergeant from another north coast town. He had several telephone conversations with the man, attempting to find a way to resolve his problem. It was finally agreed that the senior sergeant would speak to the constable and remind him of his obligation to conduct himself professionally in his dealings with the public and that it is sometimes appropriate to issue cautions rather than infringement notices.

However, conciliation could not resolve the issue of the fine. In a letter to the manager of the IPB, the sergeant requested that the IPB consider refunding the man the amount of the fine. In July 1995, the IPB advised the man that it would refund him the amount of the fine and amend his driving record to reflect the fact that his actions in 1993 warranted a caution rather than a fine.

In August 1995, we received a letter from the man. He thanked us for our role in assisting him obtain justice. He also advised that he fought the fine as a matter of principle and that he would be donating the money to charity.

Code of silence

The police culture of 'protecting mates' is a continuing problem.

One evening in late spring 1994, police at a suburban patrol held a barbecue on police premises. A large amount of alcohol was consumed at the barbecue despite the fact that most of the police were on duty. The police then continued the party at a local licensed club. They were still in uniform. They completed their revelry with a trip to a park where they consumed more alcohol. The police included constables, senior constables and two student police.

The matter was reported by police officers who chose not to participate in the party. They were concerned that the other officers were not working while on duty and that they had driven departmental police vehicles while under the influence of alcohol, bringing the Police Service into disrepute with erratic driving.

The matter went to investigation immediately. Some of the police officers the subject of complaint were interviewed twice. On the first occasion, they made a number of denials. On the second occasion, under further questioning, they admitted that they had been untruthful to the investigator in the first interview.

When questioned in relation to this, one of the student police officers stated:

> *"It was inferred that if I said I was driving it would be instant dismissal...Ever since I became involved with the police, the emphasis put on loyalty and camaraderie by serving police officers along with student police officers has been very clear. I felt the temptation in this case was more an expectation of me."*

The investigator in the matter noted:

> *"There is no doubt that when they* [the student police officers] *were first interviewed, they felt under pressure from and loyalty to the police involved. This does not excuse the untruthfulness, it only goes to explain the peer pressure they were under."*

Both student police officers were discharged from the service. Other police are facing departmental charges for disobedience and untruthfulness.

An arresting photo opportunity

A young Japanese student, who had only just arrived in the country, telephoned her mother to tell her that everything was going well.

Unfortunately she made the call from a telephone box outside a house where a drug deal was going on. Plain-clothes police were observing the 'deal'. They also took careful note of the Asian girl in the phone box. They concluded she must be a 'cockatoo' on the look out for police.

The police raid went without a hitch. At the same time as police busted into the premises, the unsuspecting student finished her call. As she walked down the street she was grabbed by two plain-clothes police officers. With little understanding of English, the student thought she was being mugged and a struggle ensued.

On learning of the true state of affairs all parties were genuinely sorry and the complaint was successfully conciliated with the help of our office and an interpreter.

The meeting concluded with the Japanese student producing a camera to request a photograph of her and the 'famous' police conciliator for the folks back home.

I am writing to let you know I have received the documents and that I am very pleased that you have found a case to answer. I am also very grateful to you and your fellow investigators on doing such a thorough investigation.
I'm pleased that justice will be done, at times my faith in the system failed me. It's good to see justice prevail not just for my benefit, but the benefit of others who happen to fall foul into the hands of officers who think they are above the law.
A complainant

Public authorities

Overview

This section covers complaints about government departments and statutory authorities other than police, prisons, local council and freedom of information matters.

This year we received 965 written complaints and 3051 informal oral complaints about public authorities other than those listed above. We also received 68 requests to review our initial determinations. A further 377 written and 3062 oral complaints were received about authorities, organisations or individuals not within our jurisdiction. We deal with telephone inquiries and oral complaints on the spot by providing advice or referral, negotiating with the public authority, or assisting the person to lodge a formal complaint.

The level of written complaints about general authorities has remained relatively static over the past few years. However, in comparison to the previous year, there has been a 33% increase in the number of oral complaints received about general authorities within jurisdiction and a 10% increase in oral complaints outside jurisdiction.

During 1994/95, 893 written complaints and 63 reviews about general authorities were determined. A further 358 non jurisdictional complaints were also dealt with. If a complaint falls outside the Ombudsman's jurisdiction, wherever possible appropriate referral information is provided to the complainant.

Preliminary inquiries were conducted on more than half the complaints received that were within jurisdiction and nine formal investigations were completed. Of those, six complaints were resolved during the course of the investigation and were discontinued. Reports were issued on the other three matters. Many matters are resolved without the need to carry out formal investigations.

Staff in the general investigation team deal with all complaints other than police matters and FOI reviews. An upsurge in complaints about local government during the year meant additional resources were diverted to that area.

Given the large number of organisations that come under the umbrella of 'general authorities' and their diverse nature it is difficult to identify overall issues or trends in this area. However, in assessing which complaints we take up priority is given to those matters which identify systemic and procedural deficiencies in public administration or individual cases of serious abuse of power. Examples of the types of issues examined this year and discussed in further detail in this section include:

- the integrity of the Psychologists Registration Board's registration and complaint handing procedures;
- the action taken by the Department of Community Services and the Department of Health to address identified deficiencies in services provided to people with disabilities living in commercially run boarding houses;
- the change in focus of complaints received about the Building Services Corporation;
- the failure to comply with Department of School Education guidelines on suspension resulting in the long term exclusion of a student from school;
- the adequacy of the complaint handling procedures of the NSW Aboriginal Land Council and the Department of Aboriginal Affairs; and
- issues of rail safety, victimisation and complaint handling procedures within the State Rail Authority.

During the year we conducted 10 mediations involving general public authorities. In some of these cases the relevant local council was also a party to the mediation. An agreement was reached by the parties in all but one matter. It is worthy to note that a number of times our offer to mediate was sufficient catalyst for the parties to reopen their negotiations and, with our assistance, resolve the dispute.

Overall, we have noticed a marked improvement in the way various public authorities respond to complaints. The case studies in this section highlight a number of complaints where quick decisive action resolved matters to the satisfaction of the complainants, enhanced the authority's image and was cost effective.

In the coming year we will continue to monitor complaints about general authorities. Particular attention will be given to the impact downsizing the public sector has on complaints relating to service delivery. Traditionally such action has resulted in an increase in the number of complaints to our office.

Outcome of public authority written complaints determined

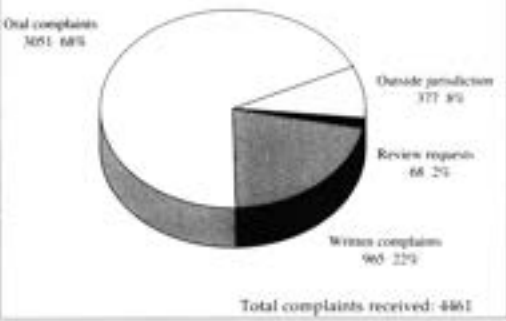
1994 - 1995

Total complaints determined: 893

**'Assessment only' includes declines of complaints that were too old or premature and incidents where the complainant had other means of redress or was provided with advice.*

Public authority complaints received

1994 - 1995



Total complaints received: 4461

Nature of public authority written complaints

1994 - 1995

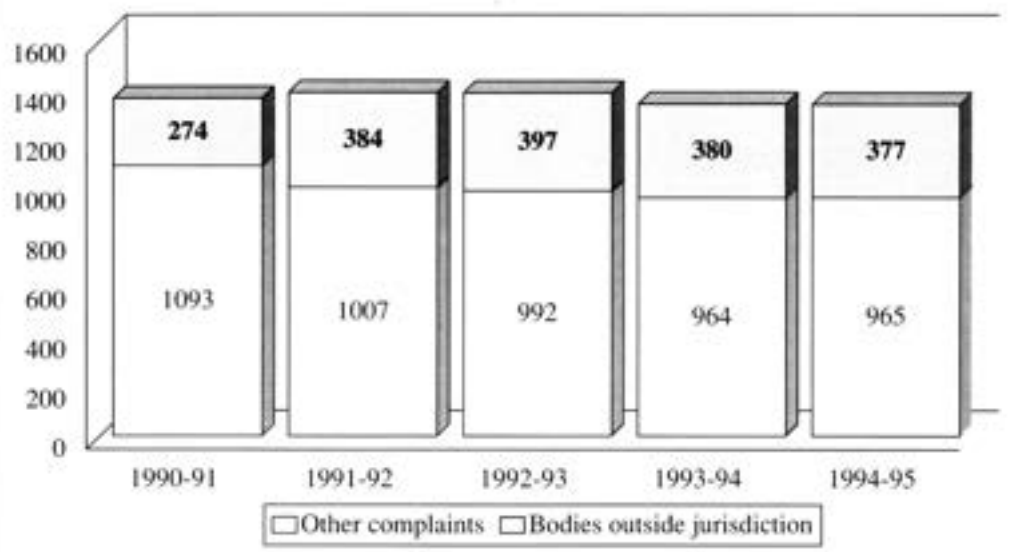
No replies, delays in action, general rudeness, poor or inadequate service	150	204
Failure to act	120	32
Failure to enforce or investigate breaches of regulations or legal obligations	70	38
Unreasonable, unjust or discriminatory enforcement of regulations	93	47
Denial of procedural fairness	25	16
Failure to provide reasons or explanations for action or inaction	42	2
Other procedural objections	25	7
Wrong decision: objection based on prejudice, malice or bias	45	17
Wrong decision: objection based on incomplete or misinterpretation of facts	47	17
Wrong decision: other reasons	21	21
Matters relating to contracts, tenders, leases or resumptions	54	50
Level of charges, fees, penalties or refunds	63	90
Matters relating to policy or legislation	35	45
Official information: refusal to disclose or alter and improper disclosure	53	34
Management: broad issues not covered above including general supervisory failure	20	24
Other	40	25
Authority outside jurisdiction	377	
Issue outside jurisdiction	62	24
Total	**1342**	

PRIMARY ISSUE ONLY

APPROVALS 47

Public authority written complaints

A five year comparison



Get me my mouthpiece!

The Ombudsman will not accept convenient legal advice as a justification for unreasonable behaviour.

Over reliance on legal advice and legal process by a wide range of public authorities, including local councils has been an ongoing concern of our office for a number of years. This conduct generally falls into the following categories:

1. Seeking advice to justify delaying action, especially where it is plain the advice will recommend nothing other than the obvious.
2. Seeking advice which defines as narrowly as possible the strict legal obligations of the public authority to the exclusion of considerations of reasonableness, ethics and accepted standards of public accountability.
3. Opinion shopping - where unwelcome advice is ignored and more palatable advice is sought from a more pliable adviser.
4. Providing a partial or false brief designed to elicit the advice desired.
5. Relying on legal advice provided by an interested party rather than obtaining independent advice.
6. Refusing to determine contentious questions, frequently development applications, where there is an appeal or other mechanism by which the matter can be determined in a court.
7. Commencing legal proceedings with the intention to cause delay or intimidation.

This is a sensitive subject. There can be no question that an authority will often need to ascertain its legal options or obligations. However, the process of determining whether legal advice is necessary should not be divorced from the normal requirements of administrative prudence. If a person sought professional advice on contract law before purchasing a bus ticket, their actions would generally be regarded as bizarre. They would also probably miss many buses.

A number of public authorities routinely channel our inquiries through their legal sections. Since many of our inquiries involve no legal points this practice is a waste of expensive professional resources and indicates maladministration. It also delays the responses from operational areas and skews the ultimate response in terms of point two above. This effect can be exaggerated when responses are referred to external legal advisers, as is often the case with local councils. While there can be no objection to seeking legal advice where there is any real uncertainty about a relevant legal issue, this is a question that requires assessment on a case by case basis.

At the heart of this problem lies a failure on the part of certain public authorities to take full account of one of the key provisions of the Ombudsman Act. Section 26(1) sets out various classes of conduct which can attract adverse findings from an Ombudsman investigation. Conduct *"contrary to law"* or *"based wholly or partly on a mistake of law"* is included, but there are other classes defined of which the most important is conduct which is *"unreasonable"*. Conduct may in the strict sense be lawful, but still *"unreasonable"*.

Lawyers are no better equipped than laypersons to judge whether conduct has been unreasonable. The Ombudsman will not accept convenient legal advice as a justification for unreasonable behaviour.

There have been a number of challenges in the past year to the Ombudsman's jurisdiction. All appear to have been motivated by nothing more than a desire to abort or at least substantially delay our inquiries and reports which the relevant public officials or authorities believed would embarrass them. Our position received strong vindication in every case which came before the Supreme Court. It is not clear whether these challenges were supported by poor legal advice or run as delaying tactics despite advice as to their likely failure.

In this respect it should be emphasised that the Ombudsman is at pains to avoid straying beyond jurisdiction, if only for the compelling practical reason that we are already fully stretched in handling those cases which are unquestionably within jurisdiction.

Because of the substantial waste of public resources so often involved in these forms of abuse of legal advice and process, the Ombudsman will exercise special vigilance on these issues and will report to parliament where appropriate.

A matter of administration

The Ombudsman Act gives the Ombudsman the power to investigate the conduct of public authorities. The term *"conduct"* is defined in section 5 of the Act to mean any action or inaction or alleged action or inaction ***"relating to a matter of administration"***.

The phrase *"relating to a matter of administration"* raises some interesting questions as to the scope of conduct we can legitimately investigate.

In early 1995, our attempts to inquire into a complaint about the NSW Health Department raised this issue. Written inquiries to the department questioned the legality of some NSW hospital practices and whether they accorded with a nationwide policy endorsed by the NSW Health Department.

The department's director general replied to our inquiries by providing limited information and stating:

> *"I am advised neither of the two questions put in your correspondence raise issues of actual administrative practice. Rather they directly address matters of law and policy, which, as you would be aware, generally fall outside the jurisdiction of the Ombudsman's Office.*
>
> *Clearly, if you are able to indicate any issue of administrative practice arising out of this complaint, the Department would be willing to help clarify the matter and provide all possible assistance to you."*

In response, we explained that the Ombudsman Act does not distinguish between matters of administration and matters of law and policy as the director general suggested. Nearly all matters of public administration are based on the interpretation and implementation of law and clearly we can question a public authority concerning matters of law.

The department responded by repeating its original objection, claiming the matters were *"clinical policy matters"* and so outside the Ombudsman's jurisdiction.

When it became clear that further discussion was unlikely to be productive, the Ombudsman sought advice from the Crown Solicitor to clarify the matter both on the specific issues raised by the complaint, and on the following more general issues of:

- whether there is a distinction between matters of "administration" and matters of "policy"; and
- whether there is a distinction between matters of "administration" and matters of "professional judgment".

The Crown Solicitor's advice strongly supported our view. He considered the correct approach to determine the Ombudsman's jurisdiction would be to consider the objects of the Ombudsman Act, particularly the reasons for establishing an Ombudsman - to ensure public authorities are subject to scrutiny in the interests of efficient and proper public administration and to protect public interests.

In considering the supposed distinction between matters of "administration" and matters of "professional judgment", the Crown Solicitor stated:

> *"...I have difficulty accepting that an action or inaction can be excluded simply by reason of the fact it is the exercise or non-exercise of a technical expertise or professional judgment. Just as a simple assertion can't exclude "policy", it can't exclude technical expertise or professional judgment."*

After receiving this advice, a departmental representative conceded the matters raised in our original letter were within the Ombudsman's jurisdiction.

Application to local government

As part of the advice from the Crown Solicitor, we also requested advice on whether the Ombudsman is entitled to investigate the following types of conduct of a local government authority:

- the adoption by council resolution of a works program, and particular actions involved in the implementation of that program.
- the adoption by council resolution of a development control plan, specifying the council's requirements for particular types of development; and particular applications of that policy to individual development applications.

The Crown Solicitor advised that such matters may be characterised as the formulation or implementation of policy and as such would be within the Ombudsman's jurisdiction.

Thank you for your letter.
I thank you for assisting me in the matter, if it wasn't for you I would still be being brushed off. Now with the help of a more experienced manager I expect most of my problems will be solved locally.
A complainant

It is to be hoped that public authorities in NSW will take full note of the Crown Solicitor's advice, will recognise the Ombudsman's legitimate and important role in questioning public authorities about the appropriateness of their conduct, and will cooperate fully with such inquiries and investigations as may be required in furthering the objects of the Ombudsman Act.

Strategies for licensing boarding houses

Progress or propaganda?

Many people with disabilities in NSW depend on hostels and boarding houses for accommodation. The licensing of these establishments has caused us concern for some time.

Our last annual report detailed a complaint from two peak community groups for people with disabilities in NSW. The complaint alleged systemic inaction and neglect by the Department of Community Services, which has licensing power over such establishments, and the Department of Health, which is responsible for providing many residents with mental health services.

Enquiries were made with these departments for eighteen months. Responses indicated the matter was being further considered. The last response received from the Department of Health largely referred to the document *Caring for People with Mental Illness*, the NSW Government's response to the Human Rights and Equal Opportunity Commission Report into the human rights of people with mental illness. This was additional to the Departments of Health and Community Services responses to the earlier *Report of the Taskforce on Private "For Profit" Hostels*.

The Ombudsman was informed the departments were undertaking a number of initiatives, including:

establishing a committee to help determine how a number of the Taskforce Report's recommendations would be implemented;

- trialing the use of an interdepartmental committee to oversee the relocation of residents from individual boarding houses to other accommodation;
- trialing new models for delivering health services to people in such accommodation;
- introducing clear service standards for boarding houses;
- improving and coordinating community support and mental health services for boarding house residents;
- regularly monitoring boarding houses to ensure compliance with standards and conditions; and
- increasing the number of licensing advisers.

In light of these intended strategies, it was decided an investigation by the Ombudsman was not warranted. It seemed unlikely that an investigation would add to the information and recommendations detailed in earlier reports. It also appeared the departments were attempting to redress the inadequacies in the system.

Recent contact has confirmed the Department of Community Services has now placed certain conditions on licences given to boarding house proprietors. These conditions are akin to minimum standards. Unfortunately, conditions relating to the maximum number of residents to be housed in one room are only imposed as conditions of licences issued to new licensees.

Three trial projects are now being implemented by the Department of Health. One particular boarding house referred to by the Sun Herald as a *"Hostel of Horror"* will close soon. An interdepartmental committee is overseeing the closure and relocation of residents. While these initiatives are welcomed, it remains to be seen if the department seriously intends to incorporate successful strategies from these trials into the design of future state-wide service delivery.

Recent inquiries create little confidence in the government's commitment to seriously improve conditions for boarding house residents. Recommendations for imposing conditions and minimum standards, and liaison between agencies all presuppose active monitoring and review of boarding houses - a role largely left to the Department of Community Services' licensing officers. The Taskforce report found:

> *"There is a lack of independent monitoring of boarding houses. The small number of disability licensing advisers have very wide ranging responsibilities. Few residents...have involved families or friends who informally monitor their circumstances."*

It recommended doubling the number of licensing officers as a matter of urgency and

detailed to whom they should be responsible, and the training and responsibilities that should be given to those positions.

The NSW Government response *Caring for People with Mental Illness*, issued in September 1994, stated:

> *"We will...introduce clear service standards...regularly monitor boarding houses to ensure compliance...increase the number of licensing advisers from 9 to 14 at a cost of $875,000 over four years..."*

At the time of writing only nine licensing positions exist within the state. Of these, only seven are filled, and of these seven, only three are permanent appointments. It appears that although money has been allocated to the Department of Community Services for new positions, the positions are still to be created. In March 1995 we were informed the job descriptions were still to be finalised.

It also appears that further delay may be experienced due to the need to clarify which functions are to be transferred to the newly created Ageing and Disability Department, and which are to remain with the Department of Community Services. It is hoped that this will be speedily resolved so that these much needed positions can be filled. Without them, the effect of detailed licensing conditions will be significantly reduced as there will be no one to ensure their implementation.

It should be noted that throughout the lengthy and detailed review of boarding house and hostel accommodation, the department has not closed down one facility. Those boarding houses that have closed down have chosen to do so, primarily for their own commercial reasons. It appears the complexity of imposing minimum conditions on a commercial industry which has for so long been relatively free from regulation and monitoring, and which provides needed beds for vulnerable individuals, is continuing to pose a daunting problem. We hope the publicity surrounding earlier reports will not be forgotten by those within these departments and their ministers. After so many reports, it is surely time for some significant and lasting improvements within the administrative and legislative arrangements in this area.

Recent inquiries create little confidence in the government's commitment to seriously improve conditions for boarding house residents.

Assisting indigenous Australians

Throughout NSW there are approximately 117 local Aboriginal land councils, approximately 500 Aboriginal corporations and numerous other Aboriginal service agencies. Land councils are within our jurisdiction but the corporations, being established under federal legislation, are not.

Land councils and corporations may apply for funding from a variety of sources both federal and state. The task of matching community issues and complaint handling agencies is not easy, especially given the strange mix of federal and state involvement and the often complex nature of the complaints. In some cases the mix of issues and jurisdiction results in considerable delays and complications. As a result the Ombudsman regularly receives complaints that involve a number of government agencies.

We have attempted, wherever possible, to assist Aboriginal people by providing a referral service. However, we have found that simply referring complaints to a relevant agency does not necessarily result in that complaint being handled efficiently or at all. We have attempted to highlight to other complaint handling agencies some of the administrative shortfalls that have become evident from our experience.

It has come to our attention that in some cases complainants were being denied redress of their grievances on the grounds that intervention would be counter to the philosophy of self determination. It has also become apparent that some complaints were being handled inappropriately despite the passage of up to two or three years of conflict.

Various organisations have been established to provide culturally appropriate services to Aboriginal people throughout NSW. In some instances, service providers are subject to complex legislative or administrative arrangements which inhibit the handling of complaints. To exacerbate problems, jurisdiction is often not clearly determined. A common outcome is that the Ombudsman is requested to inquire into agencies which are required to handle complaints as one of their functions.

Thank you so much in helping me with that problem, I am truly grateful.
After trying for five years to get some help, I could just not believe it. Once again I thank you.
A complainant

Aboriginal Land Councils

The NSW Aboriginal Land Council and the Registrar (as part of the Department of Aboriginal Affairs) have a statutory role to ensure the correct functioning of the NSW Aboriginal Land Rights Act. A recurring theme in complaints received by the Ombudsman is that the Department of Aboriginal Affairs and the NSW Aboriginal Land Council have failed to adequately respond to requests for assistance made by complainants. The conduct of these bodies in relation to complaints about a number of local Aboriginal land councils is currently the subject of investigation by our office.

Arising from the complaints received, the Ombudsman is currently formally investigating the:

- level of advice and quality of assistance provided in response to complaints made by members of the Aboriginal community;
- policies and procedures established to appropriately handle complaints;
- appropriate and timely determination of jurisdiction; and
- definition of the roles and responsibilities of various service providers.

Public interest and private grief

Perhaps amongst the most personal and saddest complaints made to the Ombudsman in this last year were from parents whose children had undergone post mortem examinations. In each case the parents were extremely distressed by the way their child's body was dealt with following the examination. The letters variously described their horror, dismay and disbelief on learning that the body of their dead child, when released for burial, did not contain their organs.

One family was angered and exasperated after learning that the brain of their two year old daughter had been retained for further examination without their consent or knowledge. The family did not learn of this until some months after the child's death and burial. When they attempted to learn what had happened to the brain, they eventually discovered that it had been transported to Queensland and burned with other "waste". The mother wrote:

> *"I understand that the Coroner has wide powers; and why the autopsy was required but you have to sign your licence for organ donation or consent for operations etc. But* [the child]*'s brain was taken without our knowledge.* [The child] *did not need the 'state' to be responsible for her remains; she has a loving family ..."*

A complaint was also made by a very distressed and angry mother who could not believe she had not been told that her son's brain was not returned with his body following the post mortem. The family's distress at their loss turned to anger when they finally found the son's brain had been retained. The mother found it difficult to accept that the autopsy and the removal and retention of the brain could occur without the consent or knowledge of her family. The family subsequently arranged for the burial of the brain with his body. The mother wrote:

> *"We never gave our permission for that violation to our son and us and now to bury part of him again. I am paralysed in grief by this insensitivity to our feelings."*

A third woman complained about the inadequacy of information about the possible retention and disposal of tissue from her son's body. She was also distressed that the wishes of her son and her family were not considered at any stage. She concluded:

> *"While I may reluctantly agree that following an accident an autopsy should take place to determine the absolute cause of death ... I cannot accept that a body must be mutilated in the process, parts are to be disposed of when and where it suits the bureaucracy, and the family are to be given no rights as to these issues."*

The matter made headlines in the Sydney newspapers. The Department of Health immediately instituted a review of methods used to dispose of brains and similar tissue. (Unfortunately brains have to undergo a particular process before they can be examined. This process takes approximately 30 days.) This raised an additional issue of an apparent lack of information provided to the family.

Our inquiries found that some of the grief counsellor positions attached to the morgues had been vacant at the time of the complaints. It was unclear however whether this information would normally be raised by a counsellor, al-

though clearly if questions had been asked the counsellor would have been able to explain the procedure in detail. The department also advised in August 1994 it was preparing a pamphlet with the Attorney General's Department to explain the post mortem process. The pamphlet was made available in June 1995.

NSW is alone in allowing the tissue removed for post mortem examination to be used for other purposes without the need for the consent of family members.

Inquiries also revealed that section 31 of the Human Tissue Act (NSW) provides that where a doctor is authorised to perform a post mortem examination, the authorisation extends to the removal of any tissue necessary for the purpose of the post mortem.

Section 31(2) of the Act allows tissue, once removed for the purposes of a post mortem examination, to be used *"for therapeutic... medical ... or scientific purposes"* without the need for any further authorisation or consent. While the complainants reluctantly accepted the need for post mortem examinations they clearly oppose this provision. All feel strongly that any parts of the deceased's body should be returned, and that any subsequent use or disposal of the body parts should only be done with the knowledge and/or consent of the family.

It appears that NSW is alone in allowing the tissue removed for post mortem examination to be used for other purposes without the need for the consent of family members. The provision also appears to be at odds with the spirit of the Act itself. Most of the Act relates to the circumstances and consents required for the donation of tissue, blood, semen by living donors, as well as that required for the removal of tissue after death for transplantation or scientific, therapeutic or medical purposes. In all these circumstances, consent, and/or consideration of the wishes of the individual or the family of the deceased are required.

We have referred this issue to a committee established by the NSW Department of Health to review the Human Tissue Act. It is hoped that the committee will fully consider the emotional distress experienced in these cases and implement the required amendments.

I take this opportunity to express my appreciation of the assistance given by the Ombudsman's Office in this matter and for your own efforts in that regard.
A complainant

Investigations

Harness authority reined in

The owners of a horse complained of being forced to repay prize money by the Harness Racing Authority and the NSW Harness Racing Club. The couple's horse had come second in a race in July 1994. Six weeks later a steward's inquiry found the first placegetter had been racing under the influence of drugs. As a result of its disqualification, the stewards ordered the club to elevate the complainants' horse to first place. In September the club paid the complainants the difference between first and second place, some $2,700.

Meanwhile, the owner of the disqualified horse had appealed to the Harness Racing Appeals Tribunal which upheld the appeal. As a result of this decision, the authority directed the club to readjust the placings of the horses back to the original order. In January, four months after paying the money, the club wrote to the couple, demanding they repay it within seven days.

The complainants wrote to us, arguing the authority's actions were unfair. The complaint raised concerns about the authority's procedures and in response we commenced a formal investigation.

During the course of the investigation it became apparent the authority had taken positive steps to address the problem. In future, if a horse is disqualified, stewards will not alter the placings until the period for lodging an appeal has elapsed. If the outcome of the appeal could affect the placings of the race, any adjustments will be held over until the tribunal's decision. The authority also requested the law be changed to make the authority's general manager responsible for telling owners of horses whose placing may be affected that an appeal has been lodged. The authority and the club also agreed to waive repayment of the money in this case. As a result of the authority's action, we discontinued our investigation.

Land titles - what you see is not always what you get

A Campbelltown man complained the Land Titles Office had altered his title without consultation, resulting in the exclusion of a stretch of land.

The saga began in the 1950s with errors by the Crown Lands Service (CLS) (now the State Lands Service) and the Land Titles Office (LTO). In 1955 the LTO notified CLS that certain Crown roads were included in an area which was the subject of a Primary Application. The CLS acknowledged the notification and said the matter was being investigated but did not respond for 14 months. In the meantime the LTO granted the application and issued a freehold title which did not exclude the road in the parcel.

The land changed hands twice without the error being noticed. In 1988 some of the land was sold to a neighbour with an agreement that the land would remain as wooded pasture. In 1991 the LTO automated the title without including any reference to the road, so the error in the title remained undetected.

In 1992 the neighbour attempted to obtain permission from Campbelltown Council to build a house on his portion of the land. This caused a rift between the neighbours and a dispute about access ensued. The neighbour approached the Blacktown office of the CLS to discuss access problems and was told there was in fact a Crown road running through his neighbour's property. The road at this stage existed on paper only. Shortly after the CLS wrote to the LTO requesting the Crown road be excluded from the title. The owner was not informed of this request.

The neighbour contacted the LTO regularly to inquire about progress of the request but the owner was not made aware any action was being taken. If the owner had been notified of the application to have the road recorded on the title, then much of the following train of events may have been averted.

Three months after the request from CLS the LTO attempted to notify the owner's company of the proposal to exclude the site of the road from the title. However, because the company had been deregistered the LTO notified the Australian Securities Commission, as required by legislation. Unfortunately, the commission does not forward such correspondence to the director/s of a deregistered company.

The neighbour began his construction of the road the day after the title was amended by the LTO using bulldozers to bisect a large stand of trees. He used letters provided by CALM offic-

ers to persuade the police that he was entitled to carry out the work. CALM made no attempt to stop the neighbour from his road-making activities, rather many actions taken by the Blacktown office appeared designed to assist him. Even after CALM was made aware of the problem, officers provided the neighbour with another letter to the effect that the public could use the road, and that there was no objection to the removal of obstructions *"with a view to restoring the road to a trafficable condition"*. This was misleading because there was, in fact, no road.

In response to a series of letters from the Ombudsman the LTO said that to be certain of a title, a solicitor carrying out the conveyance of land on behalf of a purchaser should go back to the Primary Application. This requirement was at the heart of the problem. It would seem to be quite impracticable, given the number of transactions involved, to have the Primary Applications searched at each change of ownership and this is certainly not the standard practice of conveyancers.

The Acting Director of the LTO said that a solicitor should inspect the original grant if a title refers to Crown reservations. Given the reliance placed by the public on a title issued under the Torrens system it is very important that this issue is widely understood.

Although CALM was initially slow to respond to the Ombudsman's enquiries, the complaint was eventually resolved in a satisfactory manner due to the timely intervention of the new CEO.

The State Lands Service has agreed to assist the complainant to lodge a road closing application, which will be dealt with as quickly as possible. The complainant has also been invited to lodge a road closure permit which would enable him to erect a gate on the road on the boundary of his property, pending consideration of the road closure application.

The LTO is to consider developing legislative proposals designed to limit the periods in which an amendment may be made to exclude Crown land from a Certificate of Title.

The LTO also arranged for an article dealing with this matter to be published in the Law Society Journal in July 1995 and an item on searching and charting maps is being prepared for publication later this year.

Board commended for smoothing waves

In 1991 a woman bought an old house, located over a sewer, in Surry Hills. The vendor's solicitor made the usual conveyancing inquiries of the Water Board and received a standard letter saying the board had no record of approval for the building or if any required precautions were taken during its construction. The letter disclaimed responsibility for any *"damage arising out of the presence on the property of the sewer/stormwater drain and maintenance operations carried out thereon and which do not result from negligence on the part of the Board"*. This letter was supplied to the Advance Bank which provided mortgage finance for the complainant's purchase in a sum less than the value of the land alone.

In 1992 the complainant sought to increase her mortgage to above the value of the land. The bank, accepting the board's letter at face value, rejected this application on the basis that her house was worthless as security since it was possible for the board to demolish the house without compensation.

According to Sydney Council records the house was built in the late 1860s. Hence the board, which took over the sewer from the council in 1889, could have no records of *"approval"* or *"precautions"*. There was further inferential evidence that the house did comply with the council's building requirements of the time.

Since the standard letter could not apply to her house, the complainant asked the board to withdraw its letter on which her bank relied. Rebuffed by the board for no good reason, she was obliged to seek finance elsewhere. The National Australia Bank was prepared to grant her a higher mortgage. Substantial costs arose in early discharge of mortgage one and establishing mortgage two.

In early 1994 we launched an investigation into the board's conduct. The preliminary conclusions of the investigation highlighted a number of systemic problems, criticised the board's conduct in this specific case and recommended substantial compensation for the complainant. These were sent to the board in September 1994 for its comments.

I just wanted to thank you for all your help and consideration that you were able to give our situation. ... thank you for your efforts, they have made a big difference.
A complainant

The preliminary conclusions arrived at a crucial time. The board was gearing up for its corporatisation at the end of 1994 to become Sydney Water. A key aspect of that corporatisation was a new commitment to customer service and satisfaction.

Before we issued the final investigation report, Sydney Water made an ex gratia payment of $7,100 to the complainant, the full amount of her extra refinancing costs. This was more than the our preliminary recommendation and was seen as a commendable expression of Sydney Water's new focus on customer satisfaction.

In addition, Sydney Water introduced a new policy on issuing standard letters concerning properties whose construction may predate the board, and addressed certain systemic problems in relation to complaint and correspondence handling. These prompt actions by the Board and Sydney Water represented, in effect, advance compliance with the anticipated recommendations of the final report.

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Raw prawns - the conclusion

The struggles of a company and its director through convoluted hurdles and lengthy delays imposed by the then Department of Lands and the Department of Agriculture and Fisheries were reported in our last annual report.

The company made an application for a fish farm lease to establish a prawn farm on a NSW waterway. This type of lease was available under a section of the Fisheries and Oyster Farms Act which had been inserted to encourage the development of the newly emerging aquaculture industry. The venture was the first of its kind under the new section.

The lease required approval by the Minister for Fisheries. However, he could not grant approval without the consent of the Minister for Lands, as the application included submerged Crown land. The complainant struggled for three years and dealt with numerous authorities and councils in order to achieve the sought-after lease.

Our investigation found substantial and unreasonable delays by both the Department of Lands and the Department of Agriculture and Fisheries. The agencies' confusion over responsibilities, lack of clear procedures or guidelines, poor understanding of the intent of the legislation, and an absence of any coordination between agencies made the complainant's attempts to secure a fish farm lease futile. We also found that at least part of the difficulty encountered with the Department of Lands was due to its reluctance to allow Crown land to be used in this way although the legislation clearly envisaged such usage.

After more than two years of effort by the complainant, urgent requests were sent to the Department of Lands to secure consent to the granting of the lease. The department was advised that if the lease was not soon granted, the development consent provided by the local council would lapse. Rather than speed up its processes, the Department of Lands appeared to suspend any further consideration of the matter. It decided to await the outcome of the complainant's request for a renewal of the development consent. The complainant's request for a renewal of the development consent was rejected. The complainant, still believing that a fish farm lease may yet be obtained, appealed to the Land and Environment Court.

It was found that the Department of Lands allowed the complainant to undertake court action without making any effort to advise the complainant or Fisheries whether consent would be provided to the granting of the lease. It was further found that Lands, when asked by the local council whether the complainant had lodged an application for a lease, replied that no application had been made. It made no mention of the application made to Fisheries or the fact that Lands had been approached concerning the provision of consent to the granting of the lease. This exceedingly limited reply assisted those in the local council who wished to prevent the renewal of the development consent.

During the course of the investigation, a number of changes were implemented. In particular, an Inter Departmental Committee was established purportedly to improve coordination between the various agencies. This has appeared to have done little however to reduce the red tape involved in the processing of such applications. New legislation has now removed the need for

consent to be obtained from the Minister for Lands. The decision is left squarely with the Minister responsible for fisheries. The recommendations contained in the report largely related to further improvements in the administrative processes to be used by Fisheries and other agencies. It is hoped that these will significantly reduce the obstacles and difficulties encountered by individuals making such applications. We have been advised that most of these recommendations have been accepted.

The departments were however much less willing to implement two particular recommendations which related to the ex-gratia payment of $10,000 by each department to the complainant. A further recommendation was made that the Department of Conservation and Land Management, as the successor to the Department of Lands, pay the complainant's costs associated with the appeal to the Land and Environment Court. These payments were nominal amounts to recognise the considerable frustration and expenses incurred by the complainant as a result of the unreasonable conduct by these departments in processing the complainant's application.

The new Minister for Land and Water Conservation reviewed the matter and agreed to implement the ex-gratia payment recommendations directed at his department. The new Minister for Fisheries declined to commit NSW Fisheries to an ex-gratia payment but has reported his department is implementing the other key recommendations.

School expulsion denies natural justice

In early 1994, a Central Coast mother complained the principal of a local high school had failed to comply with departmental guidelines on suspension and that her son was denied natural justice when he was expelled from the school.

The son was one of a group of four who were said to be in the possession of drugs on school grounds. Three students were originally caught by the principal handling a plastic bag containing something which appeared to him to be an illegal substance. After the other students were caught, the complainant's son told the principal that he too had been involved. The principal contacted parents and police. Not all of the parents attended the school, however the complainant did. The police interviewed the four students together, in the presence of the principal. After warning them about the dangers and possible illegality of their actions, the police decided not to lay charges and to leave disciplinary action with the school and the parents. The substance was taken by the police and later destroyed without being analysed because no charges were laid.

Following the police interview, the principal told the parents in attendance that the students would be suspended until Monday, for two school days. The complainant believed this meant her son would be able to attend classes as normal from the Monday, subject to him signing an agreement with the school about his future discipline, as was the normal requirement. Later that afternoon the complainant's husband attended the school and he claimed he was also told by the principal that the students would be able to go back to school on the following Monday.

On Monday morning, the student attended school but was told he could not return to class. He contacted his mother who was told her son would not be allowed back into the school. The mother later received a letter, dated on the Monday, directing her to seek enrolment for her son at another school. On the next day she appealed to the principal to reconsider his decision.

Three days later the mother received a further letter from the principal advising her that her son was on a long suspension from his school for the purpose of seeking a placement at another school. The principal threatened that if this was not done then he would move to exclude the son from the school.

About four weeks after the incident, and after an internal investigation by the department, the principal was ordered to allow the boy to return to the school. The principal refused to follow the department's direction and subsequently received support in this action from the other teachers and their union. As a result the boy was not able to return to the school.

The mother complained to us that the disciplinary action taken against her son was unfair and did not conform with the Department of School Education guidelines for suspension and exclusion. The Department of School Edu-

Thank you for your assistance in this matter. Your prompt and effective action is greatly appreciated.
A complainant

cation guidelines clearly state that the severity of disciplinary action should only increase in response to repeated disciplinary problems with a student. It did not make provision for immediate exclusion of a student because it allows for the use of short and long suspensions to be used in an attempt to control problems and assist students.

The principal said his decision was made in line with the Fair Discipline Code adopted by his school. The code specifically stated that the possession of drugs or weapons would result in immediate exclusion. Unfortunately, the school's code did not reflect either the provisions or the intentions of the department's policies, procedures and guidelines. In addition, each of the four students involved in the incident did not receive the same punishment. One student was removed from the school by his parents on the day of the incident. Another was suspended until the following Monday and that student's parents were never formally contacted by the school about the incident. The other student presumably returned to classes on the Monday, with his parent's knowledge of the suspension. The complainant's son was the only one formally excluded from the school.

The investigation found the principal had failed to apply the department's published procedures for the suspension and exclusion of the complainant's son from his school, and had failed to follow directions made by senior officers of the department to reinstate the student. It also found the treatment of all students involved in the incident was not equal and that the treatment of the complainant's son was improperly discriminatory. Other findings were made about the lack of adequate documentation kept in relation to the matter and the overall

The department moved to adopt our recommendations, however, due to continued staff opposition to the boy's return, the department was unable to bring about the boy's re-enrolment. The case stimulated public debate.

handling of the case by the Department of School Education.

The investigation report recommended:

- the principal be formally counselled;
- the principal and department apologise to the complainant and her son;
- the issuing of instructions concerning the application of policies and procedures by all educators and the keeping of records in such circumstances;
- a review of the suspension, exclusion and expulsion policy to include adequate review steps; and
- the complainant's son be returned to the school, if it was possible to do so in the circumstances.

The department moved to adopt the recommendations, however, due to continued staff opposition to the boy's return, including the threat of strike action by teachers at the school involved, the department was unable to bring about the boy's re-enrolment at the school. When the department took action to have the boy enrolled at another school, his parents refused to cooperate.

Alleged corruption and victimisation in the SRA

During the year we received a number of serious complaints about the State Rail Authority (SRA) concerning rail safety, internal audit, endemic corruption, internal complaint handling and widespread victimisation.

Some of the complaints were echoes or updates on issues previously dealt with by in our 1993 report to parliament on signalling safety and by the ICAC in its two reports on the Trackfast Division (1992) and the Northern Region (1993). A number of the complaints had also been made or repeated to the ICAC and the Auditor-General. One complaint to the ICAC prompted the commissioning of an inquiry by a senior member of the private bar.

We made preliminary inquiries about several of the complaints. The evidence, although far from complete, caused the Ombudsman very serious concern. It suggested wider cultural problems within the SRA and led the Ombudsman to meet with the Minister and the new acting chief executive of the SRA to explore whether some broader inquiry into the SRA was warranted.

Following that meeting the Ombudsman met with the ICAC Commissioner and Auditor-General. It was agreed that because concerns about internal audit touched most of the complaint issues the most appropriate response would be for the Auditor-General to conduct a Special Audit of a wide range of SRA internal control mechanisms related to the complaints received. He could call on the ICAC and the Ombudsman for assistance as he required it.

At the time of writing, the Special Audit - which would seek submissions from members of the public - was just about to commence.

Rubber stamping

An investigation of the Psychologists Registration Board which resulted in a special report to parliament focused on the board's decision-making processes and complaint handling procedures.

Until 1984 and the establishment of the Department of Health Complaints Unit there was no central coordinating authority in NSW for dealing with complaints about doctors, hospitals or health workers. There was neither registration nor professional regulation of psychologists in NSW before the passage of the Psychologists Act in 1989. The government of the day believed it was in the public interest to legislate for the registration of psychologists:

> *... since the public would be able to identify persons with approved psychological qualifications and experience.*

The legislation provided for a registration scheme for psychologists in NSW and a means to investigate complaints and discipline practitioners.

The investigation and regulation of health professionals was, at the time, a topic receiving considerable public attention because of the Royal Commission into Deep Sleep Therapy. The so called Chelmsford Royal Commission was established in September 1988 in response to public outcry over the numbers of deaths and other allegations of abuse attributable to the practice of narcosis therapy at the Chelmsford Private Hospital. It was the larg-

Thank you for your letter. We appreciate your efforts which has led to a very pleasing result.
A complainant

est public inquiry into mental health practices in New South Wales, costing over $15 million and hearing evidence from nearly 300 witnesses between October 1988 and July 1990. The report of the commission was due on 21 December 1990.

Mr Barry Hart, a former patient at Chelmsford, lodged numerous complaints over a period of time with the Attorney-General, the Department of Health, the Complaints Unit, the Law Reform Commission and the Australian Psychological Society about Dr Evan Davies' psychological testing practices. In December 1989, the royal commission's terms of reference were widened to specifically include Dr Davies' use of psychometric testing and any contribution of such testing to the establishment, maintenance and justification of Deep Sleep Therapy (DST). It is rare for a royal commission to focus on the actions of an individual, let alone have the terms of reference amended to incorporate this focus.

The Psychologists Act established the Psychologists Registration Board, and on 14 August 1990 the board began accepting applications for registration. Dr Davies applied to the board for registration on 23 November 1990. His registration was confirmed at the next meeting of the board on 4 December 1990, less than three weeks before the report of the royal commission was due.

The royal commissioner's report found that any contribution of Dr Davies' testing to the use of DST was probably unwitting. He certainly found no conspiracy. Although Justice Slattery was quite critical of aspects of Dr Davies' professional conduct, the making of a formal finding was not within his brief. He therefore referred a copy of his report to the Psychologists Registration Board in order that it, as the relevant authority, would be made aware of his views.

In January 1992, Mr Hart complained to the board about the conduct of Dr Davies and the board's action in registering Dr Davies during the course of the royal commission. Mr Benjamin complained to the board in similar terms at about the same time. In July 1992 Mr Benjamin lodged his initial complaint with the Ombudsman, and in April 1993 forwarded a further complaint. Mr Hart also complained to the Ombudsman in April 1993. The complaints to the Ombudsman asserted that the board was wrong to have pre-empted the findings of the royal commission by registering Dr Davies immediately before Justice Slattery's report was due. A further aspect of each complaint was the way the board had dealt with complaints made to it.

The Ombudsman questioned the board as to whether it had considered the fact of the Royal Commission's inquiry as relevant to its consideration of Dr Davies' application for registration. The board's initial response was:

> *The Board was aware in general of the terms of reference of the Royal Commission and that Dr Davies' procedures were the subject of the inquiry.*
>
> *At the time of Dr Davies' registration:*
>
> - *The Royal Commission's Report had not been released nor had the Board any knowledge of when it would be released.*
> - *The Board was not presented with a basis for preventing or delaying his registration.*
> - *Dr Davies was eligible for registration in accordance with the requirements of the Act.*

In later submissions, the board expanded on this position, stating that in fact it had had:

> *"detailed discussion of* [Dr Davies'] *assessment of Chelmsford patients. The Board particularly submits that its then member, Dr John Ellard, was a witness at the Royal Commission and was uniquely placed for fully inform the Board of matters pertaining to Chelmsford and Dr Davies role there and he did so".*

The minutes of the meeting did not reflect any such discussion. Nor was there any evidence that the board considered the possibility of informing itself of the date on which the royal commission report would be published, even though this would only have required a telephone call. Rather than wait to consider what, if any, findings might be made by the Royal Commissioner, the board chose to rely on information supplied by the applicant and the personal knowledge of its members.

The board's procedure for determination of good character, a prerequisite for registration, has remained unchanged - the acceptance of two character references provided by the applicant. In the Ombudsman's view, the provision of references does not establish good character,

but merely supports the claim. In this instance it was the board's responsibility to determine the validity of the claim. Where there is no notice of circumstances which could detract from the claim, the board might be entitled to rely on such testaments. Where, as in this case, there was public knowledge of circumstances which might well detract from the claim, the board should have referred the application for determination by a Professional Standards Committee, as it was legally entitled to do in accordance with section 22(a) of the Psychologists Act.

The board did not even request advice from the Complaints Unit as was its custom for much more mundane matters.

The board did, however, obtain legal advice about its actions after its registration of Dr Davies. This legal advice indicated there were quite obvious limitations to the effectiveness of the legislation and the Ombudsman therefore recommended amendments be considered. However, this does not detract from the fundamental point which is that the board was incautious in its registration of Dr Davies without obtaining advice at the time.

The Ombudsman was also concerned by the board's statement to this office that it would find the issue of professional misconduct "... *extremely difficult to deal with ... at the time of the processing of an application for registration*". Surely the value of professional registration is that matters such as the fitness of an applicant for registration can be properly tested. Anything less would simply be rubber stamping of correctly completed application forms, a process which would do little to protect the public or increase the standards of the profession.

A report on the Ombudsman's investigation into the Psychologists Registration Board was made to the NSW Parliament on 3 August 1995 and received considerable media attention. The Psychologists Registration Board has since advised it would comply with the recommendations of the report.

It would not be an overstatement to say that the board's handling of complaints by Mr Hart and Mr Benjamin about its conduct was most notable for extraordinary delays, and an apparent inability to either comprehend or administer the substance of the Psychologists Act.

It seems that not even the most basic elements of a complaint handling system had been adopted by the board. In June 1992 the board sought advice from the Complaints Unit about its procedure in referring complaints to that unit for investigation. It was not until August 1993 that the board sought to inform itself of the procedures involved in convening a Professional Standards Committee. This was three years after the board began accepting applications for registration. It was more than a year before Mr Hart was advised that his complaint had to be in the form of a statutory declaration, and a further eighteen months before the board dismissed the complaint. Mr Hart was nonetheless assured at that time that the board "*... remains vigilant to any errant practices brought to its attention*". Mr Benjamin was advised after fifteen months that his complaint was not in the requisite format, and then six months later his complaint was dismissed. In this letter, the board acknowledged but made no apology for the delay. Mr Benjamin's complaint was about the conduct of the board itself, a complaint which could not be dealt with in terms of the Psychologists Act. However, in dismissing the complaint the board offered Mr Benjamin no alternative course, nor did it give any assurance or indication that the substance of his complaint had been taken to heart.

It is inconceivable that an organisation which is properly administering its legislative responsibilities could take more than a year to notice that the complaint was not in the required format.

In April 1995, the Ombudsman received a new complaint about the failure of the board to deal appropriately with a complaint made to it. Yet again, an aspect of the complaint was that two years after making the complaint, the complainant was told that the complaint had to be made in the form of a statutory declaration before the board would consider it.

In order to improve the functioning of the board, the Ombudsman recommended significant amendments to the Psychologists Act. This is a matter for the government. The board and its advisers will need to turn their minds to developing procedures which will allow for the proper implementation of existing, let alone improved, legislation.

A report on the Ombudsman's investigation was made to the NSW Parliament on 3 August 1995 and received considerable media attention. The Psychologists Registration Board has since advised it would comply with the recommendations of the report. Providing another sign that improvements are likely, the Minister for Health, who had consulted with the Ombudsman prior to the report's publication, indicated the registration of psychologists and the complaints mechanism of the board would be reviewed.

Claims that client focus frustrates fair deal

Last year's annual report highlighted consumers' difficulties in getting redress from the Building Services Corporation. After an investigation by this office, the corporation agreed to review its approach to resolving complaints. About the same time, the corporation was moved to the portfolio of the Minister for Consumer Affairs. New laws and a corporate restructure have significantly changed the organisation's focus. Considerable attention is now given to the corporation's consumer protection functions, away from direct involvement in disciplinary matters. For instance, since March 1995, formal orders to rectify substandard work may be made only by the Building Disputes Tribunal, on application by the corporation. The corporation is giving greater emphasis to resolving disputes informally, including provision of a mediation service. Home Building Advisory Centres provide advice to consumers of building services.

These changes have resulted in a shift in the type of complaints made to the Ombudsman. The past year has seen a marked increase in complaints by licence holders, who believe the corporation is now leaning too much towards consumers. Many complaints have been made that the corporation has paid out insurance

money without adequately inspecting the work or notifying the licence holder who has to pay the corporation back.

...we are monitoring complaints to ensure all parties involved in the residential building industry receive 'a fair deal all round'.

In most cases we examined, the licence holder was aware of the complaint and had not resolved it, leaving the complainant little choice but to claim from the corporation's compulsory insurance funds. However, we will continue to monitor this area. There is some indication the corporation has considerably fewer resources available for inspecting work the subject of complaint. As such, there is a potential for the corporation to rely on reports prepared by the consumers' experts, with little opportunity for input by the licence holder. Obtaining a rectification order is now much more resource intensive, and it remains to be seen how the corporation responds to this. It is to be hoped the corporation does not end up paying insurance prematurely, relying on a licensee defending recovery of the money as an alternative to seeking a formal order in the first place from the tribunal. Ironically after the Ombudsman's concerns identified in last year's annual report, there is some fear the corporation's current customer focus may be at the expense of ensuring individual licensees are afforded a chance to put their version of events.

Complaints have also been received about the corporation's register of complaints. By law, any complaints about a licence holder are listed on a public register. Potential clients can ring the corporation to find out whether a given licence holder is the subject of any resolved or upheld complaints. Of course, many complaints may not be upheld once investigated. Given the corporation is legally required to list the number of all complaints still outstanding, the best solution is for the corporation to make sure all complaints are dealt with quickly.

Any change in the way an authority such as the Building Services Corporation operates is bound to attract complaints. However, we are monitoring complaints to ensure all parties involved in the residential building industry receive 'a fair deal all round'.

My husband and I would like to thank you and everyone else who helped sort out this mess for us. Would you pass on our thank you and appreciation to everyone and keep up the great work. Thank you.
A complainant

Case studies

Doppelganger dinghy

A young man working interstate received a call from his mother that his boat, stored in front of her house, had been stolen. She had reported the theft to police and given a statement. The following day his mother got a call from the boat's previous owner. This man told her he had taken the boat and intended to keep it. When she reported this to the police she was told there was nothing they could do because the Waterways Authority had cancelled her son's registration and transferred the boat to the previous owner.

When she spoke to the Waterways Authority they told her it was a private dispute and they could do nothing. Blocked by the police and Waterways Authority the young man's mother investigated herself. She learned the previous owner had visited the dealer he originally purchased the boat from and received a letter confirming he bought it. He then went to a local office of the Waterways Authority and had the current owner's registration cancelled and the boat transferred into his name.

Although this information was given to the police and the Waterways Authority no action was taken. Frustrated, the young man returned to Sydney to sort the problem out personally but his requests for help were refused.

In March 1995 the young man wrote to us. His complaint about the police was conciliated when the police agreed to investigate the alleged theft. Initial enquiries with the Waterways Authority revealed the vessel had been transferred without the correct paperwork.

To safeguard boat owners the authority plans to introduce a hull identification number system (HIN) similar to the vehicle registration system used on cars. The HIN will be a unique number attached to the boat which cannot be removed without detection. This system will enable the authority to keep a register of financially encumbered vessels and records of stolen boats. A review of the administrative processes used for vessel registration had begun recently and the NSW Police and Waterways Authority were reviewing their instructions to staff about liaison between the two organisations. With this in mind we referred the young man's complaint to the authority which agreed to consider it urgently.

A bus ride to remember

A Sydney woman was travelling on a bus in the city one afternoon. As may happen in peak hour traffic, tempers were short, and the bus driver exchanged horns and words with a commuter when his car came too close for comfort.

What started as a fairly normal peak hour ride then took a turn for the worse, as the bus proceeded to chase the car down a main city street. After letting out a few passengers, the bus driver continued his pursuit, pulled up next the car, opened the bus doors and shouted at the driver.

Still not satisfied, the bus driver got out and, still shouting, walked over to the car, whose driver was no doubt eagerly waiting for the lights to change. The complainant said the bus driver then attempted to pull the stunned motorist out of his car through the window. On failing this, he attempted to damage the car and after more heated exchange returned to the bus.

Somewhat upset by this show of temper, the remaining passengers agreed to get off the bus together at the next stop. One passenger reported this incident to State Transit Authority, who investigated the incident. As a result of the investigation, State Transit apologised to the passenger for any distress the incident caused her and disciplined the driver.

It is State Transit's policy not to disclose the details of disciplinary action to members of the public, as this is considered a confidential personnel matter. While some details of the punishment were explained to the passenger, she was not happy with this, and was concerned that State Transit had not given the driver appropriate punishment. Consequently she complained to us.

Our inquiries with State Transit determined they had taken a range of factors into account in deciding the punishment for the driver. We considered State Transit's actions were appropriate - the driver was punished in several ways and this seemed more than sufficient.

We agreed with State Transit's policy not to disclose this type of information and explained to the passenger our assessment of their action, and the reasons we would not disclose further information about the nature of the punishment.

Country information breakdown

An Inverell father of a student complained Sydney CityRail, part of the State Rail Authority (SRA), had issued an infringement notice to his son and niece for travelling on a student concession ticket without proper identification. Both were university students and said they believed their university identification allowed them to buy tickets from automatic machines. They had never had any trouble using this identification in Newcastle or Inverell.

The SRA wrote back to the complainant refusing to cancel the notices. Our inquiries confirmed the SRA policy is to issue concession tickets only where students have a separate Railways of Australia identification card, not just a university student card. According to university staff, students are all told this at enrolment. When we queried the complainant's allegations of different treatment in country areas, the SRA said it would remind its country staff and agents of the correct procedures. As far as we were concerned, this part of the complaint was resolved. Whether the two students had in fact broken the law was a question more appropriately left to the courts to decide.

The complainant was also unhappy that he was rarely given notice by the SRA about lengthy delays, even when the authority had advance notice, such as for routine maintenance. The SRA wrote to him with a toll free number he could call to check the daily times for country trains. However, the regional telephone books only listed the Sydney number, while the Sydney book clearly listed the toll free number. Once brought to its attention, the SRA agreed to include the toll free number in all future telephone book entries.

Searches and surgery

A seventeen year old detainee at a Juvenile Justice Centre complained he was subjected to a full body search while still recovering from an operation. He claimed staff made him lift his legs to such a height that the stitches were torn and the wound reopened, causing him considerable pain and some bleeding. Soon after, the young man complained of further pain and requested to see a doctor. After some delay, a doctor was called and he was taken to the local hospital. The specialist subsequently prescribed antibiotics for a possible infection.

Our inquiries revealed the young man had been subject to a body search on a Friday evening, following an operation on the previous Tuesday at the local hospital. During the search he had to remove the support and dressings. He was released to the Juvenile Justice Centre on the Wednesday with the recommendation he have bed rest and wear a surgical support for the next three weeks.

Staff agreed that during the search they had required him to lift his leg, but only slightly. This differed from the description offered by the detainee. It was also found that the detainee had been accidentally hit in the groin by a tennis ball while watching other detainees playing in the yard. This occurred earlier on the Friday.

Medical evidence could not determine the likely cause of the pain and infection. It may have been caused by the tennis ball injury or simply a postoperative infection without a specific causation. There was little direct evidence that the leg lifting caused any tearing or infection. In the circumstances, the complaint was not made the subject of formal investigation.

We did however question the department about the appropriateness of conducting body searches of people recovering from surgical procedures, particularly as such searches will require the removal of dressings and supports. It was noted that staff had decided earlier in the day that the search would be required. It would have been more appropriate, therefore, to have conducted the search at a time when a nurse could have been present to supervise the removal of surgical dressings or supports and to reduce the possibility of any inappropriate actions by staff or detainees during such searches. The Director General agreed with this view and issued an instruction to youth workers stating that, whenever possible, any searches of detainees with surgical dressings or supports should only be carried out in the presence of registered nursing staff. The instruction goes on to detail that any dressings removed should be replaced with clean dressings. The instruction is designed to ensure such searches are conducted with full consideration given to the safety and hygiene of detainees.

It greatly assists when we have someone such as your officer visiting us - someone who is anxious that we work together to solve issues and that if we differ, we can disagree without being disagreeable. I do not believe I can emphasise too strongly how much it means to my staff and me that an investigation officer is determined to carry out the requirements of his position, but has the ability and personality to do so in such a pleasant, understanding and supportive way.
Manager, Juvenile Justice Centre

Stress & fear as communication fails

A young woman wrote to the Ombudsman in December 1994 outlining the stress and fear she felt while being detained at the Yasmar Juvenile Justice Centre. She had attempted to jump off a building, and on another occasion had slashed her wrists. She asked if we could help her to get an interstate transfer to be closer to her father in Queensland.

Our inquiries revealed the young woman was under the supervision of a psychologist and a psychiatrist as part of Yasmar's new Young Women's Program. We were informed that staff were attempting to assist her deal with her current circumstances.

The Department of Juvenile Justice did not believe the young woman would be assisted by being moved to another centre or interstate. The department admitted, however, that although the Children (Interstate Transfer of Offenders) Act exists, there is no mechanism for interstate transfers for detainees to occur. The department quickly agreed to examine interstate transfers as part of its review of current legislation. Unfortunately this process may take up to two years to complete.

The young woman had made allegations about assaults by staff, and was herself facing charges for assaulting staff at Yasmar. Investigative staff went to Yasmar to speak directly with the woman and with senior staff to get a clearer picture of the woman's situation.

Three separate incidents were recounted by the woman and staff. All occurred within a two week period.

The first involved alleged harassment by a staff member who was on duty in the unit at night. The woman alleged he entered her room at night, and also slipped a condom under her door. She said he shone a torch on her face every 20 minutes or so for the rest of the night. The staff member was interviewed by the department in response to this complaint. Although the allegation could not be substantiated, he was moved to another unit.

The second concerned an incident when the young woman was moved to the isolation room where she was to be placed to calm down. It was clear the woman was forcibly moved into the room by male staff. The woman and staff made counter allegations of assault. Police were called in response to this incident. The matter will be determined at court.

The third incident occurred the day after the second incident. It again related to the woman being manhandled into the isolated detention room. Staff and the woman claim they were assaulted but no one wanted to have formal charges laid. It was alleged that when the woman refused to give up her shoes, two male staff picked her up, placed her on the cement "bed" and held her there while they removed her shoes. (Shoes and shoe laces are seen as a possible self harm risk and their removal is considered fairly standard practice). As no charges were laid and the woman did not wish to make a further statement, this matter was not pursued.

During the course of our inquiries it was revealed that significant information concerning the woman's background had not been communicated to the Department of Juvenile Justice, specifically to the psychologist and psychiatrist involved with her management. The woman had been known to the Department of Community Services for a number of years, yet few details of her family background and childhood situation were passed on to the department. It was stated to our officers that this information was of great significance for her case management.

We suggested the Department of Juvenile Justice establish clearer protocols with the Department of Community Services to ensure all information relevant to the appropriate management and support of detainees is provided.

The department supplied a copy of a document, *Department of Community Services and Department of Juvenile Justice Protocol and Procedures*. Closer scrutiny revealed the document principally related to those detainees who were or had been state wards or protected persons. This particular woman had not been a state ward, although there had been strong involvement by the Department of Community Services in her life and the life of her family. It is hoped however that this document is a reflection of increasing cooperation between these agencies for the better support and management of young people who come in contact with these agencies.

Who assaulted whom?

A solicitor wrote to the Ombudsman on behalf of a young man in a Juvenile Justice Centre. The complaint alleged the young man had been assaulted by two staff from the centre, causing injuries to his face and possible fractures.

Our inquiries confirmed there had been a serious incident involving the young man and two youth workers employed at the centre. It appeared that earlier in the evening, he had been escorted to his room by one of the youth workers after being given an 'early bed' as a punishment for misbehaviour. While being taken to his room, he shouted abuse at one of the youth workers. A short time later, he requested permission to go to the night toilet. The same youth worker attended. On return to the inmate's room, verbal abuse soon turned into physical abuse with punches being thrown. Another youth worker was present and also became involved in the fighting. He stated he was attempting to help the other worker restrain the detainee. The two workers alleged the detainee initiated the fight and could not be controlled. The detainee alleged the worker initiated the incident and the two workers had bashed him.

A senior worker arrived and the fight was broken up. The two workers were ordered to another unit for the remainder of their shift. One of the senior staff called to the unit stated that upon entering the detainee's room:

> *"I noticed that* [the detainee] *was marked around the face area and also he had a lot of swelling around the eyes plus his hand was quite swollen ... At no time did I noticed* [sic] *any marks on either* [of the two youth workers]."

The superintendent was advised, and arrived soon after to speak with those involved. The police were called and the detainee taken to hospital after being interviewed. Injuries to his face were documented and X-rays ordered.

Our staff attended the centre to review the records made on the night and inspect the unit and room where the incident occurred. Statements were closely reviewed and a further statement obtained from a worker who was on duty that night but who had been overlooked in earlier inquiries by the department and police. At the end of the day, the police declined to lay charges as it would be very difficult to establish exactly where the truth lay.

In many ways, the incident appears to be no different to many other incidents that occur in the juvenile justice system and adult correctional system. Assaults do occur, between detainees/inmates, and between detainees and staff. It is common that where allegations of assault are made, no action is taken as there is insufficient evidence to establish the truth of the matter. The only witnesses involved will of course have contradictory versions of events.

This incident however, is somewhat different from many others for the following reasons:

- the Superintendent and senior staff considered other information as significant - the statements of other workers, who, although not witnesses to the particular fight, attended the room shortly after and described what they saw;
- the department recognised it had a responsibility to make its own decision concerning the appropriateness of the conduct of its workers, rather than just stopping its inquiry when the police declined to lay criminal charges. This is evidenced by the fact that:
  - the youth workers were suspended pending full departmental investigation;
  - a recommendation was made that the two youth workers not be further employed by the department; and
- the detainee was not intimidated by the situation, and pursued his complaint with the assistance of a solicitor from a community legal centre.

As the matter appeared to be fully and appropriately dealt with by the department, we considered little would be achieved by conducting our own investigation of the matter. Ideally, such incidents would not occur within the juvenile justice system. As we live in the real world, it was at least refreshing to find such a prompt and thorough response from those in the department. It can only have been made clear to staff and detainees in that centre, that such matters can be dealt with fairly and that improper conduct by staff can and should be reported.

The Office of the Ombudsman continues to provide an excellent service to our client and we appreciate the assistance given by your officers to the improvement of Juvenile Justice service delivery.
A complainant's solicitor

Coming to the party after passing the buck

A Pymble man's sewer pipe connection was damaged by work of Sydney Electricity. At the time of the damage, Sydney Electricity repaired the pipes with a concrete patch, but this patch later became detached.

Over time, roots from a council-planted Jacaranda tree invaded the pipe and blocked the man's sewer. He had the blockage fixed and the pipe repaired and then approached both Sydney Electricity and Ku-ring-gai Council for a contribution towards the cost of the work.

Council's initial response was that as the initial damage was Sydney Electricity's fault, council would not contribute towards the cost. Sydney Electricity offered a small amount towards the cost.

Initially, we offered our mediation service to all three parties. After further discussion however, we were able to assist the parties to negotiate a settlement satisfactory to all, without a formal mediation.

Despite some initial reluctance on the part of council, they agreed that in the circumstances they would contribute towards the costs in good faith. Sydney Electricity displayed a willingness to negotiate from the beginning, and in the end offered twice the amount of their original offer.

The role of the Ombudsman in assisting residents negotiate agreements of this nature with authorities can be helpful in saving time and money for all concerned.

Contracting out- whose problem?

In February 1994, a man from Young was driving home from Canberra along the Hume Highway when he encountered road work. While driving through the work, his windscreen was severely damaged by a stone thrown up by a vehicle travelling in the opposite direction. After 13 months pursuing compensation from the Roads and Traffic Authority without result, he asked us for assistance.

Like many public authorities involved in large capital projects, the Roads and Traffic Authority increasingly makes use of private contractors to carry out work on its behalf. This was the case with the road work in question. Under the terms of the contract between the authority and the private contractor, the authority was indemnified against liability arising from work done by the contractor. As a result, the claim had been referred by the authority to the contractor and the complainant advised to pursue the contractor directly.

When we contacted the authority, it promptly agreed to pay the claim. The authority noted that in this case the work had been carried out by a contractor doing large amounts of work for the authority state-wide. It acknowledged the need for monitoring claims referred to contractors. However, the authority stressed in most cases, contracted work was of a "one off" nature. Monitoring would in these cases be done by the contract supervisor. The authority agreed to nominate a point of contact in each of its regions who would in future be responsible for receiving and referring to contractors of this sort all claims as well as monitoring assessment of the claims. Claimants will also in future be advised of details of the point of contact in the authority and the person assessing the claim on behalf of the contractor.

Valuable information

The only contact most landowners have with the Valuer General's Office comes from receiving rather innocuous looking slips of paper every six or so years advising of the Valuer General's determination of the land value of their property. Many would do no more than read the notices, contemplate the impact of the valuations on their personal fortunes and file or throw them away.

In fact, these valuations play a big role in determining the level of council rates payable each year by landowners. While the overall income of councils is limited in each year, the distribution of the rate burden can change dramatically, in part because of changes to the relative values of properties in the council area. A proportion of each landowner's rates is determined by multiplying an amount per dollar by the valuation of the land. So, for instance, the owner of a property the value of which in relation to the value of all other properties in the council area has increased will be liable for higher rates, all other things being equal.

This relationship became apparent to a resident of Sydney's northern suburbs when he found that unlike most other landowners in Ku-ring-gai Council, his rates had increased as a result of the latest valuation of land in the

council area. Most properties in the council area fell in value. The complainant's property was one of relatively few which fell only slightly in value. He protested to council that his rates had increased dramatically. Council pointed out it was because in relative terms his property had declined in value by less than the average 16 per cent decline for the council area. He then wrote to the Valuer General objecting to the valuation. His objection was refused, ostensibly because it had been made beyond the 42 day period for objections and acceptance of a late objection was not justified. At that point, he complained to the Ombudsman.

The Ombudsman believes that furnishing reasons for any decision is one of the basic principles of good administration and is often a requirement of procedural fairness.

A number of issues concerned us. The complainant was clearly unaware of the importance of the valuation when he received his notice. The Valuer General did not give any reasons for deciding not to accept the late objection. After writing to the Valuer General, it emerged the complainant was deemed to have objected on the basis of the impact of the valuation on his rates. It does not consider this a valid ground for objection. Since these grounds are not advised to landowners, this hardy seemed reasonable. Also of concern was the Valuer General's failure to record and consistently apply guidelines for determining whether late objections should be accepted.

On putting these concerns again to the Valuer General, he agreed to formulate and apply written guidelines on determining late objections to valuations. To help improve information given to landowners with valuations, the Valuer General offered to incorporate our views in a review of the notice of valuation. We emphasised the need to inform landowners of the nature of the valuation process, the significance of valuations and on what basis an objection to a valuation can be made.

Know your rights

Since its restructure in 1994 the Department of Housing has striven to provide a more sensitive and customer focused service to its clients. In 1994 a couple with disabilities asked the department to move them closer to welfare services because they were forced to travel long distances.

The department refused their request because their application *"did not meet the required criteria"*. The couple felt their needs were legitimate and asked for their case to be reconsidered. Their appeal was unsuccessful and the appeal panel sent them a letter stating *"the Department of Housing acted in accordance with existing policy.."*. No further explanation was provided.

The Ombudsman believes that furnishing reasons for any decision is one of the basic principles of good administration and is often a requirement of procedural fairness. Explanations should include enough information to inform people about their appeal rights and the kind of case they would need to make in order to have their appeal fully considered.

On this basis we wrote to the director of the department asking him to consider the adequacy of information provided to people in these situations. The director agreed it was not helpful to tell people they had a right of appeal against a decision without explaining how they could get information about the reasons for making the decision in the first place. Although the department's computer generated correspondence had been changed recently the director arranged for the letters to be amended from this perspective.

Taken for a ride

A man from the north coast had an opportunity to buy an expensive powerful motorcycle. Before completing the deal he checked with the Roads and Traffic Authority on three separate occasions as to whether he was eligible for a licence to ride such a vehicle. He was assured that since he already possessed a current gold driving licence he was eligible to apply for the motorcycle licence. He went ahead and bought the bike for $20,000. He proceeded to have riding lessons and during that time was informed by the company that he would not be eligible to apply for a licence until he was 30 years old. He was 28 years old at that time. The man was astounded at this news and contacted the manager of the local RTA registry. It was confirmed he had previously been given the wrong information but the fact remained that he was not eligible to

Thank you for the constructive role you and particularly your staff have played in this matter.
A complainant

apply for that licence. Stuck with a bike he could not ride and thoroughly dissatisfied he contacted us for help.

After receiving advice from the RTA head office, we contacted the local Area Manager and asked whether, given the circumstances, discretion could be used to grant the man permission to apply for the licence. He acknowledged a communication problem had occurred between the man and a staff member and that the man had been given permission to obtain a licence that would allow him to ride the motorbike he had purchased. The man was very happy with the result and called to thank our staff involved.

Poor telephone technique

A man complained that staff from the State Authorities Superannuation Board had misled him and been rude. He had been medically retired in December 1994. On inquiring with the board he was told that it would take about eight weeks to process his application for his superannuation. After another five weeks he rang again to ask how the matter was progressing. The officer in charge of his file told him he had his file with him and he could assure him he would have his cheque within five days.

When the complainant did not receive the cheque for three weeks he rang the officer again. The officer became annoyed and told the man he could not care less about his cheque and hung up abruptly.

The man then rang us. We inquired with a manager of the board why the man was given misleading information and about the rudeness of her staff.

All the manager would say at that stage was that the matter would be looked into.

Another call was received from the manager the following day to say that by sheer coincidence the officer in charge of the matter had called the complainant that morning and had informed him that he would get his cheque early the next week. She went on to say the call had nothing to do with the inquiries made by the Ombudsman's office and the officer had not known at that stage that a complaint had been made about his conduct.

We asked what she intended to do about the fact that misleading information had been given to the complainant and that a staff member had been rude. She said she would issue a memo to staff about the importance of not misleading clients and another on how to deal with clients.

We then contacted the complainant who confirmed the officer had called him early that morning and had apologised for his manner of the previous day saying he had been having a bad day. When the complainant asked if the call was a result of the complaint to the Ombudsman's office the question was ignored and the complainant told he would have his cheque the following week. The complainant was very happy with the final outcome and believed it was due to our intervention.

Three that got away

A mother called seeking assistance with regard to her son's driving licence. In November 1994, her son had either misplaced his licence or had it stolen. Over the next six months, someone had used his identification details and incurred eight traffic offences against his name. On receiving the reminder notices from the Infringement Processing Bureau (IPB), the son wrote to refute the infringements and requested the IPB investigate how the notices were incurred. He received no response and in early June he received notice from the Road & Traffic Authority that his licence had been cancelled.

His mother attempted to gain advice from the IPB as to what action they had taken with regard to her son's letters. She could not obtain any information and so contacted us.

Our telephone inquiries, found the IPB had received all the son's letters. However, they were only investigating five of the offences. While they acknowledged receiving a letter about the other three offences, it had apparently been misplaced, and no further action was taken. As a result the three fines were processed normally and his licence cancelled.

The IPB advised us that if a replacement letter was sent, they would recall the fines from the RTA, who would in turn reissue the son's licence. His record would then be clear.

The mother was advised of the process, and the son hand delivered a letter to the IPB the next day. The IPB and the RTA advised the process

to recall the fines and reissue the son's licence would take approximately 24 to 48 hours. The mother had called us on a Tuesday, her son had his licence reissued on Friday afternoon.

The mother had called us on a Tuesday, her son had his licence reissued on Friday afternoon.

No file, no pay

A solicitor wrote on behalf of a Department of Housing tenant, complaining the department failed to reimburse his client for painting her home.

The elderly woman and her son undertook to paint their home, where they had lived for 40 years. They were advised by the department that if they wanted to paint their home they could and the department would fully reimburse them. A publicly advertised plan for the painting of premises was obtained by the complainant which explained how much the department would pay for each room painted, the type of paint to be used and how to make a claim.

The complainant followed the department's instructions and after she had finished painting, lodged an application for reimbursement of $395.

Three weeks after inspecting the work, the department told the woman they could not reimburse her because they had lost her file. They were unable to tell her when she was likely to get the money.

Following our inquiries the department created a new file and the woman's application for reimbursement was approved. The department wrote a letter of apology to the complainant for the delay and inconvenience caused.

Cancelled without notice

A man complained the Silverwater branch of the Roads and Traffic Authority (RTA) cancelled his car registration without notifying him.

In May 1995 the man had reported his car stolen to police. In early June police found his car. On collecting his car he noted that both his number plates had been stolen. He went to the RTA in Lidcombe to get new number plates, where he was informed his car registration had been cancelled by Silverwater RTA where the number plates had been returned. He was told he would have re-register his car. He explained to Lidcombe RTA what had happened but was told they could not help.

The complainant could not understand why his car registration had been cancelled without the RTA notifying him, or why identification was not required from the person returning number plates to ensure he was the owner of the vehicle. We contacted RTA Head Office, General Manager Registration Unit, and made inquiries as to whether this was normal procedure. We were informed it was a policy to ask for identification from a person returning number plates or contact the owner to ensure this is what he wanted before the RTA would cancel his registration to prevent this from happening. They could not explain how this could have taken place if the policy had been followed. We were advised the matter would be attended to immediately and the complainant would have new number plates by the beginning of weekend.

We were informed at 4.45pm that afternoon, that arrangements had been made with Castle Hill RTA, the nearest RTA to where complainant lived, which was open on a Saturday morning, for him to collect new number plates without any charge to him. We conveyed the RTA's apology to the man.

Thank you very much for your time and presentation to our District Managers' meeting.
Your information and advice provided was well received. Those staff present, no doubt, are now in a much better position of understanding when dealing with your office.
Once again thank you for your pro-active approach in this instance.
A public authority representative

Prisons

Overview

During 1994-95 the recent dramatic increase in prisoner numbers in NSW slowed. Despite this the daily average number of prisoners was still well over 6000. In the same period there was a matching plateau in the number of written complaints about the prison system. Oral complaints however grew alarmingly from 346 in 1993-94 to 929 in 1994-95. There are a number of reasons for the strong growth.

A rearrangement of the Ombudsman program of visits to NSW gaols saw 416 complaints taken during the regular visits to all NSW gaols, a big increase on the previous year. More visits were completed and more time spent on some gaols. At Goulburn and Junee record numbers of oral complaints were received.

These visits serve a vital purpose in gauging how a particular institution and ultimately the department itself is performing. In fact the visits are the most important reflection of the 1978 Nagle Royal Commission's recommendation that an Ombudsman be given the brief of oversighting NSW prisons.

With training, experience and detailed background information about complaint patterns and prison organisation it is possible for Ombudsman officers to make insightful assessments of prisons during even short visits. Improved communication between prison staff and Ombudsman officers has also meant that an increasing number of complaints are resolved at the gaol on the day. Broad matters of policy and procedure are more openly discussed and there is a greater willingness on both sides to seek out solutions to problems.

The more positive approach of the department and the greater emphasis in this office on quick resolution of complaints has also encouraged more complaints.

Finally, the department's better telephone policies and improved awareness of this office is gradually allowing greater access to phones - and thus increasing telephone complaints.

This mix of complaints from different sources is providing an even clearer picture of how Corrective Services works.

At the same time the relationship between the department and our office continues to improve. Corrective Services involved our staff in discussions about major policy changes, offered briefings in advance on significant issues and participated in training days. For the first time a staff exchange took place between the two bodies to try to better understand how each department functions. Training sessions were run in conjunction with Corrective Services staff for those responding to Ombudsman inquiries. In addition our staff continued to speak to new recruits at the Corrective Services Academy and Official Visitors.

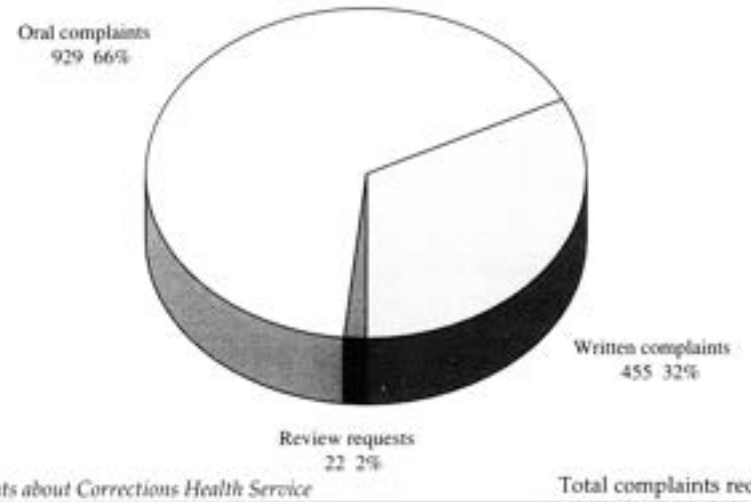
From a practical point of view this meant, for the large part, the speedier resolution of a larger number of inquiries as well as the examination of many important problems. Where an issue might in the past have been the subject of a long drawn out investigation it might now result in a meeting, a detailed letter from the Ombudsman outlining the concerns and an acknowledgment from the department that action has been taken to resolve the issue.

Not surprisingly however, we continue to receive complaints about some issues that are not so conducive to simple resolutions. There are still 6200 inmates in NSW gaols on any one day and some of them are serving time in buildings over 100 years old. Some of them are serving time in 25 year old buildings which look as though they were built last century.

It is not just the buildings that are ill equipped to cope with this number of inmates. Decisions about who goes to what gaol, why they go and how they go are made by a very small and poorly resourced group of individuals in the Classification and Placement Section of the Department. On some days there are fewer than 60 vacancies in NSW gaols to cope with newly convicted prisoners from court and essential

Prison Complaints Received*

1994 -1995

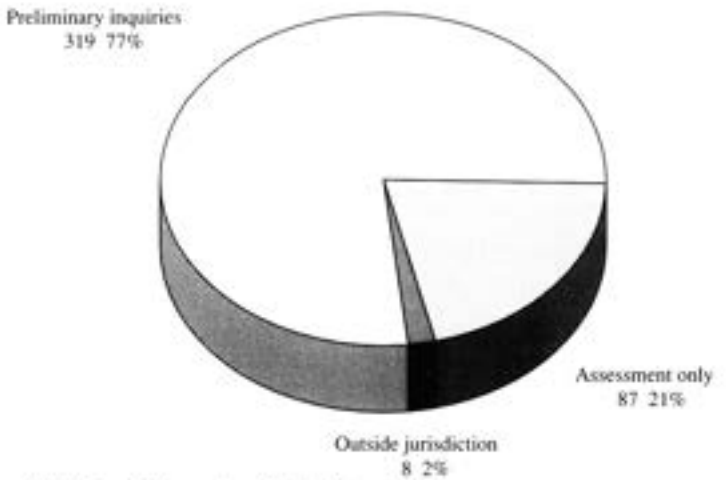


**Excludes complaints about Corrections Health Service*

Total complaints received: 1406

Prison complaints determined

1994 - 1995

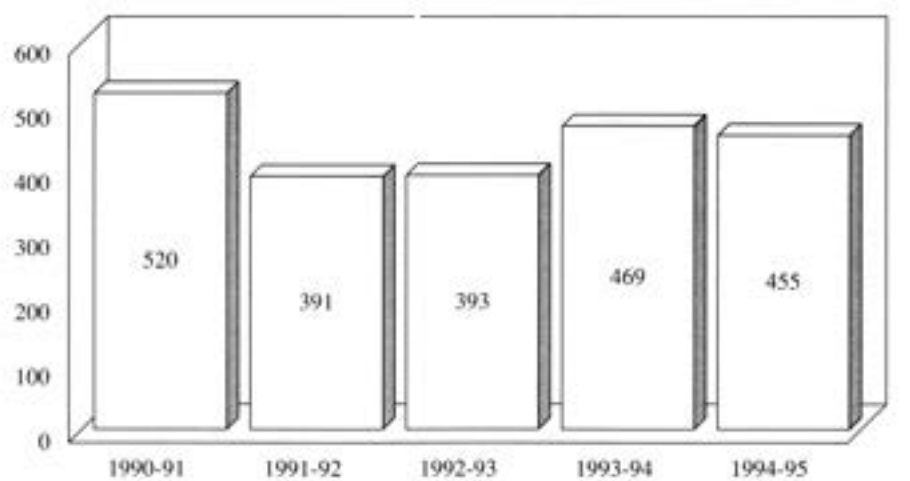


**'Assessment only' includes declines of complaints that were too old or premature and incidents where the complainant had other means of redress or was provided with advice.*

Total complaints determined: 414

Written complaints received about Department of Corrective Services*

A five year comparison



**Includes complaints about Australasian Correctional Management*

transfers around the state for compassionate, court and medical reasons. What Classification, as it stands at present, is being asked to do is almost a logistic impossibility - to fill the available spaces without endangering inmates or officers while ensuring that every opportunity for rehabilitative activity or family contact is maintained or strengthened.

The situation is not helped by continuing operational alterations over recent years to many institutions. This has meant changes to the security rating of wings (sometimes more than once in a short time), whole gaols (John Marony at Windsor from maximum to minimum), sections of gaols (the use of the Special Purpose Centre for protected inmates to house prisoners with developmental disabilities), expensive large scale renovations (and even re-re-renovations at the Reception Centre at Long Bay) and the mass movement of prisoners. This is not to say that many of the changes have not been positive steps - some of them have been. However it is still hard to avoid the impression that forward planning within the Department is either inadequate or not of the highest priority. Within the gaols and certain parts of the department itself Ombudsman officers have noted considerable dissatisfaction about the level of communication about future plans between various sections of the department.

Managing a large and unwieldy department like Corrective Services is not unlike manoeuvring an ocean liner in a small harbour - it is difficult, it can take an unreasonably long time and there is every chance of running into something. The best example of this phenomena is in the implementation of case management in NSW prisons. Making individual prison officers more responsible for the management of particular prisoners has been going on for some time. In some institutions it is working very well indeed. In others no amount of cajoling and bullying has convinced the staff to commit themselves to the concept. The reasons for this are complex and revealing - hard-line resistance to reducing the gulf between prisoner and officer exists across the system, the implementation support program has been understaffed and poorly resourced, increased paperwork resulting from case management has an impact on security, training and on staff morale. Perhaps the department has been unable to demonstrate to staff that the benefits that can flow from such a system - better inmate placement, improved understanding of prisoner behaviour, the lowering of tensions by improved communication, fewer physical confrontations - can outweigh the disruptions caused by change. It is interesting to note that beside the minimum security gaols the prison in which the system appears to have been best implemented is Junee, where staff were largely recruited from outside existing custodial environments and had fewer ingrained attitudes to the proposals.

Deft manoeuvres can indeed be accomplished within the system as the significant and apparently successful reassessment, renovation and revitalisation of the women's prison at Mulawa has proven. A dramatic reduction in complaints from the women's prison (42 in 1993-94 to 18 in 1994-95) might reflect these changes. What is now needed is a consolidation which sees the gains reinforced and a concrete plan for the future put in place.

There are a number of major changes proposed for Corrective Services, including reductions in prisoner numbers and the increased use of home detention.

Fundamental alterations to policy and practice inevitably lead to an initial increase in complaints to our office. The most successful changes ultimately reduce complaints and improve conditions. We look forward to positive, practical changes and the continued resolution of the complaints that follow.

Prison complaints received by institution
1994 - 1995

Junee	46
Reception Industrial Centre	36
Goulburn	31
Remand Centre	26
Training Centre	24
Bathurst	21
Silverwater	20
Mulawa/Norma Parker/Emu Plains	18
Parramatta	18
Maitland	17
Cessnock	14
Grafton	13
Prison Hospital	13
Kirkconnell	10
Lithgow	10
Berrima	7
John Morony	7
Mannus	6
Parklea	6
Cooma	4
Special Purposes Prison	3
Tamworth	3
Glen Innes	3
Oberon	2
Broken Hill	1
Periodic Detention Centres	1
St Heliers	1
Department of Corrective Services	58
Others	35
TOTAL	**455**

Nature of written prison complaints
1994 - 1995

		Total
Officer Misconduct		**66**
Threats/harassment	26	
Assaults	23	
Racist abuse	4	
Other	13	
Property		**64**
Loss	34	
Delay in transferring	5	
Confiscation	8	
Failure to compensate	9	
Private property policy	3	
Other	5	
Transfers		**43**
Unreasonable/refusal to	30	
Form of transport	4	
Interstate	5	
Delay	4	
Classification/placement		**41**
Record Keeping & Administration		**41**
Inaccurate records	2	
Private cash accounts	6	
Sentence calculation	8	
Warrants	2	
Failure to reply	8	
Other/refusal to supply information	15	
Visits		**31**
Treatment of visitors	12	
Ban on visitor	8	
Access to visitor	3	
Searches of visitor	8	
Day and other leave		**25**
Failure to ensure physical safety		**17**
Daily Routine		**16**
Access to amenities/activities	8	
Access to telephones	2	
General treatment (including time out of cells)	6	
Physical conditions		**15**
Unhygienic conditions	5	
Lack of basic conditions	10	
Security		**12**
Urine analysis	11	
Cell and strip searches	1	
Medical		**11**
Access	8	
Methadone	3	
Work and education (access/removal)		**10**
Mail		**10**
Delays in delivery	5	
Interception/missing	5	
Segregation		**9**
Unreasonable	8	
Failure to give reasons	1	
Unfair discipline		**8**
Buy-ups		**7**
Food and diet		**5**
Legal		**5**
Staff levels/lock ins		**3**
Probation and parole		**2**
Periodic		**1**
Other		**8**
Issues outside jurisdiction		**5**
TOTAL		**455**

Issues

Drugs

Drugs can be a desperate problem in gaols. The very nature of prison life increases the likelihood of individuals being stood over, coerced or enticed into drug use and importation.

While Corrective Services has been trying to stem the flow, it is impossible to completely stop drugs getting into prisons. One area the department is focusing its prevention efforts is on the introduction of drugs by visitors.

New searching procedures at various gaols have, for the most part, been well thought out and are carried out courteously and with due consideration. We examined a range of specific complaints about the new procedures without revealing significant misconduct by Corrective Services officers.

Corrective Services staff do not have the power to strip search visitors. If staff have 'reasonable suspicions' an offence is occurring, they can call on police. There is a need to examine the procedures used to notify police and the police procedures for conducting strip searches.

There have been occasions when police have not passed the results of searches onto staff. On other occasions, staff have used information which is months out of date to justify calling police to conduct a search. Corrective Services is aware this is unacceptable and is taking steps to make sure there is sufficient justification for each search.

The department relies heavily on 'intelligence' information in its drug prevention activities. The department needs to be wary of the value it places on some of the information it accepts.

It is important that information which might influence prison security is handled correctly. It is important to the inmates because it can change their standing within the prison system forever. It is important to the department and individual prisons because it can preserve the security of those institutions. The recurrence of complaints about the misuse of intelligence information indicates that the department may need to examine how information is gathered, distributed and used within Corrective Services. This should involve an examination of the resources allocated to intelligence gathering within the department.

As it is impossible to fully stem the flow of drugs into prisons, the drug and alcohol programs in gaols are vital. Unfortunately increasing prisoner numbers have not been matched by an increase in the resources available for drug and alcohol counselling.

While active programs exist in most gaols, they are limited. Complaints centre on general lack of access, few hours available for group sessions and delays in reports for the Serious Offenders Review Council and the Offenders Review Board. The number and quality of counsellors is limited by the money available and the difficulty of recruiting people in country centres.

If Corrective Services' war on drugs is to yield major benefits, it must better coordinate individual programs and ensure sufficient resources are available.

Urinalysis

Complaints about the urinalysis program have steadily dropped, however, we were concerned by two complaints from inmates in different gaols who were departmentally charged after returning a 'diluted' urine sample.

In the experience of Corrective Services some inmates attempt to prevent detection of drugs in their urine by drinking a large amount of fluid before giving a urine sample. If the urine is significantly diluted, the likelihood of detecting drugs is decreased.

Both complainants said they normally drank large amounts of fluid and at least one of the inmates was involved in physical training. The inmates believed they were being punished unreasonably. The department charged the inmates under clause 162 of the Prisons (General) Regulation which states: *"A prisoner must not wilfully hinder or obstruct a prison officer in the performance of his or her duties as a prison officer"*.

Both inmates were denied contact visits and were threatened with harsher punishment if they returned further 'diluted' urinalysis results.

We were concerned the inmates appeared to be receiving charges and punishments entirely on the basis of suspicions held by prison staff that by offering a diluted sample an inmate had attempted to flush illegal substances from his or her body. There did not appear to be any scientific or legal basis for inmates to be punished for

returning a diluted urine sample. Nor did there appear to be a legal basis for using clause 162.

We made inquiries with Royal North Shore Hospital's Toxicology Unit which tests samples for the department. The senior scientist who replied to our enquiries was adamant in their advice that the sample was "dilute" should not be used in any way as evidence that an inmate had taken drugs. He acknowledged that inmates with high fluid intakes, such as those involved in weight training or vigorous exercise, could return a "dilute" sample. He suggested that an inmate returning a dilute sample should be resampled to provide a representative sample. The Toxicology Unit considered this matter serious enough to write to the Department of Corrective Services and notify them they would no longer provide the department with advice that a sample was dilute because the information had been misused.

We agreed with the unit's view. It has to be acknowledged that some inmates may attempt to disguise illicit drug taking by trying to flush substances from their systems. However in most cases inmates are not given prior notice that they are to be tested and so should not be forewarned of the need to consume large amounts of fluid.

We wrote to Corrective Services outlining our concerns and requested details of the number of inmates who had been charged and what punishments they had received. The department was also asked to explain their use of clause 162 for charging inmates for returning a dilute urine sample.

The department identified 17 inmates who had been charged for returning a dilute sample and while none had been transferred or increased in security, two had a weekend leave taken from them. The department acknowledged that no legal advice had been sought before implementing this practice. The Deputy Commissioner advised that the governors who imposed the charges had been told to rescind their decision. He also provided a copy of a notice which had been sent to gaol governors telling them not to take action against inmates who had returned a diluted sample.

We proposed no further action. However on checking the Offender Record System two weeks later we found a number of the inmates originally affected still had the offence recorded against them. We contacted the department which gave an undertaking that the records would be corrected. Four months later we made a follow up check and found three inmates still had the offences recorded against them.

This failure to honour the undertaking was again brought to the Commissioner's notice and information was requested about the classification reviews conducted on the affected inmates during the intervening period. Departmental charges can have a bearing on whether an inmate's classification is lowered.

The department replied that the failure to remove the charges had not had a detrimental affect on the progress of the inmates. One had been released during this period, another had had his security classification reduced and the remaining inmate had received a further two departmental charges - this combined with the time remaining on his sentence made him ineligible to be reduced in classification.

Perusal of the documents provided by the department showed that one of the charges the inmate was supposed to have received was the **original** charge he had received for having a dilute urine.

Again the department was asked to explain. The department conceded the charge had incorrectly been taken into consideration during the inmates' classification review.

Case management

Case management is now being implemented throughout NSW gaols. In practical terms this means a file of personal details is established on each person entering prison. The file is then allocated to an officer who is made responsible for 'management' of that prisoner. In theory this places greater pressure on prison officers to relate to inmates and makes inmates more responsible for their own behaviour because they are more closely monitored. The results, however, have been mixed.

Prison officers in some gaols have grasped the concept with both hands and the system seems to be working well. In smaller camps with less pressure where similar programs have been running for some time the implementation has gone well. In other settings enthusiastic staff with supportive governors have made it work against the odds, however, there are problems.

I would like to thank you for your assistance in relation to your efforts. I am of the belief that you were instrumental and mostly responsible for changing the rule of the Department of Corrective Services when it classifies deportees, people facing extradition and interstate transferees.
A complainant

For many prison officers a new file management arrangement is simply more paperwork. Many find the existing administrative requirements onerous let alone additional ones. Some find the requirement to associate more frequently on a personal basis with convicted criminals threatening and unfamiliar. Certain inmates simply refuse to comply with the new regime. Administrative arrangements in some gaols make storage and access to files awkward.

An inmate complained that on reviewing his file he found inaccurate information and information that had been placed on the file without his knowledge. He was to appear at a Serious Offenders Review Council hearing and was concerned the information could have been given to the council and he would have had no chance to respond.

We wrote the department:

> *Obviously there should be no barrier to prison officers recording their observations of individual inmate behaviour.... However, another equally important part of case management is improved communications between officers and inmates. It is crucial that in keeping case management records prisoners are kept aware of what is being entered onto that record. It is one thing to be told that lack of co-operation, for instance, will lead to the incident being recorded and another to discover several months later that you are noted as refusing an order.*

Access to the records themselves has also been a problem. While certain comments by staff about relationships or associations of inmates should remain confidential, the practice in some gaols of requiring inmates to apply under the Freedom of Information Act to see comments that are meant to form part of their day-to-day management seems ridiculous.

The problems with the implementation of case management, highlighted by complaints to the Ombudsman, indicate the department needs to implement solid guidelines and policies, and adequate staff training.

Handcuffing

Details of the Department of Corrective Services handcuffing policy were requested after a minimum security inmate complained he and a fellow minimum security inmate were handcuffed while being transported in the rear of a secure prison van.

The inmate, who was appearing in court as a witness, had travelled unhandcuffed in a car with only one escorting officer on the previous two days. Nothing had occurred during these trips to warrant a change in their handling of him. On the third day, as there were two inmates to be moved, a small prison van was used for transport. Both inmates travelled unhandcuffed. On the return journey they were placed in large prison van and handcuffed. There were no other inmates in the van.

As a consequence of this complaint, we contacted the manager of the Transport Unit. He agreed that both the inmates were usually transported unhandcuffed and there had been no incident to warrant the change. He said the incident occurred because the escorting officers were unfamiliar with the circumstances of the inmates. He agreed to issue a reminder to the officers concerned and assured us the inmates would be transported unhandcuffed in the future unless an incident had occurred or they were with inmates of a higher classification.

Transporting handcuffed inmates in certain types of prison vans has concerned us for some time and we have regularly raised the issue with the department. Even without sudden stops or bumpy roads, inmates are constantly thrown around by the movement of the vehicle. Without seatbelts to secure them and with their hands in handcuffs, inmates have no way to lessen these effects. They often fall to the floor of the van and there have been many instances where inmates have suffered injuries while being escorted in prison vans. While maximum security inmates may need to be handcuffed during transport for security reasons, minimum security inmates do not pose the same risk.

Semantics

A program is commonly seen as a plan or process to implement a policy or at very least a list of things to be done. In a number of cases the department claims a program is in place but no action occurs.

For years the department has sent sex offenders to Cooma Correctional Centre to participate in the so called 'Sex Offenders Program'. Last year the title was changed to the Sex Offenders Assessment Program. This alteration acknowledged the fact that there is little in the way of specific treatment of sex offenders at the prison and there was no real 'program' in place.

The number and proportion of child sex offenders in the prison population has increased in recent years and Cooma faces major problems.

A shortage of psychologists in particular has created enormous problems, with the gaol unable to provide inmates with a full psychological service. Staff are difficult to recruit and continuity of service is an ongoing problem.

The long term benefits of the treatment of sex offenders is also a matter of dispute. Studies have been inconclusive about the results of intense therapy. In Cooma, of course, no genuine assessment can be made because no such treatment has taken place.

The Ombudsman wrote to the department to express concerns about the use of the word 'program':

> *It is misleading at present to refer to a "sex offenders program" being carried out at Cooma.*
>
> *This situation is unfortunate in the extreme in that upwards of 140 child sex offenders or about 40 per cent of all such offenders in the state are housed at Cooma. I cannot encourage too forcefully the Department's intention to introduce a "comprehensive treatment program" in the near future. It is of concern that certain inmates, some departmental staff and no doubt members of the public believe that such treatment takes place at the present time. It is particularly worrying that the Offenders Review Board and the Serious Offenders Review Council may not be fully aware of the lack of intensive counselling and therapeutic treatment available at Cooma.*

We look forward to the result of a recent request by Corrective services to fund such a program.

More than two years ago the notorious High Security Unit at Goulburn was closed, renovated and reopened to house inmates with difficult behaviour problems. Continuing intractable behaviour, assaults on officers and other inmates could lead to someone being put into the 'program'. Most inmates came to the unit from segregation.

The 'program' was to provide a strict hierarchy of privileges which reflected the prisoner's willingness to comply with the system. Staff ratios were high and the use of behavioural management techniques and case management were to be emphasised.

The 'program' had notable successes. However, it was used as a dumping ground by other institutions. Troublemakers were referred to the program regardless of whether they would benefit from a restricted regime and more direct case management. Inmates see the 'program' as being little more than segregation under another name. This view was reinforced by the fact that most inmates were placed on segregation as a matter of course when transferred to other prisons for court or medical appointments. This practice has now been stopped at our instigation.

The review of the program, due in March 1995 has not occurred. It seems the initial good work in setting up a unit to address the problem of non compliant prisoners deserves to be followed up with greater energy and commitment.

In fact in mid 1994 Junee Correctional centre tried to deal with the inappropriate behaviour of certain prisoners by setting up a 'program' similar to Goulburn's. The result seemed to be simply a way of separating inmates without changing their classification. A section of the gaol was set aside where less cooperative prisoners were referred. There was no limit on the amount of time they spent in the program and nothing to indicate that anything particular, other than isolation, was being put in place to influence their behaviour. The scheme was disbanded a short time after we made inquiries into it.

I had problems with my property, so I rang your office and spoke to an inquiries officer. This lady was very helpful, my property arrived on the next escort. I was very happy and would like to thank the Ombudsman's staff for doing the right thing by me.
A complainant

Classification

The method of classifying prisoners is still the source of many complaints and cause for concern.

The assessment of a prisoner's risk to the security of an institution and the choice of where a prisoner should be housed is vitally important to the operation of the NSW prison system. Thoughtful and thorough classification is a major factor in the successful progress of inmates through the system. It contributes to the rehabilitation of prisoners and is an important part of the day-to-day management of prisons.

To better ensure the security of all institutions, particularly minimum security prisons, more accurate and detailed assessment of inmate classification is needed. The well being of prisoners must also be considered as well as the security of each institution.

Mass movement

From our observations, the department does not deal well with large scale movements of prisoners. We receive waves of telephone and written complaints whenever inmates are moved on mass.

While reorganising the prison population can provide benefits, hasty planning often exacerbates logistic problems facing those organising mass movements including:

- few vacancies within prisons, especially for certain types of inmates;
- low staffing, experience and expertise levels within the department's Classification and Placement Section;
- lack of appropriate software to assist in the process;
- transport services stretched to capacity;
- poor liaison between institutions;
- isolated prison locations; and
- poor assessment of inmates for appropriate transfer.

Major movements can also have an ongoing impact on the system in general. Uncertainty about who will be transferred and when they will go, causes tension and unrest in the receiving institutions and the gaols from which prisoners are to be moved. Prisoners are often moved to an interim location before being sent on to the new gaol. Delays mean some inmates are left at interim locations for months where they have little or no access to programs, visits or counselling.

When Junee became a "protection prison" in early 1995, those mainstream inmates being transferred of all classifications were initially sent to Goulburn Correctional Centre. In many cases prisoners were told they would go to their gaols of classification within a few days or weeks, in most cases this did not happen.

Goulburn was ill equipped to deal with the influx of prisoners, particularly the minimum security inmates. This resulted in prisoners of various classifications sharing yards in the main gaol at Goulburn when they should, in many cases, have been in minimum security at other institutions. Six months later there were still a number of minimum security inmates in the main gaol at Goulburn.

The transfer caused great tension in the gaol and during early 1995 the yards at Goulburn were not safe for prison officers or inmates. A major incident was avoided by a combination of luck and good staff management.

While mass transfers are not frequent events, they still require sufficient planning. The department should:

- provide greater lead times to plan such movements;
- ensure the Classification and Placement Section has sufficient resources available to deal with all contingencies;
- offer better briefings to receiving institutions;
- be up front with inmates about transfer timetables and ultimate destinations;
- work to limit gossip and misinformation about the process;
- stage movements over longer periods; and
- pay closer attention to the most appropriate prisoners to move.

Proper planning of these exercises will help ensure the aftermath is not costly in terms of time, money and the safety of officers and inmates.

Restructure

The restructure of Corrective Services's Classification and Placement Section should address some of the mass movement problems.

In the past, Program Review Committees in gaols assessed inmates and passed on their reports to a centralised classification body at Long Bay. Now, an individual classification officer attends prisons to chair Classification Committees which determine classification and transfer matters. This should result in faster, more consistent and more informed decision making. It also ensures prison staff have more direct contact with the final decision making process and can improve their relationship with the Classification Manager.

The new system also benefits the Ombudsman as it clearly identifies the officers responsible for individual prisons. This means we spend less time tracking down information and can address complaints more quickly.

We hope the restructure is a success. It will, however, require administrative and policy support and a willingness to closely examine all elements that might play a part in the classification and placement of an inmate.

The public interest

At any one time there are more than 2000 C2 prisoners in NSW gaols. These minimum security prisoners, to quote the Prison (General) Regulation, *"need not be confined by a physical barrier at all times but ... need some level of supervision"*.

Inmates with a C2 classification do afforestation or community work, garden and clean in the gaol grounds and undertake external study in the care of officers. Almost without exception, however, they want to gain a C3 classification which will allow them to work and earn money outside prison, to study or to go home for a day without supervision. A C3 classification is as close to normal life as prison life gets. Most C3 inmates are housed at Silverwater Correctional Centre.

A C3 classification is the key rehabilitation program used by Corrective Services. Increased contact with home, work and study in a setting free from the strictures of prison is a vital part of reacquainting prisoners with the skills to survive without resorting to crime.

In recent years the number of NSW prisoners assessed as being minimal risks to security has increased. But it has been difficult to decide who should be trusted with temporary access to the outside world and how such decisions should be made.

Over the last few years there have been a number of well publicised 'walk away' escapes from minimum security. In other cases the press has simply revealed that a well known individual was trusted to attend work or classes unsupervised. Such incidents simply served to draw unwanted negative attention to the very positive works release, study leave and day leave programs.

More than 12 months ago a committee was established to look at C3 applications by a selection of inmates whose access to leave programs were considered to be a matter of public interest. The definition of inmates who were in the 'public interest' ultimately included:

- sex offenders with minimum or fixed term of more than 18 months;
- violent offenders serving three years or more;
- fraud or corruption offenders serving three years or more;
- drug offenders serving five years or more;
- culpable drivers causing death; and
- those who the Commissioner considered to be in the 'public interest'.

This meant inmates with perfect custodial records were suddenly assessed as if they posed a greater risk to security than inmates with much poorer performance. While people have a right to seek reassurance that an unsupervised inmate is not going to reoffend or abscond, the classification decision should not be based on the nature of the offence alone.

Many complainants have argued that their punishment is determined in court and that only security reasons should influence an assessment of their need for rehabilitation or contact with family and society in general.

Others objected to the determination that they were inmates of 'public interest'. One had attempted to unsuccessfully bribe a judge. Another had concealed a corpse. Yet another had a history with a bikie gang. It appears from these cases, and the inclusion of the category of "culpable driving causing death",

I have just received my three books from the Bookbinding Department of the Corrective Services Industry of the Grafton Prison. Thank you for your kind assistance in this matter.
A complainant

that potential media coverage is playing a significant role in determining prisoner's classification.

The classification system plays a vital role for inmates who hope for a future without crime.

If the system is to succeed the department needs to implement procedures which allow C3 applications to be assessed on a case-by-case basis. The crime, the prison conduct, the family circumstances, the need for some form of rehabilitation, the temperament of the prisoner are just some of the factors that must be considered in deciding who gets the benefit of the most powerful rehabilitative program within the NSW prison system. We are not confident the existing guidelines allow that form of consideration. We will continue to examine this issue.

Mulawa Correctional Centre

On 27 July 1994, an article appeared in the Sydney Morning Herald making various allegations about maladministration and the treatment by the Department of Corrective Services of women prisoners at Mulawa. The claims included the existence of a sex for favours network between officers and prisoners in the gaol, a surge in the number of self mutilations in the gaol, theft of methadone, and substandard medical, psychological and other care for inmates. The article also referred to irregularities surrounding a death in custody and an attempted suicide.

Some of the allegations were consistent with complaints already being dealt with by the Ombudsman. Because of this, and the overall high number of complaints from Mulawa, investigation officers began to make extensive inquiries. These were conducted with the willing cooperation of both the Department of Corrective Services and the Corrections Health Service.

Formal notices of investigation were issued to both departments in September 1994.

Overall, more than two hundred people have been interviewed, detailed research of relevant policies and protocols undertaken as well as physical inspections. A major report is currently being compiled.

Australasian Correctional Management

Junee Correctional Centre

As the most complained about goal in the state, Junee Correctional Centre dominates both written and telephone complaints made to the Ombudsman by prisoners. As Junee is NSW's largest gaol, this is not surprising. However, the lack of an Official Visitor to deal with minor, local matters has not helped the situation. Overall the complaints reflect the changing nature of the gaol itself.

The gaol was originally planned for 480 medium and 120 minimum security prisoners. The prison now houses most of the protected prisoners in the state. These inmates either:

- need to be separated for the crimes they have committed;
- have been assaulted or threatened while in prison;
- have given information about other prisoners or have outside connections that mean their lives are at risk; or
- are open to exploitation in normal gaols.

For some time in 1994-95 the gaol played host to a dangerous mix of mainstream prisoners of various classifications and some protection inmates. Mixing classifications, with their contrasting privileges and different levels of security, usually results in problems. The inclusion of protected inmates, as well, can have volatile results.

During this time tension was high and violent incidents increased. The situation was not helped by the need for inmates to, on occasion, share facilities. The common walkway became a danger zone and new gates had to be erected.

It would not be fair to blame these problems on Australasian Correctional Management. Junee simply serves the functions required of it by the Department of Corrective Services.

The institution has gone through some traumatic changes. Prisoners are unhappy about leaving or arriving and are more difficult to manage as a result. Officers struggle to keep up with the changing security settings and the changing faces. Non-custodial staff are faced with different demands on their time and work if the gaol is disrupted.

There is a good chance Junee will benefit in the long run from its new function. Protection prisoners are usually less difficult to manage, more productive when they work and they will be less likely to suffer from fewer visits due to the gaol's isolation.

New senior management has focused on settling the institution down after a disruptive period. The formulation of clear procedures and guidelines for the daily operation of the gaol will benefit the resolution of future complaints.

The Ombudsman visited Junee in July 1995 and investigation officers made several visits to the gaol during the year. If Junee gets a chance to draw breath the gaol might still live up to the pre-publicity and serve as the inspiration for new approaches to corrections in this state.

Corrections Health Service

Written complaints about medical care in prisons rose again, this year to 42. Telephone complaints increased to 80. In addition, Ombudsman staff were regularly approached during prison visits with concerns about medical treatment.

Despite this increase it was not a year in which major new issues emerged. Perennial problems remain. Staff are desperately difficult to recruit, particularly in country areas. Transportation of prisoners continues to be a troubling issue. Hopefully the gradual replacement of the Corrective Services trucks with more comfortable buses will lessen the concern about injuries and illness exacerbated by long journeys. Delays in appointments will be an ongoing issue.

The provision of adequate psychiatric care across the prison system is also a struggle. Once again staff are hard to get and keep and the arrangements for treatment and assessment in more isolated gaols are difficult.

Dental care, long an area of complaint, appears to be improving gradually. There are still occasional complaints about the provision of dentures.

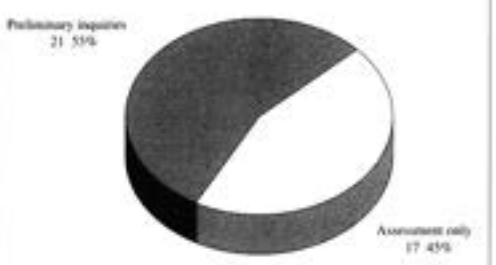
There has been a marked change for the better in the relationship between the Ombudsman's office and the Corrections Health Service during 1994-95. At the invitation of the Chair of Corrections Health Services Board the Ombudsman and staff met with the Board for the first time. The subsequent briefing and the agreement to meet in future to discuss significant issues was very encouraging indeed.

Changes within the Corrections Health Service structure should also improve the handling of complaints. In particular, the appointment of a an officer to deal directly with Ombudsman inquiries and inmate complaints is a very positive step. This office looks forward to the speedy resolution of complaints in future.

Nature of Written Complaints About Corrections Health Service
1994 - 1995

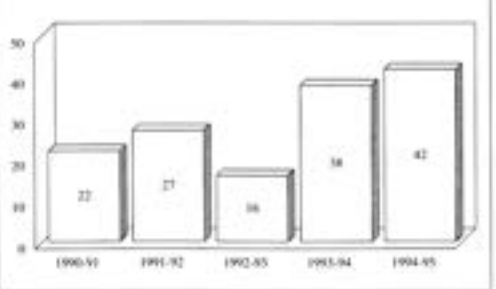
Medical treatment	35
Dental services	3
Supply and administration	4
TOTAL	**42**

Corrections Health Service complaints determined
1994 -1995



"Assessment only' includes declines of complaints that were too old or premature and incidents where the complainant had other means of redress or was provided with advice.

Complaints received about Corrections Health Service
A five year comparison



Regarding the complaint over my lost property, the prison has made me an offer now and I will accept this. The complaint has taken so long to settle and what with my trial coming up it is not worthwhile pushing for more money. Thank you for all your help on this matter over the months.
A complainant

Case studies

Practice - not policy

An Aboriginal inmate in Grafton goal had a history of self harm threats. He complained that, depressed after a court hearing, his cellmate had been deliberately removed from his cell to encourage him to injure himself. He said he thought this had been done because he was an Aboriginal.

Placing Aboriginal inmates with other prisoners is now an accepted means of trying to prevent self harm in NSW prisons. Arranging for someone to watch over prisoners under stress is a method used by police under similar circumstances.

Inquiries in this case revealed no clear evidence that the prisoners cell mate was deliberately removed from the cell. However, it was clear that contrary to explicit instructions on the inmate's file, he was placed alone in a cell for six hours.

Though these facts were apparent in the material supplied to this office the Department of Corrective Services initially proposed no further action. The officers concerned have since been reprimanded.

The Department of Corrective Services has had more than enough time to absorb the recommendations of the Royal Commission into Aboriginal deaths in custody. All staff should by now be taking them seriously.

Shots in the dark

In February 1995 an inmate from Long Bay Remand Centre complained prison officers had endangered inmates by negligently firing a rifle.

It seems a disturbance in a yard caused an officer to fire two warning shots from a tower on the wall shared with the adjacent Reception Centre. One shot hit the wall near a first floor window. The other shattered the glass of an office where three officers were working. Only staff, in fact, were endangered by the shots. The warning had the desired effect, however, and the melee was broken up.

It transpired that the officer who fired was employed by the Reception Centre and had been given no specific instructions about where he should shoot in the Remand Centre in case of emergencies. Normally an uninhabited garden bed or sections of the sterile zones in the prison are identified in case an officer needs to fire into the prison. No such instructions had been made available to Reception Centre staff. Appropriate orders have now been issued. The officer was counselled regarding his actions at the same time he was congratulated for acting decisively.

Warrants

While serving a prison sentence it is common practice to "call in" all outstanding warrants. This can include traffic and other fines. Sometimes the fines are many years old. Usually inmates can serve time for the fines concurrently with their existing sentence.

In July 1994 the law was altered to allow fines issued after that date to be sent back to a court and a warrant issued. Fines issued before that date or issued directly by police were not included. In cases where police issue a fine, the offender has one month to ask for the matter to be sent back to court and the fines made into warrants.

In February 1995 an inmate in a minimum security camp wrote to us in desperation asking to be allowed to call all his warrants. He had $3000 worth of traffic fines issued by the court and police in 1992. There was no mechanism to allow the fines to be turned into warrants and the time to be served concurrently. The court ordered fines were not covered by the new law as they occurred prior to the enactment of the legislation and the police fines had not been turned into warrants within the allowed one month period.

The prisoner was faced with the demoralising prospect of emerging from prison to $3000 worth of unpaid fines for which he might have to serve additional time. He could not get a license because of the outstanding fines and of course his chances of getting a job were sadly diminished. His only option was to present himself to the court and ask to serve periodic detention for the unpaid fines.

In seeking to prevent fine defaulters being exposed to the prison system a law is in place which largely prevents incarceration for unpaid fines. Regrettably there are circumstances when serving the time is much better than emerging with an unpayable debt and reduced chance for rehabilitation. While the solution to this problem lies beyond our powers, the Ombudsman urges it be addressed quickly.

A fair hearing

At an internal hearing for abusive language and other charges, an inmate from Junee Correctional Centre called a witness as the prison legislation allows. When the witness arrived the inmate was immediately excluded from the room by the adjudicating officer. This was despite the Prisons Act which says:

> *A prisoner is entitled to be heard at any hearing during the inquiry and to examine and cross-examine witnesses.*

Regardless of fears about witness intimidation proper hearings cannot be held without the due process being followed. Despite the facts of the matter, the governor believed that the officer concerned had acted 'in the spirit' of the legislation. Following further comment from this office, the governor agreed the practice adopted in this case was unacceptable and instructed staff to abide by the Act.

Property

A consistent complaint by inmates relates to the handling of prisoner property. Corrective Services is awaiting the installation of a new computer system which could alleviate these problems. In the meantime the complaints continue. Last year there were more than 170 oral and written complaints about property. In most cases the property was lost or permanently misplaced.

The complaints raise the same issues from year to year: improper recording of information; careless transportation; inadequate follow up of lost property; buck passing between institutions; and poor storage arrangements.

The good news is that at the instigation of the Commissioner a more positive approach has been taken to resolving property complaints. Governors can now compensate for losses up to $500 and matters are regularly dealt with at this level. The Commissioner has pushed prisons to deal with their own problems rather than pass them on to the gaol where the prisoner is currently held.

In 1993 a prisoner in Cessnock complained his stereo cassette player had been lost while he was at Parramatta Correctional Centre. An Assistant Superintendent at Cessnock spent considerable time and effort trying to track down the lost property by faxing information to Parramatta. In September 1994 the officer wrote to his governor:

> *As the total stands today I have spent several hours trying to get an answer from Parramatta Correctional Centre on whether they are going to recommend to reimburse* [the] *inmate or contest the claim. As of todays date I have been unsuccessful.*
>
> *If the claim continues to go unanswered more time will be spent on wages of Officers trying to get an answer than the total cost of the prisoners claim.*

Regrettably much more time and money was spent disputing the issue, including the time of our officers after the issue was raised with this office in November 1994. Through December 1994 up to February 1995 inquiries were fruitlessly made with administration staff at Parramatta. The paperwork was incomplete and the prison finally acknowledged that they could not avoid compensating the inmate. In late February the prisoner got a new stereo cassette player.

Strip searching

We received a number of complaints during the year about strip searches of gaol visitors.

A visitor to Lithgow gaol complained she was strip searched when she went to visit her husband. The search did not reveal any contraband. However, she was subsequently informed that she was banned from visiting any NSW gaol for six months. Her husband had been searched after the visit and no contraband was found.

Inquiries were made with the department about her complaint. They advised she had been observed with the visiting area security cameras passing something to her husband. The department suggested we view the video tape. The inmate was seen to drop something into his overalls and then apparently secrete the item in his rectum. After viewing the tape we agreed with the department that there was a reasonable basis to prevent visits between visitor and inmate.

In another case a woman who regularly visited an inmate at Goulburn complained that she and her sister had been required to undergo a strip search prior to her visit being allowed. No contraband was found and she was able to proceed with the visit.

First of all I would like to express my gratitude on your swift response to my predicament. After reading your document to the Commissioner, I feel that this can not only benefit myself but other inmates who may be in a similar situation but are unable, through various reasons, to address their own situation.
A complainant

Our inquiries revealed the correct procedures had not been followed. A senior prison officer had been informed by unknown sources that a visitor (the complainant) was going to bring drugs into the gaol on her visit. He telephoned the police when she arrived at the gaol and they attended and conducted a strip search on the basis of his information. There were no records kept of the search nor was the Deputy Governor notified before the search occurred. The prison officer contravened the departmental procedures and has now been counselled by the department.

Funeral rights

A Bathurst Correctional Centre prisoner applied to visit his terminally ill father in hospital. Before his application could be processed his father died. He lodged an application to attend the funeral in Sydney.

The Governor at Bathurst approved the application. Under normal circumstances the paperwork would have been immediately sent on to the Eastern Regional Office where an order to allow the prisoner's absence from gaol would have been processed. That did not happen. Instead the prisoner arrived at the then Reception Industrial Centre (RIC) at Long Bay without the required paperwork to allow him to attend the funeral.

On the morning of the service the prisoner discovered that no one knew of the funeral. He contacted a welfare officer who quickly organised the necessary approvals.

However, the Transport Unit was then unable to provide officers to escort the inmate to the funeral. The RIC Governor and the Regional Commander finally arranged for an escort and the prisoner left the gaol just after the funeral started. The prisoner arrived at the funeral as the last mourner was leaving.

It took 12 weeks for the department to reply to the our inquiries regarding this matter. One can only suppose that this was due largely to buck passing by the transferring and the receiving gaols of blame for failing to arrange the appropriate administrative procedures. The reply acknowledged the failure to deliver the prisoner to the funeral without proposing that any action be taken beyond apologising to the inmate. The Governor at Bathurst has since counselled his staff about their responsibilities.

Fair treatment

We receive many complaints relating to issues of fair treatment. A minimum security inmate who was a participant in the work release program complained she had been returned to medium security following allegations that she distributed her prescription medication to other inmates. The tablets had been prescribed and dispensed by an outside doctor and chemist and were kept in her cell with the full knowledge of the gaol authorities. The inmate denied distributing her medication and said the tablets were stolen from the bottle.

Inmates on work release can be granted permission to consult an outside doctor. If medication is prescribed it can be filled by an outside chemist. This practice is seen to be an important step in inmates adjusting to community living by gradually taking back control of their lives. It also overcomes practical problem because Corrections Health Service doctors are not usually available for work release inmates to consult outside work hours.

The inmate also complained she had been branded a 'security risk' because of a throw away comment she had made to an officer when the allegation that she distributed her medication had been put to her. She said she told an officer "I won't be here" when the officer said he would speak with her in her accommodation area later in the evening. The inmate denied she had any intention of escaping and said that the comments referred to her intention to visit other inmates in the gaol - something she regularly did in the evening.

This complaint raised a number of concerns; the apparent unmonitored possession, within the gaol, of the medication Rivotril which is a very popular drug of use and currency between inmates, the adequacy of the 'investigation' carried out by the gaol into the matter and the treatment received by the inmate. There was also no supporting documentation to accompany the request for her classification review, which raised the question of how such a sharp increase in classification was justified.

According to the reports supplied by the gaol, four inmates alleged the complainant had supplied 'pills' to other inmates. Two of these informants were anonymous, one was an inmate to be returned to maximum security after she was found to be under the influence of an

unknown substance and the fourth informant alleged she had received pills from the complainant in exchange for a promise that she would sign over her walkman to the complainant when she was released. This allegation arose after the accuser was required to give a urine sample which she said she knew would be 'dirty'.

Work release staff knew the complainant had been prescribed Rivotril by an outside doctor and that her prescription had been filled and the medication brought back to the gaol. This was well documented by work release staff. The complainant was able to keep the medication in her room and break no guidelines by doing so. No information was supplied to suggest that her conduct at the gaol had been of concern before this incident.

The problem relating to medication has now been addressed through an arrangement with the clinic staff who attend the gaol. The work releasees will continue to be able to apply to consult outside doctors and if medication is required, have their prescriptions filled by outside pharmacies. Any prescription medication, dependent on the type of drug, will either be handed over to clinic staff to dispense or kept in their room with their medical condition being monitored by clinic staff. This will hopefully prevent a similar situation arising.

The illegal distribution of prescription medication within gaols is a serious problem and prison authorities confronted by such allegations have to take action. However taking action without adequate investigation of allegations is counterproductive and unreasonable.

The complainant said tablets were stolen from the bottle. In fact she reported this to a prison officer on the evening before the allegation arose. He confirmed this. There was no evidence to suggest that he or any other staff member took any action as a result of this information.

The 'investigation' carried out into this matter was also inadequate and the subsequent action taken against the complainant was harsh under the circumstances.

The basis for the fear that the complainant was going to escape was also questionable. The officer who reported the verbal exchange with the complainant apparently made no attempt to discuss it with her and no proper assessment of her as an escape risk was made.

The inmate's security rating was increased and she was returned to Mulawa. As well as the potential to affect her future chances of again attaining a lower classification during the remainder of her sentence, it prevented her from having the opportunity to earn money for her release.

When we made inquiries with Mulawa, staff could not locate the prisoner's program review documents. The only classification document they had received about the transfer was a 'Classification Review' sheet. This is a single page which states whether the classification committee agreed or rejected the recommendation made by the program review committee at the referring gaol. It appears no supporting documents were provided to allow for a proper review of her classification.

This case is not an isolated incident. It is not uncommon for inmates to be transferred to a higher security gaol with the receiving gaol none the wiser about exactly why the inmate has been transferred. In many cases there are sound reasons for transfer. However without supporting documentation such special moves can rarely be justified and present significant problems for the receiving gaol and the Program Review Committee who must review the inmate's classification and progress. This has been an ongoing problem and we will continue to raise the issue with the department.

Painful breakdown

A young man with a painful condition aggravated by sitting for long periods was listed for transfer from Maitland to Goulburn Correctional Centre. When told that he would be sent by truck to Goulburn the next day he objected and asked to be held at Maitland for medical reasons. Staff told him they did not have the power to remove him from the transfer list and suggested he complete an application form which would be sent to inmate classification for a decision. He filled in the form but heard nothing further. The next day an officer told him to pack his belongings because he was going to Goulburn. He protested and a senior officer agreed to have him examined by the gaol nurse. The nurse confirmed the young man's medical condition would be aggravated by the long trip and recommended he stay at the gaol.

Thank you for the quick and decisive action.
A complainant

Despite this recommendation he was forced onto the truck. In recognition of his medical condition he was given a piece of foam to sit on. After the trip his condition deteriorated and he was ill for some time.

Our inquiries revealed prison staff had not processed his request to remain at Maitland until after the truck had left. The system for taking people off escorts if they are ill requires a doctor to write a medical certificate. In an emergency the on-call doctor can be contacted for verbal approval. In this case the nurse discovered that his instruction to prison staff had not been followed when he saw the inmate being placed on the vehicle. If the prison staff were unwilling to act on the nurse's advice they should have explained this so the nurse could contact the on-call doctor.

As a result of our inquiries Corrections Health Service reissued copies of its policy for removing inmates from escorts on medical grounds. The Deputy Commissioner of Corrective Services acknowledged a breakdown in communication had occurred between senior staff at the gaol and issued a reminder to all gaols about the need to respond promptly to requests for removal from escorts on medical grounds.

Blinded by bureaucracy

An inmate from a minimum security gaol complained about the indifference of the Corrections Health Service to his urgent need for spectacles. In January this year he had seen an optometrist and received a prescription for new glasses. He was told the lenses would be ready in two weeks. As he wanted to keep his existing frames he waited until the lenses were ready before arranging with the gaol nurse for his only glasses to be sent away for fitting. He was told the new glasses would be returned in two days. After two days he enquired about the delay and was told the glasses couldn't be supplied because Corrections Health Service hadn't paid for them.

The inmate was a qualified electrician and builder, heading the gaol's building and maintenance team. Without his glasses he suffered eyestrain and was unable to work. The inmate's trade qualifications were highly valued at the gaol and after waiting for weeks the gaol decided to pay for his glasses rather than suffer the loss of his skills.

Our enquiries revealed that the inmate's complaint was not isolated and delays in dispensing glasses was a common problem at the gaol. A number of inmates had been waiting for weeks to have their glasses supplied.

Discussions with Corrections Health Service revealed that urgent cases were given priority but lengthy delays in paying accounts meant inmates could wait up to 6 weeks before their glasses were supplied. Corrections Health Service agreed to review the situation and later confirmed that nursing staff at the gaol were now allowed to phone the optometrist themselves if inmates had problems. To protect the health and wellbeing of inmates the service agreed to ensure the optometrist's accounts were paid promptly in future.

Specialised medical equipment

An inmate at Long Bay complained to this office about the failure of the Corrections Health Service to supply him with adequate equipment required for the control of his sleep apnoea, a potentially fatal disorder. The inmate provided a report from a specialist from the Sleep Disorders Clinic at Royal Prince Alfred Hospital that said the equipment he was using *"...has not been supplied to patients for over 7 years...using this antiquated device it is clear that his sleep apnoea is not being controlled."*.

Due to apparent confusion over who was responsible for supplying such equipment to inmates, and the possible life threatening situation further delays posed, our office made urgent written enquiries to Corrections Health Service.

Fortunately, as it turned out in this particular case, the equipment was not so inadequate as to be life threatening. In response to our enquiries, Corrections Health Service acknowledged guidelines on the supply of specialised aids and appliances required clarification. Corrections Health Service advised it was not responsible for the supply of equipment such as sleep apnoea machines, orthoses, artificial limbs and other specialised appliances to inmates. Corrections Health Service advised the hospital to which an inmate is referred is responsible for the supply of such equipment.

The Royal Prince Alfred Hospital informed this office that they did not have the funds to supply costly sleep apnoea equipment to either this inmate or to any other patient of their Sleep Disorders Clinic.

Generally speaking, financially disadvantaged persons in the community who require specialised aids and appliances can apply for these via the Programme of Appliances for Disabled People (PADP scheme) which is administered by Area and District Health Services. However, inmates are not eligible for the scheme because they do not hold a medicare card.

After receiving the response from the Corrections Health Service this office remained concerned about the broader implications raised by this complaint.

The number of inmates who require specialised aids and appliances is, generally speaking, very small. Nevertheless, if inmates weren't eligible for the PADP scheme, and if hospitals couldn't afford to supply specialised equipment, how were their special medical needs to be addressed?

We planned to make further enquiries, however in the meantime received correspondence about the issue from the Department of Health. The department advised that Corrections Health Service is responsible for the supply of such equipment, however noted it did not receive specific funding for the provision of specialised equipment to inmates. The Department of Health recognised inmates were not able to apply to either the PADP scheme or the hospital directly for specialised appliances, and instituted a policy review on the matter. The department advised the policy review will clarify the responsibilities of Corrections Health Service for the provision of such aids to inmates.

Safe handling

In December 1994 a prison officer at Silverwater minimum security gaol was convinced he saw a drug deal between inmates. He said he saw an inmate enter a cell shared by two other prisoners. He thought something was going on and when the first inmate left the cell he called other officers and entered the room. There he found the two cellmates with a matchbox, several foils containing a white powder and $20. The officer took the matchbox and the "drugs" to a Senior Assistant Superintendent (SAS) and called the police.

The cellmates said the other prisoner had entered their cell acting suspiciously and that he had actually been present when the officers had burst in. They claimed the drugs belonged to this prisoner. The officers later denied that anyone other than the occupants of the cell were present when they entered.

A major problem arose because the exhibits, the silver foils of "drugs" and the matchbox and the money, disappeared. The SAS said he saw them but did not take them into his possession. The discovering officer said he left the exhibits with the SAS. Someone filled in the details of the exhibits in the appropriate register and noted that they had been signed out. There was no signature to indicate who had taken the exhibits.

The police arrived and interviewed the prisoners. The two accused were reclassified to medium security prisons without any internal or criminal charges being brought against them.

More than two months later the prisoners complained because they had been punished but had not been given the chance to defend themselves. In response to our initial inquiries, Corrective Services claimed the police had taken the exhibits and staff were waiting for criminal charges to be laid. The police claimed they knew nothing about this and had no record of taking the exhibits.

It took almost five months for the department to answer our further inquiries. In that time one of the prisoners appeared before the Offenders Review Board, which ignored the alleged charges concerning the drugs and granted him parole. The other inmate did not fare so well and was sent to Junee.

The Internal Investigation Unit (IIU) and the Corrective Services Investigation Unit finally investigated the matter. However, it took more than eight months before the Ombudsman received reports on the incident.

No real attempt was initially made to identify the third inmate, the prisoners were not interviewed by the department, little effort was made to discover who wrote in the exhibit book and the contradictory statements of the SAS and prison officer were not explored.

The department has common sense guidelines for handling exhibits that might need to be tested or used in evidence. They were obviously not followed in this case.

A final IIU report in September 1995 recommended a range of useful changes and instructions to staff about how they should deal with such issues in future.

I would like to thank all the people included in this matter, who made this compensation payment possible, and to say that you will always have myself very grateful for what your office has done for me, and if anyone says your office sits around and never gets anything done, I can and will differ with them.

If your office had never inquired into the matter, I still would be shuffling cards with the Corrective Services system.

I am honoured to say to your branch that myself shall never be back to such a place as the Corrective Service system. I don't presume that your office knows how much of importance it was to either be compensated with money or fitting clothing before I had been released. As to now, I have the edge of extra money, to set myself up properly on the outside. For that I very much thank your office once more.

A complainant

Local councils

Overview

The past year has seen a significant increase in the number of complaints received concerning local councils. The 680 formal complaints received represents an 18% increase over the number received in 1993-94. There were significant increases in the numbers of complaints relating to the processing of development and building applications and to pollution matters. Additionally, 2021 informal oral complaints about local councils were dealt with.

We received more written complaints than were determined. About half of the complaints were resolved after conducting preliminary inquiries. We also completed 14 formal investigations, of which nine resulted in reports with adverse findings.

We received 70 requests to review decisions we had made about complaints. Further inquiries were conducted on 21 review requests and one matter was formally investigated.

In addition, 12 local council complaints were formally mediated. Of these, all but one was settled by the parties through mediation.

Last year's annual report commented that the major reforms introduced in local government following the introduction of the *Local Government Act 1993* were designed to introduce greater openness and public accountability in decision-making. Perhaps these changes explain what might appear to be heightened public expectations of local government.

Local councils are independent self governing entities elected by and accountable to their local communities. It is seldom appropriate for the Ombudsman to investigate the merits of decisions made by a council exercising its discretion. This perspective has long been a fundamental feature of our work in local government. It demonstrates the sensitivity of the office to the peculiar nature of local government, in contrast to State Government executive conduct which is also subject to the Ombudsman's jurisdiction.

However, the decision-making process must be thorough, fair and lawful. Where a complaint suggests it is not, investigation may well be warranted.

Complaints have revealed a number of council operations where the key goals of thorough, fair and lawful decision making processes and open and accountable administration may be absent or frustrated. We will continue to closely monitor these areas in the forthcoming year.

Outcome of council written complaints determined

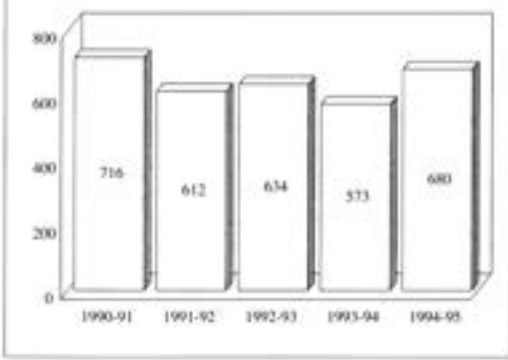
1994 - 1995

Total complaints determined: 653

**'Assessment only' includes declines of complaints that were too old or premature and incidents where the complainant had other means of redress or was provided with advice.*

Local council complaints received

A five year comparison



Nature of local council written complaints received
1994 - 1995

Development	
Objection to issue of DA	58
Unsatisfactory processing of application	52
Objection to refusal or conditions of DA	19
Building	
Objection to issue of a BA	10
Unsatisfactory processing of application	14
Objection to refusal or conditions of BA	15
Inadequate inspections of work	6
Zoning	
Objection to decision to rezone	13
Objection to refusal to rezone	5
Objection to rezoning procedures	9
Section 149 certificates	2
Enforcement	
Failure to enforce DA conditions	17
Failure to enforce BA conditions	13
Unauthorised development/ building work	39
Objection to orders relating to development or building work	10
Rates and Charges	
Objection to level of rates	10
Objection to level of charges	10
Disputed calculation of rates and charges	16
Interest charges	2
Recovery action	3
Refunds	6
Farmland rates	1
Environmental Services	
Garbage service	3
Noise complaints	21
Other pollution complaints	27
Orders relating to dogs	10
Tree preservation orders	12
Engineering Services	
Road closures/access problems	20
Failure to carry out work	19
Adequacy of council work	4
Orders to meet the costs of or carry out work	5
Drainage and flooding	18
Traffic and parking	14
Bonded work	2
Orders relating to parking	3
Community Facilities and Services	
Parks and Reserves	11
Other facilities and services	7
Conduct	
Misconduct of councillors	16
Misconduct of staff	19
Non-pecuniary conflict of interest complaints	1
Pecuniary interest complaints	8
Corporate and Customer Services	
Tendering	4
Insurance/liability claims	21
Contracts and entrepreneurial activities	7
Failure to reply to correspondence	27
Provision of information	22
Unsatisfactory complaint handling	13
Resumptions	5
Elections	3
Meetings	6
Other	22
TOTAL	**680**

Closed council meetings

The council meeting is the forum where the supreme decision making authority of a council is exercised. It is a forum for open debate and determination by the elected representatives, the councillors.

To preserve the public nature of council meetings, councils have limited power to debate and determine issues in the absence of the public. The reasons for which a meeting may be closed are set out in the *Local Government Act 1993*. Whenever a meeting is closed, the council must also detail in the minutes of the meeting the precise reason why the meeting was closed.

During the year we received a number of complaints about unjustified decisions to close meetings. In one case, a council considered a report on complaints about poultry farm odour in closed meeting. Recorded as the reason for the closure in the minutes of the meeting was "possible legal implications" arising from the report. This is not a reason for closure of a meeting under the Local Government Act. Worse still, an analysis of the legal issues allegedly raised in the report or otherwise discussed could not justify closing the meeting for **any** of the reasons for which the meeting may lawfully have been closed.

In this and a number of other cases the public was improperly denied the right to hear debate on matters of public interest. Complaints received in the future touching on this issue will be closely assessed for possible investigation.

This issue has been raised in the Legislative Council of the NSW Parliament. Amendments were proposed to narrow the grounds for closing meetings, introduce a provision overriding the power of councils to close meetings or otherwise restrict access to information where it is not in the public interest to do so and introduce a right of appeal on the merits against decisions to close meetings or otherwise restrict access to information. The Minister for Local Government has indicated he is considering these suggestions.

Reviewing decisions

A number of previous annual reports have commented on the unsatisfactory trend for some councils to put applicants to the expense and delay of appeals to the Land and Environment Court where alternative methods of dispute resolution would be more appropriate.

Strategies previously advocated by this office include councils negotiating with applicants over suitable modifications to applications which will enable them to be reconsidered without appealing to the court and councils supporting the mediation process offered by the Land and Environment Court.

Last year's annual report noted a welcome additional strategy is now available. Under the Local Government Act, an applicant for a building approval can request a formal review of the decision of a council to refuse the application or approve it on conditions the applicant regards as unacceptable. While councils are not obliged to review these decisions we encourage all councils to support the concept.

It is surprising there is no equivalent power in relation to development applications. Some councils have set up informal review processes where determinations have been made under delegated authority. However, without the specific legal power to do so, councils are unable to review their own decisions, meaning applicants must either re-apply for consent or appeal.

There appears little justification for not extending this review mechanism to development applications. Appeals to the Land and Environment Court drain the human and financial resources of applicants and councils and should be avoided wherever possible.

Failure to enforce legal requirements

Many local government complaints we receive relate to councils' failure to take appropriate action to enforce legal requirements.

Complaints come in many forms, including claims that unauthorised development or building work has been allowed and claims that councils fail to respond appropriately to pollution complaints.

Appropriate action in response to such situations is a matter for councils to decide. Yet the manner in which this discretion is exercised often appears confused, inconsistent and unreasonable. Complaints frequently reveal council delay or inaction in response to serious non-compliance with legal requirements. Often councils adopt inconsistent responses to similar situations. In contrast, councils sometimes appear stubbornly fixed on a punitive response despite the guilty party seeming to be reasonable and cooperative.

In the interests of greater openness and accountability in these situations, we are encouraging councils to develop a model policy and guidelines for enforcement action.

The Environment Protection Authority and the Director of Public Prosecutions have both adopted such policies and guidelines. Both bodies have produced public documents which explain in detail the considerations they take into regard when deciding if and who to prosecute, and identifying mitigating factors in the decision to prosecute and the question of sentence.

Local councils and the public would benefit greatly from similar prosecution policies and guidelines designed to meet the particular needs of local government.

Withholding critical information

An issue related to the improper closure of council meetings is the reluctance of some councils to table our final investigation reports in open meetings of council.

A council the subject of an investigation recently decided to receive our final investigation report in closed meeting. The council claimed this was because the matter gave rise to "legal obligations of confidence".

While this is a valid reason to close a council meeting, in this case no such obligations existed. Indeed the only possible person to whom the alleged obligations of confidence could have been owed appeared to be the Ombudsman herself. Council was advised by the Ombudsman that if these obligations existed, which was doubtful, the Ombudsman specifically waived them. In spite of such advice council took no action to table the report in an open meeting.

One possible method to address this difficulty is to recommend at the end of the report that the report itself be made public by being tabled at the next ordinary meeting of council. Yet if this recommendation is not complied with, the only other way the report can be made public is for the Ombudsman to make a report to Parliament. This is hardly a satisfactory means of resolving the problem.

In the case referred to, the council's concern appeared to be liability for defamation arising from the release of the report. Council's concern did not appear to have great merit. However, the mayor in tabling the report, and any councillors in discussing the report, were almost certainly able to claim the defence of qualified privilege.

A council meeting is a privileged occasion. In tabling a final report by the Ombudsman, councillors are entitled to claim the publication of the report is relevant to the business of council, that they have an interest or duty to table the report and that other councillors and the public at large have an interest in receiving the report. These are the elements of a defence of qualified privilege. Similar conclusions could be reached in relation to the capacity of a council to debate the report, provided councillors debate the matter in good faith and refrain from making malicious statements.

In order to resolve the issue, the Ombudsman has requested an amendment to the Ombudsman Act to legally obligate councils to table our final reports in ordinary meetings of the council. The Minister has indicated his support for the proposal, which is identical to an existing obligation on councils when receiving reports of the Department of Local Government.

Compliance with recommendations

The jurisdiction of the Ombudsman is shaped with clear regard to the principles of Ministerial accountability to Parliament. This principle forms a key element of the Westminster system of government. Hence while the Ombudsman can investigate public officials, ministers, who are accountable to parliament, cannot be investigated.

Where the Ombudsman is not satisfied that a public authority or official has taken sufficient action to comply with the recommendations in a report, she can report the matter to Parliament. The Ombudsman is also able to report to

I would like to sincerely thank you for pursuing the indifferent treatment extended to me as a ratepayer of X Council. Your intervention, miraculously converted indifference into beleaguered correspondence. Once again I thank you for all the trouble you went to.
A complainant

parliament, if she is not satisfied a local council, councillor or employee has taken sufficient action to comply with the recommendations in a report. Yet as has been noted in a number of previous annual reports, this is not a suitable or effective method to deal with failure to comply with recommendations in the local government area.

The Minister for Local Government has no authority to direct councils to comply with the Ombudsman's recommendations. Nor does Parliament, although theoretically it has the power to make laws to this effect. Not surprisingly, reporting to parliament has often failed to result in any action on the part of certain councils to comply with our recommendations.

The Department of Local Government has an investigative power in relation to councils similar to that of the Ombudsman. The problem of enforcing recommendations made in the reports of the department is dealt with in the Local Government Act. This provides that the Minister for Local Government may order a council to act in compliance with his department's recommendations.

The Ombudsman sees no reason why the recommendations in her reports could not also be enforced by the minister. Accordingly, the Ombudsman has formally requested amendments to the Local Government Act to provide that in the case of noncompliance with recommendations by local councils, the Ombudsman may request the minister to order the council to comply.

This would put the Minister for Local Government into a similar position in relation to Ombudsman reports on councils as other ministers in relation to ombudsman reports on bodies within their portfolio.

Good conduct and administrative practice guidelines

In February 1995, the Ombudsman published *Good Conduct and Administrative Practice: Guidelines for Councils*. The guidelines set standards in a large number of areas including decision-making, general management, complaint handling, tendering, use of resources, conflicts of interest and personal conduct of staff and councillors.

Most councils have purchased and are using the guidelines which are supplemented with case notes arising from issues which arise from our work in the local government area.

The guidelines have recently been expanded and revised in consultation with the Department of Local Government, the ICAC and the Local Government and Shires Associations.

The guidelines represent standards against which council conduct will be judged by the office in the course of investigating complaints.

Jurisdiction confirmed

Last year's annual report commented on a challenge by Ku-ring-gai Council to the Ombudsman's jurisdiction in connection with an investigation into the council's handling of development applications for a dual occupancy development in Wahroonga.

Council unanimously approved the first development application in March 1993. The decision to approve the application was then rescinded on the basis that a neighbour had been denied the right to address council on the night the decision to approve the application was made. When council reconsidered the application some weeks later it was refused.

An appeal against the decision was launched then discontinued. An amended application for consent was, following a delay of some months, also refused. The complainants appealed again, this time successfully. A building approval was issued in January 1995.

Allegations made in the complaint included claims that a friend of certain councillors, who acted as an advocate for the neighbour who objected to the development, had been given favourable treatment by council.

Council sought a declaration that the Ombudsman's investigation, commenced in June 1994, was void. Council relied on section 13(5) of the Ombudsman Act which 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.*

Council also sought a declaration that none of the special circumstances specified by the Ombudsman were capable of constituting special circumstances under section 13(5).

Council argued that the complainants in this case had rights of appeal and review and there were no special circumstances which the Ombudsman could regard as making it unreasonable to expect those rights to be exercised.

The matter was heard in the Administrative Law Division of the NSW Supreme Court on 13 and 17 February 1995 before Justice Smart. In a decision handed down on 3 July 1995, Justice Smart dismissed the council's challenge and awarded costs to the Ombudsman.

Justice Smart ruled that section 13(5) did not apply unless there is a substantial coincidence between the conduct to be investigated and the conduct which was or could be the subject of a right of appeal or review. In this case, the Ombudsman was not concerned with the planning merits of the applications lodged. It was therefore irrelevant that the complainants had rights of appeal against the refusal of their development applications on the merits, which they exercised. While the complainants also had rights of review of council's conduct in the matter, Justice Smart held that the ambit of the Ombudsman's investigation was so much more extensive than these rights of review that section 13(5) did not prevent the investigation.

Justice Smart also held that special circumstances meant circumstances beyond the ordinary bearing in mind the subject matter being dealt with. Looking at all the circumstances together, the Ombudsman was entitled to hold that they constituted special circumstances and that they made it unreasonable to expect the rights of review to be exercised.

Justice Smart said the cost to the complainants of court proceedings already undertaken as well as the court proceedings associated with the exercise of rights of review was beyond that to be ordinarily expected. The use of any further proceedings by the complainants was also open to question. The conduct of the mayor in the matter was also made the subject of the investigation. That conduct would be unlikely to be reviewed in any further proceedings. All of these matters entitled the Ombudsman to conclude special circumstances existed.

Justice Smart also confirmed that the restriction in section 13(5) did not extend to the conduct of councillors and council staff.

The Ombudsman publicly welcomed the decision as an important clarification of her powers in the local government area. She also expressed concern at the delay caused to the investigation and cost incurred as a result. The Ombudsman also welcomed remarks by Justice Smart confirming the investigation did not concern the planning merits of the applications lodged by the complainants, an assertion the mayor has been reported to have made on a number of occasions. The investigation has recommenced.

Thank you so much in helping me with that problem, I am truly grateful. After trying for five years to get some help, I could just not believe it. Once again I thank you.
A complainant

Continuance of use rights

Last year's annual report noted an escalation of complaints concerning continuance of use, often referred to as existing use or existing consent rights.

Several investigations of such complaints have now been completed, and inquiries into others have persuaded some councils to tighten the procedures they use to establish whether a claimed continuance of use should be recognised.

Such recognition requires the use to have been continuous and lawful before the relevant planning instrument came into effect.

The Environmental Planning and Assessment (EP&A) Act distinguishes two types of continuance of use. Section 107 of the Act defines 'existing use' as being where the current planning instrument now prohibits the development comprising the use. Section 109 defines 'existing consent' as being where the current planning instrument now requires development consent for the development comprising the use.

Recognition of continuance of use can bestow great commercial benefit on the operator. Either it sanctions an otherwise prohibited use or it avoids the expense and other uncertainties of submitting a development application, which may require an accompanying environmental impact statement. On the other hand the use may adversely affect the environment, the amenity of neighbours and deny council the ability to impose consent conditions such as hours of operation and road maintenance or other section 94 contributions.

Many complaints relate to extractive industry. A residents action group has alleged one council has consistently refused to take action against a gravel quarry which the residents allege is causing damage through blasting to their homes. The quarry was established in the 1940s, before planning laws required development consent. The residents allege the quarry has been abandoned according to law, and cannot now operate without development consent, which would require the preparation of an environmental impact statement. They allege council is flouting the law in allowing the operation to continue at all, let alone at the level of extraction of recent years. The investigation is continuing.

Nambucca Council - existing uses

Following four complaints about Nambucca Council an investigation examined its recognition of continuance of use rights to extract gravel from 13 sites. The February 1995 investigation report found all 13 recognitions were faulty.

The council had consistently ignored the advice and warnings of its town planning department about defects in continuance of use applications; it had exhibited extreme naivety in relation to accepting statutory declarations and other submissions on behalf of applicants; it had consistently favoured the sectional interest of gravel extractors at the expense of ratepayers as a whole as the recognition of continuance of use rights exempted the extractors from road contributions that would normally have been imposed as a condition of development consent; and, it frequently ignored its own legal advice, or where forced to accept it, ensured there was unconscionable delay in implementing it so as to maximise the quantity of gravel which the favoured extractor might continue to extract.

One of the report's recommendations was that council rectify its defective decisions. However, implementation of this recommendation was complicated by the operation since June 1993 of State Environmental Planning Policy (SEPP) 37 "Continued Mines and Extractive Industries".

SEPP 37

SEPP 37 gives extractors claiming the benefit of existing consent rights and who wish to expand their operation, a two year moratorium before they need to obtain development consent normally required for the expansion.

SEPP 37 requires that to be registered for the benefits of the moratorium, an extractor must provide council with extensive proof of past activity supported by details of past production levels and the exact area of land mined. This information, which is to be placed on a public register, is to confirm that existing consent rights are established and to provide a basis for calculating that the expansion of the operation does

not exceed the limits prescribed in SEPP 37. If inadequate information is provided the council should issue a "show cause" notice to the operator indicating that if required information is not provided then registration will be terminated.

The Ombudsman received many complaints about various councils' apparent acceptance of SEPP 37 registrations without proper scrutiny of the information provided by extractors. A SEPP 37 requirement is for "details of the location of mining, extraction and stockpiling, showing area and depth of the operations".

One complaint challenged an operator's details which had been accepted by Ulmarra Council. These related to area: "about 100 acres" supported by a map showing as quarry area virtually the entire area of the property; depth: "about 2 - 6 feet". The complainant was able to show via aerial survey photos some years apart that the area actually quarried was much less than currently claimed and had expanded well beyond the permitted limits in the inter-survey period.

After our inquiries the council recognised the basis on which it had initially granted SEPP 37 registrations was inadequate. It then, commendably, took the difficult but correct decision to review all registrations and write to every operator requiring production of all information to justify proper registration. Operators unable to comply had their registrations terminated.

Alerted by Ulmarra Council to our inquiries, the neighbouring Nymboida Council conducted a similar review of its own SEPP 37 registrations.

Nambucca Council - SEPP 37

There were also complaints about the way in which Nambucca Council had accepted SEPP 37 registrations. The complaints alleged grave inadequacies in the information supplied by applicants. Council itself (as actual or potential extractor) had sought and granted registration in relation to certain sites without consulting

Nambucca Council was invited to make submissions on some provisional conclusions reached by the investigation officer. Public release of the document by council caused public controversy.

the sites' owners. Council also appeared to have granted registration to sites with existing use rights. Such registration is not permissible since SEPP 37 only applies to operators able to prove their existing consent rights.

Following receipt of the investigation's draft Summary of Evidence and Grounds for Proposed Adverse Comment documents, council decided to implement one of the provisional recommendations forthwith. As a result, notices were issued to all applicants granted registration seeking information which would "show cause" why their registration should not be cancelled.

Council engaged the services of an independent planning consultant to review all operation registered under the policy. The consultant undertook this review without recourse to the summary of evidence obtained in the investigation and found all registrations to be defective. Council accepted the consultant's recommendations and cancelled all registrations on 26 September 1995, issuing notices for extractive activity to cease immediately. This action encompassed the 13 sites examined in the first investigation on registration of existing rights uses. Council also rejected the seven development applications which had been submitted by operators under the terms of the policy.

Council's response to the provisional recommendations in the second investigation marked an abrupt turnaround from its previous consistent adversarial approach to the two investigations. At a meeting between the Assistant Ombudsman and council representatives, including its legal advisors, the mayor acknowledged its registration procedures had been faulty and undertook to do all that was necessary to redress the problem.

Its subsequent commendable action in reviewing and cancelling all registrations long defended by the council, and in undertaking to take legal action should its cease work orders be ignored was, although delayed, sensible and appropriate. As a result, the final report did not include the provisional recommendation proposing the Ministers for Local Government and Urban Affairs and Planning give consideration to appointing a planning administrator to take over council's planning powers. The report did, however, recommend council review all extractive industry in the shire and report to this office the outcome of that review and immediately institute legal proceedings in the Land and Environment Court to stop any instances of unlawful extraction.

...the mayor acknowledged its registration procedures had been faulty and undertook to do all that was necessary to redress the problem.

Ballina Council

Another investigation involved the recognition of existing consent rights for the operation of a piggery by Ballina Council.

In common with many continuance of use cases, the key element here was whether the operator was able to show that use had not been abandoned in terms of the EP&A Act and the substantial volume of relevant case law.

The broad public policy considerations relating to continuance of use in general and abandonment in particular were stated by Court of Appeal President Kirby in *North Sydney Municipal Council v Boyts Radio & Electrical Pty Ltd (1989)*. He said:

> *Behind the competing legal arguments of the parties in this appeal lies a conflict between private and social rights. A wide definition of, and generous approach to existing use rights tends towards the protection of private interests in land where these conflict with the social interests represented by the generally applicable planning law. ... The readier acceptance of abandonment of existing use rights conduces to the absorption of land, which exceptionally departs from the requirements of general planning law, into the code which otherwise generally applies. Seen in this way existing use rights are a transitional derogation designed for a time only, to cushion the impact of new general planning laws upon private owners with established use of their land which has continued without abandonment.*

As to the law, section 109(3) (in the case of existing consent) of the EP&A Act presumes abandonment after a cessation of use of 12 months if the contrary can not be proven. The courts have held that intention to continue the use despite cessation is a dominant but not

exclusive factor in determining whether or not abandonment has occurred. It is also settled law that the onus lies on the operator to establish all essential ingredients of their claim to the benefits of continuance of use rights.

In the Ballina case the investigation found council's conduct in recognising existing consent rights for the piggery was unreasonable since the operator had not provided sufficient evidence to establish that the use had not been abandoned. The report recommended the council seek specialist legal advice on the tests to apply in future cases to establish continuance of use. It also recommended advice be sought on whether the current consent for the piggery's operation was valid and if not to take steps to rectify its decision. The council accepted these recommendations.

Reasonable criteria

It should be noted that were an application for continuance of use rights to come before the Land and Environment Court, the onus would be on the applicant to establish all ingredients of their case. The Ombudsman would expect councils to apply criteria and procedures which are designed to produce determinations which would be supported by the court were they to be challenged.

Council should require applicants for the benefits of recognition of continuance of use rights to demonstrate the following as a minimum.

1. The use was lawful immediately before the coming into force of the relevant environmental planning instrument.
2. The use has not been abandoned, in terms of the EP&A Act and associated case law, since the coming into force of the relevant planning instrument. In this respect:
   (a) documentary records relating to use to support a claim of continuity over the whole of the relevant period should be required; and
   (b) reliance on statutory declarations from claimants, especially where unsupported by good documentary evidence which ought reasonably be available, should be viewed with caution.
3. Where the area of land used may be relevant to any question of expansion, a proper survey map defining the area of use should be required.
4. Where production levels are relevant to any question of expansion, records of sales, transport manifests, royalty sheets or the like should be required.
5. Notify neighbours of the claim for continuance of use rights and invite submissions to be taken into account by council when considering the claim for recognition.

It should be emphasised that since the onus lies on the applicant to satisfy council, there is no reason for a council to expend resources gathering additional evidence to support a claim. Council should take reasonable steps to satisfy itself that the applicant's evidence is genuine and, for instance, in the case of inconsistent evidence, to weigh such with due care. However, it is for the applicant to produce sufficient good evidence which when considered in the light of any relevant submissions is capable of satisfying council that continuance of use rights exist.

Conditions of consent

We receive many complaints relating to conditions of consent for building and development. A specific area of concern is councils' failure to enforce conditions such as hours of operation, noise abatement measures, and level of approved activity.

In one case, a complaint was received from a couple who had alleged to Great Lakes Council that their neighbour was using his property for an unapproved activity. Council's eventual response resulted in a development application from the neighbour being approved with eight conditions attached. The conditions related to matters such as acoustic screening, noise bafflement, hours of operation and landscaping. When their neighbour did not comply with the consent conditions the couple notified the council. On 14 occasions council advised the neighbour to stop acting contrary to council's approval.

Our investigation concluded that despite numerous threats to the neighbour of prosecution, there was no evidence council had any intention of pursuing legal action to restrain the breaches. Council's attempt at a conciliatory approach did not work either. During the investigation, it became clear the conditions attached to the consent were extremely diffi-

Due to your intervention into my complaint against X Council, I have finally received a reply to my complaint.
A complainant

cult for council to monitor and enforce. The problem had resulted from the formulation and wording of the consent and attached conditions.

We made a series of recommendations to the council which included:

- developing guidelines in formulating conditions to ensure they are measurable and can be used to determine compliance;
- putting in place a policy to clearly set out the limits of conciliatory approaches to be used prior to prosecution action; and
- putting in place a policy for complaint investigation which includes out-of-hours inspections by council officers.

No doubt many councils receive similar complaints to this one. All councils should be able to refer to policy documents and guidelines similar to those recommended in this case. This would ensure councils are not put in a position where conditions of consent are imprecise and unenforceable.

Short on confidence

The Local Government Act introduced major reforms in most areas of local government, including the manner in which local council meetings are conducted. The new Act commenced on 1 July 1993.

It would seem surprising that a council would see the need to reform any of these areas of its operations just before the Act commenced, without at least ensuring the reforms were compatible with the new Act.

The former member for the South Coast complained to the Ombudsman on behalf of two councillors ('the minority councillors') on Shoalhaven Council about such a situation. The complaint was made the subject of an investigation.

On 22 June 1993, council voted to adopt a new code of meeting practice. This decision was taken less than two weeks before the commencement of the new Act. The new Act allows councils to adopt codes of meeting practice, provided they are compatible with the regulations. These regulations are the *Local Government (Meetings) Regulation 1993*, which also commenced on 1 July 1993. When council adopted the code, the Act was not yet in operation. Worse still, the regulations were not available for comment in draft form until three days after the code was adopted.

The minority councillors tried, with the assistance of the mayor, to have the adoption of the code stopped. They did so by putting forward a motion rescinding the decision to adopt the code. This prevented the code being implemented unless and until the rescission motion had been dealt with. Supporters of the code reacted by calling a special meeting of council for 25 June 1993. The minority councillors could not attend this meeting, having been registered to attend a seminar on local government accounting on behalf of council. A third councillor was also absent, due to what he described as work commitments.

On 25 June 1993, council voted against the rescission motion. At this meeting, apologies from all three absent councillors were tendered and accepted.

When council next held an ordinary meeting on 6 July 1993, the minority councillors attempted to move a motion of censure against the councillors who supported the adoption of the code. This matter was deferred. Council then resolved to express no confidence in the minority councillors for failing to attend the special meeting held on 25 June 1993. This was in spite of their apologies for not attending having been tendered and accepted. No action was taken against the third absent councillor.

Our investigation revealed the code of meeting practice adopted was inconsistent with the law for regulating meetings in operation at the time. It was also inconsistent with the new provisions which took effect when the Local Government Act commenced on 1 July 1993. This conclusion was supported by the admission by council that the code could not be implemented as a result of these inconsistencies.

Councillors under investigation and the council itself pointed out that the code was interim and it was described as such. An interim code would surely be expected to have some practical effect at some point of time. However, the code council adopted was and continues to be completely inoperative.

Our investigation considered why council adopted the code. It concluded that the code was designed to undermine the power of the

popularly elected mayor. It did so by attempting to deny the mayor his legal right to chair committee meetings and attempting to prescribe the manner in which the mayor voted in the case of votes being tied.

The investigation also concluded that the decision to deal with the motion rescinding the adoption of the code at a special meeting convened for that sole purpose was unnecessary and inappropriate. There was no reason to deal with the rescission motion so promptly given the code the subject of the motion was not capable of being acted upon. Particular criticism was levelled at two councillors who voted to deal with the rescission motion at the special meeting in the absence of the minority councillors, who were two of the three proponents of the motion. These same councillors voted to defer debate of the censure motion put forward by the minority councillors due to the absence of two of the councillors the subject of the censure motion.

Our investigation report commented that the use of both motions of censure and motions of no confidence was not appropriate given the nature of local council meetings. It was noted that the censure motion was at least partly justifiable as an attempt to raise the adoption of a flawed code of meeting practice for debate. In light of the fact that the minority councillors had tendered apologies to the special meeting which had been accepted, the investigation concluded the no confidence motion was inexplicable and found the actions of the councillors who supported the motion "unreasonable, unjust, oppressive and improperly discriminatory." This conduct was also described as inconsistent with the failure of council to make the third councillor absent from the special meeting, for reasons unconnected to council business, also the subject of a motion of no confidence.

The investigation report recommended council take steps to abandon its inoperative code of meeting practice and move to adopt a new code consistent with the current law. It also recommended council as a matter of policy refrain from passing motions of censure and no confidence. It also recommended that the motion of no confidence be withdrawn and an apology be tendered to the minority councillors.

Council declined to apologise to the minority councillors. However, council did resolve to have its executive committee prepare a draft code of meeting practice for debate and adoption subject to legal advice being obtained to ensure the draft code complied with the current law. Council agreed to consider including in its code provisions regulating the use of motions of censure and no confidence. Council also acknowledged that its previously adopted code had no legal validity.

In light of council's response to the recommendations made in the report of the investigation, no further action was taken.

Illegal streetvending

A suburban railway news stall proprietor complained that Marrickville Council was refusing to prosecute a nearby newsagent who was setting up unauthorised pavement newspaper stands near the railway entrance each morning.

For six months from December 1992, council ordinance inspectors reported numerous breaches of the law by the pavement sellers, issued warnings and recommended prosecution without result.

An investigation established that while the complaint was commercially motivated, there were public interest issues, most notably pedestrian safety, at stake. The case was complicated by the involvement of a councillor, himself a newsagent for 40 years, as an uninhibited advocate for the street newsvendors.

After clarifying its street vending policy in April 1993, council refused the streetvending newsagent's application for permission to operate two stands at the station entrance.

On 30 April 1993 an ordinance inspector issued two penalty notices to the illegal newsvendors (the newsagent's adolescent daughters) but council's General Manager, for no discernibly cogent reason, directed these notices be not further processed.

Due to a systemic problem with the council's prosecution procedures, that directive was not observed and - in effect only by accident - the case reached the Children's Court in February 1994. It was settled on the basis of written undertakings by the newsvendors.

Our investigation found council had acted unreasonably in failing to proceed with recommended prosecutions of unauthorised streetvending - at least from 23 December 1992 to May 1993. It also found the newsagent councillor had acted unreasonably by writing a letter to the council which contained allegations that were untrue, misleading and derogatory of an innocent party and in directly approaching council staff over the newsvending affair.

The investigation report recommended council amend its street vending policy to emphasise the need to avoid obstruction and maintain public safety and to impose conditions to this end on any consents. It also recommended that council prosecute all breaches of that policy with the potential to compromise public safety. Council accepted these recommendations and amended its policy in a commendably comprehensive manner.

Sand extraction

Residents of a Port Stephens Shire alleged their council failed to properly monitor a large sand extraction operation. The council had granted development consent for the mine some 20 years ago. However, there was some dispute over the ambit of the consent. This was compounded when the council was unable to find the actual consent when requested by local residents. There was also dispute over whether a public reserve was mined by the current, or previous, operator, and what action the council could have taken once made aware of allegations about the operation.

The complainants have alleged the council paid little attention to their complaints, readily accepting assurances from the operator without proper investigation. During our investigation, the council and operator reached agreement in which the operator was allowed 12 months grace in which to seek development consent. The operator has since submitted a development application and environmental impact statement. Proper consideration of the application should address many of the residents' concerns about significant expansion of the quarry without adequate environmental assessment or appropriate consent conditions. In initial comments about our investigation's provisional findings, the council assured us it will address deficiencies in its records management and complaints handling. A draft report on the investigation was in the process of being issued to the minister at the time of writing.

Rocky road

We receive many complaints from owners whose development applications have been declined by their council. Generally, we do not investigate this type of complaint because the applicants have a right of appeal in the Land and Environment Court. However, sometimes the manner in which the council has conducted its decision-making process, rather than the actual decision itself, is so unfair that the Ombudsman conducts an investigation into the development approval procedures and practices of the council. A complaint about Baulkham Hills Council resulted in such an investigation.

The owner of land in a Rural Zone applied to council for approval for a reception and seminar establishment to accommodate up to 60 people to be used for wedding receptions and business meetings during the week. Although the proposal was originally a permissible use in the zone, being consistent with the relevant planning policies, it had a rocky road right from the start. Most objections to the proposal reached council after the closing date for the lodgement of objections. Council called a conciliation conference two months after the application was lodged and then gave objectors a further three weeks to submit more evidence.

The applicants could have appealed to the Land and Environment Court at this stage but thinking they would be able to meet the specific objections raised, reduced their plan by 20%.

Council accepted two late submissions from one objector, both prepared by consultants and requested the applicants provide a detailed noise analysis. By the time this was completed, some eight months had gone by and the applicants could have reasonably expected some action from council.

Although council officers recommended the application be approved, council referred the decision to its Development Control Unit (DCU). This body, at a meeting where no councillors were present, also recommended approval but because the one persistent objector wrote to council requesting that this committee not make

the decision, the matter was referred to the Environmental Services Committee (ESC) which granted consent to the application.

However, the procedures put in place by the council allowed the application to be referred backwards and forwards from committee to council and back again, sending the application into a tailspin. It was considered on nine different occasions, once by the DCU, four times by the ESC and four times by the council, ending with the council purporting to refuse the application.

Apart from the history of the process set out above, there was a further problem relating to council's approval procedures. The arrangements by which councils often streamline the consideration of building and development applications is to delegate their authority to individual planning officers or to committees. Baulkham Hills Council's committee system, designed to facilitate decisions, was itself the instrument of delay. Further, the instruments of delegation were flawed.

The decision to approve the application made by the ESC six weeks before the meeting of the full council which refused the application was, in fact, a properly made decision which could not be overturned.

The legislation on this issue provides that once the function has been exercised under delegated authority it is deemed to have been exercised by the council and takes effect subject to its terms. While conditions could be imposed by the council in the instrument of delegation on the exercise of the power by the delegate, there is no power to include conditions which apply subsequent to the excise of a delegated power. The implementation of the decision cannot be the subject of any further limitations or conditions set out in the instrument of delegation itself. Finally, the wording of the consent granted by the committee did not make it subject to any condition subsequent that it would not take effect for a period during which members of the committee exercising the delegated authority could take action which would effectively rescind the decision.

For this reason although the council was unaware of the procedural fault, the various meetings that followed were not able to alter this decision.

This is not to say it is not appropriate for a council to adopt a procedure to enable councillors to bring development applications to a full council meeting **before** a decision is made by the delegate, be it a council officer, assessment unit or committee. For example councillors may be provided with an outline of matters coming before the delegate for consideration and may request a matter be referred to the council for determination.

Baulkham Hills Council has now changed its delegations and the situation is unlikely to arise again.

We have received the Ombudsman's report on the matter we raised concerning X Council.
The report describes precisely the sequence of events as we recorded them.
We are most grateful for the time and effort that has been expended on this matter. Thank you.
A complainant

Case studies

Dead money

Occasionally people forget or neglect ownership of land. As a result, councils are often required to sell such land to recover large sums of unpaid rates which accumulate over time. Where a council has no record of the current owner of the land, the law previously allowed councils to keep any surplus if unclaimed for seven years. Since 1993, councils have had to pay the surplus to the State Treasury.

Wingecarribee Council sold some land in these circumstances in 1981. A surplus of about $7500 remained which was kept by council after remaining unclaimed for seven years. In 1994, council received a claim for the money.

It appeared that the recorded owner of the land had died while working in New Guinea in 1929. Council was not advised. The property was then used by the former owner's wife. She died some years later. At this point, it appears rates ceased to be paid. The former owner and his wife had one child, who had married. After her death, the claim was made by her surviving husband.

Council advised the claimant that it would pay the money provided that formal court documents could be produced establishing either that each of the three deceased former "owners" died leaving valid wills having the effect of leaving the property to the claimant or, in the case of any of the "owners" dying without a will, the claimant was the only person entitled to the property.

The claimant, daunted by the expense and inconvenience in meeting this requirement especially proving events in colonial New Guinea, made an offer to indemnify council against any loss should he not be the person entitled to the money. When council refused this offer, the claimant complained to us.

After raising this issue with the council it agreed to allow an independent body to determine the claim, by paying the money into the NSW Supreme Court. The claimant was happy to pursue the claim in court and no further action was taken.

Doing it our way

In recognition of the demands that many developments place on community facilities such as roads, drainage and parks, councils can require developers to contribute towards the cost of improving such facilities. We receive many complaints about these requirements.

Few are formally investigated. Dissatisfied developers can appeal against these conditions. Councils must be open about their use of money collected in this way. All councils are required to adopt plans setting out how much is payable for different types of development and how it will be spent. Councils are legally prohibited from requiring these type of contributions with developments consented to on or after 1 July 1993 unless such a plan is in place.

The Ombudsman received a complaint that in February 1994, Yarrowlumla Council required a person carrying out a small rural subdivision to pay a contribution even though no plan was in place. In reply to our written inquiries, council defended its action, claiming it would not have consented to the subdivision without the condition and that had the complainant appealed, the consent would have been void.

We found the council's attitude unsatisfactory, particularly because it seemed unwilling to confront the question of why it had failed to adopt a plan by the required date, 1 July 1993. Council also seemed to take comfort from the possibility its own consents would be declared void should any of the 52 recipients of development consents issued after 30 June 1993, and before a plan was adopted, challenge the clearly unlawful condition.

Any investigation could have resulted in the validity of 52 consents being called into question, in turn opening up the prospect that funds collected for community facilities and applied towards their construction would have had to be refunded. Such an outcome was not in the public interest. However, so there was no doubt about how seriously the Ombudsman viewed the council's conduct, we advised the Department of Local Government and the Department of Planning of the circumstances of the case and invited them to consider if further action was warranted.

Recycled recycling charge

A Bomaderry resident complained about Shoalhaven Council's decision to impose a recycling charge on ratepayers in October 1994. The complainant believed this action was unfair given rate notices for 1994-95 had been issued some time before and did not detail the new charge. Concern was also expressed at the decision to commence recycling before council's current garbage disposal contract had expired.

Before imposing new charges and rates councils are legally required to give public notice of them in their draft management plans. The public can make submissions to councils on the contents of the draft management plans before they are finalised and the rates and charges are levied.

In this case, council did not give the required public notice. Council argued that the intention of the management plan process is to ensure proper public consultation occurs before imposing new rates and charges. As the recycling charge had been, according to council, widely debated in the community for some months prior to its imposition, council believed it was not required to wait until its next management plan was adopted before it could impose the charge. On this point council was wrong.

Council then unsuccessfully sought the assistance of the Minister for Local Government. The minister was asked to make a regulation which would validate the charge but declined to do so. Council then decided to relevy the charge for the period October 1994 - June 1996 and credit all amounts previously collected against this new charge. The actions of council were fully disclosed in the 1995-96 Management Plan.

Individual ratepayers may, if they wish, challenge the validity of the original and relevied charge. As the recycling service was in operation and the subject of a long term contract, and the council's action in relevying the charge had satisfactorily resolved the complaint, it was not in the public interest to investigate the matter further.

Over rated

Rates are levied differently depending on the use of the property. As a general rule, properties categorised as 'farmland' attract the lowest rates and properties categorised as 'business' attract the highest.

Residents of a suburb of Maitland complained about the "incorrect" rating of their property by Maitland Council. The property had, until 1984, been used for residential and business purposes, and was categorised and rated as 'business'. The property had continued to be categorised and rated in this way for a further nine years despite the fact that two subsequent owners had not carried out any commercial activity on the property since 1984. As a result, substantially more rates than would have normally been the case for a residential property had been levied and paid.

In this case, council refused the complainant's request to refund the notionally overpaid rates, pointing out correctly that each rates notice had disclosed that the property had been rated 'business'.

After our intervention, council agreed this case revealed an anomaly and has undertaken to introduce a simple procedure to be implemented when it is notified of the change of ownership of properties. Council will firstly check if the property has an out-of-character rating category, such as a house in a residential area being categorised as 'business'. In such cases council will write to the owner inviting submission of details of the current use of the property. If appropriate, the categorisation of the property for rating purposes will be modified.

The price is wrong

Concord Council acquired a former public school site in 1992 to facilitate development of much needed aged housing and child care facilities. A church group which had unsuccessfully sought to acquire the whole site obtained a commitment from council at this time to give the church group a first right of refusal over the remaining land.

Your conclusion give us relief in the sense that our complaint was not trivial and time wasting for your office. We would like to express our thanks for the efforts you and your staff have expended on our behalf in investigating our complaint.
A complainant

In 1994, council acted on its commitment and held a meeting with the church group to discuss the price to be paid for the site. Both sides had a figure to submit for discussion. The problem was that council nominated a price more than three times higher than the figure nominated by the church group's valuer. A further meeting was held a few weeks later. Both parties came with new valuations. This time, the council valuation was substantially less. Suspecting bad faith, the church group complained.

Our inquiries revealed that there were a number of valid factors behind the stark difference in values arrived at by the valuers used by the parties. Before a suggested compromise could be put to the parties, Council suddenly initiated further negotiations with the church group which resulted in a sale price being agreed to. The final price was slightly more than the midpoint between the parties' respective opening figures. The church group expressed its appreciation at our intervention which it regarded as decisive in reactivating negotiations.

The river runs through it

The boundaries of a given block of land are usually easy to determine. If physical features do not define the boundaries, a survey plan almost always will. Yet if land has a river as its boundary, the situation is not so clear cut. A river is a dynamic thing. It floods, often changing course as a result. Even the day to day flow of the river gradually redefines its boundaries.

A complaint from a Denman resident underlined these difficulties. The complainant owned a property which was bound on one side by the Hunter River. He complained Muswellbrook Council had approved plans for an extractive industry which included part of his land without consulting with him.

Inquiries of council revealed the main issue in the case was confusion over the precise boundaries of the lots fronting the river. To avoid aggravating the situation, council issued a development consent applying to specified lots without forming any opinion about the boundaries of these lots. This appeared to be a reasonable position to take. Council was in no position to definitively settle the issue.

While council appeared to have taken a reasonable position, it appeared unfortunate that more could not be done to resolve the situation. Because of a dramatic flood of the Hunter River in 1955, the river changed course quite dramatically. This rendered definition of the current boundaries of lots fronting the river extremely difficult. At our request, however, the Department of Land and Water Conservation is reviewing the boundaries of the affected lots to resolve the current confusion. This may involve a radical change to the manner in which lots fronting rivers are defined to better account for the dynamics of river boundaries.

Poor communication angers locals

A Tamworth woman alleged a conflict of interest concerning Tamworth City Council and a local golf course. The main issues of the complaint were that council had purchased the course from a developer, and then entered into a lease/purchase option with that developer, who was also a councillor.

The implication was that there could be some pecuniary interest or conflict of interest problems. In supporting her complaint, the woman advised that Tamworth City Council had agreed to provide water to the golf course at eight cents per kilolitre when the usual sporting body rate was 40.63c per kilolitre, that $13,000 was made available to the golf course to construct a dam, and a further $150,000 to build a clubhouse. Many of these issues had received attention in the local Tamworth press, and the apparent provision of cheap water in the midst of a severe rural drought had given rise to much anger in the community.

We made inquiries with council about each of the matters, and received a substantial amount of documentation in response to our questions.

After close and careful assessment we decided the allegations concerning the possibility of there being either a pecuniary interest or a conflict of interest on the part of the developer/councillor could not be supported. However, it was pointed out to council that despite there being no evidence to support the allegations, there was a great deal of anger in their community, as was shown by the existence of the complaint and the various newspaper articles on the subject. It was our view that this indicated that council should be working to ensure

that the residents retained confidence in the accountability of local government in their area.

Similarly, the ill-feeling in the community about providing the golf course with "cheap" water had been largely brought about by the lack of information made available to local residents. Council and the golf course lessee had in fact come to arrangements for the payment of the normal sporting body rate (including interest) for the entire period, should the lessee take up the purchase option. We felt that if information had been freely available to the people of Tamworth, much public disquiet and concern would have been avoided. It was pointed out to Tamworth Council that one of the important aspects of the Local Government Act is the encouragement of a spirit of openness in local government.

With regard to the contribution of funds towards the construction of a dam and a clubhouse, it was noted that the provision of a water supply by council was a clause to the original agreement to lease, and that the contribution towards the clubhouse was a commercial decision for council to make. However, it was again pointed out that not only must local government authorities do things correctly, but they must also been seen by their ratepayers to be doing so. Without such interaction between councils and their communities there will continue to be anger and ill feeling which results in complaints.

A whole lot of bull

When a Braidwood farmer found three bulls had strayed into his paddock he rounded them up and delivered them to Tallaganda Shire Council's pound. He then claimed $690 from council for his troubles. This was for 'loss of breeding of heifers served by mongrel inbred bulls', for damages to his fences and yards, and for cartage.

The bulls actually belonged to his neighbour, a farmer on an adjoining property. Tallaganda Council identified the owner of the bulls however their return home was not to be the happy ending to the story. Council refused to release the bulls to their owner until he paid council fees of $690.

Tallaganda Council told the farmer who owned the bulls if he didn't pay, his bulls would be sent to market for auction. He paid and took his bulls home.

After researching the relevant legislation, the owner of the bulls felt council did not have the authority to charge him $690 for the release of his bulls. He sought an explanation from the general manager of council. The general manager wrote to him and said, *"I have investigated the circumstances of the matter and confirm that the Council has acted within the terms of the Local Government Act and Ordinance 49."*

The owner of the bulls did not believe this response provided an adequate explanation. After further letters to council were ignored, he complained about council's failure to reply to his correspondence and provide him with an explanation on how the $690 fee was calculated.

After reviewing the relevant legislation we formed the view that the council had been entitled to require fees of about $20 per bull, a far cry from $690.

We wrote to council and pointed out the limits of fees that could be set in accordance with the relevant legislation. After reviewing the matter the new general manager advised council had, in the past, inadvertently processed impounding fees incorrectly. The $690 was recalculated and council refunded the owner of the bulls $615.

Tear down the wall

A Seaforth resident wanted to construct a fence on his rear boundary and approached Manly Council to see if approval was required. He was told providing the fence did not exceed six feet, or 1.8 metres, prior approval from Council was not required.

The owners of the adjoining property at the back did not want the fence built, because they feared their water and bush views might be affected.

After negotiations with his neighbour failed, the Seaforth resident obtained legal advice on the Dividing Fences Act. Confident he was acting within council and general legal requirements, he went ahead and built the fence. He said he used materials that matched his rear neighbour's side fence to avoid further problems. In addition to this, he did not require any contribution from his neighbour.

After his neighbour lodged an objection with Manly Council about the fence, an on site

Thank you very much for your efforts. Not even my solicitor was able to assist in this matter. It was only the Ombudsman who at last got some results. Thank you.
A complainant

meeting was held. A report was prepared and council ordered the Seaforth resident to demolish the top part of his wall.

He in turn complained to us as he did not believe his fence exceeded six feet, and he did not believe council had the right to make such an order.

The property at the back owned by the objectors was quite wide, and it had a common boundary with the Seaforth resident as well as his next door neighbour. His next door neighbour had also recently constructed a rear fence, from identical materials, yet no demolition order had been served. It seems this part of the property at the rear did not have significant views, and therefore no objection had been raised.

Council's report noted the disputed fence stood to approximately 1800mm. It noted the removal of the top two courses of bessa blocks would serve as a compromise - the objector's foreshore views would be restored and the resident who built the fence would still have a fence that gave him security and privacy.

Council's response to our written inquiries noted *"...approximately 5 blocks exceeded the height on a slope ranging from approximately 25 mm to 100mm"*. The Seaforth resident felt these were within normal building range, and believed council's demolition order appeared to be largely based on the effect the fence had on the rear neighbour's views, not on the fact that the fence exceeded the 1.8 metres height restriction by a few inches in places. He pointed out council did not have a specific policy in relation to fences and views, and there was no specific requirement that fences were not to restrict an adjoining owner's water/bush view.

After receiving our inquiries about the legislative basis for the order, council reviewed the matter and withdrew the demolition order.

A pool of confusion

A resident of Evans Head complained about the failure of Richmond River Council to address problems with her next door neighbour's above ground pool. She had a concerns about the pool's inadequate fencing, plumbing, drainage and wiring.

When we contacted Richmond River Council action had been taken, or was underway, to address most of her concerns about the pool. One matter remained, however, and that was the issue of fencing. The Swimming Pools Act requires pool owners to ensure the swimming pool is at all times surrounded by a child resistant barrier. The barrier must be at least 1.2 metres high.

Council advised us that the above ground pool complied with council's policy because the pool wall was 1.2 metres high, and so met the legislative requirement. Council accepted the actual walls of an above ground pool as serving the same purpose as a separate 1.2 metre fence.

The Department of Local Government which drafted the Swimming Pools Act and Regulation were of the view that the legislation required above ground pools to have separate fences of 1.2 metres, the actual pool wall was not considered to be a suitable safety barrier.

When we conveyed this to Richmond River Council they conducted an informal survey of six other councils in the district. Five other councils had policies that were similar to theirs.

Fearful it was in breach of the legislation, Richmond River Council took swift action to follow the matter up with the Department of Local Government. Concerned about the state-wide implications this presented, we also wrote to the Director General of the Department of Local Government and asked him to look into the matter.

The department agreed there was a need for wider dissemination of information about the requirements of the legislation in relation to above ground swimming pools. The department issued a circular to all local councils in NSW to explain the side wall of an above ground pool cannot be considered to provide a child-resistant barrier as required by the legislation.

Water, water, everywhere and...

Two new home owners complained their drainage problems were caused by council's negligence. They had attempted to resolve their complaint with Newcastle Council directly but negotiations had failed. The consent conditions for the new house included the condition of *"stormwater drains being connected to the inter-allotment drainage easement pipes"*. As it turned out there were no such pipes but the builder did not discover this until he attempted to find the point of connection and found only a sewer pipe. By this time the

house had been constructed and it was too late to run the stormwater drains to the street.

On contacting the council the building inspector told the builder to construct an absorption trench. The builder said he protested that the soil type was not suitable but felt constrained to follow council's instructions. It is not clear whether proper consideration was given by council officers at that time as to whether, in fact, the soil was suitable for such an absorption trench but, in any event, the trench constructed did not work. The owners were understandably very upset because the water in their backyard would not drain away. Council then instructed the builders to double the size of the trench. This also did not work. By this time the builders, having spent considerable funds building the trenches and being pursued by the angry home owners, were becoming frustrated.

After a meeting between the council, the owners and the builders, it was decided that some of the land could be drained to the street and the builders constructed these drains also at their own expense. The builders pointed out that they would have been able to drain the stormwater to the street more cheaply had they been aware from the outset that the inter-allotment drains were not present or near the property. At this stage, the owners approached the Ombudsman for assistance.

This complaint highlights the problems that arise for councils when standard consent forms are used and the council officer involved is careless in crossing out the conditions not applicable in the particular instance. If a council gives instruction that certain work should be carried out, then the builder must carry out those instructions. However, councils have a duty of care to ensure that the instructions will, in fact, be appropriate in the circumstances. To order a trench in clay soil which will not allow the water to drain away is not appropriate.

After our involvement council agreed to pay half the costs of the whole drainage exercise with the builder paying the other half. The owners were grateful they did not have to take expensive court proceedings to have the work completed. Had this been the outcome, the cost to council and possibly the builder would have been much greater.

Dangerous encroachment

A Waverley resident complained a neighbour's unauthorised works had extended his property by almost three metres onto a road reserve.

A small bank had been bulldozed to change the driveway entrance, a set of concrete steps had been installed, trees planted on the road reserve, and lights installed at the top of the stairs that were operated from the house. Further, a stonework retaining wall was installed with shrubbery planted around the edges making the land appear to be private property. In addition, two large boulders had been placed on the portion of the road reserve where visitors to the surfing beach below had previously parked their cars.

On the surface it appeared the road was being beautified. However, the manner in which these works altered the nature of the land gave rise to serious concern. There were steps to be negotiated where there had previously been a slope, the lighting for the steps was in the hands of the owner and if switched off would make negotiation in darkness dangerous, and the design of the work made the whole area look privately owned. All of these works were on council owned road reserve which should have been readily available for public access to the beach below.

It appeared that Waverley Council did not properly monitor the building extensions for which the owner had approval and by the time council noticed the work it had already been completed. Council was reluctant to order the works to be removed because, if the order was not carried out, council's legal expenses to have removed what some other neighbours considered to be improvements would have been very expensive.

After extensive enquiries council agreed to enforce removal of the large boulders, to have a park bench and plaque installed at the owner's expense to ensure the land was clearly within the public domain and to inspect the site on a weekly basis. Further, the council agreed to ensure that the structures were kept in good order, were kept free of obstructions and maintained the right to demolish them at the cost of the owner.

While this still gave the owner the use of extra land without much cost it appeared to be the best outcome possible under the circumstances.

Thank you so much for your prompt handling of my issue. After such a frustrating time it was great to achieve some satisfaction which was of course achieved by your office.
Your efforts were very much appreciated.
Many thanks.
A complainant

A long wait for the pub

In March 1993 the proprietors of a Newtown hotel lodged a damages claim for $16,000 with South Sydney Council after their sewer line was damaged. The hotel manager claimed the damage was caused by tree roots from council trees. Council had planted a broad-leaf paperbark and a giant honey myrtle on the footpath above the sewer line. Fibrous roots were submitted as evidence however, given the relatively small size of the trees and the depth of the sewer line, council did not believe the roots of the trees had actually cracked the terracotta sewer pipes.

The hotel's claim was not referred to council's insurers until June 1993. At the end of June 1993 the underwriters, who were based in London, sought more information from council. This was not supplied by council until the end of November 1993. Over the next 12 months, the underwriters sought information from council on five separate occasions. Some 19 months after the claim had been lodged, a determination had not been made on it. Frustrated by the delay, and alleging council was not handling the claim efficiently, the proprietors of the hotel complained to our office.

Generally speaking, it is not our role to determine liability in relation to compensation claims made to authorities, including local councils. We do insist, however, that if liability is denied adequate reasons are given and claims are processed efficiently.

We wrote to council on two separate occasions inquiring about the processing of the claim. We also visited the council and inspected the relevant files on the matter.

At this stage, council formed the view that it had become unreasonable for the London underwriters to seek more information, and instructed their brokers to settle the claim as quickly as possible. The claim was paid in full, and council undertook to review its instructions to staff on the processing of claims.

Council changed insurers in April 1994 when it banded together with five other councils to obtain public liability insurance. Council now handles public liability claims under $20,000 in-house and it is hoped this change, together with the review of instructions, will mean lengthy delays like the one experienced by the Newtown hotel proprietors will not recur.

It's not our problem

A central coast couple had their sleep disturbed by barking dogs. They complained to council about the noise problems and were told they must prosecute their neighbours personally.

The couple knew council had powers under the Local Government Act to prosecute dog owners who failed to prevent noise problems. They felt it was unreasonable for council to refuse to act and wrote to this office. Initial enquiries revealed council generally referred people to their Chamber Magistrate for advice about private prosecutions although they did send warning letters to the dog's owner. Council explained that in their experience most complaints about barking dogs were essentially neighbourhood disputes and so private matters.

Obviously not all noise complaints would be caused by neighbourhood disputes and we questioned the reasonableness of council's policy. Council responded that under the provisions of the Noise Control Act they could only issue a warning notice or prosecute the occupier of the place where the dog is kept. They believed this didn't solve the problem and were adamant that private legal action was a more effective remedy because the local court could issue an order prohibiting future noise.

We surveyed other councils with similar geographic and demographic profiles to learn how they dealt with complaints about barking dogs. Each council surveyed investigated complaints and tried to negotiate a resolution. If this was unsuccessful, and the complaint was serious, the matter was pursued vigorously and if necessary, legal action taken.

We also spoke to the local court about the effectiveness of council's referrals. A court officer said very few people pursued court action because of the need to question witnesses, the burden of presenting evidence which would satisfy the requirements of the Noise Control Act and, in some cases, concerns about prosecuting neighbours.

We referred this information back to council and provided suggestions for improving their system. These suggestions were accepted and council is now responding comprehensively to people wishing to resolve serious noise problems caused by barking dogs.

Policy down the drain

A Curl Curl resident objected to a development application of a neighbour, on the basis that the plan for stormwater drainage was inadequate, and would badly affect his property. The application was refused under delegated authority by officers from Warringah Council. One reason for the refusal was that there was inadequate provision for stormwater drainage.

The application was amended in an attempt to address the drainage concerns, reconsidered by council officers and approved. The new plans for the drainage included using an existing private stormwater drain which ran across several neighbours' properties. Using this drain clearly required consent from all users of the drain, which included the residents who had objected to council.

Council did not notify neighbouring properties of the new development application or the approval. It was not until some years later, when the applicant began to build, that the neighbours became aware of the approval.

The resident wrote to council several times about their failure to notify him and pointing out legitimate problems with the new drainage plans but received no reply.

After making inquiries we advised the council of our concerns with the manner in which the review had been conducted, and the way the complaint had been handled.

Council acknowledged these problems and admitted their appraisal of the amended application contained errors of professional judgement about the drainage plans. The plans could not be carried out. In light of this, council agreed to put real effort into finding a solution to the drainage problem through conferences with the developer.

Council reviewed their 'reconsideration' policy, to clarify whether notification was required. Council met with the residents, and gave an oral and also a written apology in light of the events. Council also decided to require the developer to lodge an application for an amendment to the development application - thus giving the residents the opportunity to object to any further problems with the drainage which may arise.

Mediation success

During a recent public awareness visit to northern NSW, two of our officers successfully mediated a dispute involving a council, a county council and a local resident.

The complainant had purchased a small rural holding in 1990, having obtained information from the local council on the location of the water main. This consisted of a diagram disclosing the location of the main, which showed the main did not affect the property. The main was supported by an easement on the complainant's title.

The complainant later built a sizeable farm shed, having obtained approval to do so from council. The shed was not built in its approved location, although this was denied by the complainant. An inspection by the county council, which had assumed responsibility for water services in 1988, revealed the shed was located over the main. It was as a result uninsurable and liable to severe damage should the main burst. This would have been the case whether or not the shed was in its approved location.

The complainant and the council had been unable to resolve the situation. The county council, although in no way liable, had offered to contribute a third of the cost of relocating the main or the shed. The council's insurer offered to contribute to relocation costs on a without prejudice basis, suggesting it perceived potential liability. The complainant was unwilling to contribute and faced the further prospect of council requiring him to relocate his shed.

As a result of the mediation, a relocation of the water main was negotiated involving contributions from all parties. The council and the county council agreed to contribute 42 per cent of the cost each with the balance met by the complainant. The council agreed to refrain from taking legal action over the shed, and the council's chief health and building surveyor agreed to not to frustrate the issue of a building certificate for the shed notwithstanding its mislocation.

The mediation took six hours and ensured lengthy and costly legal action was avoided.

Thanking you again for the courtesy in replying, something the like of the General Manager and X Council do not think necessary to ratepayers.
A complainant

Freedom of information

Overview

This section contains an account of our work and activities under the *Freedom of Information Act* for the twelve months ended 30 June 1995. This report meets the annual reporting requirements of section 68 of the *Freedom of Information Act* and clause 9 of the *Freedom of Information (General) Regulation 1995.*

The 94/95 year

The number of complaints received was steady compared to last year. This is the first time since the commencement of the Act that there has not been a substantial increase in complaints over the previous year.

There was a 7% increase in completed matters over 1993/94, and the number completed represented a 30% increase over the average number completed per year for the preceding four years. (Appendix 3 gives a breakdown of all matters determined in the year by agency.)

There was a modest increase in the percentage of matters which were resolved (before or after formal investigation) from 29% in 93/94 to 35% last year. The number of matters which were declined without any inquiries being made decreased by 65%.

There was a slight fall in the number of non-jurisdictional matters received and an increase in the number of complaints where agency decisions were upheld in whole or in part. We agreed in full or part with the agency determinations to exempt documents in over 11% of cases (an increase of 4% over 93/94), and in over 7% of completed matters we agreed with agency determinations to release documents where third parties objected to the release of information. Half of these were linked to one FOI application. This case is described in greater detail later in this chapter.

The increase in matters resolved is a result of our continued emphasis on using informal methods to find satisfactory outcomes, usually where we have come to a preliminary view that agency determinations are incorrect.

There were several instances in the year when all documents were released after our first contact with the agency, even before we had inspected the documents.

The following table gives a breakdown of the resolved complaints.

	All documents released	Some or most documents released	Resolved for other reasons
Cases resolved	14	10	14
% of completed complaints	13	9	13

Most of the complaints which were declined at the assessment stage, prior to any inquiries, were declined because they were outside jurisdiction. Others were withdrawn, or the FOI application and subsequent determination had occurred too long ago, or the complaint was premature.

In 20% of completed matters: there was no evidence the documents the complainant requested existed; the complaint was subsequently withdrawn; there was insufficient evidence of incorrect decisions or other maladministration to warrant formal investigation; or the complainant was provided with an explanation or advice by our office (these matters are referred to as 'various' in the pie chart of FOI complaints completed for 1994-95). For example in relation to three complaints, all

from one applicant, action was discontinued because the complainant had subsequently initiated a general court action which was very likely to result in access to the documents subject of his FOI application.

4% of matters proceeded to a formal report with recommendations, a 3% increase over 93/94.

The greatest number of complaints received about a single agency was 14 concerning the Department of School Education, supplanting the Police Service about which our office received the greatest number of complaints last year (16). This year only seven complaints were received about the Police Service which was the second largest number in relation to a single agency. Ten complaints were received about hospitals and other health-related agencies.

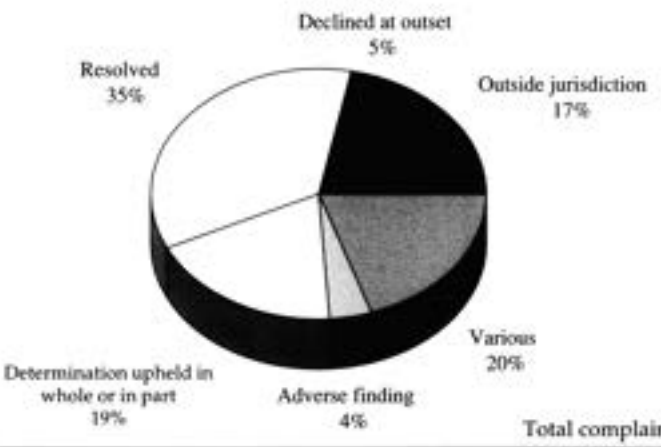
How complaints were processed

1990/95 - 1994/95

	90/95 %	94/95 %
Assessment only		
Outside jurisdiction	17	17
Declined	12	5
Preliminary inquiries	61	69
Formal Investigation		
Discontinued	7	5
Adverse findings	3	4
Total	**100**	**100**

FOI Complaints Completed

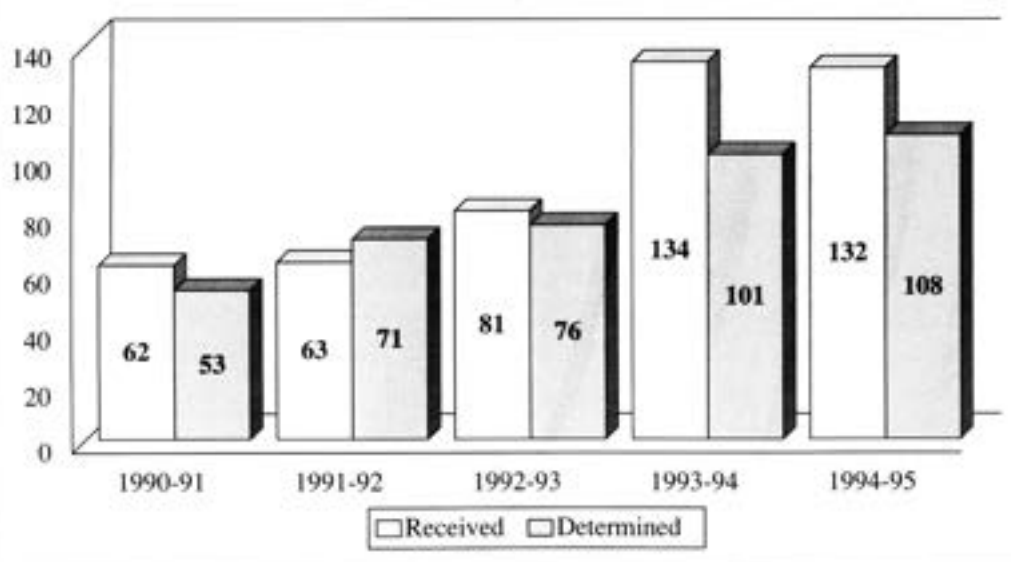
1994 -1995



Total complaints determined: 108

FOI complaints received and completed

A five year comparison



I carry my warm thanks to your freedom of information officers for the attention that they gave my letter.
A complainant

Complaints Received
Top 10 Agencies and Councils
1990-1995

Agency	Complaints
Health related agencies	43
Police Service	38
School Education, Department of	26
Corrective Services, Department of	22
Roads & Traffic Authority	21
Community Services, Department of	15
State Forests	14
State Rail Authority	11
Housing Department	11
Urban Affairs & Planning, Department of	9
Councils	
Shoalhaven City Council	8
Ku-ring-gai Council	7
Lake Macquarie City Council	7
Liverpool City Council	6
Sutherland Shire Council	5
Greater Lithgow City Council	4
Kogarah Council	4
Byron Council	3
Gosford City Council	3
Hastings Council	3
Parramatta City Council	3
Waverley Council	3

Overview of FOI complaints
A five year comparison

Year	Number of complaints	Percentage increase over average for previous years
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	
1994-95		
Brought forward	65	
Received	132	36%
Completed	108	30%
Carried over	89	

Increase of completed complaints by year
1990-1995

	Completed	% increase over previous year
90/91	53	96
91/92	71	34
92/93	76	7
93/94	101	33
94/95	108	7

Summary of complaints received and completed
1990 - 1995

	No. of complaints
Received	498*
Completed	409
Carried over	89

** Includes complaints carried over into 1990*

Issues

Recommendations to review and amend the Act

Review of the Act

The former Ombudsman submitted two reports to Parliament last year recommending a comprehensive review of the FOI Act and the establishment of an Information Commissioner in NSW.

While it is heartening to note the support in Labor's Law Reform Policy of March 1995 for various recommendations made by the former Ombudsman, there has been little or no action to implement these proposals at the time of writing.

Amendments to the Act

In his January 1995 special report to Parliament, the former Ombudsman recommended the Act be amended by:

- establishing a Joint Parliamentary Committee on Freedom of Information charged with promoting FOI;
- establishing an Information Commission in NSW with the combined jurisdiction of the Ombudsman and District Court to investigate conduct relating to a determination as well as the power to make determinations which substitute for those of the agency;
- expanding the objects set out in section 5 of the FOI Act to include a further object that information be readily accessible to the public, either free of charge or at the lowest reasonable cost;
- giving agencies the power to review their determinations in the light of recommendations in reports made by the Ombudsman, or suggestions made by the Ombudsman for the purpose of resolving a complaint; and
- placing an upper limit on the amount agencies may charge for any one application.

At time of writing it appears that the only recommendation which is currently being acted on is the proposal that agencies be given the power to review their determinations in appropriate circumstances.

Information Commissioner

The Commonwealth is completing a review of its FOI legislation. Perhaps the most significant idea floated in that review is for an independent body to monitor the operation of FOI in the Commonwealth sphere. At this stage it is proposed that the functions of such a body could include:

- monitoring and reporting on agencies' administration of and compliance with the Commonwealth FOI Act, which could include collecting statistics from agencies and preparing an annual report on FOI;
- facilitation between parties;
- publicising and promoting the Act in the community;
- issuing guidelines on applying the Act;
- training agencies;
- providing legislative policy advice on access to government; and
- a role in overseeing the general information practices of agencies, including their policies on publication and pricing of information, use of FOI and information management practices.

As noted in the June 1995 edition of *FOI Review*, such a body falls only one step short of being a comprehensive Information Commissioner in that it does not have an external determinative review role. However, the proposed body would seem to have just about every other function that would be relevant for an effective Information Commissioner.

The Commonwealth is in a different position to NSW in this regard. For well over a decade the Commonwealth Administrative Appeals Tribunal (AAT) has had a determinative review function and has made hundreds of precedent decisions, while the Commonwealth Ombudsman previously had little involvement in FOI matters.

In NSW, on the other hand, there have been less than 10 FOI determinations made by the District Court since the commencement of the Act, while there have been over 500 FOI com-

It was refreshing to receive efficient service and a well written report after years of procrastination and no action.
A complainant

plaints to the Ombudsman. The case for the NSW Ombudsman to perform the various functions of an Information Commissioner is therefore strong.

A proposal has been mooted to transfer the FOI jurisdiction of the NSW District to the proposed AAT. However, the likely advantages of an Information Commissioner over the District Court (or an AAT) in conducting external reviews of FOI determination would include:

- the benefits that flow from some degree of specialisation;
- informality and simplicity of process;
- speed;
- ability to facilitate resolution between the parties;
- a broader perspective with an ability to look behind the original decision to identify any problems relating to policy, procedure or conduct on the part of the agency or its staff;
- the process is very inexpensive for both the agency and the applicant; and
- education and advice role sits more comfortably with an Information Commissioner than a judicial or quasi-judicial body.

In addition, if the NSW Ombudsman was the Information Commissioner, there would be a depth of experience and internal precedent to draw upon.

In this regard, the former Ombudsman suggested that it would be appropriate for either the Ombudsman or the Deputy Ombudsman to be constituted as an Information Commissioner. However, for simplicity, and to avoid administrative and budgetary complications, a statutory Deputy Ombudsman option should be avoided, although in practice that position would retain primary responsibility for the FOI function, under appropriate delegation.

In conclusion the Information Commissioner proposal would overcome the problems with the existing mechanisms for external review outlined in the former Ombudsman's report of January 1995.

New programs proposed

Existing functions

At present the FOI functions of the office are to:

- assess FOI complaints, which can include informal resolution, preliminary inquiries or formal investigation and report;
- provide oral advice to members of the public and FOI practitioners in NSW agencies,
- provide guidance through the *Ombudsman's FOI Policies and Guidelines*:
  - as to the approach used by the office in the assessment of FOI complaints; and
  - to assist agencies in implementing the Act in accordance with its terms and spirit.

Proposed functions

If workloads permit, the Ombudsman proposes to develop and implement the following two programs over the coming 12 months.

Agency reviews

A continuing problem in agency assessment of FOI applications is delay in making determinations. We are therefore considering a review of processing times of FOI applications dealt with by a sample of NSW agencies.

The agencies subject to such reviews will be selected on the basis of:

- volume of FOI applications received;
- the number of complaints to the Ombudsman about determinations; or
- identified problems in processing applications within the statutory period, either through complaints to the Ombudsman about delay or highlighted in an agency's FOI annual report.

Compliance with reporting requirements

The FOI Act imposes various reporting requirements, including the need for:

- an annual FOI report;
- an annual Statement of Affairs; and
- a six monthly Summary of Affairs.

Since the disbanding of the FOI Unit in the Premier's Department some years ago no person or body has been responsible for assessing compliance by agencies with these reporting requirements.

We are therefore considering implementing a program to:

- assess the content of Summaries of Affairs to identify any obvious deficiencies; and
- identify a sample of agencies and assess whether they have complied with the annual reporting requirements in the Act.

Action on our own delays

Dealing with FOI complaints is a time consuming process. To reduce backlogs and delays in dealing with the number of FOI complaints being received we have:

- developed and published the *Ombudsman's FOI Policies and Guidelines* to provide guidance for FOI practitioners and applicants, hopefully leading to reduced numbers of complaints;
- adopted a policy of assessing complaints on a general presumption that access should be provided to all requested documents, with the onus being on the agency to justify exemption and to prove that appropriate procedures were complied with;
- requested agencies to justify their determinations in relation to each individual document the subject of the complaint by the provision of reasons to this office, fully satisfying the requirements of section 28(2)(e) of the Act; and
- given priority to our oldest complaints.

These steps have not yet brought the FOI workload to a point where more complex matters are finalised within reasonable time.

To help achieve this goal the Ombudsman also proposes to increase the number of FOI complaints that are declined at the outset. This will ensure that those complaints which are accepted are properly dealt with in acceptable time periods. A declines policy will be developed which sets out the basis on which FOI complaints will be assessed. Public interest will form the basis of this policy.

New guidelines

The *Ombudsman's FOI Policies and Guidelines* were published during the year to assist FOI practitioners, agencies and members of the public with an interest in this area.

The FOI policies emphasise we assess FOI complaints on the basis of a general presumption that access should have been provided to all requested documents, and place the onus on the agency to justify claimed exceptions and prove that the procedures in the Act were complied with.

The FOI guidelines focus on procedural best practice. They attempt to convey our best understanding as to the use of the exemption clauses, based on our experience over the years, as well as best practice from other FOI jurisdictions.

The FOI policies and guidelines were developed during the term of the former Ombudsman and have been adopted by the new Ombudsman. The guidelines have been widely distributed and have received a generally positive response.

Complaints by third parties

Councils throughout NSW regularly receive complaints from members of the public about the activities of other people in their neighbourhood. In many instances the person who has been complained about to council wants to know what has been said about them and who made the complaint. It is our experience that the FOI Act is being frequently used by the public to find out these details from the council.

The *Ombudsman's FOI Policies and Guidelines* deals extensively with complaints by third parties. The issue of objections to BAs and DAs is specifically addressed because of the number of complaints received about either the release or the non-release of these types of documents held by councils.

Generally, the content of objections to BAs and DAs are innocuous, setting out relevant objections to or submissions on the BA or DA in question. There have also been documents of this type where the content was totally inappropriate for its supposed purpose, including personal abuse, wild allegations or other irrelevant material. The Ombudsman believes the recommended approach should in future deter such inappropriate submissions.

The Ombudsman is of the view that councils should adopt a policy of open access to such objections and should take all available opportunities to inform residents that confiden-

Once again I would like to thank you for your support in handling this conflict. It has been a very stressful and frustrating situation for me and I do appreciate the enquiries you have made on my behalf.
A complainant

tiality will not be available in such circumstances. Such a policy can be placed in notices to adjoining owners concerning development or building applications made to the council, in advertisements in local papers or on public notice boards in council chambers or other public areas.

The Ombudsman believes that such openness in the provision of letters of objection to building and development applications will serve the public interest. An open policy should mean that objectors will focus upon the actual merits or disadvantages of a proposed development rather than making any gratuitous or derogatory comments of a personal nature.

If councils insist on a formal FOI Act approach to such documents they:

- must comply with the notification requirements under section 31 of the FOI Act;
- must review all responses received; and
- presumably will generally not have valid grounds under the Act to exempt the documents from release.

It is recognised that there will be occasions when such documents should not be released, but the Ombudsman believes these occasions will be very rare, and usually such documents can and should be open to public scrutiny.

Potential objectors who have serious reservations about setting objections down in writing and providing them to the council can request confidentiality. The officer receiving the objection should clearly file note the request and indicate to the objector that the request is understood. However, it is our view that the officer receiving an objection should never promise that it will be kept confidential. That would be an attempt to bind the discretion of the FOI decision-maker, should an FOI application for the objection be made. Even if the officer receiving the objection is the FOI decision-maker, he or she should not promise confidentiality at that time. In the event an FOI application is made, the appropriateness of applying a clause 6 or clause 13 exemption can then be properly considered.

We do not favour a hard and fast rule on this issue. While it is best, for the most part, to place all objections on the public record so that a FOI application and determination are simply not needed, there will clearly be occasions when the structured nature of FOI processing will be the better course to follow.

It should also be emphasised that the Ombudsman's views on the release of letters of objection to building or development applications are strongly supported by the Department of Local Government. The department has in fact written to various councils urging them to adopt our policy.

The *Ombudsman's FOI Policies and Guidelines* devote a special section to dealing with how the FOI Act relates to letters of complaint and objection which people send to councils. The variety of approaches by different councils in their willingness to hand over letters of complaint to applicants was matched by the different types of complaints received from members of the public about their neighbours. The Ombudsman's view is that natural justice should require the details of a complaint be disclosed to the person concerned where the council takes or proposes any action against that person as a result of the complaint. The question, though, as to whether the identity of the complainant is revealed is a separate and more contentious issue.

A strong argument can often be made for the non-disclosure of the identity of a complainant where the complaint to a council:

- was clearly made in good faith; and
- discloses a contravention or possible contravention of the law, for the purpose of enabling or assisting the council to enforce or administer the law (clauses 4 (1)(a) and (b) of Schedule 1); or
- it is clear that the life or physical safety of the complainant could reasonably be expected to be endangered (clause 4(1)(c) of Schedule 1).

However, the disclosure of information identifying a complainant is generally appropriate in certain circumstances, particularly where:

- the council has a public policy of disclosing the identity of complainants;
- the council is of the opinion that the identity of a complainant should be disclosed in the particular circumstances which apply;
- the identity of the complainant has already been disclosed in a publicly available document, such as the council's business paper or the minutes of a council meeting;

- the complaint is merely an objection to a building or development application;
- the complaint does not relate to the enforcement or administration of the law; or
- the complaint is clearly malicious or not made in good faith.

It is also stated in the FOI guidelines that, based on the democratic ideals of open government and freedom of information, the Ombudsman has no objection to the release of letters of complaint where councils are of the view that they should be made available to FOI applicants.

Feedback received from both agencies and the public on the Ombudsman's views concerning the release or exemption of letters of complaint has generally been positive and supportive. The Ombudsman's policies on this issue provide for each council to determine whether or not letters of complaint should or should not be released in their entirety. From the Ombudsman's experience in dealing with complaints received from both FOI applicants and people who are objecting to the release of letters they have written to councils, the main problems and misunderstandings occur when the council does not have a clear policy and there is no notice or publicity as to whether the council releases the identity of complainants.

The Ombudsman believes that in order to establish good community relations and avoid any charges of misinformation, each council should establish a definite policy as to whether it will disclose the identity of persons who have complained about fellow residents or, alternatively, whether the council accepts that such complaints are received in confidence with the identity of the complainant not being revealed. Upon the adoption of such a policy, the Council should take necessary steps to advertise its policy to residents.

Amendment of records

The issue of amending records under the FOI Act is unfortunately taking up increasing amounts of our time and resources. From our recent experience, this Part of the Act appears to be increasingly used by members of the public.

In late 1994 Botany Council challenged our right to recommend that certain documents be amended by the addition of notations, and arguing for a narrow interpretation of section 39 of the *FOI Act*. The matter was heard by Acting Justice Spender in the Supreme Court in April 1995. On June 16 the Court denied the council's appeal and awarded us costs.

An appeal was lodged to the Court of Appeal against the Supreme Court's decision was heard on 6 October 1995. The Court of Appeal handed down its judgement on 2 November 1995 dismissing council's appeal

Avoiding prejudice

Most agencies would be aware that they are required to identify all policy documents in their Summaries of Affairs and that they are required to make their policy documents available for inspection and purchase by members of the public.

However, most agencies may not be fully aware of provisions of section 15(3) of the FOI Act, which provides:

"(3) A person is not to be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than such of those provisions as the agency is permitted to delete from the copies of the document that are available for inspection and purchase by members of the public) to any act or omission of the person if, at the time of the act or omission -

- *the policy document was not available for inspection and purchase; and*
- *the person was not aware of those provisions; and*
- *the person could lawfully have avoided the prejudice had the person been aware of these provisions."*

This section appears to provide that a person cannot be prejudiced for contravening the provisions of an agency's policy document which has either:

- not been identified as a policy document; or
- so identified but not made available for inspection or purchase;

provided:

- the person can show that they were not aware of the provisions; and
- the person could lawfully have avoided the prejudice had the person been so aware.

Thank you very much for your response to my letter.
I have had most helpful replies from government departments to whom I wrote.
Anyhow, thanks again for your help which is greatly appreciated.
A complainant

As stated in the *FOI Procedure Manual* published by the NSW Premier's Department in 1994 (at page 47). This section qualifies the dictum that ignorance of the law is no excuse for breaching the law in appropriate circumstances.

Access to medical records

During the year the Ombudsman received a number of complaints from legal firms on behalf of their clients about the Department of Health's charges for clinical notes.

Previously, the department had been charging people a fee of $30 to provide copies of their clinical and medical records. Such requests, particularly by legal firms on behalf of their clients, are very common as these records are needed in legal proceedings dealing with insurance, compensation and medical negligence. The $30 charged by the department was the same as the application fee of $30 under the FOI Act.

Without warning, the department started charging the public, or solicitors representing them, $110 for providing copies of their clinical records This represented a cost rise of nearly 400%. To avoid such a charge, legal firms started applying under the FOI Act for those clinical records, where of course the fee was only $30. The department, however, began refusing those requests under section 25(1)(b1) of the FOI Act which says that an agency can refuse to deal with an FOI application if the document is available for inspection at the agency. In these cases, the department would always allow the person concerned to inspect their clinical records. Having refused to deal with the FOI application, and after receiving the $30 FOI fee, the department would write back to the legal firm asking for another $80 (to make $110) before it would give out copies of the records. Although inspection of the records was free, the bind for both lawyers and their clients was that, for legal proceedings, copies of the records were needed.

We were of the view the sudden increase required some explanation and so sent a letter to the department seeking reasons to justify the increase the costs. Importantly, the Ombudsman also asked the department whether the charge of $110 applied in situations where the person's clinical records amounted to a very small number of pages.

The department replied that the fee of $110 had been arrived at following an averaging of the time required to complete requests for copies of medical records. The Ombudsman was also advised that the department had based its decisions to refuse FOI applications for the medical records, which of course were cheaper at $30, on legal advice that section 25(1)(b1) of the FOI Act applied to such requests.

In response to our inquiries the Director-General of the department informed us that it was now realised that charging a flat fee ($110) meant that people who only wanted copies of a few pages of medical records were subsidising those seeking extensive clinical notes. The Director-General advised that the department would therefore redraft its guidelines to allow for more equitable charging for the provision of medical records. A flat fee of $30 would be charged for each request, in addition to a fee of 25 cents for each page required. Such a charging scheme was felt to be far more equitable and reasonable.

The Ombudsman was pleased with the outcome of this matter, particularly as it was achieved through negotiation and resolution, leading to a result which is clearly in the public interest.

Shortcomings in the Act enforce protracted external reviews

One of the recommendations in both Special Reports to Parliament mentioned earlier in this section of the report addresses serious shortcomings in the FOI Act which restrict our ability to complete some FOI reviews in reasonable time. The shortcomings are that:

- the protections afforded agencies when they release documents under the FOI Act do not extend to them when they release documents in response to either our formal or informal suggestions; and
- there are no procedures to deal with third party rights at external review stage.

These gaps in the Act have forced us to take steps which may seem ludicrous at first sight but are essential if the Act's protections and rights are to be properly available to agencies and third parties. The following two matters are good illustrations of the problems.

A teacher had requested copies of letters of complaint written about her by parents. In an informal resolution meeting with the Department of Education we suggested the letters should be released with identifying information deleted.

The department accepted our view, subject to the letters being retyped so that handwriting could not be identified. Now the Act's shortcomings in such circumstances became clear. Because the department had initially determined to release the letters, it could therefore not release the retyped letters. The protection afforded by section 64 of the FOI Act would not have applied opening the department to possible actions for defamation or breach of confidence.

On the basis that protection can only be gained via a determination, and that it is not possible for agencies to redetermine a matter which has already been dealt with, a new FOI application had to be made by the applicant.

The department then had to consult the authors of the letters. After an initial determination to release was made the third parties were informed and given the rights of review and appeal provided in section 31. The department then had to process any third party requests for internal review. The third parties then came to our office for external review of the department's decision to release. The third parties were given the opportunity to provide any additional information to support their view the documents were exempt. As a result our office made further inquiries of other sources. Finally the third party reviews were completed, in this case upholding the department's decision to release. The third parties did not appeal to the District Court, and the department released the retyped letters, many months after the initial application was made.

The second request for review related to a determination by NSW Agriculture to refuse access to a broad range of documents in relation to the recall of certain batches of a veterinary chemical, and to a proposed "Image Product" of that chemical being manufactured by a rival company to the applicant. Some documents were in fact released, but the majority were refused under clause 12, schedule 1 to the FOI Act. NSW Agriculture claimed section 31 of the Stock Medicines Act as the relevant secrecy provision which enabled clause 12 to be used. In part this provision restricts the release of information obtained in the administration or execution of the Act without the consent of the person from whom the information was obtained. The company involved did not consent to release.

The Ombudsman came to the preliminary view that the majority of documents which had been withheld were not in fact exempt, and subsequently a meeting was held between the Ombudsman and the Director General to resolve the matter. As a result, NSW Agriculture decided to release most of the documents. However, where relevant, third parties had to be consulted, and to obtain the protection of the FOI Act the applicant was asked to make another application.

A partial determination of the new application released some documents and listed those for which consultation was being made. The third party objected at length to the release of any further information, and pursued the internal review option once NSW Agriculture determined to release the information.

The third party, however, as compared to the School Education matter, did not request an external review after NSW Agriculture decided the internal review in the applicant's favour. The majority of documents were therefore released but the necessity for a new application, and the consultation process, which was unfortunately complex and protracted, meant that more than 11 months passed between the resolution meeting and the finalisation of the complaint.

In the third request for review, the agency agreed to accept another FOI application for the information after meeting with the Ombudsman and conveying the impression it intended to release the relevant document. As in the previous examples, the second application was thought to be necessary to obtain the protection of the FOI Act when the document was released. However, unlike the previous examples, the agency, surprisingly, did not in

This is a simple letter of gratitude.
Thanks to your office's superb effort we eventually received our full claim in April 1994. We therefore wish to thank your office for its efficiency. Special thanks to the officers involved.
A complainant

fact alter its determination the second time round, refusing access to precisely the same information as it had in its first determination.

It is the Ombudsman's view that the present need for another application to be made in order for agencies to gain the Act's protection where they are persuaded by our office their initial decisions were wrong, is most unfortunate, leading to greatly protracted external reviews. The Act should provide an efficient procedure in these circumstances. It should also provide an efficient and not overly prescriptive way to deal with third parties' rights at the external review stage.

At the time of writing, advice has been received that the Premier has agreed to the proposal that the Act be amended to allow agencies to review their determinations in appropriate circumstances.

Investigations

Diaries, files and legal advice

A lengthy investigation into Shoalhaven Council shows how the public can use the FOI Act to obtain information about developments which may adversely impact on their rights or threaten the environment.

In this case a development application to establish a quarry was lodged with the council. The proposal caused much controversy among local residents and the council refused consent for the quarry to begin operation. The Land and Environment Court, however, gave the go-ahead but with strict conditions attached to the quarry's operation.

A local resident applied under the FOI Act for all of council's documents about the quarry. The council refused to give him access to any of the material as it determined that none of the documents related to his personal affairs. The decision was based on section 16(2) of the Act (repealed in July 1993) which stated that councils only had to provide documents to applicants which concerned the applicant's personal affairs. The council determined the applications before 1 July 1993 before section 16(2) had been repealed.

We started an immediate investigation of the council as initial evidence indicated that such a broad refusal may have been unreasonable. The council's files on the quarry contained thousands of documents. Our investigation found the council was wrong to have made the very broad determination that all documents on the quarry did not concern the complainant's personal affairs. However, we also discovered that despite receiving legal advice from its solicitors for about four years that the operations of the quarry were in breach of the strict conditions of development consent stipulated by the Land and Environment Court, the council had never taken any action against the operators.

The Ombudsman recommended it was in the public interest that all of council's documents be provided to the complainant owing to the apparent impact the quarry had upon him as an adjoining landowner and also on the basis of the council's failure to act on its own legal advice. Following the Ombudsman's investigation, the council initiated action against the quarry operators. The final Ombudsman's report received extensive local press coverage.

Botany Council

Our FOI Annual Report 1993-94 described proceedings instituted by Botany Council in the Supreme Court following our investigation into the council's FOI determinations.

The Ombudsman received a complaint about the council's refusal to amend letters and a mayoral minute under the FOI Act. The two complainants to our office claimed information in the documents was incorrect, misleading and incomplete.

The complainants had, for a number of years, organised a council sponsored touch football competition. Following a dispute with the complainants, council stated in the letters and the mayoral minute that it did not know the complainants would be receiving payment for their role in organising the competition. The complainants argued that council did know they would be receiving payment for running the competition and that they had advised the council of these proposed payments on a number of occasions over two to three years.

Our investigation found the council did know, or should have known, the two administrators were to receive income, and therefore the letters and the Mayoral Minute were incorrect, misleading and incomplete in certain respects. The report recommended that an addendum be attached to the three documents stating that the council did know, or should have known, that the complainants were to receive payment.

Following our final report into the investigation, the council commenced proceedings in the Supreme Court. The substantive issues which were the subject of the proceedings principally revolved around:

- the interpretation of section 39 of the FOI Act and whether the right to apply for the amendment of records is restricted only to documents to which access was obtained under the FOI Act; and
- whether a document that accurately records some other fact, for example the minutes of a meeting, can be found by the Ombudsman to contain information that is misleading, incorrect, incomplete or out of date.

The council argued for a narrow interpretation of section 39 of the FOI Act. It claimed that as the letters and the mayoral minute had not been obtained under the provisions of the FOI Act, the two complainants did not have a right to seek their amendment under the FOI Act and therefore the Ombudsman did not have the jurisdiction to investigate the council's FOI determinations.

It was also claimed that the Ombudsman did not have the power to recommend changes to a document which had been approved by a resolution of the elected council.

Acting Justice Spender heard the appeal in the Supreme Court on 26 April 1995. On 16 June he handed down his decision and dismissed the council's appeal. His Honour found that the Ombudsman had the jurisdiction to make the recommendations that were made and that, once an investigation had ceased, a challenge to the jurisdiction of that investigation could no longer be made. His Honour ordered the council to pay the Ombudsman's legal costs.

Not long after the Supreme Court's decision was delivered, Botany Council lodged an appeal against that decision with the NSW Court of Appeal.

The Court of Appeal heard the case on 6 October. The Court of Appeal handed down its judgement on 2 November 1995 dismissing council's appeal

Environment Protection Authority and legal professional privilege

An environmentalist applied to the Environment Protection Authority (EPA) for documents relating to an alleged pollution incident in Oakes State Forest (which the EPA prosecuted). A number of documents were refused on the basis of clauses 4 (parts (a) and (d)), 9 and 10. The documents comprised investigation reports written by a field officer, memoranda and file notes prepared by legal officers, and a report for the authority's board.

The determinations contained inadequate reasoning and only scheduled in broad terms the documents identified by the authority as covered by the application. After the documents were listed in detail and examined as a result of our preliminary inquiries, we took the preliminary view that they were not exempt. This was put to the authority and in the process of resolution and investigation some documents were released. The authority held strongly to the view that the rest of the documents were subject to legal professional privilege. They argued it was not appropriate, despite the passage of time, for that privilege to be waived in matters which related to prosecutions or other enforcement of the environment protection legislation. The authority also argued that, as proceedings for breach of environmental laws had not been instituted when the internal review determination was made, clauses 4(1)(a) and (d) were also appropriate heads of exemption in relation to some of the documents.

The EPA took issue with the Ombudsman's preliminary report. In particular the EPA took issue with the Ombudsman's policy that in the assessment of FOI complaints by our office, the onus was on agencies to justify any claimed exemption, and with the Ombudsman's decision to recommend the release of a number of the documents on the basis of section 52(6)(a) of the FOI Act. This provision allows the Ombudsman to recommend the release of documents in the public interest even though they are legitimately exempt. The authority also disagreed with findings in the preliminary report that some of the documents were not subject to legal professional privilege.

In the draft report to the Minister our office agreed one document was subject to privilege. However it held that the case for the exempt status of the other documents was incorrect or was questionable to varying degrees, and that in any case their release was on balance in the public interest.

Maintaining its opposition to the Ombudsman's "onus" policy and to the findings and recommendations in the draft report the EPA referred these questions to the Solicitor General for advice.

The Solicitor General confirmed that the Ombudsman may lawfully adopt a policy for complaint assessment which places the onus of justifying the exempt status of documents on agencies, and also supported the first finding of the report, in relation to the inadequacy of the determinations. The Solicitor General also

agreed with our office that one of the documents claimed as exempt under clause 10 was not exempt, but did not agree in relation to another, a memorandum from a legal officer to the Director General. In relation to this document the Solicitor General suggested the EPA *"consider doing what is commonplace in disputed privilege claims before the courts, and providing a statement or affidavit from* [the author] *deposing as to her actual purpose in preparing the document."*

In further correspondence to the authority the Solicitor General agreed that *".... the Ombudsman may recommend waiver of legal professional privilege if of the view that the public interest would be better served by doing so."* He did however commend to the Ombudsman his view that public interest issues are built into the principle of legal professional privilege, which existed in order to maintain a free flow of advice between lawyer and client.

Acting on the Solicitor General's advice the EPA advised the complainant of its willingness to release the document which the Solicitor General identified as in his view not exempt, and provided a statutory declaration from the author of the second document to the effect that the sole purpose of the creation of the relevant memorandum was to provide legal advice to the Director General about the alleged breaches of environmental laws and the further actions to be taken in preparation for litigation.

While the statutory declaration provided sufficient evidence to justify that the memorandum may have been an exempt document, our office did not consider it necessary to come to a final conclusion in relation to it and other documents deemed as privileged, recommending that the documents should be released in the public interest pursuant to section 52(6)(a). The final report made a number of recommendations, one of which was that disclosure of those documents would on balance be in the public interest even though access may have been or was duly refused because they were or may have been exempt documents.

The EPA refused to comply with the recommendation.

State Forests and environmental impact statements

Some years ago some broad ranging FOI applications were made to the then Forestry Commission by environmentalists concerned about both the State's forests in the north-east and the Environmental Impact Statement (EIS) process which was applied to logging operations in those forests.

The matters all came to our office for external review and were the subject of formal investigations and reports.

The FOI applications from which the first two of these requests for external review arose were of such a broad nature, and there was such a clear lack of progress by the commission in dealing with them that it became clear the most appropriate way for us to continue our involvement was to assist the two parties to informally resolve the matter

The attempted resolution of the FOI applications had as its basic aims:

- the identification, by both parties in cooperation, of the specific commission documents which were covered by the applications;
- the making of decisions by the commission as to their available or exempt status;
- the release of non-exempt documents; and
- our analysis of the appropriateness of any remaining exemptions.

On a number of occasions in this process, which met with mixed success, the complainant and his colleagues made clear their belief that our continued involvement was essential to a successful outcome. Whether or not this was the case, we believed our presence was helpful and the matter remained open.

While we were satisfied with the progress of one application, this was not the case in relation to the second application. The resolution process was complicated by the occupation of the commission's head office by members of the North East Forest Alliance (NEFA) in November 1992, and the subsequent ban by the Minister on all but legally required communications between officers of the commission and NEFA.

Many thanks for taking the time to deal with this issue.
A complainant

While FOI was recognised as a statutory requirement, it is clear the substantial ill-feeling and confusion generated by the occupation and the communication ban did disrupt and inhibit the process.

The process was further complicated by another member of NEFA making an FOI application designed to catch those documents not released under the first two applications and to request additional documents. That application also became subject of a complaint.

Because the applications overlapped and it appeared that progress in the fulfilment of the second application may have been assisted by our inquiries in relation to the third complaint, the investigation remained open whilst those inquiries continued. Once a decision was made in relation to the third matter, a report covering the first two complaints was issued.

The report found deficiencies in State Forest's FOI procedures and that the handling of the two applications was inappropriate. Given the age of the matters, the fact that State Forests had made progress towards implementing appropriate FOI policies and procedures, and the changes in personnel, no recommendations were made.

The third complaint and a complaint about refusal of access to financial end-of-year information concerning other State Forest management areas also in the north-east, were taken up in a further report. Most documents subject of the third complaint had been given as cross-references in the first Dorrigo Management Area Environmental Impact Statement but had not been supplied as part of that Statement. The chief purpose of the FOI application had been to review each reference (often a scientific paper, or preliminary research, or prior assessments of timber yields) to assess the EIS conclusions in an informed way.

The documents were exempted by State Forests under clauses 7 and 8 of schedule 1 of the FOI Act (the exemption provisions relating to business affairs and research information).

Our report focused on significant procedural faults in the way State Forests dealt with the applications. The FOI decision-makers confirmed they had based their determinations on advice from district and regional staff, not on a reading of all the documents. Evidence suggested however, that the district and regional staff did not analyse all the material covered by the application and determined exempt. In addition State Forests had classified most of the documents as "sensitive" and had made its determination on this classification rather than the specific content of each document.

The report held that this approach to FOI determinations was not acceptable or allowed under the FOI Act. It also noted that where more than a few documents are involved, a schedule should be provided to applicants which lists each document and gives information and a summary of the decision in relation to it. This view has also been published in the *Ombudsman's FOI Policies and Guidelines*.

Even where a document is repetitive the Act requires that each page be considered, if only very briefly. It will be unusual for an FOI decision-maker to be so well acquainted with a many-paged document that each page does not need to be scanned. Even when the content is most predictable there may, for example, be handwritten notations. These are as subject to the Act as the original information on the page.

In response to our view that much of the documentation was not sensitive, State Forests argued that while the information on a particular page may not have value on its own, the compilation of many small pieces of information would have significant value. This "domino effect" basis for refusing access was rejected in the particular circumstances of this case. Other arguments put by State Forests during the course of investigation were rejected because they failed to link the reasons for exemption and the content of the documents exempted. This is a common mistake made by agencies. The reasons for exempting documents must specifically relate to the content of the documents, not to preconceived ideas about content based on the types or classes of the documents.

A secondary concern of the report related to a list published by State Forests in its Statement of Affairs. The list describes all documents available from the agency without an FOI application. Roughly speaking the documents fall into two categories. Either there are multiple copies which are readily available or they are on file and require time to find, compile and copy. The former are available on payment of the purchase price. The latter are available on payment

of a charge depending on time taken to process. The rate per hour is $50, higher than the processing rate prescribed by the FOI Act.

We found it unreasonable for State Forests to levy higher hourly rates for documents provided outside the provisions of the FOI Act than for documents provided under the Act. Otherwise such lists will be used to move more and more documents from the ambit of the FOI Act in order to earn more from their provision than would be possible under FOI.

While we strongly support the informal provision of information outside the provisions of the FOI Act it should not disadvantage the applicant.

The final issue addressed in the report related to public access to documents cross-referenced in EISs. During the course of our inquiries, although not because of them, State Forests issued two circulars addressing our concerns about the logic of publishing a document for public scrutiny if the reference materials on which it is based are not available as well. The circulars should ensure that two sets of all documents which are referenced in EISs but which are not reasonably accessible by the public within NSW and the ACT are to be made available for public inspection - one at the District Office of the EIS Management Area and the other at Head Office in Sydney.

The report recommended State Forest:

- adopt policies concerning the collation, scheduling and examination of all documents covered by FOI applications;
- exempt documents only on the basis of their particular content unless otherwise specifically allowed by the FOI Act;
- adopt FOI Regulation hourly charging levels for processing of applications for access to documents which under State Forest's policies do not require formal FOI applications; and
- release the majority of the documents which had been withheld.

At a consultation with the Minister and the Chief Executive it was agreed that we would further consult with State Forests to write a guideline relating to accessing State Forests' research and commercial information.

State Forests accepted the recommendations concerning policy, agreed to release some documents, refused to release the financial end-of-year information and reserved its decision on other documents subject to further review. The Ombudsman is considering what, if any, further action to take.

Resolution with no need to report

While the Ombudsman Act provides us with extensive investigatory and reporting powers, it is the policy of the Ombudsman to emphasise the resolution of complaints. Less formal resolution processes are faster, less costly and, in the end, less alienating for all parties concerned. Informal resolution is particularly appropriate for FOI complaints where the applicant wants access to the documents as soon as possible.

Even where an investigation has been commenced and a preliminary report prepared, we will still pursue alternative avenues of resolution. This approach is highlighted by the following three complaints dealt with by the office during the year. Each complaint became the subject of a formal investigation under the Ombudsman Act, yet each case was ultimately resolved, the investigations discontinued and no formal report made.

The Homefund Commissioner

During the late 1980s and early 1990s, a financing scheme was established to provide lower income families and individuals with the opportunity to purchase their own home. The scheme was established with the cooperation of several state government authorities and numerous private housing companies. However, Homefund became a financial disaster, leaving many thousands of borrowers in debt and the state government facing losses of many hundreds of millions of dollars.

In 1993 the Homefund Commissioner's Office was established to deal with complaints with those who had borrowed money under the scheme and were now unable to pay back the money they had borrowed. The Homefund Commissioner's power and charter were set out in two pieces of legislation, the Homefund Commissioner Act and the Homefund Restructuring Act. Under these Acts the disaffected borrowers could complain to the Homefund Commissioner about numerous

Whatever the outcome of this particular matter we are very grateful that you have obviously taken the trouble to come to grips with the rather complex facts and not to deposit the matter, as we feared might happen, in the 'too hard basket'!
A complainant

actions of lending authorities involved in the Homefund scheme. The Homefund restructuring Act provides, however, for absolute protection to the Crown and other authorities, including FANMAC, from any claims arising against them.

On receiving a complaint the Commissioner could categorise borrowers according to their ability to repay their debt or mortgage. In dealing with a complaint, the Commissioner could also resolve the matter or order that limited compensation be paid to the person involved.

A disaffected borrower applied to the Commissioner for all documents held concerning his case. He had previously complained to the Commissioner about the way in which his Homefund loan had been handled. The Commissioner released some material to the borrower but withheld documents under clause 9 of Schedule 1. The borrower was dissatisfied with the Commissioner's exemption of information and wrote to us.

After obtaining the Commissioner's files and the exempt documents, the Ombudsman started a formal investigation as it appeared the Commissioner's decisions to exempt the material may not have been appropriate or valid. The information withheld under clause 9 amounted to 30 documents in whole or part. The withheld material basically contained the views of the Commissioner's staff about the merits of the borrower's case. The Commissioner argued that if this material was released before he was able to categorise the borrower he may receive a misleading impression about how the Commissioner would handle his appeal.

Our preliminary view that all thirty documents should not be exempt was contrary to the Commissioner's views. However, we did agree with the Commissioner that it would not be in the public interest for the borrower to know how the Commissioner would deal with his complaint before the Commissioner made a final decision about the borrower's category. The Ombudsman felt that, of the thirty exempt documents, only four contained information which would tell the borrower conclusively about the Commissioner's probable final decision.

Following correspondence with the Commissioner, and a subsequent meeting involving the Commissioner and our staff a small amount of information was released to the borrower. However, it was relatively unimportant material, did not address our concerns and could not be seen as genuinely striving for a resolution of the matter.

In our preliminary report, the Deputy Ombudsman called for release of all the documents except those four which it felt were properly exempt at that point in time. Shortly after this, however, the Commissioner categorised the borrower and at the same time released nearly all the documents which the borrower had requested. Following some further negotiations the Commissioner reluctantly agreed to release all the documents because the categorisation process had been finalised. The FOI complaint was therefore resolved and the investigation discontinued.

Sydney Water

Sydney Water (formerly the Water Board) advertised for a senior manager in one of its divisions. A number of months after starting the job, the senior manager claimed to have developed Repetitive Strain Injury (RSI). The manager was referred on numerous occasions to the agency's doctor for examination of the alleged RSI. Relations between the senior manager and Sydney Water deteriorated until the senior manager was dismissed only a number of months after appointment. She then lodged a case with the Industrial Relations Commission claiming unfair dismissal.

Not long after, the senior manager applied under FOI to Sydney Water for all documents held about herself. In determining her FOI applications, Sydney Water determined that all the medical reports on her alleged RSI and two statements made by Sydney Water employees about her working habits were exempt under clause 10. As her FOI request covered a lot of material, the Board requested her to pay $120 in processing costs before she would be given access to the remaining information.

Following her complaint, the Ombudsman wrote to Sydney Water seeking further reasons justifying exemptions. In reply, Sydney Water claimed that some documents it had previously

determined could be released should, in fact, have been exempted and had indeed written to the applicant informing her of its change of mind. In this case, the only reason Sydney Water was able to change its mind arose because, as the applicant had refused to pay the $120 processing fee, she had not been given those documents. If there had been no fee involved, she would have already have received that material.

Owing to the Deputy Ombudsman's preliminary view that the reasons advanced for exemption of material under clause 10 were not strong and Sydney Water's belated attempt to exempt material it had earlier decided could be released, this Office commenced a formal investigation of the whole affair.

Just before sending our preliminary report we were contacted by John Withington, the former Deputy Crown Solicitor, in his role as a negotiator for Sydney Water.

Following a successful meeting between our representatives and Mr Withington, Sydney Water realised it had no authority under the FOI Act to change its mind on the exemption of documents. Hence, the material it had belatedly tried to exempt could be released to the applicant, provided she paid the $120 which was still outstanding. At the meeting, Mr Withington presented some evidence to show that a minority of the medical reports, as well as the two statements by Sydney Water employees, should in fact be exempt under clause 10 as they were created for the purposes of reasonably anticipated litigation, namely the unfair dismissal proceedings in the Industrial Commission. Sydney Water did concede, however, that the other medical reports were not so appropriately exempt. We agreed the $120 processing fee was fair given the number of documents and the complexity of the issues involved.

Environment Protection Authority

The following case is indicative of why public authorities should deal with FOI applications appropriately and endeavour to implement both the spirit and terms of the Act.

A prominent environmental legal group applied to the Environment Protection Authority (EPA) for documents dealing with EPA's processing of an application for pollution control approval for a proposed heliport at Pyrmont. In making their FOI applications, the group was verbally informed by a senior officer of the EPA that a draft approval paper for the heliport had been prepared but that it was exempt as an internal working document. The EPA's first written determination, however, made no mention of this draft approval paper. The group sought an internal review but while the EPA's second determination observed that the paper was exempt, it gave no reasons as it was required to do under section 28(2)(e) of the FOI Act.

The environmental group then lodged an application with the Supreme Court seeking an order that the EPA comply with its statutory obligations under section 28(2)(e) of the FOI Act and provide reasons why the draft approval paper was an exempt document. Not long after, the EPA agreed to release the draft paper to the environmental group making the Supreme Court action unnecessary. The Supreme Court did, however, order the EPA to pay the group's legal costs.

As it appeared the EPA may have misled the applicant and had not met its obligations under the FOI Act, we commenced a formal investigation. In submissions to the Ombudsman, the EPA admitted its handling of the FOI applications had not been appropriate and stated it had taken extensive steps to improve its processing of FOI matters and to ensure that staff were properly informed about FOI procedures. Because the EPA was implementing these positive moves and had released the documents there was no need to continue the investigation. It is pleasing to note the Ombudsman has not received any further FOI complaints to date about the EPA.

My husband and I would like to pass on our thanks to your office, and in particular your staff for the time and effort in resolving our complaint.
We have never before had cause to seek assistance from the Ombudsman and were very pleased with the thorough and professional manner in which the investigation was handled. It is hoped that the procedures implemented will benefit other owners and insure that this situation doesn't happen again.
A complainant

Case studies

Selection committee documents

An applicant unsuccessful in his job application with a council sought a range of documents relating to the decisions of the selection committee, and any comments or instructions relating to his job application and the selection procedure made by any councillor or member of council staff.

The selection committee documents were exempted by the council under clause 9 with no reasons being given in the initial determination. Council claimed no knowledge of any documents relating to comments or instructions about his job application and the selection procedure. The internal review determination explained that release of personal information on other applicants and of the interviewers' personal observations, would be contrary to the public interest, and that it had never been intended to release the documents "to the public".

The Ombudsman feels councils can reasonably release selection committee information relating to the successful applicant if applied for by an unsuccessful applicant under FOI. This is one way to show and help ensure the selection process is above board. Consultation must occur first with the successful applicant. If she or he objects they should be expected to show how disclosure of part or all of what they had said in the interview or any comments made by the selection committee arising out of their application or interview would amount to unreasonable disclosure of their personal affairs. It also seems reasonable that unsuccessful applicants be routinely given the selection committee information concerning themselves, without the need for an FOI application.

In pursuing a resolution of the matter, we suggested the council consider deleting the names of all applicants except the successful applicant and the FOI applicant from the interview culling sheets, and releasing the modified documents along with the notes of the successful candidate's interview, following consultation with him.

Council followed this suggestion. The successful candidate did not object, the documents were released, the complainant was satisfied and the matter was resolved.

Council's decision-making and property records

An applicant had requested any documents relating to any proposals to relocate the Strathfield Croquet Club, and the review of council's property portfolio. All documents were refused under clause 7 (documents concerning business affairs), and clause 12 (documents the subject of secrecy provisions).

Our letter of preliminary inquiry encouraged council to attempt a resolution of the matter. In this case the general manager released almost all the documents, amounting to about 200 pages, withholding only a small amount of third party correspondence (the third party having objected to release), and some legal advice from council's solicitors.

Having regard to the proportion of documents eventually released to those withheld, and the council's advice to our office about the contents of the documents withheld, this matter was considered resolved to the Ombudsman's satisfaction. There was not thought to be any utility in pursuing the remaining documents.

Police notebook entries

An applicant requested, among other things, a copy of the notebook entries made by a police officer concerning two occasions when the officer had searched his home.

The applicant believed entries must have been made in the notebook because he had been informed by senior police in the legal unit of the Police Service that the officer would have been required to make such entries.

The officer informed the service's FOI Unit that he had not made any entries regarding the searches. The service's determination released all documents the service claimed it held. The applicant requested an external review, asking that we examine the notebook.

We obtained the notebook and scrutinised it for the alleged entries and also signs of tampering. A letter containing a detailed account of the examination was sent to the applicant, reassuring him that the notebook did not appear to have been tampered with and there were clearly no entries regarding the searches of his home. This satisfied the applicant and the matter was resolved.

Objections to building and development applications

During the year the Ombudsman dealt with a lower than usual number of complaints about refusals by councils to provide access to letters of objection about building and development applications. The lower level of such complaints may reflect the fact that more and more councils are adopting policies to provide access to letters of objection to building applications (BAs) and development applications (DAs) upon request.

In one case the Ombudsman received a complaint from a resident of the Concord area about the way council had dealt with his FOI applications. Over a period of two years he had lodged two development applications with the council. His next door neighbour had objected to both building proposals. The applicant then requested from the council, under the FOI Act, full copies of those objections to his BA.

The council refused to give the applicant access to any of the letter of objection, observing that they were personal and that the objections to the applicant's BA were summarised in council's business papers. The council had consulted with the next door neighbour who had sent the objections. He did not agree to the release of the letters to the applicant.

The Ombudsman did not think the council's reasons for not supplying the letters of objection to the applicant were reasonable. Council's claim that it had summarised the objection to the BA was not particularly convincing considering that the 24 pages in the letters of objection had been reduced to a short three point precis. On the basis of the Ombudsman's policy that the letters of objection to BAs and DAs should be released, a formal investigation of the council was commenced and soon after a preliminary report on the complaint was sent to the council.

In response to the Ombudsman's preliminary report, the council advised it was prepared to change its policy on the matter and release the letters of objection to the applicant. The investigation was discontinued on the basis that the complaint was resolved. The Mayor, Councillor Peter Woods, is congratulated for his support for the Ombudsman's policy and views on this issue.

In another case a Ku-ring-gai resident had lodged a rather contentious DA with the council which required the council to notify approximately 20 adjoining and near neighbours who would be affected by the proposed development. The resident who lodged the DA subsequently applied to the council under the FOI Act for all letters of objection to the proposal. The council then wrote to all objectors under section 31 of the FOI Act seeking their views about whether their letters of objection could be released to the FOI applicant. Of the 20 objectors, 15 did not consent to the release of their letters. In an effort to resolve the matter, a representative of our office met with council representatives to explain the view of the Ombudsman regarding such situations. This was, of course, that access to letters of objection supplied to councils about BAs and DAs should generally be provided on request. Following its consideration of the Ombudsman's views, the council resolved to release to the FOI applicant the 15 letters of objection and to adopt a policy whereby confidentiality will not be available for letters of objection.

The council also resolved to write to the former Minister for Local Government expressing its concern at the Ombudsman's views on this issue. The Ombudsman also wrote to the Minister whereupon the Minister met with the Ombudsman to discuss the issue. At that meeting, the former Minister expressed his support for the Ombudsman's approach. The Department of Local Government then wrote to Ku-ring-gai Council advising that the Minister did not share their concern about the Ombudsman's views.

Letters of complaint

Local councils

During the year a number of cases were dealt with by the Ombudsman regarding determinations by councils to either exempt or release letters of complaint forwarded to them. In several cases the Ombudsman agreed with the determinations of the councils concerned to release the letters based upon their views that such complaint letters should be released in full. One resident objected to a council's refusal to give him access to a letter sent to the council by his neighbour. He claimed

The leaflet you sent provided helpful information, and indeed, we appreciate your whole reception and manner in dealing with the matter. So, no matter what outcome, thank you.
A complainant

that the letter, sent in with the neighbour's building application, contained untrue and malicious allegations about him. As it appeared that the letter had been provided in bad faith, the council subsequently released the letter to the applicant.

Conversely, a complaint was received about a council's release of a letter of complaint which resulted, according to the complainant, in an abusive telephone call from his neighbour about whom he had made certain allegations to the Council. No action was taken by this Office when it was established that the council maintains an open access policy, which is apparently widely advertised, whereby the identity of those who complain about fellow residents is freely available for inspection on relevant files at council premises.

Currently, we are dealing with a complaint where the council originally decided to release a letter of complaint received from a resident about his neighbour. However, the Ombudsman has obtained evidence which indicates that if the letter is released, the complainant's life or physical safety maybe placed in jeopardy. This matter will be the subject of a case study in next year's annual report.

Undoubtedly, we will continue to receive more complaints from disaffected residents.

Public authorities

A complainant working at a metropolitan railway station made written allegations to the State Rail Authority about his station master. The station master applied under FOI for those written allegations. As the documents contained information concerning the personal affairs of the complainant he was consulted and objected to the release of any of the material. The authority released most of the documents, arguing that it was not convinced such release would be an unreasonable disclosure of his personal affairs, particularly as the station master already knew he had made the allegations. The Ombudsman agreed with the SRA's determinations.

An aged pensioner applied to the Roads and Traffic Authority (RTA) for a letter of complaint sent to the authority which claimed that she was not able to safely drive a car.

As a result of the complaint, the RTA had required her to take a driving test, which she passed.

The RTA refused to provide her with the letter of complaint under clauses 4(1)(b), 6 and 13(b) of Schedule 1. The RTA claimed that it relied upon complaints received from members of the public identifying drivers who may no longer have the expertise or physical capacity to drive. The RTA stated that if the identity of the person who complained was released, and the person concerned did not consent to such release, the public would no longer be willing to lodge complaints about drivers they felt were a threat to safety on the roads. The authority argued that it should certainly continue to receive such complaints as it is definitely in the public interest that people's lives on the road should not be endangered.

The Ombudsman agreed with the RTA's determination to exempt the document. It should be pointed out, however, that such exemption should apply only to those complaints which are made in good faith. A complaint made about a driver which is malicious should not be exempt.

The RTA will generally release the details of the complaint but exempt any information which identifies the complainer. In this case, however, a release of any part of the letter would have identified the person who complained.

In another matter a member of the public complained to the Young Rural Lands Protection Board that a local grazier, when moving his stock between properties, was taking no action to stop his sheep from damaging vegetation on public land. After numerous warnings, the board subsequently withdrew his permit, meaning he could no longer move his sheep between the properties. The unhappy grazier then applied under the FOI Act for the letter of complaint received by the board who provided him with the details of the complaint but deleted all information, under clause 4(1)(c), which identified the person who complained.

Evidence which the board was able to provide to the Ombudsman did indeed show that the safety of the person who had complained may in fact be placed in jeopardy if the grazier knew his or her identity. The Ombudsman therefore agreed with the Board's determinations.

Medical records

An applicant requested a complete copy of her teenage son's medical records.

She requested an internal review on the basis of a deemed refusal about two weeks after the 21 day period had expired but did not enclose an application fee. She requested an external review by our office, again on the basis of a deemed refusal, about a week after the 14 day period for internal review had expired.

Our inquiries revealed the applicant's son was a ward of the State. The delays had been caused chiefly by the son's case manager being absent, and because it was not clear at the time who his guardian was.

Further, the hospital had written to the applicant four days after she had written to us, and before we had made any contact with the hospital, advising her that the hospital required written authority from her son's legal guardian before the requested documents could be released.

The FOI Act does not distinguish between adults, teenagers or children in its consultation provisions. While some children will be incapable of answering for themselves this was not the case in this matter.

We assisted with liaison between the hospital and the Department of Community Services. Consent was obtained from the son and the hospital undertook to process the documents as quickly as possible after the internal review application fee was received and in any case within 14 days of its receipt. It had in fact already commenced that process by putting considerable time into analysing the documents.

On this basis we considered the matter resolved.

Internal school dispute documents

A high school teacher at a country high school resigned following a dispute with other teachers at the school. He applied to the Department of School Education for a letter about himself written by the other teachers to the department and correspondence sent by the principal to a local television station which had run a segment on the school dispute. The department exempted these documents under clause 4(1)(c) of schedule 1 to the FOI Act on the basis of concerns about the safety of the teachers and the principal if they were released. The Ombudsman agreed with the exemptions based on evidence the department submitted about the motives of the former teacher.

We received two complaints from two former high school teachers who had both taught at the same school. Following an ongoing and intense dispute at the school, the Department of School Education conducted two investigations into the matter. The first teacher applied for copies of the investigation reports. The department gave him one report in full but exempted material in the second report which criticised other people, particularly other teachers. He provided us with written consent to release these critical comments from many of those teachers. Following our discussions with the department, the material to him concerning those teachers was released. Information about others remained exempt under clause 6. The complainant was quite happy with the outcome of the matter.

The second teacher applied for other information in addition to the two reports mentioned above. Any information concerning other individuals was held to be exempt under clause 6, while two letters sent to the department by members of the local community were withheld under clause 13(b) as it was claimed release would prejudice the future receipt of such confidential material.

Additionally, the department claimed it was in the public interest that it should continue to receive information from members of the community regarding the quality of education in secondary schools. We agreed with these exemptions but requested the department refund some of the advance deposit it had sought from the applicant because of delays in dealing with her applications. The department agreed to a refund.

Letters dealing with a family dispute

An applicant was involved in a dispute with her family that led to her daughter moving out of home and staying with relatives. The Department of School Education sent a number of letters concerning the future education of the applicant's daughter to a Federal education authority. Those letters included statements and opinions of the daughter, who was studying for her Higher School Certificate.

It was a surprise to get your letter and enclosures and naturally well appreciated.
I'm wishing you all the very best, first of all good health and happiness.
Many thanks again.
A complainant

The department had provided all the letters to the FOI applicant except those statements and opinions. The department had consulted her daughter who did not want her views released. The department exempted her views and opinions under clause 6. In dealing with the complaint we found the department's determinations were entirely reasonable in respecting the wishes of the daughter.

Documents about drugs and school students

A family complained to the Ombudsman that the Department of School Education refused to provide them with documents concerning their daughter. She had been found with drugs at the local high school and had been suspended. The department had exempted the statements and identity of some school teachers and students under clause 6 and various legal advisings under clause 10. Following our discussion with the department, it was agreed that the teachers' statements and names should be released as there were no strong grounds for exempting such material. One piece of legal advice was found to be primarily concerned with policy and strategy and was released to the applicant. The names and statements of the students, however, was found to be appropriately exempt under clause 6. The protection of students in such situations was felt to be particularly important. The remaining legal advice was correctly exempted under clause 10.

Board of Studies

The *Ombudsman's FOI Policies and Guidelines* emphasise that the Ombudsman will attempt to initially resolve FOI complaints rather than carry out a formal investigation under the Ombudsman Act. The Ombudsman feels that if complaints can be resolved in the first instance, all parties, including the complainant and the public authority, are generally happier than if a more time consuming formal investigation were to take place.

To provide the Ombudsman with greater scope in attempting to resolve complaints, the NSW Parliament saw fit in 1994 to include a new section, section 13A, in the Ombudsman Act. This section provides the Ombudsman with the authority to try and resolve complaints through either conciliation or mediation. Indeed, the office now has a highly focused and professional mediation service which is frequently used in attempting to resolve those complaints which we feel may be successfully mediated. In offering such a service, the Ombudsman employs two of the most highly experienced mediators in Australia.

One FOI complaint the Ombudsman received this year was certainly felt to be amenable to mediation. Early in 1995 the Sydney Morning Herald applied to the Board of Studies for documents revealing how schools in NSW had performed in the 1994 Higher School Certificate (HSC). The Herald has also requested documents containing information on how the different sections of schooling, being government, catholic and independent, had performed in comparison to each other in the 1994 HSC. The board refused the Herald access to much of this information so the Herald subsequently complained to the Ombudsman about the refusal.

After initially analysing the complaint, and following discussion with the Herald and the board, the Ombudsman felt that the Herald's complaint was one which was certainly ripe for mediation. Due to the extreme importance of education in society, the release or exemption of the information sought by the Herald should be based upon the public interest and have regard to the interests of all parties concerned with the quality of education. As the Board of Studies actually represented the interests of a number of educational organisations and elements, such as independent schools, the catholic school system and the state school sector, the views of those organisations could be put if they were to attend a mediation on the issue, whereas if the Ombudsman conducted an investigation into the matter, the views of those parties and organisations could not directly be heard or represented. By attending the mediation, those organisations were able to directly represent the views of their constituents. Mediation also offered the possibility of reaching a solution on the release or exemption of the HSC data which was acceptable to all parties who were attending the mediation.

A more formal investigation into the matter by the Ombudsman, and a subsequent report by the Ombudsman recommending either release or continued exemption of the HSC material, would have been far more costly and could certainly not have taken into account so easily

the position and views of parties other than the Board or the Herald. The value of mediation as a positive resolution tool was once again revealed by the outcome of the Herald's HSC complaint.

Senior Executive Service contracts

A prominent union made an FOI application to Pacific Power for the complete details of the Senior Executive Service contracts of their eight most senior managers. The agency released some of the contracts but refused to release details of salary packages and some other personal details. Such information was exempted under clause 6.

Pacific Power also maintained exemption, under clause 7(1)(c), of certain financial, production and output targets that each manager should meet. Pacific Power stated that to release such material would disadvantage it commercially owing to the increasing competitiveness of the electricity supply industry and the future implementation of the National Grid.

Following our negotiations, the agency agreed to release further information about each manager's salary package, and additional material concerning the financial, production and output targets. Ultimately the only details exempted about such targets were a small number of figures and quantifications concerning production and resource performances. We agreed this exemption was appropriate under clause 7(1)(c) because, if this material was released, it would severely disadvantage Pacific Power's competitive position in the National Grid.

The conciliatory approach taken by the Managing Director of Pacific Power, Mr Ross Bunyon, in dealing with this FOI matter is applauded.

Legal advice

The applicant's son had been hit and killed by a car ten years ago. The police had charged the driver but subsequent legal advice obtained by the Attorney-General's Department recommended that charges against the driver be dropped, which occurred. The applicant sought a copy of that legal advice and was denied access by the department under clause 10 as the advice was subject to legal professional privilege. We upheld the department's exemption, particularly as it had given the applicant a written summary of the reasons why the charges were dropped.

Allegations of sexual discrimination

A man working for a state government department believed a colleague had lodged a sexual discrimination complaint with the Anti-Discrimination Board about him. He applied under FOI to the board for all the documents held about the complaint and was refused access on the basis that it would be an unreasonable disclosure of the personal affairs of another person. In writing to the Ombudsman, he claimed the complaint was about him and that there would be documents held by the board relating to his personal affairs. Following a review of the matter, we assured him that none of the documents concerned him and that the sexual discrimination complaint concerned the procedures and policy of the department. If the complaint had been directed at him, he probably would have been entitled to numerous documents. He was deeply satisfied.

In another matter, an applicant had lodged a complaint with the Anti-Discrimination Board alleging discrimination and then applied under FOI for all documents held about his complaint.

Most of the material was exempted under clauses 9, 13(b) and 16(a)(iv). Soon after he complained to the Ombudsman, his discrimination complaint before the board was determined by the Equal Opportunity Tribunal. Following that decision, the board released all documents exempted under clause 9 on the basis that a final decision on the matter had been made. The board, however, continued to claim exemption of any material submitted by other parties involved in the discrimination complaint. The Board maintained that such material is provided in confidence and is essential if the board is to resolve complaints. The Ombudsman agreed with the board's views on such exemptions.

Allegations of sexual harassment

Australian Correctional Management (ACM) became the first private firm in NSW to manage a gaol - the Junee Correctional Centre. Both inmates and staff at Junee Goal may apply under the FOI Act to ACM for documents which concern their personal affairs.

Congratulations on the promptitude with which you replied to my letter. You were the first to reply to 15 certified mail letters. Well done!
A complainant.

In this case, the applicant was a former employee of ACM who worked at Junee Gaol. The applicant was dismissed following allegations of sexual harassment by other staff at the gaol. He then applied under FOI for all documents relating to the allegations and his dismissal. He received most of the material except a statement by another staff member regarding the allegations. It was exempted under clauses 6 and 13(b) of schedule 1 to the FOI Act.

Following discussion with the Ombudsman, ACM and the staff member concerned, it was agreed the statement could be released as the applicant was already aware of the staff member's identity and the nature of the allegations she had made. The complaint was therefore resolved.

Cabinet and internal working documents

An applicant, who was attempting to introduce a different mix of gases to be used in scuba driving, applied to the Department of Sport, Recreation and Racing for all documents held about his new system. The combination of gases to be used had been determined as unsafe by relevant state and federal authorities.

The department released a lot of material but decided that two documents were exempt under clause 1(1)(a) as they had been prepared for submission to Cabinet. Two other documents were withheld under clause 9.

Following consideration of the matter, the Ombudsman decided one document was appropriately exempt, having been prepared for submission to Cabinet.

The Ombudsman did not feel the other document had been prepared for Cabinet or that the other material was appropriately exempt under clause 9 as all final decisions about the diving issue had been finalised by the department months earlier. Following consideration of our views, the department released the three documents. The complaint was therefore largely resolved.

Legal advice about a patent dispute

A senior engineer with the State Rail Authority was involved in a dispute with the authority about legal ownership of a patent. He requested access to some legal advice obtained by the SRA regarding the dispute. The legal advice was exempted under clause 10. Following discussions with the Ombudsman, the SRA agreed to release the advice to him as it was no longer felt to be sensitive. The SRA's open approach to this matter is to be congratulated.

Applications

We received very few FOI applications during the year. The information in relation to these applications is set out below according to the format of and as required by the relevant sections in Appendix B in the *FOI Procedure Manual*, and clause 9(1) of the *Freedom of Information (General) Regulation 1995*.

Section A - Number of FOI requests

The Office received three new FOI requests. All were for 'personal' information only.

Section B - What happened to completed requests?

Two applications were for information related to functions specified in Schedule 2 of the FOI Act and were therefore not processed. The third application was granted in part.

Sections C-F & L

These sections relate to Ministerial Certificates, Formal Consultation, Amendment and Notation of Personal Records and Reviews and Appeals. All are nil returns for this year.

Section G - FOI requests granted in part or refused.

In the application granted in part, section 25(1)(a) was relied upon to exempt documents in whole or part, calling upon clauses 4(1)(a), 9 & 13(b) of Schedule 1 to the Act.

Sections H & I

These sections relate to fees and charges. The application fee for one application was returned. The second application was not accompanied by an application fee. The third application incurred only the $30 application fee. It was dealt with within the 20 hours free processing time for personal applications.

Sections J & K

Relate to times taken to complete requests and are therefore not applicable to the two uncompleted applications. The third application was completed within the 21 days, and the processing time fell between 11 and 20 hours.

Section L

No Internal Reviews were requested.

Comments

Under Schedule 2 of the FOI Act, the Ombudsman is exempt from the operation of the Act in so far as her complaint-handling, investigative and reporting functions are concerned.

The small number of applications received in the year equalled the number received in 1993/1994. The applicant who received the information granted in part was a former officer of the Ombudsman. Broadly speaking the information related to his employment. No such applications were received last year.

Similarly to last year, the number and outcomes of the applications meant that they impacted to a very minor degree on this office's activities, and meant likewise that no major issues arose in relation to this office's compliance with the application processing requirements of the *Freedom of Information Act*.

I wish to thank you for your reply to my letter. May my case be a help to others.
A complainant

Protected disclosures

Protection for 'whistleblowers'

The *Protected Disclosures Act 1994* commenced operation on 1 March 1995.

The Act aims to encourage the disclosure of corrupt conduct, maladministration, and serious and substantial waste in the public sector. The Act provides avenues by which public officials (both State and Local) can make such disclosures and be protected against reprisals.

The Act provides four avenues for the making of protected disclosures:

(1) to one of the primary accountability bodies in the State (ie the NSW Ombudsman, ICAC or Auditor-General) referred to in the Act as 'investigatory authorities';

(2) to the principal officer of a public authority or investigating authority;

(3) to a person (being another public official of that public authority) so nominated in an adopted internal procedure established by public authority for the reporting of allegations made under the Act; or

(4) to a member of Parliament or journalist, provided the applicable conditions in the Act are met (as set out in section 19 of the Act).

Before the Act commenced, the Auditor-General, ICAC and NSW Ombudsman prepared and published *Internal Reporting Systems*, which contains guidelines for the setting up of internal reporting procedures. Copies of this publication were forwarded to public authorities throughout the State.

A brochure on the Act was published by the former Office of Public Management of the Premiers Department, and circulars on the Act were published by the former Department of Industrial Relations, Employment, Training and Further Education, the Premiers Department of NSW and the former Department of Local Government and Cooperatives.

Arising out of requests made to our office for information, we prepared detailed guidelines on various aspects of the Act in a question and answer format. Given the complexity of the Act, advice was sought from the Crown Solicitor and Solicitor-General on these guidelines. A copy of the guidelines will be forwarded to each person or agency who obtained a copy of the *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials*.

The NSW Ombudsman was nominated as the body who would provide advice to public officials contemplating making protected disclosures under the Act, and to public authorities seeking guidance in the implementation of the Act.

Telephone calls to the Ombudsman seeking advice in relation to the Act have averaged one or two each week since the Act came into operation. The Deputy Ombudsman has also had meetings and discussions with various public officials who have responsibility for the implementation of the Act within their authorities.

Difficulties have been experienced within the office in identifying protected disclosures. For example, one complication has been that prior to receipt of contrary advice from the Crown Solicitor and Solicitor-General, our office was of the view that the Protected Disclosures Act did not cover disclosures by police officers of conduct that amounts to *"maladministration"* as defined in that Act. A further complication in relation to internal disclosures by police officers is that such disclosures are only protected under this Act if they are made voluntarily. In this regard clause 30 of the Police Service Regulation 1990 requires police officers to report criminal offences or *"other misconduct"* engaged in by other police officers. In determining whether each disclosure is in fact protected under the Act it is necessary in each case to determine whether the disclosure is of conduct which constitutes a criminal offence or *"other misconduct"*.

Another complication is that where a public official responds to a request (not being a legally enforceable direction) from our office for advice or information in relation to a complaint, if the advice or information provided constitutes a disclosure which shows or tends to show *"maladministration"* as defined in the Act, then technically that is also a protected disclosure and the confidentiality and notification provisions of the Act therefore apply.

With reference to non-police related matters clearly identified as protected disclosures, at the time of writing, we are investigating four, we had declined three after carrying out enquiries and we had declined five on the basis of lack of jurisdiction or evidence.

A review is under way of various police related complaints to determine whether they constitute protected disclosures under the Act.

The Act provides that it is to be reviewed by a Joint Committee of Members of Parliament as soon as practical after the expiration of one year after the date of ascent to the Act (being 12 December 1994). The NSW Ombudsman intends to make a submission to that Joint Committee highlighting teething problems with the Act and suggesting ways to clarify and improve its implementation.

The NSW Ombudsman intends to work with the ICAC and the Premier's Department to produce best practice guidelines to assist agencies in developing procedures and practices for the protection and counselling of persons who make protected disclosures.

Your letter and follow up recovery kit was greatly appreciated, you have been the only person who has explained or even tried to assist my situation.
... your letter of concern and assistance was like a breath of fresh air, and it is plain to see you take your job seriously.
A complainant

Client services

Our clients include consumers of NSW government services, public servants, members of parliament and the media. While dealing with complaints is our primary focus, we also undertake activities targeting specific client groups.

Access and awareness

The low level of awareness of the NSW Ombudsman and her functions among Aboriginal and Torres Strait Islanders, people from non-English speaking backgrounds, people in custody, non-metropolitan residents of the State and people with poor written communication skills has been confirmed by:

a) surveys undertaken by the NSW Ombudsman and Commonwealth Ombudsman;
b) the management review of the Office of the Ombudsman by KPMG Peat Marwick Consultants in 1993; and
c) the Joint Committee on the Office of the Ombudsman in the report on its *Access and Awareness Inquiry*.

The 1993 KPMG Peat Marwick report found our public awareness strategies made appropriate use of a restricted budget. However, KPMG noted that problems existed in raising the level of awareness of the NSW Ombudsman among Aboriginal and Torres Strait Islanders; people from non-English speaking backgrounds; young people; people with lower levels of education; and nonprofessional members of the workforce.

Through our own experience and advice from peak organisations and community representatives we recognise serious access problems exist for people who have a disability, young people, Aboriginal people and Torres Strait Islanders and people who cannot write. These problems escalate significantly when a person comes from more than one of these groups, for example a deaf person living in country NSW has greater access problems than a deaf person living in Sydney.

A plan for improvement

In February 1995 we prepared a draft access and awareness plan designed to redress these fundamental equity and access problems. The plan is based on recommendations:

a) by the Joint Committee in its reports entitled:
   i) *Access and Awareness Inquiry* (September 1994);
   ii) *Inquiry into the adequacy of the funds and resources available to the Ombudsman* (September 1993);
b) by KPMG Peat Marwick consultants in their report entitled *Management Review of the NSW Office of the Ombudsman* (July 1993); and
c) by the Ombudsman arising out of our Corporate Plan.

This plan also incorporates programs that are required by legislation and government policy including the:

- Charter of Principles for a Culturally Diverse Society - Statement of Intent;
- Disability Strategic Plan; and
- Women's Policy Statement.

The Access and Awareness Plan consists of a series of programs targeting specific groups where access and awareness is low and programs designed to improve our service to all clients. Each program is described in detail and includes objectives, activities, timeframes, responsibilities, budget, resources and performance reviews.

The effective implementation of these programs is dependent on the government granting the office increased funding. As the enhancement application to carry out the Access and Awareness Plan was rejected, the plan will be redrafted to exclude all activities which require extra staff and resources.

Country outreach

We continued our country outreach program visiting most major regional areas and including new areas such as Albury, Narrabri, Moree and Lightening Ridge. We adopted a more proactive approach to public awareness this year by combining information sessions for community groups and public authorities with our traditional approach of setting up shop to take complaints. Bimonthly trips to Newcastle are included in the program.

Our information sessions aimed to increase the general level of awareness in the community and public sector of our role, jurisdiction and procedures. This outreach also targeted specific groups such as council staff in the various areas and youth workers in the Illawarra region. The response to these sessions was very positive.

During the visits we also spoke to 256 people about their complaints, providing advice, referral information or assisting them to lodge formal complaints to our office.

Our inquiries section

Our inquiries section provides face-to-face and telephone advice to the public. The section, consisting of three inquiry officers and a receptionist/switchboard operator, is open for business weekdays from 8.30am to 5.00pm.

During the year 12,914 inquiries were handled. Of these 8,227 related to matters where the Ombudsman has jurisdiction.

Almost 3,000 calls were received concerning matters which are outside the jurisdiction of the Ombudsman. To assist callers the section maintains an extensive data base of organisations who can help people if their complaints fall outside our jurisdiction. Judging from the reaction of our customers, this service is greatly appreciated.

Representatives from various public authorities visited the section in 93/94 to examine our computer based complaints system. As a result, with certain types of complaints our officers can communicate directly and immediately with those contacts, ensuring a speedy and usually satisfactory resolution for the complainant. This course of action is of benefit to all parties concerned. The customer has a quick resolution, the Ombudsman is spared expending further time and resources in dealing with a formal (written) complaint and the public authority likewise. Last year the section resolved 504 complaints by making immediate telephone contact with a public authority. In another 744 cases inquiries were made with an authority after which advice was given to the complainant on how the problem might best be handled.

The above figures include members of the public who present in person to the office to talk about a complaint. In some situations the officer is required to assist the complainant by writing out the complaint. During the year 541 people were interviewed by inquiry officers.

Media relations

The office's working relationship with the media and the image we present to our clients through the media is vitally important.

In our complainant survey, 27% of respondents said the media was their primary source of information on the Ombudsman.

The Ombudsman released 55 media releases during the year. The media officer responded to more than 300 inquiries by journalists.

The information we can provide to the media is limited by the need to maintain confidentiality in relation to investigations. While we are free to speak about our aims and objectives, organisation and the nature of our work, we must be careful of what we say about investigations.

I acknowledge receipt of the two copies of the final report in this matter for which I thank you. On behalf of my clients I wish to express appreciation for your efforts in this time consuming and complex investigation.
A complainant's solicitor

All current and previous staff of our office are restricted from disclosing information acquired in the course of their employment.

Information can be disclosed:

- with the consent of the person or public authority from whom the information is obtained;
- for the purposes of discharging functions under the Ombudsman or any other Act;
- in certain other narrowly defined circumstances, eg, where proceedings are commenced against a person who may have committed an offence against s.37 of the Ombudsman Act (in this circumstance, the Ombudsman decides when this requirement is satisfied); or
- when a the annual report or special report to parliament is tabled.

We recognise the valuable role the media plays in disseminating information and comment about our work.

We do our best to provide all sections of the media with information they require to achieve a high standard of reporting in relation to issues affecting us.

Guidelines series

The Ombudsman published a series of three guidelines outlining freedom of information policies and issues of administrative conduct for local councils and public authorities and officials. The guidelines have sold well and have been favourably received.

FOI policies and guidelines

In late 1994 the former NSW Ombudsman published *Ombudsman's FOI Policies and Guidelines* to assist FOI practitioners, NSW government agencies and their clients in dealing with FOI. The current Ombudsman adopted these policies and guidelines and the approach to FOI requests outlined by this document.

The approach outlined in these policies and guidelines is based on and designed to further the objects of the FOI Act. It is widely accepted throughout Australia that FOI legislation is vital to ensure the rights of people to: know what the government knows about them; to evaluate what the government has done; and to participate in what the government proposes to do. The Ombudsman firmly believes that, where possible, the FOI Act should be interpreted in such a way as to maximise access to information.

When dealing with complaints about an FOI determination the ombudsman will initially presume access should have been granted to all requested documents. The onus will be on the agency to justify a legal exemption applies to the information, that its release would be contrary to public interest and that procedures specified in the FOI Act were complied with.

In practical terms this will mean that if an FOI complaint is made to the Ombudsman, the agencies must be able to satisfactorily justify why each and every individual document or item of information determined to be exempt warrants such exemption and why any disputed procedures and practices followed by the agency were reasonable.

This is a significant change from past practices. Previously when an FOI complaint was made to the Ombudsman it would be dealt with in the same way as any other complaint where the onus is on the office to prove or justify any adverse finding.

These guidelines will:

- help the public ensure that when an agency claims an exemption, that this is clearly valid;
- help agencies and the public better understand the Ombudsman's interpretation of the FOI Act; and
- enable the Ombudsman to quickly analyse and reach conclusions as to the appropriateness of determinations made by agencies.

Guidelines for councils and for public authorities and officials

Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials and *Good Conduct and Administrative Practice: Guidelines for Councils* were prepared in consultation with the ICAC, Office of the Council on the Cost of Government, the Audit Office, Archives Office, Department of Local Government and several other government bodies. The guidelines aim to:

- provide clear guidance to public authorities and local councils on the conduct and administrative practice that the Ombudsman and other appropriate agencies have determined to be acceptable and appropriate;
- promote good conduct and administrative practice in public authorities and local councils;
- provide feedback to authorities arising out of the various findings and recommendations made by the Ombudsman and other relevant agencies, and to illustrate useful points about good conduct and administrative practice in government;
- provide guidance to public officials on the discharge of their responsibilities;
- help to prevent the occurrence of administrative and conduct problems, and therefore reduce the number of complaints to the Ombudsman concerning public administration related issues;
- publish in one place material that should be useful to public authorities and local councils when they review or audit their administration and prepare or revise codes of conduct; and
- be of use as a text for training of public officials and council employees.

Public authorities survey

During late 1994 AGB McNair conducted a survey of public authorities to gauge their knowledge of the Ombudsman and to measure satisfaction levels with their dealings with the office. The data was sought to modify procedures where applicable and to design information campaigns to ensure greater cooperation and satisfaction of public authorities.

The survey population was stratified by the type of organisation and number of complaints against them. Questionnaires were sent to 443 different agencies in all. The response rate was 71%.

Two thirds of the responses came from CEO or SES/PSSES officers and a further 26% from Ministerial Liaison/Client Liaison Office or Ombudsman contact officers. Most had experienced direct contact with the office in the past six months.

Knowledge of the Ombudsman's role and functions was high (79%). The Ombudsman's Annual Report was read by 59% of respondents and nearly half had read investigation reports or heard an address by the Ombudsman or staff from the office.

Nearly 90% believed the Ombudsman should suggest ways of resolving complaints without necessarily investigating them (98% of Police Service respondents concurred in this) and about half were happy for the Ombudsman to make suggestions at any time on any basis.

Support for our mediation/conciliation service was high with 82% support overall and a high 92% of police respondents supporting the idea. More than half thought part of the Ombudsman's operations should be to be proactive about administrative reforms and 43% felt the role should include investigating matters of public interest even when no one has complained.

Satisfaction with ease of understanding correspondence was high (82%) and 52% thought the Ombudsman took no longer than necessary to resolve complaints against them. 37% believed the opposite while 69% of the police held this view. Respondents who had themselves been the subject of investigation and those who perceived most inquiries as being resolved in favour of complainants were more likely to think a longer than necessary time was taken.

Nearly 90% of respondents saw the Ombudsman's Office as a necessary part of public sector accountability and nearly half reported the Ombudsman used powers appropriately while only 10% did not. This latter view tended to be higher among police and prison personnel and those perceiving decisions favoured complainants.

The overwhelming majority reported being satisfied with the general methods used to investigate and make inquiries and 57% reported being satisfied with the quality of the determination correspondence and reports. 13% reported being dissatisfied or very dissatisfied. Nearly half of the respondents reported public benefit of the overall outcome, the most

I attended the Ombudsman Seminar held in Lismore and take this opportunity to compliment the officers involved and their expertise and willingness to address questions raised.
The provision of such a service in country regions is valued. The region has a commitment to providing quality customer service and the information provided by your officers will further assist us with that process.
A public authority representative

neutral responses coming from those who had been the subject of investigation and those perceiving decisions favoured complainants.

Half of all respondents felt the inquiry process assisted their agencies in improving its performance with three quarters of police respondents mentioning this. Half felt their agencies were more accountable as a result of an Ombudsman inquiry with a very high 80% of police responding this way. Fewer than 10% felt the effect of an Ombudsman inquiry was in some way negative. Only 5% mentioned inquiries demoralising staff and 4% mentioned other negative impacts.

The main suggestions for improvement were more communication/less secrecy in dealings with Ombudsman officers; preliminary investigations to determine the authenticity of complaints; provision of clear guidelines on the exact role of the Ombudsman; improved staffing of the office; and taking account of alternate dispute resolution procedures.

Partly as a result of the survey, regular contact staff meetings have been held between the office and various public authorities during the year as well as the Ombudsman/CEO meetings to further cooperation and promote understanding of our procedures. The Ombudsman thanks everyone who participated in the survey.

Alternative dispute resolution

Over the past 15 months an appropriate model for in-house mediations, taking into account the types of disputes we investigate, has been put into place. Forms and agreements have been prepared to facilitate the mediation process, and staff have been involved in an ongoing training program on advanced mediation skills.

In all but two matters, some agreement has been reached. Even where agreement is not able to be reached, parties invariably have found the process a useful one for allowing full and frank discussion and for clarifying the issues in dispute. Mediation allows each side to understand the other's point of view and the interests which need to be met for the matter to be resolved or to be taken further.

Another benefit of mediation is that fresh ideas which can be generated during the session can be used to improve systems within the government departments taking part in the mediation.

Some issues have arisen which need further consideration, such as how to facilitate local government officials receiving appropriate delegated authority to attend mediation and settle disputes, when most decision making functions rest with the elected councillors.

Although the types of disputes mediated have varied, a large number have involved matters relating to land use and environmental concerns. A smaller number have involved administrative actions, and commercial disputes.

Complaint handling in the public sector

During the year a one day training workshop on effective complaint management was developed. Some 115 people from a wide cross section of public authorities attended the first five courses held. More courses are planned for the future including regional courses for local government.

A workshop on front line complaint handling and customer contact has also been developed and is being run an in-house consultancy basis for other agencies.

Our *Guidelines for Effective Complaint Management*, which has always been a sought-after publication, has been revised and reissued with assistance from the Premier's Department in conjunction with Premier's Memorandum 92-29 on Frontline Complaint Handling.

We are continuing with a policy of providing as much assistance as possible to outside bodies in complaint handling and management as resources allow.

Dealing with our own complaints

This year we revised our internal policies on reviews, complaints and compliments. We believe that one way of measuring whether we are adequately performing the services we are paid to carry out is to measure the complaints we receive. An effective complaints system is an essential part of the provision of quality public

sector service. Complaints provide a useful source of information and feedback for improving our service. They provide a second chance to provide service and satisfaction to dissatisfied clients and consequently provide an opportunity to strengthen public support for our office.

The Ombudsman gives an undertaking to review any determination made that complainants object to. These reviews are carried out by a more senior officer than the one who made the initial determination.

Complaints about our service are also investigated by senior staff. Issues of complaint included failure to properly deal with complaints or investigate matters, delays, objections to the procedures used, inaccurate referral advice, bias and lack of procedural fairness.

In many cases the complaints stemmed from a lack of understanding of our legislative and procedural requirements. Usually we have been able to conciliate these matters by explaining our procedures and performance targets for turnaround times. Where we have found complaints about delays to be justified we have given apologies and taken action to address the cause of delay.

In response to complaints received we have made various changes to our procedures including amending standard letters to better explain the action to be taken or our reasons for decisions. We have implemented a new referral system for complaints we receive that come within the Commonwealth Ombudsman's jurisdiction. We have also arranged training and information sessions to ensure staff are aware of appropriate avenues of referral.

Your action on my daughter's behalf certainly moved the mountain...This is the first occasion on which anyone in the Ombudsman's Office has acted on behalf of my family, and I am very grateful for your positive action.
Thank you very much.
A complainant

Resources

Human Resources

Staff

As at 30 June, 1995 we had an effective full time equivalent staff number of 69.7. In addition we had two trainees funded by external bodies.

Staff levels
A four year comparison

Category	June 1992	June 1993	June 1994	June 1995
Statutory appointments	4	4	4	4
Investigative staff	49	45.6	47.2	52.9
Administrative staff	16.6	18.5	17	12.8
Total	**69.6**	**68.1**	**68.2**	**69.7**
Trainees (externally funded)	1	2	2	2

The above figures do not include staff on leave without pay. It also counts the full time equivalent and not the actual number of part-time staff.

Wage movements

Public sector staff were granted a 7% award increase during the last reporting year. This increase was paid in two instalments. The second instalment of 3% was paid to all staff except the Ombudsman and SES Officers in November 1994.

The Statutory and Other Offices Remuneration Tribunal determined a 4 percent increase for the Ombudsman and SES staff, which was paid in October 1994.

In January, we employed our first trainee under a new award which restructured trainee wage rates. As the Commonwealth reimburses us for trainee wages, the new award does not affect our salaries and wages costs.

There were no other exceptional movements in wages, salaries or allowances.

Restructure

As has been reported in previous annual reports, the investigative area has been reviewed and restructured to improve efficiency and to reduce costs where possible. As no such review had been conducted in the non investigative area, the former Ombudsman engaged external consultants to review the structure and responsibilities of the Administration Section. The aim of the review was to improve workflows and if possible reduce costs so that badly needed resources could be transferred to the investigation area. The consultants spoke to a number of key staff and all staff in the Administration Section were given the opportunity to contribute to the review.

The recommendations of the consultants included the abolition of four positions and the creation of three new positions with different responsibilities and duties. The overall benefit gained by the restructure included the saving of approximately $60,000 in salary and associated costs which were transferred to the Investigation Area. Lines of responsibility and accountability are now much clearer.

The new structure was implemented smoothly and one officer, displaced by the abolition of her position, accepted a voluntary redundancy.

Performance Management

A number of staff negotiated a performance agreement throughout the year although the progress to finalise agreements has not been as initially scheduled.

General Area staff are currently reviewing the first year with an agreement and are renegotiating a second agreement. Changes of staff in the Police Area has meant that performance agreements have not been finalised. This will be a priority for the new financial year.

Training and development

Staff attended a variety of courses throughout the year. Considerable resources were devoted to mediation training, investigation techniques

and an Aboriginal Awareness Course. Staff attended professional development courses and a series of training seminars were conducted with ICAC.

A significant achievement for the office was winning a Skilling Australia Award for our continued commitment to provide English Language Skills to staff from non-English speaking backgrounds. The Award was presented by the then Minister for Ethnic Affairs Mr Photios MP.

The Manager of the General Team was granted a scholarship towards the cost of attending the Public Sector Management course.

Occupational health and safety

Workplace inspections were conducted in August 1994 and February 1995. All health and safety risks identified in both inspections have been rectified. No major occupational health and safety issues arose during the year. Two worker's compensation claims were received during the year, however one claim, which was for work related stress, was withdrawn.

We plan to engage an occupational health and safety specialist to train and advise all staff in the correct use of the personal computer technology being installed during 1995-96.

Equal Employment Opportunity (EEO)

Our major EEO achievements for the year were:

- the appointment of the first female NSW Ombudsman - Ms Irene Moss
- winning the Skilling Australia Award for our commitment to English language training for staff from non-English speaking backgrounds; and
- the introduction of more flexible work practices including the promotion of part time work.

Representation of EEO Target Groups within Levels

	1993/94					1994/95				
	Total staff*	Women		NESB		Total staff*	Women		NESB	
Below Clerical Officers Grade 1	1	1	100%	0	0%	2	1	50%	0	0%
Clerical Officers Grade 1 - Clerk Grade 1	13	12	92%	10	77%	14	13	93%	11	79%
A&C Grades 1-2	5	5	100%	3	60%	2	2	100%	1	50%
A&C Grades 3-5	12	9	75%	3	25%	18	12	67%	5	28%
A&C Grades 6-9	31	14	45%	5	16%	30	13	43%	5	16%
A&C Grades 10-12	5	3	60%	0	0%	6	3	50%	0	0%
Above A&C Grade 12	4	0	0%	0	0%	5	1	20%	1	20%
Total	**71**	**44**	**62%**	**21**	**30%**	**77**	**45**	**58%**	**23**	**30%**

**Includes staff on leave without pay and counts actual part time and not full time equivalent.*

Representation and Recruitment of Aboriginal Employees and Employees with a Physical Disability

	1993/94					1994/95				
	Total staff	Aboriginal		PWPD*		Total staff	Aboriginal		PWPD*	
Total employees	71	0	0%	8	11%	77	3	4%	11	14%
Recruited in the year	26	0	0%	0	0%	20	3	15%	4	20%

**People with a physical disability*

Thank you for trying to help us with our local council. They are now considering assistance and we still have water. Thank you.
A complainant

Future EEO initiatives include:

- expansion of performance management systems ensuring that all staff have an agreement in place by 3 December, 1995; and
- a review of the training and staff development program.

Industrial relations policies and practices

Enterprise agreement

Staff did not pursue an enterprise agreement although they had indicated that such an agreement would be desirable.

Restructure

The Public Service Association raised a number of issues concerning the review of the Administrative Section. These issues were resolved after discussions between the parties.

New awards

No new awards were negotiated.

Part-time work

During the reporting year three staff members were working part time after resuming duty from maternity leave. In addition, two full time positions were filled on a part-time basis to allow the staff members more flexible work arrangements.

Grievance procedure

The office has in place a grievance procedure designed in accordance with the provisions of the Industrial Relations Act. No staff lodged a grievance during the reporting year.

Absenteeism

Sick leave absences of staff are reviewed regularly and staff with an unsatisfactory record are counselled.

Due to pressures of workload, staff continued to forfeit unpaid hours on a regular basis.

Trainees/apprentices

During the reporting year, one trainee successfully completed both on and off the job components of her traineeship. As at the 30 June, 1995 we were employing one trainee under the Careerstart program and one trainee under the Job Skills program.

We do not employ apprentices.

Chief and senior executive service officers

Number of CES/SES positions

SES Level	Total at 30 June 1994	Total at 30 June 1995
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.

Irene Moss, the first woman to be appointed as New South Wales Ombudsman, commenced her seven year term on 1 February 1995. No SES positions were occupied by women.

Ombudsman's performance statement

The Ombudsman's performance statement appears on pages 8 to 11 of this report.

General Management

Research and development

The Office of the Ombudsman was not involved in any research and development projects.

Overseas travel

No staff member travelled overseas on official business during the reporting year.

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.

Recycling

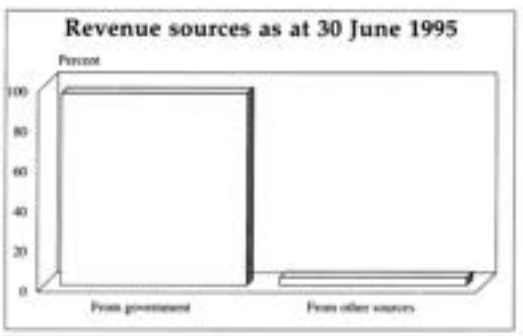
A security shredding company collects waste paper for recycling.

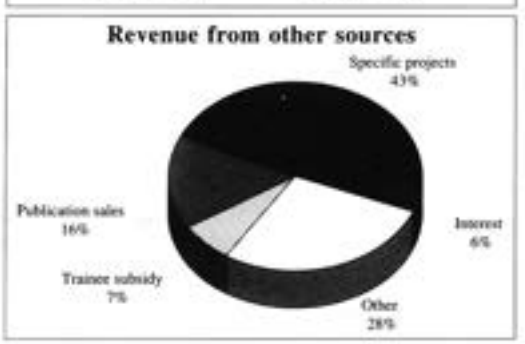
Financial summary

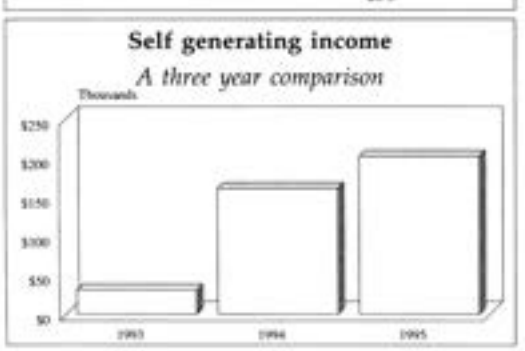
Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. In addition, the government makes provision for our superannuation and long service leave liabilities. We also generate revenue through the sale of publications, trainee subsidy, bank interest and by undertaking special inquiries on a user pay basis. A breakup of revenue received, including capital funding is:

Government	
Appropriation	$4,428,000
Acceptance of superannuation & long service leave	$314,570
Capital funding	$451,000
Other	
Special inquiries	$87,532
Sale of publications	$31,981
Miscellaneous	$82,904





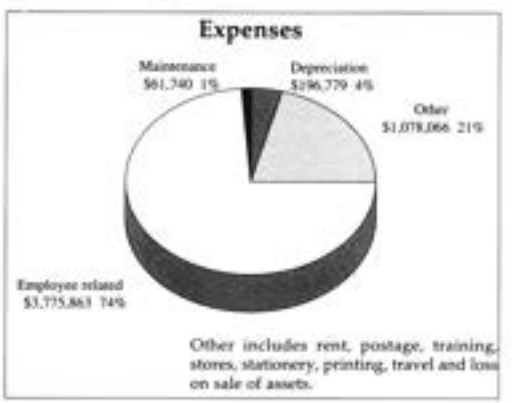


Expenses

Most of our revenue is spent on employee expenses. These include salaries, superannuation entitlements, long service leave, payroll tax etc. Last year we spent more than $3.7 million on employee expenses.

The day to day running of the office, including rent, postage, telephone, stores, training, printing and travel cost just over $1 million. Depreciation of computer equipment, furniture and fittings and other office equipment cost $196,000.

The following is a summary of expenses incurred during the year.



Consultants

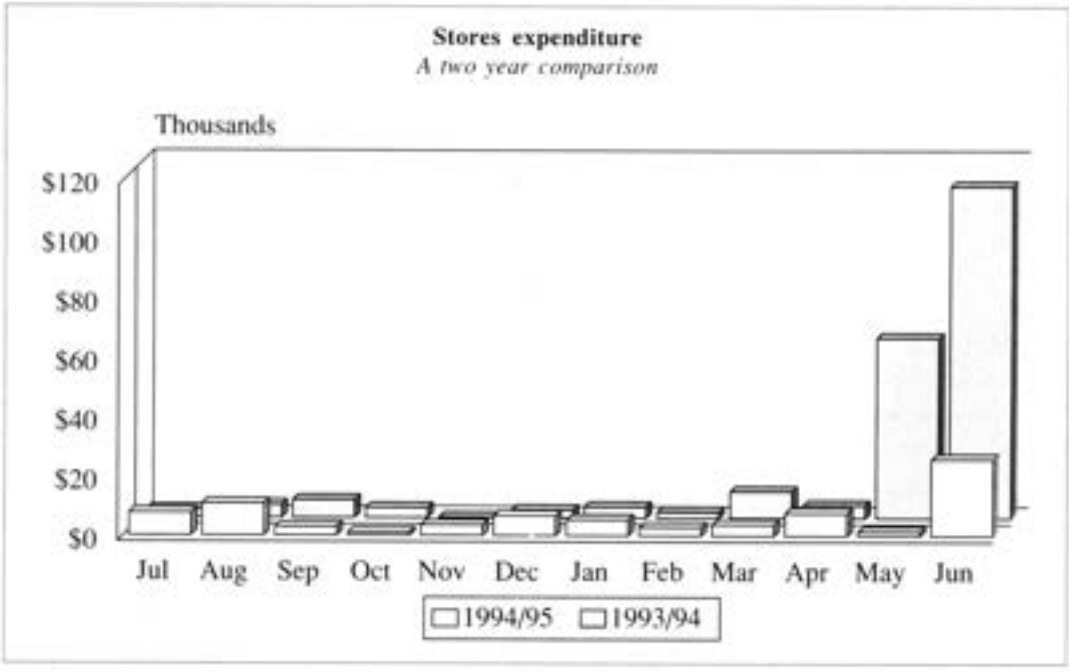
During the year we used nine consultants to provide expert advice and assistance. The total cost of all consultancies was $27,120 for normal operating activities and $32,300 for consultancies related to the major works project. There were no individual consultancy that cost at or in excess of $30,000.

Funds granted to non-government community organisations

We did not grant any funds to any non-government community organisation.

Stores expenditure

The graph on the following page represents stores expenditure during the year. As can be seen, the expenditure was consistent throughout the year except for June, 1995 when computer related purchases connected with the major works project were made. Stores expenditure has significantly reduced from the 1993/94 financial year.



Assets

Major works in progress

We have one major work in progress - the upgrade of our computer systems (both hardware and software). Initial funding for 1994/95 financial year was $536,000 however only $451,000 had been committed by the end of the financial year. Approval was given by the NSW Treasury to a carry over unspent funds into the current financial year. Funding has been provided in the 1995/96 - 1997/98 allocations to complete the project.

There are no anticipated cost overruns.

The implementation of the project is on or near schedule however some initial delay was experienced in the development of a detailed tender specification. It was the view of the office that this document had to be thorough to ensure that the new system meet all the requirements of the office. Phase one of the project will be completed in December, 1995 and further development will occur in the following two years.

A number of companies submitted a tender for the design and installation of the system which were evaluated under the supervision of the Contracts Control Board. BHA Computer were awarded the contract and work has commenced on implementing a complaints management information system.

Major Assets

Major assests at hand

Description	As at Jun 94	Acquis-itions	Dispos-als	As at Jun 95
Mini computer	2	5		7
Terminal servers	3	3		6
Personal computers	41	55	2	94
Terminals	52	56	1	107
Printer	14	1		15
Photocopiers	5			5
Television& video equipment	7			7

Land Disposal

We did not dispose of any land or property.

Liabilities

The office has two sources of liabilities - the creditors who are owed money for goods and services they provide and staff who are owed accrued leave entitlements.

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 when placed with them.

Accounts on hand as at 30 June 1995	
Current (ie within due date)	$90,506
Less than 30 days overdue	-
Between 30 days and 60 days overdue	-
Between 60 days and 90 days overdue	-
More than 90 days overdue	-
Total accounts on hand	$90,506

We regularly review our payment 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.

Value of leave

The value of recreation (annual) leave and extended (long service) leave owed in respect of all staff for the 1993/94 and 1994/95 financial years is shown in the table below.

Value of Recreation and Extended Leave		
	Year ended 30 June '94	Year ended 30 June '95
Recreation leave	$176,247	$186,598
Extended leave	$313,540	$378,301

Other

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 is the investigation area: complaints are assessed to be further investigated or declined.

The office participates in the NSW Treasury's Managed Fund. This fund is the state government's self insurance scheme. The scheme is administered on behalf of the government by GIO.

The office selects the lowest layer of insurance offered, as the number of claims received is negligible.

Financial statements

STATEMENT BY THE OMBUDSMAN

Pursuant to Section 45F of the Public Finance and Audit Act, 1983 I state that:

(a) the accompanying financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act, 1983, the Financial Reporting Code under Accrual Accounting for Inner Budget Sector Entities, the applicable clauses of the Public Finance and Audit (Departments) Regulation, 1986 and the Treasurer's Directions;

(b) the statements exhibit a true and fair view of the financial position and transactions of the Office; and

(c) there are no circumstances which would render any particular included in the financial statements to be misleading or inaccurate

Irene Moss
Ombudsman

9 August, 1995

NSW Ombudsman

BOX 12 GPO
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 1995. The preparation and presentation of the financial statements consisting of the accompanying statement of financial position, operating statement and statement of cash flows, together with the notes thereto, and the information contained therein is the responsibility of the Ombudsman. My responsibility is to express an opinion on these statements to Members of the New South Wales Parliament and the Ombudsman based on my audit as required by sections 34 and 45F(1) of the *Public Finance and Audit Act 1983*. My responsibility does not extend here to an assessment of the assumptions used in formulating budget figures disclosed in the financial statements.

My audit has been conducted in accordance with the provisions of the Act and Australian Auditing Standards to provide reasonable assurance as to whether the financial statements are free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with the requirements of the *Public Finance and Audit Act 1983*, Accounting Standards and other mandatory professional reporting requirements (Urgent Issues Group Consensus Views) 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 and other mandatory professional reporting requirements the financial position of the Office as at 30 June 1995 and the results of its operations and its cash flows for the year then ended.

P. CARR, FCPA
DIRECTOR OF AUDIT
(duly authorised by the Auditor-General of New South Wales under section 45F(1A) of the Act)

SYDNEY
11 October 1995

Office of the Ombudsman

Operating Statement
For the year ended 30 June 1995

	Notes	Actual 1995 $	Budget 1995 $	Actual 1994 $
Operating Expenses				
Employee related	4(i)	3,775,863	3,769,000	3,392,925
Other operating expenses	4(ii)	1,078,066	1,011,000	1,183,779
Maintenance	4(ii)	61,740	29,000	39,875
Depreciation	4(iii)	196,779	316,000	184,923
Total expenses		5,112,448	5,125,000	**4,801,502**
Revenues				
User charges	5(i)	32,497	4,000	3,740
Other	5(ii)	156,325	39,000	134,191
Grants	5(iii)	13,595	12,000	23,315
Total revenues		202,417	55,000	**161,246**
Net Gain/(Loss) on sale of plant and equipment	4(v)	688	-	(5,579)
Net Cost of Services		4,909,343	5,070,000	4,634,677
Government Contributions				
Consolidated Fund recurrent allocation		4,428,000	4,428,000	4,227,000
Consolidated Fund capital allocation		451,000	536,000	-
Acceptance by Crown of Office liabilities		314,570	358,000	365,118
Surplus/(deficit) for the year		284,227	252,000	(42,559)
Accumulated surplus/(deficit) at the beginning of the year		541,663	541,663	584,222
Accumulated surplus/(deficit) at the end of the year		825,890	793,663	541,663

The accompanying notes form part of these statements.

Office of the Ombudsman

Statement of Financial Position
For the year ended 30 June 1995

	Notes	Actual 1995 $	Budget 1995 $	Actual 1994 $
Current Assets				
Cash	6	80,466	-	5,283
Receivables		20,658	-	1,520
Prepayments	7	30,605	46,000	57,180
Total Current Assets		**131,729**	**46,000**	**63,983**
Non Current Assets				
Plant and equipment	8	1,016,456	950,610	730,610
Total Non-current Assets		**1,016,456**	**950,610**	**730,610**
Total Assets		**1,148,185**	**996,610**	**794,593**
Current Liabilities				
Creditors	9	90,506	22,947	76,683
Provisions	10	231,789	180,000	176,247
Total Liabilities		**322,295**	**202,947**	**252,930**
Net Assests		**825,890**	**793,663**	**541,663**
Equity				
Accumulated surplus		825,890	793,663	541,663
Total Equity	11	**825,890**	**793,633**	**541,663**

The accompanying notes form part of these statements.

Office of the Ombudsman

Cash Flow Statement
For the year ended 30 June 1995

	Notes	Actual 1995 $	Budget 1995 $	Actual 1994 $
Cash Flow from Operating Activities				
Payments				
Employee related		(3,405,751)	(3,132,283)	(2,959,374)
Other Operating		(1,063,192)	(1,327,000)	(1,255,937)
Maintenance		(61,740)	(29,000)	(39,875)
		(4,530,683)	(4,488,283)	(4,255,186)
Receipts				
User charges		32,497	4,000	3,740
Interest		11,369	3,000	3,437
Other		151,342	36,000	100,709
Grants		13,595	12,000	23,315
		208,803	55,000	131,201
Total Net Cash Used on Operating Activities	13	(4,321,880)	(4,433,283)	(4,123,985)
Cash Flow from Investing Activities				
Purchases of plant and equipment		(485,251)	(536,000)	(191,351)
Proceeds from the sale of plant and equipment		3,314	-	1,577
Total Net Cash Outflow on Investing Activities		(481,937)	(536,000)	(189,774)
Net Cash Outflow from Operating and Investing Activities		(4,803,817)	(4,969,283)	(4,313,759)
Government Funding Activities				
Consolidated Fund recurrent appropriation		4,428,000	4,428,000	4,227,000
Consolidated Fund capital appropriation		451,000	536,000	
Total Net Cash provided by Government		4,879,000	4,964,000	4,227,000
Net Increase/(Decrease) in Cash		75,183	(5,283)	(86,759)
Opening Cash Balance		5,283	5,283	92,042
Closing Cash Balance	6	80,466	0	5,283

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 Treasurer's 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 1993/94.

(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.

(b) Capital and Maintenance Expenditure

The Office received capital funding from the Crown amounting to $451,000 in the current year. No capital funding was received 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.

Provisions for payroll tax and workers compensation on employee leave entitlements have been recognised in compliance to AAS 30 - Accounting for Employee Leave Entitlements, increasing both provisions and employee related expenses by $45,191. No provision was made in 1993/94. These provisions are not funded by the Crown.

(e) Inventories

The Office has no inventories of material value. Any purchases 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 1994/95 were:

- NSW Police Service (Police/Race Relations Inquiry) $87,532

Amounts received in 1993/94 for special inquiries into Police/Race Relations and Homefund totalled $84,593.

(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 $160,657 less than budget. This result was largely due to higher than budgeted revenue through the sale of publications such as good practice guidelines and special reports to Parliament, and funding provided by the Police Service for the Police/Race Relations Inquiry.

4. Operating Expenses

(i) Employee related expenses comprise:	1995	1994
	$	$
Salaries and wages	2,905,337	2,584,671
Recreation leave expense	233,649	223,150
Superannuation entitlements	234,053	268,305
Long Service Leave	80,575	96,813
Workers Compensation insurance	45,135	23,393
Payroll tax and fringe benefits tax	277,114	196,593
Other	-	-
	3,775,863	3,392,925

(ii) Other operating expenses comprise:	1995	1994
	$	$
Rent and rates	488,099	559,071
Travel	38,899	59,172
Motor Vehicles	18,246	24,523
Insurance	4,731	3,330
Postage and Freight	31,137	23,818
Advertising	17,683	24,587
Books	26,909	23,136
Fees	191,366	261,149
Energy	16,428	16,519
Telephones	85,114	60,171
Printing	75,576	25,742
Stores	43,368	37,823
Training	40,510	64,738
	1,078,066	1,183,779

(iii) Depreciation is charged as follows:	1995	1994
	$	$
Computer equipment	95,031	86,221
Furniture and fittings	13,082	13,016
Leasehold improvement	49,274	40,957
Office equipment	39,392	44,729
	196,779	184,923

(iv) Fees for Service

Expenses relating to consultancies and audit fees (external) amounted to $27,120 and $14,300 respectively. The audit fee for 1994/95 includes an amount of $5,000 paid in respect of additional work relating to the 1993/94 audit. Comparative figures for 1993/94 amounted to $48,890 for consultancies and $9,300 for audit fees. Consultants costing $32,300 were engaged as part of the capital project and paid from investing activities.

(v) Net Gain on sale of plant and equipment

Comprises profit on sale of obsolete equipment $688

5. Operating Revenues

	1995 $	1994 $
(i) User charges comprise the following items:		
Commission on payroll deductions	516	610
Sale of Annual Report	1,015	1,020
Sale of Special Reports to Parliament	30,966	2,110
	32,497	3,740
(ii) Other Revenue		
Trainee Training Subsidy	-	1,666
Bank Interest	11,369	3,437
Miscellaneous	57,424	7,053
Industry Donation by way of Computer Equipment	-	28,642
Specific Projects	87,532	93,393
	156,325	134,191
(iii) Grants		
Trainee Salary Subsidy (ATS/Career Start)	13,595	23,315
	13,595	23,315

6. Current Assets - Cash

	1995 $	1994 $
Cash on Hand	850	800
Cash at Bank	79,616	4,483
Total Cash	80,466	5,283

7. Current Assets - Prepayments

	1995 $	1994 $
Salaries & Wages	1,124	3,384
Advertising	270	540
Maintenance	10,865	50
Other	6,247	355
Rent	0	39,979
Subscription/Maintenance	5,230	6,848
Training	1,722	991
Postal	2,687	2,443
Motor Vehicle	2,364	1,704
Telephone	96	886
	30,605	57,180

8. Non- Current Assets - Plant and equipment

	Computer Equipment		Furniture & Fittings		Leasehold Improvement		Office Equipment		Total	
	1995	**1994**	1995	**1994**	1995	**1994**	1995	**1994**	1995	**1994**
	$	**$**	$	**$**	$	**$**	$	**$**	$	**$**
At cost unless otherwise stated										
Balance 1 July	477,176	**413,823**	129,876	**129,876**	524,166	**490,924**	311,248	**229,972**	1,442,466	**1,264,595**
Additions	475,929	**94,541**	1,523	**-**	3,069	**33,242**	4,730	**84,967**	485,251	**212,750**
Disposals	(9,775)	**(31,188)**	(15)	**-**	-	**-**	(76,501)	**(3,691)**	(86,291)	**(34,879)**
Balance 30 June	943,330	**477,176**	131,384	**129,876**	527,235	**524,166**	239,477	**311,248**	1,841,426	**1,442,466**
Accumulated depreciation										
Balance 1 July	280,464	**223,348**	60,410	**47,385**	190,901	**149,941**	180,081	**141,403**	711,856	**562,077**
Depreciation for the year	95,031	**86,221**	13,082	**13,025**	49,274	**40,960**	39,392	**44,729**	196,779	**184,935**
Writeback on Disposal	(8,198)	**(29,105)**	(8)	**-**	-	**-**	(75,459)	**(6,051)**	(83,665)	**(35,156)**
Balance 30 June	367,297	**280,464**	73,484	**60,410**	240,175	**190,901**	144,014	**180,081**	824,970	**711,856**
Written Down Value										
At 1 July	196,712	**190,475**	69,466	**82,491**	333,265	**340,983**	131,167	**88,569**	730,610	**702,518**
At 30 June	576,033	**196,712**	57,900	**69,466**	287,060	**333,265**	95,463	**131,167**	1,016,456	**730,610**

9. Current Liabilities - Creditors

	1995	**1994**
	$	**$**
Salaries and Wages	-	**784**
Accrued Expenses	90,506	**75,899**
	90,506	**76,683**

10. Current Liabilities - Provision for leave entitlements

	1995	**1994**
	$	**$**
Balance 1 July	176,247	217,808
Paid during year	(228,236)	(308,144)
Provided during year	238,587	266,583
Balance 30 June	186,598	176,247
Provision for workers compensation - leave entitlement	5,648	-
Provision for payroll tax - leave entitlement	39,543	-
	231,789	176,247

11. Equity - Accumulated surplus/(deficit)

	1995 $	1994 $
Balance 1 July	541,663	584,222
Operating Result for the year	284,227	(42,559)
Balance 30 June	825,890	541,663

12. Commitments for Expenditure

	1995 $	1994 $
(1) Lease Commitments	1,887,568	2,320,295
Aggregate operating lease expenditure contracted for at balance date but not provided for in the accounts:		
Not later than one year	135,348	-
Later than one year but not later than 2 years	-	-
Later than 2 years but not later than 5 years	-	-
Later than 5 years	-	-
	135,348	-
Representing:		
Cancellable operating leases	9,543	24,930
Non-cancellable operating leases	1,878,025	2,295,365

Non-cancellable leases are for rental of office space that were renegotiated in 1993/94.

(2) Capital Expenditure	135,348	-
Aggregate capital expenditure contracted for at balance date but not provided for in the accounts:		
Not later than one year	425,949	429,804
Later than one year but not later than 2 years	418,272	429,804
Later than 2 years but not later than 5 years	1,043,347	1,252,017
Later than 5 years	-	208,670
	1,887,568	2,320,295

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 on Operating Activities for the year.

	1995 $	1994 $
NET COST OF SERVICES	(4,909,343)	(4,634,677)
Adjustments for items not involving cash:		
Donations by Industry	-	(28,818)
Depreciation	196,779	184,923
Provision for recreation leave	55,542	(41,561)
Acceptance by Crown of liabilities	314,570	365,118
(Increase)/decrease in receivables	(19,138)	2,413
(Increase)/decrease in prepayments	26,575	34,842
Increase/(decrease) in creditors	13,823	(11,804)
Net (gain)/loss on sale of plant and equipment	(688)	5,579
Net Cash Used on Operating Activities	(4,321,880)	(4,123,985)

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

	1995 $	1994 $
Consolidated fund recurrent allocation	4,428,000	4,227,000
Consolidated fund capital allocation	451,000	-
Crown acceptance of liabilities		
Long Service Leave Expense	80,575	96,813
Superannuation Expense	233,995	268,305
	5,193,570	4,592,118

15. Contingent Liabilities

There are no contingent liabilities at balance date.

16. Unclaimed Monies

There are no unclaimed monies at balance date.

End of the Audited Financial Statements.

Appendix one

Local Government Complaints Determined 1994 -1995

Local council	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Albury City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Armidale City Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Ashfield Council	0	0	0	2	0	0	1	0	0	1	0	0	0	0	4
Auburn Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Ballina Council	0	0	0	1	0	0	2	0	0	1	0	0	0	1	5
Bankstown City Council	2	0	0	1	0	1	2	1	0	0	0	0	0	0	7
Bathurst City Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Baulkham Hills Council	**0**	**1**	**0**	**2**	**1**	**0**	**7**	**2**	**0**	**1**	**0**	**0**	**0**	**1**	**15**
Bega Valley Council	**1**	**1**	**0**	**1**	**1**	**0**	**4**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**10**
Bellingen Council	0	0	0	1	1	0	3	0	0	1	0	0	0	0	6
Berrigan Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Blacktown City Council	**0**	**0**	**0**	**0**	**2**	**0**	**5**	**2**	**0**	**2**	**0**	**0**	**0**	**0**	**11**
Blue Mountains City Council	**0**	**1**	**0**	**4**	**0**	**0**	**7**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**12**
Botany Council	0	0	0	2	1	0	0	0	0	1	0	0	0	0	4
Brewarrina Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Burwood Council	0	0	1	0	1	0	2	0	0	0	0	0	0	0	4
Byron Council	1	0	0	0	0	0	2	0	0	1	0	0	0	0	4
Camden Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2
Campbelltown City Council	0	0	1	1	0	0	1	0	0	0	0	0	0	0	3
Canterbury City Council	0	0	0	1	0	0	3	0	0	1	0	0	0	0	5
Carrathool Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Casino Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Cessnock City Council	**0**	**0**	**1**	**2**	**0**	**0**	**6**	**0**	**0**	**1**	**1**	**1**	**0**	**0**	**12**
Cobar Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Coffs Harbour City Council	0	0	1	1	2	0	1	0	0	1	0	0	0	0	6
Concord Council	0	0	1	0	0	0	0	0	0	3	0	0	0	0	4
Cooma Monaro Council	0	0	0	1	0	0	2	0	0	1	0	0	0	0	4
Cootamundra Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1

Local council	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Corowa Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Cowra Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Deniliquin Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Drummoyne Council	0	0	0	0	1	0	1	0	1	0	0	0	0	0	3
Dubbo City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Eurobodalla Council	**0**	**1**	**2**	**0**	**1**	**0**	**10**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**14**
Evans Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Fairfield City Council	0	0	1	0	1	0	3	0	0	1	0	0	0	0	6
Forbes Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Glen Innes Council	0	0	0	1	0	0	1	0	0	1	0	0	0	0	3
Gosford City Council	**0**	**1**	**2**	**4**	**3**	**0**	**9**	**0**	**0**	**4**	**0**	**0**	**0**	**0**	**23**
Grafton City Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Great Lakes Council	**0**	**0**	**1**	**2**	**1**	**0**	**5**	**1**	**0**	**1**	**0**	**0**	**0**	**1**	**12**
Greater Lithgow City Council	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2
Greater Taree City Council	0	0	2	1	0	0	1	0	0	0	0	0	0	0	4
Griffith City Council	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Gunning Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hastings Council	**0**	**0**	**2**	**3**	**0**	**0**	**3**	**2**	**0**	**2**	**0**	**0**	**0**	**0**	**12**
Hawkesbury City Council	0	0	0	2	1	0	4	0	0	0	0	0	0	0	7
Holroyd City Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Hornsby Council	**0**	**1**	**2**	**1**	**2**	**0**	**4**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**12**
Hume Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Hunters Hill Council	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Hurstville City Council	0	0	0	1	0	0	0	0	0	2	0	0	0	0	3
Inverell Council	0	0	1	1	0	0	1	0	0	1	0	0	0	0	4
Kempsey Council	**0**	**0**	**2**	**1**	**1**	**0**	**5**	**0**	**0**	**1**	**0**	**0**	**0**	**0**	**10**
Kiama Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Kogarah Council	0	0	2	1	2	0	1	0	0	0	0	0	0	0	6

Local council	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declared on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Ku-ring-gai Council	**1**	**2**	**6**	**2**	**0**	**1**	**3**	**0**	**0**	**1**	**0**	**0**	**0**	**1**	**17**
Kyogle Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Lake Macquarie City Council	**1**	**0**	**0**	**6**	**2**	**0**	**8**	**2**	**0**	**5**	**0**	**0**	**0**	**0**	**24**
Lane Cove Council	0	0	0	1	0	0	4	0	0	0	0	0	0	0	5
Leichhardt Council	**0**	**0**	**0**	**3**	**1**	**0**	**5**	**0**	**0**	**1**	**0**	**0**	**0**	**0**	**10**
Lismore City Council	0	0	0	1	1	0	2	0	0	0	0	0	0	0	4
Liverpool City Council	1	0	1	2	0	0	2	0	0	0	0	0	0	1	7
Lower Clarence River Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Maclean Council	0	0	2	0	1	0	1	1	0	0	0	0	0	0	5
Maitland City Council	0	0	0	0	0	0	1	0	0	3	0	0	0	0	4
Manly Council	0	0	1	1	0	0	1	0	0	2	0	0	0	0	5
Marrickville Council	**0**	**0**	**0**	**0**	**3**	**0**	**5**	**2**	**1**	**1**	**0**	**0**	**0**	**1**	**13**
Merriwa Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Mosman Council	0	0	1	0	0	0	0	1	0	1	0	0	0	0	3
Mudgee Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Mulwaree Council	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Murray Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Muswellbrook Council	0	0	0	1	1	0	1	0	0	1	0	0	0	0	4
Nambucca Council	**1**	**0**	**3**	**2**	**3**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**0**	**4**	**15**
Narrabri Council	0	0	0	1	1	0	0	0	0	1	0	0	0	0	3
Newcastle City Council	**0**	**1**	**0**	**1**	**0**	**0**	**9**	**0**	**0**	**1**	**1**	**0**	**0**	**0**	**13**
North Sydney Council	1	1	0	0	0	0	2	0	0	1	0	0	0	0	5
Nundle Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Nymboida Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Oberon Council	0	0	0	0	0	0	1	1	0	1	0	0	0	0	3
Orange City Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Parkes Council	0	1	0	0	0	0	2	0	0	1	0	0	0	0	4
Parramatta City Council	1	0	1	1	0	0	2	0	0	2	0	0	0	0	7
Parry Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Penrith City Council	0	0	0	1	0	0	7	0	0	1	0	0	0	0	9
Pittwater Council	0	0	1	2	1	0	4	0	0	0	0	0	0	0	8
Port Stephens Council	**0**	**0**	**1**	**1**	**0**	**0**	**7**	**2**	**1**	**1**	**0**	**0**	**0**	**0**	**13**
Randwick City Council	1	0	0	1	1	0	4	0	0	0	0	0	0	0	7
Richmond River Council	0	1	0	0	0	0	1	0	0	2	0	0	0	0	4
Rockdale Council	0	1	1	0	0	0	1	1	0	1	0	0	0	0	5
Rous County Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Ryde City Council	0	0	1	1	1	0	2	0	0	1	0	0	0	0	6

Local council	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Scone Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Severn Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Shellharbour Council	0	1	2	0	2	0	0	0	0	0	0	0	0	0	5
Shoalhaven City Council	**0**	**1**	**0**	**5**	**1**	**0**	**5**	**1**	**0**	**9**	**0**	**0**	**0**	**2**	**24**
Singleton Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2
Snowy River Council	0	0	0	0	0	0	4	0	0	0	0	0	0	0	4
South Sydney City Council	**1**	**1**	**0**	**0**	**6**	**0**	**2**	**0**	**2**	**3**	**0**	**0**	**0**	**0**	**15**
Strathfield Council	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Sutherland Shire Council	**1**	**0**	**3**	**3**	**1**	**1**	**4**	**0**	**0**	**3**	**0**	**0**	**0**	**0**	**16**
Sydney City Council	0	0	0	1	1	0	3	1	0	0	0	0	0	0	6
Tallaganda Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Tamworth City Council	0	0	0	2	1	0	0	2	1	0	0	0	0	0	6
Tenterfield Council	0	0	0	3	0	0	0	0	0	0	0	0	0	0	3
Tumut Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Tweed Council	0	1	0	4	0	0	4	0	0	0	0	0	0	0	9
Ulmarra Council	0	0	0	0	0	0	1	0	0	2	0	0	0	0	3
Uralla Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Wagga Wagga City Council	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Warringah Council	0	0	0	0	2	0	0	1	0	2	0	0	0	0	5
Waverley Council	**0**	**0**	**0**	**3**	**2**	**1**	**4**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**12**
Weddin Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Willoughby City Council	0	0	1	0	0	0	3	2	0	0	0	0	0	0	6
Windouran Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Wingecarribee Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2
Wollondilly Council	0	0	0	0	0	0	4	0	0	0	0	0	0	0	4
Wollongong City Council	0	1	0	1	3	0	3	0	0	0	0	0	0	0	8
Woollahra Council	0	0	0	0	2	0	3	0	0	1	0	0	0	0	6
Wyong Council	0	0	0	2	2	0	2	0	0	1	0	0	0	0	7
Yarrowlumla Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2

Appendix two

Public Authority Complaints Determined 1994 -1995

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Aboriginal Land Council	0	0	0	1	0	0	2	0	0	0	0	0	0	0	3
Albury-Wodonga Development Corporation	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Ambulance Service of NSW	1	0	0	0	1	0	0	0	0	1	0	0	0	0	3
Anti-discrimination Board	0	0	0	1	2	0	2	1	0	0	0	0	0	0	6
Attorney Generals Department	4	1	0	1	0	0	2	0	0	1	0	0	0	0	9
Australasian Correctional Management	**0**	**1**	**0**	**3**	**0**	**0**	**13**	**3**	**2**	**5**	**0**	**0**	**0**	**0**	**27**
Australian Museum	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Board of Studies	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Broken Hill Water Board	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Building Services Corporation	**0**	**1**	**2**	**3**	**4**	**0**	**9**	**1**	**0**	**3**	**0**	**0**	**0**	**1**	**24**
Bush Fire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Business & Regional Development, Dept of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Central West Electricity	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Charles Sturt University	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Chief Secretarys Department	0	0	0	0	1	0	1	0	0	1	0	0	0	0	3
City West Development Corporation	0	1	0	0	0	0	0	0	0	1	0	0	0	0	2
Commercial Services Group	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Community Corrections Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Community Services Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Community Services, Department of	**44**	**0**	**0**	**1**	**0**	**0**	**1**	**1**	**1**	**0**	**0**	**0**	**0**	**0**	**48**
Conservation and Land Management, Dept of	**1**	**1**	**1**	**3**	**1**	**0**	**12**	**2**	**0**	**4**	**0**	**0**	**0**	**1**	**26**
Consumer Affairs, Department of	**2**	**0**	**1**	**5**	**3**	**0**	**5**	**1**	**1**	**1**	**0**	**0**	**0**	**0**	**19**

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Consumer Claims Tribunal	4	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Conveyancers Licensing Committee	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Corrective Services, Department of	**8**	**6**	**5**	**57**	**12**	**3**	**211**	**30**	**6**	**49**	**0**	**0**	**0**	**0**	**387**
Courts Administration, Department of	**17**	**0**	**2**	**0**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**21**
Department for Women	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Department of Land and Water Conservation	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Department of Urban Affairs and Planning	1	1	0	3	0	0	0	0	0	2	0	0	0	0	7
Environment Protection Authority	**1**	**0**	**0**	**1**	**0**	**0**	**5**	**1**	**0**	**4**	**0**	**0**	**0**	**0**	**12**
Family and Community Services Department	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Fish Marketing Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Geographical Names Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Governor of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Guardianship Board	2	0	0	0	0	0	1	0	0	0	0	0	0	0	3
Harness Racing Authority	0	0	0	0	0	0	0	0	0	1	1	1	0	0	3
Health Care Complaints Commission	**2**	**0**	**0**	**2**	**1**	**0**	**5**	**1**	**0**	**2**	**0**	**0**	**0**	**0**	**13**
Health Department	**8**	**3**	**10**	**10**	**11**	**0**	**6**	**4**	**1**	**3**	**0**	**0**	**0**	**0**	**56**
Health Department (Corrections Health)	**0**	**1**	**3**	**8**	**5**	**0**	**17**	**2**	**1**	**1**	**0**	**0**	**0**	**0**	**38**
Heritage Council of NSW	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Historic Houses Trust of NSW	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Home Care Service of NSW	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Home Purchase Assistance Authority	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Homefund Commissioner	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Housing, Department of	**0**	**2**	**2**	**7**	**8**	**1**	**18**	**4**	**0**	**13**	**1**	**0**	**0**	**0**	**56**
Hunter Catchment Management Trust	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hunter Water Corporation	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
I.C.A.C.	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Illawarra Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Illawarra Electricity	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Industrial Relations, Dept of	0	0	0	1	2	0	1	2	0	2	0	0	0	0	8
Juvenile Justice, Department of	**4**	**0**	**0**	**0**	**1**	**0**	**9**	**6**	**0**	**0**	**0**	**0**	**0**	**0**	**20**
Land and Water Conservation	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Land Titles Office	0	1	0	0	0	0	5	0	0	0	0	0	0	0	6
Landcom	0	0	0	0	1	0	2	0	0	1	0	0	0	0	4
Legal Aid Commission of NSW	**2**	**0**	**6**	**2**	**4**	**1**	**4**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**21**
Legal Practitioners Admission Board	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Local Government, Department of	1	1	0	2	0	0	3	0	0	0	0	0	0	0	7
Lord Howe Island Board	0	0	0	1	0	0	0	1	0	0	0	0	0	0	2
Luna Park Trust	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Macquarie University	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Maritime Services Board	0	0	0	1	1	0	1	2	0	2	0	0	0	0	7
Meat Industry Authority	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Medical Board	0	0	0	1	0	0	2	0	0	0	0	0	0	0	3
Mental Health Review Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Mineral Resources, Department of	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Minister for the Arts, Office of	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Motor Vehicle Repair Disputes Committee	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2
Murray River Electricity	0	0	0	1	0	0	2	0	0	0	0	0	0	0	3
National Parks and Wildlife Service	1	1	1	0	0	0	3	2	0	1	0	0	0	0	9
Northern Riverina County Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Northern Sydney Area															

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Health Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Northern Rivers Electricity	0	0	0	0	1	0	1	0	0	0	0	0	0	0	2
NSW Agriculture	0	0	0	0	0	0	4	0	0	0	0	0	0	0	4
NSW Fisheries	**0**	**0**	**0**	**0**	**3**	**0**	**1**	**2**	**0**	**3**	**0**	**0**	**0**	**1**	**10**
NSW Lotteries	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Nurses Registration Board	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Offenders Review Board	1	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Office of State Revenue	**0**	**0**	**1**	**1**	**1**	**0**	**5**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**10**
Office of the Protective Commissioner	1	0	0	1	0	0	2	0	0	0	0	0	0	0	4
Orange Local Aboriginal Land Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Pacific Power	1	0	0	0	0	0	1	0	0	1	0	0	0	0	3
Premiers Department	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Prospect Electricity	0	0	0	2	1	0	0	0	0	0	0	0	0	0	3
Public Prosecutions, Office of the Director of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Public Trustee	4	0	0	0	0	0	5	0	0	0	0	0	0	0	9
Public Works and Services	1	0	0	0	1	0	0	0	1	2	0	0	0	0	5
Real Estate Services Council	1	1	0	0	0	0	0	0	0	2	0	0	0	0	4
Registry of Births, Deaths and Marriages	0	0	0	1	1	0	0	0	0	1	0	0	0	0	3
Residential Tenancies Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	**0**	**2**	**3**	**10**	**25**	**0**	**19**	**4**	**0**	**11**	**0**	**0**	**0**	**0**	**74**
Rural Assistance Authority	0	0	0	0	0	0	1	0	0	1	0	0	0	0	2
Rural Lands Protection Boards	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2
School Education, Department of	**19**	**1**	**1**	**5**	**9**	**0**	**7**	**2**	**1**	**6**	**0**	**0**	**0**	**1**	**52**
Sheriffs Office	8	0	0	0	0	0	0	0	0	0	0	0	0	0	8
Shortland Electricity	0	0	0	1	0	0	2	0	0	0	0	0	0	0	3
Southern Cross University	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Southern Sydney Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Southern Tablelands Electricity	0	0	0	0	1	0	1	0	0	0	0	0	0	0	2
Southwest Electricity	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Authorities Superannuation Board	**0**	**0**	**0**	**2**	**0**	**0**	**2**	**0**	**0**	**6**	**0**	**0**	**0**	**0**	**10**
State Electoral Office	0	0	0	1	1	0	2	0	0	1	0	0	0	0	5

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
State Emergency Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Forests	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
State Rail Authority	**4**	**0**	**2**	**6**	**8**	**0**	**6**	**1**	**0**	**8**	**0**	**1**	**0**	**0**	**36**
State Superannuation Investment & Mgment Corp.	0	0	0	0	0	0	4	0	0	0	0	0	0	0	4
State Transit Authority	1	0	0	0	2	0	2	0	0	0	0	0	0	0	5
Strata Titles Commissioners Office	0	0	0	0	1	0	0	0	0	1	0	0	0	0	2
Sydney Cove Authority	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Sydney Electricity	**0**	**0**	**0**	**0**	**3**	**0**	**14**	**0**	**0**	**5**	**0**	**0**	**0**	**0**	**22**
Sydney Water	**1**	**0**	**1**	**3**	**5**	**0**	**15**	**1**	**0**	**6**	**0**	**0**	**0**	**0**	**32**
Technical & Further Education Commission	**3**	**0**	**2**	**2**	**2**	**0**	**3**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**14**
Totalizator Agency Board	0	1	0	1	1	0	1	0	0	0	0	0	0	0	4
Transport, Department of	**0**	**0**	**1**	**2**	**0**	**0**	**5**	**2**	**0**	**1**	**0**	**0**	**0**	**0**	**11**
Universities Admissions Centre	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
University of New England	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
University of NSW	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
University of Sydney	1	0	0	1	0	0	1	2	0	0	0	0	0	0	5
University of Technology, Sydney	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
University of Wollongong	1	0	0	0	0	0	1	0	0	1	0	0	0	0	3
Valuer Generals Office	0	0	3	1	0	0	1	0	0	2	0	0	0	0	7
Water Resources, Department of	0	0	0	0	3	0	4	0	0	1	0	0	0	0	8
Workcover Authority	0	0	0	1	0	0	5	0	0	2	0	0	0	0	8
Zoological Parks Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Non jurisdiction	**358**	**0**	**0**	**2**	**1**	**0**	**6**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**367**

Appendix three

Freedom of Information Complaints Determined 1994 -1995

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Albury City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Aboriginal Land Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Anti-Discrimination Board	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2
Attorney Generals Department	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Australasian Correctional Management (Junee)	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Botany Council	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Burwood Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Byron Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Cabonne Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Campbelltown City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Cessnock City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Commercial Services Group	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2
Community Services, Department of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Concord Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Corrective Services, Department of	1	0	0	0	0	0	0	2	0	1	0	0	0	0	4
Environment Protection Authority	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
Gosford City Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Hastings Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Health Department	1	0	0	0	0	0	0	0	0	7	0	0	0	0	8
Health Department (Corrections Health)	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Homefund Commissioner	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Housing, Department of	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Industrial Relations, Dept of	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2
Ku-Ring-Gai Council	1	0	0	0	0	0	0	0	0	1	0	0	0	0	2
Kyogle Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Lachlan Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Lake Macquarie City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Landcom	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Liverpool City Council	2	0	0	0	0	0	0	0	0	0	1	0	0	0	3

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Lord Howe Island Board	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Manly Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Maritime Services Board	0	0	0	0	0	0	0	2	0	1	0	0	0	0	3
Mineral Resources, Department of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Moree Plains Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
National Parks and Wildlife Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Northern Sydney Area Health Service	1	0	0	0	0	0	0	0	0	1	0	0	0	0	2
NSW Agriculture	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Pacific Power	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Parramatta City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Pittwater Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Police Service	0	0	0	0	0	0	1	0	0	3	0	0	0	0	4
Premiers Department	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Public Works	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2
Roads and Traffic Authority	0	0	0	0	0	0	1	2	0	1	0	0	0	0	4
Rural Lands Protection Boards	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
School Education, Department of	**2**	**0**	**0**	**0**	**0**	**0**	**2**	**6**	**0**	**4**	**0**	**0**	**0**	**0**	**14**
Shellharbour Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Shoalhaven City Council	0	0	0	0	0	0	0	2	0	1	0	0	0	1	4
Sport Recreation and Racing, Department of	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
State Forests	0	0	0	0	0	0	0	1	0	0	0	0	0	2	3
State Rail Authority	0	1	0	0	0	0	0	2	0	1	0	0	0	0	4
Strathfield Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Sydney Water	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
University of New England	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Waste Recycling and Processing Service	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Workcover Authority	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Nil	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2

Appendix four

Summary of non-police complaints determined 1994 -1995

Public Authority	Assessment only						Preliminary enquiries only				Investigation				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Departments and statutory authorities	154	19	45	110	127	2	253	55	7	112	2	4	0	3	893
Local government	13	19	50	103	67	5	251	29	7	91	4	1	0	13	653
Prisons	8	7	5	60	12	3	224	33	8	54	0	0	0	0	414
Freedom of information	18	2	2	2	0	0	9	31	0	34	4	2	0	4	108
Bodies outside jurisdiction	358	0	0	0	0	0	0	0	0	0	0	0	0	0	358
Total	551	47	102	275	206	10	737	148	22	291	10	7	0	20	2426
														+ current as at 30.6.95	509
														- current as at 30.6.94	326
														Total received for year ended 30.6.95	2609

Appendix five

Publications list

This is only a list of the Ombudsman's publicly available reports. Most of the Ombudsman's reports are not available to the public. The Ombudsman Act prevents us from releasing any information relating to an investigation unless it has been tabled in parliament.

Special reports to parliament

All special reports are listed under the following headings:

- Local Government
- Freedom of Information
- Ombudsman
- Public Authorities
- Police
- Prisons

Reports are placed in chronological order, and some are listed under more than one heading.

Local Government

27.1.1995	Good Conduct and Administrative Practice
4.5.1994	Hawkesbury City Council's conduct relating to Orange Grove Mall, Richmond.
25.2.1993	Ombudsman's Report on the Local Government and Community Housing Program.
4.6.1990	Soliciting of donations to a council project from developers with proposals before the Council for determination. (Baulkham Hills Shire Council)
19.3.1990	Failure of Ryde Municipal Council to implement Ombudsman's recommendations that it adopt a policy notifying owners of adjoining properties of building applications. AND Concerning amendments 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.
31.3.1989	Inaccurate media account concerning an investigation of Ashfield Municipal Council.
29.7.1988	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.
31.5. 1988	Report concerning Bellingen Shire Council and failure to implement recommendations.
31.5.1988	Report concerning the Council of the City of Lake Macquarie's failure to implement recommendations regarding unreasonable levy of rates.

9.11.1987	Failure to act on recommendations - Randwick Municipal Council. (Leonard)
8.5.1987	Report on Mulwaree Shire Council's public liability claims procedures where liability in respect of claims has been denied. (2 reports)
14.11.1986	Report on failure of Tweed Shire Council to regulate activities of a quarry.
28.4.1986	Report concerning council employees - whether Public Authority within Ombudsman Act.
17.4.1986	Report on failure of Department of Local Government to properly investigate a complaint.
14.4.1986	Report concerning Mulwaree Shire Council failure to give opportunity to make submissions.
11.4.1985	Report concerning inquiries into complaints against Eurobodalla Shire Council. (Hatton, MP)
11.4.1985	Report concerning Sydney City Council and action concerning lands known as the 'Gateway Site'.
1.4.1985	Report concerning the need to amend the Ombudsman's Act to make clear that local council employees are within the definition of 'Public Authority' under Section 5(1).
25.3.1985	Report concerning Mrs B Reardon and Mudgee Shire Council and water supply.
29.10.1984	Report concerning Hurstville Municipal Council and failure to prevent alienation of public land.
4.5.1984	Report concerning Mr D Roberts and North Sydney Municipal Council.
1.5.1984	Report concerning Merriwa Shire Council and denial of liability.
1.5.1984	Report concerning Randwick Municipal Council and processing of claims.
23.11.1983	Report concerning Alderman B Antcliff and other and the Council of the City of Sydney.
21.2.1979	Report concerning Inverell Municipal Council. (Bailey)
24.8.1977	Report concerning the destruction of trees by Lismore City Council.
22.8.1977	Report concerning the resumption of land by Colo Shire Council. (Bosanquet)

Freedom of Information

27.1.1995	Freedom of Information - the way ahead.
Nov 1994	Freedom of Information Annual Report 1993-1994 (Includes the *Ombudsman's FOI Policies and Guidelines*)
17.3.1994	Proposed amendment to the Freedom of Information Act 1989.
23.5.1990	Report concerning the operation of the Freedom of Information Act 1989 and the functions of the Ombudsman.
26.9.1984	Report concerning the GIO and the failure to reply to a reasonable request for information.

Ombudsman

18.7.1991	Report on the role of the Ombudsman in the management of complaints about police.
21.6.1991	The effective functioning of the Office of the Ombudsman.
16.5.1991	Section 31 Report: Public interest in Releasing the Ombudsman's Report on Operation Sue (Redfern Raid).

2.10.1990	Appointment of an Assistant Ombudsman.
19.7.1990	Report concerning the Independence and Accountability of the Ombudsman.
23.5.1990	Report concerning the operation of the Freedom of Information Act 1989 and the functions of the Ombudsman.
18.8.1989	Request for urgent amendment to the Ombudsman Act to enable the Ombudsman to delegate to the Deputy or Assistant Ombudsman a function conferred by S19(2) of the Ombudsman Act.
12.8.1988	Misleading and inaccurate newspaper article alleging that the Ombudsman is investigating Mr J Hatton, MP.
10.9.1987	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.
10.9.1987	Proposed amendment to the Ombudsman Act to limit application of Item 12, Schedule 1.
13.10.1986	Report on need to amend secrecy provisions.
28.4.1986	Report concerning council employees - whether Public Authority within Ombudsman Act.
24.4.1986	Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged misconduct.
1.4.1985	Report concerning the need to amend the Ombudsman Act to make clear that Local Council Employees are within he definition of 'Public Authority' under Section 5(1).
1.2.1985	Supplementary Report on Secrecy Provisions of the Ombudsman Act.
17.9.1984	Report concerning the Secrecy Provisions and the need to amend the Ombudsman Act to introduce S.35A of the Commonwealth Act.
4.3.1982	Report on the effectiveness of the role of the Ombudsman in respect of complaints against police.

Public Authorities

3.7.1995	Psychologists Registration Board
13.12.1993	Report of the Investigation into unnecessary and excessive delays in the handling of complaints by the Complaints Unit of the Department of Health.
12.8.1993	Report on the Department of Community Services and the Brougham Residential Unit.
13.10.1993	The Neary / SRA report.
9.11.1992	Report on Toomelah.
29.11.1988	Failure to obtain independent legal advice regarding departmental charges (re: Department of Agriculture).
31.8.1988	Failure of the Darling Harbour Authority to fully comply with recommendations.
31.5.1988	Report concerning the Commissioner of Motor Transport to comply with recommendations re: stolen motor vehicles.
8.5.1987	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.

12.5.1987	Report concerning the Board of Optometrical Registration refusal to give reasons for any decision to reject an application.
14.11.1986	Report concerning the failure of the Builders Licensing Board to inform of unavailability of insurance benefits and to give reasons for denial of insurance claim.
11.11.1986	Report on ex gratia payments by NSW public authorities.
11.11.1986	Report on Port kembla Coal Loader - Maritime Services Board.
16.10.1986	Report concerning the board of Senior School Studies refusal to release marks to student who sat for leaving and HSC exams prior to 1978.
28.4.1986	Report on delay in increasing rate of statutory interest on outstanding amounts of compensation.
30.10.1985	Report on Sydney Cove redevelopment Authority failure to comply with EP & A Act in giving consent for redevelopment - Grosvenor Place.
22.7.1985	Statement in reply to Minister for Education, Hon RM Cavalier MP, re: Panania North Public School.
13.6.1985	Report on NSW Department of Health on procedural deficiencies in the laboratory of the Division of Forensic Medicine.
11.4.1985	Report concerning ex-gratia payments.
11.4.1985	Report on complaint by Mrs R Clayfield MP obo Wilson's Creek Action Group about the Forestry Commission of NSW failure to prepare EIS.
26.9.1984	Report concerning the GIO and the failure to reply to a reasonable request for information.
4.5.1984	Report concerning Mr HSS Willis and the Department of Environment and Planning.
1.5.1984	Report concerning the decision to sell parts of the Hermitage Reserve.
1.5.1984	Report concerning Mr IK Briggs and the Contracts Control Board.
1.5.1984	Report concerning citizens of Newtown and the Department of Environment and Planning.
1.5.1984	Report concerning MR S Jones MP obo Mrs WJ Smith and the Department of Lands and the Land Commission.
18.11.1983	Report concerning Dr M Wainberg, Dubbo Base Hospital and the Department of Health.
18.10.1983	Report concerning Mr RC Osborne and the Department of Health.
29.11.1982	Report on inadequate compensation of land in open space, corridor and similar zones - Department of Environment and Planning.

Police

27.1.1995	Raymond Denning - withdrawal from the Witness Protection Scheme.
25.1.1995	Race Relations and Our Police. (Free)
24.1.1995	Police Internal Investigations - poor quality police investigations into complaints of police misconduct.
19.12.1994	Police conciliation - toward progress.
14.4.1994	Improper access and use of Confidential Information by police.
17.3.1994	Urgent amendments to Section 121 of the Police Service Act.

13.12.1993	Urgent amendment to the Police Service Act.
25.6.1993	Ombudsman's report on allegations of police bias against Asian students.
25.1.1993	Inquiry into the circumstances surrounding the injuries suffered by Angus Rigg in police custody and into the subsequent police investigations.
29.9.1992	Complaints by Mrs Carolyn Rigg about the conduct of the NSW Police Service.
6.12.1991	Report concerning information sought in Questions on Notice by Mr J Hatton, MP (tabled 11.12.1991).
18.7.1991	Report on the role of the Ombudsman in the management of complaints against police.
16.5.1991	Section 31 Report: Public interest in Releasing the Ombudsman's Report on Operation Sue (Redfern Raid).
4.4.1990	Failure of the Commissioner of Police to take satisfactory actions in relation to previous recommendations of the Ombudsman concerning a review of the Special Weapons and Operations Squad procedures and instructions.
24.1.1990	Failure to obtain evidence adequate for the successful prosecution of a police officer charged with assault occasioning actual bodily harm.
1.5.1989	Inadequate training and procedures of the Special Weapons Operations Unit. (Blackshaw)
31.3.1989	Concerning a decision made on the basis of inadequate legal advice provided to the Commissioner of Police. (Hunt)
10.11.1988	Failure to obtain legal advice regarding departmental charges (anonymous and Love).
29.6.1988	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.
16.5.1988	Special report to Parliament on proposals to amend the Police Regulations (Allegations of Misconduct) Act, 1978.
10.11.1987	Decision to consent to discontinuation of investigation of complaint concerning the conduct of the Assistant Commissioner (Review), Mr RC Shepherd.
1.9.1987	Failure to comply with recommendations contained in a final report under S.28 of the Police Regulation (Allegations of Misconduct) Act. (Power)
10.9.1987	Report concerning proceedings conducted in the Police Tribunal arising from investigations conducted by the Ombudsman. (Parker)
4.9.1987	Failure of Police Department to implement Ombudsman's recommendations arising from his reinvestigation of 'Club 80' complaint.
3.9.1987	Failure to implement Ombudsman's recommendations re: arrest and police 'verbal'. (Matthews)
1.9.1987	Failure of the 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.
31.8.1987	Failure to comply with recommendations contained in a final report under S.28 of the Police Regulation (Allegations of Misconduct) Act. (Marashlian)
12.8.1987	Report concerning the failure of 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.

4.8.1987	Special Report to Parliament on the first three years of the New Police Complaints System.
8.5.1987	Report concerning incorrect imprisonment for a fine already paid and inadequate initial investigation by police.
27.4.1987	Report concerning allegations appearing in various recent media reports and statements by the Minister for Police that the police complaint system is being abused.
25.3.1987	Report concerning Bogdan Ostaszewski and the response of the Police Department to the report of the Ombudsman (refer to report 1.4.1985).
27.10.1986	Report on delay in investigation of a complaint by Paul Mortimer.
24.4.1986	Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged misconduct.
7.4.1986	Report under S.31 & 32. Complaints by Miles and McKinnon.
7.4.1986	Report re: Miss WS Machin MP obo Mr P Steward about delay in investigating complaint that police assaulted blind people.
1.4.1985	Report concerning injuries sustained by Mr Bogdan Ostaszewski.
25.9.1984	Report concerning complaints against police - Ainsworth and Vibert.
25.9.1984	Report concerning Administrative Procedures in the Traffic Branch of the NSW Police Department.
	Report on the affairs of the Parramatta Police Citizens Boys Club. (Azzopardi)
18.3.1983	Report on complaint against police by Mr EL Nam.
18.3.1983	Report on complaint against police by the Aboriginal Legal Service obo May, Donn, Boyd & Bailey.
18.3.1983	Report on complaint against police by Neil Andrews, Solicitor, Aboriginal Legal Service.
18.3.1983	Report in complaint against police by Mr James Matheson.
8.3.1983	Report concerning complaint against police by CAMP Lobby Ltd.
14.9.1982	Report on the limitations re: handling complaints against police - Blank Search Warrants.
11.8.1982	Report on the limitations re: handling complaints against police - Tow Truck Racket.
4.3.1982	Report on the effectiveness of the Office of the Ombudsman in respect of complaints against police.

Prisons

4.5.1992	Report concerning the Prisons (segregation) Amendment Bill 1992.
2.12.1991	Failure of the former Department of Family and Community Services to issue instruction to Superintendents and staff on the requirements of the Children (Detention Centres) Act and its regulations, in terms of minor and serious behaviour and, in particular, instruction on dealing with assaults on detainees by detainees.
2.12.1991	Public interest in releasing the Ombudsman's report on the failure by Officers of the then Department of Family and Community Services to respond to allegations of assault of a detainee in a detention centre.

17.4.1986	Report on failure of Department of Corrective Services to accept Ombudsman's recommendations for payment of compensation for illegal detention.
14.4.1986	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.
25.3.1985	Report on the Corrective Service Commission and the treatment and rights of protection prisoners. (Own Motion)
24.6.1982	Report concerning cell searches at Parramatta gaol, January, 1982.
9.6.1982	Report on the assault of Maria Jason at Mulawa Training and Detention Centre.
29.11.1978	Report concerning the investigation of certain complaints made by prisoners by the Royal Commission into NSW Prisons.

Annual Reports

Avaialable from 1975 to 1995

Manuals

1995	Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils $30.00
1995	Ombudsman's Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials $50.00
1995	Effective Complaints Handling Guidelines
1994	Ombudsman's FOI Policies and Guidelines $30.00
1994	Electorate Officers Information Kit

Brochures

NSW Ombudsman Information Sheets:

1. General.

2. Problems with Police

3. Prisoners and Access

4. Trouble with Council?

5. Guarantee of Service.

'Some tips on making a complaint.'

'Have you considered mediation?'

'NSW Ombudsman - Your Watchdog', printed in:

Arabic, Chinese, Croatian, Greek, Italian, Serbian, Spanish, Turkish and Vietnamese.

Appendix six

NSW Ombudsman - Disability Strategic Plan Annual Report for the period ended 30 June 1995

In April, 1995 the Ombudsman submitted to the Office on Disability the Disability Strategic Plan for her Office. This plan is required under section 9 of the Disability Services Act and its aim is to identify and implement initiatives that will enhance service delivery to people with disabilities.

The following is a report on the implementation of the plan. It should be noted that the plan was finalised in March/April, 1995 and a number of key initiatives were subject to funding in the 1995/96 financial year. Initial advice was that the Office would receive additional funding to allow some of its access and awareness program including the Disabilty Strategic Plan to be implemented. However, the actual budget received did not have any increase in real terms and accordingly the Disability Strategic Plan and all other access and awareness initiatives developed by the Ombudsman were reviewed. A revised Access and Awareness Plan was submitted to the Joint Parliamentary Committee on the Office of the Ombudsman for discussion in early October, 1995.

The revised plan forms the basis of this report. A copy of the revised Disability Strategic Plan has been forwarded to the Ageing and Disability Department. The following reporting format meets the requirements of the Ageing and Disability Department.

Report format 1 Process items report

Process item	*Comment*
1. Stated commitment to disability planning by management which is communicated to staff.	The Ombudsman outlined her commitment to people with a Disability in the Disability Strategic Plan forwarded to the then Office on Disability. This plan has been made available to staff and its implementation was discussed by the Access and Awareness Committee however, due to funding problems, the Ombudsman has had to revise her access and awareness program which includes the Disability Strategic Plan. This review was completed in October, 1995. The revised plan will be circulated to staff. The Disability Strategic Plan will be distributed to new staff at induction.

Process item	*Comment*
2. Establish and implement planning structure and processes with customer representation.	Initial contact has been made with a number of community organisations in the development of the initial Disability Strategic Plan. The continuation and broadening of this consultation process requires the stretched resources of this Office to be diverted from the continually increasing complaint levels. Additional funding for access and awareness initiatives would have relieved the pressures on the Office however, as no additional funding was provided initiatives such as customer councils cannot be established.
3. Establish staff disability awareness process/program.	All staff will be informed of the Office's Disability Strategic Plan at induction. In addition, information brochures etc obtained from peak bodies will be circulated to staff on a regular basis.
4. Develop and refine data base - customer and staff.	Statistics on staff have been collected (on a voluntary basis) for EEO reporting purposes for some time. The Office has a 100% reponse rate. ODEOPE has advised that its reporting requirements are changing as a consequence of changes to certain definitions (including disability). The Office will be resurveying staff in November, 1995 to be able to report in the new format. The maintenance of a database on clients was discussed by the Access and Awareness committee. To date, some limited information is being collected on clients however, a proposal was being developed that would expand the collection of information.
5. Review representation of people with a disability in consultation processes and advisory and policy structures.	While the Ombudsman recognises the value of customer councils, her limited rescources makes it impossible to for her to establish and maintain such a council.

Process item	*Comment*
6. Develop accessible and appropriate complaints and appeals mechanism for people with a disability.	The Office has an internal complaints mechanism that although not specifically tailored to people with a disability: it does not discriminate against this group. In fact, we have developed guidelines on internal complaints handling mechnaism that have been circulated to other agencies and have been endorsed by the Premier in a recent Premiers Memorandum.
7. Initiate evaluation and review process with customer representation. Link with broader standards and Quality Assurance process.	This plan will be incorporated into the Office's Corporate Planning Cycle and will be evaluated as part of our corporate performance. Therefore, formal evaluation will be by the management committee. We also plan to evaluate the program through general client surveys conducted at least every two years.

Report format 2 Outcomes report

Key Result Area 1	**To ensure access for people with a disability to services provided by the NSW Ombudsman**
Strategy	Review building access for people who have a disability
Action	• Review building access for people with a sight or physical impairment and make recommendations to building management for changes to improve access if required • Ensure all country outreach venues are accessible to people who have a physical disability
Target	• Review of building accessibility and recommendations put to building management by end April, 1995. • All venues for country outreach visits are accessible for people with a physical disability
Responsibility	Manager Administration and Public Relations Officer
Status	As the Office leases space, the issue of accessibiltiy etc must be referred to the owners' of the building. Since the Plan was submitted, the ownership of the building has changed hands. A letter will be forwarded to the new building management seeking comments on accessibility to this building and what action, if any, they intend to take to improve access.

Key Result Area 1	**To ensure access for people with a disability to services provided by the NSW Ombudsman**
Status cont'	With regards to our outreach program, this program has been reduced due to funding problems. However, on those occassions that staff undertake outreach activities, this strategy will continue to be carried out.
Comment	The Ombudsman can only recommend to building management that accessibility issues be reviewed and improvements made where needed. If improvements are not made, the Office will take this into consideration when renegotiating future leases.

Key Result Area 1	**To ensure access for people with a disability to services provided by the NSW Ombudsman**
Strategy	Review Access for people with a hearing impairment
Action	• Purchase a TTY telephone and train staff in its use • Promote the telephone by including the number on stationery brouchers, forms and advertisements • Write to peak organisations advising them of the telephone number • Advertise the telephone number in peak organisation newsletters and other appropriate media • Continue advertising country outreach visits in regional and local press
Target	• TTY installed and training completed by September, 1995 • Publicity program to be completed by December, 1995
Responsibility	Manager Administration and Public Relations Officer
Status	Funds were allocated in our internal budget for the TTY phone. Installation is currently being arranged. Letterhead and brouchers will be amended at the next reprint. All advertisements placed will include the TTY number.
Comment	No issues or problems envisaged

Key Result Area 2	To ensure opportunities for work and career development
Strategy	Provide appropriate work place technology and equipment for staff who have a disability
Action	• Assess the equipment needs of new staff who have a disability • Undertake a survey of existing staff to ensure current staff with a disability have access to required technology • Ensure appropriate staff receive available literature on equipment available to assist people who have a disability • Assess the need of special equipment for new staff • Provide funds in the annual budget for the purchase of special equipment for staff who have a disability
Target	• Staff with a disability will have specialised equipment available to assist in performing their duties. • Funds will be available for purchasing appropriate equipment for staff who have a disability.
Responsibility	Manager Administration
Status	The Office has been committed to the provision of appropriate equipment to all staff subject, of course, to budgetary constraints. We have provided one staff member who has a hearing impairment with a special telephone receiver. However, to ensure that all staff with a disability have appropriate equipment, the survey noted above will be conducted in late 1995.
Comment	The biggest problem facing the Office is the cost involved in purchasing special equipment. If need be, the Office will seek funds from appropriate bodies to enable it to purchase any needed equipment.

Key Result Area 2	To ensure opportunities for work and career development
Strategy	Review the principle of reasonable adjustment, as it applies to the workforce, including position descriptions for new and existing staff
Action	• Review existing internal policies on employment that will impact on people who have a disability • Ensure the principle of reasonable adjustment is included in these policies • Provide information for managers and supervisors to raise awareness of reasonable adjustment • Review through discussion with staff who have a disabilty, the implementation of reasonable adjustment
Target	Improvements in individual productivity as positions are tailored to special needs (to be assessed under performance system)
Responsibility	Manager Administration
Status	This is being done on a case by case basis. A number of staff have had their duties reviewed in accordance with the principles of reasonable adjustment.
Comment	There has not been any difficulty to date in modifying position descriptions of staff under the reasonable adjustment principle. It is not envisaged that any difficulty will occur in the future.

Key Result Area 2	To ensure opportunities for work and career development
Strategy	Provide opportunities for the employment and training of people who have a disability
Action	• Identification of positions that could be filled by a person with a disability and amend position descriptions as required • Contact peak bodies which assist people with a disability to find employment when appropriate positions become available • Investigate opportunities for temporary employment or work experience • Develop and monitor career development plans for staff with a disability in line with the office's performance management system
Target	Increase over time the number of staff who have a disability
Responsibility	Manager Administration, Managers and supervisors
Status	This strategy has not been initiated as yet although the Office has explored participating in various training programs.
Comment	As with the implementation of any of the strategies in this plan, the Office's lack of of both financial and human resources will affect the implementation of this strategy.

Index of statutory requirements

Note: *bc = back cover*
ibc = inside back cover

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Need help?

If you think a NSW public authority, public servant or police officer has acted in a wrong, unfair or unreasonable way you can tell the NSW Ombudsman.

When to complain
Unless it is a serious police matter 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 NSW Ombudsman does not charge any fees to resolve a complaint.

How long does it take?
The resolution 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 dealt with?
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 on free call 1800 451 524 for people outside the Sydney area.