Clive Radford

NSW Ombudsman

ANNUAL REPORT

1995-1996

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.

Photographs on the front cover and throughout the annual report, unless otherwise stated, were taken by Genevieve Broomham.

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NSW Ombudsman

ANNUAL REPORT

1995-1996

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 21st annual report and contains an account of our work for the twelve months ending 30 June 1996.

The report also includes an account of the Ombudsman's functions under the *Police Service Act* 1990 and material required in terms of the *Annual Reports (Departments) Act* 1985, the *Freedom of Information Act* 1989 and the *Disability Services Act*.

Developments and issues current at the time of writing (September 1996) 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.

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

IreneMoss AO
NSW Ombudsman
October 1996

NSW Ombudsman

for fairness, integrity and improved public administration

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OMBUDSMAN'S REPORT

INTRODUCTION

The past 12 months have been both demanding and rewarding. This is for two principal reasons. Firstly, the recommendations contained in the Interim Report of the Royal Commission acknowledged the important role we should continue to play in handling complaints about day-to-day policing issues. Secondly, after many years of rapidly increasing complaint numbers and static resource levels, the government has now provided additional funding.

The easing of our resource difficulties will enable the office to take further positive steps in the areas we have identified as requiring more attention:

- complaints about police from Aboriginal and Torres Strait Islander people;
- access and awareness among young people and people from culturally diverse backgrounds;
- formal investigations in the non-police area of our jurisdiction; and
- the "bedding" in of the new police complaints and misconduct system.

The next 12 months will offer challenge and opportunity and I intend to make the most of these opportunities. I extend my thanks and appreciation to my team for their support, dedication and professionalism.

POLICE COMPLAINTS SYSTEM

In my report last year I noted:

> *"The system in NSW for the oversight of the conduct of police is currently the subject of significant public debate and review by the Royal Commission into the Police Service and the Joint Parliamentary Committee on the Office of the Ombudsman ...* [and] *... 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."*

Since I made those remarks, the Royal Commission released its Interim Report and recommended a major overhaul to the oversight of police conduct. The Government reacted promptly to those recommendations and the system has been radically reformed with the passing of new legislation.

What has not changed is that the Ombudsman will continue to oversight the investigation of the bulk of police complaints. I am pleased the Government and Parliament recognised the need for citizens to have their complaints about day-to-day matters properly and effectively addressed.

Complaints about policing issues have continued to consume about two thirds of the resources of my office. The issues include allegations of unreasonable use of arrest and detention powers, unreasonable use of force, abusive behaviour, breaches of police rules and procedures, and failure to take action. These matters are important to the individuals concerned and to the overall standard of police conduct.

The bulk of our oversight work is done away from the media spotlight. This is because we are obliged by statute to do our work in the absence of the public. Only rarely do details of our work become public, for example public disclosure by complainants, special reports to Parliament and annual reports.

Notwithstanding the changes brought about by the Royal Commission, there are some things

IRENE MOSS AO - NSW OMBUDSMAN Irene became the first woman Ombudsman to be appointed in NSW in February 1995. Prior to that, she worked as a Magistrate for the NSW Government, the first Asian woman magistrate in the State. For eight years Irene was the Federal Race Discrimination Commissioner at the Human Rights and Equal Opportunity Commission (first woman Race Commissioner). During that time she chaired the National Inquiry into Racial Violence. Irene was a Senior Conciliation Officer for the Anti-Discrimination Board (NSW) from 1983 - 1986. Irene is currently on the Board of SBS. She was admitted as a Solicitor to the Supreme Courts of NSW and ACT in 1974 and to the High Court of Australia in 1975. In 1995 she was appointed an officer of the Order of Australia.

which remain unchanged. The numbers of police complaints continue to rise and the pattern of complaints has not changed in any significant way. It is this second issue that causes me great concern.

Police are still capable of generating huge numbers of complaints about broadly similar issues year after year. Why? At a time of unprecedented scrutiny of individual police and the Police Service in general, why are there record numbers of complaints against police? Unfortunately, the messages being sent by the complaints do not appear to be getting through to, or acted upon by, police officers in the frontline.

The Police Service has a golden opportunity to change itself for the better. It has a new Commissioner and is starting to work through the various management changes necessary. However, the Police Service must recognise that while it must reform itself with respect to the serious issues raised in the Royal Commission, it must also address the day-to-day policing issues which are the subject of so many complaints to this office. Whether the issue is one of corruption, serious misconduct or customer service, the origins of the problem are the same - abuse of power and a lack of professionalism and integrity. The Police Service must therefore approach complaints about day-to-day policing as an integral part of these management and reform processes.

My office will continue to work with the Police Service in their reform process. Ultimately it will be up to the management of the Police Service to come up with the programs and initiatives necessary and to ensure that they are implemented. The Police Service has a history of setting up committees and generating ideas, but then letting them die. This must not be allowed to continue.

PROTECTED DISCLOSURES

One of the newer areas of our work involves "whistleblowing". Since the *Protected Disclosures*

Act came into force on 1 March 1995, this office has put considerable effort into:

- developing guidelines to assist potential whistleblowers and public authorities;
- giving advice to potential whistleblowers and public officials;
- dealing with disclosures;
- dealing with complaints about the implementation of the Act by public authorities and officials.

The office made several major submissions to, and gave evidence before, the Joint Parliamentary Committee on the Office of the Ombudsman, which is carrying out a review of the *Protected Disclosures Act*.

The thrust of our submissions and evidence is that the protection of *bona fide* whistleblowers afforded by the Act has to be real and effective. In our view the Act alone, as currently drafted, provides insufficient protection for whistleblowers in practice. Therefore greater responsibility for implementation of the goals of the Act has to be assumed by management.

Various submissions and evidence to the Joint Parliamentary Committee supported the establishment of a Public Interest Disclosure Agency (PIDA) which would play a key role to ensure the proper implementation of the terms and spirit of the legislation. This office strongly supports the need for a body to perform this role. The NSW Ombudsman is in an ideal position to undertake that role, given that it is the general jurisdiction accountability body for the State, with over 20 years experience in dealing with complaints about the conduct of public officials and public authorities.

The Joint Parliamentary Committee has now tabled its report reviewing the operation of the *Protected Disclosures Act*. A brief summary of the Committee's recommendations has been set out at the end of the chapter on Protected Disclosures. I support the thrust of the report and its recommendations and await with interest the Government's decision in relation to the Committee's recommendations.

BUDGET

One of the highlights of the year was the increase to my budget of $660,000, earmarked by the Government for the following specific purposes:

- $400,000 for an Aboriginal Complaints Unit and three additional investigation officers in the Police Team;
- $200,000 for a Witness Protection Unit with two staff; and
- $60,000 for access and awareness for youth (per year for two years).

I am particularly pleased to report the establishment of the Aboriginal Complaints Unit within the Police Team. This resulted from one of the recommendations made in the Royal Commission's Interim Report. The unit is staffed by three investigation officers and the funding allows for members of the unit to get out to the various areas of the State where there are large indigenous communities. The establishment of the unit gives me great hope that the office will provide a better service to indigenous communities.

The passing of the *Witness Protection Act* created a whole new responsibility for my office. We are now the appeal body for applicants and participants in the witness protection program against decisions of the Commissioner of Police. Additionally, as the Act creates rights for protected witnesses, it also provides new grounds for complaints to be made to this office about the operation of the program.

The money earmarked for a Youth Liaison Officer will be used to develop and help implement a strategic plan for improving the service this office provides to young people.

In addition to the increase in funding, I am required to transfer $30,000 from the "corporate services" functions of my office to core business (ie complaint handling, investigation and reporting functions). This was in response to the Government's decision to reduce corporate service costs across the public sector. A thorough review of corporate service support within the office was undertaken to identify areas where cuts could be made. I am grateful that the Treasurer agreed that the identified $30,000 could be transferred to core work rather

Irene Moss with legal studies students from Melville High School, Kempsey

than returned to the Treasury. This decision reflects the improving relationship between my office and the NSW Treasury.

The majority of the funding increase was directed to the Police Team. However I believe the office as a whole will benefit and that this will be reflected in improved services to the public and a greater focus on the office directly investigating complaints of a serious or systemic nature, both in the police and non-police areas.

CHILDREN

Recently, there has been a perceptible push from some quarters for the establishment of an Ombudsman-like institution for youth affairs. The motivation for this push is a justified concern to address the special problems faced by young people with respect to accessing public services, their relationship with police and the justice system, and issues relating to their social and economic development.

Young people clearly have special needs which deserve to be recognised and met. Our new Youth Liaison Officer, funded for two years, will be responsible for the raising of awareness amongst young people of the services offered by my office, as well as undertaking campaigns to increase the level of knowledge about their rights with respect to public services. The Youth Liaison Officer will be active and involved in visiting schools, universities, TAFEs and juvenile justice centres. In tandem with these activities, I have determined to make youth issues a priority for the office's general activities in the coming year. Next year I hope to be able to report a significant increase in the range of issues affecting young people which the office has successfully addressed.

On the broader issue of the creation of a Youth or Children's Ombudsman or similar body, I clearly state my opposition to the idea. While I am not opposed to the provision of additional resources to meet a defined need, the creation of a specialist Ombudsman for children or youth which is separate from my office is likely to fragment existing expertise and jurisdictions and lead to duplication of resources and effort. The precedent could also increase pressure for other special need Ombudsmen. Where special needs arise for another watchdog, serious consideration should be given to that. However I am opposed to setting up another one where an existing watchdog could perform that role with additional support.

From a financial perspective, there are significant advantages in avoiding the establishment of any further specialist complaint-handling agencies, each with their own establishment costs and recurrent costs for things such as corporate services and information technology.

The major problem is the need for assistance to be provided to children and young people to enable them to properly access the services that are already available to and for them. I believe that existing agencies such as the Ombudsman, Community Services Commission, Anti-Discrimination Board and Heath Care Complaints Commission can be fine tuned to provide better services to children and young people.

The debate should therefore be framed in terms of how to improve access to existing services. A dedicated Youth or Children's Advocate is one method by which access could be improved. I endorse an approach that would see such an advocate commenting on wider policy issues and acting as an advocate both in particular and general cases rather than the advocate handling complaints. The complaint handling would be left

ESTABLISHMENT OR RECONSTITUTION OF WATCHDOG BODIES SINCE 1970

1996	•	Police Integrity Commission (PIC)
	•	Inspector of the PIC
	•	Privacy Commissioner * [formerly the Privacy Committee]
	•	Inspector General of the Department of Corrective Services*
1995	•	Department of Fair Trading [incorporating the former Building Services Corporation, Strata Titles Commissioner, Department of Consumer Affairs, Office of Real Estate Services]
1994	•	Legal Services Commission
	•	Health Care Complaints Commission (HCCC) [formerly the Health Complaints Unit of the Department of Health]
	•	Royal Commission into the Police Service
1993	•	Community Services Commission
1992	•	Casino Control Commission
	•	Environment Protection Authority [incorporating the former SPCC]
1991		
1990	•	Building Services Corporation [formerly the BLB]
1989	•	ICAC
1988		
1987	•	Judicial Commission
1986		
1985		
1984		
1983		
1982		
1981		
1980		
1979		
1978		
1977	•	Anti-Discrimination Board
1976	•	Department of Consumer Affairs
1975	•	NSW Ombudsman
	•	Privacy Committee
1974		
1973		
1972	•	Builders Licencing Board (BLB)
1971		
1970	•	State Pollution Control Commission (SPCC)

* foreshadowed

to the specialist investigating agencies. The advocate would liaise closely with such agencies both in terms of referring appropriate matters to them and also taking up any issues identified by them which are relevant to children. The separation of the advocacy function from complaint handling is vital. Complaint handling requires an impartial approach and the Advocate ought not be restricted in this manner. The Advocate ought to be free to pursue and lobby for policy changes and to represent young people in their dealings with other bodies.

The Legislative Council's Committee on Social Issues has released its report concerning the Inquiry into Children's Advocacy. I am supportive of the main issues addressed in the report and the Committee's recommendations.

PROLIFERATION OF `WATCHDOGS'

The Children's Ombudsman debate reflects the trend in NSW, particularly over the past decade, for the creation of new watchdog/accountability bodies to address problems that are identified or highlighted from time to time. Leaving aside the reconstitution of such bodies, as the table opposite indicates, the rate at which new bodies have been established has been increasing.

I fully accept that certain problems are clearly best addressed by the establishment of separate specialised agencies, and I support the establishment of specific purpose watchdog/accountability bodies where this is clearly the best option.

Further, the existing watchdog or accountability bodies are bodies which I support and with whom we have forged good working relationships. Therefore, my remarks about proliferation are not intended and should not be seen as directed towards those bodies.

A major difficulty with the further proliferation of watchdog/accountability bodies arises out of the fact that jurisdictions are seldom clear cut and discreet. The overlap in jurisdiction that results can lead to problems of duplication, conflict, matters *"falling between the cracks"*, not to mention over complexity and confusion for the public.

Where the establishment of a new body is not essential for the effective implementation of the required watchdog/accountability role, the better approach would be to use existing bodies by, for example:

- expanding jurisdiction (and funding) to cover the new role (eg the proposed Privacy Commissioner); or
- clarifying jurisdiction so as to redirect or better focus efforts (eg the proposed Inspector General of the Department of Corrective Services); or
- restructuring so that a body is better able to perform its intended role (eg the new Department of Fair Trading).

Additional benefits of empowering, refocusing or restructuring existing bodies over the establishment of new bodies include:

- reduced establishment costs due to the use of existing infrastructure; and
- reduced operating costs due to economies of scale and maximising use of existing corporate service resources.

CONTRACTING OUT

Increasingly, governments at all levels are contracting out their services and functions to the private sector. The relevance of this to the Ombudsman's office is that services which would have been previously scrutinised by this office will escape such scrutiny because the office does not have jurisdiction over the private sector.

This issue has been the subject of a discussion paper submitted by the Commonwealth Ombudsman to the Industry Commission.

It is important that where traditional public sector functions are contracted out, whoever takes over those functions should be subject to the same scrutiny in their services to the public as before.

In this regard I note that this office acquired jurisdiction over the Junee Correctional Centre when the Government entered into arrangements with the private sector for a private

sector company to run the prison. The Government, through legislation empowering the private sector to fulfil this role, ensured that this office would maintain its oversight role with respect to receiving and investigating complaints about the management of the private prison. The oversight of Junee Correctional Centre is no different to the office's normal jurisdiction over prisons. I believe this is appropriate.

Issues or criteria for consideration in the continuation of that scrutiny might involve following the public money trail. If the public funds the service, then that service provider should still be accountable to the public and the Parliament through the watchdog body which previously covered that service.

Another criterion involves the issue of monopoly of service in an area. The Government may forego servicing a function which was previously subject to scrutiny and allow, through contract or license or other means, a private body to develop and perform the service. Where that body is the only provider of that service, serious consideration should be given to ensuring continuity of accountability. While no public money is involved, clearly the function should still be regarded as a "public" function.

Certain industry groups have established mechanisms of self-regulation by way of specific industry Ombudsmen. These are funded by the industry and the Ombudsman answers to a council of participants from the industry concerned. A note of caution has to be sounded on the independence of such positions, although the establishment of industry Ombudsmen should be encouraging from the perspective of developing internal grievance or complaint mechanisms.

Unless the public sector has entirely abandoned all responsibility for the service or function, or there is no special power being used by the government to regulate the matter, then public accountability mechanisms should continue to exist.

The challenge posed by contracting out is whether, and to what extent, the private contractor ought to be held accountable to the public. I welcome a debate about the issue and look forward to participating in it.

FUTURE FOCUS

I have mentioned several "big picture" policy issues which need to be addressed over the next year or so. Notwithstanding these issues, I want to ensure that the office remains focused on one of our core functions - namely handling and investigating complaints. We are determined to achieve improvements in our service to the public. The specific measures that are being adopted to achieve this objective include:

- a further restructuring of the General Team to establish a group of four investigators who will focus on issues of considerable public importance;

- playing an active role in contributing to reforms of the Police Service including working cooperatively with the Police Integrity Commission to ensure that the recommendations of the Royal Commission bear fruit; and

- focusing the access and awareness activities of the office on specific disadvantaged groups (initially youth, indigenous people and people from culturally diverse backgrounds), although not to the exclusion of other disadvantaged groups which will progressively be the focus of attention in subsequent years.

We look forward to serving the NSW public this coming year with renewed vigour and once again I express my thanks to the dedicated team with whom I work.

Irene Moss AO
NSW OMBUDSMAN

NSW OMBUDSMAN
VITAL STATISTICS

Resources

Budget 95/96	$4.58 million
Funds attributed to police complaints	$2.48 million
Total funds allocated to NSW Ombudsman in the 21 years since establishment in 1974/75 (approx.)	$47 million
1995/96 budget of NSW Ombudsman for each public sector employee (assuming 386,000 such employees)	$11.87

Complaints

Formal written complaints received 1995/96:	
Police	5,336
Other	2,373
Total	7,709
Informal oral complaints received 1995/96	14,222
Complaints received since establishment in 1974/75:	
Formal	102,700
Informal	114,000+

Reports

'Wrong' conduct reports to public authorities and Ministers since 1974/75	2,000+
Reports to Parliament (approx.) (see Appendix Six)	155

Staff

Ombudsman	1
Deputy Ombudsman	1
Assistant Ombudsman	2
Investigation staff	51
Assistants to investigative staff	12
Inquiries officers	3
Publications/media staff	2
Human Resources, Accounts and Information Systems staff	9
Total	81

OVERVIEW 1995/96

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.

OUR FUNCTIONS

1. Dealing with complaints about the conduct of NSW public authorities, including NSW government departments, statutory authorities, councils, public officials and employees (*Ombudsman Act 1974*).

2. Regular visits to and inspections of gaols and juvenile justice institutions as well as receiving and dealing with complaints from prisoners and detainees.

3. Civilian oversight of police investigation of complaints about police, which includes direct investigation of such conduct where this is considered appropriate (*Police Service Act 1990*).

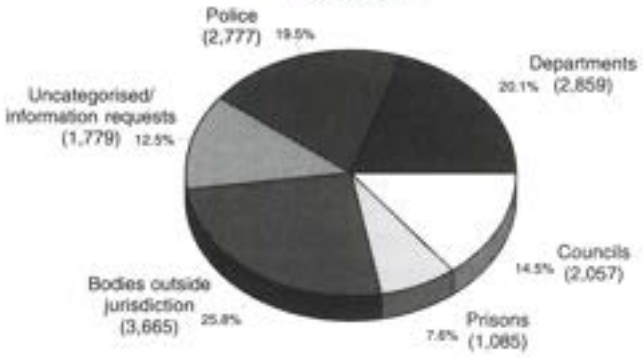
4. External review of complaints by FOI applicants about the determination of their applications (*Freedom of Information Act 1989*).

5. Dealing with protected disclosures and providing advice to public officials (*Protected Disclosures Act 1994*).

6. Determining appeals against decisions by the Commissioner of Police in relation to inclusion in or removal from the witness protection program (*Witness Protection Act 1995*).

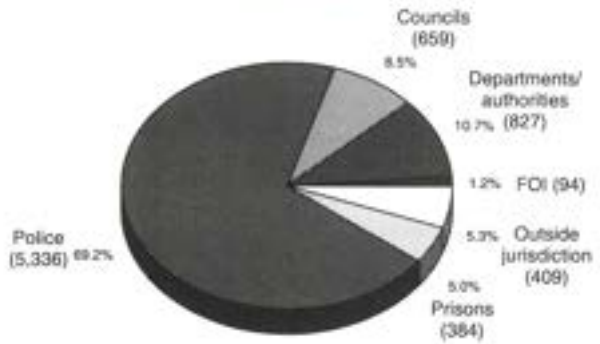
7. Auditing records of agencies authorized to intercept telephone communications (*Telecommunications (Interception) (NSW) Act 1987*).

Subject of oral complaints and inquiries received
1995/96



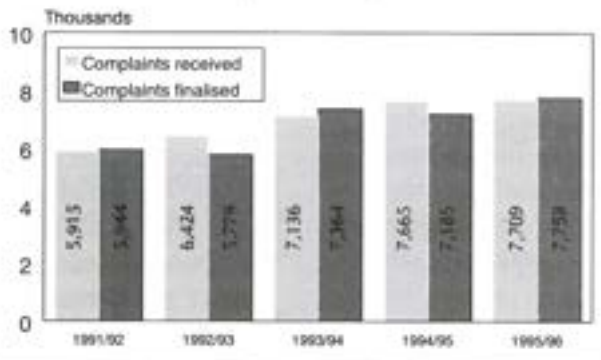
Total 14222

Subject of written complaints received
1995/96



Total 7709

Written complaints received compared to complaints finalised
a five year comparison



OUR ORGANISATION

The principal officers are:

Ombudsman

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

Manager General Team

Anne Radford, BA, Grad Dip Lib

Deputy Ombudsman

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

Manager Police Team

Marianne Christmann BSc, LLB

Assistant Ombudsman (Police)

Stephen Kinmond, BA, LLB
Dip Ed, Dip Crim

Manager Administration

Anita Whittaker BCom

Assistant Ombudsman (General)

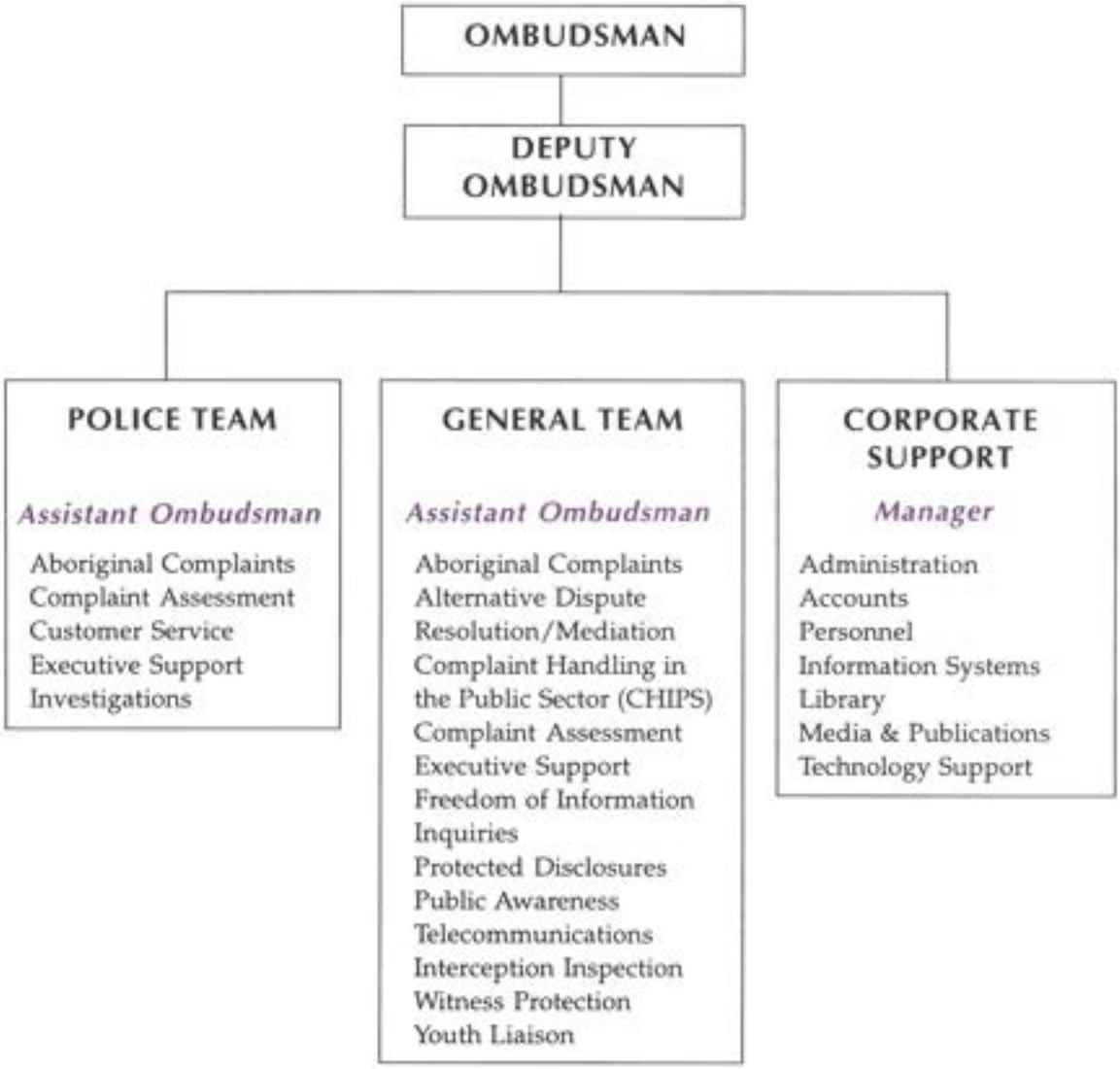
Greg Andrews, BA (Hons)
G Cert P Sect Mgt

SIGNIFICANT COMMITTEES

The Ombudsman is a member of the Community Services Review Council by virtue of her Office.

The Deputy Ombudsman and the Assistant Ombudsman (Police) were on the taskforce im-

ORGANISATIONAL STRUCTURE



plementing the recommendations of the Royal Commission into the Police Service.

The Assistant Ombudsman (General) is a non-voting member of the Prisoners Legal Service Advisory Subcommittee of the Legal Aid Commission.

The Assistant Ombudsman (Police) is a member of the NSW Police Service Internal Witness Advisory Council.

The Deputy Ombudsman and Projects Officer are members of the Protected Disclosures Steering Commitee which includes representatives of The Cabinet Office, Independent Commission Against Corruption, Public Employment Office, Department of Local Government and Audit Office.

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

Irene Moss - Ombudsman
Chris Wheeler - Deputy Ombudsman
Greg Andrews - Assistant Ombudsman
Stephen Kinmond - Assistant Ombudsman
Anne Radford - Manager General Team
Marianne Christmann - Manager Police Team
Kim Swan - Senior Investigation Officer (Legal)
Anita Whittaker - Manager Administration

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.	88% of complaints under *Ombudsman Act* assessed within 48 hours of receipt, (85% within 24 hours). 35% of complaints under *Police Service Act* assessed within 48 hours of receipt. Average time taken to send acknowledgements on *Ombudsman Act* complaints: 5 days. Police complaints declined at outset: 46% notified within 14 days. Requests for review of determinations as percentage of total complaints finalised: *Ombudsman Act* complaints 6%. Police complaints 3.5%. Complaints within jurisdiction declined at outset as percentage of total determinations: *Ombudsman Act* complaints 27% Police complaints 35%.
Complaint Resolution To resolve complaints about defective public administration through conciliation, mediation or explanation where appropriate.	69% of complaints within jurisdiction of *Ombudsman Act* resolved through provision of information/advice or constructive action by public authority. 1,123 police cases conciliated. 84% satisfaction rate among complainants with police complaints conciliated. 81% of complaints made under *Ombudsman Act* finalised in less than 60 days, (average: 62 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.	90% of recommendations made in reports under s.26 *Ombudsman Act* implemented. 97% of recommendations made under Police Services Act implemented, (increased from 73% last year). 100% of reports under *Ombudsman Act* contained recommendations involving changes to law, policy or procedures, (increased from 77% last year). 15 police investigations formally monitored.

KEY CORPORATE GOALS	KEY ACHIEVEMENT INDICATORS
Complaints Handling in the Public Sector To promote the development and implementation of effective internal complaint handling in public authorities to improve accountability and customer satisfaction.	187 public sector officers completed Ombudsman training courses on effective complaint management, (72 more officers than last year). 8.8% of complaints within jurisdiction of *Ombudsman Act* declined as premature and referred for internal complaint resolution.
Corporate Services To improve management systems.	Review of information systems completed and reforms being implemented. Performance management system being implemented in police 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. 93% of accounts processed on time. 86% 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.	76.32% of staff employeed at end of 30 June 1995 participated in formal training activities. 2.14% 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 (excluding Broken Hill Correctional Centre). 11 major country towns received public awareness visits in addition to regular visits to Newcastle and Wollongong. 5 special reports to parliament made. Lectures delivered to 5 intakes of prison officers, as well as 2 meetings of prison official visitors and 2 meetings of other Corrective Services officers.
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 case management system introduced, improving investigators access to information. An integrated software package introduced.

POLICE

POLICE

OVERVIEW

UNETHICAL CONDUCT

More than 100 complaints in 1995/96 resulted in police officers being charged with criminal offences. Hundreds of other complaints resulted in disciplinary action against police officers.

For many years this office has identified serious problems in the NSW Police Service, particularly in relation to day-to-day policing issues. The Royal Commission's inquiry into the Police Service has shown the extent of corrupt conduct within the Service. Despite all this, unethical conduct by police continues.

In a special report to Parliament in December 1995, the Ombudsman said:

> *"... a sole focus on improving complaint handling or corruption fighting mechanisms will not ... solve the enormous problems which beset the Police Service. Such an approach can address the symptoms but not the cause of police corruption."*

Mechanisms identifying misconduct form only one part of the fight against corruption. The negative aspects of police culture also need to change and this will only succeed if the push for reform is driven from within the Police Service.

Strong ethics and a commitment to serving the community must be reflected throughout all levels of the organisation. Unfortunately, as this report shows, many police continue to misuse their powers; engage in serious criminal behaviour; involve themselves in matters where they have a clear conflict of interest; assault members of the public; drink on duty; and other forms of unethical conduct.

A report to Parliament released by the Ombudsman in November 1995 revealed the large number of police still making illegal computer accesses. This type of misconduct illustrates the problem. It is not as if police are unaware of their legal responsibilities in connection with computer accesses; many police demonstrate a flagrant disregard for the very law they are required to enforce.

There are many police doing an excellent job. Each year, the Ombudsman sees a large amount of exemplary police work. But, until the culture of unethical conduct changes, those doing the job properly will continue to have their reputations tarnished.

ADDRESSING MISCONDUCT

The Police Service is a large organisation with more than 16,000 members (both sworn and unsworn). Because of its size, those at the top cannot exercise direct personal control and influence over all members. For this reason, change will only come about if those managing 'at the coal face' are aware of, and have a commitment to, the Police Service's key values. To achieve this, managers need to be given the training and skills to bring about change. The Police Service must empower managers to take effective action against those who are not prepared to embrace high ethical standards. Managers must have the ability to engage their staff in the process of reform. If the managers are incapable or unwilling to do their job, they must be held accountable.

Over the past few months the Royal Commission has turned its attention to these critical management issues. This office has been pleased to participate in 'round table' discussions to consider those areas of the Police Service in need of reform.

THE ROYAL COMMISSIONER'S INTERIM REPORT AND THE OMBUDSMAN'S RESPONSE

In last year's annual report, the Ombudsman said:

> *"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.*
>
> *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*

POLICE COMPLAINTS 1995/96
VITAL STATISTICS

- The number of written complaints received increased by 5.5% from 5056 to 5336.
- The number of complaints finalised increased by 12.8% from 4759 to 5372.
- Of the complaints investigated, the percentage of sustained findings after investigation increased from 44% to 58%. By way of further comparison the figure for the 1992/93 financial year was 29%.
- The percentage of oral complaints about police increased by 16% from 2391 to 2777.
- In excess of 100 police officers were criminally charged, arising from investigations into complaints. The Ombudsman is concerned about the large number of police involved in such serious misconduct.
- In excess of 250 police officers were formally disciplined through either departmental charges or an admonishment which is permanently noted on their records. The Ombudsman believes that creative management solutions have to be employed by the Police Service to address the underlying causes of misconduct.
- In excess of 700 police officers were managerially counselled. The Ombudsman believes a more sophisticated management response is required in many of these types of cases.
- The breakdown of police complaints into specific allegations can be found in Appendix Five.

OTHER DEVELOPMENTS

- The Ombudsman's submission to the Royal Commission in November 1995 proposed the continuation of the police complaints system, combined with a specialist agency with the brief to deal with serious corruption.
- The Ombudsman's report to Parliament in December 1995 highlighted the strengths and limitations of the police complaints system. In this report the Ombudsman also spoke of the need for a significant cultural change within the Police Service.
- The Ombudsman's report to Parliament in November 1995 highlighted the continuing problem of illegal computer accesses by police of confidential information.
- The Ombudsman participated in a Steering Committee working on the legislative framework for the new Police Integrity Commission.
- The Government has provided funding for three new investigation officers to work on police complaints. Further funding has also been provided for the creation of an Aboriginal Complaints Unit to work on police complaints (the unit has three staff and a significant travel budget).

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."

In February this year, the Police Royal Commissioner, Justice Wood, handed down his interim report. He recommended the creation of a new body to deal with serious police corruption. However, he also supported the Ombudsman's role in oversighting the bulk of complaints made about police.

The Ombudsman strongly supports the model proposed by Justice Wood and is pleased that Parliament has adopted this model in the *Police Integrity Commission Act* and the *Police Legislation Amendment Act*. This office participated in a Steering Committee, coordinated by the Cabinet Office, which developed the framework for the new legislation.

Justice Wood further recommended the complaints and investigation system be simplified *"and as much of the formality and legal complexity removed as is consistent with fairness"*. In addition to supporting simplification of the system, the Ombudsman took the view that the Police Service should play a greater role in communicating directly with complainants. With these principles in mind, the Ombudsman proposed

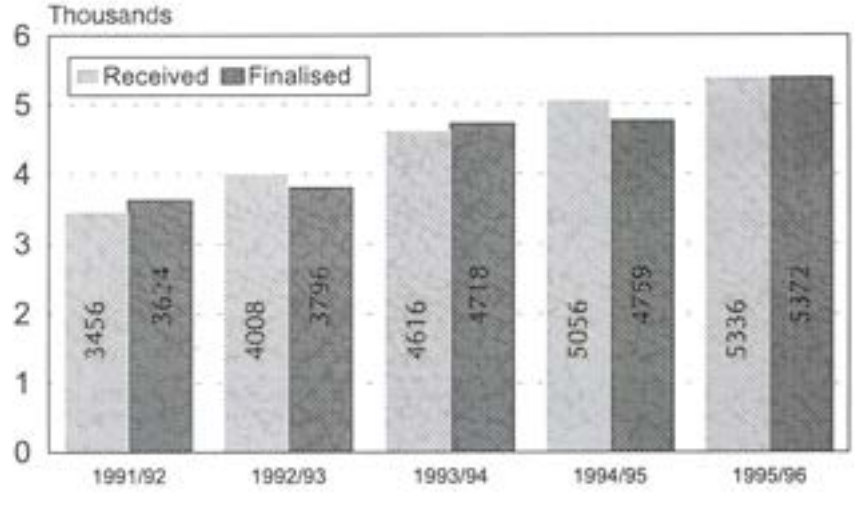
DETERMINATION OF COMPLAINTS FULLY INVESTIGATED

A five year comparison

Year	Total investigated	Sustained	Not sustained	Unable to be determined	Reinvestigate/ direct investigation
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
1995/96	856	495	236	118	7

POLICE COMPLAINTS RECEIVED COMPARED WITH COMPLAINTS DETERMINED

A five year comparison



amendments to the *Police Service Act* which involved:

- replacing narrow "legalistic" findings by the Ombudsman with broader findings about whether the Police Service has dealt with the complaint appropriately;

- requiring the Police Service to advise complainants directly of the action it has taken where the complaint was originally made to the Police Service and a full "formal" investigation has not been carried out.

The Ombudsman is pleased that Parliament has passed these amendments.

PILOT PROJECT

In the past, patrol commanders of police stations have played a relatively minor role in dealing with corruption and misconduct which occurs at their station. A large number of these misconduct matters have been handled outside the patrol. This has caused some patrol commanders to view misconduct by those they supervise as not their problem.

Patrol commanders must manage, and be seen to manage, the professional conduct of police in their patrols. In many cases, they will be in the best position to know what is going on, to act quickly and to influence future conduct.

The Police Service and the Ombudsman have recently embarked on a pilot project which gives patrol commanders greater ability to directly deal with misconduct by police in their patrols. The project is experimenting with strategies for dealing with matters quickly and without having to resort to the cumbersome and formal procedures which the Royal Commission has criticised. The Royal Commission has provided considerable support to the project.

The success of the project will depend on the ability of patrol commanders to respond to misconduct appropriately. This office will take a dim view of any patrol commander who does not take firm action when required. The Ombudsman has established a team within her office to closely scrutinise the project and provide support to the patrol commanders involved.

Determined police complaints
1995/96

Not Investigated	Declined at outset	1,800
	Declined after inquiries	1,362
	Conciliated	1,123
	Discontinued before Ombudsman investigation	231
Not Sustained	Not sustained finding	236
	Unable to be determined	118
Sustained	Sustained finding without re-investigation	495
Sustained after Ombudsman's investigation		7
Total		5,372

Investigations and non-investigations
A five year comparison

Year	Complaints determined	Not fully investigated		Investigated	
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%
1995/96	5,372	4,516	84%	856	16%

Determination of complaints not fully investigated
A five year comparison

Year	Total	Declined at outset	Declined after inquiry	Investig'n discont'd	Conciliated
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
1995/96	4,516	1,800	1,362	231	1,123

CONFLICT OF INTEREST

The Ombudsman receives a large number of complaints about police having a conflict of interest.

Conflicts of interest can arise from:

- improper associations between police officers and criminals;
- police officers involving themselves in matters where family or friends are victims, witnesses or offenders;
- secondary employment where there is or may be a conflict between officers' employment and police responsibilities;
- police officers using their position to obtain information for either their personal use or that of their friends, relatives and former colleagues.

The Ombudsman believes that as police have special powers, they have a responsibility to behave and be seen to behave ethically. A high standard of professionalism is required of police in order to maintain public confidence in the Police Service.

The current rules governing police conduct in this area are vague and do not provide adequate guidance to police. As conflict of interest complaints are often complex, there should be a clear code of conduct for police. At present there is no such code.

Case study one

In 1993 the NSW State Crime Commission carried out an operation targeting a major heroin supplier. A number of telephone conversations were intercepted between the supplier and a person later identified as a detective inspector in the Police Service's sensitive State Intelligence Group. Internal Affairs investigated the inspector's association with the criminal, finding no inappropriate conduct by the officer.

The investigation revealed that the inspector's association with the criminal dated back to 1990 when the two became neighbours. The inspector learnt that his neighbour was on weekend release from prison whilst serving an eight year sentence for supplying heroin.

A reasonably close relationship developed between the inspector and the criminal. The inspector accepted gifts of food from the criminal. The criminal mowed the inspector's lawn, collected his mail and cleaned his pool once the officer moved to new premises. The criminal also acted as a go-between in the attempted sale of the inspector's house to a major underworld figure. He arranged for the underworld figure to visit the inspector on one occasion at the officer's home. It was about this time that Crime Commission surveillance suggested the criminal was storing heroin at the inspector's premises when he was absent.

Prior to the inspector moving house, and while the criminal was still on parole, he was arrested for a firearm offence. The inspector contacted the criminal's lawyer and undertook to contact the prosecutor to have an agreement reached on certain evidence. The inspector also agreed to keep an eye on the criminal's de facto partner should a prison sentence be imposed.

The Internal Affairs investigation also revealed that the inspector was acting as the Commissioner's representative on the Offenders Review Board. During this time the criminal's file was examined in connection with a successful application to travel to Lebanon. The inspector, however, claims to have played no part in the decision granting permission to travel.

Subsequently, appearing as a defence witness at the criminal's severity appeal in relation to the firearm conviction, the inspector gave what was essentially good character evidence on the criminal's behalf. Prior to this, in a recorded telephone conversation, the Inspector said: *"Mate, you keep vacuuming the pool, I'll tell the Judge what a good bloke you are"*. The appeal was successful and the sentence was reduced from three months imprisonment to 300 hours of community service.

Contrary to the Police Service's view, the Ombudsman found that the detective inspector had formed an improper relationship with the criminal. The Ombudsman recommended the papers be sent to the Service Solicitor to examine the possibility of departmental charges. Procedural recommendations were also made in an effort to remove conflicts of interest as

Irene Moss with the Police Team at their Planning Day in June 1995.

identified in this case. They included that officers appearing as defence witnesses in court should not wear uniform and should preface their evidence by informing the court that they are appearing in a private capacity, their views representing neither the Commissioner of Police nor the NSW Government.

Case study two

Detectives from a local police station initiated an operation targeting premises believed to be associated with the sale and distribution of illegal drugs. The target premises were placed under surveillance and the registration numbers of vehicles seen to visit the premises recorded and checked.

Checks revealed that one vehicle was registered to Detective Superintendent M, the Commander of the sensitive Joint Technical Services Group. Detective Senior Sergeant K, who was in charge of the operation, did not formally report this discovery. Instead he telephoned Superintendent H who was known to be friendly with the officer. This superintendent contacted his fellow commissioned officer unofficially to find out what was happening.

The ensuing telephone conversation between the two superintendents was intercepted:

> H : ... Goodday M, how are you? ... Just a bit of an unusual story, just bear with me for a minute ... Mate, did you or your wife or any of your kids visit a house at ... in the last week or so? ... there's been some surveillance on that house ... And a car which is registered to you turned up at the house ...
>
> M : ... Oh yeah, yeah that one's mine ... my son drives it ...
>
> H : It's just that K rang me and said *"oh shit what am I gonna do with this?"* ... And I said *"Well the easiest way ... to handle it is I'll just ring M direct ..."* So mate no one's saying anything, you, you understand that don't you? ...
>
> M : .. My son drives it ... Yeah, well I'll have a chat to him, 'cause you know he's got a few mates that sort of run around on occasion and I think there's a few of them that have a bit of pot, so I'd better just have a bit of a chat to him about it ... He drinks with a mob of them at the RSL Club, that's the trouble ..

Superintendent H then arranged for Senior Sergeant K to call Superintendent M to discuss the matter. Senior Sergeant K subsequently reported back:

> K : ... they're obviously selling the dope from there and he's going there so fuckin', don't ask me fuckin' what he's going there for ...
>
> H : ... well are you gonna to continue on with it or ...?
>
> K : ... Why not? I just, just ah told the mob here that I work it, said *"That's alright I fixed that job up"* ...
>
> H : ... you'd better really tell them to shut their traps, 'cause it'd prove very embarrassing you know.
>
> K : Well (they/I) don't know that side, I pulled that bit out ...

Neither Superintendent H nor Senior Sergeant K reported Superintendent M's involvement. The only document which tied the superintendent to the premises was a Roads and Traffic Authority document identifying him as the registered owner of the vehicle. This subsequently went missing from the operational file. At no point was Superintendent M or his son officially interviewed to ascertain the purpose of the vehicle at the drug premises, even though arrests and successful prosecutions of other parties followed.

The inability of the Police Service to deal appropriately with conflicts of interest can be seen by its endorsement of the comments made by the Internal Affairs investigator:

> *"In respect to the strong inference arising when Sergeant K said "I pulled that bit out" it is my view that he was telling Superintendent H that he had removed the RTA document which named Superintendent M from the brief file documents ... I am of the view that the action of suppressing the M information was not wrongful in the circumstances in that they were not seeking to protect the boy M from any investigation or possible prosecution, but rather, preserve his father's excellent reputation ..."*

By endorsing these comments the Police Service demonstrated an inability, or refusal, to deal with a clear conflict of interest. At the Ombudsman's insistence, both Superintendent H and Senior Sergeant K were admonished in respect of their conduct, which will be permanently noted in their records.

Case study three

In August 1994, an off-duty detective was drinking with a friend at a hotel. After the officer left the hotel, his friend got into a dispute with the licensee's son, cutting his face with a broken glass. Police arrested the man and took him back to the police station.

A mutual friend telephoned the off-duty detective informing him of the arrest. The detective then went to the police station and gained access to the area where his friend was kept. He declared his identity and announced that he was there to investigate an assault matter. Once inside the detective proceeded to harass the victim and witnesses who were giving statements to other police.

The Police Service investigated the matter. It sustained the complaint against the detective, but declined to take any disciplinary action. The Ombudsman prepared a report recommending that the Service formally admonish the officer and monitor his future conduct with a view to determining whether or not he should continue to perform duties in plainclothes.

The Ombudsman also recommended that the Commissioner's Instructions be amended. The proposed changes include regulating the attendance of officers at police stations outside their patrol and preventing officers from interfering in investigations in which they are not officially involved.

Instruction 3.02 states: *" ... Do not allow yourself to be put in a position where there is an apparent conflict of interest and be conscious of the community's perceptions of the police role. Where persons with whom you are closely associated are the subject of a police inquiry, you should seek to distance yourself as far as practicable from that inquiry ...".*

The detective, by actively involving himself in the investigation, contravened this Instruction. Significantly, the Service Solicitor took a different view: *" ... Issue is taken with the fact that Commissioner's Instruction 3.02 creates a situation that amounts to a breach of discipline. In my opinion that Instruction is an advice giving*

Instruction and does not impose any rule. It is a popular misconception that every Commissioner's Instruction imposes an obligation on police in the form of a direction. Clearly that is not the case ... Instruction 3.02 in itself does not amount to a disciplinary code ...".

The Ministry for Police has since advised the Ombudsman that it is examining the whole question of the appropriateness of the existing form of the Commissioner's Instructions and whether advisory Instructions (as opposed to directive Instructions) can form the basis for disciplinary action.

Case study four

The Department of Health complained about a police officer who had allegedly destroyed drugs of addiction at a pharmacy where he was employed part-time as a pharmacist. The pharmacy was under investigation by the department for breaches of legislation relating to the recording and safekeeping of drugs of addiction.

The police officer admitted the breaches and agreed he had destroyed drugs at the pharmacy. The Police Service investigation made no adverse finding against the officer. However, it noted he had probably broken the law. It concluded the officer had not acted improperly, because police are permitted by law to destroy drugs of addiction. The Ombudsman was dissatisfied with this conclusion and decided to conduct a re-investigation.

The Ombudsman was concerned at the potential for corruption. Drugs of addiction have a high street value. Stringent record-keeping and storage requirements are necessary. The Ombudsman also examined whether the officer had put himself in a compromising position by working at a pharmacy where these requirements were not being met.

In this matter, there was no evidence that the officer had engaged in corrupt conduct. However, in a preliminary report the Ombudsman has expressed concern over the appropriateness of the officer destroying drugs at the pharmacy where he was employed.

Case study five

A senior sergeant's family was experiencing difficulties with their two young male neighbours. Police attended after his wife was abused by visitors to the neighbours' home. On his return from work, the senior sergeant and his son, also a police officer, confronted the young men.

The men complained that the two officers had forced their way into their flat and abused, threatened and assaulted them. They said the officers had also searched the premises and questioned them about their visitors' identity.

The complaint was investigated. The two officers admitted they had gone to the flat. The senior sergeant said he had "spoken very harshly" to the two men. The officers admitted separating, questioning and searching the two men and threatening to charge one of them. However, they denied forcing entry or assaulting them. The officers claimed they had gone to their neighbours' home, not as police but as "a concerned husband and son".

The Police Service found the officers' actions understandable in the circumstances. However, the Ombudsman was concerned that, although claiming to act as "a concerned husband and son", the men had abused their police powers. The complaint was reinvestigated and monitored by this office.

The Ombudsman found the officers seriously abused their powers by using their authority as police officers in a private dispute. The Ombudsman recommended departmental charges. She also sustained one of the assault allegations and recommended consideration of criminal charges against the senior sergeant.

SERIOUS POLICE MISCONDUCT

It is important to recognise that this office not only deals with complaints from members of the public about matters of day-to-day policing, but is also required to oversight the Police Service's investigations of issues of serious police misconduct. Although the Royal Commission into the NSW Police Service and the Police Integrity Commission have been and will be involved in exposing and investigating serious misconduct on the part of police, this

office will continue to have an important role in this area, primarily through oversight of the Police Service's inquiries into such matters.

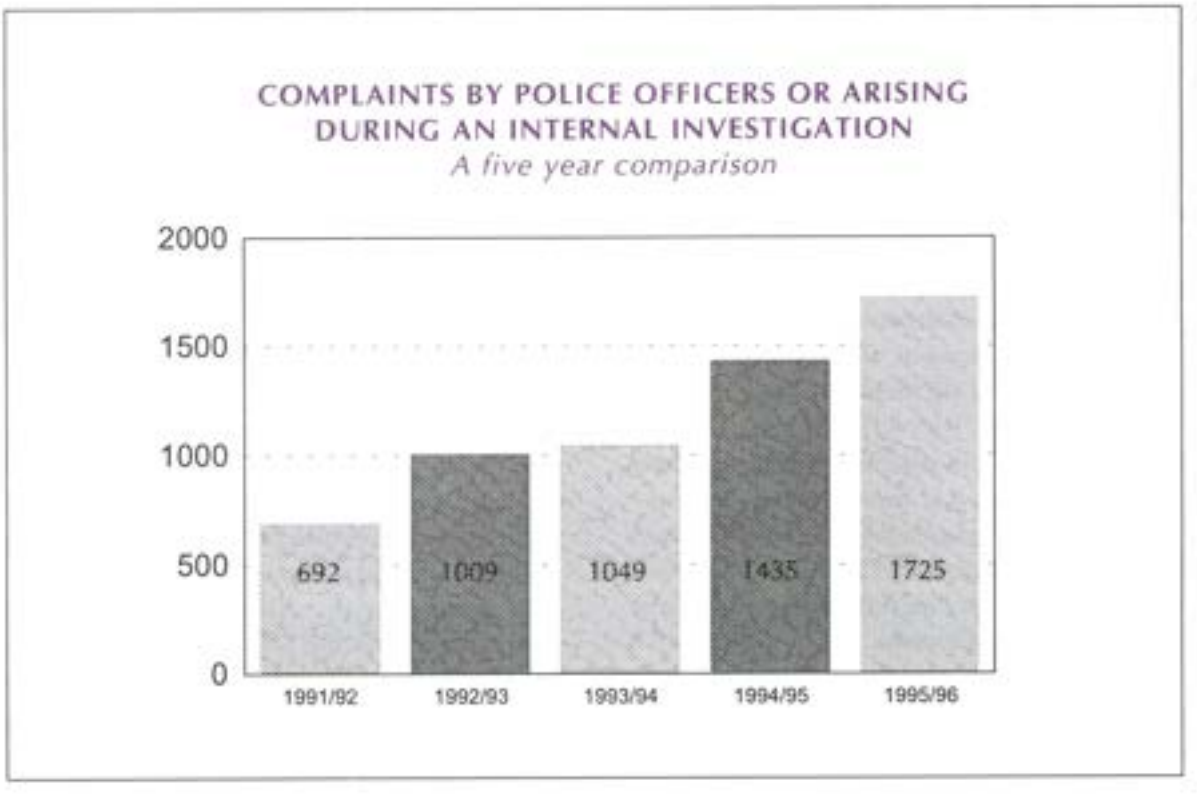
For example, there are certain matters which are dealt with by both the Police Service and this office as 'covert files'. These matters are generally the product of 'police internal complaints' and involve inquiries into allegations of serious police misconduct or issues which must be handled with considerable sensitivity. Many of the inquiries are conducted by the Police Service's Professional Integrity Branch (PIB), which is responsible for "pro-active" investigations into possible corrupt or criminal conduct by police. The information contained in these files is accessible to a limited range of officers in the Police Service and only a few staff within this office.

Examples of cases of this kind which we are able to make public include:

- A PIB investigation into the conduct of officers at a country police station which resulted in the preferment of criminal charges against an officer of "perverting the course of justice" and "obtaining a financial benefit by deception".
- A pro-active investigation by the recently established Integrity Testing Unit of the Office of Internal Affairs which revealed that a detective "was engaged in gross acts of misconduct and neglect of duty". The detective promptly tendered his resignation from the Police Service.
- A detective sergeant who was recently charged with "perverting the course of justice" and "demanding money with menaces". These charges are additional to earlier charges against the sergeant and another police officer of "conspiracy to pervert the course of justice" in relation to a false alibi given at a murder trial.

In addition to these matters from the covert files, many other complaints have resulted in criminal charges against police. Some examples are:

- A constable who did not serve a summons upon the complainant personally, but swore an affidavit that he had done so, was charged with the offence of "wilful false swearing". (The result of the constable's conduct had been that the complainant was not aware of the hearing of the summons and had an apprehended violence order issued against him in his absence.)



- A constable was charged with - and pleaded guilty to - offences relating to his fabrication of "statements" purportedly obtained from supposed witnesses to an assault. The constable's conviction resulted in his dismissal from the Police Service.

- Two sergeants were charged with "larceny" of property from the site of a drug plantation the subject of a police investigation. This matter is of particular interest because a Region Legal Services Branch had advised that there was insufficient evidence to substantiate either criminal or departmental charges against the officers involved. The Ombudsman raised concerns about the adequacy of this advice and requested that the Police Service obtain further advice from the Director of Public Prosecutions. The DPP advised that there was sufficient evidence to prefer charges of "larceny" but that consideration should be given to the possible preferment of departmental charges. The Ombudsman expressed dissatisfaction with an attempt to substitute criminal charges with departmental charges and urged the institution of criminal proceedings. Eventually, after obtaining further advice on the matter, the Assistant Commissioner (Professional Responsibility) directed the preferment of the criminal charges for larceny.

- Three police officers involved in an encounter with a complainant in a Sydney suburb have now been charged with serious criminal offences, two with "assault and robbery" and "assault", and the third with being an "accessory" to these offences. The background to the matter is detailed in last year's annual report (pages 39-40). Significantly, this was a case where the Police Service investigation did not find misconduct by the police involved and it was the Ombudsman's re-investigation which led to the preferment of criminal charges.

UNAUTHORISED ACCESS

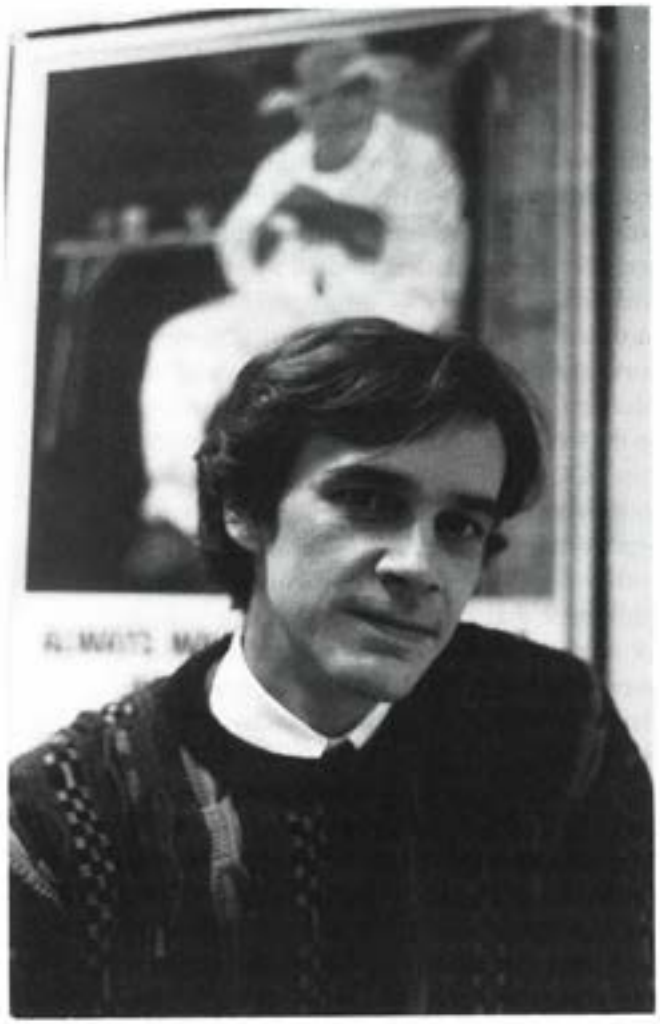
For the third consecutive year, this office has seen an increase in the number of complaints about police improperly accessing and/or disclosing confidential information. In 1993/94 there were 173 such complaints. In 1994/95 the complaints rose to 217, and alarmingly there has been a further increase in 1995/96 to 255 such complaints.

The continuing nature of this problem led the office to issue a special report to Parliament in November 1995. This report examined a number of cases where it was felt that the Police Service had failed to deal appropriately with officers guilty of improperly accessing confidential information. Specifically, the report recommended that the Service: review and intensify its education and awareness program on the Computerised Operational Policing System (COPS); ensure that where accesses contravene section 309 of the *Crimes Act* appropriate criminal sanctions are applied; formalise within the Commissioner's Instructions a requirement that officers document the reasons for accesses made to the system; and begin to impose more severe departmental penalties in respect of proven computer breaches.

The publication of this special report caused the Commander (Professional Responsibility) to convene a working party in December 1995 to examine the problem. Participants included senior officers from the Education and Training Command, the Office of Internal Affairs and the Office of the Service Solicitor, as well as representatives from the Corruption Prevention Department of the Independent Commission Against Corruption, the Office of the Director of Public Prosecutions and the Office of the Ombudsman.

This working party acknowledged the criticisms contained in the Ombudsman's special report, and endorsed the recommendations for remedial action. In particular, there was a strong consensus of opinion that more severe sanctions should be imposed on officers who betray the public trust and improperly access confidential information. Specific recommendations of the working party included: that a presumption of dismissal should apply in respect of all officers proven to have breached computer confidentiality; and that the Commissioner's Instructions should be amended to formally require officers to document the reasons for their computer accesses.

Subsequent cases monitored by this office suggested that the Police Service was not implementing the recommendations of its own working party. Accordingly, a meeting was



STEVE LEICESTER - INVESTIGATION OFFICER *Steve is originally from Sydney but for the past six years has been employed as a solicitor with the Western Aboriginal Legal Service in Western NSW and the Aboriginal Legal Service of Western Australia. Steve has had extensive experience in criminal advocacy, giving him an appreciation for the nature of Aboriginal-Police relations, ranging from those experienced in remote communities such as Wiluna in WA, semi-rural towns such as Bourke and Broken Hill as well as urban centres such as Perth and Dubbo. Steve recently joined the office to assist in setting up the Aboriginal Complaints Unit in the Police Team.*

arranged between the Ombudsman and the then Acting Commissioner on 21 June 1996 to discuss the view held by this office that insufficient action was being taken by the Service in an attempt to eradicate the serious problem of confidentiality breaches.

The outcome of this meeting was extremely positive, and it was particularly pleasing to note the personal interest and commitment shown by the Acting Commissioner with regard to this issue. A number of significant measures were implemented by the Police Service:

- On 30 June 1996 a letter was sent by the Commander (Professional Responsibility) to all members of the Police Service, reminding members of their responsibilities when handling confidential information on the Computerised Operational Policing System (COPS) and providing examples of information that officers cannot lawfully access;

- On 29 July 1996, Commissioner's Instruction 27.03 was amended to include the following direction to COPS users: *"Make a notebook entry recording the reason for a computer access unless it is abundantly clear from departmental records the access was lawful"*; and

- This office was consulted in August 1996 on a draft proposal for a *Punishment Policy for Improper Accessing by Police* designed to replace the current policy.

It is the view of this office that the existing policy fails to deal appropriately with members who breach confidentiality guidelines

This situation should be rectified by the new proposed policy, which stipulates that departmental or criminal charges will be preferred against officers who make unlawful accesses, and that where such charges are proven, a presumption of dismissal from the Service will apply.

It is to be hoped that this new Punishment Policy will take effect as soon as possible, and this office will carefully monitor individual cases with a view to identifying whether or not the underlying principles of this policy are being put into practice. Further progress has also been made in the important area of education and training, and this office envisages issuing a further special report to Parliament in November 1996 which will detail the progress made by the Service in its attempt to eradicate COPS confidentiality breaches.

BREAKING DOWN THE WALL OF SILENCE

The Police Service's Internal Witness Support Program is designed to assist "whistleblowers" within the Service who report or give evidence about misconduct or corruption by other police and employees of the Service. The program is the culmination of steps initially taken in 1993 to introduce a formal policy for this purpose. A review in 1994 of the original Internal Informers Policy led to the creation of an Internal Witness Support Unit. It is that unit which has been responsible for the development of the present program.

The aims of the program are:

- to address the fundamental problems of a culture within the Police Service actively working against the reporting of misconduct and of perceptions by members of a lack of support for whistleblowers by the management of the Service;
- to contribute to the creation of a professional organisational climate where members feel confident to report misconduct;
- to heighten awareness within the Police Service that its members have certain responsibilities with regard to internal witnesses; and
- to ensure that those reporting misconduct are supported and protected from victimisation.

A variety of measures have been implemented to give practical effect to these aims.

The establishment of the Internal Witness Support Unit is in itself one important measure. All reports of misconduct coming from within the Police Service must be promptly referred to the unit for assessment. The Ombudsman is also obliged to notify the Police Service of any complaints which she receives about the conduct of police, which means that all such complaints by Police Service members are ultimately referred to the unit. In addition, where a member of the Police Service gives evidence against another member in the course of an investigation, the investigating officer must inform the unit of that fact.

The Commander and 'case officers' of the unit have a variety of specific responsibilities in relation to people registered as internal witnesses. A 'peer support officer' is appointed to provide support to the internal witness at his or her work location and to act as an intermediary through whom the internal witness may make an application for support or protection. A senior 'mentor' is also available to both the internal witness and his or her support officer to provide positive reinforcement and to pursue issues on behalf of the internal witness. A Review Committee provides a forum for the consideration of difficult or sensitive issues which arise in particular cases.

The Internal Witness Support Program stipulates that all members of the Police Service *"have the responsibility of refraining from any activity which may be perceived as victimisation or harassment or which may be considered detrimental to an internal witness"* and that any such activity *"is contrary to law and must be reported to a senior officer"*. It also imposes special responsibilities on an internal witness's line commanders to provide the internal witness with support and protection.

The Ombudsman is of the view that the program should be commended. However, she also considers that the major challenge for the Police Service now is to increasingly co-ordinate the operation of the program with both

the investigation of complaints about police misconduct and effective management within the Police Service.

YOUNG PEOPLE AND POLICE

The interaction between police and young people is of great interest to this office. Young people are often particularly disadvantaged, especially those from Aboriginal and non English speaking backgrounds. The profile of young people and a tendency by police to focus on them leads to a high level of contact between young people and police.

A number of cases dealt with by the Ombudsman this year have successfully encouraged the Police Service to identify and correct areas where procedures have been inadequate to meet the special needs of young people.

Young People in Police Custody

Case study one

A young person was strip searched in front of various personnel at a station and handcuffed to a table after being apprehended by the Water Police.

At the request of the Ombudsman, the Commissioner's Instructions were amended to provide that *"under no circumstances is a person to be handcuffed to an inanimate object or fixture and left unsupervised"*. The Ombudsman also made a finding against the officers for their failure to ensure that the search was conducted with due consideration for the dignity and modesty of the individual.

Case study two

A young man apprehended for driving offences was placed in the dock at a police station. As the relevant Commissioner's Instruction says that a young person should not be placed in the dock unless it is *"absolutely unavoidable"*, the onus is placed on the officer to justify such action. In addition to a finding being made against the officer concerned, this instruction was also reinforced to the entire Police Service through a Commissioner's Circular.

Case study three

A young person was assaulted by a group of young people while in the back of a police van. The police involved were managerially counselled regarding their duty of care in relation to prisoners. The absence of a light in the back of the van made it impossible for the officers to see what was happening in the back. As a result of this case, all transport vans in the Sydney district have been issued with hand held spotlights.

Fingerprinting

In May 1995, the Aboriginal Legal Service complained on behalf of five Aboriginal children in relation to police allegedly fingerprinting and photographing the children without court orders. Under the provisions of section 353AA of the *Crimes Act 1990* police cannot photograph or fingerprint a child who is under 14 years old and in lawful custody for any offence without a court order.

As a result of this complaint, the Ombudsman directed the Police Service to conduct an audit of on-line charging and other appropriate records at a number of police stations. This audit revealed many incidents of juveniles being fingerprinted and photographed without court orders since January 1995. These incidents were not restricted to one patrol. Alarmingly, many police including supervisors were not aware of the provisions of section 353AA of the *Crimes Act* and the relevant Commissioner's Instruction.

Action has now been taken by the Police Service to destroy the unlawful records of the children concerned. The District Commander directed all patrol commanders to address the issue immediately by way of education and training. Furthermore, it was recommended that a Commissioner's Notice be issued to reinforce the need for strict adherence to the relevant provisions, and a warning be added on the Police Service On-line Charging System.

The Ombudsman is greatly concerned by the extent of the problem and the fact that supervisors are not aware of the provisions of the *Crimes Act*. The Ombudsman is awaiting the conclusion of a Police Service investigation into the complaint.

Police Questioning of Young People

Section 13(1) of the *Children (Criminal Proceedings) Act 1990* provides that statements made by juvenile suspects must be made in the presence of a responsible adult to be admissible in evidence.

This provision is intended to protect young people. However the Ombudsman has uncovered at least one case where the police appear to have used it to cover up police misconduct.

Two brothers, aged 14 and 17, were walking home after spending the evening fishing when they were stopped by police and taken to a police station.

Their mother complained that she arrived at the station to find her younger son making *"a false statement under pressure"*. Both boys said that they had been threatened whilst in police custody. The younger boy said that the threats were made during repeated questioning about a series of break, enter and steal offences.

Police claimed that they had taken the two boys to the police station because they suspected their fishing gear was stolen. They admitted questioning the boys about the fishing gear in the absence of a responsible adult. Police also claimed that during questioning the youngest boy "volunteered" he had committed other offences. He was then interviewed in the presence of his mother. He was charged with five counts of break, enter and steal. However, no charges were laid against either boy in relation to the fishing gear.

The magistrate, in dismissing the charges, ruled that the record of interview was inadmissible because police failed to comply with section 13(1). It was not permissible, the magistrate said, to conduct a "dry run" whereby a young person is initially questioned in the absence of an adult and then, when an admission has been obtained, an adult is brought in.

The Ombudsman, based on evidence obtained through a Police Service investigation, found that police had unlawfully arrested the boys. It appeared that the fishing gear provided a pretext for police to take them into custody and question them at length in relation to other matters without an adult being present. Police maintained they only questioned them about the fishing gear. However, they could not give details of this questioning, stating that they did not record anything knowing it would be inadmissible.

In her report the Ombudsman recommended that the Commissioner's Instructions be amended to discourage police from eliciting information from child suspects in the absence of a responsible adult. The Ombudsman expressed the view that the instructions need to make it clear that section 13 (1) should set a standard for questioning juvenile suspects and not be viewed by police as merely a rule of admissibility. The Ombudsman also recommended police be required to advise parents that their child is in custody by the quickest available means.

CHILD ABUSE JOINT INVESTIGATIVE TEAM

In 1993 the Ombudsman issued a report on the need for the Police Service to work jointly with the Department of Community Services (DOCS) in connection with child abuse investigations.

The Ombudsman issued this report after a number of complaints revealed a failure by police and DOCS workers to adequately respond to child abuse allegations. The Ombudsman's scrutiny of these matters highlighted the need for these agencies to deal with these cases in a coordinated and integrated manner.

In response to the Ombudsman's report, the Police Service and DOCS set up a pilot program using a Joint Investigative Team (JIT). The teams consists of members from both DOCS and the Police Service.

The Police Service has recently reported that the JIT pilot has achieved the following:

- a higher standard of investigations as evidenced by DPP reaction to JIT briefs;
- a positive perception by other agencies of police professionalism and attitudes;
- 85% of clients happy with the service by JIT compared with 25% at non-JIT sites;

- increased professional satisfaction of team members;

- addressing many critical issues such as victim support, personal safety, drug and alcohol crime, domestic violence, customer service and community based policing.

The Ombudsman believes that this project illustrates the value of the Police Service working in partnership with other agencies in critical areas such as child abuse.

ARREST AND DETENTION

The Ombudsman continues to receive complaints about the improper or inappropriate use of the arrest power by police. The following complaints highlight problems in the area of arrest and detention.

Arrest for questioning

At around 3am, a man was on a recreational drive from Sydney and lost his way in Wollongong. Earlier that morning there had been a "ram raid" in a Wollongong suburb and police were searching the area for offenders. Although genuinely lost, the man appeared to be acting suspiciously. A senior constable pulled him over, inspected his car and saw a number of items of computer equipment. The senior constable said the man could not give a satisfactory explanation as to the ownership of the goods and did not have any identification. He said he told the man that he wanted him to come to the station to clarify the matter and that he was not under arrest.

Assistance was called for and two more officers arrived in a police truck. The car was further searched and more goods were found. Police decided to take the man to the station. For insurance reasons, the man insisted he drive his car to the station but police refused. He agreed to go with police as he saw no other way of resolving the matter quickly. Although "volunteering" to return to the station he was placed in the rear of the police truck. Under strong objection from the man, police drove his vehicle. At the station, a detective asked him some questions and he was then allowed to leave.

After reviewing the Police Service's investigation, the Ombudsman was of the view that any reasonable person, in those circumstances, would have thought they were no longer a free person. The Ombudsman believed the actions of police were consistent with an arrest. Police should have made it clear to the man, not only that he was not under arrest, but also that he was free to refuse to go with police. Police did not do this and the Ombudsman believed this case demonstrated a lack of understanding by a relatively senior officer as to what constitutes an arrest. Moreover, it was an illegal arrest as it was for the purposes of questioning. The Ombudsman recommended that the officer be managerially counselled and the Police Service have accepted this recommendation. Additionally, the Commissioner's Instructions have been amended to define arrest. This includes, *"where* (the officer) *would not let the person leave if the person wanted to or where* (the officer) *gives the person reasonable grounds to believe* (the officer) *would not let the person leave if the person wanted to."*

Unnecessary arrest

The vice president of a swimming club observed a twelve year old boy harassing and hitting another boy. The man disciplined the boy who then claimed the man had assaulted him. That day, a constable interviewed the boy and his parents (who did not witness the incident). Three days later, the constable called the man and told him to come to the station that evening to be interviewed. The man agreed but was unable to keep the appointment. Later that night, his solicitor sent a fax to police saying the man declined to be interviewed but would give police a written statement within the week. The fax also provided the man's name, address and date of birth.

That same evening, the constable went to the man's home and, in front of his children, arrested him for the assault. The charge against the man was proved in court but no conviction was recorded.

The man complained about his arrest and this was investigated by the Police Service. When interviewed the constable said that he had to arrest the man because he had not established his complete identity. After reviewing the evidence, the Ombudsman found that the man's

MARIANNE CHRISTMANN - MANAGER Since joining the office in 1991 Marianne has continued to build on her already strong background in the police area. Marianne has worked on a number of the more complex and sensitive investigations conducted by the office, including the investigation into the attempted suicide of Angus Rigg while in police custody. Marianne has a Bachelor of Laws and a Bachelor of Science with a Psychology Major, and is currently doing her Masters of Laws at Sydney University. She has also done numerous courses in mediation, community awareness, research techniques and advanced criminology. Before coming to the Ombudsman's office, Marianne was with the Law Reform Commission, where she worked on a number of reports and discussion papers, including Police Powers of Detention and Investigation after Arrest, *and conducted research for the Commission's* Community Law Reform Program.

identity was established by his solicitor's fax and also by the boy's parents who knew him.

The constable also claimed that he needed to speak to the man in person and, as the man refused to come to the station, an arrest was necessary. The Ombudsman disagreed as the constable only had to wait one week for the man's statement.

The constable also said that the man was in charge of a number of children at swimming meetings and the boy's parents were concerned for the safety of their son. This was rejected by the Ombudsman as there were no swimming meetings scheduled and the man had been subsequently asked to officiate at club functions showing the club still had confidence in him. The police prosecutor also requested that the bail conditions imposed by the constable be removed, indicating the police prosecutor did not think the boy's safety was at risk.

Overall, the Ombudsman found that the constable's use of his arrest power was inappropriate and that he should have issued a court attendance notice or summons. The Ombudsman recommended that the constable be admonished and that police attached to his station be instructed on the factors to be considered when deciding whether to arrest or proceed by summons. The Police Service disagreed with the Ombudsman's recommendations. The Ombudsman will continue to pursue this matter.

Improper detention

A fight broke out in a local pub one evening in a country town in south western NSW. The fight spilled onto the street and patrons came out onto the footpath to watch. Police called to the scene said that when they arrived they saw a large number of people drinking alcohol in an alcohol free zone. They wanted to disperse the crowd as these people were becoming agitated and abusive.

A man present said that he walked over to the incident to see what was happening. He maintains that at the time he had not been drinking. He said that an officer told him to leave the area. The man attempted to leave but was allegedly grabbed by a police officer who twisted his arm behind his back and put him into a police van. He was then taken to the station and later released but was never told why he had been detained.

The man's complaint was investigated by the Police Service. Police claimed they had detained him as an intoxicated person. They admitted that the appropriate paperwork for detaining him under the *Intoxicated Persons Act* was not completed but denied grabbing him as he alleged.

The investigation revealed the man was sober at the time and had therefore been wrongly detained. The officers have now been charged with misconduct, for their unreasonable detention of the man, and omission of duty, for not properly documenting his detention as an intoxicated person. The Ombudsman was satisfied with the action taken by the Police Service but requested that the issue of the force used in apprehending the man be dealt with as part of the misconduct charge.

CONCILIATIONS

Overview

Conciliation continues to be an effective and efficient means of resolving police complaints. This year almost a quarter of all complaints were resolved through conciliation. While much has been achieved over recent years, the Ombudsman is keen to fuel the Police Service's commitment to the conciliation process. With the cooperation of the Police Service and Police Association, the Ombudsman is attempting to develop strategies to improve the quality of individual conciliations as well as better utilise the overall process to achieve its full potential.

The Ombudsman submitted a special report to Parliament on conciliation in May of this year. The aim of the report was to identify the strengths and weaknesses of the current system and to make recommendations for its improvement.

A major advantage of conciliation is that it is a speedy, informal and flexible way of dealing with complaints. More importantly, complainant surveys have shown that conciliation generally results in high levels of complainant satisfaction.

A further benefit of conciliation is that it increases the accountability of individual police officers to the public and can provide a valuable learning experience for the officer concerned. It also exposes systemic problems in Police Service management. In essence, conciliation forms an important part of the Ombudsman's overall strategy to improve service to the public whilst recognising resource constraints.

An emerging concern is the increase in the conciliation failure rate. In 1994/1995, 12% of conciliations failed. Figures for this year show that 24% failed. The reasons for this increase are not clear. However, the fact that complainants are better informed about their rights and options and are no longer willing to "go along" with a less than entirely satisfactory outcome may be a factor. It is also possible that there may be a lack of commitment to the process on the part of some officers. The increased failure rate demands close monitoring and further evaluation.

A further concern is that the number of complaints conciliated as a percentage of complaints determined has fallen. This year the percentage of conciliated complaints was around 21 % whereas the corresponding figure for 1994/1995 was 25%. The Ombudsman is conscious of the need to examine whether more complaints can be appropriately resolved through conciliation.

Conciliation Survey

The Ombudsman continues to monitor all conciliation records and surveys complainants involved in conciliation. This ensures the integrity of the current system.

Of the 845 successful conciliations, 539 returned the survey, a response rate of 64% (19% higher than 1994/1995).

Survey results indicate a favourable level of complainant satisfaction, which is rarely achieved through formal investigation of complaints. They are broadly consistent with last year's results:

- 446 respondents (83%) were satisfied with the way their complaint was handled;
- 278 respondents (53%) thought that the Police Service might improve as a result of the conciliation process; and
- 459 respondents (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 63% (323) of complainants felt an apology was a factor in their decision to conciliate. More than 79% (399) of respondents felt that a senior officer undertaking to speak to the officer involved was a factor in their decision.

Negative factors also played a role in complainants' decision to conciliate. For 27% (134) of respondents, the fear of damaging the career of the police officer concerned played some part in their decision. The fear of becoming involved in long disciplinary proceedings or court processes was also a factor for 23% (117) of respondents.

Concern about possible intimidation or threats by police officers conducting the conciliation was an issue for 7% (35) of respondents. Fear of future harassment for failing to conciliate was a factor for 28% of respondents.

Integrity of the system

All information relating to conciliation of oral complaints continues to be collected centrally by the Police Service and passed on to the Ombudsman. This year the Ombudsman received 753 reports of successful oral conciliations.

Each month approximately 15 oral conciliation forms are randomly selected and a survey form is sent to the complainants. Of the 129 surveys distributed between November 1995 and May 1996, 33 surveys (26%) were returned. The vast majority (94%) of respondents indicated that they were satisfied with the conciliation process.

Every conciliation form is checked for quality and completeness. The Ombudsman found most forms were correctly completed.

Problems

Examples of conduct that is of concern to the Ombudsman include police allegedly:

- requesting complainants to sign blank forms;
- fabricating information on conciliation documents;
- providing an inadequate explanation of the conciliation process so that the complainant does not fully understand what the process involves;
- attempting to conciliate complaints in a situation where the conciliating officer was a witness to the initial incident;
- conciliating matters which are outside the "class or kind" agreement between the Ombudsman and Commissioner as to the matters that can be conciliated, specifically alleged assaults; and
- arriving at complainants' homes uninvited and unannounced in the process of attempting to conciliate a complaint.

Recommendations

The Ombudsman's special report to Parliament on conciliation recommended the Police Service:

- train a small group of police officers in advanced dispute resolution techniques to enable conciliation of complex complaints;
- refine practices for the selection of police officers to be trained for conciliation so that the most suitable officers are selected;
- refine practices for the assessment and accreditation of police officers who have undertaken conciliation training;

- review the scope of the authority of conciliating officers to enable them to negotiate effectively;
- conduct an ongoing evaluation of the overall rate of conciliations, including careful monitoring of the reasons for failed conciliations;
- consider a marketing program to increase the profile of conciliations among police; and
- give specific responsibility to a senior police officer for the continued development of the conciliation system.

The Ombudsman also recommended the creation of a working party, including representatives from her office and the Police Association, to consider the recommendations and develop other measures to enhance the conciliation system.

It is encouraging that the Police Service has broadly accepted the Ombudsman's recommendations and established the working party.

The Ombudsman is confident that the conciliation process can continue to deliver a cost effective means of resolving complaints with a high degree of complainant satisfaction.

RACE RELATIONS AND OUR POLICE

Last year's annual report contained a piece on the Ombudsman's special report to Parliament *Race Relations and Our Police*. The report focused on the Police Service's practices and procedures in its dealings with racial, ethnic and other minority groups. It looked into areas such as operations, recruitment, education and training. A number of major recommendations were also made to ensure that the Police Service better service the needs of all members of our broad community, including people from diverse cultural backgrounds.

The Police Service has now produced a document, *Implementation Plan for the Charter of Principles for a Culturally Diverse Society (Ethnic Affairs-Action Plan) Years 1996-2000*, which adopted many of the Ombudsman's recommendations as major strategies. Most strategies require long term, ongoing commitment from the Police Service. The Ombudsman is pleased to see that review mechanisms have been incorporated to ensure implementation of those strategies.

The Police Team of this office has identified *"complaints from people from a diverse background"* as a significant issue for the 1996/97 year. We are looking forward to working with the Police Service and groups with a special interest in ethnic affairs to develop strategies to improve service delivery to all members of our diverse society.

PEOPLE WITH AN INTELLECTUAL DISABILITY

Complaints about police from people with an intellectual disability continue to be an area of concern for the Ombudsman. The Police Service has a responsibility to ensure that people with intellectual disabilities are treated appropriately and enjoy the same rights as the rest of the community. The following cases demonstrate the need for improvement in police procedures and training in dealing with people with intellectual disabilities.

Case study one

A 22 year old woman with an intellectual disability complained about an alleged sexual assault. A police officer interviewed the woman in the company of her mother but terminated the interview because she believed the woman was incapable of meeting the legal requirements of the *Oaths Act*. Six weeks passed before a statement was taken and the investigation could continue. At the conclusion of the investigation, police found that there was insufficient evidence to charge any person with the offence.

The Ombudsman found that the investigation had been unnecessarily delayed. The officer had made a mistake about the woman's ability to satisfy the *Oaths Act* and was wrong to delay the investigation on that basis. The Ombudsman also found the delays had been prejudicial to the complainant's legal rights. The Ombudsman recommended changes to police procedures to include an automatic review of any police refusal to take a statement from a person with an intellectual disability.

Case study two

A 33 year old man with an intellectual disability made a complaint to the Department of Community Services about an alleged sexual assault. The Police Service was notified of the complaint 12 days after the alleged incident. A further 15 days passed before the complainant was interviewed. The interview took place one day after the matter was raised in Parliament.

This interview was conducted in the facsimile room of the police station as an interview room was not available. It was interrupted by staff who needed to use the facsimile machine and station noise as the room had no door. The Ombudsman is currently reviewing an investigation of the matter.

The Ombudsman is aware of the difficulties faced by people with an intellectual disability in making a complaint to this office. Under the current legislation a complaint must be in writing. The *Police Legislation Amendment Act 1996* contains a provision giving the Ombudsman a discretion in exceptional circumstances to accept complaints that are not in writing. It is hoped that this provision will improve the access of people with an intellectual disability to the services of this office.

DOMESTIC VIOLENCE AND APPREHENDED VIOLENCE ORDERS

The Ombudsman recognises that domestic violence poses specific challenges to the Police Service. While this crime is prevalent and policing domestic violence makes a substantial demand on police time, complaints to this office demonstrate a lack of awareness by some police of the victim's need for assistance. Victims expect active intervention and in most instances require police assistance to ensure the violence is not repeated.

In recent years, changes in the legislative response to domestic violence have led to a different approach in the way police are expected to handle these problems. Police are now expected to arrest and charge when there is evidence of violence or threats in order to ensure the safety of the victim. The police response is not only crucial to ensure the victim's immediate protection, it is also important to prevent further violence or harassment. The emphasis is on police taking action, in the form of an Apprehended Violence Order (AVO). However, the success of AVOs in providing protection from further violence relies on police enforcement.

The Ombudsman is concerned about complaints that demonstrate a failure by police to properly process AVOs. In one complaint, a victim complained to police that her ex-partner breached an AVO. However, there was no indication on the police computer that an AVO was current and enforceable against him. This problem was resolved after inquiries conducted by this office and procedural matters relating to the handling of AVOs were reviewed by the Police Service.

Domestic violence complaints to the Ombudsman also highlight the frustration resulting from police inaction. Police are at times reluctant to use their power of arrest when there is a breach of an AVO. Yet, the best protection to victims is a policy of intervention. Police failure to respond can also have an adverse effect on whether a victim of domestic violence calls police again for help.

For instance, a complaint received by this office concerned a victim who contacted police for assistance. Police did not attend until three days after the initial call. Although the victim experienced further threats and harassment from her partner she was reluctant to contact police again as she believed that police would once again fail to respond. This complaint was successfully conciliated with the officer concerned. He required further training emphasising the importance of responding to calls that are made by victims requesting assistance.

The Ombudsman believes domestic violence represents a continual threat to the victim's safety and justifies vigorous enforcement efforts by police.

This office continues to receive a significant number of complaints from women alleging failure on the part of police to take action on alleged breaches of AVOs. Many of these have been satisfactorily resolved by conciliation.

These matters have highlighted the need for sensitivity and flexibility by police who are confronted with these situations regularly. Most importantly, the success achieved through conciliation demonstrates that improved communication between victims and police can help resolve problems before they escalate.

The need for training is evident in complaints relating to the failure of police to provide follow up information to victims of domestic violence. In one case, a victim complaining to this office expressed great dissatisfaction with a domestic violence liaison officer who dismissed her complaint as being trivial and, upon her request for further information as to her rights, advised her that there was nothing available at the police station.

The Ombudsman is committed to assisting the Police Service to have a clear policy on domestic violence and adequately train personnel to respond appropriately.

ABORIGINAL ISSUES

Despite significant problems in the relationships between Aboriginal communities and police, few resources have been available to this office to address this issue. Our visits to remote areas over the years have revealed that simple practical measures can often help to minimise these problems.

The Royal Commission's interim report contained a recommendation for the establishment of an Aboriginal Complaints Unit within this office. In response, the Government provided funding for such a unit. Three specialist investigators have now been employed to work in this area. The unit will focus on:

- giving Aboriginal people better access to the services of the office through regular visits by staff to key locations throughout the State;
- consulting with Aboriginal communities and police in order to develop strategies designed to improve police/Aboriginal relationships in specific key locations;
- introducing culturally appropriate dispute resolution strategies as one method of resolving disputes between Aboriginal communities and police;
- directly monitoring police investigations into Aboriginal complaints;
- ensuring the office directly investigates a number of complaints from Aboriginal communities which raise systemic issues;
- providing independent advice to the Police Service and Police Minister on the Police Service's implementation of its Aboriginal Strategic Plan and the recommendations of the Royal Commission into Aboriginal Deaths in Custody; and
- conducting research consistent with the unit's major activities.

Policing in Wilcannia

Bearing the slogan "Wilcannia Police Survivors Club", a T-shirt worn by police in Wilcannia has come to the attention of the Ombudsman.

With an emblem of a police baton and wooden club centred on the Aboriginal flag, the arguably racist overtones of the shirt are disturbing.

The officer responsible for designing the shirt said the Aboriginal flag was used to acknowledge that Wilcannia was an Aboriginal township. The crossed club and baton were supposed to symbolise previous riots between police and the local community. Any intention to deface the Aboriginal flag or offend the Aboriginal population was strongly denied.

Despite that confident response, the previous Wilcannia Patrol Commander had some concerns about the shirts. He said that he advised his officers to use their "discretion" when wearing the shirts and suggested they be kept as "mementos" only. The bottom line is that the T-shirt continued to be worn.

While the Police Service has now directed that officers wearing the T-shirt may face disciplinary proceedings, the Ombudsman will be looking into the matter further and consulting the community over the issue.

The Wilcannia Patrol has also come under scrutiny after two police officers were seen running naked across a bridge near the local post office. To their embarrassment, the drunken escapade was captured on film. On duty police

did not respond to this "offensive behaviour" with the diligence one might expect the average citizen to face. Instead, a police car conveniently arrived at the scene to escort the officers home.

A Police Service investigation into the event followed. The behaviour of the "streakers" was found to be "unacceptable and embarrassing to the Police Service". Admonishments were recommended. Disciplinary action against the police escort was not proposed. The Ombudsman is considering this case in the context of past and present policing practices in Wilcannia.

On a positive note, in June 1996 the Police Service used an independent facilitator to coordinate a meeting between police and the local Aboriginal community in Wilcannia. The purpose of the meeting was to improve relations between these two groups.

Without reaching a firm conclusion on the effectiveness of these measures, the Ombudsman is pleased with this attempt by the Police Service to deal with past problems between police and the community in Wilcannia.

Unreasonable Search

On 4 April 1995 police boarded a school bus outside Grafton. Police were conducting inquiries in relation to property offences including the theft of watches which had occurred about a week earlier. The decision to board the bus was based on information implicating a young Aboriginal person and several others whom the bus driver had seen wearing new watches on the bus the previous week.

Rather than ask the bus driver whether the known suspects may be on the vehicle, police boarded the bus and commenced questioning all of the Aboriginal children. The children were asked to show the officers any watches they were wearing and one Aboriginal child had her bag searched. Approximately eight to ten children were questioned. However, the non-Aboriginal children on the bus were not questioned or searched. It was not until the officers completed their inquiries that they asked the bus driver whether the identified suspects were in fact on the bus. They were advised that the suspects were not.

The police investigation into the matter found the complaint not sustained, on the basis that the police officers held a "reasonable suspicion", sufficient to justify their actions in questioning and inspecting the children. The Ombudsman is currently reviewing the police investigation. The basis for the police officers' actions that day, together with a consideration of the alternatives available to them in their investigation, raise an important issue as to whether police could have better preserved their relationship with the Aboriginal community without compromising their need to investigate an offence.

PAYING REGISTERED POLICE INFORMANTS

The Ombudsman received a complaint by a registered informant alleging that a police officer promised him a new car and assured him he would not go to gaol if he assisted with a police investigation. He also alleged the police officer misused money obtained from the Police Service for the purchase of drugs by the informant as part of the investigation. Specifically, he alleged that only $50 of the $150 obtained was used to buy drugs, with the remaining $100 being shared by himself and the officer.

While the informant's allegations were not substantiated, a number of concerns remained. Police Service inquiries revealed that proper procedures relating to the payment of registered informants had not been followed.

In *The NSW Police Informant Management Plan* a clear distinction is made between the payment of "working expenses" and "rewards" to registered informants. Working expenses, which cover all reasonable expenses incurred by the informant in supplying information to police, must be recorded and approved at a senior level within each patrol or taskforce. Applications for rewards, on the other hand, are assessed by a central Reward Evaluation Assessment Committee.

In this case the distinction became blurred. The officer stated that he told the informant that if he bought a *"fifty"*, he could *"keep the change"* and *"pay a few bills or take his girl out to tea"*. The $150 was recorded as both a working expense and monetary benefit. These records were endorsed by the appropriate supervisor and no application to the Reward Evaluation Assessment Committee was made.

The Ombudsman was concerned by the failure of the Internal Affairs investigator and Region Commander to question this payment. The Police Service also suggested the possibility that the payment of de facto rewards to informants was accepted practice within the Service. The Ombudsman is now conducting a direct investigation into the Police Service's procedures and practices in the area.

THE SINKING OF THE *'TERRACE STAR'*

Last year's annual report mentioned the tragic sinking of the *Terrace Star* fishing trawler. Two men drowned after the boat ran aground at Green Cape near Eden. The sole survivor, Dustin Garrett, was charged with manslaughter by police over the death of his two crew mates. The proceedings prevented the NSW Coroner from commencing an inquest into the deaths. Allegations were made that Mr Garrett was charged to avoid an inquest and cover up police inaction in relation to the attempted rescue of the men. The charges against Mr Garrett were dismissed.

While this office received telephone complaints from people in Eden requesting the Ombudsman to investigate the matter, it was not until late February 1995 that a written complaint was received. The Ombudsman directed that an investigation be conducted.

The Police Service found no evidence of any cover up by police. The decision to charge Mr Garrett was made when Mr Garrett, according to the officers concerned, told police that he was left in control of the boat while the other crew members were asleep. As the boat came close to Green Cape he left the wheelhouse for fifteen minutes. Mr Garrett also said that he had smoked cannabis prior to leaving Eden on the *Terrace Star*.

The Major Crime Squad investigated the matter. Witnesses were interviewed and police decided to charge Mr Garrett. The Legal Services Branch was consulted and advised that there was sufficient evidence for manslaughter charges.

The magistrate, in dismissing the charges, made no adverse comment (nor did the coroner) about the charges being brought. The Director of Public Prosecutions considered having Mr Garrett tried before a judge, but did not proceed. The Ombudsman, on the evidence, could not conclude that the charges were brought with the intention of thwarting a coronial inquest.

One issue which arose was the taking of a blood sample from Mr Garrett. The *Marine (Boating Safety - Alcohol and Drugs) Act* provides that police can request a person to provide a blood

or urine sample where that person has been admitted to hospital because he or she has been involved in an accident while operating a vessel. However, the sample can only be taken within two hours from the time the person operated the vessel. Mr Garrett's blood sample was taken well outside the two hour period.

The officer who requested the sample thought that there was no time limit and had little experience of boating accidents. The magistrate accepted the officer was honestly mistaken in thinking he could have the sample taken.

The Police Service investigation also examined the role of police in the rescue attempt. Comments had been made that police were late in going to Green Cape to attempt to rescue the men on board.

The investigation found that an emergency call was received from the *Terrace Star* at 4.28am and police were called at 4.36am. The constable called a number of bodies to coordinate a search. However, it was not until 6.15am, near sunrise, that the police boat left Eden. The sector commander was not notified until 7.15am.

The coroner found police were justified in not leaving Eden earlier as the boat was not equipped with aids for night navigation. He said no difference would have been made had the sector commander been notified earlier as there was little more that the constable could have done. The coroner recommended that Eden have permanent Water Police present and a review be carried out into upgrading emergency services and equipment available at Eden.

Having reviewed all the evidence, the Ombudsman has notified the Police Service of one matter requiring further attention and expects this matter to be resolved shortly. The Ombudsman is also pursuing the Service's compliance with the coroner's recommendations and has requested that the Service extend the review to all coastal police stations.

MISTAKEN IDENTITY

In 1993, a man was arrested by police for suspected possession and supply of amphetamines. The principal evidence against the man was provided by transcripts of intercepted telephone conversations. Police identified him as the person discussing the purchase and distribution of amphetamines. The transcripts were passed on to officers from another agency who arrested the man and others in relation to an amphetamine operation.

The man protested his innocence. However, on the basis of the evidence provided to the magistrate, the magistrate set stringent bail conditions. The man was unable to meet the conditions and spent 14 days in gaol.

The arresting officer then listened to the original intercepted telephone conversation. He then had the voice identification checked by another officer. This officer said that the man had been incorrectly identified and that the voice belonged to someone else.

The charges were dropped and the man was released from prison. He claimed that not only had he been humiliated by the whole experience but his arrest had adversely affected his business. He featured in several newspaper articles under headlines such as *"Two men charged over amphetamines"*.

The Police Service made no findings against any officer and refused to pay compensation for the time the man spent in gaol.

However, the Ombudsman noted that the investigation into his complaint revealed that the officer who had transcribed the telephone conversations implicating the man had made handwritten notes which were then typed. From the handwritten notes, it was clear that the officer was not certain of the identity of the voice. When the notes were typed the officer failed to convey that uncertainty and did not make any effort to check the voice identity with another officer. The Ombudsman found that the officer had been negligent.

The Ombudsman was of the view that the arrest was unreasonable. Had police been diligent, it would have been clear that there was insufficient evidence to arrest the man. The Ombudsman therefore recommended that the Police Service consider providing an ex-gratia payment to the man. She also requested that the Police Service apologise for the delay which

occurred in the investigation of his complaint. The Police Service has now agreed to enter into negotiation concerning compensation and apologise to the man.

DOG SQUAD

An anonymous complaint was received about a police dog squad. It alleged that police were using departmental purchase orders to buy car batteries, tyres and other items. The stealing of petrol and food and selling items of police uniform in a sports store owned by one of the squad members was also mentioned. It was also alleged that unmarked police vehicles were being used for a range of non-police activities such as working a turf farm, making deliveries, taking children to swimming competitions, private security work and travelling to race meetings. The squad also allegedly had a corrupt relationship with a smash repairer, who added the cost of repairing their private vehicles to departmental vehicles.

The Police Service's investigation found insufficient evidence to prove the allegations. When questioned, police denied using their vehicles for business or family purposes and the investigation went no further. The investigation discovered an officer had used his police vehicle to travel from Sydney to Mudgee to visit his girlfriend during work hours and charged the petrol to the Police Service and that some squad members had been double dipping by claiming both meal and travelling allowance for country trips. It also revealed a sports shop owner admitted selling police issue running shoes and providing himself and other officers with replacement shoes from his shop. Because no money had changed hands, the police investigator recommended the officers be counselled.

The Ombudsman was dissatisfied with the investigation. An excessive number of uniforms had been ordered by the squad. Some officers

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had ordered five or six pairs of footwear a year. Others made multiple orders of overalls, leather caps and leather jackets, yet an internal audit report revealed no excess orders for the year.

Ombudsman investigators who visited the Purchasing and Supply Branch also found that record keeping was deficient, leaving the system open to rorts.

The Ombudsman noted that the investigating police had not searched the sports store which allegedly had been selling items of police uniform.

When investigating the claim of excessive smash repairs, the investigator found that 16 damage claims had been made in one year. The squad had only 13 vehicles. The average claim was for around $2-3,000, though one claim was for $12,795. One officer who said his car had sustained "minor damage" incurred a bill for over $5,000 and a battery was also supplied to the car. The officer responsible for the car said that a battery was not needed. He believed another officer had ordered it so the smash repairer could have it. He failed to report the matter.

Although no corrupt relationship with the smash repairer could be proved, the squad no longer deals with that smash repairer.

The investigation highlighted poor supervision of the squad and its lack of accountability. Certain conditions enjoyed by the dog squad left the system open to abuse. For example, officers are able to take police vehicles on leave as long as the dog travels with them.

The Ombudsman recommended in her report that a review be undertaken of all dog squad operations to assess whether the present system is cost effective and whether the squads should be maintained in their present form. The officer who travelled to Mudgee to visit his girlfriend has since pleaded guilty to five departmental charges and is likely to be demoted.

IMPROPER PERSONAL SEARCH

Shortly after midnight, a 21 year old social worker was riding his motor cycle with a friend when something suddenly flew into his eyes, temporarily blinding him and causing his bike to swerve. Two uniformed officers performing mobile random breath test duties pulled them over and required the rider to produce his driving licence.

Believing the rider was under the influence of alcohol, one officer subjected him to a breath test which proved negative. When the rider asked why he had been stopped, the officer told him not to be a *"smart-arse"* and proceeded to search him in front of a gathering crowd of onlookers. Finding nothing incriminating, the officer angrily told him to go home. Upset by the officer's hostile and sarcastic behaviour, the rider asked if he had the right to know the officer's name. The officer allegedly said: *"If you don't leave now I'll put you in the back of the car and show you how much right you have. Now get on your bike and piss off!"*

Upset at his treatment by police, the social worker complained to the Ombudsman. The substance of his complaint was that the police officer had acted offensively, improperly searched him and failed to supply his name when requested.

A sergeant who initially inquired into the matter believed the police had acted properly and recommended against a full investigation. This was duly endorsed by the District Commander who commented :

> *"The officers ... do not recall searching* [the complainant]. *However if police did search* [the complainant] *their actions would have been justified within section 357E (a) and (b) of the* Crimes Act *which gives police the power to stop and search persons and vehicles. There is no evidence to suggest the use of abusive language by police ... I recommend no further action ...".*

The Ombudsman reviewed the papers and discovered that, contrary to the District Commander's assertion that the officers did not recall searching the complainant, one of the officers had not even been interviewed. The Ombudsman then directed that further inquiries be carried out. Subsequently, the sergeant reversed his position and recommended a full investigation.

The Acting District Commander *"strongly disagreed"* with the sergeant's recommendation. He was of the opinion that *"it would suffice if both*

[officers] *were spoken to ... and reminded of their responsibilities when stopping members of the public for the purpose of a breath analysis test".*

The Ombudsman, after again reviewing the papers, found the following significant anomalies:

- the officers' versions did not refute the complainant's allegation that he had been searched;
- if a search did take place, it would not appear to have been justified under s.357E of the *Crimes Act* due to the absence of a *"reasonable suspicion";*
- the passenger, a crucial witness in the matter, had not even been interviewed;
- the search, if it occurred, had not been documented and there were no instructions requiring the documentation of searches; and
- the Commissioner's Instructions clearly require officers to immediately supply their name, rank and number to members of the public upon request, and this instruction did not appear to have been complied with.

Accordingly, the Ombudsman directed a full investigation be carried out.

The Ombudsman found that one officer had used abusive language towards the social worker and failed to supply his name upon request. It was also found that the officer had unlawfully searched the social worker. The officer did not have a reasonable suspicion that he had in his possession, or was carrying on his motor cycle, some article which was *"stolen or otherwise unlawfully obtained"* or *"any thing used or intended to be used in the commission of an indictable offence"*. This officer has now been formally admonished in respect of his misconduct.

Alarmed by the absence of any instruction requiring searches to be documented, the Ombudsman recommended that the Commissioner's Instructions be amended to ensure that all searches are recorded in the searching officer's notebook. She also recommended that where searches are carried out by officers, the specific nature of their reasonable suspicion should also be documented. Unfortunately, this recommendation has not been accepted by the Service.

The complainant subsequently thanked the office for its intervention:

> *"It seems that were it not for the diligence of the people at the Ombudsman's Office, my complaint would have been dropped at a very early stage in the proceedings ... I appreciate and am impressed by the Ombudsman's Office picking up on and pursuing the "anomalies" in the preliminary inquiries report ...".*
>
> *"... I remain disturbed that acting against police misconduct involves such a protracted, complicated and formidable process. Were I a street kid with no permanent address, limited literacy skills, no access to typing facilities and limited knowledge of my rights, it would have been almost impossible to take my complaint to this level. Add to this the efforts of the police to sweep my complaint under the carpet, and I can't help but feel that justice must all too rarely be served."*

"PAY BACK" COMPLAINT

In February 1994, this office received a complaint in relation to two detectives abusing travel allowance in 1990. A number of other matters were raised concerning impropriety on the part of Officer A. The Police Service initiated a full investigation and two of the issues were sustained. The issue of both officers' abuse of travel allowance was referred to the Director of Public Prosecutions (DPP) for advice on criminal charges. The issue of Officer A submitting a deceitful report was referred to the Service Solicitor for advice on departmental charges.

During the investigation concerns were raised as to whether this could be a "pay back" complaint from members of the Police Service against whom Officer B had made allegations of corruption.

After careful consideration of the material provided through the police investigation, this office found the allegations against the officers unable to be determined because of the conflicting evidence on the issues sustained by the Service. The four year delay in the lodgement of the complaint also raised the question of the motive for the complaint.

The DPP declined to lay criminal charges against the officers as there was insufficient evidence to warrant criminal proceedings.

However, the Police Service decided that Officer A should be departmentally charged with two counts of misconduct. The Police Tribunal subsequently dismissed both charges as it found they were totally unfounded.

The Ombudsman believes that this case highlights the need to protect the complaints system from being unfairly used against officers who report misconduct by their colleagues.

POOR PARKING, POOR MEMORY

In 1993, a car owner complained that he had received a number of parking infringement notices (PINs) for parking offences that were not his. The man stated that his registration plates had been seized by police some fifteen months earlier.

An investigation revealed that the officers who confiscated the plates had kept them. One of the officers had just become a member of the newly formed Special Operations Group (SOG). At various times, the plates were used on SOGs vehicles, supposedly involved in covert operations. During this time, 23 parking infringement notices were incurred, none of which were paid.

The investigation into the officers' conduct was obstructed by poor documentation and unreliable evidence given by the officers. Motor vehicle logs for one vehicle had disappeared. However records identified the officers who were in the vehicles when parking infringement notices were issued.

In one case, a PIN was issued to a vehicle driven by the officer who originally seized the plates. Oddly, he stated that he was unaware that these plates were used on this vehicle or any other vehicle attached to the SOG.

On another occasion, a parking patrol officer spoke with two officers while issuing a PIN. She recalled the incident in some detail. However, police could not recall the PIN, the conversation or the covert registration plate of the vehicle. One officer could not even remember that the vehicle existed.

In fact, none of the officers could recall ever being issued with a PIN. Many denied that they had parked where the infringement was issued. Others stated they were not even in the area, despite documentary evidence to the contrary.

The Ombudsman took a dim view of the officers' evidence. Although the Police Service sustained the complaint on poor supervision and failure to follow proper procedures, the Ombudsman's report focused on the officers' truthfulness. The Ombudsman found that all eleven officers had given misleading evidence and recommended disciplinary action against them. She also recommended a review of the use and accountability of motor vehicle log books and use of "covert" number plates.

The Police Service has accepted the Ombudsman's recommendations.

RACISM AND VICTIMISATION

In May 1996, the Ombudsman reported on a complaint by Senior Sergeant Ken Jurotte, an Aboriginal officer, who claimed that he had been the subject of racism by police and victimised as a "whistleblower".

Bourke

Senior Sergeant Jurotte had had a successful career in the Police Service since 1973. In late 1989, he was appointed patrol tactician at Bourke, a town with a large Aboriginal population.

Senior Sergeant Jurotte encountered racist behaviour by certain police at Bourke, some directed towards him and his wife, who was also Aboriginal. He complained to his patrol commander who, according to Senior Sergeant Jurotte, *"did absolutely nothing"*. He then sought a transfer through his District Commander who *"ignored my plea for help"*. His Region Commander also allegedly failed to assist him. Subsequent events prompted Senior Sergeant Jurotte to make a formal complaint about these matters.

In March 1992, the ABC screened a videotape of a "bad taste" party which featured two police officers with their bodies blackened and nooses around their necks, parodying Aboriginal men who had died in police custody. It was rumoured among police that Senior Sergeant Jurotte had been involved in providing the videotape to the ABC.

The 'black faces' incident was immediately investigated by the Police Service. An issue canvassed in the investigation was the involvement of Bourke police with the video. There was a stark contrast between the evidence of Senior Sergeant Jurotte and his patrol commander on this issue. Senior Sergeant Jurotte believed that the investigation would find that his patrol commander had been untruthful and he would therefore be dismissed from the Police Service. However, Senior Sergeant Jurotte was advised that the patrol commander at Bourke would remain in that position.

It was this which prompted Senior Sergeant Jurotte to make a formal complaint about his treatment at Bourke because *"I was determined that I would no longer put up with what had gone on for far too long and was no doubt going to be far worse."*

The Police Service initiated an investigation into this complaint and decided to transfer both Senior Sergeant Jurotte and his patrol commander from Bourke.

Wilcannia

In May 1992, Senior Sergeant Jurotte commenced duty as patrol commander at Wilcannia, which also has a significant Aboriginal population. According to Senior Sergeant Jurotte, his new district commander told him at the outset: *"I know what went on in Bourke. ... I never ... wanted you here."*

In his complaint, Senior Sergeant Jurotte said: *"Despite my efforts to support and work with* [the district commander] *it became quite obvious to me that he had little, if any, regard for my ability nor the progress that had been made in the relations between police and Aborigines in Wilcannia nor the substantial reduction in crime"*. He was also concerned about certain "covert" audits of the Wilcannia Patrol: *"...one expects audits or inspections but I suggest that these audits called for additionally by the District Commander would be identified, by any independent observer, as victimisation or harassment"*.

The Police Service's investigation of Senior Sergeant Jurotte's complaint about the Bourke police and his commanders was completed in September 1992. Only two issues about racist behaviour were sustained. However, the Police Service did not advise Senior Sergeant Jurotte of the outcome of its investigation. He had to telephone this office for that information.

Senior Sergeant Jurotte then submitted a report to the Assistant Commissioner (Professional Responsibility) which concluded: *"Sir, I would request that my family and I be supplied with some kind of official notification as to the current status of the investigation as a matter of urgency so that we can put the whole distasteful and soul destroying episode behind us"*. The Police Service did not respond to Senior Sergeant Jurotte. Instead, it referred his request to this office with a suggestion that this office *"might care to consider providing appropriate advice"*. The Ombudsman has described the Police Service's response as *"disgraceful"*.

Mrs Jurotte wrote to the Minister for Police, also complaining about the lack of notification from the Police Service about its investigation into her husband's complaint:

> *"Ken is looked upon as a 'whistleblower' by many members of the Service including police in very high positions within the Service. ... Ken has told me that we may shortly receive some advice as to what is going on. In my opinion it is too little too late. If this is the Police Service's version of looking after its people ... it is beyond contempt. We have lived with rumours and innuendo for the past twelve months."*

In May 1993, the Police Service advised this office that it would conciliate Mrs Jurotte's concerns. However, no attempt to conciliate the matter occurred until July 1993.

In the course of the conciliation, Senior Sergeant and Mrs Jurotte raised their concerns about Senior Sergeant Jurotte's treatment by his district commander. Senior Sergeant Jurotte said:

> *"I have no doubt that certain problems I have encountered since leaving Bourke have been directly attributable to what happened there and the fact that I chose to take on a senior police officer... I am looked upon by some as a whistleblower or someone who bucks the system"*.

Mrs Jurotte said: *"I feel my husband has been victimised ... because he took a stand on racist behaviour by police"*.

The Police Service attempted to conciliate the Jurottes' concerns, namely:

- the transfer of the former patrol commander from Bourke to Raymond Terrace, a patrol with a large Aboriginal population;
- the Police Service's delay in advising them of the outcome of its investigation into the Bourke police; and
- the district commander's lack of support for Senior Sergeant Jurotte and the "covert" audits of the Wilcannia patrol.

Conciliation was effected on the basis that these matters would be *"brought to the attention of"* the Commissioner and the new region and district commanders. However, Senior Sergeant Jurotte was then advised of a proposed "independent external" audit of the Wilcannia patrol. The Region Commander was of the view:

> *"It is obvious the patrol of Wilcannia has lacked leadership since Senior Sergeant Jurotte took over command. There has also been a significant unfavourable increase in community - police relations since his command. I have directed a patrol audit be carried out and then the question of his suitability to remain in command may have to be addressed."*

The new Region Commander subsequently directed an "operational audit" of the Wilcannia patrol. Following the audit, Senior Sergeant Jurotte indicated that he wished to continue his command of the patrol. However, on 25 August 1993, he was relieved of his command.

The complaint

Senior Sergeant Jurotte then made a "complaint" in the form of a submission to the Commissioner. He claimed that his treatment during his command of the Wilcannia patrol, and the decision to remove him from that command, were the result of racism and his adverse identification as a "whistleblower".

The Police Service investigation

The Police Service's investigation into this complaint also encompassed a number of "complaints" about Senior Sergeant Jurotte himself. The Police Service described it as *"the one comprehensive investigation"* of *"linked"* complaints. Senior Sergeant Jurotte was interviewed about not only his complaint but also matters concerning his own conduct. Understandably, this affected his perception of the nature of the investigation: *" I believe that my original complaint has been turned around and I am now viewed as the problem ... this investigation is simply another example of the victimisation and harassment that my family and I have had to endure".*

The Police Service found Senior Sergeant Jurotte's complaint not sustained while finding almost all of the issues concerning Senior Sergeant Jurotte's conduct sustained. The Service Solicitor advised that there was sufficient evidence to prefer 11 departmental charges against Senior Sergeant Jurotte. However, the then Assistant Commissioner (Professional Responsibility) advised that he would only have Senior Sergeant Jurotte admonished.

The Ombudsman's investigation

The Ombudsman's investigation focused on the *"considerations leading to the decision to relieve Senior Sergeant Jurotte of his command".*

The Ombudsman ultimately found that:

- there was a failure to provide adequate support to Senior Sergeant Jurotte as a "whistleblower";
- there was a failure to provide adequate support to Senior Sergeant Jurotte as a senior Aboriginal police officer, thereby prejudicing his career prospects in the Police Service;
- the circumstances leading to the decision to relieve Senior Sergeant Jurotte of his command of the Wilcannia patrol were unreasonable and oppressive, involving in particular a denial of procedural fairness;
- there was a failure to investigate Senior Sergeant Jurotte's complaint in a proper manner, to identify the real basis for that complaint, and to address various managerial deficiencies on the part of the Police Service.

On this basis, the Ombudsman recommended:

- there should be a meeting between an appropriate senior representative of the Police Service and Senior Sergeant Jurotte at which there would be a proper acknowledgment of, and apology for, the inadequate support for Senior Sergeant Jurotte;
- there should be a review of the decision to admonish Senior Sergeant Jurotte;
- the Police Service should develop and implement specific measures to ensure that Senior Sergeant Jurotte's career would be supported;
- there should be a review by a senior officer of the Police Service not associated with the matter to determine whether and what management action should be taken in respect of the officers whose conduct adversely impacted on Senior Sergeant Jurotte;
- the Police Service should review relevant managerial practices to prevent a recurrence of the management problems identified in the Ombudsman's report;
- the Police Service should review its policies and strategies with respect to the appointment of Aboriginal police officers to senior positions and/or sensitive locations; and
- the Ombudsman's report should be referred to the Police Service's Internal Witness Support Unit for consideration in the development of the Internal Witness Support Management Plan.

The Police Service's response

The Police Service initially advised that the Acting Deputy Commissioner would make an appropriate apology on behalf of the Police Service to Senior Sergeant Jurotte. However, it subsequently emerged that the question of an apology would not be considered until after the Royal Commission's inquiry into the matter.

The Assistant Commissioner (Professional Responsibility) directed that Senior Sergeant Jurotte should not be admonished.

As to supporting Senior Sergeant Jurotte's career, it would appear that there is now no opportunity for the recommendation to be implemented: Senior Sergeant Jurotte has left the Police Service.

The review of possible managerial action in respect of the officers whose conduct adversely affected Senior Sergeant Jurotte was deferred pending conclusion of the Royal Commission's inquiry.

The Acting Deputy Commissioner has provided the Ombudsman with her review of deficient managerial practices and invited this office to comment on whether the managerial issues in question have been "suitably addressed".

The Police Service has also advised that its policy and practice on the appointment of Aboriginal officers to senior positions and/or sensitive locations has been addressed in its implementation plan for the *Charter of Principles for a Culturally Diverse Society.*

The Ombudsman's report has been considered in the Service's development of its *Internal Witness Support Policy and Management Program.*

PYJAMA PARTY

A newly arrived Chinese immigrant and his wife left their flat late one evening to go for a drive. They felt unable to sleep because it was hot. He was dressed in a singlet and white boxer shorts and she was in her 'nightie'. The wife drove the car and stopped in the carpark at a railway station to talk. They swapped seats.

Police approached the man in the driver's seat. They checked the car and issued a defect notice in regard to a headlight, blinkers and engine oil leak. The man tried to point out that the lights were operating by turning them on. The situation escalated and the man was arrested for offensive language. A struggle followed and the wife was arrested for assisting her husband. Four police cars with sirens on were sent to the scene, while seven cars were on standby.

The couple were taken to the police station and charged with offences such as "offensive language", "assault police" and "resist arrest".

JO FLANAGAN - SENIOR INVESTIGATION OFFICER After completing an honours degree in English Literature at Sydney University, Jo enrolled in the graduate law course at NSW University, completing that course while working for the Department of Social Security, and later the Trade Practices Commission and the Tax Office. Jo has also worked as a solicitor for the Aboriginal Legal Service, the Women's Legal Resource Centre and the Blue Mountains Community Legal Centre. For about three years she was the Community Legal Centre's representative on the NSW Domestic Violence Committee, which provided advice to the government on the operation of relevant legislation. She has a strong commitment to women's issues and since joining this office in 1992 has taken a special interest in complaints relating to domestic violence and sex based harassment. Jo is currently enrolled in a Masters in Creative Writing at the University of Western Sydney, and is in the process of writing her first novel. Jo runs the office's yoga class. She lives in the Blue Mountains where she belongs to an acapella community choir and is involved with a project which is creating a community garden in Katoomba.

Those charges were subsequently dismissed at court. The couple came to the Ombudsman for assistance. They alleged the husband was kicked during his arrest. Statements were obtained and the matter was referred to the Police Service for investigation. The Police Service found the assault matter not sustained.

After reviewing the evidence, the Ombudsman found an assault had occurred on the husband and recommended the Director of Public Prosecutions review the evidence. The DPP decided a charge should be laid against one of the constables.

The Ombudsman also found police had wrongly arrested the man and the couple were not issued with copies of their charge sheets or notebook interviews by police in contravention of the Commissioner's Instructions. Furthermore, it was found the man had been handcuffed to the leg of a table when in the interview room. This was in contravention of the Instructions (this practice has now been

banned). Police also breached their Statement of Values by releasing the couple from the police station without proper clothing or money or means of transport to their residence at three o'clock in the morning. The wife stated *"... I was wearing a night gown and slippers. My husband was wearing a T-shirt, without shoes. We asked the police if they could take us back .... they said they were not allowed to do that. The tall one said: 'Either you walk home or take a taxi' "*. They walked for four kilometres before getting a taxi.

The station officer said the normal practice would be to offer a phone call to contact a friend or a taxi. If they had no money, then he would arrange for *"a car crew or someone like the supervising sergeant to take them"*. It is difficult to understand why this was not done in this case.

It is now twelve months since the Ombudsman's findings were made. Despite numerous recommendations as to discipline, no advice has been received from the Police Service other than on the criminal charge.

A MATTER OF NOTE

A juvenile victim of a sexual assault made notes of what had happened between herself and the boyfriend of her mother during the course of some months. After making a statement to police, her notes were destroyed. The mother said she destroyed them because she was told by police they would not be needed after the statement was taken. She also stated that another police officer told her to give evidence denying she had been advised to destroy the notes. An investigation established that police had failed to keep a proper record of the notes or retain them for evidentiary purposes. The Ombudsman recommended that police be required to keep any notes made by witnesses for production in court if necessary.

HOW TO WIN FRIENDS AND INFLUENCE PEOPLE

A police officer spoke at a seminar held for emergency personnel to explain protocol at emergency scenes. The officer cited an accident on the F4 freeway in which a confrontation developed between police and fire brigade officers over procedures. He named a fire brigade officer as one of the greatest causes of inter-Service problems and made false statements about action being taken against the fire officer. Several people who attended the lecture attested to the critical and derogatory tone of the comments made.

The Ombudsman found the police officer had made defamatory remarks and had deliberately misled the investigator by stating that it was the audience who had raised the incident and nominated the fire brigade officer. The Ombudsman recommended formal disciplinary action against the officer and compensation to the fire brigade officer for the false and defamatory remarks. After obtaining legal advice, the Minister for Police has agreed to an ex-gratia payment of $5,000 to cover legal fees incurred by the complainant in this matter and nominal damages.

CHILD SAFETY

A mother complained about police who left her children by the roadside late one night after arresting her husband.

Her husband had had a minor accident. Police were called and breathalysed the man. As he showed a positive reading, police arrested him.

He told police that his three children and their friend were in the car and that he would not leave the children by themselves at 10 pm in a dark unlit area. The eldest was 14 years old while the youngest was nine years old.

Police considered the children were old enough to stay by themselves even though the father insisted they were not. He was then taken to the police station. The children were looked after by strangers in a neighbouring house.

Concerned by the incident, the Ombudsman recommended the Police Service review the relevant Commissioner's Instructions.

The Police Service has now amended those instructions to ensure the safety of children is considered by police in situations where parents are arrested.

DRINKING ON DUTY

The Ombudsman continued to receive complaints this year about police drinking on duty. The *Police Service Regulation* prohibits police from being under the influence of liquor while on duty or in uniform but "under the influence" is not defined. The Commissioner's Instructions also advise police not to enter licensed premises, except in the execution of their duty, or to accept liquor from any person. Police are prohibited from taking alcohol onto police premises without the authority of their patrol commander.

The Ombudsman has now recommended the Police Service invoke a Service wide prohibition on drinking on duty, subject to limited exceptions. Some police stations have already adopted a policy prohibiting drinking on duty. A ministerial working party is also examining the introduction of random drug and alcohol testing.

A few of the cases selected exemplify problems with alcohol consumption by police when rostered on duty.

Case study one

One Friday night, several highway patrol officers arranged to meet during their evening meal break at the station to have a barbecue. It was the last night of a highway patrol unit as it was being combined with another. Some student officers were present who had just completed their training with the patrol. Water police were also invited. An officer volunteered to pick up two cartons of beer. The officers drank until leaving at 11 pm before their 11.30 pm shift ended. A student officer explained *"... everyone finishes at 11.00, they don't usually work the extra half an hour"*. They then departed to a licensed club in unmarked police vehicles. Some officers were still in uniform or part uniform. Discretion being the better part of valour, they entered the club through the rear entrance and sat out the back. They consumed more alcohol and purchased two more cartons of beer. Around midnight some of the officers went to a park to continue drinking. Student officers took turns at driving one of the vehicles. A male officer in the back objected: *"After initially trying to stop her I kept my mouth shut and did nothing whatsoever that would distract her from driving. I felt this was important because I know that young females can't drive high powered cars properly."*

The vehicles were returned to the police station at 2 am and witnesses noted the intoxication of the occupants. One passenger was overheard referring to the driving ability of one of the student officers: *"She's mad, the way she handles that car is unbelievable mate. She does better than me. She should join the god damn highway patrol."*

The following morning a senior officer of the patrol, who had been on leave, refuelled his vehicle at the service station opposite the police station. The cashier said to him: *"There was a lot of highway boys at the station last night, did they get a new blue Commodore, they were revving the engine and spinning the wheels."* During the subsequent investigation, officers denied any knowledge of police vehicles doing 'donuts'.

Each of the officers interviewed was directed not to discuss the matter with anyone. This direction was breached. Some of the student police officers retracted their earlier evidence. The investigation found these officers had been pressured to give false evidence. Departmental charges are pending arising from false motor vehicle diary entries, failure to complete rostered duty, misuse of a police vehicle, untruthfulness, lack of supervision, taking alcohol on to police premises without permission and conduct calculated to bring discredit on the Police Service. One officer has since been dismissed and two student officers were not appointed as constables.

Case study two

Two officers on beat duties commenced a late shift at 11 pm. Their patrol was a 'safety zone', an area known for trouble due to its entertainment facilities, railway station and 'nite ride' bus services. A supervising officer became aware there had been no contact with the officers since they commenced duties and was concerned for their safety. He arranged for two separate radio broadcasts in an attempt to establish contact with them without success. The supervising officer directed a mobile patrol to search for them. Both officers were found at 3 am leaving a club with an off duty officer. Later inquiries revealed the officers, while in full

uniform, had entered a hotel to drink and moved on to the club for more drinks with a free meal. Departmental charges have now been laid against the officers for being under the influence whilst on duty and for neglect of duty in failing to complete rostered shifts.

Case study three

Police were driving a police van on patrol duties. Around midnight, they entered a hotel and obtained a case of beer. They were called out to an incident and on the way one officer helped himself to refreshments in the cabin. Sometime after 2 am they drove to a public school. They were joined by two officers from another patrol. Bogus police radio calls were made by one of the officers who said he wanted to *"show we're doing something"*. The false registration number inquiries and names for criminal index checks were logged. By 6 am the case of beer was finished. Sometime later, beer bottles, cigarette butts and a police tie were found in the school grounds. The investigation revealed the officer in charge failed to adequately supervise the officers who were absent whilst on duty for more than six hours. Formal disciplinary action against the officers is pending for neglect of duty and placing false radio calls. The police station involved has now introduced new procedures for supervisors to record work performed by all police on duty. The hotel management has been requested to refuse requests from police for free beer.

DAVID MEWING - SENIOR INVESTIGATION OFFICER David joined the Police Team in 1993 after retiring from the Royal Hong Kong Police as a Detective Senior Inspector. In Hong Kong, David headed a number of teams responsible for investigating serious crime, including Triad-related matters, and worked for some time prosecuting criminal cases in the Magistrates' courts. He also investigated police misconduct as an Inspector in Hong Kong's Complaints and Internal Investigation Bureau, and spent the latter part of his service in the Special Branch. David returned to Australia after 12 years in Hong Kong and started working for this office soon after.

PUBLIC AUTHORITIES

PUBLIC AUTHORITIES

OVERVIEW

This chapter covers complaints about government departments and statutory authorities other than police, prisons, local councils and freedom of information matters which are covered in other chapters.

This year we received 827 written complaints and 2,859 informal oral complaints about public authorities other than those listed above. We also received 93 requests to review our initial determinations. A further 409 written complaints, three review requests and 3,675 oral complaints were received about authorities, organisations or individuals not within our jurisdiction. Where a complaint falls outside the Ombudsman's jurisdiction we provide appropriate referral information whenever possible.

The level of written complaints about public authorities within our jurisdiction has dropped slightly over the past few years. However, this

Nature of public authority written complaints *1995/96*

Approvals grants, licenses, permits, registrations, applications	63
Charges level of charges, fees, penalties / refunds	90
Contractual issues tenders, contracts, maintenance	42
Information improper disclosure, refusal to alter / disclose, wrong advice	34
Management supervision	27
Misconduct corruption, conflict of interest	31
Natural justice denial, procedural fairness / failure to give reasons, other procedural objections	23
Policy/law objection to policy / law, faulty procedures	54
Regulation Discriminatory enforcement of regulations / law, failure to enforce / investigate, unreasonable / unjustified enforcement	77
Service delayed action, failure to act, no replies, poor service, rudeness, discrimination	250
Wrong decisions prejudice, malice or bias, based on wrong facts, other reasons	48
Issue outside jurisdiction	26
Other	62
Total	827

PUBLIC AUTHORITY COMPLAINTS

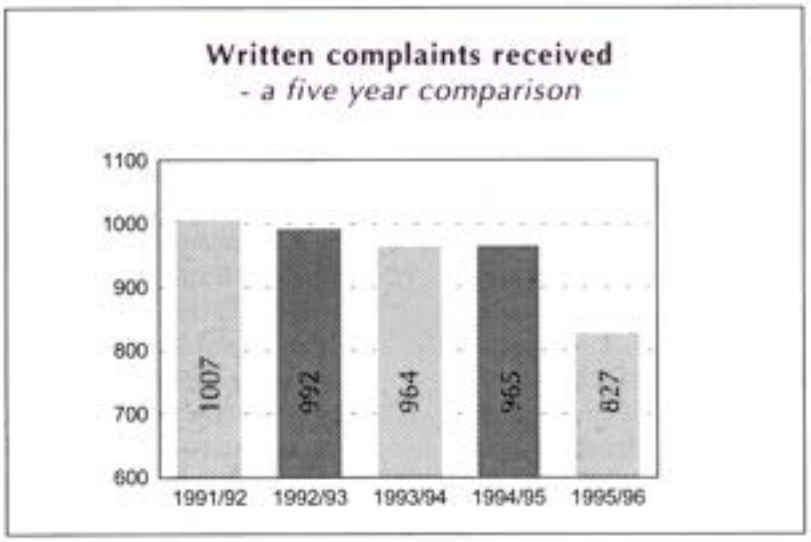
Received	
written complaints	827
oral complaints	2859
reviews	93
bodies outside jurisdiction	
written	409
oral	3675
Determined *(written complaints)*	
Formal investigation completed	3
Formal investigation discontinued	5
Preliminary inquiry	431
Assessment only	295
Non jurisdiction issues	88
Total	**822**

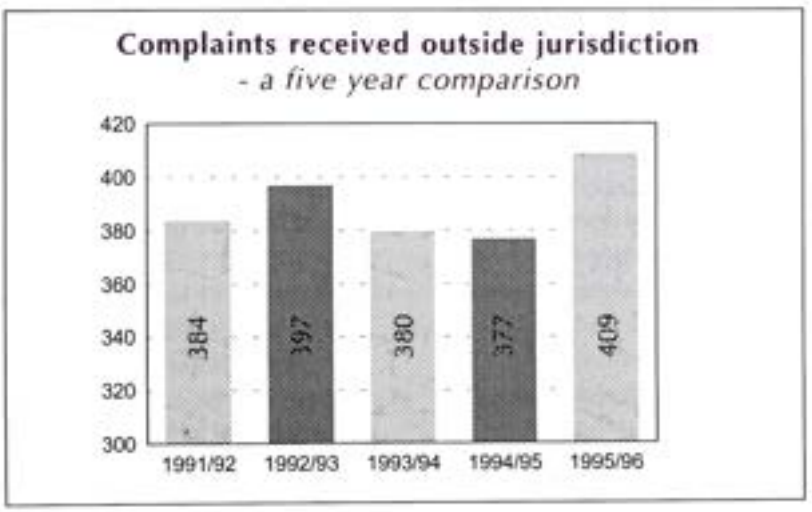
year we have seen an increase in the number of review requests and in written complaints about non-jurisdictional matters. There has been a 6% reduction in the number of oral complaints received about general authorities within our jurisdiction and a 20% increase in oral complaints about bodies outside our jurisdiction. A discussion of our approach and procedures for conducting reviews is included later in this chapter.

During 1995/96, 822 written complaints and 82 reviews about general authorities were finalised.

A further 413 non-jurisdictional matters, including four reviews, were also dealt with.

Preliminary inquiries, often extensive in scope, were conducted on more than 60% of the complaints received that were within our jurisdiction and eight formal investigations were completed. Of those, three complaints were resolved during the course of the investigation and two were discontinued for other reasons. Detailed reports were issued on the remainder. Further details concerning those matters are included elsewhere in this chapter.





'EXPERT JUDGEMENTS'

A significant number of complaints to us relate to technical and professional (including academic) judgements made by public authorities. Examples are as diverse as a council engineer's assessment of drainage capacity and specialist advice used during an investigation of alleged medical malpractice.

While our officers have a wide range of skills and knowledge, many types of expertise are unavailable in-house. While section 23 of the *Ombudsman Act* permits us to engage external expert assistance, cost means this facility has to be used sparingly.

We apply several principles to complaints based on objection to expert judgements. The first (consistent with section 13 of the *Ombudsman Act*) is that where satisfactory alternative redress is available we will decline the complaint. Alternative redress may involve: access to the Health Care Complaints Commission in the case of expert judgements by health professionals; access to the Legal Services Commission in the case of expert judgement by solicitors; or access to the relevant professional standards/ethics committees in other areas.

The second principle recognises that it is often possible for professionals and technical experts acting competently and in good faith to arrive at quite different judgements about the same problem. Often a complaint is no more than the complainant having a different view to that of the public authority expert. In this circumstance, the Ombudsman will usually weigh up the evidence and, unless there is evidence which shows that the opinion or advice clearly appears to be unreasonable, decline to conduct an investigation.

Some complainants do not confine themselves to disagreeing with the public authority expert judgement. They sometimes make allegations, attacking the expert as incompetent, prejudiced, or corrupt. We will only consider cases in this area where there is good evidence that the expert judgement was tainted by some form of improper consideration or motive.

There is a compelling practical reason for applying the above principles. If we did not do so, we would be overwhelmed with complaints calling on us to obtain unnecessary second opinions every time someone disagrees with a public authority expert judgement that affects them.

STATE RAIL AUTHORITY: AFTER THE SPECIAL AUDIT

Last year's annual report noted that following consultation between the Ombudsman, the ICAC Commissioner, the Auditor-General and the Minister for Transport about a variety of serious concerns, a Special Audit of the SRA was about to commence.

The Auditor-General's Special Audit report on Internal Control in the SRA was tabled in Parliament in May 1996. It contained wide ranging recommendations including a number (which the Ombudsman supports) about improving internal complaint handling.

The SRA was split with effect from 1 July 1996 and corporatised into four organisations, the (new) SRA, Freight Rail, the Rail Access Corporation and the Rail Services Authority.

The Minister, Mr Langton, was anxious that the new organisations should start with a strong commitment to meeting the concerns of the three accountability agencies in relation to corruption prevention, complaint handling and protected disclosures and the other internal controls canvassed in the Special Audit report. To this end, on 25 June 1996 the Minister chaired a meeting of the Ombudsman, the ICAC Commissioner and the Auditor-General with the incoming chairmen and chief executives of the four new rail organisations.

Arising from that meeting, the three accountability agencies agreed on a document outlining principles and actions to create a more desirable culture in the four new organisations. The document was then circulated with each agency nominating a senior officer who could provide advice and assistance to the organisations.

At the time of writing, the new organisations had already started to arrange meetings with the Ombudsman's office to discuss ways of improving complaint handling and their processing of protected disclosures.

The Ombudsman has a strong interest in this preventative and advisory work. It is very much in the spirit of the Ombudsman's Complaint Handling in the Public Sector (CHIPS) project which promotes more effective internal complaint handling by public authorities. In the longer term it should help reduce the number of complaints that reach the three agencies as a result of inadequacies in the authorities' internal procedures.

COMPLAINT DETERMINATIONS: REQUESTS FOR REVIEW

Each complaint that comes to us is determined in one of four ways:

- it is found to be outside our jurisdiction;
- we decline to formally investigate it (either at the outset or after making often extensive preliminary inquiries);
- it is resolved to our satisfaction (either after preliminary inquiries or mediation); or
- it is made the subject of a formal investigation.

Where we decline to formally investigate a complaint the *Ombudsman Act* obliges us to provide reasons for our decision. Since provisions in the Act which restrict our jurisdiction lead us to decline a significant proportion of complaints, it is no surprise that some complainants are dissatisfied with our determinations and seek to have them reviewed.

Despite the care taken in reaching our determinations we make no claim to infallibility. We advocate that public authorities generally should afford citizens a right of review or appeal against decisions to which they object. Consistent with that principle and on request, we will review a determination by us to decline to formally investigate a complaint.

When a review request is received, our policy is to allocate the file to an officer more senior than the one who made the original determination. The reviewing officer examines the entire file plus any new material provided by the complainant. Not infrequently, additional preliminary inquiries will be made to the complainant and/or the public authority to satisfy the reviewing officer fully. The original determination has on occasions been overturned and a formal investigation commenced. An alternative can be to suggest a mediation be conducted.

Where the reviewing officer's recommendation is other than to investigate or mediate, the file goes to the Ombudsman for final consideration and determination.

Sadly, some complainants are quite unable to accept any decision by us which does not accord completely with their wishes. Such a complainant will seek further reviews until we get the determination "right", ie agree with them.

Sometimes a complainant tells us that not all available information was provided when the initial complaint was made. When the complaint is declined, further information is often provided with the suggestion that more can be provided or obtained. This type of complainant then feels able to challenge the determination they dislike because it was reached on the basis of incomplete information.

Our response to the above complainant is simple. We expect complainants to lay all their cards on the table at the outset so we can assess their cases in the knowledge of all information available to them.

We can often empathise with determined complainants. Some are motivated by tragic events or incidents that have had significant effects on their lives. In such cases the extent of grief, resentment and sincerity is not in doubt, though the complainant's construction of events may be sadly mistaken.

However, empathy for an individual must not compromise our responsibility to the public interest which requires us to consider complaints objectively. With our limited resources we seek to provide a fair, honest and independent assessment of every complaint. If a complainant objects to our determination and its accompanying reasons, they are entitled to seek a review and that it will be conducted in a thorough and impartial manner. Once the Ombudsman has considered the review, the *Ombudsman Act* provides for no merits appeal beyond her decision, and the case is closed.

All complaint handling agencies get complainants who cannot 'let go' of their complaint. While such complainants are very few in number they can, if not handled properly, absorb an enormous amount of our resources. Such complainants sometimes make endless phone calls, request personal interviews and engage in lengthy correspondence. At times, anger at not getting the decision they want is translated into verbal abuse and physical threats to our staff.

In a small number of cases where it is clear a complainant will not accept that the review process has been exhausted, the Ombudsman may notify them that: in future no phone calls will be accepted or interviews granted concerning the specific complaint already reviewed; and correspondence will be received, read and filed but only acknowledged if it raises new issues which in the Ombudsman's opinion warrant fresh action. The Ombudsman takes this last step with the greatest reluctance, but to act differently would be to rob other meritorious complaints of the resources to which they are entitled.

INQUIRY INTO JUVENILE DETENTION CENTRES

In July 1995, the Ombudsman had discussions with the Minister for Community Services about his concerns about the current operations of the juvenile detention centres. At the Minister's request, but with terms and a methodology independently determined by the Ombudsman, the Ombudsman agreed to undertake a formal inquiry into the way in which juvenile justice detention centres operate in NSW.

The aim of the inquiry is to examine current policies and practices within the detention centres to see whether or not they reach national and international standards regarding the treatment of young offenders, in particularly the United Nations' Rules for the Protection of Juveniles Deprived of their Liberty. The Ombudsman will identify and report on any problem areas in the running of the detention centres and make recommendations designed to improve the operations of the centres.

One of the dormitories at Mt Penang Juvenile Justice Centre.

Dobroyde is one of the units at Yasmar Juvenile Justice Centre for Girls.

Extensive efforts were made to publicise the inquiry as widely as possible and contact was made with government bodies, detainees and their families, community organisations and any other interested parties. All groups were invited to make submissions to the inquiry. Press advertisements were run in a Sydney metropolitan newspaper as well as in sixteen major regional newspapers and the Koori Mail.

In December 1995 and February 1996 staff from this office working on the inquiry visited all of the nine juvenile detention centres. During these visits extensive interviews were held with management, administration staff, senior youth workers, psychologists, counsellors, nurses and other youth workers. The Ombudsman's staff also talked to as many detainees as possible about conditions at the centres.

The Ombudsman's staff went into the centres armed with a lengthy questionnaire which covered every aspect of what young offenders might experience within the centres, starting from admission procedures through to what services are available to meet the needs of these young people, standards of accommodation, food and clothing, education and training programs. The officers sought answers to questions such as what leisure activities they have, how case management was working, what contact these young people had with their families and friends, how well they were prepared for their eventual release and what support was in place to help them once they returned to their communities.

In more specialised areas of operations within the detention centres the Ombudsman commissioned expert advice. Reports on the food provided in detention centres was sought from dietitians, a psychiatrist working in the field of adolescent behaviour commented on the punishment and behaviour modification programs run in the centres, and a firm of architects inspected all the detention centres and reported on their suitability as places to detain young offenders. The information contained in these studies will be included in the Ombudsman's final report.

The findings of these visits and analysis of the interviews and submissions received by the inquiry is almost complete and a report from the Ombudsman will be presented to Parliament later in 1996.

POSTSCRIPT ON PSYCHOLOGISTS REGISTRATION BOARD

Last year's annual report (pp 63 - 66) outlined the investigation of the Psychologists Registration Board which culminated in a special report to Parliament in August 1995. Because of the public interest in this matter, it is worth adding a postscript describing the board's actions in response to the report. Technically, there has been full compliance with the Ombudsman's recommendations: all the remedial actions proposed have been completed, or at least initiated.

The board sent written apologies to the two complainants. It published the findings and recommendations of the Ombudsman's report in its own annual report, noting that the full report would be made available on request.

The Psychologists Registration Board, as recommended, has also sought advice from the Crown Solicitor on matters relating to the establishment of suitable criteria for assessing the good character of an applicant for registration, and on matters relating specifically to the board's assessment of Dr Davies's application.

A new president has been appointed to the board (the previous president did not seek reappointment), which should help to improve their performance. Dr Waring has given a clear indication to the Ombudsman that he intends to use his time as president to ensure the *Psychologists Act* and the Psychologists Registration Board become workable.

Dr Waring's attitude will certainly assist in the review and consultation process initiated by the Minister for Health in response to the Ombudsman's report. An issues paper will be circulated to a range of relevant parties, and will include amendments to the legislation proposed in our report, matters relating to registration provisions, complaints and disciplinary practitioners, and any other amendment which will promote the effectiveness of the *Psychologists Act*. This paper has not yet been received but is understood to be in preparation.

It looks as if action will finally be taken to improve the registration procedures which were themselves established to improve the standard of practising psychologists.

CARING FOR THE LAND

A farmer from southern NSW complained to us about the administration of the National Landcare Program by the Department of Land and Water Conservation. The Landcare Program is a Commonwealth funded program aimed at encouraging communities to manage land and water resources responsibly. The funds are provided to the State on certain agreed conditions. Under the agreement the State has the responsibility of assessing applications and deciding which projects are worth funding.

The farmer belonged to an incorporated community landcare group. In March 1992 a landcare officer from the department attended a meeting of the group's managing committee. At the meeting, the officer spoke of a proposal to obtain funding for a demonstration project on the property of the group chairman. Not long after, an application for funding under the program in the group's name was signed by the chairman and submitted. The application was successful and the project funded for approximately $20,000 under the Landcare Program.

The farmer was disturbed by this. He said that the committee did not vote or formally decide that an application would be made by the group. He was also concerned that the application specified that the group would contribute the sum of $29,600 should funding be received. Again, formal group approval had not been given. The farmer believed that the landcare officer had assisted in preparing the funding application and that the chairman had been improperly assisted by the landcare officer to obtain a benefit for himself.

The farmer said that he reported his concerns to the department but he believed that a proper investigation was not carried out. He said that the department did not make a formal approach to the committee for relevant records or for the group's views on the application generally. The department consulted with the landcare officer concerned and basically relied on his account of events. The department concluded that the group was aware of the application and supported it as a group application. The department maintained that the internal workings and affairs of landcare groups were not its concern and it did not take the matter further.

Our investigation focused on the systemic issues raised by the complaint relating to the administration of the program by the department.

We discovered that minutes of committee meetings did not confirm whether the group decided to make the application. As application was for a project on the property of an individual, the program required that the project have community support and group endorsement. As the person submitting the application stood to benefit the most, it was clear that the department should have done more to satisfy itself that the group supported and endorsed the application. The lack of any formal approach to the group suggested that the department did not have any protocol in place for formal communication between it and landcare groups. The department agreed that, in future, in dealing with incorporated community groups, it would formally communicate through the nominated public officer and require the provision of documentary information concerning group business.

We also wanted to know how the department monitored the expenditure of funds granted to groups and how it verified group contributions in the application. The farmer was concerned that the amount specified as a group contribution was inflated. It transpired that the department did not use any costing guidelines in assessing applications. Local and regional panels relied on their industry knowledge to assess costs including items to be part of a group contribution. It was not clear that the assessment process allowed for panels to check that the group was aware of the contribution and supported it. As to expenditure, the department did not produce any audited statements of expenditure for the project and this threw doubt on its ability to monitor expenditure of funds. Further, the group's annual financial statement did not record group contributions as liabilities. It seemed that the department could have required that this statement be submitted when receiving reports from groups on how the funds were spent.

In our investigation we asked the department to clarify the role of its landcare officers working with local groups and their obligations to report irregularities in group affairs. The department stated that it is drafting a new protocol on the official status of landcare officers with respect to membership of landcare groups. In particular the department agreed that officers who become aware of obvious irregularities should report them.

In our provisional report we recommended that in future, the department advise groups on the importance of proper record keeping. This would include records of decisions to apply for funds, decisions to make a financial contribution in an application and keeping financial statements. The department agreed to this.

The agreement between the Commonwealth and State requires the State to keep financial records for each project, provide progress reports on each project and ensure that projects are undertaken in accordance with sound environmental and financial practices. The State, in this case the Department of Land and Water Conservation, also has to assess the financial impact of projects. However it was not clear how the department actually did this, considering that the only report required for the project was at the conclusion of the project. Without costing guidelines it was difficult to see how the department could consistently ensure that the project was undertaken in accordance with sound financial practices. We recommended that funding agreements for landcare grants clearly set out the level and detail of financial accountability, reporting and evaluation standards required under the agreement between the State and Commonwealth. The department agreed with the recommendation and has since provided new funding agreements and other documentation stating that it would address these matters. We are currently assessing the adequacy of this information.

In line with our recommendation, the department also agreed to prepare costing guidelines and was drafting broad costing guidelines at the time of writing.

The department agreed with our recommendation to look at publications of the Independent Commission Against Corruption entitled *Taken for Granted - Better Management of Government Grants* and *Taken for Granted? Better Management of Government Grants - A Corruption Prevention Project*. These publications are designed to help funding bodies verify information in funding applications and final reports which look at project outcomes.

Finally the department agreed with our recommendation that it apologise to the farmer for what we concluded was a less than adequate investigation. We are presently monitoring action taken by the department to comply with the recommendations.

JODIE WAUCHOPE - INVESTIGATION OFFICER
Jodie has a strong orientation towards youth issues, cross cultural awareness and alternative dispute resolution. In 1981 she went to Japan as an exchange student. After returning to Australia, she began working closely with youth through the Opera House Youth Program, as a facilitator in theatre classes for disadvantaged students, and as Treasurer for Backtracks - a personal development camp for youth in the central western region of NSW. She also has done numerous courses in communications, counselling, conflict resolution, cultural awareness and working with minority groups. After doing a Bachelors of Arts and Bachelor of Laws at Macquarie University, Jodie worked for Waverley and Woollahra councils as a consultant. She joined the office in 1994 as a Complaints Officer and recently became an Investigation Officer.

WHO OWNS THE WRITING?

Sometimes the main issue in a complaint is outside the jurisdiction of this office and must be declined. However the complaint may highlight other matters of general public interest that *are* open to the Ombudsman to investigate. Unfortunately, an investigation in these circumstances may not provide a satisfactory result for the complainant even though it may assist others in the long term. An example of such a complaint involved ownership of the records of a hearing carried out by Board Stewards into an alleged breach of the Rules of the Greyhound Racing Control Board. Although the hearing and all matters relating to it were outside the jurisdiction of the Ombudsman, we were able to pursue questions relating to the keeping of records of such hearings.

A person contracted to the board had made a record of the proceedings by shorthand notes and had taken an audio back up recording. The greyhound owner requested the board provide these records of the hearing under the *Freedom of Information Act*. The board released the audio tapes but not the shorthand notes which the board said were owned by the contractor and not the board. This was despite the board's own rules which provided that it was obliged to retain any records of a proceeding for 12 months. The board secretary said that a transcript could be provided at a cost of $700. A dispute arose over whether the applicant should pay for a transcript when he had only requested a copy of the shorthand notes.

The Greyhound Racing Control Board, through its Secretary, told the Ombudsman:

> *".....while it is probably the legal situation that the raw material itself is the property of* [the contractor] *ie the paper, it would also clearly, we believe, be the legal situation that the information recorded on that paper is the property of the board....."*

The board's contract with the record taker was that the contractor was obliged to provide the board with a transcript, for which he was paid, but not the raw notes. The investigation was eventually discontinued when the board implemented some changes suggested by the Ombudsman. The board agreed to supply the raw notes and to alter its arrangement with future

recorders of proceedings so that the contract set out ownership of the copyright of any record taken of the proceedings. The board also took responsibility for retaining the records.

NOT SO NICE RICE

Two rice farmers in the Riverina area complained that they were unfairly treated in a scheme approved by the Rice Marketing Board. The board is the official public body responsible for the marketing and sale of rice produced in NSW.

The scheme was devised in mid 1993 by the Ricegrowers Association, a private lobby group representing the majority of rice growers in NSW. The association was concerned at the large number of new growers entering the rice industry, leading to an oversupply of rice on the market bringing a lower return for growers. The scheme was created for the 1993/1994 crop and was meant to limit production but at the same time favour longstanding growers. Under the scheme each grower was allocated a base area of land, with longstanding growers being allocated a larger base area than new growers. Rice grown in the base area were bought by the board at a certain price. Rice grown on land outside the base area was purchased at a lower price.

Generally the board is to pay growers at a uniform rate for their rice. Any scheme that varies this arrangement must be put to the Minister for Agriculture by the board for his approval. The board then has the responsibility of implementing the scheme once approval is granted. Our investigation revealed that the board played a passive role in seeking ministerial approval. It was the association that presented the scheme to the Minister and, in effect, sought ministerial approval. The Minister made it clear that he would only approve a scheme that was fair for all growers, longstanding and new. In particular he wanted the scheme to be fair for growers entering the rice industry in recent years following unsuccessful ventures in other farming industries. The association, not the board, advised the Minister that the scheme would be fair for all growers as any farmer unhappy with their base area could appeal to an anomalies committee which would review the farmer's claim. As it turned out the committee was made up of the president and two vice presidents of the association.

At about the same time the association received complaints from groups of new growers that the scheme was unfair. The scheme was subsequently amended to allocate a larger base area to those growers. In August 1993 the Minister formally approved the scheme. One month later he wrote to the board saying that threats of legal action were being made in relation to the scheme and requesting that the board oversight the operations of the anomalies committee. The board then wrote to the association, not the committee, asking that it be kept informed of the committee's activities. The board did not specify how the committee was to meet this request. The association then responded to the board saying that the committee would report to the board at the conclusion of the scheme. Overall, the association appeared to be operating the scheme.

Our investigation revealed that the safeguard of fairness for the scheme was meant to be the committee. However it was clear that the anomalies committee process was flawed. The committee membership was not representative of all interests in the industry. The committee sat at the association's offices and delivered decisions on the association letterhead. The committee did not have to give reasons for its decisions and committee members were paid a sitting fee by the association. It seemed to us that any reasonable person would be unlikely to perceive the committee as being suitably independent to perform its functions. There were no procedures for communication between the grower and the committee in the event that further information was required. While the board said that a grower could appeal to the board about a committee decision, it was not clear that all growers were made aware of this right to appeal.

The investigation concluded that the board had not performed its statutory functions and had given the association the responsibility of implementing the scheme. In view of the flawed anomalies process it was also clear that the board did not ensure that the committee acted fairly and in the interests of all growers.

As a result of our investigation the board has produced procedures for any future scheme that include a more independent committee membership. Future schemes will require any anomalies committee to provide reasons for its decisions and report regularly to the board on

its activities. The new procedures specify a right of appeal to the board as well as a right of appearance. These procedures will be made available to all growers. We recommended that the board automatically grant a right of appearance in any appeals before the board. The board so far has only said that it would do so where the farmer could show exceptional circumstances warranting a right of appearance. We also recommended that in future the committee provide farmers with details of successful appeals to the committee. The board has yet to agree to this. We are continuing to pursue both these matters with the board.

While we recognised that the association, in creating the scheme and having it brought into effect, was acting appropriately for an industry based organisation of that nature, we recommended that in future the board consider the public interest when performing its functions and operate independently of private sectoral groups. The case was a clear example of the regulator (the board) being 'captured' by the regulated (the association).

We also recommended that the board reconsider the cases of the two farmers. The board has agreed to this but it has not as yet commenced its review. We are continuing to monitor this.

It is important to note that in responding to our investigation and recommendations the board stated that the investigation was a *"useful and educational exercise which has brought home to the board the need to ensure that its procedures reflect absolute fairness in its treatment of growers and any other disaffected parties."*

LEGAL AID COMMISSION

Case study one

Within a few months of taking over a restaurant in a Port Macquarie arcade in 1986, a couple began having problems with drainage, to the point where foul smelling water overflowed into the restaurant. The couple frequently complained to the landlord and the local council and tried to get plumbers to fix the problem, but without success. Over a year later, they closed the business because of the problem, only to be sued by the landlord for unpaid rent. The couple subsequently were served with bankruptcy orders.

An Ombudsman investigation found Hastings Council had not followed up notices served on the landlord about faulty pipes, and that the pipes had not been installed in compliance with regulations.

At this point, the couple applied for legal aid to fund an action for damages against the landlord and against council. The Legal Aid Commission funded a barrister's opinion to determine the action's prospects of success. The barrister believed there was a strong case against the landlord and a reasonable case against council, provided a drainage engineer could show that the overflow was the result of defective pipes. Both the commission and the Legal Aid Review Committee rejected the application on the grounds that there were no *"reasonable prospects of success in the proceedings"*.

This office investigated the commission's conduct in refusing the application and in failing to give adequate reasons for the decision. The final report in 1993 found that the commission had wrongly assumed the restaurant owners had caused the problem, confusing a statement made by the landlord's plumber who had laid the pipes with that of a council health inspector. During the investigation, the commission provided another reason - that no report had been obtained from a drainage engineer. The applicants were never informed of this requirement. The report also found the commission had failed to advise the applicants why legal aid was refused, simply saying the evidence did not show there were reasonable prospects of success, and that the application did not comply with the commission's guidelines. The report recommended the commission ensure reasons are given for any decision to reject an application, and that the commission reconsider the couple's application for legal aid.

The commission's managing director subsequently advised this office that the commission had begun a project to make sure reasons for declining to grant legal aid *"are provided in a clear and straightforward fashion"*. This was to begin from the end of August 1993. This letter also stated the managing director was to review the application for aid.

Finally, some three years after the report was issued, the commission advised this office that the application for aid would be denied. A range of reasons were given: that the plaintiff's

company was in receivership and may therefore not be a *"person or party eligible for legal aid"*; the complexity of the proceedings and possibility for additional claims and counter claims would make the costs excessive; the ability of the landlord to pay any damages was unclear; and there were difficulties in working out exactly what loss the couple's company had suffered. Many of these reasons were evident when the application was first made in 1990, but, inexplicably, had never before been raised by the commission.

Case study two

Long after we thought the commission had implemented a policy to give reasons when refusing an application for legal aid, we received a complaint during a gaol visit that an inmate's application for aid to help in his committal hearing was refused because the commission was *"not satisfied"* the application came *"within the guidelines set by the commission"*. Concerned that this *"reason"* was hardly sufficient to ground an appeal against the decision, we contacted the commission. After much negotiation, the commission acknowledged the letters from that particular section were deficient, and undertook to review all similar letters throughout the commission.

Case study three

Early last year we also received a complaint from a firm of solicitors concerned at the way in which the commission had treated them and their client. A mother of two small children had been granted legal aid for a private solicitor to fight lengthy Family Court custody proceedings. The commission calculated that she could afford to contribute some $390 to the Legal Aid Commission, in accordance with the commission's guidelines. At that time she was on a supporting parent's pension and had an interest in a house she had bought with a friend. While her Court action was still going, she sold her share of a house to the co-owner, receiving $5,000 in payment. The Legal Aid Commission found out about this, and demanded advice from her solicitors as to why the commission had not been told of her change in financial circumstances. Under the *Legal Aid Commission Act*, a recipient of aid is required to inform the commission of any change in financial circumstances to enable a reassessment of his or her own contribution to legal costs. The woman thought she had told her solicitors, who denied they had been told. In any event, the money had been spent on school books, a credit card debt for Christmas presents, clothing and bills.

The commission redetermined the amount to be contributed by the woman at the end of her Court action, as it has the power to do, ultimately demanding $5,000. Instead of requiring the woman pay this directly to the commission as was normal practice, the commission withheld $5,000 from the solicitors' payment. Given the woman had little chance of paying this amount, this meant that the solicitors were out of pocket by $5,000. As well, the commission threatened to prosecute the woman for failing to advise it of her change in finances, but ultimately stated it had decided not to take this action.

The solicitors then contacted this office. The Ombudsman took the view that the amount of $5,000 was arbitrarily imposed, especially given there is no right of appeal against determinations made at the end of Court action as there is against other legal aid decisions. The commission agreed to waive the amount and paid the $5,000 shortfall to the lawyers but was unable to explain adequately why it was levied in the first place, and why the solicitors were left with the cost. During negotiations with this office, the commission admitted that failing to advise of a change in financial circumstances was not a criminal offence. Eventually, after prolonged negotiations, the commission agreed to write to the woman and withdrew the threat to prosecute, but still fell short of apologising for threatening criminal proceedings when no such option was available. The commission also undertook to review its prosecutions policy, to ensure staff do not make ill-founded threats, and to advise this office about its progress in changing the legislation to allow decisions made about contributions by clients at the end of a matter to be reviewed.

HOW TO AVOID UNNECESSARY DISPUTES

The Ombudsman encourages public authorities and officials to exercise their delegated authority and powers appropriately and reasonably, keeping the circumstances of each particular case in mind. Adopting a flexible approach enhances the quality of service provided to members of the public. It also ensures unnecessary conflicts and disputes are avoided. A recent example of a public authority acting flexibly and in good faith is detailed below:

The Department of Housing wrote to all tenants to inform them it had decided to take much stronger action about fraud of all kinds, and offered a month long amnesty to give tenants a first and final opportunity to put their affairs in order. A special toll free number was set up, open from 8.30 am to 7.00 pm for tenants who wanted to take advantage of the amnesty. The department promised tenants who took advantage of the amnesty that they would not be asked to repay underpaid rent, or evicted or prosecuted as a result of any disclosure made during the amnesty.

A few weeks after the end of the amnesty period, this office received a complaint from a tenant alleging the department had not kept its word. He said he had provided the department with details of his real income, and the department had asked him to repay his underpaid rent.

Our inquiries revealed the tenant did not indicate to departmental staff he was claiming the amnesty when he lodged his income details. The department's records also showed the information about the tenant's real income had been received two days after the end of the amnesty.

Although the tenant had not specifically followed the instructions that were mailed out to all tenants, the department felt it was reasonable to assume he had provided his real income details in response to the amnesty. The department adjusted the tenant's rental account accordingly.

MONEY DOWN THE DRAIN

The Ombudsman is accustomed to figurative discussion of sewerage, as complainants often urge her to investigate various "sewers of corruption" or "sewers of maladministration." In other cases, the Ombudsman looks into cases involving actual sewerage connections.

Under the *Water Board Act 1987*, the board was responsible for the provision of sewerage services to properties within its area of operation. After the *Water Board Corporatisation Act 1994* was passed, the Ombudsman made inquiries to Sydney Water about several complaints where property owners alleged the Water Board had failed to advise or consult with them before laying sewerage pipes on their land.

The *Water Board Corporatisation Act* requires Sydney Water to compensate land owners in cases where work by the authority creates an adverse impact on their land. The Ombudsman, however, was concerned to discover that no relevant guidelines existed on the way in which compensation was calculated. The Ombudsman's inquiries indicated that compensation sums were arrived at arbitrarily, were not offered to property owners unless requested, and were not indexed in any way.

Case study one

One complainant returned from a stay in Port Kembla in September 1993 to find that the Water Board had started work on a trench which would run down most of the length of his back yard. In this case, the Water Board acknowledged that a correct notice of entry was not delivered to the complainant. While the authority had made an offer of compensation, this was based on a legislative requirement to pay compensation, "only if ... a manhole or main or main ventilator is constructed on the land." The offer made by Sydney Water was $16, to compensate the owner for the presence of 1 manhole ($10) and one lamphole ($6) on his property. The complainant thought this was an unrealistic amount of compensation, and refused Sydney Water's offer.

Work on the complainant's property had been completed in 1993, however the complainant only referred it to the Ombudsman in late 1995. Sydney Water acknowledged that in 1993 there

had been minimal guidelines with regards to consultation and negotiation, and, to the credit of the authority, it should be said it had treated the development of such guidelines as a priority. The Ombudsman, however, felt the arbitrary nature of the authority's system of compensation seemed to be out of step with the approach taken to customer service in other areas. In April 1996, the Managing Director of Sydney Water responded to the concerns of the Ombudsman, saying:

> *"Sydney Water recognises that the absence of procedures to guide the payment of compensation has the potential to provide uncertainty for our customers. For this reason, we are developing a policy and guidelines in relation to compensation for property owners affected by its works on private land."*

It is hoped that the outcome of this process will be the circulation of clear guidelines for determining the amount of compensation to be paid in particular situations. The Ombudsman will monitor the establishment of these guidelines and will review their appropriateness for dealing with cases like this one.

Case study two

The Ombudsman looked at another matter, also concerning work completed in 1993, where, on the basis of advice from approved consultants, the Water Board laid sewer pipes on a woman's property. In this case, while notification may have been *sent*, it was apparently not *received*. The Ombudsman takes the view that notification by mail is a reasonable administrative practice and declined to take up this aspect of the complaint. However, the Ombudsman made inquiries into conflicting advice given to the complainant about where responsibility lay for the location and design of sewer mains.

In 1994, the Water Board had written to the complainant that, *"the reason for the sewer being located within your property is not known by the board,"* and suggested that only the board's consultant could answer this question. In response to written inquiries by the Ombudsman, the Managing Director of Sydney Water admitted the responsibility for approval of the design rested with the authority and said, *"this was not clearly stated in the process and as a result misunderstandings occurred."* The Managing Director also regretted that checking of designs, in the old process used by the Water Board had not been carried out *"with the affected property owner's perspective in mind."*

Consequently, and bearing in mind the deficiencies in the complaints-handling process highlighted by the Ombudsman's inquiries, Sydney Water carried out an independent audit of the matter. The terms of the audit were, *"to determine what actually occurred and what would have happened if the new procedures which have been in place since January 1995 had been followed."* As a result of this audit, in May 1996, the authority, while making no admission of liability and while not agreeing to remove the sewer pipes, did offer the complainants $2,600 as compensation for the *"perceived inconvenience"* the Water Board had caused to the complainant.

A greater emphasis on negotiation between Sydney Water, developers (or agents) and affected property owners, and an improvement of Sydney Water's complaints-handling procedures, is expected to reduce the likelihood of situations similar to these arising in the future.

TO PAY OR NOT TO PAY

Sometimes even simple problems can become tortuous complaint handling sagas which require a circuit breaker. The Ombudsman received a complaint from a woman who lived in a Department of Housing flat at Merrylands. The woman was frustrated as she had been trying to sort out her rental rebate applications (1990-1994) since late 1994. She had written numerous letters and had dealt with more than eight different staff members over a period of 18 months. Unfortunately, she had decided earlier this year to stop paying rent altogether, so Residential Tenancies Tribunal action was also looming.

The Ombudsman's office contacted the Department of Housing about the case. Immediate action was taken by the Department and the complainant's case was examined. A meeting was arranged between the complainant and the department which resulted in the complainant being satisfied with the calculation of both the rental rebates and her current payable rent.

UNAPPEALING LETTER

When a person wishes to contest a fine issued by the State Rail Authority (SRA) the usual procedure is to write to the either the Infringement Processing Bureau or the Authority and appeal, giving the reasons why the fine should be cancelled. The appeal is processed and a response issued. The usual response from the SRA, where the appeal is not upheld, has been to inform the appellant and ask that the fine be paid by a certain date. However, there is another means of redress available and that is to the local court. In has been the practice of the SRA not to inform appellants of this option. Our officer wrote to the Chief Executive of the SRA requesting that he consider including that advice in future letters of decline. At the request of the Ombudsman the Chief Executive Officer agreed to change their standard letter of decline to include information about the option of appealing to the court.

FRUSTRATION

Each year hundreds of people complain to the Ombudsman about issues relating to their employment. Each year hundreds are declined as they are covered by clause 12, Schedule 1 of the *Ombudsman Act* which prevents examination of such matters. However there are sometimes administrative issues related to these complaints that are worthy of examination.

A teacher complained that the Department of School Education had agreed in 1994 that she had been disadvantaged by a clerical error that had led to her being allowed fewer transfer points than she was entitled to in her search for a permanent teaching position. According to her the department had done nothing to fix the problem. The department's inquiries continued through 1995 with increasing frustration on the part of the teacher and her husband. Phone calls were not returned and commitments to finalise the matter were not kept. After a complaint in September 1995 this office started making similar inquiries about the progress of the "investigation" into the matter. After many telephone calls and a further three months examination of the matter the department was finally prompted to announce that the teacher's commencement date had been acknowledged and she had been appointed to her nominated school.

There is no doubt that transfer and appointment issues can be complex and delicate problems to solve. There is little justification, however, for not explaining the situation promptly and clearly and keeping complainants up to date with what is happening.

AND THE REASON IS .....

A dog breeder wrote to us as she was unhappy with the response she received from the Veterinary Surgeons Investigating Committee concerning her complaint about a local vet. The Veterinary Surgeons Investigating Committee takes complaints about the professional conduct of vets and can investigate those complaints and take action against vets when appropriate.

The dog breeder had complained to the committee about what she thought was professional negligence by the vet during an operation on her pregnant dog which resulted in some puppies being stillborn. The committee had decided not to take any action about her complaint but in their letter to her they had not given any reasons about why the committee did not believe the vet had acted negligently.

The Ombudsman strongly believes that authorities should give adequate reasons for their administrative decisions. With this in mind, we contacted the committee and pointed out that they had not given the complainant adequate reasons for their decision. Happily the committee realised their oversight and not only undertook to write to the dog breeder again telling her why they did not take action against the vet but also agreed to change their policy to give complainants more thorough reasons as to why action would not be taken about particular complains.

The dog breeder was very pleased with the outcome.

"BUT WAIT! PAY MORE....."

A woman from Laurieton complained about a dispute she had with the Roads and Traffic Authority. It concerned the stamp duty for the change of registration of a car she owned which was registered jointly with her defacto husband.

As he had recently passed away, she was trying to have his half of the car registered in her name in line with the execution of his estate. The Roads and Traffic Authority required her to pay stamp duty on the new certificate of registration which was based on the full value of the car.

Preliminary inquiries by the Ombudsman revealed that the Roads and Traffic Authority did not have the power to exempt the complainant as the vehicle did not pass directly to her under her husband's will. This was actually covered by the Office of State Revenue and its policies on stamp duty. However there appeared to be some discrimination in this regard, as married couples were exempt from paying stamp duty in the circumstances but those in a defacto relationship were not. In response to discussions with our office, the Office of State Revenue decided to review the complainant's case as well as changing its policy to include defacto couples as part of the exemption.

JACQUI SCOTT - INQUIRIES OFFICER *Jacqui joined the office in 1990 as the Executive Assistant to the previous Ombudsman David Landa. During this time she finished her Advanced Certificate in Personnel Management. In 1995 she joined the Inquiries Section of the office. As an inquiries officer, Jacqui handles all queries from the public about problems they may have with a government department or authority and regularly makes trips to Newcastle, and various prisons and juvenile justice centres to take complaints. Originally from Chile, Jacqui's bilingual skills are often utilised by the Spanish-speaking community when they contact the office. Prior to working at the Ombudsman's office, Jacqui worked at the Legal Aid Commission. She is currently undertaking further studies at the University of Technology, Sydney completing her Bachelor of Arts in Social Sciences.*

BURNING OFF FOR FUN AND PROFIT

An Occupational Permit allows a member of the public the right to graze stock in state forests. State Forests does not receive much in the way of income from such ventures and there is limited benefit for the land itself. The grazing is secondary to all the other uses of the forest areas. The authority still has the responsibility of ensuring that bush fire hazards are reduced through burning off or other means.

Unfortunately, in attempting to burn off an area covered by an Occupational Permit near Cooranbong State Forest workers dropped incendiaries from a helicopter on the wrong side of a fire break and burnt out about 50 hectares of the occupier's grazing land during a bad drought. While the actions were clearly accidental the permit holders were understandably upset and complained to the Ombudsman. The situation was not helped by the fact that forestry workers cut through the locks on a gate to the property in an effort to get in and control the blaze. The occupiers were only told of this action later.

An apology should have been automatic but State Forests had to be prompted by phone calls and a letter from this office. This office also recommended that the complainants get legal advice about their case for damages against the authority. State Forests pointed out that rain in the burnt out areas soon after the burning off meant that stock feed on the property had never been better.

ASHES TO ASHES

A woman from St. Peters recently complained about the Department of Anatomy and Histology at Sydney University. Her retired father had signed a body donor form two years ago and had altered it to read "delivery of my ashes to my executors". He wanted his ashes to be flown back to England and scattered over his wife's grave. When he died, his body was taken by the department for the advanced training of medical students. More than a year later when they finished, his body was taken to Northern Suburbs Crematorium and cremated. Tragically, his ashes were then buried in the grounds of NSC, contrary to his wishes.

Our inquiries revealed that his instructions for his ashes were clearly noted on his file at the department as well as being marked on the body donor form. Apparently, the department received a letter from the crematorium two months later asking what to do with his body, as well as a number of other bodies. In response to the letter, it was found that a "temporary staff member" at the department had rung the crematorium. The staff member did not bother to check any of the cadaver files before telling the crematorium to follow "standard procedure", which was to cremate and bury the ashes on the crematorium grounds.

The Ombudsman recommended that the department collate an 'office training manual' by which new staff would be trained, so that this type of administrative mistake could be averted. In response to the Ombudsman's enquiries, the department made an offer to pay for a plaque in memory of the complainant's father and fly it to England.

DOG FIGHT

For a greyhound owner a fighting offence is a real problem. It can lead to suspension of the dog and can even reduce the animal's value in any later sale. A first offence by a dog is generally dealt with by the Greyhound Racing Control Board by discussing the matter with the owner/trainer, viewing the video and, if guilty, applying a one month suspension. Formal appeals against these decisions are only allowed if the suspensions are more than one month. The board claims that it would be swamped with hearings if it changed its policy to allow a formal hearing of every first offence.

Without the benefit of an appeal mechanism an owner complained that stewards had unjustly decided that his dog had fought in a race at Wentworth Park. Inquiries revealed that a steward who watched the race at the track had sat down with the owner on the night and viewed the video of the race. Though there was argument over exactly what was said, the owner had agreed on the evening that his dog had "turned his head" and therefore fought. He later decided that his ignorance of the guidelines had meant he had misinterpreted the race video and had not been able to defend his position. He took the matter to the board who rejected his request for the suspension to be withheld.

The Ombudsman decided that the video the board had viewed was inconclusive and that the race steward had the best view of the race looking down the straight. The board was entitled to rely on the steward's opinion in this case and the decision was found to be reasonable. The inquiries also revealed that the board was well aware of the need to offer a fair hearing - particularly in circumstances where no formal appeal mechanism is in place.

WANTED: RESUMÉS NOT PLUGGING PERSUASIVE POLITICAL PLATFORMS

A serving councillor from NSW wrote to the Ombudsman complaining about the State Electoral Commission's failure to respond to concerns he raised about the contents of candidates' resumés. These resumés are placed in the polling booths to inform voters of a candidate's experience and qualifications. The complainant asserted that in his council, candidates had wrongly been allowed to include matters of policy or political statements in their resumés.

A preliminary investigation by the Ombudsman revealed that the State Electoral Commission considered that material about a candidate's policies and political statements could be included in resumés.

After receiving more complaints, further advice was sought from the Crown Solicitor's Office. This advice was that the Commissioner's view

was incorrect. The State Electoral Office recognised its guide to candidates needed to be modified to inform candidates that no policies or political statements may appear in resumés. The Commission is also examining whether it will now need to vet resumés more closely.

BACK INTO TROUBLE

In October 1994, the Roads and Traffic Authority commenced road works in Windsor to improve the quality of several underbridges. A local resident was concerned about a hazardous situation that had arisen for vehicles entering and leaving his driveway which was halfway down a hill leading to an underbridge. Due to the bridge reconstruction, a safety lane that had previously existed had been converted into a detour lane and the combination of speeding drivers, the crest of the hill and lack of safe entry into traffic created enormous potential for accidents. The resident was also concerned about the jarring noises created by box-trailers, semi-trailers and other vehicles as they passed over the bump in the road outside his house. Not the best lullaby at 3 am in the morning.

The Ombudsman had several discussions with the RTA and the State Rail Authority, who were overseeing the construction work. In response to our inquiries, the RTA resurfaced the road outside the complainant's house which eliminated the excess noise made by certain types of traffic. The RTA also passed plans for future line marking to reinstate a two metre safety lane outside the complainant's house.

OH FOR PEACE AND QUIET!

A resident of a quiet outer suburb complained that the local high school was letting its school hall to inappropriate and noisy groups such as line dancers, without considering the privacy of nearby residents. Because school sites are zoned 'special use-education', the use of a school hall at the weekends for community groups, bands, line dancing and other non-educational purposes is, in effect, a change of use. This change of use can cause problems particularly if the halls are old and close to an adjacent property. Most developers seeking a change of use must go through a local council which may advertise the proposal to allow for objections and may impose conditions relating to such matters as hours of use, noise and traffic generation. Some councils allow the temporary use of school halls for other than educational purposes without a development application but require one where the hall is to be used regularly for a particular purpose that is not educational.

The Department of School Education has guidelines instructing principals to apply to their local council for development consent if the use of school facilities involves commercial activities. However these guidelines do not inform principals of the need to comply with local council requirements for activities other than commercial ones.

The complaint was resolved when the department agreed to ensure that the school lodged the necessary development application with the local council. The council could then impose any conditions thought necessary and monitor the use. The department also agreed to expand and clarify its policy document on community use of school facilities.

TENDER NEGOTIATIONS

During 1995 Sydney Water decided to trial a toilet flush control device in various areas of NSW. A company which had been discussing such a device with Sydney Water complained when they failed to win the subsequent tender. The company said that the tender guidelines had not been followed, that their patent licences had been deliberately undermined and that they were never given adequate reasons for the failure of their tender.

There is no doubt that the company had put considerable time and effort into discussing with Sydney Water ways of testing water saving devices. However, no evidence emerged to confirm that a special relationship existed between the authority and the company. The level and quality of the assistance offered to Sydney Water was an entirely commercial investment by the company - which clearly wanted to get an edge on supplying the device when the time came.

When the tenders were let the company received a weighting in the assessment process to acknowledge their previous experience and

SHEILA O'DONOVAN - INQUIRIES OFFICER *Sheila was born in Glenstal in the south of Ireland, one of 12 children. The majority of her working life in Ireland was spent working for the Irish public service, primarily the Department of Defence. She came to Australia in 1974 and worked in a range of jobs including the accounts section of Grace Bros, at a day care centre in Bondi and for the NSW Department of Education in the Correspondence School Library. She worked in the library for five years, sending selected books for distance education to children in remote areas of the State. Part of her work at the Ombudsman's office still involves contact with rural NSW when Sheila takes part in our country outreach visits. Last year Sheila attained a distinction in a Public Relations course run by TAFE.*

involvement but their price was not competitive. Another firm was nominated.

The Ombudsman declined to formally investigate this aspect of the complaint but had some advice for the authority. In negotiating with companies under these circumstances all statutory authorities should go to some lengths to demonstrate that one firm is not being treated differently to another. In this case the authority missed two clear opportunities to make it clear to the company that discussions or contact with a firm does not imply any special relationship. At one point the company wrote to Sydney Water saying, amongst other things, that:

> *"I can assure my suppliers that an order is in the offing so we will have sufficient time for production and shipping."*

While Sydney Water spoke to the company representative the letter went unanswered. It is not surprising that the company - knowingly or not - took that to imply that they would be favoured in the tender process. The authority should have made sure they could not be criticised for misleading the company.

The matter was complicated by a range of patents and licences held (or pending) by the competing companies for the various devices. An authority lawyer recommended that "the specifications should be carefully drafted". In the final tender document Sydney Water simply listed "proof of patent ownership" as a criteria. The winning tender could not really comply with the criteria. According to the legal advice obtained by Sydney Water neither could most of the tenders. The lawyers assessed each claim and advised the tender committee that the nominated tender represented a minimal risk of legal action. A technical breach of the tender guidelines might have occurred, but reasonable steps were taken by Sydney Water. The Ombudsman advised the authority that more care should be

taken with the wording of the specifications and agreed with the need to require an indemnity against legal action for companies producing devices which have no clear patent.

Sydney Water conceded that:

> *"... there are a number of issues which have emerged from this matter. The most significant of these is a recognition by Sydney Water of the need to exercise great care in dealing with intellectual property issues given their potential to compromise Sydney Water's tender procedures and commercial dealings."*

The level of cooperation and association between government and the private sector in the development of new technology is increasing. There is obviously a need for expert assistance and guidelines in this area.

WATER DOWN THE DRAIN

After Sydney Water began charging for water on a 'user pays' basis an inner city resident began to get very large accounts for water usage. As is the case in many older suburbs, his property had a shared or common water service with three adjoining properties. The main line of galvanised pipe leads directly through a main meter to the complainant's property and then under his house to a concrete covered yard. Three adjoining terrace properties, being unable to connect to Sydney Water's main, are connected to this common line in the yard. Each connection has a check meter. The three subsidiary owners are charged for the water measured by each of the three check meters and the sum of these readings is subtracted from the main meter reading to calculate the charge to the fourth owner.

This arrangement was perfectly satisfactory to the owners before water became a scarce resource. Any leak in the common line would go unnoticed and unattended. When the 'user pays' system came into operation, the complainant began to receive very large bills. Not realising there was a leak, he paid large water accounts for some years. However, an account for $1400 rather than the expected $40 caused him to begin correspondence with the then Water Board. The amount of water lost was registering only on the main meter and not on the check meters. Because Sydney Water's records showed the main was connected directly to complainant's property he was getting the accounts for *all* the water lost in the leak. The terrace house owner attempted to explain to Sydney Water that he had replaced the water piping on his property with a new copper service and was sure the leak was not on his property. When he did not receive a satisfactory response he wrote the Ombudsman.

After the intervention of the Ombudsman, Sydney Water agreed to waive the charges to that date, to replace the meters and assist in searching for the leak. The leak was found to be on the common line but the charges continued to go to the complainant. The besieged owner was having difficulties in convincing the other three owners that they should do something about the leak especially as he was getting all the bills and engaging in all the correspondence. After further representations from the Ombudsman Sydney Water agreed to divide any future large accounts between the four property owners. Had Sydney Water continued to waive charges, there would have been no incentive for the owners to have the leak repaired and may have set a precedent for other inner city older suburbs where many owners are faced with similar problems.

Sydney Water also assisted by arranging a meeting with the four property owners to ensure that each understood that because the leak was on the common line, they shared responsibility to have it fixed.

REVIEWING RENT REBATES

A legal centre wrote to us on behalf of a tenant of the Department of Housing whose rental rebate had been cancelled by the department. It is clear that the onus is on the tenant claiming the rebate to provide adequate information to prove the claim. Where there is not adequate information, the department can cancel the rebate.

In this case, the department cancelled the rebate after anonymous allegations of rebate fraud were made about the tenant. Two days after the cancellation an officer interviewed the tenant about the allegations. The tenant spoke English as a second language, and the interview was conducted with an interpreter. The tenant denied

the allegations, but the interviewing officer decided that the tenant's response was not truthful. The officer proceeded to recommend formally that the rebates be cancelled. The tenant was notified two weeks later of the cancellation. After this, the department refused to accept the tenant's rental rebate assessment forms.

The department's policy at the time was that rental rebates could be cancelled where the department was investigating allegations of rebate fraud. However, this seemed unfair, in that the rebate was cancelled on the basis of anonymous allegations and the suspicions of the officer. We made inquiries about the department's investigation of his case.

The department reviewed the investigation of the allegations and decided that the investigation had not been carried out in line with departmental policy.

As a result, the department apologised to the tenant and reinstated the rebate from the date it was cancelled. At the time it replied to us, the department was considering a review of the procedures to emphasise investigation of allegations prior to cancellation of rebates.

A WINDOW ON COMPLAINT HANDLING

A south coast line rail commuter complained about station staff who refused to sell him his weekly ticket and insisted he use the ticket vending machine. He was particularly incensed because he had written to the line manager to complain and three days later found his letter had been stuck on the inside of the station booking office window for all to read. Additionally he found under the windscreen of his car in the station carpark an State Rail Authority pamphlet on fare evasion with certain paragraphs highlighted.

Preliminary inquiries confirmed that while the SRA encourages commuters to use vending machines, tickets should still be available from station booking offices. Also the Chief Executive Officer said the employee responsible for the public display of the commuter's complaint letter:

> *"has been reprimanded and a note of the circumstances has been made in his official history. He has been counselled as to his responsibilities to his customers and reminded of CityRail's policy which entitles customers to purchase tickets from a booking office when open. The employee has been advised that his performance will be closely monitored in future and any further incidents will be seriously viewed."*

A LONG DELAYED DECISION

A couple in Sydney's west approached the Ombudsman in September 1995 after having exhausted every other avenue in a dispute they were having with the Building Services Corporation. The dispute centred on the loss of a deposit for a domestic swimming pool, the construction of which had never been started. The complainants had received a letter from the contractor informing them that his financial circumstances left him "unable to complete your swimming pool" and referring them to the BSC.

The BSC declined to entertain the couple's claim on the basis that " the contractor was not licensed." The couple had, in the meantime, commenced an action through the Consumer Complaints Tribunal and had obtained an order against the company by whom the contractor was employed. Since the company had ceased trading, the order could not be acted upon. The complainants approached the BSC to seek a review of the BSC's decision not to entertain the claim and included a reference to Section 101 of the *Building Services Act*. This allows the BSC to make discretionary payments under specific circumstances. The BSC declined and indicated that in order to make a discretionary payment, "work must have been commenced".

The couple contended the BSC had reached the conclusion that the contractor was not licensed in error. Although the company which employed him was not licensed, the actual contractor who was to perform under the contract was licensed. They also argued that even if the contractor was not licensed, the BSC could still make a discretionary payment as the relevant section refers to "incomplete work" and not "uncommenced work". A further bone of contention was that the complainants were aware of at least ten other instances where claims had been paid out in respect of contracts entered into with the contractor. After the Ombudsman made telephone inquiries with the Legal Services Department, the complainants were advised to

lodge an insurance claim with the BSC which would be redetermined. The complainants filed the insurance claim in October 1995.

In January 1996 the Ombudsman received a telephone call from the complainants asking what had happened. The Ombudsman telephoned the BSC to see what progress had been made and was informed that the BSC had no knowledge of any insurance claim having been lodged. The BSC requested that the Ombudsman send a full copy of all documents on our file so that they could assess whether to pay out on an insurance claim. This was done and an acknowledgment was requested and received. Finally, in March 1996 the Ombudsman received a fascimile confirming that the complainants claim would be paid and that "the cheque would be in the mail".

YOU LEAVE ME HANGING ON THE TELEPHONE

A man lodged a complaint about cancellation of his car registration for underpayment of registration fees. The underpayment was due to a clerical error on the part of the Roads and Traffic Authority. When the authority realised they had undercharged the complainant, the RTA telephoned him and told him they had mistakenly undercharged him by $15 and required him to make good on the shortfall immediately. He tried to explain that he was unable to pay the balance prior to his next pay day. The RTA staff member said she would have to check this with her supervisor and put the complainant on hold. She never came back to the complainant, who, after waiting for fifteen minutes, put the phone down. He didn't hear anything else from the RTA until two weeks later when he received a refund cheque from the RTA for the amount he had paid. On telephoning the RTA he was advised that his registration had been cancelled. The complainant was concerned that he had been driving an unregistered car since the RTA had, in his view, cancelled his registration without notice.

The Ombudsman made inquiries with the relevant branch of the RTA to ascertain their policy on cancellations which arise from an initial RTA fault. The acting manager undertook to investigate the matter and, a week later, she reported to the Ombudsman that everything that had happened was completely contrary to RTA policy. The complainant's payment should have been held in a miscellaneous bank account until the complainant was able to finalise the matter. The RTA staff involved were reminded of proper procedures and reprimanded. The manager also provided the complainant with a full explanation and a formal written apology.

TAKING A PARTNER FOR THE VOLTS

A couple bought a block of land within the service area of the Northern Riverina County Council in 1990. To determine costing for the construction of their new home, they sought a verbal quote from the Northern Riverina County Council as to the cost of having electricity connected to their property. The authority told them it would cost around $3,000.

Later in the year, a representative of the Northern Riverina CC told the couple that the connection fee would, in fact, cost them $5,603. The representative informed them that this amount was for connection from the main electricity line to the property, with a transformer for service to both their property and their neighbour's property. The idea was that the neighbour would also eventually need to have electricity supplied to him, at which time the couple would be reimbursed $2,582, being the neighbour's share of the cost. The couple were also told that if they were not prepared to agree to this arrangement, then the electricity would not be connected. They requested to have the arrangement put in writing, and a handwritten explanation of the arrangement was placed on the form on which they requested their electricity supply.

In late 1995 it became apparent that the couple's neighbour would soon be connecting his electricity supply. In the meantime, the authority had changed its name to Energy South. Energy South told the couple that it was not its policy to make arrangements of the type that had been entered into, and that it seemed likely that the neighbour would connect to his electricity supply from a new line, rather than from the extension which supplied the couple. The authority also told the couple that its policy, in any case, was only to give partial refunds within five years of the original payment. This time period, of which the couple had not previously been aware, had elapsed a few months before.

The couple brought the complaint to the attention of the Ombudsman, who made inquiries into the matter. The Ombudsman suggested to Energy South that the couple had a strong legal case to enforce the handwritten agreement, as the couple had no reason to doubt that the representative with whom they had spoken in 1990 had authority to sign the agreement. It was further suggested to Energy South that expenditure of Energy South's resources on legal expenses to resist honouring enforcement of that agreement could also be seen as unreasonable. Energy South responded by authorising payment of $2,582 to the complainants.

PRISONS

Goulburn Correctional Centre.

Photograph provided by the Department of Corrective Services/ Department of Public Works and Services Partnership.

PRISONS

OVERVIEW

In the past 12 months formal complaints to the Ombudsman about prisons dropped from 455 to 384, more than 15% fewer than in 1994/95. This figure includes complaints about the privately-run gaol at Junee. Complaints about the Corrections Health Service also fell from 42 to 28 this year. This was at least partially offset by an increase in telephone and face-to-face prison visit complaints, which jumped from 929 in 1994/95 to 1085 in 1995/96.

The reduction in formal or written complaints perhaps reflects the impact, however gradual, of case and area management arrangements in prisons which place the onus on middle managers for improved handling of complaints. Prison officers are now asked to relate more directly to inmates and to become involved in solving internal problems.

On the other hand, the increase in oral or informal complaints has been influenced by the Ombudsman's regular visits to institutions as well as a gradual improvement in inmate access to telephones across the prison system. While the long awaited 'smartcard' system, allowing inmates improved access to telephones, will assist in complaint handling it is likely to have a major impact on our inquiries staff who will be faced with a rush of new complainants.

Complaints about every prison were down with the exception of Maitland, Cessnock, John Morony and Lithgow. The Reception Centre, since its change of function and reduction in size, has seen complaints drop by 66%. Junee, the largest prison, recorded a reduced but still significant number of complaints.

There were also corresponding falls in formal complaints about particular issues. As always, the number of complaints about officer misconduct and property remained the highest. Hopefully the property complaints will be reduced by the new Department of Corrective Services computer system (COMS) and the introduction of the other cure-all, the 'smartcard'. Day leave/works release and record keeping/administration led to less complaints than in previous years. So did classification; but the poor administration of large scale movement of prisoners was an issue of continuing concern. This year the unclassified (or "other") group of formal complaints contained a significant number about the recently consolidated unit responsible for court and inter-gaol transport. They have earned themselves a separate category for 1996/97.

In contrast to these figures, there was a sharp increase in the number of complaints about unfair discipline. As mentioned in earlier annual reports this remains an issue of concern to the Ombudsman.

We are also pleased to report that the Department of Corrective Services, with what appears to be a minimum of fuss, is moving towards some changes which this office has long advocated.

In the 1994/95 Annual Report the Ombudsman wrote of the failure of the department to make a genuine attempt to offer a comprehensive program for sex offenders in NSW gaols. The so-called program at Cooma Correctional Centre involved little therapeutic work and appears to have been wholly ineffective in recent years. Corrective Services has now taken significant steps to establish an intensive program for sex offenders at the Long Bay complex. Staffed by trained officers with significant input by specialists, a course over 44 weeks will be run for up to 20 volunteers at a time. This will be only part of an expanded range of treatments involving individual sessions for inmates who do not have access to the Long Bay program.

After a number of delays and false starts the new Violent Offenders Program has begun in a renovated section of the Reception Centre at Long Bay. This program is staffed by newly trained custodial officers and other professionals. It aims to deal more effectively with the violent behaviour of inmates within the NSW system. This latest effort to cope w'h some of the State's most dangerous prisoners is part of a strategy which also includes the redrafting of the guidelines for the Intensive Case Management Program at

Goulburn. These are very positive steps for which this office has been pressing for some time.

Two transitional centres for women prisoners were recently announced by the Minister for Corrective Services. The first, at Parramatta, opened recently and will provide the opportunity for minimum security prisoners to better adjust to the return to society. Emu Plains Correctional Centre is in the process of being revamped to cope with about 120 low security women. Another overdue initiative which has also been announced is the reassessment of the classification of women prisoners. This office has previously pointed out the need to address the inequities in the security assessment and placement of women in NSW gaols.

Prison closures are fundamental changes to the prison system in NSW which can only be judged on the results. The closing down of Parramatta and sections of Long Bay complex will be, when they take place in 1998, direct results of the opening of the new 900 place Metropolitan Remand

PRISON COMPLAINTS
(excludes Corrections Health)

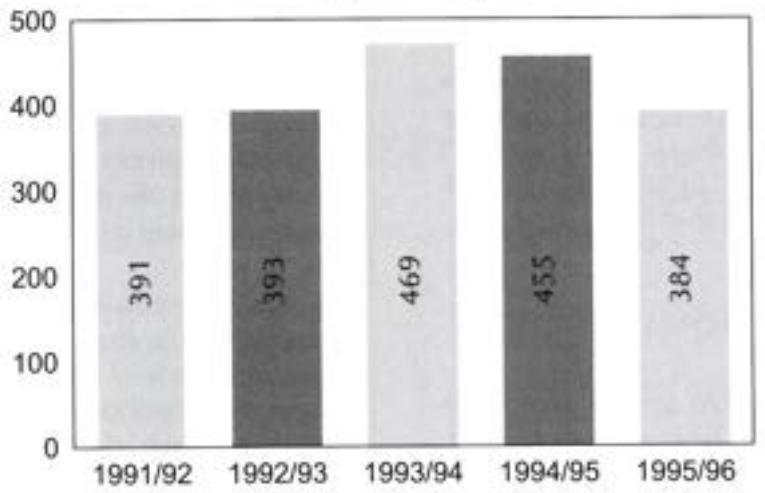
Received

written	384
oral	1085
reviews	21

***Determined** (written complaints)*

Formal investigation completed	2
Formal investigation discontinued	2
Preliminary inquiry	281
Assessment only	103
Non jurisdiction issues	3
Total	**391**

WRITTEN COMPLAINTS RECEIVED ABOUT DEPARTMENT OF CORRECTIVE SERVICES*
A five year comparison



** excludes Corrections Health but includes complaints for the privately-run Junee Correctional Centre*

and Reception Prison under construction at Silverwater. The impending closure of Cooma Correctional Centre seems to be a logical consequence of the centralisation of the sex offenders program.

Maitland is also due to close in 1997. The impact of this on the housing of high security inmates in the northern region is unclear. Nevertheless, the segregation area at Maitland continues to be the source of complaints and conditions are less than satisfactory. Similarly, the closure of Norma Parker Correctional Centre for women will cause little grief for the many people who suffered from the inadequate conditions over the years. Nonetheless, the removal of an option for the placement of women prisoners could be cause for some concern.

The bottom line, however, is that all of these institutions are old and run down. Inmates live in dank, crowded cells, often with dangerous electrical wiring. Officers supervise inmates in areas with inadequate space, poor lines of sight and outmoded equipment. Beyond their historical value there can be little argument to retain these buildings. Whether the department maintains an institution of some sort in these areas is another question.

The Minister has also confirmed that an Inspector-General will be appointed. No further details are known at present but working out that role and its powers will be difficult. An internal complaints handler, an internal investigator, an inspector or an auditor are all options. What is certain is that anyone charged with taking on any of these jobs within the Department of Corrective Services will need enough real power and the required resources to do the job. The experience of the Police Service in this regard should not be forgotten. In establishing this job the Minister needs to make absolutely clear that inmates and officers will retain an absolute right to complain to this office regardless of the role of the new position.

JUNEE CORRECTIONAL CENTRE

As with most other NSW prisons, complaints from the privately-run Junee Correctional Centre slowed in 1995/96. The 36 written complaints received represent the expected proportion of total complaints about institutions. The complaints reflect the full range of grievances and show no difference in this regard to those flowing from prisons run by Corrective Services.

There are certainly signs that Junee has settled down since the disruptive changes involved in establishing the protection inmates in the gaol. Serious potential problems still exist in the mixing of minimum and medium security inmates and in the possible association of mainstream, protection and strict protection prisoners. However nothing major has come to light as yet. Perhaps the threat of transfer to a gaol that less adequately caters for protection inmates is acting as an inhibitor to complaints, and even to violent incidents.

Issues relating to noncustodial (education, welfare and psychology) services seem to be falling at present. But it would be reasonable, given the prison's location, to expect that staffing of these positions will be a problem in the future.

Junee is also functioning as a remand and reception prison for the surrounding area. This means dealing with some high risk prisoners under difficult circumstances. Combined with the need to provide worthwhile options for works release and day leave at the other end of the security scale, this presents a formidable management challenge for the Junee staff.

The prison may be privately run but it now operates as just another part of the NSW prison system.

CORRECTIONS HEALTH SERVICE

The number of written complaints about Corrections Health Service (CHS) dropped from 42 in 1994/95 to 28 this year. This is in sharp contrast to recent years which have shown a continuous increase. Likewise, telephone and prison visit complaints also fell from 80 in 1994/95 to 54 this year. The majority of complaints, as always, were about the quality of medical care.

This year, however, a distinction was made between complaints about clinical matters, and service or attitudinal issues. There were nine complaints altogether about rudeness or the negative approach of clinical staff. The office advised these individuals to take up their concerns with the nurses or doctors directly or with CHS management.

Occasional complaints highlighted a longheld concern of the Ombudsman about communication between CHS and Corrective Services. The two authorities appear to have established an admirable working relationship at management level. Despite this, observations by Ombudsman officers indicate that problems remain in prisons.

Last year's hope that complaint handling would be streamlined by the appointment of an officer to deal with Ombudsman inquiries has not been fulfilled. The small number of complaints requiring detailed preliminary inquiries have led to lengthy correspondence. All in all, though, a rather quiet year for CHS generally.

Prison written complaints received by institution 1995/96

Junee	36
Reception Industrial Centre	12
Goulburn	26
Remand Centre	17
Training Centre	14
Bathurst	14
Silverwater	10
Mulawa/Norma Parker/Emu Plains	16
Parramatta	8
Maitland	19
Cessnock	17
Grafton	9
Prison Hospital	11
Kirkconnell	4
Lithgow	21
Berrima	5
John Morony	21
Mannus	2
Parklea	3
Special Purposes Prison	2
Periodic Detention Centres	3
St Heliers	2
Broken Hill	2
Department of Corrective Services	49
Others	61
TOTAL	**384**

Nature of written prison complaints 1995/96

	Total
Officer misconduct threats/harassment, assaults, racist abuse	55
Property loss, delay in transferring, confiscation, failure to compensate	56
Transfers unreasonable/refusal to, form of transport, interstate, delay	39
Classification/placement	27
Record keeping & administration inaccurate records, private cash control, sentence calculation, warrants, failure to reply/supply information	15
Visits treatment of visitors, visitor bans, access to visitor, searches	23
Day and other leave	4
Failure to ensure physical safety	13
Daily routine access to amenities/activities, access to telephones, general treatment	14
Physical conditions unhygienic conditions, lack of basic conditions	7
Security urine analysis, cell and strip searches	7
Medical access to services, methadone, dental, standards of care	36
Work and education access to, removal of	9
Mail delays, interception	9
Segregation unreasonable, failure to give reasons	6
Unfair discipline	18
Buy-ups	5
Food & diet	5
Legal	4
Probation and parole	4
Periodic detention	2
Other	26
TOTAL	384

INVESTIGATIONS, INQUIRIES AND OTHER FORMS OF SELF EXAMINATION

Like any other organisation, Corrective Services looks at major incidents within the prison system with a view to preventing the problems recurring. Individual prisons examine more minor matters that happen daily across the NSW prison system. Whether or not this self examination is useful depends on the thoroughness and effectiveness of those investigations. There has been growing evidence in recent years that Corrective Services needs to spend some time 'watching the detectives'.

Within a prison it is the responsibility of the Governor, Deputy or Area Manager to judge whether all the information regarding an incident has been gathered. It is also their job to make recommendations about charges against inmates or changes to procedures to prevent future problems.

Regrettably, complaints about prison governors or senior gaol staff failing to adequately investigate incidents are becoming more common. Whether it is a fight between inmates, allegations of intimidation of other inmates or simply persistent reports of 'bad attitude', it is not uncommon to find files with no useful record of what took place. That does not mean that the prisoner did nothing to prompt the penalty, which may be a transfer to another gaol, 28 days off amenities or both. But it often means that the paperwork has not been done or not placed on either the case management file or the warrant file. It also means that sometimes even the most basic inquiries have not been made to verify the allegations made. Even if the circumstances look quite clear cut, *all* participants in an incident - officers, non custodial staff and inmates - should be spoken to about what happened. Formal statements might not be needed in all cases but the file must reflect as closely as possible what actually took place. If the investigation reveals no serious offence that does not mean the facts will not be useful at a later date.

If internal offences by prisoners have come to light charges should be laid to allow the alleged offender the chance to state their case. If nothing substantial emerges to implicate an inmate in an offence the person should not be transferred simply because they were present at the time. At the end of the day prisoners' files should tell the whole story of the inquiry into the matter.

Complaints of assault by prisoners about Corrective Services officers are criminal matters generally handled by the Corrective Services Investigation Unit (CSIU). The unit is made up of NSW police officers seconded to the department. Their investigations are initiated by the department's Investigation Review Committee and overseen by the department's Director of Security and Investigation.

Many complaints of assault are made by inmates or referred by others each year. The Ombudsman's office does not have the resources to investigate these allegations. The existing protocol is to refer the matters to the CSIU and assess the reports. In most cases the allegations are not accompanied by the medical evidence or independent witnesses that would be needed to support charges against officers. Regardless of the quality of the complaint or the likelihood of charges arising, each investigation should thoroughly canvass the issues. There are indications that some investigations fall short of the desired standard.

Case study

An inmate at Goulburn Correctional Centre alleged that after his visit was terminated he got angry and that an officer had punched him several times in the face. The investigation was carried out by a Detective Sergeant at CSIU. The officer did not explore an explanation for the prisoners specific injuries recorded by medical staff. The Ombudsman said:

> *"No* [prison] *officer* [was] *asked to explain the mark under* [the inmate's] *eye or the split lip. Other than the possibilities suggested by the interviewing police officer there is no specific mention by any prison officers in any interview of* [the prisoner's] *face coming into contact with any person or object."*

Given that the Deputy Governor had earlier told an Ombudsman officer that the officer concerned was forced to punch the inmate this was particularly worrying.

To make matters worse an unacceptable joint statement was initially submitted by three prison officers and photos of the inmate's injuries were taken four days after the event. At

the Ombudsman's suggestion the department has issued instructions regarding individual statements and the prompt photographing of injuries. The head of the CSIU has agreed to speak to the officer about inadequacies in the report.

However this complaint has led to a much closer watch being kept on the quality of such investigations. It has also prompted inquiries by the Ombudsman to clarify the status and circumstances of the NSW police during their time with the department.

Of even greater public interest is the Ombudsman's decision to examine the response of the department relating to major escapes. This decision was made in response to a well publicised escape from Goulburn gaol in 1996. As part of that investigation Ombudsman officers have monitored the investigation of the escape by the department's Internal Investigation Unit.

Any recommendations arising from this investigation will be aimed at assisting the department to strengthen its own internal investigation procedures.

The Ombudsman is concerned that investigations at all level are rigorous enough to produce fair and positive results.

INTELLIGENCE?

Two of the constants of prison life are drugs and escapes or attempted escapes. Like police, Corrective Services staff depend not only on detective work but on informers for information to counter escape attempts and drug drops. They also depend on prison officers and others to observe the behaviour of inmates and their visitors to build up files on inmates.

Information gathered in this fashion is commonly described as "intelligence". How valuable the intelligence is depends, amongst other things, on:

- how it is received
- the reliability of the source
- the plausibility of the information
- how well it is recorded
- how well it is stored
- how it is distributed
- how it is used.

In 1990 Assistant Commissioner of Operations, Mr Ron Woodham, said that:

> *"We rely heavily on the intelligence gathering process that exists within our department today.*
>
> - *All intelligence is forwarded to the Internal Investigation Unit;*
> - *There are two selected intelligence gathering officers in each institution in NSW;*
> - *Regional Emergency Unit staff also gather intelligence."*

In the six years that have followed it is not unreasonable to expect that the handling and use of intelligence would have improved. Evidence suggests, however, that there are still problems.

At a local level each prison might have a designated Intelligence Officer, but that does not mean that these individuals spend all their time gathering and assessing useful information. Because they are often reasonably senior officers, they continue to function within the prisons in their normal roles as Assistant or Senior Assistant Superintendents. In some institutions Intelligence Officers are not identified. Because of staffing pressures, vital information that should be recorded centrally is sometimes hoarded, ignored or misinterpreted. It has been suggested that information embarrassing to the particular prison might even be held back from the Central Intelligence Group (CIG) to avoid criticism later on.

Case study

A prisoner complained that he was transferred from John Morony Correctional Centre and reclassified from C3 to B without notice and had been told that the move was due to intelligence information. The inmate's file did not indicate why he had been so severely punished. Inquiries with the Security and Investigation section revealed that the prisoner had been removed as a result of an Intelligence Report (IR) naming him as being involved with drugs during his attendance on day leave to technical college. This alone did not seem to justify the reclassification so the Ombudsman wrote asking for a more detailed explanation.

The reply surprised the Ombudsman as well as the Director of Security and Investigation. The

prisoner's cell had been searched after a positive drug test and a previously unmentioned diary had been found. The diary contained the most extraordinary revelations about drug use, sexual activity and manipulation of the system. The transfer and subsequent failure to tell the prisoner why he had been moved were more than understandable.

The larger problem was, however, that the vital intelligence information contained in the diary was only sent on to the CIG after this office queried the situation. The internal system set up to convey intelligence information had not worked. Not only that, but there was no concerted plan put into place to do a follow up investigation of the activities so graphically set out in the diary.

The Ombudsman wrote to the Commissioner saying that:

> *"... I am concerned that the best possible use might not have been made of the available information concerning* [the prisoner]."

This may turn out to be a gross understatement. Inquiries concerning this matter are continuing.

Similar situations arise when visitors to prisoners are banned on the basis of intelligence information. How justifiable is it to ban a visitor because the prisoner has been found to have drug implements or drugs? Can it be assumed that because intelligence information has proven correct in identifying a gaol drug user, the visitor named in the information report is also guilty and should be banned? Is it fair to use old, unconfirmed reports to justify continuing bans on visitors?

Likewise a Program Review or Classification Committee can be confronted by an Intelligence Report indicating some standover activity. No concrete evidence might exist. Unless these allegations come from a previously reliable informant or are tied to other information from officers, other inmates or the CIG database, punishing someone on this basis can be questionable.

These situations require the sometimes difficult balancing of the rights and legitimate expectations of fair treatment of inmates against the public interest issues of prison security and good order. Under normal circumstances we satisfy ourselves that there is sufficient information and reasonable suspicion created by the intelligence report to justify the exercise of discretion by prisons officials. These decisions are then simply confirmed with complainants. Sometimes the intelligence information is from a less reliable source and unsupported by other details. Sometimes the transfers and reclassification are simply to rid the gaol of irritating inmates. At the Ombudsman's request the department has agreed to reassess such cases.

Certainly the Central Intelligence Group is a clearing house for all information on high risk inmates. Substantive files are collated and this information is (following recent notable escapes) discussed and disseminated at High Risk Management Committee meetings. The committee includes the governors of all maximum security prisons.

The CIG is also now offering detailed training for intelligence and other officers.

As previously mentioned, at the time of writing the Ombudsman had embarked on an investigation into the response of the department to major escapes from correctional centres and in particular, the escape of inmate George Savvas from Goulburn Correctional Centre. The use of and dissemination of intelligence information will be a particular focus in that investigation.

CLASSIFICATION

Between 1991/92 and 1995/96 the number of C classification (low security) prisoners in NSW gaols increased from 1,841 to 2,996. One of the consequences of this increase is the change in the nature of some prisons. Few gaols now serve the same purpose as they did when they were constructed. This includes 100 year old institutions like those at Long Bay or Parramatta, as well as more recently purpose built prisons.

Aside from demonstrating a problem with forward planning on the part of the department, there are real up front financial costs for Corrective Services in altering the operation of NSW prisons. High security facilities are sitting unused in what are now minimum

security gaols. On the other hand staff costs are reduced as prisons take in low classification inmates.

John Morony Correctional Centre at Windsor was built to cater for maximum security inmates but is now home to prisoners on works release and day leave. Cessnock has alternated between medium and minimum security inmates. The private gaol at Junee was envisaged to hold a mix of medium and minimum security classification prisoners under normal discipline. Not only are there more minimum security prisoners at Junee in medium security settings but the bulk of them are on protection. Until recently many minimum security women prisoners spent their time behind as many gates and fences as their maximum security counterparts. All of these prisons have secure perimeters. Along with the Training Centre at Long Bay, these maximum security prisons are being used as minimum security prisons when there is no where else to send low risk inmates.

What was, until reasonably recently, the maximum security Reception Industrial Centre at Long Bay has been dismembered and is now simply a reception centre. One part has been claimed by the adjacent Training Centre as accommodation for minimum security workers. This means that inmates sentenced for the same crime can be serving the last months of their sentence in gaol as a C classification prisoner in very different physical settings.

There are also very real contrasts in the manner in which minimum security prisons in NSW are run. Management styles differ, the response of staff to new, less restrictive regimes can vary enormously and some renovations that turn maximum into minimum security are more sympathetic than others.

Based on the experience of Ombudsman officers it is fair to say that some prison governors and a proportion of staff are uncomfortable with minimum security arrangements and the changing conditions. This is reflected in the harsher controls in some institutions compared to others. It is also reflected in the continuing complaints of inmates who find that their behaviour in one prison is unacceptable in another.

Some prison staff believe that an unacknowledged hierarchy exists which means that the "more difficult" low security inmates are transferred to the prisons with higher fences or walls. They claim that there is no effort on the part of the transferring gaol to control unwanted behaviour and no consideration of the consequences for the gaol on the receiving end.

They also complain that in the urge to push prisoners to lower classifications, dangerous inmates are placed prematurely in prisons where they are largely unsupervised. Certainly there are signs that some minimum security institutions are running tougher regimes in response to more unpleasant incidents and more escapes.

There is a surprising level of discretion for governors at the minimum security end of the NSW prison spectrum. Presuming that security is adequately maintained the range, for example, of activities, restrictions on movement, privileges and even buy-up items can be adjusted to suit the circumstances.

There is no reason why individual management styles, discretion over conditions, more flexible classification arrangements and the very real physical contrasts between institutions should not be things that Corrective Services can use to their advantage. A variety of institutions with different approaches and specialties is certainly desirable. Greater choice of prisons for placement of more difficult inmates is also positive. What is less desirable are startling contrasts between conditions, physical and otherwise, and inconsistent punishments for particular behaviour.

The department might want to consider some sort of notional assessment of minimum security prisons which acknowledges the genuine differences between them and the impact these differences can have on inmates and staff. It might also be useful to examine local orders, instructions and controls to make sure that movement between minimum security institutions cannot be considered a punishment in itself. Finally, the consistency, thoroughness and fairness of the security classification of prisoners continues to deserve close examination by the Department of Corrective Services.

BETWEEN THE IDEA AND THE ACTION

As early as 1994 Ombudsman officers were briefed on the introduction of the 'smartcard' to NSW prisons. The idea, of course, had been around for some time: put all of an inmate's personal details on an identity card along with sentence details, property list, cash account balance and anything else to avoid the continuing administrative nightmare of tracking any problems through a mountain of paper. Given that the Ombudsman deals with large numbers of complaints on deficiencies in just these areas it sounded like a great move.

Unfortunately government authorities (not just Corrective Services) have an unenviable record in the management of innovative technological development and entrepreneurial activity. Senior Corrective Services officers spent a lot of time finding a company that was large enough to develop a smartcard and small enough not to think the project was insignificant. Once they had done so they spent the bulk of their time examining *what* would be produced. It seems that not enough time was spent thinking about *how* the process of development might occur.

The private company focused on developing a product. This included the installation of a trial smartcard controlled telephone system at Parramatta Correctional Centre. There was some expectation that no tender would be necessary or at least there would be nominated firms asked to tender. That did not happen. When the time came a public tender was called. The company complained about the process and suggested that material they had supplied had been used in the tender specifications and passed out to competing firms who now had access to their technology.

While it was the company's risk to invest their time in the joint project they should have been given a clearer idea by Corrective Services or (what was then) Commercial Services Group (CSG), who initially handled the tender, of what the process would involve. It was likely from the outset, for instance, that a tender would ultimately be necessary. Perhaps the enthusiasm of the proponents obscured the need to establish a clear professional working relationship that took into account the requirement for statutory authorities to be seen to be absolutely impartial in their dealings with the public.

Extensive delays occurred in letting the tender. Allegations concerning CSG staff were made. ICAC assessed the matter. The tender was cancelled and called once more. Law suits were threatened. Intellectual property issues were raised. Angry letters were exchanged. A detailed assessment of Corrective Services processes was done by their Internal Audit section.

More than two and a half years after the ideas were floated the tender was finalised. By this time the smartcard innovation first discussed in earnest by NSW Corrective Services had been installed or approved in almost every other state in Australia.

The Ombudsman will be closely monitoring the department's response to the manner in which this matter was handled. Every effort should be made to foster innovations which might make life easier for Corrective Services staff (and, not incidentally, reduce the number of complaints to this office). However, staff have an obligation to comply with accepted tendering and contracting practices regardless of the need to acquire a service.

THE CONTINUING PROBLEM OF MISSING PROPERTY

Prisoners are allowed to have a small amount of property in gaol, such as books, stationery and photographs. Their civilian clothes and documents are kept in storage at their gaol. When prisoners are transferred to different gaols throughout the course of their sentence, their property follows them. The department is responsible for any property it is holding in storage, and for property that is transferred from one gaol to another. The Ombudsman receives many complaints from prisoners about missing property, usually after the prisoner's own attempts at having the problem addressed by prison staff have been unsuccessful.

Retired Commissioner Smethurst showed a particular interest in complaints about missing property and late last year told the Ombudsman *"...I am determined to address the ongoing problem of inmate lost property..."*. The Commissioner requested this office refer all property

complaints directly to him in the first instance so that he could monitor the way in which individual correctional centres processed missing property claims.

This arrangement has proved to be particularly effective in ensuring complaints about missing property are resolved quickly. It has also freed up Ombudsman staff from the frustrating and time consuming paper chase which is involved with following up complaints about missing property.

Unfortunately it did not have an impact on the proportion of complaints this office received about property. Written complaints about property constituted 15% of the total number of written complaints this office received about prison matters in 1995/96. Resolutions, however, were more numerous and much speedier.

The department's decision to introduce the electronic smartcard system, referred to earlier in this chapter, may help to reduce property-related complaints.

MULAWA

Last year's annual report referred to an investigation into the care and protection of women held at Mulawa Correctional Centre by both the Department of Corrective Services and the Corrections Health Service.

The summary of evidence collected during the extensive investigation was sent to all relevant parties in February 1996 so they could make submissions in response. Extraordinarily detailed responses have been received. As well as needing very close assessment in themselves, these responses raised a number of additional issues which have required further investigation. This assessment and further investigation was being undertaken at the time of writing.

DEATHS IN CUSTODY

A death in the NSW prison system must be the subject of inquiry by the State Coroner. The examination of such deaths might be in the form of an inquest or an assessment of reports by local police into the circumstances of the death.

In the past the Ombudsman has - with very rare, but quite notable, exceptions - stood back from such inquiries. That does not mean that this office does not have serious concerns in some cases about the administrative response of the Department of Corrective Services and the Corrections Health Service.

During 1996 an unfortunate death at the Remand Centre at Long Bay prompted a meeting between the Ombudsman and the Coroner, Mr Derek Hand. The result was an informal agreement to improve the level of cooperation between the two offices. It was agreed that the Ombudsman's office would be given the opportunity to bring to the Coroner's notice areas of concern relating to the handling of administrative matters by the Department of Corrective Services. The Coroner agreed to allow access to completed investigation files to assist Ombudsman inquiries where relevant. On the basis of their wide experience of NSW prisons, Ombudsman staff offered the Coroner's investigators any practical assistance they might need. The Ombudsman also added her weight to the view that a specialist unit of investigators within the Coroner's office were best placed to examine the causes of deaths in custody.

The new level of cooperation is encouraging and gives the office the opportunity to examine more fully any administrative differences which might lie behind any death in custody.

TRIED AND TESTED

During a gaol visit an inmate complained to office representatives that the Corrections Health Service (CHS) had failed to inform him of the result of a compulsory HIV test he had undergone in 1991. The complainant said that it was not until he returned to gaol in 1992 that medical staff found his 1991 test results.

In November 1990 compulsory HIV testing was introduced in NSW gaols through the then Prison Medical Service (now Corrections Health Service). All new reception inmates were required to undergo an HIV test. Any inmate with a positive test result was informed of the test result, underwent counselling and received appropriate medical care. Inmates showing negative test results were not notified of the outcome of their tests. If an inmate was released before a test result was available she/he was to be contacted and informed of the result if it was positive.

There were problems associated with the compulsory testing program - not the least of which was the high number of inmates serving short sentences and the difficulty of contacting them after release. This particular problem resulted in the compulsory testing policy being amended to exclude inmates serving short sentences.

In early 1991 when the complainant entered gaol to 'cut out' fines, short term inmates were still undergoing compulsory HIV tests. The complainant was informed that he had to be tested and that if his test result was positive he would be informed of the result within 10 days - regardless of whether he was in gaol or had been released. He was also told that if his test was negative no contact would be made. His contact address was recorded by medical staff. He was released a few days later and heard no more about his test.

During 1992 the complainant returned to gaol on remand and underwent another compulsory test. His test result was positive. When his medical file was consulted, medical staff discovered that his 1991 test result had also been positive. Understandably the complainant was very distressed; ignorance of his HIV status had put a number of people at risk. Although the complainant had initially lived with his wife and family on his release in 1991, this relationship broke down shortly after and he commenced another relationship prior to being imprisoned in 1992. Also during this period he had worked as a male prostitute. Because he had not been notified of his positive HIV status, the complainant not unreasonably believed his 1991 test result was negative.

The complainant was also concerned that the delay in notifying him of his HIV status had also delayed the start of a treatment program. Medical opinion at the time suggested that the earlier a diagnosis is made and treatment commenced, the better the prognosis for a patient. He did not commence any form of treatment until approximately 18 months after his original diagnosis. The complainant has commenced legal action against the NSW Department of Health.

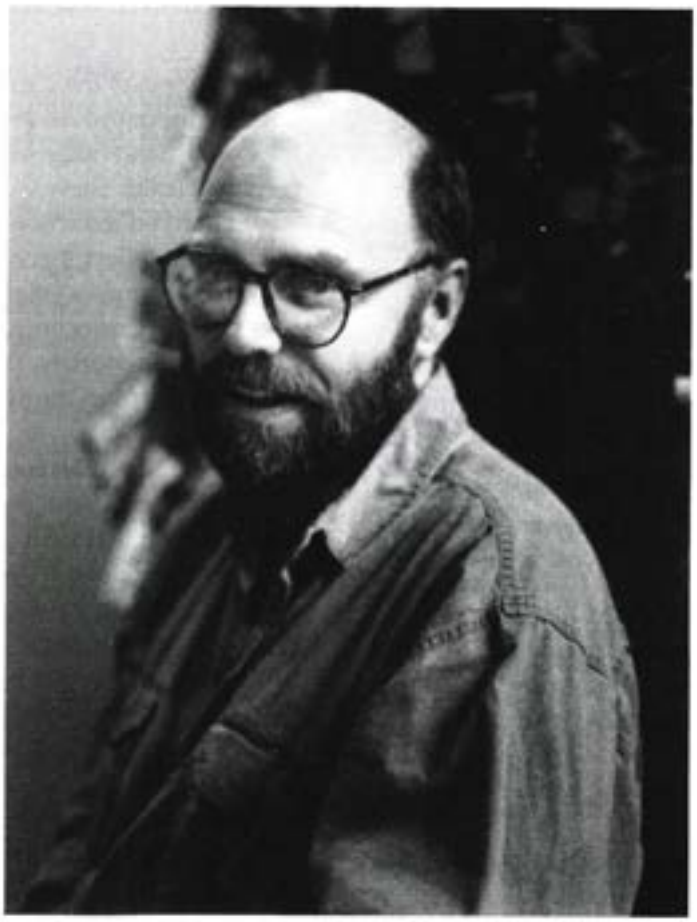
The Corrections Health Service admitted it had failed to inform the complainant of his 1991 test result. Although CHS had procedures in place for notifying inmates after release, they were not followed. The complainant's test result had been filed rather than passed on to appropriate staff for notification. CHS were unable to provide any explanation as to why he had not been notified. However the Director of Clinical Services at the commencement of the investigation suggested that because the system was new when the complainant was tested *"... the system was not comprehensive enough to ensure that test results were made known to HIV positive persons."*

This office considers that the CHS failed in its duty of care by not notifying the complainant of his test result. This failure also placed a number of other people at very serious risk of contracting HIV and could well have contributed to the spread of the virus in the community. The complainant suffered considerable stress and anxiety when he realised the risk to which he had subjected his sexual partners.

Failure to notify the complainant also delayed the commencement of medical treatment and denied him the counselling which accompanies notification of a positive result. Such counselling may have assisted him to make lifestyle and risk behaviour changes which as well as affecting his prognosis, may have reduced the risk of transmitting the virus.

The Ombudsman found that the conduct of the NSW Department of Health, which is the Department responsible for the Corrections Health Service, was unreasonable in failing to notify the complainant of his test result. Several recommendations were made including an audit of all positive test results to ensure that all inmates who were tested and found to be HIV positive during the compulsory testing period were notified of their result. The findings of the audit are to be provided to this office.

Given the complainant's health status and the length of time that it can take for legal proceedings to be determined, it was also recommended that the NSW Department of Health offer to mediate the dispute with the complainant and his legal counsel. This matter had not been finalised at the time of writing.



JIM MILNE - SENIOR INVESTIGATION OFFICER *Jim has a wide and varied work history, having worked as a real estate agent, a brickies labourer and a journalist in Britain and Wollongong, before becoming a researcher at the Centre for Multicultural Studies at Wollongong University. Jim has worked extensively with the Wollongong community, helping to set up various long day care centres, working as an ethnic child care worker, a community worker in neighbourhood centres, and assisting numerous communities through his work for the Illawarra Area Assistance Scheme. He has been with the Ombudsman's office since 1989 and in that time has finalised over 1500 complaints. Jim regularly visits virtually every gaol in NSW and now specialises in prison complaints.*

CASHED UP

Case study one

In 1990 a Venezuelan national was caught attempting to bring drugs into Sydney. After he was imprisoned, various monies were paid out and some cash was confiscated by the Australian Federal Police. The remainder, more than $300 US, was sent by Prisoner's Aid to the Remand Centre at Long Bay.

When the prisoner complained that the money had disappeared the department spent four months making inquiries but failed to find either the cash or the inmate's property card. They also failed to suggest a solution to the problem. Nine months after the first letter from the Ombudsman, an offer was made to compensate the prisoner. By this time, however, the prisoner had been released and returned home to Venezuela. The Venezuelan consulate is still searching for him in order to return the money.

It is unfortunate that the department couldn't find the cash, as the Federal Police later discovered that their share of the money confiscated from the prisoner was counterfeit.

Case study two

Another inmate complained that he was transferred to court without the cash he had brought into gaol. He was released from court penniless and had to go to the Salvation Army for enough money to go back to Long Bay and pick up the $600 he had in his account at the gaol. Similar complaints have been made by other prisoners.

It is unreasonable for Corrective Services administration staff to be asked to assess if a prisoner is likely to be freed from court. It is also unreasonable to have to arrange on every day of a long trial for a prisoner's cash to be transported with them. But it is not unreasonable for inmates to be informed that emergency cash is available via court officers for those trapped without funds. Person's walking free from courts can also request to be bailed back to Long Bay to collect their cash.

Once more the transfer of prisoner cash from one prison to another has been the subject of a number of complaints. Given the numbers of inmate movements perhaps the incidence of errors or delays is not extraordinary. However the irritating level of discomfort and distress that is caused to prisoners is of concern. Small things matter in prison. A smoker without tobacco, no replacement socks or no tin of something to supplement the prison diet. All of these things can become a problem - for officers as well as inmates - simply because the transfer of funds is delayed.

Hopefully the long awaited computer system update for Corrective Services will see these problems become things of the past.

MISCOMMUNICATION

For many years the Ombudsman has stressed the need for improved communication between the Department of Corrective Services and Corrections Health Service. In response, there has been a marked reduction in the number of complaints that reflect this concern. This is due, in part, to an improvement in the information provided by Corrections Health to the officers that manage prisoners. There are still examples, though, of gaps in the system.

The Public Guardian complained about the arrest and subsequent medical treatment of a young Aboriginal man with a mental disability. There were some problems in identifying the man because he was generally unresponsive to questions from police and later from prison officers when he was transferred to Parramatta Correctional Centre.

Medical staff at Parramatta were called and the prisoner was seen by a nurse and when her attempts at assessment failed, by a medical officer. The doctor suggested in his clinical notes that the inmate be referred to welfare. The assessment was incomplete and was to be completed the following day. In fact the Reception Health Status Notification form which was used at that time to pass on relevant health and medical information to Corrective Services staff contained simply an inmate's name - the wrong one as it turns out - and the signature of the nurse. The form had a date of birth showing the demonstrably younger man to be over 45 years old. It said nothing about the inmate's problem with communication, his Aboriginality or anything else that might have assisted prison officers in managing him. A further form (Wing

officers information form) was to be filled out by medical staff but copies, if any ever existed, were not kept by Corrective Services. Nor was there any indication that the medical officer's recommendations were passed on to prison officers, orally or otherwise. He was placed in a cell with another inmate but there is nothing to say the cellmate was informed of any concerns for the man's safety.

The prisoner collapsed overnight. Unaware of any need to be overly concerned, the cellmate left him curled in a foetal position on the floor of the cell. The prisoner was taken to Westmead hospital for treatment hours later when his condition was seen to be serious.

The notification forms have been revised several times since this incident and policies have been developed to cover most circumstances.

The Corrections Health Service stated:

> *"I am confident that, with the current policies in place and the climate that exists between CHS and DOCS staff, any confusion that may have occurred in regards to the management of* [the inmate] *would not manifest itself if the same situation arose today."* (Emphasis retained.)

This office has no doubt that since this incident occurred the level and quality of communication between Corrections Health and Corrective Services has improved considerably. The Ombudsman is equally confident that an unwelcome level of confusion and miscommunication *did* occur in this case. Prompt acknowledgment of problems can lead to quicker and better solutions.

HANDY WORK

An inmate at Berrima Correctional Centre complained that he was being discriminated against by an officer at his gaol work location. This discrimination took the form of insulting language and discriminatory allocation of work tasks causing him to be paid less than other inmates. He also complained about an incident which occurred when he reported to the officer that he had a work related injury.

The inmate had reported to the officer in charge of his work location that he had to be assigned to 'light duties' for a period because of a work related injury to his right hand. A medical certificate identifying which hand was injured and outlining details of the injury had been provided by the gaol clinic. On presentation of the certificate the officer had expressed his disbelief of the inmate's injury and insisted on making a photocopy of the inmate's hand.

Inquiries were made by this office into the discrimination allegations. There was no evidence that the complainant's gaol wages were less than other inmates working in the same area. In fact he was being paid at a higher rate than a number of other inmates because special skills were required to perform his job. The complainant's work reports were all positive.

Inquiries into the incident were also made. The officer admitted to photocopying the inmate's hand but denied he had questioned the complainant's claim of a work related injury. He stated he had made the photocopy to verify which hand was injured.

This office wrote to the Commissioner expressing our concern about the intimidatory and unprofessional conduct of the officer. We requested that the officer be counselled about his actions and reminded of his professional responsibilities when dealing with inmates. The Commissioner agreed and the officer was counselled by the Governor.

UNDERPANTS ALERT

On a routine inspection visit to Kirkconnell Correctional Centre an inmate complained to Ombudsman staff that his only set of civilian clothes had been lost. He said his property bag, containing his clothes, had been lost by Department of Corrective Services staff when they transferred him from Goulburn Correctional Centre to Kirkconnell.

He was very concerned and angry because he was due to be released from gaol in six weeks. The requests he had put in for property searches, and then compensation, had achieved nothing. He wanted to be able to travel home in civilian clothes, not the green prison uniform. He told Ombudsman staff if the department did not replace his clothes before his release date, he would simply stand outside the gaol in his underpants on his day of release, in protest.

Ombudsman staff checked the inmate's property records and found his property had been in the care of departmental officers when it went missing. As the inmate's attempts to sort the matter out via the usual channels had been unsuccessful, details of his complaint were forwarded to the Commissioner of Corrective Services to be actioned. The Commissioner arranged for a review of the complaint, and the complaint was resolved.

Because the property could not be located after a thorough search, the department agreed to compensate the inmate for his lost property. A special escort to nearby Bathurst was arranged so that the inmate could purchase replacement clothing prior to his release.

THE WALKABOUT WALKMAN

An inmate at Parklea Correctional Centre complained to this office about the loss of his walkman from the centre's property room and the failure by the department to compensate him for the loss.

The inmate had purchased the walkman on a buy up day. The walkman was placed in the property room of the centre. About a month later the inmate asked that the walkman be returned to him. He was told that the walkman had disappeared from the property room and it was now assumed lost. The inmate then requested that he be provided with another walkman or compensated for the loss with no success.

This office wrote to the Commissioner (as per his instructions) and requested that he review the matter. We were later advised that the department's investigation revealed the inmate had signed for the walkman a couple of days after he had initially placed it in the property room. Upon receiving this advice we requested a copy of the property records. The department informed us that, in fact, Parklea Correctional Centre had no record of the inmate ever signing for the provision of the walkman, and the department had been provided with wrong information.

Following the receipt of the above information this office again wrote to the Commissioner and asked that the matter be reopened to determine exactly what had become of the walkman.

The Commissioner replied to this office advising that *"the information which was initially provided from Parklea Correctional Centre, that the inmate acknowledged receipt of the walkman in question, could not subsequently be verified"*..... further that *"the level of record keeping at the Centre, in this case, is unsatisfactory and accordingly, on that basis, the inmate has been offered and has accepted $80.00 compensation for the walkman"*.

POSTED

Just when you thought that every possible complaint about prisoner mail had been dealt with by this office another - two actually - raises its head.

The *Prisons Act* stipulates that mail from inmates to police is privileged and cannot be opened. However mail from police to prisoners does not have the same protection. Along with other mail to inmates it is sometimes inspected for security and other purposes.

Case study one

An inmate at Berrima complained that his mail from police had been opened and that this might have put his life at risk. There is no indication that his life was in fact threatened but it did make clear that police generally were not aware that their correspondence may be opened and of the possibility that the contents may become known to others. As a reminder a Commissioner's Instruction was issued to police pointing out that mail to prisoners should be limited to standard correspondence and not contain confidential information.

Case study two

At least 13 authorities can claim privilege when writing to someone in prison and expect that their correspondence will not be checked. There is a catch, however. A prisoner complained that his letters from two such authorities were opened when they arrived. It seems that the envelopes were marked only with the address of the authorities and not with the name or logo. Gaol staff did not recognise the address and opened the mail. The Ombudsman wrote to all authorities covered by the act reminding them of the problems prison officers might have in identifying their correspondence.

LOCAL COUNCILS

LOCAL COUNCILS

OVERVIEW

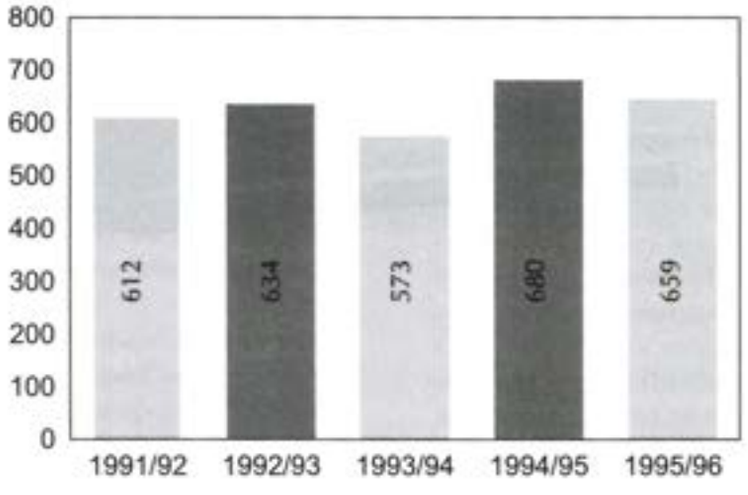
LOCAL COUNCIL WRITTEN COMPLAINTS DETERMINED
1995/96

Received	
written	659
oral	2057
reviews	66
Determined	
Formal investigation completed	8
Formal investigation discontinued	2
Preliminary inquiry	379
Assessment only	233
Non jurisdiction	22
Total	**644**

The past year has seen a slight decrease in the number of complaints received by the Ombudsman concerning local councils. The office received a total of 659 formal written complaints in 1995/96. This represents a decrease of 3% compared to the 680 received in 1994/95. Similar to previous years, development applications were the most common subject matter of complaints. There were also large numbers of complaints received about engineering matters such as access and flooding. Complaints about failing to enforce conditions of consents and approvals and inadequate customer service were also received in large numbers. Additionally, we received 2,057 oral complaints about local councils, a slight increase over the previous year.

The office received more complaints about local councils than it finalised. About half of the complaints were resolved after conducting preliminary investigations. A total of 10 formal investigations under the *Ombudsman Act* were

Written complaints received about Local Councils
a five year comparison



conducted, of which eight resulted in reports with adverse findings.

Complainants requesting a review of decisions the office had made about their local council complaints totalled 66. In all but five cases, the independent review agreed with the original decision made.

Mediation continued to be used as a means of dealing with local council complaints. One council complaint was settled by the parties through formal mediation. Additionally mediation techniques were successfully employed in informally resolving a large number of complaints about local councils.

NATURE OF WRITTEN LOCAL COUNCIL COMPLAINTS
1995/96

Building building inspections, objections to building applications, conditions/refusal of application, processing	44
Community services parks and reserves, other facilities	8
Corporate/customer services meetings, elections, tendering, provision of information, contracts resumptions, unfair treatment liability, complaint handling	154
Development objection to development applications, conditions/refusals, processing	107
Enforcement failure to enforce BA/DA conditions orders, unauthorised works	63
Engineering services failure to carry out work/inadequate work, road closures/access, parking, traffic, drainage/flooding, works	84
Environmental services pollution, tree preservation, noise, health inspections, garbage collection, dog orders	52
Misconduct misconduct of councillors/staff, conflict of interest, pecuniary/non-pecuniary interest	40
Rates and charges	53
Town planning rezoning, S149 certificates, existing use/consent	13
Non-jurisdictional issues	3
Other	38
Total	**659**

WHO'S THE BOSS? - THE ROLE OF THE GENERAL MANAGER

It is now three years since the major overhaul of local government brought about by the *Local Government Act 1993* first took effect. One of the most significant changes made by the new Act is the redefinition of the roles of the mayor and the general manager in conducting the affairs of councils. The general manager now has specific authority for the day-to-day management of councils. The general manager has the function of appointing, directing and dismissing staff. The role was redefined by the new Act to be the equivalent to that of a chief executive officer. The mayor and the councillors hold the power of appointment and dismissal of the general manager.

The mayor formerly exercised authority in the capacity of the chief executive officer of a council. The principal functions of the mayor are now: to exercise, in the case of necessity, *"policy making functions"* of council in between council meetings; to preside at council meetings; and to exercise the civic and ceremonial functions of the mayor. Under the new Act most of the powers formerly performed by the mayor are now carried out by the general manager. Many commentators see this change as a transfer of power from the 'political' sphere of local government, where power rests with the mayor and the councillors, to the 'administrative' sphere. In practical terms, it also diminishes the power of councillors.

Councillors elected at the 1991 elections had to adjust to this change. The process of adjustment was complicated by the need to appoint a general manager following the commencement of the new Act in July 1993.

In September 1995, local government elections were held across NSW. As with all such elections, many councillors retired and many did not secure re-election.

This office has become increasingly alarmed at the number of general managers who have been

DOMINIC RIORDAN - SENIOR INVESTIGATION OFFICER *Dominic handles the majority of local government investigations for the office. Born in the UK, Dominic came to Australia in 1969, finishing his education in NSW and going on to do his Bachelor of Arts and Bachelor of Laws degrees at NSW University. In between study, Dominic worked for both the Department of Housing and the Department of Education. After graduating, Dominic worked in private legal practice for over four years, focusing on planning, environmental and local government law as well as domestic and commercial conveyancing. He joined the office in 1993 and is now our Senior Investigation Officer for Local Government.*

dismissed or resigned in controversial circumstances since the commencement of the *Local Government Act 1993*. The trend appears to have worsened since the recent local government elections.

There is a growing concern that mayors and elected councillors are reluctant to allow general managers to manage. Newly elected councils need to establish good relationships with their general managers within a short time. Failing to do so can and does lead to unwarranted and inappropriate strain being placed on general managers to the detriment of councils as a whole. This appears to have resulted in a number of dismissals and forced resignations.

Fundamental to this problem is the inequality of power between councillors and general managers. Councillors are elected and assert a significant degree of popular legitimacy as a result. They have power to review and terminate the employment of the general manager if he or she is performing unsatisfactorily. Some of the recent dismissals and resignations have raised the question of what protection a general manager has against a council, a councillor or mayor attempting to usurp the general manager's powers or to exert inappropriate or unlawful authority over the general manager's decisions.

It is hardly practical for a general manager to take legal action against his or her employer to prevent or restrain improper or unlawful intrusion in the exercise of the general manager's powers. If unfairly dismissed, the general manager can take legal action for unfair dismissal. In the meantime the management of the council suffers.

While councillors claim the authority of the electors, the highest authority in our society is the law made by the Parliament. General managers must be allowed to manage the affairs of councils in accordance with their lawful powers and free from unwarranted and inappropriate influence from councillors.

This office is presently conducting a number of investigations in which the improper exercise of authority and attempts at exercising undue influence by mayors and other councillors are key features. These investigations are likely to activate debate on the adequacy of existing measures to protect the rights and obligations of general managers to manage. Unless they are protected, general managers may soon perceive that regardless of the powers the law grants them, uncritical deference to the will of the councillors is the most sensible approach.

One measure which will contribute to better understanding of this issue is a proposed set of guidelines being developed by the Department of Local Government and the Independent Commission Against Corruption in consultation with the NSW Ombudsman on managing the interaction between councillors and staff. These guidelines will be finalised in the coming year after appropriate consultation with interested parties. It is intended that they will assist in establishing an appropriate model for managing relationships between councillors and staff.

I HATE TO BE CRITICAL BUT.....

In a number of instances coming to the attention of this office, councils have been making use of the threat of defamation to achieve certain outcomes.

One situation which arises concerns councils relying on a vague threat of liability for defamation to justify dealing with matters in secret. Last year's annual report noted one such case. The council wanted to table an Ombudsman report in closed council. It justified the move by claiming that a public release of the report could leave council liable. This action ignored the fact that any councillors in discussing the report were almost certainly able to claim the defence of qualified privilege. This defence should be available where: the publication of the report is relevant to the business of council; councillors have an interest or duty to table the report; and other councillors and the public at large have an interest in receiving the report.

Another use of defamation by councils is making threats of defamation against people complaining about their conduct. One recent case illustrates the dangers of this approach.

A resident, well known to council staff, and a council town planner were having a conversation at the council offices. According to the town planner, the resident made a number of

disparaging remarks about the actions of a number of council staff. In particular, he is alleged to have said that the general manager had a conflict of interest in relation to a particular development matter. A record of the conversation was made by the town planner and reported to the general manager. Council's solicitors then wrote to the resident on behalf of the council, the general manager and senior staff. The letter outlined allegedly defamatory statements made by the resident. It then demanded an apology and a retraction. The letter concluded that if the apology and retraction were not forthcoming, the aggrieved parties reserved their rights to take further action.

The resident complained about this and a number of other matters to the Ombudsman. The complaint was assessed and declined. However, in our letter to the council, the office commented it was concerned about threats of defamation being made against members of the public by councils. This is because of the potential such threats have to gag legitimate debate on public issues and deter people from referring serious concerns to bodies such as the Ombudsman and the ICAC. The letter acknowledged that if the statements had been made (which the resident denied) and were untrue, it was natural that the staff concerned would be distressed by such comments. It concluded that the resident or council were free to refer the allegations to the Ombudsman or the ICAC for assessment. It should be noted that complaints to this office and the ICAC enjoy absolute protection against liability for defamation.

Council wrote to the Ombudsman objecting strongly to our comments. In particular, the council asserted that the council and its staff had as much right as anyone else to protect their reputations. In reply, the Ombudsman noted that recent court decisions show how reluctant the law has become to protect the 'reputations' of government institutions and politicians. One recent decision has even established that councils do not have a 'reputation' as governing bodies which can be defamed. Another recent decision has set a higher standard for persons alleging defamation in the course of debate on public affairs and political matters on the basis of an implied constitutional right of freedom of communication in relation to public affairs and political matters.

Hopefully, councils will accept and observe the good sense shown by the courts and refrain from futile and unproductive threats against those who criticise their performance. The threat may be appropriate in only the most exceptional of circumstances. If further examples of defamation threats come to light, such matters will be assessed closely for investigation.

INSURING AGAINST CLAIMS

Some years ago, this office conducted a series of investigations into the processing of insurance claims against councils. As a result, a set of recommended procedures for councils in managing these claims was developed by the Ombudsman, in consultation with the Department of Local Government and the Local Government and Shires Associations. Among the most important of these procedures is that claimants receive a statement of reasons why liability is denied. Follow up work indicated that the procedures had been adopted by virtually all NSW councils.

There is now evidence suggesting that with the passage of time, some councils no longer adopt or follow some or all of these procedures. Two recent complaints highlight the problem.

Case study one

In the first case, residents of a south coast town complained about the refusal of their local council to pay a claim arising from costly changes to their building renovations. These arose from the alleged failure by the council to notify adjoining owners of the proposed work. One of these owners eventually forced the complainants to carry out major changes in order to reduce the impact of the work on his property.

After making inquiries, our attention focused on the refusal by council to give reasons for its decision to deny liability. This is a central element of the recommended procedures. Council strongly asserted that it did comply with the procedures. Council said that what distinguished this case was that the claim had been made by solicitors on behalf of the claimants and had amounted to a notice of the commencement of legal action. This, argued council, meant that council *"reasonably concluded that it was not the intention of the claimants to participate*

in free and unprejudiced negotiation of their claim with Council."

It is hardly unusual for legal advisers to be involved in presenting claims on councils. A claimant may regard the assistance of such advisers as necessary and prudent. The letter council received in this case did not commence legal action. No statement of claim was served on council by the claimants. The solicitors' letter was a strongly worded claim. It did say that the claimants had instructed the solicitors to commence proceedings. However, it clearly indicated that proceedings had not been commenced and concluded with the following request:

> *"Our client is desirous of discussing this matter on a "without prejudice" basis prior to initiating Court proceedings."*

Council's approach effectively penalised the claimants for using legal advisers given to writing strongly worded letters of demand. If its approach was known to other potential claimants, it could well have the effect of discouraging claimants from seeking legal advice or making claims through their solicitors. To treat claims threatening legal action as outside the boundaries of the recommended procedures is unreasonable given that resort to litigation is a natural consequence of the failure of parties to settle a claim.

Case study two

In the second case, a property owner from south western NSW complained about the way in which his local council had dealt with a compensation claim he had lodged for damages. Flooding had washed away fill material from his driveway, knocked over a sheet metal boundary fence, and dislodged paving. He blamed the flooding on a nearby culvert and table drain, which he claimed had failed to divert run off water because they had not been properly maintained by his local council.

After investigating the matter, and three and a half months after receiving the property owner's compensation claim, council referred the claim to its insurers. The insurers wrote to the property owner soon after this and said *"...it would appear that there is no negligence on Council's part and as a result, I must inform you that unfortunately, your claim against Council is denied."*

This office contacted the General Manager of the council about the inadequacy of this response. We reminded him of the procedures which required council to ensure claimants receive a statement of reasons why liability is denied.

The General Manager assured this office that his council had adopted the recommended procedures. The General Manager agreed to send a further letter to the property owner giving a better explanation of the reasons council did not believe it was negligent.

Council's administration manager then contacted this office to advise no such letter would be sent. He argued providing further details might compromise council's position if the property owner decided to commence legal action. This office requested the General Manager contact us direct to explain why his undertaking to provide a better explanation would not now be met. The administration manager rang back soon after to say a letter had been prepared for the General Manager's signature which outlined the reasons behind council's decision to deny liability. The outcome was satisfactory, although unnecessarily difficult to achieve.

The Ombudsman has no appetite for fighting battles twice. There is no reason why councils should have stopped observing the recommended procedures. The giving of reasons is an important right. If liability is denied, the matter will go to court where the validity of the claim will be tested. It is in most instances unconscionable for councils to try to seek some sort of advantage by withholding reasons at this preliminary stage. Complaints indicating that this is being done will be carefully examined. If necessary, a further investigation of the issue will be undertaken.

CONFLICTS OF INTEREST

The *Local Government Act 1993* introduced a new set of requirements for disclosing pecuniary interests and investigating complaints about failure to observe the new requirements. These complaints are usually referred to the Department of Local Government for investigation and, if necessary, referral to the Pecuniary Interest Tribunal.

The Ombudsman is concerned that the comprehensive regulation of pecuniary interests may result in complacency among councillors and council staff about non-pecuniary conflicts of interest. The Ombudsman intends to take a continued interest in complaints of non-pecuniary conflicts of interest.

The Department of Local Government's model code of conduct sets out requirements for dealing with non-pecuniary conflicts of interest. Most councils have adopted the model code as their own code of conduct. The requirements contained in codes of conduct are not mandatory. However, this should not lure councillors and council employees into believing that these requirements need not be observed in appropriate circumstances.

A BUYER'S MARKET

Since 1992, councils have been required to pay compensation on just terms whenever they acquire land not available for sale. In other words, if a council buys land which is on the market, it pays the best price it can negotiate. However, if the land is not on the market and it is the council which indicates it is interested in acquiring the land, the owner is entitled to compensation on just terms. What this compensation comprises and how it is determined is set out in the *Land Acquisition (Just Terms Compensation) Act 1991*.

This office has become aware of a number of cases where councils go about negotiating with land owners to acquire some or all of their property without any regard to the land owner's rights to proper compensation. As a result, the land owners have not been aware of their rights and have agreed to sell without determining if the price is as good as the price had they known of their rights under the law.

The most common example is where the council approaches a land owner offering to create an easement to deal with a local drainage problem. The land owner jumps at the chance to solve the problem and readily agrees that the parties will meet their own costs and no compensation will be paid. No mention is made of the land owner's rights. Of course, if the land owner demands too much compensation, the council can decide not to create the easement. The point is that agreements made in ignorance of one's rights are not fair.

As a result of these concerns, an investigation has been commenced into whether the conduct of a council, in acquiring land and negotiating a price, had full regard to its obligations to pay proper compensation. It is intended to review the procedures used by a variety of councils to determine whether there is any need for a more comprehensive campaign to inform councils of their obligations and ensure these are observed.

UPDATES

Closed Council Meetings

Last year, we commented on the large number of complaints about unjustified decisions to close meetings. Councils can only close meetings to the public where certain specified matters are being debated. In closing meetings, councils must also comply with certain procedures which enable the public to at least be informed of the reasons for the closure of meetings. The complaints this office received suggested that the public was being denied the opportunity of observing and participating in council debate of important local issues for reasons which were not valid and that the procedures for closure were often not being complied with.

The Minister for Local Government recently contacted the Ombudsman confirming that he is considering options for review of the legislation in this area. This office has submitted a briefing document outlining its views on options for reform which the Minister is presently considering. The Minister has indicated that this office will be invited to contribute further once draft legislative amendments are developed. The Minister confirmed his intention to reform this area of abuse at this year's Local Government Conference.

This office recently finalised a report on the conduct of a council in wrongfully closing a meeting to discuss an important local issue. The report recommended a number of measures designed to address the problem.

Reviewing Decisions

Last year's annual report commented that councils have no power to review their decisions to refuse development applications or approve them subject to conditions the applicant regards as unacceptable. This power already exists in relation to building applications.

The Ombudsman recently wrote to the Minister for Urban Affairs and Planning asking that consideration be given for the *Environmental Planning and Assessment Act 1979* to be amended to provide applicants with such a right of review. The Minister responded welcoming her initiative and stating his department was exploring the issue and was prepared to work with this office in determining the feasibility of the proposal.

Since then, the Minister has announced a program to bring into one piece of legislation all existing provisions governing planning and building control. As part of this program, a right of review in relation to development applications is being considered for inclusion in the new comprehensive law. It is hoped that this provision will be law by the middle of 1997.

Compliance with Ombudsman's Recommendations

Previous annual reports have commented on the inadequacy of the present system of reporting the failure of councils to comply with the recommendations of the Ombudsman to Parliament.

Last year, we commented on the Department of Local Government having an investigative power over councils similar to that of the Ombudsman in relation to which recommendations can be enforced by the Minister for Local Government. As a result, the Ombudsman had formally requested amendments to the *Local Government Act 1993* to provide that in the case of non-compliance with recommendations by local councils, the Ombudsman may request the Minister to order the council to comply. Efforts to clarify with the department the progress in implementing this agreement have not been successful. It is hoped that the necessary amendment will be presented to Parliament in the near future.

Good Conduct and Administrative Practice Guidelines

The Ombudsman's *Good Conduct and Administrative Practice: Guidelines for Local Councils*, originally published in February 1995, were substantially amended and reissued in December 1995.

They have proven to be very popular with local councils. Approximately 120 of the 177 local councils in NSW have now purchased at least one copy of the guidelines, and many have purchased multiple copies.

PORT STEPHENS COUNCIL - FULLERTON COVE

In May 1996 the Ombudsman finalised an investigation into the steps taken by Port Stephens Shire Council to respond to complaints in relation to a sand extraction operation not complying with the terms of the development consent issued to a previous operator 20 years ago. Local residents complained the operation had extracted sand from areas of the site never envisaged by the original application, and that extraction from a public reserve and from the site of a former World War II radar station had been carried out unlawfully. Council's response to these complaints was hampered by its inability to locate the actual consent document until the administration manager asked the operator concerned for a copy in response to a request for the document under freedom of information legislation. Indeed, council's records management was shown to be highly deficient by the investigation, with no records of relevant telephone conversations, site inspections or meetings, thus rendering it almost impossible to determine the basis for many of council's actions. Council has acknowleged its deficiency in this area and has undertaken to ensure records management practices are examined.

While it was clear that extraction from the radar station site and public reserve had taken place without appropriate consent, there remains a dispute as to whether the previous or current operator was responsible. Council's handling of the matter, however, indicated deficiencies in a range of areas. Various council officers at different times gave wrong advice in relation to the site. This included confusion of zoning and giving inconsistent advice to the operator and to complainants about the activity's planning status. Council failed to follow up key issues raised by the complainants and did not pay close attention to planning issues. Complainants were not told the consent documents could not be located, and were repeatedly given copies of documents other than those asked for. The Ombudman recommended council review its complaints handling system and tree preservation order to ensure it was appropriate and capable of enforcement, and that it provide additional training for staff concerning the preparation of development consents and ensuring compliance with planning controls. Council is to report on the implementation of these recommendations later in the year.

HOUSE ON A HILL BECOMES HOUSE IN A HOLE

A resident of Naremburn complained to this office about the failure of Willoughby Council to properly notify him of the impact of an adjoining development on his property.

Adjoining his home, which is at the bottom end of a steep residential street, are council playing fields. In 1986, council announced plans to substantially upgrade the playing fields. The project was to be carried out and supervised by private consultants. It was to be fully self financing. This was to be achieved by temporarily using the playing fields as a major landfill site and selling to excavators the right to deposit landfill on the site.

Accordingly, the playing fields were to be substantially raised. This was of some concern to the complainant who enjoyed a pleasant view to his north over the existing fields, which were on the same level as his property.

On receiving notice of the proposed development, the complainant sought assurances that his view would not be lost. He was told by council staff that the fields would be raised, but that his house would continue to *"overlook level playing fields"*. He was also assured the value of his property would be enhanced by the upgrading. On the basis of this advice, he was satisfied and did not lodge an objection to the development proposal.

The upgrade commenced in early 1987 and took a number of years to complete. As work continued, the complainant became increasingly alarmed at the height of the playing fields, which were greatly in excess of the levels he had been advised of by council.

As work on the upgrading was concluding, the complainant took his concerns to council. He complained to council that the upgrading had resulted in an embankment on the border of his home several metres higher than that disclosed to him by council. He claimed that as a result, his property had lost considerable value.

The matter was referred to a council meeting in September 1991 which considered a report on the matter and resolved to purchase his property *"subject to legal advice"*. This resolution was

made prior to the 1991 local government election. At a council meeting shortly after the election, council reconsidered its position in light of some serious budget problems. It then resolved to seek legal advice *"to establish what if any compensation Council would be liable for"* to the complainant. This advice was that council would not be liable.

The complainant convinced council to reconsider the matter in late 1992. Further legal advice was sought on council's liability and on whether there was legal justification for an *ex-gratia* payment. Again, the advice was that the complainant had little prospect of success in any legal action. The advice also commented that there was no justification for an *ex-gratia* payment. On this basis, council informed the complainant no compensation would be paid.

An intensive investigation of the history of the upgrading project was undertaken by this office. It revealed that the complainant had received notice of the original development proposal. This proposal involved constructing a two metre embankment next to his property. Council's advice that he would continue to overlook the fields was therefore slightly misleading in that they would in fact be level with the floor level of his property.

However, council failed to notify him at all of amendments to the original development proposal which provided for an increase to the embankment of a further two metres. This amended proposal was the one council consented to a few months later. Council also failed to inform the complainant of later decisions to further increase the level of the playing fields. The investigation revealed that these later decisions were not formally consented to by council but were carried out with the knowledge and approval of council officers. Ultimately, the fields were constructed approximately four metres higher than the level the complainant had been notified of.

The investigation revealed that the project was beset by major cost overruns. This resulted in continuous revision of the amounts of fill and the consequent amounts of income needed from the sale of tipping rights. A total of nearly 840,000 cubic metres of fill was eventually deposited on the site. This exceeded the initial estimated of 350,000 cubic metres by almost 500,000 cubic metres.

The investigation concluded that there had been a failure on the part of a number of senior council officers to properly monitor or otherwise participate in the project. As a result, the project was built in breach of a number of conditions of the development consent issued by council. The absence of proper monitoring and participation also helped to explain the spiralling cost of the project and the consequent decision to allow ever increasing amounts of fill to be deposited on the site.

The Ombusman found that the investigation by council staff of the complaints made by the complainant was seriously flawed. Council's investigation resulted in a report to council which contained a number of very serious factual inaccuracies. For instance, it wrongly claimed the complainant had been given notice of the revised levels and seriously understated the final level of the fields adjacent to the complainant's property. These inaccuracies could have been in part a result of the poor state of council's records. The investigation also concluded that the instructions given to council's solicitors were inadequate, based as they were on council's own flawed report.

The upgrading project had a serious impact on the complainant's property. His property is located at the foot of a steeply sloping street, about two metres below a rock shelf. The embankment, some seven metres high, has the effect of putting his property at the bottom of a deep and narrow valley. Accordingly, in light of the evidence of serious procedural failures in council's notification procedures, it was recommended that substantial compensation be paid to the complainant.

A number of other recommendations were made, addressing the many serious procedural failures the investigation had revealed. These recommendations included: investigating procedures for proper management of projects managed externally; adopting improved record keeping procedures; adopting improved procedures for notifying the public of and assessing development applications made by council; and investigating options for rectifying breaches of planning laws identified in the investigation.

THE MATTER OF PRINCIPLE - OR HAZARDOUS FIRE CLEARINGS

In September 1994 Hastings Council issued a notice under the *Bush Fires Act* requiring the owner to clear his property of waste material and to clean up all undergrowth. Having moved his residential address, the owner did not receive this notice but he later received the final notice which gave him 14 days to comply with the original order. After contacting the council by telephone to confirm he would be carrying out the work, the property owner travelled to the area the following day. He presented council's letter at the counter of council chambers to find out exactly what work was to be done and then arranged to have the area slashed.

He was alarmed when he later received an account for $660 to cover the cost of work carried out by council's contractor to clear a bushfire hazard. The owner assumed that given his personal approach to the counter and his telephone calls, council would know he intended to comply and would have contacted him had the work been unsatisfactory. It seemed to the owner that council had spent money on his behalf without even consulting him about it. After attempting to resolve the problem by correspondence with council, he contacted the Ombudsman.

The issues raised by the complaint were ones of general public interest. This included, the care taken by council to ensure that notices issued to ratepayers give clear instructions to ensure the recipients know exactly what is required of them, the keeping of records of site inspections where inspections are carried out by different inspectors and the keeping of records in instances where a person indicates either by a visit to council chambers or by a telephone call that they intend to comply with the order.

It seems two inspections of the site were carried out by different officers. The second officer had no visual record of the first inspection and may not have been aware that some work had been done. It was the second inspector who had issued the final notice and had arranged for council's contractor to clear the perceived hazard.

After contact with the Ombudsman, council instructed its rangers to take photographic records of lots prior to issuing an order to clear and agreed to waive half of the contractor's fee.

KERBING QUOTES

A group of residents had lobbied Lake Macquarie Council to have their street kerbed and guttered. When council decided to do the work in the first half of 1995 it notified residents. Council asks residents to pay a contribution towards such work and sets the level of contribution for such works each year.

In the letter to the residents, council set out the price per metre of the work at $36 per metre. The work was finished a month or so later, after the end of June. Residents received a bill not for the price at $36 per metre as previously informed, but at the price of $40 per metre. Between the time of notification and completion of the work, council had brought in new charges for the new financial year.

Most residents along the street paid the amount requested. A few residents however had unusually long frontages, which resulted in the total bills being substantially higher. These residents wrote to this office. One resident was a builder, who regularly dealt with quoting for jobs. He considered council's initial price per metre to be a quote which was binding. When he put this argument to council, it disagreed and informed him he must pay the bill at the higher amount.

Councils must set out their charges each year in management plans. Draft management plans must be drawn up for public comment, and then for approval by council in June each year.

The first letter was written at a time after the management plan for the coming year would have been approved. Because of this, council would have known at that time what they planned to charge in the new financial year. Accordingly, council could have informed residents of what the charges would be in the coming financial year.

We wrote to council with concerns about the change in price. Council responded to our concerns by charging all residents the initial

amount quoted, and refunding the difference to all those who had already paid.

DELIVERY BUSINESS NOT A HOME OCCUPATION

A resident of the Cooma-Monaro Shire complained to council about a business which was operating from the house next door to their house. Many people operate small businesses from home. Cooma-Monaro Shire Council's local environment plan adopts the *Environmental Planning and Assessment Model Provisions (1980)*. This includes a clause to the effect that council is not able to restrict or prohibit home occupations carried out in dwelling houses. Thus certain businesses are allowed to operate in residential zonings.

To be allowed to operate however the business must come within the classification of "home occupation". "Home occupation" can be defined in a number of ways. The occupation must not interfere with *"the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products or grit, oil or otherwise"*.

In this case, the business was a parcel delivery business. This involved numerous pick ups and deliveries by trucks during the day at their home. The operators owned a large truck themselves (amongst other vehicles), which they used for the business. They started the truck regularly before 5am, in preparation for the day's deliveries.

The residents were disturbed by the noise from the truck so early in the morning, and were concerned about the increased traffic which was a result of the business. The residents complained to council about this and several other matters over a period of 18 months, and kept a log of the starting times of the truck. The residents complained to us in August 1995. They had been writing to council for over a year about the problem without any definite results.

Council initially took the view that the business was not a "home occupation" on the basis it interfered with the amenity of the neighbourhood. At one point council served a notice on the operators, requesting them to cease using the premises for a business which is not a home business. However, the business did not cease operating and council did not follow through on the matter.

The residents complained to us at the length of time it took for council to act on their complaints. After we made inquiries, it was clear council had tried to resolve the complaints. There had been many discussions with the residents and the business operators. At one meeting both the residents and business operators expressed satisfaction with the way a part of their complaint was resolved. Council mistook this for an expression of satisfaction on the issue of the operation of the business, and took no further action (despite receiving further complaints). Once this was clarified, council served a notice on the business to cease operating from the home.

PERSISTENCE DOES PAY

An elderly pensioner wrote to this office regarding the failure by Grafton City Council to grant him pensioner rebate on water rates. He advised us that a mandatory concession for water rates was granted to all eligible rate paying pensioners. In February 1995, council wrote to him advising that following the introduction of the *Local Government Act 1993* he was now eligible for the water rates concession. Following this advice, he again wrote to council requesting that he be reimbursed for overpaid water charges dating back to 1984, when he first applied for the pensioner rebate.

In April 1995, council wrote to him in response to his request for reimbursement. Council advised that *"under the old Local Government Act, rebates were only available where a water rate was levied. In your case, you will understand that you were not rated for water but in fact were levied a charge for which no rebate was available... I have enclosed a copy of Section 160AA of the previous Act...*

...You will notice that there is no reference to a charge for water and only related to water rates."

After making inquiries to the Department of Local Government, it emerged that the Minister for Local Government had written a letter to the complainant's MP about the issue. This letter

stated that *"under the provisions of the former Local Government Act, 1919, pensioner concessions were only available for eligible pensioners on water supply rates based on the land value of a person's property. This situation remained until the 1989 rating year when an amendment in 1988 to section 378A of the former Act allowed pensioner concessions to be granted on water charges, such as those levied by Grafton City Council on the complainant's property. The level of concessions from 1989 was set at 50% of the charge up to a maximum of $87.50 per year"*.

The amendment to section 378A meant that the complainant was entitled to a rebate from 1 January 1989. This office contacted council with a view to determining what action it would take in light of the amendment. Council admitted that it had made a mistake and advised the complainant *"a very unfortunate interpretation was placed on Department of Local Government Circular 88/47 which preceded variation of Section 378A of the Local Government Act 1919. At the time, it was assumed that the Section was directed at rebates for water rates being extended to also include water charges but that the rebates were only to extend to payers of rates rather than customers paying charges. That interpretation was reinforced by Section 160AA which deals with pensioner rebates on rates generally. It is now clear that Section 160AA should not have been read in conjunction."*

Council invited the complainant to make an application for rebates from 1 January 1989, and apologised for its mistake.

OUT ON A LIMB

A elderly pensioner couple from Minto had driven to Ingleburn Fair to do some shopping. They parked their car in the disabled spot in the council car park. On returning to their car they found a large branch had fallen and damaged the roof of their car. A few months later, after bringing the matter to Campbelltown City Council's attention, they received a somewhat short letter from council's insurance company. The letter denied liability but gave no reasons for this decision.

The Ombudsman made enquiries with council and found that council had acted in accordance with its "Green policy". In simple terms, all trees about which complaints were received were inspected by council. Unfortunately, no complaints had been received about this particular tree. The Ombudsman then pursued the possibility of council meeting part of the cost of the complainant's car insurance excess. After a number of conversations, council maintained its denial of liability but agreed to make an *ex-gratia* payment to the full value of the complainants' excess.

LANDSCAPING FOR FREE

In May 1996 we received a complaint from a very frustrated couple who owned a block of land at Liverpool. Building had commenced on neighbouring blocks of land. They had fenced their land off to ensure it wasn't disturbed. However, the wire fence and posts were removed and their block soon resembled a rubbish tip. Excess concrete, timber offcuts, rocks, piping and tiles littered their block. Another development started behind their block and more rubbish had been bulldozed onto their land. It was estimated that it would cost between $2,000-$3,000 to remove all the rubbish and soil. This needed to be done as they were soon going to put the block up for sale.

They made many inquiries and complaints with council, the Police and the Chamber Magistrate before they contacted the Ombudsman. Our office thought it was strange that council could not or had not done anything. It seemed obvious that the builders were not complying with the conditions and their building approval. After inquiries with council, it was found that there were no conditions on the current building approvals regarding access and dumping of excess building materials. The Ombudsman strongly suggested that these matters should be considered by council. As a result, Liverpool City Council has changed its building approvals to include conditions requiring storage of builder's waste and that access to building sites is not to be from any other private property. Under council's direction the complainant's property has been cleared of rubbish by the builder concerned. The builder is also constructing a retaining wall (free of charge) on their property to prevent any further soil spillage in the future.

CHARGE LIFTED : NO-ONE NOTICED

In December 1995 a Five Dock resident complained to the Ombudsman that Drummoyne Council was charging an unauthorised notification fee of $75 for advertising of building applications. The fee had been outlawed on the 1st July 1995 by virtue of changes to the *Local Government (Approvals) Regulation 1993*. He alleged that Council claimed that despite the illegality, it was its 'policy' to impose the charge.

Council advised it would agree not to charge the fee from the 1 January 1996. Council also agreed not to charge the complainant the fee regardless of the lodgement date of his building application. However, this seemed unfair for a number of people who had paid the fee since the 1st July.

Under further pressure from the office, Drummoyne Council informed the Ombudsman that it was compiling a detailed list of applicants who have paid the fee since 1st July. Council only received notice of the change from the Department of Local Government on 29 August 1995. Therefore council resolved to refund fees paid on or after 30 August and to refund fees paid between 1 July 1995 and 29 August 1995 on request.

THE BEST LAID PLANS OF MICE AND MEN ...

An interesting point about the ownership of intellectual property arose in reference to a complaint. A couple purchased a house and later discovered that council had given a building approval for certain extensions to be made to the house.

The couple approached the Ombudsman after a long battle with council concerning the apparent cancellation without notice of this approval. The cancellation took place after the previous owners of the property wrote to council to advise they had no intention of proceeding with the building approval and requesting refund of the application fees which they had paid. The complainants said that officers of the council had misinformed them about the provisions of the *Local Government Act 1993*. The officers argued that council was entitled to cancel the approval as it was the property of the person who made the application. However, the complainants contended the application attached to the property, arguing they had acquired it when they purchased the property.

The Ombudsman made preliminary inquiries at council, and council acknowledged that an error had been made by its staff in suggesting the approval had been cancelled. Under the terms of section 76 of the *Local Government Act*, approval attaches to the particular activity proposed to be carried out, and where the activity relates to land, the approval attaches to the land. Consequently, council recognised the validity of the approval in question and allowed the complainants to lift the approval and the submitted plans subject to payment of outstanding fees.

Council took the view, however, that the original applicant held copyright over the plans which had been submitted to council. It was concerned that the complainant, who apparently did not have access to the original owner's set of original plans, might breach the laws of copyright in copying the plans from the council's files. Council was prepared to issue a copy of the plans to the complainants, provided a disclaimer was used to protect council against any potential action for breach of copyright.

GRAZING AND RIGHTS

During a public awareness trip to western NSW by officers of the Ombudsman, a couple complained that they had unreasonably been prevented from obtaining grazing rights over the local oval adjacent to their newly purchased house.

They had thought that the grazing rights came with the purchase of the property because their predecessor had grazed his stock on the land. When they discovered this was not the case they applied to Walgett Council only to be told that they could not lease the area due to *"health problems"*. They were later astonished to find out that the rights had been given to another, more distant, neighbour. This decision was based on a verbal agreement with the new leaseholder.

When the Ombudsman became involved the council conceded that they had no procedures to deal with grazing rights because the issue seldom came up. No reports related to any health problems were available and no record of any formal or informal agreements was found. Council had apparently gone along with the recommendations of a local ward councillor. Council initially voted to stick to its decision despite the total failure to explain how or why they had decided who would get the grazing rights.

Common sense dictates that some sort of assessment be made of competing requests for leases or grazing rights, no matter how rare the occurrence. Council should not deny someone's request on spurious grounds and then grant them later to another party.

The Ombudsman wrote to Council

> *"In the absence of any sensible explanation as to how or why grazing rights were allocated it would be difficult not to conclude that council has inappropriately conferred a benefit on* [the leaseholder] *by allowing the use of council resources. All councils have a responsibility to act impartially and to make the best possible use of the available resources. That has not occurred in this case."*

Despite a recommendation from staff that the original decision be maintained the council voted to withdraw grazing rights for six months and to adopt a simple procedure for assessing applications in future. The assessment will involve measuring various criteria as well as calling for expressions of interest in any future grazing rights. Such steps at the outset would have prevented any complaint.

FOR THE GOOD OF THE TOWN?

In April 1995, a resident of Cootamundra complained to the office about the lack of adequate action by Cootamundra Shire Council in response to numerous complaints from residents about noise, dust and traffic emanating from a nearby factory site. The complaint also alleged that a number of councillors had financial interests in the industries operating at the site which amounted to pecuniary interests.

In the last five years, council had allowed a number of new industries to commence operations at the site. A fertiliser storage facility, a canola crushing plant and a transport depot had all commenced operations in this period. Residents had been complaining since 1993 of the noise from the canola crushing plant, the spread of fertiliser dust from the storage facility and the noise and inconvenience caused by large numbers of daily truck movements. Council had made some attempts to deal with residents' concerns. Most notably, it formed a committee in 1994 consisting of a councillor, an industry representative and a resident. The resident representative withdrew some months later in protest at a lack of progress.

It became apparent that council's reluctance was borne of a concern not to be seen to unreasonably interfere with or frustrate the industries. Like many towns, Cootamundra fights a constant battle to attract and retain businesses which create employment opportunities for the towns people. These industries also provide important services to the local farming community.

After making preliminary inquiries, the allegations about pecuniary conflicts of interest were referred to the Department of Local Government. In response to our inquiries, council arranged a further meeting between the residents and industry representatives. As a result, a number of undertakings were given by the industry representatives to reduce fertiliser dust, reduce noise and better regulate traffic movements. It was also realised at this time that the transport depot had been operating for a number of years without development consent.

Shortly after this, one of our investigators visited Cootamundra to inspect the site and speak to the complainant and representatives from council and industry. Following this visit, we wrote to council setting out a number of concerns we had about the situation.

While acknowledging that progress was being made, we noted there was evidence council lacked expertise in processing development applications. This had resulted in failure to obtain adequate information about developments, imposition of poorly drafted conditions, and lack of adequate action to enforce conditions.

Concerns were also raised about the allegations of conflicts of interest. It emerged that a number of councillors had small financial interests in the canola crushing plant. A number of councillors also had rights to use a weighbridge on the site at no cost. This weighbridge was a major source of noise and traffic complaint. Declarations of these interests by the relevant councillors had been somewhat irregular. Meanwhile, the Department of Local Government had concluded that no councillor had breached any statutory obligations in relation to dealing with pecuniary interests. The interests were not sufficient to be covered by the *Local Government Act*. This office nevertheless reminded council that under council's code of conduct, all councillors had to avoid or appropriately deal with their interests.

A number of options were put forward for council to consider. Council's response to these suggestions was commendable. Firstly, all councillors with interests in the canola crushing plant and the weighbridge declared their interests and refrained from debate on the matter.

The council then agreed to continue efforts to assist with the relocation of the weighbridge. It agreed to carry out some noise minimisation measures on the road adjoining the site. Council also agreed to take action to enforce conditions relating to noise and form a committee of councillors, none of whom have any interest in the industries, to oversee action in response to future complaints.

Council also agreed to use expert consultants for more complex town planning matters and to take steps to review the zoning of land in the vicinity of the site so that more appropriate zoning could be considered. Councillors were also given detailed information on conflicts of interest. Council also decided to review its overall complaint handling procedures in light of this office's work in that area.

SEPARATING THE DROSS

The 1993/94 Annual Report commented on the concerns of this office about the operation of *State Environmental Planning Policy No. 34*. Designed to provide a more predictable and speedier means of obtaining development consent for major projects, it places responsibility for the assessment and determination of applications for such projects with the Minister for Urban Affairs and Planning. The policy applies to applications for developments which involve capital expenditure of $20 million or more or involve the creation of 100 or more full time jobs.

A complaint was received from a number of residents of Kurri Kurri concerning an application approved by the Minister under SEPP 34. The development concerned was an aluminium dross plant. Aluminium dross is a by-product of the aluminium smelting process. It yields commercial amounts of aluminium when subject to secondary processing. The complaint raised a number of concerns about the processing of the application.

The application had something of a chequered history. As an $18 million proposal (ie under the $20 million minimum in SEPP 34) it had been rejected by Maitland City Council. An amended proposal, relocated to Kurri Kurri and valued at $26 million, was then submitted for the Minister's consideration under SEPP 34. The complaint raised serious concerns about the increased value of the Kurri Kurri project.

After making preliminary inquiries, the Department of Urban Affairs and Planning responded to our concerns about notification of applications under SEPP 34 by issuing a directive that notification be as broad as practicable.

Focus then turned to the adequacy of the information used by the department to determine that the application met the $20 million threshold under SEPP 34. A series of meetings were held with departmental representatives to discuss our concerns. These arose from the very small amount of information the applicant had provided to the department to substantiate its claim that the proposal would cost $26 million. It amounted to no more than a single page of costings and a half page of additional detail in response to a letter requesting reasons for the discrepancy between the cost of the Maitland proposal and the Kurri Kurri proposal.

In explaining why it accepted such limited information, the department stated it relied on the applicant's obligation to be truthful. It also claimed that it carried out general checks with people familiar with the relevant industry to verify details where a proposal was close to the threshold.

This office suggested the department look at ways of making applicants more accountable to show applications met or exceeded the threshold. In doing so, the office stressed it was sensitive to the need for a streamlined approval process. However, it noted that without comprehensive and transparent procedures, consents could prove invalid.

The department agreed to remind all applicants of the penalties for providing false or misleading information. This has been done by altering the application form to highlight the consequences of such action.

The department also agreed to new procedures for applications where the cost or number of jobs closely approximates the thresholds or where other information comes to light casting doubt on the information provided. In these cases, the applicant will be asked to provide additional information. The department agreed to undertake comparative assessments of these proposals with similar developments. If doubts remain, or if comparative assessment is not possible because of the unique nature of the proposal, the applicant would be requested to provide independent certification of the details.

On the basis of these measures, the complaint was considered to have been resolved.

UNWELCOME SIGNS

Many popular tourist areas now offer as a service to visitors a local FM band visitor information service. These services announce themselves to visitors with prominent signs on important access roads.

Last year, during a public awareness trip to the central west of the State, a complaint was received from a provider of such a service. He complained that he intended to start such a service in Orange. To erect his signs, he needed development consent from Orange City Council. He had not been able to get this consent, although the approval of the Roads and Traffic Authority had been obtained.

Shortly after lodging his application, council received an inquiry from a rival visitor information service. The rival service was run by the owner of a local AM band radio station. After consulting with his rival, the complainant advised council that he and his rival were seeking approval for joint signs, that is one sign per location, each giving details of both frequencies.

When the matter came before council, the rival's signs were approved but the complainant's were deferred. This was so the complainant could demonstrate he held a broadcast licence. Council had in fact already been told that he held such a licence. When it came before council again, the complainant's application was refused on the basis council did not support a proliferation of signage.

In such situations, this office normally can do little to assist complainants. The only way to get consent once it has been refused is to reapply or to appeal to the Land and Environment Court.

In this case, however, there was a possibility this office could facilitate a resolution. The RTA, in approving the signs, had stipulated that it would require the joint proposal agreed on by the parties, failing which its approval would be revoked. We asked the RTA to contact council pointing out the conditions of its approval. The RTA did so. Council then met with the rival operator who agreed to the complainant adding his frequency to the rival's signs subject to meeting half the cost of the signs and the cost of additional sign writing. Council then invited the complainant to submit a fresh application for consent to signage. On this basis, the matter was considered to have been resolved.

STEPS TO AVOIDING WASTE

A firm of solicitors complained to the Ombudsman on behalf of a Kingsford resident about a number of instances it argued demonstrated bias against their client on the part of Randwick City Council.

Among the issues raised were concerns about council's failure to implement a decision to close some pedestrian steps near the resident's home. The steps were to be closed because they directed pedestrians onto a busy road at a point obscured from view to traffic approaching from one direction. This made them unsafe.

BEVERLEY WILLIS - INVESTIGATION OFFICER *Beverley joined the office in 1989 after a career in the Department of Education spanning 21 years. Beverley graduated from Auckland University with a Bachelor of Science and a Diploma of Education intending to take up teaching, however marriage and family temporarily intervened. She emigrated to Australia with her husband and three sons in 1968, after which she began teaching science in a variety of Sydney high schools, both single sex schools and co-educational. She went on to become Head Teacher of Science at schools in the Western Suburbs and Inner City. During this time, Beverley assisting in writing a number of publications for schools and was heavily involved in curriculum development. This experience highlighted the need for plain English and clear expression, something she felt was missing in some correspondence from the Ombudsman's office in the early days. Beverley's extensive life experience has been invaluable to this office, and she now specialises in local government issues.*

Council responded to protests from other users of the steps by agreeing to construct a new set of steps directly in front of the resident's home. While this seemed to solve the safety issue, it placed the steps only a few metres from the nearest cross street where existing pedestrian access was almost as safe.

Staff from the Ombudsman met with the Mayor and council staff and suggested that the steps appeared to be unnecessary. They were estimated to cost Council $30,000 to construct.

This office rarely intervenes in resource allocation issues in local government. The allocation of resources is a matter for the elected councillors to determine. Every council is now required to inform its community of how they propose to allocate resources by exhibiting a draft Management Plan each year. The public is invited to make submissions on this document which must be considered by the council before the plan is finalised.

In this case however, following media coverage of alleged budget difficulties at council, it was decided to invite council to reconsider the issue. After conducting a further survey of local residents, council resolved to abandon the plan to relocate the steps. On this basis, the complaint was considered to have been resolved.

INACCESSIBLE AND UNUSABLE BUT AVAILABLE

Since July 1994, councils have been legally required to levy a domestic waste management charge on the owners of every property for which a domestic waste service is available. This requirement has generated a number of complaints. This office is seldom able to assist these complainants. Most often these complaints are that charges must be paid even though the service is not used. However, some councils have taken an innovative approach to this situation by setting a lower charge for property owners who make less or no use of the service. This encourages sensible waste minimisation practices.

Last year a complaint was received from a property owner who owned an undeveloped lot fronting an unformed road in Katoomba. He complained that even though his property was undeveloped and that no garbage service was available to his land, Blue Mountains City Council still required that he pay a domestic waste management charge.

Council considered the service was available. To council, *"available"* meant that it was *"available to the general area in which the land is located"*. Council also noted that the land could not be developed without the road being formed. At that time a service would be provided to the property. Of some relevance is the fact that there are a large number of properties fronting unmade roads in the Blue Mountains.

Council was asked to reconsider its position in light of our concern that council's interpretation was incorrect. An investigation into the issue was under consideration.

Council's review produced results. Council decided that from 1 July 1996, it would impose an interim charge of $38 per annum, approximately 60% below the previous charge, for property owners whose properties fronted unmade roads. This was to be retrospective. Amounts over $38 paid in 1994/95 and 1995/96 would be credited against future liability.

Council argued that some charge should be imposed on account of the infrastructure costs associated with the provision of a domestic waste management service which all property owners benefit from. This service includes waste depots which can be used by owners of vacant land. For instance, owners of vacant land must remove material from their land to minimise bushfire risk. Without necessarily accepting council's argument that a service was *"available"* to ratepayers such as the complainant, on the basis of council's review and the resulting reduction in the charge, the matter was considered to have been satisfactorily resolved.

FREEDOM OF INFORMATION

FREEDOM OF INFORMATION

OVERVIEW

This chapter contains an account of our work and activities under the *Freedom of Information Act* over the past 12 months, and our plans for 1996/97. It also constitutes our *Freedom of Information* annual report, meeting 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 YEAR 1995/96

Complaints received

There was a drop of 21% in the number of complaints received compared to last year, falling from 120 to 94. This is only the second time since the start of the Act in 1989 that there has not been a substantial increase in complaints over the previous year, and the first time that there has been a significant decrease. While there are many reasons for the decline, we believe that the wide circulation among State and Local Government agencies of the *Ombudsman's FOI Policies and Guidelines* was a major contributing factor, for example in relation to improved agency FOI decisions and third party complaints about building or development applications objections made to councils (which is discussed later in this chapter). We believe our guidelines may be assisting agencies in providing a better analysis of documentation in the light of the exemption clauses of Schedule 1, and improved compliance with the obligation to give reasons for their decisions. This ultimately means more informed FOI decision-making.

Complaints finalised

There was an 11% increase in completed matters compared to the previous year, from 108 to 120. This increase represented a 35% jump in the average number of complaints completed per year for the preceding four years, a pleasing result.

Complaints outside jurisdiction

There was a significant fall in the percentage of complaints outside our jurisdiction. We believe this shows a growing awareness in the community of the need for an internal review before requesting an external review by this office. This is probably due to a greater number of agencies meeting the Act's requirement to inform applicants of their review rights. It is surprising how often in the past we came across matters where this had not occurred.

Complaints resolved

The majority of complaints for the year were resolved. This is the fourth year running in which resolution has been the primary single reason for the completion of FOI complaints. Proportionally the number of resolved matters this year was on par with last year.

Resolved complaints were largely achieved by agencies releasing documents following our intervention. Of these complaints, some were being formally investigated but the investigations were discontinued when access was given to all or most of the documents claimed as exempt by the determining agencies. Other complaints were similarly resolved *prior* to formal investigation, or by the release of additional documents which were identified after we began our inquiries. The remainder of resolved complaints were completed when the relevant agencies took appropriate action, such as: improving their record-keeping and FOI procedures; dealing immediately with delayed determinations; or paying refunds.

The table on the opposite page gives a breakdown of resolved complaints. As can be seen, the proportion of matters resolved in each category for 1994/95 and 1995/95 is similar.

RESOLVED COMPLAINTS 1995/96

as % of all completed complaints

	All documents released	Some or most documents released	Resolved for other reasons	TOTAL resolved
1994/95	13%	9%	13%	35%
1995/96	10%	7%	15%	32%

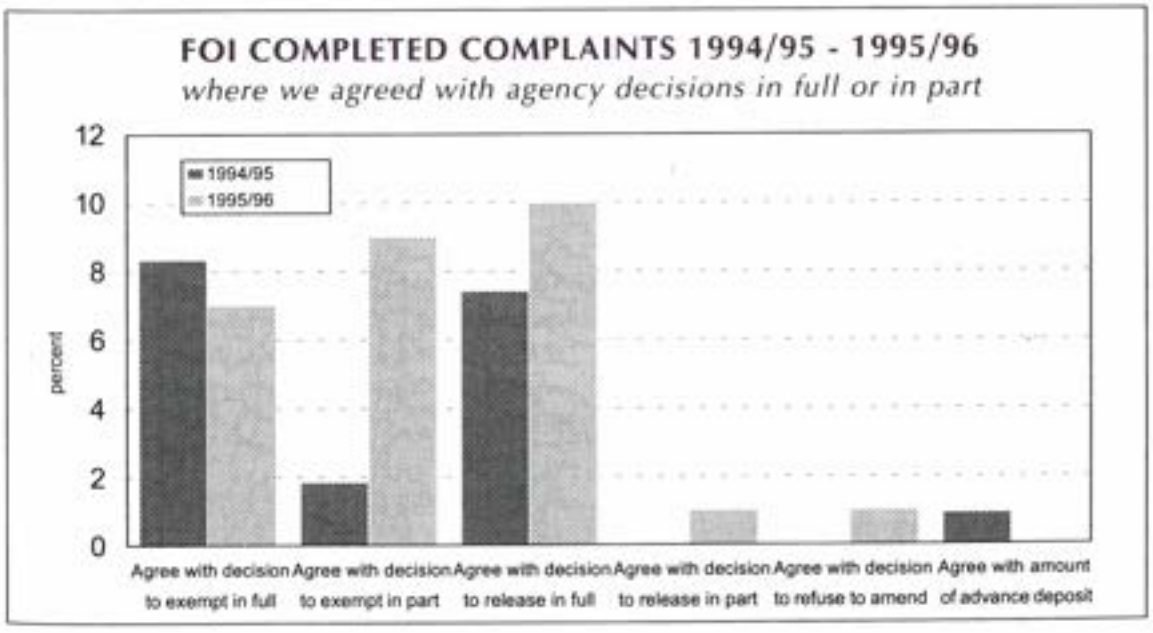
The year saw a 9% increase over last year in the number of matters completed where this office agreed with agency FOI decisions. The percentage of such complaints as a proportion of all completed complaints rose from 12% in 1993/94 to 28% this year. The year with the next highest result (22%) was 1992/93, with no figures being available for earlier years.

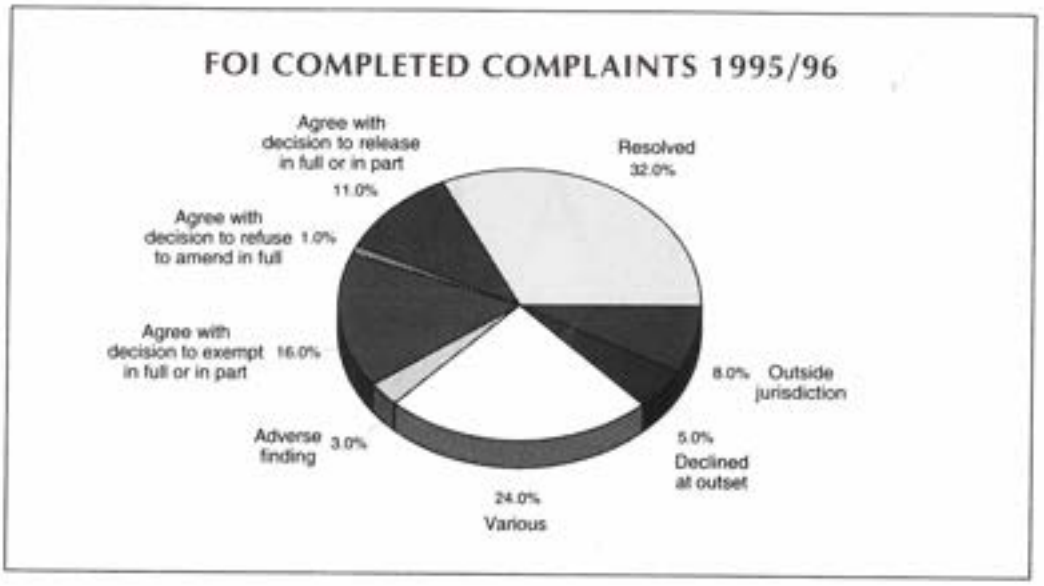
Last year we began compiling more detailed statistics on complaints completed as a result of this office agreeing with agency determinations. For 1994/95 and this year we have prepared a reasonably detailed breakdown of categories of agreement as shown in the above table.

There are two primary factors in the 9% rise between 1994/95 and 1995/96 in the number of matters where we agreed with agency decisions:

- the significant increase in our partial agreements with agency decisions to exempt; and
- our full or partial agreements with decisions to release.

These increases may be the result of improved agency decision-making, a closer correlation of decisions with the guidelines issued by the office, or a combination of these or other reasons.





The "various" category in the pie chart of FOI complaints above accounted for 24% of completed matters. These were: files which were closed for lack of evidence or because an investigation was not warranted; complaints which were withdrawn by the complainant; or matters where the complainant was given explanations or advice regarding FOI procedures. The percentages in this category for 1994/95 and 1995/96, as with the resolved matters, are similar.

The number of complaints which went through a formal investigation to a report with recommendations was small, as has been the case since the commencement of the Act. In total, only 3% of all matters completed this year were finalised by the issuing of a formal report under Section 26 of the *Ombudsman Act*. This compares with last year's 4%.

Action on our own delays

Like last year, we again gave priority to finalizing our oldest complaints and to speeding up the external review process.

We have had some success. For the second time since this office began conducting external reviews, we completed more complaints in the year than we received, by a margin of 22%. This was partly due to the fact that we received fewer complaints than last year, but also due to our continued emphasis on the resolution of complaints, streamlining our procedures for dealing with complaints and a continued growth in expertise. We hope to present an even better result next year, our aim being to have no complaints older than one year as at the 30 June 1997.

Freedom of Information applications

We did not receive any FOI applications in 1995/96 for documents held by this office. There is therefore no information to give in terms of clause 9(1) of the *Freedom of Information (General) Regulation 1995* and Appendix B in the *FOI Procedure Manual*.

FUTURE DIRECTIONS

Any organisation dealing with the public needs to be proactive in its work, its philosophy and the way in which it deals with and responds to the demands of its clients. This applies equally to the NSW Ombudsman, particularly given that our role and work is basically concerned with reviewing and analysing the decisions, actions and effectiveness of other organisations. Our large client base is also a consideration, being the entire population of NSW and virtually all State and local government authorities.

The increasing public expectation of better government and public administration also means that accountability organisations such as ours need to be constantly trying to improve their performance.

In order to improve our work as an external review agency under the *FOI Act* and to foster the spirit of open government we intend to maintain an active role in the promotion of the *FOI*

Act. In the coming year we hope to apply more of our time to the promotion of the spirit of FOI, the auditing of the FOI practices and procedures of selected agencies, and FOI research.

This office is constrained by its limited resources. In this regard, it may be worthwhile to compare ourselves with the office of the Western Australian Information Commissioner. The Commissioner has a staff of 14 who dealt with 255 appeals and complaints in 1995/96. This is in contrast to our office where our two staff who deal with FOI work handled 94 complaints in 1995/96 in addition to providing advice on FOI issues to the public and NSW government agencies.

Two years ago we published the *Ombudsman's FOI Policies and Guidelines* with a view to assisting public authorities in handling FOI applications and to encourage greater access to information held by government. This document has also provided a framework to assist our staff in dealing with FOI complaints and in assessing the determinations of agencies under the *FOI Act*. The publication of the guidelines also meant that the views of this office about the *FOI Act* were made widely available and in a concise form for the benefit of both the public and the staff of agencies who deal with FOI applications. To date, over 270 separate agencies have purchased copies of the guidelines.

Later in 1996 we intend to publish a second edition of the *Ombudsman's FOI Policies and Guidelines*. In our second edition we will revise our views on a number of exemption clauses and other issues relevant to FOI. Our second edition of the guidelines will highlight a five pronged approach for agencies in relation to access to information. This five pronged approach will be along the following lines:

1. the handling and determination of standard FOI applications for *access* to documents;

2. the handling and determination of standard FOI applications for the *amendment* of documents;

3. the *content* of statements of affairs and summaries of affairs;

4. the *routine disclosure* and automatic release of documents and information on request; and

5. the *active publication* of information useful to the public.

Since the introduction of the *FOI Act* in March 1989, the Ombudsman has focused on complaints about the determinations of agencies under the Act. These complaints mostly relate to agencies refusing access to documents, agencies charging what applicants believe are excessive fees for processing applications, or agencies refusing to amend documents that the applicant claims are wrong or out of date. This focus will continue.

However, we will also be vigorously promoting the spirit of the legislation, which, in our view, encourages the disclosure of as much information and as many documents as possible. This means that agencies should exempt only a minimal amount of documentation necessary for the effective functioning of government.

We will also be advocating that agencies begin routine disclosure of documents. Agencies should begin classifying their documents and identifying those that can be released immediately should a request be made for these documents, whether that request is a formal FOI application or merely an informal request.

During the year we will begin random audits of agencies to ensure they are meeting the requirements of the *FOI Act* in relation to the processing and determination of FOI applications. We will also be randomly auditing compliance by agencies with the reporting requirements under the *FOI Act*, in terms of annual reports, summaries of affairs and statements of affairs. Monitoring of compliance with ongoing FOI reporting requirements by this office has recently been supported by the Public Accounts Committee in its report on the review of annual reporting in the NSW Public Sector.

In his recent 1995 Annual Report, Mr Tom Wright, the Information and Privacy Commissioner for Ontario in Canada, observed that:

> *"The true purpose of freedom of information legislation is to change the culture of government organisations - to foster a sprit of openness and a readiness to share information with the public as an ongoing part of doing business."*

We hope we can contribute to a final fulfilment of the goal envisaged by Mr Wright.

REDETERMINATIONS AND THE AMENDMENT TO FOI ACT

On 17 December 1995 part of the *FOI Act* was, from our point of view, amended in a very important way. The introduction of section 52A into the Act now allows agencies to review and redetermine FOI applications following involvement by the Ombudsman.

In dealing with complaints under the *FOI Act*, the Ombudsman frequently comes across matters where she does not agree with the decision of agencies to refuse access to documents. In the past, the options open to the Ombudsman were to write a report under the *Ombudsman Act* formally recommending release of the documents or, in an attempt to informally resolve the complaint, suggest to the agency that the documents should be released.

In most cases, where agencies released documents following such informal intervention by the Ombudsman, such release was easy with no procedural or legal implications. However, in some cases the proposed release of documents by an agency following intervention by the Ombudsman became far more complicated. This mainly occurred where the agency concerned felt that the protections offered in sections 64, 65 and 66 of the *FOI Act* were needed before it could release the documents. These three sections give certain protection to an agency, its officers and other individuals from actions for defamation, breach of confidence, certain criminal actions and personal liability if documents are released in response to a formal FOI application made under the *FOI Act*. The problem was, however, that if the agency separately released documents of its own volition following intervention by the Ombudsman, this protection would not be available because the release as not done under the *FOI Act*.

As a result of a particular FOI complaint about a council (discussed in more detail in the case studies section of this chapter) we requested some legal advice from the Crown Solicitor on the issue of agencies releasing documents following intervention by the Ombudsman. The Crown Solicitor advised that the *FOI Act*, as it then was, did not allow an agency to review a determination already made under the *FOI Act*. What this effectively meant was that if an agency decided to release documents following intervention by the Ombudsman, it was merely releasing those documents under its ordinary statutory or other powers. As observed above, this was not normally a problem. However, if the agency wanted to gain the protection available under sections 64 - 66 of the *FOI Act*, this protection was not available.

The Ombudsman wrote to the Premier requesting that the *FOI Act* be amended to allow agencies to review their determinations. The Premier and the Parliament agreed to amend the Act with the result that section 52A now allows an agency to review its determinations of FOI applications following intervention (whether formal or informal) by the Ombudsman.

Premier's FOI Memorandum

An investigation into a large government department revealed procedural inadequacies which were of significant concern to the Ombudsman. We consequently coordinated with the Premier's Department to circulate our response to those inadequacies widely throughout the public sector. Premier's Circular 96/10 was distributed to all government agencies on 9 July 1996 and a similar Department of Local Government Circular (no. 96/32) was sent to all councils.

An annexure to each circular was the Ombudsman's recommendations regarding the FOI Act. The text of the annexure is reproduced on the following pages.

IDENTIFICATION OF DOCUMENTS COVERED BY FOI APPLICATIONS

From time to time in conducting external reviews we have noticed that agencies have been pedantic in their interpretation of the terms of an FOI application. As a result, information which we have thought was clearly covered by the terms of the application has not been subject to determination under the Act.

The reasons for agencies being so pedantic are varied. Some decision makers take advantage of the terms of an application to escape responsibility for making a decision in relation to sensitive documentation. Others simply want to save themselves work by making as narrow

ANNEXURE TO PREMIER'S CIRCULAR 96/10

RECOMMENDATIONS FROM THE OMBUDSMAN REGARDING IMPLEMENTATION OF FOI ACT

1. Time in which determinations are to be made:

1.1 It is important to remember that the statutory time frame set out in section 18(3) of the *FOI Act* for the processing and determination of FOI applications has two separate elements:

- firstly, a deadline of 21 days from the date of receipt of the application; and
- secondly, a requirement that applications be dealt with *"as soon as practicable"* **within** this 21 day period.

2. Honesty in identifying documents:

2.1 The honesty with which an agency and its officials approach the question of whether or not the agency holds documents the subject of an FOI application is essential to the whole concept of FOI. It determines whether the FOI legislation will work or not.

2.2 When an agency holds documents containing information which, on a reasonable interpretation of the terms of the FOI application, are covered by those terms, then those documents should be considered to be covered by the application and assessed appropriately.

3. Negotiation with applicants to identify documents:

3.1 Section 19(1) of the *FOI Act* requires agencies to negotiate with applicants to assist them to provide sufficient information to enable the agency to identify the documents to which an FOI application relates.

3.2 **It must be expected that applicants will rarely, if ever, be in a position to describe, in the particular language of the agency, the documents which the applicant seeks.** It has always been an agency's responsibility to recognise this principle and make due concessions to an applicant in its analysis of any FOI application. This is a basic and essential procedural requirement of FOI and has been since the Act began.

3.3 While the statutory obligation is stated to apply only to the **acceptance** of applications, logic and fairness dictate that the principle propounded in section 19(1) should also be applied to the **assessment** of FOI applications. If there is a genuine doubt as to whether an applicant wants particular documents, consultations with the applicant should always occur under the terms and/or spirit of section 19(1).

4. Independence of internal reviews:

4.1 The *FOI Act* provides that when an FOI application is initially determined by an officer of an agency, other than its principal officer, a person aggrieved by the determination is entitled to an internal review of the determination (see section 34(1) & (3) of the Act). An application for an internal review is not to be dealt with by the person who dealt with the original application or by a person who is subordinate to that person (see section 34(5) of the Act).

4.2 It is important to look at the purpose of the legislative provision which creates the right of internal review. From its terms, it appears that the purpose of section 34 of the *FOI Act* is to provide for a full and proper review of the merits of the original decision.

4.3 To achieve a proper review of the merits of a decision, the Act requires that the review must be carried out by a person unconnected with the original decision and not subordinate to the original decision-maker. **It is therefore essential that there be appropriate separation between the initial decision-maker and any probable internal reviewer to ensure that the initial decision-maker is not influenced by the views of the likely internal reviewer** (being the principal officer or other superior) **when making the initial determination.** In this regard internal reviews must not only be independent, but must be seen to be independent.

4.4 This is **not** to say that it is inappropriate for the initial decision-maker and likely internal reviewer to discuss, in theoretical terms, issues relating to the proper interpretation of particular provisions of the *FOI Act*, or for that matter relevant departmental policies or practices.

5. Involvement of Ministers:

5.1 It is not unreasonable that an agency notifies its Minister, or the Minister's office, of the receipt of FOI applications and the determination of such applications. However, the identity and motive of an FOI applicant are irrelevant considerations in the determination of the application. Agency officers determining FOI applications must therefore be careful not to allow inappropriate matters to influence the exercise of their statutory responsibilities.

5.2 It is essential, however, that determinations of FOI applications are made by the agency on the merits, based solely on the criteria set out in the *FOI Act* and independent of any political influence or considerations. It would be in the interests of agencies to ensure that their Ministers, and the staff in their Ministers' offices, are made aware of this.

an interpretation as possible. In such cases, if it were not for the external review process, the applicant may never learn of the existence of documents in which he/she has an interest, simply because of the way in which the wording of the application was being interpreted, something they could not have been aware of.

In one case which we investigated this year, an applicant asked an agency for internal "*reports*" which contained statistics specifically identified by the applicant. At the time of the request, the statistics in question were politically sensitive. The decision-maker decided that the internal documents were not "*reports*". He based this on claims that the documents did not contain an analysis of the statistical material, and that they had not been published. The decision had been made despite the fact that the statistics were collated in readily identifiable documentation which was easily distinguished within, and printed from, a database. The decision-maker also made this decision despite admitting that he himself had from time to time referred to the documents as "*reports*". He denied access to the "*reports*" on the basis that the agency did not hold such documents.

In our report of the investigation we decided that the statistical collations were clearly covered by the terms of the application and that the decision-maker's conduct in denying that the reports existed was unreasonable and based partly on improper motives. We considered the conduct could

reasonably have been seen as an attempt to subvert the proper implementation of the Act.

The Ombudsman considers that the honesty with which an agency and its officials approach the question of whether or not they hold documents the subject of an FOI application is central to the whole concept of FOI, and to whether the FOI legislation will work. When an agency holds documents containing information which, on a reasonable interpretation of the terms of the FOI application, are covered by those terms, then those documents should be considered to be covered by the application and assessed appropriately.

If there is a genuine doubt as to whether an applicant wants particular documents, consultation should always occur under the terms and/or spirit of section 19(1) of the *FOI Act*. An applicant will rarely, if ever, be in a position to describe, in the particular language of the agency, the documents which he or she seeks. It has always been the agency's responsibility to recognise this principle and make due concessions to an applicant in its analysis of any FOI application. This has been a basic and essential procedural requirement of FOI since the Act began.

In the case mentioned above, this principle had already been spelt out to the same agency on a previous occasion and a previous annual report item also stressed its importance.

Recently a Premier's circular written in consultation with this office and referred to earlier in this chapter also highlighted the above principle's central place in correct FOI decision making.

REMOVAL AND DESTRUCTION OF DOCUMENTS FROM OFFICIAL RECORDS

Two matters dealt with during the year raised serious concerns about the removal of documents from official files.

In the first case, a Chief Executive Officer removed from a personnel file, and destroyed, a letter subject of an FOI application. The FOI applicant had objected to the presence on his file of the document and wanted it removed, but not destroyed. Rather, he wanted to be given the document. In the second case the CEO of a large government department ordered the removal of a typed and signed file note from an official administrative file.

In each case, although the subject document was not of great significance, it nevertheless held unique information and was therefore of value. More important is the question of principle.

It has been argued that removing a document from an official file and not returning it causes that document to cease to exist as far as official records and therefore agencies are concerned. In this sense removal alone, as was the instruction in the second instance, could be seen as the equivalent of destruction.

In NSW the *Archives Act* prohibits the destruction of records without reference to the Archives Authority unless it is in accordance with agreements reached between the Archives Authority and individual agencies. At the federal level reference must be made to the Australian Archives before a Commonwealth record can be destroyed.

There are, of course, cases where it is obvious that no valuable information would be lost through the destruction of certain records. To cover this situation the Commonwealth *Archives Act* includes a normal administrative practice ('nap') provision which allows for some destruction without formal authorisation. The types of information covered by this provision are usually limited to information that is duplicated (eg a handwritten draft or information copy), unimportant (eg telephone message slips), of short term facultative value (eg compliments slips or some ADP test data) or a combination of these.

An explanatory pamphlet published by the Australian Archives states that the general rule is that unimportant records which can be destroyed as a 'nap' should not be placed on file. It suggests that a test for determining whether destroying a record is a normal administrative practice would involve asking whether any unique valuable information will be lost as a result of the action.

In the absence of any such adopted policy in NSW, the NSW Archives Authority follows the Commonwealth normal administrative practice in relation to such documents as, for example, drafts, copies and published reports.

In the light of proper records preservation practice, the removal from official files of the documents mentioned above cannot be condoned. Neither can the actual or theoretical destruction of the documents. In the first matter, despite the FOI applicant's wishes, the document should not have been removed. Further, the FOI application made the CEO responsible under the *FOI Act* for ensuring a determination was made as to whether or not to release the document under that Act. The destruction of the document made both its release and a determination to that effect impossible.

In the second matter, the instruction for the document's removal was clearly not in accordance with best file keeping practices.

The restrictions which the NSW *Archives Act* places on the removal and destruction of documents from government records is an important statutory obligation arising from a principle of records preservation. It is not appropriate for unique documents to be permanently removed from official files.

ACCESS TO INFORMATION COMPILED AND CREATED BY CONSULTANTS

It came to our attention during the year that FOI applications were often unsuccessful in relation to documents created by consultants in the course of fulfilling government contracts.

These documents may be broadly described as working papers on which a consultant's final report is based. They may include documents complete in themselves though unpublished, such as research papers, studies and surveys, as well as papers on which calculations have been made, file notes, and other essential material on which the facts and conclusions in a final report are built.

One agency claimed, when asked for such documents in relation to a consultant's study into the impact of a proposed road on the surrounding bushland, that it did not hold the documents as it did not have *"immediate right of access"* to them under the terms of section 6(2)(e) of the *FOI Act*. It was clear the documents were not on the agency's premises, but it was also true that at least some of the documents had passed through the agency's hands at one time or another. Nevertheless the agency claimed that it had no legal claim on the documents.

This office is of the view that agencies should ensure that either:

- copies of all such source material documents are provided to them with the final reports; or
- they have an immediate right of access to such documents under the contract with the consultant.

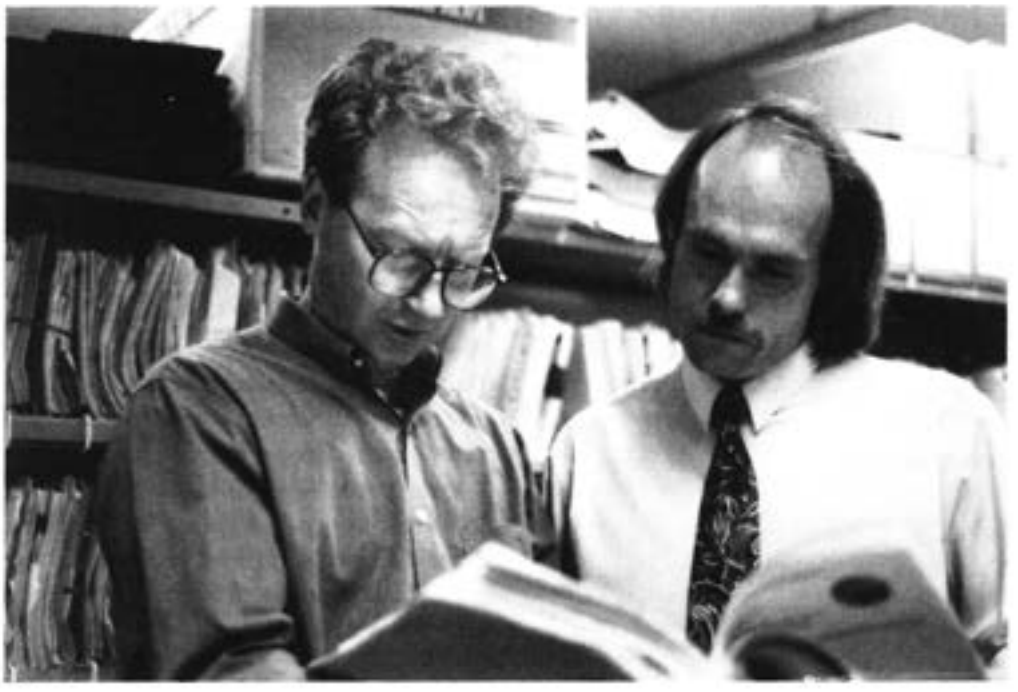
Responding properly to FOI applications is just one reason why agencies should require such documents to be readily available. Agencies may themselves need to check the source material on which the conclusions in a final report are based.

The public sector is increasingly contracting out work to private consultants. As this continues, the influence of private consultants on government decision making will also increase. It is vital to the public interest that the documentation on which these consultants base their conclusions be accessible.

The immediate right of access that this office believes should be included in contractual relationships between government agencies and consultants should be explicit. We intend to publish a brief special report to Parliament recommending that a statewide policy be adopted in this regard. The policy would require every contract between government agencies and consultants to include a provision that any document compiled or created in the process of fulfilling the contract must be made available to the agency upon request, with no conditions attached. The only exception may be documents that would reveal a trade secret, provided the consultant could show that the information was not of significance to the facts and conclusions in the final report.

OBJECTIONS TO BUILDING AND DEVELOPMENT APPLICATIONS

The *Ombudsman's FOI Policies and Guidelines*, published in December 1994, shed light on the more commonly used exemption clauses in the *FOI Act*.



FOI officers David Watson and Wayne Kosh confer over documents.

One particular type of document that we feel should not be subject to exemption under the *FOI Act* are objections lodged with councils about building applications (BAs) and development applications (DAs).

The Ombudsman feels it is in the public interest that letters of objection about BAs and DAs be readily available. Councils take these objections into account in considering whether to approve BAs and DAs. If councils were to consider objections which are not disclosed, councils would then be making administrative decisions on the basis of information which was not publicly available.

Furthermore, objections lodged with councils about BAs or DAs should be based upon planning, building, environmental, privacy, safety or other relevant grounds, *not* personal animosities, gossip, allegations about personal character, habits, conduct or the like. Objections to BAs and DAs should not contain personally motivated or subjective comment which is irrelevant to the merits of the actual BA or DA itself. Councils need to fully publicise the fact that confidentiality will not be available for such objections. This should lessen the chance that an objector did not know their submission would be disclosed, and help ensure that such objections do not contain malicious or personally based material and that they are lodged in good faith.

During the year the response from councils and members of the public towards the Ombudsman's policy on disclosure of objections to BAs and DAs has been very favourable. We received submissions from a number of councils asking us to comment on proposed policies to release details of objections to BAs and DAs, including Tweed Shire, South Sydney, Lake Macquarie, Randwick, Nymboida and Maclean.

We are pleased with the way in which our policy on the disclosure of objections to BAs and DAs has been received to date by councils and the public generally.

IDENTIFICATION OF COMPLAINANTS AND WITNESSES

Local Councils

The dilemma facing councils about whether they should disclose the identity of those who complain about their neighbours shows no sign of abating. During the year we continued to receive letters from people who were unhappy with the determinations of councils on such questions. The complaints made to us were either from people who did not want their identity, as complainants to a council, disclosed under the *FOI Act*, or from persons who wanted to know who had complained about them to the council.

As stated in Part 7 of the *Ombudsman's FOI Policies and Guidelines*, we feel that natural justice generally means that the substance of a complaint should be shown to somebody who has been complained about if the council does, in fact, takes action as a result of the complaint. However, the disclosure of the identity of a complainant raises a different issue.

The Ombudsman feels that a strong argument could often be made for the nondisclosure of the identity of a complainant if the complaint was made in good faith, disclosing a possible contravention of the law, and was sent to the council to enable it to enforce the law. We also feel the identity of a complainant may well be exempt if disclosure could endanger the complainant's safety.

However, we also feel that disclosure of the identity of a complainant is generally appropriate in the following situations:

1. where the council has a public policy of disclosing the identity of complainants;
2. the council believes it should be disclosed in the particular circumstances that apply;
3. the complainant's identity has already been publicly disclosed;
4. the complaint does not relate to the enforcement or administration of the law; or
5. the complaint was made in bad faith.

From our experience, less problems arise for councils when they develop a clear policy, widely advertised to residents and ratepayers, to either keep the identity of complainants confidential or undertake to disclose complainants' identities.

The most significant complaint we dealt with during the year in this area was from an elderly ratepayer who complained to his council about a local family storing a number of wrecked and damaged cars in front of their house. The council directed the family to move the cars. One member of the family then applied under the *FOI Act* for the details of the complaint, including the identity of the complainant. The council had a policy of disclosing the identities of complainants and in the case concerned undertook to provide the elderly ratepayer's name and address.

In complaining to us, the ratepayer claimed that nearly all of the family in question could be particularly violent and that he feared for his and his wife's safety if council disclosed his identity. Our investigations confirmed that his claims were well founded. It should be stated that the sources of our research were not available to council when it determined to release the ratepayer's identity.

However, a problem then arose. We received legal advice from the Crown Solicitor stating that the *FOI Act* (prior to the inclusion of section 52A) did not allow an agency to change its determination once it had been made. This meant that in this case, the council could not now change its determination to release the ratepayer's identity (although it could not actually release those details while we were dealing with his complaint). This apparent legal impediment represented a major dilemma which led us to write to the Premier seeking amendment of the *FOI Act* as described earlier in this chapter.

Following the amendment to the *FOI Act* by the inclusion of section 52A, we wrote to the council suggesting they change their determination and exempt the identity of the ratepayer under clause 4(1)(c) of Schedule 1 of the *FOI Act*. The council agreed and duly changed its determination and exempted his identity, to the immense relief of the ratepayer.

During the year we dealt with six other complaints about councils that involved FOI applications for complaint letters about a member of the public. In three of these complaints (all about the same council) the council con-

cerned maintained a policy of releasing the details of a complaint, including the details of who made the complaint. The three people concerned had complained to the council about someone in their neighbourhood and were now dissatisfied as the council proposed to release the details of their identities and their complaint to the FOI applicant. We declined these complaints as we felt that the policy of the council to release all details of the complaint in the circumstances appeared appropriate.

The three other complaints, however, involved councils that, unlike the council mentioned above, followed a general policy of not releasing the identity of the person who had complained to the council. These three complaints were received from the people who were the subject of complaints to the council. They then applied to the councils concerned under the *FOI Act* to see who had complained about them. The councils refused to give them these details and so they wrote to us. In two of these cases we agreed with the FOI determinations as the councils involved had policies of not releasing the details of complainants. In the third case, however, the council had not even released the substance of the allegation made about the person concerned. Following our intervention the council did release the nature of the allegation without disclosing the identity of the person concerned. We felt that such partial release was appropriate considering the council's policy to not release the identity of complainants in such circumstances.

Roads and Traffic Authority

We received a complaint from a legal firm on behalf of their client about the refusal of the Roads and Traffic Authority to provide them with the identity, under the *FOI Act*, of the person who had complained to the RTA about their client's ability to drive. Their client, who managed a farm, suffered from a medical condition which may have appeared to anybody who was not medically trained to affect her ability to drive a car. However, as medical evidence was to show, the condition did not hamper her driving ability at all. Her legal firm claimed that the complaint about her driving ability was made in bad faith, as, if she could not drive, she would not be able to operate her farm which would benefit the person who they suspected had lodged the complaint. As a result of the complaint to the RTA about her driving ability, she was directed to have a medical examination, which she passed easily.

The RTA had refused to disclose the identity of who complained about her under clauses 4(1)(b), 6 and 13(b) of Schedule 1 to the *FOI Act*. The RTA argues that it is dependent upon receiving complaints from members of the public about people who may no longer have the physical or mental capabilities to drive a motor vehicle. The RTA maintains that it would never find out about most of these people who may no longer be able to drive if it is not able to receive complaints from members of the public. The RTA is fearful that if the identity of complainants is divulged without their consent, people will stop lodging complaints about those incapable of driving and the RTA will never find out about them. The RTA believes that public safety could be endangered if this happened. As we have stated previously, the Ombudsman agrees with the RTA's views on the exemption of a complainant's details in these situations, provided that the complaint has been made in good faith.

With this matter, however, there was genuine concern that the complaint to the RTA about the woman's ability to drive had been made for malicious purposes and that the person making the complaint knew it to be wrong. We therefore carried out some enquiries, but from our research we were not able to establish that the complaint had been made in bad faith. We therefore agreed with the RTA's exemption of the complainant's details in this instance.

BOTANY COUNCIL'S USE OF PUBLIC FUNDS

The Ombudsman's two previous annual reports of 1993-94 and 1994-95 referred to an FOI investigation carried out into Botany Council and the council's subsequent legal challenges to the jurisdiction of the Ombudsman.

Our investigation into Botany Council followed an FOI complaint to the Ombudsman from two organisers of a local touch football competition in the Botany area. Following a dispute with the council, the two complainants received letters from the council claiming that the council did not know the complainants would be receiving payment for their role in organising the competition. Council's claim that it did not know of these payments was also expressed in a publicly released mayoral minute at about the same time. The complainants always maintained that council knew they would receive payment for organising the competition and that they had advised the council of this fact on various occasions over a period of three years.

Under the *FOI Act* the complainants requested the council to amend its records (ie the letters and the mayoral minute) as they claimed these documents were incorrect, misleading and incomplete. The council refused to amend the documents as it claimed it did not know that the organisers would be receiving payment for running the touch football competition.

The Deputy Ombudsman's investigation found that the council did know, or should have known, that the two organisers were to receive income from the competition and that the letters and the mayoral minute were incorrect, misleading and incomplete. Our report recommended an attachment be made to the documents stating that the council did know, or should have known, that the organisers were to receive income.

As detailed in last year's annual report, following the publication of our final report, the council took the Ombudsman to the Supreme Court challenging our jurisdiction. The council argued that section 39 of the *FOI Act* did not allow a person to seek amendment of documents if they had not obtained those documents under the *FOI Act*. As the competition organisers did not obtain the letters and the mayoral minute under the provisions of the *FOI Act*, the council claimed they did not have a right to seek amendment of them.

The council also argued that documents which record proceedings or other facts, such as minutes of a meeting, cannot be found to be misleading, incorrect or incomplete. The council believed that the Ombudsman did not have the power to recommend amendment to a document which had been approved by resolution.

Council's appeal was dismissed in the Supreme Court by Acting Justice Spender on 16 June 1995. council then appealed against Acting Justice Spender's decision to the Court of Appeal. On 2 November 1995 the Court of Appeal dismissed the council's appeal and ordered the council to pay the Ombudsman's costs in the matter.

In its unanimous decision, the Court of Appeal made comments critical of the council. Not only did the Court uphold the Ombudsman's jurisdiction to investigate the complaint, it also indicated its agreement with the findings and recommendations in our report. The then President of the Court, His Honour Justice Michael Kirby, made the following comments:

> *"... the recommendations appear temperate and sensible. Although this Court may not have all of the facts, and may not fully understand the council's position, on the basis of the facts found by the Ombudsman, his findings were virtually inevitable. His recommendations were therefore lawful."*

> *"No foundation was ever established to support the contention that the Ombudsman lacked power under his Act to conduct the investigation and to make the finding and recommendations which he did."*

Following the Court of Appeal's judgement, we wrote to the council asking whether it would now comply with the recommendations of the report to amend the documents. The council subsequently advised us that it was not prepared to amend the documents to state that the council did know, or should have known, that the two organisers would receive income.

On 17 January 1996 the Ombudsman made a special report to Parliament concerning the investigation of Botany Council. The special re-

port was made for three reasons. Firstly, to recommend that Parliament amend the *FOI Act* to put beyond doubt that:

- the public can seek amendment of an agency's records under the *FOI Act* regardless of how access to those records was obtained; and
- to provide that a record can be amended by the addition of a notation or other document located close to the information determined to be incomplete, incorrect, out of date or misleading.

The second reason the special report was made was to inform Parliament that the council was not prepared to comply with the recommendations of the Deputy Ombudsman in his final report concerning the amendment of the relevant documents. This was despite the comments of His Honour Justice Kirby supporting the findings and recommendations of the Deputy Ombudsman.

The third reason for the report was to advise Parliament that the Ombudsman felt that council's legal challenge to the Deputy Ombudsman's report was of little utility and did not appear to be in the public interest. As observed in the special report, legal costs to the council, including our legal costs which the council was ordered to pay, were over $35,000.

As the Ombudsman observed in the special report to Parliament:

> *"Given that the legal questions involved in the case are only of peripheral relevance, at best, to the functions of the council, its decision to institute these proceedings and to appeal the decision of the Court at first instance has interesting implications in terms of the council's own assessment of its priorities for the expenditure of its, presumably, scarce resources. In the light of the above, the motivation behind the taking of these proceedings against the Ombudsman is unclear and very much open to legitimate question, particularly by the residents of Botany, if not by the general community and by the Parliament."*

Following the Ombudsman's report to Parliament we wrote to Botany Council asking whether it was now prepared to amend the documents as recommended in the Deputy Ombudsman's report. The council again indicated it was not prepared to amend the documents in this way.

THE CASINO CONTROL AUTHORITY AND THE FOI ACT

During the year we received a complaint from a company which claimed that the Casino Control Authority (CCA) had not properly or thoroughly dealt with their FOI applications. The company had applied under the *FOI Act* for numerous documents, most of which concerned the decision of the CCA to award the first casino licence in late 1994 to Darling Casino Limited. The CCA informed the company that it did not have to deal with its FOI application as virtually all the documents requested were covered by the provisions of section 148(7) of the *Casino Control Act* which prevented the CCA from giving access to the type of documents asked for by the applicant.

Section 148(7) of the *Casino Control Act* states that access to a document can be granted in response to an FOI application unless the document concerned is of a type described in that section. Some of the types of documents described are those containing information:

1. relating to an investigation of a possible contravention of the law;
2. that would disclose the identity or existence of a confidential source of information relating to the enforcement or administration of the law;
3. concerning the business affairs of an applicant for a casino licence under the *Casino Control Act*;
4. obtained during an investigation of an application for a casino licence.

Many of the documents described in section 148(7) of the *Casino Control Act* are similar, if not identical, to parts of clause 4 of Schedule 1 to the *FOI Act*.

When we received the complaint we wrote to the CCA asking for all the documents that the FOI applicant had requested under the *FOI Act* together with their relevant FOI files. This is our usual procedure in dealing with most FOI complaints. Our view was that section 148(7) of the *Casino Control Act* merely allowed the

CCA to exempt documents under that Act if the documents satisfied that section of the *CCA Act*. We felt, however, that the CCA still had an obligation to determine an application for such documents according to the procedures set out in the *FOI Act*.

While the Ombudsman does not have jurisdiction under the *Ombudsman Act* to investigate the CCA, we felt that we did in this case as the CCA was determining an application under the *FOI Act*.

The CCA replied to our inquiries claiming that they were not dealing with the FOI application under the *FOI Act* but rather under section 148(7) of the *Casino Control Act*. If this was the case it meant that the Ombudsman did not have the power to inquire into this FOI complaint nor was able to compel the CCA to provide us with the exempt documents or any of its FOI files.

The CCA obtained legal advice from the Solicitor-General about whether it had dealt with this FOI application under the *FOI Act* or *Casino Control Act*. The advice from the Solicitor-General was that the CCA was able to refuse to deal with this application under the *FOI Act* as the documents fell under the descriptions of documents in section 148(7) of the *CCA Act*.

The CCA therefore refused to provide us with any of the documents or its FOI files. With the advice of the Solicitor-General in mind, we apparently had no power to carry out further inquires and therefore had to reluctantly decline the complaint.

This case highlights an area of concern for the Ombudsman, which is the exemption of public authorities from the operation of the *FOI Act* without any real public notification and discussion about whether this exemption is in the public interest. This very concern was raised by the former Ombudsman in a speech he gave to the Institute of Public Administration of Australia on 15 July 1994. The exemption of the CCA from the provisions of the *FOI Act* is in fact an anomaly in that it has not been done under the *FOI Act* but has occurred under the *CCA Act*. The exemption of government authorities from FOI by means of other legislation is not in keeping with the scheme of the *FOI Act* and in effect is a less explicit way of eroding the influence of the Act.

STATE FORESTS AND ENVIRONMENTAL IMPACT STATEMENTS

We reported last year an investigation into the refusal by State Forests to give access to a large amount of information. The FOI applicant had requested a range of documentation which he wished to use in analysing an environmental impact statement (EIS). The EIS related to the harvesting of timber in a northern management area of State Forests. At the time of writing that annual report item State Forests had not made a decision on some of the recommendations contained in the report of the investigation. Not the least of these was the recommendation that all specified documents be released within two weeks of the report being issued.

The complainant has since informed us that State Forests has refused to release most of the documents which we recommended be released. On 23 October one document was released and the complainant was informed the other documents were still under consideration. On 1 November 1995, two months after the report was issued, some further information in relation to 1983 smallwood yield assessments was released. According to the complainant most of this information was already publicly available in the management plan for the area. The complainant was informed that a schedule of the smallwood yield assessments information and Forestry Research Inventory System (FORINS) data was not to be released, and the reasons for that decision would be provided *"in the near future"*. Those reasons were provided about seven weeks later. Included in this communication from State Forests were the detailed schedule of the documents the subject of the FOI application and more detailed reasons for refusal of access. The reasoning itself seemed to be only a slight expansion upon the arguments which our report had called into question.

As one of our recommendations related to ensuring documents covered by FOI applications were collated on time, the period of time taken to supply this Schedule is of significance.

At the time the complainant wrote to us, in January this year, State Forests had not informed him of its decisions in relation to some documents subject to our recommendations to release, such as growth plot data. The complain-

ant recently informed us that the situation had not changed since January.

One reason for the refusal by State Forests to comply with our recommendation to release documents is particularly worthy of comment because of its apparent capacity to undermine the objects of the FOI Act.

The "Domino effect"

State Forests argued that individual documents released over time could form a mosaic that, when viewed in total, could reasonably be expected to cause serious adverse commercial effects, such as to advantage the timber industry over State Forests in negotiations.

We have labelled this argument the 'domino' argument. It is an argument which is designed to escape the need for documents to be assessed only on the basis of their particular content, where generalist clauses such as clauses seven and nine are relied upon to exempt material. The argument goes that if any one document of a particular class is released, and at a later time another is released, and at a still later time another, the combination of information in those documents in the wrong hands may cause adverse effects. Therefore, none of the documents of that class will ever be released. It does not matter that documents in the class may not be exempt if examined separately, on their own merits.

A worrying aspect of this way of approaching the assessment of FOI applications is that it is easily applied to any individual document that can be shown to belong to a class of documents. All that is needed is the creation of a "domino effect" scenario.

It is the view of this office that this approach to FOI is detrimental to achieving the Act's object to extend, as far as possible, the rights of the public to obtain access to information held by the government. It involves the creation of scenarios far removed from the practical tests of reasonable expectation of adverse effect contained in the generalist exemption clauses of Schedule 1 of the Act. It requires that those tests be applied, not to the specific content of certain documents, but to the generalised content of the class of documents to which those certain documents belong. Thus the right of access of an FOI applicant to specific documents is obliterated by determinations which do not specifically address the effects of disclosure of those documents. Another effect is that classes of documents which the *FOI Act* does not recognise as exempt become exempt. Agencies which use this approach thus place classes of documents of their own choosing on a par with information classes recognised by the Act as exempt, such as Cabinet documents.

As in this case, the general rule is that this office will not accept reasons for exemption based on the "domino effect" argument.

CHRIS WHEELER - DEPUTY OMBUDSMAN Chris has had an active academic and working life. Chris began his career as a town planner, working in both local and state governments in Victoria and then in NSW. Chris completed his Masters in Town Planning at Sydney University, followed by a Bachelor of Laws at the University of Technology, Sydney. Chris originally came to the Ombudsman's office in 1981, but left seven years later to work for the NSW Department of Local Government as a Local Government Inspector. He later practiced as a private solicitor for some years specialising in administrative law and local government issues, before returning as Deputy Ombudsman in 1994.

RURAL LANDS PROTECTION BOARD

The new section 52A of the *FOI Act* enabled a quicker resolution of a complaint about a rural lands protection board than may otherwise have been possible. There were communication problems between the board and this office. These were caused by the distance from Sydney of the board's head office which prevented face to face meetings, and the fact that the board employed its outside solicitor to handle all contact with this office.

The issues raised by the FOI complaint were claims of inadequate processing, and failure to identify and provide documentation.

Due to the communication problems, and because the matter was delayed, this office constructed a detailed resolution procedure and put it to the board. The idea was to present a complete package which would require very little effort on the board's part to adopt and put into practice. All that would be needed was consideration of the suggestions made in the package and a decision to accept, alter or not accept those suggestions. If accepted all that would need to be done was preparation of a letter (the contents of which was suggested in full), photocopying some documents which had already been compiled and fully prepared for release, and the sending of the letter and documents to the applicant.

This office suggested the board:

1. review its determination of the complainant's FOI application by making a new determination (the contents of the notice of determination were suggested); and
2. release a second set of documents as this office considered a resolution of the matter should include an effort to open up the actions of the board's officers so that they were as transparent as possible to the complainant. This office believed that in this way a reasonable attempt would have been made to allay certain concerns of the complainant.

The board accepted the suggestions in full. The board then made a redetermination along the lines suggested in the package, photocopied the two sets of documents, and sent them off under cover of the redetermination. The matter was consequently considered resolved to the satisfaction of the Ombudsman.

The preparation by this office of a detailed package in order to attempt a resolution is unusual. Generally details would normally be sorted out through a combination of letters and meetings, and we would consider it most important for the agency to prepare both the schedule of documents covered by the application, and the documents to be released, including making deletions.

In this case the distance, and a lack of FOI expertise on the part of the board, indicated a situation where if we followed normal procedures there would probably have been excessive delays and unnecessary correspondence. We therefore decided on the above course, which was aided by the introduction of the redetermination provision of section 52A.

EMPLOYMENT RELATED FOI COMPLAINTS

The *FOI Act* is often used by employees or former employees of agencies who become involved in work related disputes with the agency concerned. The FOI application is sometimes made in order to see what information the agency has collected about the person/s concerned.

Case study one

We received a complaint about the Board of Studies from a teacher who had previously been a marker at the HSC examination. The board decided to no longer employ him, which he suspected was owing to allegations made about him to the board. He then made an FOI application for various documents relating to himself, including any allegations made about him. The board gave him access to some material but also refused him access to some documents under clauses 6 and 13(b) of Schedule 1 to the *FOI Act*. The teacher also thought that the board had a number of documents concerning allegations about him which the board was not admitting it in fact possessed.

Following our enquiries with the Board of Studies and our examination of the board's relevant files, we were satisfied the board did not have

any further documents containing allegations about the teacher. We also determined that the documents exempted under clauses 6 and 13(b) did not actually relate directly to the teacher and were certainly not concerned with criticism of him. The teacher was relieved by the result of our inquiries.

Case study two

We also received a complaint from another teacher about the Department of School Education. The teacher had taken leave following a dispute with local education authorities, and had then applied under the *FOI Act* for all documents the department had about him, believing that various documents critical of him were on the department's files. These documents were certainly not in the material he received from the department and were not withheld from him on the grounds that they were exempt. As a result of our inquiries with the department we were satisfied that the department had no further documents about him and was not withholding material critical of him.

Case study three

A complaint was received from an employee of the Roads and Traffic Authority about his annoyance with the RTA's determination to refuse to amend certain documents. The complainant had applied for a promotion with the RTA but had been unsuccessful. He then appealed to the Government and Related Employees Appeal Tribunal (GREAT) about his failure to gain the higher position but was not successful in his appeal. The employee then wrote to senior management of the RTA raising his concerns about the way in which the RTA handled the culling and selection procedures for the position and also about the way it had dealt with his appeal to GREAT. After examining the two replies he received from the former Chief Executive of the RTA, he felt that they did not properly reflect his concerns. He subsequently applied under the *FOI Act* for these letters to be amended as he believed them to be misleading, incorrect and incomplete. In its determinations, the RTA refused to amend the two letters. After our examination of his complaint and the RTA's submissions, even though we had some misgivings about a few of the comments in one of the former Chief Executive's letters to the complainant, we did not believe there was any material in the letters that was incorrect, incomplete or misleading. We therefore declined his complaint but advised him of his rights under section 46 of the *FOI Act* to direct the RTA to attach to the two letters detailing why he thought they were incomplete, incorrect or misleading.

Case study four

We received a complaint from a former official visitor with the Department of Corrective Services. Official visitors are appointed by the Minister to visit inmates and to resolve minor problems and difficulties they may be having while in prison. Our complainant had applied under the *FOI Act* for all records of visits she had made to a correctional centre over a period of time, although the centre involved was not the one she was appointed to as an official visitor. When she received her determinations she claimed the department had not recorded all the visits she had made to this particular institution. At that stage the department could not find a rather large book that had been used for visitors to sign when they entered the centre. The book, which was no longer in use, could not be found in the repository. We made some inquiries with the department about the official visitor's claims and also sought information about the missing book. As a result of our inquiries the department found the book and also traced some further visits made by the complainant to the correctional centre involved. We found no evidence of any other visits made by her or any evidence that the department had kept secret details of her visits. We felt that the issues in dispute were largely resolved as a result of our inquiries.

LEGAL PROFESSIONAL PRIVILEGE

Case study one

An FOI applicant was refused access to a private investigator's report held by a council, based on clause 10 of Schedule 1 to the *FOI Act*. The report had been sought by the council's solicitors in relation to the possible illegal use of commercial premises. The solicitors were seeking evidence to prove the illegal use for the purpose of court action against the proprietor.

The *Ombudsman's FOI Policies and Guidelines*, at 9.7.5, state in part:

"Legal professional privilege can be claimed in relation to communications: ...

2. between a client (or a client's agent, including a lawyer) and a third party (for example a specialist or technical expert) which were brought into existence for the sole purpose of obtaining legal advice for use in litigation which is either pending or within the reasonable contemplation of the client at the time the communication was brought into existence."

The private investigator's report was clearly brought into existence for the sole purpose of helping in the construction of legal advice, which was for the sole purpose of use in litigation. This office's view was that these facts met the accepted tests of legal professional privilege.

Case study two

In another matter a council refused access to a legal opinion it had sought from its solicitors. The advice concerned a development application. This office confirmed that the council had directly sought the advice, and that the document sought by the application was the advice provided by the solicitor in response to the council's request. We also confirmed that the advice had not been widely distributed, and that it was therefore of a confidential nature. We decided that the document met an accepted test of privilege as described at 9.7.5(1) of the guidelines:

"Legal professional privilege can be claimed in relation to communications:

1. between a client (or a client's agent) and a lawyer which:

(a) are confidential in nature; and

(b) were brought into existence for the sole purpose of .....:

(i) enabling the client to obtain, or a lawyer to give, legal advice."

THIRD PARTY COMPLAINTS

Case study one

After years of controversy about the development of a large area of land on Lake Macquarie, the owner of the land and Lake Macquarie Council reached agreement on a way to move forward on the development. A Deed of Agreement was drawn up which in effect was a contract between council and the owner. The deed detailed the actions each party agreed to take. A number of FOI applications were made by those opposed to the project for copies of the Deed of Agreement and related documents, all of which the council determined to release.

The owner of the land objected and after being unsuccessful at the internal review stage, requested this office undertake an external review. His chief objection was that the deed would be used by those still actively opposing any development on the site to identify and attack the most vulnerable steps in the process, thus halting the process outlined in the Deed of Agreement, and effectively stopping the development. He relied on clause 7(1)(c) of Schedule 1 to the *FOI Act*.

Our decision was that the documents were not exempt. While it seemed likely that disclosure could cause some unwelcome occurrences, such as public statements misconstruing the deed, it was unlikely that there would be an unreasonably adverse affect on the owner's company. The wording of clause 7(1)(c) clearly assumes that some adverse effect is allowable before the clause can be applied. The idea behind this would appear to be that it would be difficult to have freedom of information without disclosure of government-held information at times causing some adverse effects. The Act caters for this by allowing a certain level of adverse effect but drawing the line at an unreasonable level.

In this office's view the owner did not provide persuasive evidence that an unreasonable adverse effect on his company could reasonably have been expected by the disclosure of the documents. In coming to our conclusion we took into account the fact that council had decided the documents were not exempt. If release of the documents could have adversely affected the affairs of council or the owner's company, being its co-signator, it is reasonable to assume that council would have exempted the documents. That it did not supported the view that it was unlikely that an unreasonable adverse effect existed. It was also unlikely to prejudice the future supply of such documents to council, given the commercial interest of the third party in, and council's involvement with, the creation of the deed.

Case study two

In the case of Hastings Council, the third party was the owner of a residence about which there were documents which were the subject of an FOI application. He was concerned that the security of his home would be compromised if the documents were released, and objected to not knowing who the applicant was. This office contacted the applicant, who had no objection to her identity being revealed to the third party. Council subsequently passed this information on. We also examined all the documents covered by the application. It was clear that there were no plans of the building among them. In addition council met with the third party and showed him all the documents which it intended to release. There was subsequently general agreement between the third party, council and this office that the security of the third party's dwelling could not be threatened by the disclosure of the documents. We also took the view that no unreasonable disclosure of personal affairs would occur by disclosure.

Case study three

Randwick Council determined to release a number of objections to a development which was under construction at the time the FOI application was made. The third parties who complained to this office were the authors of objection letters, and had signatories to petitions which were also subject of the application. Section 7.1 of the *Ombudsman's FOI Policies and Guidelines* was of direct relevance. In it the Ombudsman takes the view that, generally, disclosure of objections to development and building applications is appropriate. We agreed with council's decision to release the information.

VICE CHANCELLORS' SALARIES

A large union had, with considerable success, collected detailed information about the remuneration packages of vice chancellors and pro vice chancellors from tertiary institutions across the nation. One method the union had employed was freedom of information legislation.

Four NSW universities had refused access to the information. Three of these, after the involvement of this office, released information in one form or another to the satisfaction of the union. In one of these cases, for instance, we suggested that, in the interests of resolving the matter, rather than the "raw" data covered by the terms of the union's FOI application, the university release summary details instead. The university agreed to do this and the union accepted. However the University of New England, despite the fact that the majority of tertiary institutions across Australia had released the information, continued to refuse to release the information. Having successfully resolved three of the four complaints this office decided as a matter of utility not to take further action, despite our preliminary view that the information was not exempt.

RESOLVED MATTERS

Employment contracts

A journalist applied under the *FOI Act* for access to the employment contract of the General Manager of Liverpool City Council. Access was refused under the personal affairs exemption in Schedule 1 to the Act. This office made written preliminary inquiries requesting detailed reasons for the exemption which section 28(2)(e) of the *FOI Act* requires of FOI decision-makers. Shortly afterwards the General Manager provided the journalist with relevant sections of the contract. The journalist was satisfied with the information and considered his complaint resolved, as did this office.

Planning documents

Complaints were received from two people involved in a croquet club owned by Strathfield Municipal Council. They had applied to the council for a range of documents relating to council's future plans for the land. The land was occupied by both the club and an early childhood centre. The documents requested included all *"records, reports, papers etc"* relating to the proposed relocation of the club and centre, the brief and supplementary records of instruction to a consultant which council had employed to report on Strathfield's open space, and any lead-up documentation in respect to the issue of a certificate under section 65 of the *Environmental Planning and Assessment Act*. This office wrote to council requesting detailed reasons for all exemptions in terms of the requirements of section 28(2)(e) of the *FOI Act*. The

council then released the vast majority of documents, understood to be about 250 pages, and withheld only nine pages, most of these on the basis of legal professional privilege. We did not consider there was a sufficient call to take further action in relation to the documents not released and considered the matter resolved.

Building records

A city council mishandled an FOI application for documentation concerning a development application. The applicant was a next door neighbour to the property subject of the development - a renovation which had already been completed but which the applicant was convinced was illegal. He was seeking proof of this. The FOI application had been delayed and there were other procedural inadequacies. This office put a resolution scheme to the council, which was accepted, under which council gave full explanations of the actions it had taken in approving the development application, and of its mishandling of the FOI application. The applicant agreed on this basis that his FOI complaint was resolved.

Delays

An academic made two FOI applications to the University of New England. The processing of both applications was delayed. We made preliminary telephone inquiries and the university acknowledged the delays and agreed to make initial determinations as soon as possible. As an alternative, the university offered to make internal review determinations on the basis of deemed refusals, under section 24(2) of the *FOI Act*, of the initial applications so that, if the complainant wished, he could proceed directly to the external review stage . The university also gave some indication of the likely outcomes, in one case that all documents would be released, and in the other that partial release was likely. We considered both complaints satisfactorily resolved.

While we consider that we have jurisdiction to investigate matters where a deemed refusal under section 24(2) exists, we generally do not take that option. In line with the Ombudsman's view that her office is an avenue of last resort, we usually encourage *deemed refusal* complainants to either wait for an initial determination and then proceed to internal review if necessary, or to apply immediately for an internal review.

Copies of letters of objection

A northern Sydney council had an open policy in relation to letters of objection to development applications. The policy allowed any person to view the letters and take any notes from them, but not to obtain photocopies of them. The chairperson of a group opposed to a particular development objected to this policy, believing that he needed copies of all letters of objection received by the council in relation to this development. He thus made an FOI application for copies of all the letters, and complained to this office when he did not receive a determination within 21 days. We discovered, on making preliminary inquiries, that the council had extended the 21 day period by 14 days, as provided by section 59B of the *FOI Act*, in order to consult with all the authors of the letters, and had made its determination, correctly, by the 35th day after receiving the application. The council's determination released more than 170 letters in their entirety, and withheld the names and addresses on only two others. However by failing to notify the applicant of the determination to extend the 21 day period *in writing* as is required by section 59B, the applicant was not aware that in special circumstances such an extension was possible. We explained to the applicant the section 59B provision, and that in the council's determination minor exemptions had been made. He agreed on the basis of the explanation and amount of information received that his complaint was resolved.

MEDICAL RECORDS

We received a letter from a complainant who was not happy that a hospital would not give her immediate access to her aunt's medical records. Her aunt had died several months before in the hospital. She had received treatment for a number of years which meant there were quite a lot of medical records involved. The applicant apparently wanted the records for the purposes of resolving a family dispute over her aunt's estate.

Section 31 of the *FOI Act* does not allow an agency to give an FOI applicant access to documents that concern a person's personal affairs without first consulting with that person. If the person does not consent to release the documents and the agency does not agree with this view

and wants to release the material, the agency must give them their review and appeal rights under the *FOI Act* before the documents can be released to the FOI applicant. If the person whose personal affairs are involved has died, as in this case, section 31 states that the person's closet relative must be consulted instead. The *FOI Act* does not spell out who a person's closest relative is, however the *Mental Health Act* gives some guidance on this question.

In determining the FOI application, the hospital informed her she could not receive access to her aunt's medical records without the permission of the Public Trustee, who was dealing with claims on the estate. This advice, in terms of the *FOI Act*, was not actually correct. The difficulty with this case was that, based on the definition in the *Mental Health Act*, the FOI applicant would be the closest relative, along with about ten of her brothers and sisters. However, from our research we were able to find some documentation which led us to believe that, as far as section 31 of the *FOI Act* is concerned, our complainant's oldest sister was the closest relative. On that basis we advised our complainant that the hospital must first consult with her sister before our complainant could receive access to her aunt's medical records. At the time of writing we do not know whether our complainant's sister had consented or not.

POLICE SERVICE AND DOCS

During the year we received two complaints from people who had been denied access by the Police Service and the Department of Community Services to some documents which included the identity of individuals who had made notifications of alleged sexual abuse of children. The two complainants to this office had been the subject of these notifications.

As we observe in the *Ombudsman's FOI Policies and Guidelines*, it is beyond question that the Department of Community Services and the Police Service should not be hindered in receiving allegations, made in good faith, about children who are being sexually or physically abused. For this reason we firmly agree that such allegations are made in strict confidence and that the identity of the complainant should remain highly confidential. Such confidentiality is guaranteed by sections 22 and 115 of the *Children (Care and Protection) Act 1987*.

Case study one

One of the complaints was received from a former youth worker who had been accused of sexually abusing children in a youth refuge. He was not charged by the police. Both the Department of Community Services and the Police Service had withheld from him the identity of the people who had made the allegations. We agreed with the exemption of the documents under clauses 4(1)(a), 4(1)(b), 4(1)(e), 6 and 13(b) of Schedule 1 to the *FOI Act*. All evidence indicated that the allegations had been made in good faith. With this in mind we agreed that the allegations had been made to the police and the department for the purpose of their investigative functions and that to disclose the identity of the people who had made the allegations would prejudice the ability of the police and the department to investigate allegations of sexual abuse of children in the future.

Case study two

The second complaint was received from a person who had been convicted of sexual abuse of a number of boys. He had been refused access by the Police Service to some documents relating to the sexual abuse allegations made against him. We agreed with the Police Service that any documents which he had not been able to subpoena during his trial were certainly exempt under the above clauses of Schedule 1 of the *FOI Act* given our views that such allegations, made in good faith, are made in strict confidence. As with the first complaint detailed above, evidence indicated that the allegations in this matter were made in good faith.

UNIVERSITIES

One of the more unusual complaints we received during the year was from a senior lecturer at a prominent university in Sydney. He and another senior lecturer in the same department had a fight on campus in which our complainant claimed to have been viciously punched in the face by the other senior lecturer. Needless to say academic liaison between them has since been limited. Neither of the two senior lecturers involved were charged by the police. As a result of the incident our complainant went on leave for a while and when he returned to work the university placed him on a

different campus as he claimed that if he returned to his original department his life would be placed in danger by the other senior lecturer.

Our complainant had applied under the *FOI Act* for numerous documents collected by the university in its investigation of the fight between the two academics. The university gave him access to a number of documents but refused him access to some under clauses 6 and 13(b) to Schedule 1 of the *FOI Act*. The documents he was refused access to were mainly those detailing statements made by the other academic to the university during its investigation of the incident, as well as some medical related and other personal information about the other academic. In the circumstances we agreed with the determinations of the university to exempt the documents. We felt that some of the material was of a very personal nature and it would be unreasonable to disclose it. We also believed that other information received by the university was given in confidence and that it would not be in the public interest for such information to be disclosed in this instance.

ELECTORAL COMMISSIONER

We received a complaint from a person who successfully stood as a candidate to become a councillor at the local government elections in September 1995. Prior to the election a complaint was made about her to the Electoral Commissioner which claimed that she was ineligible to contest the election due to certain criminal convictions recorded against her. She then applied under the *FOI Act* for the details of the allegation. The Commissioner, in brief determinations, released to her only general comments about the allegation. The identity of the person who made the allegation and the actual terms of the allegation itself was exempted under clauses 6 and 13(b) to Schedule 1 of the *FOI Act*.

Following our analysis of the Commissioner's determinations we disagreed with the decision to exempt the letter of complaint, including the identity of the person who had written the letter. The person who had made the allegation had previously been, for many years, a senior and well known public official in the area. We felt that, given the public profile of the person concerned, it may not be in the public interest that confidentiality apply to this situation. From information we received, it was also common knowledge amongst council staff and our complainant as to who had lodged the complaint about her. Further, from our inquiries we discovered that the Electoral Commissioner does not carry out inquiries or investigate allegations of the kind made in this matter. We felt that a release of the allegation and identity of the person who wrote the letter would not aversely affect the Commissioner's investigative functions into such allegations as such investigative functions simply do not exist. We therefore suggested to the Commissioner that he release the letter by redetermining the FOI application under the new section 52A of the *FOI Act*. At the time of writing, this release had just occurred.

DETAILS OF JPs

We received a complaint from a private association claiming to represent all justices of the peace (JPs) in NSW. The association had applied to the Attorney General's Department under the *FOI Act* for the names and addresses of all newly appointed JPs from the beginning of 1995. The Attorney General's Department exempted all the names and addresses under clauses 2 and 6 of Schedule 1 to the *FOI Act* stating that these details were given to the Executive Council and that it would be an unreasonable disclosure of the personal affairs of the JPs to provide their names and addresses without consent. The department observed it would be too resource intensive and costly to write to every JP seeking their consent. The association said they wanted the details of all JPs so as to arrange training and education for them. The association also claimed that they used to receive information about new JPs until 1991 when these details stopped being sent for privacy considerations. The association also felt they should receive them as Members of Parliament were given the details of all newly appointed JPs.

After our analysis of this matter we agreed with the department's determinations. We discovered that the association was one of several private organisations representing the interests of JPs and that it did not perform any role under State law. We agreed it would be unreasonable to supply the names and addresses of JPs to what was essentially a private organisation.

The names and addresses of JPs are not publicly available as a complete list and we felt that just because they were supplied until 1991, changing privacy considerations meant that it was now not considered appropriate. Quite reasonably the department informed all newly appointed JPs of the role of the association to enable them to join if they so wished.

ANALYSIS OF OPPOSITION POLICIES

A complaint was made to us by a well known and prominent media organisation. They had applied to the Premier's Department in mid 1995 for that department's analyses of the policies of both the former NSW Government and the former NSW opposition leading up to the NSW State election in March 1995. The department did provide the media organisation with some documents but exempted the majority of the material under clauses 9 and 16(a)(iv) of Schedule 1 to the *FOI Act*. The department claimed that these exempt documents were internal working papers prepared for decision making purposes and to release them would adversely affect the effective performance of the Premier's Department. It was also claimed that it was contrary to the public interest to release the documents.

Following the complaint to us by the media organisation, we wrote to the department asking for the subject documents and for detailed reasons justifying exemption of this material. In response the department reconsidered its determination to exempt the documents and decided that the documents should be released to the media organisation (with the exception of one document that had been submitted to Cabinet which was withheld under clause 1 of Schedule 1). The complaint was therefore resolved.

BUILDING DISPUTE RECORDS

We received a complaint from a resident of the northern Sydney area whose house had been damaged in storms a few years ago. In having her house repaired she had experienced problems with a builder and had complained about the builder to the former Building Services Corporation, which is now part of the Department of Fair Trading. In dealing with her case the former BSC had amassed a considerable file. She then applied under the *FOI Act* for the content of that file. The BSC gave her access to all material except one document which was exempted under clause 9 as an internal working document. This document was quite important in her case against the builder. In assessing her complaint we did not believe that the document should be exempt and we wrote to the BSC expressing this view. After considering our position the BSC agreed and released the document to her, which resolved the matter.

THE LOANS AFFAIR

We received a complaint from a legal firm on behalf of a client who had made FOI applications to a prominent NSW Government authority. The complaint claimed that the agency had not properly dealt with their FOI applications. Indeed the legal firm claimed that the agency involved had not even responded with any determinations to their applications.

The documents they wanted concerned loans which had been authorised to four members of the board of the agency. A few years before, the agency had received advice from a member of its senior management that the agency had the power, under relevant legislation, to make loans to its board members. Loans were subsequently approved for four board members and taken out by three of them. Following concern that the agency may not have actually had the power to make these loans, legal advice was obtained from senior counsel which confirmed that these loans were in breach of the relevant Act. The loans were eventually repaid and the senior manager who gave the advice that the agency had the power to make the loans was dismissed following allegations that he was involved in financial irregularities.

We began an immediate investigation of the agency involved. During the initial part of our investigation the agency undertook to identify those documents it believed were caught by the FOI application and to indicate whether it was prepared to provide any or all of these documents to the FOI applicant. The agency advised us that it considered most of the documents exempt under clauses 6, 7(1)(b), 7(1)(c), 9, 10 and 15 of Schedule 1 to the *FOI Act*. The agency felt that to disclose these documents concerning the

loans made to board members would, among other things, have a detrimental effect on the nature of the work carried out by the agency.

Following our examination of all the documents together with the agency's relevant FOI files we felt that some documents relating to the personal affairs of the board members were properly exempt and that material concerning proposals for the establishment of a credit union and loans scheme should not be released as consideration of the scheme had been deferred for an indefinite time. To release these documents may negatively influence future consideration of the scheme. With the remaining material concerning the apparently unlawful loans, however, we felt that disclosure of these documents was in the public interest and outweighed any negative effects such release might cause to the agency. We were also of the view that the possible damage to the affairs of the agency concerned was by no means as significant as the agency claimed.

In our preliminary report on the matter we therefore recommended that these documents should be released. Prior to the publication of our final report on the investigation, the agency concerned met with its responsible Minister. Following that meeting the agency also met with us and undertook to release all those documents we did not feel were appropriately exempt. Such release occurred not long after and in our final report we did not need to make further recommendations and we were able to congratulate the agency on its conciliatory approach to resolving the problem.

AND THEY'RE RACING

We received a complaint from a designer of sulkies in the harness racing industry about the Harness Racing Authority (HRA). He had applied under the *FOI Act* for a publication detailing planning and design guidelines for the construction and maintenance of harness racing tracks. In dealing with his FOI application the HRA had advised him he could inspect the document but that commercially sensitive information would be removed. In dealing with the complaint, we first of all tried to resolve the matter and asked the HRA to release those parts of the guidelines document which it did not consider would be commercially sensitive. This resolution process resulted in the release of approximately 90% of the publication to the applicant. As our complainant wished to see the whole publication, we proceeded to consider whether the remaining part was properly exempt.

In its submissions to us the HRA considered the rest of the guidelines to be exempt under clause 13(a) to Schedule 1 of the *FOI Act*. This clause applies if it can be shown that to release a document will breach confidence. They advised that the company which had supplied the track guidelines document had a written agreement with the HRA that the document would not be distributed except to licensed harness racing clubs that were given approval to design harness racing tracks. The HRA also believed that to release the document to the applicant may adversely affect the business affairs of the company which designed the guidelines as it would enable track design competitors to copy that company's secret design formulae.

For us to decide whether the track guidelines document was exempt under clause 13(a) of Schedule 1 we considered four criteria which Justice Gummow, in a Federal Court FOI decision, decided must apply for an action to be founded for a breach of confidence. Justice Gummow's decision in the Federal Court was made about a provision of the Federal *FOI Act* which is virtually identical to clause 13(a) of the NSW *FOI Act*. One of those four criteria was that there was actual or threatened misuse of the information in the document.

With this complaint we agreed with the HRA that the rest of the track guidelines document was in fact exempt under clause 13(a) of Schedule 1. The criteria concerning actual or threatened misuse of the information in the document could certainly include the use by a rival company or person who was in business competition with whoever had designed the information in the document. From our research, we confirmed that a rival track design company was very interested in the material in the track design document.

PROTECTED DISCLOSURES

Cartoon by Ron Tandberg/The Age.

PROTECTED DISCLOSURES

INTRODUCTION

For simplicity, we use the informal term *"whistleblower"* and its derivatives in preference to *" a person who made a protected disclosure"*. In doing so we note that *"whistleblower"* is the term most recognisable and widely used by public officials and members of the public who deal with this office, and the organisation which represents the interests of many whistleblowers is called *Whistleblowers Australia Inc.* The Ombudsman strongly believes that the title *"whistleblower"* can and should be worn with honour.

The object of the *Protected Disclosures Act* is:

> *"...to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector... "*

The Act provides that its object, the encouragement and facilitation of disclosures, is to be achieved with a three-pronged attack:

1. enhancing and augmenting established procedures for making disclosures;

2. protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures; and

3. providing for those disclosures to be properly investigated and dealt with.

The Ombudsman believes that the legislative policy behind the Act is clearly and greatly desirable. The elimination of corrupt conduct, serious and substantial waste and maladministration in the public sector is an object with which no reasonable person could disagree. However, those engaged in that conduct tend to do so in secret. Encouraging whistleblowers to unlock such secrets so they can be investigated and acted on is vital to the achievement of this object. This is why the Ombudsman believes that, of the three prongs, the protection of whistleblowers is the most important to the success of the Act. Real and effective protection for whistleblowers is the foundation upon which everything else sits. Unfortunately, by itself, the Act does not currently guarantee such protection.

It was with this in mind that the Ombudsman presented three written submissions to the Joint Parliamentary Committee which has been reviewing the Act. The Ombudsman, together with the Deputy Ombudsman, attended the Committee's hearings to give oral evidence. The submissions and evidence covered a number of technical matters with the thrust being the need for the Act to be amended to make the statutory protections afforded whistleblowers both practical and effective.

One other important point the Ombudsman raised in her evidence was the need for a change in public service culture concerning whistleblowers. Regrettably, there is an attitude prevalent in the public sector which sees whistleblowers as 'rats under the house'. This attitude influences reaction to whistleblower. This attitude must change. The whistleblower can be an early warning signal. The information a whistleblower brings to management can be used to identify management problems and to effect necessary change and efficiencies. Whistleblowing can promote accountability and can be an example of integrity and professionalism. In essence, whistleblowing can be a useful management tool. The genuine whistleblower should be seen as providing management an opportunity for improvement and not as some 'rat under the house' requiring extermination.

ROLE OF THE OMBUDSMAN

The Ombudsman's role is five-fold and each role is discussed below:

1. Maladministration

The first role involves dealing with complaints by whistleblowers about maladministration by public authorities or other public officials.

If such complaints are made directly, or referred to the Ombudsman, clause 12 of Schedule 1 to the *Ombudsman Act* applies. This clause precludes the Ombudsman from investigating the conduct of a public authority relating to matters affecting a person as an officer or employee.

It is also important to note, however, that the fact that a disclosure may be outside the jurisdiction of the Ombudsman does not have any bearing on whether the disclosure is a protected disclosure under the *Protected Disclosures Act*. A disclosure may still be protected on the basis that the subject matter concerns *"maladministration"* (as defined under the *Protected Disclosures Act)* even though the subject matter is excluded conduct under Schedule 1 to the *Ombudsman Act*. In such circumstances, consideration is given to whether the disclosure should be referred to another investigating authority, public authority or public official for appropriate action under section 25 of the *Protected Disclosures Act*. A protected disclosure that is so referred under the provisions of the *Protected Disclosures Act* remains a protected disclosure.

2. Implementation of the Act

The second role relates to complaints by public officials about compliance with or the implementation of the *Protected Disclosures Act* by public authorities or public officials.

Where a person has made a disclosure to a public authority, or to one of the other investigating authorities, and the disclosure has not been dealt with appropriately or in accordance with the specific requirements of the *Protected Disclosures Act*, it is open to the person to complain to the Ombudsman about such concerns. Such complaints are treated very seriously by the office.

3. Detrimental action

The third role of the office involves dealing with concerns raised by whistleblowers and witnesses about detrimental action being taken against them. Allegations of *"detrimental action"* against whistleblowers are treated very seriously by the office.

This role also includes dealing with complaints by public officials concerning the conduct of public authorities or officials arising out of the making of a protected disclosure to the Ombudsman (or to another investigation authority, public authority or public official where the disclosure has been referred to the Ombudsman under the *Protected Disclosures Act* for investigation or other action).

In assessing allegations of *"detrimental action"* the starting point for the office is an assumption that good administrative practice will generally dictate that chief executive officers, and other senior public officials, are responsible to ensure that legitimate/*bona fide* whistleblowers are protected from both direct and indirect *"detrimental action"*.

It is also to be expected that such complaints will often fall within the specific exception set out in clause 12 of Schedule 1 to the *Ombudsman Act*.

4. Advisory service

The fourth role of the office relates to the provision of advice to public officials:

- contemplating making protected disclosures; or

Deputy Ombudsman Chris Wheeler consults with Assistant Ombudsman Steve Kinmond.

- seeking advice on the interpretation and implementation of the Act.

Requests for advice are invariably oral, and therefore do not constitute a complaint (which must be in writing) under the *Ombudsman Act*. Persons contemplating making a protected disclosure are therefore able to seek advice without actually making a complaint which may, in practice, not be protected by the Act. On the basis of the information disclosed during these conversations, the person is advised as to whether it appears that the proposed disclosure is likely to be protected under the Act, and if so which investigating authority, public authority or public official is the appropriate recipient.

Advice given on the implementation of the *Protected Disclosures Act* includes guidance about the development and implementation of appropriate internal reporting procedures. One of the objects of the Act is the enhancement and augmentation of procedures for the making of disclosures and the Act pre-supposes that public authorities and officials will have appropriate internal procedures for the making of disclosures.

5. *Guidelines*

The fifth and final role of the Ombudsman involves the preparation of guidelines to assist public authorities and public officials in the interpretation and implementation of the Act. We are in the process of updating our first set of guidelines and expect the second edition to be published by early November.

The second edition will be a substantial document which seeks to incorporate knowledge and experience about the implementation and interpretation of the Act since it commenced in March 1995. Several themes run through the guidelines including:

- public authorities should put their own house in order, wherever this is possible and appropriate, (when in doubt, public officials can seek advice from the NSW Ombudsman, or one of the other investigating/review authorities);

- dealing with whistleblowers is primarily a management issue and a management obligation (the *Protected Disclosures Act* is a good statement of legislative intention, but its effective implementation is reliant on management commitment and action);

- protected disclosures, as with complaints from members of the public, should be treated as a management tool to assist authorities to identify and address problems;

- the *Protected Disclosures Act* should be interpreted broadly - when in doubt it is best to

assume that a disclosure is protected and to act accordingly (although still pointing out to the whistleblower that the position is unclear).

DISCLOSURES RECEIVED

To date, we have received 51 formal written protected disclosures.

However, this figure is somewhat artificial as the statistic does not measure:

- the oral 'complaints' we received which satisfy the criteria for *"protected disclosures"* but are not within the jurisdiction of this office because they are not in writing - these number well over 60;
- disclosures made by members of the Police Service which satisfy the statutory criteria for *"protected disclosures"* under the *Protected Disclosures Act* - these number over 50 (these are discussed further below);
- disclosures made by Police Service whistleblowers which, while not satisfying the statutory criteria for "protected disclosures", are internal complaints under the *Police Service Act* - these number over **1000** in the past year.

We do not include whistleblowers from within the Police Service in our statistics, although such disclosures are numerous, because:

- there are complexities involved in identifying whether a matter falls under the obligation in clause 30 of the *Police Service Regulation* or the under the *Protected Disclosures Act;*
- complaints from police officers are dealt with under the terms of the *Police Service Act* in the same way whether or not they are *"protected disclosures"* under the *Protected Disclosures Act* (in terms of confidentiality and notification requirements);
- the Police Service operates a comprehensive policy with respect to their internal whistleblowers in the form of the Internal Witness Support Program.

TYPES OF PROTECTED DISCLOSURES

The types of protected disclosure matters made or referred to the Ombudsman which have been, or are being, investigated include such matters as:

- a complaint that a public official had improperly denied the existence of documents as the basis for refusing a Freedom of Information application for contentious documents;
- a complaint about an alleged failure by a public authority to protect and keep confidential the identity of a whistleblower;
- a complaint about alleged unlawful, and potentially criminal, behaviour by the whistleblower's colleague;
- a complaint about widespread maladministration amongst outdoor staff within a local council;
- a complaint about participation in debate and voting despite pecuniary interests and conflicts of interest by elected members of a local council;
- a complaint about alleged inadequate insurance arrangements with potentially massive liabilities for a number of public authorities.

Several of the protected disclosures made or referred to the office were dealt with by way of informal investigation or preliminary inquiry, for example being resolved by the provision of advice or explanation to individual complainants. The types of matters include the actions of local councils with regard to building matters and the performance of their other functions.

Most of the protected disclosures which were outside the jurisdiction of the Ombudsman fell into the employment exclusion in the *Ombudsman Act*. Nevertheless, these complaints sometimes raised serious issues for the management of the relevant public authorities and, with the prior consent of the whistleblower, some were referred to senior staff of those authorities for appropriate action. Despite the fact that the Ombudsman had no jurisdiction in such matters, it was felt that the existence of the Act had encouraged the making of such disclosures, thus presenting public authorities

with an opportunity they would not otherwise have had to deal with such concerns.

We have also referred some allegations about council employment matters and serious and substantial waste to the Department of Local Government to be dealt with by the department as protected disclosures. The department has kept, and will continue to keep, the NSW Ombudsman informed about the progress of these complaints.

REQUESTS FOR ADVICE

Records kept by the office indicate that since the commencement of the Act, detailed advice has been given to over 100 public officials contemplating making a disclosure or needing guidance on the implementation of the Act. This figure does not include second and subsequent inquiries from the same public officials, or communications received in relation to formal written protected disclosures made or referred to the office.

Advice given includes whether it appears, from the information provided, that a disclosure is likely to be a protected disclosure under the Act. If the request for advice has come from a potential whistleblower, our advice includes the provision of information about the most appropriate investigating authority, public authority or public official to whom the disclosure could be made. If the request for advice has come from a public official on behalf of a public authority, advice has been provided about the implementation of the Act, including the implementation of appropriate internal procedures for reporting and investigating disclosures, and options available to ensure proper protection for whistleblowers.

Most actual and potential disclosures by public officials concerning the affairs of their agency are inherently sensitive and often of some complexity. In these circumstances, and particularly given the difficulties associated with the interpretation of the Act, the Deputy Ombudsman has undertaken the bulk of this advice work since the commencement of the Act.

PRELIMINARY INQUIRIES

Of the formal written protected disclosures made or referred to the Ombudsman to date, 36 have so far been made the subject of either informal investigation or extensive preliminary inquiries, in order to determine whether the matters warrant a formal investigation under the *Ombudsman Act* or could be otherwise appropriately resolved.

REFERRAL TO OTHER BODIES

Where necessary and appropriate, protected disclosures made to the Ombudsman have been referred to other investigating authorities, or the Department of Local Government, for investigation or other appropriate action. As at the end of the financial year, five protected disclosures have been referred to the Department of Local Government, four to the ICAC, and three to the Audit Office.

FORMAL INVESTIGATIONS

Of the formal protected disclosures made or referred to the Ombudsman to date, eight have been or are the subject of five separate formal inquiries under the *Ombudsman Act*. In relation to two of these inquiries a final report has been issued, and draft reports have so far been issued in relation to two others.

One of the consequences flowing from the recommendations contained in one final report was the issuing of a Premier's Circular No 96/10 (a copy is reproduced in the chapter on Freedom of Information). The circular raised the issue of processing applications under the *FOI Act* and was addressed to all Ministers and Chief Executive officers. The Department of Local Government also issued a circular No (96/32) in similar terms to all councils in NSW. It is pleasing to note these positive outcomes arising from a protected disclosure.

The experience of the Ombudsman to date is that the nature of the issues raised in protected disclosures are such that they often can only be properly addressed through formal hearings, with evidence being taken from witnesses on oath. This is a more time consuming, labour intensive and expensive approach than that normally necessary in formal investigations carried out by the office in relation to non-protected disclosure matters. Such investigations normally focus on the assessment of records held

by public officials or public authorities, plus written demands for information and written replies from public officials and public authorities.

At the end of the 1995/96 financial year, the formal inquiries that have been or are in the process of being carried out into protected disclosures have involved over 16 days of hearings and the taking of sworn testimony from over 34 witnesses.

PROTECTION OF WITNESSES AND WHISTLEBLOWERS

Probably the major area of difficulty for the office in dealing with protected disclosures made or referred to the Ombudsman has involved the protection of the whistleblowers (or persons otherwise associated with such disclosures) against detrimental action.

The potential for detrimental action has been found to arise in two separate circumstances:

1. Where the identity of the whistleblower is known to the public authority or public official(s) concerned either because:

- the whistleblower has made little attempt to conceal his or her actions, intention or identity; or

- the identity of the whistleblower has had to be disclosed to enable the disclosure to be investigated or for one of the other reasons set out in section 22 of the Act.

2. Where the identity of the whistleblower is unknown to the public authority or public official(s) concerned either because:

- the disclosure was anonymous; or

- information identifying the whistleblower has not been revealed but assumptions (not necessarily correct) have been made as to the identity of the person(s) most likely to have made the disclosure.

The amendment to clause 12 of Schedule 1 to the *Ombudsman Act*, which provides an exemption to the excluded conduct set out in that clause, was drafted in the light of both possibilities referred to above.

A recent amendment to section 37 of the *Ombudsman Act* makes it a criminal offence to take

Ombudsman, ICAC and Department of Local Government staff and representatives of other government agencies participating in the Protected Disclosures Workshop that was held this year at the Darling Harbour Convention Centre.

reprisal action against a person because they made a complaint or gave evidence to the Ombudsman or are assisting the Ombudsman. It is also a criminal offence for an employer to dismiss an employee or prejudice an employee in his or her employment because the employee assisted or appeared as a witness before the Ombudsman. Where an employee is able to show that they have been dismissed or prejudiced in employment, the onus of proof is reversed, so the employer must prove that the employee was dismissed or prejudiced for some reason other than because the employee assisted or appeared before the Ombudsman. An equivalent amendment has been incorporated into the *ICAC Act*.

It is the view of this office that the protection of legitimate/*bona fide* whistleblowers is vital for the effective implementation of the *Protected Disclosures Act*. It is also the view of this office that the Act alone, as currently drafted, provides insufficient protection for whistleblowers in practice. Effective protection is therefore a management obligation.

The starting point for the Ombudsman has been an assumption that good administrative practice will generally dictate that Chief Executive Officers and other senior public officials are responsible to ensure that legitimate/*bona fide* whistleblowers are protected from both direct and indirect detrimental action.

Options for administrative action designed to ensure adequate protection for whistleblowers, would include such approaches as:

Internal reporting systems

1. Adopting an internal reporting policy and implementing internal reporting system which emphasises:

- the authority's view that corrupt conduct, maladministration, and serious and substantial waste of public money will not be tolerated;
- the authority's support for whistleblowers and the making of disclosures;
- the procedures to be followed by responsible staff of the authority on receipt of disclosures to ensure that they are dealt with appropriately and quickly;
- the obligations on staff who receive disclosures, eg the importance of:
    a. protecting/maintaining the confidentiality of the whistleblower's identity;
    b. dealing with the disclosure impartially; and
    c. actively protecting the whistleblower from reprisals;
- providing avenues for internal disclosures to be made discreetly and privately.

2. Adequately training all staff with roles under the internal reporting system to ensure they are fully aware of their responsibilities under the internal reporting system.

Assessment and investigation

3. Ensuring that the assessment and investigation of disclosures is done:

- fully competently and quickly;
- impartially and fairly (in relation to the agency, the whistleblower and the person the subject of the disclosure); and
- reasonably and discreetly.

Confidentiality

4. Ensuring confidentiality (the primary protection for whistleblowers) by emphasising the need for discretion on the part of:

- the authority;
- all relevant officers of the authority with responsibilities either under an internal reporting system or for investigating or taking any other action on a disclosure; and
- the whistleblower.

5. Informing the whistleblower prior to disclosing his or her identity where this is necessary under any of the grounds set out in section 22 of the Act.

6. Taking no action or discontinuing an investigation, or a line of investigation, where it is clear

that the potential for the identity of the whistleblower to become known, and serious detrimental action to result, far outweighs any likely beneficial outcome should that investigation, or line of investigation, be undertaken or continued.

Mentors

7. Nominating a relatively senior person within the authority as a "mentor" who is responsible to:

- provide moral support and positive reinforcement to the whistleblower as to the propriety of his/her actions; and
- respond appropriately to any concerns raised by the whistleblower.

Managerial responsibilities

8. Placing an obligation (either in general or in relation to specific persons) on supervisors and other persons in management positions to support whistleblowers and to protect them from victimisation, harassment or any other form of reprisal.

9. Where a protected disclosure involves the conduct of other staff in a workplace, identifying the whistleblower (after obtaining the prior consent of the whistleblower) to an appropriate superior (or the CEO of the authority if the disclosure is made to an investigating authority), requesting or directing that adequate steps are taken to protect the whistleblower from victimisation, harassment or any other form of reprisal.

10. Including a standard provision in contracts for all senior staff where they are employed on the basis of a performance based contract (for example members of Chief Executive Service and senior staff of councils) requiring these officers to ensure that procedures for dealing with protected disclosures are implemented and fostered within their organisation and that support is available to staff who have made, or intend to make, a protected disclosure.

11. Performance reviews of persons employed on performance based contracts should include an assessment of the extent to which these officers have met their contractual obligations in relation to protected disclosures.

Instructions to staff

12. Issuing instructions to staff (either in general or in relation to a specific persons) to abstain from any activity that is or could be perceived to be victimisation or harassment of whistleblowers.

13. Including an appropriate statements in the authorities code of conduct and related policy documents concerning:

- the rights and obligation of staff who receive disclosures or make a disclosure;
- the importance of the protected disclosure legislation to the ethical framework and values of the organisation;
- examples of situations which may arise when a protected disclosure is made and the principles which should be adhered to in such circumstances;
- the obligation on all staff (including managers) to avoid any action that is or could be perceived to be victimisation, harassment or any other form of reprisal; and
- the obligation on managers to take positive steps to protect whistleblowers from actions that are or could be percieved as victimisation, harassment or any other form of reprisal.

Cultural change

14. Taking steps to effect cultural change within the organisation to create an environment where staff are confident that if they make disclosures:

- their disclosures will be dealt with appropriately; and
- they will be adequately protected.

Information as to rights

15. Directly and personally informing the person(s) whose conduct is the subject of a protected disclosure that the (unidentified) whistleblower has the right to take legal action or to complain to management (or the ICAC/DLG/etc) in respect of any detrimental action

GRANT POULTON - PROJECTS OFFICER *Grant's academic history includes a Bachelor of Laws and a Bachelor of Arts from the University of Auckland, and a Masters of Laws from the London School of Economics. He is currently studying for a Masters in Policy Studies at the University of NSW. Prior to joining the office, Grant worked in commercial legal practise as a litigation specialist for over six years in Sydney, the UK and New Zealand - mainly in the areas of family, industrial and insolvency law. In New Zealand, where he was born, he worked in the aviation industry in aircraft and air traffic control accident and incident investigations. He has been involved in large scale fraud and insolvency investigations and taught law in the UK and NZ.*

taken substantially in reprisal for the making of the protected disclosure.

16. Informing whistleblowers that they have the right to take legal action or to complain to management (or the ICAC/DLG/etc) in respect of detrimental action taken by the public authority or public officials substantially in reprisal for the making of their protected disclosure.

CONCLUSION

The *Protected Disclosures Act* marks an important statement of legislative intention. It needs amendment to strengthen the protections afforded whistleblowers. However, our experience to date suggests that many public authorities and officials are not suitably committed or prepared to deal properly with disclosures. We suspect that this lack of commitment and preparedness will cause many unnecessary difficulties for whistleblowers and result in significant work for the Ombudsman. The office will be focusing on prevention work as we expect our resources to be under pressure in handling the increased workload.

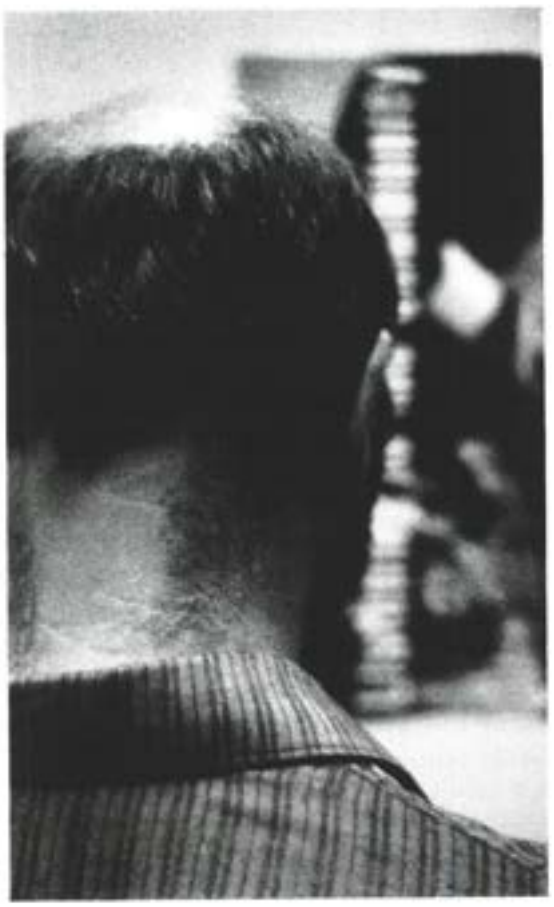
POSTSCRIPT

Since writing the above, the Joint Parliamentary Committee has released its report on the review of the Act. The principal recommendations and highlights in the report are:

- refinements to the scheme of the Act as opposed to radical change;
- recommendations aimed at ensuring that members of the Chief Executive and Senior Executive Services fully appreciate the relevance of the Act to the effective management of their organisations;
- recommendations with the objective of creating a management environment in which internal reporting systems and support structures provide mechanisms for the proper investigation of protected disclosures;
- the establishment of a Protected Disclosures Unit (PDU) within the office of the Ombudsman to monitor the investigation of protected disclosures and provide advice to public officials wishing to make disclosures;
- the collection by public authorities and investigating authorities of statistical data on protected disclosures so as to develop a comprehensive body of qualitative information which can be used for subsequent reviews of the Act; and
- the PDU to act as the central coodinator of such statistics and publish an annual report on the operations of the Act.

The Committee's report on the Act marks a useful step towards improving the scope and operation of the protections afforded whistleblowers. The Committee is to be congratulated on its thoughtful and wide ranging report.

WITNESS PROTECTION



WITNESS PROTECTION

A significant development in the Ombudsman's jurisdiction was created by the *Witness Protection Act 1995* which began operation on 18 April 1996. For the first time the Ombudsman has been given a determinative role rather than a recommendatory role in her review of administrative action.

The Act provides for the safety of Crown witnesses and their families. The Commissioner of Police is charged with responsibility for assessing people for inclusion in the program and providing protection to the witnesses on the program. The Act also empowers the Commissioner to remove witnesses from the program under certain circumstances.

There are three distinct roles for the Ombudsman under the *Witness Protection Act*:

1. Determining appeals under section 6(4) against a decision of the Commissioner to not include a person in the witness protection program.

2. Determining appeals under section 12(5) against a decision of the Commissioner to terminate the protection and assistance given to a person under the witness protection program.

3. Investigating complaints by persons about the conduct of the Commissioner or member of the Police Service concerning matters covered by the Memorandum of Understanding proposed or signed by them under the witness protection program.

The Ombudsman also more generally may deal with complaints made under the *Police Services Act* alleging misconduct on the part of police officers relating directly or indirectly to the management of witnesses under the program.

The appeals under sections 6(4) and 12(5) of the Act are so called "de novo" hearings, ie the Ombudsman stands in the shoes of the Commissioner and is empowered to determine whether a person should in fact be accepted into or removed from the program.

This new role provides a number of challenges. The Act provides that the Ombudsman must determine appeals within 72 hours. This presents significant logistical problems given the need to examine confidential police records, provide the appellant and the Commissioner with the opportunity to be heard, and gather and assess all other relevant information that may be necessary. Stringent security is also required in relation to all information concerning the appeals and complaints, and the conduct of the appeals and investigations.

Additional funds were made available to the Ombudsman to engage specialist staff to assist in carrying out these responsibilities and to carry out capital works associated with providing secure accommodation for the unit.

At the time of writing, no formal appeals have yet been made although complaints relating to the program have been dealt with. At all times the Ombudsman has expected the substantial work of the unit to come from complaints about the operation of the program rather than formal appeals. Complaints tend to deal with issues such as the quality and nature of protection offered to witnesses and disputes between witnesses and their case officers. Given the security implications of what at times can be volatile disputes between witnesses and their protectors, the Ombudsman's approach to these matters is to attempt to actively conciliate such complaints wherever possible.

CLIENT SERVICES

CLIENT SERVICES

ACCESS AND AWARENESS

The Access and Awareness Plan of the Ombudsman's office is currently under review. A primary aim of this review is to come up with clear and achievable outcomes. Although strategies will be developed to improve the services we provide to all sectors of the community, specific groups have been targeted for the coming year. One of the main reasons for this has been the increase in funding for 1996/97 which has been earmarked to improve our services to youth and indigenous people. We will also be targeting people from culturally diverse backgrounds, in line with the review of Government services to ethnic communities.

Resource and staffing restrictions prevent us from being able to focus on all disadvantaged groups at the one time and achieve substantial improvements to our services. By focusing on a small number of groups, we hope to achieve measurable and permanent outcomes in these areas. However it is worth mentioning that other strategies, such as our country outreach program and regular visits to prisons and juvenile justice centres, will be maintained ensuring that all groups have a satisfactory degree of access to the office.

Each year there will be a new focus for our Access and Awareness Plan so that over time, the specific needs of all disadvantaged groups identified in our Plan will be properly addressed.

Indigenous people

In last year's annual report we explained that complaints to the Ombudsman from indigenous people regularly involve a number of government agencies. Often these agencies are not within our jurisdiction, and in such cases we try to assist by providing a referral service.

Since the introduction of our new complaints monitoring system we are able to more accurately record whether a complainant is of an indigenous background. This will assist us in the future to assess whether indigenous people are using our services, and if not, how we can improve our service to meet the needs of indigenous people.

Of course, we only know of a person's indigenous status if this is identified by the complainant. It is possible that more indigenous people write to us than we are aware, where this status is not identified.

This year, we received very few complaints about authorities from people who identified themselves to us as indigenous. Of these complaints about authorities (apart from police, correctional centres and juvenile justice centres), we received more complaints outside our jurisdiction than within our jurisdiction.

As mentioned above, we will be reviewing our access and awareness program in the coming year. This will include examining ways in which we can improve awareness of our role amongst indigenous communities, and access to our services by indigenous communities.

Funding provided by the Government has enabled the office to establish an Aboriginal Complaints Unit in the Police Team. Specific strategies for the unit are outlined in the Ombudsman's Report and in further detail in the chapter on Police.

People from culturally diverse backgrounds

Our latest survey results show that complaints to the office by people from non-English speaking background have increased by 20% over the past two years. In the past financial year, a number of strategies were implemented to make the office more accessible to people from culturally diverse backgrounds.

General information brochures on the functions of the office were translated into nine different languages and distributed to key community groups late last year. The office is currently in the process of updating our database of ethnic community groups throughout the State. Following this, a more extensive mailout to community groups will occur.

A number of strategies with the media have also been developed. Key ethnic media in the State now receive all media releases faxed out from the office, along with mainstream media outlets. Contact has been made with a number of ethnic media for community announcements about the role and function of the Ombudsman.

The office also engages interpreters and translators for any complainant who may require these services. All costs involved are met by the Ombudsman's office. This has been an ongoing policy of the office for a number of years.

The Government is currently reviewing the direction of ethnic affairs in NSW including reporting requirements. This review may impact upon our current program and current strategies may need to adjust accordingly.

Youth

During the year, the office continued to visit juvenile justice centres throughout the State. The majority of these centres are visited at least twice a year. This is consistent with previous years and is part of an ongoing strategy to improve access to this office by young people in detention.

A major report into juvenile justice centres in NSW is currently being prepared by the office (for details refer to the chapter on Public Authorities). This report was commissioned by the Minister for Community Services and is due to be released later this year. The report will make a number of significant recommendations to improve juvenile justice in the State. We anticipate the report will have positive long term ramifications for juveniles in detention.

The allocation of additional funding in 1996/97 will enable the Ombudsman to be more proactive in relation to youth issues (for details refer to the Ombudsman's report under Children). A youth strategy will be developed, including promotional material specifically aimed at youth and an increase in the level of liaison between this office and peak youth organisations.

Country Outreach

This year our country outreach program included visits to major regional centres including Albury, Wagga Wagga, Dubbo, Cowra, Bathurst, Coffs Harbour and Armidale. Bimonthly visits to Newcastle are also part of the program.

Our outreach program includes 'setting up shop' to take complaints, as well as presenting seminars to community groups, local councils, government departments and authorities. We also set up a stall at the Royal Agricultural Show in Bathurst - the biggest country show in NSW outside of the Sydney, Newcastle and Canberra. Our attendance received good media coverage and many people stopped at our stall to pick up pamphlets or obtain advice.

Consideration will be given to having information stalls at other country shows to improve access to the Ombudsman for people in rural areas.

Notice of our visits is publicised through the local media and through open invitations to community organisations and public authorities to attend our seminars. In response to feedback from members of Parliament, we now also notify local MPs of our visits so they can refer people to our staff.

NSW Ombudsman Irene Moss speaks to high school students about her role and the work of her office

People with disabilities

Since April 1995, the office has had in place a Disability Strategic Plan as required by legislation. Details of our strategies and their implementation are outlined in Appendix Seven.

Briefly, the main developments in this area for the past year have been the installation of a TTY number for the office, the recording and distribution of our new brochures on audio tape through the Royal Blind Society, and input into the development of the Whole of Government Framework on Disability. The Whole of Government Framework will focus agencies to achieve consistent outcomes to improve client services for this target group. As well as being a catalyst for us to review how we provide our services, the Whole of Government Framework will also improve the way other agencies cater for their clients. This is consistent with our Complaint Handling in the Public Sector (CHIPS) Program.

In the coming year, we will be reviewing our specific goals and objectives in our Disability Strategic Plan to further improve our service provision to people with a disability.

OUR INQUIRIES SECTION

The Inquiry Section of the office is the first point of contact for people seeking information or making a complaint. Throughout 1995/96 the section handled an increasing number of telephone inquiries. Last year's figure of 14,222 shows an increase of 10% over the previous year, continuing the trend set the year before. This figure includes face-to-face interviews with 452 members of the public who came in to the office to lodge their complaints.

The section functions on a staff of three. Inquiry officers assess complaints and determine how best to assist. If it is not appropriate to invite a formal complaint to the Ombudsman at that point the complainant might be advised to take the matter up with the authority concerned and our *Some tips for making a complaint* brochure will be offered. We implement the Ombudsman's Guarantee of Service whereby, when we cannot directly intervene in a matter, we will suggest another way to help solve the problem. We also keep an up to date supply of information on the functions of other organisations which we promptly dispatch to those in need. To assist in this we keep in touch with

the jurisdiction and services offered by other investigatory organisations.

Every contact made by a member of the public is entered on our database for statistical and analytical purposes.

We arrange a telephone interpreter service for callers where necessary and in some circumstances will provide an interpreter in person for an interview. If we receive a complaint in a language other than English the Section arranges all translations for the office.

As well as providing telephone advice and information to the public, inquiry officers participate in prison visits and are also involved in community awareness trips to other areas of the State (including our bimonthly visits to Newcastle).

By having access to the Complaint Management System (database) inquiry officers can and do respond to queries on matters currently before the Ombudsman where the investigation officer is not available. On top of that, inquiry officers also handle complaint files, making inquiries of public authorities and responding in writing to the complainants.

Consistent with our customer service focus, rather than put callers on hold, overflow calls are distributed to complaint officers and assistant investigation officers.

Calls cover a huge range of issues, some of which are extraordinary, some mundane and others quite humorous. To give a flavour to the Inquiries Section, following is a sample of some of the sorts of inquiries dealt with.

Case study one

The Royal Commission into the NSW Police Service has aroused old resentments in some people about perceived injustices. One of the more curious complaints this year, from an older gentleman, related to an incident that occurred in 1962 involving the police. He said it still causes him loss of sleep. He and two comrades were involved in various robberies. There was one particular heist however in which he was not directly involved. His mates came round to his house to show him the haul of loot and he volunteered to get rid of it for them. Later when questioned by police he denied involvement.

The police explained that his mates had businesses and therefore couldn't afford to go to gaol. If 'Jimmy would take the rap' he would be well looked after and on that understanding he did and spent two years in gaol. After the trial his mate handed him ten pounds (sterling) and said *"I'll never forget you"*. He received no further money or favours. The injustice of it all is still haunting him, particularly as his friends' businesses are going well.

Case study two

It is rewarding to know that by providing useful information we empower people to resolve problems themselves. An elderly widow with driveway drainage problems found the local council unwilling to assist. On receipt of our brochure on how to make a complaint she again tackled the council with very positive results. She wrote in to express her thanks and said that our advice had given her backbone - where she was bent over she is now straight.

Case study three

A gentleman whose sewer pipes were blocked by tree roots growing on council property came in to complain about the refusal of his local council to accept liability. He couldn't afford to have the damage repaired by a plumber and wasn't able to undertake even temporary measures himself. An inquiry officer had a number of discussions with council about the problem, eventuating in council undertaking repair work. The gentleman wrote in to say that although it was two months before the work commenced he was very happy with the outcome and believed it only came about as a result of the intervention of this office.

These cases took time to resolve, but results come fast too.

Case study four

At 2.45pm one afternoon a young man telephoned the office complaining about the Roads and Traffic Authority cancelling his licence for failure to pay a parking fine. He advised that the fine was due for payment on the 3rd of the month but had paid it on the 1st at the RTA's Clarence Street office and had a receipt to prove that he had paid it. Our telephone inquiries with the RTA found that the

payment which the young man had made on the 1st had been credited to another person. The RTA apologised for the mistake and reinstated the complainant's licence within an hour of our call to them.

Case study five

An elderly person contacted this office to complaint about the Mt Druitt branch of the Department of Housing for failure to reimburse her for repairs she had done to her fence. The original fence was in a bad state. Once the work had been completed she attended the local branch office of the Housing Department and submitted her claim for reimbursement of half the total cost for having the fence repaired. Some months later she was advised that the department would not reimburse her because she had not consulted with it prior to having the fence repaired. When this office made telephone inquiries with the branch office we were told that the advice given to the complainant was incorrect. The department would pay for half of the costs incurred provided she sent another letter with copies of receipts. The complainant followed this advice and three months later after many calls to the branch office the complainant was reimbursed.

PUBLIC RELATIONS

The Public Relations Section continues to provide a range of services including coordination and resourcing of access and awareness, production and distribution of publications and media liaison. The key outcomes for 1995/96 were:

- production of a new range of brochures
- review of access and awareness strategies
- increase in the number of publications issued
- review of media strategy

In 1996/97 the section will:

- further refine access and awareness strategies to target disadvantaged groups
- develop and issue electoral officer kits
- maintain office profile through publications and media liaison
- increase profile among alternative media

Brochures

A new series of brochures was produced by the office, including an updated brochure on the general functions of the Ombudsman, and specialist brochures on police, local councils, prisons and appeals against freedom of information decisions.

A pamphlet was also produced offering a step by step guide on how to make a complaint. *Some tips for making a complaint* also listed the appropriate bodies to go to in both the public and private sector if the complaint is not handled satisfactorily. Input was sought from various complaint handling bodies as to the content and style of the brochure and incorporated where possible. The result was an easy to follow guide for anyone wanting to make a complaint, and many of the bodies listed in it have made bulk purchases of the brochure.

All the brochures were distributed through a direct mail out targeting approximately 2,500 groups throughout NSW. These included Aboriginal groups, general and ethnic community groups, juvenile justice centres, prisons, courts, legal aid centres, local councils, health centres, universities, libraries, police stations, electoral offices and government departments.

The response to the new brochures has been overwhelming and a reprint had to be ordered within days of their initial distribution. Orders are continuing to come in for further copies. It is hoped the brochures will further increase the public's awareness of the office.

Publications

Guidelines series

The guidelines series produced by the office last year has continued to sell well. The series includes guidelines on good conduct and administrative practice for local councils and public authorities, FOI policies and practices, the interpretation and implementation of the *Protected Disclosures Act*, and complaint handling.

LISA DU - ASSISTANT INVESTIGATION OFFICER Lisa began her studies with the English Department at Shanghai Teacher's College, going on to do a Masters in Economics at Fudan University, also in Shanghai, and a Graduate Diploma Course in Economics and Econometrics at Sydney University. After finishing her Masters in Economics in China, Lisa lectured and conducted various research projects at Shanghai University of Finance and Economics for five years before moving to Australia. In Sydney, Lisa worked for two of largest Chinese dailies as a reporter and translator, and became an accredited Translator in 1990. Since then, Lisa has been a panel translator in Mandarin and English with the Ethnic Affairs Commission. From 1990 to 1996, Lisa worked as an Ethnic Community Liaison Officer for the NSW Police Service. She joined the Police Team earlier this year and has been active in implementing our Access and Awareness Plan.

Good Conduct and Administrative Practice: Guidelines for Local Councils was updated with a second edition, and subsequently distributed to all councils which had purchased our first edition. A number of updates are also planned for the coming year, including a significantly expanded second edition of the *Ombudsman's Protected Disclosures Guidelines*, and an update of the *Ombudsman's FOI Policies and Guidelines*.

Three new publications in the series are planned, two for later this year. These first two publications will summarise the key issues in the *Good Conduct and Administrative Practice Guidelines*, to enable mass distribution to all public officials in the State. The first publication, *Principles of Administrative Good Conduct*, will focus on the basic principles of good conduct in public administration for distribution by all State and local government bodies to their staff (see Appendix Nine for a draft copy). The second publication, *Administrative Good Conduct*, will expand on these principles for distribution to the managers of all NSW public sector agencies.

Each guide is intended to provide, in one easily accessible source: general guidance on the standards of conduct expected by the NSW Ombudsman; assistance to public officials in the performance of their official duties; and assistance to public sector agencies in the training of staff and the development of codes of conduct.

The third publication, expected to be published early next year, will expand the good conduct publications to cover police. *Good Conduct and*

Administrative Practice for Police will condense some of the key points observed by this office in its 20 year history of oversighting and investigating complaints about the NSW Police Service, and offer guidelines as to the standard of conduct expected by the Ombudsman from police officers at all levels.

Special Reports to Parliament

In the past year we have continued to produce special reports to Parliament on issues of concern to the Ombudsman. An updated list of special reports to Parliament is detailed in Appendix Six. A review of the cost of printing the reports has reduced their cost and the office is anticipating an even greater number of reports to be tabled in Parliament in the coming year.

Media inquiries

A high proportion of our complainants hear about the Ombudsman through the media. As such, it is essential that we establish and maintain a good working relationship with the media.

The information we provide to the media is limited by secrecy provision of the Ombudsman Act and the need to maintain confidentiality in relation to investigations. Subject to this limitation, 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.

During the past year, the Ombudsman sent out over 30 media releases. The number and range of media outlets to which these releases are sent has also been significantly expanded to include community and ethnic media. The media officer responded to over 120 media inquiries by journalists and articles by the Ombudsman appeared in the Sydney Morning Herald and Al-Dabboor.

COMPLAINT HANDLING IN THE PUBLIC SECTOR

Best practice complaint handling is an idea whose time has come - particularly in the public sector in NSW. Some years ago, under pressure to decrease the volume of complaints we received, this office began to encourage and facilitate better complaint handling by public authorities. This program involved both training in best practice complaint handling, and the publication of *Guidelines for Effective Complaint Management*.

Over the last 12 months, staff from the office have presented a number of workshops, both in Sydney and regional areas of NSW, to State government public servants and staff of local councils on *Understanding Complaint Management*. The workshops are targeted at middle and senior managers responsible for customer service and complaint resolution initiatives.

The level of interest in both levels of government has been strong. Three agencies participating in the workshops asked the office to prepare and present specialised in-house training for their staff. These ranged from frontline complaint handling skills to designing a complaint management system.

Following a visit to Sydney from a consultant with the Western Australian Public Sector Management Office, the Management Improvement Branch of that office engaged us to travel to Perth and present a workshop on *Best Practice Complaint Management* to representatives of peak government organisations in Western Australia.

During the past year we revised our *Guidelines on Effective Complaint Management* to reflect current trends in the area, and the use of complaint data to improve the system and operation of au-

thorities. These guidelines were distributed widely throughout the NSW public sector by the Premier's Department as a resource to support Premiers Memorandum No. 95-29 on Frontline Complaint Handling. The guidelines were also distributed to a conference of public sector administrators in Hong Kong in June where the Ombudsman was the guest speaker. (All expenses for the trip were paid for by the Office of the Commissioner for Administrative Complaints in Hong Kong.)

Investigation Techniques Conference

A major initiative of the Complaint Handling in the Public Sector (CHIPS) program this year was the organising of a two day national conference on investigation techniques. The conference was held 25-26 June 1996 and was co-sponsored by the Independent Commission Against Corruption and the Royal Institute of Public Administration. Over 300 people attended from all over Australia as well as participants from New Zealand, Papua-New Guinea and Hong Kong. The conference was overbooked and a further 100 people had to be turned away due to the inability to obtain a larger venue.

The conference ran three concurrent streams. One was aimed at experienced investigators interested in updating skills and learning about the latest technological developments to assist investigations and litigation. The second stream focused on those involved in administrative inquiries and non-criminal investigations. Topical issues in investigation management and operations were included in both streams. The third stream was an integrated introductory course on the principles of investigation.

The conference showcased 34 presenters from organisations such as ABC's Four Corners program, Australian Competition & Consumer Commission, Australian Federal Police, Australian Institute of Police Management, Australia Post , Australian Securities Commission, Charles Sturt University, Commonwealth Department of Public Prosecution, Commonwealth Ombudsman, Independent Commission Against Corruption, National Crime Authority, Northern Territory Ombudsman, NSW Bar Association, NSW Ombudsman, NSW Police Service, NSW Solicitor General, Office of State Revenue Victoria, Queensland Criminal Justice Commission, University of Sydney, Whistleblowers Australia as well as some private forensic consultants.

Due to the success of the conference, the three sponsoring organisations are planning to hold a follow up conference in a year's time.

ALTERNATIVE DISPUTE RESOLUTION

The mediation pilot project, reported on in our last annual report, has continued its success. Changes to the *Ombudsman Act* came into effect on 12 December 1994, and gave us the power to attempt to resolve complaints by way of conciliation or mediation. Mediation is voluntary, and evidence of things said during a formal mediation under the Act is not admissible in any later investigation by our office or in any other proceedings.

As our pilot project became a more formal area of dispute resolution within the office, mediations that were undertaken moved into more complex areas (see case notes below). Some of the issues raised in current mediations and a few of the creative options discovered at the sessions are worth outlining here.

Disputes over development issues such as the granting of building approvals and the need to obtain environmental impact statements, requests under the *Freedom of Information Act*, decisions relating to the granting of funds to charitable organisations, extraction of sand and gravel from creek beds, failure to administer complaint handling protocol or act on customer complaints, maladministration, and disputes about compensation and payments are among some of the many issues dealt with by mediations.

Some of the most creative outcomes arise from mediations where more than one government department is present. It can then be possible for two departments to work together to craft an agreement which benefits everyone, including the complainant, and which goes some way towards redressing the complainant's concern.

One mediation involving two departments was resolved by each contributing something to the complainant. One department agreed to consider a special application for funding the set

up costs of a student housing project on the basis that the other would consider making available the necessary housing for the project. Following the successful outcome, one of the departments asked our office to mediate in another long standing dispute in which it was involved. We mediated this dispute as an independent agency, on a fee paying basis.

Agencies are increasingly looking toward resolution of complaints, as well as investigation. In the police area, conciliations account for about 21% of complaints about police, and we have found that conciliation generally results in a high level of complainant satisfaction (over 80%).

Investigative staff who are trained in mediation find dispute resolution skills useful in other areas. Whether it be facilitating a meeting between parties or simply using particular skills when communicating, staff agree that the model and the associated training has much to

NATASHA SERVENTY - ALTERNATIVE DISPUTE RESOLUTION (ADR) COORDINATOR Natasha has a legal background, and is a former director of the Arts Law Centre of Australia. She became interested in alternative dispute resolution after doing a course on commercial mediation. Natasha first came to the office in April 1994 as a consultant to help set up the new mediation scheme and to assist in developing the Complaint Handling in the Public Sector (CHIPS) project. She now works part-time coordinating both programs. Although Natasha came to us as an experienced mediator and trainer in mediation and negotiation, her knowledge of complaint handling has been developed within this office, and is focused very much on the public sector.

offer. Throughout the year, our panel of mediators take part in advanced training in the form of specialist skills and role play simulations to keep their skills up to date.

Mediation and other forms of alternative conflict resolution are catching on for a lot of other Ombudsman organisations. Following a major conference on investigation techniques held in Sydney in June, staff of Ombudsmen organisations from the Commonwealth, Queensland, Tasmania, South Australia and the Northern Territory met at our office to discuss, among other things, the use of mediation and alternative dispute resolution in dealing with complaints. In Hong Kong, the Commissioner for Administrative Complaints intends setting up a small ADR unit, modelled on our own.

Mediation case notes

There were some fascinating cases this year for the growing band of in house mediators. In particular, freedom of information requests have provided fertile grounds for resolution.

Case study one

One such request was from a Sydney journalist for a listing of all high schools' Tertiary Entrance Rank (TER), concerned the NSW Board of Studies. If provided, the TER ranking could have been published in a way which compared schools. Most of those involved in tertiary education were concerned that broad generalisations about schools would be drawn from this information. It was felt that a 'league table' such as is currently published in the United Kingdom, might be damaging to schools and their students, particularly those about to face the Higher School Certificate who attended a lower ranked school.

The Ombudsman was asked to make a determination about whether or not the list ought to be provided under the *Freedom of Information Act*. We decided that the parties ought to be offered the opportunity to mediate and resolve the dispute by agreement, rather than run the risk of a determination which would have met the needs of only one party.

After a lengthy mediation between the parties, and some additional representatives of important groups in the tertiary education area, the matter was resolved. Certain information was provided, and certain requests were dropped. There were also additional conditions surrounded publication, so as to protect privacy and minimise the impact on students about to sit for their HSC, were agreed to between the parties.

Both parties were able to reach a decision acceptable to them, rather than having a third party make the determination, which would not necessarily end the dispute as a further appeal to the District Court was likely.

Case study two

Another complex mediation involved the Department of School Education and a group of parents and citizens in a regional area. The complaint involved a vast number of allegations over a lengthy time period. As is sometimes the case, the issues as put forward for the Ombudsman to consider, were not necessarily the most important issues to the complainants and their community.

To have investigated even a representative sample of the complaints would have been a lengthy process for our office. The issues were wide ranging and concerned a local high school as well as the interpretation and adequacy of departmental policies.

In this instance the Department of School Education itself suggested that the matter was one amenable to mediation. After careful consideration of our files, we agreed and offered both sides the opportunity to mediate within our program. The process was agreed to and we held a number of preliminary meetings with all concerned parties to determine the most important issues. After a lengthy preparation and intake period, two mediators from our office travelled to the regional area concerned. The mediation took place over three days. Some of the issues canvassed include student welfare, academic matters, parents and community, staffing, communication, the role of the Teachers' Federation and departmental policy. A number of positive outcomes were achieved. It is worth noting here that some of them could not have been achieved through the formal investigation process, or would not even have been part of any formal investigation. One of the strengths of mediation is that discussion can be more wide ranging, over differing issues than is possible within a formal investigation

process. All parties agreed to move forward and work together in the future, and a consultative program was arranged covering a number of issues and disputes. Other matters were not able to be resolved, particularly policy matters which affected people not present at the mediation. Nonetheless, it was generally agreed that more was achieved by the process of working together than could have been achieved through other avenues.

The Ombudsman will continue to offer mediation as an option for resolving selected complaints where it is appropriate and cost effective.

DEALING WITH OUR OWN COMPLAINTS

We view complaints about our office as one avenue of useful feedback about whether we are adequately performing the services which fall within our charter. Complaints not only provide information about possible service delivery problems, but also give an insight into the needs and expectations of those who use our service and the criteria they use to judge our performance.

Complaints about our office are investigated by senior staff and responded to as promptly as possible. Where appropriate every effort is made to conciliate the complaint, or where the complaint is found to be unjustified, to provide the complainant with the results of our inquiry and the reasons for our decision.

The types of complaints we received this year included such matters as delay, rudeness, inaccurate information, conflict of interest and alleged leaking of documents. Most complaints were either conciliated or, particularly in the case of the latter matters, found to be unjustified. However, analysis of the complaints received tends to show a lack of understanding of our legislative and procedural requirements and demonstrates a need for the office to more clearly state what we can and cannot do, how we will do it and how long it is likely to take. Strategies are being put in place to address this problem.

CORPORATE SUPPORT

CORPORATE SUPPORT

CORPORATE SUPPORT

The aims of the Corporate Support Area, which comprise personnel services, financial services, public relations, information management and library services are:

- to provide efficient and effective support to the core activities of the office;
- to make the most effective use of resources available to the office;
- to maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment;
- to increase Parliamentary and community awareness of the role, function and services offered by the NSW Ombudsman; and
- to maximise the use of information technology to enhance productivity and the achievement of internal management and accessibility goals of the office.

The role of the Corporate Support Area was reviewed during the year as a result of the Government's decision to reduce corporate service costs throughout the public sector by 10%. The review revealed that our corporate service costs represent 17.45% of the total expenses of the office. The median for public sector agencies of a similar size was 17.09%.

In December 1995 the Treasurer advised the Ombudsman that a $30,000 saving was to be made in corporate services in the year 1996/97. Fortunately for the office, this amount was to be redirected to core business, meaning that the overall budget to the office was not reduced.

A number of strategies have been adopted to ensure that the cost of the corporate service function is reduced while the level of service is maintained. These strategies include restructuring the area, the deletion of a position and a thorough examination of work processes to eliminate inefficient or unnecessary tasks.

PERSONNEL SERVICES

The Personnel Section, consisting of two staff, provides a range of services including recruitment, leave administration, payroll and occupational health and safety. The key outcomes for 1995/96 were:

- the revision of the EEO Management Plan;
- the training of staff in the new case management system and wordprocessing package;
- engagement of Sydney Hospital's OH&S Unit to conduct a workplace audit after the implementation of the new computer system.

In 1996/97 the section will:

- review our OH&S program including evacuation procedures;
- review our performance management system ensuring that all staff have a signed agreement within three months of commencing employment;
- finalise negotiations with staff on improvements to work practices under the Framework Agreement.

Staff

As at 30 June, 1996 we had an effective full time equivalent staff number of 72.30. In addition we had two trainees funded by external bodies.

STAFF LEVELS

a four year comparison

	June 1993	June 1994	June 1995	June 1996
statutory appointments	4	4	4	4
investigative staff	45.6	47.2	52.9	55.2
administrative staff	18.5	17.0	12.8	13.1
total*	68.1	68.2	69.7	72.3
trainees (externally funded)	2	2	2	2

* The above figures do not include staff on leave without pay. The full-time equivalent of and not the actual number of part-time staff are counted.

A budget increase in 1996/97 will enable the Ombudsman to employ an additional nine staff members increasing the number of positions to 81.

Wage movements

During the 1994 reporting year, public sector staff were awarded a 6% salary increase. The increase was to be paid in two instalments. The first instalment of 3% was paid in July 1995. The second instalment was paid in July 1996.

The Statutory and Other Offices Remuneration Tribunal determined a 3% percent increase for the Ombudsman and SES officers. The increase was paid in October 1995.

There were no other exceptional movements in wages, salaries or allowances.

Performance management

Due to the high staff turnover, particularly in the police team, not all staff have negotiated a performance agreement. It is our intention to finalise this matter by the end of December, 1996 with all new staff having an agreement negotiated within three months of entering on duty. All senior executive staff have an agreement.

We will review the performance management system during 1996/97 to ensure that it still meets its objectives.

Training and development

Staff attended a variety of courses throughout the year. Considerable resources were devoted to computer, investigation techniques and management training courses. Staff also attended professional development courses.

The implementation of a PC based computer system with a new database and word processing package meant that nearly all staff needed some computer training. All staff will undergo a word processing and MS windows skills assessment so that further training needs can be identified.

The office organised an Investigation Techniques Conference with the Royal Institute of Public Administration and the Independent Commission Against Corruption, which was attended by 313 people from overseas and Australia. Topics included principles of investigation and issues in investigation, such as trends in procedural fairness. Thirty-four of our staff attended this two day conference.

The office continued to send staff to English Language Skills courses conducted by the Adult Migrant Education Service.

Occupational Health and Safety

Workplace inspections were conducted in February 1996 and June 1996. The June inspection was undertaken by occupational health and safety specialists from Sydney Hospital. A number of issues were raised in their report including the need for a regular review of the setup of workstations to ensure that OH&S requirements are being maintained. The issues raised are being addressed.

One workers compensation claim was received relating to an injury sustained on a journey home.

We plan to review our OH&S program, including evacuation procedures, during the 1996/97 year.

Equal Employment Opportunity (EEO)

During the reporting year we reviewed our EEO program to link it to the corporate planning process. Our aim was to integrate a number of programs that exist for a variety of legislative and administrative purposes thereby reducing duplication of effort and resources. It was also felt that the number of strategies in our EEO management plan should be reduced to ensure that the progam was achievable, results oriented and low maintenance.

In December 1995 the Ombudsman submitted a revised EEO Management Plan to the Director of Equal Opportunity in Public Employment for comment. In her response the Director stated:

> *"The four critical result areas you have developed and the implementation strategies which you have put in place are practical and achievable. This office strongly advocates for this integrated approach to human resources management planning. I will recommend the elements of your employment equity program as a model of good practice to other agencies in the NSW Public Sector."*

Our major EEO achievements for the year were:

- increasing the number of staff working under flexible work arrangements;
- development of a strategic EEO program including developing policies on harassment prevention and grievance handling;
- increasing the representation of women at all levels in the organisation;
- 100% response rate to the EEO resurvey; and
- targeting recruitment advertisements ie using alternate publications such as the Koori Mail in addition to mainstream press.

At the time of writing, recruitment action was in progress to fill the Aboriginal Liaison and Complaints Officer position which became vacant in April 1996. This is an identified position for which

REPRESENTATION OF EEO TARGET GROUPS WITHIN LEVELS

	1994/95					1995/96				
	Total staff*	Women		NESB		Total staff*	Women		NESB	
Below Clerical Officer Grade 1	2	1	50%	0	0%	1	1	100%	0	0%
Clerical Officer Grades 1-2	14	13	93%	11	79%	9	9	100%	8	89%
A & C Grades 1-2	2	2	100%	1	50%	3	3	100%	1	33%
A & C Grades 3-5	18	12	67%	5	28%	17	12	71%	6	35%
A & C Grades 6-9	30	13	43%	5	16%	36	19	53%	8	22%
A & C Grades 10-12	6	3	50%	0	0%	12	6	50%	4	33%
Above A & C Grade 12	5	1	20%	1	20%	4	1	25%	1	25%
Total	77	45	58%	23	30%	82	51	62%	28	34%

* includes staff on leave without pay and counts actual part time and not full time equivalent

REPRESENTATION & RECRUITMENT OF ABORIGINAL EMPLOYEES & EMPLOYEES WITH A PHYSICAL DISABILITY

	1994/95					1995/96				
	Total staff	Aboriginal		PWPD*		Total staff	Aboriginal		PWPD*	
Total employees	77	3	4%	11	14%	82	0	0%	10	12%
Recruited in the year	20	3	20%	4	20%	31	0	0%	3	10%

*People with a physical disability

Aboriginality is an essential requirement. In addition, the office was granted funding from 1 July 1996 to establish an Aboriginal Complaints Unit of three staff in our Police Area to deal specifically with complaints by Aboriginal people about the conduct of police. Staff were recruited for this unit after the reporting period and are not included in the above statistics.

EEO initiatives for 1996/97 include:

- review our performance management system;
- improving Aboriginal employment and career development opportunities;
- undertake exit interview for all staff leaving the office.

Industrial relations policies and practices

Framework Document

In August 1995 the NSW Government, the Public Service Association and the Professional Officers Association entered into a consent award which provided for increases in rates of pay for public sector employees. Attached to the award were a number of documents known as the FRAMEWORK which committed the parties to investigating a number of issues and negotiating changes where appropriate with the aim of significantly reforming the public sector.

Issues in the framework document applicable to all public sector agencies include flexible work arrangements, classification and grading, extended hours of service, and customer and client services. In addition, specific issues can be addressed at the local level ie between the Ombudsman and the Workplace Group. Staff have nominated training and development, reorganisation and hours of duty as matters they wish to pursue under the framework.

New awards

No new awards were negotiated.

Part time work

During the year four staff were permanent part-time and five staff requested part-time leave for short periods of time. All applications to work part-time have been approved.

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

Quarterly reviews of sick leave are undertaken. Staff with unsatisfactory sick leave records were counselled in accordance with the public sector sick leave policy.

Staff continued to forfeit unpaid hours throughout the year.

Trainees/apprentices

The office continued to participate in the Careerstart training program. As at the end of June 1996 we were employing one trainee under the Careerstart program which is funded by the Commonwealth Government. The office also participated in the Jobskills Program. As at 30 June 1996, one Jobskills trainee was employed. The office does not employ apprentices.

NUMBER OF CES/SES POSITIONS

SES level old	SES level new	Total at June 30 1995	Total at June 30 1996
Level 8	Band 4 - upper	-	-
Level 7	Band 4 - lower	-	-
Level 6	Band 3 - upper	-	-
Level 5	Band 3 - lower	-	-
Level 4	Band 2 - upper	1	1
Level 3	Band 2 - lower	-	-
Level 2	Band 1 - upper	2	2
Level 1	Band 1 - lower	-	-
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*

Chief and Senior Executive Service

During the year, the grading structure of the Chief and Senior Executive changed. Eight grading levels were collapsed to four. The position of Deputy Ombudsman, previously graded as an SES Level 4 is now graded as an SES Band 2. Both Assistant Ombudsman positions, previously graded as SES Level 2 are now SES Band 1. All three SES officers are remunerated in the upper salary package levels of their respective bands.

The Ombudsman is the only woman appointed to a SES or CEO position. She was the only women occupying such a position in the last reporting period.

Ombudsman's performance statement

The Ombudsman's performance statement appears at the front of this report.

GENERAL MANAGEMENT

Research and Development

The NSW Ombudsman was not involved in any research and development projects.

Overseas travel

The Ombudsman was asked to present the keynote speech at an international conference on complaints management in Hong Kong. This conference was held 11-14 June 1996.

All costs associated with this trip were paid by the Office of the Commissioner for Administrative Complaints in Hong Kong.

Code of Conduct

The Code of Conduct for the office was reviewed during the year and amended to include the need for staff to formally disclose matters which may or could potentially result in conflicts of interest arising out of the performance of their duties with this office. The current code is reproduced in Appendix Ten.

Recycling

Building Management introduced a recycling program during the reporting year. The initial focus was on paper recycling however glass, aluminium and P.E.T. bottles have now been included.

The Minister for Land and Water Conservation issued guidelines in late 1995 on the need to conserve water. Part of the Government's strategy is for agencies to demonstrate that their organisation is using water efficiently. Unfortunately, as the office is only a small tenant in a commercial building, it is impossible to identify our actual level of water usage although staff have been advised of the guidelines and have

ANITA WHITTAKER - MANAGER CORPORATE SUPPORT Anita has worked in the NSW public sector for over 17 years. She started her career at the Art Gallery of NSW, moving on to the State Superannuation Board before joining the office as Personnel Officer in 1985. Anita has been involved in the development of the office's EEO program, the introduction of performance management and the establishment of our OH&S program. In 1993 Anita, along with the then Complaints Manager, was given responsibility for implementing the office restructure. This entailed advertising and recruiting staff for over 40 investigative and administrative positions. With careful planning, the bulk of positions were filled within three months of advertising. In March 1994, Anita was promoted to the position of Manager of Corporate Support which is responsible for the non investigative areas of the office such as Personnel, Accounts and Information Systems. Anita has a Personnel Management Certificate as well as a Bachelor of Commerce degree.

been asked to minimise water usage. The minister's guidelines have been referred to Building Management for information.

PUBLIC RELATIONS

The Public Relations Section, consisting of two staff, is part of the Corporate Support Area. It primarily deals with the public directly and through the media, as well as coordinating our Access and Awareness Plan. The activities in this area are detailed in the chapter on Client Services.

INFORMATION MANAGEMENT AND LIBRARY

The Information Systems Group, consisting of three staff, provides a range of services including records management, computer support and library.

The key outcomes for 1995/96 were:

- implementation of the major works computer project;
- major review of archiving of records;
- commencement of corporate information project..

In 1996/97 the section will:

- finalise the corporate information project;
- investigate/participate in the integration of the police complaint information into a wide area network jointly held by the Ombudsman, Police Integrity Commission and the Police Service;
- focus on continuous improvement of systems.

Introduction of new technology

Considerable progress was made on the upgrade and integration of office computer systems in the year and this progress had a direct impact on the work of the Information Systems Group.

At the outset of this project, the office had a number of small disparate databases and a separate word processing facility. The Complaints Management Information System was implemented in the later part of 1995 to integrate all

of these systems into one with a more modern computer platform.

The core systems were in place by 31 December 1995 and within the budget allocation.

Information Systems Review

In February, 1996 the Ombudsman engaged a consultant to review the Information Systems Group. This purpose of this review was to:

- provide advice on whether the current records management procedures would best enable the group to efficiently and effectively carry out its functions; and
- review the current staffing arrangements and provide advice on whether these or alternative arrangements would best enable the section to efficiently and effectively carry out its functions.

The consultant made a number of recommendations from changing the file covers to standardising work processes and procedures. Most recommendations were adopted by the Ombudsman and are currently being implemented.

Corporate Information Project

A project was commenced in May 1996 to centrally register the key information that the office produces or uses. For example, our library holdings, annual reports and special reports to Parliament, and legal advisings are all retained by the office but no simple and efficient system existed to search this information for specific issues.

The Corporate Information Project aims to centrally register this information on a database. At the time of writing the database had been designed, and legal advisings and special reports to Parliament had been entered on this system. Other information will be progressively included on the database following examination and categorisation of a collection of case reports ranging over several years. The final information collection will incorporate all of the significant work of the office into a simple accessible information store. A valuable research and training tool will result from this work.

FINANCIAL SERVICES

The Finance Section, consisting of three staff, provides a range of services including budgeting, management reporting, accounts payable and purchasing. The key outcomes for 1995/96 were:

- reviewing management reporting and improving the presentation of monthly expenditure reports;
- revising the chart of accounts reducing the number of cost centres and accounts;
- revising accounting policy on physical assets.

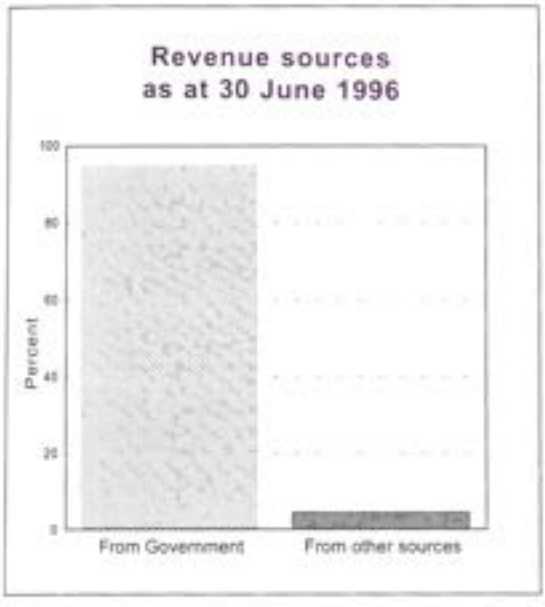
In 1996/97 the section will:

- develop an accounting manual;
- computerise purchase orders and accounts receivable;
- review internal audit program.

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, bank interest, undertaking special inquiries on a user pays basis and conducting training courses for public sector agencies. A breakup of revenue generated, including capital funding is:

GOVERNMENT	
Appropriation	$4,553,000
Acceptance of superannuation & long service leave	$350,283
Capital funding	$298,000
FROM OTHER SOURCES	
Special inquiries	$102,427
Publication sales	$20,834
Bank interest	$19,627
Trainee subsidy	$13,565
Miscellaneous	$91,737

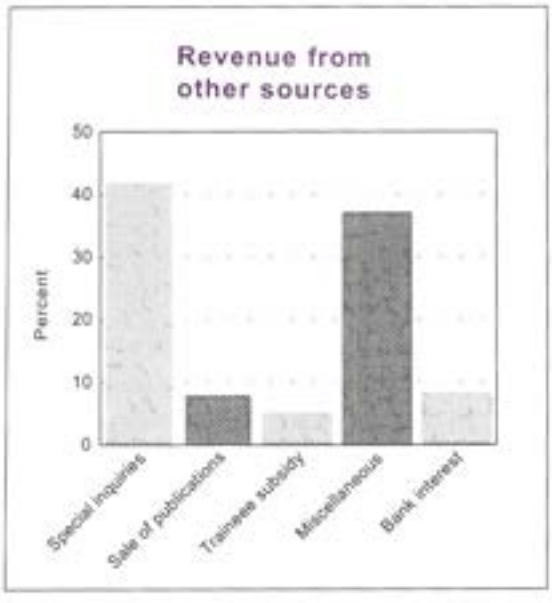


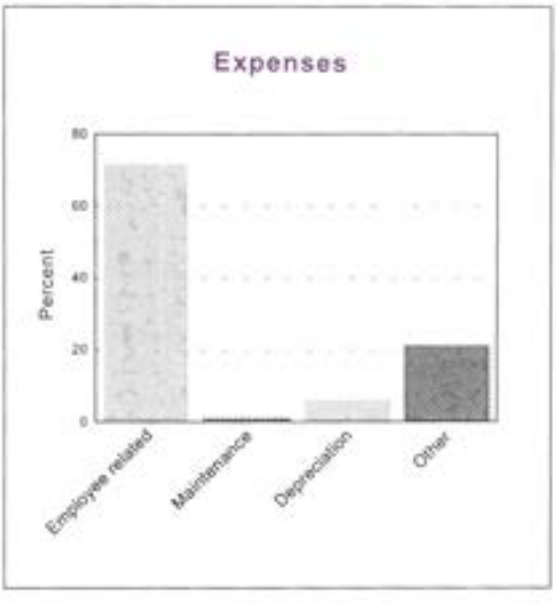
Expenses

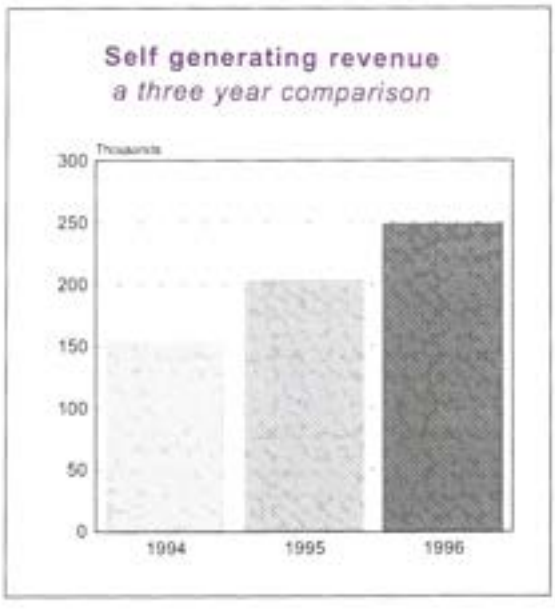
Most of our revenue is spent on employee expenses. These include salaries, superannuation entitlements, long service leave, payroll tax etc. Last year we spent more than $3.9 million on employee expenses.

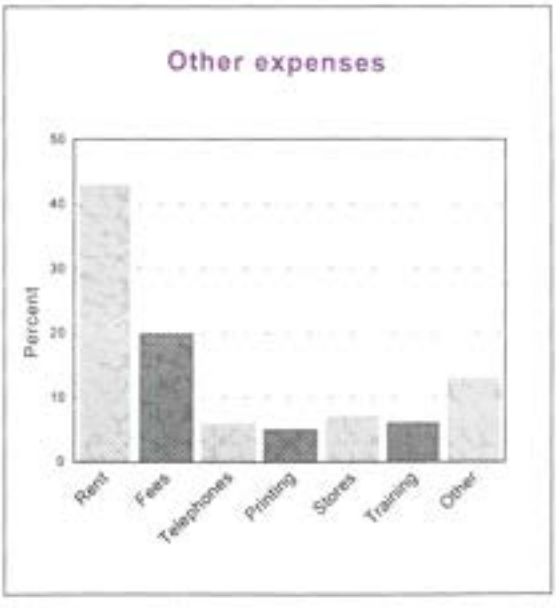
The day-to-day running of the office, including rent, postage, telephone, stores, training, printing and travel cost over $1.1 million. Depreciation of computer equipment, furniture and fittings and other office equipment cost $302,768.

Below 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 consultants was $21,802 and as such there was 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 opposite page represents stores expenditure during the year. As can be seen, expenditure was fairly consistent throughout the year except for June, 1996 when purchases were made for the newly established Witness Protection and the Aboriginal Complaints Units.

Assets

Major works in progress

We have one major work in progress - the upgrade and integration of our computer systems (both hardware and software). Initial funding for the project occurred in 1994/95 with $536,000 being allocated but only $451,000 being committed by year end. Approval was given to carry the unspent portion into the 1995/96 financial year - bringing the total capital allocation to $220,000 for that year.

The funding was used to purchase and install a network of personal computers, completion of the complaints management system software and training staff on how to use the new systems.

The implementation of the project is near completion with only minor matters to be finalised in the 1996/97 financial year. A capital allocation of $77,000 has been provided for this purpose.

Minor works

Additional funding of $78,000 was provided during the year to establish a secure Witness Protection Unit within the office. Besides some modification to the fitout being required, the nature of the unit's work required additional security measures. Capital items such as computers were also purchased for the unit.

Major assests

MAJOR ASSETS ON HAND

Description	June 95*	Acquisitions	Disposals	June 96
Mini computer	3	0	0	3
Terminal servers	6	0	0	6
Personal computers **		27	67	94
Printers	15	1	0	16
Photocopiers	5	0	1	4
Televisions and video equipment	7	0	0	7

* we reclassified some of our assests during the year, therefore the opening balance of some categories does not match last year's closing balance.

** last year we recorded personal computers and terminals seperately. This year they are combined.

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 and services are placed with them.

ACCOUNTS ON HAND
as at 30 June 1996

Current (ie within due date)	$84,283
Less that 30 days overdue	-
Between 30 and 60 days overdue	-
Between 60 and 90 days overdue	-
Total accounts on hand	$84,283

We regularly review our payment policy. We aim to pay all accounts within the vendor credit terms 98% of the time. During 1995/96 we paid 93% of our accounts on time compared with 92% the previous year. Although this result is below the standard that we aim to achieve, the result is acceptable when staff absences on extended sick leave and the move to a new computer environment are taken into consideration.

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 1994/95 and 1995/96 financial years is shown in the table below.

VALUE OF RECREATION AND EXTENDED LEAVE

	June 1995	June 1996
Recreation Leave	$186 597	$205 966
Extended leave	$378 301	$445 107

Other

Risk management and insurance

The responsibility for risk management is devolved to individual managers in our office. Financial risk management is only one component of risk management. Other areas where risk management principles are applied is the investigation area. An example of risks management in this area is the assessment of complaints to determine those to be investigated or declined.

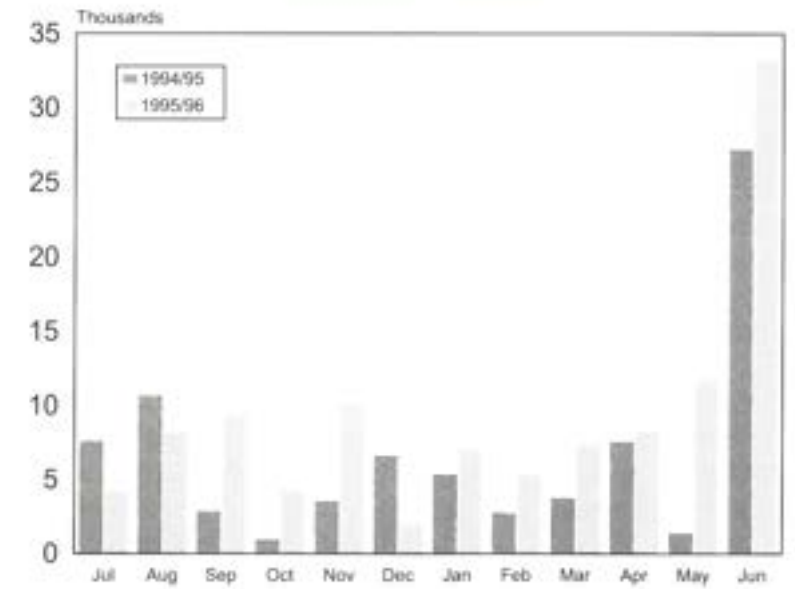
The office participates in the NSW Treasury's Managed Fund. This fund is the State Government's self insurance scheme. The scheme is administered on behalf of the Government by the GIO.

The office selects the lowest layer of insurance offered, as the number of claims received is negligible.

Internal Audit

In 1995 the NSW Treasury issued a Statement of Best Practice on Internal Control and Internal Audit. This statement expands the scope

Stores expenditure
a two year comparison



of Internal Control from the traditional one of focusing on financial controls and legal compliance. It now incorporates an assurance that an agency's operations are being conducted efficiently and effectively to achieve the agency's objectives.

The current internal audit of this office is financial. The change in focus to operational auditing requires some planning and coordination and as such a detailed internal audit program will need to be developed. This is a priority for the 1996/97 financial year.

Market testing and contracting out

The NSW Government is promoting contracting out and market testing as an alternative to in house provision of services. Market testing means investigating the capabilities of other suppliers to determine whether an activity can be carried out more effectively and/or more efficiently. Market testing does not necessarily lead to contracting out an activity.

When the Market Testing Policy was issued in 1994, the office responded by saying that the use of contracting out was limited and as such a detailed strategic plan was not developed. More recently however, the Ombudsman stated in a letter to the then Acting Director General of the Premier's Department that:

"As a public sector accountability body, I believe that certain core activities can only be performed by the Ombudsman or officers of the Ombudsman. As such, the scope for contracting out is limited to the non core work or those aspects of core business that may not have a directly impact on complaint handling eg training public sector agencies in complaint handling. An examination of previous correspondence concerning this matter indicates that the Office has only superficially considered market testing and contracting out as alternatives to performing tasks in house.

I am committed to any process that would improve our service delivery and reduce costs. Accordingly, I have directed my senior staff to identify suitable activities that are currently performed in house that could be contracted out. To date, computer support, transcription services, corporate service and public relations activities have been identified and will be pursued during 1996/97. However, until some initial work is undertaken I am unable to identify any benefits and savings that may be achieved."

A detailed plan will be developed over the coming months and further developments will be included in next year's annual report.

FINANCIAL STATEMENTS

INDEPENDENT AUDIT REPORT

OMBUDSMAN'S OFFICE

To Members of the New South Wales Parliament and the Ombudsman

Scope

I have audited the accounts of the Ombudsman's Office for the year ended 30 June 1996. The preparation and presentation of the financial statements consisting of the accompanying statement of financial position, operating statement and cash flow statement, 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 Ombudsman's Office 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 1996 and the results of its operations and its cash flows for the year then ended.

A.C. HARRIS

SYDNEY
21 August 1996

NSW Ombudsman

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 (General) Regulation 1995 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 particulars included in the financial statements to be misleading or inaccurate.

Irene Moss
Ombudsman

19 July 1996

Ombudsman's Office
Operating Statement
For the year ended 30 June 1996

	Notes	Actual 1996 $	Budget 1996 $	Actual 1995 $
Expenses				
Operating Expenses				
Employee related	4(i)	3,917,593	3,971,000	3,775,863
Other operating expenses	4(ii)	1,126,478	1,022,000	1,078,066
Maintenance		32,107	30,000	61,740
Depreciation	4(iii)	302,768	342,000	196,779
Total expenses		5,378,946	5,365,000	5,112,448
Revenues				
User charges	5(i)	21,285	16,000	32,497
Grants	5(ii)	13,565	13,000	13,595
Other	5(iii)	211,650	62,000	156,325
Total revenues		246,500	91,000	202,417
Net Gain on sale of plant and equpiment	5(iv)	1,689	-	688
NET COST OF SERVICES		5,130,757	5,274,000	4,909,343
Government Contributions				
Consolidated Fund recurrent appropriation		4,553,000	4,526,000	4,428,000
Consolidated Fund capital appropriation		298,000	220,000	451,000
Acceptance by State of Office liabilities		350,283	345,000	314,570
Surplus/(deficit) for the year		70,526	(183,000)	284,227
Accumulated surplus at the beginning of the year		825,890	825,890	541,663
Accumulated surplus at the end of the year		896,416	642,890	825,890

The accompanying notes form part of these statements

Ombudsman's Office
Statement of Financial Position
As at 30 June 1996

	Notes	Actual 1996 $	Budget 1996 $	Actual 1995 $
Current Assets				
Cash	6	115,870	(19,534)	80,466
Receivables		30,732	1,658	20,658
Prepayments	7	75,228	56,605	30,605
Total Current Assets		221,830	38,729	131,729
Non Current Assets				
Plant and equipment	8	1,051,518	893,456	1,016,456
Total Non-current Assets		1,051,518	893,456	1,016,456
TOTAL ASSETS		1,273,348	932,185	1,148,185
Current Liabilities				
Creditors	9	84,283	47,506	90,506
Provisions	10	292,649	241,789	231,789
TOTAL LIABILITIES		376,932	289,295	322,295
NET ASSETS		896,416	642,890	825,890
Equity				
Accumulated surplus		896,416	642,890	825,890
TOTAL EQUITY		896,416	642,890	825,890

The accompanying notes form part of these statements

Ombudsman's Office
Cash Flow Statement
For the year ended 30 June 1996

	Notes	Actual 1996 $	Budget 1996 $	Actual 1995 $
Cash Flow from Operating Activities				
Payments				
Employee related		(3,518,291)	(3,626,000)	(3,405,751)
Other Operating		(1,158,093)	(1,081,000)	(1,063,192)
Maintenance		(41,828)	(30,000)	(61,740)
		(4,718,212)	(4,737,000)	(4,530,683)
Receipts				
User charges		25,624	25,000	32,497
Interest		13,553	7,000	11,369
Grants		12,431	13,000	13,595
Other		187,149	65,000	151,342
		238,757	110,000	208,803
Total Net Cash Used on Operating Activities	12	(4,479,455)	(4,627,000)	(4,321,880)
Cash Flow from Investing Activities				
Purchases of plant and equipment		(340,687)	(223,000)	(485,251)
Proceeds from the sale of plant and equipment		4,546	4,000	3,314
Total Net Cash Outflow on Investing Activities		(336,141)	(219,000)	(481,937)
Net Cash Outflow from Operating and Investing Activities		(4,815,596)	(4,846,000)	(4,803,817)
Government Funding Activities				
Consolidated Fund recurrent appropriation		4,553,000	4,526,000	4,428,000
Consolidated Fund capital appropriation		298,000	220,000	451,000
Total Net Cash provided by Government		4,851,000	4,746,000	4,879,000
Net Increase/(Decrease) in Cash		35,404	(100,000)	75,183
Opening Cash Balance		80,466	80,466	5,283
CLOSING CASH BALANCE	6	115,870	(19,534)	80,466

The accompanying notes form part of these statements

NOTES TO AND FORMING PART OF THE STATEMENTS

1. *THE DEPARTMENT REPORTING ENTITY*

The Ombudsman's Office comprises all of the operating activities of the Office.

2. *SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES*

The Office's Financial Report has been prepared as a general purpose financial report 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 under accrual accounting 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 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 1994/95, except where noted.

(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 $298,000 in the current year. Capital funding received in 1994/95 was $451,000. Maintenance expenditure (including periodic major maintenance) is accounted for in the Operating Statement and is specifically stated.

During the year, the Office reviewed and changed the policy on capitalisation of assets. The Office now capitalises assets costing in excess of $2,000 rather than $1,000 as was the past practice.

(c) Depreciation

Depreciation is charged on a straight line basis against all depreciable assets so as to write off the depreciable amount of each depreciable assets as it is consumed over its useful life.

Depreciation rates used are:

Computer equipment	33.33%
Office equipment	20%
Furniture and fittings	10%
Leasehold improvement	life of lease contract

(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 State, the Office accounts for the liability as having been extinguished resulting in non-monetary revenue described as "Acceptance by State 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 are recognised in compliance to AAS 30 - Accounting for Employee Leave Entitlements. These provisions are not funded by the State.

(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. During the year amount received from the Minister for Community Services relating to Juvenile Justice Centres Inquiry was $92,819. In 1994/95 the Office received an amount of $87,532 from the NSW Police Service for Police/Race Relations Inquiry.

(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.

3. *BUDGET REVIEW*

The actual Net Cost of Services was $5,130,757, $143,243 less than budget. This result was largely due to higher than budgeted revenue such as the funding provided by the Minister for Communtiy Services for the Juvenile Justice Centres Inquiry and revenue generated from a training course developed by the Office.

4. EXPENSES

(i) Employee related expenses comprise:

	1996	1995
	$	$
Salaries and wages	3,060,341	2,905,337
Recreation Leave	247,666	233,649
Superannuation entitlements	249,245	234,053
Long Service Leave	100,368	80,575
Workers Compensation insurance	11,100	45,135
Payroll tax and fringe benefits tax	248,873	277,114
	3,917,593	3,775,863

(ii) Other operating expenses comprise:

	1996	1995
	$	$
Rent and rates	480,947	488,099
Travel	37,068	38,899
Motor Vehicles	17,636	18,246
Insurance	4,456	4,731
Postage and Freight	26,286	31,137
Advertising	17,363	17,683
Books	30,802	26,909
Fees	225,358	191,366
Energy	16,508	16,428
Telephones	72,211	85,114
Printing	51,117	75,576
Stores	81,211	43,368
Training	65,515	40,510
	1,126,478	1,078,066

Expenses relating to consultancies and audit fees (external) amounted to $21,802 and $10,500 respectively. Comparative figures for 1994/95 amounted to $27,120 for consultancies and $14,300 for audit fees.

(iii) Depreciation is charged as follows:

	1996	1995
	$	$
Computer equipment	211,784	95,031
Furniture and fittings	13,715	13,082
Leasehold improvement	48,546	49,274
Office equipment	28,723	39,392
	302,768	196,779

5. *REVENUES*

(i) User charges comprise the following items:	1996	1995
	$	$
Commission on payroll deductions	451	516
Sale of Annual Report	378	1,015
Sale of Special Reports to Parliament	20,456	30,966
	21,285	32,497

(ii) Grants	1996	1995
	$	$
Trainee Salary Subsidy (ATS/Career Start)	13,565	13,595
	13,565	13,595

(iii) Other Revenue	1996	1995
	$	$
Bank Interest	19,627	11,369
Miscellaneous	89,596	57,424
Specific Projects	102,427	87,532
	211,650	156,325

(iv) Net gain on sale of plant and equipment	1996	1995
	$	$
Comprises profit on sale of obsolete equipment	1,689	688

6. *CURRENT ASSETS - Cash*

	1996	1995
	$	$
Cash on Hand	850	850
Cash at Bank	115,020	79,616
	115,870	80,466

7. *CURRENT ASSETS - Prepayments*

	1996	1995
	$	$
Salaries & Wages	1,141	1,124
Advertising	-	270
Maintenance	20,586	10,865
Other	-	6,247
Rent	39,740	-
Subscription/Membership	9,144	5,230
Training	475	1,722
Postal	2,816	2,687
Motor Vehicle	1,326	2,364
Telephone	-	96
	75,228	30,605

8. *NON-CURRENT ASSETS - Plant and Equipment*

	Computer Equipment		Furniture & Fittings		Leasehold Improvement		Office Equipment		Total	
	1996	**1995**	1996	**1995**	1996	**1995**	1996	**1995**	1996	**1995**
	$	**$**	$	**$**	$	**$**	$	**$**	$	**$**
At cost unless otherwise stated										
Balance 1 July	943,330	**477,176**	131,384	**129,876**	527,235	**524,166**	239,477	**311,248**	1,841,426	**1,442,466**
Additions	252,765	**475,929**	-	**1,523**	75,898	**3,069**	12,024	**4,730**	340,687	**485,251**
Disposals	(97,164)	**(9,775)**	(2,313)	**(15)**	-	**-**	(5,123)	**(76,501)**	(104,600)	**(86,291)**
Balance 30 June	1,098,931	**943,330**	129,071	**131,384**	603,133	**527,235**	246,378	**239,477**	2,077,513	**1,841,426**
Accumulated depreciation										
Balance 1 July	367,297	**280,464**	73,484	**60,410**	240,175	**190,901**	144,014	**180,081**	824,970	**711,856**
Depreciation for the year	211,784	**95,031**	13,715	**13,082**	48,546	**49,274**	28,723	**39,392**	302,768	**196,779**
Writeback on Disposal	(95,203)	**(8,198)**	(1,417)	**(8)**	-	**-**	(5,123)	**(75,459)**	(101,743)	**(83,665)**
Balance 30 June	483,878	**367,297**	85,782	**73,484**	288,721	**240,175**	167,614	**144,014**	1,025,995	**824,970**
Written Down Value										
At 1 July	576,033	**196,712**	57,900	**69,466**	287,060	**333,265**	95,463	**131,167**	1,016,456	**730,610**
At 30 June	615,053	**576,033**	43,289	**57,900**	314,412	**287,060**	78,764	**95,463**	1,051,518	**1,016,456**

9. *CURRENT LIABILITIES - Creditors*

	1996	**1995**
	$	**$**
Salaries and Wages	641	**-**
Accrued Expenses	83,642	**90,506**
	84,283	**90,506**

10. *CURRENT LIABILITIES - Provision for leave entitlements*

	1996	**1995**
	$	**$**
Balance 1 July	186,598	**176,247**
Paid during the year	(258,062)	**(228,236)**
Provided during the year	277,431	**238,587**
Balance 30 June	205,967	**186,598**
Provision for annual leave loading	36,156	**-**
Provision for workers compensation - leave entitlement	2,421	**5,648**
Provision for payroll tax - leave entitlement	48,105	**39,543**
	292,649	**231,789**

11. *COMMITMENTS FOR EXPENDITURE*

1. Lease Commitments

Aggregate operating lease expenditure contracted for at balance date but not provided for in the accounts:

	1996	1995
	$	$
Not later than one year	418,480	425,949
Later than one year but not later than 2 years	417,339	418,272
Later than 2 years but not later than 5 years	626,008	1,043,347
Later than 5 years	-	-
	1,461,827	1,887,568

Representing:	1996	1995
	$	$
Cancellable operating leases	1,141	9,543
Non-cancellable operating leases	1,460,686	1,878,025
	1,461,827	1,887,568

Non-cancellable leases are for rental of office space that were renegotiated in 1993/94.

2. Capital Expenditure

Aggregate capital expenditure contracted for at balance date but not provided for in the accounts:	1996	1995
	$	$
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

12. *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.

	1996	1995
	$	$
NET COST OF SERVICES	(5,130,757)	(4,909,343)
Adjustments for items not involving cash:		
Depreciation	302,768	196,779
Provision for recreation leave	60,860	55,542
Acceptance by Crown of liabilities	350,283	314,570
(Increase)/decrease in receivables	(10,074)	(19,138)
(Increase)/decrease in prepayments	(44,623)	26,575
Increase/(decrease) in creditors	(6,223)	13,823
Net (gain)/loss on sale of plant and equipment	(1,689)	(688)
Net Cash Used on Operating Activities	(4,479,455)	(4,321,880)

13. *CONTINGENT LIABILITIES*

There are no contingent liabilities at balance date.

14. *UNCLAIMED MONIES*

There are no unclaimed monies at balance date.

15. *PROGRAM INFORMATION*

	Notes	Program 1	Program 2	Total Office	Total Office
	(i)	1996	1996	1996	1995
		$	$	$	$
Operating Expenses					
Grants & subsidies		-	-	-	-
Other		(2,754,294)	(2,624,652)	(5,378,946)	(5,112,448)
Total Operating Expenses		(2,754,294)	(2,624,652)	(5,378,946)	(5,112,448)
Operating Revenue					
User charges		11,281	10,004	21,285	32,497
Other revenue		39,269	185,946	225,215	169,920
Gain on sale of non-current assets		896	793	1,689	688
NET COST OF SERVICES		(2,702,848)	(2,427,909)	(5,130,757)	(4,909,343)
Government Allocation	(ii)	2,800,120	2,401,163	5,201,283	5,193,570
Operating results after Consolidated Fund Allocation		97,272	(26,746)	70,526	284,227
Total Assets		675,409	597,939	1,273,348	1,148,185

(i) Program 1 - Resolution of Complaints about Police

Objectives: To provide for the redress of justified complaints and selectively investigate complaints that identify structural and procedural deficiencies in the police service. To promote fairness, integrity and practical reforms in the NSW Police Service.

Program 2 - Resolution of Local Government, Public Authority and Prison Complaints and Review of Freedom of Information Complaints

Objectives: To provide for the redress of justified complaints and selectively investigate complaints that identify structural and procedural deficiencies in the public administration.

To promote fairness, integrity and practical reforms in NSW public administration and maximise access to Government information subject only to such restrictions as are necessary for the proper administration of the Government.

(ii) Government Allocations

Consolidated fund recurrent allocation	2,445,000	2,108,000	4,553,000	**4,428,000**
Consolidated fund capital allocation	192,000	106,000	298,000	**451,000**
Crown acceptance of liabilities				
Long Service Leave Expense	50,613	49,755	100,368	**80,575**
Superannuation Expense	112,507	137,408	249,915	**233,995**
	2,800,120	2,401,163	5,201,283	**5,193,570**

The Office operates on two programs commencing this year. Consequently amounts last year by program were not available.

END OF AUDITED FINANCIAL STATEMENTS

APPENDIX ONE

LOCAL GOVERNMENT COMPLAINTS DETERMINED 1995/96

Local Council	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Albury City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Armidale City Council	0	0	0	2	0	0	0	1	0	0	0	0	0	0	0	3
Ashfield Municipal Council	0	0	0	1	0	0	2	0	0	1	0	0	0	0	0	4
Ballina Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Bankstown City Council	0	0	0	0	1	0	3	0	0	0	0	0	0	0	0	4
Bathurst City Council	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Baulkham Hills Shire Council	**0**	**0**	**1**	**2**	**1**	**0**	**4**	**0**	**0**	**4**	**0**	**0**	**0**	**0**	**0**	**12**
Bega Valley Shire Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Bellingen Shire Council	0	0	2	3	0	0	2	0	0	2	0	0	0	0	0	9
Berrigan Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	**0**	**0**	**2**	**2**	**0**	**0**	**3**	**0**	**1**	**2**	**0**	**0**	**0**	**0**	**0**	**10**
Blue Mountains City Council	**0**	**1**	**0**	**3**	**0**	**0**	**5**	**1**	**0**	**4**	**0**	**0**	**0**	**0**	**0**	**14**
Botany Bay City Council	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	2
Broken Hill City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Byron Shire Council	0	0	1	3	1	0	1	0	0	1	0	0	0	0	0	7
Camden Municipal Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Campbelltown City Council	0	0	0	1	0	0	3	1	0	1	0	0	0	0	0	6
Canterbury Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Carrathool Shire Council	1	0	0	0	1	0	1	0	0	0	0	0	0	0	0	3
Casino Municipal Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Cessnock City Council	1	1	1	0	0	0	2	0	0	1	0	0	0	0	0	6
Coffs Harbour City Council	0	0	1	0	1	0	5	2	0	0	0	0	0	0	0	9
Concord Municipal Council	0	0	0	0	0	0	3	0	0	2	0	0	0	0	0	5
Coolah Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Coolamon Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Coona-mmaro Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Coonabarabran Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Coorumble Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Coolamundra Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Copmanhurst Shire Council	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Cowra Shire Council	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	3
Crookwell Shire Council	0	0	0	1	1	1	1	0	0	0	0	0	0	0	0	4
Drummoyne Municipal Council	0	0	1	0	0	0	2	0	0	1	0	0	0	0	0	4
Dubbo City Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Dungog Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Eurobodalla Shire Council	1	0	2	0	1	0	2	0	0	0	0	0	0	0	0	6
Fairfield City Council	1	0	0	1	1	0	1	0	0	2	0	0	0	0	0	6
Far North Coast County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1

Local Council	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Forbes Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Glen Innes Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gosford City Council	**0**	**1**	**1**	**2**	**3**	**0**	**6**	**0**	**0**	**6**	**0**	**0**	**0**	**0**	**0**	**19**
Goulburn City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Grafton City Council	0	0	1	0	2	0	1	0	0	1	0	0	0	0	0	5
Great Lakes Shire Council	0	0	1	2	0	0	1	1	0	2	0	0	0	0	0	7
Greater Lithgow City Council	0	0	0	0	1	0	1	0	0	1	0	0	0	0	0	3
Greater Taree City Council	0	0	1	1	1	0	3	0	0	0	0	0	0	0	0	6
Griffith City Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gunnedah Shire Council	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Harden Shire Council	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Hastings Council	0	0	1	1	0	0	3	0	0	3	0	0	0	0	0	8
Hawkesbury City Council	1	0	1	1	0	0	1	1	0	0	0	0	0	0	0	5
Holroyd City Council	0	0	2	0	1	0	0	0	0	1	0	0	0	0	0	4
Hornsby Shire Council	**2**	**2**	**5**	**2**	**2**	**0**	**7**	**2**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**23**
Hume Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hunters Hill Municipal Council	0	0	2	0	0	0	0	1	0	0	0	0	0	0	0	3
Hurstville City Council	0	0	0	3	0	0	4	0	0	2	0	0	0	0	0	9
Inverell Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Jurnee Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Kempsey Shire Council	0	0	0	1	1	0	1	0	0	1	0	0	0	0	1	5
Kiama Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Kogarah Municipal Council	0	0	0	2	0	0	1	0	0	1	0	0	0	0	0	4
Ku-ring-gai Municipal Council	**0**	**1**	**2**	**2**	**1**	**0**	**5**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**11**
Lake Macquarie City Council	**1**	**0**	**2**	**2**	**2**	**0**	**7**	**2**	**0**	**11**	**0**	**0**	**0**	**0**	**0**	**27**
Lane Cove Municipal Council	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	3
Leichhardt Municipal Council	0	0	0	1	0	0	3	0	0	1	0	0	0	0	0	5
Lismore City Council	0	1	0	0	1	0	1	0	0	0	0	0	0	0	0	3
Liverpool City Council	0	0	0	0	1	0	5	0	0	2	0	0	0	0	0	8
Lower Clarence County Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Maclean Shire Council	**0**	**1**	**0**	**0**	**2**	**0**	**4**	**0**	**1**	**3**	**0**	**0**	**1**	**0**	**0**	**12**
Maitland City Council	1	1	1	2	0	0	3	0	0	0	1	0	0	0	0	9
Manly Municipal Council	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	3
Marrickville Council	**0**	**0**	**1**	**1**	**3**	**0**	**3**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**10**
Moree Plains Shire Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
Mosman Municipal Council	0	0	0	4	0	0	1	0	0	0	0	0	0	0	0	5
Mudgee Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Nambucca Shire Council	**0**	**0**	**3**	**2**	**0**	**0**	**5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**3**	**14**
Narrabri Shire Council	0	0	0	1	1	0	2	0	2	1	0	0	0	0	0	7
Narromine Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Newcastle City Council	**0**	**2**	**3**	**0**	**0**	**0**	**7**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**14**
North Sydney Council	1	0	0	0	0	0	1	0	0	2	0	0	0	0	0	4
Nymboida Shire Council	0	0	0	0	2	0	4	0	0	0	0	0	0	0	0	6
Orange City Council	0	0	2	0	1	0	1	0	0	1	0	0	0	0	0	5
Parkes Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Parramatta City Council	0	0	1	0	1	0	2	0	0	1	0	0	0	0	0	5
Parry Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Penrith City Council	0	0	0	1	2	0	0	0	0	1	0	0	0	0	0	4
Pittwater Council	1	0	1	2	0	0	1	0	0	1	0	0	0	0	0	6
Port Stephens Shire Council	**0**	**1**	**0**	**2**	**1**	**0**	**3**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**3**	**12**

Local Council	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Queanbeyan City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Randwick City Council	**0**	**1**	**0**	**2**	**1**	**0**	**6**	**0**	**0**	**3**	**0**	**0**	**0**	**0**	**0**	**13**
Rockdale Municipal Council	0	0	1	1	2	0	3	0	0	1	0	0	0	0	0	8
Ryde City Council	**1**	**1**	**2**	**2**	**2**	**0**	**3**	**2**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**13**
Shoalhaven City Council	**0**	**1**	**0**	**3**	**2**	**0**	**7**	**0**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**15**
Singleton Shire Council	0	0	0	1	0	0	1	1	0	1	0	0	0	0	0	4
South Sydney Council	**0**	**0**	**1**	**3**	**1**	**0**	**7**	**0**	**0**	**5**	**0**	**0**	**0**	**0**	**0**	**17**
Strathfield Municipal Council	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	2
Sutherland Shire Council	**0**	**1**	**3**	**0**	**2**	**0**	**7**	**0**	**0**	**5**	**0**	**0**	**0**	**0**	**0**	**18**
Sydney City Council	2	0	0	1	0	0	2	0	0	1	0	0	0	0	0	6
Tallaganda Shire Council	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Tamworth City Council	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Tenterfield Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
The Council of Shellharbour	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Tumbarumba Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Tumut Shire Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Tweed Shire Council	0	1	0	0	0	0	2	1	0	1	0	0	0	0	0	5
Ulmarra Shire Council	0	0	0	1	0	0	3	1	0	0	0	0	0	0	0	5
Uralla Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Wagga Wagga City Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
Walgett Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Warren Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Warringah Council	**1**	**0**	**2**	**2**	**1**	**0**	**2**	**1**	**1**	**4**	**0**	**0**	**0**	**0**	**0**	**14**
Waverley Council	0	1	0	2	1	0	3	0	0	2	0	0	0	0	0	9
Weddin Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Wellington Council	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Wentworth Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Willoughby City Council	**0**	**0**	**5**	**2**	**0**	**0**	**3**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**12**
Wingecarribee Shire Council	1	0	0	0	0	0	4	0	0	0	0	0	0	0	0	5
Wollondilly Shire Council	0	0	0	3	0	0	4	0	0	2	0	0	0	0	0	9
Wollongong City Council	0	0	1	1	1	0	3	1	0	2	0	0	0	0	0	9
Woollahra Municipal Council	0	0	1	0	0	0	2	0	0	2	0	0	0	0	0	5
Wyong Shire Council	**0**	**0**	**0**	**1**	**0**	**0**	**5**	**0**	**1**	**4**	**0**	**0**	**0**	**0**	**0**	**11**
Yarrowlumla Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Yass Shire Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Total	**22**	**18**	**44**	**90**	**60**	**1**	**228**	**25**	**7**	**118**	**1**	**1**	**1**	**0**	**8**	**644**

APPENDIX TWO

PUBLIC AUTHORITY COMPLAINTS DETERMINED 1995/96

Public Authority	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Aboriginal Land Council	0	0	0	0	1	0	1	1	0	0	0	0	0	0	0	3
Advance Energy	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Agriculture Department	0	0	0	0	0	0	1	2	0	0	0	0	0	0	0	3
Ambulance Service of NSW	1	0	0	1	1	0	0	0	0	1	0	0	0	0	0	4
Anti-Discrimination Board	0	1	0	1	2	0	3	1	0	1	0	0	0	0	0	9
Armidale Rural Lands Protection Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Attorney Generals Dept	5	0	0	1	2	0	0	0	0	0	0	0	0	0	0	8
Audit Office	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Australasian Correctional Management	**0**	**1**	**5**	**1**	**1**	**0**	**22**	**3**	**0**	**7**	**0**	**0**	**0**	**0**	**0**	**40**
Bathurst Windradyne Local Aboriginal Land Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Birpai Local Aboriginal Land Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Board of Veterinary Surgeons	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Broken Hill Water Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Building Services Corporation	**1**	**0**	**3**	**3**	**2**	**0**	**16**	**0**	**1**	**4**	**0**	**0**	**0**	**0**	**0**	**30**
Business & Regional Development, Dept of	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Casino Control Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Centennial Park & Moore Park Trust	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Central Sydney Area Health Service	0	0	0	0	3	0	2	0	0	0	0	0	0	0	0	5
Charles Sturt University, Riverina	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Co-operatives, Registry of	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Commercial Services Group	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Community Services Commission	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Community Services, Dept of	**14**	**1**	**1**	**4**	**3**	**0**	**2**	**0**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**26**
Consumer Affairs	**0**	**2**	**0**	**2**	**2**	**0**	**3**	**0**	**0**	**3**	**0**	**0**	**0**	**0**	**0**	**12**
Corrections Health Service	**0**	**3**	**3**	**5**	**0**	**0**	**10**	**0**	**1**	**5**	**0**	**0**	**0**	**0**	**1**	**28**
Corrective Services, Dept of	**3**	**11**	**3**	**44**	**26**	**0**	**138**	**27**	**1**	**67**	**0**	**0**	**2**	**0**	**1**	**323**
Courts Administration	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dairy Corporation of NSW	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	3
Dept of Land & Water Conservation	**2**	**0**	**1**	**2**	**3**	**1**	**10**	**0**	**0**	**8**	**1**	**1**	**1**	**0**	**0**	**30**
Dept of Local Government	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2

Public Authority	Assessment only						Preliminary enquiries only					Investigation				Total
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Dept of Mineral Resources	1	0	0	0	1	0	4	0	0	0	0	0	0	0	0	6
Dept of Public Works & Services	0	0	0	0	1	0	2	0	0	1	0	0	0	0	0	4
Dept of School Education	**13**	**2**	**0**	**6**	**8**	**0**	**12**	**3**	**0**	**3**	**1**	**0**	**0**	**0**	**0**	**48**
Dept of Sport & Recreation	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Dept of Transport	**0**	**0**	**0**	**2**	**1**	**0**	**4**	**1**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**10**
Dept of Urban Affairs & Planning	1	0	1	1	1	0	1	1	0	3	0	0	0	0	0	9
Energy South	0	0	0	1	0	0	1	0	0	2	0	0	0	0	0	4
Energy, Dept of	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Entertainment Industry Interim Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Environmental Protection Auth.	1	1	0	1	0	0	4	0	0	0	0	0	0	0	0	7
Ethnic Affairs Commission	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Fair Trading, Dept of	**0**	**0**	**0**	**0**	**3**	**0**	**7**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**12**
Fire Brigades NSW	1	0	0	2	0	0	0	0	0	0	0	0	0	0	0	3
Gaming & Racing, Dept of	0	1	0	0	1	0	2	0	0	1	0	0	0	0	0	5
Geographical Names Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Grey Hound Racing Control Board	0	0	1	0	0	0	1	2	0	0	0	1	0	0	0	5
Griffith Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Guardianship Board	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Harness Racing Authority	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	3
Health Care Complaints Comm.	**1**	**0**	**0**	**2**	**4**	**1**	**2**	**4**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**16**
Health Dept	5	2	2	3	5	0	2	1	0	1	0	0	0	0	0	21
Home Purchase Assistance Authority	0	0	0	0	1	0	2	1	0	1	0	0	0	0	0	5
Housing Dept	**2**	**1**	**1**	**10**	**10**	**1**	**20**	**2**	**1**	**16**	**0**	**0**	**0**	**0**	**1**	**65**
Hunter Water Corporation	0	0	0	0	0	0	2	1	0	1	0	0	0	0	0	4
Illawarra Electricity	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Independent Commission Against Corruption	3	0	0	0	0	0	1	0	0	0	0	0	0	0	0	4
Indust. Rel. & Employ. Train/Further Ed, Dept.	0	0	0	2	0	0	2	0	0	0	0	0	0	0	0	4
Industrial Relations, Dept of	1	0	0	0	1	0	2	1	0	1	0	0	0	0	0	6
Juvenile Justice, Dept of	**1**	**0**	**0**	**1**	**0**	**1**	**6**	**2**	**0**	**2**	**0**	**0**	**0**	**0**	**0**	**13**
Land Titles Office	0	0	0	0	2	0	0	0	0	0	0	1	0	0	0	3
Legal Aid Commission of NSW	**2**	**1**	**4**	**7**	**1**	**1**	**2**	**0**	**0**	**4**	**0**	**0**	**0**	**0**	**0**	**22**
Liquor Administration Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Lord Howe Island Board	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Macquarie University	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1

Public Authority	Assessment only						Preliminary inquiries 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/unreliable	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Maritime Services Board	0	0	0	0	1	0	3	0	0	4	0	0	1	0	0	9
Metcorth Energy	0	0	0	1	0	0	2	0	1	0	0	0	0	0	0	4
Metsouth Energy	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2
Mine Subsidence Board	0	1	1	0	0	0	0	1	0	0	0	0	0	0	0	3
Minister For Natural Resources,																
Office of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Molong Local Aboriginal																
Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Motor Vehicle Repair																
Industry Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
National Parks & Wildlife																
Service	**1**	**0**	**0**	**3**	**2**	**0**	**5**	**1**	**1**	**1**	**0**	**0**	**0**	**0**	**0**	**14**
National Trust of																
Australia (NSW)	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Northern Riverina Electricity																
& Water	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Northern Rivers Electricity	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Northern Sydney Area Health																
Service	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Northpower Energy	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
NSW Board of Studies	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
NSW Fisheries	**0**	**0**	**1**	**1**	**1**	**0**	**5**	**1**	**0**	**9**	**0**	**0**	**0**	**0**	**0**	**18**
NSW Medical Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
NSW Valuer General's Office	0	2	0	0	1	0	1	0	0	0	0	0	0	0	0	4
Office of Financial Management	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Office of Protective																
Commissioner	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Office of Public Guardian	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Office of State Revenue	**0**	**0**	**0**	**2**	**1**	**0**	**4**	**2**	**0**	**6**	**0**	**0**	**0**	**0**	**0**	**15**
Pacific Power	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Pilliga Local Aboriginal																
Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Police Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Premier's Dept	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Prospect Electricity	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Psychologists Registration Board	0	0	0	0	0	0	1	0	1	0	0	0	0	0	1	3
Public Trustee	2	0	0	1	1	0	1	1	0	0	0	0	0	0	0	6
Real Estate Services Council	1	1	0	0	0	0	2	0	0	2	0	0	0	0	0	6
Registry of Births,																
Deaths and Marriages	1	0	0	0	0	0	0	2	0	1	0	0	0	0	0	4
Rental Bond Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Residential Tenancies Tribunal	1	0	2	0	0	0	0	0	0	0	0	0	0	0	0	1
Rice Marketing Board	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Roads and Traffic Authority	**1**	**3**	**4**	**13**	**15**	**0**	**26**	**3**	**0**	**9**	**0**	**0**	**0**	**0**	**0**	**77**
Rural Assistance Board	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Rural Lands Protection Board,																
Bombala	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Rural Lands Protection Boards	0	0	1	0	0	0	1	0	0	1	0	0	0	0	0	3
Sheriffs Office	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Shortland Electricity	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1

Public Authority	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
South Western Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Southern Sydney Area Health Service	0	0	0	1	0	0	0	0	1	1	0	0	0	0	0	3
State Authorities Superannuation Board	0	1	0	0	0	0	4	1	1	1	0	0	0	0	0	8
State Contracts Control Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
State Electoral Office	1	0	0	2	1	0	0	2	0	1	0	0	0	0	0	7
State Forests	0	0	0	0	1	0	1	0	0	1	0	0	0	0	0	3
State Library of NSW	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
State Rail Authority of NSW	**5**	**4**	**6**	**7**	**9**	**2**	**13**	**1**	**1**	**7**	**0**	**0**	**0**	**0**	**0**	**55**
State Superannuation Investment & Management Corp	0	0	1	4	1	0	1	1	1	0	0	0	0	0	0	9
State Transit Authority of NSW	1	1	0	1	0	0	0	2	0	2	0	0	0	0	0	7
Strata & Tenancy Commissioners	0	0	0	0	1	0	1	0	0	1	0	0	0	0	0	3
Sydney Electricity	**0**	**0**	**0**	**2**	**4**	**0**	**2**	**1**	**0**	**3**	**0**	**0**	**0**	**0**	**0**	**12**
Sydney Market Authority	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Sydney Water Corporation	**2**	**0**	**0**	**1**	**4**	**0**	**7**	**0**	**1**	**1**	**0**	**0**	**0**	**0**	**0**	**16**
Technical and Further Education Commission	**2**	**2**	**0**	**2**	**2**	**0**	**1**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**10**
Totalizator Agency Board of NSW	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Tow Truck Industry Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Traffic Authority of NSW	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Training & Education Co-ordination, Dept of	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Tweed/Byron Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Tweed/Lismore Rural Lands Protection Board	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Ulan Electricity	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Universities Admissions Centre	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
University of NSW	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
University of Sydney	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0	3
University of Technology	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
University of Western Sydney	1	0	0	0	0	0	2	0	0	1	0	0	0	0	0	4
University of Wollongong	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Wagonga Local Aboriginal Land Council	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	2
Waterways Authority	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Wee Waa Local Aboriginal Land Council	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Western Power	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Western Sydney Area Health Service	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Workcover Authority	**1**	**1**	**1**	**0**	**5**	**0**	**2**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**11**
Zoological Parks Board of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1

APPENDIX THREE

FREEDOM OF INFORMATION COMPLAINTS DETERMINED 1995/96

Public Authority	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Anti-discrimination Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Ashfield Municipal Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Attorney Generals Department	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Auburn Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Australasian Correctional Management	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Building Services Corporation	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Camden Municipal Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Casino Municipal Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Central Sydney Area Health Service	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Charles Sturt University, Riverina	0	0	0	0	0	0	0	2	0	1	0	0	0	0	0	3
Community Services, Dept. of	1	1	0	1	0	0	0	2	0	2	0	0	0	0	0	7
Consumer Affairs	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Copmanhurst Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Corrections Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Corrective Services Department	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Department of Local Government	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	2
Department of Mineral Resources	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Department of School Education	0	0	0	1	0	0	0	2	0	0	0	0	0	0	0	3
Department of Urban Affairs and Planning	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Dungog Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Environmental Protection Authority	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Fair Trading Department of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Gosford City Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Greater Lithgow City Council	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Greater Taree City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Grey Hound Racing Control Board	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Harness Racing Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hastings Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1

Public Authority	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Health Care Complaints Commission	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Health Department	0	0	0	0	0	0	0	3	0	1	0	0	0	0	0	4
Hornsby Shire Council	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Housing Department	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Lake Illawarra Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Lake Macquarie City Council	1	0	0	0	0	0	1	5	0	0	0	1	0	0	0	8
Liverpool City Council	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Macquarie University	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Manly Municipal Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
National Parks & Wildlife	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
NSW Board of Studies	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	2
NSW Fisheries	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Nymboida Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Police Service	2	0	0	0	0	0	3	3	0	0	0	0	0	0	0	8
Premier's Department	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Randwick City Council	2	0	0	0	0	0	0	5	0	0	0	0	0	0	0	7
Richmond River Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	0	0	0	0	0	0	4	2	0	1	0	0	0	0	0	7
Rural Lands Protection Boards	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Shoalhaven City Council	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
South Sydney Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
State Electoral Office	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Forests	0	0	0	0	0	0	0	0	0	0	0	1	0	0	2	3
Strathfield Municipal Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Sutherland Shire Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Sydney Electricity	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Sydney Opera House	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Sydney Water Corporation	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Technical and Further Education Commission	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
NSW Totalizator Agency Board	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
University of New England	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	3
University of Sydney	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Wellington Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Western Sydney Area Health Service	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Workcover Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Total	**9**	**1**	**1**	**4**	**0**	**1**	**13**	**46**	**0**	**35**	**0**	**5**	**1**	**0**	**4**	**120**

Public Authority	Assessment only						Preliminary inquiries 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	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Departments and statutory authorities	88	32	34	104	118	7	242	52	12	123	2	3	2	0	3	822
Local government	22	18	64	90	60	1	228	25	7	118	1	1	1	0	8	644
Prisons	3	15	11	50	27	0	170	30	2	79	0	0	2	0	2	391
Freedom of information	9	1	1	4	0	1	13	46	0	35	0	5	1	0	4	120
Bodies outside jurisdiction	409	0	0	0	0	0	0	0	0	0	0	0	0	0	0	409
Total	531	66	110	248	205	9	653	153	21	355	3	9	6	0	17	2386

+ current as at 30.6.96	456
- current as at 30.6.95	470
Total received for year ended 30.6.96	2372

APPENDIX FIVE

POLICE COMPLAINT PROFILE

Complaints about police to the Ombudsman are managed by creating a file for each letter of complaint. Each complaint file may contain a number of allegations about a single incident. For example, a person arrested following a brawl at a hotel may complain of unreasonable arrest, assault and failure to return property. One incident, one complaint, many allegations.

In cases determined last year 9,850 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
Conspiracy or cover up	62	14	15	13	0	104
Theft	159	22	68	31	0	280
Consorting	17	1	0	0	0	18
Bribery or extortion	144	4	27	21	0	196
Dangerous or culpable driving	0	1	0	1	0	2
Drug offences	175	6	24	10	0	215
Fraud	11	2	1	1	0	15
Perjury	12	2	0	1	0	15
Sexual assault	24	10	5	6	0	45
Telephone tapping	2	0	0	0	0	2
Murder or manslaughter	6	1	1	0	0	8
Other	128	34	36	36	0	234
Total	**740**	**97**	**177**	**120**	**0**	**1,134**

Assault

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Injury	210	51	117	124	0	502
No injury	207	30	55	54	0	346
Total	**417**	**81**	**172**	**178**	**0**	**848**

Investigations and prosecutions

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Forced confession	10	0	3	1	0	14
Fabrication	83	16	28	12	0	139
Unjust prosecution	67	3	15	3	13	101
Suppression of evidence	12	4	4	0	0	20
Failure to properly review prosecution	0	1	0	0	0	1
Faulty investigation or prosecution	229	97	76	42	137	581
Disputes traffic infringement notice	202	1	0	2	18	223
Failure to prosecute	200	13	17	6	92	328
Total	**803**	**135**	**143**	**66**	**260**	**1,407**

Arrest/detention/warrant

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Unjustified search or entry	61	6	14	12	19	112
Unnecessary use of force, damage or resources	91	18	23	29	23	184
Faulty search warrant procedure	62	11	16	12	19	120
Strip search	4	0	1	1	0	6
Improper detention of intoxicated person	1	2	0	0	0	3
Unreasonable use of arrest or detention powers	122	26	57	21	20	246
Failure to withdraw warrant on payment	5	1	0	0	1	7
Improper issue of summons, warrant or enforcement order	35	3	1	0	13	52
Total	**381**	**67**	**112**	**75**	**95**	**730**

Abusive remarks or demeanour

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Race related	22	6	14	12	16	70
Other social prejudice	12	2	1	4	3	22
Traffic rudeness	46	3	1	6	155	211
Other	98	21	38	38	109	304
Total	**178**	**32**	**54**	**60**	**283**	**607**

Inadvertent wrong treatment

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Administrative matter arising from investigation	0	0	0	12	0	12
Property damage	13	0	0	1	3	17
Total	**13**	**0**	**0**	**13**	**3**	**29**

Breach of police rules or procedure

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Sexual harassment	24	13	7	6	7	57
Traffic or parking offences	71	20	19	15	31	156
Failure to provide or delay legal rights	44	13	23	13	20	113
Failure to return property	50	4	8	10	17	89
Threats or harassment	333	42	61	46	131	613
Unreasonable treatment	287	25	54	60	337	763
Drinking on duty	24	19	7	2	3	55
Faulty policing	23	1	0	0	12	36
Failure to take action	166	17	45	20	223	471
Breach of police rules and regulations	949	469	144	67	27	1,656
Failure to identify or wear number	19	2	6	3	23	53
Misuse of office	45	22	12	11	4	94
Other	210	10	10	2	5	237
Total	**2,245**	**657**	**396**	**255**	**840**	**4,393**

Information

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Inappropriate disclosure of confidential information	84	70	69	13	14	250
Failure to provide information or notify	25	13	10	10	24	82
Inappropriate access to confidential information	68	23	13	2	4	110
Providing false information	58	91	19	12	16	196
Total	**235**	**197**	**111**	**37**	**58**	**638**

Management issues

Category	Not fully investigated (*)	Sustained	Not sustained	Unable to be determined	Conciliation	Total
Delay in answering correspondence	8	0	0	1	7	16
Inappropriate permit/licence action	8	1	0	1	1	11
Condition of cells or premises	2	2	0	0	0	4
Other	17	2	4	0	10	33
Total	**35**	**5**	**4**	**2**	**18**	**64**

Total	**5,047**	**1,271**	**1,169**	**806**	**1,557**	**9,850**

APPENDIX SIX

PUBLICATIONS LIST

The *Ombudsman Act* prevents the office from releasing any information relating to an investigation unless it has been tabled in parliament. For this reason, the majority of the Ombudsman's reports are not available to the public. However the following is a list of reports which are available to the public.

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

17.1.1996	Botany Council: Botany Council's challenge to limit the scope of the FOI Act and the jurisdiction of the Ombudsman.
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	Report on the failure of Ryde Municipal Council to implement Ombudsman's recommendations that it adopt a policy notifying owners of adjoining properties of building applications.
	Report 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 'Gate way 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 others 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

17.1.1996	Botany Council: Botany Council's challenge to limit the scope of the FOI Act and the jurisdiction of the Ombudsman.
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

1.12.1991 Public interest in releasing the 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.

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 section 19(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 the 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 section 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

1.10.1996	The Weston Report - concerning the unreasonable arrest of Mr Rodney Saunders.
26.8.1996	Police and Insurance Investigators.
24.7.1996	The Piat Report.
28.5.1996	Police Conciliation Update.
20.12.1995	Confidential Information and Police.
13.12.1995	NSW Police Complaints System.
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 Regulation (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 section 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 section 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	Report 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 section 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 on 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

1996	Ombudsman's Protected Disclosures Guidelines (1st edition) $10
1995	Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils (2nd editon) $30
1995	Ombudsman's Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials $50
1995	Effective Complaint Handling Guidelines $10
1994	Ombudsman's FOI Policies and Guidelines $30
1994	Electorate Officers Information Kit

BROCHURES

1. General information

2. Problems with a police officer?

3. Problems in gaol?

4. Trouble with council?

5. Unhappy with an FOI decision?

6. Some tips on making a complaint.

7. NSW Ombudsman - Your Watchdog, printed in: Arabic, Chinese, Croatian, Greek, Italian, Serbian, Spanish, Turkish and Vietnamese.

APPENDIX SEVEN

NSW OMBUDSMAN - DISABILITY STRATEGIC PLAN ANNUAL REPORT FOR THE PERIOD ENDED 30 JUNE 1996

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.

REPORT FORMAT 1 PROCESS ITEMS REPORT

Process item	*Comment*
1. Stated commitment to disability planning by management which is communicated to staff.	The Ombudsman and Management Committee strongly support any avenue that improves our service delivery to all groups but particularly people who are in some way disadvantaged. The support for our disability planning is communicated to staff at induction and then on a regular basis through access and awareness activities.
2. Establish and implement planning structure and processes with customer representation.	Initial contact has been made with a number of community organisations in the implementation of strategies (eg Royal Blind Society). Further consultation will occur during the coming year.
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.

Process item	*Comment*
4. cont...	Some statistics on clients are obtained through our client surveys. However these are only a sample of people who use our services, not all. The issue of collecting statistics will be discussed by the Access and Awarness Planning Committee.
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.
6. Develop accessible and appropriate complaints and appeals mechanism for people with a disability.	The office has an internal complaints mechanism that could be used by staff with a disability. The office has 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

Key Result Area 1	*To ensure access for people with a disability to services provided by the NSW Ombudsman*
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 Relation Officer
Status	Discussions have occured with Building Management
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 Relation Officer

Key Result Area 1	*To ensure access for people with a disability to services provided by the NSW Ombudsman*
Status	TTY telephone installed and number publicised on letterhead and brochures
Comment	The above action implement. New strategies to be developed.

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	Needs of staff who have a disability are discussed with the individual staff member and equipment purchases made if required. Funding has been provided from existing stores budgets.
Comment	12% of staff have indicated that they have a disability (Source: EEO statistics). Where necessary, modifications to work have occurred as well as the purchase of specialist 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

Key Result Area 2	*To ensure opportunities for work and career development*
Action cont...	• 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 fully implemented as yet although the office has explored participating in various training programs.
Comment	The percentage of staff who have a disability has been fairly consistent over the past few years at about 12-14%. The office will explore training and other options available during the next year to provide further opportunities.

APPENDIX EIGHT

LEGAL CHANGES

During the year the following legislation, or legislative amendments, were introduced:

1. Witness Protection Act 1995:

The details of the effect of this legislation are discussed in the 'Witness Protection' chapter of this Report.

2. Police Legislation Amendment Act 1996:

- Schedule 2 of this Act amends Part 8A of the *Police Service Act 1990.* Details of the effect of the amendments are discussed in the Police chapter of this Report.

- Schedule 4 of this Act:

  a. amended section 35A of the *Ombudsman Act* to extend the immunity of the Ombudsman and staff to cover acts, matters, or things done or omitted to be done for the purpose of executing any Act (the immunity was previously limited to the *Ombudsman Act*);

  b. amended section 37 of the *Ombudsman Act* to create offences for reprisal action against persons who have complained to or assisted the Ombudsman and reverses the onus of proof where an employee is dismissed or prejudiced in his or her employment for or on the account of the employee assisting the Ombudsman;

  c. made various consequential amendments arising out of the *Police Integrity Commission Act 1996*, in particular the extension of the role of the Joint Parliamentary Committee to cover the Police Integrity Commission.

3. Police Integrity Commission Act 1996:

Details of the effect of this legislation concerning complaints about police, and the relationship between the Police Integrity Commission and the Ombudsman, are discussed in the Police chapter of this Report.

4. Statute Law (Miscellaneous Provisions) Act (No. 2) 1995:

- Details of the new section 52A inserted by this Act into the *Freedom of Information Act* are discussed in the Freedom of Information chapter of this report.

- A new section 13AA was inserted into the *Ombudsman Act* to remove any doubt as to the Ombudsman's power to make preliminary inquiries to determine whether to make particular conduct of a public authority the subject of an investigation under that Act.

APPENDIX NINE

DRAFT PRINCIPLES OF ADMINISTRATIVE GOOD CONDUCT

The NSW Parliament, and the Government of the day and the people of NSW are entitled to expect that all State and Local Government officials perform their duties to the highest standards. This includes the right to expect the conduct of all public officials to be in accordance with accepted principles of good conduct in public administration.

The view of the NSW Ombudsman as to the basic standards of conduct expected of public officials are set out below. These standards are based on the work of the Ombudsman over the past 21 years, and incorporate relevant principles of administrative good conduct drawn from the publications listed at the end of the document.

This guide is intended to provide, in one easily accessible source: general guidance on the standards of conduct expected by the NSW Ombudsman; to assist public officials in the performance of their official duties; and assistance to public sector agencies in the training of staff and the development of codes of conduct.

1. COMPLIANCE

1.1 Compliance with the law, orders and policies

A fundamental principle of public administration is that public officials are required to comply with both the letter and spirit of applicable law. They are also legally obliged to comply with the lawful and reasonable orders of their employer which relate to matters of employment.

One of the primary reasons for the existence of public authorities and public officials is to give effect to the lawful policies of the Government of the day (or council in the case of council staff).

1.2 Obligation of fidelity

Public officials must ensure that they always act in accordance with their obligation of fidelity (including loyalty) to their public authority.

2. INTEGRITY

2.1 Honesty

Public officials should promote public confidence in the integrity of public administration. They should encourage the highest standards of honesty and avoid any conduct which could suggest or give the perception of any departure from this.

2.2 Good faith

Public officials are obliged to act in good faith, ie.: honestly; for the proper purpose; on relevant grounds; and without exceeding their powers.

2.3 Improper or undue influence

Public officials should not seek to gain, either directly or indirectly, any advantage for themselves, members of their family, relatives, business associates, friends or the like, by influencing the conduct or the making of any decision by another public official.

2.4 Improper advantage

Public officials should not take advantage of their status, position, powers or duties for the

purpose of obtaining any unauthorised preferential treatment or other improper advantage for themselves or any other person or body.

2.5 Confidential information

Public officials should not seek or obtain any financial benefit or other improper advantage for themselves or any other person or body from any information to which they have had access in the course of their work.

Public officials should not disclose any information obtained in connection with the performance of their official duties unless such disclosure is authorised.

2.6 Gifts and bribery

Public officials should not seek or accept any gift or benefit if such action could reasonably be perceived as intended or likely to cause them:

- to act in a particular way (including making a particular decision);
- to fail to act in a particular circumstance; or
- to otherwise deviate from the proper course of their official duties.

2.7 Use of public resources

Public officials should be scrupulous in their use of public property, official services and facilities and should not permit their misuse by any other person or body.

2.8 Economy and efficiency

Public officials should strive to obtain value for money and avoid waste and extravagance in the use of public resources.

3. PUBLIC INTEREST

In the performance of their official functions and duties, public officials must act in the public interest, for the common good. Public officials must not make decisions, or otherwise act or fail to act, in order to further their private interests (eg. to gain any financial or other material benefit for themselves, their immediate family, relatives, business associates or friends).

Decision-makers, and persons providing written reports to decision-makers, should fully and appropriately disclose any conflicts of interest they may have in the matter under consideration.

4. FAIRNESS

4.1 Impartiality

Public officials should perform their duties impartially, particularly when exercising statutory discretionary powers or delegated authority. They should deal fairly and equitably with all members of the public and their colleagues.

4.2 Procedural fairness

There is a presumption that the rules or principles of procedural fairness (ie. natural justice) must be observed by public officials when exercising statutory powers which could affect the rights, interests or legitimate expectations of individuals.

4.3 Reasons

The giving of reasons for decisions is one of the basic principles of good public administration and is often a requirement of procedural fairness (ie. natural justice).

Reasons should fully explain a decision in a way that is simple and easily understandable.

4.4 Notification of rights of objection, appeal or review

Members of the public should be adequately informed of any available rights of objection, appeal or review (both internal and external) where they are adversely affected by a decision, or a decision is otherwise one which they potentially might wish to challenge.

4.5. Reasonableness

Public officials should always act in ways that are reasonable in the particular circumstances

that apply. This includes a reasonable proportionality between the ends to be achieved and the means used by public officials to achieve them.

5. TOLERANCE

Any decision or the provision of services or facilities which favours one or more persons over others is inevitably discriminatory and therefore partial (eg. additional assistance for people with special needs). However, decisions and actions by officials which unfairly or unlawfully discriminate against an individual or group are unacceptable.

Public officials should always act in a manner that is inclusive and tolerant of people regardless of: linguistic, cultural, religious, ethnic, national or racial backgrounds; physical or mental attributes or disabilities; age; or gender or sexual orientation.

6. COMPETENCE

6.1 Advice

Public officials have a responsibility to ensure that all advice given by them to any person in the performance of their official duties is accurate, frank, impartial, complete, and timely.

6.2 Care and attention

Public officials must exercise reasonable care in the performance of their duties, and exercise of their powers. While on duty, they should give their whole time and attention to official business.

6.3 Timeliness

Decisions should be implemented and statutory obligations carried out:

- in accordance with any statutory deadlines that may apply; **or**
- within reasonable periods of time,

and in either case, without undue delay.

7. ACCOUNTABILITY

7.1 Scrutiny

Public officials are accountable for their decisions and general conduct to their supervisors, their public authority, their Minister and Government of the day (where applicable), the Parliament, and ultimately the people of NSW (or their communities in the case of councils).

7.2 Complaints and disclosures

Complaints from the public and disclosures by staff should be viewed and treated as important ways for management to be accountable to the public, as well as to review the performance of the organisation and the conduct of individual members of staff, contractors, consultants and the like.

7.3 Performance review

It is a fundamental principle of good public administration that the conduct and performance of public officials should be adequately and regularly reviewed.

7.4 Records

Public officials should create and maintain full and accurate records which document their activities and the reasons for their decisions.

7.5 Correction of mistakes

Public officials must ensure that any mistakes, errors, oversights or improprieties (whether personal or organisational), once identified, are rectified voluntarily and promptly.

7.6 Access to information

Information is held by both state and local government on behalf of the people of this State. They have a right to know what has been or is being done or contemplated by government, unless there are good and lawful reasons for access to be restricted.

7.7 Privacy

The promotion of access to information must not be at the expense of the individual's right

to privacy. Members of the public have a right to expect that information held by government concerning their personal affairs will not be unlawfully, unreasonably or improperly disclosed.

7.8 Administrative practices

Public authorities, and public officials in management positions, should ensure that appropriate management structures, systems and practices are in place to ensure proper accountability, compliance with applicable procedures and practices, and that activities are carried out in ways which are legal, reasonable and professional.

8. CONSULTATION

Public officials should ensure that, wherever possible, there is adequate, meaningful and timely consultation with affected, or potentially affected, persons before decisions are made.

9. SERVICE

9.1 The primary purpose of public officials

The primary purpose of public officials is to serve the public, the Parliament, the Government of the day, their Minister (if applicable), their public authority (including a council, where relevant), other public authorities and their colleagues.

9.2 Standard of service

Citizens have a legitimate expectation that the service they receive from all public authorities and public officials will be to the best standard that can practicably be achieved. Public authorities and officials are obliged to provide quality services to the public and to strive to improve their standards of service.

9.3 Courtesy

In performing their official functions and duties, public officials must treat all people with courtesy and respect.

9.4 Conflict resolution

It is in the interests of public authorities (including local councils, where relevant), the Government of the day, the public generally, and in particular the individual members of the public concerned, that public authorities attempt to resolve disputes, where possible, without recourse to the courts.

9.5 Coordination

Active and positive steps should be taken to ensure full and proper liaison and coordination between public authorities (or different component units of a public authority) and public officials, particularly where there is the potential for unnecessary duplication, confusion or conflict.

9.6 Documentation

Correspondence with the public and forms used by public authorities and public officials should be written in plain language, using simple terms and easily understandable formats.

9.7 Accessibility

The offices of all public authorities (or relevant component units of public authorities) that deal with the public should be easily accessible to all members of the public, including those with disabilities.

9.8 Titles and names

The names of public authorities and their various component units, and the position titles of public officials who deal with the public, should be self-explanatory, reflecting clearly and simply their main function(s).

10. HEALTH, WELFARE AND SAFETY

Public authorities and public officials in management positions are required to ensure that their premises adequately provide for the health, welfare and safety of the staff of the authority and members of the public who use them.

FURTHER ADVICE OR GUIDANCE:

Further guidance on good conduct in public administration can be obtained from the NSW Ombudsman (02-9286 1000) or be found in the following publications:

- *Administrative Good Conduct*, NSW Ombudsman 1996;
- *Code of Conduct for NSW Public Agencies: Policy and Guidelines*, PEO, 1996;
- *Fraud Control: Developing an Effective Strategy*, Audit Office, 1994;
- *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials*, NSW Ombudsman, 1995;
- *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils*, (2nd edition) NSW Ombudsman, 1995; and
- *Practical Guide to Corruption Prevention*, ICAC, 1996.

NOTE:

This document is a summary of an Ombudsman publication entitled *Administrative Good Conduct*. It is intended for wide distribution to all public sector employees in NSW.

APPENDIX TEN

CODE OF CONDUCT

BACKGROUND

The office of the Ombudsman is constituted under the *Ombudsman Act, 1974*. Its operations are governed principally by that Act and the *Police Service Act, 1990*. It also has specific operational responsibilities under the *Freedom of Information Act*, the *Telecommunications (Interception) (New South Wales) Act* and the *Independent Commission Against Corruption Act*.

The office is accountable to the public of NSW through Parliament and its operations are essentially independent of the government of the day. The office has a prime obligation to the public interest which demands that the work of the office and the conduct of its officers and staff must maintain public confidence and trust.

The basic charter of the office is to receive, investigate and report on complaints about the administrative conduct of public authorities and alleged misconduct of police officers, to determine complaints and, where appropriate, to make findings and recommendations.

The mission of the NSW Ombudsman 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.

In pursuit of this mission the office seeks the achievement and maintenance of high standards of conduct on the part of the State's public authorities. It seeks to maintain standards no less high on its own part.

INTRODUCTION

This code applies to the Ombudsman and all staff of the office, whether by way of appointment, secondment, contract, temporary arrangement or on a fee for service basis. It is subject to annual review, and revision from time to time as circumstances require.

The code has been developed to provide practical guidance to all staff in their performance of their duties and in handling situations which may present ethical conflicts.

It sets out basic principles which officers and staff are expected to uphold and prescribes specific conduct in areas central to the exercise of the Ombudsman's functions and powers.

The document cannot cover every possible situation which may arise. If you are uncertain of what to do in a particular situation, ask your supervisor or a senior officer for guidance.

The code will be reviewed annually and updated. If you have comments or suggestions for improving the code, please refer them to the Manager Administration who has responsibility for reviewing this code.

BASIC PRINCIPLES

The public have a right to quality service from the NSW Ombudsman. That service will be characterised by:

- the vigorous pursuit of truth, without fear or favour;
- courteous, attentive and sensitive treatment of individuals and organisations that the office deals with;
- conscientious and competent discharge of all duties and responsibilities;
- fair procedures;
- the setting aside of personal interests and views in discharging functions;
- the efficient and effective use of the resources of the office.

LEGISLATIVE OBLIGATIONS

You are obliged to always act in accordance with the provisions of the legislation under which the office undertakes its functions (*Ombudsman Act 1974, Police Service Act 1990, Protected Disclosures Act 1994, Witness Protection Act 1995, Telecommunications (Interception) (New South Wales) Act 1987, Freedom of Information Act 1989*, and *Independent Commission Against Corruption Act 1988*) and the Ombudsman's policies, directions and delegations as set out in memoranda and procedure manuals.

You are to become and remain fully conversant with those instruments.

You should also be conversant with the principal provisions of other public sector legislation having general effect upon the office, including the *Public Sector Management Act 1988*, the *Anti-Discrimination Act 1977*, the *Occupational Health and Safety Act 1983*, and the *Public Finance and Audit Act 1983* and observe them.

PERSONAL CONDUCT

You are to deal with other staff and the public with honesty, courtesy and consideration, and to refrain from conduct or behaviour which may damage the reputation and standing of the office and its staff.

You must not discriminate or deal unfairly with complainants, public authorities or fellow officers on the grounds of:

- sex, age, marital status or pregnancy;
- race, colour, nationality, ethnic or social origin;
- physical or intellectual disability or impairment;
- sexual preference; or
- religious or political belief.

DRESS AND APPEARANCE

Your dress and appearance need to be appropriate to the formality of your official duties. Casual clothes are not to be worn on official visits or when interviewing public authorities. If involved in a section 19 hearing, officers are expected to dress to a standard that would be expected of legal representatives in a court.

PROFESSIONAL CONDUCT

You are expected to discharge your duties with care and thoroughness, in compliance with all lawful instructions and with close attention to:

- honesty and integrity;
- accuracy and completeness;
- consideration of all relevant facts;
- particular merits of the case;
- impartiality and procedural fairness;
- equity and natural justice;
- accountability;
- consistency, all things being equal;
- office policy;
- discretion and tact;
- conflicts of interest.

You must maintain adequate documentation to support any decisions made.

You must not unduly delay taking action or making decisions.

Any verbal communications on sensitive or important matters are to be recorded accurately and immediately and brought to the attention of an appropriate senior officer.

CONFLICTS OF INTEREST

To maintain the integrity of the office, personal interests (financial and otherwise), associations and activities must not conflict with your duties. The Ombudsman is entitled to know if there is even a remote possibility of a conflict arising.

You must make full and frank disclosure to the Manager Administration or the relevant statutory officer of any conflict, either real or potential, which may be seen to impact on the impartial exercise of your duties. All conflicts of interest are to be noted in the conflicts register maintained by the Manager Administration. This register contains all disclosures by staff of matters which are or could potentially result in conflicts of interest arising out of the performance of their duties with this office.

If necessary, you may need to disqualify yourself from having any involvement in particular matters where that conflict arises, subject to the agreement of the relevant statutory officer.

If you are in any doubt whether to disclose a potential conflict of interest, you have an obligation to consult your Complaints Manager, the Manager Administration or the relevant statutory officer. Such consultations will be treated confidentially and may avoid harm or embarrassment to the office and yourself.

ACCEPTANCE OF GIFTS OR BENEFITS

You must not accept any gift or benefit that could be seen by a member of the public as intended or likely to cause you to do your job in a particular way, or deviate from usual procedures.

Generally any such offers should be declined except in cases where the offer is of some token kind and it would be rude or offensive to refuse, or where the offer is also to associates who share a common task and purpose and which does not impose any obligations that may conflict with your duties eg. modest hospitality offered on visits to institutions, during meetings of working parties, selection committees etc.

You must always decline offers from individuals or organisations that are complainants to the office or that you know to be the subject of an investigation by the Ombudsman.

You must never solicit any money, gift, benefit, travel or hospitality in association with your duties.

CONSULTATION AND REPORTING

You have a duty to report any operational problem or difficulty you identify to your direct supervisor, or where appropriate, to a more senior officer.

You have a duty to consult your colleagues or supervisor when you have any doubt about the way in which you should exercise your delegated powers or fulfil your duties.

You have a duty to seek approval for any action that you do not have delegated authority to take or that is the subject of any specific direction or policy of the Ombudsman or a senior officer requiring consultation or approval.

You must report without delay to the Complaints Manager or the relevant statutory officer any complaint that is made about the exercise of the functions of the Ombudsman or the conduct of yourself or another staff member.

You must inform the Ombudsman of any case where there is reason to suspect corrupt conduct within the meaning of the *Independent Commission Against Corruption Act* whether occurring within or outside the office in view of her obligation of notification under the Act.

GENERAL ACCOUNTABILITY

You are responsible for your own acts and omissions and will be held responsible for them.

If you have a supervisory role, you will also be held responsible for any foreseeable acts and omissions of your staff which by their seriousness, repetition or common occurrence are matters that you should know of and correct if you are exercising responsible management, leadership and supervision.

If you have a supervisory role, you therefore have a duty to make sure the staff under your control or leadership have a clear understanding of their duties, how they are expected to perform those tasks, and what results are expected.

You must notify the Ombudsman or the relevant senior officer of any precautionary or remedial action that is necessary to take in respect of any staff under your leadership or supervision or any function or responsibility of the Ombudsman which you are unable to take yourself.

CONFIDENTIALITY

You must always comply with the obligations of confidentiality in respect of the work of the office prescribed by the legislation under which the office undertakes its investigations, monitoring and reporting.

You must not access or disclose any of the sensitive information that the office receives or has access to except in the proper performance of your duties.

You must not use any information that you obtain in the course of your duties to gain improper advantage for yourself or for any other person, that would cause harm or discredit to the office or any person, or would be inconsistent with your duties.

PUBLIC COMMENT

This section should be read in conjunction with the Media Policy and the memorandum concerning disclosure of information dated 19 December, 1994.

You must not engage in public comment, whether through public speaking engagements, comments to newspaper or radio or television journalists, letters or articles to newspapers or other publications that:

- comments on the work of the office unless you have prior permission or delegated authority of the Ombudsman;
- is the expression of private views but by implication is capable of being perceived as official comment from this office.

You can disclose official information which is normally given to members of the public seeking that information.

In discussing any other work of the office outside the office, you must confine yourself to material that has entered the public domain by way of annual reports, special reports to parliaments, reports of the Joint Parliamentary Committee on the Ombudsman, media releases authorised by the Ombudsman or public addresses given by the Ombudsman or other statutory officers.

You must refer all media enquires to the Media Officer unless you are the designated officer to take media calls in relation to some specific issue.

The constraints on public comment and the obligations to observe and protect confidentiality still apply when you leave the employ of the Ombudsman.

You must use any resources and equipment of the office economically and without waste.

When using equipment you must exercise care and follow service requirements. When using shared equipment, you must ensure that your use does not unnecessarily impede access by others or assume unreasonable priority.

You must not use your work time or obtain or use stores items such as stationary, equipment or postage for a private purpose unrelated to the work of the office unless authorised. There are some reasonable exceptions to this rule. For example, you may use the phone for private local calls if they are short, infrequent and do not interfere with work, and send and receive private fax messages as long as they are local, infrequent and do not interfere with the work of the office.

When using office resources for an authorised private purpose you must ensure that they are secure and properly cared for, used in your own time, do not interrupt the work of the office or access by colleagues for official purposes, and supply any consumables yourself.

When you leave the employ of the Ombudsman you must return all equipment and documents that belong to the office.

You must not incur expenditure on behalf of the office unless authorised. If incurring authorised expenditure, you must adhere to all relevant requirements of the *Public Finance and Audit Act*, Treasurer's Directions, office policies and any financial delegations you have.

You must maintain security of the office and any keys or mil keys that you have.

You must make yourself familiar with any security procedures followed in the office including emergency and fire procedures.

You must obtain approval from a senior officer delegated to give such approval for any outside employment that you intend to engage in or are considering.

You must not engage in any outside employment or remuneration that would conflict or compromise your duties as an officer of the Ombudsman.

You should be aware of the various sanctions that may be applied for the breach of any provision in the legislation governing the work of the Ombudsman or your employment under the provisions of the *Public Sector Management Act*.

Sanctions may be applied if you are involved in:

- unacceptable behaviour, either in the course of your duties or in your private life that would bring discredit on the office of the Ombudsman or the public service;
- unsatisfactory performance of your duties;
- breaches of this Code of Conduct;
- breaches of your terms of employment;
- breaches of any provisions of the Acts mentioned in this code;

Any sanctions applied will depend on the seriousness and nature of the breaches and may include counselling by a supervisor or member of senior staff, a record of behaviour being documented and placed in your personnel file, the deferment of salary increments, not being recommended for renewal of contract, formal disciplinary or criminal action.

INDEX

This index is designed to provide a convenient guide to the various matters canvassed in this report. It does not purport to index every reference to a particular subject or topic.

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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) 9286 1000, free call on 1800 451 524, TTY on (02) 9264 8050 or fax on (02) 9283 2911.