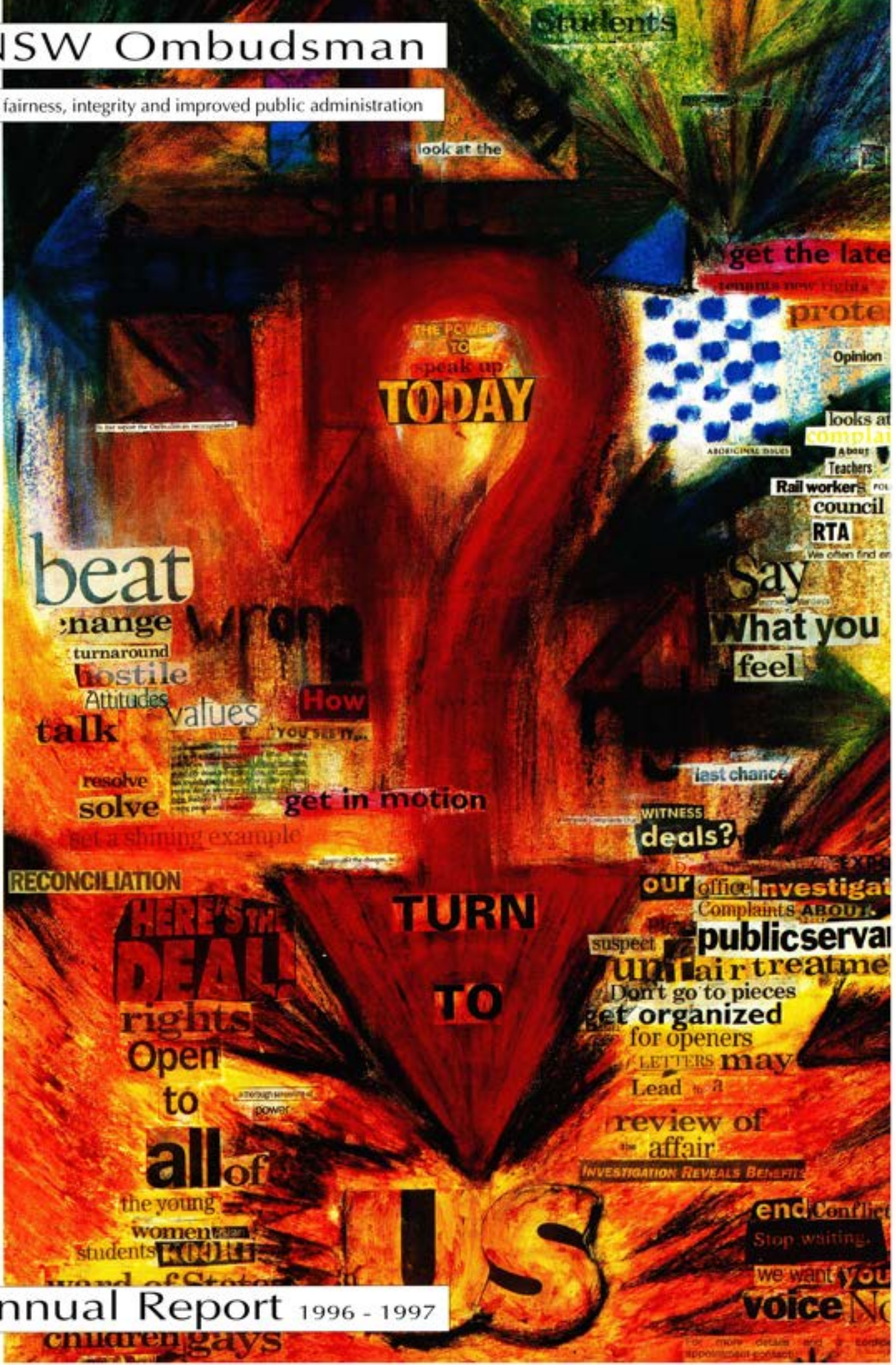


NSW Ombudsman

For fairness, integrity and improved public administration



Students

look at the

get the late

THE POWER TO
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TODAY

ABORIGINAL ISSUES

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Opinion

looks at
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About

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LETTERS may

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the affair

INVESTIGATION REVEALS BENEFITS

end conflict

Stop waiting.

we want you

voice No

Annual Report 1996 - 1997

FOR MORE DETAILS AND APPOINTMENT CONTACT

HISTORIC BEGINNINGS

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

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

The first NSW Ombudsman was appointed in 1975 and the legislation became operative in May that year.

The NSW public sector today is a very different animal to that of 1975. In 22 years there have been many changes. Governments have come and gone, public authorities have merged and separated and there have been four very different individuals appointed as Ombudsman.

RIGHTING WRONGS

Since inception we have dealt with more than 200,000 complaints.

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

FRONT COVER

We used the image on the front cover to produce a poster for young people during the year. Distribution has been limited so far but the young people who have seen it tell us they love it. It will be distributed widely to refuges, schools, universities, juvenile justice centres and community information centres. The poster was designed by Jason Rogers, a young artist from Wollongong.

TO OUR READERS

Our annual report is a public record of our accountability. We are accountable to the people of NSW through the State Parliament.

The first part of this report looks at our people, performance and organisation. The remainder is structured around our three core goals of:

- improving the NSW public sector;
- ensuring we are accessible; and
- providing a cooperative and productive workplace.

LETTER TO PARLIAMENT

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
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Dear Gentlemen,

Under section 30 of the *Ombudsman Act 1974*, the Ombudsman is required to submit an annual report to Parliament. This is our 22nd annual report and contains an account of our work for the twelve months ending 30 June 1997. This report is also made pursuant to section 31 of the *Ombudsman Act*.

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

Developments and issues current at the time of writing (July-August 1997) 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 my office during the year and so the case material contained in the report covers a broad range of complaints 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 AO
NSW Ombudsman
October 1997

CONTENTS

• OMBUDSMAN'S FOREWORD	2
• OUR ORGANISATION	6
• OUR OBJECTIVES AND RESULTS	8
• 1996/97 OVERVIEW	10
• IMPROVING THE NSW PUBLIC SECTOR	
Handling Complaints about Police	12
Handling Complaints about Authorities and Departments	42
Handling Complaints about Local Councils	60
Handling Complaints about Correctional Centres	84
Handling Complaints about Juvenile Justice Centres	106
Handling Complaints about Freedom of Information	114
Protected Disclosures	136
Handling Complaints about Witness Protection	147
A Fast Advice and Resolution Service	149
Promoting Alternative Dispute Resolution	152
Improving Complaint Handling in the Public Sector	158
• ENSURING WE ARE ACCESSIBLE	
Planning for Access and Awareness	160
Working With Young People	164
Working with Aboriginal People	170
• A COOPERATIVE AND PRODUCTIVE WORKPLACE	172
• FINANCIAL SUMMARY AND STATEMENTS	180
• APPENDICES	199
• INDEX	230

OUR MISSION

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 SERVICE GUARANTEE

If you have a complaint about a NSW government authority or public servant we guarantee to give it our 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

- To act with integrity.
- To vigorously pursue the truth.
- To set aside personal interests and views in the discharge of our functions.
- To discharge all duties and responsibilities conscientiously and competently.
- To treat our clients with courtesy and sensitivity.
- To implement fair procedures.
- To use our resources efficiently and effectively.

VITAL STATISTICS

Resources

Recurrent funds provided by the government 1996-96	\$5.3m
Total funds allocated (approx.) since establishment in 1974-75	\$52m

Complaints

Formal written complaints received 1996-97	8,111
Police	5,232
Other	2,879
Informal oral complaints received 1996-97	15,698
Complaints received since establishment in 1974-75	
Formal	110,811
Informal	129,000+

Reports

Wrong conduct reports since establishment	2,200+
Special reports to Parliament since establishment (approx.)	163

Staff

Ombudsman, Deputy Ombudsman, two Assistant Ombudsman	4
Investigation staff	56
Assistants to investigative staff	8
Inquiries officers	3
Publications/media staff	2
Human Resources, Accounts and Information Systems staff	9
Total	82

INCREASING LEVELS OF COMPLAINTS: A CAUSE FOR CONCERN?

Once again, I report a continuation of the upward trend in complaints. We dealt with 8,111 formal written complaints, an increase of 5% on the previous year, and 15,698 informal oral complaints, an increase of 10%. Some notable increases occurred in formal written complaints about local councils - up 22% - prisons up 36% and FOI up almost 40%. Increasing numbers of complaints year after year seems to be a fact of life for the office. However, the message conveyed by this steady increase is unclear.

Citizens are complaining more. And there will always be problems associated with the practices, policies and procedures of many public authorities. The question arises as to whether this upward trend in the level of complaints indicates a serious decline in the quality of the overall service provided by public authorities or public officials, or is a sign that the public increasingly believes that making a complaint is a worthwhile exercise. It is my belief that public authorities are not getting dramatically worse. Rather, it is my impression that citizens are seeing this office as a practical and effective method to obtain redress.

One of the reasons why the office is receiving more complaints may be due to our improved capacity to resolve complaints quickly and informally, without the need for formal investigation. Investigations are very often lengthy affairs and resource intensive. If complaints can be informally resolved, sometimes over the telephone, redress is quick and low cost. This fits with the office's three-pronged focus to its work - to review, to resolve and to rectify.

An important factor in the speedy and informal resolution of complaints is the willingness of public authorities to respond positively and openly to our initial inquiries. Very often, a complaint can be rapidly resolved if the public authority objectively considers the concerns raised by the complainant, acknowledges the problems which exist and then quickly moves to resolve them. I am pleased to report that many public authorities have adopted a positive and cooperative attitude to our inquiries, resulting in many complaints being successfully resolved on an informal basis. More and more public authorities are using complaints as a management tool to act as an early warning system for problems and to improve levels of service or policies and practices.

Increased numbers of complaints may not necessarily be a cause for alarm. Rather, they may be a sign of greater responsiveness and a culture that sees complaints as an important source of information to enhance the performance and effectiveness of the public sector.

CHILDREN AND YOUTH ISSUES

The Royal Commission into the NSW Police Service has completed its investigation into the paedophile reference and presented its report to the government. The Royal Commission has made 140 recommendations designed to improve child protection. I welcome the report and endorse the principles which inform the recommendations. I am pleased that the recommendations envisage this office should play a role in the reformed system for child protection.

It is important that a steady and balanced approach be taken in terms of the hard work of putting the reforms in place. It is equally important that the discussion which surrounds the implementation of the recommendations avoids too much emotionalism and rhetoric. Decisions about child protection are inevitably and understandably going to generate a considerable amount of strong feeling. However, these feelings should not completely obscure the goal of creating a child protection system which is workable and fair to all.

In relation to the handling of complaints about the conduct of service providers, I believe that the following five principles should be taken into account in the implementation of the Royal Commission's recommendations:

1. compliance with the principles set out in both of the reports of the Royal Commission with respect to its police and paedophilia references;
2. separation of complaint handling and investigation roles from advocacy and disciplinary roles to avoid in built incompatibility of functions;
3. a seamless approach to investigations to avoid overlapping responsibility and duplication - multiple agencies handling complaints can lead to jurisdictional confusion and conflicts, matters falling between the cracks and so on;
4. avoidance of the proliferation of bodies with responsibility to investigate complaints about service providers - this avoids public confusion about where to go for help and maximises recognition; and

5. agencies to take ownership of their problems including primary responsibility for the conduct of their staff, subject to mandatory notification and effective external oversight.

Adherence to these principles will assist in the development of a complaint handling system which avoids multiple investigations by different bodies, most of whom have quite different powers. There have been cases where investigations have been undertaken by more than one watchdog, police and the public authority concerned. The duplication of effort and resources and the attendant confusion in the minds of the public as to who is responsible for handling complaints is clearly not in the public interest.

I highlighted children's and youth issues in my foreword to last year's annual report. During the year there has been a quite remarkable increase in complaints from or on behalf of young people - see *Working With Young People*. This increase reflects the success of our strategies for raising awareness of our office among young people and youth advocates and workers. It is pleasing that so many young people are contacting our office not only to make complaints but also to seek appropriate referral information. However, there is still much to be done.

We are continually reviewing our complaint handling practices and procedures as they apply to young people, as should all public authorities. I am aware that most public authorities which have contact with young people have a long way to go before they can claim that they have the confidence and trust of the young people they serve. I am always concerned to hear from my youth liaison officer stories about young people being afraid to make complaints. This is totally unacceptable. We will be closely monitoring any claims by young people that they have been harassed or victimised because they have made a complaint to the appropriate body.

Another major project of the office in this area was the publication of our special report to Parliament into juvenile justice detention centres. The report followed the office's year long investigation into the standards of care being provided to juveniles in detention. Issues examined included education and training, food, discipline and punishment, accommodation, family contact and rehabilitation services. We made 239 recommendations for improving conditions and treatment, having found many current practices barely adequate. The Department of Juvenile Justice is making steady progress towards the implementation of the recommendations. We shall, however, be closely monitoring future compliance and implementation of the recommendations. See *Handling Complaints About Juvenile Justice Centres*.

POLICE: A PROFESSIONAL AND ETHICAL SERVICE

The Royal Commission into the NSW Police Service has now completed its work. In the area of police complaints, a reformed complaints system is being trialed. The office continues to deal with the vast bulk of police complaints through external oversight of internal police investigations into complaints. During the year, the office handled 5,232 formal written complaints, which includes those we directly investigated or monitored, and 2,706 informal oral complaints.

A police complaints system where the bulk of complaints against police are investigated by police, with those investigations subject to external scrutiny and oversight by this office, was the model recommended by the Royal Commission and accepted by the government. It is also a model supported by this office and consistent with modern management approaches which see benefit in forcing organisations to recognise and own their problems. However, giving responsibility to the Police Service to investigate complaints requires police to be objective and professional in undertaking those investigations. Regrettably, we still see too many cases where investigations are performed inadequately or investigators fail to draw appropriate conclusions from the evidence.

During the year, I made several special reports to Parliament which raised the issue of inadequate investigations: the Piat report of July 1996; a report on police and insurance investigators of August 1996; the Weston report of September 1996; and most recently a report on Alison Lewis and Lithgow Police. One common theme in all of these reports, and many other complaints we handled and investigations we oversaw, is the incidence of inadequate internal police investigations. This



Irene Moss AO
NSW Ombudsman

remains a key concern of this office. The Police Service has to improve the overall quality of its internal investigations and the objectivity with which it views matters. Police must discard any desire to exonerate their colleagues and must openly acknowledge mistakes.

Another key area of concern is the ongoing problem of police failing to properly deal with conflicts of interest. During the year I released two special reports to Parliament about conflicts of interest. One report was made public in March 1997 about a specific case of a conflict of interest involving a senior officer. This report also raised serious questions about the adequacy of the internal police investigation as well as the conclusions drawn from it. The other report of June 1997 highlighted several cases of conflict and discussed the issue as a Service-wide problem.

These special reports, and many other complaints, describe cases where police were unable to recognise the existence of clear conflicts let alone adequately deal with them. Identification of a potential conflict of interest is of course the first step in being able to either avoid or manage it appropriately. There are still too many complaints we receive where police, including some senior officers, seem blind to the existence of such conflicts. Needless to say, the failure to spot a conflict of interest leads inexorably to mismanagement of it.

The Commissioner has released a Code of Conduct which contains guidance to police on conflicts of interest. However, there is a clear need for police to improve their understanding about what is, or could potentially lead to, a conflict of interest. The ability to adequately identify and manage conflicts is one indicator of a professional Police Service. Regrettably, the Police Service appears to be some way from adequate performance in this area.

Another area of concern relates to unauthorised access by police to the police computer system. Police have a high degree of access to a number of computer data bases which contain a wide variety of information about citizens. This access is granted as it is in the public interest for such information to be available for the prevention and detection of crime. However, this power has to be exercised responsibly and professionally and for the purpose for which it is granted. Unauthorised access is not only a criminal offence and a serious breach of privacy, but also a gross betrayal of public trust. Nevertheless, we have discovered a number of cases where not only have there been the most extraordinary levels of unauthorised access but also where the penalties meted out for the unauthorised access have been wholly inadequate considering the gravity of the misconduct. While the Police Service has launched a quite extensive cam-

paign to educate officers about unauthorised access, it appears that its response to unauthorised access will have to get a lot tougher if the frequent abuse of computer systems is to be stamped out. The successful eradication of unauthorised access as a significant problem will be an indicator of the development of a professional and ethical Police Service and we shall be closely monitoring the situation.

On a more positive note, I am pleased to report the significant advances made by police in relation to internal witnesses. The Internal Witness Support Unit has been considerably enhanced by the development of a new policy, and research suggests that the Unit is making great strides towards improvements in the treatment of internal witnesses. The Unit has a dedicated and professional staff and stands to date as an example of what the Police Service can achieve.

LOCAL COUNCILS: SMALL POCKETS OF RESISTANCE

The legislation covering local councils has been in place for a considerable period of time. I am gratified about the growing level of acceptance of the accountability of councils, councillors and mayors. However, there are still some pockets of resistance in local government which have yet to completely accept that they are accountable to watchdog bodies such as this office. This is to be contrasted with other public authorities where there is general acceptance of the principles which underpin accountability and indeed willing cooperation with the watchdog bodies. In my view, it is more likely in local government than with state government authorities for there to be a tendency to shoot the messenger and avoid dealing with the message. I hope that in the next twelve months the office will be able to constructively engage these remaining pockets of resistance with a view to gaining wider acceptance of accountability.

CONFLICT BETWEEN GENERAL MANAGERS AND MAYORS

One issue which continues to be of significant concern is the level of conflict between general managers of local councils on the one hand and mayors and councillors on the other. The numbers of complaints we have received where this is a significant element remains disturbingly high.

The conflict between GMs and mayors/councillors stems, to a large degree, from a lack of knowledge about the intricacies of the 1993 *Local Government Act* and certain expectations of and by many elected officials which are in conflict with the scheme of the Act. The public expects that councillors and mayors will be re-

sponsive to the needs of constituents. Elected officials are under pressure to respond to community concerns, and elected officials are conferred with considerable legitimacy and moral authority by the electoral process. These factors, when combined with a lack of knowledge about the 1993 legislation, often seem to create a range of unrealistic expectations and pressures which cannot be satisfied under a system which gives executive power within councils exclusively to GMs.

In my view, there are some solutions available to the problems of conflict which do not require a radical re-shaping of the legislation.

First, there is a need to better educate the electorate and those seeking election to councils to clarify the actual role, powers and responsibilities of elected councillors and mayors. This education could assist to dampen unrealistic expectations about the powers and responsibilities of councillors and mayors. While some education programs are currently available in NSW, a renewed emphasis needs to be placed on the matter in the lead up to the next round of local government elections due in 1999.

Second, councils should have mechanisms to identify problems before the parties become too polarised in their views and the conflicts intractable.

Third, early and appropriate intervention by neutral third parties can assist in conciliating or mediating disputes. Peak industry bodies in local government, the Department of Local Government and this office all currently offer alternative dispute resolution services. However, greater emphasis needs to be placed on their use and also upon their implementation.

Fourth, there are some relatively minor amendments to the act which could assist in defusing some potential for conflict. The most important would appear to be clarification of the actual powers and role of GMs, in particular clarification of what is meant by "day to day management". This is currently the responsibility of GMs and a topic about which there is a great deal of confusion, if not disagreement, across local government.

PROTECTED DISCLOSURES: IMPLEMENTATION IS INADEQUATE

During the course of the year we have audited virtually every state government agency's protected disclosures Internal Reporting Policy. Such policies are a key step in the implementation of the *Protected Disclosures Act*. The results of the audit are extremely disappointing. 72% of the 106 policies which were audited were found to be inadequate, often seriously so. Some of the policies contained misstatements about the Act and its interpretation. Many policies failed to contain statements which evidenced the agencies' opposition to maladministration,

corrupt conduct and serious and substantial waste. Another area of inadequacy was the lack of guidance and advice about key terms in the Act and the protections available to whistleblowers.

The Act commenced on 1 March 1995 and now, over two years later, many public authorities still do not appear to have grasped the nettle and put in place adequate policies and procedures to encourage whistleblowers and to ensure that their disclosures are properly dealt with. Without adequate policies and procedures in this area, it is highly unlikely that whistleblowers will feel confident about making disclosures. This would seem to defeat the point of the legislation.

Disclosures about serious and substantial waste, corrupt conduct and maladministration are clearly in the public interest. And so is their effective investigation and the implementation of changes which are necessary to prevent their recurrence. Many public authorities need to change their attitude to both whistleblowers and their disclosures and begin to regard them as a valuable management tool and source of information. To this end, all agencies whose policies were found to be inadequate have been written to by the Protected Disclosures Steering Committee with specific suggestions for how their policies can be improved. We shall be closely monitoring the uptake of these suggestions and shall report on the matter next year.

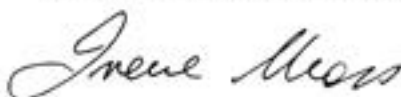
As I reported last year, the Joint Parliamentary Committee on the Office of the Ombudsman released its report on its review of the Act in September 1996. The Committee made a number of recommendations with respect to improving the legislation. The government is yet to respond to these recommendations and I would hope that some constructive action is taken within the current financial year.

CONCLUSION

There is little or no joy in uncovering misconduct by public officials. There is still far too much of it. However, there is immense satisfaction in being able to resolve complaints by citizens and achieving systemic improvements to public administration for the benefit of the public.

A significant objective of my office is to add value in the process of public administration and we will continue to focus on improving public administration in NSW.

I renew our commitment to these important objectives.



Irene Moss AO
NSW Ombudsman

Our Principal Officers

OMBUDSMAN



Irene Moss AO

BA (Syd), LLB (Syd), LLM (Harvard).

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. For eight years Irene was the Federal Race Discrimination Commissioner at the Human Rights and Equal Opportunity Commission. Irene is currently on the Board of SBS and chairs the NH&MRC National Breast Cancer Centre. 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.

DEPUTY OMBUDSMAN



Chris Wheeler

BTCP (Melb), MTCP (Syd),
LLB (Hons)(UTS).

Chris originally came to our office in 1981 but left seven years later to work for the NSW Department of Local Government. He later practised as a private solicitor specialising in administrative law and local government issues,

before returning as Deputy Ombudsman in 1994.

ASSISTANT OMBUDSMAN (POLICE)



Stephen Kinmond

BA, LLB, Dip Ed, Dip Crim.

Steve worked for a number of years in the child protection area before joining our office and working as a senior investigator. He left the office to practice law in the private sector, specialising in commercial litigation and migration. After returning to our office he was appointed as Assistant Ombudsman (Police) in 1995.

ASSISTANT OMBUDSMAN (GENERAL)



Greg Andrews

BA (Hons), G Cert P Sect Mgt.

As a senior investigator and manager with our office for some years, Greg has been responsible for producing many of the major reports and initiatives of the past three Ombudsmen. Greg manages a diverse range of the Ombudsman's activities supported by a talented and committed team.

MANAGER CORPORATE SUPPORT



Anita Whittaker

BCom.

Anita joined our office as Personnel Officer in 1985. Before joining the office she gained extensive public administration experience at the State Super Board and the Art Gallery of NSW. In 1995 Anita was promoted to Manager of Corporate Support, where she manages

a diverse range of projects and staff.

MANAGER POLICE TEAM



Marianne Christmann

BSc, LLB.

Marianne joined our office in 1991 and has continued to build on her already strong background in the police area. She has worked on a number of our more complex and sensitive investigations. Before joining our office, Marianne was with the Law Reform Commission

and conducted research for the Commission's Community Law Reform Program.

MANAGER GENERAL TEAM

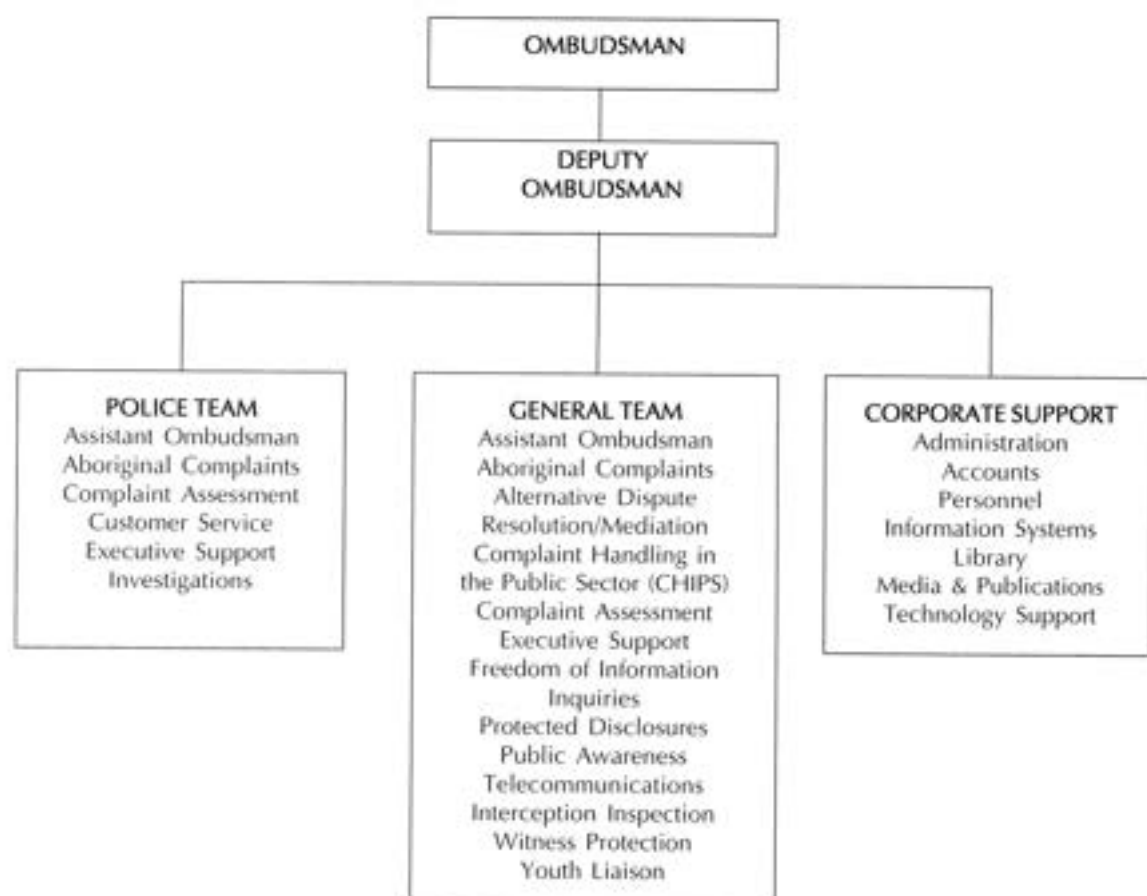


Anne Radford

BA, Grad Dip Lib, G Cert Mgt.

Anne has worked with us for eight years, initially working in the FOI Unit. She broadened her experience working as a general investigator and in 1993 was appointed Complaint Manager of the General Team. Prior to working with the office, Anne worked with the Department of Community Services.

Our Organisational Structure



SIGNIFICANT COMMITTEES - INTERNAL

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

Irene Moss - Ombudsman, Chris Wheeler - Deputy Ombudsman, Greg Andrews - Assistant Ombudsman (General), Stephen Kinmond - Assistant Ombudsman (Police), Anne Radford - Complaints Manager (General), Marianne Christmann - Complaints Manager (Police), Kim Swan - Senior Investigation Officer (Legal), and Anita Whittaker - Manager Corporate Services.

SIGNIFICANT COMMITTEES - EXTERNAL

The Ombudsman is a member of the Community Services Review Committee by virtue of her office.

The Deputy Ombudsman and the Investigation Officer (Projects) are members of the Protected Disclosures Implementation Steering Committee.

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

The Assistant Ombudsman (General) is a member of the Public Service Panel for the Churchill Fellowship.

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

The Assistant Ombudsman (Police) and the Manager Technology are members of the Police Complaints Case Management System Steering Committee.

Our Objectives and Results

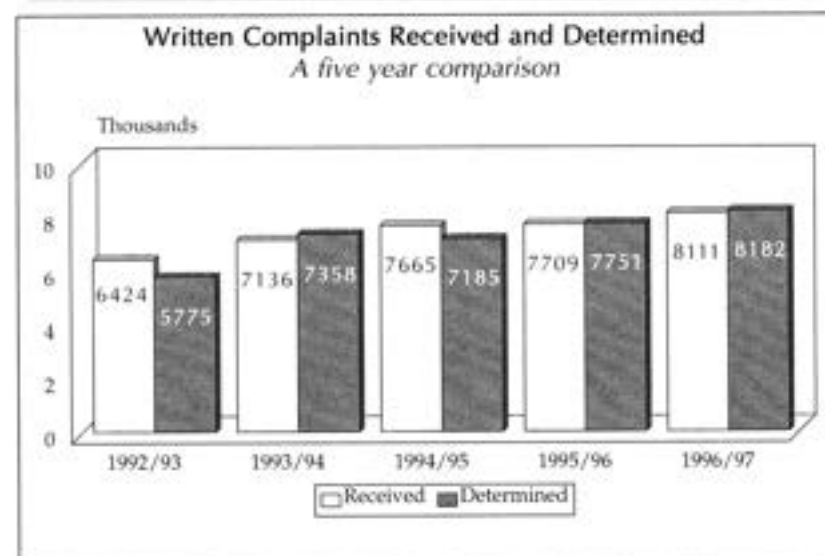
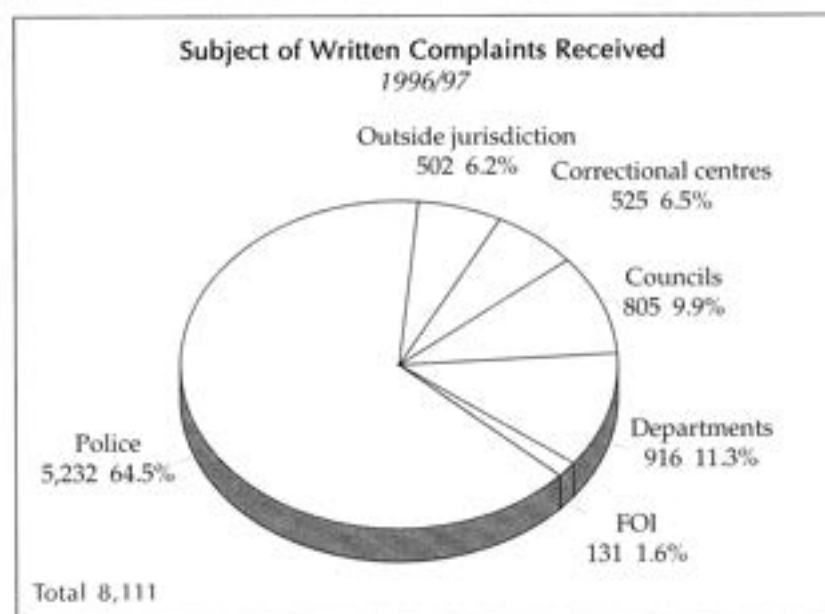
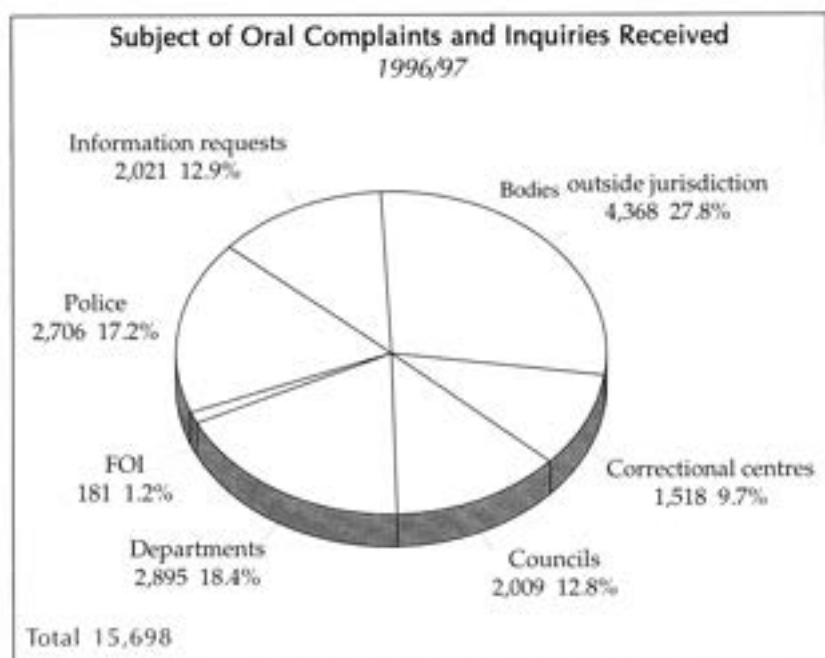
GOAL	OBJECTIVES	PRIORITIES AND FOCUS	1996/97 ACTIVITIES AND OUTCOMES	FUTURE
IMPROVING NSW PUBLIC ADMINISTRATION	<p>To resolve complaints about defective public administration in NSW.</p> <p>To promote best management practice within the NSW public sector.</p>	<p>Provide prompt, appropriate, effective and efficient resolution of complaints.</p> <p>Focus on complaints identifying structural and procedural deficiencies in NSW's public administration and individual cases of serious abuse of powers.</p> <p>Investigate and report on structural and procedural deficiencies in public administration.</p> <p>Provide guidance to agencies through training and publications, particularly on complaint handling and management of whistleblowers.</p>	<ul style="list-style-type: none"> 90% of complaints under <i>Ombudsman Act</i> assessed within 48 hours of receipt (88% within 24 hours). (New procedures are currently being implemented in the area of assessing complaints about police. The procedures will require new benchmarks and will be reported on next year.) Requests for review of determinations as percentage of total complaints finalised: <i>Ombudsman Act</i> complaints 6%, and Police complaints 3.9%. 63% of complaints within jurisdiction of <i>Ombudsman Act</i> resolved through provision of information/advice or constructive action by public authority. 1,309 police cases conciliated (25% of all complaints about police), survey of complainants reports 80% satisfaction rate with police complaints conciliated. 79% of complaints made under <i>Ombudsman Act</i> finalised in less than 60 days (average: 62 days). 95% of recommendations made in reports under s.26 <i>Ombudsman Act</i> implemented. 84% of recommendations made under <i>Police Service Act</i> implemented. 77% of reports under <i>Ombudsman Act</i> contained recommendations involving changes to law, policy or procedures. 25 police investigations formally monitored. Completed 11 direct investigations under the <i>Police Service Act</i>. 8 special reports to Parliament. 18 effective complaint management courses conducted with more than 300 public sector officers participating. <i>Protected Disclosures Guidelines (2nd edition)</i> published and distributed to all public sector agencies. 	<ul style="list-style-type: none"> Implementation of a more rigorous assessment program for complaints about police. Review the extensive training police area commanders receive in conciliations. Maintain current level of monitoring police investigations and special reports to parliament targeting police issues. Working with peak bodies to develop protocols to guide agencies on issues which generate complaints. Target formal investigation resources on complaints indicating structural and procedural deficiencies in public administration. Develop further strategies to resolve complaints informally. Continue to provide training for managers and frontline staff in effective complaint management. Implement training program for public sector managers in Protected Disclosures.
MAKING SURE WE ARE ACCESSIBLE	<p>To identify client groups with barriers to accessing our services and develop targeted programs.</p> <p>To increase parliamentary and community awareness of our role and services.</p>	<p>Young people, Aboriginal people, people from a non-English speaking background, people living in regional NSW, juvenile detainees and prisoners provide a particular focus for our access and awareness activities.</p>	<ul style="list-style-type: none"> A three year access and awareness strategy developed Youth liaison officer appointed and outreach program underway resulting in significant increase in number of young people contacting our office . Aboriginal complaints unit established to deal with complaints about police resulting in improved access and awareness and a sharp rise in complaints from Aboriginal people. Ethnic communities communications strategy underway. Briefing sessions held for more than 50 electorate officers. 14 regional outreach visits conducted, six outreach visits to Newcastle. All prisons and juvenile justice centres visited . 	<ul style="list-style-type: none"> Establish a complaint support network and promotional material for youth. Develop teaching material for civics curriculum. Develop an internet web site. Continue program of regional outreach. Continue outreach and inspection to correctional centres and Juvenile justice centres. Begin periodic detention centre visit and inspection program .
PROVIDING A COOPERATIVE & PRODUCTIVE WORKPLACE	<p>To ensure our management practices are of the highest standard.</p>	<p>Staff development.</p> <p>Effective management of financial and technological resources.</p>	<ul style="list-style-type: none"> Re-establishment of a Joint Consultative Committee to facilitate discussion between staff and management. Scored well above the public sector average in the Australian Quality Council Self Assessment survey of public agencies. Developed overseas staff exchange program. Issued with an unqualified audit report. 	<ul style="list-style-type: none"> Review induction procedures and develop induction manual. Develop cultural awareness training for staff. Implement a rolling job evaluation program. Survey staff on flexible work options. Develop total asset management plan and disaster recovery plan

Significant Developments 1996/97

- An Aboriginal Complaints Unit was established in the Police Team in September 1996. The unit works with Aboriginal communities across NSW, particularly in rural and remote areas, and has begun to implement a number of practical measures to improve police relations with those communities. The unit's access and awareness program has led to a sharp rise in the reporting of Aboriginal complaints about police misconduct; the unit's pilot mediation program is testing ways to encourage communities to take concerns directly to local police commanders; and the Ombudsman - in conjunction with the Police Service - is about to commission an evaluation of the service's Aboriginal Strategic Plan.
- In the non-police area, extensive liaison work was undertaken by our Youth Liaison Officer and Aboriginal Complaints Officer which has resulted in greater access to the Office by indigenous people and young people. The representation of these groups in our complainant profile has increased as a result. Special access and awareness meetings were conducted with a range of peak bodies representing various ethnic groups to further knowledge and awareness of the Ombudsman's functions and to increase our understanding of problems encountered by these groups in their dealings with public authorities. Special briefing sessions were also conducted for electoral assistants of Members of Parliament.
- The Ombudsman's appointment of a youth liaison officer and the development of strategies to address recurring problems between young people and police, is making the Ombudsman's services more accessible to young people. Renewed Police Service interest in developing a cooperative approach to dealing with young people is adding to the momentum for constructive change.
- We targeted significant issues relating to recurring complaints about police which require a more strategic approach, including police relations with ethnic minorities, arrest and detention issues, illegal computer access, conflicts of interest and internal witnesses. By urging the Police Service to consider systemic patterns of misconduct, we have highlighted a number of service-wide issues.
- Recommendations in special reports to Parliament are an important part of our reform strategy. Three of the Ombudsman's reports in 1996-97 illustrated the Police Service's difficulties in recognising and dealing with conflicts of interest, a report in July 1996 criticised the police response to a bungled drug raid, and two reports in October highlighted serious issues associated with instances of unreasonable arrest and detention.
- Conciliations remain integral to resolving about one quarter of all complaints about police. In responding to a report to Parliament by the Ombudsman, the Police Service is currently engaged in training all local area commanders in more sophisticated dispute resolution strategies.
- We played an active role in assisting the Royal Commission into the NSW Police Service through submissions, advice and participation in a series of round table discussions. The commission's reports in February 1996, November 1996 and May 1997 heralded essential changes to the police complaints and discipline system and have aided our efforts to get the service to respond to complaints and to provide a better service.
- Under Part 8A of the *Police Service Act*, we initiated an agreement with the service for police managers to deal directly with minor day to day internal management issues without having to seek our advice. The agreement encourages the service to take greater responsibility for managing its staff, and enables us to allocate greater resources to overseeing more serious complaints.
- There was a 21% increase in formal non-police complaints and a 10% increase in oral complaints received by the Ombudsman which were all processed without any significant increase in our decline rate. We were able to increase both the number and ratio of preliminary investigations that ended in resolution of the complaint.
- December 1996 saw the release of a two volume report on the most comprehensive investigation of a public authority ever undertaken by the Ombudsman. The Inquiry into Juvenile Detention Centres examined every facet of the operation of detention centres

from the perspective of their compliance with international minimum standard rules. The report's 239 recommendations are being used as a blueprint for reform by the Department of Juvenile Justice.

- The office produced the *Public Sector Mediation Guidelines* jointly with the Attorney General's Department and The Audit Office. Released under a Premier's Memorandum in early July 1997, the guidelines provide a framework for the use of mediation as an alternative dispute resolution method by public agencies.
- A comprehensive audit was conducted of compliance by public authorities with their obligations under the *Freedom of Information Act*. The special report to Parliament released in July 1997 provided a snapshot of citizen use of the Act across all major public authorities in the state.
- Assisting public authorities develop better internal complaint handling policies and skills continued to be a priority. Eighteen individual workshops were presented during the year attracting several hundred participants from all over NSW.
- We have actively contributed in consultations on major legislative proposals that involve matters or authorities that produce high numbers of complaints to the Ombudsman. Submissions were made in response to discussion papers on proposed changes to the laws and processes controlling development and the streamlining of pollution legislation. The Ombudsman also made a major contribution to the Parliamentary Inquiry into the *Protected Disclosures Act* and participated in a number of meetings and made an extensive written submission in response to the ICAC investigation into Aboriginal Land Councils.
- In January 1997 we released two documents relating to administrative good conduct. The first of the two documents, *Principles of Administrative Good Conduct*, reproduced in Appendix 11, is a short summary of the principles of administrative good conduct applicable to public officials at all levels in the NSW public sector. The second document, *Administrative Good Conduct*, was specifically designed for managers, and expands on the principles referred to in the summary document. The feedback from authorities about the documents has been very positive and it appears most authorities have distributed the principles document to their staff.



Handling Complaints about Police



The seriousness of alleged police misconduct remains a source of concern. There continue to be significant numbers of police officers criminally charged or the subject of disciplinary action.

Overview

A rise in complaints about police by members of the public has offset a fall in complaints from within the NSW Police Service. Members of the public made 4226 written complaints about police in 1996-97, up from 3611 complaints in 1995-96 - an increase of 17%.

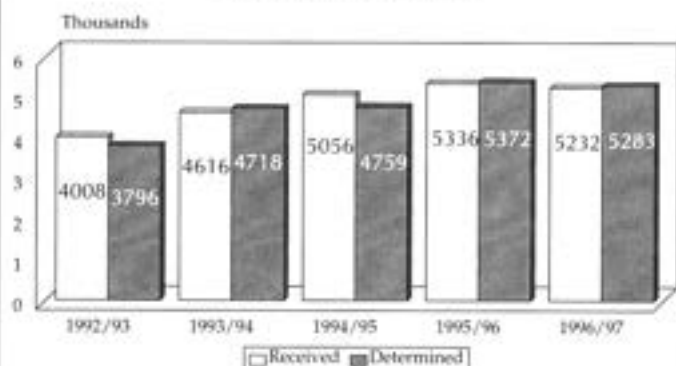
A further 1006 matters originated from within the Police Service, down from 1725 internal complaints the previous year. Much of this fall is attributable to an agreement between the Ombudsman and the Police Service for police managers to deal directly with minor day to day internal management issues without the need to refer those complaints to us. The management of those issues can be audited by us. The Police Service continues to refer all serious complaints, including all allegations of criminal conduct, serious neglect of duty and harassment.

The seriousness of alleged police misconduct remains a source of concern. In the past year more than 60 police officers were criminally charged following investigations into complaints and 230 had disciplinary action taken against them.

For many years we have highlighted the misconduct problems which exist in the Police Service. The Royal Commission into the NSW Police Service has forced the Police Service to acknowledge the extent of its problems.

In last year's annual report we noted that *"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"*. The Police Service has begun to look at its people and processes in an attempt to deal with the massive cultural change required to transform the way it operates. The Police Commissioner's Code of Conduct and Ethics sought to articulate the standards expected of Police Service personnel. All police officers have been urged to embrace and promote these key values of professionalism.

Complaints about Police Received and Determined
A five year comparison



The Police Service recently revamped its local patrol structure and appointed new managers to each of its 80 local area commands. Under the service's proposed Employee Management Scheme, these managers will be given the principal responsibility for setting standards within their patrols. As noted in last year's annual report, we support the principle of holding police managers to account for the performance of their staff. Managers who are incapable or unwilling to do their job must be held accountable.

It would be wrong to suggest change will occur overnight. Complaint numbers should not be used as the only measure of progress.

An important indicator of success will be a greater preparedness by police at the front line to challenge colleagues who show a disregard for their responsibilities as police officers. It is encouraging to note that over recent years a much larger number of police have been prepared to defy the Police Service's entrenched code of silence and report serious misconduct by fellow officers. The outstanding work of the Police Service's Internal Witness Support Unit has played a critical role in encouraging many officers to come forward.

Ultimately, the key to lasting change lies with the police managers. If they set the example and have the skills to promote professionalism, there will be progress. We will continue to direct considerable energy to determine whether the Police Service is genuinely committed to an effective management model.

EMPLOYEE MANAGEMENT SCHEME

A critical test of the Police Service's reform agenda will be its commitment to promoting the principles of its proposed Employee Management Scheme (EMS). Under recommendations set out in the Royal Commission's Final Report, the Police Service is expected to develop mechanisms to address the many shortcomings of the current disciplinary system. Of particular concern, in relation to dealing with police misconduct or malpractice, is the need for the Police Service to identify the substance of complainants' concerns and to implement effective remedial action.

In streamlining its disciplinary system, the Police Service must clearly spell out the objectives of the EMS. The EMS is not intended to endorse 'soft options' for serious misconduct. In relation to many of the problems currently dealt with by way of 'counselling', the range of management measures under the proposed EMS should provide much greater scope for errant officers to confront the causes of their misconduct. Repeated failure by poor performers to improve their professional conduct may ultimately lead to their dismissal. This new approach will

require creative thinking on the part of police managers, sound guidance from a well-organised policy unit, and accurate recording of both negative and positive aspects of police officers' professional development.

In piloting the EMS in selected patrols this year, the Police Service aimed to encourage local commanders to take responsibility for the day to day management of their staff. Assessments of the initial phase of the EMS, known at that time as the Pilot Project, indicated that a lot needed to be done in order for the EMS to achieve its potential.

The EMS must also aim to: promote the highest levels of ethical conduct and professionalism among police; deal with all complaints in a fast, fair and effective manner; respond flexibly to particular circumstances; and provide mechanisms to address systemic problems, identify problem officers and make managers accountable.

Most importantly, there should be a commitment to involving complainants in the process and to achieving high levels of customer satisfaction.

Following critical assessments of the Police Service's poor management of initial stages of the Pilot Project, including our own detailed assessments, the service cut the number of patrols involved in the scheme, improved training and support to patrol commanders and better defined the scheme's objectives. The Police Service is yet to thoroughly evaluate the achievements of this second phase of the Pilot Project, which ended on 1 July 1997 when the restructure of the Police Service dispersed those patrol commanders piloting the EMS.

Some benefits to be gained through EMS, such as a closer involvement by local commanders in responding to concerns about officers under their control, are already emerging. However, few local commanders have participated in developing the EMS and a number of police managers purporting to act under the EMS have demonstrated a poor understanding of the scheme's aims and objectives.

The Police Service is planning a measured roll-out of the EMS philosophy and framework, starting with a small number of the newly formed Local Area Commands. A thorough assessment of the recently completed pilot of the EMS should help curtail many of the problems experienced in the second phase.

Clearly there is still a long way to go. A much greater level of skill and a broader understanding of appropriate management responses are required for the EMS to work effectively. Given the critical importance of the EMS to the reform process, our office will closely monitor the Police Service's implementation of the concept.

Handling Complaints about Police

THE IMPACT OF NEW LEGISLATION

New legislation was introduced on 1 January 1997 which changed the police complaint outcome categories. Police complaint outcomes that were previously categorised as 'sustained' will now be categorised as 'adverse finding'. Complaints categorised as 'not sustained' and 'unable to be determined' will now be categorised as 'no adverse finding'. Previous years' results have been adjusted to reflect this change.

Determined Complaints about Police 1996-97

Not investigated	
Declined at outset	1,461
Conciliated	1,309
Partially investigated	
Preliminary or informal investigation	1,505
Discontinued	224
Formal investigation	
No adverse finding	311
Adverse finding	473
Total	5,283
Current matters (at 30 June)	
Being conciliated	268
Under preliminary/informal investigation	612
Under formal investigation	676

Complaints about Police Fully Investigated

A five year comparison

Year	Total investigated	Adverse finding	No adverse finding
1992-93	609	178	431
1993-94	818	418	400
1994-95	650	283	367
1995-96	849	495	354
1996-97	784	473	311

Action on Police Complaints

A five year comparison

Year	Complaints determined	Declined or partially investigated	Formally investigated
1992-93	3,796	3,182 84%	609 16%
1993-94	4,718	3,894 83%	818 17%
1994-95	4,759	4,109 86%	650 14%
1995-96	5,372	4,516 84%	849 16%
1996-97	5,283	4,499 85%	784 15%

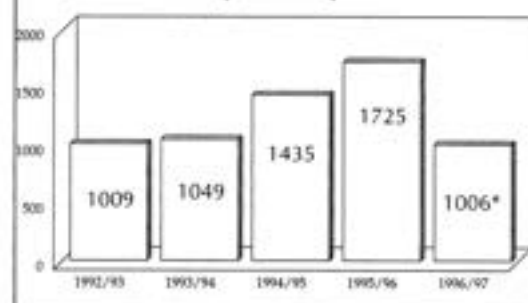
Complaints about Police Declined or Partially Investigated

A five year comparison

Year	Total	Declined at outset	Preliminary or informal investigation	Investigation discontinued	Conciliated
1992-93	3,182	1,587	851	215	529
1993-94	3,894	1,698	1,005	364	827
1994-95	4,109	1,687	1,010	227	1,185
1995-96	4,516	1,800	1,362	231	1,123
1996-97	4,499	1,461	1,505	224	1,309

Complaints by Police Officers or Arising During an Internal Investigation

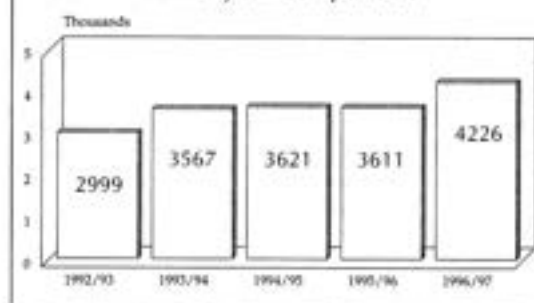
A five year comparison



* This is a significant decrease from the number reported in 1995-96. The main reason for this drop is an agreement reached between the Ombudsman and the Police Service in terms of s.139A of the Police Service Act, where minor internal matters need no longer be reported to the Ombudsman.

Complaints about Police by Members of the Public

A five year comparison



Note: This table illustrates that there has been a sharp increase in complaints against police by members of the public, a 17% increase over 1995-96 and a 41% increase during the past five years. The total number of police complaints, that is complaints from all sections of the community, of 5232 masks this increase.

A SNAPSHOT OF STATISTICS

- Written complaints received from members of the public increased by 17%, from 3611 to 4226.
- Overall 5232 complaints were received about police, including 1006 from within the Police Service.
- Of the 784 complaints investigated, almost 60% resulted in adverse findings - about the same as last year's figure of 58%. The proportion of investigations leading to adverse findings in 1994-95 was 44%, and 29% in 1992-93.
- More than 60 police officers were criminally charged following investigations into complaints.
- More than 230 police officers were formally disciplined and more than 950 managerially counselled. All adverse findings are permanently noted on officers' records.
- The Police Service apologised to 390 complainants following inquiries or conciliations.
- There has been a significant shift in the general complaint profile.
- From these statistics it is clear:
 - a large number of police continue to act unprofessionally, including a disturbing number who engage in criminal conduct;
 - each year a large number of police who act unprofessionally are identified and dealt with;
 - it is pleasing to note that over the past five years the Police Service has been prepared to identify poor performance in a much larger number of cases. For example, the proportion of investigations leading to adverse findings has doubled since 1992-93.

Aboriginal complaints typically originate from relatively remote communities where access to our office is limited. The communities and townships in which complainants live also tend to be small and have a substantial police presence. To address these difficulties, our Aboriginal Complaints Unit conducted a community based access and awareness program, contributing to a 50% increase in complaints.



- Providing Support for Aboriginal Complainants
- Youth Issues
- Police in a Culturally Diverse Society
- Risk: Officers' Complaint Histories
- Drugs and Alcohol
- Child Abuse
- Unauthorised Computer Accesses
- Arrest and Detention
- Criminal Conduct
- Conflict of Interest
- Sex Based Harassment
- Conciliations
- ... Means Never Having to Say You're Sorry
- Compensation
- Domestic Violence

Issues

PROVIDING SUPPORT FOR ABORIGINAL COMPLAINANTS

The establishment of the Aboriginal Complaints Unit in 1996 has enabled our office to play an unprecedented role in assisting Aboriginal complainants. Aboriginal complaints typically originate from relatively remote communities where access to our office is limited (see map). The communities and townships in which complainants live also tend to be small and have a substantial police presence. These factors may increase the reluctance of many Aboriginal people to lodge complaints relating to police conduct.

To address these difficulties, the Aboriginal Complaints Unit conducted a community based access and awareness program. This contributed to a 50% increase in the number of complaints received this year. Further, by conducting three direct investigations and monitoring a further six, we have been able to take a more proactive role.

We have found Aboriginal people are significantly less likely to successfully conciliate minor complaints with police than are non-Aboriginal people. This is of particular concern because such issues can readily be the source of discontent for the community generally and adversely impact on relationships between police and the Aboriginal community.

An important initiative undertaken by the complaints unit has been to introduce a pilot mediation program involving local patrol commanders, complainants and local Aboriginal Legal Services. Consistent with reforms aimed at patrol level accountability, this program has resulted in an environment in which complainants feel secure in voicing their concerns and, in most instances, has

resulted in timely and appropriate action being taken by involved patrol commanders.

In conjunction with the Police Service, we recently commissioned the Institute of Criminology to conduct an evaluation of the Police Service's Aboriginal Strategic Plan. The study, to be conducted over the next year, will involve a comprehensive examination of practical measures undertaken by each key patrol in response to the strategic plan. In particular, the evaluation will assess the responsiveness of local patrols to the needs of their particular communities. As the following case examples show, it is often inadequate service delivery by police, rather than excessive responses, which underlies complaints from Aboriginal people.

FAILURE TO HELP

After a brief swim in the Murray River on a hot summer's day, a young Aboriginal man became ill and had to be helped to the family vehicle. He was unconscious and his family decided to seek help at the police station, a drive of some four or five minutes.

The family sought the assistance of police and requested that they call an ambulance. The police officers did not examine the young man for any signs of life, nor did they administer any first aid. They suggested the family drive to a hospital, twenty minutes away. They did not call an ambulance or offer to drive or provide an escort to the hospital, but did telephone the hospital. In spite of this call, the hospital apparently remained unaware of the seriousness of the situation. The hospital's emergency section was not notified and staff were not prepared for his arrival. Twenty minutes later, the young man was pronounced dead.

Although police attempted to conciliate the matter the following day, there was a subsequent internal investigation as well as a coronial investigation.

The Police Service investigation found the two police officers had neglected their duty to provide assistance. We agreed with the police and Coroner's findings that the officers' failure to render assistance was unreasonable. We were further concerned about the stress involved in the family being interviewed twice in relation to the same matter. We recommended the Police Service formally apologise to the family - which they did.

INADEQUATE POLICE RESPONSE

A former member of an Aboriginal community complained about the police response to a series of violent incidents in the community. The complaint highlighted the problems experienced by a remote Aboriginal community where factional problems led to violence, and police resources were inadequate to respond to the magnitude of the incidents.

Police initially attempted to deal with the violence by approaching the elders of the community to intervene. While this approach was commendable, it became apparent that police did not recognise that the problem had escalated to a point where more decisive action was required. The absence of a cohesive response plan where additional police could be called upon from adjoining patrols, delayed the police response. While eventually a task force was formed and numerous arrests made, by this time, a number of houses had been destroyed and some residents had left the community. The incidents also highlighted problems which can occur in instances of inadequate police resources in some remote areas. On a number of occasions the police response was seriously hampered because they were outnumbered by 10 to one.

We requested the service develop a plan to respond to further problems in the area. While the violence had ceased by this time, we felt the Police Service should be prepared for further problems. Patrol training was conducted on operational responsiveness and the need to act swiftly when criminal offences were being committed. The Assistant Commissioner also met with the complainant as part of a larger meeting conducted by our Aboriginal Complaints Unit. The local patrol was upgraded to a 24 hour station. Initiatives, such as the use of infrared cameras to detect offences, have also been trialed. Ongoing communication between local police and representatives of the Aboriginal community should also assist in improving police response should further problems develop.

WARRANTS COMMUNICATION BREAKDOWN

A young Aboriginal woman was arrested on warrants for nonpayment of fines. She was taken to the police station where she told police her mother had attended court and had the warrants recalled some days earlier.

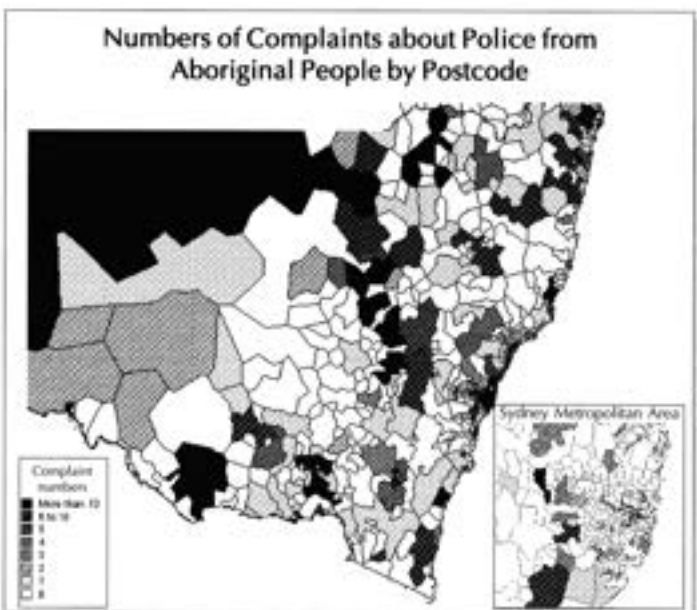
The police 'on-line' warrants system showed the warrants were still outstanding so police detained her. She then threatened to kill herself which resulted in her transfer to a psychiatric hospital for assessment. Subsequent police inquiries showed the warrants had in fact been recalled, and the information on the warrants computer system had not been updated, apparently through lack of communication between the courts and police. The young woman was subsequently released from hospital some 100km from where she was arrested.

We contacted the Police Service's Warrant Index Unit. Staff explained their procedures and liaison with Courts Administration and indicated this was an isolated incident. Notwithstanding, we will closely examine any further warrant complaints.

DEATH IN CUSTODY

A concerned group complained following the death of a young Aboriginal woman from a heroin overdose.

The day before her death the woman was apprehended by police for breaching her bail conditions. As a result of a check of the police computer system, the arresting officers were aware that she had a history of self harm and was a known drug user. While in custody the woman became agitated and was seen to remove a razor blade from her hair. She was searched again and more razor blades were found. A further piece of a razor blade was found as a result of an internal examination conducted by a doctor. When the woman appeared at court, bail was opposed by the prosecutor but granted by the magistrate.



Handling Complaints about Police

The complainants were concerned that police were aware of the woman's need for psychiatric treatment and failed to bring this to the attention of the court. Had they done so the magistrate may have ordered her detention in a hospital under the *Mental Health (Criminal Procedures) Act*, or alternatively refused her bail and recommended psychiatric care.

The Police Service investigation found there had been numerous attempts by the local health service to get psychiatric treatment for the woman. On the day of her bail hearing, the health service's Aboriginal liaison officer rang the prosecutor and requested that the woman be transferred to a psychiatric hospital or that bail be refused and the woman transferred to the corrective service's mental health facility. The police investigation made no adverse finding on the prosecutor's failure to bring this to the attention of the court.

We found the woman's need for psychiatric care was a highly relevant matter for the court and that the prosecutor had breached existing operating procedures requiring him to place all relevant information before the court. We recommended the operating procedures be amended to reinforce this duty. While the prosecutor has been reminded of his duties, we are awaiting advice from the service as to the implementation of our recommendation concerning operating procedures.

YOUTH ISSUES

Young people are in a vulnerable position in their dealings with police. Uncertainty about their rights, compounded by a reluctance to complain, can leave serious and systematic abuses unchecked. Their reticence often stems from a fear of reprisals or scepticism about the willingness of authorities to take their concerns seriously. Those young people already enmeshed in the criminal justice system are particularly vulnerable.

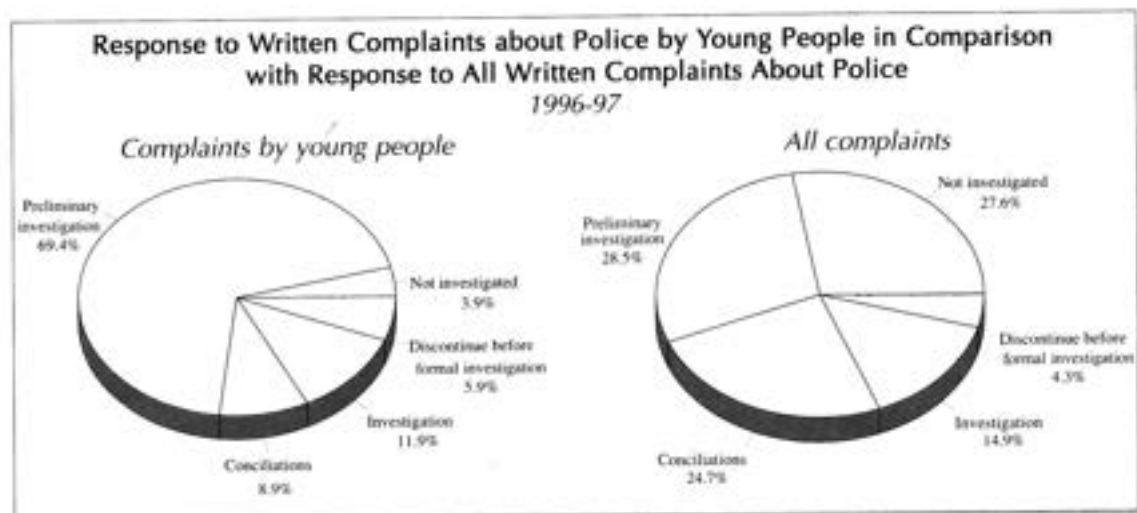
Complaints by young people can provide the Police Service with valuable information on the sometimes fragile state of police-youth relations in parts of NSW. Given the wealth of police resources directed at young people, particularly in the context of street policing, there is a need to make the police complaints process more accessible. Our staff have implemented a number of strategies including increased contact with young complainants, using age appropriate language in standard letters, and a small team of investigation officers specialising in youth complaints.

We are also analysing young people's complaints about police to identify allegation trends and problem locations. The vast majority allege assault. As the figures below illustrate, we ensure inquiries are made into the bulk of complaints received by young people. Ongoing analysis of complaint trends and interaction between police and young people should help further develop and refine our strategies and responses.

POLICE SERVICE RESPONSE

Police officers with a specialist interest in youth issues have long been the focus of attempts to improve police relations with young people, however, their influence has been limited by a number of structural and cultural factors.

A Youth Policy Statement in 1995 committed the Police Service to a plan to improve services to young people. An active central policy unit has given substance to the plan by supporting the work of police youth liaison officers. Cooperative youth policing initiatives are gathering momentum with the formation of a youth issues working party consisting of senior police personnel and two major training-oriented forums for youth officers in 1996-97. The result is a coordinated, intelligent policy approach to youth issues which promises to challenge aggressive and reactive policing of young people.



The number of youth officers has increased markedly but current loose administrative arrangements in determining who should perform youth liaison duties means that no-one is sure exactly how many there are, much less how much time is allocated for these tasks. All patrols have nominated youth liaison officers but the time dedicated for them to work on proactive policing programs still very much depends on their other duties. A survey of the youth liaison officers at the 1996 forum found that 61% were allocated less than one shift per week to perform youth liaison functions and almost all had never completed any accredited training. Youth liaison officers are crucial to implementing the Police Service's youth policy and action plan. The service is developing an enhanced role for patrol-based youth officers, whose responsibilities will include functions under the new youth conferencing scheme.

JUVENILE JUSTICE AND POLICE

Many of our complaints come from young people in juvenile justice centres. Their difficulties are often compounded by the circumstances of their detention. Recent complaints have suggested police have been giving a low priority to incidents of assault against young people in these centres. Two particular complaints suggested police were talking young victims of assault out of proceeding against their assailant. While we found no evidence of this, it did appear young people in juvenile justice centres were at a distinct disadvantage when complaining about other detainees or staff members. Using a direct approach, we arranged a meeting between the police, the Director General of Juvenile Justice and ourselves to discuss these issues. As a result of our meeting the Police Service will liaise with Juvenile Justice and our office to formalise policies and procedures designed to address this neglected area.

NOTIFYING PARENTS OR GUARDIANS

A young person was arrested by police and taken to a police station to be charged. His mother was contacted about four hours after he was taken to the police station. The relevant Commissioner's Instruction states that when a child is taken to a police station, a parent or guardian is to be notified the child is at the police station.

In the same case, police also continued interviewing the young person (in the presence of a relative), despite indications that the young person did not wish to participate further in the interview.

We believe proper professional conduct requires notification of parents or guardians within a reasonable period. The presence of a parent or a guardian can avoid many potential problems associated with the detention of young people. Accordingly, we recommended the of-

ficers involved be reminded of their responsibilities in this regard and that a similar reminder be issued to all officers at a patrol training day.

In relation to the failure to terminate the interview with the young person immediately, we considered such action by police to be in contravention of the relevant Commissioner's Instruction. A recommendation was made that the officers and their supervisor be counselled as to their actions, and a reminder regarding police responsibilities be issued at the patrol training day.

(NOT-SO) CANDID CAMERA

A peak youth organisation complained about the activities of police at a local railway station. An operation had been conducted which involved taking photographs of a target group (young males of Asian appearance) as they arrived at the station. The police response to the complaint was to inform the complainant that a large number of robberies had taken place in an adjoining shopping centre and the majority of offenders had been described as young Asian males.

Apart from the intrusive nature of the operation, the organisation was concerned about the storage and disposal of photographs, and with the need to inform the young people of the reason for the operation. Our officers met with the Police Service and the youth organisation to establish broad principles which should govern

When our staff run workshops with young people they engage them in role plays. One centres on the unlawful arrest of two young boys. Participants take on the roles of the arrested boys, their parents, the police and the Ombudsman and attempt to come to a solution the parties can agree on.



future operations. This was followed by a meeting between the Assistant Ombudsman (Police), the region commander with the responsibility for youth issues and representatives of the youth organisation.

The Police Service agreed to develop guidelines and standard operating procedures to ensure people are informed of the purpose of such operations and are able to retrieve the photographs at the conclusion of the operation. We will continue to monitor this issue closely.

PROTECTION FROM SELF-HARM

Police officers called an ambulance to attend to a teenage girl lying unconscious in parkland near a Sydney suburban shopping centre. After regaining consciousness, she became distressed and vigorously refused medical assistance. After the ambulance left, the girl and a friend became increasingly agitated and abusive. Despite concerns that the girl was apparently seriously affected by heroin, the two police officers departed. They had no power to intervene to prevent her from harming herself under the *Intoxicated Persons Act* because she was not affected by alcohol. Uncertainty about her age (one source said she was 15, another said she was 18 years old) precluded action under child welfare legislation. The two police officers left to avoid further exacerbating tensions.

The officers' district commander criticised their decision not to arrest the young women for summary offences. We strongly disagreed, questioning how an arrest could possibly address concerns about the girl's welfare.

On the other hand, there are dangers in leaving someone who is clearly affected by drugs and at serious risk of harm. It seems anomalous that police are encouraged to intervene to ensure the safety and welfare of intoxicated persons found in public places but not persons seriously affected by other drugs. We have asked the Police Service to review this anomaly and work closely with the Department of Community Services to suggest appropriate reforms.

THE PAEDOPHILE'S FRIEND

Police stopped an interstate driver at 1.20am and said the driver could not satisfactorily explain how he came into possession of a stereo in the car. Checks subsequently revealed that the driver was wanted for breaching parole, so both he and his young passenger were taken to a nearby police station.

The teenage passenger, also from interstate, was described by the driver as a "friend of a friend". After verifying the boy's identity, and being told that he "had absconded from a boys' home" interstate, police helped make arrangements for him to stay with an adult male friend of the driver. Despite receiving intelligence that

the driver had convictions for paedophilia, police did not record the name and address of the driver's friend nor check the friend's criminal record.

The boy was allowed to leave the police station in the early hours of the morning and was pointed in the direction of a taxi stand 700 metres away. He was expected to find his own way from Sydney's eastern suburbs to the home of the paedophile's friend more than 30km away. The boy said he started walking about 4am and eventually caught buses to the home of the paedophile's friend.

The matter only came to our attention after the driver complained about the arresting officers' failure to secure his car while he and the boy were in custody. The Police Service acknowledged the need to secure the vehicles of arrested persons but took some time to respond to our concerns about the arresting officers' management of the boy's detention and his welfare needs. The Police Service reminded the officers "in the strongest possible terms of their responsibilities" but are yet to advise of measures to encourage police generally to exercise caution when discharging children from custody.

POLICE IN A CULTURALLY DIVERSE SOCIETY

This year we took initiatives to improve our customer service to non-English speaking communities. We recognise the need to overcome the information and language barriers which prevent some people from being aware of our services. The cultural and historical experience of some sections of the community may also prevent people from coming forward to make a complaint about police. These barriers hinder the resolution of complaints and work against the goals of community policing.

This year we began a program of informal consultations with community leaders and representatives of ethnic community media. Our aim is to improve communication with ethnic communities, explain our role, and improve understanding and trust in both our office and the Police Service. The meetings are an opportunity for community leaders to meet the Ombudsman and her staff and raise issues that may affect their community. The program to date has included consultations with the Chinese, Spanish and Vietnamese communities. It provided valuable contact and insights for our office and will continue in the year to come.

We continue to oversight the implementation of the Police Service Ethnic Affairs Action Plan 1996-2000. Our aim is to ensure the Police Service meets its responsibilities both in the provision of core services and proper handling of complaints by people from ethnic communities. We believe complaints provide an opportunity for the

Police Service to evaluate the success of its policies and the standard of its service to ethnic communities.

Our office continues to receive complaints from members of ethnic communities and the Police Service successfully resolves many of these complaints. Other complaints suggest a lack of cultural sensitivity and the need for a more sophisticated and flexible approach by police. We perceive the need for improved use of interpreters and for a review of the use of Ethnic Community Liaison Officers. This year we hope to discuss these concerns with senior management of the Police Service to ensure service-wide improvement.

DISGRUNTLED TAXI DRIVER

A Chinese taxi driver attended a police station to report a passenger for assault, fare evasion and malicious damage to his taxi. The police charged the taxi driver with 'common assault', 'resist police' and 'assault police' after making inquiries with the passengers. The taxi driver complained to us through his Member of Parliament. He alleged that police ignored his evidence and took sides with the passengers and then wrongfully brought charges against him. We had discussions with the Police Service and suggested they review the decision to charge the taxi driver and try to resolve the complaint by conciliation. The Police Service did not take up this proposal and commenced a formal investigation. We made a second attempt to resolve the complaint informally but the Police Service did not respond to that request.

The court dismissed all the charges against the taxi driver eight months after he made his complaint. During the proceedings the magistrate did not accept the evidence of police.

The Police Service recommended that no further action be taken as a result of its investigation. We invited the Police Service to participate in a meeting with the complainant to address his complaint. During a recent meeting between the Ombudsman, the Police Service and the complainant, it was agreed the Police Service would make further inquiries into the police response to the taxi driver's initial requests for assistance.

RISK: OFFICERS' COMPLAINT HISTORIES

Traditionally, the police complaints system has examined complaints of misconduct in isolation. Several recent cases, however, raise questions regarding risk assessment and the weight to be given to an officer's complaint history - particularly where there is a pattern of serious, similar complaints.

SEXUAL MISCONDUCT

A senior constable the subject of an allegation of sexual misconduct, was found to have an alarming history of similar complaints.

In 1990, the officer allegedly indecently assaulted a 10 year old girl. The police investigation found the matter sustained. The officer was committed for trial on two charges of indecent assault. He was found not guilty and no further action was taken.

A further, unrelated complaint against the officer was also made in 1990. It was alleged the officer had sexually assaulted a nine year old girl. He was committed for trial on two charges. A jury found the officer not guilty of sexual intercourse without consent but was unable to reach a verdict in relation to the charge of indecent assault. Departmental charges were not laid. No further action was taken.

The Ombudsman hosted large scale community consultations with the Chinese and Vietnamese communities during the year. The consultations included presentations by senior staff and team members. The consultations provided community members with an opportunity to raise issues of concern or queries. This proved extremely useful for both the community and our office, with some matters being resolved on the spot.



In another matter a constable was charged with five counts of sexual assault on a child under the age of 10 years. In his District Court trial, the jury was unable to reach a verdict and a retrial was ordered. Again, a jury was unable to reach a verdict. The Director of Public Prosecutions has decided not to proceed further with these matters. No departmental charges are contemplated.

In the above case we drew the service's attention to the need to evaluate patterns of conduct and independently review the evidence presented at court as part of an appropriate management response. In line with the Royal Commission's recommendations, the issue may not necessarily be guilt or innocence according to strict legal proof but rather the suitability of an officer for continued employment as a member of the Police Service. As the Royal Commission noted "...whatever happens in relation to criminal proceedings, a managerial decision will still be required in relation to any member who is the subject of them."

In considering officers' complaint histories and the management options open to the service, the necessary approach must be one of risk minimisation. Given the position of responsibility which police hold in society, our concern is for an outcome which will best protect and promote the interests of the community. The Police Service has accepted the concerns we raised in these cases and is considering action against the officers. We will continue to monitor this issue closely.

DRUGS AND ALCOHOL

In April 1997 the *Police Service Amendment (Testing for Alcohol and Prohibited Drugs) Regulation 1997* was promulgated under the *Police Service Act 1990*. This new legislation reflected the growing public disquiet over police abuse of alcohol and drugs.

The regulation established "a code of behaviour regarding alcohol and drug use by members of the Police Service". It allows for the random or targeted drug and alcohol testing of on-duty police officers, and sets out the possible consequences for those officers who breach the code (including counselling, rehabilitation and, where appropriate, disciplinary action). A key feature of the regulation is the setting of a prescribed concentration of alcohol of 0.02% for police officers rostered on duty.

The Royal Commission into the NSW Police Service discussed the problem of substance abuse by police in its final report issued in May 1997. It referred to the use of recreational and performance enhancing drugs by some police, and identified drinking on duty as representing "a serious problem for policing because of the:

- possibility that the judgement of police might be impaired in the execution of their duties;

- risk to service property and to the lives and property of others where alcohol-affected police use motor vehicles or weapons;
- formation of inappropriate social relationships where police become accustomed to drinking with those who operate on the other side of the law;
- provision of favours in return for free alcohol or entertainment; and
- encouragement it gives to the establishment of a group culture which emphasises solidarity and silence."

In May 1997 the Police Service took the positive step of formulating a 'Drug & Alcohol Policy'. This policy clearly sets out the service's expectations of employees with respect to drug and alcohol use, and undertakes to provide "all reasonable support ... to staff members who seek help for substance abuse problems". The implementation of this policy was scheduled to take place in September 1997.

The following case studies demonstrate just how much of a problem the service is facing in this respect.

THE BODY BUILDER

The Police Service received information suggesting that a senior constable, a keen body builder, had illegally used anabolic steroids. In an Internal Affairs interview, the officer denied ever having used anabolic steroids. He also agreed to allow Internal Affairs to make verbal enquiries about his medical history.

Those enquiries revealed that the officer had admitted to past steroid use when being treated by a doctor at Manly Hospital. When confronted with this information the officer again denied any prior steroid use and withdrew permission to access his medical records.

On the basis that any criminal prosecution for steroid abuse would now be statute-barred (due to the amount of time that had elapsed since the alleged offence) and the absence of corroborative medical evidence, the Police Service determined that the complaint was not sustained.

We re-investigated the matter and obtained the medical records held by Manly Hospital. The doctor treating the officer had recorded "Background of abuse of anabolic steroids in the past". These records, together with the doctor's own recollection of the conversation she had with the senior constable, clearly supported the conclusion that the officer had admitted past steroid use to the doctor. It therefore followed that the officer was untruthful when denying any previous steroid use to Internal Affairs.

We have now recommended the service solicitor advise on the appropriateness of bringing departmental charges, including untruthfulness, against the officer concerned.

THE SUPPLIER

The Police Service received anonymous information suggesting a senior constable attached to Kings Cross police station was supplying ecstasy and cocaine in Sydney nightclubs. The officer was placed under surveillance. He was eventually approached while off duty by an undercover officer attempting to purchase illegal drugs.

The target officer sold the undercover officer a quantity of amphetamines, and was promptly arrested and searched. Further quantities of illegal drugs were found on his person and in his home.

The officer was subsequently charged with one count of 'supply prohibited drug' and three counts of 'possess prohibited drug'. He pleaded guilty at court and resigned from the Police Service in December 1996.

THE DRUNKEN HARASSER

One evening a number of student police officers from the Goulburn Academy went to a nearby hotel to drink and socialise. An off-duty senior constable from the Goulburn patrol was drinking in the hotel at the same time and by his own admission was "moderately affected by alcohol".

At some point the senior constable approached a female student police officer from behind, taking hold of her hips and pulling her back against his body. As the female trainee moved out of the senior constable's grasp she also felt him stroke her buttocks.

A fellow male student police officer came to his classmate's aid, whereupon the senior constable squeezed the male student's cheek. The senior constable then attempted to provoke the male student into fighting him, saying "Come on mate, fuckin' hit me and I'll get you thrown out of the academy".

Another student police officer then approached, telling the senior constable to "fuck off and leave him alone". This prompted the senior constable to slap the second male trainee a number of times on the side of the head.

A member of the Police Academy staff intervened. The senior constable was then escorted out of the tavern by another off-duty police officer. On being escorted outside, the senior constable kicked his escorting officer in the groin and was in turn struck.

The following day the incident inside the hotel, which had been observed by a number of police as well as the public, was reported to the Goulburn patrol commander. The matter was investigated and the investigating officer recommended that the assailant be departmentally charged with misconduct.

In his report the investigator commented:

"This investigation disclosed a course of conduct involving both sworn members of the Police Service and Student Police Officers at a licensed establishment ... which brings discredit both upon the individual and the Police Service as a whole. There has been a considerable history of similar type incidents ... which have occurred at the same establishment over a period of time involving police and students who are resident at Police Academy which is located a short walking distance from [the tavern]. It is my belief that recurrences of similar type can be expected ... unless action is taken to either limit or prevent police and students ... from patronising the Tavern...."

The senior constable had also been involved in another alcohol induced incident at a hotel four years earlier. This previous incident had resulted in the officer being charged with seven departmental counts of misconduct and fined.

Notwithstanding this similar previous misconduct, the Police Service intended to simply admonish the officer. We have written to the Police Service disagreeing with the proposed action and requesting a more appropriate response.

Curfews have been imposed on students since this incident occurred. Only time will tell if this has any meaningful effect on the culture of drinking which has developed at the academy.

CHILD ABUSE

In last year's annual report, we noted that the Police Service and Department of Community Services (DOCS) had established a pilot program using Joint Investigative Teams (JITs) in connection with child abuse investigations. The JITs pilot achieved:

- a higher standard of investigations as evidenced by DPP reaction to JITs briefs;
- a positive perception by other agencies of police professionalism and attitudes;
- a satisfaction rate of 85%, compared with 25% where JITs were not involved;
- increased professional satisfaction of team members; and
- direction of attention to many critical issues including victim support, personal safety, drugs and alcohol, domestic violence, customer service and community based policing.

Many thanks for the manner in which this complaint was dealt with.

It helps to instill in our two children that the police force is an important part of the society they will play a part in, now and in the future.

A complainant

The establishment of a network of teams across the Sydney metropolitan area and in Newcastle and Wollongong staffed by police and DOCS officers has now been approved. These teams will provide joint investigations for some child sexual assault, physical abuse and severe neglect cases. They will operate in accordance with joint policies and procedures which are currently being developed.

We support an inter-agency approach in relation to the difficult and complex area of child sexual assault and abuse.

We have consulted with DOCS, the Police Service and the Community Services Commission in relation to the handling of complaints made against JIT's.

The following cases identified some of the issues which concerned our office.

COMMUNICATION BREAKDOWN BETWEEN DOCS AND POLICE

A concerned woman complained to our office about the handling of a child abuse case. She referred to a meeting apparently held between senior representatives of DOCS and the Police Service where, she understood, an agreement was reached not to take action against a DOCS officer for non-notification to police. There had been four previous notifications to DOCS about the child. The police were only notified following receipt of the fifth notification. By this time the child had lost the sight in one eye.

We did not have jurisdiction over the conduct of DOCS and referred the matter to the Community Services Commission for appropriate action. We examined the police conduct.

Police inquiries indicated a number of police had expressed concerns over the handling of this matter. However, following the meeting between police and DOCS, officers decided further action was unnecessary.

We decided a formal investigation should be conducted into certain aspects of police conduct raised by the complaint. The investigation is continuing.

NEGLIGENCE AND EXCESSIVE WORKLOADS

A concerned mother complained about an investigation into an alleged sexual assault on her daughter. She alleged a detective was negligent in the way he obtained a statement from her daughter and interviewed the alleged perpetrator, and had lied during the trial of the perpetrator.

The Police Service conducted a full investigation. It recommended the detective be admonished and a review be conducted into staffing levels and workloads of the former Child Mistreatment Units (CMUs) throughout the state. The relevant Assistant Commissioner stated that while he would normally support the disciplinary rec-

ommendation, he did not see any benefit in pursuing disciplinary action against the detective. He believed it far more important to address the staffing deficiencies revealed by the investigation.

Our provisional report commended the recommendation for a review and assessment of the workload and staffing of the former CMUs. However, we raised concerns about the detective's continued involvement in the sensitive area of investigating sexual assault and abuse matters as he had previous similar adverse findings against him. We recommended he be departmentally charged on two of the issues of complaint and referred the matter back to the Police Service.

The detective has now admitted to a charge of 'omission of duty'. He was paraded and reprimanded before his district commander and an adverse entry placed on his personnel record. The officer is no longer working as a detective.

Following a similar complaint, this officer was severely admonished. Any investigative tasks he carries out are closely supervised and his work performance is being monitored for 12 months.

We reviewed a number of Police Service reports in relation to the review of Child Protection Investigation Teams (CPITs formerly CMUs). The future role of CPITs was the subject of a submission by the Police Service to the Royal Commission titled *Future Directions in the Delivery of Child Protection Services*. A three tiered investigative structure to replace the existing investigative structure was proposed. We agree in principle with this approach.

UNAUTHORISED COMPUTER ACCESSES

The community places enormous trust in police by giving them significant powers. We expect them to use these powers lawfully to protect and improve our quality of life.

Police are given a special trust in the area of access to information. Police officers have ready access to significant amounts of confidential information about almost everyone in the community. This includes criminal records, victims of crime and driving and vehicle registration records. We have found many police abuse their right to access this information.

We first raised serious concerns about the problem of unauthorised accesses in a report to Parliament in November 1995. We found the Police Service was not treating the problem with sufficient seriousness. Our report recommended improved training and the introduction of a requirement that police record the reasons for their computer accesses. More severe penalties were recommended, including the use of criminal charges.

Unauthorised access varies in seriousness. At the extreme, information may be improperly accessed and sold to insurance companies or private investigators. Other types of unauthorised accesses include the following.

CONVENIENCE ACCESSES

These are accesses made by officers about themselves or a relative at that person's request. The reasons offered for the access might be that they were checking to see whether the Roads and Traffic Authority (RTA) had received notification of a change of address. The officer carries out the check rather than referring the inquiry to the RTA. Police are only slowly getting the message that such access is improper.

CURIOSITY ACCESSES

Curiosity accesses include when an officer accesses information about a public figure to see, for instance, what sort of car they drive. These accesses are more serious since they involve a clear invasion of privacy. Curiosity accesses may also extend to checks on the criminal records of an officer's friends and acquaintances. This may give the officer access to highly sensitive information which the officer may well be tempted to pass on. Sometimes officers will falsely claim to have been doing official work in making these checks.

Accessing a partner's record

A police officer had accessed the criminal record of his de facto wife. She had a juvenile conviction which she believed had been removed from the records.

The Police Service investigator accepted the explanation of the officer that he had accessed the record by chance while "scrolling through" computer information about the local area. The Ombudsman was concerned that the computer audit reports did not support the officer's explanation and directed that the matter be re-investigated.

The officer later agreed that the audit records showed that he could not have found his de facto wife's record while "scrolling through" the computer records as he claimed. Instead the audit report showed that two accesses were made directly into the police criminal record database.

The officer has been criminally charged with unlawfully accessing police computer records. The Police Service is also considering a departmental charge of untruthfulness.

Getting a reliable second hand car

A sergeant who wanted to buy a second hand car accessed details of vehicles he saw advertised for sale in a Sydney newspaper. The sergeant had been checking registration, age and address details of the cars against the information given by the owner over the telephone.

The sergeant claimed he was checking whether the vehicles had been involved in criminal activity or had been 'rebirthed'. Even though the access was for his own personal purpose he justified his behaviour by the fact that, coincidentally, one of the cars did appear to have been 'rebirthed'.

The sergeant was charged departmentally with seven counts of misconduct. Further disciplinary action was also taken.

KEEPING TABS

A more sinister form of unauthorised access involves officers 'keeping tabs' on people they, or friends, have a grievance against. This often involves police accessing information about former spouses. In relationships where there is a history of domestic violence, this form of unauthorised access is especially serious. We have found a number of worrying examples of these accesses.

"I know how to find you"

A young woman made a domestic violence complaint against a police officer. The officer was the father of her six month old son. She said the officer had threatened her and said that he would be able to find her no matter where she was. She took this threat seriously because he had mentioned making a number of unauthorised accesses in the past.

The police investigation identified 12 unlawful accesses made by the officer. These included accesses made on the complainant, members of her family, a friend, a neighbour and his ex-wife. The investigation also uncovered accesses made at the request of the complainant's father on his former wife and her male friend.

The officer was criminally charged. He later resigned from the Police Service. He was subsequently convicted and sentenced to a term of imprisonment.

"I know where they live"

A man had supervised access to his children. On one occasion the access visit took place in a park under the supervision of a local minister and his wife. The man was seen photographing their car. The man later told his children that he knew the identity of the minister and his wife.

A police investigation showed that the man's sister, who was a police officer, had accessed the details of the minister's vehicle registration on the day following the access visit. The officer was departmentally charged with misconduct.

Thank you for your compassion. Words could not express our gratitude.

A complainant

THE POLICE SERVICE'S RESPONSE

Following the Ombudsman's Report to Parliament on unauthorised computer accesses the Police Service has responded to the challenge by taking steps to lift police awareness of the problem. It has also implemented a strict disciplinary policy to deal with misconduct of this kind. This year, there was a small decrease in the number of complaints about police improperly accessing computer information for the first time in four years (from 255 in 1995-96 to 225 in 1996-97). This decrease may reflect the positive efforts made by the Police Service.

Much work remains to be done. Police officers still regularly fail to make a record of their computer accesses. Serious invasions of privacy continue to occur.

The current challenge is for the Police Service to develop a policy for dealing with unauthorised accesses within the Employee Management Scheme (EMS). We are calling on the Police Service to deal with access matters using the full range of options available to it. This means the service must be prepared to use strong sanc-

Following our report on unauthorised computer access, the Police Service has taken steps to lift police awareness of the problem, including the publication of posters such as the one shown. However, much work remains to be done. Police officers still regularly fail to make a record of their computer accesses and serious invasions of privacy continue.



tions, including the Commissioner's confidence provisions, in cases involving an invasion of privacy. Criminal charges, if available, must also be pursued.

Under EMS, responsibility for managing police behaviour is to be devolved to local area commanders. It will be up to these commanders to make it clear to the officers on their team that unauthorised accesses will not be tolerated.

As the Police Service embraces EMS, we will continue to monitor the effectiveness of the strategies adopted by police to stamp out unauthorised access of computer information.

ARREST AND DETENTION

The frequency of complaints alleging improper arrest and detention practices remains a source of concern. Of the 609 'arrest/detention/warrant' allegations made against police in 1996-97, there were 218 alleged instances of unreasonable use of arrest or detention powers (see police complaint profile page 39).

Police officers must always consider whether there is an alternative to arrest, particularly in relation to minor offences. The continued use of arrest and charge powers to deal with relatively minor infringements such as 'offensive language', highlights the need for urgent reforms in this area of policing.

Once in custody, inadequate scrutiny of detention practices in many police stations can make detained suspects vulnerable to mistreatment. The absence of independent witnesses in custody areas makes it difficult to assess claims of assault or other mistreatment.

Our escalating concerns about the lack of police awareness of the appropriate standards which should apply when arresting and detaining suspects, culminated in *The Foster Report*, a special report to Parliament in October 1996. The report noted High Court criticism of "serious and reckless" police infringements of the rights of Mr Stephen Foster, a young Aboriginal man illegally detained and interrogated by police in relation to an arson at Narooma and convicted on unreliable evidence. A particularly disturbing aspect of Mr Foster's case was the basic lack of understanding of the legal grounds for arrest, even among senior officers.

Reforms since *The Foster Report* have been hampered by the Police Service's uncoordinated approach to implementing policy. As the Ombudsman noted in a submission to the Royal Commission into the NSW Police Service last November:

The Service's fractured approach to arrest and detention issues illustrates the current lack of coordination among the many policy-making commands in the Service. This Office sees arrest and detention is-

issues as a continual spectrum ranging from decisions on whether an arrest should occur in the first place, through to how a suspect is dealt with while in police custody. Changes to one part of the spectrum tend to influence others. The Police Service's approach has been to divide arrest and detention issues into discrete policy areas, each to be dealt with in isolation from the other.

The Ombudsman strongly emphasised the need for a strategic approach, particularly in an organisation as large and diverse as the Police Service.

The appointment of a police working group to consider reforms contained in England's landmark *Police and Criminal Evidence (PACE) Act* and their applicability to the NSW context, signalled a potential breakthrough. For the first time, the Police Service began to consider arrest and detention issues in a more coordinated way. Initial talks scheduled for late 1996 were deferred, then deferred again. In July, the Police Service presented a draft code of practice on arrest and detention issues, and revised its advice on complying with the *Evidence Act*. Despite the delays, the drafts are a promising sign that the Police Service accepts the arguments by the Ombudsman and others about the need for coordinated and comprehensive reforms.

There is an urgent need to review the frequent use of broad discretionary powers permitting police to stop, search and detain suspects. The common practice of police asking suspects to 'voluntarily' accompany them for questioning, in circumstances where suspects feel they have no choice but to comply, is another grey area of the law which generates many serious complaints.

We will also urge the Police Service to carefully consider the implications of recent legislative changes which considerably broaden police powers to detain suspects for questioning. We expect equal consideration for the protection of detainees' rights.

The Police Service's commitment to support its officers with information and guidance on appropriate arrest and detention practices is of critical importance. Without a sound understanding of their current powers, police officers are ill-equipped to implement more innovative reforms such as promoting alternatives to arrest. We will continue to monitor the Police Service's response to this important area of policing, especially in relation to young people.

HOLDING THE MAN

A Woollahra resident called police after hearing the sound of breaking glass at a neighbouring address. Two senior constables en route to investigate the suspected break-in, stopped a man walking in the vicinity. They

forcibly restrained and searched him, citing their power under s357E(a) of the *Crimes Act* to stop, search and detain any person reasonably suspected of "...having or conveying any thing stolen or otherwise unlawfully obtained or any thing used or intended to be used in the commission of an indictable offence". The only evidence connecting the pedestrian with the breaking glass was that he was walking in a nearby street.

The search apparently disclosed nothing connected with a possible offence, yet police continued to detain the man. Further inquiries revealed that the glass was broken by a dog, not an intruder. The pedestrian was released after being held for about 20 minutes. We expressed concerns about the police officers' decision to stop and search the man as there was little to suggest an offence had taken place. Nor was there reason to suspect the man of "having or conveying" anything connected with a possible offence.

Of greater concern was their decision to continue to detain the man after the search was completed. Any excuses which might have justified the initial (arguably illegal) search, clearly did not apply once police had established that the man had nothing in his possession connected with an offence.

Our recommendations included a request for the Police Service to develop a strategy to reinforce appropriate arrest practices and procedures. The Police Service initially said it could find no fault with the police officers' actions. The issue is yet to be resolved.

'VOLUNTEERING' TO ASSIST POLICE

A bank teller who was accused of assisting a customer to commit a series of frauds upon the bank, was questioned by two detectives in her manager's office. There was no power to arrest her for questioning and there was little to connect her with the frauds. According to the teller, the detectives arrested her, took her to the police station for questioning and later released her without charge. Such an arrest may have been illegal.

The detectives conceded there was insufficient evidence to arrest the teller but argued that she voluntarily accompanied them to assist with their inquiries. The first detective added, "... at no time did I tell her that she was under arrest although through my actions her arrest may have been inferred ... [and] at no time did she express any desire to leave the police station or police vehicle ... should she have done so, I would have had no hesitation of informing her that she was under arrest." The other detective stated, "... even though she was not told she was under arrest it would have been inferred."

We considered the relevant test in *R v O'Donoghue* as to whether the detectives "plainly conveyed to the suspect by what [they] said or did the impression that the suspect was not free to leave or to refuse to accompany [them]".

The Police Service said the onus was on the complainant to challenge the detectives' authority to take her to the police station: as she did not challenge them, she must have consented to go. We argued that the teller effectively had no choice but to accompany police, her 'consent' to accompany them was not voluntary and thus she had been unlawfully arrested. The Police Service rejected this analysis, concluded that the arresting officers acted appropriately and refused to take any further action.

The legal protections afforded to people under arrest are partly intended to ensure the reliability of admissions made while in custody. As 'volunteering' to accompany police can diminish suspects' basic legal rights, we have urged the Police Service to take the initiative in giving suspects the information they need to make a genuine choice to assist voluntarily.

CROSS-BORDER CONFUSION

Victorian police went with NSW detectives to search the home of a NSW man suspected of hiding a motor vehicle which was the subject of a fraudulent insurance claim by its Victorian owner. The NSW man was "caught red-handed" with a prohibited weapon (a cross bow) and allegedly made admissions in relation to the missing vehicle.

He was taken to a NSW police station and said he thought he was under arrest. The relevant NSW law at that time stipulated that once arrested the man should have either been charged or released. Instead, the NSW detectives said the man was not under arrest, just assisting with their inquiries. They said that after he was cautioned, he voluntarily went with them, chose to stay and answer questions, consented to go with the Victorian police to Victoria to be questioned and charged for his alleged involvement in the vehicle fraud, and further agreed to return to the NSW police station to be charged for possessing the cross bow.

The only evidence linking the man with the vehicle fraud was his admission, allegedly made after threats. The Victorian magistrate hearing the fraud case rejected the evidence and acquitted the man. We agreed with the magistrate that if in fact the man was free to leave or to refuse to accompany police, this should have been explained to him, otherwise it was reasonable for him to believe he was under arrest. He was surrounded by police during the search of his home, confronted with a prohibited weapon, allegedly admitted to an offence and taken to

the police station. We also said his 'consent' to accompany Victorian police back to Victoria should have been electronically recorded.

The Police Service attributed the unlawful detention to "a lack of procedural understanding on the part of the two police officers" and counselled them about their actions.

POOR CUSTODY PROCEDURES

The arrest and detention of a man who was taken to three different police stations and, although injured in the course of the arrest, was not given medical attention, highlighted many of the problems experienced by people in custody.

The wrong bail procedures were followed and there was no record kept of the man's alleged refusal of medical treatment. He told one officer that he was HIV positive and the officer informed other staff at the police station. He eventually became distressed and apparently attempted to hang himself in the cell with a rope he made from a mattress cover. He was then charged with malicious damage. Eventually, some hours later, he was released on bail.

Disciplinary action was taken against police for failing to obtain medical attention, for disseminating the information about his HIV status and for transporting him with his hands cuffed behind his back.

Police are obliged to advise people charged with a criminal offence of their entitlement to a telephone call to a relative, a solicitor of their choice, a person who may be able to arrange bail or a doctor of their choice. There is currently no independent record of whether this obligation has been fulfilled. We have recommended that the arresting police officers be required to make a notation in their notebook, or some other formal documentation, stating when and where the arrested person was advised of their entitlement to a telephone call, the notation to be verified by the arrested person and the officer's supervisor. The Police Service has addressed these recommendations in its draft code of practice on arrest and detention issues.

CRIMINAL CONDUCT

We continue to play a vital role overseeing Police Service investigations of complaints involving possible criminal and other serious misconduct. Allegations of assault, sexual assault, larceny, perverting the course of justice, drug offences and many others have become the subject of investigation. In many cases the Police Service relies on evidence from members of the public. However, police officers are also coming forward to report allegations of criminal or serious misconduct.

Examples of matters in which we have recently been involved include the following.

- A young Aboriginal man was assaulted by a police officer from an inner city station. The case is of particular interest because the complaint came from police officers who had witnessed and promptly reported the assault. We monitored the Police Service investigation and attended all interviews with relevant witnesses. The evidence of the four police officers who had witnessed the assault was crucial. The victim of the assault was also interviewed and was surprised the Police Service was conducting an investigation. He said he had not reported it because he thought no one would believe him. The police officer involved was charged and convicted of assault.
- A constable was approached by a sergeant who provided false documentary evidence to cover up the investigation of a motor vehicle accident. The constable reported the matter to his patrol commander and an investigation commenced. The sergeant was charged with 'perverting the course of justice', convicted and sentenced to a term of three years imprisonment. He was dismissed from the Police Service.
- A central coast police officer was an honorary office-holder with a local sporting club. Following an audit, the club management became aware that approximately \$11,000 was missing. The matter was reported to the Police Service for investigation. The officer fully admitted his responsibility to the investigating police, was charged with larceny and pleaded guilty. The officer was placed on a recognisance to be of good behaviour for a period of five years. The officer repaid most of the money to the club before the court case. Following his conviction, the officer resigned from the Police Service.
- A complaint was made that a police officer was involved in the cultivation of cannabis. Following inquiries, the police executed a search warrant at the officer's house and located about 280 grams of cannabis, a number of cannabis plants in the backyard, some utensils for smoking cannabis and three prohibited weapons. The officer was charged with three drug related offences and two relating to the prohibited weapons. He pleaded guilty to the prohibited weapon charges, but not guilty to the drug related charges. He was convicted on all five matters and fined. Two days after his conviction, the officer was dismissed from the Police Service.
- The former de facto of a police officer complained that he had sexually assaulted her on numerous occasions. The complaint was investigated by the Police Service and the officer was charged with a number

of sexual assault and indecent assault offences. The matters are still before the court. In the interim the officer is on extended leave.

CONFLICT OF INTEREST

Of ongoing concern are complaints about police involved in conflicts of interest. Last year we called upon the service to produce a clear code of conduct for police in this area. It is pleasing to note that in February 1997 the Commissioner issued a 'Code of Conduct and Ethics'. This code alerts officers to potential problem areas which might compromise the impartial performance of their duties. Financial interests, personal beliefs or attitudes, outside activities, and relationships with people with whom the service is dealing in an official capacity are all cited as representing possible conflicts of interest.

We have issued three special reports to Parliament and examined a considerable number of additional cases involving police conflicts of interest during the past year.

'POLICE AND INSURANCE INVESTIGATORS'

This report examined the unhealthy relationship which exists between police and insurance investigators, many of whom are former members of the NSW Police Service.

In the report we recommended the service review its instructions in order to better regulate contact between police and insurance companies. The service informed our office that it believed current instructions were sufficient. Nevertheless, the service did issue a reminder to personnel that all requests for insurance information should be referred to the Centralised Insurance Unit for processing. When in doubt, officers were directed to consult their patrol commanders before releasing information.

'CONFLICT OF INTEREST'

This report stemmed from a case involving a senior officer associating with a drug trafficker while the criminal was a parolee and the officer the Commissioner's representative on the Offenders Review Board. When the criminal was charged with illegal possession of a firearm, whilst still on parole for heroin trafficking, the officer appeared at court as a defence witness in his appeal against sentence.

Our report on the complaint resulted in the officer being departmentally charged with misconduct and fined \$1,000 by the Commissioner. Unfortunately, through an administrative oversight, the officer was allowed to retire without the fine being collected.

Thank you for your letter...I should like to say that I am very grateful for your assistance in this matter, without your help I would have no chance of ever receiving justice.

A complainant

We recommended the service develop a policy where police are:

- required to consult their patrol commanders if they have any involvement in court proceedings which may involve a conflict of interest;
- required to preface any evidence they give in court in a private capacity with a statement making it clear to the court that they are not appearing as police officers; and
- prohibited from wearing uniform when appearing in court to give evidence in a private capacity.

In June 1997 the service implemented our proposed recommendations through an amendment of the Commissioner's Instructions.

'CONFLICT OF INTEREST & POLICE'

This report provided further examples of police involved in conflicts of interest. It dealt with a number of cases of police officers inappropriately concerning themselves with matters involving family and friends.

The report also discussed the pitfalls into which police can fall when engaging in secondary employment. For example, police who have a second job can be faced with difficult ethical problems if their employer engages in shady business practices.

When releasing the report the Ombudsman said that the Police Service's Code of Conduct needed to be clarified and promoted within the service. Soon after its release, the Australian Federal Police contacted us seeking permission to use the report in their training programs. Permission was granted. The NSW Police Association then expressed strong support for the report noting that "... the Code of Conduct is of little value unless the Police Service enters into a comprehensive education and training package."

The Police Service has endorsed the report in general terms. We will closely monitor the implementation by the Police Service of the report's recommendations.

The release of three reports examining police and conflict of interest caused strong public concern. We will continue our scrutiny of such complaints.

Police in conflicts of interest

Report urges better training



Officer's deal with criminal

Ombudsman's report attacks officers over conflict of interest

By LARRY LAMPT
The Ombudsman's report of the police culture, the NSW Ombudsman said, has been "seriously undermined" by the police's handling of a case involving a senior officer who gave police a confidential drug trafficker with a 20-year criminal record after accepting a bribe.
The relationship between the senior inspector Barry Kennedy, who resigned from the service in January, and the police's handling of the case was the focus of the report.
The report, titled "Conflict of Interest & Police", was released on Monday.
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Ombudsman cautions police

By SYDNEY — New South Wales Ombudsman James Spence has urged police to be more forthcoming in co-operation between police and insurance companies in a report into circumstances surrounding police involvement in a \$240,000 private insurance case.
The report, headed "Conflict of Interest & Police", was released on Monday.
The Ombudsman said that the police's handling of the case was "seriously undermined" by the police's handling of the case.

Police warned on insurance claims

By RACHEL MORRIS
The Ombudsman's report of the police culture, the NSW Ombudsman said, has been "seriously undermined" by the police's handling of a case involving a senior officer who gave police a confidential drug trafficker with a 20-year criminal record after accepting a bribe.
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Watchdog slams probe

Police fail to identify conflicts of interest

Still playing favourites



SEX BASED HARASSMENT

Any harassment on the basis of gender can be sex based harassment. It includes, but is not limited to, sexual harassment, which is verbal or written or physical conduct of a sexual nature, which the perpetrator knew or should have known was offensive to the victim. Not all sex based harassment is sexual in nature. For example, it might involve letting someone's tyres down or other attacks on property. Sex discrimination is the treatment of an employee in an abusive or unfair way on the basis of gender and can include sex based harassment.

Since the Police Service launched their revised sex based harassment policy in 1991, we have been monitoring its operation and effectiveness through complaints received.

One of the concerns about the existing system we shared with the service, was the appropriateness of the standard investigation model for dealing with complaints.

Firstly, many complainants do not want an investigation. What they want most is for the behaviour to stop, and for a senior officer to speak to the offender and make it clear that the behaviour is unacceptable.

Secondly, witnesses could rarely be found to give evidence in support of the complaint, either because the alleged behaviour had occurred when no one else was present, or because the available witnesses denied the behaviour had occurred. The 'closing of ranks' phenomenon appears to be more marked when gender issues are involved. One complainant told us, *"From my experience, males will always look after other males who are complained about."*

To make matters worse for the complainants, in a number of cases police investigators ended up investigating the complainant. For example, a female officer who complained of obscene remarks about her sexuality was found to have left work early on one occasion. She was to be admonished by her district commander (a fairly severe penalty) until the Assistant Commissioner, Human Resources, intervened. We were advised that the Police Service intended to improve the process of investigation as part of the review of the policy.

By 1994, the service had established a working party to review the policy. In 1996 approximately 1,000 male and 1,500 female members of the service were surveyed. The aims of the survey were to measure the respondents' understanding about what constitutes sex based harassment, their experience of it, their awareness of the policy, and their attitudes to how the system worked. 49.3% of females and 10.2% of males said they had experienced sex based harassment. The main problems reported by those who had lodged a complaint were that the system

was complex, it did not deal fairly with the victim, and it lacked confidentiality. Seventy percent said that the process did not allow the victim to control the way the complaint was handled and 44.4% said they would not complain again.

From July 1996, we had discussions with the service about proposed revisions to the policy. In May 1997, the service provided us with a copy of the draft policy. There are aspects which will be welcome improvements on the present system. In the proposed model, though investigation will still be necessary where criminal conduct is involved, for less serious matters a number of informal resolution processes are available. The complainant will be involved in decisions as to how the complaint is handled. Complainants will also be asked to comment on their experience of the process.

The delays in reforming the system have been a concern, however, we fully appreciate the difficulties involved in developing a system which adequately supports victims and provides some measure of confidentiality, while still holding perpetrators accountable.

CONCILIATIONS

OVERVIEW

Over the past ten years we have worked with the Police Service to improve the effectiveness of conciliation as a tool for informal complaint resolution. Last year we reported that the Police Service had agreed to set up a working party to implement our recommendations about conciliations. In January the Police Service transferred responsibility for the project to Chief Superintendent Terry Collins as part of the Employee Management Scheme. The Police Service took this step to coordinate the changes to conciliation with the wider reform process that followed the Royal Commission's interim report.

The Police Service has implemented the following recommendations:

- appointment of a consultant to develop a training course in advanced dispute resolution techniques;
- improved accreditation and assessment techniques for participants in the new training course; and
- selection of local area commanders for training in advanced resolution techniques.

The outstanding recommendations include:

- completion of the review of the authority of conciliation officers to settle matters on behalf of the Commissioner of Police;
- introduction of a mechanism for internal review of unsuccessful conciliations and for ongoing evaluation of trends in the conciliation process; and

- consideration of a marketing program to improve the profile of conciliation.

Through the working party we have also identified the need for the Police Service to:

- simplify the conciliation form;
- develop a policy on the use and retention of conciliation records for promotion and recruitment procedures within the Police Service;
- set service-wide benchmarks for the rate of conciliations as a percentage of complaints determined; and
- set service-wide benchmarks for the rate of unsuccessful conciliations.

In his final report on the NSW Police Service, Justice Wood supported the continuation of conciliation and endorsed the recommendations made by the Ombudsman about conciliation. Justice Wood also argued for improvement of the conciliation process to ensure that it remains relevant and effective. We concur with the views expressed by Justice Wood. The Police Service needs to address the current weaknesses of the system. This improvement requires an increased emphasis on the use of conciliation as a managerial tool and as a means of improving the performance of police.

THE YEAR IN REVIEW

During the year 1309 written complaints were the subject of an attempted conciliation and police resolved 955 to the satisfaction of the complainant. The number of complaints conciliated as a percentage of complaints determined has increased from 21% in 1995-96 to 25% in the past year. While this increase is a positive measure of the commitment of the Police Service to conciliation, we remain concerned about the rate of conciliation failures. In the past year the rate of failure rose to 27% from 24% in 1995-96.

We hope the proposed training of local area commanders will help reverse this trend. It has been our experience that conciliation is generally successful if conciliation officers demonstrate a commitment to professional conduct, seek to improve customer service of and take effective managerial action.

We will continue to monitor the conciliation process and assist local area commanders to resolve complaints informally. A commitment to the conciliation process must be maintained by the senior management of the Police Service to ensure the continued improvement of the process.

CONCILIATION SURVEY

This year complainants were a little less satisfied with conciliation than in 1995-96. Even so:

- 319 respondents (80%) were satisfied with the way their complaint was handled;

- 173 respondents (44%) thought that the Police Service might improve as a result of the conciliation process;

- 334 respondents (84%) were satisfied with the manner and approach of the police officer who handled the conciliation; and

- 247 respondents (64%) felt an apology played a role in the resolution of their complaint.

The figures reflect that conciliation has retained a high level of complainant satisfaction.

OMBUDSMAN CONCILIATIONS

The Police Service conducts the majority of conciliations. This year we increased the number of conciliations conducted by our officers as part of our commitment to conciliations and intervening when we consider it appropriate. The following is an example of a complaint we resolved through conciliation.

An eight year old boy was sitting on the steps outside his home. A 19 year old man approached the boy and tried to make him accompany him by pulling him by his finger. The man allegedly produced a pocket knife before the boy managed to escape. The boy's mother chased the man down the street and then she rang police. Police attended the home of the 19 year old and discovered he had the intellectual development of an eight year old due to a disability. He explained to police that three school-boys hit him with sticks and that the boys were hiding behind a tree waiting to attack him. The police were unable to find the pocketknife. They decided that they would not take any action against the man and explained the outcome of their inquiries to the eight year old boy and his mother.

The man's brother made a complaint to police that they had been abusive when making their inquiries. The brother could not write and made his complaint on the telephone to police. The police attempt at conciliation failed. We contacted the complainant who explained that his brother was in fear of both the local schoolchildren and of the local police. He felt his brother was the victim of the original incident and that they were both treated unfairly by the police who attended their home. The complainant and his brother were clearly upset by the incident. We invited the complainant, his brother and police to a meeting to discuss the complaint.

The outcome of the conciliation was an agreement by the Police Service to take a number of actions to overcome the man's fear of police and to act on his complaint of harassment. The conciliation officer volunteered to be available to respond to any requests for assistance, and invited the complainant and his brother to a Police Open Day and BBQ to meet local police. The officer made an

undertaking to brief all shift supervisors about the harassment and to provide training to the patrol about customer service and dealing with people with disabilities. The conciliation helped to restore the complainant's confidence and trust in the Police Service. The Police Service took the time to understand the needs of some of its local citizens and improved the quality of its service.

... MEANS NEVER HAVING TO SAY YOUR SORRY

Police make mistakes. Indeed, we all do. When launching the new Code of Conduct, Commissioner Ryan made it clear that the nature of policing means mistakes will be made. But he also stressed that the service will achieve very little unless both management and individual officers take full responsibility for how their behaviour affects other people.

We believe the service should take appropriate steps to rectify the problems that result from mistakes. Even an honest mistake can have serious repercussions. At the very least it may cause stress and inconvenience to those affected by it.

We have found an apology can mean the difference between a satisfied complainant and an unhappy one. The success of conciliation provides a clear illustration of this point. When it comes to conciliated complaints, our surveys indicate that more than half of those who complain about police are happy to consider their complaint resolved if an apology is offered by the service. There is no reason to believe that an apology is less important when complaints concern serious issues of misconduct (although this may be one element of an appropriate response).

While the service is more willing to apologise than it used to be, we believe that there are still far too many occasions when an apology is only forthcoming after prompting from us.

A FORCEFUL EVICTION

A tenant was evicted from premises by police after a request from his landlord. The man offered minor resistance to the police action and as a result, one of the constables became annoyed. Outside, he threatened the tenant, warning him that if he was called back, he would use his baton on the man's head. The tenant complained and the incident was investigated by the service. The investigator found that the officer had threatened the tenant in the manner alleged.

The service deliberated for some time over what action it should take against the officers for both unlawful eviction and threats. However, six months after the investigation was complete, it had not expressed any regret to the complainant about the events. We intervened and the service apologised to the complainant.

TWO ASSAULTS BUT ONLY ONE PROSECUTION

Two 16 year old Aboriginal women were celebrating the birthday of a friend when a misunderstanding resulted in an altercation with another female patron. Police were called and the patron alleged that she had been assaulted. The police asked the young women to attend the station to 'clear things up'. Although the women complained to police that they had also been assaulted, police did not interview the witnesses. Instead they told the two young women they would be summonsed for assault.

The charges against one woman were withdrawn and they were proven against the other. Some time later, both women instituted private prosecutions for assault against the third patron and her boyfriend. The court found the charges proven.

The evidence indicated there were two incidents comprising separate assaults. We found police failed to respond appropriately to the assault allegations made by the young women. We recommended the service apologise to the complainants. After more than a year of deliberations, the service agreed to apologise but by that time the whereabouts of the young women were unknown.

COMPENSATION

During the year we dealt with many complaints where compensation for lost or damaged property was an issue. In some instances, the Police Service readily acknowledged the need to pay and did so quickly.

In other cases the Police Service was reluctant to pay compensation even though its own inquiries had shown the service was at fault or its officers had suggested compensation be paid. Most involved long delays by the Police Service in granting compensation to a complainant: our office successfully intervened in many of these cases.

THE MISSING RING

A \$400 diamond ring belonging to the victim of a serious offence was held as an exhibit by police officers investigating the offence. Two years later, police no longer required the ring and a receipt was issued indicating that the ring had been returned to the owner.

The owner said she did not receive the ring. She complained and sought \$400 compensation. The police investigation established that a senior constable had signed an official police receipt for the ring on behalf of the owner. At the time he signed for the ring, the officer was in a relationship with the owner. He claimed to have returned the ring to her. Inconsistencies in the officer's evidence were not adequately assessed because of deficiencies in the police internal inquiry.

I would like to thank you... for your valued involvement in this matter.

A complainant

Despite uncertainty about the officer's motivation for taking the ring, the inquiry clearly established that he had falsified the owner's signature. The Police Service initially decided that the officer should be counselled. We asked the service to seek advice from the Director of Public Prosecutions on whether to prefer criminal charges. The officer was eventually convicted for forging the receipt.

We also argued that the service was ultimately responsible for ensuring that the ring was returned to its owner. We agreed with the service's own legal advisers who recommended that the service pay \$400 to compensate the owner. After numerous requests by our office, payment was finally made, more than four years after the false document was signed by the officer.

THE DAMAGED PHONE AND STRETCH LIMO

A police officer stopped a stretch limousine and issued a defect notice over a minor modification. The driver disputed the defect. The driver called the owner on the car phone and asked the officer to speak to him. During the conversation the constable verbally abused both the driver and the owner who was on the phone. The constable terminated the call and slammed the phone down on the roof of the limousine. This destroyed the phone and damaged the vehicle.

The owner complained and requested compensation. The police investigation established that the constable had verbally abused both the driver and owner as well as using offensive language in the presence of the six female passengers in the limousine. It also established that the constable had damaged both the car phone and the vehicle.

Notwithstanding this, the Police Service declined to consider the question of compensation until charges against the constable had been heard in court.

The charges were subsequently dismissed. The service again deliberated on the compensation issue. We considered that, although there may have been doubts about the intent of the officer, it had been accepted that the constable had damaged both the phone and the car. We therefore requested that the complainant be compensated. Seven months after this request, the Police Service finally agreed to compensate the complainant for the damage to his car and phone.

UNLAWFUL DETENTION

Early one morning police stopped a man walking along a street in Sydney and obtained his details. A warrant check was carried out and the attending officers were informed over the police radio that there were five outstanding warrants for traffic matters in a name with similar unusual spelling to the man's.

The man suggested that the warrants may relate to his cousin and supplied police with the phone number of his brother so that they might check on this. At 3.00am his brother was spoken to by police and gave an inconclusive answer about the particulars of his cousin or brother. The police acted on this answer and the man was arrested and taken to the police station. He protested that his brother must have been sleep talking and not know what he was saying. At the station he was charged and transferred to prison.

The following day the man's concerned brothers attended the police station. Detailed inquiries were made on the computer about the identity of the person with the outstanding warrants. After a number of hours the officer in charge decided that there was doubt about the correct identity of the person named in the warrants. The man was released from prison and a complaint was made. He had been in custody for about 21 hours.

The police investigation found that the man had been unlawfully arrested and detained. Other than addressing the actions of the officers involved, the Police Service proposed no other action. We requested that an apology be made to the man and an ex gratia payment be considered as compensation for his unlawful detention. Sixteen months after he was unlawfully detained, the man was given an apology and a cheque for \$500 from the police.

A QUICKER RESPONSE

In December 1995 a prisoner had been transferred from one police station to another for charging. The prisoner was received by the custody officer and, after being searched, his property was placed in the prisoner property bag. Later when the bag was inspected by police, a gold ring was found to be missing.

The prisoner complained. A police investigation found that the gold ring had been lost by police during the prisoner's processing. Within three months of the incident the police accepted responsibility for the loss and decided to compensate the complainant.

DOMESTIC VIOLENCE

We continued to monitor complaints regarding the policing of domestic violence incidents. We are pleased to report the Police Service has recognised domestic violence as an area in which the police need to take an active approach to better protect victims. However, several issues continue to cause concern.

VICTIM SUPPORT

Complaints received by our office involve issues about victim support and allegations of a lack of understanding of domestic violence amongst some officers.

A woman from a suburb in Sydney called our office for help. She was due to go to court because her ex-husband had breached an Apprehended Violence Order (AVO). He had a history of being very violent towards her during the period of their relationship. She discovered that on the day she had to go to court, he and two of his family members were also due to appear on assault charges. She was scared and very distressed about going to court on her own. We liaised with the patrol commander who then organised for the woman to be escorted safely to and from the court.

UNSERVED ORDERS

An AVO must be served on the defendant before it is enforceable. Unserved orders leave victims unprotected.

We received a complaint from a woman who went to court and had an AVO taken out against her brother. Fourteen months later, her brother came to her home and verbally abused her, causing her a great deal of stress and she became ill. When she called the police, they had no record of the AVO and it had not yet been served. No action could therefore be taken against her brother.

We have been liaising with police at the Domestic Violence Central Data Bank. All AVOs are listed on this data bank whether taken out through the police or the local court. From this data bank, it is possible to see which orders have not yet been served. The data bank may be used as a base for a more efficient system to keep track of unserved orders. We intend to examine this issue further.

FAILURE TO ACT ON BREACHES OF ORDERS

We have received complaints about the failure of police to act on breaches of AVOs. We are concerned this failure undermines the effectiveness and impact of those orders and the protection afforded to victims. Also, victims tend not to call the police again if the police did not satisfactorily respond to a breach the first time.

We understand many victims have difficulty making complaints about police. Victims may also not wish to complain when they have to rely on the police to enforce AVOs and protect their safety.

We will continue to scrutinise complaints regarding domestic violence and AVOs.

Thank you first of all for being there and thank you especially for resolving my particular problem.

A complainant

Thank you for your interest in my complaint and it give us, the ordinary people, confidence in the system under which we live.

A complainant

My sincere thanks for your honest and committed approach to the case.

A complainant

I would like to thank you sincerely for your efforts in this matter. I know you understand the problems faced by our service and our clients and it is very refreshing to have someone like yourself in a position of authority where you can demand and receive immediate action.

It is great benefit to the Aboriginal community to have Aboriginal people in such positions and we thank you very much for your assistance in this matter.

A complainant

- A Form of Forgery
- When Friendship is Criminal
- Traffic Breach Reports and Statute Barred Offences
- Sexual Assault
- Serious Delays
- Missing Persons

Case Studies

A FORM OF FORGERY

Our standard survey of an apparently successful conciliation prompted a response from the complainant that his 'signature' on the conciliation form was a forgery. We were sufficiently concerned about this serious allegation to conduct our own investigation into the matter, holding an inquiry at which the complainant, the sergeant involved in the conciliation and the sergeant's supervisor gave evidence. Our report expressed 'grave concerns' about whether the sergeant had forged the complainant's signature and the truthfulness of his evidence. We referred the matter to the DPP, which advised that there was insufficient evidence to prefer criminal charges. We also recommended management action by the Police Service. The sergeant's region commander agreed that the sergeant's conduct "could at best be described as unprofessional" and "has brought his overall integrity into question." The sergeant was removed from supervisory duties, placed under close supervision, counselled and warned that further misconduct might well lead to a review of his suitability for employment as a police officer.

WHEN FRIENDSHIP IS CRIMINAL

The law regarding consorting in NSW makes it an offence to habitually consort with people who have been convicted of an indictable offence. The term 'habitually consort' is not defined. Guidelines for police indicate officers require a number of 'bookings' within a six month period before a prosecution can be considered. A booking or warning is a term used when an officer has spoken to a suspect and the officer is satisfied that the suspect is knowingly consorting with a person or people who have been convicted of an indictable offence. The officer then records the information obtained from questioning the suspect in their official police notebook and transfers it onto a computer database.

A complaint arose when two men stopped their vehicles in a side street off Parramatta Road late one night. A police van stopped and asked them what they were doing and asked them if they had been in trouble with the police. One of the officers issued a 'booking' for consort-

ing on the basis that the older man knew the younger man, a juvenile, had been convicted of an indictable offence. The two complainants believed they were being harassed by the police and later lodged a complaint. The older man said he had explained that he had given bail surety for the juvenile, and he was a long time friend of the juvenile's family. The investigation found that, at the time in question, there was no conviction on the juvenile's record for an indictable offence. The booking should not have been made and, therefore, the issue was sustained.

Representations were made to the Police Service for a policy review on the use of consorting laws, including establishing whether a person could be booked for consorting in circumstances where they had provided bail surety. The service responded to this by issuing a Commissioner's Circular and also agreed to correct the criminal record of the juvenile by including the words "without conviction" in relation to the offence.

TRAFFIC BREACH REPORTS AND STATUTE BARRED OFFENCES

Our 1994 annual report reported a number of cases where delays in investigation resulted in a number of matters becoming statute barred or prejudiced in some way.

The administration of traffic breach reports and the line of command for the supervision of related duties, was raised in a report by our office in 1995. Our concern, then and now, is that where there is a failure to take follow up action in the event of an outstanding breach report, there is a real possibility of matters becoming statute barred.

The Police Service responded to our report by proposing to maintain a traffic breach reports book and to formalise audit procedures. While this deals with some of the concerns raised in our report, it fails to address the issue of responsibility for any follow up action which may arise due to sickness or leave.

We have referred the matter back to the Police Service, drawing attention to the apparent failure to address this issue. We are awaiting a response.

SEXUAL ASSAULT - UNSUCCESSFUL PROSECUTION

A police investigation into an allegation of sexual assault resulted in the dismissal of the charge and costs awarded against the prosecution in the Local Court. The case was very weak and requisitions made for more evidence by the Office of the Director of Public Prosecutions (DPP) were not complied with. The absence of a system for recording the receipt of such requisitions was a problem as the officer claimed he had never received them. We ensured a protocol was developed between the Police Service and the DPP so that station supervisors would receive and record requisitions.

Other problems existed with the lack of victim support. Our intervention ensured that the victim was compensated from local patrol funds for losses incurred as a result of the investigation, for damage to her clothing and other associated costs.

The officer was dealt with under the new Employee Management Scheme. At our suggestion, his supervisory responsibilities were removed and he was placed under close supervision with all briefs being submitted through a senior officer. He was also required to attend further training in the area of victim support. As a result of this case, the patrol commander initiated regular contact with the local sexual assault service to improve the service to victims.

SERIOUS DELAYS

A representative of a NSW sporting organisation complained about the theft of information from that body. Two years later, the police investigation into the allegation was still not complete. We decided to conduct an investigation into this significant delay.

Our investigation revealed serious systemic weaknesses with respect to management practices in certain specialist agencies. Of particular concern was the absence of timetables and reallocation procedures, and the manner of case prioritisation and assessment.

We therefore recommended that our report, particularly with reference to procedures for assessment, completion and reallocation of matters, be referred to the Police Service's Criminal Investigation Review Team for consideration. We will continue to closely monitor this issue.

MISSING PERSONS

A distressed woman whose schizophrenic brother went missing and was found dead 14 days later complained about the adequacy of the Police Service investigation into her brother's disappearance. The woman believed she had made more inquiries to try to locate her brother than the police had. She later found out there was a sighting of a naked man in a trench coat reported to police the morning of her brother's disappearance. It was later established that this man was her brother.

Police inquiries indicated a missing persons report was taken at approximately 7.40pm, put on to the computerised operational policing systems (COPS) and disseminated to the closest police station to her brother's last known location. However, that station was not a 24 hour station and had only a skeleton staff. There was no evidence that police at that station had accepted responsibility for investigating the brother's disappearance, or were aware of the COPS message.

As there was no police policy on the reading and dissemination of COPS messages at the time of the incident, a Commissioner's Instruction has now been issued which states that, at shift change-over, COPS messages should be read and, where appropriate, distributed.

Police inquiries also revealed a search was conducted of the area where the naked man was sighted at approximately 7.30am that day but no one was found. A minor incident of this type would not normally be placed on COPS. There was no way for police to link that report (which turned out to be about the brother) with the missing persons report received some 12 hours later.

We were concerned by the adequacy of the police procedures and whether those procedures appropriately reflected the responsibilities and accountabilities of police officers involved in the investigation of missing person reports. We have referred our concerns to the Police Service for comment and are now awaiting a final response.

We can't thank you enough for intervening [in this matter]. I hope we don't have to go through anything like this again, I didn't like going over the heads of the officers concerned.

Your support was very much appreciated!

Now that this is all over, we can put this down to experience and get on with our lives again.

A complainant

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 9,729 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*	Adverse finding	No adverse finding	Conciliation	Total
Conspiracy or cover up	71	6	26	0	103
Theft	169	21	69	1	260
Consorting	73	5	29	0	107
Bribery or extortion	132	7	34	0	173
Dangerous or culpable driving	9	2	1	0	12
Drug offences	182	5	65	0	252
Fraud	29	3	9	0	41
Perjury	22	0	4	0	26
Sexual assault	27	7	25	0	59
Telephone tapping	6	1	1	0	8
Murder or manslaughter	21	0	1	0	22
Other	121	9	31	0	161
Total	862	66	295	1	1,224

Assault					
Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Injury	169	21	146	0	336
No injury	305	30	122	1	458
Total	474	51	268	1	794

Investigations and prosecutions

Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Forced confession	18	1	7	2	28
Fabrication	82	6	33	4	125
Unjust prosecution	54	3	7	6	70
Suppression of evidence	7	7	2	0	16
Failure to properly review prosecution	0	0	0	1	1
Faulty investigation or prosecution	297	71	108	200	676
Disputes traffic infringement notice	246	0	5	17	268
Failure to prosecute	123	21	33	105	282
Total	827	109	195	335	1,466

Arrest/detention/warrant

Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Unjustified search or entry	62	8	20	39	129
Unnecessary use of force, damage or resources	83	8	43	17	151
Faulty search warrant procedure	35	5	12	10	77
Strip search	16	1	7	5	29
Improper detention of intoxicated person	4	0	1	0	5
Unreasonable use of arrest or detention powers	99	30	58	31	218
Total	299	52	156	102	609

Abusive remarks or demeanour

Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Race related	28	4	18	25	75
Other social prejudice	7	2	5	6	20
Traffic rudeness	59	2	3	103	167
Other	111	35	72	162	380
Total	205	43	98	296	642

Handling Complaints about Police

Inadvertent wrong treatment					
Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Administrative matter arising from investigation	4	2	0	0	6
Property damage	17	1	5	8	31
Total	21	3	5	8	37

Breach of police rules or procedure					
Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Sexual harassment	41	16	36	5	98
Traffic or parking offences	73	17	27	39	156
Failure to provide or delay legal rights	61	13	30	15	119
Failure to return property	47	8	11	23	89
Threats or harassment	331	20	124	157	632
Unreasonable treatment	256	20	80	251	607
Drinking on duty	27	5	16	6	55
Faulty policing	16	0	1	8	25
Failure to take action	203	30	63	264	560
Breach of police rules and regulations	571	428	133	31	1,163
Failure to identify or wear number	23	3	5	13	44
Misuse of office	38	12	26	4	83
Other	74	30	30	10	144
Total	1,761	605	582	826	3,774

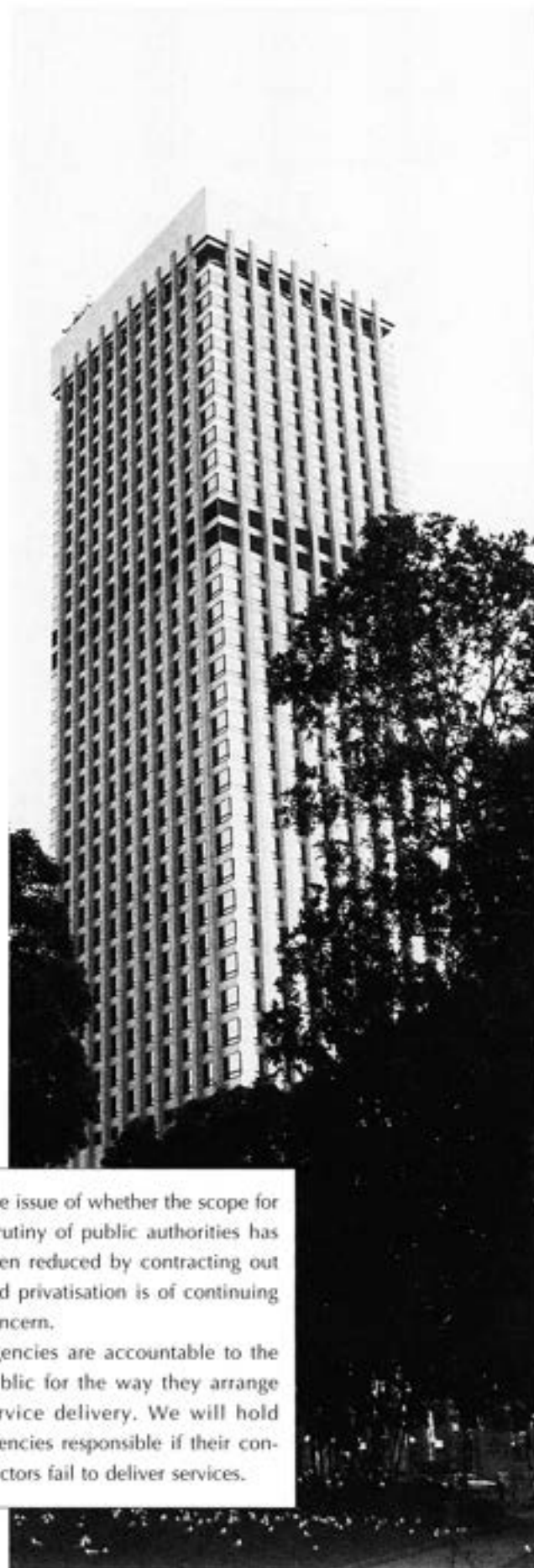
Information					
Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Inappropriate disclosure of confidential information	125	43	50	20	238
Failure to provide information or notify	58	26	27	52	163
Inappropriate access to confidential information	134	140	86	10	370
Providing false information	50	92	52	21	215
Total	367	301	215	103	986

Management issues

Category	Not fully investigated*	Adverse finding	No adverse finding	Conciliation	Total
Failure to withdraw warrant on payment	4	0	0	1	5
Improper issue of summons, warrant or enforcement order	26	3	1	11	41
Delay in answering correspondence	9	0	1	7	17
Inappropriate permit/licence action	3	1	0	4	8
Condition of cells or premises	3	0	0	0	3
Other	80	16	3	24	122
Total	125	20	5	47	197

Total	4,941	1,250	1,819	1,719	9,729
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Handling Complaints about Departments & Authorities



The issue of whether the scope for scrutiny of public authorities has been reduced by contracting out and privatisation is of continuing concern.

Agencies are accountable to the public for the way they arrange service delivery. We will hold agencies responsible if their contractors fail to deliver services.

Overview

This chapter covers complaints about general 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 916 written complaints and 2,895 informal oral complaints about public authorities other than those listed above. We also received 82 requests to review our initial determinations. A further 502 written complaints, two review requests and 4,368 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 rose 11% this year after trending down over the previous five years. Written complaints about non-jurisdictional matters jumped 23% but review requests fell by 12%. There has been little change in the number of oral complaints received about general authorities within our jurisdiction but a 19% increase in oral complaints about bodies outside our jurisdiction.

During 1996/97, 952 written complaints and 84 reviews about general authorities were finalised. A further 508 non-jurisdictional matters, including six reviews, were also dealt with.

Preliminary or informal investigations, often extensive in scope, were conducted on 59% of the complaints received that were within our jurisdiction. Thirteen formal investigations were completed involving 17 separate complaints. Of these, four resulted in formal reports and the remainder were discontinued for various reasons.

Public Authority Complaints 1996-97

Received

Written complaints	916
Oral complaints	2895
Reviews	82
Bodies outside jurisdiction	
<i>Written</i>	502
<i>Oral</i>	4368

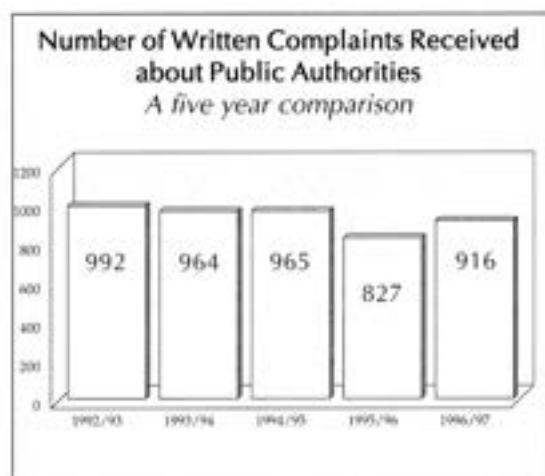
Determined written complaints

Formal investigation completed	17
Preliminary or informal investigation completed	502
Assessment only	332
Non jurisdiction issues	101
Total	952

Current investigations (at 30 June)

Under preliminary or informal investigation	56
Under formal investigation	5

The area of greatest complaint is service delivery. Nearly one in three complaints are about service delivery, including complaints of delayed action or failure to act; failing to respond to correspondence or telephone calls; rudeness; or discrimination.



Nature of Written Complaints about Public Authorities
1996-97

Approvals Grants, licenses, permits, registrations, applications	82
Charges Level of charges, fees, penalties/refunds	71
Contractual issues Tenders, contracts, maintenance	53
Information Improper disclosure, refusal to alter/disclose, wrong advice	52
Management Supervision	13
Misconduct Corruption, conflict of interest	16
Natural justice Denial, procedural fairness/failure to give reasons, other procedural objections	32
Policy/law Objection to policy/law, faulty procedures	121
Regulation Discriminatory enforcement of regulations/law, failure to enforce/investigate, unreasonable/unjustified enforcement	54
Service Delayed action, failure to act, no replies, poor service, rudeness, discrimination	249
Wrong decisions Prejudice, malice or bias, based on wrong facts, other reasons	49
Other	43
Issue outside jurisdiction	81
Total	916

- The Buck Stops at the Public Authority

- Youth Issues

- Scattergun and Serial Complainants

Issues

THE BUCK STOPS AT THE PUBLIC AUTHORITY

Our previous annual report identified the issue of contracting out as being of increasing relevance to the Ombudsman. A specific concern is whether the scope for scrutiny of public authorities has been reduced by contracting out and privatisation.

A public authority, publicly funded to provide a service or to pursue some activity in the public interest, may decide to contract out the task of providing that service or pursuing that activity. In such cases we believe the normal standards of public accountability should apply. This may be achieved via the terms of the contract between the public authority and the contractor. Such a contract ought to render the contractor sufficiently accountable to the public authority so as to enable the public authority to monitor the conduct of the contractor under the contract, and to compel the contractor to rectify any problems arising from that conduct.

In a speech made to the IPAA NSW State Conference, the Ombudsman outlined our approach to complaints made about the conduct of contractors engaged by public authorities. She said:

Providing there is some merit to the complaint, we will be looking fairly and squarely at the public sector agency and asking them what they intend to do to bring the contractor into line. We will not accept as an adequate response the reply that it's the contractor's fault and that the agency is not accountable for what the contractor has or has not done. The point is that the agency is accountable to the public for the way it has arranged for the service to be delivered. If the agency has not provided mechanisms in its arrangements with the contractor for proper monitoring of the contract or reserved to itself the power to require its contractor to remedy defects, then this is an omission on the part of the agency for which it is responsible. At the end of our examination of the matter we will be seeking to enforce the accountability principle to secure a result for the citizen which resolves the complaint.

This issue was indirectly raised in a complaint made by a subcontractor engaged by a private company involved in a joint development with a public authority.

The complainant claimed a contractual relationship with the public authority, and therefore that the public authority owed him certain obligations under the alleged contract. The complainant speculated that if he had no contractual relationship with the public authority and he engaged in wrong conduct while delivering services to the public pursuant to his contract with the private company, the public authority would be unaccountable to the public for that wrong conduct.

Our examination of the contract between the public authority and its partner in the joint development revealed the public authority was excluded from the process of selecting subcontractors and lacked the capacity to monitor their conduct. It could, however, insist on the termination of the subcontractor's services.

The issue of the extent to which a public authority is required to monitor and control the conduct of subcontractors is a difficult one. Ultimately a balance must be reached between the right of the public authority to contract out thereby removing itself from the day to day delivery of services and the need to ensure that the subcontractor remains accountable to the public authority.

We believe that while it may be reasonable for a public authority to delegate service delivery, in doing so it ought not abrogate its responsibility to directly monitor and regulate the conduct of subcontractors. In practical terms, the public authority ought to retain the right to undertake inquiries into the conduct of subcontractors where required, to regulate that conduct and, if necessary, to terminate their services. The terms of the contract between the contractor and the subcontractor should be subject to the public authority's approval and contain a term that the subcontractor is to deliver the services contracted for, to the satisfaction of the public authority.

As to the complaint received by our office, we decided that, because the public authority was excluded from the process of appointing subcontractors, it lacked the capacity to dictate the terms of the subcontractor's appointment. This flaw was further compounded by the inability of the public authority to monitor the conduct of the subcontractor. In this context the right to insist on the termination of the subcontractor's services was inadequate to render the subcontractor properly accountable to the public authority.

Although there may be cases where the public authority should have some involvement in the selection of subcontractors or a veto over their selection, it is important that public authorities focus on the terms and agreements under which subcontractors are selected rather than insisting on actually being a part of the selection process.

The public authority now concedes its arrangements with its joint development partner were flawed and would not be repeated.

Fortunately, no complaints were made about the conduct of the subcontractor and the structure of the arrangements between the subcontractor and the public authority was only of illustrative interest to us. Undoubtedly, however, as public authorities contract out more, the issues raised by the complaint will come before us again in a more substantive way.

YOUTH ISSUES

During the year we conducted a substantial access and awareness program for young people, speaking to many young people and youth advocates including parents, youth groups and legal services.

As a result, total complaints from, and on behalf of, young people have increased. Police complaints make up the largest proportion of complaints from young people; the second highest proportion of complaints is about juvenile justice centres; followed by complaints about the Department of School Education.

A substantial number of school complaints are about suspensions. We investigated suspensions a number of years ago but there are still unresolved issues, many of which relate to communication problems. Parents and children are sometimes unaware of discipline and suspension procedures for their school and there is confusion over the difference between suspension and exclusion. Occasionally there are also difficulties with student and parental input during suspension resolution processes.

Many of the parents who complain about suspensions refer to the unfairness of the process. They complain there is a lack of procedural fairness in deciding guilt and innocence and of the effect the suspension will have on the future education and reputation of their child within the school.

A related difficulty for parents is complaint handling procedures within schools. These are not clear to parents nor students in many schools. Sometimes the system pushes the responsibility for resolving complaints back to the school from where the complaint originated, and on occasions, escalated. Parents in this circumstance feel they will either receive an aggressive approach from the school or that the whole exercise will be pointless. We

have also spoken to complainants about decisions made by more senior officials to support the decisions of schools without supplying the complainant with reasons for the decision.

Our community consultations raise concerns about children at risk. These concerns include the over representation of Aboriginal children in suspensions, the number of Aboriginal children who have left school by an early age, sometimes as young as ten, the lack or failure of programs to support and keep at school these students at risk, and the lack of alternate educational facilities for school resisters.

We will continue to monitor this area closely in the coming year.

SCATTERGUN AND SERIAL COMPLAINANTS

Two types of complainant consume more than their fair share of our resources and those of other public sector bodies or officials, the 'scattergun' and the 'serial' complainant. The more common scattergun complainant sprays copies of their complaint to every complaint handling body they can think of - and often to ministers and media outlets as well. Often a letter with a long list of "c.c." The Premier, ICAC, Auditor-General, Attorney General, Anti-Discrimination Board, Human Rights Commission, John Laws, A Current Affair, etc. readily identifies a complaint of this type. However, word-processing can mean such complaints are individually addressed to a range of agencies with no telltale "c.c." to indicate this.

We approach such complaints on the twin principles that we must avoid duplication of effort and that, as the general jurisdiction watchdog for the state, we are essentially the avenue of last resort. In particular, we believe the public authority complained of should normally have been given an opportunity to resolve the complaint through their own complaint handling processes. Thus we normally regard such complaints as premature and decline to deal with them if the public authority complained of has not exhausted its complaint handling/appeal procedures. We also decline complaints if any specialist agency approached is capable of dealing with the complaint. We may vary this approach where complaints disclose serious abuse of power, systemic problems or matters of significant public interest.

We thank you for your prompt reply to correspondence from us

We wish to thank you for the assistance you have provided in this matter. It is refreshing to see that us residents can seek such assistance if the need arises. Happy New Year!

A complainant

We declined 4% of the non-police complaints received this year on the basis of concurrent representations to other agencies that provided an alternative means of redress.

To minimise the prospect of duplicating inquiries that specialist agencies may make into such complaints, we liaise with agencies such as the Department of Local Government, the ICAC and the Audit Office. We check whenever it seems that another agency may have received a complaint from such a complainant.

Serial complainants are those who refuse to accept that their complaint lacks merit or is incapable of being pursued. On having their complaint declined by one watchdog agency, they re-lodge it with another. Sometimes such complainants will not disclose previous declines. At other times they will augment their complaint with claims of incompetence or corruption in the agency that declined to give them the result they demanded.

Again, if we believe there is a possibility the complaint has already been considered by another watchdog agency, we will check. On the other hand, if a complaint is made about the specialist watchdog that previously declined the complaint, we require compelling evidence of incompetence or improper consideration before we will act. We do not accept, as complainants often urge on us, that the fact of an agency's decline is in itself good evidence of improper consideration.

We normally have no option but to open a file (with its attendant costs) when receiving a complaint from a scattergun or serial complainant. While we try to minimise the resources we spend on such complainants, sadly in a world of tight budgets, such resources cannot then be spent on more worthy complaints.



If a complaint falls outside our jurisdiction we provide appropriate referral information whenever possible. Our small inquiries team deal with thousands of requests for information and advice each year.

Case Studies

- Medical Machinations
- Home Owners, Licence Holders and Insurance - the BSC becomes DFT
- Retirement Blues
- A Question of Good Character
- Department of Health - Division of Analytical Laboratories
- Hard Lesson for Student Teachers
- I Was Robbed
- Loo Blues
- Record Keeping
- Bad Smell
- Let's Talk
- Investigation Explanation
- Gone Fishing
- Mineral Claim Appeals
- But It's Not My Car!
- A Change for the Letter
- Please Explain...
- School Leaving Age for Students with Disabilities
- We're (Not) All Going on a Land Tax Holiday
- We Value Your Complaint
- S.O.S.
- What They Don't Know Won't Help Them
- Parrots, Pumpkins and Power
- Into the Woods
- Gimme a Sign
- What's Your "Policy" Policy?
- Fair Gol

MEDICAL MACHINATIONS

The Australian Medical Association (AMA) complained on behalf of a doctor that a complaint of professional misconduct about him to the Medical Board had been made in bad faith by the chief executive officer of an Area Health Service (AHS). The doctor had previously worked at a children's unit run by the AHS.

The complaint of professional misconduct centred around alleged inappropriate relationships between the doctor and former patients and sought an investigation of these issues. After preliminary inquiries we started formal investigation of the case.

We identified four separate but related disputes involving the doctor which were said to have motivated the complaint of misconduct. These were:

- disagreement over the appropriate doctor/patient relationship for treating children in the unit;
- dispute over an academic paper between the doctor and his co-authors from the unit;

- dispute between the doctor and the unit director over intellectual property in research grant applications for projects at the unit; and
- dispute between the doctor and the unit director and AHS management over the doctor's whistleblowing to the media about the unit and its treatment of certain children.

The AMA cited as evidence of bad faith the "temporal relationship" of the AHS's complaint to the Medical Board and both a whistleblowing media appearance by the doctor and a complaint made by the doctor about the conduct of the director of the unit. In other words the complaint to the Medical Board was allegedly motivated by a desire to punish and silence a critic. This turned out to be one of number of examples in this case of the logical flaw which derives a cause and effect relationship between two events simply because one followed the other.

The investigation examined a large quantity of documents and summonsed 11 witnesses to give sworn evidence at hearings held pursuant to section 19 of the *Ombudsman Act*.

One of the case's key underlying problems was that the doctor saw a strong role for himself as an advocate for disadvantaged children. He indicated his philosophy was always to put the needs of the child first even if this meant abandoning conventional professional prudence or administrative practice. In an increasingly suspicious climate concerning child abuse, this approach involved risks to which the doctor appeared insufficiently sensitive.

An earlier internal audit investigation into irregularities in awarding the research grants in which the doctor had an interest, stumbled across an allegation the doctor was a paedophile. An investigation by the Health Department Legal Branch found no evidence to support this allegation. No evidence was produced in our own more extensive investigation to prove child abuse by the doctor.

The threshold question in the investigation was to establish whether there were sufficient grounds to justify the AHS making the complaint about the doctor to the Medical Board. If sufficient grounds existed then even if there was significant ill-feeling towards the doctor arising from the four disputes, we could not (in the absence of direct confession as to ill-feeling being the motivation for the complaint) criticise any public authority for making the complaint to the board.

There was evidence the doctor had social contact with previous patients. Our investigation concluded that it was reasonable to ground a complaint on an observed departure from the generally-perceived professional standards on friendship between doctors and patients or former patients (particularly children). The Medical Board then must determine whether the practitioner can demonstrate that the circumstances justified the breach of the standard. In this case we were satisfied that the chief executive officer had sufficient grounds for concern over the possible breach of that professional standard to alert the Medical Board.

We were also concerned about the mishandling of the research grant applications including the switching of funding from an approved project to a project which had not been approved. We were unable to satisfy ourselves about the true circumstances of the switch. New procedures have now been adopted which should prevent recurrence of such problems. For that reason we did not pursue this issue further.

In December 1996 we found no wrong conduct on the part of any public authority formally the subject of the investigation.

HOME OWNERS, LICENCE HOLDERS AND INSURANCE - THE BSC BECOMES DFT

Two years ago, we reported significant changes in the focus of the Building Services Corporation, which is now firmly incorporated into the Department of Fair Trading. Instead of policing complaints about shoddy work, the corporation decided to return responsibility for solving disputes to the parties themselves. A free mediation service replaced rectification orders. We were concerned by increasing complaints from disgruntled licence holders, alleging they had been denied procedural fairness as insurance claims were paid to consumers without their knowledge or the opportunity to fix the problem. We noted it was likely significant changes in an organisation's structure would attract complaints and decided to monitor complaints.

In late 1995, we received a complaint which highlighted various issues from the perspective of a builder. While we did not agree with some of the allegations made in that complaint, several things did concern us and we began an investigation in January 1996. We asked questions about some of the specific issues raised in the complaint: why two different officers sent conflicting letters to the two parties involved on the same day; why a senior staff member told the builder he was in breach of his contract; why there was a nearly three month delay in informing the builder of a further batch of complaints; how the corporation could look at an insurance claim at the same time most of the issues were to be considered by the Supreme Court.

The department (as it had become) was able to satisfy us about most of these concerns, acknowledging there had been delays, inappropriate communication and failure to answer correspondence. However, the main point put by the department was that these concerns were one-off - confined to that complaint. We disagreed since, as predicted in our earlier annual report, we had received a series of complaints raising similar issues from both home owners and builders. Using another nine examples we decided to expand the investigation to look at:

- the quality and timeliness of advice;
- delays and inaccuracies in responding to correspondence;
- delays in determining insurance claims;
- file management and record keeping;
- internal information management;
- the amount of notice given to licence holders before action is taken which may be detrimental; and
- how decisions are made about mediation.

As part of the investigation we visited the department's St Leonards office, inspecting the various files and examining the administrative procedures in both the insurance and complaint notification units. The department also told us about yet more changes in store because of new legislation and the former corporation's integration into the larger department.

The most drastic change was the government's decision to take away the department's monopoly on home building insurance. This had been mooted for some time so the former corporation had devoted little resources to employing permanent experienced staff, providing adequate computer and phone support, and implementing adequate guidelines. It was not surprising then that we found the most deficiencies in the insurance area, with correspondence unanswered, relevant documents missing, wrong and conflicting advice given, as well as inadequate and conflicting guidelines.

Taking on board the findings of our investigation, as well as the changes which were being proposed, we met with senior departmental officers. They agreed with our preliminary findings and advised that the whole structure of the organisation was at that time under review. Because of the major restructuring, legislative changes and proposals for administrative reforms, we decided to discontinue the investigation and the department undertook to keep us informed of its new procedures and guidelines - which it has done.

In relation to home building insurance, the department no longer acts as insurer. From 1 May 1997 the Home Building Act provides for a new scheme run by private insurers under which all residential work over \$5000 needs to be insured. Despite the changes effectively bringing an end to the BSC insurance schemes, there is a wind up period which covers insurance taken out up until the change-over date of 1 May 1997 - known as DFT Insurance. Because of DFT Insurance, the department will continue to play a significant role in processing consumers' claims for up to seven years.

The administrative overhaul conducted by the department resulted in a flatter structure for DFT Insurance which takes account of the evolving role of the section as the legislative changes take effect. In a similar vein procedures manuals have been developed and new records management software is to be implemented.

We are aware of yet another restructure and changes in legislation are likely to produce a rash of complaints. We will continue to monitor these and keep in contact with the department.

RETIREMENT BLUES

A former owner of a lot in the Fernbank Retirement Village at St Ives spent many years seeking assistance from public officials to address what he considered to be illegal management structures and deferred management fees operating in Fernbank and similar retirement village schemes.

Proprietors of lots in strata title schemes on registration constitute the body corporate in which vests the common property of the scheme. Subject to the *Strata Titles Act*, the body corporate has the "control, management and administration of the common property" and the duty to do so for the benefit of the proprietors. Under the Act the body corporate may appoint a managing agent, may delegate some of its duties and functions, and may also revoke those delegations and appointments.

At Fernbank and a number of other similar strata title retirement villages, the original developer through a Deed of Management purportedly appointed its own nominees to manage the common property to the exclusion of the body corporate and was able to charge the proprietors large amounts of money for this service known as "deferred management fees". The complainant argued that the effect of the deed was that the management of the common property was for the benefit of the company and not the proprietors.

The complainant claimed that no such appointment could be made as on registration of the scheme, the common property vests in the body corporate and only that body has responsibility for the management of the common property. While the body corporate can appoint a managing agent, it was argued this is not what occurred at Fernbank. The Deed of Management was alleged to have not been actually executed by either the developer, its nominee or the body corporate. Even if it had, the complainant argued it would still be invalid as the agreement would be in conflict with the *Strata Titles Act*.

The complainant believed the Commissioner for Consumer Affairs and the Strata Titles Commissioner did not recognise his argument due to its ramifications for the retirement village industry. Legal advice available to them acknowledged that if the various arguments he raised were successful, it could undermine the legal infrastructure of other retirement villages. At least six were directly affected but some 10% of the 1000 or so retirement villages in NSW are strata titled. The ramifications indeed had serious implications.

The Branch wishes to thank you and the members of your Office for the diligent manner in which this issue was pursued. As I am sure you will appreciate, the implications contained in this particular case were such that the matter needed to be clarified.

The AMA

Following our preliminary inquiries, it was decided that the then Commissioner for Consumer Affairs had acknowledged and responded to the complainant's concerns but there were grounds for investigating the action or inaction of the then Strata Titles Commissioner.

It was found that early correspondence to the complainant from the Strata Titles Commissioner saying there was no conflict with the Act and other correspondence from the Minister which he drafted contained no analysis of his main argument. In our view, he incorrectly took the position that the complainant's concerns were related to contractual arrangements and were outside the "extent" of the *Strata Titles Act*, the *Retirement Villages Industry Code of Practice* and the *Retirement Villages Act*. While purportedly closely monitoring some legal proceedings and having attended some conferences with officers of the former Department of Consumer Affairs and with Counsel in relation to the proceedings, he appeared to have taken a passive role and relied upon it to provide answers to a number of important issues which in fact the proceedings appeared not to be concerned with.

One related to a further issue raised by the complainant in connection with the ambiguities in the coverage of the *Retirement Villages Act* and the Code of Conduct to strata titles retirement villages. There are no references in that Act and Code to the *Strata Titles Act*, and in our view the detailed further arguments of the complainant cast doubt on the applicability of these instruments to strata title retirement villages.

As early as 1990 the complainant had brought these matters to the attention of the Strata Titles Commissioner. He also raised a number of matters with the Minister for Consumer Affairs relating to the ambiguities in the industry code in its application to strata villages and even asserted that the code was invalid. In one response he was advised these matters had been brought to the attention of the Strata Commissioner. Our investigation found no documentary evidence that any action had been taken by this former Commissioner on these matters.

Our investigation concluded that there was a community expectation that the Strata Titles Commissioner would act in the public interest and be proactive in monitoring issues relating to his area of concern. We found that this former Commissioner should have taken action to fulfil that community perception to deal with the complainant's argument as he could have in a number of ways. In consideration of the wide role played by the Tenancy Commissioner and Strata Titles Commissioner, we took the view that the responses given to the complainant were inadequate given their potential impact.

Our investigation was delayed for a number of reasons but was pursued to finality due to the public interest in the basic ongoing issues which have still not been adequately addressed.

More recently, there have been developments in the further legal proceedings in the Court of Appeal. The responsible Minister has also initiated a review of the retirement village industry. In line with our recommendations, this review will address the various arguments of the complainant and also include a review of the overall financial arrangements in retirement villages as suggested by the Retirement Village Consultative Committee.

At the time of writing the Department of Fair Trading was preparing a discussion paper that will stress the issues to be considered during the review. The discussion paper will highlight the matters we recommended.

A QUESTION OF GOOD CHARACTER

Our last two annual reports have included items on the office's investigation of the Psychologists Registration Board.

The pivotal concern of the investigation was the board's failure to request more than notional advice and references to support an applicant's request for registration as a psychologist. This was one of the matters canvassed in an issues paper circulated by the Department of Health in December 1996. The paper was specifically designed to elicit submissions from interested parties on the need for changes to the *Psychologists Act*. It also flagged the need for similar attention to be paid to other health registration legislation.

In June 1997, the board sent us copies of its new application forms. While agreeing that the new format, and extent of questioning, was a vast improvement, we were concerned about one remaining aspect. One question asked the applicant if they had ever been the subject of an adverse finding "relating to your conduct or to your character as a psychologist, or as a health care professional, by a court, Royal Commission, special commission of inquiry or by the Independent Commission Against Corruption". The applicant, it appeared, need not have declared any finding by the Health Care Complaints Commission, the Anti Discrimination Board or the Ombudsman (despite her ongoing and public interest in this issue) even though such finding might be extremely relevant to an assessment of character. We suggested the inclusion of this catch-all phrase at the end of the list: "... or any other statutory body". The board speedily accepted the suggestion.

DEPARTMENT OF HEALTH - DIVISION OF ANALYTICAL LABORATORIES

We received a complaint from a magistrate, seriously concerned that the Department of Health's Division of Analytical Laboratories had been unable to give the police the results of its testing of substances in a drugs case. The magistrate found it hard to accept that in five months the division had not determined whether a syringe and tobacco pouch contained amphetamine. The police prosecutor told the magistrate that the analyst was on leave on the day he had asked for the results and there was no one else to do it because the substance was locked in a safe.

We requested an explanation from the department, which informed us that when the police first sent the syringe and pouch in April 1996 the syringe was not in a "sharps only" container. The department's policy, for some years, has been that syringes will not be tested if they are not properly packaged because of the risk of needle stick injury to staff. This meant some delay before the police returned the exhibit in its proper form. There was also a higher than average number of demands on the analysts at that time. The analyst was only on one day's leave but in any event cases are not generally transferred between analysts for security reasons.

All of these explanations were reasonable if unfortunate and the department said it sincerely regretted the incident. As a result of the complaint, the director of the division and police representatives agreed:

- the investigating police officer would provide prompt written notice to the division of a hearing date or other court deadline;
- the division would review its priorities to take into account these deadlines; and
- the division would tell the police when a certificate of analysis could be expected, allowing plenty of time for other arrangements to be made if necessary.

This reminder to keep up with workloads and improved communication between the two authorities should ensure accused people and the courts are not kept waiting for crucial prosecution evidence.

HARD LESSON FOR STUDENT TEACHERS

Two students who had completed different education degrees at the University of Technology (UTS) complained to us that the Department of School Education did not recognise their qualifications for employment as teachers. Although each student's circumstances were different, the cases highlighted difficulties in communication between the department, UTS and individual students. As a result, the students did not realise until after graduation that they could not be accredited by the department to teach.

One student read in the course information that her proposed degree would be "accepted by the NSW Department of School Education for special education credentialling". She understood 'credentialling' to mean the department would accept her as qualified to teach special education. In fact, the term 'credentialling' means the department accepts only previously accredited teachers who complete the course as special education teachers.

Although the course information was technically correct, it was confusing to those who were not familiar with the jargon used. UTS informed us that all students are advised to seek independent advice from the department about the qualifications needed to gain employment as a teacher. They did agree, however, the course information could be confusing for potential students. We suggested they amend the course information in line with our guide "Administrative Good Conduct", to ensure the information is accessible to future potential students.

The second student had teaching qualifications from overseas and so gained advanced standing in his course at UTS. The UTS degree he completed would normally be accepted by the Department of School Education for teacher accreditation. After finishing his course, the department told this student they would not accept the overseas study that formed part of his degree. He was, therefore, not yet qualified to teach in NSW.

Our inquiries revealed an error had been made by the department in previously approving several other students with the same qualifications. Because the student who complained to us had completed his studies in good faith, the department decided to grant him a "one off" conditional approval to teach.

Through our discussions with the Department of School Education and UTS staff, we also became aware that other currently enrolled students could be similarly affected. We wrote to UTS and they agreed to advise students of these problems. We also suggested better coordination was required between the department and teaching institutions to ensure future students are not disadvantaged.

I WAS ROBBED

A first class honours law graduate complained about her university's failure to award her a university medal for which she had been nominated.

I refer to the report by the Assistant Ombudsman. You are aware this complaint involved a great number of related issues and the conflicting interests of many people and organisations. I would be glad if you would pass on to the officers involved in this work my gratitude for the thoroughness of their investigation and the impartiality and clarity of their report.

Such a standard of work justifies the faith of the community in the important work of your office.

A complainant

To avoid invoking our policy of not second guessing professional, technical and academic judgements, the complaint was carefully framed in terms of alleged maladministration on the part of the committees that had considered the medal award. Part of that maladministration was a failure to give reasons for decisions.

The complainant only came to us after she had engaged counsel to plead her case (this time in terms of the medal's non-award being based on gender discrimination) before the Equal Opportunity Tribunal. The EOT had rejected her case. She complained to us about the incompetence of the EOT and about maladministration in the conduct of the university's defence before the EOT in that the university had produced a document altered from its original form in a manner designed to mislead the EOT.

It was clear from the outset that some aspects of the case were outside our jurisdiction. Despite the jurisdictional problems and the age of the case by the time it reached us, the potential to identify systemic problems with the award of university medals prompted us to interview the complainant and carefully analyse the voluminous documentation she supplied.

Our analysis concluded:

- A university medal is a prize and not an entitlement.
- A potential medal candidate cannot nominate themselves for consideration. This distinguishes medal awards from an entitlement to marks from an examination for which the candidate is self-nominated.
- A medal is not awarded on the purely mechanical aggregation of examination marks during the candidate's degree. A medal award reflects a component of subjective discretion in the assessment of academic excellence by individual members of the medals committee who also have a duty to maintain a comparability of excellence between candidates from disparate disciplines.

While broad criteria for medal award should be clearly set out it is not reasonable to expect that highly detailed criteria (such as were sought by the complainant) should be formulated, especially given the comparability issue noted above.

In the academic sphere it is unreasonable in practice to expect reasons for every decision on the award of mark entitlements for examinations, essays etc. An expectation of reasons for decisions is even more problematic in the case of prizes.

As our analysis disclosed no significant maladministration or real prospect of a formal investigation reaching any positive finding, the case was closed. We suggested the university make one minor clarification to its medal award criteria concerning the exclusion

of extracurricular activities from consideration. The documents examined did not support the complainant's allegations about the EOT.

LOO BLUES

The director of a company developing and manufacturing on-site greywater (treated effluent) management systems wrote to the Department of Health requesting approval for his system. He received a letter from the Director-General of Health that the system did not require the approval of the Health Department because on its own it did not constitute a primary waste treatment device but only "refined" the effluent. The department told the director that its approval would be up to local councils. On the basis of this advice the company began to manufacture and market the devices. However, the director was very aggrieved when, after a local council refused an application from a customer to install his device to further treat the effluent from a primary device, he found that an Area Health Service had circulated a letter to all councils in its area advising that the particular system was **not** considered to be a suitable means of disposing of treated aerated septic effluent and was not supported by the department. This was a direct contradiction of the advice from the Director-General of Health.

The complainant was concerned that the department on the one hand was refusing to give him approval for the device because "it was not necessary" but on the other hand was circulating advice to councils that virtually ensured the device would never be approved by local councils. When the director could not get the matter clarified, he wrote to us. After prolonged preliminary inquiries, the Area Health Service agreed to withdraw the circular and to write to councils in that area clarifying its previous advice.

A further issue highlighted by this complaint was the provision of advice to local councils about which devices should be installed in particular soil types or how the topography may affect the performance of a device. We have received many complaints from people who have installed systems with a council's agreement, only to find they do not work properly either because the soil was unsuitable or because an increase in development in the area increased surface water runoff thus causing the system to be less efficient. The problem for local councils is that systems become less efficient if they are not properly maintained and councils currently have no powers to monitor systems and enforce standards of maintenance.

We believe the Department of Health should provide local councils with detailed advice and performance standards for such systems. Because the issue involves the EPA, the Health Department, the Department of Land and Wa-

ter Conservation and local councils, a committee with representatives from all bodies has been set up. There is also a legislative review committee with representatives from the Department of Local Government and the Health Department which will consider mechanisms to facilitate monitoring and continuing maintenance of domestic wastewater management systems.

RECORD KEEPING

We became aware, while investigating a complaint about the Registry of Births, Deaths and Marriages, that the registry did not keep any record of general inquiries it dealt with.

When the registry received a general enquiry, for example "How do I trace my family tree?", the correspondence was answered but no record of the enquiry or the reply was kept. A record was kept only if money was sent with the correspondence. Normal practice was to return the original letter to the sender with the reply.

We pointed out this could cause problems if a member of the public complained their query had not been answered. The registry would have no record of the letter being received or of a reply being sent.

As a result of our discussions, the registry has introduced procedures so the number of general inquiries handled each day is identified and records are kept to ensure each inquiry is now accounted for.

BAD SMELL

A woman complained to us about a stench coming from the sewer pipes near her home. She told us she had phoned Sydney Water at least eight times and written to them in 1994 about the odour. She was not happy with their efforts to fix the problem nor their lack of response to her complaint.

We encourage public authorities to develop complaints handling procedures and knew Sydney Water had developed procedures in early 1995. When an individual complains to Sydney Water, a staff member must contact them to discuss the complaint and both parties must then agree on a course of action. The complainant is then aware of the action to be taken and has the name and contact details of the staff member dealing with their complaint.

Our inquiries prompted Sydney Water to write to the woman, apologising for the delay in resolving her complaint and advising her of the progress of their investigation. We also recommended Sydney Water monitor whether staff were properly implementing the new complaints handling procedures. They agreed their lack of response to her complaint had only made the situation worse and told us that training in the new procedures would be provided for all staff.

LET'S TALK

A couple travelling on State Rail witnessed a young woman being assaulted by a member of State Rail Authority (SRA) staff. They went to the young woman's assistance, going with her to report the incident to the nearest police station.

The couple complained to us about the behaviour of the staff member and the SRA's apparent lack of action. The couple believed the young woman may have been under the influence of drugs but her behaviour had not justified the reaction of the staff member.

The SRA investigated the incident and recommended no action against the staff member. Other staff and a number of security guards who had witnessed the incident said the assault had been provoked by the young woman and the staff member had acted appropriately in restraining her.

However, in our discussions with the police, we found they had taken a statement from another member of the public which supported entirely the account given by the couple who complained to us. The SRA investigator had been unaware of the existence of this statement. With the consent of the police, we supplied a copy of the additional statement to the SRA investigator.

As a result of this new evidence the SRA reviewed the conclusions of their investigation. It was decided disciplinary action should be taken under the State Rail Code of Conduct against the staff member concerned.

During our work on the complaint it was clear communication between the police and the SRA over this type of incident was poor. Both the police and SRA staff acknowledged this was a problem. We suggested they establish formal communication links to prevent this type of problem happening again.

INVESTIGATION EXPLANATION

A plant technician from Sydney lodged a complaint against his employer with the Department of Industrial Relations. According to the complainant, the employer had failed to pay him his holiday pay entitlement.

One of the department's Industrial Inspectors investigated the matter and advised the complainant:

"...I have completed an investigation and found no breaches of the industrial laws administered by the Department. Therefore, under the circumstances, this Department intends to take no further action in this matter."

Thank you for your letter ... I'm happy to advise you that my complaint has been dealt with and a refund should be on its way by the end of February.

Thank you for your help.

A complainant

A local MP wrote to us on behalf of his dissatisfied constituent, asking us to further investigate the matter. We were concerned the department's letter did not give any details about what investigations had been made or explain what findings led to its final decision.

Our inquiries revealed that the department had been fair and reasonable in its investigation. The inspector had discovered the complainant had already taken periods of holiday leave, which reduced the amount of holiday pay he was later entitled to.

Regardless, we believe that giving reasons for decisions is one of the basic principles of good public administration. We believe departments and authorities should fully explain the reasons for their decisions, in a way which is simple and easily understood by members of the public.

The Acting Director-General of the department acknowledged our concerns and advised us he had requested inspectors be "*sensitive to the issue of procedural fairness and the giving of reasons to complainants.*"

The Acting Director-General also indicated his department was making significant changes to parts of its investigative process. This includes the use of plain English, and providing more explanatory information in correspondence to its clients.

GONE FISHING

A fisherman in the Moruya area decided to sell his business. In order to do this, he applied to NSW Fisheries for his Recognised Fishing Operation notification which detailed his catch history. Another fisherman contested the catch history. NSW Fisheries therefore prevented the transfer of the fishing business until the matter was resolved. The fisherman who wanted to sell his business complained to us saying there was no time limit in which the matter had to be resolved so it could go on indefinitely preventing him selling his business.

We made inquiries and as a result NSW Fisheries completely reviewed its policy. It introduced an appeals process to deal with applications for determining entry into restricted fisheries and an appeals panel to hear claims related to catch histories. These new regulations became effective in 1997.

In this particular case a time limit was set for the fisherman claiming part of the catch history to submit new evidence to NSW Fisheries. He did not do so and the embargo on the sale of the business was lifted.

MINERAL CLAIM APPEALS

A miner complained about the Department of Mineral Resources' denial of his mining lease application. The complaint raised issues about miners' appeal rights.

No right of appeal exists against the refusal of an application for a mineral claim but there is a right of appeal against the cancellation of a claim. However, it was apparent the department was not informing miners of their rights of appeal and we suggested it should do so. The department replied it believed miners were generally aware of their rights but few used the appeal process because the appeal was to the District Court which could be expensive and time consuming. The department therefore decided to recommend that the *Mining Act 1992* be amended so appeals would be dealt with in the Warden's Court, not the District Court. In 1997, a year after the complaint was made, the *Mining Act* was amended in accordance with this recommendation. Furthermore, the department instructed all mining registrars to inform miners whose claims have been cancelled that a right of appeal exists.

BUT IT'S NOT MY CAR!

In August 1996 a very distraught person wrote to our office complaining about the Roads and Traffic Authority (RTA), Parramatta City Council and the Infringement Processing Bureau (IPB). The complainant had been issued with eight infringement notices, a notice from Parramatta City Council advising him of their intentions to remove a motor vehicle they considered to be abandoned, which council believed was the complainant's, and a letter from the RTA reminding the complainant he had not renewed registration of the vehicle, again, believed to be his. After many calls, letters and visits to the RTA, IPB and council, notifying them, without success, that he was not, and never had been the owner nor the driver of the vehicle, the complainant lodged a written complaint with our office.

The complainant had provided letters and signed statutory declarations to the RTA, IPB and council notifying them of their error and asking them to amend their records to show he was not the owner of the offending vehicle. Although the RTA told him they had amended their records, he was still issued with eight infringement notices. The RTA had amended their records, but had failed to notify the IPB that they should also amend their records so that no fines be recorded against the complainant.

We contacted the three agencies and were informed that inquiries would be made into the complaint. Council informed this office that they were only acting on information provided by the RTA's records and until such time as the RTA amended their records council could do nothing. We then contacted RTA head office and after many calls between the RTA and IPB the complainant's records were finally updated and no offences or fines were recorded against his name. The IPB provided the complainant with a letter to that effect.

A CHANGE FOR THE LETTER

A man asked for our intervention in obtaining a response from the Real Estate Services Council. Our inquiries revealed a systemic problem within the council in the manner in which correspondence was being dealt with. Due to a large backlog it was taking two to three months for complaints to be allocated to an officer and up to two more weeks before the complaints were being acknowledged. After our inquiries, changes were instituted to correct the problem. These changes ensured the prompt acknowledgment of all complaints and inquiries along with a contact name and number. In addition all backlogged matters were allocated to officers to expedite prompt processing.

PLEASE EXPLAIN...

A director of a small private inquiry agency contacted our office complaining the WorkCover Authority had failed to provide reasons for altering the agency's insurance classification. This decision meant the agency faced a 1500% increase in its insurance premiums. The complainant had called WorkCover for an explanation for the change. No reasons were given. The complainant then made a formal appeal against the decision, providing information in support of the objection. WorkCover denied the appeal but again provided no reasons for its decision, merely stating the matter was closed.

We asked WorkCover why it had reclassified the agency and why it failed to provide reasons for its decisions, despite the complainant's requests. WorkCover responded by providing a copy of its determination and an extract from the Government Gazette referring to the relevant classification. It advised the reclassification was part of its attempts to remedy differences in the way some insurers had been classifying inquiry agents. We sent copies of this information to the complainant. We decided not to pursue this aspect of the complaint as the decision was largely based on professional judgement and there was no evidence to suggest it had been improperly exercised.

We did however pursue WorkCover's failure to give reasons for its decisions. WorkCover stated its policy is only to provide detailed explanations upon request as the cost of doing so as a matter of course would be prohibitive. We suggested employers should at least be told that they can ask for more detailed reasons by including a sentence to that effect in its notification letters. WorkCover agreed to this suggestion.

SCHOOL LEAVING AGE FOR STUDENTS WITH DISABILITIES

A community legal centre made a complaint about the way the Department of School Education administered its policy on the school leaving age for students with disabilities. At that time departmental policy was that students with disabilities had to leave school once they were 18 years of age. Some parents had sought exemption from this policy to enable their son or daughter to remain at school after that age, as students accessing the HSC could do. The legal centre alleged the department dealt with these requests in an arbitrary and ad-hoc way, and such exemptions were often made only after parents had taken legal action and a hearing before the Equal Opportunity Tribunal was imminent.

We made extensive inquiries with the Department of School Education over a long period. Government policy changed in 1996 and now provides that students with disabilities can remain at school until the end of the term in which they turn 20 years of age. The department states no formal approval is required. The matter is to be determined by consensus at a transition planning meeting. The meeting will include the student's parents/care givers, the student, departmental officers and representatives from other agencies. The department has not established criteria for reaching a "consensus", but states the overriding consideration is the best interests of the child. Indeed it appears the department has specifically decided not to provide any criteria. If the consensus of the meeting is that the student should remain at school no further "approval" is needed.

We appreciate there can be difficulties in establishing guidelines which, in some situations, can become overly rigid and restrictive. However, the absence of criteria could lead to parents being unable to advocate effectively on behalf of their son or daughter be-

Thank you for your letter....Thank you also for your intervention with the Department of Housing and the NSW Health Department. I am considerably relieved that appropriate action is being taken over my mother's condition, about which I was extremely concerned.

...Thank you again for your concern.

A complainant

cause they are unaware of what are relevant and irrelevant considerations and expectations. The lack of criteria could also cause difficulties where consensus is not reached. Of similar concern is the lack of any formal appeal mechanism. It is not clear to whom an appeal should be addressed or on what basis it would be resolved.

Our inquiries into the matter are continuing. While many welcome the new policy, we trust the Department of School Education will continue to refine its processes to ensure students with disabilities and their parents are able to fully participate and be confident they are fairly and equitably treated.

WE'RE (NOT) ALL GOING ON A LAND TAX HOLIDAY

In 1988, the Office of State Revenue responded to a shortage in rental accommodation by introducing a land tax holiday in respect to new residential accommodation. To qualify for this tax break, the building or construction work in question had to start between June 1988 and 1 January, 1994.

In 1995 a landowner consulted the information booklet on land tax put out every year by the Office of State Revenue. In relation to new residential rental accommodation, the booklet read:

Exemption is available for land that is used to provide new residential rental accommodation whether by erecting a new building, converting a nonresidential building into residential accommodation or by converting an existing dwelling into 2 or more separate dwellings. Exemption applies for the 5 tax years following the date on which the new accommodation becomes ready for occupation.

Not realising that the period of eligibility to participate in the tax holiday had already come and gone, the landowner applied for exemptions on three properties which seemed to meet the criteria published in the booklet. He told us he had decided to retain these properties as a commercial decision on the basis of the tax exemption he believed he was entitled to receive.

We wrote to the authority that in our view, the 1995 information booklet was deficient and possibly misleading in that it did not reflect the temporary nature of the "land tax holiday" for new rental residential accommodation. We said that the paragraph in question should have included, at the very least, some such caveat as "in some cases", or, preferably, the relevant dates to which this exemption applied. We felt the office should have anticipated there was potential for confusion of the kind that took place.

The complainant had written to the Office of State Revenue requesting an *ex gratia* payment for the 1995 tax year. Following our representations, the Office of State Revenue decided to grant this request. The current Land Tax Information Booklet has been amended to avoid the possibility of a recurrence of this problem.

WE VALUE YOUR COMPLAINT

In November 1995, a Queensland businessman who believed he had identified a breach of the *Valuers Registration Act* by a real estate valuer wrote to the Real Estate Services Council. Within a week, the council wrote back, saying it had received the complaint. This letter, however, identified an incorrect party as the subject of the complaint. When the businessman wrote to the authority to point this out, he began what became, for many months, a one-sided correspondence.

The complainant wrote to the council in December 1995, and in February 1996. In March 1996, he forwarded a copy of a related letter to the authority. In May 1996, and again in August 1996, he wrote directly to the authority. On each occasion, the Queenslanders sought advice on the progress of his complaint. He continually stated he was dissatisfied because he had not received a written reply.

In October 1996, he brought the matter to our attention. We telephoned the Department of Fair Trading, of which the Real Estate Services Council now formed a part. We were told that complaints about the conduct of a real estate valuer are referred in the first instance, to the Valuer's Registration Board. (The board is not a public authority, and therefore falls outside the jurisdiction of the Ombudsman.) In this case, it seems the valuer from the board had lost the file. The Department of Fair Trading gave the valuer a copy of the required paperwork. However, the complaint was no closer to completion than it had been on the day it was lodged, a year ago.

We suggested the Department of Fair Trading write to the complainant, explaining the situation and apologising for the delays. While the department had been in telephone contact with the complainant from time to time, we believe when a person has requested a written response, one should be provided unless there are good reasons for not doing so. At the same time we asked the department to review whether current practices were appropriate for the speedy investigation of complaints about valuers. We later followed up with written inquiries into the delays we had identified.

We were somewhat surprised in December 1996, to learn that the businessman had still not received a letter from the Department of Fair Trading. The letter in question was finally sent on 17 December, 1996. The department did not send us a copy of the letter, which we had requested, until late April, 1997.

The Department of Fair Trading acknowledged the case had made it aware of deficiencies in existing procedures. As a result of our involvement, the department decided to review all existing complaints about valuers and the procedures used by departmental officers. This should result in more efficient customer service. The department has begun a review of the *Valuers Registration Act* and has told the reviewers of the scope for improvement in the complaint and disciplinary processes concerning real estate valuers. We will keep monitoring the situation. The complainant wrote to us to say, "We wish to thank you for your prompt attention to this matter and feel that without your involvement we would still be waiting for a response from the Real Estate Services Council."

S.O.S.

A Tasmanian couple celebrating their fortieth wedding anniversary began a holiday cruise aboard the *MV Southern Cross*, a Russian liner operating out of Sydney. Only days earlier, the ship had docked at the Rocks to offload 700 passengers, 41 of whom had suffered a viral infection. The ship's medical officer did not report the outbreak of the viral epidemic to port authorities and a shipload of new passengers were allowed to board for a thirty-four day cruise. For the Tasmanian couple, the highlight of the tour was returning to Sydney and being admitted to hospital with suspected gastroenteritis. The previous few weeks had seen about 170 fellow passengers afflicted with symptoms of uncontrollable vomiting and spasmodic diarrhoea.

Mr Gavin Frost, Chief Medical Adviser for the Commonwealth Department of Health was interviewed by the Channel Nine program *A Current Affair* and described the outbreak as an epidemic. Had the Commonwealth been notified when the ship first docked in Sydney, steps could have been taken to investigate the cause of the illness.

Despite apparent breaches of the *Quarantine Act* and the *NSW Health Act*, no action was taken against the cruise line. The Commonwealth Ombudsman referred the couple's complaint to us as there were concerns that the NSW Health Department had failed to respond to the outbreak of illness aboard the *MV Southern Cross*.

We asked the department for an explanation. They sent us a legal advising, prepared five months after the event, that listed reasons why the department could not prosecute the ship's operators or the medical officer. They

could not be sure the illness was notifiable under the Act as: the ship could escape NSW jurisdiction by sailing out of coastal waters; the ship's doctor was not registered in NSW; and there was even a question whether the passengers were "receiving attention" while in state coastal waters. The then Director-General of the NSW Health Department, Mr John Wyn Owen, concluded that "the advice indicates that it is unlikely that the Department of Health would be able to take any action against a cruise ship operator or a medical practitioner for failing to notify an outbreak of an infectious disease on board a cruise ship." Jurisdiction was further complicated by international maritime law.

We agreed that the murky jurisdiction made it difficult to determine who was legally responsible for enforcing health and notification standards aboard international cruise ships. We pointed out the gap in legislation and requested an urgent review to settle the jurisdictional problems. The Department of Health favours a voluntary code of practice for ship operators and is currently in consultation with the Commonwealth Department of Health and Family Services. We are waiting to see if these voluntary guidelines provide adequate protection to passengers in the event of another outbreak. With the Sydney 2000 Olympics looming, this issue will become more urgent if cruise ships are used to provide temporary accommodation in Port Jackson.

WHAT THEY DON'T KNOW WON'T HELP THEM

Sometimes government authorities take confidentiality to foolish extremes. A resident of Federal, in northern NSW, bought a property affected by a high voltage power line easement running from Lismore to Mullumbimby. Only a month earlier, Transgrid had negotiated and paid compensation to the former owner. The new owner's solicitors inquired about the situation and received a standard letter stating, "In the event that it becomes necessary to acquire a transmission line easement over any property, Transgrid will pay the owner compensation for the acquisition at not less than market value."

While the owner knew of the easement, she was not aware of any compensation payment made. Her inquiries were answered with a brusque letter from Transgrid's solicitors de-

Many thanks for your two letters in response to my enquiry for assistance with matters related to the Registry of Births, Deaths and Marriages.

The matter has now been resolved satisfactorily....I am now able to go ahead and initiate the search which I need to have done.

I appreciate your assistance in this matter, and their co-operation with you.

A complainant

nying her any right to compensation. In the following nine months, Transgrid continued to hound the property owner for her signature on the easement grant but refused to provide any information on the compensation payment to the previous owner. We wrote to Transgrid and suggested a more informative and gracious letter to the owner was an option they had yet to explore. Transgrid sent the owner an apology for their unhelpful correspondence and arranged a field officer to meet personally with her and settle the easement.

PARROTS, PUMPKINS AND POWER

A pumpkin farmer in Wentworth paid Murray River Electricity \$200 to install an irrigation system meter on his farm. Within two months, sparks could be seen coming from the supply line. Apparently pesky parrots from the pumpkin patch had picked a piece of power twist and pretty soon the power meter packed up. Engineers from the power company unravelled the lines they had installed and billed the pumpkin farmer \$74 for their effort. A dispute arose over who was responsible for the costs of repairs but the argument was one-sided: Murray River Electricity did not answer the farmer's letters and eventually cut off his power. The pumpkin farmer lodged a damages claim for his perished pumpkin crop.

When we looked into the matter it appeared that a sum of \$74 had been "mistakenly" added to another of the farmer's electricity bills, and promptly paid. A refund was arranged. The insurer also failed to answer the pumpkin farmer's correspondence and the Electricity Association of NSW claimed to have no responsibility for the problem. We wrote back and pressed the view that authorities should provide clear and comprehensive reasons for decisions. This public responsibility is not avoided simply because a non-government body (in this case the insurer) acts on behalf of an authority. The farmer was offered a free reconnection. We could not help the farmer with his insurance claim since this was a private commercial matter to be decided on ordinary levels of proof. The Electricity Association told us they believe that peckish parrots are an act of God.

"INTO THE WOODS"

We realise that government policies are sometimes prepared in haste, responding to emergency situations or to offset the hardship caused by a change in approach by government. One such example is the Forest Industry Structural Adjustment Package (FISAP), designed to shift logging activity away from old growth forests. FISAP was intended to buffer businesses and operators in the industry from a substantial decline in their business.

A consultant specialising in pre-logging wildlife surveys claimed the new government policy had destroyed his livelihood. He applied for emergency assistance and a Business Exit Assistance (BEA) grant. The Department of Land and Water Conservation recognised the consultant's dire situation but rejected his claim saying his skills were not limited to the forestry industry, his surveys had a limited shelf life and he would have had to 'reorientate' his business in any event. These grounds were not among the criteria for BEA grants and appeared to have been improvised by the department. The policy might not have originally been intended for claimants like the consultant but the Ombudsman has strongly argued that, as a matter of natural justice, statutory authorities have a duty to provide reasons for their decisions which are consistent with available guidelines.

An investigator interviewed department staff and reviewed the consultant's application file. The initial approach to FISAP was made before any guidelines were in place and the consultant relied on verbal advice that he was eligible for assistance. When issued, the guidelines set out the eligibility criteria without stipulating the type or nature of business enterprise that might be eligible. More recent guidelines for FISAP Industry Development Assistance contain these criteria but there was nothing as far as we could see to prevent the consultant applying for Business Exit Assistance. The department's reasons for rejecting the claim were not based on the published criteria and could be seen as irrelevant considerations in making the decision.

The consultant appealed against the decision and received a more detailed response, again rejecting his claim. The reasons given were:

- brisk business reported by other consultants in the same region indicating an underlying demand for forestry-based consultancy services; and
- similar survey work was still required and although pre-logging surveys were down the consultant's skills were transferable to associated activities.

We declined to investigate the matter, satisfied that the department had ultimately given reasons for rejection which were soundly based on the terms of the guidelines. At the same time we advised the consultant to resubmit his application with more substantial proof that his loss of business was a direct result of the new policy. The consultant was eventually awarded a Business Exit Assistance grant of \$5000 and the department published a comprehensive set of guidelines which we hope will clarify the eligibility criteria for applicants.

"GIMME A SIGN"

Darling Harbour Authority responded to a complaint about unclear parking signs in Pyrmont Street claiming that they adhered to the minimum Motor Traffic Act regulations regarding restricted parking. We examined the area and even though the authority had correctly posted signs, an ordinary driver could have been misled. The parking ranger estimated in the last year around 60 infringement notices had been issued in this street. We suggested to the authority that signs should be as clear as possible without encouraging more visual pollution. Drivers should be aware that the rules applying to "Restricted Parking Areas" are found in the Drivers Handbook and it is their responsibility to adhere to parking rules. Our view was that a simple change to the signs could avoid future complaints and remove any doubt from drivers' minds. Once issued, however, parking fines and other traffic infringements must be handled by ordinary court process and the Ombudsman will not intervene on a complainant's behalf. The authority agreed to post clearer signs and Chief Executive Alan Marsh wrote: *"If this measure deters motorists from parking illegally in Pyrmont Street I will be pleased. I can assure you that the Authority gets no pleasure out of issuing parking infringement notices to visitors to Darling Harbour."*

WHAT'S YOUR "POLICY" POLICY?

Each year a notable share of complaints come from people who have applied for grants or assistance which were rejected by a department or authority. We do not usually take up these complaints unless we suspect the authority has treated applicants inconsistently or has applied irrelevant criteria in its decisions. In this case, a new farmer in Henty applied for a Rural Adjustment Scheme training grant to help him acquire *"farm management skills and professional advice"*.

By all the available guidelines and advice from staff at the Rural Assistance Authority (RAA), the new farmer was entitled to apply for a training grant but his application was knocked back. The RAA said that grants were only available to farmers with at least two years' experience. The farmer argued if this restriction is not included in the official eligibility guidelines, then it is an irrelevant consideration. We agreed.

We investigated the authority's administration of the scheme and found that the two-year rule had been a part of the RAA's policies for some time. The policy sprang from a resolution at a 1993 meeting of Commonwealth, state and New Zealand agriculture ministers. The former Chief Executive of the RAA had forgotten to publish the new policy and the only staff who knew of it had heard

by word-of-mouth. The public had no way of knowing that new entrants to farming were ineligible for the grants.

In our view, the policy was never adopted and pursued by the authority and could not be relied upon when rejecting an otherwise eligible application. In our final report to the Minister for Agriculture we said:

"it is manifestly impossible to apply any general principle to particular sets of circumstances when the principle has not been clearly and formally conveyed, in writing or otherwise, to those who are supposed to administer it."

The minister and the new head of the RAA agreed. The authority quickly published complete guidelines and began a training program for staff. We were happy to hear the farmer received a grant based on the prevailing guidelines at the time he first applied for assistance, following our recommendation requesting such consideration.

FAIR GO!

A young woman lodged a complaint about delays she had experienced obtaining a real estate agents licence from the Department of Fair Trading. After we began our inquiries, the young woman was able to obtain the licence she sought. However, by that time five months had passed since she had made the application.

We spoke about this matter with the Department. Following our inquiries, the Department of Fair Trading drafted a guarantee of service for applications of this kind, specifying a turnaround time of 30 working days for completed applications.

Thanks to your good selves I have now received a cheque for \$177 from Parramatta, being the return of the fine that I paid in May 1995 and was promised would be refunded in the 'near future' ...

Clearly I am indebted to you for your intervention in this instance ...

A complainant

Handling Complaints about Local Councils



Complaints about local councils increased substantially. The most common complaints were about development and building applications. Complaints about corporate and customer services, town planning, environmental services and building and development applications increased significantly.

Overview

Complaints about local councils increased substantially in the past year. We received 805 formal written complaints about local councils in 1996-97. This is an increase of 22% over the number received in 1995-96. As with previous years, the most common type of complaints were complaints about development and building applications. There was a significant increase in the number of complaints about corporate and customer services, town planning, environmental services and building and development applications.

We finalised 796 complaints in the past year, an increase of 23% over the number finalised in 1995-96. We also received 2009 telephone enquiries and complaints about local councils. This is a decrease of 2% over the number received in the previous year.

About half of the complaints finalised in the past year resulted in the complainant being assisted or the complaint being satisfactorily resolved after preliminary investigation.

A total of 20 complaint files representing four main issues were formally investigated. Of these files, 17 resulted in adverse findings being made in a formal report. The remaining complaints resulted in no adverse findings being made in our formal report.

We received 71 requests for a review of our decision not to formally investigate complaints about local councils. We finalised 76 such review requests. We formally mediated three complaints about local councils. We also continued to successfully apply mediation techniques to informally resolve many other complaints about local councils.

WHICH COUNCILS ARE COMPLAINED ABOUT?

There are 177 local councils in NSW. This year we received complaints about 137 of them. Councils are classified for comparative purposes according to the Australian Classification of Local Governments on population densities. The 18 classifications are grouped into the

Local Council Complaints 1996-97

Received

Written	805
Oral	2009
Reviews	71

Determined written complaints

Formal investigation completed	20
Preliminary or informal investigation completed	462
Assessment only	298
Non jurisdiction issues	16
Total	796

Current investigations (at 30 June)

Under preliminary or informal investigation	75
Under formal investigation	10

five broad categories as detailed in the table below. The table shows how the councils complained about this year were distributed across the categories and details the percentage of complaints they generated and how we dealt with those complaints. A comparison with complaints received about local councils by the Department of Local Government revealed a similar profile.

The table indicates that there is an under representation of rural agricultural councils and an over representation of councils in urban metropolitan areas and a slight over representation of councils from fringe areas and regional towns and cities in the councils made the subject of complaints. Furthermore, the urban, regional town and city councils and the councils from fringe developing areas generate higher proportions of complaints that the councils represented in the sample of councils complained about. On the other hand, while approximately 40% of councils complained about come from rural agricultural areas, they generate only 17% of the complaints.

The preponderance of complaints about planning, de-

velopment and building issues is likely to be the most obvious explanation for these trends.

The table reveals a relatively unbiased disposition of complaints in terms of the percentage declined or made the subject of preliminary informal investigations compared to the percentage of complaints received in each category. Further details of the complaints we received about individual councils and their disposition can be found in Appendix One.



Complaints about Councils by Population Category

Category	% of councils in category	% of the 137 councils subject of complaint	% of complaints received	% of complaints declined	% of preliminary or informal investigations conducted
Urban -metropolitan, developed	19%	25%	32%	30%	35%
Regional town/city	21%	24%	33%	33%	31%
Fringe developing urban or regional	6%	8%	16%	19%	14%
Rural - significant growth	3%	4%	2%	2%	2%
Rural - agricultural	49%	39%	17%	16%	18%
Rural -remote	1%	1%	0%	0%	0%

Nature of Written Complaints about Local Councils

1996-97

Building Building inspections, objections to building applications, conditions/refusal of application, processing.	51	Engineering services Failure to carry out work/inadequate work, road closures/access, parking, traffic, drainage/flooding, works.	77
Community services Parks and reserves, other facilities	27	Environmental services Pollution, tree preservation, noise, health inspections, garbage collection, dog orders.	58
Corporate/customer services Meetings, elections, tendering, provision of information, contracts, resumptions, unfair treatment, liability, complaint handling.	185	Misconduct Misconduct of councillors/staff, conflict of interest, pecuniary/non-pecuniary interest.	55
Development Objection to development applications, conditions/refusals of applications, processing.	136	Rates and charges	70
Enforcement Failure to enforce BA/DA conditions, orders, unauthorised works.	69	Town planning Rezoning, S149 certificates, existing use/consent.	35
		Other	32
		Non-jurisdictional issues	10
		Total	805

- Who's the Boss?
- I Hate To Be Critical But....
- Insuring Against Claims Continued
- Planning Law Reform
- Pollution Law Overhaul
- Defining Our Role in the Building and Development Approval Process
- Youth Issues
- Duplication
- Use and Abuse of Legal Advice
- The Good the Bad and the Ugly

Issues

WHO'S THE BOSS?

In last year's annual report, we pointed out how alarmed we have become by the number of general managers who have been dismissed or who have resigned under threat of dismissal. We commented that there was a growing perception that this was because many mayors and councillors were reluctant to allow general managers to manage. We also noted that two of our investigations featuring this issue were likely to activate debate on the adequacy of existing measures to allow general managers to manage.

These comments produced a strong reaction in the local government sector. Accusations of bias towards general managers were levelled at us. We also received a number of approaches from general managers and members of the public who cited incidents they considered to be examples of the problems we identified.

These approaches, together with further allegations about general managers being subjected to improper interference from councillors and being dismissed or resigning under threat of dismissal, fortified us in the view that the problems we had identified are real and continuing.

Three of the cases in the last year are of particular concern. In the first, a council with substantial financial difficulties tried to find grounds to dismiss its general manager. When it was unable to do so, it agreed to an early termination of his contract, at a cost of over \$200,000 to the ratepayers.

In the second case, a general manager was informed by his mayor more than a year before his contract expired that he would not be reappointed. A decision like this tends to make a mockery of the performance based contracts under which general managers are employed.

In the third case, ministerial intervention was needed to prevent a council from dismissing its general manager. The general manager concerned resigned some months later.

In last year's annual report, we referred to some of the causes of the current difficulties facing many general man-

agers. These include the imbalance between the electoral authority of councillors and the managerial authority of general managers and the lack of practical protection for general managers who suffer inappropriate or unlawful interference in the performance of their duties.

Added to this, we are concerned that there is uncertainty over just what the responsibilities of the general managers are. The law says they are responsible for day to day management. What does this mean? This uncertainty can provide fertile ground for disputes between general managers and councillors, particularly mayors. In this regard, we have identified general managers new to local government as the group at greatest risk of damaging disputes.

We have previously commented that the last local government elections were followed by a number of dismissals and resignations. In our view there may be a case for greater training of candidates and new councillors.

In order to canvas the views of relevant industry bodies, we distributed a discussion paper setting out more fully our views on what is wrong with the present system. The discussion paper also put forward a number of options addressing these problems, including:

- clarifying the responsibilities of the general manager, the mayor and councillors;
- adopting a scheme similar to one currently operating in Western Australia allowing councils experiencing conflict to call on a panel of peers to examine the workings of the council and attempt to resolve the conflict;
- adopting more objective methods for reviewing the performance of general managers and determining whether they will be retained under their contracts of employment or reappointed;
- encouraging councils to run training programs for candidates and councillors on the operations of councils, with particular emphasis on the respective rights and responsibilities of councillors and staff in conjunction with existing programs run by the Local Government and Shires Associations; and

- increasing legal protection for general managers against inappropriate interference from councillors in the performance of their responsibilities.

We are finalising two major investigations in which this issue has been central. It is anticipated that the reports on these investigations will include recommendations to clarify the roles of the main players, provide means for resolving disputes and improve protections for general managers subject to inappropriate interference.

Already, there have been some measures taken that will improve the situation. The guidelines prepared by the Department of Local Government and the ICAC on managing interaction between councillors and staff that were foreshadowed in last year's annual report were released in March 1997. Many councils are currently implementing policies consistent with these guidelines.

I HATE TO BE CRITICAL BUT....

We have continued to receive complaints from members of the public who have been threatened with defamation action by councils, councillors or council staff. The most common case is where a resident makes allegedly defamatory remarks in a letter to council or while speaking at a council meeting. These remarks are invariably referred to the council's lawyers for advice. Commonly, this results in a letter being sent to the resident threatening defamation proceedings unless the offending remarks are withdrawn and an apology is received.

The worst example of threatened defamation proceedings against a resident to come to our attention involved an ex-council employee who allegedly told council workers doing road works near his home that they were all going to be replaced by casual day labour. The workers asked their supervisors about the claims. Their supervisors reassured them that there was no truth in the claims. Council staff rang the resident to ask him not to visit council work sites. He allegedly refused.

At this point, the matter was sent to the council's lawyers. They sent a letter to the resident. The letter warned the resident not to unlawfully interfere with council work sites. However, it went further. The letter said that the resident had made a statement imputing that council was an uncaring employer. The letter also warned the resident not to contact council staff "...with the intention of making statements injurious to council or with the object of spreading unfounded rumours...or lowering morale."

We wrote to the council informing them that we understood its concern about members of the public interfering in council work sites but did not understand why the letter focused on allegedly defamatory imputations in relation to council and its staff. We were particularly concerned that the letter requested the resident to stop

talking to council employees about anything damaging to the council or that could lower the morale of employees. We told the council that if the request had been acted on by the resident, it would have amounted to an unwarranted suppression of his right to discuss local affairs.

Another common situation is for a council to refer allegedly defamatory remarks made about a third party, typically a person doing work for the council, to the third party. Typically, this is done without any request from the third party concerned. What is particularly troubling about these cases is that the councils concerned sometimes ignore their obligations not to disclose information in the custody of the council without a lawful reason to do so.

More troubling still have been a growing number of cases where council staff and councillors are seeking Apprehended Violence Orders (AVOs) against members of the public. Each of these cases must be determined by the courts. However, we believe great care must be taken before the police or the courts are asked to become involved in these cases.

It is a matter of concern that any councillor or staff member believes they are so at risk that an AVO is required. It is important to note that in all but one of the cases that have come to our notice, a permanent AVO was ultimately made by the court.

We have already made it clear that threats of defamation are appropriate in certain exceptional circumstances. This is also true of seeking an AVO. Yet this step can result in residents losing rights that most of us take for granted, such as the right to visit their council and the right to meet with their elected representatives to raise concerns. Interestingly, in one case, even though an AVO sought by a councillor was granted against a resident, its terms were designed to allow the resident to continue to attend and speak at council meetings.

Following our remarks in last year's annual report, we were approached by the Local Government and Shires Associations who offered to work with us in developing guidelines for responding to allegations that are potentially defamatory. We are anxious to expand this project to provide guidance for councillors and staff who believe they need to seek an AVO.

Among the ideas being considered are:

- giving residents who are invited to write to council or speak at council meetings advice on how best to raise their concerns, including advice on refraining from abusive or offensive language or personal criticisms of staff and councillors;
- adopting and publicising a policy that councils will not respond to letters that contain abusive or offensive language or personal criticism of staff and councillors;

Handling Complaints about Local Councils

- ensuring that council codes of conduct and codes of meeting practice require staff and councillors to refrain from using abusive or offensive language or personal criticisms of other councillors, staff members and members of the public;
- providing staff and councillors who believe on reasonable grounds that they have been defamed by a member of the public the right to seek leave to speak at a council meeting for a short time in defence of their reputation;
- providing members of the public who believe on reasonable grounds that they have been defamed by a member of council or a council staff member the right to seek leave to speak at a council meeting for a short time in defence of their reputation;
- adopting a procedure where members of the public, staff or councillors who are accused of making defamatory remarks can be asked to withdraw their remarks at a council meeting; and
- providing guidance on the circumstances in which it would be appropriate for a councillor or a member of staff to seek an AVO and exploring ways in which the terms of such an AVO can be framed so that the rights of the person against whom the order is sought, to deal with their council, are not unreasonably interfered with.

INSURING AGAINST CLAIMS CONTINUED

In last year's annual report, we commented that the guidelines we developed a number of years ago to help councils deal fairly with insurance claims are being ignored by a number of councils.

A further serious example of this, which was thankfully quickly resolved, has come to our attention. The guidelines that councils, when they deny liability, give members of the public who make claims reasons for their decision, are being ignored. In this case, it appears it was due to inadvertence on the part of the council concerned.

When a complainant suggested that Ku-ring-gai Council had, at least in some cases, abandoned the practice of giving reasons, we wrote to them asking why. We noted that a table published in the Ombudsman's Annual Report for 1986 indicated Ku-ring-gai Council had introduced procedures to ensure claimants would receive reasons in cases where claims were denied. Council wrote back to us to say that as a result of our representations, they had decided to reintroduce the practice of suitably informing claimants as to the reasons for decisions.

In response to our remarks in last year's annual report, the Local Government and Shires Associations wrote to us and suggested that we work with the Associations and the Department of Local Government in a joint review of the current guidelines. We have agreed to this offer. Work on this review will be carried out in the coming year.

PLANNING LAW REFORM

In February this year, the Minister for Urban Affairs and Planning released details of proposals to significantly overhaul the process for controlling development in New South Wales. We were invited to comment on these changes and did so.

In our submission, we welcomed a number of the proposals. We welcomed the principle of integrated development assessment, a system where applicants can obtain all consents, permits, licences and approvals they require to carry out a development at one time.

We have commented in previous annual reports on the need for a right of internal review to be available for applicants for development consent. At present, this right is only available for applicants for building approval. The reform proposals have addressed this need. They make provision for a new right of review for dissatisfied applicants for development consent. We are naturally very pleased that our calls for this reform has been heeded.

We have also pointed out to the department there are aspects of the reform proposals we are concerned about. In particular, we are concerned about the plan to allow private 'certifiers' to assess and determine development applications for certain types of minor work. This proposal should only be implemented if the public interest is protected. We are concerned that members of the public, particularly affected neighbours, will have no satisfactory mechanism for making complaints about the actions of certifiers. As things stand, the Ombudsman would not have any power to investigate the actions of certifiers.

We are also particularly concerned that the minimum requirements for notifying affected members of the public of building applications are not diluted by the proposed reforms.

We will continue to monitor the development of the reform proposals.

POLLUTION LAW OVERHAUL

In 1996 the government announced plans to review, rationalise and streamline pollution legislation. An exposure draft of the Protection of the Environment Operations Bill was released together with a public discussion paper.

It is envisaged that the new legislation, when enacted, will repeal and replace the existing five core pollution control Acts. It will become the pivotal legislative mechanism for reducing pollution and protecting the environment. While the five separate Acts may have met the environmental needs of the day, they have become an overlapping and sometimes confusing network of responsibilities and requirements.

The Ombudsman was invited to make a submission to the Environment Protection Authority (EPA) on the pollution law reform proposals. While supporting the EPA's efforts towards streamlining pollution legislation, we expressed concerns about several aspects of the exposure draft and suggested that a number of the provisions be reviewed.

The Bill devolves responsibility for pollution licensing from a single body (the EPA) to more than 170 local councils. With responsibility being shared between the EPA and councils, we commented that achieving consistency in pollution regulation will be difficult. We are fearful that councils will be competing for industry in their area by setting lower standards of regulation or alternatively turning industry away by imposing unreasonably high standards. Put simply, councils will be left to determine how economic values and environmental and health concerns should be prioritised.

Limited resources already prescribe the level of enforcement by councils in response to pollution within their boundaries. We noted that the imposition of additional responsibility on councils without some transfer of resources could result in further deterioration in the levels of enforcement.

We are also concerned that opportunities for substantive public involvement in the pollution licensing process are limited. It also seems the EPA and councils are not obliged to provide reasons for a decision to grant or vary a pollution control licence. We have long held the view that the giving of reasons for decisions is one of the basic principles of good administration and is often a requirement of natural justice.

We also support third party appeal rights. Applicants are given a broad right of appeal against decisions of a council or the EPA on a pollution licence. It is our view that a truly integrated approach to planning and pollu-

tion regulation requires that third party appeal rights should be available in licensing decisions for scheduled activities.

As part of our submission, and in an effort to assist councils achieve greater consistency in response to possible breaches of environmental as well as planning and building laws, we are hoping the EPA will agree to work with us to develop model enforcement and prosecution guidelines.

Notwithstanding the concerns expressed in our submission, on balance we believe that the Bill amounts to a significant improvement on the existing legislative regime dealing with pollution. We will continue to monitor developments.

DEFINING OUR ROLE IN THE BUILDING AND DEVELOPMENT APPROVAL PROCESS

We continue to receive a significant number of complaints each year from both applicants and third party objectors about decisions made by councils on development and building applications. We generally do not look at complaints about the merits of decisions made by councils on development and building applications. It is helpful to explain why we investigate so few of these cases.

First, it is not our role to stand in the shoes of councils and revisit the merits of building or development applications. These decisions are made by councils in accordance with strict statutory requirements and with the benefit of expert assistance.

To substitute our views for those of a council would involve making assessments and judgements on complex technical issues and matters which clearly fall within the area of council discretion. Councils are obliged to consider objections to building or development applications. However, they are not ultimately required to accept the objections in making a final decision unless they show that it would be unlawful to approve the application.

Second, many of the complaints we receive about decisions by councils to approve or refuse building applications can only be satisfactorily resolved by recommending that a council change its decision. The Ombudsman does not have the power to change a council's determination. Only the Land and Environment Court can put aside a council's decision to approve or refuse an application.

Third, section 13(5) of the *Ombudsman Act* prevents us looking at complaints about councils when the conduct complained of is subject to a right of appeal or review. We can only investigate when there

I am writing to thank you for your efforts on our part. ...I firmly believe you helped to make Council act.

A complainant

are special circumstances that make it unreasonable to expect the complainant to have exercised this right.

The distinction between appeal and review rights is important. A right of appeal is where the court itself makes a new decision on an application. In contrast, a right of review includes the right to have the court review the process by which the application was dealt with to ensure the law has been fully complied with.

If you are an applicant for a building or development approval and you are unhappy with the decision of the council you can appeal against the merits of the decision.

If you have lodged an objection to a designated development (i.e. a development which has a major environmental impact such as a mine or a major factory) you also have a right of appeal on the merits of the decision.

Applicants and objectors also have a right of review in the Land and Environment Court. This is where there is evidence that in the process of assessing an application, one of the legal requirements has been ignored or wrongly carried out. Any person can apply to the Court to correct or prevent a breach of the relevant planning and building legislation.

Each year we do investigate some complaints about building and development applications. Typically these complaints indicate inadequacies in the practices adopted by councils in their handling of building or development issues.

We support and encourage good communication and effective procedures between councils, applicants and objectors. It is our long held view that councils should adopt generous practices for notifying adjoining owners of building and development applications.

We support the use of alternative dispute resolution methods including mediation between applicants and objectors. We also support mediation between councils and applicants as an alternative to expensive court action. We receive lots of complaints about councils failing in these areas.

People also often complain about councils not enforcing conditions of building or development consent or about work being undertaken without consent. This is also an area where we closely examine complaints. The degree of non compliance is always an important factor in determining whether or not it is appropriate for a council to take action to ensure compliance. The Ombudsman expects councils to promptly investigate and determine the merits of complaints about unauthorised development or the failure to observe approval or consent conditions.

Where we are not satisfied that a council has taken appropriate action in response to a complaint about non-compliance we will encourage the council to investigate the matter and take follow-up action.

YOUTH ISSUES

Local councils are the main source of facilities and services for young people, especially in the all important areas of public space. Our community consultations and enquiries reveal that on occasions councils are less than comfortable in consulting with young people about these services. Decisions are sometimes made that alienate young people over fairly simple issues that, with a little communication, could have strengthened relationships between the community and its young people.

This issue is very important in regard to the *Children Protection and Parental Responsibility Act 1997*. This act will allow police to remove children under 16 years of age from a public place in an operational area. One of the conditions for declaring operational areas is local council development of a crime prevention plan.

The Attorney General will consider requests from local councils to declare operational areas. In doing so the Attorney General is to have regard to, among other things, whether the local council has adequately consulted with young people and the nature of youth support initiatives.

DUPLICATION

A question raised in the media during the year concerned the duplication of effort of various watchdog bodies, although the media report in question did not focus specifically upon our office. The Ombudsman has spoken out in past annual reports about the proliferation of watchdog bodies. The potential for duplication of effort with other agencies with overlapping jurisdictions is a matter that we are very conscious about and studiously try to avoid.

The area in which we are most likely to have this problem is complaints about local government. A growing number of citizens complained to us this year about matters of maladministration in their local councils. Many ratepayers also make complaints about their local councils to the ICAC, the Minister for Local Government and the Department of Local Government.

The department has a special branch, the Investigation and Review Branch, which deals with most of the complaints received by the department and provides advice to the Minister on most of the complaints received by him. The branch is properly resourced, which means more favourably than the general investigation team in this office in terms of resources that can be devoted to local government complaints. They receive and are able to deal with far more local government complaints than our office.

The potential for duplication is therefore high given that many complainants adopt the scatter gun approach to complaints (see article in Public Authority section) or

shop around watchdog agencies when one agency declines to investigate their grievance. The Ombudsman and the department liaise so as to not duplicate efforts. The department sends a monthly schedule giving brief details of the complaints it has received and actioned. We consult this wherever possible as part of our assessment process. There is of course usually a two to three week delay in being advised of complaints received by the time the department's schedule is compiled and distributed. So within that time span, unless there is some other indication of a cross referral in the actual complaint, we are sometimes unaware if a complaint was concurrently sent to the department.

If there is some indication of cross referral, we will generally seek information from each other as part of our assessment process. We may consider that enquiries by the other department constitute an alternative and satisfactory means of redress. In some cases there may be discussion as to which agency is best suited to take the complaint up. These decisions can be influenced by the particular nature of the complaint or its relevance to other matters that each agency is currently pursuing. For example, the Ombudsman has statutory power under the *Local Government Act* to refer pecuniary interest complaints to the Director General of the department and generally does so. This is because the department has specialist staff dedicated to this area who are able to appear and present cases in the Pecuniary Interest Tribunal if their investigations reveal breaches of the Act that warrant proceedings. Ombudsman staff by statute are non-compellable or competent witnesses so this is a relevant consideration in referring complaints of this kind, even though the Ombudsman has the power to investigate them.

Secrecy provisions in the *Ombudsman Act* prevent the Ombudsman providing the department with details of all the complaints received by her office. Consequently the exchange of information is very much one sided. It is only for the purpose of assessing complaints and exploring whether the complainant has used an alternative means of redress or whether the department has any relevant information that may assist our enquires that the Ombudsman is able to disclose information to the department.

To determine the extent, if any, of duplication of effort, our complaints were matched against the department's schedule of complaints for the year. The Ombudsman received 805 local government complaints during the year and conducted formal or preliminary/informal investigations on 61%. The department received 1307 complaints and conducted enquiries on about 30%. We found 128 complaints where the complainants had made identical or similar complaints to both bodies. Most of

these had either been declined by both agencies or taken up by only one of the agencies.

We found only 28 cases where both agencies had conducted some form of preliminary or informal inquiries. This is only 3.5% of the local government complaints we received. In 18 of those cases, the complaint had been received by the Ombudsman first. In another two cases, the complaints were received by both agencies on the same day. As 88% of our complaints are assessed and allocated to investigation staff for action within 24 hours, the likelihood of our beginning preliminary enquires before we were in a position to know that the department had also received a complaint from the same person in those cases was high.

There were only eight cases where the complaint was received first by the department and also made the subject of preliminary or informal inquiries by our office. In all of those cases, our inquiries were made by telephone and the cases quickly disposed of.

Given the window period of up to six weeks before our office is updated by the department schedule on the complaints received by them from the beginning of each month, some duplication of effort is unavoidable. There are also a number of cases where complainants raises similar but also new issues with us, or supply further information which may warrant us making inquiries even where the Investigation and Review Branch of the department has already undertaken some. While the department's inquiries will usually constitute an alternative and satisfactory means of redress which justifies the Ombudsman declining the complaint, each complaint received by us must be assessed on its merits and reasons provided for whatever action we take or decline to take.

Clearly these results show there is very little duplication of effort between the two authorities.

USE AND ABUSE OF LEGAL ADVICE

Our 1995 annual report highlighted over reliance on legal advice and legal process by a wide range of public authorities, including local councils. This problem has continued largely unabated.

Legal advice, whether from in-house professionals or private practitioners, is expensive - at times horrendously so. There should be good reason for seeking it. Our ultimate test of whether seeking legal advice is 'reasonable' (within the meaning of the *Ombudsman Act*) is whether it was in the public interest to do so. Public authorities often confuse or

Having received an apology I would like to thank you and the Ombudsman, Ms Irene Moss for such speedy assistance in this matter.

A complainant

seek to claim personal and/or organisational interest as synonymous with the public interest, when plainly they are not.

A threshold requirement to justify seeking advice is the existence of significant uncertainty. Too often legal advice is sought where no real uncertainty exists. This can be a delaying tactic or an avoidance tactic where the public authority wants to offset blame for a controversial decision - they want to be able to say: "the decision was based on legal advice".

The NSW Law Reform Commission in its 1997 Issues Paper *Circulation of Legal Advice to Government* raised another aspect of the problem when it noted:

"While every legal practitioner has a duty to advise impartially on the law, there is a practical and understandable tendency for some private practitioners, who are competing for the client's business, to present advice in ways which are as conducive as possible to the interest of the client. The pressures of competition for some practitioners may not be entirely consistent with the obligation to give advice which the client may not welcome."

Summaries of concerning cases are set out below.

CASE 1

Throughout the 1980s and early 1990s, the then Ombudsman, Geroge Masterman and David Landa, conducted many inquiries about council notifications of adjoining owners. In particular, they argued councils should notify adjoining owners and other affected persons about all building and development applications. In his 1990 annual report, Mr Landa noted the vindication of his views in the decision made by Justice Cripps in the landmark case, *Hornsby Shire Council v Porter*. Also in 1990 an Ombudsman report recommended the *Local Government Act 1919* should be amended to have councils' responsibility to notify adjoining owners of building applications made explicit. This change was finally achieved with the passage of the *Local Government Act 1993*.

This year, we received a complaint about a council's failure to notify an adjoining owner of a building/development application in 1991. We made inquiries into the availability of documents possibly relevant to the case. Because the council told us it had sought legal advice about the matter, we asked to see, "all documents and legal advice received by Council from [the solicitors] in relation to the issues raised by [the complainant]."

It emerged the council sent a number of files to their solicitors in August 1996, asking:

"Given ... the history of this matter in terms of Council's development and building approvals ... what is your advice concerning Council's legal position and what action it should take[?]"

The solicitors replied in early September, saying:

"There appears to be nothing irregular in the Council's development consent. ... There was no legal obligation for Council to seek the view of neighbours."

In late September 1996, however, the council sought further legal advice from its solicitors. This time, the council wanted to know about:

"implications arising from the Porter vs Hornsby case with respect to the issue of the notification process. In this regard it was considered that Council may have acted improperly by not notifying residents of the development and building application for the dual occupancy on the subject site;"

and:

"whether any rights of the applicant or adjoining residents were denied by the non-notification of the proposal and if so, is there an area of exposure to Council's development consent and building approval."

Two weeks later, the solicitors sent the council a "draft" legal advice containing the statement:

"In this case, I am instructed that the Council did not give notice to the affected residents in accordance with its implied duty under the LGA. Technically, therefore, the Council has breached provisions of the LGA."

While this extract needed to be read in the context of the further advice that followed, the advice was quite clear. The letter contained a further reference to "a technical breach of the LGA..". The council faxed this advice back to the solicitors a few days later with certain passages struck out and other handwritten passages added. A fax cover sheet signed by a council officer accompanied these suggested changes. It read:

"Corrections- Sorry about late notice but Tuesday was Council meeting day.

Will be back in Office by 2.00 PM and I will call."

The next day, the solicitors provided their "formal" advice to the council. The parts of the "draft" advice the council officer had struck out were omitted from the "formal" advice. The solicitors either paraphrased or omitted the council's suggested additions.

Significantly, both references to a technical breach of the *Local Government Act* were omitted from the "formal" advice. A few days later, the same officer who had commented on the "draft" advice, reported to the council's Committee of the Whole on 22 October 1996 in the following terms:

"[F]urther legal advice was obtained ... which is attached. This advice indicates that Council was not under any obligation to advise the adjoining neighbours of the approval."

When the council replied to our request to see the correspondence which had passed between the council and its solicitors, it did not send us the "draft" advice nor the fax marked "corrections". We obtained copies of these through inquiries into an unrelated matter.

We then asked the council on what basis it was apparently making "corrections" to the legal advice it receives. The council denied it was making "corrections". It said it was merely providing comments. The council also said it had not retained the first advice "as it was only a draft."

We later asked the council about its practices in "commenting" on legal opinions in draft form and whether the council generally retained records of the comments it made. The council said it was its practice "on an occasional basis" to receive legal advice in draft form for comment. The council said this was because:

"...[l]egal advice that is directed to the wrong issues or based on an incorrect understanding of the facts is simply a waste of Council's money. The practice of commenting on drafts enables staff to establish whether the content is... inconclusive...lacking direction ... confusing ... incomplete [or] does not address the issues."

The council also said it did not generally retain records of comments made by staff on draft legal opinions. It explained that the draft was not the council's document. It added that the only document of relevance to the council was the final form of advice.

The council's solicitors later told us the draft advice in question was provided, "for the recipient Council officer to 'review the advice' and 'discuss its suitability'". They also stated "that [they do] not knowingly alter advice to suit the convenience of [their] clients."

This case prompts a number of questions:

- Are some councils "fine-tuning" the advice they receive to their own convenience through the practice of receiving draft legal advice for comment and, if so, what are the implications?
- If any council regularly receives legal advice that is inconclusive, lacking direction, etc, would it be more appropriate to consider changing legal firms or improving the communication skills of staff responsible for giving instructions?
- Where a council has better specialist knowledge of a particular legal area than its legal advisers, is the commissioning of legal advice an expensive exercise in redundancy?
- If comments on draft legal advice are made, should records of those comments be kept? (It would be a breach of the *Archives Act* for most authorities within the Ombudsman's jurisdiction to dispose of public

records such as letters or facsimiles that contain or enclose drafts of legal advice and comments on those drafts without prior approval of the Archives Authority. However, local councils are not subject to the *Archives Act* unless specifically gazetted as such, and at present, no councils are. Councils are still subject to the requirements of section 13 of the *Local Government Act*, clause 5 of the *Local Government (Savings and Transitional) Regulation* and the *General Records Disposal Schedule for Local Government in NSW* which restrict and control the destruction or disposal of council records. There are therefore different statutory requirements governing the disposal of council records.

CASE 2

A complaint was received about a north coast council's conduct in relation to a golf course development. During our preliminary inquiries into the case, we found the council had sought an opinion from a barrister specialising in local government law about whether consents had been given for the project and whether they had lapsed. In our final letter to the complainant (a copy of which was sent to the council), we made the following observations about the advice:

"I note this is not the first opinion of [the barrister] to come to the attention of this Office distinguished by caveats concerning obviously relevant documents not included in his brief. The effect of these absences (some due to unavailability, but others apparently by client design) shapes advice to a form clearly desired by his client. Such advices, while proper in their own terms, are open to misuse by clients who may be happy enough to reproduce the conclusions but omit the caveats. It is not unfair to say such advices may as easily obstruct as assist in properly reaching answers (based on all available evidence) to questions arising from the case at hand."

CASE 3

The stick of purported legal opinion can be used to confuse citizens as to their rights. The interpretation of common law is complex. It is against the public interest to carelessly cite a convenient precedent without examining its applicability to the case at hand.

We were concerned to find a senior officer of one department had written to a complainant:

"I note that in a recent decision of the Supreme Court, it was held that unless an allegation had particular distinguishing characteristics, then a lapse of six years since the alleged behaviour is sufficient to warrant not proceeding to investigate further. The grounds for this decision [are] related to the likeli-

hood that prejudice could be suffered by the person or persons concerned due to the loss of evidence and the failure of memory."

The complainant gave us a copy of what we understand is the judgement referred to. He suggested the judgement is not as cut and dried as the department's abstract might make it appear. The judge did make the remarks attributed to him, but in the following context:

"In the exercise of what is a discretionary jurisdiction I find that the limitation period of six years applicable to torts and contracts provides some kind of rough, if arbitrary guide. As a secondary consideration I intend to take into account the particular circumstance so that, even if more than six years has elapsed since the charges were brought against Mr Burns, if the event complained of is one that may be characterized as singular, precise or vivid, it should be allowed to go forward. The third consideration is the seriousness of the allegations: serious matters should usually go forward."

The judge also quoted from the case of *Freeman v McKenzie (1988)*:

"Each case must be decided on its own facts and no fixed guide lines are possible."

On this occasion the complainant, who was legally trained, was able to conduct his own research into the provenance of the advice. It would be fair to say most complainants would have accepted the advice at face value. For this reason, we pointed out to the department the potentially misleading nature of quoting legal precedents if those are not placed in correct context. We also suggested it would be good practice when relaying advice based on a specific legal precedent, to identify the relevant judicial decision.

CASE 4

Not all abuse of legal advice and process occurs by commission. An omission to seek advice can represent abuse if there is genuine uncertainty about the legal position. Alternatively, there would be abuse if there was certainty that the advice would be against a course of action already determined. The following case appears to be of the former kind.

A north coast couple complained that a councillor and a senior planning officer at their council had each provided an affidavit in support of their opponents in a legal dispute about a proposed property subdivision.

The mayor told us that both the councillor and senior officer claimed they were unaware that they did not have to provide the affidavits when contacted by the opponents' solicitor. The mayor also told us both parties were "alarmed" that they had "unwittingly, assisted one side of a court action which involved two shire residents".

We find it difficult to understand how two professional people were unaware of their rights and responsibilities in this matter. The actions of the councillor and the senior officer were, at best, unwise. We believe both should have sought advice from either the mayor or the general manager about their position, if there was indeed any confusion on their part. We wrote to council reinforcing our view that the actions of the councillor and senior officer were highly inappropriate.

We suggested the mayor instruct all staff and councillors about their responsibilities in these types of matters. The mayor then instructed all councillors to seek advice from the general manager if a request were received to participate in any way in legal matters concerning actual or proposed business of council. It would then be a decision of the general manager to consult council's legal adviser, if necessary. The general manager issued a similar instruction to all staff. We believe such an instruction would be prudent in all councils.

CASE 5

We believe that, as a matter of principle, public authorities should act in accordance with their legal advice pertaining to their legal obligations or matters of legal interpretation unless there are good reasons not to.

A Sydney council resisted a complainant's plans to subdivide his land. A previous owner had obtained an approval to subdivide the land into two lots. It was assumed that the old approval had lapsed on the ground that it contained a time limit that had expired.

The council strongly resisted the complainant's subdivision plans which involved a four lot subdivision. The matter went to court. The complainant later (and inadvertently) obtained the council's legal advice through a Freedom of Information application. The complainant discovered the council had received legal advice to the effect that the inclusion of a time limit on the old two lot subdivision approval was invalid.

The council has defended its failure to advise the complainant of its legal advice on the basis that it was covered by legal professional privilege. While we acknowledge the right of councils to rely on privilege, there is nothing to say that councils should not be prepared to waive privilege and negotiate alternatives to costly litigation in appropriate circumstances.

We encourage councils to explore other settlement options with complainants, particularly in cases like this, where another option had earlier been approved by the council.

While the complainant was seeking approval for a four lot subdivision, council, once it became aware of the invalidity of the time limit provision on the earlier subdivision approval, should have been prepared to negotiate

with the complainant to find out whether the original two lot approval was a platform for resolution.

Above all, this case demonstrates what can happen when a council becomes stuck in an adversarial mode and is unprepared to look beyond a very narrow construction of its rights.

The complainant ultimately obtained approval for a three lot subdivision from the Land and Environment Court. Given that this was one more lot than that provided for in the original subdivision, it is open to argue the public interest would have been better served had the legal advice been used as a platform for negotiation.

WHAT CAN WE DO?

Evidence of ongoing abuses of legal advice and legal process by public authorities oblige us to give this area a special priority while such abuses remain prevalent.

Wherever there is good reason to believe such abuse has occurred, we will examine the circumstances and identify and report on the cost and the parties involved.

We have also commenced work to develop some simple general principles that will improve the transparency and integrity of the process of obtaining and distributing legal advice. This will in turn help to engender public confidence in the process. We intend consulting interested parties to ensure the general principles are effective and workable. Among the draft principles being considered are the following:

- wherever possible, instructions should be given in writing with all necessary supporting material;
- all phone conversations regarding legal advice should be properly recorded in file notes;
- communication between lawyers and clients should focus on clarifying instructions and supporting factual material;
- providing draft advice to clients is acceptable if it is for the purpose of clarifying instructions and supporting factual material;
- if further advice is required, or if the advice provided misconceives instructions or misinterprets supporting material, wherever possible, this should be dealt with by further written instructions requesting supplementary advice;
- public authorities are entitled to waive privilege and must carefully consider whether and to what extent it is appropriate to provide all or some of the advice when requested to do so by third parties;
- considerations relevant to the decision as to whether it is appropriate to waive privilege include: whether to do so would damage the legitimate interests of the public authority; whether to do so would breach privacy; and whether to do so is in the public interest; and

- public authorities should not misrepresent their legal advice by, for instance, being selective about what the advice says or concealing or misrepresenting the context in which it was given.

THE GOOD THE BAD AND THE UGLY

When you deal with more than 7,000 written complaints and over 15,000 telephone inquiries every year, you realise that among the vast majority of reasonable people who seek your help, there is a small number who are not reasonable.

Generally, these people refuse to accept our assessment of their complaints. Typically, they continue to write to, telephone or visit our office irrespective of the number of times they are told that we cannot help them. In a few instances, these people have become abusive towards our staff.

Continuing to deal with these types of complainants can be an enormous strain on our limited resources. It can also be unnecessarily stressful on the staff concerned. For these reasons, we sometimes reluctantly advise these types of complainants that further communication with our office must be in writing and that sometimes letters will only be responded to if they raise significant new information relating to their complaint.

We recognise that from time to time councils also have difficulties of this sort. One case in the past year concerned a council which had been struggling to respond to a constant stream of letters from a group of residents on a wide range of issues. We had received a number of complaints from these residents, most of which did not warrant action. In the course of discussing some of these complaints, we suggested to the council that it should develop a policy to respond to this situation.

We provided some advice to the council on the policy. Our starting point was to stress that criticism of council was not of its nature undesirable and is in fact a very valuable tool in maintaining and improving services. We also stressed that nobody, no matter how much time and effort is taken up responding to their complaints or criticisms, should be unconditionally deprived of their right to a hearing and to have their concerns responded to.

On behalf of the Lemon Tree Passage Residents Action Group I would like to take this opportunity to thank you for your excellent and comprehensive report....

I appreciate how difficult it must have been to collate the information given to you.

The matter was put before the Council meeting on Tuesday of this week and the recommendations of your Department were accepted and the unanimous vote was to abide by these decisions. ...

Again I would like to thank you sincerely for your care and diligence in this matter.

A complainant

Handling Complaints about Local Councils

We suggested that the council develop a complete public access policy. We proposed this policy contain commitments from the council to:

- respond to letters and telephone enquiries;
- allow residents to address council meetings; and
- respond to personal visits by residents to council offices.

We suggested that, having said what it would do, the council could detail the reasonable limits it proposed to place on the rights of residents. These might include not responding to letters and terminating telephone calls which are personally abusive or threatening and not responding to complainants (unless new substantive issues are raised) who have had their concerns fully investigated and continue to complain about these same concerns.

We also recommended the council consult our office and other oversight agencies before it imposed any specific restrictions on the access of any individual resident. We are continuing to work with the council on refining its policy. We believe these types of policies are only suitable if councils have a full range of complaint handling services, including a complaint handling system, full use of external referrals and a commitment to alternative dispute resolution methods such as mediation.

These guidelines can be used by all councils to develop public access policies which strike a suitable balance between the rights of individual residents and the need for councils to operate efficiently and effectively.

Case studies

- Foul Play
- Existing Uses Continued
- Rates Review
- The Wandering Dog
- Tighter Tree Protection
- Water In Excess
- Asbestos Alarm
- A Matter of Grave Concern
- Herbicide Horrors
- Bored into Submission
- Distress Redress
- Sensible Settlement
- In Our Mountain Greenery
- Signed, Sealed, Delivered
- You Never Phone, You Never Write
- Hail Councillor, Ill Met
- Extracting Concessions
- Double Fault
- In Deep

FOUL PLAY

Over a period of three months late in 1994, we received a number of complaints relating to Cessnock City Council's handling of residents' complaints about pollution from neighbouring poultry farms. The complainants alleged that the council's action on their complaints was insufficient, and that the council had failed to take action on alleged breaches of conditions of consent by the poultry farmers. Two of the complainants complained that the council had wrongly closed to the public, a meeting which was to consider their complaints.

Our investigation into the issues of the council's alleged inaction and failure to enforce consent conditions was discontinued after the council took steps to resolve these issues. The issue of the closure of the meeting to the public became the sole focus of the investigation and ultimately the subject of the final report.

This is an issue of some interest to us. We receive few complaints specifically concerned with the closure of meetings, however, a number of complaints have revealed evidence of what appeared to be improper and perhaps unlawful conduct by councils in closing meetings.

The overriding principle of the *Local Government Act 1993* is that councils should be open and accountable to the communities they represent. Accordingly, council meetings are to be open except in certain limited situations. When a meeting is closed, the particular grounds on which the meeting is closed to the public must be specified and recorded in the minutes of the meeting.

In our experience, it is not uncommon that the grounds for closure of a meeting are unclear or are not valid grounds under the Act. Sometimes a meeting in which a topical issue is discussed may be closed because a minor aspect of the discussion may be a matter which justifies closure under the Act.

The way in which councils use the power to close meetings is significant. There is a potential for the public to be wrongly denied the opportunity to be aware of or to participate in matters before council. It also frustrates the process of open and accountable decision making.

Cessnock City Council closed the meeting in which the complaints about the poultry farms were to be considered on one of the permitted grounds under the Act. This was that council would be receiving and considering legal advice concerning litigation or which would otherwise be privileged from production in court. In the minutes of the meeting in question, the reason recorded for the closure was "*possible legal implications*".

A number of explanations were put forward by the council for the meaning of "*possible legal implications*". Amongst other things, it was said that the meeting was closed because an Environmental Services Report to be discussed at the meeting recommended legal action. The report in question, however, did not explain why the material in it was confidential or why discussion of it should have been held in closed meeting. It did not refer to the legal consequences of the proposed action to be taken, or any legal advice.

It was also said that advice provided by the council's solicitor was discussed at the meeting. Doubt was cast on this explanation, however, because the evidence that the advice in question was provided prior to the meeting was inconclusive.

Other explanations provided by the council lacked foundation and council subsequently conceded that they were provided in error.

In our final report, we found that by not referring to the specific grounds set out in the Act in its resolution to close the meeting, the council did not follow the legal procedure for closing the meeting. We also found that by using "*possible legal implications*", council's reason for closing the meeting was based on a mistake of law or fact.

Our final report recommended:

- the council follow the procedures in the Act to close meetings on a basis which is in accordance with the law;
- the Minister for Local Government look into the need to issue a practice note to all local councils to guide them on the circumstances in which the grounds in the Act may be relied upon to close a council meeting; and
- the council not rely on legal advice to close a meeting unless the legal issues substantially relate to the matters at hand, are clearly identified in the report to council, and are discussed fully in it; and that all reports presented to closed meetings clearly identify the grounds for such closure in accordance with the Act.

The council subsequently complied with all recommendations.

During the course of the investigation, the issues raised in relation to the closure of meetings were discussed with the Office of the Minister for Local Government, as it was an issue the Minister had been concerned about for some time. The Ombudsman wrote to the Minister, putting to him a number of options for reform.

After receiving a copy of our report, the Minister raised the issue in Parliament. It has since formed the subject of a discussion paper by the Department of Local Government and proposals to amend the relevant legislation.

The discussion paper proposes to charge councils with a duty to keep meetings open and require councils to state the grounds in the Act under which it is closing a meeting and specify the reasons for the closure. Councils may be prevented from relying on legal advice to close a meeting unless the legal issues relate substantially to the matters being discussed in the meeting, are clearly identified in the report to council, and are fully discussed in it. Com-

mercial information will need to be confidential before a council may close a meeting to discuss it. It is proposed to make it clear in the Act that a council may close a meeting only for a portion of a debate on an agenda item if necessary. The new Administrative Decisions Tribunal may be given the power to overturn a council's decision to close a meeting in breach of the Act.

Councils may be required to make tapes or transcripts of the portions of a meeting that have been closed and these may be available to the public after a certain time. It is also proposed to provide a "fast-tracked" right to access council reports, tapes and transcripts of those parts of council meetings closed to the public under the *Freedom of Information Act 1989*.

We have continued to correspond with the Minister's office in relation to the discussion paper and proposed amendments. We eagerly await reforms that will further regulate the capacity of councils to close meetings to the public and thereby ensure more open and accountable government.

EXISTING USES CONTINUED

Over the past few years we have investigated a number of councils over the way they recognise existing use rights. These are rights to continue an activity that was commenced before the council's town planning controls restricted or otherwise regulated that type of activity on the land in question. This means an existing use, if it is recognised, can continue at the same intensity forever. The law is quite strict about the sort of evidence which must be produced before the existing use can be recognised. It is this area that has caused many problems. The law also strictly regulates intensifying activities which have existing use rights.

BUTCHERING EXISTING USE RIGHTS

Some residents of Seedlands made complaints about Nymboida Council's recognition of existing use rights for a cattle feedlot near the Clarence River. In 1986 the Nymboida Local Environmental Plan was gazetted. This introduced for the first time a requirement that development consent be obtained from council before any person could carry out lot feeding of cattle.

In 1988, the then site owner wrote to council saying he had operated a feedlot there since 1985. This was a year before the requirement for development consent was introduced. The site owner therefore benefited from existing use rights.

His letter appears to have been the only evidence submitted to support his claim. The site owner then asked for development consent to increase the number of cattle from 1450 to 1800 head. At that time, a feedlot of more

than 400 head (now 1,000 head) would have been considered "designated development". This is development that is potentially environmentally harmful. As a result, public consultation on such developments is extensive. A costly environmental impact statement must also be prepared and submitted with the development application.

Because the site owner's application was in effect for only 350 head (ie an increase from 1450 to 1800 head), his application was not technically an application for designated development. The General Manager was able to approve the application using his delegated powers, subject to some conditions.

In 1991 the site was sold as a cattle feedlot. Inquiries by the purchaser's solicitor prompted the council to check the site. Council found the 1988 approval had not been acted on and had therefore lapsed. Council confirmed, though, that the site could operate as a feedlot accommodating up to 1450 head of cattle. This was despite our investigation revealing that there is little doubt the original owner held no more than about 300 head at any one time.

The new owner gradually increased the number of cattle on the site so that by 1994 there were over 1,000. Midway through that year, local residents began complaining to the council, the Environment Protection Authority, NSW Agriculture and the Department of Planning. Eventually they also complained to us.

The main complaints were about odour, noise and water pollution as well as about the council allowing the use to continue without proper development consent. Photographs were provided showing dead cows lying in the paddock metres from a creek flowing into the Clarence River. These highlighted the serious pollution potential.

The council's response was to organise a meeting with the other authorities with a view to having a plan of management for the site. The EPA in particular had serious concerns about the environmental implications for a feedlot in an area of high rainfall. There were at the time no controls over such things as waste water.

The council, however, did not reconsider its initial decision to recognise existing use rights even though there was evidence to show this decision was incorrect. Because of this, there was little effective action it could take to fix the problems of noise, odour and dust. The plan of management had no legal status. The owner did bring in some measures to reduce the adverse environmental effects. Ultimately, however, the feedlot was able to continue as it had done without proper regulatory controls.

Our investigation concluded the council should not have recognised existing use rights and should have reviewed its decision once complaints were made and should have done more to respond to the complaints about noise, odour and dust. We recommended the council seek legal advice about its initial decision and even consider asking the Land and Environment Court for a determination. We also recommended the council consider its options in relation to controlling complaints about odour, noise, dust and carcass disposal. Council has complied with all recommendations.

DREDGING IT UP AGAIN

We have previously reported progress in the investigation into Nambucca Shire Council's defective registration of 87 extractive operations under "State Environmental Planning Policy 37: Continued Mines and Extractive Industries" (SEPP 37). This was the second investigation into this council about gravel extraction in the shire. The first investigation found the council had improperly allowed gravel to be extracted from the shire's river system on the basis of unjustified recognition of existing use rights.

SEPP 37 applies to mines and extractive industries. These operations by their nature need to expand to remain viable. SEPP 37 was introduced to allow for limited expansion subject to strict guidelines. These ensure operators provide evidence of the alleged existing use over the whole history of the operation. This includes surveys, photographs, records of extraction and a planning history of the site. The policy imposed strict controls on the amount of, and the area subject to, extraction.

Our second investigation found Nambucca Council had registered the sites - over half of which had been council operations - without due regard to the requirements of SEPP 37.

In the final stages of the investigation, the council agreed to withdraw its approval for all of the sites still registered under the policy and notified all the operators of this decision. Our final report therefore recommended the council undertake a survey of all extractive sites in the shire, to make sure no unlawful extraction was taking place. The council employed a consultant to undertake this task. The consultant found only minor infractions which the council successfully pursued.

First of all we would like to congratulate you on the thoroughness of your investigation into the Oak Park Feedlot ...

A complainant

Handling Complaints about Local Councils

As a result of our investigation, the council also agreed to ensure its Road Upgrading Contributions Plan, then under review, included provision that regard be had to the effects on roads of gravel carting. Appropriate levies for road maintenance will therefore be required whenever development consent is granted for gravel extraction.

The council flatly refused to implement the recommendation that all councillors be given information and training about their responsibilities with regard to environmental planning, assessment and control. The two investigations into the gravel extraction industry in the shire revealed the council had regularly overturned recommendations of its trained planning staff. Instead, it chose to allow gravel extraction to continue. This was despite the clear lack of evidence sufficient to allow this and despite a lack of proper due regard for environmental planning considerations. Staff allocated money to arrange such training as a result of our report, however, the council resolved that because of financial constraints, and because it "is aware of its roles and responsibilities", no training was required.

We also recommended the Department of Local Government consider undertaking a management overview of the council's planning and associated activities, the functioning of its Works Committee and its meeting procedures. This was in light of a number of decisions to hold closed meetings without apparent regard to the legal requirement that appropriate reasons for the meeting being closed being given. The department agreed this was appropriate, undertook a management overview and issued its report in December 1996.

The department commented on the council's refusal to implement the recommendation that training be provided for councillors:

"This would seem to be a curious view held by Council given the trenchant criticisms of Council by the Ombudsman, the frequent practice of Council disregarding the advice of its Director of Environmental Services and the current view of Council that it may be subject to litigation because of the quality of its decision making in the recent past."

The department echoed our concerns about planning administration, concluding council "has been irresponsible as the consent authority for development control particularly as regards the extractive industry". The overview, however, encompassed a range of other issues (such as finance and employment) broader than those identified by our two investigations. For instance, the overview report noted there were delays in determining development applications as well as an absence of policies and procedures required in response to the 1995 ICAC Report into Randwick City Council.

The overview's conclusions agreed with ours that it appeared the council had breached the *Local Government Act* in closing meetings. The report pointed out the council's accountability "is being undermined by its inappropriate and improper inclusion in confidential sessions of items of public interest". This conclusion was based on examples other than those identified in our investigation. The department was particularly scathing of council's initial "stubborn refusal" to table our second report in open council. It was not until December 1996 (more than year after the report was issued) that the report was made available to the public. The council belatedly told us this delay was because legal advice had been obtained about possible proceedings should it publicly table the report. The department identified:

"questionable instances of Council more recently moving into closed session on such reported issues as tyre recycling, the duties of the Fire Control Officer and the minutes of a Regional Group of Councils' meeting."

The department made 13 recommendations. Most relevant to our investigation (since the SEPP 37 registrations had already been cancelled), the department recommended the council ensure meetings are closed only where appropriate and proper. The council is also to advise the Director General of its progress in implementing these recommendations.

BLASTED NUISANCE

Last year we reported on our investigation into Port Stephens Council's response to complaints about a sand extraction operation. Local residents had complained the operation had overstepped the limits set by the council some 20 years before when it was first approved. We concluded there was no doubt sand had been taken from areas outside the area for which approval had been given but it was not clear who was responsible, the current or the previous operator.

We were also concerned by the council's handling of the complaints, incorrect advice given by different officers and council's inability to find a copy of the actual consent. We recommended the council review its complaints handling system and its system for issuing tree preservation orders. We also recommended that it make sure staff were appropriately trained in preparing development consents and in applying planning laws.

During the year we also finalised another investigation into the Port Stephens Council. This concerned the council's recognition of existing use rights for a quarry which had previously been operated by the council but was now in private hands.

We concluded the council did not have enough evidence to allow quarrying over much of the site and at very high levels without development consent. The council had allowed the new operator to blast at high frequencies, even though the council itself had stopped blasting in 1980 after local residents complained. We concluded the council should have looked more closely at whether this level of blasting was allowed under the operator's existing use rights. We also found the council had not properly considered transferring its interest in the quarry and had seriously deficient record keeping practices.

We recommended the council ask the operator to submit more information to support his claim for existing use rights. The council took up this recommendation. At the time of writing, the council was considering the information. It was also contemplating taking legal action to finally determine the status of the claimed existing use rights. We will continue to monitor this action.

In response to concerns raised by both investigations, the council told us it had:

- introduced new registration procedures for subdivision, development and building applications;
- registered outgoing letters when these respond to written correspondence (but not telephone inquiries or applications as this takes up too many resources);
- set up a new property filing system using its new computer system;
- agreed to ensure council reports are promptly placed on the appropriate files so staff know exactly what was decided when carrying out resolutions;
- developed standard forms to record inquiries and the outcome of meetings;
- developed checklists when assessing development and building applications;
- provided all staff with personal computers and given them access to all council business papers and minutes through these computers;
- reminded planning staff of the need to ensure consent conditions are precise and measurable;
- set in place quality control procedures to make sure documents are not destroyed until it is clear the microfilm version is legible;
- set up a Customer Service Task Force to review "all aspects of customer service including complaints handling policies and procedures" which has developed a complaint handling policy and is developing a set of procedures;
- set in place steps to coordinate complaints handling across council, making sure all complaints (however they arise) are recorded and referred to the appropriate officer; and

- implemented a new Tree Preservation Order to ensure it is lawful and readily enforceable.

The council appears to have taken our concerns seriously, particularly about its record keeping and complaint handling procedures and systems. We hope this will help reduce the need for our future involvement and allow the council to act on complaints and information brought to its attention and to improve its service to the public.

RATES REVIEW

The introduction of the *Local Government Act* in 1993 saw the abolition of the concept of 'mixed development' rating and the emergence of 'dominant use' rating in its place.

Previously councils rated properties with more than one use based on an apportionment factor issued by the Valuer General's Office. This factor attributed a proportion to the different uses of a property. This rating method typically applied to a mixed shop/house or shop/flat. It allowed councils to determine what proportion of the land value was to be rated as residential, business, farmland or mining.

Under the new Act, councils were required to categorise each parcel of land according to its "dominant use" and rate it accordingly. This created a system of winners and losers given that residential rates are generally lower than commercial rates. This meant that if a residential use was the dominant use the property owner would enjoy a reduction in rates. However, more often than not, the reverse was the case and more rates were payable. Inequities emerged with the residential proportion of mixed developments often being subjected to the higher business rate.

After receiving complaints about the abolition of mixed development rating we surveyed a number of councils about their approach to new "dominant use" rating. The survey revealed that some councils were adopting a very rigid approach to "dominant use" rating while others appeared to be acting contrary to law.

The Ombudsman brought the deficiencies of "dominant use" rating to the attention of the Department of Local Government and shortly after this, the Minister announced mixed development rating was to be reintroduced. Councils can once again rate parcels of land with both residential and business uses proportionately according to those uses.

When I rang the other day I felt so deserted and alone, your kindness and your reassurance that maybe I could do something about my problems helped me stand up straight again, gave me the inside to ring the council ...

... just thank you again for being a kind human.

A complainant

THE WANDERING DOG

A woman contacted us from Mulawa Correctional Centre where she was serving a sentence for failing to pay fines she had been issued for not keeping her dog restrained. Her only income was a widow's pension and she could not afford to pay the fines.

The dog was large but friendly and kept getting out of her backyard. The council was entitled to issue the fines for breaches of the *Dog Act* but it was clear this action would not resolve the problem. Even after serving her prison sentence the woman still had a number of outstanding infringement notices.

We spoke to the council and the Department of Housing, from whom she rented her house. The Department of Housing agreed to repair the fence around the backyard which had missing panels through which the dog was escaping. We asked the council to review the way they were dealing with the case. They agreed issuing further infringement notices would not resolve the problem and accepted instalment payments over a period of time towards the outstanding fines. The complainant had the dog desexed, which she believed would help change its behaviour.

All concerned hoped their joint efforts would persuade the wandering dog to stay in the backyard.

TIGHTER TREE PROTECTION

An Eastern Suburbs resident made numerous written complaints to Woollahra Council about the redevelopment of a hotel site near his home. He was concerned the removal of 10 poplar and four flame trees, had left him and his neighbours with little privacy. The initial development application inspected by the complainant indicated that only six trees were to be removed. The council had not responded to the complainant's letters.

Woollahra Council's tree preservation plan protects certain mature trees from being cut down. In this case, once work had started on the site, the contractors discovered tree roots were damaging sewerage and drainage pipes. The developer applied for council permission to remove additional trees. The council approved the application on the condition that the developer replace the trees and landscape the site.

Our inquiries revealed this application and the removal of trees from the site were made according to established council procedures. However, we were concerned the council did not have a system to monitor whether its tree preservation orders were being complied with.

The general manager indicated the council recently installed a data base to record the tree preservation orders which it issues. The council further responded to our concerns by saying:

"Your letter has prompted a further review of the procedures in place and I am confident that further enhancement to these procedures will ensure the community expectations are satisfied."

The council intends to refine its computer system so development consents with conditions relating to trees or landscaping works will be marked for future monitoring by council staff.

WATER IN EXCESS

A central coast man received an excess water account from Gosford City Council for \$3,172. He attempted to resolve his problem with the council to no avail. Water meters in the area were not always read every calendar year and his account was for the period May 1993 to September 1995. Despite this he (and we) found it hard to believe that he could have used more than five million litres of water in that time. The account was not paid on advice from a council employee, and no follow up action was taken.

When the meters were read in June 1996, another bill was received which showed only 227 kilolitres had been used since the last bill. This rang alarm bells. The latest account included the 1995 and 1996 bills - the total amount owing was now \$3,293.35. The man asked the council to review his whole account. The council decided work had been done on the meter in 1993 and that it had been reset to zero. The council refused to acknowledge there could be a problem - they would not accept the home owner's protest that no work had been done on his meter, which is located behind a two metre fence.

The ratepayer wrote to us and we made some telephone inquiries. Council's revenue officer insisted there was no problem and the amount was due - no other position would be accepted. We believed the council could not provide a reasonable answer to support its view. We wrote to the mayor who instigated a review of the matter. The review found the meter had not been reset to zero in 1993 and that the total reading for the 1993-1995 period was actually 943 kilolitres. Accounts were adjusted and a new bill issued for \$356.85. The Central Coast ratepayer was delighted to pay that account.

ASBESTOS ALARM

Leichhardt Council approved a building application on a site in Annandale which involved the removal of asbestos. One of the conditions of consent was that work associated with the removal of asbestos should be properly monitored and should comply with all relevant guidelines. Unfortunately, the developers failed to comply, to the distress and alarm of the people living next door. In fact, because the workers did not erect an isolating sheet,

the neighbours ended up with fragments of friable asbestos on their own property. They asked the council to take action to have all the asbestos removed safely.

The council issued a notice to the builders but when this was ignored, the council took no further action. Months passed and nothing happened. The neighbours came to us. We made enquiries and as a result of our representations the council placed the matter in the hands of their solicitors with a view to prosecuting the developers.

We also sought the advice of the WorkCover Authority. We found developers who fail to comply with WorkCover instructions in regard to asbestos removal work can face extremely large fines. A representative of WorkCover inspected the property and instructed the developer to remove the asbestos within seven days. WorkCover also made sure an analyst would check it had been correctly removed.

A GOAT'S STORY

As a last resort a couple wrote to this office to complain about the failure by Parramatta City Council to act on a complaint about their neighbour keeping up to 20 goats. The couple had been complaining to council over a period of six years, and although council officers were sympathetic no action was taken against the neighbour. The couple's main concern was that of health, as they could not open their windows at any time due to the stench emanating from the goats' shed. In addition to the odour they also had to deal with a rat problem and flies attributed to the keeping of the goats. The council had at some stage requested that the neighbour remove the goats but the neighbour refused and council did not pursue it.

We contacted the council and discussed the matter with the relevant officer. They agreed that there was a problem and a report was prepared for council. We were advised that the council would write to the neighbour and request that the goats be removed. However, the neighbour took no notice of council's letter and continued to keep the goats. The council then issued an order on the neighbour advising him that he must cease the keeping of goats within seven days from the date of the order, and failure on the owner's part to comply with the order would result in council instigating legal action. The couple then sent a thank you note expressing their gratitude for the swift and effective action by this office. They also advised that the goats were removed from the neighbours property within two weeks after the order was served. They could finally breathe easy!

A MATTER OF GRAVE CONCERN

The dying wish of a mother was that a family grave be obtained where she and her daughter and son-in-law would be buried side by side. The plots were bought from council and on her death, the mother buried. On visiting the grave a few years later, in 1994, the daughter found that another body had been buried in their site alongside the mother's grave. The family was extremely upset and immediately contacted the council. The council agreed there had been a mix-up and subsequently proposed options which the family did not find acceptable. Further interaction with council led to an escalation of bad feeling. The family obtained legal advice, however, more than two years later, at the time they complained to us, the matter remained unresolved. The family was seeking an apology, a refund for the cost of the graves and compensation for legal costs. We contacted the council, explained the needs of the complainants and arranged a meeting between the parties. As a result the council reimbursed the family's legal costs and refunded the Burial Right, plus interest accumulated over six years. The general manager wrote to the family apologising for the error and ensuing distress.

HERBICIDE HORRORS

An elderly man was convinced his illnesses were caused by herbicides sprayed by council in a reserve adjoining his property. He claimed his herbs, which he was in the habit of eating straight from his garden, were also sprayed. They later died, along with other plants in his garden. He took the matter up with the council which denied spraying. Neither the Environmental Protection Authority nor the Minister for Health were able to resolve his complaint. Eventually he brought the matter to us in an endeavour to make council admit to the spraying. He also wanted assurances that no further spraying would be undertaken in that reserve.

Our inquiries of council were unable to establish whether herbicide had been sprayed at the alleged time. However, the council wrote to us promising to:

- erect signs at the two entrances to the reserve stating *This reserve is not to be sprayed with herbicide;*
- write to all staff in the section that carries out maintenance in the area to not spray herbicide in the reserve;

I thank you for making enquiries on our behalf with Lake Macquarie City Council.

... The matter is now resolved - after two years of talking to council - and we do sincerely thank you, for your intervention on our behalf.

A complainant

- charge the Parks Operations Manager and Parks Supervisor with the responsibility to monitor the situation so that further problems would not arise; and
- reaffirm to its contractor in writing not to spray in the reserve.

The complainant was not satisfied with the council's response. Firm in his belief that council had sprayed the reserve prior to his most recent illness he said he could not trust council not to spray again. Of course we could not police the reserve. We accepted council's assurances and closed the file believing there would be no further problems.

In July 1997 the complainant visited us again. He claimed to have seen council workmen spraying herbicide in the reserve. Very upset, he approached them and they ceased spraying. We contacted the council's general manager who confirmed the allegations. At the time of writing the general manager was investigating the matter and promised to report back to us and write to the complainant.

BORED INTO SUBMISSION

A ratepayer of Moree Plains Shire Council complained about its failure to accept responsibility for the effect its water supply bore had on the resident's stock and domestic bore. The complainant said that the council bore resulted in her bore running dry.

The complainant had applied for a subsidy to help pay for a deeper bore. The subsidy had been refused because the department administering the subsidy believed the council was at fault. The council had previously refused to make the contribution and did not accept that the proximity of its bore had anything to do with the complainant's bore running dry.

We proposed the council contribute a quarter of the subsidy on an *ex gratia* basis. The council agreed and the complaint was considered resolved.

DISTRESS REDRESS

A neighbour complained that Blacktown City Council had failed to notify him of a substantial change to the design of an adjoining dual occupancy development.

After we intervened, the council issued a stop work notice on the development. The development application was then reconsidered using an independent consultant to assess the overall development. The council subsequently confirmed the approval of the application.

The council also agreed to negotiate an *ex gratia* payment of several thousand dollars in recognition of the distress caused by the council's departure from due process in approving the amended development application.

SENSIBLE SETTLEMENT

Two residents complained about the actions of Orange City Council in carrying out and later permitting the filling of adjoining land. Council had sold the land to a developer. They also complained about the council's failure to build an easement in the agreed location at the rear of their land. They had already tried to fix the problem by going to court. This had proved too expensive and they abandoned their case.

The complainants argued that the council's failure to control development on the adjoining land had altered the relative level of their land and the developer's land at the boundary between the properties. This, they said, caused the natural water flow to be directed back on to their land. They believed that the presence of water on their land compromised drainage and diminished its value and development potential.

We wrote to the council to determine whether the complaint should be formally investigated. With our intervention the council offered to settle the complaints.

As part of the settlement the council agreed to waive the unpaid balance of legal costs owed. The council also undertook to remove an unauthorised drainage pipe it had installed at the rear of the complainants' property and carry out remedial drainage work at no cost to the complainants.

IN OUR MOUNTAIN GREENERY

A Sydney man bought a block of land from Blue Mountains City Council in 1960. When the land was rezoned as residential, rates went up, based on the Valuer-General's valuation of the property at \$50,000. In 1992, the council carried out drainage work which effectively blocked the access road to the property. In 1996, the owner obtained an independent valuation which suggested the property was worth \$25,000 but could have been worth up to \$50,000 if the council had not carried out the works.

In 1995 the owner asked the council if it wished to buy the land. The council replied it did not and pointed out the land was capable of having a house built on it. The owner put the property on the open market. He was prepared to sell it, at that time, for as little as \$21,000 because of his desperation to get rid of the land. When an intending purchaser, however, submitted a development application, the council voted to reject it. At the same meeting the council allegedly voted for a report "*on how best to permanently protect the land from any development.*" The purchaser withdrew his offer to buy the land.

When the owner came to us he believed he had no prospect of finding a buyer and felt he was being financially burdened by the high level of rates he was expected to pay which was still based on the Valuer-General's valuation of \$50,000.

Just after the owner brought his problem to us, the council finally decided it would make an offer to buy the land. They offered the complainant the same amount of \$21,000 that he had been willing to accept from the prospective buyer. The council gave no consideration to the loss of value apparently caused by its engineering works.

We told the owner he had a right to apply to the Valuer-General's Office for a new Certificate of Value for his property. On the presumption the Valuer-General's valuation was substantially lower than its previous valuation, the owner would be able to apply to the council for a refund of the excess rates he had paid. At the same time, we wrote to the council, asking them to review the matter.

Council advised they had obtained a further independent valuation of the property. This valuation was not substantially higher than the amount the council had already offered. Taking into account all the circumstances of the case, however, a meeting of Council decided definitely to purchase the property and the council told us it was prepared to negotiate with the complainant for sale at a price up to \$45,000. We agreed to keep this sum confidential until the council made the offer to the owner. At the time of writing the owner was considering the council's offer.

SIGNED, SEALED, DELIVERED

A resident of Griffith wrote to us that Griffith City Council had not answered or acknowledged a petition. We telephoned the council which claimed it had not received the petition. Noting that the petition had been sent by registered mail, we then checked with the Griffith Post Office and found that a council employee with an illegible signature had signed for the item in question. When the council was still unable to locate a copy of the petition, we faxed them a copy. The council apologised unreservedly for the administrative error and the general manager gave an undertaking he would reply to the petitioner's concerns as soon as possible.

YOU NEVER PHONE, YOU NEVER WRITE

A young couple in Pambula wrote to us objecting to road works which they said had resulted in loss of access to their property. They told us they had written to Bega Valley Shire Council several times about the matter but nine months after sending the first letter had not received any reply.

When we telephoned, the council told us they regretted their failure to reply to correspondence. According to the council, however, the complainants had only ever had very poor access. The council said that after the road works in question, the access had been restored to its original state.

The complainants, however, had sent us a series of photographs which appeared to tell a different story. The council had not previously seen these photographs. We asked the complainants to send the photographs to the council. Shortly after they did so, the council arranged for a site meeting with the couple and entered into negotiations to provide the couple with proper access.

HAIL COUNCILLOR, ILL MET

This year a concerned resident complained Wentworth Shire Council had improperly closed a meeting to the public. We wrote to the council to check whether it had acted in accordance with the *Local Government Act* in closing the meeting in question.

It turned out the matter had been discussed in the confidential section of council's meeting because of an administrative oversight. The general manager had forgotten he was carrying a certain letter on his person until the confidential section, and accordingly, he introduced it at that late stage. Because the item was not confidential, we sent the complainant a copy of the minutes relating to this item.

Our inquiries, however, disclosed further examples of laxity in relation to the council's closure of meetings. On the evidence available to us, the council appeared to close meetings to the public without specifying the grounds for closing the meeting and/or without recording the grounds in the minutes of the meeting. We sent the council a copy of our findings in the Cessnock case mentioned above. The council told us it proposed to take steps to bring its practice into accordance with the *Local Government Act*. We were pleased the council undertook to do so, but reserved the right to make an audit of the situation at some future time.

On behalf of my family and myself I would like to express our gratitude to the swift and effective action taken by your department.

The goats were removed from the neighbours property within two weeks. The difference is already noticeable with the odour gone and vermin appearing to be under control. Our yard is a far more pleasurable place to be.

Many thanks

A complainant

EXTRACTING CONCESSIONS

Developers lodged plans for a major quarry development in the Coffs Harbour area. The plan involved two existing quarries being combined into one. A family living on a road near the smaller of the quarries knew of the application but made no submission to the council about it because they believed it would have little effect on them.

However, to address the concerns of a group of objectors, the developers made a series of amendments to their application. The proposed traffic route for trucks entering and exiting the proposed "super quarry" was changed and changed again. The environmental impact study attached to the development application was altered to reflect these changes. Unfortunately, although the council planned to move an intersection to reduce the impact of the changes on the family referred to above, it did not tell the family of the changes. The family only found out about them just before the council meeting which would decide whether or not to approve the DA.

We made inquiries and following our intervention, the council deferred its decision about the development application until the family had an opportunity to study the changes and respond. The council and developers also visited the site and held discussions with the family about what could be done to further reduce the impact of the revised development proposal.

DOUBLE FAULT

We are often asked to investigate calls for tenders on the basis that a council's decision was procedurally flawed. In most cases we do not become involved in routine matters of council business, including commercial leases and tenders. We do, nevertheless, strongly advise councils to make their decisions as open, fair and informed as possible.

Warringah Council advertised for expressions of interest to develop and operate local tennis courts and club rooms. A minimum of six courts had to be upgraded and maintained. The council compiled a short list of people who were invited to submit tenders for the project. The criteria for inviting tenders included:

- the value of the facilities as a recreational resource for the community; and
- the management experience and financial backing of the proponents.

A local tennis association offered to substantially redevelop the site to competition level and shift the association's headquarters away from another council property at Wakehurst. The association had grand plans for the site, hoping to spend over three quarters of a million dollars to convert the centre into a modern well-designed showpiece.

Council had other ideas. They adopted a conservative approach to development and did not wish to encourage tenants, like the tennis association, to vacate existing premises without alternate lessees. The Acting General Manager of Warringah Council noted that the association had *"actively lobbied Council for its support and encouragement in the development of its headquarters at Wakehurst. The Council supported and now wishes the Association to continue to direct its endeavours, expertise, management and financial assistance to the continued operation at Wakehurst."* The association complained to us that they should have been allowed to tender for the project. They argued *"we represent the community, and are a non-profit tennis association, we believe that a grave injustice is being done - particularly as we are clearly the highest bidder by \$600,000 in capital expenditure terms."*

In closed session, the council had discussed the various proposals and by majority vote opted not to invite the association to tender. The council felt a large scale development would entail restrictions on the public facility, such as closure for tournaments and membership requirements. Developers willing to invest large sums in capital expenditure would also be keen to recoup their investment through fees and licences, changing the public character of the facility. This is a valid consideration for council when deciding on prospective tenders. Our concern, however, was that the council's intentions should have been made clear when expressions of interest were sought. In this case council considered the ongoing management of a separate facility as a basis for rejecting the tennis association proposal. We suggested to the council that the tender documents could easily have included a clause to protect existing facilities. Also, the council's minimalist views on development should have been incorporated into the call for expressions of interest. We strongly urged the council to develop a clear set of guidelines related to expressions of interest and tendering to reduce complaints of favouritism.

IN DEEP

Eurobodalla Shire Council made a spectacular failure of its attempt to contract out the management of the Narooma Swimming Pool. After calling for tenders, a contract was signed with a former council employee who had managed the pool for a number of years. The council then found itself in breach of its own policy that its contractors must be incorporated. The pool manager formed a company with his wife and son as directors and a new contract was signed. After substantial revision the contract no longer reflected a management agreement but a lease, including exclusive right to occupy and sublease.

Our inquiries showed that both contracts were negotiated by the Director of Engineering personally and were not considered in any detail by council.

The new management was not well-received by a group of 69 residents whose favourite aquafit classes were abandoned. The Director of Engineering became exasperated over repeated requests to maintain the regular class times.

The Department of Land and Water Conservation discovered the lease arrangement when complaints about the pool management began to surface. Narooma pool is on crown reserve land and any lease affecting the premises had to have the Minister's written consent. Without such approval the contract was beyond the power of the authority concerned.

Adding clouds to confusion, the council opted to discuss the embarrassing contract in a closed session. The Ombudsman has made strong public comment on the need for councils to make their operation as open as possible to public scrutiny. In this case, the failure to document the reasons for closing debate to the public prompted the suspicion that councillors were unwilling to reply to awkward questions.

The department rightly insisted that the situation be rectified. The council had to either repudiate the existing contract and risk being sued for damages, or negotiate a new agreement acceptable to the Minister. The facts indicated the council had acted improperly, particularly in failing to secure Ministerial approval for the lease. We also had concerns about the tendering process and council's complaint handling skills.

It is not always practical or useful for this office to embark on formal investigations in such situations. Questions of utility must be addressed. Voiding the contract was likely to result in a law suit against the local authority. The cost to council and ratepayers was a factor to consider.

We wrote to council:

"Nevertheless, you will understand that the circumstances surrounding this complaint cast doubt on the ability of Council to properly manage the tendering, leasing and contracting matters put before it. This office will very closely examine any and all complaints which suggest that systemic problems may exist in Council's dealing with such issues."

In reply, the general manager for Eurobodalla Shire Council assured us:

"I do believe that the error in this instance is not systemic and this view is supported by the fact that Council manages numerous contracts and considers numerous tenders through its activities on an ongoing basis".

Time will tell. The Director of Engineering accepted responsibility for the leasing problems in his performance review with the general manager and the in-house solicitor who approved the contracts no longer works for council. The council also recently adopted formal policies for handling complaints and we were pleased to receive one of the first copies. A new contract for the pool lease was drawn up following advice from the Department of Land and Water Conservation and the council is waiting for ministerial approval.

I have received your letter of 30 October 1996, and wish to place on the record appreciation to you in facilitating (finally) a satisfactory outcome.

... I appreciate this existing direct and workable relationship with Warrigah Council. Again, many thanks for your intervention.

A complainant

Thank you for your letter. I note your comment that I will be disappointed at the response.

To the contrary, to have correspondence forwarded to Hastings Council in June acknowledged, plus an apology, feels like a major breakthrough. I honestly believe that without your intervention, that correspondence would have remained at the bottom of the 'too hard' basket indefinitely and the problem & myself simply ignored. Impossible to prove but I know what was happening.

Once again, thank you for your letter & prompt attention on this matter. Your intervention has helped.

A complainant

Handling Complaints about Correctional Centres



Complaints about case management, physical safety and segregation have increased noticeably. We are aware of the complex and difficult task of making the system work efficiently in the midst of great change. We will assist wherever possible.

Overview

COMPLAINT PROFILE

As complaints rose in other areas of the Ombudsman's jurisdiction, so did those about the Department of Corrective Services.

We received 466 written complaints about the department, an increase of about 21% in comparison to last year, one of the highest levels in the past five years. Telephone complaints and complaints taken during visits to prisons increased by about 36%, to 1474.

We finalised 456 custodial complaints during the year, an increase of about 16% on the previous year. In about 70% of the complaints finalised, the complainant was assisted or the complaint resolved after preliminary investigation. One formal investigation, into Mulawa involving both the Department of Corrective Services and the Corrections Health Service, was finalised.

The number of complaints about particular institutions also varied in comparison with previous years. There were fewer complaints about the Remand and Training centres, Silverwater and, in particular, John Moroney (recording a single complaint). On the other hand, there was a marked increase in complaints about Grafton, Kirkconnell and Parramatta correctional centres. Of greatest concern are those institutions that received a comparatively high number of complaints and an increase in comparison to previous years. Of particular concern are Junee, Goulburn and Lithgow, all of which had increased complaints.

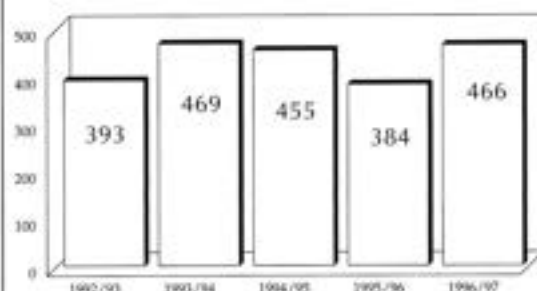
Correctional Centres and Department of Corrective Services Complaints 1996-97

Received	
Written	466
Oral	1474
Reviews	20
Determined written complaints	
Formal investigation completed	1
Formal investigation discontinued	1
Preliminary or informal investigation completed	313
Assessment only	133
Non jurisdiction issues	8
Total	456
Current investigations (at 30 June)	
Under preliminary or informal investigation	81
Under formal investigation	3

**Nature of written prison complaints
1996-97**

	Total
Property	66
Loss, delay in transferring, confiscation, failure to compensate	
Officer misconduct	58
Threats/harassment, assaults, racist abuse	
Classification/placement	51
Transfers	41
Unreasonable/refusal to, form of transport, interstate, delay	
Daily routine	30
access to amenities/activities, access to telephones, general treatment	
Visits	27
Treatment of visitors, visitor bans, access to visitors, searches	
Failure to ensure physical safety	22
Record keeping & administration	21
Inaccurate records, private cash control, sentence calculation, warrants, failure to reply/supply information	
Segregation	13
Unreasonable, failure to give reasons	
Medical	13
Access to services, methadone, dental, standards of care	
Legal	11
Mail	11
Delays, interception	
Security	10
Urine analysis, cell and strip searches	
Unfair discipline	10
Day and other leave	8
Physical conditions	6
Unhygienic conditions, lack of basic conditions	
Work and education	6
Access to, removal of	
Food & diet	6
Probation and parole	5
Buy-ups	4
Periodic detention	3
Other	44
Total	466

**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

**Prison written complaints
received by institution
1996-97**

Department of Corrective Services	128
Junee	52
Goulburn	48
Lithgow	38
Mulawa/Norma Parker/Emu Plains	18
Kirkconnell	17
Parramatta	17
Maitland	16
Cessnock	16
Grafton	15
Reception Industrial Centre	13
Remand Centre	12
Cooma	10
Parklea	10
Training Centre	8
Bathurst	8
Prison Hospital	7
Silverwater	6
Berrima	5
St Heliers	3
Tamworth	3
Special Purposes Prison	3
Periodic Detention Centres	2
Broken Hill	2
John Morony	1
Others	8
Total	466

Handling Complaints about Correctional Centres

Last year's annual report noted with some hope that the lower complaint numbers of that year were perhaps a reflection of the impact of case and area management. We hope the return to previous high levels is not a reflection of the same impact. It is certainly of concern that complaints about classification and placement, fundamental issues for case management, have risen markedly.

Complaints in the categories of "fail to ensure physical safety" and "segregation" also increased noticeably.

The last annual report also flagged the former commissioner's determination to address the ongoing problem of inmate lost property, and the central monitoring of the way individual correctional centres deal with lost property claims. While complaints about lost property were resolved more quickly, complaints still increased by about 18%. It seems likely that the numbers will continue to rise in the coming year as more than 2500 inmates are transferred around the system in order to fill the new Metropolitan Reception and Remand Centre.

A NEW LOOK FOR THE DEPARTMENT OF CORRECTIVE SERVICES

The Department of Corrective Services has undergone significant administrative structural change and opened two unique institutions - the Metropolitan Reception and Remand Centre (MRRC) which at 900 beds is the biggest custodial institution in Australasia, and the tiny, but invaluable, Parramatta Transitional Centre. In some ways these two institutions are indicative of the vision of corrective services in the late 20th century.

New administrative structures saw the regional commands of the department reduced from four to three. The central region office at Blacktown was closed and the department advertised for three rather than four regional commanders. The newly created central region includes the two new institutions.

The new Commissioner, Dr Keliher, also created an executive unit to coordinate contact at the highest levels of his department. The results of an executive management review and the eventual structure of the department are not yet known. Nonetheless, it is clear there will be fundamental changes flowing from these moves. With a strategic planning team working on a project "Towards 2000", we hope the structure will reflect the changing picture of corrective services.

The new, larger regional areas will put pressure on the commanders to better coordinate responses to emergencies and to better plan how to use the available space. At Long Bay, particularly, the extensive renovation and reorientation of most of the facilities is an enormous challenge. The much vaunted sex offenders programs in what was the old Reception Induction Centre need to be up and running to fill the gap created by the absence of programs at Cooma in recent years.

We are aware of the complex and difficult task of making the system work efficiently in the midst of great change. We will watch with interest, and assist wherever possible.

The new Metropolitan Reception and Remand Centre is the biggest custodial institution in Australasia. For many years its opening has been seen as the cure all for a wide range of problems within the prison system.



FUTURE DIRECTIONS

The Department of Corrective Services needs to improve its responsiveness to our inquiries about complaints, and to solutions we propose. While we would have to acknowledge that some delays in the finalisation of complaints are inescapably our responsibility, this year has seen an unfortunate decline in the speed with which the department has responded, to written inquiries in particular. In some cases, fairly simple questions have become complex simply because of the time taken by the department to provide information, let alone address the problem. At a time when complaint numbers are rising, this is a matter which will continue to create problems if not attended to.

The MRRC, for no other reason than because of its size, will undoubtedly provide a significant focus for our work in the coming year.

We will be closely monitoring the movement of women through the system as a result of the new women's classification system. Other areas of special interest will be: the department's use of "intelligence" and information gathered as a result of investigation; the department's own investigative processes; and case management and its impact on the lives of inmates.

In the coming year we are also planning to visit a number of periodic detention centres to inspect facilities and meet with inmates and staff.

CORRECTIONS HEALTH SERVICE

Formal complaints about the Corrections Health Service remained at 28 for 1996-97. Oral complaints on the other hand dropped from 54 to 31, continuing the trend for the last couple of years.

Also continuing the trend of the past few years, most complaints were about access to medical services and standards of care. Standards of care is a category of complaint which includes problems with attitudes of clinic staff. This was a matter extensively canvassed in our report into Mulawa.

The way clients are treated has an overwhelming influence on their appreciation of the service as a whole. Even when medical care is said to be as good as a community standard, when patients believe they have been treated with disdain, they are dissatisfied with the medical care. This is clearly an issue which must be addressed by the service as it is one which continues to be raised.

Corrections Health Service Complaints 1996-97

Received	
Written	28
Oral	31
Determined written complaints	
Formal investigation completed	1
Preliminary/informal investigation completed	16
Assessment only	7
Total	24

Nature of written complaints about the Corrections Health Service 1996-97

Access to medical services	14
Standards of care	9
Dental services	2
Failure to ensure physical safety	1
Methadone	1
Officer misconduct	1
threats/harassment, assaults, racist abuse	
Total	28

- Junee Correctional Centre
- Special Diets on the Basis of Religion
- Periodic Detention
- Jurisdiction
- The Metropolitan Remand and Reception Centre
- Mulawa Report Card
- Options for Women
- Family Focus
- Telephone Troubles
- Fact, Rumour and Other Information
- Banned Visitors
- A Case of Mismanagement
- Intelligent Follow Up

Issues

JUNEE CORRECTIONAL CENTRE

The privately run Junee Correctional Centre retained its position as the institution about which most complaints were made. This year the number of formal written complaints increased from 36 to 52.

The range of complaints was similar to previous years. Lost property was the most common complaint, followed by problems with officers ranging from alleged assault to threats and abuse, and record keeping and administration.

One complaint was that Ombudsman complaint forms were not readily available and visits by Ombudsman staff not well publicised. Institutions are sent posters advertising visits. Officers attending Junee in March 1997 noted the posters had not been displayed in the wings and inmates advised they had been told of the visit only that morning.

This, together with observations about the attitude towards inmates who make complaints, gives rise to a concern that staff at Junee have yet to take to heart the role of our office - and the fact that we can often offer assistance in providing solutions to difficult situations.

SPECIAL DIETS ON THE BASIS OF RELIGION

We received a complaint from an inmate of a rural correctional centre who is an Orthodox member of the Jewish faith. The inmate felt the Department of Corrective Services was unreasonable, failing to provide him with kosher food. The inmate wrote, "I realise that having broken the law in this country, I must give up my freedom for a period of time but surely it does not mean that I must forego my religious beliefs."

Our inquiries found the department was anxious to resolve the problem. At its suggestion, a meeting was held between departmental officers, the Chaplain to Jewish inmates in NSW Correctional Centres, and us to re-

solve the inmate's complaint and to establish guidelines to avoid the possible recurrence of complaints of this type.

The *Correctional Centres Act 1952* states that every inmate is to be supplied with sufficient food to maintain health. This is expanded by the *Correctional Centres Regulation*. The department told us it tries to meet these requirements without breaching the religious or other ethical observances of inmates. The catering manager for correctional centres has to take into account, for instance, that there is a large vegetarian community within prisons. While only about 1.5 % of the general population is vegetarian, some 7% of the inmate population choose a vegetarian diet. Generally speaking, on days when pork appears on a menu, Islamic inmates are supplied with a meal from the vegetarian menu. Similarly, Hindu inmates are able to replace meals containing beef with meals from the vegetarian menu.

The problem for an Orthodox Jewish inmate, however, was not so simply solved. Basic to the preparation of kosher food is the complete separation of milk and meat foodstuffs. Separate cooking utensils, crockery and cutlery are necessary for "milk" (dairy) and "meat" foodstuffs. These should be separately stored, washed and used on the stove and in the oven separately. Meat and milk foods should be prepared and served on different surfaces. No kitchen in a NSW correctional centre is equipped to meet these requirements. Nor would one expect there to be, as there are less than 15 Jewish inmates in NSW. The system of security classification and other placement considerations mean Jewish inmates are quite likely to serve their sentences as the only representative of their faith at a given institution.

It was agreed the department should ensure Jewish inmates are able to eat as many as possible of the items included on the department's vegetarian menu. Some ar-

rangements had already been made to allow the inmate to prepare his own vegetarian meals, and it was agreed that inmates requiring a kosher diet should be provided with cooking utensils and cutlery, so long as this was consistent with security guidelines.

Providing a vegetarian diet represented only a partial solution to the problem as it did not fully accord with the requirements of Jewish dietary law. The bread, cheese and margarine used by the department were not kosher. However, the department agreed to do what it could to find substitutes. The centre's governor said he would supply the inmate with a copy of *The NSW Kosher Products and Services Directory* and would arrange to add items to the buy-up list at the inmate's request. The department also agreed to provide the inmate, where possible, with whole fruit and vegetables.

We felt it was unreasonable to expect inmates who were not vegetarians before they were convicted to become vegetarians for the course of their sentences. On the other hand, we accepted the department's reluctance to use its resources to supply a minority of inmates with specially slaughtered kosher meat. The estimated cost of providing such food could almost quadruple the cost of feeding an inmate, even before the cost of transport was taken into account.

It was decided to trial a system where Jewish inmates could have meat brought into correctional centres under rabbinical seal and departmental stamp, at their own expense. The department agreed to provide refrigerated or frozen storage for such meat, taking due notice of any need to isolate this food from other foodstuffs.

While the number of Jewish inmates is small, there are more than 200 Islamic inmates. We therefore spoke with representatives of the Islamic faith, who indicated the preparation of meat for Islamic inmates was less problematic. No separate or special utensils are required to prepare food for Islamic inmates, although care should be taken to avoid "contamination" of food with non-halal animal products. A Moslem inmate would also prefer his or her food to be prepared by a member of a monotheistic faith.

On the basis of our recommendations, the department prepared a draft policy about dietary constraints on the basis of religion. We were pleased by the good faith shown by all parties in attempting to resolve a difficult situation, however, we were unable to agree with the department on one point of its proposed policy. The department felt the policy should only apply to inmates who could demonstrate evidence of religious commitment prior to imprisonment. We felt strongly that the inmates who either returned to, or embraced a new religious faith, during their imprisonment, should be able to follow the

observances of that religion. We raised this issue with the department which after considering the matter, agreed that a sufficient safeguard against abuse of the guidelines was that a review be made of those inmates whose religious observances were inconsistent.

PERIODIC DETENTION

Periodic detention centres (PDCs) are not often the source of complaints. Inmates are held for limited periods, mainly over weekends. Most spend their time working on community projects. This does not mean problems do not arise.

A weekend inmate at Malabar PDC complained he had been inappropriately moved to Goulburn Correctional Centre after an incident involving threats to an officer. He also alleged he had been assaulted.

The complainant allegedly encouraged other inmates to threaten the officer but officer reports also suggested that he had been previously involved in "standover tactics". It was recommended a penalty notice be issued to the inmate.

Our inquiries revealed the prison officer's report regarding the complainant's prior record was inaccurate. We requested the Director, Periodic Detention Centres speak to the officer and have the record amended. Such inaccuracies can have a permanent and damaging effect on an inmate.

The supervisor of the Malabar PDC had recommended action be taken against the inmate. However, the acting director of PDCs failed to act on the report and no assessment was made. If the material in the report was adequate, charges should have been brought. If not, the supervisor should have been told the results of the assessment. If more information was needed it should have been promptly requested. Nothing happened. The Ombudsman's comments on these issues have been brought to the attention of the officer concerned.

Complaints most often made to this office relate to the physical conditions and the food at the centres. Petitions from most of the detainees at a centre are not uncommon. One petition complained that although there was no work for detainees they were not permitted to return to their cells or go to the recreation room. They had to sit out in the cold weather.

Most of the complaints were resolved through telephone inquiries. However, complaints about physical conditions can really only be dealt with through regular visits to the centres.

Limited resources mean Ombudsman officers cannot visit all prisons as well as PDCs on a regular basis. However, in 1997-98 the first formal visits to PDCs are planned.

JURISDICTION

The Serious Offenders Review Council (SORC) manages some of the state's more notorious criminals. It is chaired by a retired judge and the practical effect of Schedule 1 of the *Ombudsman Act* means the Ombudsman has no power to examine the decisions made by SORC about the placement or management of these inmates.

The SORC has a number of subcommittees. The Serious Offender Management Committee (SOMC) looks at the management of some less high profile inmates. The Pre Release Leave Committee (PRLC) governs the release to unsupervised leave of certain types of inmates. In 1997 the High Risk Management Committee (HRMC) was added to the list.

The HRMC was formally created, in part, to govern how and where the inmates most likely to escape should be held. The conduct of all of these committees cannot be examined by this office. The only alternative remedy for unhappy inmates (other than going back to SORC for a second opinion) is an appeal to the Supreme Court. In these days of meagre Legal Aid assistance there are few prospects that this remedy will be readily available.

This does not mean the Ombudsman does not get complaints about the actions of SORC related bodies. In fact, it does not necessarily mean that actions related to the inmates managed by these bodies are beyond the reach of the Ombudsman. After all, these inmates are all controlled daily by prison officers whose conduct is within jurisdiction. The preparation of reports on their files which are submitted to SORC, for instance, are within jurisdiction as is, in all likelihood, the administrative conduct of corrective services staff preparing material for the council.

It is a unique situation. Up to the point SORC makes a decision the Ombudsman can review the conduct related to the inmate's management. At the other end of the chain this office can also examine the conduct of the Commissioner in approving or disapproving the decisions of SORC. This is frustrating for complainants but it has meant that this office is doubly vigilant in making sure that possible administrative inefficiencies which might lead to SORC being misinformed or misled are examined very closely indeed. In the coming year the Ombudsman expects to look even more closely at how SORC and its offshoots are provided with information.

THE METROPOLITAN REMAND AND RECEPTION CENTRE

In opening the Metropolitan Remand and Reception Centre (MRRC) at Silverwater the Minister and the Commissioner spoke of the challenge of managing a high tech gaol for 900, mostly unsentenced, inmates.

The opening and operation of the MRRC is the biggest task the department has taken on recently. It is a huge institution revolving around technology not previously tried in Australasian gaols. It will involve the closure over the next year of three older prisons, the re-orientation and renovation of several others and the movement of almost 2500 inmates. Primarily, the opening of the MRRC has been seen for many years as the cure all for a wide range of problems within the prison system.

Prisons at Cooma, Maitland and Parramatta will be closed in the wake of the commissioning of the MRRC. The Remand Centre at Long Bay will be revamped to hold those medical transit inmates now frequently shipped to and from their gaols of classification pursuing medical appointments as well as other specialist functions. Specialised sex offenders programs are being set up in what will become in September 1997, the Malabar Special Programs Centre. This will be an amalgamation of the therapeutic units at Long Bay including the Special Care Unit, the Kevin Waller Unit for those threatening self harm, the Andrew McConnachie Unit for violent offenders and other small operations. Some time in 1998 the Industrial Training Centre will also become part of the new arrangement. The Reception Induction Centre will cease to exist. At Cessnock, renovations will allow maximum security inmates to be housed there alongside minimum security inmates. At Goulburn, the now minimum security, but once maximum security area, the Multi Purpose Unit, will once more house maximum security inmates.

Smartcards will be introduced which will ultimately hold all inmate data as well as allowing access from one area of the new gaol to another. Cameras will watch walkways largely unpatrolled by officers and inmates will be moved via electronically controlled gates. The huge numbers of visitors to the gaol will be checked in and out past drug detection dogs and using identification systems which check thumb and finger prints.

The opening of the MRRC should stem the flow of complaints from remand inmates arbitrarily plucked from the metropolitan area and sent to Goulburn where their access to the amenities normally available to unsentenced inmates was limited. It might stop remand inmates having to sign a document ostensibly relieving the department of liability for putting them in the yards in Goulburn with those who are sentenced.

Greater space and better amenities at the new gaol should allow better notional classification arrangements for unsentenced inmates. Allied with improved initial assessment of those received from court and better case management this should allow separation of those more likely to be at risk from assault or stand over. Larger cells with better amenities, workable (vandal proof) emergency buzzers and showers and greater access to more gym equipment and outdoor exercise areas might also create an atmosphere less conducive to acts of violence or self harm.

Early complaints from the centre have been about delays - delays, of several hours, in processing visitors to the centre, delays for inmates moving around the centre and delays accessing medical attention. There have also been reports of faulty phones and perimeter fences, ill-planned reception areas and flooding showers.

We will deal with complaints bearing in mind that these problems may well be minor and temporary teething problems. However, given the size of this venture we will visit as often as we can and carefully monitor individual complaints and emerging trends.

MULAWA REPORT CARD

As noted in previous annual reports, we have been investigating the care and protection of inmates at the state's biggest centre for women. During this year the investigation - which included interviews with more than two hundred people and the assessment of hundreds of documents - was finished, and a report made to Parliament in April. Covering every aspect of the women's lives in incarceration, the report is many thousands of words.

Investigators were initially very concerned about the conditions in the centre and the amenities provided to the women. It seemed possible that the conditions themselves were a factor in the surge in the rate of self harm - which at its worst in the second half of 1994 involved about a third of the women at Mulawa and as many as 30 incidents a month. The rate was approximately three times the average for the system as a whole, even though women make up only about 5% of the total population.

We made inquiries about food, clothing, visits, work, education, disciplinary issues and staffing problems. We considered in detail use in the centre of both legal and illegal drugs, and the provision of medical and psychological care. We looked at all aspects of daily routine in an attempt to understand how a culture of self harm had developed in the centre, and to assess the response of the Department of Corrective Services and the Corrections Health Service to the extraordinarily high rates of self harm in 1993 and 1994.

The investigation coincided with moves by the Department of Corrective Services to improve the woeful conditions for female inmates. Eventually the department seemed to realise that the investigation could actually assist this process and its initial refusal to acknowledge the problem developed into a high degree of cooperation. As issues were identified during the course of the investigation such as unreasonable, and perhaps even illegal, multiple punishments for single offences imposed by officers without necessary delegations, the department ordered changes in the Mulawa practices. By the time the investigation report was tabled in Parliament, the department - in its own words - unreservedly accepted all but two of the 36 recommendations directed at its jurisdiction.

Many of these recommendations aimed at fine tuning broad initiatives undertaken by the department - for example, in creating opportunities for women to do paid work in a vegetable garden at Mulawa, thereby addressing the need for real work and fresh vegetables. Other recommendations were designed to ensure the implementation of more sweeping changes - an increased focus on pre/post release services, the establishment of a detoxification unit and program at Mulawa, the development of a women's classification system, and much more stringent monitoring of self harm statistics so that the crisis might never recur.

At least on paper, and more than likely in practice, this cooperative effort will ensure that conditions and amenities for women in Mulawa, and perhaps NSW as a whole, are of the highest standard.

Health services became an issue in the investigation because of the high level of complaints about both provision of services and the attitude of staff towards their patients. The investigation did not reveal any systemic problems with delay in the provision of medical services, even though there were clear gaps in the administration of the clinic, for example, the lack of reliable statistical data. Of more concern was the widely held perception that the clinic staff were unsympathetic, even punitive, in their treatment of patients. Such a perception is obviously difficult to investigate. Because the negative opinion was so pervasive, it was impossible not to accept the general point that the clinic was not functioning well during the period under consideration.

I thank you for your response to my last correspondence with regard to the telephone system in operation at Bathurst CC. I am pleased to hear that you are continuing to look into the situation at Bathurst, I believe it is a major issue for inmates in country gaols in general...once again I thank you for your efforts on behalf of the inmates at Bathurst CC.

A complainant

The investigation also noted significant problems with the provision of proper care to inmates in need of psychiatric help. For example, the establishment of a mental health team was recommended in 1991 but not established until the end of 1994. Reviews by the NSW Health Department at the beginning of 1995 confirmed the existence of gaps and failures to implement existing procedures.

Four recommendations were made with a view to improving the medical services at Mulawa, or the general view of such services. One of these was that an annual review of the medication of female inmates be conducted in order to address the widespread perception that women in prison are over medicated. Each recommendation suggested a report on the topic in question be provided to the Corrections Health Service Board for its consideration. We believe the board may be in a good position to make ongoing objective assessments of the practices of the Corrections Health Service.

The other topic investigated was the alleged existence of a "sex-for-favours" network. We found no evidence that such a network was in fact operating. A number of cases of alleged sexual harassment and sexual misconduct by prison officers were identified, all of which had at some time been reported to at least one of the department's investigative units. An assessment of the way in which these cases were handled revealed some problems with the efficiency and thoroughness of the internal investigation process. There were clear discrepancies in the thoroughness of investigations. In particular, cases of consensual relationship were pursued with fervour and sophistication, posing as they do a potential security problem for the department. Harassment allegations on the other hand were handled insensitively and with a much greater degree of scepticism. Of further concern was the revelation that even if an allegation was proved and the individual officer dealt with (more often than not by being allowed to resign), scant attention was paid to broader issues such as complicity from other officers, even though failure to report such conduct should itself have been investigated.

Our conclusion was that there is a clear need for the internal investigation of allegations of this nature to be oversights by an external body, much in the same way as this office oversights police internal investigations. The exact nature of such oversight is still being negotiated with the department, refusing as it did the recommendation of compulsory notification to the Ombudsman.

All in all, however, we are well pleased with the outcomes achieved during this long and difficult investigation. There can be little doubt that the conditions of imprisonment for female inmates are vastly improved, and are unlikely ever to return to the degrading days of 1993 and 1994.

OPTIONS FOR WOMEN

A significant development this year, complementing the move to case management, has been the establishment of a classification system based on individual needs and capacity, rather than on traditional security considerations. This system is, at the moment, for women alone. It pretty much mirrors the existing classification system, except that the assumption will be that, unless otherwise demonstrated, the initial classification of sentenced women will be "minimum supervision". This means that most women, following a reception and induction process, will be very quickly eligible to move from Mulawa to Emu Plains. It is to be hoped that this new classification system will strongly underpin the development of identified pathways for women moving towards the end of their sentences.

The newest option for women in the last months of their sentences is the Parramatta Transitional Centre. It has proved to be a very successful placement for women who are working or studying, or for women with their children. The atmosphere is informal and the accommodation very pleasant. The women are expected to budget, shop and cater for themselves, in addition to doing all other domestic duties as well as studying or working. Very much a picture of ordinary life.

This is not to say there are not problems for the transitional centre but they are overwhelmingly of an administrative nature. Only three of the 27 women who have been placed there have been returned to a more stringent correctional centre because of breaches in the centre's protocol. This is a stark contrast to the large numbers of women who were sent back to Mulawa from Emu Plains when it first opened as a minimum security institution for women in February 1995, mostly for drug related offences.

The problems seem to have come from gaps in the procedures established to process applications to go to the transitional centre. We have received a number of complaints about paperwork going astray, the processing of applications taking months and months, and of other obstructions. Inquiries into these complaints are ongoing and it is becoming clear that the system needs early attention. Work is still being done to ensure transitional centre case workers are included in all the case management meetings at which applications are considered, something which is obviously essential. For example, we have suggested that a central record be kept of all applications, probably with the Women's Services Unit, so that problems in the system can readily be identified and corrected.

There are inherent difficulties in managing a number of institutions - this is evidenced by problems experienced at Norma Parker Correctional Centre which is under the governance of Emu Plains. Complaints to our office include delayed paperwork and poor communication. When inquiries have been made, we have been able to largely resolve these problems. However, we will continue to monitor the systemic issue.

There are still considerable difficulties in the provision of health care to the women at the centre. Many of them are at work and so cannot attend the clinic at Norma Parker - even when the clinic there has agreed the women are still CHS clients. Efforts are being made to coordinate with local medical practitioners to provide necessary services. Quite clearly protocols need to be speedily established - as it stands we have been told that often the personal intervention of the Director of Women's Medical Services is required to resolve a problem. No matter how good her work is, reliance on an individual is not a satisfactory situation.

FAMILY FOCUS

During the year a mothers' and children's program was implemented at Emu Plains Correctional Centre and the Parramatta Transitional Centre. This program was abandoned in 1981 and its re-establishment has been somewhat controversial. Such a sensitive initiative had to be handled with great care and it has been achieved with minimum difficulty.

The Mothers' and Children's Committee examines all applications by female inmates wishing to live with their children. Until last year, only a few were eligible for release into the community under section 29(c) orders. Now a far greater number can be accommodated with their young families and in very pleasant surroundings.

The accommodation of mothers and children together in a correctional setting is an admirable extension of the long day visits which have occurred at Mulawa for a number of years. It is pleasing to note the same opportunity to spend a decent length of time with their children is now being offered to some of the male inmates.

There can be little doubt the department has a very clear view of the value of family contact - both for families and inmates. Further acknowledgment of this came in the department's response to the recommendations in the Mulawa report. We recommended the loss of phone calls be used as a last resort penalty for prison offences, rather than the first choice as has been the case in the past. This was in recognition of the difficulty for female inmates, who are often still the main support in the fam-

ily, in maintaining contact with their children - particularly pre-schoolers. The department has gone one step further, recommending that restriction of visiting privileges also be used as a last resort. This may well cause some difficulty for governors whose range of penalties are considerably reduced but we heartily endorse the attempt to facilitate strong family ties.

TELEPHONE TROUBLES

Any significant changes to operating procedures in correctional centres usually generate complaints - regardless of whether the changes are positive or negative. Changes to the telephone system for inmate calls have been no exception.

'Public' telephones have been installed in all gaols, usually in yard areas which offer greatest access to large numbers of inmates. Inmates are able to use the phone by keying in a personal identification number, their master index number (MIN) and the phone number they wish to ring. Only phone numbers already programmed into the system by gaol staff can be called. Inmates can request up to six personal phone numbers and four legal phone numbers be programmed into the system for their use. The numbers can be changed on a regular basis if requested by the inmate. Currently personal calls last six minutes and legal calls 10 minutes. Inmates are able to make their calls at any time outside their work hours with the exception of muster times when the phones will not operate. There is also no limit to the number of calls that can be made. However, the system is programmed so an inmate cannot make consecutive calls, to prevent monopolisation of the phone. The system allows for calls to be monitored and terminated if the conversation constitutes a breach of security.

The move away from officer connected calls is a positive one for inmates and the department. Officer connected calls were labour intensive and inmate access to phone calls was always subject to officer availability. We received regular complaints about access to phones and the use by some officers of phone calls as an unofficial punishment/reward system. However, some issues continue to be raised by inmates and their families and will not be resolved in the short term. Most com-

I am writing to express my sincere thanks to your officer as she conducted herself in a professional manner and took the time to explain the rules and procedures of the NSW Ombudsman's Office and hence wrote back to me.

I would like to thank your officer for putting my mind at ease and I hope she gets recognised for the good service she has provided.

Thank you once again.

A complainant

plaints have been about the increase in cost, the length of the calls, delays in changing nominated numbers and that 1800 numbers cannot be called. We raised these issues with the department and will continue to pursue them.

The greatest number of complaints we have received about the new system has been that inmates now have to pay for phone calls as they make them and that the calls are not subject to the off-peak or discounted rates that are available to other consumers. Under the officer connected system, inmates were able to make reverse charge phone calls to their families and friends and even some solicitors. The new system does not allow for reverse charge calls so phone calls cannot be made unless there is enough money in an inmate's account. For inmates in correctional centres a long way from their families, every call is an STD call and even with discounted rates, telephone contact can be expensive. Inmates can have money paid into their gaol accounts by family or friends and this money as well as their gaol wages is used to pay for telephone calls. Inmates argue that while families paid for their telephone calls under the old system of reverse charge calls, they had several months to budget for their telephone bill and did not have to pay money into their gaol account.

The department has advised us that an 'override' is to be put into the system to allow reverse charge calls to be made from the Area Managers office so that in special circumstances such as family emergencies, inmates will be able to call regardless of whether they have money in their accounts. The override will also allow the time limit on legal calls to be extended so that if required an inmate and her/his solicitor will be able to participate in a telephone interview. This will be dependent on individual circumstances. Another change to be made is the extension of personal calls from six minutes to 10 minutes. The six minute limit was based on an analysis of a two year trial telephone system operating in Parramatta Correctional Centre. According to the department the average call during the trial period was three minutes so the implementation of a six minute limit appeared reasonable. At the time of writing the increase to 10 minute calls was to go ahead as soon as possible.

Arranging legal representation is often a problem for remandees and numerous phone calls can be made before a solicitor is found to handle their case. Most correctional centres have a policy of changing inmate phone numbers once per week. For those on remand who are still trying to arrange legal representation and therefore calling a number of legal firms, this is not frequent enough. The standard operating procedures for the new MRRC allow for inmate phone numbers to be changed

on a daily basis to overcome this problem. We will be encouraging other reception gaols to adopt this practice where possible.

Since the implementation of this system, inmates have been unable to access 'free call' numbers provided by bodies such as our office, Prisoners Legal Service and the Aboriginal Deaths in Custody Watch Committee. Inmates with no money in their account cannot ring these organisations. The department advised us that inmates would be reimbursed for calls to our office if they submitted an application form requesting repayment. However, when we spoke to inmates about this, they inevitably said they were not told they would be reimbursed. It also did not overcome the problem of inmates not having sufficient funds in their accounts to allow them to make a call. It seems updates to the system are being developed which will, when installed, resolve this problem.

FACT, RUMOUR AND OTHER INFORMATION

There is nothing to indicate that the perennial problems of inadequate investigation, poor record keeping and inferior intelligence handling are any closer to being solved. In earlier annual reports we raised concerns about the inadequate compilation and handling of information relating to inmates. Information includes 'intelligence' provided by officers or other inmates, reports of 'investigations' by governors or other officers, or simply opinions about a inmate's attitude.

This type of information can form the basis for re-classifying and transferring inmates. As such it is important the information be properly recorded and filed. This does not mean inmates need to know who has supplied the information, nor does it mean confidential reports need to be on the inmate's case management file for all to see. It means a common-sense approach should be taken which allows an observer to assess why or how a decision has been made based on the paperwork. Where security is an issue, for instance, classification committees or program review committees adjudicating on someone's future can be referred by a note on the file to the relevant investigator or intelligence officer.

Regrettably, common-sense does not always prevail.

CASE 1

An inmate at a minimum security gaol was found with a syringe and two needles in a box with his leather-work tools. He claimed he used the items for mixing dyes and showed paperwork to say that his possession of them had been approved. He claimed he had never been target urine tested for drugs. He was charged with possession of the property. However, before the charge could be heard, the

inmate was transferred to an even less secure gaol. He was allowed an unsupervised leave before the charge papers followed him and he was finally convicted of having drug implements in his possession. He was then reclassified and sent to a more secure gaol where he appealed against the decision and complained to the Ombudsman about the process.

It transpired that the "approval" to have the implements was probably faked and that

After his transfer, the Industrial Training Centre Intelligence Officer contacted Silverwater's Intelligence Officer and advised [the inmate] was suspected of illegal drug activity at the Industrial Training Centre.

There are a number of problems with this process. Firstly, it seems the nature of the charges was ignored when the inmate was transferred and an inmate who had purportedly committed a serious internal offence was allowed to leave the gaol unsupervised. In this case inadequate attention was paid to the available information.

Secondly, an informal exchange of information between intelligence officers had influenced the classification and assessment of the inmate. This information of alleged drug activity was also not passed on to the Central Intelligence Group (CIG) data base or to any other officers who might make use of it.

The Ombudsman criticised the department:

It is absolutely unacceptable that such "information" is circulated between prisons to enable inmates to be "watched" while it is not recorded with the intelligence gathering arms of Corrective Services.

Under these circumstances it is impossible to assess the credibility of the source informant or the veracity of the intelligence information if all details are not available. This is not information to be hoarded but to be distributed.

What is more disturbing is that [the inmate's] appeal [against the decision to transfer and reclassify him] was obviously influenced by an assertion that was not considered to be worthwhile adding to the prisoner's file or to the CIG data base.

The then Deputy Commissioner agreed the inmate should have been drug tested and promised to change the urinalysis and inmate discipline procedures. He also agreed that both gaols had failed to adhere to guidelines which dictate that the Internal Investigation Unit should be informed if it is suspected an inmate is involved in drug trafficking. A memo about this lapse was forwarded to the gaols' governors.

CASE 2

An inmate complained he had been assaulted by two inmates at Kirkconnell Correctional Centre. He said he had been charged with fighting, transferred and reclassified while one of the inmates who had attacked him had been allowed to retain his classification and stay at the camp.

The officer reports showed there was no witness to the start of the fight between the complainant and his alleged assailant, but officers did witness the third inmate rush in and kick the assailant while he was on the ground. The files gave no sensible explanation for transferring the man who appeared to be the victim. Our inquiries revealed there was considerably more to the story but this information was not recorded on the complainant's files.

Apparently the complainant had been reluctantly accepted at the minimum security camp because of concerns raised at other gaols. Internal prison intelligence suggested there had been a long standing feud between the two initial combatants in the fight. There was also specific information relating to the cause of the fight.

The Ombudsman wrote to the Commissioner:

None of this information is available on the inmate's file, nor, it appears was it believed important enough to be included on the CIG data base as intelligence. It was (and remains) unavailable to the PRC in Goulburn where the inmate is now housed.

I trust that you agree that the decisions of prison governors need to be adequately supported by properly recorded information. In this case that did not happen ... If this information had been provided neither ... written complaint nor my letters would have been necessary.

It turned out the governor of the gaol also had the view that the inmate was capable of "violent and aggressive behaviour" but this also was not recorded on the file.

The then Deputy Commissioner replied, saying he thought certain unsubstantiated information relating to inmate's conduct was not sufficiently important to justify recording that information. In some instances this is true, but while governors can use this type of information to transfer and reclassify inmates, it is worth setting out in detail. As the Ombudsman pointed out:

Thank you for sending me a copy of your letter to the Commissioner. I received it today and was most impressed with the way you structured my argument and the time and effort you put into on my behalf..... Thanks again, on behalf of my family and myself for all your efforts in this matter.

A complainant

The overall management of prisoners is made much more difficult by the failure to record relevant information. Potentially violent inmates may well be inappropriately placed or classified. Case management strategies for individual inmates are also damaged by such failures.

BANNED VISITORS

During the year we received 11 complaints from people banned from visiting NSW gaols. As a result we took a closer look at a number of representative cases and held discussions with corrective services officers about some issues which arose from bans imposed by the department.

There is no underestimating the importance of visits for inmates. It is vital to the maintenance of family and community ties and in many cases to the emotional well being of the individual inmate. For prison officers, constant successful inmate visits can divert an inmate from despair or violence. Someone with regular, rewarding contact with family and friends is easier to manage than someone separated for long periods from their relatives.

Of course, visits are also the main avenue for passing contraband - mostly drugs - into NSW gaols. Each weekend visitors are caught smuggling all manner of things in all manner of ways into prison. When people are caught they are often charged by police and are almost invariably banned or restricted in their visiting arrangements.

We believe there is a significant difference between someone hiding several grams of an illegal drug in their underwear and someone with an openly visible blister pack of an over-the-counter medication. We believe a number of factors should be taken into account in assessing the length or nature of a ban, including:

- the demeanour of the person when apprehended;
- any efforts to conceal contraband;
- nature and amount of contraband;
- visitor history;
- intelligence information;
- mitigating circumstances; and
- the personal circumstances of the inmate and family.

Each situation and individual is different and each case should be judged on its merits. While this means consistency is difficult, it is reasonable to expect that a full range of factors will be taken into account in making that assessment. In March 1997 the Ombudsman wrote to the Commissioner raising a range of issues including:

- whether sufficient attention was paid to the intention of a visitor to traffic in drugs - particularly in cases of prescription drugs which are legal outside institutions or tiny amounts of soft drugs where there was no obvious intent to traffic;

- the department's tendency to rely on police charges and court results rather than assessing each case as it directly affects the security of the prison;
- the department's failure to consider the specific circumstances of inmates and their families;
- inconsistencies and inadequacies in the department's file and report management;
- the need for signs at gaols making it clear that legal prescription medications are illegal on prison grounds; and
- the delay between charge and ban which often allows someone to visit for several weeks after the alleged offence.

We also requested the Commissioner review a number of decisions to ban or restrict visits.

As a result, a 12 month ban for a visitor who admitted having prescription drugs was annulled and another ban for having a marijuana joint was reduced from 12 to six months.

The department conceded that its record keeping could be improved and agreed to our suggestion that a reporting format for visitor offences be made consistent for all gaols.

We will be regularly reviewing visitor bans in NSW gaols to encourage the fullest, fairest and most consistent assessment of all offences.

A CASE OF MISMANAGEMENT

Inmate management is a key element of correctional services and the mainspring of inmate management in NSW is case management.

From 1995 prison officers in all gaols were asked to oversee the sentences of a number of inmates. In effect, this has meant maintaining a file with details of an inmate's history and sentence - monitoring the planned path of that individual through the system. It has meant keeping a running sheet on the conduct of a person and, most challenging of all, talking to that person about problems and their solutions.

These are not necessarily straightforward tasks. In some gaols they are simply extra things to do in a day already crowded with other duties. For some officers of long standing, the idea of communicating more frequently and amicably with criminals does not come easily. After all, some have lived through regimes where inmates were barely allowed to speak to their guards. New tasks also mean more and different training to make sure the case management files are complete and up to date.

While the new tasks are quite alien to many people, there is sound reasoning behind them. Every piece of information that allows greater understanding of an inmate

- that allows erratic and maybe violent behaviour to be predicted - that allows greater understanding of a fear or problem - can save time, money, energy and, perhaps, lives. Every useful conversation might mean one less unnecessary movement, one less needless assault, one less damaging standover attempt or, at an extreme, riot or hostage situation. And this is not to mention the benefits to society of an inmate emerging from prison after a better managed sentence. It is easy to say but much harder to convince staff it is a good idea. There is evidence case management is not performing consistently across the system and in some institutions is barely working at all.

Case management is always going to be more difficult in certain types of prisons. Remand inmates, for instance, are unconvicted, often short term and seldom willing to concede that they need to participate at any level in management of their sentence.

CASE STUDY

In January 1996 the circumstances surrounding a death in custody at the Remand Centre, Long Bay, were brought to the attention of the Ombudsman (see p89 of 1995-96 Annual Report).

A young man was remanded in September 1995 for crimes committed while under the influence of drugs. He had recently attempted self harm and suicide, and had been diagnosed as schizophrenic. It was his first time in gaol. He was assessed on reception and referred to a psychiatrist, the psychologist and listed as at risk of self harm. It was recommended that he be placed two-out so someone could watch over him.

A reception committee did not meet to consider how the man could be best placed to ensure his term was served without incident. His appointment with a psychiatrist made through Corrections Health Service did not take place and no follow-up booking was made. There is no record that he saw the welfare officer or psychologist as recommended. In the protection wing of the gaol the inmate was stood over by more aggressive inmates. He told an officer about the harassment but did not want to put his life further at risk by taking action against those responsible. The officer made a decision not to report the inmate's concerns. The inmate went to the clinic and was issued a certificate so he could stay out of the yards, away from those who threatened him. Alone in his cell he hanged himself.

Although deaths in custody are examined by the Coroner, we raised a range of issues about the inmate's death with the department. We discussed our concerns with the Coroner and this case was the basis for a revised working arrangement between the two offices. In June 1997 the Coroner brought down his finding concerning the death. He found:

- harassment by other inmates had contributed significantly to the death;
- a breakdown in case management;
- a failure to act on the part of the officer to whom the inmate turned;
- a failure to ensure the inmate was two-out;
- inappropriate comments about the inmate's mental state had been made on the management file; and
- the Corrections Health Service had failed to ensure the referral to a psychiatrist was followed through.

We wrote to the Department of Corrective Services and the Corrections Health Service, echoing the Coroner's concerns and pointing out that the new inmate had not met with a reception committee, and that there had been a failure to follow up referrals to inmate development staff.

The inmate's case manager was on leave for most of the man's four months in gaol. Sections of the file were completed but no one took overall responsibility for maintaining the file and keeping up with the case management tasks. While no one showed a callous disregard for the inmate's circumstances, there was no one there to piece together the picture of an inmate under the most severe strain and at genuine risk of self harm.

Case management is such an enormous change in the culture of imprisonment that it will continue to take time, energy and commitment for years, a generational change even, before old attitudes and customs are completely overcome and the correctional setting is flexible enough to accommodate the many demands made on it. At the moment there is little doubt that too much has been expected of custodial officers in the initial implementation of the program. There is clear evidence of a significant gap between corporate commitment and the coordination and planning required to make the system a working reality.

There is a great challenge facing those who manage inmates in NSW gaols, not just in the 900 person remand prison at Silverwater but in all institutions where the system is poorly or partially implemented. It would be a mistake for corrective services to believe that case management is safely operating efficiently in all NSW gaols and that nothing further needs to be done.

INTELLIGENT FOLLOW UP

Last year the Ombudsman reported the case of the inmate who kept an extraordinary diary record of drug use in gaol and sexual adventures during study leave. The Ombudsman was extremely concerned that the vital information contained in the diary was not passed on as it should have been to the intelligence handling arm of corrective services. Correspondence with the department in connection with this matter continued until October 1996

Handling Complaints about Correctional Centres

when the Ombudsman wrote to the Commissioner:

I am concerned that the fundamental issue arising out of this complaint - the inadequate handling of intelligence information - has not so far been acknowledged by Corrective Services. This office has taken the view that formal investigation of such matters is unnecessary presuming that the department takes steps to deal with the issues. I would appreciate the assurance that Corrective Services is seriously considering this issue.

Some ten months after the matter was first raised, the Deputy Commissioner reported that:

- a Corrections Intelligence Group (CIG) was being formed under the control of the Director, Security and Investigation;

- recommendations were made that dedicated intelligence officer positions be created at seven major gaols;
- regular meetings of intelligence officers be held;
- directions had been issued in the Corrective Services Bulletin about the gathering and handling of "information likely to effect the security of a correctional centre";
- arrangements had been made for additional training for commissioned officers and at governors' conferences; and
- "standard operating procedures" would be developed for the CIG.

These are pleasing developments but are nonetheless, only structures, documents and proposed positions. The proof will be in improved intelligence handling and gathering - an improvement we look forward to.

Visits to correctional centres remain an important part of the accessibility of our office. Twenty-two visits to correctional centres were conducted during the year. Investigation staff regularly meet to coordinate visits to centres. In the coming year we are planning to visit a number of periodic detention centres to inspect facilities and meet with inmates and staff.



Case Studies

- Too Little, Too Late
- Mail Watch
- Property Problems
- Out of the Frying Pan, into the Fire
- Junee Cash
- All I Want for Christmas is my Two Front Teeth
- Contraband, Lies and Video Tape
- Contraband Confusion
- Cruel 'joke'
- Mismanagement or Malice?
- Moving Round the System
- Jest Not Funny
- Health and Security
- Treatment
- Speaking Out
- Delayed Reaction
- Insurance and Assurance

TOO LITTLE, TOO LATE

In March 1996, as a result of intelligence received, the cells of four inmates of Lithgow Correctional Centre were searched. A gaol made knife, a shiv, and a quantity of heroin were found in the cell of an inmate who later complained to our office. He was complaining that his 'B' classification had been increased to 'A2' and his girlfriend barred from visiting for 12 months even though he had not been charged with offences relating to drugs or the shiv. He was also moved to the Goulburn High Security Unit.

We made telephone inquiries of the gaol and were told police were dealing with the drug charges, and the inmate had been dealt with internally in relation to the shiv. By August when no evidence of any charges was available, a letter was sent to the department asking for clarification of the situation. An extremely protracted and difficult exchange ensued.

In January 1997, the commissioner advised that Lithgow management assumed the police were proceeding with all matters in a superior court. The police, however, only ever considered drug related charges, it not being clear on what grounds they could pursue the matter of the shiv. Once it was clear the police were proceeding with drug related charges, this aspect of the complaint was finalised.

We continued to ask questions about the shiv because it was by then clear that the Serious Offender Management Committee had changed the inmate's classification because of this incident, and what was described as "a second knife incident". It took some months before pa-

pers relevant to the second incident could be found. Unfortunately, that matter had also been poorly dealt with - none of the relevant papers were on the inmate's files and the officer involved was disciplined for failing to report a serious incident. Even so, it was described to the Serious Offender Management Committee as a "second knife incident", with no reference to it having occurred in 1995, long before the inmate was given a "B" classification.

Finally, the department decided that no charges in relation to the shiv would proceed because of the lapse in time. In addition, file notes setting out the allegations relating to knife incidents were given to the inmate, who noted his denial of them; these were then to be placed on the case management file in order that some documents existed clarifying matters.

It is important that inmates are punished for offences proved against them and that corrective services take action to ensure the good management of its institutions. In this case, however, it seemed quite unreasonable an inmate could be punished on the basis of corporate memory without ever having had an opportunity to put his case. What the department called "*an administrative oversight*" was more properly described as a lack of procedural fairness.

MAIL WATCH

Prison regulations allow mail to inmates to be read and copied in certain circumstances. An approval to copy correspondence can be obtained by providing reasons to the Director, Security and Investigation.

An inmate at the Special Purpose Centre complained that he had been called before a senior officer and told that if he was thinking of becoming involved in bringing drugs into the gaol he should think again. The inmate denied he was contemplating it. The officer showed him a photocopied letter he had sent to his girlfriend and said they had been copying his incoming mail as well.

Our examination of the matter aroused some suspicions. The language in one letter was unusual and his female visitor had been stopped by drug detector dogs on one occasion. However, the gaol's governor did not have approval to allow the copying to take place, and had provided no support for his instruction that it should continue indefinitely. If the copied letter had been needed to support criminal charges a court may well have found it was improperly obtained.

In any case it seemed fruitless to continue to copy the mail after warning the inmate he was under suspicion.

The Assistant Commissioner Operations issued a reminder to all staff that the proper approvals had to be obtained and copying of the mail was stopped.

PROPERTY PROBLEMS

The reception room of a correctional centre stores inmates' property which the inmate is not allowed to have in the centre. Items stored may be anything from civilian clothing for court appearances to personal items with someone when arrested. While storage space for inmate property varies from gaol to gaol it is always limited and inmates are encouraged to send excess property out to family or friends.

When inmates are admitted to the Long Bay Prison Hospital where there is no storage facility, their property including their cell property is usually stored in the reception room of the Reception and Induction Centre (RIC) which is also on the Long Bay Complex. On release from the hospital the inmate and his property are then transferred to his gaol of classification.

For one inmate who complained to us during the year this process went haywire. He had been transferred to the RIC so he could be taken to medical appointments at an outside hospital. After attendance at one such appointment he was unexpectedly admitted to the Long Bay Prison Hospital on his return to the Long Bay Complex. He did not return to his cell in the RIC. When the inmate was released from hospital and returned to Junee, he found numerous items of his cell property missing, including a walkman radio cassette player.

On advice from our inquiries section the inmate wrote to the department and asked that they make inquiries about his missing property. He subsequently received a letter from the Commissioner's office advising him that no com-

pensation would be paid for his property because he had had *sufficient time to pack his possessions prior to ... being admitted to hospital.* The inmate was upset with the response and apparent lack of accurate inquiries made about his complaint. He wrote back to the department pointing out that he did not pack his property prior to going to his medical appointment because he was not told his appointment time and date and even if he had been given this information he was expecting to return to his cell in the RIC. He did not expect to be admitted to hospital. The inmate sent a copy of his letter to us and requested we make some inquiries about his complaint. It seemed clear from the department's reply to the inmate, no consideration had been given to the departmental practice of not informing inmates in advance of dates and times of medical appointments or of proposed movements between gaols.

During our inquiries the department informed us that it wasn't really clear what the inmate was complaining about, his letter had been very difficult to read because it was a photocopy; it was unlikely anything else would be done and in any event they were expecting we would write to them about it. Under the circumstances we decided to write to the Commissioner about their earlier 'investigation' of the complaint, requesting clarification of their practice of informing inmates about medical appointments, and the apparent delay of several days between the inmate being admitted to hospital and his property being packed and removed from his former cell.

The reply from the department stated that the information in their earlier letter to the inmate was incorrect. The Commissioner agreed the inmate had not been given an opportunity to pack his property and that the four day delay in packing his property was unusual. It was determined the inmate was to be reimbursed for at least the walkman. The department advised the inmate he could purchase a replacement walkman and nominated a figure which the inmate agreed to. This office decided that the matter was resolved. Unfortunately that was not the end of the inmate's problems.

The inmate submitted a request that the gaol activities officer purchase a replacement walkman. He provided details of the type of walkman he wanted, which was within the price specified by the department. For some unknown reason the officer decided he would purchase a product of his choosing which was well below the specified replacement value agreed by the department. Not unreasonably the inmate refused to accept this item and after several 'attempts' to persuade him to take it, he was informed he had to have that item or nothing. Again the inmate wrote to the department and explained his difficulty. He requested the money be placed in his property

to allow him to purchase the item on his release rather than continue to be in conflict with correctional centre staff over the problem. Approximately six weeks later the inmate received his money.

OUT OF THE FRYING PAN, INTO THE FIRE

An inmate in grave danger was transferred from one correctional centre to another. Unfortunately, the correctional centre he was sent to was a far more dangerous place than the one from which he came. He was transferred despite telling staff he feared being killed because his evidence had led to another inmate in the receiving gaol being given a life sentence.

The conduct of the staff in question was in some ways understandable as there were good reasons to doubt the honesty, and even the mental coherence of the inmate in question. Nevertheless, it became apparent the story he was telling on this occasion was quite true. Luckily, he was transferred again before any harm came to him.

We spoke with the department and made sure an instruction that the inmate should not be sent to that correctional centre again was placed on his file.

JUNEE CASH

An inmate at Junee made us aware of an administrative difficulty caused by the centre's unique management. Normally, when inmates are transferred from one institution to another, they are not allowed to carry money but private cash can be electronically transferred into their accounts without delay.

Junee Correctional Centre, however, used a different inmate cash system and different banking facilities from those used by the Department of Corrective Services. The transfer of inmates' funds between the two systems required a cheque to be sent, received and cleared before being credited to an inmate's account.

The volume of mail passing into large institutions meant further delays could take place, even in terms of getting the letters containing the cheques sorted and opened. The process of providing inmates with their money was taking up to two to three weeks in some cases. Meanwhile, substantial irritation was caused to inmates who were, for instance, going cold turkey from nicotine addiction simply because they had no money to buy cigarettes.

We advised the Department of Corrective Services that in our view electronic transfer of funds provides a safer, faster procedure producing a better audit trail and sent a copy of the letter to ACM. We asked the department to liaise with ACM in addressing this problem. As a result, arrangements were quickly made to bring the system of cash transfer into line with those existing in every other correctional centre in NSW.

ALL I WANT FOR CHRISTMAS IS MY TWO FRONT TEETH

An inmate wrote to us after the Department of Corrective Services told him he would not be eligible to receive false teeth while he was in custody. It is the policy of the Corrections Health Services not to provide dentures to inmates serving a sentence with less than a three year non-parole period. We made inquiries to see if an exception could be made in this case, as the inmate really was in very urgent need of dental treatment. During a car accident at the time of his arrest he lost two of his front teeth, and while in custody had caught a gum disease, and two more of his front teeth had to be extracted. Facing the possibility of almost a year in prison with, as he put it, "*nothing to eat with*", he appealed to us. Following our intervention, the Corrections Health Service agreed this was a matter where an exception to policy was appropriate and gave approval for a dentist to make up a dental plate for the inmate.

CONTRABAND, LIES AND VIDEO TAPE

Any suspect behaviour by a visitor or an inmate will usually result in the termination of the visit and can result in a long term restriction, especially if the incident is captured on video surveillance equipment found in most visiting areas.

A maximum security inmate complained that a harmless prank had resulted in his partner being banned. He stated he dropped his false teeth down the front of his partner's dress. He retrieved them a short time later and replaced them in his mouth. The officers monitoring the visits area terminated his visit and the Assistant Commissioner, Operations later banned his partner from visiting for 12 months. The inmate suggested that if we viewed the video surveillance tape it would clearly show what actually occurred.

Two members of staff did view the video tape. It clearly showed the inmate remove an object from inside the dress of his visitor, place it in his mouth and appear to swallow. It was not possible to see what the article was because it was inside the closed hand of the inmate. It also appeared from the video that the inmate and his visitor embraced in an attempt to shield the retrieval of the object.

It was not necessary to view the entire tape of that day's visits to verify whether he did at some other time drop his false teeth down his visitor's dress. In the incident recorded, it was impossible to verify what was retrieved and placed in his mouth. Swallowing contraband passed in visits is a common way contraband is introduced into gaols. When visitors or inmates are observed in conduct which shows objects being surreptitiously

passed and placed in the mouth or otherwise concealed, they are rarely given the benefit of the doubt. We agreed the department had sufficient reason to suspect that contraband was passed to the inmate during the visit and take the action they did.

CONTRABAND CONFUSION

The partner of a woman held in Mulawa Correctional Centre was banned from visiting any correctional centre for 12 months after he refused to be searched before a visit at Mulawa.

On arrival at Mulawa the young man was approached by officers from a special task force of the Department of Corrective Services whose aim is to prevent contraband being taken into gaols. When asked if he had any drugs in his possession, including prescription medication, he replied he had a blister pack of tablets which had been prescribed by his doctor. He also had a copy of the prescription with him. The man offered to take the medication back to his car but was told it was not necessary because he had declared it to the officers and it was still in the blister pack. The officers then informed him that they wanted him to undergo a strip search to ensure he had no contraband hidden on his body. The man refused to be searched by the officers, stating he would only undergo a search by police at a police station and that in any event a search was unnecessary as he was not going to have any physical contact with his partner because she was currently on 'box visits'. His visit was refused and he left the centre. He subsequently received a letter from the department informing him he was a 'banned visitor'.

Our inquiries confirmed the inmate to be visited was restricted to a 'box visit' where a glass screen is between the inmate and the visitor for the duration of the visit. A departmental spokesperson said the visitor was banned because he refused to be searched by police and there was 'intelligence information' that he intended to pass drugs to the inmate during the visit. We asked the department to review the 12 month ban because there was no obvious intention to take drugs into the gaol; the young man had acknowledged possession of his prescription medication and he knew prior to his visit that his partner was restricted to a 'box visit'. He was also under the impression that he was to be searched by correctional staff and not police. The department reviewed his case and rescinded the ban. In the intervening three months he had been unable to see his partner.

CRUEL 'JOKE'

An inmate complained a prison officer told him his father had died as a cruel 'practical joke'. He had complained to the governor of the gaol but did not think the issue was being taken seriously.

We contacted the gaol and discovered they were still investigating the complaint, but had not informed the inmate of this. They agreed to inform him of the progress of their investigation and acknowledge the distress that could be caused by such an incident. The governor later wrote to us that disciplinary action had been taken against the prison officer concerned.

MISMANAGEMENT OR MALICE?

A complaint by an inmate at Bathurst Correctional Centre epitomised our concerns about inadequacies in the implementation of case management and the misuse of so-called 'intelligence'.

The inmate was refused parole in November 1996. He and his legal representative were concerned about comments made by the governor to the Serious Offender Management Committee during its visit in February 1996. The committee's summary noted the governor did not trust the inmate "around female staff". This comment was included in the report presented at the parole hearing some nine months later. The parole officer gave evidence that she had not experienced problems with the inmate, and that she had discussed these comments with gaol staff, including the case officer and other female staff who had worked around the inmate, without finding any support for the governor's comments.

When questioned, the governor said he had been approached by the programs manager who passed on a complaint from his secretary that she was concerned for her safety when the inmate was around her. The governor said there were other females who had the same worries. He asserted: "*As a governor of an institution I believe it is my duty to relay to committee's [sic] any information received from staff be it verbal or written*".

We do not dispute this, however it concerned us that the governor appeared to have not explored the truth of the allegations, record the incidents or the concerns expressed - or in fact raise them with the inmate at all.

On the face of it, the conduct complained of would seem to be exactly the kind of thing which the department intends to address by way of case management. In this instance, not only was there no documentation but the inmate's case officer was unaware of there being a problem.

That the governor took no action to deal with a complaint of what could have been a serious security issue indicates that he actually thought the matter of little importance at the time. And yet, in what is clearly an absolute breach of the principles of natural justice, he reported the unsupported allegations to the committee which was to provide a report on the inmate's eligibility for parole, without ever having given the inmate an opportunity to respond. Such conduct leaves the governor open to complaints of maliciousness and in this case there is no evidence this was not the case.

While the complaint about the governor's conduct was unresolved, the matter was not pursued because more than a year elapsed since the time of the incident and the Commissioner gave an assurance that the Parole Board had given no relevance to the governor's comments. Evidence supporting this assurance was provided. In addition, the inmate was paroled in May 1997. The outstanding issues of the governor's need to act with fairness and integrity and the need for accurate case management notes were firmly referred back to the Commissioner for attention.

MOVING ROUND THE SYSTEM

An inmate complained to us he had been waiting four months to be moved to Grafton Correctional Centre.

His wife lived in Queensland and following the birth of their son, suffered from post natal depression and then a serious mental illness. He had been given approval on compassionate grounds to transfer to Grafton so his wife could visit him but no place was available. He was concerned about his wife's ability to cope without contact with him.

We made inquiries with the gaol he was in and with Grafton. We found there had been a mix up with the formal request for him to be moved. Staff from the two gaols discussed the problem and within a few days the paper work was fixed and the inmate was on his way to Grafton.

JEST NOT FUNNY

A young inmate at the Parklea Correctional Centre complained an officer had made indiscreet comments about him in front of a group of inmates. The inmate claimed the comments suggested he had supplied intelligence information to the prison authorities. The inmate was concerned how these comments would be interpreted by other inmates and whether he would be at risk of retaliation if the story got out.

Our inquiries confirmed the inmate's claims. The officer claimed the comments were "only said in jest" and that "no harm was intended". We have previously expressed concerns at how such intelligence information is used. We are concerned that the safety and well being of

inmates is not placed at risk if they do provide information to prison authorities.

In his report to the governor, the assistant superintendent said:

"I believe this situation to be a lesson to ... staff in appropriate standards of conduct and the need to maintain "professional distance" when interacting with inmates."

The governor agreed with our view these comments were inappropriate, whether made in jest or not. The officer involved was counselled over the incident and apologised to the inmate.

HEALTH AND SECURITY

An inmate who worked in the cabinet shop at the minimum security Malabar Industrial Training Centre complained that following a much publicised escape from another centre, inmates were now being locked in the cabinet making factory all day. He said inmates were suffering from having no fresh air in a dusty environment and there was a fire risk because the fire exits were too close together. He also complained access to the toilets was through the spray room.

As a result of the concerns we raised, an occupational health and safety committee was formed with the majority of inmates participating on a weekly basis. An inspection by a WorkCover representative was arranged and plans made to improve access to the toilets.

TREATMENT

In August 1995 an inmate at Long Bay Prison Hospital complained about his medical treatment while hospitalised after a psychotic episode. His representative alleged the man had been burned in his cell when boiling water was thrown on him and that he was not promptly treated. He also said the inmate was not properly monitored when he had refused medication.

For 12 months we tried to elicit information about the man's treatment. Our correspondence to the Corrections Health Service pointed to a number of significant concerns about the keeping of clinical records and treatment sheets. Attendances on the patient were not recorded, the man was noted as not complying with medication when in fact he had been receiving medication, and the communication between the health staff and corrections staff was inadequate.

The situation was not helped by inaccurate information being given to the Ombudsman about the level of treatment offered to the patient. The error appears to have been the result of incomplete information passed on by nursing staff to the officer responding to the Ombudsman.

Handling Complaints about Correctional Centres

These problems were obvious at an early stage of our inquiries, however, the authority only grudgingly acknowledged them after they were spelt out in detail. Fourteen months after the initial complaint, the Corrections Health Service finally acknowledged

... the absence of clinical record providing description and outcome of a number of contacts with the patient was of concern.

In a letter on behalf of the CEO of Corrections Health, we were informed that clinical staff had been spoken to about the problems and assured that a key information sheet passed between staff was being better utilised.

It is not unusual for an authority to be defensive in the face of criticism. It is not unusual for bodies to admit 'concern' about acknowledged problems but to propose no solution. The more positive and profitable stance would be to identify the error and address the problem. Regrettably, that response is not so common.

SPEAKING OUT

A minimum security inmate soon due for release was working as the clerk for a prison chaplain when it was discovered he was using the computer to write letters to an outside lobby group. The letters were critical of the prison system generally and Cessnock Correctional Centre particularly.

The man was sacked from his job and referred back to a committee to consider whether he should be eligible for the unsupervised leave he would have been entitled to just prior to release. There was some disagreement amongst the committee members and the governor decided the inmate would have to wait three months for his study leave. This effectively meant no leave before the end of his sentence. The basis for the delay was that the inmate had to serve time after being sacked before being allowed unsupervised leave.

The inmate defended himself by saying that some of the letters were drafts only and that others had been written in his role as secretary of the Inmate Development Committee. The matter was complicated by the publication of some of the material in the quarterly magazine of the outside group. The department took exception to the article in the magazine and banned its distribution in NSW prisons.

Both the inmate and the community organisation claimed they were being victimised. The inmate supported this view by saying that after these events he had been misidentified during a cell search and "mistakenly" charged with having unauthorised property. The charge was later withdrawn.

It is understandable for prison managers to feel disappointed that a trusted inmate with an unblemished record used the facilities to criticise the prison. However in doing so the inmate said only what many others have said publicly and privately in the past. As the Ombudsman said:

... there is no basis for excessively punishing an inmate for publicly expressing views that are held by hundreds, if not thousands, of other prisoners.

Ironically, the governor chose to make a number of in-temperate and inaccurate remarks in a report on the matter.

The Ombudsman commented:

I sincerely hope that this failure to follow existing practise does not reflect a regime at Cessnock of less formal punishments for disagreeing with prison management.

She also said:

A cooler, more objective assessment of this issue at an earlier point in time might have avoided the original complaint. As [the Ombudsman officer] pointed out, there appears to have been an over-reaction in this case.

The regional commander spoke to the governor pointing out that the matter could have been handled differently.

DELAYED REACTION

In 1993 an unsentenced inmate complained about his inclusion on what was then the Special Management Inmate Support Program run at Goulburn Correctional Centre. He also said that as a result of his inclusion on the program he was automatically segregated when moved between gaols.

The program was designed to cope with disruptive and often violent offenders whose management in various gaols was very difficult. The 'program', such as it was, involved minimal contact with other inmates and limited privileges gradually returned to the participants in return for good behaviour, in the manner of behaviour modification schemes. Much correspondence was exchanged over a long period of time without corrective services supplying up to date guidelines for the program.

Several reviews of the program were announced and drafts of the guidelines were circulated but not approved. Finally, in September 1996, policy documents were released governing what is now called the Intensive Case Management Policy.

The complainant had long since been released. It remains to be seen whether these new documents will have any impact on the ability of staff to influence the behaviour of violent inmates and whether the program itself can function usefully. At least the participants and our officers now have a policy to consult.

INSURANCE AND ASSURANCE

In October 1996 an inmate made a rather extravagant claim for lost property. There was little doubt that he had lost clothing and precious little to show what had happened to his Italian suit and accompanying clothes.

The department advised us that because the claim was above the \$500 which the governor could approve, and the number and value of items was difficult to assess, it was to be sent to the department's insurers - in December 1996 - for assessment. We were assured that all was under control. In May 1997, the department admitted, after further inquiries, that the paperwork had not been sent to the insurers at all. It had been misfiled.

In June 1997 the insurers settled the matter for \$1200. It seems likely that a willing negotiation at the outset would have led to a smaller pay out and a much quicker resolution of what should have been yet another minor property complaint.

I thank you earnestly for your attention to this matter, for forwarding the complaint to the Commissioner, and your return correspondence.

I am pleased to inform you that after a meeting with a member of the Executive Staff here at Cessnock Correctional Centre, the matter has now been amicably and agreeably resolved.

I wish to express my thanks... for your concern.

A complainant

Even though I had no need for your services this year I would like to take the time to thank you for just being there.

I hope I have no need to make you busy in the coming year but take comfort in the fact that I can rely on you being "there". I hope you and your co-workers and their families enjoy the festive season and come back safely next year to help us ordinary folk to get a fair go.

A member of the public

Handling Complaints about Juvenile Justice Centres



The most frequently raised issues in complaints about Juvenile Justice Centres were: staff misconduct, predominantly assaults and harassment; daily routine; and unfair discipline.

Overview

We continue to focus on the Department of Juvenile Justice's nine full time detention centres. We visited all nine centres during the year, making good use of our new youth liaison officer and Aboriginal complaints officer by including them as much as possible in our routine visits to the centres. This often meant three people attended some centres rather than the usual two. Additional visits were made to two centres specifically in response to complaints received.

NATURE OF COMPLAINTS

A total of 31 written complaints were received, which is a 50% increase on those received for 1995-96. This can in part be attributed to the publicity surrounding the release of the Ombudsman's report of her inquiry into juvenile detention centres in NSW. This has made more people within the centres and the wider community aware they can complain to us about these issues.

Because juvenile detainees can find it difficult to make written complaints, we also monitor the number and type of oral complaints received by telephone and from interviews with detainees during our visits to the centres. The most frequently raised issues during the year were:

- staff misconduct, predominantly assaults and harassment;
- daily routine, which includes access to phones and facilities, general treatment (of which most relate to the ban on smoking), lack of basic conditions, staffing levels/lockdowns, time out of their rooms and unhygienic conditions; and
- unfair discipline.

These generally corresponded with the major issues identified in previous years' complaints to this office, although complaints about food and transfers appear to have dropped. No doubt this is due, in part, to improvements within centres, but also may reflect the increased visits to the centres by Official Visitors. It is clear that these visitors, who are appointed by and responsible to the Minister for Community Services, have established an increased profile with detainees and centre staff. We

Department of Juvenile Justice Complaints

1996-97

Received	
Written	31
Oral	185
Determined written complaints	
Formal investigation completed	2
Preliminary or informal investigation completed	24
Assessment only	9
Non jurisdiction issues	1
Total	36

generally enjoy a positive relationship with all Official Visitors, and we have, on occasion, depending upon the nature of the matter, referred complaints from detainees to each other. We look forward to continued cooperation with them in the coming year.

The Ombudsman's report, *Inquiry into Juvenile Detention Centres*, tabled in Parliament in December 1996, laid down the gauntlet for the Department of Juvenile Justice. It challenged the department to improve its operations, and detailed numerous changes that can and should be made for juvenile detainees to receive care and treatment of an international standard. To date we are generally pleased with the department's response to this challenge.

The Ombudsman continues to be concerned with the number of allegations of staff misconduct. In most instances these allegations were made by detainees, although two or three were made by fellow staff. All staff and a number of detainees who made these complaints also expressed concerns of reprisal from other staff.

Our inquiry into the centres focused considerable attention on the need for better internal complaint resolution and departmental action in response to allegations of assault by staff. Rather than initiate our own investigations, we have decided to refer most allegations to the department for its own investigation (where the department had not previously been aware of the allegations) and report back to us. Where the department has already dealt with the matter, we have usually requested all documents collected and created for the investigation. As indicated in some of the case studies which follow, we have found the department's response to such matters to be increasingly thorough and timely.

Outcome of Oral Complaints/ Inquiries Received 1996-97

Explanation, advice or referral given	79
Advised to submit written complaint	20
Preliminary or informal investigations made	109
Total	208

Note: Some inquiries raised more than one issue, which may have different outcomes. Therefore a greater number of issues than total number of oral complaints/inquiries received were dealt with.

Nature of Written Complaints about the Department of Juvenile Justice 1996-97

Officer misconduct	17
Daily routine	2
Failure to ensure physical safety	2
Property	1
Record keeping and administration	1
Bans on visitor	1
Day and other leave	1
Other	6
Total	31

- Report of Inquiry into Juvenile Detention Centres
- Internal Investigations

Issues

REPORT OF INQUIRY INTO JUVENILE DETENTION CENTRES

The Ombudsman's report *Inquiry into Juvenile Detention Centres* was tabled in Parliament on 10 December 1996. The report recommended changes in every aspect of the Department of Juvenile Justice's care and management of juveniles investigated during the inquiry.

The two volume report was the result of more than 15 months intensive examination of the department's treatment of juvenile detainees. Departmental policies, guidelines and centre practices were closely examined. Detainees, their families, centre and community based departmental staff and community groups were interviewed. Each of the nine centres was inspected by an investigative team from the office. Submissions were received from individuals, community organisations and other government agencies. We were particularly pleased to note the high level of cooperation provided by the department and so many of its staff at all levels. The processes used in the inquiry were detailed in last year's annual report.

Buildings, clothing, education, vocational programs, health services, management and staffing practices, contact with family and the wider community, behaviour management, discipline and transport were examined to see how well they complied with national and international standards. Our inquiry focused on issues relevant across centres rather than examining each centre separately, thus the report can be seen as a "report card" for the whole NSW juvenile detention centre system.

We made 239 detailed recommendations for improvements to the centres and their management. These were further refined to produce six 'key' recommendations in the areas of:

- detainee care and treatment;
- law and policy;
- management and administration;
- programs and services;
- building and environment; and
- staffing.

The single most concerning finding, and the most difficult and challenging for the department to overcome, was the existence of a centre "culture" which limits the department's capacity to provide secure and appropriate care for detainees. Allegations of cronyism and fear of reprisal for reporting inappropriate staff conduct were regularly reported. So too, poor staff morale, inadequate training and supervision, and high use of casual staff were endemic. Structural changes within the department made many feel confused and insecure in their employment. Many were frustrated due to a tradition of poor practice and low management expectations.

The Minister for Community Services, Mr Ron Dyer, who initially requested and substantially funded our inquiry, and the Director General of the Department of Juvenile Justice, Mr Ken Buttrum, have accepted all our findings. They have provided assurances all recommendations will be implemented. This is to occur in stages with most recommendations being implemented within



Detainees are often locked out of their rooms during the day. Our inquiry found space is generally not well used and areas tend to be bland and visually unappealing.

12 to 18 months of the release of the report. We are concerned the department does not repeat earlier mistakes by introducing changes without due input and communication with staff at all levels. The Ombudsman is to be informed of the department's progress periodically until all recommendations have been implemented.

The department has reported subcommittees have been formed in all centres and its central office. These bodies are responsible for implementing change at their local level, with all reporting to central office on a regular basis. The recommendations have been categorised into "stages" according to urgency, ease of implementation, and local need. Responsibility for implementation of the recommendations has been included in the performance agreements of all senior managers.

A high level taskforce with representation from the Department of School Education and unions has been established to further analyse cultural issues within the centres and the department as a whole. It is to examine current agency values, ethics and behaviours, analyse their operation within the department, and suggest how these may be addressed in future.

Funding has been approved by Treasury for many of the recommendations concerning the physical environment, including much needed maintenance and safety requirements. Minda Juvenile Justice Centre is to be closed by December 1998 and Worimi is to be replaced by a new centre in the Hunter, as strongly recommended in the report. New centres are to be built in Grafton and Dubbo. Although some of these measures were in train prior to the release of the report, the report certainly added impetus to the process and ensured much needed maintenance was carried out on all centres, rather than permitting them to deteriorate further.

We recognise that while much can be done to improve management practices, some recommendations require increases in the department's budget. Of key concern is the need for the department to better recruit, train and retain individuals who are personally and professionally equipped to supervise and interact with juveniles. To this end, we recommended pay rates for youth workers be increased commensurate with their skills and responsibilities, and that greater emphasis be placed on training and supervision. The department has made two submissions to Treasury for additional funds to increase the wages of senior youth workers within centres. While recent recruitment for permanent positions will reduce inappropriate reliance upon casual staff, low wage levels and staffing ratios may still deter many suitably skilled individuals from working in NSW's Juvenile Justice Centres. \$1.2 million has been allocated for the introduction of a staff competency based training program. A staff performance planning and appraisal scheme is also soon to be finalised. We believe these initiatives need to be accepted as an ongoing priority in funding, staffing and time allocation to ensure their long term effectiveness.

A number of recommendations are also dependent upon the cooperation of other agencies, notably the Department of School Education, the NSW Health Department, the Department of Community Services, the Department of Corrective Services and the Technical and Further Education Commission. These include:

- the provision of appropriate and meaningful vocational programs that can offer juveniles an opportunity to gain skills and credit towards external courses;
- better coordination and case planning for detainees who may be transferred to an adult correctional facility for part of their sentence;
- earlier identification and provision of appropriate information and support for detainees who are state wards and those with disabilities;



Dormitories, such as this one at Mt Penang, do not provide detainees with safe accommodation. Our inquiry found, however, that facilities with one or two bed rooms with en-suites contained fittings and fixtures which could be easily used for self harm.

- greater access to community based services and organisations; and
- better pre- and post-release planning.

While these agencies were not specifically examined as part of the inquiry, we will be monitoring these agencies' involvement in the implementation of these recommendations.

Our regular inspections of juvenile justice centres provide opportunities for our staff to monitor the implementation of the report's recommendations in each centre. As well as taking complaints from individual detainees, particular matters such as behaviour management practices and pre-release planning can be specifically targeted. We are also more closely examining individual complaints made to this office by or on behalf of detainees. This allows us to determine whether changes to date are affecting actual practice as well as policies and statements of intent. Now the department has had six months to effect urgent changes and plan its implementation of outstanding matters, we will be making our own checks to ensure recommended changes positively impact on the daily care and treatment of detainees in each centre.

INTERNAL INVESTIGATIONS

This year we received a number of related complaints about one particular juvenile justice centre from detainees and detainee parents. These ranged from incivility and lack of communication to allegations of staff assaults on detainees and inappropriate support and treatment of a detainee who was considered to be at risk of self harm. Inquiries were made on all the matters raised. Incident reports, staff and detainee statements, log book entries and similar records were obtained. Inquiries were also made with the police who had been called in response to detainee allegations of assault by staff (the adequacy of the response of the police is detailed in the section *Handling Complaints about Police*).

We found that in most cases, the Department of Juvenile Justice had responded appropriately in the circumstances. The department was able to show they had fully investigated the incidents reported and taken appropriate disciplinary action where it was considered that staff had acted improperly. In one case we found that an investigator had failed to interview a detainee who may have witnessed the assault. The investigator acknowledged the oversight, while pointing out that all other staff and detainee witnesses had been interviewed. In some instances, the available evidence was inconclusive, with the result that no action was taken.

Our inquiries allowed us to examine the way in which centre staff were now investigating allegations of assault and mistreatment of detainees. Our major report into the centres had criticised the limited resources and length of time taken by the department to investigate such matters. We were therefore pleased to learn of the steps being taken by the department to provide staff with specific training in interviewing and investigative techniques, and also in handling potentially violent situations.

We also raised with the department the need to be more proactive in obtaining information from detainee witnesses. In some of the above cases, detainees had been asked to write out their own statements. Decisions about the need for further investigation were made based upon these statements and those of staff. We had also noted this practice in other centres. Clearly if detainees have difficulty with reading or writing, they may be reluctant or unable to provide such statements, particularly when they may already feel distressed by the incident and possible repercussions. We suggested staff should be willing to take oral statements from detainees, possibly with the use of a tape recorder.

The department also agreed that where police are to be called, detainees are only to be initially asked if they saw or heard anything so that their names can be passed on to the police as possible witnesses. It is then for the police to take full statements from them. Departmental staff are only to take detailed statements once a decision has been made that no police action is proposed.

We wish to congratulate the NSW Ombudsman on her extensive inquiry into the care and treatment of young people detained in Juvenile Justice Centres throughout New South Wales.

We commend the methodology undertaken by the Inquiry, in particular the consultations with young people in detention centres and their advocates. The recommendations of the Inquiry are comprehensive and far reaching, and we are hopeful that the Government will implement them as a matter of urgency.

A youth lobby group

Case Studies

- Assault Investigation at Minda
- Office of Last Resort
- Young Adults in Detention
- Yasmar Juvenile Justice Centre
- Reluctant Escapee/Forced Freedom
- Tip of the Iceberg
- No Longer Delayed or Delayer

ASSAULT INVESTIGATION AT MINDA

Our investigation officers immediately attended Minda Juvenile Justice Centre following an anonymous telephone complaint giving an eye-witness account of a staff member assaulting an inmate by punching him three times in the abdomen area and then kneeling him. At the time the inmate was in a very agitated state and was in the process of being moved from another centre following his being attacked and injured by two other inmates.

Senior staff were interviewed and relevant documents and reports collected. In the following days, we interviewed inmates and visitors to the centre. Our inquiries raised a number of issues apart from the alleged assault, including whether:

- there had been adequate supervision of the detainees prior to the incident;
- placing the boy's two attackers in confinement was reasonable and in accordance with policy;
- the detention of all detainees on Talbot Unit following the earlier incident was reasonable;
- the staff member who allegedly assaulted the inmate had breached security procedures and practices; and
- there was complicity among staff to cover up the alleged assault.

As a result we launched a formal investigation and using the Ombudsman's Royal Commission powers, summonsed staff on the relevant shift to give oral evidence.

The alleged victim of the assault had sustained head injuries during an earlier fight with two other inmates. Our inquiry found the two supervising staff had acted appropriately to contain the situation. However, it was likely that while they were restraining his two attackers in another room, the victim who was unconscious at the time was kicked by other detainees and sustained his major injuries then.

The two attackers were segregated in confinement rooms for several hours. While the relevant procedure was not properly followed, we found the discretion was exercised reasonably given the seriousness of the incident. Likewise, the later confinement of all the detainees so the earlier incident could be properly investigated by the acting

Assistant Superintendent was found to be reasonable in the circumstances.

The alleged assault on the victim took place when staff took him away from the unit to get medical attention from the duty nurse. He refused treatment and ran back to the entrance of the unit in a highly agitated state. Despite several staff attending the boy, a further staff member left an adjoining unit and tried to intervene to quieten the boy down. The boy responded aggressively to that staff member by picking up a garbage bin and throwing it in his direction. According to the anonymous complainant, it was then that he responded by assaulting the boy. The staff member and others in attendance denied the allegation. The victim himself said the staff member was throwing punches but he was so agitated that he did not know whether they connected.

We had serious reservations about the veracity of the evidence given by the attending youth workers except one who was absent from the scene at the critical time. However, other than the information from the anonymous complainant, there was insufficient evidence to meet the threshold required to make a positive finding that the youth worker in question had assaulted the boy. Nevertheless, we did find the youth worker had made an error of judgement by becoming involved in the incident which by all accounts was being adequately and sensibly controlled by the other workers present. The youth worker lost his professional sensibility, by becoming unduly reactive, aggressive and agitated - reactions indicative of a temperament not suited to dealing with the often volatile behaviour of juvenile detainees.

Also in intervening in the incident, the youth worker had left his own unit unsecured and failed to inform a fellow worker of his actions in leaving the unit. This breached the security practices and procedures of Minda.

The case provided an interesting insight into the culture at Minda. We expressed concern that all but one of the specific youth workers subject of investigation did not give accurate or reliable evidence to the inquiry or to the management of Minda about the assault incident with the express purpose of attempting to ensure the youth worker was not implicated. Our inquiry heard evidence

of a 'culture' of protection within Minda. It was suggested staff attempted to cover up incidents or behaviour to protect colleagues from disciplinary action or adverse comment.

While there was a strong suggestion of complicity between staff involved in the incident, there was insufficient evidence to warrant a finding of wrong conduct on the part of the officers involved in relation to a cover up of their colleague's involvement. During our investigation, however, we did become aware of a reluctance by detainees and staff to complain or report incidents of misconduct by staff members. Both detainees and staff said they feared repercussions if they complained.

As a consequence we recommended the department augment its internal complaint handling procedures including its internal reporting system under the *Protected Disclosures Act*.

It had been provisionally recommended that subject to due process, the particular youth worker be disciplined for the breach of security at Minda. Based on this and other incidents, the department removed the youth worker from the roster of casual workers. The youth worker took proceedings in the NSW Industrial Relations Commission for reinstatement. Due in part to a number of procedural deficiencies in the presentation of the department's case, the Commission found for the youth worker and the department was ordered to reinstate the worker.

As a consequence of this case, the department changed its guidelines for dealing with such appeals in the Industrial Relations Commission.

Our investigation reinforced many of our concerns about the culture operating in juvenile justice centres which was more thoroughly examined in our report *Inquiry Into Juvenile Detention Centres*.

OFFICE OF LAST RESORT

We received a complaint on behalf of a 14 year old Aboriginal child about his treatment at a juvenile justice centre. The complaint included concerns that the young person had been refused medical attention, the assessment of his medical needs had been inadequate and he had been assaulted by youth workers after he had tried to commit suicide.

Our initial inquiries revealed a number of other concerns, including whether the police investigation of the alleged assault had been sufficient.

In light of the department's recent efforts to improve its handling and investigation of detainees complaints, and our general policy to give the authority concerned the opportunity to resolve the matter itself, we referred the matter to the Director General of the Department of

Juvenile Justice. We requested the department inform us of the investigation's progress and provide us with a copy of the final report. We explained to the person who made the complaint that if they were not satisfied with the department's own investigation, and there was evidence of maladministration, we would consider further action.

The department's investigation was thorough and recommended a number of areas for improvement in relation to service delivery in all juvenile justice centres. Some aspects of the complaint were found to have arisen due to miscommunication between the people involved and some parts were not sustained. A disciplinary inquiry was undertaken about the alleged failure of staff to follow departmental procedures.

We took the view appropriate action had been taken by the department, including changes to policies and procedures to try and prevent the same problems happening again. We therefore decided no further action was necessary.

YOUNG ADULTS IN DETENTION

A young woman in Yasmarr Juvenile Justice Centre wrote to us complaining about threatening and abusive behaviour of staff at the centre.

Soon after making her complaint to us she was moved to an adult prison. She told us her life had improved tremendously and the environment was much better than in a juvenile justice centre. She spoke of being treated like an adult, not as a baby, and of being given some responsibility for herself and her day.

We raised the concerns she was identifying with the Director General of the Department of Juvenile Justice, pointing out they were in line with issues identified by our inquiry into juvenile justice centres. Our inquiry found older detainees often prefer accommodation in the adult prison system because they had more freedom and independence, less immediate control by officers, were treated as a young adult rather than as a child and had more privacy. This is particularly so for young women.

We were unable to investigate the specific allegations made by the young woman as there was no independent evidence to determine what actually happened at Yasmarr. However, we were able to use her case to reinforce to the department what a number of young women have said about their experience of the centre.

YASMAR JUVENILE JUSTICE CENTRE

We received a complaint from a solicitor on behalf of a young woman detained at Yasmal Juvenile Justice Centre. The solicitor questioned the adequacy of care provided to her client on admission to the centre. The young woman was experiencing drug withdrawal and suicidal thoughts.

We made enquiries and eventually decided that the department had acted reasonably and the young woman had received adequate care.

We found that when the young woman was admitted to the centre and attempted suicide, the Alcohol and Other Drug (AOD) Counsellor was on leave. The registered nurse was relied on to provide most of the support the counsellor would usually have done, in addition to her normal workload. While it did not appear to have significantly affected the care provided on this occasion, the need for adequate relief staff for professional support positions was raised with the department. We suggested it be included in their review of juvenile justice centre policy and administration.

RELUCTANT ESCAPEE/FORCED FREEDOM

A newspaper article detailing an escape from Minda Juvenile Justice Centre indicated that one of the two detainees involved was an unwilling participant. An escort van used to return the detainees from court to Minda was held up by armed attackers who were intent upon freeing their colleague. As he was handcuffed to another detainee, this younger juvenile was taken with him. The young man had actually been granted bail at court and was returning to Minda to finalise the paperwork and collect his belongings.

We asked the department why the two had been handcuffed in this way and why a young man granted bail at court required handcuffing at all. We found the original authorisation for the use of handcuffs was made at the centre prior to his transport to court. The authorising officer decided handcuffs were needed because of the nature of the charges. There was little other information available to the officer when making this decision which had then not been reviewed following the granting of bail.

In its reply to us, the department acknowledged:

"The form, given to the escorting staff, does not take into account changes in a detainee's legal status following their court appearance. This incident reveals a serious flaw in our policy and procedures which is now being corrected."

The form has now been amended to allow instructions to be given to escorting staff to enable them to not re-apply handcuffs if the detainee to be escorted back to the juvenile justice centre has been granted bail at court.

The inappropriate use of handcuffs was raised by the Ombudsman in her report to Parliament in December 1996. Section 22 (2) of the *Children (Detention Centres) Act* states "A detainee shall not, **without reasonable excuse, be handcuffed or forcibly restrained.**" Despite this, we found handcuffs were routinely used, even though their use was not in accord with departmental policy, and where two escort staff were used to transport one or two detainees. The use of handcuffs is being monitored as part of our oversight of the implementation of the recommendations made in our report.

TIP OF THE ICEBERG

Our officers make regular visits to detention centres throughout NSW. On these visits many detainees talk to us about relatively small matters and go on to tell us about serious issues once they feel they can trust us.

For example, a young man complained about the lack of shampoo and soap in his unit. When he was told we could help him he went on to tell our officers about the fact that his parents were unaware he was in a detention centre. It seems that at the time of his arrest his parents were moving house and he did not have their new telephone number. He had been in the centre for five days.

Through the centre manager we were able to alert case management staff who tracked down his parents so that the all important family contact could be maintained. At the same time we were able to contact a Vietnamese community welfare group to provide support for the detainee and his family.

NO LONGER DELAYED OR DELAYER

A detainee complained to officers visiting his detention centre about delays in a transfer to a centre which was closer to his family. The transfer had been approved by the Department of Juvenile Justice for some time and it was the detainee's impression the other centre did not want him. He was told there was no room on a number of occasions. Following our intervention, the two relevant centre managers organised for the transfer to take place. The detainee was moved the next day.

Handling Complaints about FOI



We believe agencies should:

- voluntarily publish useful information
- informally and automatically release information on request
- formally disclose information on application under the FOI Act
- publish summaries of affairs, statements of affairs and annual reports, and
- amend inaccurate personal records on request.

Overview

This chapter contains an account of our work and activities under the *Freedom of Information Act* for the twelve months ended 30 June 1997, and our plans for the 1997-98 year. It, and Appendix Nine, also constitute 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*.

RESULTS

The most significant achievements of our Freedom Of Information Unit were a 43% resolution rate and an increase, for the eighth successive year, in the number of complaints completed during the year. The increase was almost 11%.

In continuing to emphasise resolution of complaints we also saw an 11% rise over last year in the number of complaints which we completed specifically by informally resolving them. This rise was probably in large part due to our use of section 52A in almost 22% of all completed complaints, half of all matters which we considered satisfactorily resolved. Section 52A was inserted in the *FOI Act* in late 1995 and provides agencies with the opportunity to redetermine an FOI application which has been sent to us for review. The redetermination must be in accordance with a suggestion or recommendation of the Ombudsman, or as a result of a written undertaking given in a conciliation conducted by the Ombudsman. Our successful use of this provision is largely because redetermination under s52A carries with it all the protections which the Act affords any agency in relation to the original FOI determinations. Without that protection we believe we would see, as we did before the introduction of the s52A provision, a significant number of agencies

Freedom of Information Complaints 1996-97

Received	
Written	131
Oral	181
Reviews	5
Determined written complaints	
Formal investigation completed	3
Formal investigation discontinued	3
Preliminary or informal investigation completed	105
Assessment only	2
Non jurisdiction issue	20
Total	133
Current investigations (at 30 June)	
Under preliminary or informal investigation	43
Under investigation	1

unwilling to alter incorrect or unreasonable decisions. With the protection provided by s52A, however, agencies have been prepared without exception to give access to documentation on the basis of our suggestions that documents be released, based on our preliminary views that the documents were not exempt. None of these matters required formal investigation. Turnaround times for matters resolved on this basis appear to be improving as we gain more experience in the application of s52A. All matters resolved under s52A involved the release of documents previously considered exempt by the agencies concerned.

While only half of the complaints were resolved under s52A, the other half were resolved in ways considered satisfactory by other means, many still by the release of some or all documents claimed as exempt. Almost one quarter of all resolved complaints involved issues such as processing delays, withheld or lost documents, failures to respond and excessive charges. These were resolved by agencies following our suggestions. For example, we successfully encouraged immediate action on a number of delayed applications, in various cases we suggested agencies give explanations to applicants, and in others we suggested that refunds be given.

Three wrong conduct reports were completed in the year, all of which are detailed later in this chapter. Due to the steady increase over the past five years in the number of matters completed per year, the proportion of wrong conduct reports completed each year to total complaints completed is at its second lowest for that period. We believe this is a direct result of the number of matters which have been informally resolved over the same period, an increase from 20% to 43%.

The increased emphasis on informal resolution has lessened the need to formally investigate matters. This conclusion is strengthened when one considers the number of formal investigations which were discontinued on the basis that they had been resolved to the Ombudsman's satisfaction - four in 95/96 and three in the last year.

COMPLAINTS RECEIVED

As can be seen from the accompanying graph there was a sharp rise in the number of complaints received in comparison to the previous year. The reasons for the more than 39% increase are not known.

Of the complaints received the great majority related to refusal of access to documents. Most of the rest were classified in three categories, namely:

- requests for review from third parties;
- allegations that agencies were refusing to acknowledge the existence of documentation (ie withholding documents);
- allegations that the processing of applications was delayed.

Nature of Written Complaints about FOI 1996-97

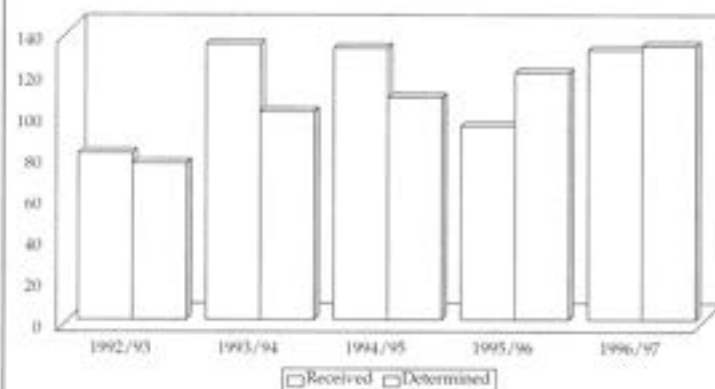
Access Refused	81
Charges	8
Lost Documents	2
Processing Delays	12
Third Party Objections	14
Withholding Documents	14
Total	131

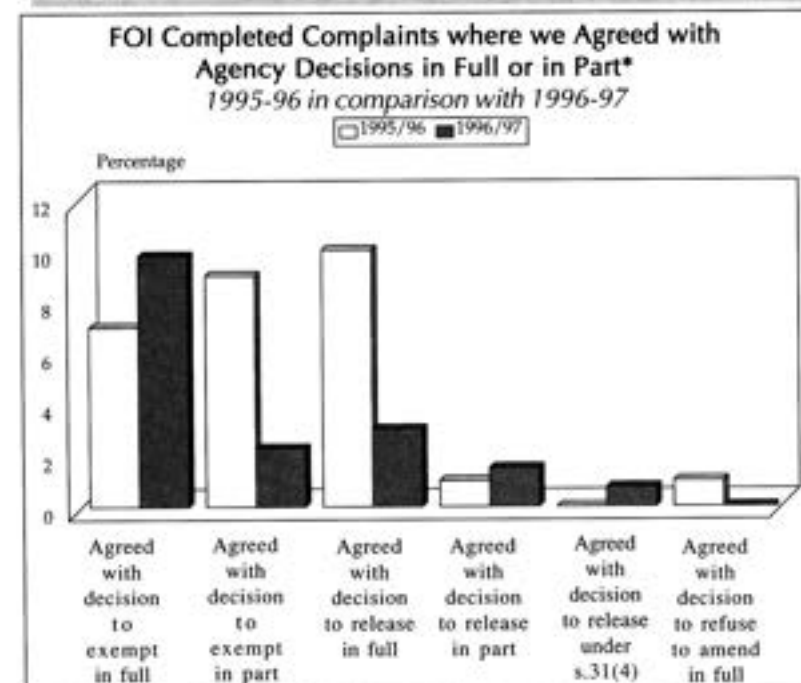
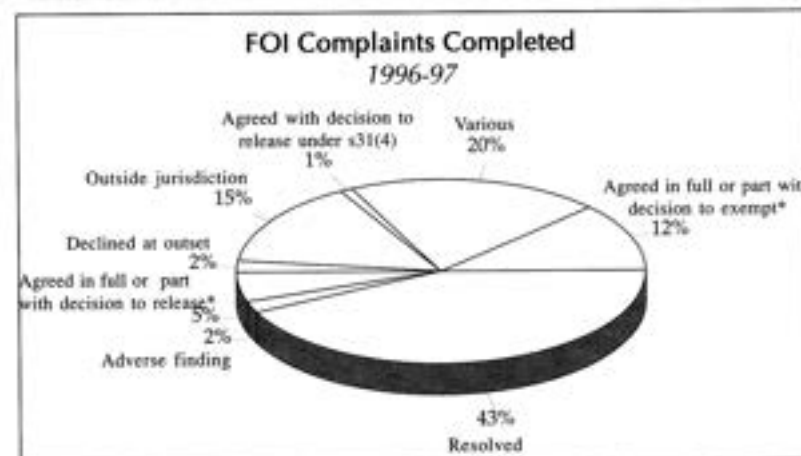
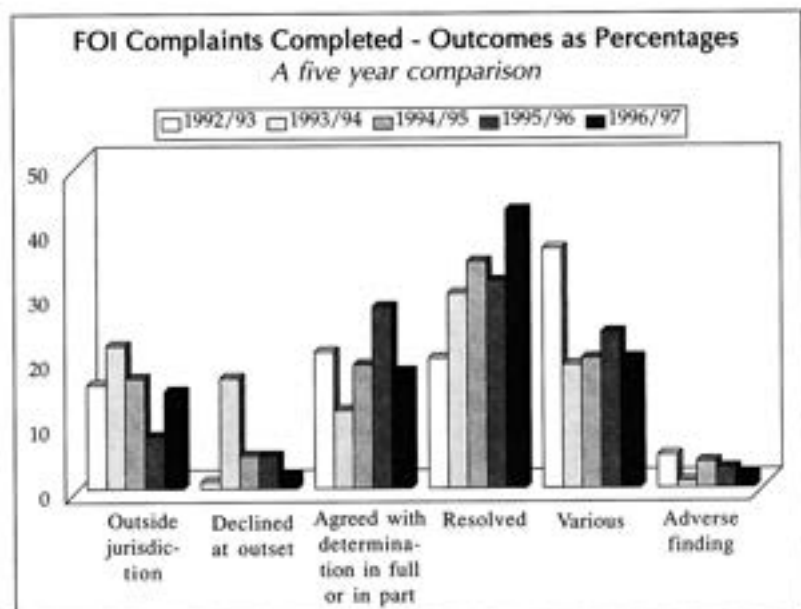
Note: Twenty of the above complaints were determined after analysis and in some cases inquiries, to be complaints which were outside our jurisdiction (primarily, for example, where the applicant had not yet sought an internal review).

Resolved Complaints as a Percentage of All Completed Matters 1995-96 & 1996-97

	95-96	96-97
All documents released	10%	16%
Some or most documents released	7%	16%
Resolved for other reasons	15%	11%
Total resolved	32%	43%

FOI Complaints Received and Determined A five year comparison





*Note: 'Agreed in full or part with decision' means we agreed entirely with an agency decision to exempt or release (see 1st para on this page for explanation) documents, or that the primary outcome of the complaint in our view was our partial agreement with an agency decision to exempt or release documents eg our view may have been that some but not all of the documents claimed as exempt were in fact exempt.

Where we agreed with agency decisions

We receive complaints, not only from FOI applicants about agency decisions to **refuse** access to documents, but also from third parties who object to agency decisions to **release** documents to FOI applicants because they consider such release would be an unreasonable disclosure of their personal or business affairs. Where we agree with agency decisions, therefore, our agreement can be either in relation to a decision to release documents or to a decisions to refuse access. There was a significant drop from 1995-96 in matters where we agreed either in full or in part with agency decisions to release documents or to refuse access. The drop in the number of matters where we agreed with decisions to release is probably merely a reflection of the dip in the number of complaints by third parties which we completed this year. There was a fall in the number of matters where we agreed **in part** with decisions to exempt which may be explained by a small rise in the number of complaints where we agreed **in full** with decisions to exempt.

THE 'VARIOUS' CATEGORY

The 'various' category in the pie chart of FOI complaints below accounted for 20% of completed matters, down slightly on the average for the last five years of 24%. These were chiefly complaints which were finalised on the basis of withdrawal of complaints by the complainants, explanations and advice regarding FOI procedures being given by this office to complainants, lack of evidence or because we did not consider there was sufficient justification in terms of the public interest and/or the possibility of useful outcomes, to warrant further action such as formal investigation.

ACTION ON DELAYS

The number of complaints completed during the year again increased over the number completed in the previous year. We also improved the average time taken to complete files by nearly seven weeks over the previous year, averaging 27 weeks. Last year we set ourselves the goal of having no complaints older than one year by 30 June this year. We fell short of the mark by 14 complaints, (21.5% of complaints carried forward into 1997-98). We anticipate, given the number of old files to be completed this year, that the average completion time will increase by four weeks on a one-off basis in 1997-98. Setting the one year goal for the following year will then be realistic.

Issues

- Open Government
- Confidentiality and Exempt Matter
- The Big Picture and FOI
- Cabinet Certificates
- Interpretation of "Business Affairs" in Clause 7
- FOI Policies and Guidelines (2nd Edition)
- Freedom of Information Applications to Our Office

OPEN GOVERNMENT

APPROACH

Agencies should adopt an active five-pronged approach to the disclosure of information, involving:

- (1) **pro-active disclosure** (voluntary publication of useful information);
- (2) **informal disclosure** (automatic release on request);
- (3) **formal disclosure** (presumption for release on application under the *FOI Act*);
- (4) **FOI reporting** (summaries of affairs, statements of affairs and annual reporting); and
- (5) **amendment of records.**

PRO-ACTIVE DISCLOSURE

As stated at section 5(4) of the *FOI Act*, the Act "... is not intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required or under any other Act or law".

Agencies should review the information they make available to assist the public to determine whether it is comprehensive, accurate and up-to-date.

The *FOI Act* sets out a formal right and procedure for people to obtain access to information. However, it is not a code and in no way limits agencies from voluntarily disclosing useful information about their policies, procedures, decisions and actions.

INFORMAL DISCLOSURE

Whenever possible, agencies should routinely and automatically disclose information on request. To this end agencies should consider:

- identifying any documents which they are required by law to make available for inspection and purchase, either under the *FOI Act* or under any other legislation which applies to the agency (eg. section 11 of the *Local Government Act* in relation to councils); and
- classifying their documents and identifying those that can be released:
 - informally when a request is made for these documents (if an FOI application is made for these documents the agency should refund the FOI fee);
 - or

- if appropriate, under the *FOI Act* (in the case of most agencies this should only consist of a relatively limited number of documents); and/or
- identifying categories of documents commonly requested under FOI and determining whether it is really necessary to deal with such requests formally under the Act.

This process should be undertaken in conjunction with the preparation of an agency's statement of affairs and summary of affairs.

FORMAL DISCLOSURE

Since the introduction of the *FOI Act* in July 1989, we have focused on complaints about determinations by agencies under the Act. These complaints mostly relate to agencies refusing access to documents, to processing irregularities such as excessive fees, or processing delays, or to agencies refusing to amend documents that the applicant claims are wrong or out of date.

We are of the view that the spirit of the legislation encourages the disclosure of as much information and as many documents as possible. This means that agencies should exempt only the minimal amount of documentation necessary for the effective functioning of government.

FOI REPORTING

FOI annual reports

It is important for the users of FOI that agencies properly report on their implementation of the *FOI Act* both in terms of:

- statistics setting out the numbers of applications received and how they were dealt with; and
- an assessment of the impact of FOI on the agency.

The annual reporting requirements in the *FOI Act* help ensure agencies are accountable for their actions and decisions. The FOI information required to be included in agency annual reports is necessary for any overall assessment to be made about:

- the use made by the public of their rights under the *FOI Act*;
- whether the agencies are complying with the spirit of the legislation; and

- the impact of the legislation on individual agencies and the public sector as a whole.

FOI summaries of affairs

It is also important for the success of FOI that agencies prepare and publish summaries of affairs that fully comply with the *FOI Act* and its regulations.

Summaries of affairs:

- force agencies to identify all policy documents which influence any of the agencies' work which deals, in any way, with the public;
- allow members of the public to access a wide range of government documents without the need to make a formal application - all policy documents listed in an agency's summary of affairs are required to be available for inspection and purchase by members of the public, but subject to the rare limitation provided in section 14(4) of the Act;
- assist members of the public and local interest groups to obtain information about the policies, procedures and practices of an agency, and assist agency staff seeking precedent documents when drafting or updating policy documents; and
- protect members of the public from prejudice arising out of any contravention of the provisions of an agency's policy document, which has either not been identified as a policy document, or has been so identified but not made available for inspection or purchase. (For this to apply, however, the person must be able to show that they were not aware of the provisions of the document and that they could lawfully have avoided the prejudice had they been so aware (section 15(3)).

In relation to this last point, in effect section 15(3) allows a person to resist prejudicial action by an agency on the basis of any alleged contravention of the provisions of a policy document.

Clearly the mere publication of summaries of affairs in government gazettes is not likely to lead to the achievement of all the purposes listed above. To make the information more easily accessible to members of the public, agencies should consider such options as:

- making copies of their summaries of affairs or brochures containing that information, available to the public free of charge at their offices;
- annexing the list of policy documents in their summaries of affairs to their management/corporate plans;
- including the information in their web site on the internet; and/or
- particularly in relation to local councils, publishing the information in a local newspaper.

AMENDMENT OF RECORDS

Our recent audit of compliance with annual reporting requirements found that very few people use the amendment of records provisions of the *FOI Act*. Presumably this is because members of the public are unaware of their rights to seek amendment of records held by agencies relating to their personal affairs.

Where an agency becomes aware that a member of the public objects to information on documents that concerns his or her personal affairs (on the basis that the information is incomplete, incorrect, out of date or misleading), the agency should ensure that the member of the public is informed of his or her right to apply for the amendment of those records.

CONFIDENTIALITY AND EXEMPT MATTER

At the conclusion of an investigation (which is discussed later in this chapter) into FOI determinations by the Central Sydney Area Health Service (CSAHS), we made two recommendations which have wide repercussions in two different areas.

The Ombudsman is committed to the principles of Freedom of Information and open government. While we acknowledge some degree of confidentiality is needed in government administration and private business enterprise, in our view, public authorities that are agencies for the purposes of the *FOI Act* should not enter into confidentiality agreements contrary to the letter and spirit of the *FOI Act*. In our final report on the investigation of the CSAHS, and in a subsequent report to Parliament on that matter, we recommend the Premier and the Minister for Local Government prepare circulars informing agencies that it is unacceptable to enter into confidentiality agreements that are contrary to the letter and spirit of the *FOI Act*. By entering into rigid and broad confidentiality agreements, public authorities can effectively predetermine that documents which are subject to the *FOI Act* will be exempt. It is our long held view that any attempt, other than in a small minority of cases, to predetermine exemption of documents that may be the subject of an FOI application may breach the letter, if not the spirit, of the *FOI Act* as well as being contrary to the public interest.

The second recommendation we made is designed to overcome a problem for us when we write reports about our FOI investigations. Under section 52(4) of the *FOI Act*, we cannot disclose information from documents an agency has claimed are exempt. In investigating the CSAHS, we obtained legal advice from the Crown Solicitor to determine whether section 52(4) meant we could not disclose exempt material to the Minister in order to consult with him under section 25 of the *Ombudsman*

Act about the investigation. We also asked the Crown Solicitor if section 52(4) allowed us to include any exempt material in a report to Parliament.

Unfortunately, the advice we received from the Crown Solicitor placed us in a difficult position. The advice was that we could not release any exempt matter to the Minister or to Parliament. This proved to be a real problem in consulting with the Minister about the CSAHS investigation as it meant we could not release to the Minister any documents held to be exempt by the CSAHS whether or not we believed the basis for exemption were lawful or reasonable. However, at our suggestion, the Minister was able to obtain a copy of the exempt documents, including our report on the investigation, from the CSAHS.

Similarly, should it be decided to make a report to Parliament about the CSAHS, we will not be able to release to Parliament material claimed as exempt by the CSAHS. As there has been no action on the recommendations in our CSAHS report, it may be necessary to make a report to Parliament recommending that the *FOI Act* be amended to enable the Ombudsman:

- to release exempt matter to a responsible Minister for the purpose of a consultation about an investigation; and
- to release exempt matter in a report to Parliament, where we deem this to be in the public interest.

THE BIG PICTURE AND FOI

In the complaints received over the last year we have noticed a move away from the more individual based FOI applications to ones being made for the purposes of pursuing social, political or environmental issues, in pursuit of commercial disputes or for the purposes of seeing whether some form of civil litigation should be pursued. While we are still receiving some complaints about individual based issues there has been a definite trend towards complaints that focus on wider issues.

Some of the more important areas in which there has been a noticeable increase in the use of FOI include the following.

USE FOR LITIGATION AND DISCOVERY

FOI is proving to be increasingly attractive to lawyers, individuals and groups who are in the process of, or are thinking about, embarking on litigation. FOI is, in some ways, a better option than using formal discovery proceedings through the courts. For example, the restrictions on the use of documents obtained through discovery makes the FOI option more feasible. Documents obtained in discovery proceedings can only be used in the court case in question. However, if they are obtained

through FOI, there is no such restriction on their use. FOI is also being used to obtain information to see if it is worthwhile commencing litigation. This is in preference to actually commencing legal proceedings, which is expensive and very involved when compared to FOI applications. Also, while courts may place restrictions on how documents can be read or copied in discovery, such restrictions do not apply to FOI applications, where the applicant is basically allowed access to the material in any form he or she likes.

FOR COMMERCIAL DISPUTES

Private companies and individuals who are involved in commercial disputes with other private institutions are using FOI to obtain relevant documents held by a public authority. As is detailed in the discovery section above, private corporations may lodge an FOI application with a public authority for documents that relate to a private commercial dispute in order to assist in determining whether legal action can be brought against another private organisation.

USE BY THE MEDIA

The media appears to be more and more aware of the advantages of using FOI. While FOI is not really an option for journalists who need documents immediately to write an article for an early deadline, it is certainly an attractive avenue for the investigative journalist pursuing information for a future article or series of articles. Also, as journalists are becoming increasingly aware, the refusal of public authorities to provide documents under FOI can be, in itself, a story or area of interest as it indicates a desire to conceal, or a reluctance to disclose, information. Such concealment by a public authority is quite often inappropriate as far as the provisions of the *FOI Act* are concerned.

USE BY ENVIRONMENTAL GROUPS

With increasing public awareness of environmental concerns and government attempts to ensure protection of the environment, groups and individuals who have an interest in protecting the environment are using FOI more and more. One prominent example receiving extensive media coverage has been applications by groups to ensure the Sydney Olympic Games proceed along strict environmental guidelines. As a general proposition, the protection of the environment is certainly in the public interest. Complaints about documents containing information disclosing an adverse effect on the environment, therefore, warrant particular attention. In our view, again as a general proposition, such documents should be revealed, unless there is very good reason not to.

USE TO HIGHLIGHT WRONGDOING AND FLAWED ACTION BY ORGANISATIONS

The *FOI Act* is increasingly being used to show and expose action and conduct by public sector organisations that has been contrary to law, unjust and contrary to the public interest. Such wrong conduct and action can be that of a public authority or a private organisation. The *FOI Act*, with its emphasis on open government and the public interest, is certainly an appropriate mechanism to ensure that wrongdoing is not concealed.

CABINET CERTIFICATES

In dealing with complaints about the determinations of agencies under the *FOI Act*, we sometimes deal with cases involving documents prepared for or presented to cabinet. Clause 1 of schedule 1 to the *FOI Act* allows agencies to exempt documents that have been prepared or presented to cabinet, or contain information concerning a decision of cabinet. However, under this clause, an agency cannot exempt cabinet documents that contain purely factual or statistical information or if the document is older than 10 years, regardless of its content.

Section 22 of the *Ombudsman Act* allows for the Director General of the Cabinet Office to issue a certificate advising that a document sought under the *FOI Act* is a cabinet document. Such a certificate can apply to any agency. Under section 22 of the *Ombudsman Act*, as far as our external review role under the *FOI Act* is concerned, if the Director General issues such a certificate it is conclusive proof the document is exempt.

In relation to the complaints we dealt with during the reporting year of 1996-97, three certificates were issued by the Director General of the Cabinet Office certifying that documents claimed as exempt by agencies were in fact Cabinet documents. These three certificates were issued in relation to complaints about refusals to release documents by the National Parks and Wildlife Service, Premier's Department and Department of Transport.

The issuing of three certificates during the reporting period of 1996-97 contrasts with the provision of one certificate for the previous reporting period of 1995-96.

In the first two months of 1997-98, one certificate has already been issued for documents held by the Department of School Education.

INTERPRETATION OF WHAT IS MEANT BY 'BUSINESS AFFAIRS' IN CLAUSE 7

Clause 7 in schedule 1 of the *FOI Act* allows agencies to claim documents as exempt if they contain information about a person's or company's trade secrets or commercial and business affairs. For the exemption to apply in relation to commercial and business affairs, the release of the documents concerned must destroy or diminish the commercial value of the information or have an unreasonable adverse effect on the business affairs of the person or company concerned. The mere disclosure of a person's or company's trade secrets can also mean that a document can be exempt. The exemption available under clause 7 can also apply to the business affairs of government agencies, although it would quite likely only apply in this situation if a government agency is involved in commercial competition with the private sector.

Consultation provisions, an integral part of the *FOI Act*, mean an agency cannot actually release documents containing trade secrets, commercial or business information about another person or company without consulting with them.

The definition of what is meant by a trade secret in legal and commercial arenas is quite specific. However, the interpretation of what constitutes somebody's business affairs can be very wide and we have seen this in agency's determinations. While consideration of the principles of natural justice may mean, where agencies are considering releasing documents relating to another person's or company's affairs, they should consult about the document with the person or company concerned, we do not believe that a wide and all encompassing interpretation of what constitutes business affairs should be adopted in every case by agencies. In our view the principles of open government and Freedom of Information should be equally applied to exemption under clause 7 of schedule 1 and the manner in which agencies consult under section 32 of the *FOI Act*. A more narrow interpretation will, in our view, assist the purposes of the Act in encouraging the disclosure of as much information as quickly as possible and at the lowest reasonable cost.

We are concerned that if the term 'business affairs' is given a particularly wide definition, agencies would exempt a wider range of information held by government than intended under the spirit of the *FOI Act*. The objects section of the Act clearly sets out the intention of the Parliament to promote open government and the principles of participatory democracy.

FOI POLICIES AND GUIDELINES - 2ND EDITION

The *Ombudsman's FOI Policies and Guidelines* was first published in December 1994. Since then more than 400 copies have been sold, mainly to state government departments, local councils, universities, libraries and community or public interest groups.

The guidelines have recently been revised in the light of changes to relevant legislation (for example in relation to legal professional privilege and section 52A of the *Freedom of Information Act*). They have also been expanded, particularly in relation to:

- the approach that should be adopted by agencies to encourage open government;

- negotiations with applicants;
- independence of internal reviews;
- involvement of ministers;
- public interest considerations;
- access to complaints by third parties (partially in relation to child protection and sexual harassment documents);
- work performance and selection records;
- the personal affairs exemption (clause 6); and
- the confidential material exemption (clause 13).

FREEDOM OF INFORMATION APPLICATIONS TO OUR OFFICE

See appendix 10 for full details of applications made to our office.

We have noticed a move away from the more individual based FOI applications to ones being made for the purposes of pursuing social, political or environmental issues. The legislation is increasingly being used to expose illegal or unjust conduct by public sector organisations. The *FOI Act*, with its emphasis on open government and the public interest, is certainly an appropriate mechanism to ensure that wrongdoing is not concealed.



- Prince Alfred Hospital
- Environment and Public Interest
- Confidentiality Undertakings, Procedural Fairness and the Public Interest
- A Thriller in Manila
- Access to the Naked Truth and the Bare Facts
- Lord Howe Island - Paradise in the Pacific or Island of Discontent
- Snapshots of some Section 52A Results
- Simple Solutions

Case notes

PRINCE ALFRED PRIVATE HOSPITAL - NOTHING BUT A DREAM?

Perhaps the most important complaint we dealt with in the last year may have to be the subject of a special report to Parliament. It concerned the proposed private hospital in the grounds of the Prince Alfred Hospital at Camperdown.

In 1996 we received a complaint from a medical specialist who had applied to the Central Sydney Area Health Service (CSAHS) for all documents relating to a proposal to build a private hospital at Camperdown on land owned by the CSAHS. The CSAHS refused to provide him with any documents, claiming they were all exempt under clauses 4(1)(d) and 15 of schedule 1 in the *FOI Act*. It advised the specialist that a confidentiality clause in a contract signed by the CSAHS prevented the disclosure of any documents about the proposed private hospital.

We subsequently made initial inquiries with senior management at the CSAHS. We were informed the doctor's FOI applications were for documents concerning a proposal by a private company, Macquarie Health Corporation Pty Ltd, to build a private hospital, hotel, medical centre and car park on land to be made available by the CSAHS. We were further told a contract for the proposal had been signed in September 1989, granting a lease to Macquarie Health Corporation for 99 years in order to operate the hospital and other facilities. The contract in question was called a '*Heads of Agreement*.'

We decided to commence a formal investigation of the matter, including the manner in which the CSAHS handled the doctor's FOI application. In writing to the CSAHS we also requested all the documents held about the proposed private hospital, in addition to information setting out why construction of the private hospital had not commenced in the almost seven years since the Heads of Agreement had been signed in 1989.

CSAHS provided us with all the documents relating to the private hospital, amounting to 41 files and containing several thousand pages. This material made very interesting reading, especially in attempting to understand

why construction of the private hospital had never commenced. The files contained a myriad of different types and classes of documents, ranging from legal, professional and technical advice to internal memoranda, general correspondence, costings, invoices and contracts.

In our final report on our investigation of the doctor's complaint, we recommended that it was in the public interest that all documents requested by the doctor in his FOI applications be released to him. We made such a recommendation under section 52(6)(a) of the *FOI Act*, which allows us to recommend release of documents in the public interest, even if the documents are exempt (which in this case was arguable in relation to most documents). We made a recommendation that all documents be released in the public interest as the failure to construct The Prince Alfred Private Hospital was an unfortunate episode that had adversely affected the interests of the people of NSW and it was therefore in the public interest that the doctor, as the FOI applicant, and the public in general, should be informed about the whole affair. We also made this recommendation as we concluded that certain actions or inaction of the CSAHS had contributed to the failure of Macquarie Health Corporation to construct the private hospital. We also found that the CSAHS had not properly determined the doctor's FOI applications.

In our final report we found that the Heads of Agreement signed between the CSAHS and Macquarie in September 1989 was a fundamentally flawed document as it did not compel Macquarie Health Corporation to build the private hospital by any particular date, nor did it properly enable the CSAHS to terminate the agreement should Macquarie not have built the hospital within any specified period. We also concluded that the confidentiality provision in the Heads of Agreement could be seen to breach the spirit and intent of the *FOI Act*. We therefore made a recommendation that agencies subject to the *FOI Act* not enter into confidentiality agreements that are contrary to the spirit and intent of that Act. For further commentary on this issue see the *Confidentiality and exempt matter* section in the issues of FOI chapter.

Despite the recommendation in our final report that all documents be released to the FOI applicant, the CSAHS advised they did not intend to release any documents created after the Heads of Agreement was signed in September 1989, on the basis of the confidentiality clause in the Heads of Agreement. We believe such action by CSAHS to be inadequate compliance with our recommendations and we are therefore contemplating the option of making a special report to Parliament about this issue.

In our view, the refusal of the CSAHS to release all the documents to the FOI applicant does not uphold the spirit of open government nor does it promote the intent of the *FOI Act* itself. More importantly perhaps, the refusal of the CSAHS to release all the documents about the hospital is very much contrary to one of the main aims of the *FOI Act* - being to expose, and perhaps prevent, actions and outcomes that are contrary to the public interest. The extreme delay in the development of the proposed Royal Prince Alfred Private Hospital is certainly an outcome that is contrary to the public interest. In our view, the refusal of the CSAHS to comply with our recommendations reflects adversely upon the conduct and actions of the CSAHS.

ENVIRONMENT AND THE PUBLIC INTEREST

An environmental group established to prevent further degradation of coastal waterways, lakes and estuaries applied to the Lake Illawarra Authority (LIA) for numerous documents dating back several years. Some of the documents related to proposals to carry out sand mining and dredging in Lake Illawarra. In making their FOI applications, the group had requested a 50% reduction in fees and processing charges as they felt their FOI application was being made in the public interest. In determining the FOI applications, the LIA had asked the group for two sets of advance deposits, which together amounted to several hundred dollars.

When we started our investigation of the complaint, we found the LIA had asked for the two advance deposits to be paid within two working days. Even though it did not threaten to do so, if the LIA had not received these two payments within the two working days, it was entitled, under the *FOI Act*, to refuse to continue to deal with the group's FOI application. The *FOI Act* does not contain a time frame by which an agency can require an FOI applicant to pay any further processing fees or charges.

In our final report on the investigation of this complaint, we found that the use by the LIA of a two day period for payment of an advance deposit to complete

the processing of the FOI application was unreasonable. We observed that the use of such a short period to require payment of an advance deposit could certainly be used by an unscrupulous agency or public official to deter an FOI applicant from proceeding with their application. Such an approach would be contrary to the spirit of open government and the principles of access to information at the most reasonable cost. Even though the group had paid each of the advance deposits within the required two day periods, they had complained to us that the short time frame had caused them inconvenience.

We also found in our final report that the LIA had not properly considered the group's request for a 50% reduction in processing fees and charges. One of the reasons advanced by the group for this reduction was based on environmental concerns. We found that the LIA had not properly documented the reasons for its refusal to reject the group's request for the 50% reduction.

We therefore recommended that the LIA refund to the group half of the advance deposit it had paid on the basis that the FOI application had been made in the public interest. In this case, the discount amounted to several hundred dollars.

This case represents a very important issue as far as we are concerned, in that documents and information held by government should be available under the provisions of the *FOI Act* at the lowest reasonable cost. We are also particularly concerned by apparent attempts by some agencies to use prohibitive costs and charges in dealing with FOI applications as a means of impeding or restricting the public access to documents and information.

CONFIDENTIALITY UNDERTAKINGS, PROCEDURAL FAIRNESS AND THE PUBLIC INTEREST

A former employee of Royal North Shore hospital made a number of FOI applications to the hospital. Each application was framed in broad terms, requesting copies of any communications passing between specified hospital employees which mentioned both the applicant and specified ex-patients of the applicant.

The applicant brought each of the applications to us for external review. The hospital, which provided lengthy responses to our written inquiries, had identified only a small number of documents as covered by the three applications and took a firm view on their exempt status.

The central documents of those claimed as exempt were statements by former work colleagues about the applicant. The statements had been sought by the leader of the section in which the applicant had worked, to provide evidence of an alleged pattern of unprofessional conduct. The statements were intended to be used to aid

Handling Complaints about FOI

consideration of what further action should be taken by the Area Health Service (AHS) in relation to that conduct. The hospital had refused access to each of the documents under clause 13(a) of schedule 1 of the *FOI Act*, claiming disclosure of the documents in each case would found an action for breach of confidence.

Our investigation found the leader of the section had given broad undertakings of full confidentiality to the authors of the statements. However, the authors gave evidence to us which led us to believe the statements may never have been written if it had been fully explained to them how the statements would be used. In fact the statements were immediately sent beyond the hospital to the chief executive officer of the AHS and were eventually sent by him to the Health Care Complaints Commission (HCCC).

Among other things our investigation looked at the appropriateness of the confidentiality undertakings which were given, and made a close study of the various tests which are used by the courts and relevant tribunals in deciding whether a breach of confidence has occurred. As to the latter, we concluded the five tests laid out by the Queensland Information Commissioner in a number of his decisions most accurately reflected the developed common law. Each of those tests was then applied to the facts we had collected in relation to the confidential undertakings made to the authors of the statements.

We concluded that the undertakings which were given were considerably more far-reaching than the section leader had authority to give, and it was likely the hospital had already breached the undertakings by sending the statements beyond the hospital to the AHS, from where they had been sent to the HCCC. If this was the case, however, it did not automatically mean further breaches were permitted, as what dissemination there had been was still restricted to a very limited group. We also found, on application of the five tests, the statements could legitimately be claimed as exempt under clause 13(a) because the undertakings, while inappropriate, had still been given. An obligation had thereby been laid upon the hospital to keep to those undertakings.

The Ombudsman is able to recommend the public release of a document if it would, on balance, be in the public interest even though access has been duly refused because it is an exempt document. Consequently we believed it was important to examine whether there was a public interest in the documents' disclosure and, if so, whether any such public interest was sufficient to override the application of clause 13(a). We considered there was enough weight of legal precedent to accept that, if there was a sufficient public interest, it could justify a breach of confidence.

After a close examination of the pros and cons, the investigation concluded there were overriding public interest concerns which in our view required the release of the statements. In brief these were that there was a strong public interest:

- in the applicant being afforded, as a matter of procedural fairness, access to the statements which had been made about him (there is a "right to know" established simply by the existence of the Act);
- for it to be widely known within the hospital and beyond that:
 - assurances of confidentiality given by an organisation are not guarantees of absolute confidentiality; and
 - the confidentiality of information in the future may be subject to decisions by FOI decision makers, or other officers under pressure of any number of considerations other than FOI applications, of which the promiser of confidentiality could not be aware;
- in the cessation of practices where all-embracing assurances of confidentiality are given;
- in the disclosure of the statements because such disclosure may help to bring about both a more general awareness of the limits to confidentiality undertakings and the halting of all-embracing undertakings being given.

In summary we concluded that the public interest in the applicant having access to the statements, which all contained matter concerning himself, and the public interest in the applicant receiving procedural fairness by such access, were good reasons for the agency to breach the confidentiality promised to the authors of the statements, as part of a conciliation under s.13A of the *Ombudsman Act*. There was further public interest in the questionable status of the confidentiality undertakings becoming public, and in the restrictions which the *FOI Act* places on such undertakings coming to public attention. As these would be likely outcomes of disclosure, we found there was a sufficient public interest in the disclosure of the documents to outweigh the public interest in exemption as argued by the hospital. In our view, a person making such a disclosure would be able to successfully employ a defence based upon the public interest, to any action for breach of confidence.

The investigation also looked at a number of procedural questions and a preliminary statement of evidence and provisional conclusions was issued, for comment by the AHS. As our preliminary recommendations were all accepted by the AHS, it was decided to discontinue the investigation.

The AHS undertook to conciliate the matter and make a new determination, as the result of a written undertaking, to release the documents and to take the other steps suggested in the draft recommendations.

A THRILLER IN MANILLA

During the year we received a complaint from a councillor on Manilla Council that she had been denied access to a tape recording of a council meeting she had attended. Under the *FOI Act*, which she had used to apply for the tape, a document can include a tape recording. The council claimed the meeting itself had been closed to the public under section 10(2) of the *Local Government Act*. This section allows councils to close their meetings to the public in specified but limited cases.

We wrote to the council requesting the tape and the council's FOI file to allow us to further assess the complaint. We eventually received a reply on behalf of the council from a private solicitor. He advised us that council refused to provide the tape based upon "public interest immunity" as he felt it was not in the public interest that council send the tape to us. The role and function of the Ombudsman, and the Ombudsman's powers to compel agencies to provide information and documents were pointed out to him in a telephone conversation, after which the tape was immediately sent to us.

From our examination of council's files we not only found that council had inappropriately refused the councillor access to the tape, but that it had adopted policies that were contrary to the *Local Government Act*.

The council claimed the councillor was refused access to the tape of the meeting as the recording concerned the "inner workings" of council and that release of the tape may leave the council open to criticism. In our view, such reasons in fact enhanced the argument that it was in the public interest for the tape to be released.

It further appeared the council was closing its meetings to the public for reasons that were not consistent with section 10(2) of the *Local Government Act*. Moreover, it appeared the meeting attended by the councillor (the tape for which she had requested under FOI) should not have been closed to the public. Additionally, council seemed to have a document disposal and destruction policy that was in breach of *The General Records Disposal Schedule for Local Government*, which councils must comply with.

We subsequently wrote back to the council advising it was our preliminary view that the tape of the council meeting should not have been exempt and should therefore be released. We also pointed out that council's policies concerning the closing of meetings and its destruction of documents appeared to be contrary to the law.

The council soon advised us it would release the tape of the closed council meeting to the councillor who had sought access to it. The council also told us it had changed its policies about closing its meetings to the public and the disposal of its documents so that they were totally consistent with the *Local Government Act*. The complaint was therefore resolved and we thanked the council for its cooperative approach in the latter stages of our inquiries.

ACCESS TO THE NAKED TRUTH AND THE BARE FACTS

A group opposed to the introduction of legalised nude bathing at Reef Beach in Sydney applied to the National Parks and Wildlife Service (NPWS) for various documents about proposals to legalise nude bathing there. In its determinations the NPWS exempted all the documents sought on the basis of clause 1 of schedule 1 to the *FOI Act*, claiming they had been prepared for submission to cabinet.

In dealing with the complaint from the group, we wrote to the NPWS requesting that it obtain a certificate from the Director General of the Cabinet Office verifying that the documents in question had in fact been prepared for cabinet. Under the *Ombudsman Act*, such a certificate is absolute proof that a document is in fact a cabinet document and is therefore exempt.

While the Cabinet Office issued a certificate for some of the documents claimed by the NPWS, it would not support the view that all the documents had in fact been prepared for submission to cabinet. Of these remaining documents, the NPWS wrote to us advising that while they were prepared to release some to the group, they were claiming that other material was now exempt under other clauses of schedule 1. After examining this material, we agreed that some of these documents were appropriately exempt under other clauses in the *FOI Act*, such as legal advice that was privileged, but we felt that quite a lot of documents should be released to the group, particularly internal policy and working documents of the NPWS. We wrote to the NPWS requesting it review its determination under section 52A(1)(a) of the *FOI Act*. The NPWS accepted this suggestion and most documents were released to the group. In the end, all parties were satisfied.

LORD HOWE ISLAND - PARADISE IN THE PACIFIC OR ISLAND OF DISCONTENT

During the 1995-96 year, we began receiving numerous FOI complaints about the Lord Howe Island Board.

As an island with a small population and no agricultural or industrial capacity of its own, Lord Howe Island is dependent on shipping delivery of materials and foodstuffs from the Australian mainland. The winning of a shipping contract to deliver produce, fuel and other materials to the island is a lucrative prospect. During the year we received complaints from one of the parties who had not been successful in gaining a tender to deliver materials to the island. The party concerned had applied under the *FOI Act* for documents relating to the board's decisions to award the shipping contract to another tenderer alleging the board had engaged in improper conduct. The board refused the FOI applicant access to numerous documents, claiming that to release the documents would be an unreasonable disclosure of the successful shipping tenderer's business affairs.

In reviewing the complaint, we did not agree with the board's determination. We did not believe all the documents sought by the FOI applicant would be an unreasonable disclosure of the business affairs of the successful tenderer. In fact, we considered it was in the public interest that certain documents should be released, as disclosure would help interested members of the public to learn about the board's tendering procedures. Reasonably open tendering procedures also help to guard against the incursion of corruption and improper practices. We requested the board reconsider its determinations under section 52A of the *FOI Act* and release certain of the documents. The board agreed with our views and subsequently released the documents.

In a separate matter, we received a complaint from a former resident of the island who was engaged in the cultivation of kentia palm seeds on the island. The resident was involved in direct competition for the cultivation of kentia palm seeds with the board itself. She claimed the board's unfair use of restrictive trade practices in the cultivation and export of the seeds had eventually ruined her business and forced her to return to the Australian mainland.

In determining her FOI applications, the board exempted certain documents under clause 9 of schedule 1, claiming that material formed part of the board's decision making processes, as well as legal advice that the board claimed was subject to legal professional privilege. Our complainant also alleged that further documents existed concerning an attempt to introduce a project known as the '*kentia palm incentive scheme*'

While we agreed the legal advice concerning the scheme was privileged, we did not believe the internal decision making documents of the board, which also related to the palm incentive scheme, should be exempt. We came to this conclusion as the documents concerned a decision about the scheme that had already been made and we therefore felt there was no good reason that the documents should continue to be exempt. We wrote to the board suggesting, under section 52A of the Act, they release the documents, and the board did. From our inquiries about her complaint, we saw no evidence to indicate that the board had any other documents about the kentia palm incentive scheme.

During the year we also received complaints from several residents of the island, including the two disaffected FOI applicants mentioned above, about a decision of the board to allow "*interested members of the public to inspect*" documents relating to written inquiries we had made with the board. The people who wrote to us were somewhat aggrieved that the board had opened its files for public inspection on what were essentially private issues. The complaints about this practice also raised the possibility that such an open access policy could be somewhat hypocritical given that the board had previously refused people access to its own documents.

In writing to the board we noted that the issues raised by the complaints could be interpreted as an allegation that certain individuals' privacy had been infringed. We therefore referred the allegation to the Privacy Committee, whose role is to deal with such allegations.

SNAPSHOTS OF SOME SECTION 52A RESULTS

We have included here some brief descriptions of successful resolutions of complaints where we used section 52A of the *FOI Act*, a provision described earlier in this chapter¹¹

CASE 1

Access was refused under clause 6 of schedule 1 to the Act to third party statements regarding the FOI applicant which had been collected during an investigation of the applicant by the Building Services Corporation (BSC). Following a review of the documentation we suggested release of the statements from four out of the six third parties would not be unreasonable, and that the department should review its determinations in relation to the statements of those four, but to maintain exemption in relation to the statements of the remaining two third parties. The suggestion was accepted and implemented.

CASE 2

Application was made for access to letters written by a church leader to a local council. The letters concerned a heritage order which had been placed on a church building, and contained information about alleged activities which had taken place in the church and cemetery. Access had been refused under clauses 6 and 7 of schedule 1. Following a review of the documentation it appeared the letters were not private communications but were written on behalf of the wider church in order to lobby the council, and that only two small sections of one letter were exempt under clause 7 as being information concerning professional affairs, the future supply of which could be prejudiced. A suggestion along these lines under section 52A was put to the council and adopted. The author of the letters was informed of his right to appeal to the District Court about the new determination.

CASE 3

An agency employed clause 7(1)(c) of schedule 1 to refuse access to documents in relation to a special lease over rural crown land. The holder of the lease objected to the release of the documents. Following a review of the documents it appeared to us that none were exempt and we suggested they all be released. The suggestion was accepted by the agency which made a new determination to this effect.

CASE 4

The names of two external examiners were deleted by the University of Sydney from the examiners' reports on a postgraduate thesis. Clause 13(a) of schedule 1 was employed. We suggested the names should be released, on the basis that the exemption claim was tenuous and that release may be in the public interest even if the clause did apply, because allegations of collusion and bias had been made against the examiners. The university made a new determination to release the names, subject to deferral of access so that the examiners could, if they wished, pursue their right of appeal to the District Court.

CASE 5

The National Parks and Wildlife Service claimed as exempt under clause 13 representations and submissions from members of the public and summaries of those documents in relation to assessment reports for wilderness areas. Our telephone inquiries revealed that the confidentiality claims appeared to rest on slim foundations, and on that basis we suggested the documents be released and they were.

CASE 6

Access was refused by the Department of Urban Affairs and Planning to documents relating to a proposed road through bushland. The material contained legal opinions, information concerning the personal affairs of third parties and some documents claimed as confidential under clause 13. Following a review of the documents the department adopted our suggestion that it review its determination and:

- release the documents claimed as exempt under clauses 6 and 13;
- in one case retype a letter and delete identifying information under section 25(4); and
- apply section 25(4) to the legal opinions exempted under clause 10, deleting the actual legal advice while releasing the surrounding material.

CASE 7

An FOI applicant who had supplied information about an alleged crime to the Police Service requested under the *FOI Act* that the service provide access to any analyses of that information and any record of communication between another Australian police jurisdiction and the officer to whom the applicant had sent the information. Sections of the documents were deleted under clauses 6 and 9 of schedule 1. In his complaint to us, the applicant also claimed that documents covered by his application were missing. We suggested that all exempt material - which only comprised deletions from documents - be released via a new determination. The exempt material either related directly to the applicant or was identical to information which, apparently by error, had not been deleted from the documents released to the applicant. We also requested a detailed explanation of the searches which the service had made for the missing documents. The suggestion was adopted and the explanation regarding the searches was found to be satisfactory.

CASE 8

The Health Department refused access to a report relating to the dismissal of a Board under its jurisdiction and to a review of the financial and management practices of an Area Health Service. Exemption was claimed under clause 13(b) and clause 16(a)(iii) and (iv). Following a review of the documents detailed arguments were put to the department in relation to the exemption claims, and a suggestion made under section 52A that the department review its determination and release the report.

In our preliminary view the reasoning in the determinations was faulty, and, given the content of the report and the fact that it had been written by public employees we considered arguments relating to prejudice to future supply, and the public interest in exemption, as insufficient to support the exemptions claimed. We also suggested that additional documents which were referred to in the report were covered by the terms of the FOI application, and that the full FOI process should be applied to them as an extension of the application. The department accepted both suggestions.

CASE 9

A report to Tweed Shire Council was the subject of an unsuccessful FOI application. Council refused access under clause 13(a) on the basis that it contained information supplied by a ratepayer confidentially. Our suggestion the report should be released was rejected by council. On the basis of the reasons supplied by council for that rejection, we altered our suggestion to allow the deletion of information identifying the source. Council accepted the revised suggestion and released the report with the specified deletions.

CASE 10

Fairfield Council refused access to subdivision files and a property file under clauses 9 and 10. Our suggestion under section 52A that almost all the information be released, with some deletions, was to a large extent, accepted by council. Although determinations resulting from our intervention under section 52A are not capable of review by our office, any "determinations" arising from agency decisions to alter the terms of our suggestions made under section 52A without consultation with and approval by this office, not being determinations under the Act, are subject to our jurisdiction. We suggest agencies consult with us about our suggestions if they are not acceptable.

CASE 11

The University of Newcastle refused access under clauses 9 and 13 to a written complaint of sexual harassment, the attachments to the complaint, and documents generated within the university after the complaint was lodged. The applicant was the subject of the complaint. A number of documents were released on the university's own volition, without our suggestion, during the time we were making preliminary inquiries. Our review looked at the question of whether the confidentiality of the remaining documents extended to the respondent in a sexual harassment claim, and whether natural justice was served by the respondent receiving only an inadequate summary of the complaint. It appears that confidentiality is recog-

nised universally, not only by the universities which we spoke to but in publications of, for example ODEOPE, the ADB as an essential requirement for dealing with any workplace grievances. However, this confidentiality is not intended to restrict access to, and the flow of, information to those directly involved in the grievance and its resolution. It is meant to prevent, or to reduce as far as possible, gossip and innuendo, and all discussion about the complaint within and outside the workplace except for that which is essential for the complaint to be resolved. It is not meant to prevent the respondent from being fully informed of the substance of complaints made against him/her, and by whom.

A total assurance and practice of confidentiality would make any action upon such a complaint impossible. Clearly information concerning a complaint has to have some distribution. It is a question of how much and to whom. We found that it was a common practice of university EEO units to give a copy of the written complaint of sexual harassment to the respondent. On the basis of that practice, and of the principles of natural justice, we concluded that withholding the written complaint from the respondent was not an appropriate application of the confidentiality principle. Our suggestion under section 52A, which the university adopted, was that the university determine to release the written complaint and other documents claimed as exempt, but that the release should be deferred so that the person who made the complaint of harassment could, if she so wished, pursue her appeal right to the District Court.

CASE 12

We received a complaint about the WorkCover Authority from a solicitor representing a former employee at a private abattoir. The former employee had suffered a terrible injury in an accident at the abattoir and had lost part of one of his hands. The WorkCover Authority investigated the accident and received statements from a number of staff at the abattoir. In its determinations of the solicitor's FOI applications WorkCover had released some documents but had withheld the statement of one of the directors of the abattoir. This statement, which was important to any legal action that the former employee may have wished to take about his injury, was claimed to be subject to legal professional privilege by WorkCover, as they felt it had been obtained solely for the purposes of commencing litigation.

Following our inquiries, we wrote to WorkCover saying we disagreed with their decision to exempt the statement. We did not believe the statement was privileged, as we felt it was obtained for other reasons in addition to

the possibility of litigation. We requested WorkCover consider reviewing its determinations and releasing the statement to the solicitor. Soon after, WorkCover agreed with our view and promised to change its determination and release the statement.

CASE 13

A former academic at the University of Wollongong had applied for a report to the Vice-Chancellor on the workings of a department of which the academic had previously been in charge. The department had apparently been performing poorly. The academic had left the university in less than amicable circumstances. The university had refused to provide the academic with any of the report, claiming it was all exempt under clause 13(b). In our inquiries into the complaint, we felt that not all of the report was properly exempt. We felt factual material in the report, together with the working party's views on the academic, should be released to the academic. We therefore wrote to the university requesting they review their determination under section 52A and release those parts of the report to the academic, which the university subsequently agreed to do. We did however, agree that opinions of staff and students in the report were exempt under clause 13(b), owing to confidentiality agreements given by the persons who prepared the report.

CASE 14

We received a complaint from the operator of a private bus company in a rural area who had contracted with the Department of School Education to drive children to and from a particular school. He had applied for a copy of an audit report compiled by the department into allegations that school teachers at the particular school had been working illegally for other bus companies in driving children to and from school. Our complainant alleged the employment of teachers by bus companies had given them an unfair advantage over his bus run. The department, in its determinations, had exempted the whole report under clauses 16(a)(i) and (ii) of schedule 1, arguing that its release would prejudice future audit investigations that the department wished to carry out. The department also claimed the report's release would breach confidentiality undertakings that had been given to people who had provided information to the auditors. However, in reviewing the department's determinations we felt that most of the report should in fact be released, particularly those sections dealing with the department's summaries, findings and views. We agreed information relating to private individuals and bus companies, as well as some personal material concerning teachers, should not be disclosed. We therefore wrote to the department suggesting it review its determination under section 52A

of the *FOI Act* and release most of the report, which the department agreed to do. The complainant was pleased with the outcome.

CASE 15

A complaint was made to us by an ambulance officer with the Ambulance Service. The complainant had been investigated by the service following an internal dispute involving other service personnel. He had then applied under the *FOI Act* for all documents generated by the service in its investigation of him, including statements made both by service employees and private citizens. The service had exempted various documents under clause 13(b) of schedule 1, claiming the information in these documents had been obtained in confidence. In dealing with his complaint, we felt information the service had obtained from private citizens was appropriately exempt as the service had no power, for its internal personnel related investigations, to compel members of the public to provide information. We agreed disclosure of the statements of private citizens, without their consent, might mean members of the public would hesitate in giving information and cooperating with the service in any future investigations. However, we did not believe the statements obtained from service personnel, and the terms of reference of the investigation, should be exempt, as the service could compel its employees to provide statements and relevant information. We therefore wrote to the service suggesting it review its determination and release the statements of its employees, together with the terms of reference of the investigation. The service agreed with our viewpoint and released these documents.

CASE 16

A complaint was made to us by an individual representing a group calling for greater access to national parks. The group had applied under the *FOI Act* for details of properties owned by the National Parks and Wildlife Service (NPWS) that were rented to its employees under a recognised employee housing policy. The employees who were living in these properties paid rents to the NPWS that were lower than the normal market rate. They lived at the properties in order to maintain and service both the property concerned and the adjoining national park. The documents requested by the group detailed the normal market rent for the property, the discounted rent paid by the resident employee and the type of discount that was applied to the property in question. In determining the group's FOI application, the NPWS claimed that it would be an unreasonable disclosure of the employees' personal details and affairs to disclose the address and rent paid for each property. In assessing the complaint, however, we gave consideration to the findings of the NSW Court

of Appeal in the case of the *Commissioner of Police v The District Court of NSW & Perrin (1993) 31 NSWLR 606*. In that case the Court said that the normal, official duties of public sector employees do not concern the personal affairs of those employees but could be said to concern the affairs of the public sector agency that employed them. In the case in question we felt that the information that had been asked for by the group did not concern the personal affairs of the NPWS employees but more appropriately related to the affairs of the NPWS itself. We therefore felt there was no good reason to exempt the documents in question and asked the NPWS to review its determinations under section 52A. The NPWS responded quickly and agreed to release those documents. The NPWS is to be congratulated on the brisk way in which it moved to resolve this issue.

SIMPLE SOLUTIONS

We receive a significant number of complaints each year which are capable of a simple, and often rapid, solution. We find agencies are generally welcoming of our involvement. Sometimes on receiving a complaint about delay by an agency we find that the agency has not received the FOI application at all, or that it readily admits the delay and takes immediate action to redress the situation. In other matters the principal officers of agencies, upon hearing from us by telephone, and prior to us seeing or reviewing the documents subject of complaints, will simply decide to release the documents. Following are examples of complaints we were able to conclude in simple fashion.

CASE 1

A report on the dental problem of a patient, which had been created by request of the Dental Board, was considered exempt by the Dental Hospital when applied for by the patient. After we contacted the hospital by telephone and pointed to some possible shortcomings in the notice of determination the hospital contacted the board and decided the report could be released.

CASE 2

We received a complaint from a solicitor representing a family whose small dog had been quite viciously attacked in their front yard by a large dog belonging to a neighbour. Following the attack, the large dog had been taken to the pound by the council dog catcher, as he had not been registered. The owners apparently soon picked the dog up from the pound and registered him. The family's small dog was badly hurt and required veterinary attention, though he fully recovered. In order to take action for recovery of the vet's fees, the family's solicitor had attempted to obtain, under FOI, the identity of the

dog's owner, which was not known to them. The council had refused to release these details to the solicitor. After we received the complaint, we expressed to the council our preliminary view that disclosure of the dog owner's identity did not appear unreasonable. The council agreed to supply the information and the complaint was resolved.

CASE 3

A concerned resident wrote to us about Baulkham Hills Shire Council's refusal to release an engineer's geotechnical report about landslip and land instability at an important intersection. The council claimed the report was subject to legal professional privilege and exempt under clause 10 of schedule 1. We wrote to the council making preliminary inquiries about the complaint and requesting a copy of the engineer's report. The council replied that it was not only prepared to release the report to the applicant, and thereby waive privilege, but would arrange for the mayor and other senior council staff to meet with concerned residents about the problems at the intersection. Baulkham Hills Shire Council is to be congratulated on its conciliatory and open approach.

CASE 4

A complaint was made to us by a representative of a group opposed to the proposal to build the eastern distributor in Sydney's eastern suburbs. As part of its endeavours to oppose approval and construction of the roadway, the group had applied under FOI to the Rail Services Corporation (RSA) for photographs of rail cables in the Kings Cross area. The group claimed the photographs showed that the cables were rusting. Our complainant believed the RSA had not appropriately responded to their FOI application. In dealing with the complaint we met with management from the RSA (which came into being on 1 July 1996 when the former State Rail Authority was broken up into four separate organisations dealing with different areas of rail service delivery). They explained they had initially not immediately understood whether the group had actually made an application under the *FOI Act* or whether it simply had made an informal request for some photographs. Another complicating factor, they explained, was that they could not locate many of the photographs the group wanted because they believed they were held, for appropriate reasons, by a federal government authority. In the end they agreed to deal with the group's application under the provisions of the *FOI Act* and to assist the group in any way they could to obtain the photographs. The group was happy with the outcome of the complaint.

CASE 5

A complaint was made by a metropolitan Sydney councillor who was upset about a determination of the council to release documents about the complainant's personal affairs to another councillor. Allegations had been made to the council that the councillor who had complained to us had improperly used council stationery and postal services for his own political and electoral use, possibly breaching council's code of conduct. Although the amount of resources involved were not substantial, the council, following its own investigation of the matter, had referred the issue to the Independent Commission Against Corruption (ICAC) as it raised concerns of corruption. The ICAC had chosen not to take any formal action about the matter. Another councillor, and quite possibly a political foe, then applied under the *FOI Act* for access to all council documents concerning the allegations about, and investigation of, the possible improper political and electoral use of council resources. Some documents were exempted but the council also determined to release most of documents concerning the allegations and its investigation. In dealing with the complaint, we agreed with the council's determination to release the documents in question. One of the main reasons for our decision was based on the findings of the Court of Appeal in the *Commissioner of Police v The District Court & Perrin* case mentioned earlier in this chapter. In that case the court observed that one of the purposes of the *FOI Act* was to overturn the traditional anonymity that applied to public officials who were making decisions that were affecting, one way or another, the lives of individuals. The court, in considering the minister's second reading speech introducing the *FOI Act*, felt it was not the intention of the Act protect from disclosure the identity of public officials who were acting in the normal course of their duties or responsibilities. The court considered such disclosure of the identity of public officials would promote the "...principles of 'openness, accountability and responsibility'" In effect the court held that public officials, in their duties, should not be protected by the veil of anonymity and secrecy. In considering the matter, we also took into account that the documents sought in the FOI application disclosed conduct by a public official which may have been improper and not considered to be in the public interest. We therefore agreed with the council's determination that a release of the documents in question would not be an unreasonable disclosure of the councillor's personal affairs and indeed would not be contrary to the public interest.

- Introduction
- Use of FOI by the Public
- Determination of FOI Applications by NSW Agencies
- Other Applications
- Amendment of Records
- Resource Implications of the FOI Act
- Ombudsman Audits

Audit Statistics

INTRODUCTION

Some of the statistical findings of our audit of compliance by government agencies with the annual reporting requirements of the *FOI Act* have been reproduced below. While 135 agencies were the subject of the audit, the results are drawn from 115 annual reports for the year 1995-96. The remainder consisted of ministerial offices where statistics were all included in the Premier's Department's annual report, and agencies that failed to publish an annual report in 1995-96.

USE OF FOI BY THE PUBLIC

The information contained in the audited annual reports indicates that the access to information provisions of the *FOI Act* appear to be significantly under used. We estimate that most NSW agencies would have received on average less than eight FOI applications in 1995-96.

We estimate that between 10,500 and 11,000 FOI applications were made to NSW public sector agencies in 1995-96, with our best guess being approximately 10,800. Given the population of NSW, this is not as high as would have been expected. It is substantially the same as the number of applications made in that period in Victoria, which at that time had a population 26% less than NSW, and is only 20% greater than the number of applications made in Queensland, which at the that time had a population approximately 50% less than that of NSW.

More than 80,000 FOI applications were made throughout Australia in 1995-96.

DETERMINATION OF FOI APPLICATIONS BY NSW AGENCIES

In 1995-96 all requested documents were released in approximately 81% of the determinations reported in the audited annual reports, and a large majority of determinations (92.3%) resulted in the release of either all or some of the documents requested.

Only 6.7% of reported applications resulted in access being completely refused, and a further 11.6% resulted in access being refused in part. In relation to the 1209 applications refused in whole or in part, 115 applicants (9.5%) then sought an internal review by the agency concerned. Of these only 31 (27%) were reported as being successful with the original determination being varied.

COMPARISON WITH 1989-90

The percentage of full or partial refusals of access to documents which resulted in applications for internal review (as reported in the audited annual reports) decreased by 13% in the six years since 1989-90. This reflects, at least in part, what appears to be a 5% decrease in the same period in the reported numbers of full or partial refusals. It is possible that it also reflects an improvement in the standard of the reasons for refusing access to documents given by agencies who receive significant numbers of applications.

	Internal Reviews					
	Comparisons with Other Jurisdiction					
	Cth	NSW	WA	SA	TAS	VIC
Internal review applications	323	115 ⁽¹⁾	213	68	40	291
	0.82% ⁽²⁾	1.4% ⁽²⁾	2.49% ⁽²⁾	1.65% ⁽²⁾	1.47% ⁽²⁾	2.7% ⁽²⁾
Upheld/confirmed	184	70 ⁽³⁾	136	51	31	207
	57% ⁽⁴⁾	61% ⁽⁴⁾	64% ⁽⁴⁾	75% ⁽⁴⁾	77.5%	71% ⁽⁴⁾
Varied	89	31 ⁽³⁾	60	17	6	77
	27.5% ⁽⁴⁾	27% ⁽⁴⁾	28% ⁽⁴⁾	25% ⁽⁴⁾	15%	26.5% ⁽⁴⁾

Notes:

- (1) Number of reported internal reviews in audited annual reports. (2) Percentage of total FOI applications.
(3) All results may not have been reported. (4) Percentage of total internal review applications.

Reviews and Appeals
Comparisons with 1989-90

	1989-90 ⁽¹⁾		1995-96	
	No.	%	No.	%
Internal reviews	98	22.4 ⁽²⁾	115	9.5 ⁽²⁾
Upheld	65	66 ⁽³⁾	70	61 ⁽³⁾⁽⁴⁾
Varied	33	34 ⁽³⁾	31	27 ⁽³⁾⁽⁴⁾
Ombudsman reviews	6		94 ⁽⁵⁾	
District Court appeals	2		9 ⁽⁶⁾	

Notes:

- 1) Statistics from the "Freedom of Information Act 1989 Annual Report 1989-90" published by the Premier's Department in 1990
- 2) Percentages of FOI applications refused in full or refused in part.
- 3) Percentages of internal review determinations.
- 4) Not all results were included in the audited annual reports and some applications were not determined during the reporting year.
- 5) Actual number of applications for review by Ombudsman in that year.
- 6) Actual number of appeals notified to Ombudsman by District Court Registry.

COMPARISON WITH OTHER AUSTRALIAN JURISDICTIONS

Compared to other FOI jurisdictions in Australia where information is readily available, NSW appears to have a relatively low number of internal review applications compared to total FOI applications, but one of the highest levels of internal review applications compared to the number of refusals or partial refusals of access. In this regard NSW's 9.5% compared with 3.3% in Tasmania, 3.85% in the Commonwealth, 9.3% in Victoria, 13% in South Australia and 20.5% in Western Australia.

COMPLAINTS TO OMBUDSMAN

Of the 70 reported applications for internal review which were fully unsuccessful (ie. the original determination was upheld), it is probable that approximately half complained to the Ombudsman. As agencies may not be informed about complaints which the Ombudsman declined to take any action upon (for example due to lack of jurisdiction where the applicant had failed to apply for an internal review or was withdrawn), and as complaints can be made by third parties objecting to decisions to release documents, an exact figure would require an analysis of every complaint made to the Ombudsman.

The actual numbers of FOI related complaints made to the Ombudsman in each year since 1989/90 are set out in the graph below.

The results of the audit indicate that most FOI complaints made to the Ombudsman appear to relate to agencies that receive relatively few FOI applications.

Only three appeals were reported to have been made to the District Court (at least one of these reported appeals was subsequently discontinued). Notifications to the Ombudsman from the District Court Registry indicate that in fact nine appeals were lodged in that period from determinations made by all agencies in NSW.

OTHER APPLICATIONS

At least 1490 of the applications reported to have been made to NSW agencies in 1995-96 were for documents that did not exist (eg 1200 applications to the Police Service seeking the applicants' criminal records where no trace of such records could be found) or were deferred, withdrawn, transferred to another agency, or did not need to be dealt with as FOI applications for various reasons.

Only three ministerial certificates were reported to have been issued under section 59 of the FOI Act, all obtained by the Department of Public Works and Services (a ministerial certificate is taken to be conclusive evidence that documents are restricted documents, ie. Cabinet documents, Executive Council documents, or documents affecting law enforcement and public safety).

AMENDMENT OF RECORDS

Very little use was made of the amendment of records provisions of the FOI Act, with only 14 applications being made for amendment of personal records. This is presumably because people are unaware of their rights to seek amendment of records relating to their personal affairs. Such minimal use of these provisions is a matter of particular concern.

RESOURCE IMPLICATIONS OF THE FOI ACT

It appears that the FOI Act does not have significant resource implications for most public sector agencies. In this regard in 1995-96:

- 14% of the audited agencies (19) received 84% of the FOI applications reported in the 115 audited annual reports (the 20 agencies that appear to have received the most FOI applications in NSW received 65% of our estimate of the total number of applications);
- 19% of audited agencies received no FOI applications and made a nil return;
- the remaining 67% of audited agencies received an average of only 15 FOI applications each, but it is likely that most agencies in NSW would have received less than eight FOI applications; and
- most agencies would not have been required to consult with more than a total of 10 people in the course of 1995-96 prior to releasing documents.

OMBUDSMAN AUDITS

In order to improve our work as an external review agency under the *FOI Act* and to foster the spirit of open government in NSW, we maintain an active role in promoting FOI.

The *FOI Act* requires public sector agencies in NSW to regularly publish certain information about:

- (1) the affairs of the agency, including a description of the agency's structure, functions, kinds of documents held by the agency and a list of all policy documents; and
- (2) the administration of FOI by the agency, including FOI statistics, an assessment of the impact of the FOI on the agency's activities, and so on.

We have commenced a program to audit compliance by government agencies with the requirements of the *FOI Act*, including compliance with FOI reporting requirements. This audit program was foreshadowed in our 1994-95 and 1995-96 annual reports and arises out of:

- our long standing concerns about the standard of FOI reporting by agencies; and
- the Public Accounts Committee's recommendation that the Ombudsman audit FOI annual reporting by agencies (in its 1996 report entitled "*Annual Reporting in the NSW Public Sector*").

AUDIT PROGRAM

This program of FOI audits includes an assessment of compliance:

- by a sample of 135 FOI agencies with the annual reporting requirements set out in section 68 of the *FOI Act*, clause 9 of the *Freedom of Information (General) Regulation 1995* and Appendix B to the *FOI Procedure Manual* published by the Premier's Department (3rd edition) in 1994 - the subject of a special report to Parliament in July 1997;

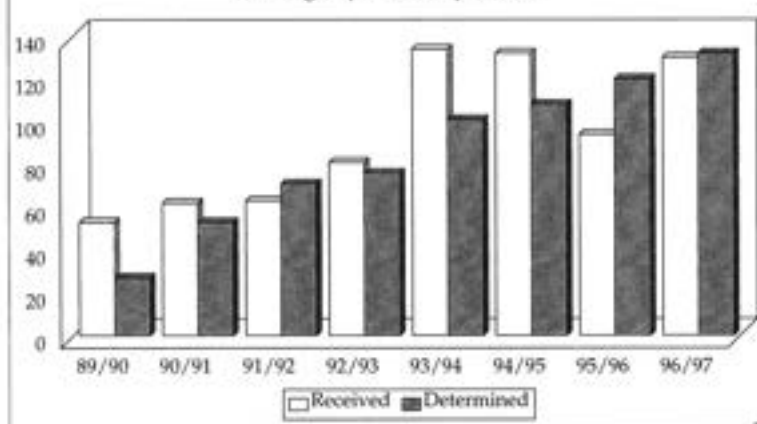
- by all local councils with the summaries of affairs requirements in section 14 of the *FOI Act*;
- by a randomly selected sample of all FOI agencies with the summary of affairs requirements set out in section 14 of the *FOI Act*;
- by a sample of FOI agencies with the statement of affairs requirements set out in section 14 of the *FOI Act*;
- by a sample of FOI agencies with the requirements of Parts 3 and 4 of the *FOI Act*, looking at such matters as:
 - the number of FOI applications received and determined in the past 12 months;
 - the times taken to deal with applications, in particular whether these times are substantially within the periods set out in the *FOI Act*;
 - reasons for any delays;
 - the amounts of advance deposits and charges levied;
 - the nature of determinations (eg. the percentage where access was granted, allowed in part, or refused);
 - the standard of determinations, including:
 - the sufficiency of reasons for refusals;
 - the relevance of exemption clauses generally being claimed; and
 - identification of documents the subject of the application;
 - amendments to records, including the number and nature of applications and determinations made in the preceding 12 months, and the times taken to deal with such applications.

FOI ANNUAL REPORTING

Our audit revealed a very poor level of compliance by public sector agencies with the annual reporting requirements of the *FOI Act*:

- 52% of the agencies the subject of the audit did not comply with the FOI annual reporting requirements:
 - 13% completely failed to comply (ie. no annual report in one case, no reference at all to FOI in four annual reports, and no reference to FOI reporting requirements in another 13 annual reports);
 - 39% inadequately complied (ie. the content and format of the FOI information contained in the annual reports did not comply with annual reporting requirements in significant respects).
- 48% of the agencies the subject of the audit adequately or fully complied with annual reporting requirements:
 - 10% adequately complied (ie. the content and format of the annual reports generally complied, although certain information was not included);

Written Complaints About FOI Received and Determined
An eight year comparison



- 19% lodged nil returns (ie. the agencies reported that they received no FOI applications); and
- 19% fully complied with FOI annual reporting requirements.

We wrote to all agencies that failed to comply, outlining our concerns.

FOI SUMMARIES OF AFFAIRS

In early 1997 we conducted an audit of compliance by councils with the summary of affairs requirements in section 14 of the *FOI Act*.

Before conducting that audit and after consulting with the Department of Local Government we circulated to all councils lists of the policy documents likely to be held by a council. We suggested these lists could be used by councils as a guide when preparing their summary of affairs for December 1996.

When we audited the council summaries of affairs published in the December 1996 Government Gazette we found that 43% of councils failed to comply with the requirements in significant respects. Only 37% fully complied, with the remaining 20% largely complying. We wrote to all councils that failed to comply, outlining our concerns.

MONITORING IMPLEMENTATION OF FOI

Our own research indicates that the refusal of access to documents by NSW agencies is comparable to most other Australian jurisdiction. However, our research also indicates that the use of FOI legislation by the public is lower in NSW than in those other jurisdictions. In this regard, it is of particular concern that the amendment of records provisions of the *FOI Act* are virtually unused, presumably because the public is unaware of their rights to seek amendment of records relating to their personal affairs.

Further, the complaints to our office, consistently indicate a generally poor standard of compliance by agencies with the letter and/or spirit of the FOI legislation.

NSW is the only FOI jurisdiction in Australia which does not have provision for monitoring the implementation of FOI. In all other States and the Commonwealth there are public officials charged with responsibility to collect, analyse and report annually on FOI statistics. With the closure of the FOI Unit in the NSW Premier's Department in 1991, only two years after the Act commenced, there is no similar mechanism in NSW.

While we may possibly have the power to regularly monitor the implementation of FOI, provided we hold the view that there is likely to be a failure to comply with legal requirements by some agencies, we certainly do not have the resources to do so comprehensively and regularly. In fact, we only have the resources to allocate two

full-time investigative staff to dealing with FOI complaints and investigations. This must be seen in contrast to the Western Australian Information Commission, which has 14 full time staff dealing with similar numbers of complaints. It must also be borne in mind that Western Australia's population is third of that of NSW.

RECOMMENDATIONS

In a special report to Parliament on the audit of compliance by agencies with FOI annual reporting requirements, it was recommended that:

- (1) the Premier re-establish an FOI Unit within the Premier's Department;
- (2) the functions of the FOI Unit include:
 - promoting FOI in NSW;
 - providing advice and education on the requirements of the *FOI Act* to agencies and to people wishing to use FOI;
 - regularly reviewing and updating the *FOI Procedure Manual* published by the Premier's Department;
 - monitoring the implementation of FOI by NSW public sector organisations;
 - collecting and analysing comprehensive statistics from all FOI agencies and reporting to Parliament on the implementation of FOI by NSW public sector organisations;
 - reviewing the format and content of the FOI sections of agency annual reports; and
 - reviewing the operation of the *FOI Act* and Regulation.
- (3) as an alternative, the Office of the Ombudsman be authorised and funded to perform the functions listed in recommendation (2).

Protected Disclosures

Overview

The focus of our work in this area has been threefold: to handle complaints about protected disclosures; to assist and encourage public sector managers to assume greater responsibility for the effective implementation of the *Protected Disclosures Act*; and to review all internal reporting policies adapted by public sector organisations for the purpose of the Act to ensure they are adequate and not misleading.

In the past year complaints rose by slightly over 25%.

Under arrangements which exist between the Ombudsman, the ICAC, the Auditor-General, the Police Integrity Commission and the Police Integrity Commission Inspector (all of whom are nominated investigating authorities under the Act), the Ombudsman acts as the first port of call for general inquiries by potential whistleblowers and persons charged with implementing the Act. This function is performed by senior staff who have specialist knowledge of the Act and its implications.

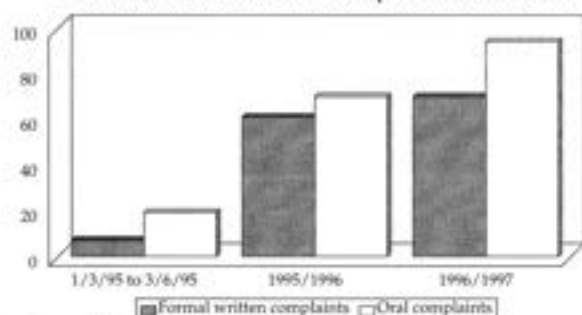
We do not include all whistleblowers from within the Police Service in our protected disclosure statistics, even though such disclosures numbered 1006 because:

- there are complexities involved in identifying whether a matter falls under the obligation in clause 30 of the *Police Service Regulation* or under the *Protected Disclosures Act*;
- complaints from police officers are dealt with by the Police Service and our office in the same way whether or not they are protected disclosures under the *Protected Disclosures Act* (in terms of confidentiality and notification requirements); and
- the Police Service operates a comprehensive and effective policy with respect to their internal whistleblowers in the form of the Internal Witness Support Program.

Whistleblower disclosures from within the Police Service which we do include in our statistics are those made directly to our office and/or are made anonymously from within the Police Service. The reason for including these two types of complaints in our statistics is that neither category of complaint falls under the obligation in clause 30 of the *Police Service Regulation* and therefore the limitation in section 9 of the *Protected Disclosures Act*.

The focus of our work has been to help ensure disclosures are handled effectively, ensure agencies have adopted effective internal reporting systems and, assist and encourage public sector managers to assume greater responsibility for the protection of whistleblowers and the effective implementation of the *Protected Disclosures Act*.

Protected Disclosures Complaints Received



The *Protected Disclosures Act* came into force on 1 March 1995. Complaint numbers for 1996-97 represent a 25% increase in overall complaints.

Issues

- Work with Public Sector Managers
- Ombudsman's Protected Disclosures Guidelines (2nd edition)
- Workshops and Seminars
- Review of the Protected Disclosures Act
- Implementation Steering Committee
- The Term 'Whistleblower'
- Police as Whistleblowers and Witnesses
- Consequences for Whistleblowers

WORK WITH PUBLIC SECTOR MANAGERS

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

"... the protection of bona fide whistleblowers afforded by the [Protected Disclosures] 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." (emphasis added)

The goals of the Act are threefold:

- enhancing and augmenting established procedures for making disclosures;
- protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

We have therefore devoted considerable time and effort to encouraging and assisting public sector managers to assume greater responsibility for the implementation of these goals. The basic premise upon which our work is founded is that potential whistleblowers have to believe they will be protected and their disclosures properly handled before they will make disclosures and that unless these conditions are satisfied, staff will not make disclosures.

Given the making of disclosures which show or tend to show corrupt conduct, maladministration or serious and substantial waste are clearly in the public interest, management effort should focus on satisfying the preconditions which are necessary to encourage disclosures.

Fundamental to the satisfaction of these preconditions is for management to develop and implement:

- policies and procedures which provide for effective protection of whistleblowers;
- effective and accurate internal reporting policies for the purpose of the Act; and
- procedures for the proper investigation of disclosures.

OMBUDSMAN'S PROTECTED DISCLOSURES GUIDELINES (2ND EDITION)

We published the first edition of the *Ombudsman's Protected Disclosures Guidelines* in an A4 booklet format in February 1996. During the course of the year, we revised those guidelines on the basis of experience in handling complaints, dealing with public authorities who were grappling with the implementation of the Act and material prepared for and arising out of seminars on the Act run for local councils. The second edition of the guidelines was published in December 1996 in a loose-leaf format. The new format allows simple amendment and updating as is necessary. One copy of the second edition of the guidelines was made freely available to each public authority and local council, and further copies have been sold for a small charge (\$30) in order to recover office costs. We have distributed more than 400 copies of the guidelines to public agencies. The Department of Local Government and the Auditor-General provided invaluable comments and submissions on the guidelines and their assistance is gratefully acknowledged.

The guidelines have been prepared to give practical guidance and assistance to public officials who are:

- charged with the responsibility for implementing the Act;
- developing internal reporting systems for their organisations; or
- contemplating making a protected disclosure.

There are two parts and four annexures in the guidelines:

- Part A focuses on dealing with disclosures, including:
 - the role of the external investigation or review authorities which have a major involvement in the implementation of the Act;
 - internal reporting systems for authorities;
 - assessment of internal disclosures;
 - management of whistleblowers;
 - investigation of internal disclosures; and
 - protection of whistleblowers.
- Part B focuses on the interpretation of the Act.

Protected Disclosures

- Annexure A is a model Internal Reporting Policy for public authorities.
- Annexure B is a model Internal Reporting Policy for local councils.
- Annexure C is a model Information Sheet for an internal reporting policy (the information sheet is intended to be used by public authorities and local councils for distribution to all staff).
- Annexure D is a copy of the Act.

WORKSHOPS AND SEMINARS

In addition to the publication of the guidelines, we have been involved in the presentation of seminars and workshops about the Act and its implementation. These are as follows:

- | | |
|-------------|---|
| July '96 | <ul style="list-style-type: none"> • to Department of School Education by the Deputy Ombudsman • to local government managers by the Deputy Ombudsman and a senior investigation officer |
| August '96 | <ul style="list-style-type: none"> • to local government managers by the Deputy Ombudsman and a senior investigation officer |
| October '96 | <ul style="list-style-type: none"> • to local council and public authorities in Wagga Wagga by two senior investigation officers • to local council and public authorities in Griffith by two senior investigation officers |
| January '97 | <ul style="list-style-type: none"> • to Opera House staff by a senior investigation officer |
| March '97 | <ul style="list-style-type: none"> • to Corruption Prevention Forum by Deputy Ombudsman |
| April '97 | <ul style="list-style-type: none"> • to Board of Studies (two sessions) by Deputy Ombudsman |
| June '97 | <ul style="list-style-type: none"> • to Chief Executive's Committee by the Ombudsman and Deputy Ombudsman • to TAFE senior managers by the Deputy Ombudsman |

A number of workshops are planned for the remainder of the 1997 calendar year. The workshops have been organised in cooperation with the Department of Local Government, the Institute of Municipal Management and the ICAC.

REVIEW OF THE PROTECTED DISCLOSURES ACT

The Parliamentary Committee on the Office of the Ombudsman released its report on the review of the Act in September 1996. The Committee made 24 recommendations. A decision is still awaited as to the government's intentions in relation to the recommendations.

IMPLEMENTATION STEERING COMMITTEE

The Deputy Ombudsman and the Projects Officer are members of the Protected Disclosures Implementation Steering Committee. The committee meets once every two or so months. Other members of the committee include representatives from the Department of Local Government, the Premier's Department, the ICAC, the Audit Office, the Police Service, the Police Integrity Commission, and The Cabinet Office.

The Committee was formed by the Premier to develop strategies for the more effective implementation of the *Protected Disclosures Act*. The committee has recently reported to the Premier on its activities over the past financial year. Highlights of the year's activities include:

- presentation of two workshops for local government;
- development of 11 workshops for local government;
- participation in corruption prevention forums;
- creation of database of protected disclosure coordinators in state authorities and local councils; and
- articles and information concerning the Act and internal reporting systems in the ICAC newspaper *Corruption Matters*.

THE TERM "WHISTLEBLOWER"

The Ombudsman has, on a number of occasions, said that the term whistleblower is a badge of honour which should be worn with pride. This is one of the principal reasons the Ombudsman links protected disclosures with the term 'whistleblower'. Another reason is the fact that in our experience many public sector employees have not heard about "protected disclosures" or the *Protected Disclosures Act* whereas most are aware of "whistleblowers" and the so called "*Whistleblowers Act*". A third reason is our view that public sector managers ought to protect all *bona fide* whistleblowers from any negative consequences which might arise from reporting wrong conduct, whether or not the disclosure by the whistleblower has met all the requirements of the *Protected Disclosures Act*. This approach is evidenced by the manner in which the issue has been dealt with by the NSW Police Service.

The Police Service has devoted considerable time and energy in the development of an effective policy which regulates the treatment of police internal witnesses. This policy is particularly commendable for its attempt to improve protection from reprisal for all whistleblowers, whether or not they have made a protected disclosure under the *Protected Disclosures Act*.

Encouraging *bona fide* whistleblowers by ensuring they are protected and making it clear to a workplace that reprisals against whistleblowers are utterly unacceptable will assist in the development of a whistleblower-friendly workplace. The aim of public sector managers and employees is for a workplace culture that views reprisals against all bona fide whistleblowers as unacceptable as, say sexual harassment or racial discrimination.

POLICE AS WHISTLEBLOWERS AND WITNESSES

We see a significant number of police 'internal witness' complaints, matters in which police officers report or provide evidence about misconduct by other police.

The concerns of internal witnesses are handled within the Police Service by the Internal Witness Support unit. The Service has recently completed an extensive research project about the handling of internal witnesses. The results of that project are encouraging, indicating that the unit now has a high level of credibility among police.

We have also taken various steps to deal with complaints from - and about - police internal witnesses.

- We closely monitor the progress of such complaints.
- Staff with a particular interest in this area have carriage of significant complaints of this kind.
- Staff dealing with these complaints meet regularly to determine ways of improving support for internal witnesses.
- In addition to regular contact with the Internal Witness Support Unit, we take an active role in making personal contact with internal witnesses.
- We pursue systemic issues relating to the treatment of whistleblowers in order to promote improvements to police practices and procedures.
- We play an active role on the Internal Witness Advisory Council.

The case studies *'The Moller Case'* and *'Harassment and Victimisation'* which follow in the next section, highlight some of the difficulties in managing complaints from internal witnesses.

CONSEQUENCES FOR WHISTLEBLOWERS

An consistently raised issue concerns the obligations and responsibilities of public authorities, their CEOs and other public officials in relation to whistleblowers who may be implicated in misconduct (whether the subject of their whistleblowing or separate from it).

We have developed guidelines on this issue after consulting widely with such organisations as the Police Service, Cabinet Office, Premier's Department, Health Department, Department of Local Government, ICAC, Audit Office and Whistleblowers Australia Inc.

The purpose of the guidelines includes:

- protecting both whistleblowers and management - whistleblowers against actual or perceived detrimental action, and managers against allegations of detrimental action; and
- providing guidance as to the circumstances where it may be appropriate that action not be taken against whistleblowers.

GENERAL OBLIGATIONS

Public authorities, CEOs and other senior public officials are responsible to ensure that:

- whistleblowers are protected from both direct and indirect detrimental action and any other reprisal action;
- disclosures by whistleblowers are properly assessed and investigated in a timely manner;
- the results of investigations are appropriately dealt with; and
- the culture of their organisations is supportive of whistleblowing and whistleblowers.

RELEVANT PRINCIPLES

Without whistleblowers it will often be unlikely that the disclosed maladministration, corrupt conduct or serious and substantial waste would have otherwise been uncovered and therefore likely that such wrong doing would have continued.

Public authorities, CEOs and other public officials must not victimise, harass or otherwise take unreasonable action against whistleblowers.

The act of whistleblowing should not necessarily shield whistleblowers from the reasonable consequences flowing from any involvement in misconduct, or acts of dishonesty, incompetence or negligence on their part. However, in some circumstances an admission may be a mitigating factor when considering disciplinary or other action, provided such action does not constitute beneficial treatment for the purpose of influencing the whistleblower to make the disclosure.

IMPLEMENTATION

Treating whistleblowers fairly

Public authorities, CEOs and other public officials must not, either individually or collectively:

- victimise or harass a whistleblower (for example by dismissal, demotion, forced transfer, discrimination against the whistleblower, or the disproportionate or excessively intensive investigation of relatively minor allegations about the whistleblower);
- deal unfairly with a whistleblower or treat a whistleblower inconsistently compared to the treatment of non-whistleblowers in the authority in similar positions;
- act against a whistleblower but not the person(s) the subject of justified/substantiated disclosures; or
- fail to properly assess, investigate and deal with disclosures in a timely manner.

Ensuring action taken against a whistleblower is justified and appropriate

Disciplinary action against a whistleblower inevitably creates the perception - almost an automatic presumption in some cases - that it is being taken in retaliation for the disclosure. In all cases where disciplinary action is contemplated, CEOs or other responsible public officials must ensure that they are able to clearly demonstrate that:

- their intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- there are good and sufficient grounds that would fully justify action against any non-whistleblowers in the same circumstances; and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

Public authorities, CEOs or other responsible public officials that are unable to demonstrate that these pre-conditions have been met leave themselves open to claims that they have engaged in maladministration or corrupt conduct, and possibly charges that they have committed the criminal offence of "detrimental action" as defined in the *Protected Disclosures Act* (or the *Police Service Act* where appropriate).

Disciplinary action against a whistleblower could result in complaints to the Ombudsman or ICAC, or the institution of criminal proceedings against the public authority, CEO or other public officials involved. Therefore, where disciplinary action against a whistleblower is contemplated, it should only be taken where the CEO or other responsible public official is able to **clearly**

prove, to an appropriate standard (depending on the seriousness of the conduct), that the whistleblower has been involved in misconduct or has acted dishonestly, incompetently or negligently. Further where such proof is available, the CEO or other responsible public official should also be able to clearly prove that any disciplinary action taken against the whistleblower was:

- **reasonable**;
- **proportional** (between the ends to be achieved and the means used to achieve them); and
- **consistent** (with similar cases involving non-whistleblowers).

Just as formal disciplinary action can be detrimental action, so can other employment related actions. This includes apparently harsh imposition of human resource procedures, rewriting of job descriptions, deleterious changes in duties to be performed or projects to be undertaken (eg. the shift sideways into "special projects"), redeployment or redundancy, or even outright dismissal. Quite clearly it is essential that public authorities, CEOs and other responsible public officials can demonstrate the appropriateness of their actions, including (for redundancies in particular) the existence of a relevant plan prior to the act of whistleblowing.

Generally speaking, where disciplinary action relates to conduct the subject of the whistleblower's disclosure, it would be in the best interests of all parties concerned if responsible public officials are also able to show that disciplinary action was only commenced after the matter disclosed by the whistleblower had been appropriately dealt with and consideration had been given to the matters listed above.

Is it in the public interest for whistleblowers to not be disciplined or to be granted an indemnity against prosecution?

Even where it appears to a CEO or other responsible public officials that disciplinary action or criminal proceedings against a whistleblower are possible, it may be in the public interest:

- for the CEO to make submissions to the Director of Public Prosecutions for the DPP to request an indemnity against prosecution for the whistleblower from the Attorney General; or
- to exercise a discretion not to institute disciplinary action.

The appropriate action would depend on:

- the seriousness of the alleged misconduct disclosed by the whistleblower;
- the likelihood of uncovering the alleged misconduct in the absence of a whistleblower (a "but for" test);

- the extent and level of substantiated involvement by the whistleblower in the alleged misconduct or in any other substantiated or admitted acts of misconduct, and the seriousness of that misconduct;
- the length of time since the alleged misconduct;
- the relevance and importance of the information disclosed by the whistleblower for the purpose of dealing with the alleged misconduct;
- the degree of cooperation by the whistleblower with those charged with investigating or dealing with the disclosed alleged misconduct;
- previous good behaviour and a willingness to acknowledge wrong doing on the part of the whistleblower; and
- the seriousness of the alleged misconduct committed by the whistleblower, and whether the misconduct is continuing or repeat conduct.

When any consideration is being given to seeking an indemnity for a whistleblower who is to be a witness in criminal proceedings, matters that need to be addressed are listed in the *Prosecution Policy and Prosecution Guidelines* of the DPP.

When considering whether to approach the DPP to seek an indemnity or whether to exercise discretion to refrain from taking disciplinary action, care should be taken to ensure that potential whistleblowers are not encouraged to make a disclosure as a consequence of a promise that they will be granted beneficial treatment, for example the exercising of a discretion not to institute prosecution or other disciplinary action. Furthermore, the Act specifically provides that a disclosure that is made solely or substantially with the motive of avoiding dismissal or other disciplinary action (other than reprisal action) is not a protected disclosure. To avoid these problems, any discussion or decision with respect to the exercise of any discretion not to institute criminal or disciplinary action, or the possibility of seeking an indemnity, should occur only **after** a disclosure has been made and assessed.

There may be circumstances where misconduct is committed by a whistleblower which has no connection with a disclosure they have made and yet it is in the public interest for a CEO to exercise the discretion against taking disciplinary action or to seek an indemnity from the DPP for a whistleblower. These circumstances are very limited and would arise only where:

- the misconduct occurred prior to the disclosure being made; and

- the disclosure was not made solely or substantially with the motive of avoiding dismissal or other disciplinary action nor made as a consequence of a promise that the whistleblower will be granted beneficial treatment; and
- the misconduct is of a relatively minor nature.

DOCUMENTATION

In any event, if after having given consideration to all of these matters, disciplinary or other action against a whistleblower is warranted, great care should be taken to properly and thoroughly document the process. In addition to properly documenting all contacts with whistleblowers, witnesses, investigators and managers, great care should be taken to thoroughly document the deliberations surrounding any decision about indemnification. The reason for any decision which is made should also be recorded. Additionally, where any of the investigating authorities or the Department of Local Government are involved in a matter and action is intended against a whistleblower, they should be notified of this fact.

SEEKING LEGAL AND OR OTHER ADVICE

These guidelines should not be used as a substitute for legal or other relevant advice. The purpose of the guidelines is to assist CEOs in highlighting issues which should be considered in dealing with whistleblowers who may have been implicated in misconduct. Given the complexities which are involved in this matter, legal and or other relevant advice should be obtained prior to the taking and making of decisions which are irrevocable or from which serious consequences may flow.

- The Moller Case
- Harassment and Victimisation
- Protected Disclosures and the Auburn Rumour Mill
- Insurance Tremors
- Whistleblower's Off-notes
- A Question of Retribution?
- When is a Disclosure not a Disclosure?

Case Studies

THE MOLLER CASE

In 1995, the Professional Integrity Branch (PIB) began a proactive investigation into the possible use and supply of drugs by Senior Constable Clinton Moller. Subsequently, in December 1995, a police officer who had worked with Moller - but who was unaware of the existing PIB investigation - reported to the Police Service that he had received information about Moller's involvement in drug distribution. Significantly, he referred to the existence of other police officers who might also be able to provide relevant information. PIB interviewed the police officer who had submitted the report and a number of other officers. In the course of these interviews, some of the police admitted to their own use of illegal drugs.

A number of police officers who had been interviewed by PIB and admitted to illegal drug use were suspended from duty. One of these police officers, Senior Constable Craig Raymond, complained of his treatment by the Police Service. Raymond claimed that PIB had given him an assurance that he would not face any criminal charges or disciplinary action as a result of information which he could provide about Moller. He alleged that, despite this assurance, the then Commander of the Office of Professional Responsibility, Assistant Commissioner Schuberg, had inappropriately pressured him to resign, suspended him, and anticipated the preferment of departmental charges and the institution of dismissal procedures. It is worth noting that Schuberg had apparently been appointed as Raymond's mentor. The role of a mentor is to provide support for the internal witness.

Raymond's complaint was investigated by the Police Service and we were provided with a report on the matter. We were concerned, not only about deficiencies in the investigation, but about whether the Police Service had adequately addressed the broader issues and tensions raised by the matter.

We invited Deputy Commissioner Jarratt to reconsider the matter in light of our concerns. Mr Jarratt advised us that the whole episode should be regarded as a learning experience for the Service and identified the following lessons from the matter:

- when inducements are held out to officers to assist in an investigation, the grounds for the inducement must

be clear and properly recorded;

- it is appropriate for senior officers to outline courses of action (such as resignation) open to officers whose serious misconduct has come to light, however, it is not appropriate for senior officers to then recommend a particular course of action; and
- the need for a clear policy in dealing with officers who have been improperly involved with the use or supply of drugs.

As a result, Senior Constable Raymond was reinstated to full duties following the satisfactory outcome of a drug test. At the same time, it was clearly indicated that any future use of drugs would render him liable to the application of the Commissioner's confidence provisions.

HARASSMENT AND VICTIMISATION

As a result of coming forward and giving honest and forthright evidence, some internal witnesses have been the subject of payback complaints and harassment. One such incident arose when an officer was charged with assaulting a civilian, as a result of a report by an internal witness. A few days later, the officer was pulled over for a random breath test when the internal witness was performing RBT duties. The internal witness stated he walked away from the car and the officer flashed his lights at him, shouting out to other police in the area, "Hey [name of internal witness], I got the brief yesterday [concerning the assault]. Put this man in front of my car."

The Ombudsman views harassment of this kind very seriously. In many cases, however, the form of harassment will make it difficult to take action against any police. For example, the internal witness can be treated as a social outcast by other patrol members. In other cases, the harassers can make anonymous complaints against internal witnesses or threatening telephone calls to the internal witnesses or their family. Without careful management by the Police Service of these matters, internal witnesses can suffer enormous stress. In the past a number of internal witnesses have been driven from the Police Service as a direct consequence of the abuse to which they have been subjected.

PROTECTED DISCLOSURES AND THE AUBURN COUNCIL RUMOUR MILL

An employee of Auburn Council complained that information he provided confidentially to council officers pursuant to the *Protected Disclosures Act 1994* had been improperly released to those about whom the disclosures were made.

The complainant had initially made the disclosures to the council's two (now former) human resources (HR) officers pursuant to the council's standing internal reporting system for whistleblowers. The disclosures concerned alleged incidents in the Parks and Gardens Section and the alleged mismanagement by three supervisors in Engineering and Technical Services.

With the complainant's permission, the two former HR officers spoke to the then General Manager who recorded details of the conversation in his diary. He agreed to investigate the issues raised by the disclosures. The then Director of Engineering and Technical Services was also informed allegations had been made concerning workers in his department, but was not told the nature of each of the issues, the names of the persons subject of the disclosures, or the complainant's name.

As the complainant made the disclosures on his rostered day off, great care was taken by the HR staff to ensure he would not be seen leaving the building.

The day after the disclosures were made, the Director of Engineering was phoned by one of his workers seeking permission for work he intended to perform on the weekend. As the request was unusual, he raised it with the HR Director and speculated that it related to one of the issues raised by the disclosures. Given the confidentiality with which the disclosures were being treated, the HR Director expressed surprise that the issue was apparently being discussed by the workers. The Director of Engineering later discussed the issue with the General Manager in a garden outside the council offices as they feared the General Manager's office had been 'bugged' and this was how the information about the disclosures had got out.

A few days later, the HR Director was sacked by the council and the task of investigating the complainant's allegations was assigned to the then one remaining HR officer.

Little progress was made on the investigation for the next few weeks. During this time rumours swept the outdoor staff that the complainant had complained about certain matters. Despite the rumours, during this period, the three supervisors the subject of the disclosures showed little concern about any complaints that may have been made.

Three weeks after making the disclosures, the complainant, who had become increasingly unhappy with his work situation, gave oral notice of his intention to quit his job. He subsequently revoked this.

At around the same time, the then general manager was also sacked. He was informed that he had been sacked by the mayor and another councillor who was married to one of the supervisors the subject of the disclosures. At that meeting, the general manager's diaries, including one containing details of the disclosures, were seized by the mayor. According to the mayor, no one else saw the diaries and they were placed in a locked cabinet until handed over to the council's solicitors. The then director of engineering was appointed acting general manager.

On the next day, the acting general manager was approached by the director of environment and planning who was the direct supervisor of the councillor's spouse. He said the spouse had asked about the status of the investigation against him. As the acting general manager had not followed the progress of the investigation, he subsequently met with the remaining HR officer, and discussed it with her.

The acting general manager then sought to contact the complainant to get his side of the story. He discovered his phone number was not on the file. As the complainant had commenced his employment with the council in the garbage section, the acting general manager obtained the complainant's telephone number from the garbage overseer but did not tell him what it was about. The acting general manager then rang the complainant and arranged an appointment to see him.

The information about the acting general manager seeking to obtain the complainant's phone number was subsequently relayed by the garbage overseer to one of the persons the subject of the disclosures, and from him to the others. The garbage overseer said the councillor who was married to one of the persons in question asked him about the phone call on the same day he had mentioned it to his initial confidant.

The next day, the acting general manager met with the complainant to discuss the disclosures. The acting general manager decided an investigation would have to be made and he should tell the mayor. In notifying the mayor, the acting general manager named the people about whom the complaints had been made, and the complainant.

At 10.00 am on the following morning, the three people about whom the complaints had been made, stormed into the acting general manager's office stating that they knew the complainant had seen him the previous day and had made allegations about them, and they insisted on telling their side of the story.

There were a number of reasons given by the three for their sudden desire to confront the acting general manager about the disclosures. One claimed he was fed up with the rumours and wanted to get it out into the open then as he felt the acting general manager was more approachable than his predecessor. The councillor whose spouse was the subject of the disclosures said she had

constantly urged him to confront the acting general manager, and he finally responded, although this was denied by her spouse. Another who was the subject of the disclosures admitted to a quick temper and said it was he who incited the others to join him in confronting the acting general manager on the morning in question.

The complainant returned to work five days later after retracting his resignation. On entering the yard a co-worker said to him, "You must have balls of steel coming back here". It was then the complainant became aware that his making of, if not the substance of, his disclosures had been revealed or was known to the people he worked with. The complainant was aghast that his disclosures had become known to his three supervisors, the subject of the disclosures, and he took stress leave from that day.

Our investigation disclosed the council workplace was rife with rumour and gossip. Allegations, both substantiated and unsubstantiated of the activities of council workers and overseers circulated regularly. Our investigation also revealed the complainant had known that the then HR director and the then general manager were going to be dismissed long before they did!

Furthermore, it became clear that the council as a whole was rife with political conflict. The councillor whose spouse was the subject of the disclosures was convinced the acting general manager's investigations of the disclosures, constituted an attack on her through her spouse. The former HR director believed there was a concerted effort on the part of employees who had previously been able to run the council according to their own wishes, to replace people they saw as a threat.

Investigations of complaints about the disclosure of information provided by whistleblowers are, at the best of times, resource intensive and time consuming. This investigation however, was further complicated by the poisonous atmosphere that pervaded the council.

Evidence from different sources was contradictory and we had to interview some witnesses more than once in an attempt to resolve conflicting evidence. For reasons not always obvious, many people interviewed appeared reluctant to disclose facts relevant to the investigation, possibly through fear of jeopardising their employment or of losing long and previously close friendships. Whatever the reasons, the difficulties in obtaining clear, truthful evidence severely prolonged the investigation and caused us unnecessary expense in both time and resources.

One scenario put to investigators for the three supervisors having knowledge of the content of the disclosures and of their source, was that the mayor had given the information to the councillor whose spouse was the subject of the disclosures. The mayor had access to the diaries of the former general manager and had been told of

the disclosures by the acting general manager the day before the acting general manager was confronted by the three. On the basis of the available evidence, the investigators, however, accepted the mayor's assertions that the diaries were kept secure.

Despite the fact that circumstantial evidence pointed to a breach of the *Protected Disclosures Act 1994*, the investigators found the information appeared to have been spread by way of the rumour and supposition that was endemic in the council, rather than by a breach of the legislation. While rumours are unfortunate and often exceedingly harmful in a work place, they do not constitute a breach of the legislation. Accordingly, in the absence of evidence of a breach of the *Protected Disclosures Act*, we found there had been no wrong conduct on the part of the council or the officers responsible for dealing with the application.

While no breach of the *Protected Disclosure Act* could be established, it may be more than merely coincidental that each council officer that had any responsibility for or involvement in the investigation of the disclosure was subsequently dismissed, had their contract terminated or otherwise left council employment of their own volition. This included the former general manager, the former acting general manager/director of engineering and technical services, the former HR director and the other former HR officer.

INSURANCE TREMORS

An officer from one of the bigger councils made a protected disclosure about his - and other - councils' participation in an insurance pooling scheme. The Scheme was set up by a prominent broking firm as a form of insurance pool. It covers a significant number of the councils in NSW against public and professional indemnity claims.

The disclosure alleged a number of serious problems with the Scheme including an excessive expense ratio, potential problems with the cover provided and conflicts of interest on the part of the broker and at least some of the officers of various councils who sat on the Scheme's board. These officers on the board were involved in getting their own councils into the Scheme and promoting it to other councils. It was suggested that nearly all councils in the Scheme had joined on the basis of inadequate or a complete lack of independent professional advice, and that once in the scheme it would be very expensive to get out.

Given the highly complex nature of the issues raised, we sought advice from the federal Insurance and Superannuation Commission (ISC) and from an actuarial expert. The first interesting conclusion was that the Scheme was not carrying on insurance business and thus was outside the ISC's jurisdiction (and hence supervision).

Our actuarial expert believed some of the more startling allegations about the Scheme were alarmist. However, he recommended the annual independent actuarial report on the Scheme should be sent to all member councils and not just to the broker as appeared to be the case at present. It also seemed the Scheme's management expense ratio could be seen as relatively high, although not as bad as suggested by the complainant.

The professional advice obtained by the complainant's council prior to joining the scheme was from its solicitors who merely provided what seemed a pedestrian analysis of the Scheme's trust deed and largely ignored risk issues. This suggested that smaller councils, at least, would be unlikely to have obtained more competent and comprehensive legal and other professional advice before taking the plunge into the Scheme.

A check with the Local Government and Shires Associations disclosed that they were unaware of any complaints about the Scheme.

We decided that the complaint should not be investigated formally but the Ombudsman wrote to the Director General of the Department of Local Government outlining our remaining concerns which we thought could warrant monitoring by the department during its review processes. As a result, the Director-General advised the Ombudsman:

"I have decided that future management overviews conducted on a cyclical basis on each of the councils in NSW will include as part of its brief an examination to ensure that councils have given appropriate consideration to the form and coverage of risk management and insurance indemnity that they have taken out. This will include all councils not just those within the ... scheme."

WHISTLEBLOWER'S OFF-NOTES

A protected disclosure was made to us alleging a Sydney public authority had been guilty of maladministration and serious waste of public money in three ways: by long-term filling of its Director, Finance & Systems position with a consultant; by bungling the introduction of new computer systems; and, by the treatment of our complainant during restructuring of his position (in the Systems area) and offering him a redundancy package.

We consulted the Audit Office. It was aware of the situation, had canvassed aspects of it in two previous annual reports and was continuing to monitor developments. While not dismissing his claims, it believed the whistleblower had exaggerated their seriousness.

After making further preliminary inquiries we declined to investigate. Apart from the Audit Office's ongoing scrutiny, two key considerations in our decision were that much of the disclosure concerned employment related issues (thus being outside our jurisdiction) and the com-

plainant's acceptance of a voluntary redundancy settlement made it difficult to argue he had suffered detrimental action he found unacceptable.

Our complainant was extremely determined to achieve the result he sought, which was some form of punitive action against his former employer. As well as having mounted a very substantial campaign to secure documents from the public authority via FOI, he complained to the Joint Parliamentary Committee on the Ombudsman that our decision to decline to investigate his complaint did *"not deal with the issues with sufficient probity"*. He provided no evidence to support this assertion.

He also subsequently claimed he had been coerced into his redundancy settlement and was pursuing a wrongful dismissal case in the Industrial Relations Court. This latter action, pursuant to section 13(4)(b) of the *Ombudsman Act*, clearly represented alternative and satisfactory redress in terms of any claims of detrimental action he may have sought to make. Either the Court would find for him and make appropriate orders, or it would find his case unsubstantiated in which event there would be no grounds for action by us.

Being its first experience of a protected disclosure, the case had caused very considerable disruption and concern to the public authority. The general manager believed the case could have been handled better and to ensure that was the case in future, he approached us to run seminars for all his managerial and supervisory staff. We agreed to run two seminars for about 60 staff in all. At both there was lively discussion about the *Protected Disclosures Act* and its implications. We are confident the public authority's staff are now much more keenly aware of their rights and responsibilities in this area.

A QUESTION OF RETRIBUTION?

Two very important components of the *Protected Disclosures Act* concern the protections available to the whistleblowers: protection against their identity being revealed and protection against retribution.

A local councillor made a complaint to our office about some of the council's financial affairs. We initially assessed the complaint as a protected disclosure. The councillor had previously been an outspoken critic of the council's conduct in the matter. Shortly after the complaint was received, the councillor was censured by his fellow councillors.

After being censured, the councillor publicly stated the censure was a breach of the *Protected Disclosures Act*. The councillor believed that by making a protected disclosure, he was entitled to absolute protection from retribution.

However, there was no evidence that his fellow councillors knew of his disclosure to us. It was therefore impossible for the censure to have been a 'retribution' for making a protected disclosure. The *Protected Disclosures*

Act is designed to ensure that if you make a protected disclosure, you are not subjected to "detrimental action" (ie punishment) **because you made a protected disclosure**. This is only possible if the retribution is motivated by the protected disclosure. After setting the councillor straight on this issue, we got on with examining his complaint.

WHEN IS A DISCLOSURE NOT A DISCLOSURE?

We received a protected disclosure from an employee of a state government authority. He alleged that he and his partner became victims of reprisal action by his superiors for speaking of his concerns about his immediate superior's financial management. That supervisor was subsequently charged with a number of criminal offences relating to fraud. Disciplinary action had been commenced against him and his partner, who both worked for the same organisation. The complainant alleged numerous irregularities in the way the complaints were initiated against him, and the investigative processes used. He claimed they were brought in an effort to get him "out of the way" after he had started to talk to others about his concerns.

Most claims of unfair treatment of a government employee in their employment can not be examined by our office because of statutory prohibitions. Recent amendments to clause 12 of Schedule 1 of the *Ombudsman Act*, however, expressly permit the Ombudsman to examine employment related matters where the conduct arises from the making of a protected disclosure to the Ombudsman or to another person who has referred it to our office.

The Ombudsman takes most seriously any allegation that a government employee has been unfairly treated as a result of disclosing information which comes within the *Protected Disclosures Act* or for making disclosures in the spirit of the Act. We discussed with the complainant the fact that once a formal investigation commenced, it would become reasonably clear to the authority that he was the author of the complaint to the Ombudsman, particularly as much of our investigation would concern the circumstances surrounding any disclosure made by him to the authority and the way in which disciplinary action had been pursued against him. The man accepted this and gave us permission to disclose his name if it became necessary for the purposes of the investigation.

We eventually found the complainant had not actually made a disclosure in terms of the requirements of the *Protected Disclosures Act*. While he had spoken with a number of his colleagues about his suspicions, he had not clearly raised his concerns with a superior officer or anyone who would normally be considered responsible for receiving or dealing with such disclosures within the

organisation. He felt reluctant to do so in case he was found to be wrong. *Unfortunately he was not aware of the Protected Disclosures Act*, nor the existence of the authority's internal reporting guidelines (although these had, at the time, been circulated to all senior staff with the instruction that they be brought to the attention of all employees). While he had made some general comments to colleagues about the apparent shortage of funds and at one point questioned the way a particular cheque had been drawn, he never provided specific information about the nature of his concerns to anyone in a superior position. A superior officer was finally alerted to inappropriate financial management but only after complaints against the man had already been made by other staff.

The complaints made against the complainant by other staff appear to have been facilitated by his immediate superior at the time who is now facing criminal charges. After speaking with other staff involved with those complaints and examining the paperwork associated with them, we decided that while the motives of the superior's involvement in the initiation of the complaints against the man were questionable, we could not so readily dismiss the content of the concerns raised by those staff who made the actual complaints and wished the matter to proceed. Questions of the appropriateness of the way in which these matters, and those related to his partner, were pursued could not be directly linked to the making of a protected disclosure under the *Protected Disclosures Act*. Even going beyond the technical requirements of the Act, we considered the information he disclosed at the time to be of insufficient detail to have placed his superiors or the authority on notice about the nature of his concerns or that he may be at risk of reprisal for his actions.

In all the circumstances, we decided to discontinue the investigation. The adequacy and appropriateness of the commencement and investigation by the authority of the complaints made against him can be fully dealt with in the disciplinary process. The authority was also reminded of the need to take positive steps to ensure all its staff are aware of the provisions of the *Protected Disclosures Act*. Prior to the commencement of our investigation, the authority had already undertaken a review of its current procedures and had devised a new, clearer set of guidelines. Reference to the general operation of the Act and the authority's guidelines have also been included in its code of conduct for all employees.

Handling Complaints about Witness Protection

Overview

With the gazetting of the *Witness Protection Act 1995* in April 1995, the Ombudsman's Witness Protection Unit was established. In the unit's first full year of operation, our officers have developed an insight into an area of police activity that has, until now, received little independent scrutiny. Because of the highly sensitive nature of the information with which we deal, it is only possible to report in the broadest terms about our activities.

The *Witness Protection Act* formalises the responsibility of the Commissioner of Police to establish and maintain a witness protection program in order to protect the safety and welfare of Crown witnesses and others who have given information to police concerning criminal activity. The Act also creates a new role for our office in providing oversight of this program. The Ombudsman has been given the role to determine appeals against decisions by the Commissioner of Police to refuse an applicant entry onto the Witness Protection Program or to remove an existing participant from the program. The Act imposes a strict time limit in respect of all stages of the appeal process.

During the year three appeals were received, of which two were determined within the statutory time limit of 72 hours, and the third withdrawn by the appellant.

The unit also deals with complaints concerning the administration of the Witness Protection Program. As was expected, our main work in this area relates to complaints about ongoing operational matters and the quality of protection.

The Act requires that anyone admitted to the program must sign a memorandum of understanding which sets out the basis upon which he or she is included on the program and the details of the protection and assistance that are to be provided. The memorandum also states that protection and assistance under the program may be terminated if the participant breaches a term of the memorandum. It must also contain a statement advising the participant of his or her right to complain to the Ombudsman about the conduct of police in relation to the matters dealt with in the memorandum.

Participants who joined the program before the Act came into force, however, may not have information about their right to complain. Because of the isolation inevitably imposed on program participants, one of our main aims throughout this year was to communicate information about our existence and role to any participant who might wish to use our service. In the course of our regular liaison with the police involved in WitSec (the Witness Security Unit responsible for the program) we arranged for all those on the program to receive notification providing these details.



The complaints handled by our Witness Protection Unit are often time and resource intensive. People participating in the Witness Protection Program are in quite unusual and highly stressed situations. They are or are perceived to be in real danger from people who are prepared and motivated to kill them and/or their families or at least to do them significant harm.

Handling Complaints about Witness Protection

In the weeks following the distribution of this notice, we were contacted by a number of program participants who raised a range of procedural issues relating to their participation on the program. Due to the need to observe the utmost security and the importance of the on-going relationship between participants and the WitSec police who provide their day-to-day protection and assistance, we have preferred to resolve complaints using conciliation rather than formal investigation. A number of matters concerning complainants have been addressed in this way and WitSec have agreed to implement certain procedural changes as a result.

The complainants with whom we deal are in quite unusual and highly stressed situations. They are or are perceived to be in real danger from people who are prepared and motivated to kill them and/or their families or at least to do them significant harm. Many have already been assaulted, even tortured, before coming onto the program. A number of the participants are reported to have some form of post-traumatic disorder or other psychological or psychiatric problems. Understandably, many suffer severe depression and a number have attempted suicide. By and large they are unable to be in contact with many of the people to whom they are closest and to whom they would normally turn for support. Many have had to sever all contact with their families and friends.

As a result the complaints that are dealt with by our unit are very often resource-intensive in terms of the time required.

A Fast Advice and Resolution Service

Overview

Our Inquiry Section is the first point of contact for people seeking information or making a complaint. Every contact made by a member of the public is entered on our database for statistical and analytical purposes. Through 1996-97 we handled an increasing number of inquiries. The year's figure of 15,698 shows an increase of almost 1,500 calls over the previous year. This figure includes face-to-face interviews with more than 500 members of the public. This continues the upward trend evident over the last few years. With the success of our access and awareness plan we expect complaint numbers to increase further.

Inquiry officers assess whether complaints are within our jurisdiction and determine how best to assist. If a complaint is premature we advise the complainant to take the matter up with the authority concerned and offer our *Tips for Making a Complaint* brochure. If a complaint is outside our jurisdiction, we suggest other ways to solve the problem.

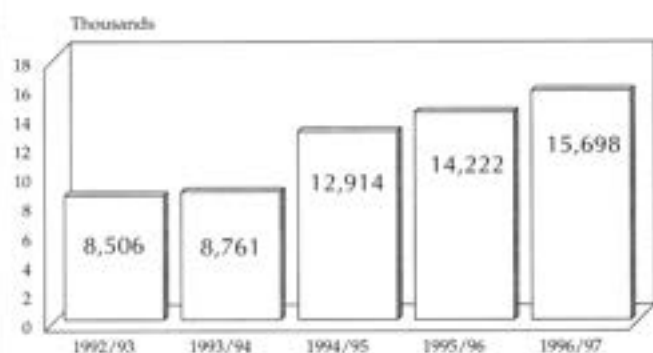
We arrange a telephone interpreter service for callers where necessary and in some circumstances will provide an interpreter in person for an interview. If we receive a complaint in a language other than English we arrange translations for the office.

Inquiry staff also participate in prison visits and community outreach trips. As in previous years we continued our program of talks to groups from non-English speaking backgrounds and participated in the St George Migrant Information Day.

The section consists of three staff. With the increase in telephone enquiries we are increasingly reliant on the support of back-up officers to take overflow calls at peak periods.

Consistent with our goal of trying to resolve 5-10% of complaints on the spot we immediately contacted the authority concerned on 930 matters (7% of oral complaints). The following are a few examples of some of the quick resolutions achieved.

Oral Complaints and Inquiries
A five year comparison



Our Inquiry Section is the first point of contact for people seeking information or making a complaint. Through 1996-97 we handled an increasing number of inquiries. Last year's figure of 15,698 shows an increase of almost 1,500 calls over the previous year.

- What Law?
- The Power to Pay
- It's Yours... Almost
- The Cheque's in the Rail
- Seeing the Light
- Fast Phone Call Fixes Fence
- The Slow Walk to Freedom

Case Studies

WHAT LAW?

A couple from south western Sydney called asking about charges by the Roads and Traffic Authority (RTA) for vehicle registration transfer. They had recently sold a business and were transferring their vehicle from a business name to their private names. The vehicle had been referenced to the husband and they were told it would cost nothing to change into his name, but more than \$500 of stamp duty to transfer into both. They could not understand why and could not get a satisfactory answer. We contacted the manager of the motor registry. We found the officers handling the transaction were not aware of a recent law change removing stamp charges under these circumstances, that is, where a married/de facto couple wish for a vehicle to be registered in both names when it had not previously. The manager advised that the couple need only pay an administration fee of \$20 and the vehicle could then be registered in both names.

THE POWER TO PAY

A young woman from the north coast was frustrated that her electricity deposit had still not been released a few months after disconnection. She had contacted Northpower on numerous occasions and been told anything from "the cheque will be issued immediately" to excuses such as "the computer system was new and delays are being experienced". We contacted Northpower, and upon checking its records the officer unreservedly apologised for this occurrence and a cheque was issued that day.

ITS YOURS.... ALMOST

A man from south western Sydney called to complain that the Department of Housing had left him without a tenancy. He had been contacted to sign a lease for a department house. He was then told, after cancelling his private rental, the house would not be available when the department first thought, there was too much repair work to be carried out. The department could not say when it would be ready. We contacted the department and an officer upon inspection of the premises confirmed the repair work necessary, but that it would be completed within the week and the tenancy could commence the following

Friday. The complainant was satisfied once he had a certain date and was then able to extend his private rental.

THE CHEQUE'S IN THE RAIL

In May 1997, a senior citizen came into our office because he had been waiting four months for a refund from the Infringement Processing Bureau (IPB). At the end of 1996 a woman he knew had been issued with a fine by the State Rail Authority. In December 1996 the complainant paid the fine to the IPB on her behalf. Apparently unaware of this payment, State Rail cancelled the fine and in January 1997 wrote to the woman confirming this. After waiting some time for a refund the woman contacted the IPB. They assured her that the cheque would be in the post. Nothing came.

While the man was in our office we rang the IPB who promised us that the cheque would be sent 'by the end of next week'. Three weeks later the complainant came in again - the cheque had not arrived. We rang the IPB again. This time we were told there was no record of State Rail cancelling the fine. The IPB then confirmed the cancellation with State Rail and rang us promising a refund would be sent within three weeks. Nineteen days later we received a thank you call from the complainant, the cheque really had been in the post! Though the matter was eventually resolved it is unfortunate that more effort was not made by the IPB and State Rail to resolve it earlier.

SEEING THE LIGHT

A resident of a street near Canterbury Racecourse received a council mail drop stating that a development application (DA) had been lodged for 'Night Lighting for Night Racing'. The complainant believed this to be misleading as the DA was actually for night racing. Night lighting was a secondary issue. He felt that other residents might not object about associated problems (parking, noise, etc) in the mistaken assumption that a decision had already been made to allow night racing.

We rang Canterbury Council who stated that most objections, to that date, were actually about night racing. Therefore council believed that residents knew exactly what the DA was for and was unwilling to go to the expense of a second mail drop. However council offered to

clarify the matter in media releases to the local press and in council columns. The complainant, who had originally wanted council to leaflet all the houses in the area, was satisfied with this outcome.

FAST PHONE CALL FIXES FENCE

A man had been trying for three years to have a dividing fence replaced between his property and property of the Department of Housing. Within a few days of a call from this office to the relevant department office, an inspection was carried out and orders raised to have the fence replaced.

THE SLOW WALK TO FREEDOM

At 10.30am a man contacted us to complain that Kings Cross police had delayed processing and forwarding his bail papers to the jail where he was on remand. He told us a friend had posted bail at Kings Cross station two days before.

When we rang the police they told us they could not find the documentation. After several contacts with the jail, police and complainant we arranged for the complainant's girlfriend to give Kings Cross police copies of the documentation and for the police to forward the papers to the jail immediately. By 3.45pm the same day we were able to give him the news that he would be released within the hour!



Inquiries staff regularly demonstrate our computer complaints management system to representatives of government agencies. The system manages high volume complaint caseloads and customer feedback.

Promoting Alternative Dispute Resolution

Overview

During the year our mediation program continued to mature. Our in house staff mediators were able to consolidate their skills, through practical experience and by attending advanced training courses. Looking back over the year, it appears we are in a transition period in relation to the public sector's use of alternative dispute resolution methods, such as conciliation and mediation. While some authorities have embraced the benefits of mediation, others still do not know much about the topic.

We were therefore pleased to be involved in the publication of the *Public Sector Mediation Guidelines*, which were prepared in conjunction with our office, the Attorney General's Department and the Office of the Auditor General. These guidelines are specifically written for public sector managers who are considering using mediation or an alternative dispute resolution process to resolve a dispute. Copies of these guidelines were sent under cover of a Premier's memorandum, encouraging the use of mediation by public sector managers, in July 1997.


During the year we undertook 11 mediations, almost half of which were at the request of the department or agency concerned. These figures indicate that some agencies are more active in their desire to use the process to resolve problems between themselves and complainants. We are seen by both sides as being able to take a neutral standpoint while at the same time having the experience to understand issues which arise in the public sector in its dealings with its clients.

Where a mediation involves a complainant who has already contacted this office, no charge is made for our mediation service.

OUTCOMES

Many people ask about the outcomes of our mediations, or our "success rate". When people talk about success, they usually mean whether or not an agreement has been reached and signed at the mediation. Of the 34 mediations we have completed to date, agreement has been reached in 30. Usually this is a full resolution of all the issues, but in some cases it has been an agreement in principle, with further work to be done. In one or two cases, agreement was reached on some issues, with others left in abeyance. (We have been advised that in one of the 30 cases, the agreement broke down after the mediation and that the dispute is ongoing.)

In the four cases where agreement was not reached, there was still an 'outcome' in that all parties had a better understanding of each others' needs, interests and positions. In two cases, the parties 'agreed to disagree' and decided to have the matter determined through the court system. In the other two cases, one of the parties decided to 'walk away' from the dispute and leave the responsibility for the result in the hands of the other party. It is important to understand that this is always an option during mediation. Reaching an agreement, or putting an agreement in writing, is entirely a matter for the parties and their judgement at the time of the mediation.



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Whatever the outcomes reached at the mediation, it appears that generally all parties to date have been satisfied with our manner of conducting the mediations.

THE BENEFITS OF MEDIATION

One of the benefits of mediation is that it provides participants with an opportunity for dialogue which often reduces tensions, as each party is able to clarify with one another how they feel about the issues between them. At the very least, even if no agreement is reached, each party should come away from a mediation feeling they have a clearer understanding of their own interests and that of the other party.

In many of the cases we deal with, factors which contribute to disputes include delay and poor communication. Often this is mixed with a lack of understanding of each party's position, which can contribute to bad feelings and a lack of trust. It is of course the mediator's role to improve communication and understanding between the parties. Often, this is enough for the parties to alter their attitude to one another and if they genuinely want to resolve a situation, the mediation can then move on to creating a set of options for resolution.

Although the preliminary stages of encouraging clarification of issues and understanding between the parties can take some time, the option generation and bargaining for agreement stages progress more quickly if each side has a clear understanding of the other side's needs and interests.

HONG KONG CALLING

In our last annual report, we noted that the Hong Kong Ombudsman intended setting up a mediation unit modelled on our own.

In February 1997, Assistant Ombudsman Greg Andrews was asked by the Hong Kong Ombudsman to visit his office and provide advice on setting up their program. He spent three days demonstrating mediation skills to the staff of the office and working with the Ombudsman's working party to refine their policy and guidelines. The Assistant Ombudsman also gave a presentation on the mediation work of our office to senior members of the Hong Kong civil service. All expenses for this trip were met by the Hong Kong Ombudsman.

As a result of the Assistant Ombudsman's visit, the Hong Kong Ombudsman contracted with our office to present a five day mediation training course for his staff. We received a fee for the course and all travel and accommodation expenses were again met by the Hong Kong Ombudsman.

In April 1997, our Alternative Dispute Resolution Coordinator, Natasha Serventy travelled to Hong Kong to teach the course. Her five-day course was specifically prepared for Hong Kong conditions, and the skills and strategies of mediation were enthusiastically embraced by all participants.

During her week in Hong Kong Ms Serventy addressed a gathering of over 100 chief executive officers in the Hong Kong public sector about mediation and its use both in NSW and Hong Kong. From the degree of interest generated and the questions after the address, it would appear the Hong Kong public sector is keen to try out this new method of resolving disputes.

Promoting Alternative Dispute Resolution

Our mediation unit and services are recognised internationally. The Hong Kong Ombudsman is setting up a mediation unit based on our own. The Hong Kong Ombudsman paid for our Alternative Dispute Resolution Coordinator, Natasha Serventy, and Assistant Ombudsman, Greg Andrews, to visit Hong Kong to provide advice and training for their staff and public sector chief executives.



Case Studies

- Trouble in Paradise
- Under Observation
- Harmony in Higher Education
- Banking on Mediation
- Water Fight

TROUBLE IN PARADISE

A Sydney couple had bought a leasehold interest in a substantial bushland block, imagining that it would be a wonderful holiday property in the short term, and a place for retirement in the longer term. Unfortunately, the local council rezoned the land without warning, preventing them using it as they had intended. In addition, State Forests decided to make the land part of State Forests. While the couple were negotiating a solution with State Forests, the Resources and Conservation Assessment Committee (RACAC) earmarked the land for assessment by National Parks and Wildlife Service. The land was effectively frozen and the agreement which had almost been reached between State forests and the couple was unable to proceed. The couple complained to us and the file was referred for mediation.

The four parties present at the mediation were:

- the complainants;
- a representative of the State Forests Department;
- a representative of the National Parks & Wildlife Service; and
- a representative of the Resources & Conservation Assessment Committee (RACAC).

After clarifying each party's issues and responsibilities, a number of options were considered. Each one carried with it the complexities of dealing with all the parties' needs. As we worked through discussions on zoning, acquisition of land and land exchanges, the parties were able to determine in their own minds which option would best meet their needs as well as the needs of the others.

During the session, the complainants were able to express their feelings about the decisions which had been made by these various government departments, none of which had taken into consideration their wishes and desires. One of the important underlying issues of the mediation was for each agency representative to understand the complainants' point of view. Another aspect was for the complainants involved to understand, even if they did not fully agree with, the positions taken by the government departments. In the end, in order to resolve the matter, it was not necessary for the parties to reach agreement on all aspects of the dispute. Indeed, this is usually the case in most mediations. The parties may often agree

to disagree about the past and the degree of their responsibility for the problem, but still progress to a joint willingness to seek a solution, such as in this mediation. In the final solution, it was agreed by all parties that there would be a subdivision of the land, and that the part of the land that had special conservation value and which would contribute most to the forestry system would remain as forest. The other part of the land would be transferred to the complainants as unencumbered title (freehold) in recognition for the need for some type of compensation for the problems involved in the dispute.

All government parties agreed to consider the land as soon as possible in terms of its wildlife and other conservation values, and to move as quickly as possible towards implementing the agreement.

In many ways, this matter highlights the usefulness of a neutral mediation facility such as that provided by our office. The parties were probably all aware that such an option was a possible solution to the complexities surrounding this particular piece of land. Nevertheless, because so many of the parties were involved it was difficult, without some formal meeting, to reach a solution. There were also underlying and more personal issues that needed to be aired prior to a solution being reached.

UNDER OBSERVATION

There can be many reasons for delay and miscommunication on government files. Usually, the effects of this are felt more strongly by the non-government parties. A mediation session is often an opportunity to discuss these effects, and if appropriate, for a government agency to extend an apology to the complainant. In this manner, mediation can sometimes provide not only a full resolution of the dispute but also an opportunity for a reconciled relationship between the parties.

A similar problem was at the heart of this mediation. The dispute had been protracted and although both the complainants and the local council involved had invested considerable time and effort in attempting to resolve the matter, it had had little effect.

A Sydney couple obtained approval to demolish the house on their land and build their dream home. Just before they built the house, council approved a development application for villa homes on a neighbouring prop-

erty. The council assured the couple their Code for Villa Homes would protect their sunlight and privacy. The conditions requiring boundary fencing and landscaping, together with the location and the design of the villas, meant the couple's property should not be adversely affected by the new development.

The couple built their new house but were shocked when the villas were constructed. The villa's overlooked their rear boundary and in effect the couple had no privacy. The couple's attempts to gain access to the amended plans, and information from the council regarding those plans, was met with initial resistance. Eventually they established that the villa development contravened the council's code, and complained to us about the alleged failure of the council to comply with its own code in the case of this development.

The mediation session provided the opportunity for both parties to voice their grievances and frustrations to one another. At the point where they both felt that their views were heard, it became possible for the parties to begin to focus on practical solutions for the future.

The solution centred on the need for a structure to be built to ensure the couple's privacy and it was agreed the council would bear the cost of the structure.

HARMONY IN HIGHER EDUCATION

Sometimes disputes which look difficult are easily resolved. In all cases this is because of the attitude of the parties, and their desire to reach an agreement.

We received a complaint from a former student who had enrolled in a fine arts course at a large Technical and Further Education (TAFE) institution.

The student had not completed the course and left in acrimonious circumstances, claiming he had been the subject of discrimination at the institution in relation to his artistic style. He claimed the institution had not adequately explained, in any information it published, what was required of students and the artistic approach the institution was looking for.

Additionally, he complained the institution did not have a proper mechanism for addressing students' grievances and his concerns about the course had not been adequately assessed when he raised the matter with the institution's management. He was extremely upset about what had happened to him, which had resulted in a dispute that seemed to him to be intractable.

Both the former student and the representatives from the institution approached the mediation in a positive manner and the dispute was easily resolved. The resolution included an agreement that the institute would establish formal grievance handling procedures.

BANKING ON MEDIATION

An elderly couple living in the Hunter region complained to us a number of years ago about damage to their property caused by an embankment collapse during a downpour. The embankment was owned by their local council as part of a reserve. The collapse demolished extensive landscaping they had built years earlier. We suggested the couple consider legal action.

A few years later we were again contacted by the couple. They complained that despite a written promise by a councillor that the council would repair the embankment, it had not been done. The councillor who had promised the action had since died. We decided to mediate the complaint and the council, somewhat reluctantly, agreed.

At the mediation, both sides' needs and concerns were discussed. The council feared legal liability for a costly job. The council representative was surprised to learn that the complainants wanted little more than some physical assistance with tidying up the damage caused by the collapse.

The council agreed to this and to investigate to ensure that the damage was not a health hazard. The council further agreed to maintain its reserve and to consult the complainants on any future changes to the use of the reserve. The dispute was settled.

WATER FIGHT

A farmer in country NSW complained that the Department of Land and Water Conservation were being unreasonable in requiring him to remove a water pump supplying water to his property. He believed an agreement had previously been made under which the authority was able to use part of his land in return for the right to pump water at a special rate. He subsequently made a number of business decisions on this basis.

The agreement had not been fully recorded, and the authority denied that an agreement on the terms stated by the complainant had been made. Officers from the Department were concerned that in a time when water supplies were limited, and water licences closely monitored, the farmer was enjoying an unfair and unregulated access to cheap water, far in excess of that available to other farmers.

After more than four years of lengthy correspondence, and with the threat of legal action looming, both parties agreed to mediation by the Ombudsman. As the matter involved two different arms of the Department of Land and Water Conservation, representatives of these two areas, together with a representative from the department's legal section attended the mediation, as did the complainant and his legal adviser.

The mediation itself took place in the country, with two trained mediators from our office conducting the process. Time had to be spent reviewing the initial events surrounding the initial agreement, and the years of correspondence which had clearly engendered frustration and weariness in all parties.

Despite the fact no easy solution was apparent, everyone wished to avoid the alternative, which was to resolve the issues through the court, where both sides would have to spend considerable money and time arguing their case. Consideration of the alternatives is often a powerful motivation during a mediation to spur parties on to create a resolution.

Once agreement was reached, the wording of each term was worked through carefully to ensure there would be no repeat of the initial problem of incomplete written records of the agreement. This is common in mediations conducted by our office, as we encourage written agreements, and our mediators are specifically trained in how to help the parties clarify the terms of their agreements to make sure they are both complete and realistic.

The Department later thanked the Ombudsman for assisting the parties to find a settlement to such a protracted dispute.

I would like to thank you and [your investigation officer] for conducting the mediation between the Hunter Institute of Technology and myself. I would also like to take this opportunity to express my gratitude to the Ombudsman's Office for making the mediation service available to me. Without this service I have no doubt that a resolution for the dispute would ever have eventuated or had a successful outcome.

A mediation participant

A brief note to thank you for arranging and facilitating the mediation session between [officers] from Sydney Water and members of the [X] family...

I was particularly pleased with the outcomes of this session. It appears that Sydney Water and Mrs [X] will now be able to agree on a course of action to resolve the dispute. This was the first time both parties had been able to reach common ground over this matter.

I appreciate your efforts in helping to achieve this result.

A mediation participant

Improving Complaint Handling in the Public Sector

TRAINING THE PUBLIC SECTOR TO BETTER HANDLE COMPLAINTS

There is continuing interest within all levels of government towards agencies creating full customer service systems which include making the best use of customer feedback and professional handling of customer complaints. Demand for our program of encouraging best practice complaint handling in the public sector, both at state and local government levels, escalated dramatically during the past 12 months. This program included training, consultancies, and our popular *Effective Complaint Handling Guidelines*.

For some years, we have been committed to providing whatever assistance we can to local and state governments who wish to set up their own internal complaints management or customer feedback systems. A common scenario is for representatives of an agency to attend one of our workshops designed for managers, such as *Understanding Complaint Management*. This systems based workshop looks at best practice complaints systems and gives managers sufficient information to decide the type of system which would be most appropriate for their organisation. During the past financial year we presented 10 courses in Sydney for managers, five of which were open to any public sector employees, and five which were specifically customised for managers within the State Rail Authority.

We also presented two courses for managers outside Sydney, one open course in Perth for the Public Sector Management Office and a customised course for Moree Plains Shire Council which was attended by both staff and councillors. More courses for managers have been scheduled for 1997-98.


Following attendance at one of our management courses, it is common for the agency to begin development or review of its own complaint handling policy and guidelines. On request, we have reviewed agency guidelines and offered suggestions as to how they can be improved. We regularly demonstrate our computer system for the management of high volume complaint and customer feedback caseloads.

Over the past four years, we have been asked by participants about further courses; courses which would be more appropriate for staff who need skills training in how best to deal with complainants. As a result we have developed 'frontline' complaint handling courses both externally on a customised basis and in house for our own staff members. Last year, we prepared a specific skills based course for the State Rail Authority, and presented eight workshops to station and ticketing staff on best practice complaint handling.

Due to a growing demand for this type of workshop, which is skills rather than systems based, we will be offering open courses for public sector staff during 1997-98. Income generated by these courses contributes to the cost of carrying out our investigation work.

DEALING WITH OUR OWN COMPLAINTS

We have an internal system to deal with requests for review of decisions and complaints about our performance. We record all such letters or calls along with those where thanks or positive news about the work of the office or individuals are expressed.



Demand for our program of encouraging best practice complaint handling in the public sector, both at state and local government levels, escalated dramatically during the past 12 months. This program included training, consultancies, and our popular *Effective Complaint Handling Guidelines*.

A "review" is a written request expressing dissatisfaction with a decision and seeking to have the decision overturned. Our review policy and procedures were detailed in last year's annual report.

A "complaint" (which may be incorporated in a review request) is where an allegation of impropriety or misconduct is clearly articulated or a grievance is expressed about our policies and procedures, or the way in which our staff handled a matter. Although we only receive a small number of complaints each year, we take them very seriously and all are referred to a senior officer for investigation.

The types of complaints that we received included allegations of delay, conflict of interest, bias, rudeness, lack of procedural fairness and improper disclosure of information. A few of these complaints required remedial action to address the situation. This included giving apologies, counselling staff and reviewing procedures. It is our practice to advise complainants of the results of our inquiries and we take the opportunity to clarify any issues that have been raised.

We regard complaints as useful indicators to assess how well we are performing our role and to look at ways of improving our service. This year we plan to review our internal complaint system.

To improve service you must understand customer expectations and levels of satisfaction. Customer feedback is essential to this understanding. In our courses we teach participants that complaints are a form of customer feedback and effective complaints handling is a key part of good customer service.



Ensuring We Are Accessible



We have developed an Access and Awareness Plan which focuses on improving the representation of minority groups among our complainant profile. It is structured as a series of work plans, each designed for specific groups including Aboriginal and ethnic communities, young people, people with a disability, people in detention, people in regional NSW and women.

PLANNING FOR ACCESS AND AWARENESS

In February 1997, the Ombudsman approved a three year access and awareness plan which focuses on improving the representation of minority groups among our complainant profile. A draft access and awareness plan was originally prepared by the office in February 1995 in response to the Joint Parliamentary Committee's Access and Awareness Inquiry report of September 1994. However a number of the strategies outlined in that draft plan were dependent on funding which did not eventuate. Cost neutral strategies were nonetheless developed and implemented, although these were limited in scope and impact.

Funding was provided last year for a number of new positions, namely three staff for the Aboriginal Complaints Unit in the Police Team and a Youth Liaison Officer in the General Team. These additional staff members have enabled the development and implementation of numerous strategies to raise awareness of the office among both young people and Aboriginal communities and to better monitor complaints received by these groups.

While the work of these positions focuses on two specific areas, their presence has helped to invigorate access and equity in our office. As such, significant developments have also been initiated in relation to ethnic communities and people in rural areas.

An access and awareness committee has been formed which reports directly to the management committee on a regular basis and provides a forum for information sharing and coordination between the people responsible for implementing the various strategies. The access and awareness committee was also responsible for the drafting the current access and awareness plan.

The main aim of the plan is to provide action-based strategies with clear performance indicators, nominated responsible personnel and relevant timeframes. The document is structured as a series of work plans, each specifically designed for various groups including Aboriginal communities, ethnic communities, young people, people with a disability, people in detention, people in rural areas and women. The plan is a dynamic document with updates and additions being made as required.

The external or outreach work being performed by the office is occurring alongside internal strategies to improve the general sensitivity needed in handling complaints and responding to an increasingly diverse clientele.

WORKING WITH ETHNIC COMMUNITIES

Late last year we began an intensive period of consultations with peak ethnic community organisations with a view to improving our profile and ensuring ethnic communities have a clear understanding of our role and function. The consultations aimed to:

- gauge the communities' level of knowledge of our office;
- identify community specific needs in terms of our services, barriers to using those services and ways of eliminating those barriers; and
- identify networks and best methods of information dissemination.

A survey was drafted and distributed among various community groups to further determine levels of awareness of our office throughout the ethnic community sector.

Around 15 peak community organisations were involved in the consultation process and as a result, subsequent information sessions have been

held for more than 100 workers and management members of these organisations. We are looking at long term strategies for continuing our work in this area.

The Ombudsman hosted larger scale community consultations with the Chinese and Vietnamese communities during the year. The consultations included presentations by senior staff and team members. The consultations provided community members with an opportunity to raise issues of concerns or queries. This proved extremely useful for both the community and our office, with some matters resolved on the spot. The consultations also generated significant media coverage among ethnic media. We are planning to continue these outreach sessions with other ethnic communities in the coming year.

We have continued distributing our community language brochures. We have produced nine brochures in community languages including Arabic, Croatian, Chinese, Greek, Italian, Spanish, Serbian, Turkish and Vietnamese. In the coming year we will review the brochures to determine if new translations are required.

WORKING WITH THE ETHNIC MEDIA

Ethnic media now receive all media releases distributed by the office. General information on the Ombudsman's office was also prepared as a community announcement for 2RRR for various programs including Hindi, East Timorese, Hungarian, Yugoslav and African.

Plans are underway for an information session on the Freedom of Information legislation which will take place later this year.

Advertising was also taken out in the 1997 Chinese Business Directory.

FESTIVALS

Staff had a rewarding day at the St George Migrant Information Day, offering information on the office. We are also represented on the NSW Refugee Week Committee.

GOVERNMENT AGENCIES

Discussions with Canterbury Council have been initiated in order to distribute information about the Ombudsman at citizenship ceremonies. Contact was made with Fairfield Council to work in with events as part of their multicultural calendar.

The office was also represented at the launch of Impact of Contracting Out on Female NESB Workers: Case Study of the NSW Government Cleaning Service at Parliament House.

ACTIVITIES WITHIN THE OFFICE

Office-wide cross cultural training is being organised for late 1997, which will cover the office's handling of clients from culturally diverse backgrounds, as well as personnel within the office.

A number of relevant research publications from the Bureau of Immigration, Multicultural and Population Research were purchased for the library.

FUTURE PLANS

Our plans for the coming year are listed below in the format required by the Ethic Affairs Commission and our ethnic affairs plan. Our ethnic affairs plan contains addi-

Key Result Area	Initiative	Timeframe	Intended Outcome
Social Justice	Liaise with peak NESB bodies and use NESB networks	Ongoing	Increase community awareness. Improve lines of communication.
	Monitor our services through regular customer surveys	Ongoing	Provides strategic information to ensure effective targeting of services.
Community Harmony	Provide representatives to speak at meetings of NESB groups	Ongoing timetable of engagements and on request	Increased community awareness and improve our understanding of community needs.
	Attend community festivals and cultural activities to provide information about the Ombudsman.	Ongoing timetable of events and as requested	Increased community awareness and improve our understanding of community needs.
	Train staff in cultural awareness	Training to be completed by December 1997	There are suitably qualified staff to deal with complaints by people from a NESB.

preters and having correspondence translated.

REGIONAL OUTREACH

In a continuing effort to ensure our accessibility to people outside the metropolitan area we make trips to regional areas every year. During 1996-97 three separate trips encompassed the North Coast, Far West and Riverina districts of the state.

During the week long visit to each area, investigation officers performed a range of tasks. Presentations were given to various groups including Aboriginal, youth, welfare workers and state government employees as well as the general public in open meetings.

The officers also take complaints from individuals, providing community members with the opportunity to personally discuss problems with our investigation staff.

A continued program of bimonthly complaint taking sessions in Newcastle remained a priority and officers were regularly fully booked.

In the coming year we will conduct visits to the South West and North West regions, as well as continue the bimonthly visits to Newcastle. Our focus will remain on increasing awareness through media and community contact. We will also compile a list of information, multicultural and community events, enabling a structured approach to attending these events.

INFORMATION AND PUBLICATIONS

An extensive distribution of brochures occurred during the first two months of this financial year. Information is regularly resupplied to government, non-government and community organisations on request, and consequently we distributed approximately 116,000 brochures during the year. Our most popular brochure is *Tips*

for making complaints of which 39,000 copies have been distributed. The brochure provides a step by step guide to making a complaint and lists watchdog agencies and complaint taking bodies. The brochure is regularly updated and demand remains high.

A new brochure *Mediation* was produced during the year. Two new publications for state government employees *Principles for Administrative Good Conduct*, and a summary of our guidelines on *Administrative Good Conduct*, were distributed free to public authorities and local councils across NSW. The response to these publications was overwhelming, with several thousand copies provided to organisations as hard copy and on disk.

We expanded our guidelines series yet again with the publication of the second edition of the *Ombudsman's Protected Disclosures Guidelines*. A complimentary copy was sent to all departments and further copies continue to be sold.

The second edition of the *Ombudsman's FOI Policies and Guidelines* has recently been released.

Community and media interest in our reports to parliament remained high throughout the year. Eight reports were tabled, two more than the previous year. The release of our report *Inquiry into Juvenile Detention Centres* report in December received a particularly high level of attention.

In the coming year we have several priorities with regard to provision of information. We will:

- establish and develop our web site to provide another means for accessing a range of information about our services; and
- produce an easy to read complaint form for young people.

Consultations with Chinese and Vietnamese community leaders aimed to:

- gauge the communities' level of knowledge of our office;
- identify community specific needs in terms of our services, barriers to using those services and ways of eliminating those barriers; and
- identify networks and best ways to disseminate information.



PEOPLE IN DETENTION

Visits to juvenile detention centres and correctional centres remain an important part of the accessibility of our office. Twenty-two visits to correctional centres were conducted over the twelve month period. Investigation officers accompanied by the Aboriginal Complaints Officer met with gaol governors, conducted inspections of the centres and discussed complaints with inmates.

Similarly, the Youth Liaison Officer accompanied investigation officers when visiting the state's nine juvenile justice centres.

WOMEN

Promotion of the rights of women is an important issue for our office and throughout the year we were involved in a variety of activities. We had stalls at the Sydney Women's Festival and International Women's Day (IWD) march, and some staff attended the IWD picnic. We aim to be involved in these events again next year.

In the next twelve months our Spokeswoman will attend workshops to improve her understanding of and ability to deal with women's issues. We aim to hold monthly lunches for staff with prominent women speakers. Information was collected and displayed in the office and this will be expanded in the next twelve months.

MEDIA LIAISON

Over 45 media releases were distributed relating to various issues including the public release of reports and regional outreach visits. Personal interest in the Ombudsman continued during the year with profiles appearing in a range of publications including the Australian Magazine and Sydney Morning Herald.

PEOPLE WITH A DISABILITY

We worked with the Royal Blind Society to prepare an audio recording of our information brochures. The 200 tapes have been distributed to people who are sight impaired, libraries and a wide range of community groups. Updated copies of the tapes will be produced in the next twelve months.

Use of our TTY (Telephone Typewriter) telephone has been disappointing and we will be assessing the community's awareness of this service, especially with the growth of electronic communication.

Appendix six contains the annual report of our disability strategic plan.

In the coming year we will review the results of our complainant survey in relation to respondents who have a disability. We will use the results of this review to prepare strategies to ensure people who have a disability, are aware of our office and have access to our services.

Annual planning days provide an opportunity to coordinate access and awareness activities across the office.



Working with Young People

BACKGROUND

Young people do not make many complaints to the Ombudsman. To help overcome this the Ombudsman appointed a youth liaison officer (YLO), Stephen Waite, in October 1996. Stephen has made contact with many young people and groups that work with young people.

One of the main messages we give young people is that they have a right to good service and respect from government agencies and that they have a right to complain if they do not receive such treatment. Many young people are unaware of these rights and are unaware of the existence of the Ombudsman.

We believe it is important for every young person to know about our services. It is of course difficult to speak with each of them individually, so an important part of our access and awareness program is to speak to the people who work with young people and who can act as their advocates.

MEETINGS WITH GROUPS OF YOUNG PEOPLE

During the year we conducted presentations and workshops for young people throughout NSW. We spoke to groups from schools, TAFEs, universities and community groups.


We have made a special effort to encourage peer advocacy. For example a member of the Youth Advisory Council, invited our YLO to speak to the Youth Advocacy Project on the Central Coast. Government schools have Student Representative Councils (SRCs) which provide a voice for students and there is also a state SRC. We have run workshops and information sessions for the state SRC and for eight district SRCs, representing over 30 secondary schools. Our YLO will meet with other SRCs in the coming year. The state SRC has nominated a contact person for the NSW Ombudsman, Rebecca May from Greystanes High School.

We have been grateful to the district SRCs for their feedback on the written materials we are developing for young people. At the suggestion of Gosford SRC we will be working with our SRC contact to establish a training kit for SRC members. The training kit will help SRC members inform other school students about complaint making procedures.

We take a special interest in detainees in juvenile justice centres. Many of our complaints from young people are made on their behalf by their parents. This is not usually the case for detainees and they require extra support. With the appointment of our YLO we have been able to increase the frequency of our visits to the juvenile justice centres throughout the 1997 calendar year. The YLO has also visited and taken complaints from the prisoners on the Young Offenders Program at Parklea Correction Centre.

MEETINGS WITH PEAK YOUTH ORGANISATIONS

Peak youth groups are in a good position to make complaints on behalf of young people. They provide us with an overview of the main issues regarding young people and suggestions about how to approach young people. We have met with five peak youth organisations and will maintain ongoing contact.



One of our main messages to young people is that they have a right to good service and respect from government agencies and that they have a right to complain if they do not receive such treatment.

CONSULTATIONS WITH SERVICE PROVIDERS

Government and non-government service providers are the people in day-to-day contact with young people. We believe they provide a valuable means of informing young people about their rights, including the right to make complaints. We met with many of these groups across NSW during the year. More than 400 youth workers have attended meetings to find out about our work and procedures, and to discuss major issues for young people. These meetings provide a great opportunity to distribute our posters and brochures.

SUPPORTING YOUTH INITIATIVES

We have actively supported initiatives we believe will benefit young people, especially those addressing issues which may otherwise become complaints.

We have had many positive interactions with the Police Service including meetings with the Community Safety Development Branch about police YLOs, presentations at the police YLOs' annual forum and submissions regarding course development for the police YLOs.

Our YLO participated in the Premier's youth policy forum and we contributed comments to the Cabinet Office on their draft youth policy statement. We developed a response to the cautioning aspects of the Young Offenders' Bill and this response was presented to the forum organised by the Attorney General's Department.

We believe the emerging curriculum *Civics and Citizenship* is important for young people. We have a representative on the Board of Studies Reference Group which is involved in the development of curriculum content. We would like to see accountability bodies, including the Ombudsman, explicitly included in the curriculum. We believe this is important if students are to fully understand their rights and responsibilities, and decision making and democratic processes.

We have met with representatives of the new Office of Children and Young People. The Department of Housing has also consulted with us about improving the quality of written materials from the department to young people.

WRITTEN MATERIALS

Three articles have been published on the work of the office in relation to young people, and information on the Ombudsman's office was added to the brochure *Count Us In*, which was published by DTEC. Information was distributed to various community organisations, some of which are listed in the table.

A youth poster was published and is currently being distributed throughout the state. A youth specific bro-

chure, is being prepared and will be available for distribution this year. The images from this brochure and the poster will be used to develop banners and fridge magnets that will be part of our distribution to various youth groups, schools, universities and colleges. In developing these materials we have been very pleased to work with Jason Rogers, a young artist from Wollongong. Jason is associated with "Creative Youth Initiatives", a Sydney City Mission project which aims to provide young people with creative opportunities and access to employment.

We published contact cards for young people and distributed them throughout NSW. The popular cards carry the message "Don't Whinge - Complain!", as well as our telephone number.

It is difficult to explain in writing considerations such as 'outside jurisdiction', 'last resort' and 'exclusions'. This is especially so when we are trying to produce simple and brief brochures catering for all reading abilities. However we do not want to mislead young people by giving them the impression that we have the power to deal with all their problems.

We are resolving this dilemma in a number of ways. Firstly we seek the assistance of youth workers, advocates, peak groups and peer advocates and secondly we encourage a simple first step for young people: "phone us and we will help". If a young person rings us and has a complaint we can take up, we can help with the second step - writing the complaint. If we can't help them directly we are confident we can find someone who can.

We have also established a comprehensive database of youth contacts so we can distribute youth related materials throughout NSW. Many of the people on the database are people we have met.

EASE OF ACCESS

Lack of knowledge about our office is only one of the reasons that we receive few complaints from young people. We are making it easier to complain and working to increase the confidence and trust of young people in our office.

We believe it is important for young people to see and meet the people who work in our office and this was our main tactic during the year.

Availability is also an important issue. Our YLO has provided an extra and specialised resource for complainants who wish to talk over their concerns and seek advice about how to deal with their complaints. The YLO has been able to help young complainants with writing their complaints. The YLO has also provided other staff with advice regarding young complainants and assisted with the liaison between complainants, our office and departments.

Working with Young People

Upper: Jason Rogers, the young artist responsible for designing our youth poster, met with students from Port Jackson district to gauge their reactions to the poster.

Lower: Our staff have travelled across NSW speaking to people who work with young people. As a result we have seen the number of complaints from young people and about youth related issues, increase dramatically.



The YLO has established, and is currently chairing, a review of our complaint handling procedures for young people. Some of the main changes already implemented are:

- staff now make regular phone contact with young complainants so that young people are supported and informed if there are any delays in the process and procedures can be explained;
- our letters have been simplified so they are easily read; and
- the development of a straightforward and short complaint form for young people (to satisfy the legal requirement that our complaints are in writing and not turn off people who don't feel confident writing).

Training and development are important to the youth access and awareness program. Regular formal and informal training sessions have occurred across the office, including programmed sessions in team meetings and specific youth issues training days for the police and general teams. Both police and general teams have dedicated complaints officers working on youth complaints so that complainants benefit from specialised expertise and skills. Thirty people from our office attended a performance of *Face To Face*. The performers were young people from Creative Youth Initiatives and was part of the Inner City Homeless Youth Project. The play is about the experiences of young people dealing with government departments. During the year another 20 people from the office attended a two day training session on plain English.

We have benefited from the presence in the office of Debbie Delaney, a youth welfare student on placement from Loftus TAFE. Debbie has been a valuable source of advice and guidance about the access and awareness program.

WHAT ARE WE HEARING ?

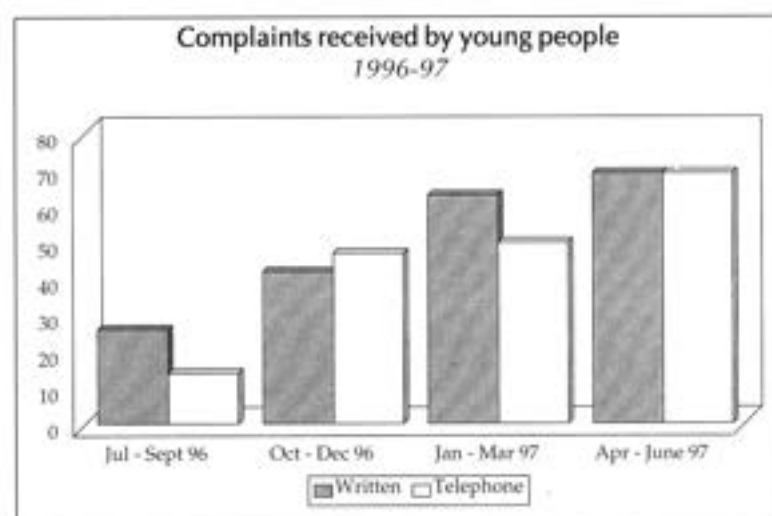
- Young people fear making complaints. Some fear nobody will believe them. Others are frightened of being mistreated if they complain.
- Many young people are confused about who they complain to.
- Many young people have low expectations of government agencies.
- Young people are interested in the big picture and are not necessarily self centred in their desire for fair, reasonable and legal treatment. They understand that by making a complaint to the Ombudsman they can make a difference for others.
- There are issues for all departments and authorities regarding young people.

- It will take time and encouragement before young people as a group become confident about making complaints, especially written complaints.
- Our best chance of getting contact from young people is by phone and to encourage this will require more phone inquiries staff.
- It is important for supportive adults and young people to complain on behalf of less confident young people otherwise issues remain hidden.
- Young people believe that most adults who work for government departments assume complaints from young people are vexatious. Our experience is that they are not.

COMPLAINTS RECEIVED

We have received a steady and significant increase of written and telephone complaints over the year. Our YLO started in mid October 1996 and the increase in complaints mirrors our increased contact with young people and representatives from youth organisations. Written complaints increased 165% and telephone inquiries increased 392% over the year (measured as a % increase in the number of complaints in the first quarter to the number of complaints in the fourth quarter). These figures can be compared to office wide figures, which show that complaints increased by 10.4% (telephone) and 5.2% (written) during 1996/97 compared to the previous year.

The large increase in the number of inquiries and complaints about juvenile issues need to be viewed with some caution. Firstly, they in some ways reflect an improvement in our data collection. Even so this is a positive outcome because it means that we are better situated to examine trends. Secondly the increases come from a low base and it will take continued effort to maintain them. Finally many of these complaints are made on behalf of young people. These allow us to address issues about gov-



**SUMMARY OF YOUTH ACCESS AND AWARENESS ACTIVITIES
1996-97**

GROUPS OF YOUNG PEOPLE

Bonyrigg Youth Group
 Wagga Youth Council
 National Tertiary Presidents' Conference
 Loftus TAFE
 Nirimba TAFE
 Ultimo TAFE welfare expo
 Orange TAFE
 Dubbo City Youth Council
 UNSW orientation week guides training day
 UNSW orientation day
 UTS orientation day
 UWS orientation days (2)
 Wingham High School
 Dubbo High School
 Kempsey High School
 Port Macquarie High School
 Bega High School

DISTRICT STUDENT REPRESENTATIVE COUNCILS

Liverpool
 Broken Hill
 Dubbo
 Bateman's Bay
 Gosford
 Port Macquarie
 Wagga Wagga
 Port Jackson

WRITTEN MATERIALS DISTRIBUTED

Youth Action and Policy Association
 "On The Street" magazine
 Mt Druitt Youth Workers
 Options Youth Housing
 Centacare
 Health Service Project
 2010
 Parramatta Youth Project
 Copeland Youth Services
 Leichardt Municipal Council
 Barnardos
 South West Sydney Health Area
 Gosford Youth Services

KEY INSIGHTS

Youth Development Project at Newcastle
 Multicultural Youth Project - Bankstown
 Creative Youth Initiatives - Darlinghurst
 South Sydney Community Youth Council
 Justice Action
 Inner City Homeless Youth Project

YOUTH SERVICE PROVIDERS

Streetworkers' Network Meeting,
 Glebe Youth Project,
 Central Coast Youth Workers
 Port Macquarie Youth Workers
 Orange Youth Workers and young people
 Hunter R Y D O N Annual Conference
 Staff at the Distance Education School at Dubbo,
 National Children's and Youth Law Centre,
 Youth Branch Of the Cabinet Office
 Fairfield Youth Workers Network Meeting
 Youth networks of Western Sydney - YAPA
 Taree Youth Workers and young people
 Broken Hill Youth Workers and young people,
 Marrickville Leichardt Youth Interagency
 School welfare staff at Port Macquarie and Dubbo
 Department Of Community Services re. refugees
 Maitland Youth Development Unit
 Eastlakes Youth Interagency (Newcastle)
 Police Service - Newcastle Patrol

PEAK YOUTH ORGANISATIONS

Youth Action and Policy Association
 Youth Advisory Council
 Youth Justice Coalition
 Youth Accommodation Association
 Federation of Parents and Citizens

SUPPORTING YOUTH INITIATIVES

Office of Children and Young People
 Police Service - Youth Liaison Officers
 Cabinet Office
 Attorney Generals Department
 Board of Studies
 Department of Housing

ernment agencies and their service to young people, however, we would like to further increase complaints coming directly from young people.

Given the above considerations, we are very happy with the trend shown in these figures and see them as a positive indicator of the progress of the access and awareness program for young people.

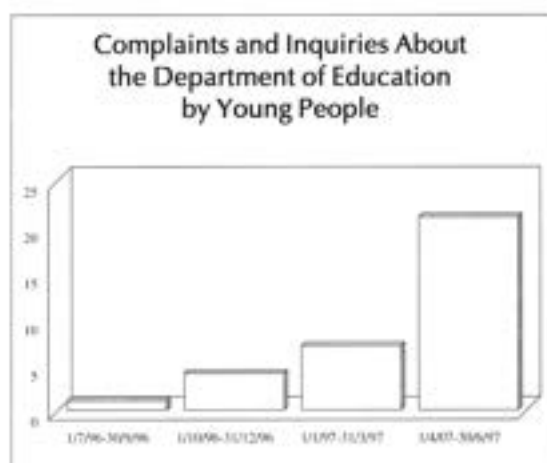
PATTERNS OF COMPLAINTS

Examples and case studies of the issues affecting young people can be found in the sections of this report to do with police, departments and authorities, juvenile justice and local councils.

In the past, the majority of complaints and enquiries from and on behalf of young people have related to police and juvenile justice centres. This is still the case. About 50% of complaints and enquiries relate to police, with complaints concerning mainly assaults, stop/ search /seize and breach of rights. Complaints and enquiries about juvenile justice centres represent about 30% of those from young people.

However as the number of complaints and enquiries from young have increased so has the diversity. By the end of the year we were receiving regular contact regarding a variety of departments and authorities including Department of School Education, local councils, State Rail Authority, Housing, Roads and Traffic Authority and TAFEs and universities. For example the graph below shows the number of complaints and enquiries about the Department of School Education. The increased range of complaints and enquiries includes increasing contact from young people seeking general advice.

Recurring themes in these complaints are the lack of information given to young people about their rights and the processes that affect them, and a general perception that young people should be seen and not heard.



FOR THE FUTURE

We are committed to:

- developing and distributing brochures and other written materials as they become available;
- creating a "circle of friends" throughout NSW. This is an idea supported by young people and youth workers (this circle will allow us to give a young person anywhere in the state the name of a local person who can help them write a complaint).;
- creating curriculum materials for NSW schools;
- running focus groups for young people to identify systemic problems that may warrant developing our own motion investigations; and
- collecting and monitoring patterns of issues related to young people.

THE VALUE OF A SPECIALISED YOUTH LIAISON OFFICER

The significant inroads we have made into access and awareness for young people this past year has only been possible through having a dedicated liaison officer. Funding for this position runs out at the end of the 1996-97 financial year. It is clear already that ongoing support for this position will be necessary to consolidate and maintain the youth initiative.

We published contact cards for young people. The bright yellow cards have proved extremely popular and we have distributed hundreds across the state. The reverse side lists agencies we can investigate.



Working with Aboriginal People



Despite the government's efforts to reduce the impact of the application of non-culturally appropriate policies and practices, many Aboriginal people and communities are still subject to systemic discrimination and institutionalised racism by government departments, agencies, and public officials.

BACKGROUND

For many decades Aboriginal people have had many aspects of their lives dominated by government policies, departments and agencies. Such involvement has not always been welcomed by Aboriginal people. Further, as history has evidenced, such involvement has not always been beneficial for Aboriginal peoples and communities.

In recent years governments have made some efforts to reduce the impact of the application of over two centuries of non-culturally appropriate policies and practices to Aboriginal peoples and communities. Despite these efforts, many Aboriginal people and communities are still subject to systemic discrimination and institutionalised racism when dealing with government departments, agencies, and public officials.

Another unfortunate legacy of previous government policy and mainstream social attitudes of the past is the poor levels of literacy and numeracy amongst many Aboriginal people and communities, especially communities in country or more remote areas. A lack of such skills affects the ability of Aboriginal people to effectively communicate their grievances to many government departments and agencies.

In recognition of the above, and in light of the number of complaints received by the Ombudsman from Aboriginal people, the Ombudsman employs an Aboriginal Complaints Officer. Nathan Tyson, the latest occupant of this position, joined the office in early January, 1997. We also have a dedicated Aboriginal Complaints Unit in our team that handles complaints about police. The work of the unit is detailed in the section *Handling Complaints About Police*.

ABORIGINAL COMPLAINTS OFFICER - ROLE AND RESPONSIBILITIES

The role of the Aboriginal complaints officer (ACO) can be broken roughly into three key areas of responsibility. The first of these areas is the participation in visits to correctional centres and juvenile justice centres across NSW, to take complaints and monitor the concerns of Aboriginal inmates and detainees.

The second area of responsibility of the ACO consists of visits to Aboriginal communities, groups and organisations throughout NSW. The aim of these visits is to increase the awareness amongst Aboriginal people of the role and responsibilities of the NSW Ombudsman.

The third area of responsibility of the Aboriginal Complaints Officer is to make preliminary inquiries on many of the written complaints received by this office from Aboriginal people and to refer and/or decline matters of complaint when necessary.

Unfortunately, the complex nature of many of these complaints mean that they are unable to be dealt with by just one body. Reviewing the issues that come into the office each year also shows that many of the problems seem to be unsolvable under the current *Aboriginal Land Rights Act*. This is especially the case with the complaints we receive relating to the land council system and is discussed further below.

While the ACO's primary focus is on complaints received from and issues raised by Aboriginal people, the ACO also handles some complaints from people of non-English speaking backgrounds (NESB) and people with disabilities. The ACO also assists in handling mainstream complaints as deemed necessary by consideration of workloads of other staff.

VISITS TO CORRECTIONAL CENTRES AND JUVENILE DETENTION CENTRES

In recognition of the disproportionately high rates of incarceration of Aboriginal people in NSW, and the problems that these inmates and detainees face, the ACO attends most visits by our staff to correctional centres and juvenile justice centres. During these visits advice is given to inmates and detainees about our role and how they may be able to use our services.

Issues commonly dealt with include lost/missing property, alleged racial discrimination and harassment of Aboriginal and NESB inmates by prison officers, and failure to follow recommendations of the Royal Commission into Aboriginal Deaths in Custody. Many of these issues are resolved during these visits via consultation with the governor or deputy governor of the institution.

The ACO also liaises with the Aboriginal Deaths in Custody Watch Committee, the Indigenous Social Justice Association, and the Indigenous Services Unit of the Department of Corrective Services in relation to both specific and systemic issues.

ACCESS AND AWARENESS

Part of the ACO's role is to raise the level of awareness of the role and responsibilities of the NSW Ombudsman amongst Aboriginal people and communities. In turn it is hoped that more Aboriginal people will avail themselves of the services provided by our office.

A number of meetings have been conducted with Aboriginal community representatives and organisations, for example the ACO attended and spoke at a debriefing day for Aboriginal Mentors employed by the Department of Juvenile Justice. It is hoped that these mentors will pass on information about the Ombudsman to young people under their guidance. The ACO has also attended meetings with groups such as the Aboriginal Advisory Committee for the Anti-Discrimination Board, the Aboriginal Inter-Agency Committee of Randwick Council, the Aboriginal Deaths in Custody Watch Committee, and the Indigenous Services Unit of the Department of Corrective Services.

THE NSW ABORIGINAL LAND COUNCIL SYSTEM

At present a large number of complaints handled by the ACO involve aspects of the NSW Aboriginal Land Council system. Matters raised in these complaints include the actions of members and/or office-bearers of some Local Aboriginal Land Councils (LALCs), and the actions or inaction by the NSW Aboriginal Land Council (NSWALC) in relation to such complaints.

At present there is no effective internal complaint resolution mechanism available to members of Local Aboriginal Land Councils. The NSWALC has a function, under s.23(g) of the *Aboriginal Land Rights Act*, to conciliate disputes between other land councils and members of these land councils, but will only exercise that jurisdiction if invited by all parties. Most complainants find this unsatisfactory. We are working with a number of organisations, including the ICAC, NSWALC and the Department of Aboriginal Affairs, to remedy the problems currently existing within the land council system.

ICAC PROJECT - CORRUPTION PREVENTION IN ABORIGINAL LAND COUNCILS

The ICAC, after receiving a number of complaints about fraud, corrupt conduct and maladministration in NSW Aboriginal Land Councils, began an inquiry in 1995 to help them identify corrupt conduct and find practical and culturally appropriate solutions to prevent such conduct occurring.

The ICAC released a discussion paper and organised a number of consultation meetings with Aboriginal communities across the state to discuss their needs and concerns in relation to the land council system. Our ACO attended consultations in Batemans Bay, Maitland, Wagga Wagga, Dubbo and Parramatta. Attending these meetings provided our ACO with invaluable insight into the concerns of various Aboriginal communities and individuals across NSW and also provided an opportunity to inform people about the Ombudsman's functions.

We made a detailed submission in response to the discussion paper released by the ICAC. This submission involved a recognition and discussion of current issues affecting the land council system and Aboriginal communities, as well as 50 recommendations for changes that will improve the system and reduce the opportunities for corrupt conduct. The submission drew on past complaints received by this office, and a major investigation of the NSWALC and a number of specific land councils conducted over the past years. The submission also considered feedback received by the ACO during his attendance of the community consultations conducted by the ICAC.

A Cooperative and Productive Workplace

Overview

It is often said that the key to a successful organisation is the commitment of its staff. This is definitely the case in our office. In an environment of increasing complaint numbers and limited resources it is important that this commitment be nurtured and not lost.

A number of strategies were adopted during the year to improve our workplace. The most significant was the re-establishment of a Joint Consultative Committee as the forum for discussion between management and staff. Other strategies include greater use of flexible work options, continued emphasis on work related training and development of a staff exchange program. These issues are discussed in detail in the following section of this chapter.


As well, the small corporate support team provided invaluable assistance to investigation staff allowing them to concentrate on our core business of investigating complaints.

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 our office;
- make the most effective use of resources available;
- maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment;
- increase parliamentary and community awareness of the Ombudsman's role and function and the services offered by our office; and
- use information technology to enhance productivity and the achievement of our internal management and accessibility goals.

Last year we reported that the government reduced funding for corporate support services by \$30,000 as part of its overall policy to reduce corporate service expenditure throughout the public sector. By restructuring the section as well as streamlining processes we were able to reduce the cost of our corporate support function while maintaining the level of service expected by staff and our external clients.

Recently, however, the government announced that it was committed to further corporate service reductions throughout the public sector. The impact of this decision on our office is not yet known, but a reduction in both corporate support staffing levels and service standards is likely.



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Issues

- Personnel Services
- General Management
- Information Management and Library Services
- Changing Places

PERSONNEL SERVICES

Our personnel staff provide a range of services including recruitment, leave administration, payroll and occupational health and safety. The key outcomes for 1996-97 were to:

- re-establish a Joint Consultative Committee to facilitate discussion between staff and management;
- restructure the customer service unit in the police team; and
- develop and implement a staff exchange program.

In 1997-98 staff will:

- review our induction procedures and develop an induction manual;
- work with external trainers to develop cultural awareness training as we have committed to undertake in our EAPS program; and
- implement a rolling job evaluation program.

STAFF

As at 30 June, 1997 we had an effective full time equivalent staff number of 81.7. In addition we had two trainees whose positions are externally funded.

Staff Levels
A four year comparison

	June '94	June '95	June '96	June '97
Statutory appointments	4.0	4.0	4.0	4.0
Investigative staff	47.2	52.9	55.2	63.9
Non-investigative staff	17.0	12.8	13.1	13.8
Total	68.2	69.7	72.3	81.7
Externally funded trainees	2.0	2.0	2.0	2.0

Note: 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.

The actual staff establishment of the office increased in 1996-97 as a result of the increase in funding provided by the government for the establishment of an Aboriginal Complaints Unit and additional investigation staff in our Police Team as well as the employment of a Youth Liaison Officer. Our establishment increased by seven to 82 positions.

WAGE MOVEMENTS

During the 1996-97 reporting year, public sector staff were awarded pay increases totalling 4%. The first, an increase of 3%, was awarded in July, 1996 with the 1% increase effective in January, 1997.

Increases totalling 5% have been awarded to staff during the 1997-98 year. The Statutory and Other Offices Remuneration Tribunal determined a 3% increase for the Ombudsman and SES officers effective October 1996. The Ombudsman received a further 1.5% increase in January 1997.

There were no other exceptional movements in wages, salaries or allowances.

PERFORMANCE MANAGEMENT

Every 12 months staff negotiate a performance agreement with their immediate supervisors. These agreements link individual performance to our corporate goals and objectives.

During the year the Police Team finalised their first agreements under the Performance Management System. The General Team have had agreements in place for a number of years.

TRAINING AND DEVELOPMENT

We believe continual staff training and professional development is critical to our ability to meet our corporate goals and objectives. Usually, individual training plans are developed when performance management agreements are negotiated. However, other training opportunities may arise during the year that are not included on the training plan.

We heavily rely on external providers although some specific job related training is developed and conducted in house.

During the reporting year, we spent \$67,548 on training. Almost all staff were trained to use our computerised case management system. Staff also undertook training in mediation, writing in plain English, interviewing techniques, management of electronic records, skillmax and job evaluation. A number of staff also attended short professional development seminars.

OCCUPATIONAL HEALTH AND SAFETY

Workplace inspections were conducted in February and April 1997. The February 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 were being maintained.

Two workers compensation claims were received, one relating to injuries sustained on a journey to work.

A review of first aid officers was undertaken and as a result a number of staff members were trained in first aid.

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

During the year we reviewed our EEO program to make it more relevant to our corporate objectives and to streamline the program to make it achievable, results orientated and low maintenance. The EEO plan was finalised during the year and circulated to staff for their information.

A number of the strategies in the plan requiring action during the year have been referred to the Joint Consultative Committee (JCC) for discussion as they impact on conditions or entitlements of staff. In particular, performance management has been discussed by the JCC as has

training and certain personnel policies such as higher duties and study assistance.

Our major EEO achievements for the year were to:

- finalise the strategic EEO program, including the development of policies on harassment prevention, grievance handling and reasonable adjustment;
 - increase the proportion of Aboriginal staff from 1.2% to 4.4%;
 - introduce exit interviews enabling staff leaving our office to provide feedback on the organisation; and
 - train additional staff in job evaluation methodology.
- In 1997-98 we plan to:
- survey staff on their use or knowledge of flexible work options;
 - conduct cultural awareness training; and
 - finalise review of induction program and an induction manual.

The tables on this page show:

- a break up of staff by salary level, sex and EEO target group membership, which was obtained by surveying staff; and
- the employment basis of staff ie either permanent or temporary and full time or part time, sex and EEO target group membership.

Level	Total staff	Staff responding to EEO data	Men	Women	Aboriginal & Torres Strait	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with a disability	People with a disability requiring adjustment at work
<\$21,995	2	100%	0%	100%	0%	0%	0%	0%	0%
\$21,995 - \$32,295	14	100%	7%	93%	0%	79%	71%	21%	7.1%
\$32,296 - \$40,869	18	100%	17%	83%	11.1%	28%	11%	0%	0%
\$40,870 - \$52,850	40	100%	58%	43%	5%	15%	5%	3%	0%
\$52,851 (non SES)	13	100%	46%	54%	0%	31%	15%	8%	0%
SES	3	100%	100%	0%	0%	0%	0%	33%	0%
Total	90	100%	40%	60%	4.4%	29%	18%	7%	1.1%

Note: Includes staff on leave without pay and counts actual part time and not full time equivalent.

Employment basis	Total staff	Staff responding to EEO data	Men	Women	Aboriginal & Torres Strait	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with a disability	People with a disability requiring adjustment at work
Permanent Full time	66	98%	39%	61%	4.5%	30%	20%	6%	1.5%
Part time	5	100%	0%	100%	0%	20%	20%	0%	0%
Temporary Full time	14	100%	50%	50%	7.1%	29%	14%	0%	0%
Part time	2	100%	0%	100%	0%	50%	0%	50%	0%
SES	3	100%	100%	0%	0%	0%	0%	33%	0%
Total	90	99%	40%	60%	4.4%	29%	18%	7%	1.1%

No 'casual' or 'other' staff were employed

REVIEW OF RECRUITMENT PRACTICES

During the year we reviewed our recruitment procedures. From this review a number of changes were made to improve security, including a more detailed process of vetting job applicants. The introduction of this new policy generated considerable discussion within the office.

STAFF EXCHANGE PROGRAM

During the year the Ombudsman and the Commissioner for Local Administration in England negotiated a staff exchange program. The aim of the exchange is to facilitate closer contact between similar jurisdictions, enhance the experience of staff and explore other approaches to complaint handling and investigative techniques.

To ensure our staff member was not disadvantaged by participating in the exchange, it was agreed that the home agency would continue to pay the staff member. This meant that leave entitlements, conditions of employment, continuity of service and superannuation would not be affected.

Staff participate in the program on the understanding that on their return they will prepare a research paper on complaint handling in different jurisdictions identifying any unique complaint resolution methods that may be used.

A report by our staff member involved in the exchange is included in this chapter.

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, negotiating changes where appropriate with the aim of significantly reforming the pub-

lic sector.

The 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.

To implement the Framework Document a Joint Consultative Committee (JCC) was established. This committee comprises representatives of staff, the union (Public Service Association), and management. In addition to implementing the Framework, the JCC is also the forum for discussing other issues of interest or concern to staff.

NEW AWARDS

No new awards were negotiated.

PART TIME WORK

During the year six staff were permanent part-time and three staff requested part-time leave for short periods of time. All applications to work part-time were approved.

GRIEVANCE PROCEDURE

We have in place a grievance procedure designed in accordance with the provisions of the *Industrial Relations Act*. Although no staff lodged a formal grievance during the reporting year, a number of issues were raised at the Joint Consultative Committee meetings.

ABSENTEEISM

Quarterly reviews of sick leave are undertaken. Staff with unsatisfactory sick leave records are counselled in accordance with the public sector sick leave policy.

Sick leave is also available to staff if they have to care for family members who are ill. Although sick leave was made available for caring for family members, the average number of days taken as sick leave decreased last year. An analysis of sick leave records reveals that in the 1996 financial year staff took an average of 5.14 days sick leave compared to 4.89 days in 1997.



Our small corporate support team provides invaluable assistance to investigation staff, allowing them to concentrate on our core business of investigating complaints. The team of 11 staff includes personnel services, financial services, public relations, information management and library services.

TRAINEES/APPRENTICES

We continued to participate in the Careerstart training program and at the end of June 1997 were employing two trainees under the Careerstart program. Careerstart trainees are funded by the Commonwealth Government.

The NSW Treasury has advised that from 1997-98 it will be retaining the Commonwealth funding provided for Careerstart trainees. This means, if we want to continue participating in the program, we would need to make the funds available from other areas of our budget. Unfortunately this is not an option and we will no longer be participating in this training program.

We do not employ apprentices.

CHIEF AND SENIOR EXECUTIVE SERVICE

Staff Employed at CEO and SES levels		
SES Level new	Total at 30 June '96	Total at 30 June '97
Band 4 - upper		
Band 4 - lower		
Band 3 - upper		
Band 3 - lower		
Band 2 - upper	1	1
Band 2 - lower		
Band 1 - upper	2	2
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

The Ombudsman is the only woman in our office appointed to a SES or CEO position. She was the only woman occupying such a position in the last reporting period.

OMBUDSMAN'S PERFORMANCE STATEMENT

The Ombudsman's performance statement appears on pages 2 to 5 of this report.

GENERAL MANAGEMENT

TOTAL QUALITY MANAGEMENT

All public sector agencies were required to participate in a quality assessment process. The government contracted the Australian Quality Council to assist agencies through the process.

The assessment is designed to provide a baseline to be used for strategic and organisational change and continuous improvement. Assessment was made on seven categories - leadership, planning, information, people, customer focus, process and performance. Half the staff were involved in the assessment process.

Our results were pleasing in comparison to the 81 participating public service organisations, particularly in the areas of leadership, information, customer service and performance.

A working party has been set up to review the results in more detail and to develop strategies for improvement.

RESEARCH AND DEVELOPMENT

The NSW Ombudsman was not involved in any research and development projects.

OVERSEAS TRAVEL

Three staff members travelled overseas during the reporting year. Details are:

- Greg Andrews
Assistant Ombudsman (General)
Travelled to Hong Kong
19 February to 23 February 1997
Invited by Hong Kong Commissioner for Administrative Complaints to discuss mediation.
- Natasha Serventy
ADR Coordinator
Travelled to Hong Kong
1 May to 7 May 1997
Invited by Hong Kong Commissioner for Administrative Complaints to provide mediation training to staff.
- Jane Sharkey
Investigation Officer
Travelled to England
April 1997 to April 1998
To participate in the staff exchange program with the Local Government Ombudsman.

All costs associated with travelling to Hong Kong were paid by the Hong Kong Commissioner for Local Administrative Complaints. We contributed \$750 towards Ms Sharkey's travel to England.

CODE OF CONDUCT

The code of conduct provides practical guidance to all staff in the 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. There was no amendment to the code of conduct which is reproduced in appendix eight.

RECYCLING

We are located in the Coopers and Lybrand building and participate in their recycling program. The initial focus of the program was on paper recycling however it has been widened to now include glass, aluminium and P.E.T. bottles.

INFORMATION MANAGEMENT AND LIBRARY

Our information management staff provide a range of services including records management, computer support and library services.

The key outcomes for 1996-97 were:

- our participation in joint project for the integration of police complaint information into a wide area network jointly held by the Ombudsman, Police Integrity Commission and the Police Service (PCCM);
- streamlined and improved case management reporting; and
- the establishment of an internet site.

In 1997-98 staff will:

- develop a total asset management plan;
- develop and implement a disaster recovery plan; and
- develop a web site.

POLICE COMPLAINTS/CASE MANAGEMENT SYSTEM - PCCM

In its interim report, the Royal Commission into the NSW Police Service recommended that a new, enhanced and integrated Police Complaints/Case Management System should replace several systems used within the Police Service and be linked with oversight agencies to form a single and complete record of complaints against the police.

The Premier's Department established a project on behalf of the Police Service and the oversight agencies ie the NSW Ombudsman and the Police Integrity Commission, to review existing systems. Following preliminary funding and system outline exercises, the project proper commenced in January, 1997. The project objectives include a review of systems operating in the three agencies, determining the requirements for new systems and enhanced processes and to acquire and develop those systems.

This initiative has been given funding approval by the NSW Treasury and will have a major impact on our office and the way oversight of police is conducted in this State. The project is at the tender preparation stage and is planned to be at the contract stage by December 1997. Implementation will begin in 1998 and be phased in over the next three years.

STREAMLINED AND IMPROVED CASE MANAGEMENT REPORTING

During the year, considerable work was undertaken to ensure that the case management system produced timely and useful information to assist staff manage complaint loads. For example, reports were written to identify matters where possible delays were occurring. The new reports will greatly enhance decision making and improve caseload management.

INTERNET

In June 1997 we connected a stand-alone computer to the internet. Our email address is nswombo@nswombudsman.nsw.gov.au. A web site is in the early stages of development and when finished will contain:

- information about our role and function;
- select publications including details of special reports to parliament;
- a summary of this annual report; and
- information about job vacancies.

CORPORATE INFORMATION PROJECT

A project was commenced in May 1996 to centrally register the key information our staff produce and use. We retain library holdings, annual reports, special reports to Parliament and legal advisings but had no simple and efficient system to search the information for specific issues.

To date, legal advising, special reports and our library holdings have been entered into the database. In addition, work has commenced on entering case notes from our annual reports. Work has also started on networking the database and it is expected all staff will have access to the information from their own desktop personal computer by the end of the year.

The final information collection will incorporate all of our significant work into a simple accessible information store. A valuable research and training tool will result from this work.

CHANGING PLACES

We have a long record of supporting staff in seeking secondments to other organisations. This is good for the personal development of staff and brings new ideas into our office. Last year we went a step further and approached the Commission for Local Administration in England about a swap between investigation staff in much the same way as teachers do. The Commission, also known as the Local Government Ombudsman, investigates complaints about local councils in England. The Commission was immediately responsive, agreeing such an exchange would be of enormous benefit to the two officers and to each organisation, affording an opportunity to see how like organisations fulfil their charter.

Jane Sharkey is the investigation officer who has undertaken the exchange. She writes from England:

"I started in the Coventry office of the Commission in May 1997. There are three Commission offices: London, Coventry and York, each headed by its own Ombudsman. There are around 90 investigators and 100 support staff spread across the Commission dealing with over 15,000 complaints each year.

Jurisdiction is over county, district, the more recently created 'super councils' known as unitary authorities and (in London) borough councils. These various bodies have a wider brief than councils in New South Wales. Between them they are responsible for such things as planning, environmental health, waste collection, education, social services, housing and some roads. There can be marked differences between council areas, even down to when school holidays are.

Not long after my arrival, my counterpart in New South Wales commented he had not worked out whether the job was fundamentally the same with superficial differences or fundamentally different with superficial similarities. I am not sure I have decided which, either. Complaints about English councils can be remarkably similar to the sorts of complaints I am used to in New South Wales; not notifying neighbours of planning applications, taking no action to repair housing, delays in replying to correspondence.

Not all complaints, though, mirror those in Australia. One of the more fascinating - to me - council jobs is the Rights of Way officer who makes sure the public footpaths, bridleways and 'Roads Used as Public Paths' which run across private land are kept clear of obstructions and are properly marked on Definitive Maps kept at the council's chambers. Complaints tend to come from Ramblers or Bridleways Associations that the council has not made the landowner clear the path, or put the path in the right position so riders and walkers can exercise their ancient British right to use these paths as they please. While these complaints are not the sort seen in Australia, at heart the same questions arise: has the council complied with its statutory obligations and properly applied its policies? Has it acted reasonably given its resources and other priorities? What should the council do, or have done? Ultimately, it's the same approach with different subject matter.

The main difference is in the outcome for complainants, although even there similarities arise. The Commission cannot investigate council's actions which affect 'all or most' of the inhabitants of a council area. Anonymous complaints cannot be accepted. As well, the Commission has to show not only 'maladministration' on the part of a council, but also that this caused 'injustice' to the complainant. So, the English Ombudsman concentrates on remedies for individual complainants, and not, as in New South Wales, on systemic problems likely to affect a large number of people.

In NSW the Ombudsman tends to seek changes in procedures and policies as well as revisiting previous decisions, only occasionally obtaining monetary compensation for complainants. An English complainant is more likely to receive a payment of a sum of money to compensate for any loss suffered. So, putting up with noise nuisance for a year because of council inaction may result in a payment of equivalent to \$2,000, plus a sum for the complainant's 'time and trouble' in complaining to the Ombudsman. In New South Wales the same complaint is likely to have the council review the matter and take action to stop the nuisance and review existing systems to prevent it happening again. English 'local settlements' last year accounted for nearly 2,500 complaints. This form of settlement is obviously going to be more likely with certain types of complaint. For instance, nearly half the complaints about housing repairs are settled, while only six per cent of planning ones can be.

There are also differences in the relationship between the Ombudsmen and the subject of their scrutiny. When a recent Government inquiry recommended the Commission's abolition, local government objected. It is hard to reconcile this support for the work of the Commission and the relative ease of dealing with councils over each complaint with some of the New South Wales public authorities' view of their Ombudsman.

In England, the investigation process tends to be more formalised. Preliminary inquiries are invariably made by letter usually seeking a response within 15 working days, a much shorter time frame (and often met) than in Sydney. Each council has a designated 'link officer' such as the County Solicitor. The Coventry office runs a two day training course for such officers to demystify the process and explain what an Ombudsman complaint is all about. This officer coordinates the council's replies as well as arranging for relevant officers to speak to Commission staff. Where a formal investigation is underway, the link officer provides a list of all officers who may have been involved in the matter complained of, and will arrange the time and place for these to be interviewed. It is all quite civilised and all parties appear to have no major qualms about these interviews.

The 'formal investigation' equivalent in England is known as a 'Stage 2'. These cases are where preliminary inquiries have failed to resolve the complaint and the Commission's investigator thinks there has been both maladministration on the council's part and

an injustice to the complainant. Formal investigation generally involves a visit to the complainant and to council offices to obtain any outstanding information, inspecting files and interviewing officers. Reports are much shorter, outlining the facts, why the Ombudsman thinks there was a problem and what should be done to resolve it. As with New South Wales, most of the Ombudsmen's recommendations are accepted at the time a report is first issued. Only a small proportion require a further report which is considered by the full council, and even fewer councils are required by the Ombudsman to publish a statement in a local newspaper detailing any action recommended by the Ombudsman.

The English Ombudsmen have been very supportive of the exchange and are particularly interested to learn more about our use of information technology, our mediation service and our additional areas of work, for example, with protected disclosures.”

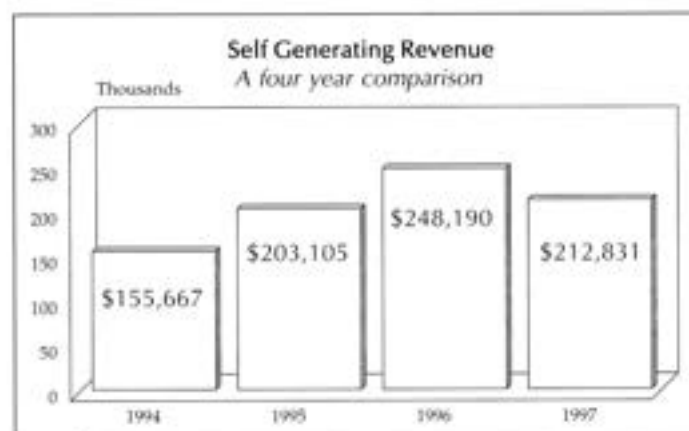
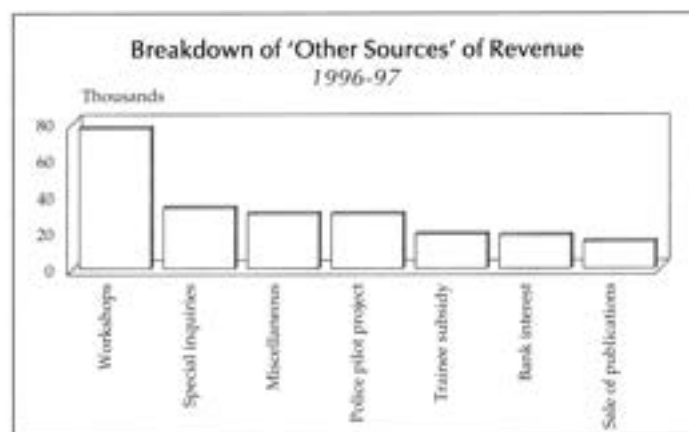
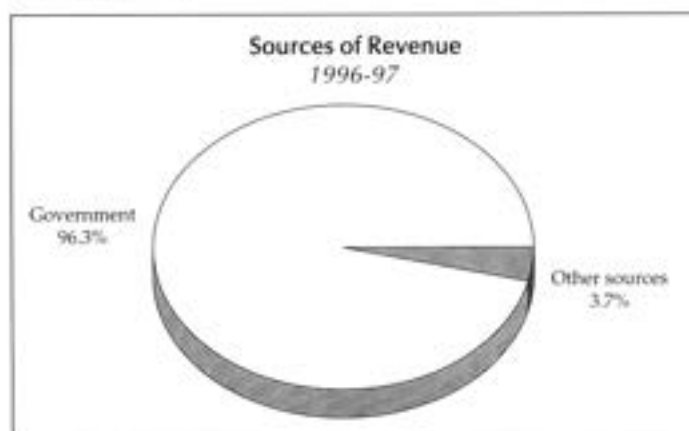


Most of our revenue is spent on employee expenses including salaries, superannuation, long service leave and payroll tax. Most of our revenue comes from the government, however, we generate some revenue through the sale of publications, and conducting special inquiries and training on a fee for service basis.

Financial Summary

REVENUE

Most of our revenue comes from the government in the form of a consolidated fund appropriation. In addition, the government makes provision for our superannuation and long service leave liabilities. We also generate revenue through the sale of publications, bank interest, undertaking special inquiries on a user pay basis and conducting training courses for public sector agencies. A breakup of revenue generated, including capital funding is:



Government

Appropriation	5,254,000
Acceptance of superannuation & long service leave	399,420
Capital funding	124,000

From other sources

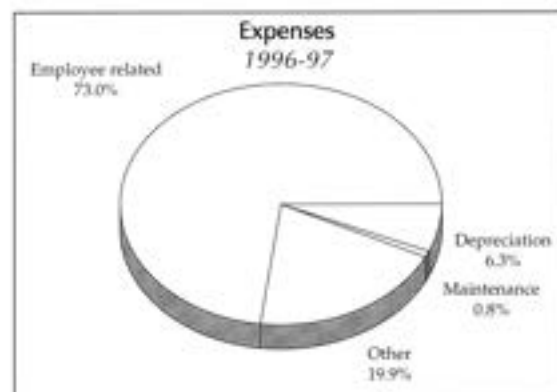
Workshops	76,949
Special inquiries	33,327
Police Pilot project	30,000
Bank interest	18,041
Trainee subsidy	18,579
Publication sales	14,606
Miscellaneous	30,080

EXPENSES

Most of our revenue is spent on employee expenses, including salaries, superannuation entitlements, long service leave, payroll tax. During the year we spent more than \$4.6 million on employee expenses.

The day to day running of the office, including rent, postage, telephone, stores, training, printing and travel cost over \$1.3 million. Depreciation of computer equipment, furniture and fittings and other office equipment cost \$397,965.

The following is a summary of expenses incurred during the year.



CONSULTANTS

During the year we used one consultant to provide expert advice and assistance. The total cost of that con-

sultant was \$2,000 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.

It should be noted that stores includes asset purchases such as office and computer equipment, furniture and fixtures and consumables such as stationery. Because our usual expenditure is small, the purchase of major items such as a new fax machine in September, 1996, additional computers in February and March, 1997 or new sound recording in June, 1997 can cause fluctuations in the level of expenditure.

ASSETS

MAJOR WORKS IN PROGRESS

We finalised the upgrade and integration of our computer systems (both hardware and software). Initial funding for the project occurred in 199-/95 and we received \$671,000 prior to the 1996-97 financial year, \$77,000 was provided in 1996-97 to finalise the project.

The funding was used to purchase and install personal computers, complete the complaints management system software and train staff to use the new systems.

MINOR WORKS

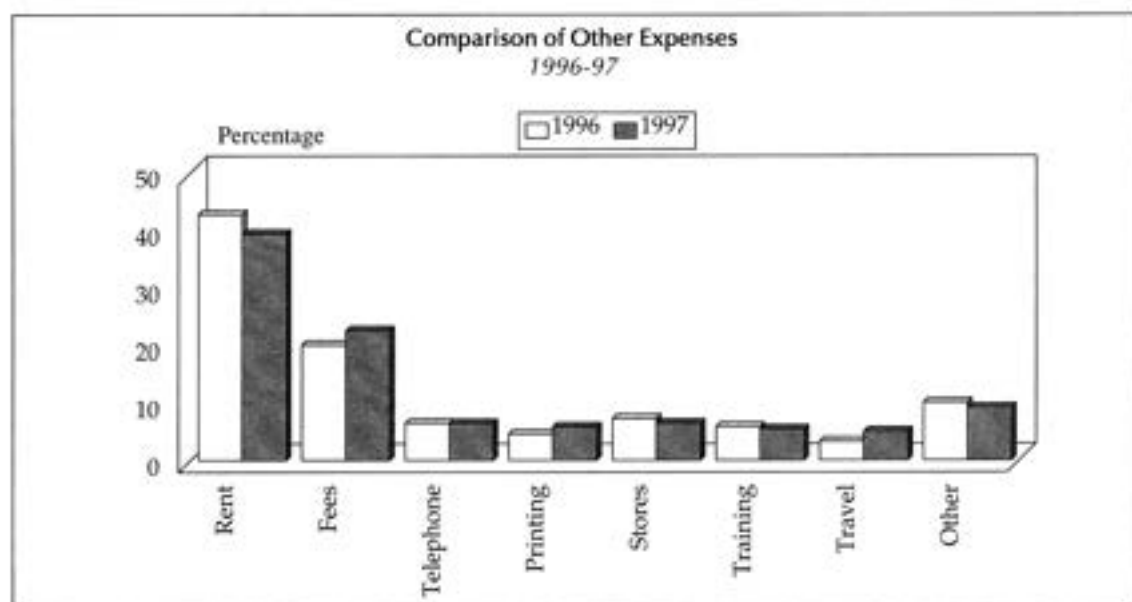
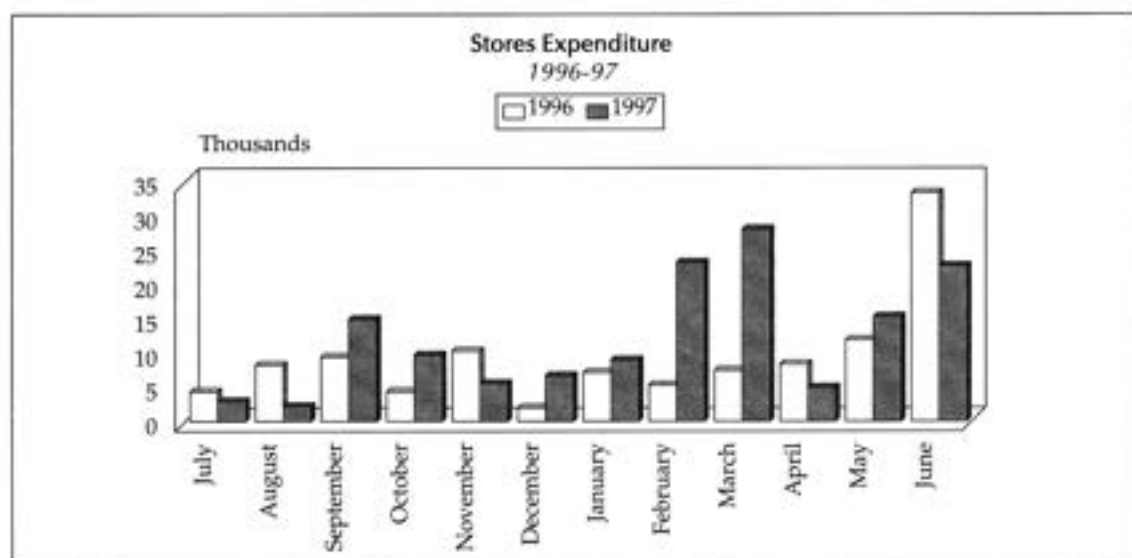
Funding of \$35,000 was provided to finalise the establishment of the Aboriginal Complaints Unit and the Witness Protection Unit as well as for minor capital expenditure during the year. We were given approval to transfer \$12,000 from recurrent to capital to install emergency lighting and exit signage.

MAJOR ASSETS

The table on the opposite page shows major assets on hand.

LAND DISPOSAL

We did not dispose of any land or property.



Major Assets on Hand

Description	June 1996	Acquisitions	Disposals	June 1997
File Servers (Mini computer)	3	0	2	1
Hub (Terminal Servers)	7*	4	6	5
Personal Computers	106*	4	13	97
Printers	18	3	4	17
Photocopiers	4	0	0	4
Televisions and video equipment	7	0	0	7

**Opening balance adjusted after stocktake revealed that some assets not previously included in count.*

LIABILITIES

We have 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

Accounts on hand as at 30 June 1996	
Current (ie within due date)	\$53,598
Less than 30 days overdue	-
between 30 days and 60 days overdue	-
between 60 days and 90 days overdue	-
More than 90 days overdue	-
Total accounts on hand	\$53,598

We regularly review our payment policy. We aim to pay all accounts within the vendor credit terms 98% of the time. During 1996/97 we paid 96% of our accounts on time compared with 93% the previous year. Although this result is below the standard we aim to achieve, the result is acceptable when staff turnover and absences on leave 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 1995/96 and 1996/97 financial years is shown in the table below.

Value of Recreation and Extended (Long Service) Leave

	June 1995	June 1996
Recreation Leave	\$228,179	\$205,966
Extended (Long Service) Leave	\$486,166	\$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 risk management in this area is the assessment of complaints to determine those to be investigated or declined.

We participate 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.

We selected the lowest layer of insurance offered, as the number of claims received is negligible.

AUDIT

Internal Audit

In 1995 the NSW Treasury issued a Statement of Best Practice on Internal Control and Internal Audit. This statement expands the scope 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 our 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 1997/98 financial year.

External Audit

The Auditor General audits our financial statements which are found on the following pages. The results of the audit were very pleasing with the Audit Office finding no major problems with our financial systems or financial reporting. Two minor matters were mentioned in the management letter, the incorrect filing of a document and the absence of an identification label on two assets. The Ombudsman formally congratulated accounting and other corporate support staff for their contribution to this result.



BOX 12 GPO
SYDNEY NSW 2001

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 1997. The preparation and presentation of the financial report consisting of the accompanying statement of financial position, operating statement, statement of cash flows, program statement - expenses and revenues and summary of compliance with financial directives, 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 report.

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 report is free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates.

In addition, other legislative requirements which could have an impact on the Office's financial report have been reviewed on a cyclical basis. For this year, the requirements examined comprise: Chief Executive Service/Senior Executive Service remuneration; Payroll Tax on superannuation benefits; disaster recovery plans for computer installations and prompt payment of accounts.

These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial report is 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 report of the Ombudsman's Office complies with section 45E of the Act and presents fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements the financial position of the Office as at 30 June 1997 and the results of its operations and its cash flows for the year then ended.

A handwritten signature in black ink, appearing to read "A.C. Harris".


A.C.HARRIS

SYDNEY
12 August 1997

STATEMENT BY THE OMBUDSMAN

Pursuant to Section 45F of the Public Finance and Audit Act 1993 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 for Budget Dependent Agencies, 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

28 July, 1997

NSW Ombudsman

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**OMBUDSMAN'S OFFICE
OPERATING STATEMENT
FOR THE YEAR ENDED 30 JUNE 1997**

	Notes	Actual 1997 \$'000	Budget 1997 \$'000	Actual 1996 \$'000
Expenses				
Operating Expenses				
Employee related	2(a)	4,636	4,671	3,918
Other operating expenses	2(b)	1,260	1,138	1,126
Maintenance	2(c)	53	30	32
Depreciation and amortisation	2(d)	398	408	303
Total expenses		6,347	6,247	5,379
Less:				
Retained Revenue				
Sale of goods and services	3(a)	15	10	21
Investment income	3(b)	18	17	20
Grants and contributions	3(c)	49	13	14
Other revenue	3(d)	140	42	192
Total retained revenue		222	82	247
Gain / (loss) on sale of non-current assets	4	(9)	-	1
NET COST OF SERVICES		6,134	6,165	5,131
Government Contributions				
Recurrent appropriation	5(a)	5,254	5,346	4,553
Capital appropriation	5(b)	124	112	298
Acceptance by the Crown Transactions Entity of employees entitlements and other liabilities	6	399	377	350
Total Government Contributions		5,777	5,835	5,201
SURPLUS / (DEFICIT) FOR THE YEAR		(357)	(330)	70

OMBUDSMAN'S OFFICE
STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 1997

	Notes	Actual 1997 \$'000	Budget 1997 \$'000	Actual 1996 \$'000
ASSETS				
Current Assets				
Cash		17	83	116
Receivables	8	31	31	31
Other	9	91	75	75
Total Current Assets		<u>139</u>	<u>189</u>	<u>222</u>
Non Current Assets				
Property, plant and equipment	10	<u>764</u>	<u>751</u>	<u>1,051</u>
Total Non-Current Assets		<u>764</u>	<u>751</u>	<u>1,051</u>
Total Assets		<u>903</u>	<u>940</u>	<u>1,273</u>
LIABILITIES				
Current Liabilities				
Accounts payable	11	54	72	84
Employee entitlements	12	<u>310</u>	<u>302</u>	<u>293</u>
Total Current Liabilities		<u>364</u>	<u>374</u>	<u>377</u>
Total Liabilities		<u>364</u>	<u>374</u>	<u>377</u>
Net Assets		<u>539</u>	<u>566</u>	<u>896</u>
EQUITY				
Accumulated funds	13	<u>539</u>	<u>566</u>	<u>896</u>
Total Equity		<u>539</u>	<u>566</u>	<u>896</u>

OMBUDSMAN'S OFFICE
CASH FLOW STATEMENT
FOR THE YEAR ENDED 30 JUNE 1997

	Notes	Actual 1997 \$'000	Budget 1997 \$'000	Actual 1996 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(4,214)	(4,285)	(3,518)
Other		(1,358)	(1,180)	(1,200)
Total Payments		<u>(5,572)</u>	<u>(5,465)</u>	<u>(4,718)</u>
Receipts				
Sale of goods and services		16	23	26
Interest received		21	17	13
Other		178	42	200
Total Receipts		<u>215</u>	<u>82</u>	<u>239</u>
NET CASH FLOWS FROM OPERATING ACTIVITIES	17	<u>(5,357)</u>	<u>(5,383)</u>	<u>(4,479)</u>
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of property, plant and equipment		4	4	4
Purchases of property, plant and equipment		(124)	(112)	(340)
NET CASH FLOWS FROM INVESTING ACTIVITIES		<u>(120)</u>	<u>(108)</u>	<u>(336)</u>
CASH FLOWS FROM GOVERNMENT				
Recurrent appropriation		5,254	5,346	4,553
Capital appropriation		124	112	298
NET CASH FLOWS FROM GOVERNMENT		<u>5,378</u>	<u>5,458</u>	<u>4,851</u>
NET INCREASE/(DECREASE) IN CASH		(99)	(33)	36
Opening cash and cash equivalents		116	116	80
CLOSING CASH BALANCE AND CASH EQUIVALENTS	16	<u>17</u>	<u>83</u>	<u>116</u>

PROGRAM STATEMENT - EXPENSES AND REVENUES

	Program 1*		Program 2*		Total	
	1997 \$'000	1996 \$'000	1997 \$'000	1996 \$'000	1997 \$'000	1996 \$'000
AGENCY'S EXPENSES AND REVENUES						
Expenses						
Operating expenses						
Employee related	(2,624)	(2,015)	(2,012)	(1,903)	(4,636)	(3,918)
Other operating expenses	(700)	(562)	(560)	(564)	(1,260)	(1,126)
Maintenance	(31)	(17)	(22)	(15)	(53)	(32)
Depreciation and amortisation	(231)	(160)	(167)	(143)	(398)	(303)
Total expenses	(3,586)	(2,754)	(2,761)	(2,625)	(6,347)	(5,379)
Retained Revenue						
Sale of goods and services	9	11	6	10	15	21
Investment income	10	11	8	9	18	20
Grants and contributions	41	7	8	7	49	14
Other revenue	21	21	119	171	140	192
Total Retained Revenue	81	50	141	197	222	247
Gain / (loss) on sale of non-current assets	(5)	1	(4)	-	(9)	1
NET COST OF SERVICES	(3,510)	(2,703)	(2,624)	(2,428)	(6,134)	(5,131)
Government contributions	3,266	2,800	2,511	2,401	5,777	5,201
SURPLUS / (DEFICIT) FOR THE YEAR	(244)	97	(113)	(27)	(357)	70

* The name and purpose of each program is summarised in Note 7.

**SUMMARY OF COMPLIANCE WITH FINANCIAL DIRECTIVES
FOR THE YEAR ENDED 30 JUNE 1997**

	Actual Appropriations		Estimated Expenditure**	Actual Appropriations		Estimated Expenditure**
	Original	Revised		Original	Revised	
	1997 \$'000	1997 \$'000	1997 \$'000	1996 \$'000	1996 \$'000	1996 \$'000
Recurrent appropriations						
Program 1*	3,099	2,972	2,972	2,418	2,445	2,445
Program 2*	2,247	2,282	2,282	2,108	2,108	2,108
	5,346	5,254	5,254	4,526	4,553	4,553
Capital appropriations						
Program 1*	76	84	84	114	192	192
Program 2*	36	40	40	106	106	106
	112	124	124	220	298	298
Total appropriations	5,458	5,378	5,378	4,746	4,851	4,851

Variations between original and revised appropriation are not considered material.

* The name and purpose of each program is summarised in Note 7.

** In New South Wales, agencies are not required to separately record expenditures which are financed by the Consolidated Fund as distinct from expenditures financed by their own user charges. As a result, they are not able to determine accurately the exact amount of the expenditures that are related to the Consolidated Fund. However, the amount of revised appropriation should approximate the actual expenditure of Consolidated Fund monies by agencies.

NOTES TO THE FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(A) REPORTING ENTITY

The Ombudsman's Office, as a reporting entity, comprises all the operating activities of the Office.

(B) BASIS OF ACCOUNTING

The Office's financial statements are a general purpose financial report which has been prepared on an accruals basis and in accordance with applicable Australian Accounting Standards and the Urgent Issues Group Consensus Views, the requirements of the Public Finance and Audit Act and Regulations, and the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent Agencies or issued by the Treasurer under section 9(2)(n) of the Act.

Where there are inconsistencies between the above requirements, the legislative provisions have prevailed. Statements of Accounting Concepts are used as guidance in the absence of applicable Accounting Standards, Urgent Issues Group Consensus Views and legislative requirements.

The financial statements are prepared in accordance with the historical cost convention. All amounts are rounded to the nearest one thousand dollars. All amounts are expressed in Australian currency. The accounting policies adopted are consistent with those of the previous year.

(C) PARLIAMENTARY APPROPRIATIONS AND CONTRIBUTIONS FROM OTHER BODIES

Parliamentary appropriations and contributions from other bodies (including grants and donations) are recognised as revenues when the Office obtains control over the assets comprising the appropriations / contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

(D) EMPLOYEE ENTITLEMENTS

(i) *Wages and Salaries, Annual Leave, Sick Leave and On-costs.*

Liabilities for wages and salaries, annual leave and vesting sick leave are recognised and measured as the amount unpaid at the reporting date at current pay rates in respect of employees' services up to that date.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the entitlements accrued in the future.

The outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee entitlements to which they relate have been recognised.

(ii) *Long Service Leave and Superannuation*

The Office's liabilities for long service leave and superannuation are assumed by the Crown Transactions Entity. The Office accounts for the liability as having been extinguished resulting in the amount assumed being shown as part of the non-monetary revenue item described as "Acceptance by the Crown Transactions Entity of Employee Entitlements and other Liabilities".

Long service leave is measured on a nominal basis. The nominal method is based on the remuneration rates at year end for all employees with five or more years of service. It is considered that this measurement technique produces results not materially different from the estimate determined by using the present value basis of measurement.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (ie Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (ie State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(E) INSURANCE

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government agencies. The expense (premium) is determined by the Fund Manager based on past experience.

(F) ACQUISITIONS OF ASSETS

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is determined as the fair value of the assets given as consideration plus the costs incidental to the acquisition.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

(G) PLANT AND EQUIPMENT

Plant and equipment costing \$2,000 and above individually are capitalised.

(H) DEPRECIATION OF NON-CURRENT PHYSICAL ASSETS

Depreciation is provided for on a straight line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the entity.

Depreciation rates used are:

Computer equipment	33.33%
Office equipment	20%
Furniture and fittings	10%
Leasehold improvement	life of lease contract

The Office has fully depreciated assets (valued at cost) as follows:

Computer equipment	\$94,000
Office equipment	\$28,000
Furniture and fittings	\$64,000

(I) LEASED ASSETS

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is recognised at its fair value at the inception of the lease. The corresponding liability is established at the same amount. Lease payments are allocated between the principal component and the interest expense. The Office has no finance lease arrangement with another entity.

Operating lease payments are charged to the Operating Statement in the periods in which they are incurred.

2. EXPENSES

	1997	1996
	\$'000	\$'000
(a) Employee related expenses comprise the following specific items:		
Salaries and wages	3,642	3,061
Superannuation entitlements	264	249
Long service leave	118	100
Recreation leave	309	248
Workers compensation insurance	17	11
Payroll tax and fringe benefits tax	268	249
Other		
Payroll tax on superannuation	18	-
	<u>4,636</u>	<u>3,918</u>
	1997	1996
	\$'000	\$'000
(b) Other operating expenses		
Auditor's remuneration	12	10
Rental expense relating to operating leases	496	481
Insurance	6	4
Other		
Fees	272	215
Telephones	80	72
Stores	81	81
Training	68	65
Printing	73	51
Travel	63	37
Other expenses	109	110
	<u>1,260</u>	<u>1,126</u>
	1997	1996
	\$'000	\$'000
(c) Maintenance		
Repairs and routine maintenance	<u>53</u>	<u>32</u>
	1997	1996
	\$'000	\$'000
(d) Depreciation expense		
Other property, plant and equipment	<u>398</u>	<u>303</u>

3. REVENUES

	1997	1996
	\$'000	\$'000
(a) Sale of goods and services		
Sale of Publications	15	20
Other	-	1
	<u>15</u>	<u>21</u>
	1997	1996
	\$'000	\$'000
(b) Investment Income		
Bank interest	18	20
	<u>18</u>	<u>20</u>
	1997	1996
	\$'000	\$'000
(c) Grants and contributions		
Police pilot project	30	-
Trainee Salary Subsidy (ATS/Career Start)	19	14
	<u>49</u>	<u>14</u>
	1997	1996
	\$'000	\$'000
(d) Other Revenue		
Specific Projects	33	102
Workshops	77	38
Miscellaneous	30	52
	<u>140</u>	<u>192</u>

4. GAIN/(LOSS) ON SALE OF NON-CURRENT ASSETS

	1997	1996
	\$'000	\$'000
Gain/(loss) on disposal of property, plant and equipment		
Proceeds from sale	4	4
Written down value of assets sold	(13)	(3)
	<u>(9)</u>	<u>1</u>
Net gain/(loss) on disposal of property, plant and equipment	<u>(9)</u>	<u>1</u>

5. APPROPRIATIONS

	1997 \$'000	1996 \$'000
(a) Total recurrent appropriations (per Summary of Compliance)	5,254	4,553
Recurrent appropriations (per Operating Statement)	<u><u>5,254</u></u>	<u><u>4,553</u></u>
(b) Total capital appropriations (per Summary of Compliance)	124	298
Capital appropriations (per Operating Statement)	<u><u>124</u></u>	<u><u>298</u></u>

6. ACCEPTANCE BY THE CROWN TRANSACTIONS ENTITY OF EMPLOYEE ENTITLEMENTS AND OTHER LIABILITIES

The following liabilities and/or expenses have been assumed by the Crown Transactions Entity.

	1997 \$'000	1996 \$'000
Superannuation	263	250
Long service leave	118	100
Other operating expenses	18	-
	<u><u>399</u></u>	<u><u>350</u></u>

7. PROGRAMS/ACTIVITIES OF THE AGENCY

- (a) **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.
- (b) **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 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

8. CURRENT ASSETS - RECEIVABLES

	1997 \$'000	1996 \$'000
Sale of goods and services	1	1
Other debtors		
Bank interest	7	10
Other	23	20
	<u><u>31</u></u>	<u><u>31</u></u>

9. CURRENT ASSETS - OTHER

	1997 \$'000	1996 \$'000
Prepayments		
Salaries and wages	-	1
Maintenance	30	21
Rent	40	40
Subscription/Membership	10	9
Training	9	-
Postal	-	3
Motor Vehicle	1	1
Other	1	-
	<u>91</u>	<u>75</u>

10. NON-CURRENT ASSETS - PROPERTY, PLANT AND EQUIPMENT

	Computer Equipment		Furniture & Fittings		Leasehold Improvement		Office Equipment		Total	
	1997 \$'000	1996 \$'000	1997 \$'000	1996 \$'000	1997 \$'000	1996 \$'000	1997 \$'000	1996 \$'000	1997 \$'000	1996 \$'000
At cost unless otherwise stated										
Balance 1 July	1,099	943	129	131	603	527	246	239	2,077	1,840
Reclassifications	(9)	-	75	-	-	-	(66)	-	-	-
Additions	43	253	11	-	60	76	10	12	124	341
Disposals	(257)	(97)	(25)	(2)	-	-	(8)	(5)	(290)	(104)
Balance 30 June	876	1,099	190	129	663	603	182	246	1,911	2,077
Accumulated depreciation										
Balance 1 July	484	367	86	73	289	240	167	144	1,026	824
Reclassifications	(4)	-	74	-	-	-	(70)	-	-	-
Depreciation for the year	279	212	13	14	80	49	26	28	398	303
Writeback on Disposal	(250)	(95)	(20)	(1)	-	-	(7)	(5)	(277)	(101)
Balance 30 June	509	484	153	86	369	289	116	167	1,147	1,026
Written Down Value										
At 1 July	615	576	43	58	314	287	79	95	1,051	1,016
At 30 June	367	615	37	43	294	314	66	79	764	1,051

11. CURRENT LIABILITIES - ACCOUNTS PAYABLE

	1997	1996
	\$'000	\$'000
Creditors	<u>54</u>	<u>84</u>

12. CURRENT LIABILITIES - EMPLOYEE ENTITLEMENTS

	1997	1996
	\$'000	\$'000
Recreation leave	228	206
Other		
Annual leave loading	39	36
Payroll tax on recreation and long service leave	41	48
Workers compensation on recreation leave	2	3
Aggregate employee entitlements	<u>310</u>	<u>293</u>

13. CHANGES IN EQUITY

	1997	1996
	\$'000	\$'000
Balance at the beginning of the financial year	896	826
Surplus/(deficit) for the year after extraordinary items	(357)	70
Balance at the end of the financial year	<u>539</u>	<u>896</u>

14. COMMITMENTS FOR EXPENDITURE**Operating Lease Commitments**

Commitments in relation to non-cancellable operating leases are payable as follows:

	1997	1996
	\$'000	\$'000
Not later than one year	421	418
Later than one year but not later than 2 years	419	417
Later than 2 years but not later than 5 years	209	626
Later than 5 years	-	-
	<u>1,049</u>	<u>1,461</u>

These operating lease commitments are not recognised in the financial statements as liabilities.

15. BUDGET REVIEW**NET COST OF SERVICES**

The actual net cost of services was lower than budget by \$31,000, which was primarily due to a \$140,000 increase in retained revenue generated from conducting courses, grants and sale of publications. The increase in retained revenue was off-set by an increase in other operating and maintenance expenses by \$122,000 and \$23,000 respectively. However employee related expenses decreased by \$35,000 and there was a \$10,000 reduction in the depreciation expense. There was a \$9,000 loss on the sale of non-current assets.

OTHER

Variances between assets, liability and cash flow budget and actual balances are not considered as being major.

16. CASH AND CASH EQUIVALENTS

For the purposes of the Cash Flow Statement, cash includes cash and bank overdraft. Cash at the end of the financial year as shown in the Cash Flow Statement is reconciled to the related items in the Statement of Financial Position as follows:

	1997	1996
	\$'000	\$'000
Cash	17	116
Closing Cash and Cash Equivalents (per Cash Flow Statement)	<u>17</u>	<u>116</u>

17. RECONCILIATION OF NET COST OF SERVICES TO NET CASH FLOWS FROM OPERATING ACTIVITIES

	1997	1996
	\$'000	\$'000
Net cash used on operating activities	(5,357)	(4,479)
Depreciation	(398)	(303)
Acceptance by Crown of liabilities	(399)	(350)
Decrease / (increase) in provisions	(17)	(61)
Increase / (decrease) in receivables	-	10
Increase / (decrease) in prepayments and other assets	16	45
Decrease / (increase) in creditors	30	6
Net (loss) / gain on sale of plant and equipment	(9)	1
Net cost of services	<u>(6,134)</u>	<u>(5,131)</u>

END OF AUDITED FINANCIAL STATEMENTS

Appendix One

Local Government Complaints Determined 1996-97

Local Council	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/vexatious/insufficient interest/commercial matter	Right of appeal or review	Explanation or advice provided	Premature, referred to authority	Investigation declined or resoundingly granted	Complaints avoided	Investigation declined insufficient evidence/utility	Investigation declined on resoundingly granted	Resolved in Councilman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Albury City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Armidale City Council	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	2
Ashfield Municipal Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Auburn Council	0	1	0	1	1	0	2	1	0	1	0	0	0	3	0	10
Baffins Shire Council	0	0	1	1	1	0	3	0	0	0	0	0	0	0	0	6
Barkston City Council	0	0	1	2	4	0	2	0	0	0	0	0	0	0	0	9
Barraba Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Bathurst City Council	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	3
Bathurst Hills Shire Council	0	1	1	2	1	0	0	1	0	1	0	0	0	0	0	7
Bega Valley Shire Council	0	0	0	0	3	0	3	1	0	3	0	0	0	0	0	12
Bellingen Shire Council	0	0	0	1	0	0	3	1	0	2	0	0	0	0	0	7
Berrigan Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Blacktown City Council	0	0	0	2	0	0	6	0	0	3	0	0	0	0	0	11
Blayney Shire Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Blue Mountains City Council	0	1	3	3	2	0	7	0	0	4	0	0	0	0	0	20
Bogan Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Botany Bay City Council	0	0	1	1	0	0	0	0	0	2	0	0	0	0	0	4
Broken Hill City Council	0	0	0	0	3	0	1	0	0	0	0	0	0	0	0	4
Berwood Municipal Council	0	0	0	1	2	0	1	0	0	1	0	0	0	0	0	5
Byron Shire Council	1	0	0	1	1	0	4	2	0	1	0	0	0	0	0	10
Cahoon Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Camden Municipal Council	2	0	0	0	0	0	1	0	0	0	0	0	0	0	0	3
Campbelltown City Council	0	0	0	0	2	0	2	0	0	0	0	0	0	0	0	4
Camberley Municipal Council	0	0	0	0	0	0	2	1	0	1	0	0	0	0	0	4
Central Darling Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Cessnock City Council	0	0	2	0	0	0	1	2	0	1	0	0	0	0	13	19
Coffs Harbour City Council	1	0	2	2	6	0	3	0	0	1	0	0	0	0	0	15
Concord Municipal Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Cooma-Monaro Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Coonabarabran Shire Council	0	0	1	1	0	0	1	0	0	1	0	0	0	0	0	4
Copmanhurst Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Covera Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Deniliquin Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Derrinryne Municipal Council	0	0	0	3	0	0	0	0	0	2	0	0	0	0	0	5
Dubbo City Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Dumaresq Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Dungay Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Eurobodalla Shire Council	0	0	1	1	1	0	4	2	0	3	0	0	0	0	0	12
Fairfield City Council	0	0	0	0	1	0	5	0	0	0	0	0	0	0	0	6
Forbes Shire Council	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Godalby City Council	0	0	2	6	2	0	5	0	0	10	0	0	0	0	0	25
Goodham City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Graben City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Great Lakes Shire Council	0	0	1	1	2	1	5	0	0	4	0	0	0	0	0	14
Greater Lithgow City Council	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2

Local Government Complaints

Local Council	Assessment only						Preliminary or informal investigation					Formal investigations				Total
	No jurisdiction	Trivial/note/insufficient interest/commercial matter	Right of appeal or review	Explanation or advice provided	Pressures, referred to authority	Investigation declined on non-proprietary grounds	Complainant assisted	Investigation declined - insufficient evidence/ability	Investigation declined on non-proprietary grounds	Resolved to Complainant's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Greater Tare City Council	0	1	0	0	1	0	2	0	0	2	0	0	0	0	0	6
Griffith City Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Gunnedah Shire Council	1	0	0	0	0	0	8	0	0	0	0	0	0	0	0	9
Gunning Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Hastings Council	0	0	0	1	0	0	2	0	0	2	0	0	0	0	0	5
Hawkesbury City Council	0	1	1	1	2	0	4	0	0	0	0	0	0	0	0	9
Hobroyd City Council	0	0	0	0	2	0	0	0	1	0	0	0	0	0	0	3
Hornsby Shire Council	0	1	4	2	3	0	8	1	0	1	0	0	0	0	0	20
Hunter Hill Municipal Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Hartsville City Council	0	0	2	1	2	0	1	1	0	1	0	0	0	0	0	8
Junee Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Kempsey Shire Council	2	0	0	0	1	0	4	0	0	0	0	0	0	0	0	7
Kiama Municipal Council	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	3
Koparah Municipal Council	0	0	1	1	0	0	3	1	0	0	0	0	0	0	0	6
Ka-Ring-Gai Municipal Council	1	0	1	2	0	0	7	0	0	2	0	0	0	0	0	13
Kyogle Shire Council	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	3
Lake Macquarie City Council	0	0	2	2	4	0	11	1	0	6	0	0	0	0	0	26
Lane Cove Municipal Council	0	0	0	0	0	0	1	1	0	1	0	0	0	0	0	3
Lecton Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Leichhardt Municipal Council	0	0	2	0	2	0	7	0	0	3	0	0	0	0	0	14
Lismore City Council	0	0	1	0	0	0	2	0	0	0	0	0	0	0	0	3
Liverpool City Council	0	0	0	1	1	0	3	1	0	3	0	0	0	0	0	9
Lockhart Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Maclean Shire Council	0	0	0	1	0	1	1	0	0	0	0	0	0	0	0	3
Maitland City Council	1	0	0	9	0	0	8	0	1	3	0	0	0	0	0	22
Manilla Shire Council	0	0	0	3	5	0	2	5	0	1	0	0	0	0	0	16
Manly Municipal Council	0	0	0	1	0	0	3	0	0	0	0	0	0	0	0	4
Marrickville Council	0	0	0	2	0	0	3	0	1	2	0	0	0	0	0	8
Moree Plains Shire Council	1	0	0	0	0	0	2	0	0	1	0	0	0	0	0	4
Mosman Municipal Council	1	0	0	5	0	0	5	1	0	0	0	0	0	0	0	12
Mudgee Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Murray Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Murrumbidgee Shire Council	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Murrumbidgee Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Muswellbrook Shire Council	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2
Nambucca Shire Council	0	0	0	3	1	0	5	0	0	1	0	0	0	0	0	10
Namabri Shire Council	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2
Narrandera Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Narramine Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Newcastle City Council	0	0	0	3	1	0	1	0	0	2	1	0	0	0	0	8
North Sydney Council	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2
Nundle Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Nymboida Shire Council	0	0	0	0	1	0	1	1	0	1	0	0	0	0	3	7
Oberon Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Orange City Council	0	0	0	0	0	0	4	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	1	0	3	1	0	1	1	0	4	0	0	0	0	0	11
Parr Shire Council	0	0	1	0	0	0	1	0	0	1	0	0	0	0	0	3
Penrith City Council	0	0	0	0	1	0	0	0	0	2	1	0	0	0	0	4
Pittwater Council	1	0	1	0	1	0	2	2	0	2	0	0	0	0	0	9
Port Stephens Shire Council	0	0	0	3	2	0	3	2	0	0	0	0	0	0	1	11
Queanbeyan City Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Local Council	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/minor/ insufficient interest/ commercial matter	Right of appeal or review	Explanation or advice provided	Precedence, referred to authority	Investigation declined on reasons/similarity grounds	Complaints assisted	Investigation declined/ insufficient evidence/ utility	Investigation declined on reasons/similarity grounds	Resolved to Councilmaker's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Quirindi Shire Council	0	2	0	1	0	0	0	0	0	0	0	0	0	0	0	3
Randwick City Council	0	0	2	3	0	0	5	1	0	1	0	0	0	0	0	12
Richmond River County Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Richmond River Shire Council	0	0	1	0	0	0	1	0	0	1	0	0	0	0	0	3
Rockdale Municipal Council	0	0	1	3	2	0	2	1	0	0	0	0	0	0	0	9
Ryde City Council	0	0	0	0	1	0	3	0	0	1	1	0	0	0	0	6
Rylstone Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Severn Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Shoalhaven City Council	1	1	1	4	4	0	4	0	0	3	0	0	0	0	0	22
Singiton Shire Council	0	0	1	0	0	0	2	1	0	1	0	0	0	0	0	5
Snowy River Shire Council	0	1	0	0	1	0	0	1	0	0	0	0	0	0	0	3
South Sydney Council	0	1	0	1	2	0	0	1	0	3	0	0	0	0	0	10
Stratfield Municipal Council	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Sutherland Shire Council	0	0	2	3	1	0	10	0	0	7	0	0	0	0	0	23
Sydney City Council	0	0	2	2	0	0	4	0	0	0	0	0	0	0	0	8
Tallaganda Shire Council	0	1	0	2	0	0	0	1	0	1	0	0	0	0	0	5
Taree City Council	0	0	1	1	0	0	1	0	0	1	0	0	0	0	0	4
Temora Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Tenterfield Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
The Council of Shellharbour	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Tambarumba Shire Council	0	0	0	1	0	0	2	1	0	0	0	0	0	0	0	4
Tweed Shire Council	0	0	2	3	1	0	8	0	0	0	0	0	0	0	0	14
Ullmans Shire Council	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	3
Unialla Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	0	1	1	0	0	2	0	0	0	0	0	0	0	0	4
Walgett Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Warragah Council	0	1	1	1	1	0	5	2	0	2	0	0	0	0	0	16
Waverley Council	0	0	0	1	1	0	4	2	0	2	0	0	0	0	0	10
Weddin Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Wellington Council	0	0	0	2	0	0	0	0	0	1	0	0	0	0	0	3
Wentworth Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Willoughby City Council	0	0	1	1	3	0	1	0	1	1	0	0	0	0	0	8
Wingecarribee Shire Council	0	0	1	0	1	0	2	0	0	0	0	0	0	0	0	4
Wollondilly Shire Council	0	0	0	7	3	0	5	0	0	1	0	0	0	0	0	16
Wollongong City Council	0	0	2	4	1	0	2	0	0	2	0	0	0	0	0	11
Woolahra Municipal Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Wyong Shire Council	0	0	0	2	2	0	3	0	0	0	0	0	0	0	0	7
Yarrowlands Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Yass Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Young Shire Council	0	0	0	0	1	0	1	0	0	1	0	0	0	0	0	3
Total	16	15	38	123	100	2	275	48	5	131	3	0	0	3	17	796

Appendix Two

Public Authority Complaints Determined 1996-97

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/remedy/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 Affairs, Dept of	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	
Advance Energy	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2	
Agriculture Department	1	0	0	1	0	0	4	0	0	1	0	0	0	0	7	
Air Transport Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Ambulance Service of NSW	2	1	0	1	0	0	2	0	0	0	0	0	0	0	6	
Anti-Discrimination Board	0	0	0	1	2	0	1	0	0	1	0	0	0	0	5	
Archives Authority of NSW	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
Australian Correctional Management	0	0	0	0	5	0	4	3	0	1	0	0	0	0	13	
Attorney General's Department	3	0	0	1	1	0	4	1	0	0	0	0	0	0	10	
Audit Office	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Australian Inland Energy	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Bipai Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
Building Industry Taskforce	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Building Services Corporation	0	0	0	1	1	1	5	3	2	0	0	1	1	0	15	
Bush Fire Services, Dept of	0	0	0	0	1	0	1	0	0	1	0	0	0	0	3	
Centennial Park And Moore Park Trust	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Central Coast Area Health Service	0	0	2	0	0	0	1	0	0	0	0	0	0	0	3	
Central Sydney Area Health Service	1	1	0	1	1	0	0	0	0	0	0	0	0	0	4	
Central West Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Charles Sturt University, Riverina	0	0	0	0	1	0	0	1	0	1	0	0	0	0	3	
Chiropractors & Osteopaths Registration Board	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
Coal Compensation Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Community Services Commission	1	0	0	0	0	0	1	0	0	0	0	0	0	0	2	
Community Services, Dept of	6	0	0	1	2	0	2	1	0	3	0	0	0	0	15	
Condobolin Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	
Conservation & Land Mgmt - on Land & Water Co	0	0	0	0	0	0	0	0	0	0	1	0	0	1	2	
Corrections Health Service	0	1	2	4	0	0	5	2	0	9	0	0	0	1	24	
Corrective Services, Dept of	8	13	6	54	55	0	135	71	0	99	0	0	1	1	443	
Darling Harbour Authority	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Department For Women	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Director Public Prosecutions	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Energy Australia	1	0	2	0	2	0	2	0	0	1	0	0	0	0	8	
Energy South	0	1	0	0	1	0	0	0	0	1	0	0	0	0	3	

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/remote/insufficient interest/commercial matter	Right of appeal or review	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	
Energy, Dept of	0	1	0	1	0	0	0	1	0	1	0	0	0	0	0	4
Environmental Protection Authority	2	1	0	1	5	0	3	0	0	1	0	0	0	0	0	13
Equal Opportunity Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Fair Trading, Dept of	2	1	0	4	3	0	26	7	1	12	0	0	0	0	0	56
Far West Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Fire Brigades NSW	2	0	0	0	1	0	1	0	0	0	0	0	0	0	0	4
G.R.E.A.T.	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Gaming & Racing, Dept of	1	0	0	1	0	0	2	1	0	0	0	0	0	0	0	5
Great Southern Energy	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	2
Greater Murray Health Service	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Greyhound Racing Control Board	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	1	0	0	0	0	0	0	0	0	1
Health Care Complaints Commission	1	0	0	4	1	0	7	1	0	0	0	0	0	0	0	14
Health Department	4	1	1	3	2	0	7	0	0	3	0	0	1	1	0	23
Heritage Council of NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Home Purchase Assistance Authority	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Homesland Commissioner	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Housing Department	0	2	2	10	17	0	31	4	0	40	0	0	0	0	0	108
Hunter Area Health Service	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Hunter Water Corporation	0	0	0	2	1	0	2	0	0	3	0	0	0	0	0	8
Illawarra Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Independent Commission Against Corruption	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Industrial Relations, Dept of	2	0	0	0	2	0	1	0	0	1	0	0	0	0	0	6
Integral Energy	0	0	0	1	1	0	1	0	0	2	0	0	0	0	0	5
Jerrinja Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Juvenile Justice, Dept of	1	1	0	6	2	0	9	10	0	5	0	0	0	2	0	36
Kempsey Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Land & Water Conservation, Dept of	3	0	0	1	2	0	13	2	0	14	1	0	0	0	0	36
Land Titles Office	0	0	0	1	0	0	3	0	0	0	0	0	0	0	0	4
Legal Aid Commission of NSW	1	0	1	4	4	0	2	0	0	6	0	0	0	0	0	18
Legal Practitioners Admissions Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Lightning Ridge Local Aboriginal Land Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Liquor Administration Board	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Local Government, Dept of	0	1	0	2	0	0	3	1	0	0	0	0	0	0	0	7
Lord Howe Island Board	1	0	1	0	1	0	1	0	0	4	0	0	0	0	0	8
Macquarie Area Health Service	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Macquarie University	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Metsoth Energy	0	0	0	1	1	0	1	0	0	1	0	0	0	0	0	4

Public Authority Complaints

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				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	Complaint assisted	Investigation declined-insufficient evidence/no utility	Investigation declined on resource/priority grounds	Resolved to Complainant's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Mid North Coast Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Mid Western Area Health Service	1	0	0	0	2	0	0	0	0	0	0	0	0	0	0	3
Mineral Resources, Dept of	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	3
Mine Subsidence Board	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Mogo Aboriginal Land Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Motor Vehicle Repair Disputes Committee	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Motor Vehicle Repair Industry Council	0	0	0	2	0	0	1	0	0	0	0	0	0	0	0	3
National Parks & Wildlife Service	0	0	0	0	3	0	8	0	0	4	0	0	0	0	0	15
Nepean Hospital	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Aboriginal Land Council	1	0	0	1	1	0	2	0	0	0	0	0	3	0	0	8
NSW Treasury Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Northern Sydney Area Health Service	1	0	1	0	1	0	0	0	0	0	0	0	1	1	0	5
Northpower	1	0	1	0	0	0	1	0	0	0	0	0	0	0	0	3
Northpower Energy	0	0	0	1	2	0	3	0	0	0	0	0	0	0	0	6
NSW Board of Studies	1	0	1	0	0	0	2	0	0	1	0	0	0	0	0	5
NSW Fisheries	2	0	0	2	1	0	5	0	0	2	0	0	0	0	0	12
NSW Lotteries	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
NSW Medical Board	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
NSW Valuer General's Office	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Office of Protective Commissioner	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Office of Public Guardian	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Office of State Revenue	0	0	1	1	4	0	0	1	0	3	0	0	0	0	0	10
Oxerwal Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Premier's Department	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Public Employment Office	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0	3
Public Trustee	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7
Public Works & Services, Dept of	1	0	0	1	0	0	2	2	0	2	0	0	0	0	0	8
Rail Services Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Real Estate Services Council	0	0	0	0	0	0	1	0	0	3	0	0	0	0	0	4
Red Chief Aboriginal Land Council	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Registry of Births, Deaths & Marriages	0	0	0	0	1	0	1	0	0	4	0	0	0	0	0	6
Rental Bond Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Residential Tenancies Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Riverina Water	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Roads And Traffic Authority	2	1	1	7	39	0	21	4	0	7	0	0	0	0	0	82
Rural Assistance Board	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Rural Lands Protection Boards	0	0	0	0	2	0	2	2	0	0	0	0	0	0	0	6
School Education, Dept of	12	1	1	1	15	0	10	6	0	6	0	0	0	0	0	52
South Western Area Health Service	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or review	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	
Southern Cross University	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Southern Sydney Area Health Service	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	3
State Electoral Office	0	0	0	1	0	0	0	1	0	1	0	0	0	0	0	3
State Emergency Service	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	2
State Forests	0	0	0	0	1	0	3	0	1	0	0	0	0	0	0	5
State Library of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
State Rail Authority of NSW	5	3	2	9	7	0	5	3	2	14	0	0	0	0	0	52
State Rescue Board of NSW	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
State Superannuation Investment & Mgmt Corp	0	0	1	0	2	0	1	1	0	3	0	0	0	0	0	8
State Transit Authority of NSW	1	0	1	4	3	0	1	0	0	0	0	0	0	0	0	10
Strata & Tenancy Commissioners	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Superannuation Administration Authority	1	0	0	3	0	0	1	1	0	1	0	0	0	0	0	7
Sydney Cove Authority	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Sydney Opera House	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Sydney Organising Committee for The Olympic Games	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Sydney Water Corporation	2	0	1	1	5	0	7	0	1	3	1	0	0	0	0	28
Technical and Further Education Commission	1	1	0	1	5	0	1	2	0	1	0	0	0	0	0	12
Tandem Agency Board of NSW	1	0	0	0	1	0	1	1	0	2	0	0	0	0	0	6
Tourism 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
Transgrid	0	0	0	7	1	0	0	2	1	1	0	0	0	0	0	12
Transport, Dept of	1	1	3	6	1	1	3	2	0	3	0	0	0	0	0	21
Universities Admissions Centre	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	3
University of New England	2	0	0	1	0	0	1	0	0	0	0	0	0	0	0	4
University of New South Wales	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
University of Newcastle	1	0	0	1	0	0	0	0	0	1	1	0	0	0	0	4
University of Sydney	0	0	1	1	0	0	0	1	0	1	0	0	0	0	0	4
University of Technology	1	0	0	0	0	0	1	0	0	1	0	0	0	0	0	3
University of Western Sydney	0	0	0	1	1	0	0	1	0	2	0	0	0	0	0	5
Urban Affairs & Planning, Dept of	0	0	0	1	2	0	2	0	0	1	0	0	0	0	0	6
Veterinary Surgeons Investigating Committee	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Waterways Authority	0	0	0	4	1	0	0	1	2	1	0	0	0	0	0	9
Westworth Area Health Service	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	2
Western Lands Commission	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Western Sydney Area Health Service	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Workcover Authority	3	0	1	3	1	0	3	2	0	1	0	0	0	0	0	14
Total	111	38	41	181	231	10	398	158	20	310	14	14	24	18	20	1,468

Appendix Three

FOI Complaints Determined 1996-97

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/remotes/ insufficient interest/ commercial matter	Right of appeal or redress	Explanation or advise provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assisted	Investigation declined-insufficient evidence/no utility	Investigation declared on resource/priority grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Ambulance Service of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Baulkham Hills Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Blacktown City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Building Services Corporation	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2	
Barwood Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Byron Shire Council	1	0	0	0	0	0	0	0	0	2	0	0	0	0	3	
Campbelltown City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Central Sydney Area Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2	
Commercial Services Group	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2	
Community Services, Dept of	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2	
Concord Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Corrective Services, Dept of																
Dental Board of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Environmental Protection Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Barrabool Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Evans Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Fair Trading, Dept of	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Fairfield City Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2	
Gaming & Racing, Dept of	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Gosford City Council	0	0	0	1	0	0	0	2	0	0	0	0	0	0	3	
Greater Lithgow City Council	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	
Greater Tare City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Gunning Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Health Department	3	0	0	0	0	0	1	0	0	2	0	1	0	0	7	
Illawarra Area Health Service	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Industrial Relations, Dept of	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Jerrilder Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Kogarah Municipal Council	0	0	0	0	0	0	0	1	0	3	0	0	0	0	4	
Lake Illawarra Authority	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	
Lake Macquarie City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Land & Water Conservation, Dept of	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2	
Legal Practitioners Admissions Board	1	0	0	0	0	0	0	2	0	0	0	0	0	0	3	
Local Government, Dept of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Lord Howe Island Board	0	0	0	0	0	0	0	1	0	2	0	0	0	0	3	
Maitland City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Manilla Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
Musman Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
National Parks & Wildlife Service	0	0	0	0	0	0	0	0	0	3	0	0	0	0	3	

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/remote/ insufficient interest/ commercial matter	Right of appeal or review	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 Complainant's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
New England Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Northern Sydney Area Health Service	0	0	0	0	0	0	0	1	0	0	0	2	0	0	0	3
NSW Fisheries	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Olympic Co-ordination Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Parramatta City Council	0	0	0	0	0	0	0	2	0	1	0	0	0	0	0	3
Pitwater Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Police Service	2	0	0	0	0	0	0	5	0	1	0	0	0	0	0	8
Premier's Department	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Rail Services Corporation	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Roads And Traffic Authority	1	0	0	0	0	0	0	2	0	0	0	0	0	0	0	3
Rockdale Municipal Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Rural Lands Protection Board	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Ryde City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
School Education, Dept of	0	0	0	0	0	0	0	5	0	3	0	0	0	0	0	8
South Western Area Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Sport & Recreation, Dept of	1	0	0	0	0	0	0	2	0	0	0	0	0	0	0	3
State Electoral Office	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
State Forests	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Rail Authority of NSW	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Strathfield Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Sydney Organising Committee For The Olympic Games	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Technical and Further Education Commission	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Totalizer Agency Board of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Transport, Dept of	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	2
Tweed Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
University of New England	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	2
University of Newcastle	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
University of Sydney	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0	3
University of Western Sydney	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
University of Wollongong	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Uvala Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Urban Affairs & Planning, Dept of	1	0	0	0	0	0	0	2	0	1	0	0	0	0	0	4
Wagonga Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Watersways Authority	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wentworth Area Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Wollongong City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Workcover Authority	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Total	20	1	0	1	0	0	1	49	0	55	0	3	0	0	3	133

Appendix Four

Summary of Non-Police Complaints Determined 1996-97

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				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	Investigator declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Departments & statutory authorities	303	21	30	113	164	7	238	64	11	186	3	2	10	2	3	952
Local councils	16	15	58	123	100	2	275	48	5	131	3	0	0	3	17	796
Correctional centres & juvenile justice centres	9	15	8	64	62	0	153	86	0	114	0	0	1	2	2	516
Freedom of information	20	1	0	1	0	0	1	49	0	55	0	3	0	0	3	133
Bodies outside jurisdiction	502	0	0	0	0	0	0	0	0	0	0	0	0	0	0	502
Total	648	52	96	301	328	6	667	247	16	486	6	5	11	7	25	2,899

+ current as at 30.6.97 445

- current as at 30.6.96 456

Total received for year ended 30.6.97 2,888

Publications List

OFFICE OF THE OMBUDSMAN

21.6.1991	The effective functioning of the Office of the Ombudsman.	6.12.1991	Report concerning information sought in Questions on Notice by Mr J Hatton, MP (tabled 11.12.1991).
2.10.1990	Appointment of an Assistant Ombudsman.	18.7.1991	Report on the role of the Ombudsman in the management of complaints against police.
19.7.1990	Report concerning the Independence and Accountability of the Ombudsman.	16.5.1991	Section 31 Report: Public interest in Releasing the Ombudsman's Report on Operation Sue (Redfern Raid).
18.8.1989	Request for urgent amendment to the Ombudsman Act to enable the Ombudsman to delegate to the Deputy or Assistant Ombudsman a function conferred by S19(2) of the Ombudsman Act.	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.
12.8.1988	Misleading and inaccurate newspaper article alleging that the Ombudsman is investigating Mr J Hatton, MP.	24.1.1990	Failure to obtain evidence adequate for the successful prosecution of a police officer charged with assault occasioning actual bodily harm.
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.	1.5.1989	Inadequate training and procedures of the Special Weapons Operations Unit. (Blackshaw)
10.9.1987	Proposed amendment to the Ombudsman Act to limit application of Item 12, Schedule 1.	31.3.1989	Concerning a decision made on the basis of inadequate legal advice provided to the Commissioner of Police. (Hunt)
13.10.1986	Report on need to amend secrecy provisions.	29.11.1988	Failure to obtain independent legal advice regarding departmental charges and delay in police investigation.
24.4.1986	Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged misconduct.	10.11.1988	Failure to obtain legal advice regarding departmental charges (anonymous and Love).
1.2.1985	Supplementary Report on Secrecy Provisions of the Ombudsman Act.	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.
17.9.1984	Report concerning the Secrecy Provisions and the need to amend the Ombudsman Act to introduce Section 35A of the Commonwealth Act.		
POLICE			
11.3.1997	Conflict of Interest		
18.10.1996	The Foster Report	16.5.1988	Special report to Parliament on proposals to amend the Police Regulations (Allegations of Misconduct) Act, 1978.
1.10.1996	The Weston Report	10.11.1987	Decision to consent to discontinuation of investigation of complaint concerning the conduct of the Assistant Commissioner (Review), Mr RC Shepherd.
26. 8.1996	Police and Insurance Investigators	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)
24.7.1996	The Piat Report	10.9.1987	Report concerning proceedings conducted in the Police Tribunal arising from investigations conducted by the Ombudsman. (Parker)
28.5.1996	Police Conciliation Update	4.9.1987	Failure of Police Department to implement Ombudsman's recommendations arising from his reinvestigation of 'Club 80' complaint.
20.12.1995	Confidential Information and Police	3.9.1987	Failure to implement Ombudsman's recommendations re: arrest and police 'verbal'. (Matthews)
13.12.95	NSW Police Complaints System	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.
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.		

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)	4.3.1982	Report on the effectiveness of the Office of the Ombudsman in respect of complaints against police.
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.	PRISONS & DETENTION CENTRES	
4.8.1987	Special Report to Parliament on the first three years of the New Police Complaints System.	11.4.1997	Mulawa Report
8.5.1987	Report concerning incorrect imprisonment for a fine already paid and inadequate initial investigation by police.	10.12.1996	Inquiry into Juvenile Detention Centres
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.	9.11.1992	Report on Toomelah.
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).	4.5.1992	Report concerning the Prisons (segregation) Amendment Bill 1992.
27.10.1986	Report on delay in investigation of a complaint by Paul Mortimer.	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.
24.4.1986	Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged misconduct.	17.4.1986	Report on failure of Department of Corrective Services to accept Ombudsman's recommendations for payment of compensation for illegal detention.
7.4.1986	Report under Section 31 & 32. Complaints by Miles and McKinnon.	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.
7.4.1986	Report re: Miss WS Machin MP obo Mr P Steward about delay in investigating complaint that police assaulted blind people.	25.3.1985	Report on the Corrective Service Commission and the treatment and rights of protection prisoners.
11.4.1985	Exclusion of Assistant Ombudsman and civilian investigation officers from investigating police conduct	24.6.1982	Report concerning cell searches at Parramatta gaol, January, 1982.
1.4.1985	Report concerning injuries sustained by Mr Bogdan Ostaszewski.	9.6.1982	Report on the assault of Maria Jason at Mulawa Training and Detention Centre.
25.9.1984	Report concerning complaints against police - Ainsworth and Vibert.	29.11.1978	Report concerning the investigation of certain complaints made by prisoners by the Royal Commission into NSW Prisons.
25.9.1984	Report concerning Administrative Procedures in the Traffic Branch of the NSW Police Department.	OTHER PUBLIC AUTHORITIES	
10.11.83	Report on the affairs of the Parramatta Police Citizens Boys Club. (Azzopardi)	3.7.1995	Psychologists Registration Board
18.3.1983	Report on complaint against police by Mr EL Nam.	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.
18.3.1983	Report on complaint against police by the Aboriginal Legal Service obo May, Donn, Boyd & Bailey.	12.8.1993	Report on the Department of Community Services and the Brougham Residential Unit.
18.3.1983	Report on complaint against police by Neil Andrews, Solicitor, Aboriginal Legal Service.	13.10.1993	The Neary/ SRA report.
18.3.1983	Report in complaint against police by Mr James Matheson.	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.
8.3.1983	Report concerning complaint against police by CAMP Lobby Ltd.	29.11.1988	Failure to obtain independent legal advice regarding departmental charges (re: Department of Agriculture).
14.9.1982	Report on the limitations re: handling complaints against police - Blank Search Warrants.	31.8.1988	Failure of the Darling Harbour Authority to fully comply with recommendations.
11.8.1982	Report on the limitations re: handling complaints against police - Tow Truck Racket.	31.5.1988	Report concerning the Commissioner of Motor Transport to comply with recommendations re: stolen motor vehicles.

Publications List

- 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.
- 30.8.85 Report on the Deputy Ombudsman under section 31 of the ombudsman Act concerning misinformation about the compulsory wearing of school uniforms.
- 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.

OTHER PUBLICATIONS

ANNUAL REPORTS

- 1995-96, 1994-1995, 1993-1994
NSW Ombudsman Annual Report
- 1993-1994
NSW Ombudsman FOI Annual Report
- 1995-1996, 1994-1995, 1993-1994, 1992-1993
NSW Ombudsman Annual Report Summary

GUIDELINES

- 1997 Ombudsman's FOI Policies and Guidelines - 2nd edition \$30.00
- 1997 Administrative Good Conduct - free
- 1997 Principles of Administrative Good Conduct - free
- 1997 Ombudsman's Protected Disclosures Guidelines 2nd edition - \$30.00
- 1996 Electorate Officers Information Kit - free
- 1995 Ombudsman's Effective Complaint Handling Guidelines - free
- 1995 Ombudsman's Good Conduct and Administrative Practice - for councils \$30.00
- 1995 Ombudsman's Good Conduct and Administrative Practice - for public authorities and officials \$50.00

BROCHURES

- All brochure are free.
- General information
- Problems with police?
- Problems in gaol?
- Trouble with council?
- Unhappy with an FOI decision?
- Some tips for making a complaint
- Have you considered mediation?
- NSW Ombudsman - Your Watchdog, printed in: Arabic, Chinese, Croatian, Greek, Italian, Serbian, Spanish, Turkish and Vietnamese.

Appendix Six

Disability Strategic Plan Annual Report for 1996-1997

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.	<ul style="list-style-type: none">• 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.	<ul style="list-style-type: none">• Initial contact has been made with a number of community organisations in the implementation of strategies.• Further consultation will occur during the coming year.
3. Establish staff disability awareness process/program.	<ul style="list-style-type: none">• All staff will be informed of the office's Disability Strategic Plan at induction.
4. Develop and refine data base - customer and staff.	<ul style="list-style-type: none">• Statistics on staff have been collected (on a voluntary basis) for EEO reporting purposes for some time. The office has a 100% response rate.• Some statistics on clients are obtained through our client surveys. However these are only a sample of people who use our services, not all.
5. Review representation of people with a disability in consultation processes and advisory and policy structures.	<ul style="list-style-type: none">• While the Ombudsman recognises the value of customer councils, her limited resources 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.	<ul style="list-style-type: none">• 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 mechanism 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.	<ul style="list-style-type: none">• 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 one	Review building access for people who have a disability
Action	<ul style="list-style-type: none"> • Review building access for people with a sight or physical impairment and make recommendations to building management for changes to improve access if required • Ensure all country outreach venues are accessible to people who have a physical disability
Target	<ul style="list-style-type: none"> • 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 occurred with Building Management
Comment	In response to concerns raised by the Ombudsman, the managers of the building are reviewing access issues. An improvement plan is being developed which will be submitted to the building's owners for endorsement. In the meantime, some changes have already been made which have improved access.

KEY RESULT AREA 1	TO ENSURE ACCESS FOR PEOPLE WITH A DISABILITY TO SERVICES PROVIDED BY THE NSW OMBUDSMAN
Strategy two	Review access for people with a hearing impairment
Action	<ul style="list-style-type: none"> • Purchase a TTY telephone and train staff in its use • Promote the telephone by including the number on stationery brochures, 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	<ul style="list-style-type: none"> • TTY installed and training completed by September, 1995 • Publicity program to be completed by December, 1995
Responsibility	Manager Administration and Public Relation Officer
Status	TTY telephone installed and number publicised on letterhead and brochures
Comment	The above action has been implemented.

KEY RESULT AREA 2	TO ENSURE OPPORTUNITIES FOR WORK AND CAREER DEVELOPMENT
Strategy one	Provide appropriate work place technology and equipment for staff who have a disability
Action	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	7% 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 two	Review the principle of reasonable adjustment, as it applies to the workforce, including position descriptions for new and existing staff
Action	<ul style="list-style-type: none"> • 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 disability, 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.

Disability Strategic Plan Annual Report

KEY RESULT AREA 2	TO ENSURE OPPORTUNITIES FOR WORK AND CAREER DEVELOPMENT
Strategy three	Provide opportunities for the employment and training of people who have a disability
Action	<ul style="list-style-type: none"> • Identification of positions that could be filled by a person with a disability and amend position descriptions as required • Contact peak bodies which assist people with a disability to find employment when appropriate positions become available • Investigate opportunities for temporary employment or work experience • Develop and monitor career development plans for staff with a disability in line with the office's performance management system
Target	Increase over time the number of staff who have a disability
Responsibility	Manager Administration, managers and supervisors
Status	This strategy has not been 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 Seven

Legal Changes

During the year the following legislative amendments, were introduced.

The *Police Legislation Act Amendment 1996*, amended the *Telecommunications Act (New South Wales) Act 1987* to make both the Royal Commission into the NSW Police Service and the Police Integrity Commission "eligible authorities" for the purpose of inspection of telecommunications records by the Ombudsman. The Royal Commission ceased operations at the end of August 1997. The position of the Police Integrity Commission, however, remains somewhat anomalous. While it is an eligible authority under the NSW Act, at the time of writing Parliament had not made a section 34 declaration under the Commonwealth Act. Unless, and until,

such a declaration is made, the Police Integrity Commission is precluded from obtaining warrants for telephone interceptions - although this office is still bound to inspect its records pursuant to the NSW Act.

Both the *Police Legislation Amendment Act 1996* and the *Police Integrity Commission Act 1996* commenced on 1 January 1997. The effect of this legislation is discussed in our 1995-96 annual report.

The *Police Legislation Further Amendment Act 1996*, implemented recommendations of the Royal Commission's Interim Measures Report. The *Police Service Amendment Act 1997* introduced amendments to clause 9 of the *Police Service Act*.

Appendix Eight

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.

Code of Conduct

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.

Code of Conduct

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.

USE OF OFFICE RESOURCES

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.

SECURITY

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.

OUTSIDE EMPLOYMENT

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.

SANCTIONS

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.

Appendix Nine

Freedom of Information Applications to Our Office

The following information is given according to fulfil our annual reporting requirements under the Freedom of Information Act, the *Freedom of Information (General) Regulation 1995* and Appendix B in the *FOI Procedure Manual*.

CLAUSE 9(1)(A) AND (2) OF THE *REGULATION* AND APPENDIX B OF THE *MANUAL*

SECTION A - NUMBERS OF NEW FOI REQUESTS

We received four new FOI applications in the 96/97 year. As we received none in 95/96, none were brought forward into 96/97. All four applications were processed and completed, none were withdrawn, and one was partially transferred out.

FOI requests	Personal	Other	Total
A1 New (including transefered in)	3	1	4
A2 Brought forward	0	0	0
A3 Total to be processed	3	1	4
A4 Completed	3	1/2	4
A5 Transferred out	0	1/2	
A6 Withdrawn	0		
A7 Total processed	3	1	4
A8 Unfinished (carried forward)	0	0	0

SECTION B - WHAT HAPPENED TO COMPLETED REQUESTS?

Three of the four applications were for documents which related to the Ombudsman's complaint-handling, investigative and reporting functions. In these matters an explanation of section 9 and our inclusion in Schedule 2 of the FOI Act was provided. In the fourth application, which requested a list of all policy documents of this Office in relation to the investigation of complaints, and of the Department of Corrective Services pertaining to prisoner classifications, we supplied a copy of this Office's Summary of Affairs, and transferred the rest of the application to the Department, considering under section 20(1) that it related more closely to the functions of that Department.

FOI requests	Personal	Other
B1 Granted in full	0	0
B2 Granted in part	0	0
B3 Refused	0	0
B4 Deferred	0	0
B5 Completed*	3**	1**

Notes: *The figures on the line B5 should be the same as the corresponding ones on A4.

**The three personal applications related to functions of the office which are excluded from the operation of the Act. The fourth was transferred. Therefore, while four applications were completed, they were not completed in terms of B1-B4.

Freedom of Information Applications

SECTION C - MINISTERIAL CERTIFICATES

No Ministerial Certificates were issued in relation to FOI applications to this Office this year.

C1	Ministerial Certificates issued	0
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SECTION D - FORMAL CONSULTATIONS

No requests required consultations, formal or otherwise.

		Issued	Total
D1	Number of requests requiring formal consultation(s)	0	0

SECTION E - AMENDMENT OF PERSONAL RECORDS

We received no requests for the amendment of personal records.

Result of Amendment Request	Total
E1 Result of amendment - agreed	0
E2 Result of amendment - refused	0
E3 Total	0

SECTION F - NOTIFICATION OF PERSONAL RECORDS

We received no requests for notations in the period.

F1	Number of requests for notation	0
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SECTION G - FOI REQUESTS GRANTED IN PART OR REFUSED

No decisions to grant access in part or to restrict access were made.

Basis for disallowing or restricting access	Personal	Other
G1 Section 19 (applic incomplete, wrongly directed)	0	0
G2 Section 22 (deposit not paid)	0	0
G3 Section 25(1)(a1)(diversion of resources)	0	0
G4 Section 25(1)(a) (exempt)	0	0
G5 Section 25(1)(b), (c), (d) (otherwise available)	0	0
G6 Section 28(1)(b) (documents not held)	0	0
G7 Section 24(2) - deemed refused, over 21 days	0	0
G8 Section 31(4) (released to Medical Practitioner)	0	0
G9 Totals	0	0

SECTION H - COSTS AND FEES OF REQUESTS PROCESSED DURING THE PERIOD

We received only one application fee, for \$30. This accompanied one of the applications which related to our exempt functions and was refunded.

	Assessed Costs	FOI Fees Received
H1 All completed requests	\$0	\$30

SECTION I - DISCOUNTS ALLOWED

No fees were retained and therefore the question of discounts did not arise.

Type of discount allowed		Personal	Other
I1	Public interest	0	0
I2	Financial hardship - Pensioner/Child	0	0
I3	Financial hardship - Non profit organisation	0	0
I4	Totals	0	0
I5	Significant correction of personal records	0	0

SECTION J - DAYS TO PROCESS

All applications were dealt with within 21 days.

Days to process		Personal	Other
J1	0-21 days	3	1
J2	22-35 days	0	0
J3	Over 35 days	0	0
J4	Totals	3	1

SECTION K - PROCESSING TIME

All applications were dealt with in 0-10 hours.

Processing hours		Personal	Other
K1	0-10 hours	3	1
K2	11-20 hours	0	0
K3	21-40 hours	0	0
K4	Over 40 hours	0	0
K5	Totals	3	1

SECTION L - REVIEWS AND APPEALS

No applications proceeded to internal review. Under section 52(5)(d) of the Act no determinations by this Office are capable of external review by this Office. No applications were finalised by or indeed proceeded to the District Court.

L1	Number of internal reviews finalised	0
L2	Number of Ombudsman reviews finalised	0
L3	Number of District Court appeals finalised	0

Freedom of Information Applications

SECTION L - DETAILS OF INTERNAL REVIEW RESULTS

Bases of Internal Review		Personal		Other	
		Upheld*	Varied*	Upheld*	Varied*
Grounds on which internal review requested					
L4	Access refused	0	0	0	0
L5	Deferred	0	0	0	0
L6	Exempt matter	0	0	0	0
L7	Unreasonable charges	0	0	0	0
L8	Charge unreasonably incurred	0	0	0	0
L9	Amendment refused	0	0	0	0
L10	Totals	0	0	0	0

CLAUSE 9(1)(B) AND (3) OF THE REGULATION

Dealing with the above matters took very little time and consequently could not be said to have impacted to any significant degree on our activities during the year. The preparation of our Statement of Affairs and Summary of Affairs occupies only a small amount of time and again could not be said to have impacted to any significant degree on our activities. In terms of clause 9(3)(c), (d) and (e), no major issues arose during the year in connection with our compliance with FOI requirements, and given that there could be no inquiries by this office of our own determinations and there were no appeals of our decisions made to Court, there is no information to give as specified at (d) and (e) of clause 9.

Appendix Ten

Speeches and Oral Presentations

The following lists the major presentations by staff during the year. In addition to those listed, staff from the police and general teams in the office gave presentations on the role of the Ombudsman to numerous groups and bodies, including the Police and Corrective Services training academies.

THE OMBUDSMAN

September 1996

- Speech to the Catholic Theological Union, Sydney

October 1996

- Speech to the Museums Australia 1996 Annual Conference titled *Community values: the museum as mirror or change agent*, Sydney

February 1997

- Speech to Centacare Bankstown to commemorate the opening of the Bankstown office

March 1997

- Speech to the IPAA (NSW Division) 1997 State Conference titled *Does contracting out and privatisation reduce the scope for scrutiny of the public service?*, Sydney. (This speech is to be published in the *Australian Journal of Public Administration*.)

June 1997

- Speech to the Council for the Economic Development of Australia, Sydney

June 1996

- Presentation to the CEOs Committee on consequences for whistleblowers

THE DEPUTY OMBUDSMAN

July 1996

- Speech to the Department of School Education titled *The Ombudsman and review of administrative action*, Sydney
- Seminar for local government on the *Protected Disclosures Act*, Sydney

August 1996

- Seminar for local government on the *Protected Disclosures Act*, Sydney
- Seminar to FOI practitioners, Sydney

October 1996

- Lecture for the University of Technology Advanced Administrative Law titled *Review of administrative decisions*, Sydney

February 1997

- Seminar for FOI practitioners, Sydney

March 1997

- Presentation as part of a Corruption Prevention Forum on protected disclosures, Sydney

April 1997

- Seminar (2 sessions) to the Board of Studies on codes of conduct and protected disclosures, Sydney

June 1996

- Presentation to the CEOs Committee on consequences for whistleblowers, Sydney
- Seminar to TAFE on protected disclosures, Sydney

ASSISTANT OMBUDSMAN (GENERAL)

September 1996

- How to handle complaints, Medicine Hospitals and the Law Conference, Sydney

February 1997

- The Use of Mediation by the NSW Ombudsman, Hong Kong Civil Service at Office of The Ombudsman Hong Kong

May 1997

- Handling complaints and getting it right, Local Government and Shires Association Conference

POLICE TEAM

September 1996

- Senior Investigation Officer and Investigation Officer presentations to NSW police in Dubbo and Port Macquarie

December 1996

- Senior Investigation Officer and Investigation Officer presentation to a Sydney patrol on preliminary inquiries

February 1997

- Investigations Officers presentations to three Sydney patrols on the pilot system

GENERAL TEAM

October 1996

- Seminar by two Senior Investigation Officers to 16 state and local government employees at the Wagga Wagga Council Chambers.
- Seminar by two Senior Investigation Officers to 14 state and local government employees at the State Government Offices Griffith

April 1997

- Investigation Officer presentation to Australian Institute of Criminology seminar on juvenile justice issues

May 1997

- Inquiries Officer presentation to Spanish community group on the role of the Ombudsman

YOUTH LIAISON OFFICER

Liaison activities listed in the section *Working with Young People*.

Speeches and Oral Presentations

MEDIATION STAFF**August 1996**

- Seminar presentation on the Application of Mediation in the NSW Ombudsman's Office to postgraduate students, University of Western Sydney

April 1997

- Seminar presentation to heads of departments of Hong Kong public service about mediation, both in NSW and its application to Hong Kong.
- 5 day mediation workshop to Hong Kong Ombudsman staff, Hong Kong..

SUBMISSIONS MADE BY THE OMBUDSMAN**To the NSW Royal Commission into the NSW Police Service**

- November 1996 Response to issues raised in Royal Commission round table discussions 30 July - 6 September 1996
- November 1996 Complaints and Discipline: Submission to the Royal Commission on the operation of the Police Service's complaints and discipline system
- January 1997 Review of Analysis of the Royal Commission's survey of NSW Police Officers
- February 1996 Submission on Commissioner's Confidence and Management of Behaviour

To the Attorney-General

- Various submissions on the Administrative Decisions Tribunal Bill
- Various submissions on the Privacy and Data Protection Bill

To the Department of Corrective Services

- Submission on the proposed Inspector General of Prisons Bill

To the ICAC

- Submission to Operation Zac: Preventing Corruption in Aboriginal Land Councils

To the Joint Parliamentary Committee on the Ombudsman

- Submission regarding the review of the Protected Disclosures Act, July 1996
- Submission to General Meeting, November 1996
- Submission to General Meeting, April 1997

Appendix Eleven

Principles of Administrative Good Conduct

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. Copies are available, on disk and in hardcopy, from the Ombudsman's publications officer.

The NSW Parliament, 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 basic standards of conduct expected of public officials by the NSW Ombudsman are set out below. They are based on the work of the Ombudsman over the past 21 years, as well as relevant work of other accountability bodies.

This guide is intended to provide, in one easily accessible source, general guidance on the standards of conduct expected by the NSW Ombudsman designed to assist public officials in the performance of their official duties.

1. COMPLIANCE

1.1 COMPLIANCE WITH THE LAW, ORDERS AND POLICIES

A fundamental principle of good public administration is that public officials 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 general duty of fidelity or faithful service (including loyalty) to their employer. However, in doing so, public officials must not compromise their integrity.

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, i.e.: 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/CONFLICT OF 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 promptly, 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/natural justice (eg. the right to be heard) 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

Decisions or the provision of services or facilities which favour one or more persons over others are, by their very nature, discriminatory and therefore partial (eg. additional assistance for people with special needs). However, such decisions and actions by officials are not necessarily unacceptable unless they unfairly or unlawfully discriminate against an individual or group.

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; 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 decisions, plus the reasons for those 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, the Government of the day, the public generally, and in particular the individuals concerned, that public authorities and public officials 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.

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 GUIDANCE:

Further guidance on good conduct in public administration can be found in the following publications:

- *Administrative Good Conduct*, NSW Ombudsman 1996;
- *Code of Conduct for NSW Public Agencies: Policy and Guidelines*, Premier's Department, 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.

Index

A

Aboriginal people and communities	10, 26
Complaints by	10, 15, 170
Complaints Officer	10, 170
Complaints Unit	10, 15, 16, 160
Foster Report	26
Aboriginal Deaths in Custody Watch Committee	94
Aboriginal Land Rights Act	171
Access and awareness	15, 160
Aboriginal people	171
Community consultations	161
Ethnic communities	20, 113, 160
Inmates	163
Juvenile detention	163
People with a Disability	163
Regional outreach	162
Women	163
Young people	164, 165
Accounts payable policy	183
Administrative Decisions Tribunal	74
Administrative Good Conduct	11, 162
Apprehended Violence Orders	35, 63
Appropriations	195
Archives Act	69
Area Health Service	124
Assets	181
Current	195, 196
Non-Current	196
Auburn Council	143
Audit	183, 184
Auditor-General	137
Australian Medical Association	47

B

Baulkham Hills Shire Council	130
Bega Valley Shire Council	81
Blacktown City Council	80
Blue Mountains City Council	80
Board of Studies	138
Budget Review 198	
Building Services Corporation. See Department of Fair Trading	

C

Cabinet Office	120
Canterbury Council	150
Cash and Cash Equivalents	198
Cash Flow Statement	188
Central Sydney Area Health Service	118, 122
Cessnock City Council	73
Changes in Equity	197
Children	2
Abuse	23
Mistreatment Units	24
Protection	2
Protection Investigation Teams	24

C (cont)

Code of Conduct	176, 217
Commissioner for Consumer Affairs	49
Committees	7
Commitments for Expenditure	197
Community Services Commission	24
Complaint handling in the public sector	158-159
Conciliations	10, 21, 31, 36
Survey	32
Corporate Information project	177
Correctional Centres	
Complaint statistics	84-85
Centres	
Bathurst	102
Cessnock	90
Cooma	86, 90
Emu Plains	92
Goulburn	84, 90, 99, 104
Grafton	84, 103
John Moroney	84
Junee	84, 88, 101
Kirkconnell	84, 95
Lithgow	84, 99
Long Bay	86, 90, 97, 100, 103
Maitland	90
Malabar	90, 103
MRRC	86, 90, 94
Mulawa	78, 91, 93
Norma Parker	93
Parklea	103
Parramatta	84, 86, 90, 92, 94
Reception Induction Centre	86, 100
Silverwater	84, 97
Issues	
Case management	86, 87, 92, 96, 102
Classification	86, 92
Contraband	101, 102
Diet	88
Family	93
Intelligence	87, 94, 99, 103
Investigative processes	87, 94, 102
Lost property	86, 100, 105
Mail	99, 104
Periodic detention	87, 89
Physical safety	86, 103
Placement	86, 103, 104
Segregation	86
Smartcards	90
Telephones	93
Visitors	91, 96, 101
Women	91-93
Correctional Centres Act	88
Correctional Centres Regulation	88
Corrections Health Service	91, 97, 101, 103
Complaints statistics	84, 87
Corrections Intelligence Group	98
Crimes Act	27

D

Darling Harbour Authority	59
Dental Board	130
Department of Community Services	20, 23, 109
Department of Corrective Services	84-106
Department of Fair Trading	48, 50, 56, 59
Department of Health	50, 51, 52, 57, 92, 109, 127
Department of Housing	78, 150, 151
Department of Industrial Relations	53
Department of Juvenile Justice	3, 11, 106-113
<i>See also</i> Juvenile Justice	
Department of Land and Water Conservation	58, 83, 156
Department of Local Government	5, 63, 64, 66, 74, 76, 78, 137, 138
Department of Mineral Resources	54
Department of School Education	51, 55, 109, 120, 129, 138
Department of Urban Affairs and Planning	75, 127
Development applications	
<i>See also</i> Local Government	
Disability Strategic Plan	213
Dog Act	78
Domestic Violence	35

E

Effective Complaint Handling Guidelines	158
Electricity Association of NSW	58
Environmental Protection Authority	65, 75, 80
Equal Employment Opportunity (EEO)	174
Ethnic Affairs Plan	161
Eurobodalla Shire Council	83
Evidence Act	27
Expenses	181, 193

F

Fairfield Council	128
Financial Summary	180
Freedom of Information	
<i>Complaint Statistics</i>	114-116, 206
<i>Issues</i>	
Amendment of records	118, 133
Annual reporting	134
Applications	121, 221
Audit	132-135
Business affairs	120
Cabinet Certificates	120
Commercial disputes	119
Confidentiality and Exempt Matter	118
Disclosure of information	117
Litigation	119
Media use	119
Monitoring implementation	135
Policies and Guidelines	121, 162
Public use	132
Reporting	117
Summaries of affairs	118, 135
Funds granted to community organisations	181

G

Gosford City Council	78
Griffith City Council	81

H

Health Care Complaints Commission	124
High Risk Management Committee	90
Hornsby Shire Council	68

I

Industrial relations policies and practices	175
Information Management and Library	177
Infringement Processing Bureau	54, 150
Institute of Municipal Management	138
Internet	177
Intoxicated Persons Act	20

J

Joint Consultative Committee	172
Joint Investigative Teams	23
Joint Parliamentary Committee	5
Juvenile detention centres	3, 19, 106-113, 163, 171
Assault	111, 112
Complaint statistics	106
Inquiry into Juvenile Detention Centres	10
Internal investigations	110
Minda	109, 111, 113
Worimi	109
Yasmar	112, 113

K

Ku-ring-gai Council	64
---------------------	----

L

Lake Illawarra Authority	123
Land Disposal	181
Legal Changes	217
Leichhardt Council	79
Liabilities	183
Local councils	4, 60-83
Complaint statistics	60, 67, 199
Issues	
AVOs	63
Building and development	65
Cemeteries	79
Closed meetings	73, 76, 81, 125
Consent conditions	73, 76, 78, 80
Contracting out	82
Defamation	63
Discussion paper	74
Duplication	66
Existing use rights	74, 75, 76
Fines	78
General managers	4, 62
Insurance claims	64
Legal advice	67
Notification	80, 82
Rates	77, 80
planning law reform	64
Pollution	65, 73, 75, 79
Service	81
Tenders	82
Tree preservation	78
Water	78, 80

Local Government Act

67, 68, 69, 73, 76, 77, 81, 125

L (cont)

- Local Government and Shires Association 62, 64
 local government elections 5
 Lord Howe Island Board 126

M

- Manilla Council 125
 Media liaison 163
 Ethnic media 161
 Mediation 10, 16, 152-156, 162
 Public Sector Guidelines 11, 152
 Mission statement 1
 Moree Plains Shire Council 80
 Murray River Electricity 58

N

- Nambucca Shire Council 75
 National Parks and Wildlife Service 120, 125, 127, 129, 155
 Northpower 150
 NSW Agriculture 75
 NSW Ambulance Service 129
 NSW Fisheries 54
 NSW Industrial Relations Commission 112
 Nymboida Council 74

O

- Occupational Health and Safety 174
 Office of State Revenue 56
 Ombudsman's performance statement 2-5, 176
 Operating Statement 186
 Orange City Council 80
 Overseas travel 176

P

- Paedophiles *see also* Children 2, 20
 Parliamentary Committee 138
 Parramatta City Council 54, 79
 Performance Management 173
 Personnel Services 173
 Police *see also* Royal Commission 3, 4, 12-41, 127
 Complaint statistics 12, 14, 15, 38-41
 Issues
 Aboriginal complainants 16-18
 Abuse 39
 Apology 33
 Arrest and Detention 26-28, 39
 Assault 38
 Breach of rules 40
 Child abuse 23-24
 Conflict Of Interest 4, 10, 29-30
 Compensation 33-34
 Complaints Management System 177
 Conciliations 31-33
 Consorting 36
 Criminal conduct 28-29, 38
 Domestic violence 35
 Drugs and alcohol 22-23
 Employee Management Scheme 13, 26, 37
 Ethnic communities 20-21
 Illegal computer access 4, 10, 24-26, 40
 Inadvertent wrong treatment 40
 Information 40
 Internal Witness Support 4, 10, 13, 136, 139, 142

P (cont)

- Investigation delay 36, 37
 Investigations and prosecutions 37, 39
 Management issues 40
 Risk assessment 21-22
 Sex based harassment 31
 Youth relations 18-19
 Port Stephens Council 76
 Pre-Release Leave Committee 90
 Prince Alfred Private Hospital 122
 Program Statement
 Expenses and Revenues 189
 Activities of the Agency 195
 Protected Disclosures
 Complaint statistics 136
 Guidelines 137, 162
 Harassment and victimisation 142
 Implementation Steering Committee 138
 Training 137, 138
 Whistleblower 138, 139
 Protected Disclosures Act 5, 11, 112, 136, 138
 Protection of the Environment Operations Bill 65
 Psychologists Act 50
 Psychologists Registration Board 50
 Public authorities 42-59
 Complaint statistics 42, 43, 202, 208
 Issues
 Contracting out 44-45
 Complainants 45-46
 Youth issues 45
 Publications *see also* Reports to Parliament 162, 165, 209
 Administrative Good Conduct 11, 162, 227
 FOI Policies and Guidelines 121, 162
 Protected Disclosures Guidelines 137, 162
 Public Sector Mediation Guidelines 11, 152

R

- Rail Services Corporation 130
 Real Estate Services Council 55, 56
 Recruitment Practices 175
 Recycling 176
 Registry of Births, Deaths and Marriages 53
 Reports to Parliament
 Alison Lewis and Lithgow Police 3
 Conflict of Interest & Police 29, 30
 Foster 26
 Implementing the FOI Act 135
 Piat 3
 Police and Insurance Investigators 29
 Inquiry into Juvenile Detention 107, 108
 Mulawa 91, 93
 Weston report 3
 Research and Development 176
 Resources and Conservation Assessment Committee 155
 Revenue 180, 194
 Risk management and insurance 183
 Roads and Traffic Authority 54, 150
 Royal Commission into the NSW Police Service 2, 3, 10, 12, 22, 24, 26, 32
 Royal North Shore Hospital 123
 Rural Assistance Authority 59

S

Self harm	20, 90, 91, 97, 112, 113
Serious Offender Management Committee	99, 102
Serious Offenders Review Council	90
Service guarantee	1
Speeches and Oral Presentations	225
Staff	173
Staff Exchange Program	175
State Forests	155
State Rail Authority	53, 150
Statement of Financial Position	187
Stores expenditure	181
Strata Titles Act	49
Strata Titles Commissioner	49
Sydney Water	53

T

Technical and Further Education	109, 156
Technical and Further Education Commission	109
Total Quality Management	176
Training and development	173
Cross cultural training	161
Transgrid	57
Tweed Shire Council	128

U

University of Newcastle	128
University of Sydney	127
University of Technology	51
University of Wollongong	129
Unlawful Detention	34

V

Valuer General's Office	77
Valuers Registration Act	56

W

Wage movements	173
Warringah Council	82
Watchdog bodies	4, 45, 66
Web site	162
Wentworth Shire Council	81
Witness Protection	147
Witness Protection Act	147
Woollahra Council	78
WorkCover Authority	55, 128
Works in progress	
Major	181
Minor	181

Y

Young people <i>see also</i> Juvenile Detention	
3, 10, 18, 27, 29, 45, 66, 113, 164-169	
Complaint statistics	167, 169

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.

Telephone: (02) 9286 1000

Toll free call outside Sydney area: 1800 451 524

TTY: (02) 9264 8050

Fax: (02) 9283 2911.

Email: nswombo@nswombudsman.nsw.gov.au