

*Aue Radford*

# n s w o m b u d s m a n

1997-98 ANNUAL REPORT

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### 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) and Parliamentary Commissioner for Administration (United Kingdom).

The first NSW Ombudsman was appointed in 1975 and the legislation became operative in May that year. In 23 years there have been many changes; public authorities have merged and separated and there have been four very different Ombudsmen.

### WHAT THE OMBUDSMAN DOES

The Ombudsman investigates and reports on complaints about the conduct of public authorities and their employees.

Over the years, we have helped many thousands of people resolve their grievances with government agencies.

Since inception, we have dealt with more than 119,000 formal complaints and 149,000 informal complaints.

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

### OUR ANNUAL REPORT

Our annual report is a public record of our work and through it we are accountable to the people of NSW through the State Parliament.

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

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

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## contents

1997-98 ANNUAL REPORT

Ombudsman's foreword .....	6
Vital statistics .....	12
Our objectives and results .....	14
Our functions .....	18
Our organisation .....	19
Police .....	20
Public authorities .....	62
Local councils .....	88
Correctional centres .....	120
Juvenile justice centres .....	148
Freedom of information .....	160
Protected disclosures .....	184
Witness protection .....	199
Special audits .....	201
Continuous improvement .....	203
Ensuring we are accessible .....	210
A cooperative and productive workplace .....	220
Financial statements .....	233
Appendices .....	252
Index .....	283
Need help? List of contacts .....	288

This annual report was produced by the staff of the Office of the NSW Ombudsman.

The report was printed by Carillon Graphic Communications. 1,500 copies were printed at approximately \$13.70 per copy.

Photography by:

Genevieve Broomham on pp.6, 19, 20, 39, 45, 62, 88, 148, 160, 184, 204, 210, 219 and 220.

Darcy McFadden, Lismore Northern Star p.188.

Office of the NSW Ombudsman on pp.1, 33 and 120.

ISSN 1321 2044

ISBN 0 7313 1245 7



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1997-98 ANNUAL REPORT

## OUR MISSION

To safeguard the public interest by:

- ensuring an appropriate response to complaints about public authorities; and
- promoting fairness, integrity and improved public administration in NSW.

## OUR VALUES

We are committed to:

- setting aside personal interests and views in the discharge of our functions;
- acting conscientiously and competently;
- treating individuals and organisations courteously, attentively and sensitively;
- implementing fair and adequate procedures;
- using resources efficiently and effectively; and
- providing a service that is accessible to everyone.

## 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.

The Hon. Virginia Chadwick MP  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

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

Dear Madam President and Mr Speaker,

Under section 30 of the *Ombudsman Act 1974*, the Ombudsman is required to submit an annual report to Parliament. This is our 23rd annual report and contains an account of our work for the twelve months ending 30 June 1998. This report is also made pursuant to section 31 of the *Ombudsman Act*.

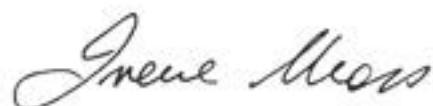
The report includes an account of the Ombudsman's functions under the *Police Service Act* and material that is required in terms of the *Annual Reports (Departments) Act*, the *Freedom of Information Act* and the *Disability Services Act*.

Developments and issues current at the time of writing (July–September 1998) 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  
November 1998

It is critical to the work of this office and other watchdog bodies, and fundamental to proper accountability, that public authorities respond fully and honestly to our inquiries. Where this office suspects and discovers failures to respond fully and honestly, we will pursue the matter vigorously.



Irene Moss, AO,  
NSW Ombudsman



## foreword

1997-98 ANNUAL REPORT

### COMPLAINT STATISTICS — A SNAPSHOT

This year has been a very busy one. We dealt with 8,245 formal written complaints, 17,425 informal oral complaints and 2,695 inquiries— that's about 100 new complaints every business day. As I said in my foreword last year, increasing complaint levels year after year seem to be a fact of life for this office.

To put this year's statistics into some medium-term context, I have analysed complaint levels over the last five years. Using the 1993-94 financial year as a base, the number of written complaints to this office has increased by nearly 16% to 8,245 this year. The number of complaints actioned (i.e. those not declined at the outset or those not outside our jurisdiction) has increased by 61%. Informal oral complaints and inquiries have increased by 130%. In the same period our jurisdiction has been expanded to include:

- dealing with protected disclosures and providing advice to public officials (*Protected Disclosures Act 1994*);
- determining appeals against decisions by the Commissioner of Police in relation to inclusion in or removal from the witness protection program (*Witness Protection Act 1995*);
- auditing certain records of agencies authorised to conduct controlled operations (*Law Enforcement (Controlled Operations) Act 1997*); and
- monitoring the use of powers conferred on police by the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*.

### MORE AUDITING?

The expansion of our jurisdiction over the last few years has seen us further develop an audit role. In addition to specific statutory audit functions in relation to telecommunications interceptions and controlled operations, we have spent time encouraging and assisting public authorities to put in place better systems to improve their



administration, as well as 'auditing' their compliance with other administrative requirements. Examples include:

- An audit of compliance by public authorities with the various requirements relating to the reporting of freedom of information applications. This was the subject of my report to Parliament in July 1997 that revealed a disturbing lack of compliance by the public authorities that were audited (only 1 in 5 fully complied with their statutory obligations). The audit was repeated this year and the results are set out in **Freedom of information** in this report. In brief, this year's audit revealed a continuing problem.
- A continuation of our audit of public authorities' compliance with the Premier's Memorandum 96-24 relating to protected disclosures. The memorandum required all public authorities to implement documented internal reporting procedures under the *Protected Disclosures Act* by 30 January 1997. A large number of public authorities to whom the memorandum applied had not complied by the 30 January 1997 deadline. We progressively audited compliance with the memorandum and reported in July 1998 that a handful of agencies had still not complied some 17 months after the deadline. As at the time of writing, this situation has now been largely rectified.
- A continuation of our audit of the contents of protected disclosures internal reporting policies of over 130 public authorities (so far, it appears that only 52.5% are adequate). We have been working with authorities whose policies were inadequate to secure their improvement (see **Protected disclosures** in this report).
- An audit of the Police Service's handling of 337 internal management matters no longer reported to us (see **Police** in this report).
- During the next year we will monitor compliance by a selection of public authorities with their statutory obligation to make and keep records of their activities. This obligation has been enshrined in legislation in the form of s.12(1) of the *State Records Act 1998* (a requirement which this office sees as very much related to obligations under the *Freedom*

*of Information Act*). While we understand that agencies may feel that such record keeping requirements are burdensome and may constitute unnecessary red tape, these requirements are important in maintaining and reinforcing accountability standards. Our aim is to ensure there is a proper balance between requirements to keep records and efficient public administration.

- Our *Complaint Handling in the Public Sector* (CHIPS) courses and guidelines. These courses have been designed to encourage public authorities to develop effective complaint-handling systems and to train front line staff and managers on how to make the most out of complaints. During the coming year, it is my intention to have some of these complaint-handling systems audited.

Our involvement in these audits has not been at the expense of our traditional complaint-handling role. As the statistics referred to above clearly show, the office remains at the front-line as the State's general jurisdiction watchdog. However, in my view, a focus on auditing will make a useful contribution to our preventative and systemic work.

## THE MEANING OF MORE COMPLAINTS

It would be tempting, but I think quite wrong, to conclude from the statistical snapshot that the performance of the NSW public sector is deteriorating. As I said last year, I believe that increasing complaint levels can be a reflection of a public that is more aware of its right to complain and confident that making a complaint is worthwhile. This increased awareness and confidence is, in my view, reinforced by a public sector that has increasingly embraced the view that complaints are a useful source of information which can improve service. This report gives several examples of public authorities responding promptly and effectively to complaints, indicating a willingness to review the action or decision that led to the complaint and to resolve the problem.

### A healthy approach

One case where this positive attitude was illustrated related to a recent investigation we carried out into the State Transit Authority (STA). A complaint was referred to this office by the then Minister for Transport in relation to the adequacy of the practices and procedures of the STA in response to assaults on bus operators. Our report identified a number of inadequacies and made 38 recommendations for improvement. The report was made public in September 1997 and gave rise to some very critical media comment about the STA. Throughout the process of the investigation, the reporting of it, and our subsequent discussions with the STA about progress in the implementation of our recommendations, the STA has been committed to working constructively with this office to rectify the identified problems. Their attitude was that, *'if we could be doing things better, we want to know about it, and we will act on identified problems'*. This attitude reflects great credit on the STA. By admitting the possibility that, from time to time, problems and deficiencies will arise, the STA leaves itself open to maximising the opportunities that are presented by complaints. It also allows the STA to give itself the chance to improve its internal procedures and its services to the public.

### An unhealthy approach

The STA's approach is to be contrasted with the conduct highlighted in my report to Parliament of December 1997 concerning the Prince Alfred Private Hospital Project. In 1989 the Central Sydney Area Health Service (CSAHS) contracted with Macquarie Health Corporation for Macquarie to build a private hospital at Prince Alfred Hospital. Eight years later no private hospital has been built. The delay raised obvious concerns. A Freedom of Information (FOI) application was made to the CSAHS for access to their documents. Access was denied on the basis of a confidentiality agreement the CSAHS had with Macquarie. The matter came to us for review and we looked at all the documents. We recommended the CSAHS release the documents on grounds that it was in the public interest for the community to have details about what had gone on since 1989. Despite the fact that the confidentiality agreement did not contractually

prevent the CSAHS from releasing the documents it nevertheless rejected our recommendations. The CSAHS did not accept our recommendation that it was in the public interest to release the documents. They effectively chose a course of action where they put private interests ahead of the public interest (see *'Commercial in confidence agreements and Prince Alfred Private Hospital'* in **Freedom of information** in this report). This investigation reveals disturbing delays and inadequacies on the part of the CSAHS to rectify identified problems.

During the year this office formally investigated the South Eastern Sydney Area Health Service (SESAHS). This investigation focused on two issues. First, the adequacy and accuracy of written information provided by the SESAHS to this office. Second, the adequacy of the SESAHS's management and administrative response to some adverse findings made by a Judicial Registrar against three of the SESAHS's employees. Both issues were linked by the question of honesty. The SESAHS's response with respect to the adverse findings made against its three employees was poor, and the SESAHS's written response to this office was seriously inaccurate and misleading (see *'Accuracy, honesty and accountability'* in **Public authorities** in this report).

These investigations are indicative of a rather lax approach to the question of accountability and a detectable unwillingness on the part of the two agencies concerned to fix problems brought to their attention by this office. What was quite startling about the investigation into the SESAHS was that it provided inaccurate information to this office.

It is critical to the work of this office and other watchdog bodies, and fundamental to proper accountability, that public authorities respond fully and honestly to our inquiries. Where this office suspects or discovers failures to respond fully or honestly, we will pursue the matter vigorously.

## GOVERNMENT LAWYERS

We continue to monitor closely the use and abuse of legal advice by public authorities. Several months ago, I gave the opening address at a conference for government lawyers (see 'Dealing with lawyers and legal advice' in **Public authorities** in this report). Lawyers employed by public authorities have a difficult job. They have to adhere to their professional conduct standards and obligations as well as the rather special demands of public sector accountability standards. From our experience, insufficient weight and attention is given to these accountability standards.

In short, government lawyers need to play a more active role in making a contribution to compliance with accountability requirements instead of advising their clients how to avoid them.

## YOUNG PEOPLE

Another area of concern for this office has been complaints by or on behalf of young people. This office has increased its focus on youth complaints over the past four years and will continue its attention in this area (see 'Working with young people' in **Police** in this report). In a recent speech to a conference on legal issues for professionals working with children, I spoke about the proposed Commission for Children and Young People and the proposal to give this office a new role in relation to child abuse allegations made against the employees of designated government and non-government agencies. The origin of the proposal to give this office this new role lay in the findings of the Royal Commission into the NSW Police Service (the Royal Commission).

The Royal Commission identified numerous cases where agencies either refused to acknowledge problems or else failed to take appropriate action in response to problems brought to their attention. One consequence of this seeming inability of responsible agencies to deal appropriately with problems brought to their attention was the recommendation for this office to have an active role in ensuring that agencies appropriately deal with such problems.

In undertaking this new role, one of our key goals, consistent with this office's overall approach, will be to foster a culture where agencies will be open to acknowledging problems or mistakes and dealing professionally and effectively with them. Such a culture cannot be imposed. It will only develop where there is close co-operation between this office and the agencies with whom we will be working. To this end, we will adopt a two-pronged approach:

- ensuring that all designated agencies develop and implement proper policies and procedures for identifying and reporting allegations; and
- ensuring that all allegations and complaints are properly considered.

In my view, competent and professional investigations are the best means by which the public can be assured that the substance of allegations is properly considered while ensuring alleged wrong-doers are treated fairly. This view is justified by our experience. The NSW Ombudsman has been in the business of investigating complaints for 23 years and I believe we have an enviable track record and expertise in the area.

## POLICE COMPLAINTS

The total number of police complaints received was very close to that of last year — 5,034 complaints in 1997–98 compared with 5,232 in 1996–97. Of these complaints, 626 were formally investigated and more than 100 police officers were criminally charged in relation to their misconduct.

A few months ago a story was published in the *Daily Telegraph* under the headline 'Police complaints hinder arrests, says Ryan'. The article said:

*The system of recording and investigating complaints against police officers is hindering efforts to reduce crime ... [police] officers were hesitant in going about their duties, fearing they may be the target of complaints from the public.*

The evidence suggests that this is not the case. For example, there has been no discernable increase in complaints arising from Operation

CitySafe, the recent police initiative targeting anti-social and criminal behaviour around problem areas in the Sydney central business district. This operation appears to show that firm policing does not lead to increased complaints.

While I am determined that the rights of citizens to complain about the conduct of police will be staunchly protected, let me also state for the record that I will not allow the complaints system to be misused to penalise police officers for doing their job, nor will I allow it to hinder police efforts to reduce crime.

Police should see complaints as a management tool which points to areas that may need attention, not as a hindrance in their fight against crime or as a threat to honest, hard-working police officers.

Unfortunately, some police commanders continue to see complaints as only being significant if criminality or other very serious misconduct is revealed. They show little understanding of basic principles of customer service: for example, some commanders still seem unable to say 'sorry'.

Various other public authorities we deal with see complaints as a useful tool to reveal systems problems and seek to use complaint-related information to improve their services to the community. The fact that the Police Service — with an annual budget of more than \$1 billion — has no-one monitoring service-wide complaint trends, illustrates that the Service still tends to see complaints as a threat rather than an opportunity.

We recognise that the complaints system is an evolving system. It is inconceivable that we could sit back and say no more change will be contemplated. For this reason, I recently met with the Police Commissioner as well as the Police Integrity Commissioner to discuss ideas for the further improvement of the complaints system. An agreement was reached for further changes and, at the time of writing, a Bill had been introduced to Parliament. The effect and emphasis of the proposed changes will be to ensure that the Police Service is held responsible for taking appropriate action in the circumstances of each complaint.

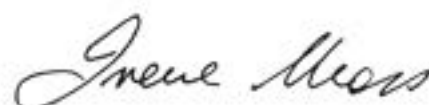
## LOCAL COUNCILS AND ENFORCEMENT

My staff received numerous complaints about how councils deal with allegations that development consents and building approvals are being breached or that people are carrying on development or building work without consent or approval. We were able to resolve many of these complaints relatively quickly and easily by asking the council concerned to investigate the matter, take appropriate action and report to us.

We expect that councils will first of all impose sensible and practical conditions on the development consents they issue. We also expect them to properly investigate allegations that development consents are being breached or that unauthorised activity is occurring. Lastly, we expect that councils will make reasonable and consistent decisions about what further action they need to take if they find evidence of unauthorised activity. I commend these practices to all councils (see 'Development plans' in **Local councils** in this report).

## CONCLUSION

Our work is challenging and, when we are able to resolve complaints and produce practical recommendations for change, incredibly rewarding. I want to formally acknowledge and thank the team with whom I work and express on their behalf our continuing commitment to working with members of the public and the public sector during the coming year to secure improvements in public administration.



IRENE MOSS AO  
NSW OMBUDSMAN



## vital statistics

1997-98 ANNUAL REPORT

### RESOURCES

Recurrent funds 1997-98	5.86 m
Total funds allocated (approx.) in 23 years since establishment	58 m

### COMPLAINTS

Formal written complaints received 1997-98	8,245
Police	5,034
Other	3,211
Informal oral complaints received 1997-98	17, 425
Inquiries received 1997-98	2,695
Complaints received since establishment in 1974-75	
Formal	119,000+
Informal	149,000+

### REPORTS

Adverse findings since establishment (approx.)	2,610
Special reports to Parliament 1997-98	7
Special reports to Parliament since establishment (approx.)	170

### STAFF

Ombudsman, Deputy Ombudsman, two Assistant Ombudsman	4
Investigation staff	57
Assistants to investigation staff	8
Inquiries officers	4
Publications/media staff	2
Human resources, accounts, library and information systems staff	8
<b>Total</b>	<b>82</b>

Figure 1: Subject of oral complaints and inquiries received

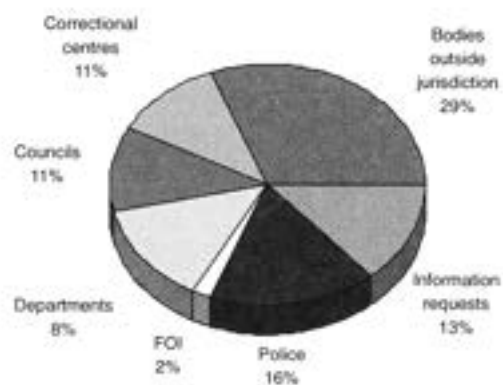


Figure 2: Subject of written complaints received

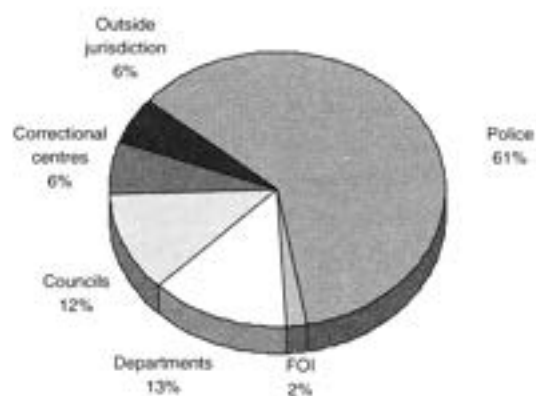
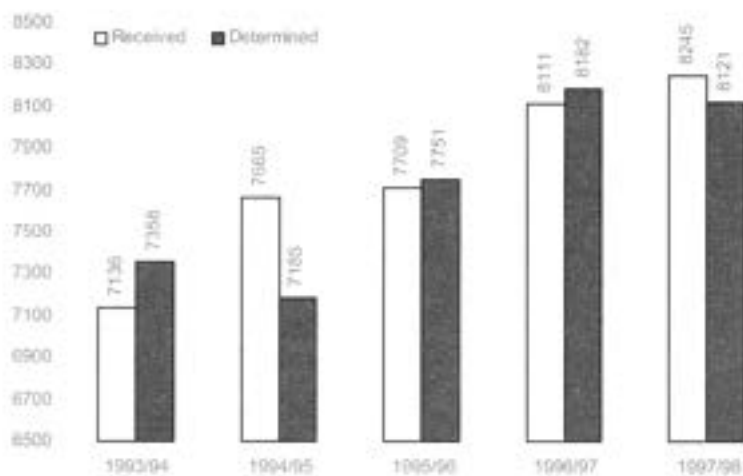


Figure 3: Written complaints received and determined



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## our objectives & results

1997-98 ANNUAL REPORT

### GOAL

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- To promote fair, accountable and responsive public administration

### PRIORITIES AND FOCUS

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- provide prompt, appropriate, effective and efficient resolution of complaints
- focus on complaints identifying structural and procedural deficiencies in NSW's public administration and individual cases of abuse of powers
- investigate and report on structural and procedural deficiencies in public administration.
- provide guidance to agencies through training and publications
- oversight police complaints system to ensure that the procedures, practices and outcomes are fair and reasonable

## 1997-98 ACTIVITIES AND OUTCOMES

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- 90% of complaints under the *Ombudsman Act* were assessed within 48 hours of receipt (88% within 24 hours)
- 70% of complaints under the *Police Service Act* were assessed and cross checked against police service systems within five working days
- 65% of complaints within jurisdiction of the *Ombudsman Act* were resolved through the provision of information/ advice or constructive action by the public authority
- 1,393 police cases were conciliated (28% of all complaints about police) with a survey of complainants reporting a 75% satisfaction rate with conciliations
- 80% of complaints made under the *Ombudsman Act* were finalised in less than 60 days, with an average 58 days
- 95% of recommendations made in reports under s.26 *Ombudsman Act* were implemented
- 79% of all recommendations made under the *Police Service Act* were implemented
- 100% of reports under the *Ombudsman Act* contained recommendations involving changes to law, policy or procedures
- requests for reviews of determinations (as a percentage of total complaints finalised) were: *Ombudsman Act* complaints (6.5%) and *Police Service Act* complaints (2.6%)
- 20 police investigations were formally monitored
- 13 direct investigations under the *Police Service Act* were completed
- seven special reports were tabled in Parliament
- 22 protected disclosure workshops were conducted throughout the State
- nine courses were conducted in complaint handling for frontline staff
- nine courses were conducted in understanding complaints management

## FUTURE

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- review the police complaints system with a view to proposing legislative changes to streamline system (note: legislation was introduced into Parliament in October 1998)
- restructure the police team to reflect the regional structure of the Police Service
- continue to rigorously assess complaints
- maintain our current level of monitoring of police investigations
- maintain our current level of direct investigations
- maintain our current level of special reports to Parliament
- conduct training courses in investigating protected disclosures
- publish guidelines on dealing with difficult complainants (published in October 1998) and conduct training courses on this topic
- publish guidelines on options for redress for maladministration
- continue our involvement in the ethics working party and the protected disclosures implementation steering committee



## GOAL

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- To monitor our performance in order to continually improve the quality of our work
- 

- To increase awareness of our role and functions and to promote access for all
- 

- To implement best practice management systems to foster a cooperative and productive workplace and ensure the effective use of available resources

## PRIORITIES AND FOCUS

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- use technology better
  - survey complainants and public authorities (as resources permit)
  - monitor our performance to develop benchmarks both internally and with other agencies (these benchmarks enable us to focus on improving our work processes as well as being an accountability tool)
  - review our policies, procedures and practices
- 

- young people, Aboriginal people, people from non-English speaking backgrounds, people living in regional NSW, juvenile detainees and prisoners provide a particular focus for our access and awareness activities
- 

- to provide efficient and effective support to the core activities of the office
- to make the most effective use of resources available
- maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment

## 1997-98 ACTIVITIES AND OUTCOMES

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- a customer satisfaction survey was conducted to gauge how we are viewed and how we can improve our service — 91% of complainants reported receiving practical assistance
- our case management system was modified to improve both complaint management and internal and external reporting
- we are currently in the preliminary stages of a major benchmarking exercise with other Australian Ombudsmen

- 
- a discussion paper on the policing of domestic violence was disseminated
  - we made 13 visits to peak ethnic community groups
  - we conducted a community consultation with the Vietnamese community
  - we distributed community language brochures
  - we participated in community festivals
  - we conducted cross cultural sensitivity training for staff
  - we developed and distributed an easy to use complaint form for young people
  - we published a youth specific brochure
  - we developed a program of peer advocacy for young people
  - we made four access and awareness trips with presentations being given to various groups including Aboriginal, youth, welfare workers and state government employees.
  - we conducted bimonthly complaint taking sessions in Newcastle
  - we made 42 visits to adult correctional centres
  - we visited all juvenile justice centres at least twice
  - we distributed 30 media releases

- 
- we implemented an employee assistance program
  - we developed a managing unsatisfactory performance policy
  - we surveyed staff on flexible work options and negotiated a new flexible working hours agreement
  - we reviewed our code of conduct
  - we developed a Year 2000 program
  - we completed our accounting manual
  - we established computerised invoicing and accounts receivable systems

## FUTURE

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- review our policy for dealing with complaints about the office
- develop an office intranet to integrate a number of disparate information databases
- formalise benchmarking activities with relevant agencies in line with the Government's service competition policy
- review our records area in response to the new *State Records Act*.
- continue the development of the Police Complaints Case Management System (integration of complaints information between this office, the Police Integrity Commission and the Police Service)

- 
- continue our program of meeting with peak community groups
  - review our disability strategic plan
  - continue our outreach program
  - link into the Government Access Program to improve dissemination of information to regional NSW
  - continue outreach and inspections to correctional centres and juvenile justice centres
  - develop an internet site

- 
- review our occupational health and safety program
  - develop a working from home policy
  - review our performance management system
  - review our information technology strategic plan, identifying our needs for the next three years



## our functions

1997-98 ANNUAL REPORT

The work of the NSW Ombudsman is guided by NSW legislation. The roles of the office are briefly described below.

### ADMINISTRATIVE REVIEW

1. Dealing with complaints about the conduct of NSW public authorities, including NSW government departments, statutory authorities, councils, public officials and employees (*Ombudsman Act 1974*).
2. Regular visits to and inspections of gaols and juvenile justice institutions as well as receiving and dealing with complaints from prisoners and detainees.

### POLICE

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

### FREEDOM OF INFORMATION

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

### PROTECTED DISCLOSURE

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

### WITNESS PROTECTION

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

### TELECOMMUNICATIONS INTERCEPTION

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

### CONTROLLED OPERATIONS

8. Auditing of certain records of agencies authorised to conduct 'controlled operations' (*Law Enforcement (Controlled Operations) Act 1997*).

### POLICE AND PUBLIC SAFETY POWERS

9. Monitor the effects of the new powers conferred on police by the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*.

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## our organisation

1997-98 ANNUAL REPORT

### PARLIAMENT

Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission



### OMBUDSMAN Irene Moss AO

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



### DEPUTY OMBUDSMAN Chris Wheeler

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



### ASSISTANT OMBUDSMAN (POLICE) Stephen Kinmond

BA, LLB, Dip Ed, Dip Crim

Aboriginal complaints  
Complaint assessment/conciliation  
Customer service  
Executive support  
Investigations  
Protected disclosures/internal witnesses



### ASSISTANT OMBUDSMAN (GENERAL) Greg Andrews

BA (Hons), M Env Loc Gov Law, G Cert P Sect Mgt

Aboriginal complaints  
Alternative dispute resolution/mediation  
Complaint assessment  
Complaint handling in the public sector (CHIPS)  
Controlled operations  
Executive support  
Freedom of information  
Inquiries  
Investigations  
Protected disclosures  
Public awareness  
Telecommunications/interception inspection  
Witness protection  
Youth liaison

### MANAGER, CORPORATE SUPPORT Anita Whittaker

BCom

Administration  
Accounts  
Personnel  
Information systems  
Library  
Media and publications  
Technology support

I wish to thank you for the attention you have given this matter and for all your support and understanding during what was a very stressful period in my life.

*A complainant*

I'm not sure exactly what finally triggered the favourable response to my complaints, but I feel your referral to the Police Legal Services may have been a contributing factor, so I sincerely thank you for that.

*A complainant*



Marianne Christmann,  
Manager, Police Team

<b>Overview</b>	<b>21</b>
1997-1998 statistics .....	24
<b>Issues</b>	<b>25</b>
Employee Management and better complaint handling .....	25
Internal management matters .....	26
Police officers adversely mentioned at the Royal Commission .....	27
Criminal and serious misconduct by police .....	28
Deficient investigations, delays and inappropriate outcomes .....	30
The impact of stressful or traumatic incidents on police .....	32
Police relations with young people .....	33
Speed kills .....	36
Police investigations of missing persons .....	37
Domestic violence .....	39
Arrest and detention .....	40
Mental health and intellectual disability issues .....	42
Complaints from Aboriginal people and Aboriginal/police relations .....	44
Improper accessing of computer information .....	47
Responding to emergency calls .....	48
Risk assessment of police officers .....	49
Police shootings .....	50
Conflict of interest .....	51
Public mischief .....	52
Drugs, alcohol and police .....	54
Conciliations .....	55
<b>Cases</b>	<b>56</b>
One station's policy stripped bare .....	56
Investigating a suspicious death .....	57
Police rott Thredbo disaster .....	57
Tendering for police tows .....	58
Police, councils and parking enforcement .....	58
<b>Police complaints profile</b>	<b>59</b>

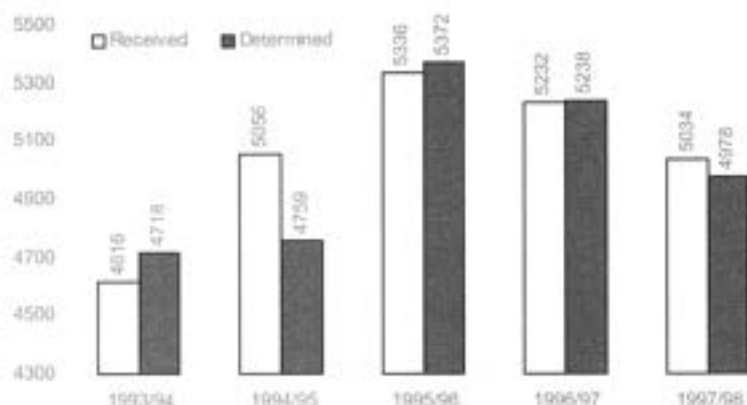
## Overview

Our focus remains on the Police Service's continuing efforts to make the complaints system faster, fairer and more effective, consistent with the principles outlined by the Royal Commission into the NSW Police Service (hereafter referred to as the Royal Commission).

Crucial developments in 1997-98 included successful anti-corruption initiatives by a reinvigorated Internal Affairs command and improvements to the mechanisms for removing corrupt and grossly inept officers from the Service. Despite this, much of the police complaints system is characterised by embryonic reforms.

The delay in police managers putting reform principles into practice is partly attributable to a general restructure of the Police Service on 1 July 1997 which severely disrupted complaint handling throughout the organisation. In many areas, complaint assessment, allocation, investigation and other steps in responding to complaints stalled, creating a backlog of complaints.

**Figure 1: Complaints about police received and determined**  
A five year comparison

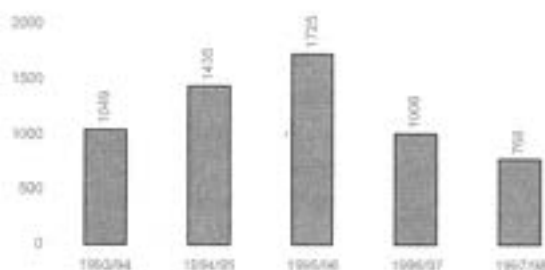


For instance, many investigations initiated before the 1 July restructure were delayed for weeks or months when commanders and investigators were transferred to other areas. Our monitoring showed an alarming increase in the number of complaints awaiting Police Service action in the early months of 1997–98. The Service responded with its own analysis which concluded that *‘the Ombudsman’s concerns about delays are justified and that the problem will not be overcome in the short term’*. The Service’s report blamed inadequate Police Service processes and poor planning for the deterioration in complaints management at that time. It also highlighted the need for there to be staff with appropriate training, skills and experience in regions and local commands, and criticised the lack of Service-wide consistency in complaints management. We will continue to closely monitor how quickly the Police Service deals with complaints.

The restructure also forced the Police Service to suspend its Employee Management (EM) trial, which was beginning to develop a new approach to complaint handling. The EM approach stresses the importance of making local level managers the focus of decision making and service delivery. The Royal Commission argued that the Service’s capacity to use this approach to improve complaint handling would be a litmus test of its capacity to achieve lasting reforms. As the discussion in the following section notes, the EM trial resumed in early 1998 and is now working through some of the issues identified by our evaluation of the Police Service’s earlier attempts to trial new procedures.

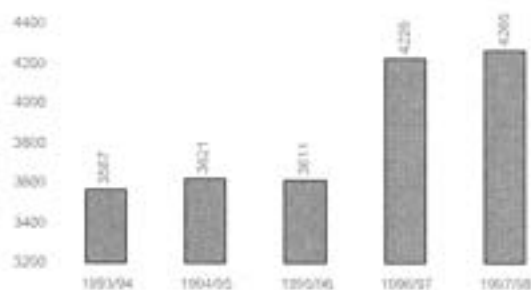
**Figure 2: Complaints by police officers**

A five year comparison



**Figure 3: Complaints by members of the public**

A five year comparison



One initiative which has developed quickly, centres on an agreement between the Ombudsman and the Police Commissioner to streamline the handling of matters that originate from within the Police Service (see ‘Internal management matters’ in this section). Under this agreement only those police internal complaints which involve *serious* allegations need be notified to us. The effect of this agreement is to exempt the Police Service from notifying us of reports concerning minor day to day internal management issues. The Police Service is being urged by our office to address those matters quickly and effectively without consulting us.

Consequently, complaints originating from within the Police Service dropped from 1,725 complaints in 1995–96, to 768 in 1997–98. During the same period, written complaints by members of

the public rose from 3,611 complaints in 1995–96, to 4,266 in 1997–98 (see fig 2 and fig 3). The seriousness of alleged police misconduct remains a source of concern. More than 100 police officers were criminally charged following investigations into complaints (see ‘Criminal and serious misconduct by police’ in this section).

Our direct investigations and reports to the Police Minister and the Parliament continue to focus on identifying serious and systemic issues, particularly those where the Police Service has failed to respond to obvious concerns. These include the difficulties arising from the Police Service’s sluggish approach to dealing with officers adversely mentioned at the Royal Commission, and the sometimes serious consequences of failing to effectively manage the impact of stressful or traumatic incidents on police.

With respect to broader issues of public concern, we play a critical role in identifying strategies to assist the Police Service to act in accordance with community values. Our work shows the Service’s recent initiatives to improve police relations with young people reflect a sophisticated operational policing strategy. Similarly, the Police Service continues to make significant advances in its efforts to support internal witnesses through the ground breaking work of its Internal Witness Support Unit. Its achievements this year include improved measures for identifying and responding to ‘pay back’ or reprisal complaints by other police officers. Through a close working relationship with the Police Service’s Internal Witness Support Unit and our membership of the Internal Witness Advisory Council, we have been able to monitor and help institute initiatives to support whistleblowers (see **Protected disclosures** in this report).

Police Service attempts to address important issues affecting many other areas of policing require a high degree of organisational commitment and strategic thinking. There are recurring problems associated with the Service’s arrest and detention practices, the policing of Aboriginal people, the difficulties commonly encountered by people with a mental health problem or an intellectual disability, the policing of domestic violence, and other such operational issues. These problems highlight the need for continued improvements in these areas.

**Table 1: Action taken on police complaints**

A five year comparison

YEAR	COMPLAINTS DETERMINED	DECLINED OR PARTIALLY INVESTIGATED	FORMALLY INVESTIGATED
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%)
1997–98	4,978	4,352 (87%)	626 (13%)

**Table 2: Complaints about police formally investigated**

A five year comparison

YEAR	TOTAL INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING
1993–94	818	418 (51%)	400 (49%)
1994–95	650	283 (44%)	367 (56%)
1995–96	849	495 (58%)	354 (42%)
1996–97	784	473 (60%)	311 (40%)
1997–98	626	397 (63%)	229 (37%)



### A snapshot of 1997–1998 statistics

- There were 5,034 written complaints about police in 1997–98. Of these, 4,266 were received from members of the public. The remaining 768 written complaints originated from within the Police Service, down from 1,006 matters in 1996–97 and 1,725 in 1995–96. This reflects an agreement to exempt the Service from notifying us of routine management issues.
- The less serious police internal matters which no longer need be notified to us remain subject to audit. The 337 matters we audited this year showed the Service is dealing with most matters appropriately.
- Of the 626 serious complaints formally investigated, 63% resulted in adverse findings. The proportion of investigations resulting in adverse findings last year was 60%, up from 58% in 1995–96, and 44% in 1994–95.
- There were more than 100 officers criminally charged following investigations into complaints (this number may increase as the Police Service receives legal advice on other matters completed in 1997–98).
- Officers were counselled about their conduct or performance in relation to almost 1,200 complaints.
- Training is an increasingly important element in the Police Service's response to complaints: 95 complaints resulted in training programs for individual officers as part of the outcome plan; a further 129 complaints resulted in training for groups of officers at a local area, regional or Service-wide level.
- The Police Service apologised to 354 complainants following inquiries or conciliations.
- The 15 direct investigations completed by our staff in 1997–98 examined problems in key areas of policing such as:
  - police procedures for investigating suspicious deaths;
  - systems for responding to emergencies;
  - conflicts of interest;
  - organisational support for officers involved in traumatic incidents; and
  - managing those officers whose complaint profiles suggest they may pose a risk to themselves, their colleagues or the public.
- We directly monitored more than 20 investigations involving vulnerable complainants or complaints alleging particularly serious misconduct.

## Issues

### Employee Management and better complaint handling

*The existing system must be simplified and as much of the formality and legal complexity removed as is consistent with fairness.*

With these words the Royal Commission highlighted the Complaints and Disciplinary System as one of the key areas for Police Service reform. The Royal Commission's vision was for faster, more effective complaint handling where local commanders took responsibility for their own staff.

In accordance with the Royal Commission's recommendations, the Police Service has trialled new complaint handling procedures over the past few years. The Police Service's new approach to complaints is part of its Employee Management (EM) system. The current trial is under way in the Greater Hume and Hunter regions.

The initial EM trial focused on encouraging local commanders to develop sophisticated management responses to problems in their command. The trial had limited success partly because the Police Service did not spell out what EM was about. Resourcing problems and a failure to entrust local commanders with more serious matters also undermined the trial.

A second EM trial commencing at the beginning of 1997 was better resourced, but came to an unplanned end with the Police Service restructure in July 1997. Our evaluation of the trial identified some positive achievements, including strong evidence that more matters were being dealt with at local level, greater use of conciliation, and a greater willingness to take action to address complaints. However, there was little evidence of more streamlined complaint practices.

Just prior to the commencement of the current trial in the Hunter and Greater Hume regions, it became apparent to us that there were two separate groups within the Police Service developing two distinct reform agendas. We were of the view that

this approach was highly unsatisfactory and pointed out to the Police Service the need to combine the two streams. We urged the Police Service to develop a unified approach to complaint reform, consistent with the principles outlined by the Royal Commission. We brought key players from the two Police Service groups together to develop broad guidelines to provide practical assistance to local commanders in understanding what the Royal Commission hoped the Police Service would achieve through EM. A framework policy and procedures document was developed as a result of the meeting. The Police Service will need to add to this document as the new complaints system is rolled out across the State. Importantly, as a result of the discussions, the Police Service committed itself to developing a uniform Service-wide approach to complaints reform.

The current trial is ongoing. The Greater Hume Region in particular has worked hard to achieve quality under the new complaint handling procedures. It is apparent that much remains to be done particularly in streamlining the process and in encouraging the Police Service to view complaints as a tool which can be used to improve their service to the community.

Table 3: Complaints about police

1997-98

<b>Received</b>	
Written complaints	5,034
Oral complaints	3,316
Reviews	128
<b>Total</b>	<b>8,478</b>
<b>Determined written complaints</b>	
Formal investigation completed	626
Formal investigation discontinued	167
Preliminary or informal investigation completed	1,605
Assessment only	1,187
Conciliation	1,393
<b>Total</b>	<b>4,978</b>
<b>Current matters (at 30 June)</b>	
Being conciliated	343
Under preliminary/informal investigation	909
Under formal investigation	549

Recently the Ombudsman agreed to support legislative change to support local area commanders owning and being accountable for dealing with the bulk of complaints against officers in their command. The proposed changes, which we developed in conjunction with the Police Integrity Commission and the Police Service, have now been incorporated into a Bill to go before Parliament.

This office cannot control whether the Police Service succeeds in improving its handling of complaints: we do not own the process. However, we will monitor and report on the outcomes consistent with our oversight role and the challenges given to the Police Service by the Royal Commission.

In its attempts to improve complaint handling, the Police Service has committed itself to developing measures which emphasise the need for:

- complaints to be dealt with more quickly;
- increased use of sophisticated management responses;
- increased involvement of complainants in the complaint process;
- fairness to police officers who are the subject of complaints, including proportionate responses to mistakes and a preparedness by senior officers to appropriately deal with those they supervise; and
- tough action in cases of unethical conduct or gross incompetence.

These principles will form the basis of our assessment of the Police Service's progress in achieving real improvements to handling complaints.

### INTERNAL MANAGEMENT MATTERS

In August 1996, the Ombudsman and Police Commissioner agreed to significantly increase the range of complaints to be dealt with by the Police Service as internal management issues. These matters generally involve complaints by police about their colleagues in connection with minor day to day operational matters. The Ombudsman

has no involvement in these matters apart from an auditing role.

As a result of the agreement, there has been a dramatic fall in the number of complaints by police officers (see **fig 2**). Because the Police Service now only notifies us of serious allegations, the number of matters from police sources has fallen from 1,725 to 768 complaints in two years.

This year we audited Police Service records in relation to 337 of the internal management matters no longer reported to us. Of this group, 37 were examined very closely to assess the quality of the management response and compliance with the 1996 agreement. The audit revealed that the Police Service is generally handling these cases appropriately. However, there were some cases of concern.

One matter involved an intoxicated off-duty officer entering a police-only area of a station and demanding access to the gun cupboard because he wanted to 'hurt' somebody. When asked to leave, he punched and damaged a partition and was then escorted from the station. He returned and again demanded his service revolver, stating that if his request was not complied with he would go home and kill himself. Colleagues intervened and took him home after he had calmed down. The Police Service's response involved transferring the officer, removing his revolver for one month and imposing a requirement that he attend an appointment with the police psychologist. It is not clear whether there was any follow-up assessment of the officer.

We are now investigating this case to determine why this matter was assessed as a minor internal management issue and not notified to us. Our review will also examine the adequacy of the police investigation into the incident and the action taken by the Police Service to address the involved officer's misconduct.

## POLICE OFFICERS ADVERSELY MENTIONED AT THE ROYAL COMMISSION

The Royal Commission heard evidence from both civilians and police officers alleging corrupt, improper or inappropriate conduct by police. A significant number of police officers were adversely mentioned.

In May 1998, we made a special report to Parliament on how the Police Service had dealt with these officers.

### Allegations of serious misconduct

In response to evidence of serious misconduct, a number of officers were suspended from duty, while others were removed from particular duties. However, this left outstanding the issue of how the situation of these officers was to be finally resolved.

In early 1996, s.181B of the *Police Service Act* came into operation. This provision gave the Commissioner of Police a specific power to dismiss a police officer on the basis of evidence given at the Royal Commission. Nineteen officers were dismissed under s.181B.

In late 1996, s.181B was superseded by a more general provision, s.181D. Known as the 'commissioner's confidence' provision, s.181D conferred on the Commissioner of Police a broad power to remove a police officer from the Police Service on the basis that the commissioner did not have 'confidence' in the police officer's suitability to continue as a police officer. This was an important innovation, designed to allow the removal of a police officer where there were serious concerns about the integrity or competence of the officer.

However, a number of practical issues emerged in relation to the use of the s.181D power. There was the need for the Police Service to develop suitable criteria defining the types and levels of misconduct sufficient to warrant an officer's removal from the Service. Another relevant matter was the requirement imposed on the Commissioner of Police to afford procedural fairness to officers faced with the prospect of removal. There was also

an expanding list of officers nominated for consideration under s.181D — including not only some of the officers adversely mentioned in Royal Commission evidence, but many officers nominated for other reasons. The problems encountered by the Police Service in addressing these issues led to considerable and undesirable delays throughout 1997 in processing s.181D matters generally.

A significant problem also emerged in relation to the application of the s.181D power to officers adversely mentioned in Royal Commission evidence. Ironically, this evidence could not be relied upon as a ground for removing the adversely mentioned officers because it was inadmissible in legal proceedings.

Our concerns about the delay by the Police Service in dealing with officers adversely mentioned at the Royal Commission were conveyed to the Service in July 1997 when we commenced our investigation into the matter. In late 1997, the Police Service reassessed its management of the s.181D process. More streamlined procedures were developed and, in early 1998, greater resources were committed to clearing the backlog of outstanding cases.

There were more than 100 officers adversely mentioned at the Royal Commission dealt with under the s.181D process. Our report noted that 54 cases had been finalised by April 1998. We recommended that the Police Service should finalise the outstanding cases as soon as possible and requested advice from the Police Service on its progress. The Police Service advised us in August 1998 that all but six cases were finalised — three were in the final stages of the s.181D process and another three were the subject of further investigation. The position in relation to the remainder is as follows:

- four officers were removed under s.181D, with another being dismissed under a different provision;
- 15 officers resigned;
- four officers were medically discharged;
- 15 officers were given a performance warning notice; and

- there was insufficient evidence to proceed under s.181D in relation to 64 officers.

### Allegations of less serious misconduct

While much of the evidence at the Royal Commission focused on corrupt conduct, there were also allegations of less serious forms of misconduct, such as poor performance and breaches of procedure. These types of misconduct were not of a type which would justify the removal of the police officers involved from the Police Service under s.181B or s.181D.

Allegations of minor misconduct at the Royal Commission should have been promptly addressed by the Police Service, in order to ensure that the officers accused of such misconduct were not left under a cloud for a prolonged period. However, as we observed in our report, the Police Service's initial response to allegations of less serious forms of misconduct was minimal and ad hoc. It was only in July 1997— in the aftermath of the Royal Commission and when we commenced our investigation into the issue — that the Police Service created an Adverse Disclosures Project Team to conduct a review of all material relating to every police officer adversely mentioned at the Royal Commission. This team identified 64 officers who were not suitable candidates for possible action under s.181D. Submissions were then sought from these officers (except, of course, those who had resigned in the meantime) in order to assist their commanders in determining the need for, and nature of, a suitable management response.

Our report noted that, by April 1998, the position in relation to 38 officers had been fully finalised, with management action being taken in some cases. The situation in relation to 26 other officers remained outstanding to varying degrees. We recommended that these matters should be dealt with expeditiously in the interests of both the Police Service and the involved officers. In August 1998, the Police Service advised us that only two matters were still outstanding.

The Police Service has also advised that a number of adversely mentioned officers not dealt with under s.181D or the Adverse Disclosures

Project are still to be assessed. We await advice on the outcome of this assessment.

## CRIMINAL AND SERIOUS MISCONDUCT BY POLICE

Our office must be notified of complaints involving criminal and other serious misconduct by police. We carefully scrutinise the Police Service's investigation of such matters in order to ensure that the investigation has been thorough and that, where appropriate, suitable action has been taken. This action may not only be the institution of criminal proceedings but the implementation of an appropriate management response.

In our experience, the investigation by Internal Affairs of allegations of criminal and serious misconduct is generally vigorous. However, investigations at the local command level are still variable in quality. While our office remains alert to deficient police investigations, it is also important that the Police Service itself should ensure that there are adequate mechanisms for internal review of the quality of its investigations into criminal matters.

We list below a number of cases involving criminal conduct by police. Although the list is disturbing, it should also be recognised that these are cases in which police have been required and prepared to investigate the conduct of their colleagues. It must also be emphasised that the list does not reflect the conduct of police as a whole and, indeed, that police who engage in criminal conduct do a discredit to their colleagues.

### Assaults

- A sergeant was arrested and charged with various offences including indecent assaults, an act of indecency, and possessing firearms without a licence or permit. He was immediately suspended from duty and subsequently resigned from the Police Service.
- A senior constable was charged with an assault upon a 12 year old boy. He was placed on restricted duties and is under consideration for loss of commissioner's confidence.

- A senior constable was convicted of assaulting a member of the public while off-duty. He resigned from the Police Service on the day after his conviction.
- A senior constable was charged with various offences including indecent assault and drugs and firearms offences. He was suspended from duty and subsequently issued with a commissioner's confidence notice.
- A constable involved in a confrontation with another police officer at a police station and who fired a shot into the ceiling of the station was charged and convicted of 'assault' and 'firing a firearm in a building'. Immediately following the incident in question, he was suspended from duty. Following his conviction, he applied to be medically discharged and subsequently resigned from the Police Service.
- A senior constable was charged with the assault and indecent assault of another senior constable. Shortly afterwards, he resigned from the Police Service.
- A senior constable was charged with assaulting a member of the public. He pleaded guilty and was conditionally discharged by the magistrate on entering a good behaviour bond for 12 months.

In January 1997, a Police Service decision was made that the senior constable should be transferred and 'managerially counselled' on the need for him 'to behave at all times in a manner that generates public trust and confidence in members of the Service'.

Our office expressed concerns about the adequacy of this response on the basis that the constable had 'demonstrated no genuine contrition following the assault' and had 'compounded his misconduct by continuing with an attitude reflecting a lack of appreciation of the seriousness of his actions'. We recommended that the Police Service reconsider the matter and take a more appropriate management response to the constable's misconduct.

In early 1998, the new region commander agreed that 'more significant action could well

have been taken. Indeed, should a similar instance arise today, then I have no doubt that much more serious action would be initiated by the Service'. However, it was also noted that the constable had been on long term sick leave and had applied to be discharged from the Police Service on medical grounds.

#### Improper access to confidential information

- A senior constable was charged with improperly attempting to gain access to information on a police computer system. A magistrate found the offence proven but no conviction was entered. On appeal, the charge was dismissed. Nevertheless, the matter was referred for consideration under s.181D. Pending that decision, the senior constable was required to perform 'restricted duties, under strict supervision'. Ultimately, in 1998, the senior constable was issued with a performance warning notice. The Police Service also advised that the senior constable 'will be eased back into mainstream policing under close supervision'.
- A senior constable was charged with offences of 'unlawful computer access'. In early 1998, the charges were dismissed. However, the officer's region commander advised our office: 'Although the criminal charges have been dismissed it is obvious that [the officer] has seriously breached departmental policy and I consider his conduct still requires consideration pursuant to the provisions of section 181D.'

#### Fraud

- A sergeant was charged with a number of fraud matters. Shortly afterwards, he resigned from the Police Service.
- A senior constable was charged with 'misappropriation' of money at a police station. He was suspended pending the outcome of the charge. Although the charge was dismissed, the matter was referred for consideration under s.181D. The senior constable subsequently resigned.
- A senior constable was charged and convicted of a forgery offence in relation to the registration of a motorcycle. He resigned from the Police Service.

### Drink driving offences

- A detective was arrested for a Prescribed Content Alcohol (PCA) offence and refused to undergo a breath test. He pleaded guilty to the offence and was fined and disqualified from driving for three months. The matter has been referred for possible action under s.181D.
- A constable was convicted of high range PCA. His local area commander counselled him in relation to the code of conduct; he also undertook welfare counselling and psychiatric treatment. However, we noted that the matter had not been referred for consideration under s.181D, as required under the Police Service's own guidelines, and requested the commander to do so.

## DEFICIENT INVESTIGATIONS, DELAYS AND INAPPROPRIATE OUTCOMES

In January 1995, our office published a special report to Parliament entitled *Police Internal Investigations — Poor Quality Police Investigations into Complaints of Police Misconduct*. Drawing on a number of case studies, the report identified problem areas and highlighted the need for the Police Service to lift its game.

The Royal Commission also identified similar problems. In its final report, the Commission challenged the traditional approaches used to deal with police misconduct.

In response, the Police Service restructured and is developing new processes for investigating and resolving police complaints. One change in this area was to shift responsibility for the majority of complaints away from Internal Affairs to regions and local area commands.

This development provides for greater decision-making and control at the local level, and greater flexibility for dealing with complaints on a management basis. It also allows Internal Affairs to focus its attention on very serious corruption and misconduct matters. But an inherent danger is that local commands may not deal with complaints to a high standard.

It is of prime importance that the new police complaints framework improves the quality of internal investigations, the speed with which complaints are resolved and the appropriateness of investigation outcomes.

However, significant problems remain. For example, during 1997–98 several hundred investigated complaints had to be sent back to the Police Service by our office because the inquiries were deficient. Over the same period the number of overdue police reports actually rose. We are improving our capacity to identify problem areas in relation to delays, deficient investigations, and inappropriate management decisions.

The Police Service has indicated its willingness to put in place procedures to minimise delays. However, it is imperative that such measures should not lead to any further decline in investigative quality.

The Police Service needs to improve its capacity to track deficient investigations and compare the effectiveness of each region. Where problems are identified with the performance of individual investigators, remedial action needs to be implemented.

The Police Service also needs quality and consistency in relation to management decisions taken in response to complaints.

The following two cases are examples of poorly handled investigations.

### Investigative errors and delay

A woman complained that her estranged husband had become aware of confidential information concerning her. The estranged husband lived with a highway patrol officer who had been engaged to the woman's sister. The complainant believed the officer had improperly accessed her details on the police computer and then passed the information on to her estranged husband.

An audit revealed that the officer had accessed confidential information held on the police computer system on 42 occasions between 1991 and 1997. This information included details about

the complainant, her family, including the officer's former fiancée (her sister), and the complainant's new boyfriend.

The police investigation showed the complaint to be proven against the officer. However, the officer could not be criminally charged because the investigator did not submit his report before the expiry of the statutory limit for bringing the relevant charge of 'unlawful access to data in computer' under s.309(1) of the *Crimes Act*.

The danger of this happening had been pointed out in an earlier special report to Parliament issued by our office entitled *Confidential Information and Police*:

*Section 309(1) is a summary offence which is governed by a six-month statute of limitations ...*

*For this reason it is essential that the Police Service accurately identifies those cases of potential criminality at the outset so as not to jeopardise the chance of a successful prosecution. Unfortunately, a number of cases have become statute-barred due to inappropriate assessment at the initial stage or untimely investigation by the Service ...*

The investigation was further flawed because the officer was not interviewed electronically, as is required by legislation. The senior officer reviewing the investigation noted this.

In the original interview, the investigator gave the officer one caution to cover some 19 criminal offences and one further caution relating to the other 23 offences (the 42 computer accesses). The investigator's failure to separately caution the officer for each offence would have resulted in admissibility problems should the matter have proceeded to court.

The region commander commented:

*I am at a loss to explain how an experienced investigator ... could make such elementary errors. However ... I have no reason to believe the investigator did so in order to deliberately sabotage any possible criminal action against [the officer subject of the complaint]...*

The officer is now being considered for removal from the Police Service, and the investigator has been counselled over his investigative failures. At the request of our office, the Deputy Commissioner has also been asked to consider the need for measures to promote investigators' awareness of legislative requirements governing the admissibility of evidence in connection with investigations under the *Police Service Act*.

#### **An inappropriate response to a nasty incident**

In March 1996, two off-duty police constables attended a buck's party at a hotel. The publican spoke to the party regarding unruly behaviour. An altercation developed. The publican's 66 year-old father had his arms pinned behind his back and was savagely beaten about the face by members of the buck's party.

A police investigation identified one of the off-duty officers as being involved in that assault. The victim sustained a broken nose and fractured cheekbone, however, he declined to pursue the matter criminally. The police investigator recommended that the officer responsible be departmentally charged, which was endorsed by the investigator's commander.

The region commander disagreed:

*I have given this matter careful consideration and it is abundantly clear that the Senior Constable's conduct and behaviour on the night in question was certainly most unacceptable and is of major concern to me. However, while not wishing to minimise the seriousness of [the] conduct I have taken particular note of the supportive comments of his Local Area Commander and his previous good conduct. I have determined that the Senior Constable be severely admonished ... in the strongest possible terms in respect of his unsatisfactory conduct.*

The Assistant Ombudsman wrote to the region commander strongly disagreeing:

*You have determined that there is sufficient evidence to support this issue which involves a criminal offence by a member of the Police Service. As such, I believe that the commission*



*of such a criminal act should elicit a greater response than a 'severe admonishment'. In my opinion, this matter is such that the [commissioner's confidence] provisions of section 181D of the Police Service Act should be considered ... Alternatively, as a minimum response ... this issue should be the subject of a departmental charge ...*

The Police Service has now informed our office that the constable has been issued with a formal performance warning notice which indicates that conduct of a similar nature may result in the commissioner taking action to remove him from the Police Service.

## THE IMPACT OF STRESSFUL OR TRAUMATIC INCIDENTS ON POLICE

Police work often exposes officers to stressful or traumatic incidents which may affect their psychological well-being and hamper their ability to perform their policing duties effectively. Police Service managers should be in a position to identify and respond to the needs of officers experiencing difficulties. To do so, they may need access to relevant information about officers' psychological well-being. An appropriate response by managers to the situation of affected officers not only benefits those officers, but also protects the interests of the Police Service and community.

The potential risks posed by officers whose psychological state may have been affected by their work were highlighted in a recent case involving a senior police officer accused of sexual assault. When the allegation was put to him, he stated, *'I don't believe it is true from memory...I can't respond to this because I don't know if this happened or not'*. He explained that he suffered memory loss arising from a traumatic work-related incident and he had been receiving counselling and psychiatric treatment for some time, including counselling for post-traumatic stress.

When we requested further information to clarify how the Police Service had responded to the officer's situation, a supervisor reported that the officer had relieved as a patrol commander for

lengthy periods, was *'performing to a high standard and has no integrity problems, is honest and trustworthy and is an excellent role model for junior police'*. Although the supervisor recognised that the officer had been directly involved in two traumatic incidents, it appeared that he was unaware the officer was receiving treatment. Nor was there any mention of any risk assessment of the officer by the Service.

This response raised concerns on our part about the ability of the Service to obtain appropriate professional assessments about officers whose capacity to perform their duties might be affected by their exposure to traumatic incidents. Our office commenced a direct investigation into this general issue. The investigation included a formal hearing and the exercise of our Royal Commission powers.

We found current Police Service policies and practices did not provide an adequate mechanism for the Service to obtain information about the well-being of its officers for management purposes. Our final report recommended that the Service should:

- take immediate steps to ensure that specialist debriefing teams are always called in following critical incidents and that commanders are appropriately involved; and
- develop improved policies and practices which would enable the Service to obtain appropriate information about the well-being of its officers for management purposes.

The Service is implementing the recommendations. It has brought forward the introduction of improved debriefing procedures for critical incidents. A Police Service committee, including the two police associations, is reviewing current policies and practices in relation to obtaining and using medical assessments for management purposes.

## POLICE RELATIONS WITH YOUNG PEOPLE

The introduction of full-time police youth liaison officers in all local commands across NSW in early 1998, is underpinning a raft of innovative measures aimed at improving police relations with young people.

The selection and training of 80 police officers with a specialist interest in youth issues was timed to support the introduction of youth cautioning, conferencing and other court diversion measures for young people under the *Young Offenders Act*, which came into effect on 6 April 1998. One important function of the youth officer is to provide specialist advice to police on their responsibilities under the new scheme.

However, it is apparent that the youth liaison officer initiative is having a broader impact. Many youth officers have developed links with other agencies and are central to local commanders' efforts to identify and resolve problems affecting young people and juvenile crime in local communities. This smarter, more proactive approach seems to be benefiting both young people and the wider community.

The specialised training and preparation provided to youth officers appears to be a significant factor in the early success of this initiative. With our assistance, the Police Service worked with the Department of Education and Training, the Department of Juvenile Justice and youth organisations to develop an accredited training program for the youth liaison officers. Our role in helping to develop the course, providing policy advice and training police youth liaison officers was recognised through a Police Service award to our youth officer earlier this year.

The first youth liaison officer course began in February 1998 and included pre-reading and work-oriented assignments, a five-day residential school, a work-based research project, and a final assessment before a panel of educators, police and youth policy advocates. As with other youth officer training, we advised the Service and assisted with the course delivery. The feedback from course participants has been very positive.

The selection of officers who are keen to work with young people, and the practical guidance provided by the Police Service's youth issues working party, seem to be crucial factors in the apparent success of the youth officer program. Similar initiatives have struggled in the past, partly because of a tendency to delegate youth policing tasks to reluctant 'volunteers', or to rely on officers to perform proactive youth policing functions in their own time, with little support or policy direction.

In meetings with the Service, we urged the Police Service to extend the initiative even further, to promote the role of youth officers in:

- improving interagency cooperation and youth consultation;
- training their colleagues to interact more effectively with young people;



Youth Officer, Stephan Waite, receives a certificate of appreciation from the NSW Police Service

- promoting programs which divert young people from the juvenile justice system, particularly with the introduction of cautioning and conferencing schemes; and
- developing youth specific programs in local areas.

We have also pushed the youth officers to adopt a pivotal role in complaint handling. Part of this strategy is to strongly encourage any young people with particular grievances about police or police procedures to work with their local youth workers and police youth liaison officers to try to resolve concerns at an early stage. Where necessary, we have intervened directly to bring the Service face-to-face with its critics. The feedback so far indicates that some youth officers are instrumental in resolving more complex concerns, particularly problems which require the cooperation of other agencies such as local councils or support services.

The challenge for the Police Service is to maintain the quality of its youth liaison officer program by:

- supporting youth officers with ongoing specialised training and policy advice;
- making intelligent use of their developing expertise and interest in youth issues; and
- advertising and selecting replacements as vacancies arise, to keep the program staffed by officers with a keen interest in youth issues.

Without these measures, there is a danger that the strengths of the current youth liaison officer program could be eroded.

We will continue to closely monitor the Police Service's work with young people, especially in light of recent legislative changes to street policing powers. One change, the *Crimes Legislation Amendment (Police and Public Safety) Act*, includes extended police powers to search for knives and to disperse groups in public places. Our office will scrutinise police use of the new powers throughout 1998–99, and our report on the powers will provide a focus for further reviews.

### Snap decisions

In addition to supporting the Police Service's youth policy initiatives, we continually seek ways to improve the Police Service's handling of complaints involving young people. Our annual report last year described concerns relating to an intrusive police operation at a Sydney suburban train station in which all young males of Asian appearance were being stopped and photographed. We brought the peak youth organisation that raised the concerns together with the police, and the Police Service agreed to develop guidelines for any similar operations in the future.

In January this year the Service published the guidelines. After noting that such operations are rarely necessary, the Service detailed factors that police should consider before, during and after any operation of a sensitive nature. The guidelines for planning such an operation included:

*Consideration is to be given as to whether this kind of operation is the most appropriate option, given the intrusive nature of police activity required by such an operation.*

The guidelines for action during the operation emphasised the need for police to explain to people being photographed the reason for the operation, its likely duration, who they could contact for information and what would happen to the photos when the operation concluded. The guidelines for action after the operation specified that police should evaluate the operation, provide feedback to interested groups and destroy the photographs.

The emphasis throughout was on the need for the Police Service to communicate with groups likely to be affected by such an operation. It is important to note that the group which raised its concerns about the original operation has reported improvements in the way police and the youth sector have worked together in the location where this incident occurred. Youth workers in other areas have also reported a greater willingness by police to consult them about local youth crime and local police initiatives.

### The oversight

In assessing complaints by young people, we tend to scrutinise the police response more closely. This strategy occasionally reveals serious deficiencies in the police response to young people.

One young person complained to a youth worker that he had been hit in the head by a police officer while being arrested for a 'break, enter and steal' offence and nominated a witness to the alleged assault. The officer investigating the allegation interviewed the three arresting officers, but made no record of these conversations. He did not speak to the supervisor on the relevant shift, to the complainant or to the witness. When asked by his then patrol commander to clarify whether the complainant had been injured, the investigator replied:

*After speaking with the police officers and the fact that the young person at the time did not have any signs of injury nor did he make a complaint of being injured, I was satisfied that the incident did not take place.*

Senior commanders asked for further information, but it appears the investigator did not attempt to contact the complainant.

In reviewing the Police Service's handling of the matter, we examined the brief of evidence for the charges against the young person. It included a transcript of an interview with the arresting police soon after the arrest which showed that the complainant did refer to being hit on the side of the head. When asked if he would like to make a handwritten statement, he replied, 'Yeah, about you hitting me in the head mate, with a closed fist.'

The arresting officer's failure to report the allegation meant the opportunity to interview relevant witnesses and establish the truth or otherwise of the allegation, was lost. The failure of the officer investigating the complaint to make basic inquiries was also a concern.

The Police Service agreed with our concerns and has taken steps to address the performance of the officers involved, particularly in relation to their obligation to report complaints. Other measures include instructing investigators and supervisors on

making appropriate inquiries and ensuring that adequate inquiries are made.

### Company of strangers

There seems to be an ongoing need to remind police of the special provisions that apply to investigating offences involving children. The *Children (Criminal Proceedings) Act 1987* includes important guidance on the need to use arrest as a last resort (s.8), and the need for a responsible adult (usually a parent) to be present when interviewing child suspects (s.13(1)). Failure to comply with these laws may make evidence collected through such interviews inadmissible. We believe provisions such as s.13(1) should set a standard for questioning juvenile suspects. It appears that some police view it merely as a rule of admissibility.

In one case, a 13 year old girl admitted to her mother that she had stolen a wallet from a teacher at her school. Her mother told the school, and the girl was suspended while police inquired into the matter. Although the girl was willing to co-operate with police, the mother was working on the day they wanted to interview the girl. Instead of trying to arrange another time, the investigating officers arrested the girl, interviewed her in the presence of an adult other than her mother and issued a court attendance notice. Although they appeared to comply with the provisions of the *Children (Criminal Proceedings) Act*, we queried the need to arrest the girl and interview her when her mother could not be present.

The officers' explanation for arresting the girl was that there was a need to finalise the matter before she returned to school, and that 'the victim held concerns for her family and personal property as the young person had her residential address and other personal particulars and documents'.

As the issuing of a court attendance notice is akin to granting unconditional bail, it was not immediately apparent to us that the concerns of the victim justified the use of arrest powers. Although we recognised the need to finalise the matter quickly, the Police Service agreed that a preferable approach would have been to interview the girl in the company of her mother. The Police Service

apologised to the mother, and circulated advice to all officers reminding them of the special provisions which apply to interviewing children under the age of 16 years.

The introduction of the *Young Offenders Act* since this incident, obliges police to consider whether young people who admit to offences such as this should be referred for cautioning or other court diversion measures. We will be monitoring how these changes influence the police use of charges or court attendance notices in relation to young people.

## SPEED KILLS

Ordinarily, an officer getting a speeding ticket would not be notified to our office. Where more serious allegations emerge, such as abuse of office, we are notified and oversee the handling of the complaint to ensure community standards and the Police Service's own ethical standards are met.

Recent media reports of senior officers clocked at excessive speeds have heightened community concern about certain police seeing themselves as being above the law. Rumours have circulated as to whether pressure was brought to bear on junior police not to prosecute their superiors and whether senior officers received special treatment owing to their rank. This is potentially damaging to the Police Service's credibility and the reform process.

### Rank factors in decision to caution

A chief superintendent was clocked travelling along a remote highway at 138 km/h. The superintendent was stopped, cautioned and allowed to leave. Following weeks of speculation, it was revealed in the media that the superintendent had allegedly *'tried to pull rank on the young constable thwarting any possible booking'*. An Internal Affairs investigation commenced immediately.

In the end, the investigation did not disclose any evidence in support of the allegation. The superintendent had been in plain clothes and only exchanged a few words with the officer without mentioning rank. The caution appeared to be issued in accordance with local policy at the time taking

into account traffic conditions and the superintendent's assumed good driving record.

The young officer readily admitted the chief superintendent's rank was a factor in his decision to caution. To his credit, he sought advice from his superiors as to what he should do. However, his immediate supervisor simply passed his report onto his commander. Two weeks later, his commander advised the officer that the decision rested with him.

Our office expressed concerns to the Police Service about elements of the case but was ultimately satisfied with the action taken. The chief superintendent was reminded in the strongest terms of the high level of responsibility and accountability required of his position. The junior officer was commended for raising the matter and his supervisors were reminded of their responsibilities.

The Police Service is also reviewing its 'on the spot' caution policy and published a notice reminding all police that:

*...when they are dealing with members of the Service who have committed offences under the Traffic Act (whether on or off duty), they are to treat them no differently than members of the community.*

### High speed on the Hume highway

Another superintendent was clocked by a highway patrol officer at 135km/h. The officer alleged that the superintendent stated his name and rank and then said *'Where were you hiding? You obviously weren't doing your high profile patrolling like you are supposed to'*. The superintendent also allegedly accused the officer of stitching him up and claimed to have a faulty speedometer. The officer allowed the superintendent to leave without a speeding ticket.

Later, at the station, the officer received a message to contact the superintendent. The superintendent apologised for his behaviour and reiterated that there was a problem with his speedometer.

As in the previous case, the officer tried to get advice from his superiors. His duty officer said he would advise his commander. Two weeks later, his

commander directed the officer to prepare a full report which was then treated as a complaint and investigated.

The superintendent maintained he had not been speeding. He suggested that either the radar equipment or the reading was inaccurate. The investigation therefore included re-enacting the incident but found no evidence that the equipment or reading was faulty. The officer also had never had a speeding matter overturned.

The superintendent, while contesting parts of his conversation with the officer, conceded that he 'could have' said some things when they were put to him in an interview. He conceded he had been assertive and 'perhaps overbearing' towards the constable and apologised. He denied using his position to influence the officer's decision.

However, the superintendent's conduct appeared to create uncertainty in the officer's mind. He stated:

*...I thought I would be guided by what my boss had to say. I've never had any police jump out and accuse me of anything before. He accused me of hiding and not providing high profile patrolling. I was unsure of what to do, I thought you were not supposed to give a ticket to a police officer in a police vehicle.*

Again, our office was concerned by the incident but satisfied with how the Service dealt with the complaint once it came to light. The superintendent was summonsed for 'exceed speed' and removed from his command. Again, the junior officer was commended for reporting the incident but also reminded of his responsibilities. His supervisor was counselled in the strongest terms as to his obligation to junior police.

#### Cause for concern

Two further complaints are:

- A superintendent, after being stopped by an officer for speeding, allegedly called the officer into his office to clarify what action he proposed to take. Rumours circulated about the conversation until one officer called the Police Service's Corruption Hotline to anonymously

report the feeling that the superintendent had used his position to influence the officer's decision. The Police Service is currently investigating the matter.

- Another superintendent, who acted as a road safety sponsor, was allegedly clocked at 195km/h in a suburban area near peak hour. An officer pursued the superintendent who allegedly activated the strobe lights on his unmarked vehicle on two occasions without decelerating. The superintendent reported to his commander that he was evaluating certain performance aspects of the vehicle and posed no danger to the public. He has since pleaded guilty to the offence of 'speed dangerous to the public' and been fined and disqualified from driving for one year. The Police Service is further considering the matter.

#### Cultural change

In one respect, it is encouraging that police culture has changed in that officers can now report these incidents. Of concern is that officers were placed in the invidious position of having to decide what action to take against very senior officers with minimal support.

Clearly supervisors and middle managers need to be aware of their vital role in promoting cultural change. Senior police must also appreciate the level of responsibility and accountability expected of them and be attuned to community perceptions. Our office looks forward to when members of the service are seen to be treated no differently to other members of the community for traffic offences. In the meantime, we will continue to closely monitor these cases.

#### POLICE INVESTIGATIONS OF MISSING PERSONS

We reported our concerns about the adequacy of police procedures in relation to missing person investigations in last year's annual report. We also questioned whether those procedures adequately spelt out officers' responsibilities and accountability when investigating missing person reports.

On a positive note, the Police Service published a notice reinforcing police procedures. Officers accepting missing person reports were reminded that they are responsible for the investigation unless it is reallocated through the case management system.

The following cases illustrate why appropriate procedures and investigations are essential.

#### Missing critically ill patient

A complaint was made on behalf of a mother about police failing to locate her critically ill son. Her son had wandered out of a hospital in a disoriented state. He was immediately reported missing to police by hospital staff. Police were advised that if he did not receive medical treatment within 24 hours he would die. Seven days later, he was found dead 300 metres from the hospital entrance.

Our office was dissatisfied with a number of aspects of the Police Service's investigation into the incident. It was unexplained why police failed to respond more quickly to the missing person report. Police rosters indicated there were five cars and crews on duty when the man was reported missing. A message was also broadcast over the police radio several times that night. However, it was only given a priority 3 — *'Respond as soon as possible when there is no priority 1 or 2 matters outstanding. The matter is not life threatening ...'* — despite concerns expressed by hospital staff regarding the man's life-threatening condition.

The Service acknowledged our concerns. Further inquiries confirmed that a constable had incorrectly prioritised the message. However, the inquiries were unable to find a legitimate reason why an earlier response to the broadcast was not made by the car crews on duty. The Service concluded that there had been a breakdown in systems and supervision.

The Service advised us that several officers had been offered advice and guidance as a result of the incident. A review of supervisory and case management practices within the command and a mandatory lecture on missing person procedures were to be conducted. Revised standard operating

procedures in the command were also devised as a result of the incident.

#### Missing woman

A mother complained that it took police eight months to inform her that her missing daughter had been found dead. Her daughter's body had apparently been recovered in a bay and taken to the morgue. The mother felt that, had a proper police investigation been conducted at the outset, months of heartache could have been avoided.

Police inquiries into her complaint established that a 'located person' event was entered on the police computer when her daughter's body was found. It incorrectly described the daughter as being of south-east Asian appearance. Six days after this entry, the daughter was reported missing by her flatmate. This was not recorded as a 'missing person' report because her family did not want her recorded as a missing person at that stage. The 'occurrence only' entry was apparently upgraded to a 'missing person' report ten days later.

Inquiries indicated that the Missing Persons Unit did not initially connect the computer entries about the body found and the missing daughter. The missing person report was only accessed in the unit six months after its creation. The mother claimed it was only as a result of her efforts that inquiries were made by police which led to her daughter being identified.

Our office made further inquiries with the Missing Persons Unit. Apparently, problems had arisen with searches on the Service's computer system. These problems are currently being examined by the Service's specialist computer project team.

Procedures have also since been revised and a protocol put in place between the Missing Persons Unit, Coroner's Office and Institute of Forensic Medicine in relation to the notification of unidentified bodies.

Given the procedural issues identified, and the sensitivity of such complaints, our office will encourage the Service to continue to improve its procedures for investigating missing persons.

## DOMESTIC VIOLENCE

The complaints received this year raised similar issues to those reported in last year's annual report, such as police failing to serve and/or enforce apprehended violence orders (AVOs) and lack of victim support.

While this is of concern, we are encouraged by the Police Service's commitment to improving its service to victims of domestic violence. Steps taken have included:

- further clarifying the duties of Domestic Violence Liaison Officers (DVLOs);
- specially appointed regional DVLOs regularly meeting with the Service's corporate sponsor to discuss current issues; and
- circulating comprehensive standard operating procedures for domestic violence which will be reviewed every twelve months.

### Discussion paper

Recognising that victims of domestic violence often find it difficult to complain about the services they receive, our office prepared and circulated a discussion paper on the policing of domestic violence. The paper is intended to stimulate debate with a view to finding practical solutions to problems identified in the following areas:

- initial police responses to domestic violence incidents;
- the service and enforcement of AVOs;
- victim support;
- police training; and
- the lack of monitoring of state wide service provision.

To date, we have received approximately 60 submissions from a wide range of individuals and agencies.

A common theme in the submissions is that DVLOs are doing a difficult job well but are not afforded adequate resources. It also appears that some police officers are reluctant to assist in domestic violence incidents and tasks such as victim support are left to overworked DVLOs.

Many submissions suggest a failure by some officers to perceive domestic violence as a serious crime. This attitude affects the way in which those officers respond to incidents, such as ignoring the need for victim support.

Submissions indicate that there continues to be a problem with policing domestic violence in remote areas. Problems also arise where people in need of protection are Aboriginal or from a non-English speaking background, have a mental illness or intellectual disability or are affected by drugs or alcohol.

### Our community visits

Our staff have visited community groups, domestic violence workers and members of the Police Service to discuss the role of our office. This strategy has been successful in two ways: the first has been to clarify with workers and interest groups what police are actually required to do when responding to domestic violence; the second has



Leena Pradhan facilitates a meeting of the domestic violence working party



been to increase awareness of the complaints process and to make it more accessible.

Our office is currently preparing a report to Parliament on this issue. The report will contain practical suggestions on ways in which the policing of domestic violence may be improved.

## ARREST AND DETENTION

Matters relating to arrest and detention constitute a large proportion of complaints about police. In assessing the police response to individual complaints, we put a lot of effort into developing practical strategies that the Police Service can use to reduce the likelihood of similar problems recurring. In addition to identifying problems associated with particular incidents, our aim is to promote good practice that protects the interests of members of the public and is fair to police officers.

Generally, there is some uncertainty about the ambit of police powers to search, arrest and detain members of the public. The lack of useful and accessible advice on appropriate arrest and detention practices has been a critical deficiency in the past. In the context of potentially intrusive policing practices, broad changes to key legislation and a robust public debate about the capacity of police to reduce crime, there is an ongoing need for the Police Service to provide its officers with guidance about the exercise of their powers.

A crucial development in the past year was the introduction of the Police Service's *Code of Practice for Custody Rights Investigation Management Evidence* (CRIME code) and its advice on *Procedures for the Evidence Act*. Both were developed to complement the introduction of the *Crimes Amendment (Detention After Arrest) Act 1997*, which amends the *Crimes Act* to give police authority to detain suspects for investigative purposes, notably questioning. The new legislation, including a detailed Regulation, forms the basis of a broad investigative detention scheme. It has powers to enhance the capacity of police to investigate offences as well as measures intended to safeguard the interests of persons in custody.

Much depends on the role of 'custody managers', whose duties include the independent review of investigators' decisions to arrest persons brought into custody and informing those persons of their rights. The CRIME code itself also provides useful advice to investigators.

Our direct contributions to the CRIME code included a submission detailing concerns about an early draft. Our concerns included the need:

- To implement new arrest and detention procedures in a way that avoids undermining initiatives being developed by other sections of the Police Service that promote alternatives to arrest and charge.
- For the code to reflect the practical changes the Service is seeking to promote through its Aboriginal policy statement and strategic plan.
- For the code to adequately reflect the Service's commitment to meeting the specific needs of children and young people, as articulated by its youth policy statement and action plan.
- To clarify the position of witnesses and suspects who volunteer to assist police with their inquiries.
- To refine the draft code's advice on intellectual disability and mental illness to distinguish the different approaches required in relation to each group (for case studies illustrating the arrest and detention difficulties encountered by these groups see 'Mental health and intellectual disability issues' in this section).

The Police Service made amendments to address a number of these concerns in its final draft. The result was a compact guide written in plain English which provides police and members of the public with useful advice on changes to custody practices.

We also provided comments on the Regulation prepared pursuant to the *Crimes Amendment (Detention after Arrest) Act* and suggested specific amendments to enhance or clarify measures included in the Regulation. The final version addressed many of our concerns.

The legislation, which came into effect in February this year, will be evaluated early next year. We suggested there was a need to consider a number of indicators, not just complaints. The Attorney-General's Department agreed and has begun collecting information from a range of sources.

Despite these significant advances, there are a number of problems which potentially limit the impact of the Police Service's efforts to improve arrest and detention practices. One is the fragmentation of advice on arrest and custody procedures. Although the CRIME code is now a prime source of practical advice on search, arrest and other custody issues, arresting officers also need to be aware of related advice in the *Commissioner's Instructions*.

A more fundamental concern is the need for the Police Service to support police officers, particularly custody managers, with specialist training and on-going policy advice. In contrast to the Service's thorough preparation of officers selected for the youth liaison officer program (see 'Police relations with young people' in this section), custody managers were given minimal preparation before assuming central responsibility for the new 'detention after arrest' scheme. Inadequate training and support may reduce their effectiveness and undermine the Service's attempts to improve arrest and custody practices. The Service is beginning to address these deficiencies through working groups and a review of training.

We continue to monitor the Service's efforts to train and support officers who have significant responsibilities in the arrest and detention area. We also scrutinise related Police Service initiatives, such as its expanded use of Field Court Attendance Notices as an alternative to arrest and charge, to check whether they are affected by these changes.

### Resorting to arrest

A 12 year old Aboriginal boy was arrested on suspicion that he had damaged playground equipment. Following a struggle, he was handcuffed and transported in a caged vehicle to the police station. The incident escalated a conflict between

the arresting officers and several members of the local Aboriginal community.

The arresting officers did not seem to adequately consider Police Service policy to use arrest as a last resort. Section 8 of the *Children (Criminal Proceedings) Act 1987* also encourages police to consider alternatives to arresting and charging children.

Although the complaint was later withdrawn, we were concerned that many officers appear to resort to arrest without giving proper consideration to the alternatives. The arresting officers' region commander agreed that there was a need to review arrest procedures and generally improve police officers' awareness of when and when not to exercise their discretion to arrest. Our assistance to the Service included participation in a region training day by the Assistant Ombudsman (Police).

As this region started reviewing its arrest practices, we began to develop our capacity to analyse Police Service data on the arrest and charging of Aboriginal suspects. The information will assist with the evaluation of the Police Service's implementation of its Aboriginal strategic plan.

### Mardi Gras arrests

Two party-goers were stopped and questioned as they were preparing to attend festivities following the 1997 Gay and Lesbian Mardi Gras parade in Sydney. One had a hat with a NSW police badge on it. Police suspected the badge might have been stolen and confiscated it, despite assurances from one of the party-goers that she could prove she bought it from a licensed second-hand dealer.

After an apparently heated discussion about whether the police officers would issue a receipt for the badge, both party-goers were arrested and taken to a police station to be charged for 'goods in custody', 'resist arrest' and 'hinder police'. They remained in custody for about four hours while they waited to be issued with court attendance notices in relation to charges that were later withdrawn.

Conflicting evidence made it difficult to determine where the truth lay in relation to the two complainants' allegations of assault, wrongful arrest

and homophobic abuse. However, we pointed out to the Police Service that Mardi Gras is an occasion on which the wearing of costumes can be reasonably expected. Taken in context, the wearing of the hat badge was a fairly minor offence.

The local commander agreed. In addition to speaking with the officers for their handling of the inquiry into the ownership of the badge and apologising to the complainants, the Police Service advised officers policing this year's Mardi Gras celebrations to exercise appropriate restraint. He said all participating police were:

*... informed that additional tolerance was to be shown to persons acting in an extravagant manner and that caution was to be displayed unless the person was seen to violate the law on public behaviour, etc. Passive enforcement measures such as cautions and breach reports were stressed and discretion was the tone of the evening ... tolerance will be the theme of events such as Mardi Gras and other public parades ... This will be an on-going training initiative of this command.*

Hundreds of thousands of members of the public attended this year's Mardi Gras parade, yet the Police Service reported just one arrest. Police were widely praised for their role in the event.

## MENTAL HEALTH AND INTELLECTUAL DISABILITY ISSUES

A 1998 Australian Institute of Criminology (AIC) study, called *Police Shootings 1990-1997*, suggests that 'persons with mental disorders or handicaps may be more likely than others to come into contact with police'. This contact is often complicated by the difficulties police experience in dealing with people with these conditions. Problems with cases of this kind have been reflected in a number of complaints to our office.

The AIC study also found that a significant number (over one third) of those people who died as a result of police shootings were reported to have been 'either "depressed" or had some form of psychiatric history requiring treatment'. It

recommended that serious consideration be given to providing police with specific training to deal with situations involving persons with, among other conditions, mental or psychological disturbances (see also 'Police shootings' in this section).

### Mental Health Act alternatives

Police have several options for dealing with persons who are suffering from some form of mental illness or disturbance. For instance, under s.24(1) of the *Mental Health Act*, where a person is known or suspected to be suffering from a mental illness and is also suspected of having committed an offence, police are able to escort them to an appropriate health service facility. These provisions need to be widely publicised and understood so that officers are aware of all the tools available to them.

The following two cases highlight difficulties which can arise when police fail to appreciate that they are dealing with a person suffering from a health problem or an intellectual disability. The potential for problems increases when the person or detainee is either unable or disinclined to inform police of their condition. This emphasises the role of the station custody officer in assessing arrested persons at the police station and the need for specific training in this difficult area.

### Mother and child

A woman who suffers from schizophrenia complained of her arrest and treatment by police. When the woman was approached by police she became abusive and, owing to her condition, resisted actively when officers attempted to detain her. She was taken to the nearby police station and issued with court attendance notices for the offences 'resist arrest' and 'assault police'. At her request, police then escorted her to a nearby hospital for treatment relating to her condition.

Of concern was the fact that the woman had an 11 year old daughter unsupervised at home, for whom the woman had expressed to police repeated concerns. Two officers later attended the house, checked on the daughter, who claimed she was fine, and then left.

The primary arresting officer had strong suspicions that the woman may have been suffering from some form of mental disturbance. He indicated these suspicions in the custody forms he prepared.

We sought clarification as to why arrest and charges were considered, particularly after a mental health condition was suspected. Police have the discretion under the *Mental Health Act* to deal with such situations 'otherwise than in accordance with the law'.

We suggested that the situation was unnecessarily exacerbated by the approach taken by police, in circumstances where the woman was unlikely to be found guilty of the offences. The matter was later heard at court where the charges were dealt with by an order under the *Mental Health Act*.

This case also raised the issue of the lack of support provided to the young daughter who had been left unsupervised for a considerable period of time. We recommended that officers in the patrol receive training and education on dealing with 'vulnerable persons'.

### Arrest at Town Hall

A young man, who suffered from several physical and intellectual disabilities and severe epilepsy, was travelling home from his job in the city. He began to suffer symptoms indicating to him the onset of a seizure. In an attempt to get to the train station before experiencing a full seizure, he hurried across the road, colliding with several people on the way. One of these people was a non-uniformed police officer who received a minor injury as a result.

The young man was approached by two police officers in plain clothes, who proceeded to restrain him and apply handcuffs behind his back. He was forcibly taken to a nearby police station and detained. It was there that police learned of his epilepsy and the handcuffs were removed. Contact was then made with his family and he was released to travel home. The man experienced considerable distress as a result of the incident, and for some weeks after.

An investigation revealed that the young man suffered from a range of debilitating symptoms as a result of his disabilities and during his epileptic seizures. The police officer had been struck without provocation as a result of the young man's impending seizure. He had struggled strongly once detained only as a result of genuine fear.

The police involved were not found to have acted inappropriately or with excessive force. They released him as soon as possible once his disabilities were revealed and no charges were laid against him. The young man was involved in the investigation process to demystify the proceedings and attempt to restore his confidence. We acknowledge the excellent manner in which the Police Service handled this aspect of the case.

The Service also arranged for officers within the relevant patrol to be reminded of the need to be aware of persons suffering from medical and intellectual disabilities and to deal with them sensitively.

### Searched

A carer for a man with an intellectual disability complained that while the man was held in custody for certain offences, he was strip searched. The man resisted police during the search and it was alleged that excessive force was used by police. The man suffered injuries to his head and back.

Police enquiries into the complaint showed that, while the carer was present during the interview process, he was not present when the man was searched.

We wrote to the Police Service expressing concerns that police procedures, such as strip searches, can be particularly confusing and confronting for a person with an intellectual disability. We suggested that in certain circumstances, it would be advisable to have an 'appropriate adult' present during these searches. The Service acknowledged our concerns and a memorandum was issued to all local area commanders in the region to extend particular care when dealing with people with intellectual disabilities.

The new *Crimes Amendment (Detention After Arrest) Act* now contains specific statutory requirements for police to follow in relation to 'vulnerable persons', including those people with 'impaired intellectual functioning'. The Act requires police to contact and have present a support person when a vulnerable person comes into police custody for an 'investigative procedure', including a strip search. In addition, regulations under the Act require the custody manager to find out the identity of the person responsible for the welfare of the individual being detained, and communicate to that person the detainee's whereabouts and the reasons for detention. This Act came into effect in February 1998, some six months after the incident occurred.

#### Lack of understanding

A regional community services organisation complained that police had failed to properly investigate a possible assault by a residential care worker on their client, who suffered from an intellectual disability. In their complaint, they pointed to a delay by police of up to three weeks before initial enquiries were commenced in relation to the allegations against the care worker. In fact, the organisation was concerned that it was only their persistence which resulted in police investigating the allegations.

The organisation alleged that the delays complicated the investigation of the matter, due to the client's already limited ability to communicate specific details such as dates or times. The organisation felt this demonstrated a failure to take complaints of this kind seriously and an '*apparent lack of understanding by police of the problems experienced by persons with intellectual disabilities*'.

We suggested that the matter be conciliated. The outcome was successful. The difficulties involved, including evidentiary procedures, were fully explained to the organisation. Arrangements were also made for a representative from the organisation to address local patrols on dealing with the intellectually disabled. This has resulted in greater liaison between the organisation and local police.

#### Other developments

In response to the recommendations of the coronial inquest into the fatal police shooting of Mr Levi (see 'Police shootings' in this section), the Police Service has recently entered into a Memorandum of Understanding with the NSW Health Department which establishes procedures for dealing with people suffering from mental health problems. The new procedures were announced on 11 August 1998.

The memorandum provides clear guidance on crisis intervention, indicators of mental health conditions, referrals to mental health services, and training implications. It also reiterates the Police Service's commitment to ongoing training of police in dealing with persons with mental illness and intellectual disabilities in arrest and custody situations. It will be interesting to review the impact of the memorandum in terms of the complaints we receive.

#### COMPLAINTS FROM ABORIGINAL PEOPLE AND ABORIGINAL/POLICE RELATIONS

The Ombudsman's Aboriginal Complaints Unit became operational in 1996 with the employment of three specialist investigation officers. The unit was established to provide Aboriginal people with better access to our services. In its first year the unit focused on access and awareness programs. This involved many field trips to remote rural towns and metropolitan areas to establish better liaison between Aboriginal communities and police, and to offer support to Aboriginal complainants.

More recently the focus of the unit has been on developing strategies to improve relationships between Aboriginal people and police. Our unit targets communities with high percentages of Aboriginal complaints. This enables us to identify systemic issues such as unlawful strip searching and fingerprinting of young people, police entering premises without authority and failure by police to use alternatives to arrest. By consulting with diverse communities and police, we are working together to develop and implement broader community/policing programs.

### Complaint profile

Complaints identified as being from Aboriginal people (or on behalf of Aboriginal people) increased from 209 complaints received in 1996-97 to 225 this year. This represents a 7.5% increase in complaints handled by the unit. Fig 4 shows an upward trend over the year.

### Police taking responsibility for service delivery to Aboriginal communities

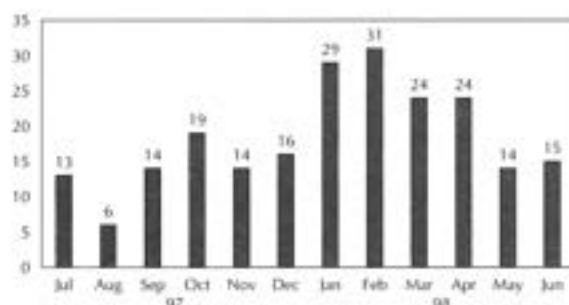
The NSW Police Service's *Aboriginal Policy Statement and Strategic Plan* was launched in June 1998. In a collaborative arrangement between the Police Service, the Institute of Criminology and our office, a comprehensive evaluation of the strategic plan will commence shortly. The study will analyse practical measures undertaken by key patrols in response to the plan. It will also provide a tool for assessing the responsiveness of local patrols to the needs of their particular communities. Our major role will be to assist in compiling complaints data and monitoring service delivery to Aboriginal communities.

### Ensuring adequate police responses to Aboriginal communities

A concerned member from an Aboriginal elders tribal council complained that police responded inadequately to urgent requests for police assistance from Aboriginal community members. Concerns were raised that police appeared less likely to respond to calls from Aboriginal people than from the wider community.

Figure 4: Police complaints and inquiries by or on behalf of Aboriginal persons

1996-97



Over a twelve month period, violent confrontations had erupted between factional groups. Police were often called to disperse disgruntled community members on a property development area. An investigation confirmed police did attend on most occasions, resulting in one arrest and up to thirty applications for Apprehended Violence Orders.

It was obvious the problems could not be resolved solely through an investigation. Our office requested police develop mechanisms to monitor community situations in the future. In response, the mid north coast police local area developed a community development plan for 1998-2000 in consultation with local representatives from the Aboriginal community, various community organisations and our office. Further, the police are conducting workshops with Aboriginal community members to form an Aboriginal consultative committee. This will provide a forum where community issues can be addressed. Ongoing communication between our office, local police and representatives of the Aboriginal community will hopefully assist in improving policing responses.



Laurel Russ and Kym Clifford, Aboriginal Complaints Unit

### Arresting Aboriginal children

An Aboriginal mother complained that her thirteen year old son was arrested and detained at a police station for approximately seven hours, questioned and charged before police had informed her. She also complained that police had entered her home and conducted a search without a warrant or her consent.

Her son, who was home alone, responded to a knock on the door and was confronted by two police officers conducting inquiries into the theft of clothing. He invited them into the house where stolen jeans were located in the laundry. Shortly afterwards, he was arrested and conveyed to the police station. The police officers were aware there was no one else present in the house at the time of the arrest.

Unsuccessful attempts were made by the police to contact the boy's mother. In her absence a court attendance notice was issued for 'receipt of stolen goods'. The boy remained at the police station a further five hours. During this time, police made no attempt to contact his mother. He was conveyed home at approximately 10pm when his mother was contacted.

While it could not be established that the officers had deliberately breached police procedure, policies or their duty of care towards the young person, our office requested the Police Service issue a general reminder to officers at a patrol training day that arrest is a measure of last resort, and to remind them of special provisions for children under 16 years in the *Children (Criminal Proceedings) Act 1987*.

### Appropriate community and policing initiatives

The Aboriginal Legal Service (ALS) raised concerns with the Police Service that police were inappropriately arresting young persons on warrants. A young person had been arrested for an outstanding warrant for an offence he had committed several months earlier. The arrest occurred outside a popular video shop while he was waiting for his father. The incident caused stress and embarrassment to his parents. They

complained to the ALS on behalf of the Aboriginal community.

The complaint was discussed at the monthly consultative committee meeting between the ALS, the Police Service and our office. A three-tiered plan for Aboriginal persons with outstanding warrants was proposed. This involves:

- police contacting the person and making an appointment for them to attend the police station;
- if the person fails to attend, police will advise the ALS who will contact the person and encourage them to voluntarily attend the police station; and
- where the person cannot be contacted, or fails to attend when notified, the ALS must notify police who will then arrest the person when they are next seen.

The committee members agreed to monitor the effectiveness of the plan and report on outcomes at subsequent meetings.

### Public interest

A legal centre complained on behalf of an Aboriginal community worker that two police officers had stopped her and unlawfully searched her vehicle in a busy street. The incident was viewed by her clients and caused considerable embarrassment to her and her passenger.

After close liaison between our office, the Police Service and the complainant, a successful outcome was negotiated. The complainant accepted a personal apology from the officer for the humiliation and embarrassment caused to her. Further, the officer's conduct will be monitored by his supervisors, and ongoing customer relations training will be provided to him, including cultural awareness education.

The legal service praised our office saying we had made '*invaluable comments and suggestions about acquiring the best outcome for my client.*'

We will continue to do our best to improve Aboriginal/police relations.

## IMPROPER ACCESSING OF COMPUTER INFORMATION

Police misuse of access to information stored on Police Service and Roads and Traffic Authority (RTA) computer systems continues to be one of the largest sources of complaints about police. When a police officer accesses this information for personal reasons, or out of curiosity, it is an abuse of the community's trust and a criminal offence. It is also an invasion of the privacy of the persons concerned.

Our office first highlighted its concerns about misuse of computer access in a report to Parliament in 1995. Since then, the Police Service has taken significant steps to address the problem. Most recently, the Police Service launched a new mandatory education package that all police officers must complete as part of their incremental progression.

Another important development is that local area commanders have been given the ability to generate local audit reports on the accessing activity of their staff. This initiative coincides with a marked drop in the number of complaints in this area from 370 last year to 260 this year. Our office fully supports the empowering of local commanders to make their command a 'no unauthorised access' location.

In order to maintain confidence in the Police Service's ability to deal with unauthorised computer accesses, it is important that serious invasions of privacy be dealt with appropriately. We have seen a number of accessing cases where the Service's investigation or response in serious matters has been found wanting. Giving local commanders responsibility for these investigations should not signal a weakening of resolve. The Police Service must be unequivocal in investigating and prosecuting criminal accesses.

Serious cases seen by our office include improper accesses made out of curiosity or convenience. 'Curiosity Killed the Cop' proclaims one Police Service poster. Curiosity is a powerful temptation and cases where officers re-offend even after being disciplined are not unknown.

### Curiosity

A police officer admitted to having accessed the details of a prominent legal identity 'purely out of curiosity'. The Police Service proposed to counsel the officer and require him to write an essay. We disagreed. Our office took the view that, as the matter involved an invasion of privacy, it should be dealt with criminally. The Police Service has now agreed to lay charges.

### School reunion

A police officer based in Sydney was interviewed about 52 unexplained computer accesses. After initially claiming that he had made the accesses in the normal course of his duties, he later admitted that in fact he had been organising a school reunion. The officer pleaded guilty in court to making 46 illegal accesses. Our office is awaiting the Police Service's decision on the officer's future.

More serious still are cases where a police officer accesses confidential information as a tool to harass someone they have a grievance against: a number involve a former partner.

### Telephone harassment

A woman and her boyfriend complained that they were receiving harassing telephone calls. They suspected that the man's estranged wife, who is a police officer, was behind the calls. The woman was fearful for her safety given what seemed the officer's irrational behaviour.

The officer was found to have illegally accessed the woman's work and home address. After initially denying it, the officer admitted to having telephoned her. She pleaded guilty to two counts of unlawful computer access. She was also admonished by her commander for untruthfulness. She is currently being considered for dismissal under the commissioner's confidence provisions.

### Total (non)-recall

A woman complained that she was being harassed by her former partner, a police officer. She also believed that he had accessed computer details relating to her family and her neighbours. Following an audit, the officer was asked to clarify a large



number of accesses including 35 of the complainant and her family, 34 of the officer himself and his family, ten of other police officers and three of public figures. In all he was questioned about 100 accesses. He offered an explanation for only one. In relation to all other accesses, he stated that he did not remember. The Police Service recommended that the officer be admonished and required to complete a staff survey. Our office viewed the matter much more seriously. The investigation had also failed to adequately examine the link between the accesses and the alleged harassment. We sent the matter back to the Police Service for further investigation and are awaiting the result.

### RESPONDING TO EMERGENCY CALLS

Members of the public legitimately expect that police will respond promptly and appropriately to calls for assistance, especially when the call concerns a situation requiring urgent police attention.

We have received a number of complaints that the police response to an emergency call was slow or unsatisfactory. Some of these complaints are successfully conciliated. However, it must be emphasised that effective conciliation will generally require a discussion and recognition of the complainant's concerns, an explanation of the police response to the complainant's call, and, where appropriate, an acknowledgment of any shortcomings in the police response.

In dealing with any complaint about a poor police response, it is important that the Police Service should make suitable inquiries into the matter. A failure to conduct adequate inquiries not only means that the Police Service is unable to respond to the complaint in an informed manner, but will also raise questions about whether the Police Service is genuinely attempting to address the complainant's concerns.

Unfortunately, we have recently seen a number of cases involving unsatisfactory inquiries into the

adequacy of the police response to an emergency call. One of these matters became the subject of a direct investigation by our office.

#### A youth worker's calls for help

A local area commander was required to inquire into a complaint that police had failed to attend a youth centre after an employee there made a number of calls about incidents involving aggressive behaviour by a group of young people. The commander prepared a report to the Minister for Police on the outcome of his inquiries, which suggested that the police response to the calls was satisfactory. We found that this advice was inaccurate and misleading because the commander had conducted inadequate inquiries and had drawn wrong conclusions from the limited information he had obtained. The result of our investigation was that the region commander discussed with the complainant the circumstances surrounding the failure of police to provide her with proper service and made an apology to the complainant.

#### Computer Incident Dispatch System (CIDS)

Our investigation also focussed upon the capacity of the Police Service's Computer Incident Dispatch System (CIDS) facility to ensure that police could give appropriate priority to emergency calls and other calls for assistance. CIDS is used to record calls for police assistance and to enable radio operators to alert police vehicles to such calls. Calls are given a priority — immediately life-threatening situation (priority 1), urgent response required (priority 2) or routine matter (priority 3). We discovered that the vast majority of calls are classified as priority 3. There is little or no distinction within this category between quite serious matters and those which are relatively minor. This creates difficulties for police in giving appropriate priority to calls for assistance.

We also discovered a number of other problems in relation to the use of CIDS. The system could not automatically or readily identify multiple calls about the same matter. Police could not ascertain how long ago a call for assistance had been made. The abbreviation of messages for broadcast created the potential for important information not being

given to police. There was also the potential for a breakdown in communication as information from the caller was passed on to radio operators and in turn to police. The system did not allow for regular direct contact between the caller and the police.

Furthermore, we found there were often deficiencies in CIDS records. Information recorded on CIDS did not always accurately reflect either the actual time at which a job was broadcast over the radio or when police attended to the matter.

We recommended that the Police Service should urgently consider the various limitations on the effectiveness of CIDS and develop measures to eliminate or minimise these problems (the findings and recommendations in our report were consistent with the conclusions of the Auditor-General's report in March 1998 *Police Response to Calls for Assistance*).

The Police Service has advised us of a number of strategies to address the problems in this area:

- The development of an interface between CIDS and COPS (the general police computer information system).
- The establishment of a communications training unit to develop and deliver training programs for staff involved in using CIDS.
- The creation of a Response Management Team to oversight solutions for improved performance in responding to calls for assistance. A number of operational plans have been developed which focus on the Government's plan to improve police response times. In particular, a revised priority allocation system was to be completed by September 1998.

## RISK ASSESSMENT OF POLICE OFFICERS

We recently made a special report to Parliament recommending that Police Service managers needed to adopt 'risk assessment' strategies when dealing with officers accused of misconduct.

Our report was prompted by concerns about a variety of cases involving a failure by the Police Service to consider the possibility of management

action in relation to officers allegedly involved in serious misconduct. The report referred to three cases of particular concern:

- An officer had a pattern of similar complaints alleging sexual assaults against children. No risk assessment of the officer was undertaken.
- An officer was charged with five counts of sexual assault upon a child. After two trials in which the jury was unable to reach a verdict, the officer was returned to duty without any further consideration of the evidence given at court.
- An officer had a history of complaints against him, including separate allegations of assault on his former wife and current partner. The Police Service decided that the officer's complaints history had 'no relevance' in assessing the officer's suitability to continue in his current duties.

In each of these cases, we requested the Police Service to reconsider the matter, with significant results. The two officers who were the subject of sexual assault allegations were considered under the commissioner's confidence provisions — one was removed from the Police Service, the other resigned. The officer involved in the third matter was removed from supervisory duties.

Our investigation of the Police Service's policies and procedures about risk assessment and minimisation strategies revealed deficiencies in this area. Some sections of the Police Service, notably Internal Affairs, were adopting techniques to deal with the issues involved. However, some managers were refusing to consider allegations of misconduct against officers under their command in the context of the officers' complaint profiles.

Our report emphasised that assessments of potential problem officers required the consideration of complaint profiles, information on patterns of similar serious complaints and evidence from failed prosecutions. Assessments should also take into account intelligence collected by the Police Service, reports from supervisors, the nature of the officer's work and the length of time the officer had been engaged in that work.

Significantly, the use of relevant information could also reveal whether an officer was the subject of unfounded or vexatious complaints or payback complaints by disaffected colleagues.

The most significant indicator of the success of the Service's risk assessment strategies will be whether there is a greater level of understanding by police managers of the need to identify and assess disturbing trends in the behaviour of officers within their command, with appropriate reference to complaint profiles.

### POLICE SHOOTINGS

Police shootings inevitably arouse controversy. They focus attention on the difficult question of the circumstances in which police should be entitled to use firearms when confronted with a person whose behaviour is threatening the safety of police or members of the public.

Our office must be notified of complaints about police shootings involving death or injury, and we oversee Police Service investigations into these matters. We therefore have an important role in assessing whether police responsible for a shooting have acted reasonably in the particular circumstances of a specific incident. Our oversight role also involves consideration of possible improvements to Police Service procedures, with a view to minimising the situations in which police may be required to use firearms. In this respect, we take into account the work of the Police Service's committee on firearms and operational safety and recommendations made at coronial inquests into fatal police shootings.

It is important to recognise that Police Service guidelines strictly limit recourse by police to the use of firearms. Commissioner's Instruction 22 emphasises that there must be *'reasonable grounds to believe'* that an officer or a member of the public will be killed or seriously injured, and that firearms should only be used *'when there is no other reasonable course of action'*. The justification for any police shooting is assessed in the context of these requirements.

The requirement that police should only use firearms when there is no other reasonable course of action raises the question of whether the police can and should resort to measures other than the use of firearms where a person poses a serious threat to police or a member of the public. This issue has been the subject of consideration within the Police Service. In October 1996, a decision was made that aerosol incapacitants such as capsicum spray should be made available to operational police. Consideration was also given to the use of extendable batons, and a decision made that extendable batons would be provided to officers in specialist sections of the Police Service which had a demonstrable need for this equipment. The Coroner who conducted the inquest into the fatal police shooting of Mr Roni Levi in June 1997 recommended that the Police Service should expedite the implementation of these measures. In response, the Police Service has brought forward the training of staff who will instruct officers in the use of capsicum spray.

A significant aspect of many incidents involving police shootings is that the victim became involved in a confrontation with police when psychologically disturbed, depressed, suicidal or affected by drugs or alcohol. Police must have the appropriate skills to deal with such people. The Coroner in the Levi inquest observed that the matter *'highlight[ed] the need for police training in dealing with mentally ill persons to be reviewed and constantly updated and reinforced with police officers'*. As a result of a recommendation by the Coroner, the Police Service and the Department of Health have developed a protocol for dealing with mentally ill and disturbed people. The measures contemplated by this protocol should reduce the likelihood of a need by police to resort to the use of firearms (for further details, see *'Mental health and intellectual disability issues'* in this section).

It is obviously important that investigations by the Police Service into police shootings are, and are seen to be, conducted in the best possible manner. The Police Service has adopted a number of measures to ensure the integrity and thoroughness of its investigations into these incidents. The investigation must be conducted by

an officer from a local area command other than the one in which the incident occurred; the relevant region commander must also attend the scene of the incident *'to ensure that the Commissioner's Instructions are followed and that all necessary resources are immediately available to the officer in charge of the investigation'*; and the region commander and Internal Affairs must oversee the investigation.

One interesting development, designed to assist the Police Service in the comprehensive investigation of police shootings, is the introduction of legislation enabling police involved in a shooting to be subjected to compulsory drug and alcohol testing following the incident (see *'Drugs, alcohol and police'* in this section).

## CONFLICT OF INTEREST

Our office continued to monitor the issue of police involving themselves in matters in which they have a conflict of interest. The Police Service's *Code of Conduct and Ethics* (the code) warns police to avoid putting themselves in situations which 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 cited as potentially giving rise to conflicts of interest. Officers must disclose any potential or actual conflicts to their manager.

Our recent report to Parliament, *Conflict of Interest and Police*, urged the Service to develop a training package to support the code. Cases studies in the report indicated that even senior officers had difficulty grasping the concept and failed to detect when conflicts of interest arose. The code contains little practical guidance to assist police. Given the complexity of the issue, clear guidelines are necessary so all police are aware of their responsibilities.

It is pleasing to report that the Police Service has embraced this message. Ethics training, incorporating the code, has been integrated into several of the Service's education programs. The Service's training video on computer accessing

now also incorporates conflict of interest issues, case studies and law.

In addition, all non-commissioned officers will be tested annually on their knowledge of the code of conduct. Local commanders are now also conducting random audits of computer accesses by their staff (see *'Improper accessing of computer information'* in this section).

## Conflict of interest and secondary employment

Secondary employment is a vexed question for the Service. On the one hand, police should not be unfairly denied access to additional income. On the other hand, some of the most serious conflicts of interest can arise where officers engage in certain kinds of work such as in the security, liquor, gaming and racing industries.

Police must have the Service's approval before engaging in employment outside their official police duties. The code advises police that their police duties take precedence. Secondary employment will not be approved when there is an actual or potential conflict of interest.

However, officers occasionally circumvent the process by working without approval, even where approval has been denied, or by describing their employment in euphemistic terms to gain approval. *'Customer service officer'* or *'personal assistant'* can sometimes describe security work.

## Bodyguard to the stars

An anonymous source informed us that two senior constables were engaged in unauthorised secondary employment in the security industry. They allegedly worked for a private security firm providing VIP security for visiting celebrities and security at hotels and other venues around Sydney.

The original police investigation found the allegations unproven. Our office directed that further inquiries be conducted. In the end, owing to difficulties in obtaining official taxation records from the officers' alleged employer, we commenced a direct investigation under the *Ombudsman Act 1974*. This enabled us to compel the production of the records to check whether either officer was on the security firm's payroll.

## POLICE

However, on inspection, neither of the officers' names appeared in the official records.

Through related investigations it emerged that one of the officers:

- had been denied approval for secondary employment as a 'personal assistant' to celebrities because of a potential for conflict of interest;
- had acted as a bodyguard to a well known model (he was caught on video and three witnesses attested that he was employed by the firm as a bodyguard during her visit);
- had continued to renew his security licence each year, while denying he did security work; and
- had his licence applications approved on three occasions by his friend (the other officer in the complaint).

The other officer:

- had Police Service approval to work as a customer service officer at a shopping centre employed by a subsidiary company of the private security firm;
- was also caught on video acting as a bodyguard but claimed to be only 'helping out a friend';
- also renewed his security licence annually, while denying engaging in such work; and
- was driving a 4-wheel drive owned by the security firm and had signed the buyer's order form on behalf of the firm.

Our office found that both officers had engaged in unauthorised secondary employment and lied about it. The provisional report recommended that the officers be considered for dismissal under the commissioner's confidence provisions.

One officer was issued with a performance warning notice by the commissioner. He was again photographed, apparently acting as a bodyguard to a visiting celebrity. Following inquiries into the matter, he tendered his resignation.

The second officer's commander is currently deciding what action to take in relation to him.

Importantly, our final report made recommendations on the issue of secondary employment. We recommended:

- steps be put in place (possibly requiring legislative amendment) to prohibit police from holding any licence under the *Security (Protection) Industry Act 1985* without prior Police Service approval for secondary employment relevant to the licence applied for (as all people involved in security work must hold an appropriate licence, this is one way to prevent police engaging in security work without approval)
- applications for secondary employment be closely scrutinised by the Police Service for actual or potential conflicts of interest
- in granting approval, the Service should expressly stipulate the type of work being approved and conditions of approval
- where an officer is granted approval to be a director or partner in a security firm, a condition of the approval be that the officer be prohibited from assessing any security licence applications.

Our recommendations have since been referred to the executive director of Human Resources, to consider in preparing the Service's secondary employment policy. It is worth noting that the *Code of Conduct and Ethics* is also being reviewed.

## PUBLIC MISCHIEF

In early 1998, the Police Service initiated a number of 'cause public mischief' prosecutions against complainants whose allegations of police misconduct were disproved or failed to be substantiated.

The 'cause public mischief' offence (s.547B of the *Crimes Act*) gives police a discretion to prosecute anyone who misuses the criminal justice system by deliberately making false representations to police. The offence recognises that groundless allegations can waste police resources, as well as cause distress to people who have been falsely accused. Until recently, the charge was rarely used against complainants alleging police misconduct.

We sought advice on the Police Service's policy for prosecuting complainants, particularly as many of the complainants being prosecuted were children, intoxicated people and people with mental health problems. An important element of the offence is that the person must knowingly or intentionally make false representations to police. The cases against most of these complainants were weak because of practical difficulties in proving this intent. We also queried whether it was in the public interest for police to prosecute such complainants.

More generally, complainants who have been subjected to inappropriate policing practices may sometimes exaggerate their version of events. They may also interpret the facts differently from police. For instance, reasonable force to effect an arrest might be viewed by the complainant as excessive force. In many cases this may be explained by differences in perception.

Many of the complainants charged with 'cause public mischief' appeared to have been raising genuine concerns. We were worried that the police prosecutions may create a public perception that anybody lodging a complaint runs the risk of being prosecuted if there is insufficient evidence to substantiate the complaint.

### Differing perceptions

A young Aboriginal complainant accused police of assaulting her and her boyfriend while they were in police custody. A few weeks before the arrest, the complainant had suffered a late-term miscarriage. Despite this possible mitigation, she pleaded guilty when the public mischief case went to court. Although video evidence showed that one allegation — that she was pushed from an interview room — was clearly untrue, there seemed to be a basis for her other allegations including qualified admissions by the officers involved.

It appeared that all parties agreed that a violent struggle took place in the charge room of the police station. However, while the complainant believed that she and her boyfriend were assaulted, police claimed the force used was only that which was reasonable to subdue a violent defendant. The differences in perception seemed to be genuine.

Although police had a discretion to charge the complainant for public mischief, it is difficult to see how the public interest was served by prosecuting her for this offence.

### Phantom assaults

Police prosecuted a mentally ill woman who alleged that she had been sexually assaulted by police officers. The allegations were clearly groundless, as the officers named by the woman did not exist. Because of her illness, it would have been difficult to prove that the complainant was knowingly misleading police. Police were also aware of her mental illness, yet still preferred the charge. The charge was dismissed by the magistrate under provisions of the *Mental Health Act*.

### The police response

After raising our concerns about the potential for such cases to damage public confidence in the willingness of police to take complaints about police seriously, the Police Service stated:

*The provisions of Section 547B of the Crimes Act will only be used where the 'false representation' is deliberately and maliciously fabricated and cogent evidence supports that finding. This is not generally about exaggeration or gilding the lily.*

The internal affairs commander issued a memo to all police, advising them that public mischief proceedings should not be used against complainants whose allegations are based on a genuine difference in perception. Nor should public mischief apply to merely 'gilding the lily' where the complaint raises legitimate issues of concern. Since this advice was circulated in June this year, internal investigators have continued to recommend charges against complainants. However, the number of complainants actually charged appears to have dropped significantly.

The internal affairs commander is monitoring police use of public mischief charges against complainants and is preparing procedural advice for internal investigators. That advice is expected to emphasise the need for police to have special regard to exercising a discretion not to charge

vulnerable complainants, and to seek more constructive ways to deal with apparently false complaints.

## DRUGS, ALCOHOL AND POLICE

The very nature of policing, including the fact that police officers carry firearms and take part in high speed pursuits, makes substance abuse by police a matter of concern. Last year, we received:

- 70 complaints alleging drug use, or supply, by police officers, or that officers had warned drug suspects that search warrants were going to be executed;
- six complaints that police were using or selling steroids; and
- 28 complaints that officers were under the influence of alcohol, or drinking alcohol, while on duty.

The introduction of the *Police Service Amendment (Testing for Alcohol and Prohibited Drugs) Regulation 1997* and the Police Service's drug and alcohol policy was discussed in last year's annual report. We have continued to monitor not only substance abuse complaints, but also the Police Service's overall response and strategies in this area.

### Implementation of the Service's drug and alcohol policy

#### *Phase one – Education*

A six month drug and alcohol education package was provided throughout the Service by drug and alcohol counsellors. A six month amnesty period also allowed affected officers and their families to seek professional and confidential help from counsellors provided by the Service. More than 120 police took up this offer which is a significant increase in officers voluntarily seeking assistance.

#### *Phase two – Testing for alcohol and drugs*

Random and targeted alcohol testing began in September 1997. Testing was conducted by civilian staff from the Human Resources Directorate. By May 1998, over 5,400 officers had been tested at

randomly selected locations throughout the state. Officers are required to have a reading below 0.02. Only nine officers tested above 0.02.

In addition to being offered rehabilitation, officers who test positive are relieved of their duty for the day and subjected to further unscheduled testing for the next three years.

To determine the extent of drug use in the Police Service, independent testing of officers for prohibited drugs is being undertaken — all of the results are anonymous. Individual test results are not available to the Service or the officer. The results of this testing (which also involved surveying tested officers) will be used by the Service to decide if there is a need for officers to be randomly tested or subjected to targeted testing. The results are expected soon.

#### *Phase three – Evaluation*

The formal evaluation of the effectiveness of the drug and alcohol testing program will be undertaken 12 months after full implementation of phase two.

### Steroids

Of concern is that the regulation only authorises testing for drugs coming under the *Drugs Misuse and Trafficking Act 1985*. As anabolic steroids are a prescribed, restricted substance under the *Poisons and Therapeutic Goods Act 1966*, they cannot be tested. In the survey relating to drug use, officers were asked whether they had used anabolic steroids in the last 12 month and five year periods. Use of prescription drugs was also canvassed and officers were asked if they would allow their sample to be tested for prescribed drugs. Once the survey results are known the Police Service will be better placed to judge the extent of misuse by police of these kind of substances.

### Mandatory drug and alcohol testing

From 1 July 1998, new legislation has made it mandatory for the Police Service to test all police officers for drug and alcohol use who have been directly involved in deaths in custody, police shootings, or high speed pursuits in which a person was killed or seriously injured.

It is pleasing to note that the Police Service's Healthy Lifestyles Branch has been actively developing and implementing drug and alcohol education and training programs throughout the state. Staff from our office have attended several of these training sessions, including a workshop about the development of the national guidelines for substance abuse.

### National guidelines

Guidelines have been developed by agreement between the State and Territory police commissioners which are intended to:

- *Provide a resource for key personnel to develop or review existing substance use policies.*
- *Provide a framework which will promote consistency between jurisdictions balanced with the ability to respond to local organisational needs.*
- *Identify issues of significance to the development and implementation of substance use policy in a policing environment.*
- *Suggest strategies to facilitate policy implementation.*
- *Assist in identifying the roles and responsibilities within policing organisations for dealing with substance use in the workplace.*
- *Provide effective strategies for good practice in human resource management.*

Our office will continue to actively monitor the Police Service's response to drug and alcohol issues.

## CONCILIATIONS

### The year in review

During the year, 1,393 written complaints were the subject of an attempted conciliation. Police resolved 997 to the satisfaction of the complainant. A positive trend has been the increase in the number of conciliations. The number of complaints conciliated as a percentage of complaints determined has increased from 25% in 1996-97 to 28%. We have expressed our concern in recent reports about the increasing rate of failed conciliations. This year the failure rate increased from 27% in 1996-97 to 28%.

Each year we survey members of the public who have participated in conciliations. The results of our conciliation surveys demonstrate that the satisfaction rate for conciliation remains high. The survey results also indicate:

- 313 respondents (75%) were satisfied with the way their complaint was handled, a drop of 5% from 1996-97;
- 339 respondents (82%) were satisfied with the manner and approach of the police officer who handled the conciliation, a drop of 2% on 1996-97;
- 185 respondents (45%) thought that the Police Service might improve as a result of the conciliation process; and
- 242 respondents (58%) felt that an apology played a role in the resolution of their complaint.

The following two cases described below are typical of the large number of successful conciliations conducted this year by police. The conciliation process provides the opportunity to resolve complaints quickly and efficiently. It can also give police commanders an insight into those they supervise.

### Giving support to victims of crime

A victim of crime complained that police had failed to take any action into a theft of some jewellery from his home. The man reported the theft to police and several weeks later had not heard anything further. The conciliation officer acknowledged the



lack of police action and counselled the involved officer for failing to follow up on the theft and to provide support and information to the victim. The conciliation officer took steps to ensure that action was taken in relation to the theft and reminded all police in the command about the need to follow up on reports and to provide support to victims of crime.

### Assaults on teachers

A school teacher contacted police after being assaulted in the playground by a student at her school. The teacher was very upset by the assault and telephoned police to request action against the student. The police officer told the teacher that making a complaint would mean too much paperwork and would take up a great deal of time and resources due to court appearances. The teacher felt like she had been told to forget about it. The teacher made a complaint about police and was invited to a conciliation. The conciliation officer was unable to identify the officer who had spoken to the teacher. The conciliation officer arranged for a senior officer to investigate the assault. A memo was also sent to all officers in the command about the need for police to respond to complaints of assault and the particular need to provide adequate support to staff at the school.

Unfortunately, there are still complaints open to informal resolution where the Police Service fails to take the opportunity to deal with the complaint quickly and appropriately.

### Mistaken identity

A motorist was pulled over by police and his details checked over the police radio. The check identified outstanding warrants in the name of the motorist which police brought to his attention. The man disputed the warrants and explained that, although he did have the same name, he was not the person named in the warrants. He asked police to request a check of the police computer; claiming that this would resolve the identity problem. Instead, the police arrested him.

When the police computer was eventually checked back at the station, the police realised they had the wrong man. A complaint was then

made about the incident. Rather than quickly resolving the complaint by expressing regret over the incident, the Police Service sought to defend the actions of its officers and attack the credibility of certain claims made by the complainant.

On several occasions we sought to have the Service understand that they could indicate regret over the incident without having to unfairly criticise the officers involved. Unfortunately, this point was not understood even by senior officers dealing with the case. It was only after the Ombudsman formally reported this case to the commissioner and the Minister that the Police Service acknowledged the legitimacy of concerns raised by the complainant.

## Cases

### ONE STATION'S POLICY STRIPPED BARE

We received a complaint from a group of protesters arrested and charged by police with 'remain on enclosed lands' while protesting against a major urban development. They expressed concern to us regarding their treatment by police while in custody, which included being strip searched.

After being arrested and charged, each person was granted conditional bail by police. Those who chose not to accept the bail conditions imposed were strip searched by police before being placed in the cells.

We requested certain information about the charging and custody of these people in order to determine the most appropriate course of action. Analysis of the information provided by the Service sparked concerns regarding the station's policy surrounding strip searching people who remained in custody after being charged. The policy provided for the compulsory strip searching of prisoners in police custody. This conflicted with Police Service policy.

Strip searching is an inherently invasive procedure. Service policy in this area seeks to strike a balance between the rights of the individual, the Service's duty of care towards

people in custody, the occupational health and safety needs of police officers and the possibility of evidence relating to the offence the person is arrested for being hidden on the person. A policy of mandatory strip searching does not allow for the consideration of these factors.

We conducted a spot telephone survey of other local area commands in the region in question and discovered problem was limited to the one station.

We raised our concerns directly with the local commander. During negotiations it was agreed the station's policy was in conflict with Service policy. Discussions with the commander led to the immediate removal of the policy.

Training measures were put in place for that command and the local commander undertook to meet with the complainants to discuss the remedial action taken by the Service directly with them. We are still awaiting advice on the outcome of that meeting.

## INVESTIGATING A SUSPICIOUS DEATH

A family complained that police inquiries into the death of their father had not been thorough and professional. The family was concerned that the police had not initially treated the death as suspicious. An autopsy revealed the man had died as a result of a blow to the head. Further police investigation into the matter resulted in the arrest and charging of a person for the man's murder.

The Police Service concluded that the police inquiries into the man's death had not been deficient. However, we conducted our own investigation, involving a hearing at which the family and a number of police officers gave evidence. We found there had been a number of problems including:

- a failure by police to make appropriate inquiries of the man's family and other relevant witnesses;
- a failure by a detective to observe or note significant evidence at the man's home which might have indicated that his death was suspicious;

- a failure by a constable to record crucial information given by a witness about seeing the dead man with another person shortly before the man's death — and a further failure to pass this information on to police investigating the man's murder; and
- a failure by the various officers to coordinate their inquiries effectively.

The family were also inappropriately permitted early access to their father's home — a step which could have contaminated evidence at the crime scene.

On our recommendation, the Police Service provided an apology to the complainants for the lack of professionalism in the police inquiries into their father's death and the Service's own failure to acknowledge the problem.

We also recommended that the Police Service conduct a comprehensive review of the nature and coordination of police inquiries into deaths, particularly those in possibly suspicious circumstances. The Crime Agencies section of the Service is undertaking that review and we look forward to advice on the outcome.

## POLICE RORT THREDBO DISASTER

During the Thredbo disaster rescue operation, all emergency personnel working at the site were granted free access to the Kosciuszko National Park and free use of ski equipment and ski-lifts during down time as a gesture of goodwill.

In the course of the operation, two off-duty police officers entered the Kosciuszko National Park in their private motor vehicle. The officers allegedly produced their police identification and informed park staff that they were there to relieve police working at the disaster site. The officers were then issued with a five day exemption pass for their vehicle, entitling them to access the national park without paying the usual \$60 entrance fee.

After entering the park the officers again allegedly produced their police identification to obtain ski-lift passes and ski equipment free of charge.

The officers' arrival was subsequently mentioned by park personnel to other police working at the disaster site. Inquiries revealed that these two officers were not present to assist in the rescue operation. Rather, they had been invited by a colleague involved in the rescue operation to make use of the free skiing that was available.

Following its investigation, the Police Service summonsed the officers for 'obtain benefit by wilfully false representation'. This charge related to the officers gaining free entry to the park.

With regard to the officers obtaining free ski-lift passes and ski equipment, the police investigator asserted that *'the evidence is not to the standard of prima facie required for criminal proceedings, nor do I believe that this is a matter of such a serious nature that criminal proceedings is appropriate'*.

Our office disagreed with the recommendation. We requested that advice be sought from the Director of Public Prosecutions (DPP). As a result of the DPP's advice, the two officers were charged with a second count of 'obtain benefit by wilfully false representation'. This second charge specifically related to the officers obtaining free ski-lift passes and ski equipment once on the disaster site.

The DPP further advised that there was insufficient evidence to lay criminal charges against the officer who had invited his two colleagues onto the site. He resigned, ruling out the possibility of departmental action against him.

## TENDERING FOR POLICE TOWS

In 1995, the Police Service adopted a policy of replacing the existing towing roster with a system where tow operators would tender for a contract to do all police organised tows in an area. This move, supported by the Royal Commission, was aimed at minimising the opportunity for corrupt payments by tow truck operators to police.

Our office began to receive a number of complaints about the tow tenders. These included complaints about irregularities in documentation and also more serious complaints where contracts

had been awarded to tow truck operators who did not meet the tender criteria. Confidence in the integrity of the tendering process was being undermined. Our office decided to investigate the adequacy of the Police Service's overall system for tow tendering.

The Police Service has now adopted a policy of centralising tow tendering under the supervision of the Police Service's Purchasing and Supply Branch. The Branch began supervising tow tenders in March 1998. Since then, no complaints have been received about tow tenders.

## POLICE, COUNCILS AND PARKING ENFORCEMENT

In 1992, the *Traffic Act* was amended to enable local councils to have a role in the enforcement of parking regulations. Any council could seek to enter into an agreement with the Police Service to enforce parking restrictions within its local area. To date, 46 councils have negotiated agreements which specify the areas where, and the times when, councils can enforce parking restrictions.

In March 1998, there were media reports that the Police Service was contemplating the termination of its agreements with the councils. Complaints were made to our office about the ramifications of any such decision. We conducted inquiries into possible termination of the agreements in question.

The Commissioner of Police advised us:

*Existing agreements with local government authorities will not be terminated. The Service has, however, established an internal working party of senior officers to carry out a review of on-street parking issues. Pending the outcome of that review, the negotiation and signing of any new agreements has been suspended.*

The working party has made certain recommendations which are being considered by the Service.

It also emerged that the Auditor-General's office had commenced an audit of the enforcement of parking regulations. We held discussions with

representatives of the Audit Office about the nature and scope of the audit.

In view of these developments, we decided not to pursue the matter. Nevertheless, we raised with the Police Service whether the current legislative regime governing the system of parking enforcement by both the Police Service and councils was appropriate in view of the administrative burdens imposed by the need to negotiate agreements. We suggested that consideration might be given to legislation conferring concurrent jurisdiction on both the Police Service and councils in relation to parking enforcement, with appropriate mechanisms for co-ordination. We also suggested this idea could be considered by both the Police Service and Audit Office in the course of their current reviews.

## POLICE COMPLAINTS PROFILE

Complaints about police to the Ombudsman are managed by creating a file for each letter of complaint. Each complaint file may contain a number of allegations about a single incident. For example, a person arrested following a brawl at a hotel may complain of unreasonable arrest, assault and failure to return property. One incident, one complaint, many allegations.

In 4,978 cases determined last year, 8,741 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.*

Table 4: Criminal conduct

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	OTHER	TOTAL
Conspiracy or cover up	64	6	39	1	110
Theft	112	17	83	0	212
Consorting	55	5	36	1	97
Bribery or extortion	73	5	46	0	124
Dangerous or culpable driving	3	0	0	0	3
Drug offences	150	2	44	0	196
Fraud	23	9	19	0	51
Perjury	26	6	7	0	39
Sexual assault	34	6	25	0	65
Telephone tapping	9	0	2	0	11
Murder or manslaughter	18	0	1	0	19
Other	90	11	37	0	138
<b>Total</b>	<b>657</b>	<b>67</b>	<b>339</b>	<b>2</b>	<b>1,065</b>

Table 5: Assault

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Injury	308	34	149	0	491
No injury	122	22	84	0	228
<b>Total</b>	<b>430</b>	<b>56</b>	<b>233</b>	<b>0</b>	<b>719</b>

## POLICE

Table 6: Investigations and prosecutions

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Forced confession	13	1	5	1	20
Fabrication	76	3	22	0	101
Unjust prosecution	59	1	5	13	78
Suppression of evidence	9	2	2	0	13
Failure to properly review prosecution	2	2	1	0	5
Faulty investigation or prosecution	353	74	85	291	803
Disputes traffic infringement notice	166	0	1	4	171
Failure to prosecute	183	7	32	170	392
<b>Total</b>	<b>861</b>	<b>90</b>	<b>153</b>	<b>479</b>	<b>1,583</b>

Table 7: Arrest/detention/warrant

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Unjustified search or entry	54	5	7	23	89
Unnecessary use of force, damage or resources	92	21	25	14	152
Faulty search warrant procedure	23	4	8	9	44
Strip search	15	1	5	2	23
Improper detention of intoxicated person	4	2	2	1	9
Unreasonable use of arrest or detention powers	118	15	34	41	208
<b>Total</b>	<b>306</b>	<b>48</b>	<b>81</b>	<b>90</b>	<b>525</b>

Table 8: Inadvertent wrong treatment

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Administrative matter arising from investigation	2	0	0	0	2
Property damage	14	0	8	2	24
<b>Total</b>	<b>16</b>	<b>0</b>	<b>18</b>	<b>2</b>	<b>26</b>

Table 9: All allegations

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
<b>Total</b>	<b>4,508</b>	<b>911</b>	<b>1,574</b>	<b>1,748</b>	<b>8,741</b>

Table 10: Management issues

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Failure to withdraw warrant on payment	3	0	1	2	6
Improper issue of summons, warrant or enforcement order	21	1	5	18	45
Delay in answering correspondence	10	1	0	4	15
Inappropriate permit/licence action	4	2	0	0	6
Condition of cells or premises	3	0	0	2	5
Other	57	17	6	20	100
<b>Total</b>	<b>98</b>	<b>21</b>	<b>12</b>	<b>46</b>	<b>177</b>

Table 11: Breach of police rules or procedure

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Sexual harassment	18	11	4	7	40
Traffic or parking offences	93	7	24	35	159
Failure to provide or delay legal rights	54	6	37	22	119
Failure to return property	41	5	6	22	74
Threats or harassment	349	16	90	162	617
Unreasonable treatment	326	15	93	363	797
Drinking on duty	16	2	18	1	37
Faulty policing	20	0	1	13	34
Failure to take action	196	25	61	218	500
Breach of police rules and regulations	336	273	123	14	746
Failure to identify or wear number	16	4	5	13	38
Misuse of office	47	11	27	6	91
Other	62	24	29	7	122
<b>Total</b>	<b>1,574</b>	<b>399</b>	<b>518</b>	<b>883</b>	<b>3,374</b>

Table 12: Information

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Inappropriate disclosure of confidential information	157	24	57	18	256
Failure to provide information or notify	75	50	29	72	226
Inappropriate access to confidential information	133	71	55	1	260
Providing false information	72	67	36	19	194
<b>Total</b>	<b>437</b>	<b>212</b>	<b>177</b>	<b>110</b>	<b>936</b>

Thank you so much for your recent correspondence. Thank you also for including the leaflets containing relevant information and the correct procedure to continue in the right direction with my complaint.

*A complainant*

I would like very much to thank you for all your help with my complaint. It is not something I ever thought I would have to do. If you need more information, I would be happy to help.

*A complainant*



Anne Radford,  
Manager, General Team

# p

## public authorities

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>63</b>
<b>Issues</b>	<b>66</b>
Dealing with lawyers and legal advice .....	66
<b>Cases</b>	<b>69</b>
Consumer rights .....	69
Building insurance .....	69
Consumer friendly? .....	70
Education .....	71
School suspensions and exclusions .....	71
Complaint resolution policy .....	72
Case management unit .....	72
Whose complaint? .....	72
In strife at school .....	73
Environment .....	73
Landcom sale of land .....	73
Persistence pays off .....	74
Dam buster .....	75
Outcasts of Thurgoona .....	76
Finance .....	76
Land tax part 1: Hidden value, hidden cost .....	76
Land tax part 2: Disclosing the basis of valuations .....	78
Land tax part 3: Delays in determining objections .....	78
Health .....	79
Conflict of interest .....	79
Accuracy, honesty and accountability .....	81
Housing .....	82
Servicing clients with special needs .....	82
All in a name? .....	83
My house is falling to pieces .....	83
Who owes? .....	84
Transport .....	84
Fretting for his guitar .....	84
Train travel turn-off .....	84
Fare's fair .....	85
Dreaming of a quiet Christmas .....	85
Utilities .....	86
A watery response? .....	86
Watt's the problem? .....	86
Less than Frank Zapper .....	87
Current account problems .....	87

## Overview

This section covers complaints about general government departments and statutory authorities other than police, correctional centres, juvenile justice centres, local councils and matters such as protected disclosures, witness protection and freedom of information which are covered in other sections.

This year we received 1,095 written complaints and 3,589 informal oral complaints about public authorities other than those listed above. We also received 90 requests to review our initial determinations. A further 467 written complaints, nine review requests and 5,882 oral complaints were received about authorities, organisations and individuals not within our jurisdiction. Where a complaint falls outside the Ombudsman's jurisdiction we provide appropriate referral information whenever possible.

The number of written complaints about public authorities within our jurisdiction rose 20% this year, on top of a rise of 11% last year. These rises followed a slow decline in such complaint numbers over the previous seven years. Encouragingly, the increase in review requests, at 10%, was only half the increase in written, within jurisdiction complaints. Written complaints about non-jurisdictional matters fell by 7%.

The number of oral complaints about public authorities within jurisdiction rose by 24% this year and oral complaints about bodies outside our jurisdiction rose by 35%.

During 1997-98, 1,035 written complaints and 83 reviews about general authorities were finalised. A further 467 non-jurisdictional matters, including eight reviews, were also dealt with.

Informal investigations, often extensive in scope, were conducted on 52% of the complaints received that were within our jurisdiction. Six formal investigations were finalised and, of these, four resulted in formal reports and two were discontinued.



Table 1: Nature of written and oral complaints about public authorities  
1997-98

COMPLAINTS	WRITTEN COMPLAINTS	ORAL
<b>Approvals</b> Grants, licences, permits, registrations, applications	90	312
<b>Charges</b> Level of charges, fees, penalties/refunds	148	411
<b>Contractual issues</b> Tenders, contracts, maintenance	53	313
<b>Information</b> Improper disclosure, refusal to alter/disclose, wrong advice	65	223
<b>Management</b> Supervision	26	92
<b>Misconduct</b> Corruption, conflict of interest	19	46
<b>Natural justice</b> Denial, procedural fairness/failure to give reasons, other procedural objections	24	139
<b>Policy/law</b> Objection to policy/law, faulty procedures	106	266
<b>Regulation</b> Discriminatory enforcement of regulations/law, failure to enforce/investigate, unreasonable/unjustified enforcement	89	44
<b>Service</b> Delayed action, failure to act, no replies, poor service, rudeness, discrimination	296	883
<b>Wrong decisions</b> Prejudice, malice or bias, based on wrong facts, other reasons	42	439
<b>Other</b>	49	321
<b>Issue outside jurisdiction</b>	88	100
<b>Total</b>	<b>1,095</b>	<b>3,589</b>

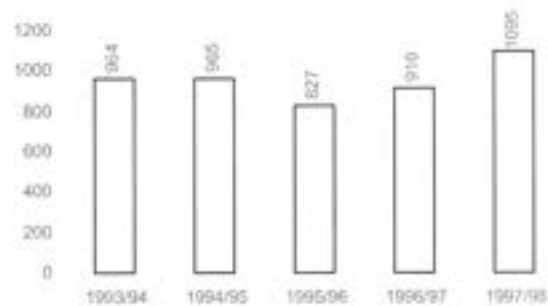
The area of greatest complaint continues to be about service delivery with an unchanged 27% of complaints about such things as delayed action or failure to act, failing to respond to correspondence or telephone calls, rudeness and discrimination. Complaints about charges more than doubled to 14% — the increase almost entirely due to a flood of complaints about increases in land tax flowing from a new round of valuations and removal of the tax exemption relating to a family home where the land is valued at more than \$1 million (see 'Finance' in this section).

There has been a general increase in inquiries and complaints from and on behalf of young people, in particular about departments that have frequent contact with young people.

Many of these inquiries and complaints arise from the lack of information available to young people and their advocates about departmental policies and processes. We believe departments and authorities must play a more active role in making information about their operations available to young people, especially in formats that are accessible. Problems are often exacerbated when complaint and appeal mechanisms are not fully understood by young people and their parents. A related issue in most complaints to this office from or on behalf of young people is a belief that young complainants are not listened to.

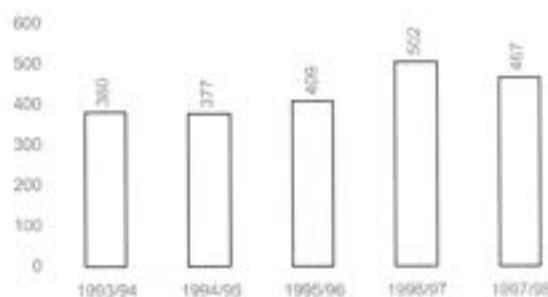
**Figure 1: Written complaints received about public authorities**

A five year comparison



**Figure 2: Written complaints received outside jurisdiction**

A five year comparison



## Issues

### DEALING WITH LAWYERS AND LEGAL ADVICE

#### Jurisdiction and the voluntary production of legal advice

There are a number of legal restrictions that limit the ability of the Ombudsman to investigate matters where lawyers are involved. The Ombudsman is not able to investigate a complaint about private or public lawyers when acting as a legal adviser to or legal representative of a public authority. Nor is the Ombudsman able to investigate conduct that relates to the carrying on of legal proceedings. Under the *Ombudsman Act*, public officials are able to resist demands for the production of documents on the basis of legal privilege. However, under the *Freedom of Information Act*, all documents, whether subject to a claim of legal privilege or not, have to be produced to this office.

Legal advice is often provided to this office by agencies wishing to demonstrate that they have acted in accordance with advice. When legal advice is disclosed to us it can be useful in assisting in the speedy resolution of complaints. We are generally asked to respect the confidentiality attached to such legal advice and may only need to disclose parts of it if it is crucial to giving reasons for a determination.

In many cases, the legal advice given by lawyers to public authorities can be useful in assisting this office understand issues associated with cases we investigate. We therefore encourage public authorities to disclose relevant advice to us even though they may be able to claim privilege.

#### An unhealthy addiction to secrecy

We have noticed a number of trends where legal advice and legal devices are not necessarily being used in the wider public interest. An increasingly common problem that we are coming across is the unhealthy addiction some lawyers and their clients have to secrecy, often for its own sake. Commercial-in-confidence clauses are being inserted into contracts as standard clauses, sometimes without a great deal of thought. A classic case is the Central Sydney Area Health Service's contract with a private company (see 'Commercial-in-confidence agreements and Prince Alfred Private Hospital' in **Freedom of information** in this report). The confidentiality clause in this case was an all embracing secrecy clause. It did not appear that any thought went into deciding why secrecy was required and what needed to be protected. Such blanket exclusions are unacceptable. They are the product of lazy minds and demonstrate a desire to avoid public scrutiny and a complete disregard for the public interest.

Public sector agencies should carefully assess whether keeping things secret, once contracts have been finalised, is in the public interest. Sometimes there are legitimate reasons for keeping sensitive commercial information confidential and the FOI legislation throughout Australia explicitly recognises this. As with legal advice, a reasonable and balanced approach is required. It is not always necessary or appropriate to not disclose legal

Table 2: Complaints about public authorities  
1997-98

<b>Received</b>	
Written complaints	1,095
Oral complaints	3,589
Reviews	90
<b>Total</b>	<b>4,774</b>
<b>Bodies outside jurisdiction</b>	
Written	467
Oral	5,882
<b>Total</b>	<b>6,349</b>
<b>Determined written complaints</b>	
Formal investigation completed	4
Formal investigation discontinued	2
Preliminary or informal investigation completed	477
Assessment only	432
Non jurisdiction issues	120
<b>Total</b>	<b>1,035</b>
<b>Current investigations (at 30 June)</b>	
Under preliminary or informal investigation	166
Under formal investigation	19

advice just because privilege may be claimed. There needs to be sound reasons for this and, where there is more to be gained by disclosure — for instance, to avoid the escalation of a dispute — that should be done.

### Compelled openness

This office operates under the presumption that the public has a right to know what is being done by government. The former Chief Justice of Australia, Sir Anthony Mason, said in a recent High Court judgment:

*The courts have consistently viewed government secrets differently from personal and commercial secrets...the judiciary must view the disclosure of government information 'through different spectacles'. This involves a reversal of the onus of proof: the government must prove that the public interest demands non-disclosure.'*

The Chief Justice also referred with approval to the view of Professor Paul Finn that in the public sector *'the need is for compelled openness, not for burgeoning secrecy'*.

There are cases where information is genuinely commercial-in-confidence and constitutes important commercial property. Where something is clearly in this category then the exemption may be appropriate.

### Openness: A linchpin of accountable government

The importance of maintaining access to government information cannot be over-estimated. It is a linchpin in keeping government accountable. Unless we know what government is up to, we are not in a position to challenge it or, where appropriate, criticise it and where necessary, correct it.

The Royal Commission into the commercial activities of the former Western Australian Government noted that *'effective accountability was a casualty of [the Government's] entrepreneurial zeal'*.<sup>2</sup> The commission noted:

*In a system of government such as our own, power is given to elected and appointed official*

*alike to be exercised for the benefit of the public. Of course, in any particular case, the question whether a proposal serves the public interest is the very stuff of politics, requiring open and vigorous debate. This makes for a healthy society. But when government seeks to "live by concealment" — it can be anticipated that instances will occur where official power and position are both misused and abused. But what our inquiry has revealed is how lamentably lacking are the safeguards against misuse and abuse to which the public should be entitled.'*<sup>3</sup>

This inquiry illustrated the conundrum — if the public sector accountability mechanisms are diminished or eliminated, what takes their place? Experience has shown that a climate of secrecy is conducive to corruption, incompetence, inefficiency and maladministration.

### Some problems with lawyers

Greville Janner, an English lawyer and former MP once said:

*If the facts are on your side, hammer on the facts...if the law is on your side, hammer on the law...if neither is on your side, hammer on the table...*

Unfortunately, this aptly describes the approach that some public authorities take with the use of legal advice or proceedings in dealing with disputes with their customers. It is also sometimes the approach that lawyers acting for authorities and complainants sometimes take to this office.

The recent Federal Court decision involving the law firm Flower and Hart is a timely reminder about the professional responsibilities of all lawyers. In our work, we have come across cases where lawyers acting for the Government have sought to use the inevitable delays in the legal system and the Government's allegedly deep pockets to exhaust citizens financially and to demoralise them mentally. All with the purpose of extracting some advantage, or possibly to settle a difficult or an unwinnable case. Justice Goldberg said in the Flower and Hart case that if a client asks a lawyer to do something that is improper, it is the duty of

the lawyer to say no, and if need be withdraw from acting.

Another type of dubious behaviour is to automatically deny liability. If the citizen goes through the cost and trouble of proceeding, there is then the inevitable settlement on the steps of the court house.

These tactics run counter to the duty of public officials and public authorities to act in the public interest. Citizens have the right and a legitimate expectation that their government will behave ethically and with accountability. If public authorities make mistakes or errors and they are aware of them, they must move swiftly to resolve the problem. The denial or avoidance of responsibility for mistakes or errors is the antithesis of accountable government.

The misuse of legal advice or opinions is an issue that sometimes arises when agencies are in conflict or dispute with citizens. We have seen cases where legal advice has been used to try and blind ordinary members of the public with 'science'. We have also seen cases where legal precedents have been referred to but either not named or only selectively quoted from. If public authorities are going to provide their legal advice or opinions to members of the public, a practice we encourage, then it defeats the purpose if the advice is incomprehensible or consists only of edited highlights which are misleading.

Another problem we have observed is the apparent inability on the part of some public officials to correctly identify conflicts of interest. During our formal investigations we have seen lawyers appear for or otherwise represent both the agency we are investigating as well as individual public servants involved. The interests of these two parties are not always the same. Very often their interests will be in conflict.

One difficult issue that we have also come across is the lawyer as the 'fixer'. Employed government lawyers are often placed in the invidious position of being instructed to solve

problems that are not of their own making. They are simply instructed to get the agency or the boss out of a hole. As members of a profession with certain privileges and responsibilities, lawyers are obliged to provide objective professional advice, no matter how unwelcome it may appear to be. And, on the other side of the ledger, public servants who give these sorts of instructions must really look at their own conduct and ask themselves whether they are behaving properly.

Another manifestation of lawyers as 'fixers' is the situation where public officials who have been vested with discretionary power seek legal advice about how that power should be exercised. This can be a trap. The lawyer's role is to advise on technical legal issues, that is, what can or cannot be done. Their role is not to actually make the decision as the delegate for that other official or advise on the merits of the decision. If lawyers are being used in effect to give policy or strategic advice, it would be even harder to justify claims of privilege.

### Conclusion

All public servants are obliged to act ethically. Part of this duty is the obligation to make a positive contribution to accountability standards. Lawyers have a key role in enhancing these standards. Lawyers, and those instructing them, must make a more concerted effort to adhere to established accountability standards and at the same time avoid the temptation to use the law and legal advice as a means of getting around them. The public quite rightly expects its public servants, whether they be lawyers or otherwise, to act in the public interest. We shall be closely monitoring this situation.

### Notes

1. *Esso Australia Resources Limited v Plowman* (1995) 69 ALJR 404, per Mason CJ at p.413.
2. Quoted in Freiberg, A., (1997) 'Commercial confidentiality, criminal justice and the public interest', Australian and New Zealand Society of Criminology 12th annual conference, Brisbane, p.147.
3. *Ibid.*

## Cases

### CONSUMER RIGHTS

#### Building insurance

Despite changes to the administration of home building insurance, it is an area that continues to generate complaints to us. As we reported last year, the old system of home building insurance has been replaced by a privatised version. The Department of Fair Trading, however, will have a role in this area for some years to come as it looks after insurance taken out before the changeover date of 1 May 1997. Under the schemes previously operated by the department, home owners are covered for defects for a number of years and so complaints and claims by those people remain the department's responsibility.

Generally we are able to get information quickly from departmental officers about the complaints we receive. Often cases can be finalised simply by explaining the department's decisions, or providing further advice about how people can seek some other form of appeal or review. Occasionally, the complaints raise more complex issues.

The system for dealing with home building complaints and claims is relatively straightforward. It involves notification of the complaint, allows for the possibility of informal rectification or a mediated agreement, and if all else fails, an insurance claim.

However, some of the complaints we have received this year have arisen because the department has gone outside the usual process. At times this is unavoidable, such as in the many cases the department has dealt with over recent years relating to defective swimming pools. These necessitated the use of different options to resolve the individual complaints such as full or partial compensation and/or rectification. Unfortunately abandonment of the usual process can often result in a complaint.

A number of complaints involved the decision of the department to exclude the cost of technical reports or expert advice when claims are met. This

is a common problem and many home owners believe that all such reports should be allowed by the department in the payment of the claim. In fact, the insurance scheme does not specifically allow for the inclusion of such reports or expert assistance. These reports or assistance are sometimes necessary to enable the department to make a judgement on a claim and in those cases the payment of such costs may be included. Home owners should, however, be cautious in seeking expert reports and advice and should not do so without written authorisation of the department's insurance officers.

One complaint involved a matter where the woman's claim totalled almost the full amount available under the scheme (\$100,000) for the actual rectification works. She had sought expert advice and technical reports over and above that required by the department, to a total value of approximately \$30,000. The department met the portion of the cost for advice and reports which it had sought, but the woman was left significantly out of pocket because of the extra reports. The department also considered the cost of the reports she had provided to be well above the going market rate.

Finally, a problem which also arises relates to the legalities attached to home building insurance. Most of the interactions between the department and home owners and builders are based on legal contracts. Home owners who have incomplete or defective work begin the process of complaint notification and claim. At the same time some people take actions they feel are necessary to protect what is often their most valuable possession — their home. They may do things such as not meet final payments to contractors. Such actions are often taken without consulting their legal advisers and sometimes can have ongoing consequences in terms of their claims with the department.

One man wrote to us about the department's decision to withhold an amount of money from his claim because he had not made full and final payment to the contractor. In fact, the department was legally justified in so doing. The complainant's inquiries to the department had resulted in a number of letters quoting various clauses of the

insurance scheme as reasons for the department's decision. We asked the department to explain their reasons, and their response to us simply confused the matter further. Research by our staff eventually uncovered a plain English explanation for the department's actions which we passed on to the home owner. We also gave the man advice about other agencies that could assist him. It is unfortunate that the department does not recognise the difficulty some home owners may have in understanding the department's actions and decisions. The provision of easily understood information can go a long way to avoiding lengthy inquiries by us in addition to meeting the requirements of administrative good practice.

### **Consumer friendly?**

A Sydney woman complained to us about the service she received from the Department of Fair Trading. She had lodged a claim with the department about sub-standard landscaping work carried out at her home.

The woman submitted her claim to the department's office in Parramatta but was subsequently told that this was the wrong office and that she should resubmit her complaint to the St Leonards office. Her complaint was assigned to a case manager in the Disputes Resolution Branch who offered both parties mediation. The contractor declined this offer. The complainant was informed of the other options available to pursue her claim — to have her claim dealt with by the Building Disputes Tribunal or to lodge a claim under the department's statutory insurance scheme. She chose the latter. Upon assessment, her insurance claim was rejected as it was determined the type of work in her claim was outside the terms of the contractor's licence and therefore outside the jurisdiction of the scheme.

When the complainant wrote to us she was frustrated. She did not know what else she could do to pursue her claim and was worried she had already spent a considerable length of time making what she felt was no progress at all. We made inquiries of the department and, based on the information we received, were able to explain to her how her claim had been dealt with to date and

details about options still available to pursue her claim.

The woman's complaint raised a number of concerns about the department's handling of complaints about contractors. We wrote to the department's director-general about these concerns. We asked why the complainant had been required to resubmit her claim when she sent it to the wrong office, why it had been suggested the insurance scheme was an option when in fact the claim was found to be for a type of work outside the jurisdiction of the scheme and why the case manager did not contact the woman after the insurance claim had been rejected.

The director-general acknowledged the woman's original claim should not have been sent back to her. It should have been referred internally to the correct office. He told us the other matters were connected to the relative independence of the department's Insurance Branch. Only the Insurance Branch can determine if a claim is within its jurisdiction; if a claim was ruled out at an early stage by another section this could disadvantage the complainant. The Insurance Branch does not normally return a file to the Disputes Resolution Branch after a claim has been processed so the case manager in that branch would have been unaware of the decision, although the complainant could always call the case manager. The director-general believed this segmentation of roles benefits the department and the public, providing expertise at various points of the complaint handling process.

While acknowledging these potential benefits, we felt this complaint highlighted the difficulties which can be experienced when dealing with a number of different areas of the Department of Fair Trading. We suggested the issues raised be considered by the department when evaluating the transparency of the department's processes from a consumer's point of view.

## EDUCATION

### School suspensions and exclusions

The decision by a school to suspend or exclude a student is a very serious one. This is particularly so in the case of a long suspension — up to 20 days — or an exclusion where the student has to move to a different school in the public education system.

We have received a number of complaints about the procedures used to make such decisions. Concerns raised include inadequate opportunities given to students to explain their side of the story, delays in arranging to meet with parents to resolve suspensions, inadequate information being given about suspensions and failures to explain how to appeal against a decision to suspend or exclude.

In one case, no written advice was given about a student's suspension, the parent only being advised orally when he was called to the school to take his son home. He told us he did not know if his son had been given a long or a short suspension.

We acknowledge that parents may become distressed, and sometimes angry, when informed of such serious disciplinary action being taken and that these can be difficult emotions to deal with. It is unfortunate, however, to see insensitive and inappropriate handling of such situations exacerbate the conflict and make resolution more difficult.

We were concerned to receive a complaint where a student had been given a short suspension but, seemingly because of a failure by the school and district office to successfully meet and discuss the situation with the student and his parents, it had become a long suspension. Following discussion between this office and the district superintendent a meeting was arranged between the student's parents, a member of school staff and staff from the district office. The suspension was resolved at this meeting.

The Department of Education and Training acknowledged that various issues relating to the suspension had not been addressed as well as

could be expected and explained the action taken to address the problems. The district superintendent counselled the principal on the need to resolve such issues quickly and to act in accordance with the department's policy guidelines. On the basis that the department had acknowledged the problem and had taken appropriate action to prevent it happening again, we decided no further action was necessary.

In the long term, failure to deal adequately with complaints from parents is counter-productive for the school and department. We have seen a number of cases where, after a suspension has been resolved and the student has returned to school, parents have a whole series of complaints about the way in which the matter was handled rather than the actual decision to suspend. These complaints then have to be addressed, often by the district superintendent, assistant director-general or director-general, and may ultimately result in inquiries to the department from the Ombudsman.

The Department of Education and Training is currently redrafting its *Policy on the Suspension and Expulsion of Students from School*. We have provided comments on the draft policy to the department which we believe would improve the transparency of the process for students and parents and clarify a number of procedural issues, particularly about appeals.

We are also finalising an investigation in which these issues have been central. The draft report on the investigation will include recommendations for guidelines for the conduct of interviews and inquiries with students into serious disciplinary matters, guidance for departmental staff about the giving of reasons for decisions, specific mechanisms to notify parents about how to appeal against a decision to suspend or exclude a student and improvements in the way parents are made aware of departmental policies.

The Department has already indicated it will adopt some of the suggestions we have made and incorporate them into its new policies.



### Complaint resolution policy

The mother of a girl attending a primary school in Sydney's inner-west complained to us about the way in which the school principal had handled her concerns about matters affecting her daughter. A large part of the mother's concerns related to the conduct of teachers at the school, and she felt the action taken in response to her complaints by the principal and the Department of Education and Training had been inadequate. In addition, the mother told us she had not been properly advised by the principal or the senior departmental officers she had spoken to about the availability of access to the department's resolution of complaints policy.

Issues raised by the mother relating to individual teachers were not taken up by us because they are essentially matters relating to the employment of those people and as such are excluded from our jurisdiction under the *Ombudsman Act*. However, after further contact with the mother we decided to make inquiries about the information given to her on the department's policy to resolve complaints.

One of our investigation officers met with the district superintendent responsible for the daughter's school area and the complaint resolution policy was discussed in terms of its content and implementation. Our examination of the policy highlighted some areas we thought could be changed to enhance its effectiveness. Specifically, we suggested to the Director-General of Education that the policy should contain a direction for its own implementation, such as a requirement that the availability of the policy be made known in the school community at least once a year. We also suggested that the policy should contain specific directions to principals (and other departmental staff) about keeping adequate records when complaints are received.

The director-general wrote to us about our suggestions and noted that the resolution of complaints policy was being reviewed by an independent authority. Both of the matters we had raised had been considered as part of the review and were contained in the draft recommendations. The director-general invited us to examine the reviewed policy statement before its implementation, and we were happy to accept.

### Case management unit

This year we received a significant number of complaints about alleged inadequacies in the Department of Education and Training's handling of allegations of improper conduct (including conduct of a sexual nature) by staff and improper relationships between staff and students. The consistency of the issues raised in these complaints impelled us to commence scrutiny of the practices and procedures of the department's Case Management Unit so as to assess the department's ability to respond to, and investigate, allegations of improper conduct by staff and improper relationships between staff and students. This investigation is still continuing.

### Whose complaint?

A post graduate student wrote alleging the University of Wollongong had failed to deal fairly with his complaint against a member of its academic staff. He complained that his past supervisor had improperly written to a professional journal requesting it not publish material the student intended to submit. The student only learned of this following the rejection of his article. The letter was part of a wider dispute between them. The student believed the academic's actions may have seriously affected his reputation and future employment prospects.

The complainant raised his concerns with various members of the university staff. While he received some assistance within his faculty to redress the possible damage to him, he believed no real action was being taken by the university against the staff member and that his wider complaint was being ignored. He therefore came to us.

To our initial inquiry, the university claimed it had acted appropriately. Another staff member had reported the academic's conduct before the student's written complaint had been received. The university had dealt with it as a disciplinary matter, and conducted its inquiries in accordance with the relevant academic industrial award which meant our complainant was largely excluded from the process. The student, who had raised a number of issues of concern about the academic's conduct towards himself, was viewed as a witness to the

existing action rather than as a separate complainant.

No one from the university administration discussed the student's complaint with him or outlined the possible actions and outcomes. He was not informed of progress, or given an opportunity to provide additional material or comment upon the matter. While he was given oral advice about the outcome of the disciplinary process, no written response was provided even though he had specifically requested this. There was no central coordination of action in response to his complaint. We considered this conduct inadequate, particularly in light of the potential damage to the student's reputation and future career.

Our officers met with senior staff of the university to discuss the case. The university eventually acknowledged it had not handled the matter well. It agreed to write to the complainant in response to his continuing concerns and review its complaint handling procedures.

### **In strife at school**

For some time we have been concerned about how young peoples' concerns about school experiences have been dealt with by the Department of Education and Training. In one case a community agency complained on behalf of a young Vietnamese man and his family about their ongoing problems with a high school. At issue were rudeness, suspension and exclusion, and improper release of information. While the case could have been formally investigated, the pressing problems facing the young man and his family convinced us we should arrange a face to face meeting between the various parties to the dispute, with two of our mediators.

Present were the aid agency representative, the young man, his father, the school principal and a legal representative for the department. The departmental officers arrived and immediately put forward a specific settlement offer to the complainants. They indicated their wish to avoid lengthy discussion of the issues. However, the complainants had come prepared for and were expecting a full discussion of the many aspects of

their dispute. With our knowledge of the benefits of frank discussion, especially in relation to solving complex problems, we were reluctant to prematurely shorten the process. Parties may solve problems themselves in their own way, at any time. However, if they cannot, the mediation process of clarification and exploration is designed to lead to a joint understanding, and to use that understanding to build an outcome satisfactory to both parties.

We asked each party to discuss separately whether they wished to continue with the mediation process, or to abandon it and take the opportunity to negotiate between themselves. The complainants decided to continue with the mediation process and the departmental representatives, after some thought, agreed.

The list of topics seemed daunting at first, but as each side was able to explain their actions, reactions and feelings about the events, a sense of relief was felt. Misunderstandings and misperceptions had contributed to the problems. Poor communication was exacerbated by language and cultural differences. Once these barriers were identified and understood, the department's representatives were able to relax their positions and cooperate with the process.

It was acknowledged that the department's complaint handling process needed improvement, and the difficulties facing the headmaster were better understood. Both sides listened to the other and, in so doing, became calmer and more conciliatory. The parties needs for respect and acknowledgment were met, and the matter was fully resolved.

## **ENVIRONMENT**

### **Landcom sale of land**

A Newcastle woman complained she had been cheated out of a block of land she had sought to buy as part of the release of a Landcom precinct. She had been obliged to accept the less desirable adjoining block. She saw it as rubbing salt in her wound that, before she settled the purchase of her block, Landcom had failed to notify her of the

building application submitted by her successful neighbour — thereby depriving her of the opportunity to object to his application.

We decided to investigate. Although we found a number of irregularities, the woman's key claim — that she should have been given precedence over the successful purchaser of her preferred block — was disproved. We found her neighbour did express an interest in the block before she did. Hence he had first call on the disputed block and our complainant was not denied any entitlement by its sale to him.

However, the complaint raised two very important systemic issues that could affect not only every purchaser, but also every potential purchaser, of a Landcom block.

The first issue related to how Landcom dealt with competing interests in an individual block. Obviously the ideal way to handle competing interests is to auction the block. However, because of the cost or because competing interests only surfaced relatively close to the sale date, Landcom did not always see an auction as desirable. The alternative was to implement a Priority Numbering System (PNS) in which numbers were allocated chronologically to persons expressing an interest in buying. On sale day persons on the PNS were called in number order and offered their choice of one of the then available blocks.

The implementation of a PNS for a precinct release was advertised and was designed to prevent extended 'camping out' by prospective purchasers at the site office in the days leading up to the sale date.

Our investigation alerted Landcom to the fact that its existing PNS guidelines were often not being followed and, in any case, they were flawed and in need of review. That review took account of the recommendations of our investigation for greater fairness and transparency in the operation of the PNS and a new set of guidelines came into force from the start of 1998.

The second issue concerned the obligation of Landcom to a prospective purchaser who has paid a deposit on a block, when the owner of a neighbouring block submitted a building application to the local council. Despite payment of the deposit, the block is still owned by Landcom up until final settlement and any notification by the council will be made to Landcom and not the prospective purchaser.

In the case of our complainant, Newcastle City Council had not notified Landcom of the building application by the woman's neighbour who, at the time, was still a prospective purchaser. The council had failed to acquire Landcom's consent (as the landowner) to the submission of the building application. Following our inquiries, the council agreed it should tighten its procedures to avoid repetition of such failures.

On the more general issue, we initially recommended that Landcom promptly pass on to a prospective purchaser any council notification of a building application for an adjoining block. Landcom argued that such a requirement would be administratively too onerous, given the number of blocks involved and the difficulty in keeping a close track of prospective purchasers. Instead, it has amended its Landcom reservation form to make explicit the prospective purchaser's obligation to inquire of the relevant local government authority concerning any building/development applications lodged by adjoining owners. It has also amended its checklist for purchasers to include consulting the local council as to building requirements for the block purchased and again to inquire if any building/development applications have been lodged on adjoining or nearby properties.

We accepted Landcom's amendments as providing a reasonable compromise solution.

### **Persistence pays off**

A Northern Tablelands farmer complained that an upstream neighbour was pumping excessively from a creek causing it to dry up entirely on the farmer's property in certain low rainfall seasons. He complained that the Department of Land and Water

Conservation denied that pumping was the cause of the drying up and refused to act against his neighbour. The farmer complained his riparian rights were being infringed.

After substantial preliminary inquiries of the department the complaint was declined. However, the complainant (who has a doctorate in agriculture) sought a review of that decision. He provided a comprehensive critical analysis of the department's position (as established by our inquiries), supported with data he had accumulated from years of water flow measurement. He convinced us we should re-open the case. Another factor in our decision was that the complainant's objective appeared reasonable — he was not seeking to prevent his neighbour from pumping, but merely to have some limits imposed.

We made further inquiries of the department and sought their comments on the complainant's analysis of their position. Initially, the department indicated that it would not change its position. At this stage, we considered whether the case may be suitable for mediation, but this prospect was complicated by the need to involve the neighbour as well as the other two parties in any mediation.

The reviewing officer continued to negotiate with the department. He contended that the department did not appear to have considered as fully as it should the extensive evidence and analysis put together by the complainant. The department acknowledged the case was now substantial and agreed to re-evaluate all the material.

As a result of this re-evaluation the department proposed that the case would be best settled by it funding an independent hydrologist to survey the creek and determine whether or not the water extraction upstream had the effects claimed by the complainant. After confirming the terms of reference for the hydrologist's project were acceptable to the complainant, we finalised the complaint as having been resolved to our satisfaction.

### Dam buster

A Southern Highlands resident complained about a major development being carried out on a nearby property. The complainant queried the role of the Department of Land and Water Conservation. A dam had been built on the property. The complainant suggested the department built the dam without development consent and had not issued the required water licence for the dam.

We asked the department about these allegations. The department told us the dam had been built by the former Department of Conservation and Land Management. That department was not responsible for issuing water licences. Some months later, that department was merged with the Department of Water Resources to form the Department of Land and Water Conservation. The new department later determined that the developer required a water licence.

The department also told us a court case was underway to determine if the developer needed development consent to build the dam. The department added that staff are encouraged to provide land holders with whatever assistance they require. The department made it clear that it is the developer's responsibility to determine whether their development needs a water licence or any other consents or approvals.

We then wrote to the department suggesting that the public expectation would be that government departments will not be involved in activities carried out without the necessary licences, consents and approvals. The department replied that it was finalising a manual for staff regarding the construction of dams. This manual contains information on licensing requirements. The department also undertook to expand the manual to cover other consent requirements. We were satisfied that by doing this, departmental staff should be able to give comprehensive advice to their customers on necessary licences, consents and approvals. On this basis we considered the complaint resolved.

### Outcasts of Thurgoona

A civil engineering firm was engaged by Charles Sturt University to facilitate the installation of dry composting toilet facilities on its Thurgoona campus to promote environmental awareness among students. The firm wrote to a number of public authorities including the South West Centre for Public Health seeking advice and direction in achieving its goals. The centre replied expressing a number of concerns about the efficacy and hygiene of dry composting toilets. The centre said it endorsed the university's goals in installing the toilets but, in the absence of comprehensive scientific evidence, could not support the use of the toilets.

The director of a company seeking to win the contract to install the toilets wrote to the centre complaining about inaccuracies in the centre's letter and claimed it had damaged the company's business and product. The centre wrote back rebutting the criticisms made and invited the company director to specify what information in the original letter had been incorrect.

The company engaged a consultant who wrote to the centre identifying a number of inaccuracies in the original letter. When the centre failed to respond to the consultant's letter, he complained to us.

Our inquiries revealed that the centre had chosen not to respond to the complainant's letter because it did not wish to engage in a 'paper war' with him. We pointed out to the director of the centre that he had invited the company to specify any inaccurate information in the original letter and was, therefore, obliged to respond. Furthermore, it could be inferred from the centre's failure to respond that it could not answer the criticisms made and that the original letter was indeed inaccurate. We thus suggested the centre respond to the complainant's letter.

In its response to the complainant's criticisms, the centre conceded a number of the statements made in the original letter were either incorrect or potentially misleading. We suggested the centre write back to the civil engineering firm correcting

the incorrect or misleading statements made in the original letter. The centre then did so.

The centre's response to our inquiries indicated that the inaccuracies may have arisen from a breakdown in communication between the centre and the central office of the Department of Health. The director of the centre agreed with this assessment saying this could be attributed to the absence of a clear policy on compost toilets. He reported, however, that the department was close to finalising its guidelines on these devices and this would not be a problem in the future. He also told us that the centre would seek to avoid any repetition of the situation by ensuring all proposed developments of the nature envisaged by the university would be discussed with the department's consultant on human waste treatment services.

## FINANCE

### Land Tax Part 1: Hidden value, hidden cost

The complainants sold some land in 1996. Inquiries by the purchasers revealed the land was subject to a charge for outstanding land tax. A few weeks later, the complainants received a bill from the Office of State Revenue (OSR) for \$745 consisting of a primary liability of \$430 for the 1993 tax year and a further late lodgement penalty of \$315.

Land with a value under \$160,000 does not normally incur land tax. The land was last valued by the Valuer-General pursuant to a general valuation in July 1983. At that time, the land was valued at \$53,000. The complainants paid council rates on the basis of this valuation until the land was subsequently revalued by the Valuer-General in July 1993 at \$159,000. On both occasions, the complainants were issued a notice of valuation by the Valuer-General pursuant to s.29 of the *Valuation of Land Act 1916*. As far as the complainants were concerned, the value of their property for land tax purposes remained at \$53,000 until July 1993 when it increased to \$159,000. When the complainants received the 1993 valuation, they asked the OSR whether they would need to pay land tax. They were told they did not.

However, in addition to doing general valuations pursuant to the *Valuation of Land Act 1916* every three years, the Valuer-General also does valuations for the OSR every other year. These valuations are prepared exclusively for the OSR under contract and, as such, are the property of the OSR. Consequently, the Valuer-General provides no notice of these valuations to affected landowners.

Unbeknown to the complainants, in July 1992, the Valuer-General valued their land at \$182,000 for the purpose of the 1993 tax year. As a consequence, their land attracted a land tax liability for that year. At no time had the complainants been informed of that value and therefore they had no way of knowing their land had, for that year only, attracted a land tax liability. When the Valuer-General notified the complainants the following year that the land in question had a value of \$159,000 as of July 1993, they reasonably assumed the value of the land up to that time had not exceeded the land tax threshold.

The complainants wrote to the OSR objecting to their land tax liability and the late lodgement penalty incurred by them. The OSR wrote back to the complainants affirming the valuation and the decision to impose a late lodgement penalty. The complainants then complained to us.

As the valuations are prepared by the Valuer-General under contract for the OSR, that information is the property of the OSR and not the Valuer-General. Accordingly, the onus lies with the OSR to release that information to landowners. As with most tax regimes, s.12 of the *Land Tax Management Act 1956* requires the taxpayer to furnish returns before the taxpayer's liability will be assessed by the OSR. Furthermore, there is no requirement under the Act for the OSR to notify taxpayers of their prospective liability before they lodge a return.

In response to our inquiries, the Commissioner of State Revenue explained the difficulties of notifying all landowners of their potential liability. NSW has 3.4 million properties intermittently changing hands, 95% of which do not attract land

tax. Only landowners themselves can state with certainty what their total land holdings are on 31 December each year.

Nevertheless, to assist landowners in determining whether they should lodge an initial return, the OSR places prominent advertisements in *The Sydney Morning Herald*, *Daily Telegraph*, *Financial Review* and *Australian* newspapers during January and February each year. Advertisements are also placed in regional and country newspapers and broadcast in several languages on the SBS radio network. In addition, a land tax booklet is printed each year to assist people who will be lodging initial returns.

In view of the particularly unfortunate circumstances of this case, the commissioner subsequently decided to remit the penalty component of the complainants' tax liability.

We continue to receive complaints from complainants who have incurred late lodgement penalties as a consequence of their apparent ignorance of the need to lodge a return. In most cases, complainants are aware the value of their land exceeds \$160,000 but say they are unaware of the need to lodge a return. In some cases, the land in question has exceeded the \$160,000 threshold for the first time in a year in which the Valuer-General has not issued a notice of valuation and therefore the landowner has been quite unaware of their potential liability.

Given the *Land Tax Management Act 1956* imposes no duty on the OSR to notify landowners of their potential liability, the sheer impracticality of doing so, and the lengths to which the OSR goes to advertise the need to furnish returns, we believe the OSR's current practices are reasonable in the circumstances. Furthermore, aggrieved taxpayers who have incurred a late lodgement penalty can write to the commissioner to seek the remission of that penalty. Since our office is one of last resort, we will decline complaints where complainants have failed to do so. As the commissioner has a wide discretion to remit penalty tax, any decision made by him in this regard will only prompt inquiries by us in the most exceptional circumstances.

### Land tax part 2: Disclosing the basis of valuations

The removal of the land tax exemption on principal places of residence with an unimproved land value in excess of \$1 million coincided with valuations undertaken by the NSW Valuer-General in the Woollahra district which saw the number of such properties jump from 400 to 2,000. While the properties affected by the removal of the principal place of residence exemption appear to be concentrated in Woollahra, other districts also subsequently saw dramatic increases in property values which impacted on the land tax liability of investment properties.

The removal of the exemption, together with the rise in valuations across the metropolitan area, generated a massive number of complaints about both the valuation process and land tax. Complaints focused on a number of issues such as the fairness of the imposition of the tax on principal places of residence, the correctness of valuations, the failure of the Valuer-General to disclose the basis of valuations with notices of valuation, the length of time it takes the valuer-general and the OSR to determine objections and the failure of the OSR to acknowledge objections.

However, we have declined complaints about the imposition of the tax on principal places of residence on the basis that this is an issue within the area of government resource allocation/collection policy rather than of any flaws in its administration and as such is not one for our attention.

Complaints about the correctness of valuations as specified in a notice of valuation issued by the valuer-general pursuant to the *Valuation of Land Act 1916* or by a notice of assessment issued by the OSR pursuant to the *Land Tax Management Act 1956* have been declined on the basis that both these Acts provide a right to object and therefore an alternative and satisfactory means of redress. Determinations of objections may be appealed to the Land and Environment Court.

We have pursued the issue of the failure by the Valuer-General to disclose the basis of valuations with notices of valuation. Our view was that the Valuer-General ought to disclose sufficient information in the notice of valuation to inform

landowners of the data and methodology that form the basis of valuations and to inform them of their rights of objection and appeal under the *Valuation of Land Act 1916*. The response by the Valuer-General was cooperative and constructive. He endorsed our suggestions with respect to improving the quantity and quality of information provided to land-owners. The Valuer-General undertook to include with notices of valuation an explanatory sheet incorporating information relating to:

- methodology (sales analysis as the prime basis for calculating values, work done by contractors subject to regulatory control);
- overall local government area changes; and
- objection and appeal processes (including information about the proper grounds for objections).

In addition, the notice of valuation is being reviewed by the Valuer-General in terms of providing better information to land-owners. Our consultations with the Valuer-General on this matter will continue. In relation to the complainants from the Woollahra district, the Valuer-General sent letters to objectors in the district which sought to explain more fully the valuation decision. These letters enclosed a schedule of sales of residential house sites in the Woollahra district.

### Land tax part 3: Delays in determining objections

We have discussed with the Valuer-General's office the length of time it takes to determine objections. In addition to determining objections lodged under the *Valuation of Land Act 1916*, the OSR also refers to the Valuer-General objections it receives pursuant to the *Land Tax Management Act 1956* with respect to valuations. The Valuer-General's office has experienced a dramatic increase in the number of objections received in the last year, including over 4,000 objections to valuations in the Woollahra district alone. The office has limited resources and, given the large increase in the number of objections, it is inevitable though unfortunate that delays in determining those objections will result. Nevertheless, we have continued to monitor these delays as we receive complaints about them.

We have received complaints about the length of time it takes the OSR to determine objections to land tax assessments. The OSR informed us it received over 5,500 objections to assessments in the first three months of 1998. This represented a massive increase in the number of objections usually received by the OSR and has invariably led to an increase in the time the OSR takes to determine objections. Section 96(1)(b) the *Taxation Administration Act* 1996 provides objectors with a right of appeal to the Land and Environment Court if the Chief Commissioner does not determine their objection within 90 days of its reception by the OSR. Accordingly, we have declined these complaints on the basis that complainants have an alternative and satisfactory means of redress.

We have also received complaints about the OSR's failure to acknowledge the objections it receives. We have discussed this issue with the OSR. In the past, the OSR was able to determine objections sufficiently quickly to avoid the need to send out acknowledgments to objectors. This practice was subsequently reviewed in the light of the sharp rise in the number of objections and the subsequent increase in the amount of time it took to determine complaints. As of 1 July 1998 the OSR began to acknowledge the receipt of objections and inform objectors of their rights of appeal.

## HEALTH

### Conflict of interest

In December 1990, three senior doctors on the staff of Royal Prince Alfred Hospital (RPAH) set up a company to carry out toxicology testing for private clients, typically from within industry, using the personnel and equipment of RPAH. The company was called Toxicology Specialists Pty Ltd (TSPL). The doctors first obtained advice on the project from both their solicitors and accountants. When they submitted their proposal, the Central Sydney Area Health Service (CSAHS) also sought professional advice, retaining Price Waterhouse to address a number of issues that would arise with this and any similar venture that might be mooted in the future.

Records indicate that TSPL billed almost \$60,000 for services in the years 1991–92. By the end of 1992, however, no payments had actually been made to RPAH for the use of its resources. Although both parties had obtained clear professional advice to do so, the arrangements relating to the use of RPAH's resources and to reimbursement were not finalised until some years after the operation commenced. In addition, again clearly against the advice of the professionals, the arrangements between TSPL and RPAH even then were not formalised in writing — and never have been.

1992 brought a spate of investigations into the affairs of CSAHS. Prompted by a number of allegations of impropriety in CSAHS, audits were carried out by the manager of internal audit for CSAHS and a legal consultant who, between them, produced three separate reports from June to September, 1992.

Among their key findings in relation to the TSPL project, the authors noted that both RPAH and CSAHS management had been slow in dealing with a proposal that represented a potentially useful source of revenue for RPAH. They also pointed out that the company appeared to have commenced operations within RPAH without the knowledge of certain members of senior management, who had only learnt of this fact when interviewed by them some twenty months later. The failure to reimburse RPAH for use of its resources was noted, as was the use of a staff clerk to do the company's billing and the fact that laboratory staff had been directed to use a computer source code to register the tests performed by RPAH for the company over which there was no audit control.

Questions of morality and conflict of interest arising from TSPL's activities were also highlighted and it was made clear that these issues were thought to have been insufficiently addressed. Then, in October 1992, the Department of Health's Audit Branch produced a report of their own audit of CSAHS — the 'Clarke Report', as it came to be known. The earlier audit reports were reviewed in the Clarke Report, as was the action that was taken in response to these. Further observations were made. In all, the Audit Branch made eight



recommendations to the department, three of which related to the TSPL enterprise. These were, that:

- the Executive Director, Operations, of the NSW Department of Health formulate a recommendation to the director-general as to whether the project should proceed or be abandoned;
- the Director, Legal Branch, determine whether any staff involved had breached the code of conduct applicable and if so recommend appropriate disciplinary action; and
- that the Executive Director, Operations, consider developing a policy for issue to health organisations covering the participation by area health services/hospitals in arrangements with senior staff/companies (of staff) for provision of services utilising area health service/hospital facilities, staff, or other resources from which the staff/companies stand to gain financially as well as the area health services/hospitals.

In November 1992, in response to the Clarke Report, the department's director-general wrote to the CSAHS Board indicating that, if they wished to continue with the TSPL arrangement, the department would have to consider it further. He went on to state that *'the TSPL arrangement should not proceed further until this has occurred'*. This statement appeared to us to be unambiguous — as the CSAHS Director of Finance and Budget stated in his evidence *'It's in plain English, isn't it?'*

However, the chief executive officer of the CSAHS told us that she did *not* take the directive to mean that the project should not continue any further *'in the sense of time'*, but simply that *'there should be no extension of the whole activity'*. She said it had not occurred to her that the directive could avail itself of any other interpretation. The Health Department's own view of the meaning of the direction, however, as expressed by the current director-general, was *'the intention was that the project should cease operations until the situation was clarified'*.

In any event, this letter was followed by a short-lived flurry of correspondence between the department and CSAHS which eventually ground to a halt, with both parties purportedly awaiting action

by the other. The issue of TSPL evidently fell off the agenda of all involved, and the company continued its activities.

Clearly, CSAHS and the TSPL project had been subject to official scrutiny. Nonetheless, in November 1995, we commenced yet another investigation, after it came to our notice that the company was still operating and it appeared that no or insufficient action had been taken to follow through on the recommendations of the Audit Branch. No policy had been formulated, the issue of disciplinary action had not been dealt with and there was still no written contract in existence to clarify the arrangements between the parties although a re-imburement protocol had by that time been implemented.

As a result of our investigation, the Ombudsman made findings in relation to both the Department of Health and the CSAHS. We found the department's response to the Clarke Report was unreasonable in that it had failed to fully implement the report's recommendations concerning TSPL. We further found CSAHS had failed to properly document its arrangement with TSPL and had allowed it to continue operating within RPAH until January 1996 without either a proper written contract for the use of its facilities and reimbursement or formal approval from the Department of Health. In doing this the CSAHS had not acted reasonably in ensuring financial probity and a recognition and elimination of conflicts of interest in relation to private business activities of hospital staff throughout its administration.

On 29 January 1996, the department's then director-general directed that the arrangements between the CSAHS and TSPL *'be now brought to a conclusion as soon as possible'*. He stated that he had reviewed these arrangements *'in the context of the Ombudsman's current investigation'*. As a result, TSPL finally ceased its activities within RPAH after almost six years of operation.

Acting on our recommendations, the department has introduced a new system to improve the monitoring of documents throughout the department and between the department and area health services, and CSAHS has implemented a

system of tracking outstanding matters. In addition, the department is currently developing a new policy to address situations of senior medical staff using departmental facilities to carry out private business ventures. The issue of possible disciplinary action against those involved in the enterprise was, on our recommendation, put back on the board's agenda. The board, however, decided that such action was not appropriate. The people concerned had waited over five years for this determination to be made.

### Accuracy, honest and accountability

We conducted an investigation into the South Eastern Sydney Area Health Service (SESAHS) and its chief executive officer that focused on two issues:

- the adequacy and accuracy of written information provided by the SESAHS in response to this office's preliminary inquiries; and
- the adequacy of the SESAHS's management and administrative response to some adverse findings made by a Judicial Registrar against three of its employees.

The investigation revealed that:

- written information provided by the SESAHS to the preliminary inquiries was inaccurate in significant respects; and
- the response of the SESAHS with respect to the adverse findings made against its three employees was poor.

A Judicial Registrar of the Australian Industrial Relations Court made a number of adverse findings against three of the SESAHS employees in relation to a claim for unjustified dismissal by another employee. These adverse findings raised questions about the honesty and integrity of the three employees. This office was concerned to ascertain the steps that the SESAHS took in response to the findings that were made against the three employees. Written preliminary inquiries were made of the SESAHS asking a number of questions in relation to this issue. The SESAHS stated in one of its responses to these inquiries that:

*during the preparations for the rehearing (i.e. the appeal lodged by the SESAHS against the*

*Judicial Registrar's decision) the employees were specifically asked to respond to the criticisms made of them and they were tested on their responses.*

On receipt of this reply, we had to decide whether we should accept the answer at face value or to investigate the matter further. This decision was not unique. Every year this office conducts many thousands of preliminary inquiries of public authorities in relation to the complaints that are made to the office. The purpose of these inquiries is to ascertain whether complaints have any substance and, if they do, whether they can be resolved at this stage. Very often, matters are resolved at this preliminary investigation stage without the need to formally investigate the matter. A critical ingredient in this process is confidence on the part of this office that the public authorities have made full disclosure of all relevant material and that their responses are completely accurate. By and large, the public authorities responding to preliminary inquiries do exactly this. However, in certain circumstances, we decide to test this.

The reasons behind the decision to test the SESAHS's response included:

- the unhelpful and high-handed manner in which the SESAHS had responded to a number of legitimate questions posed to it in a letter from Whistleblowers Australia Inc; and
- the revelation in the Auditor-General's Report to Parliament (vol 1, p.iv) that NSW's financial watchdog was denied open access to material necessary for its audit — '*an audit of the (South Eastern Area Health Service's) conduct of the longest industrial case heard by the Industrial Relations Court could not be completed because the (SESAHS) would not allow audit open access to its legal advice*' — raising questions about the SESAHS's attitude to accountability.

As the investigation revealed, the decision to test the SESAHS's response to our preliminary inquiries was entirely justified. The oral evidence taken on oath established that, contrary to the information given to this office by the SESAHS:

- the adverse findings in the judgement were not put to the three employees;
- the employees were not specifically asked to respond to the criticisms made of them; and
- the testing of their responses did not occur.

In other words, the SESAHS's statement was inaccurate in significant respects and the conclusion that flowed from these findings was that, on the very important question of ascertaining the honesty of the three employees, the SESAHS's response was inadequate. Had the SESAHS actually done what it claimed it had done, its response would have been adequate.

The SESAHS's poor response to the adverse findings against its employees was due to its failure to sufficiently prioritise the question of ascertaining the honesty and integrity of its employees when they had been formally called into question. This issue was not approached with sufficient care or rigour. The SESAHS should have spent more time and resources on establishing whether the questions raised about the honesty and integrity of its employees were justified. If it had done so, a formal investigation by this office would not have been necessary.

The SESAHS's lack of accuracy with respect to its written responses to the inquiries being made by this office flowed on from this issue. It failed the quite simple task of having full and proper written records of its own and was, therefore, unable to demonstrate that it had been careful and rigorous. The absence of these records was a significant lapse on the part of the SESAHS.

Four recommendations were made to the SESAHS concerning:

- improving record keeping;
- improving liaison with this office;
- workplace ethics and training; and
- the pressing need for the SESAHS to debrief the three employees.

The SESAHS has indicated its general acceptance of these recommendations.

## HOUSING

### Servicing clients with special needs

A tenant complained that the Department of Housing refused his application for priority re-housing in May 1997. He claimed he had been harassed at the block of units where he was living. He had also provided the department with a letter from his psychiatrist and authorised the department to contact her about his application. Staff had checked the documentation and decided there was insufficient evidence to support re-housing either on the basis of harassment or due to his psychiatric condition.

The tenant complained to us he was then forced to move out of his flat due to his fears of harassment and was later hospitalised. He believed the department's refusal of his application had contributed to the deterioration of his mental health and eventual hospitalisation.

Three months later, the department approved another priority re-housing application from the tenant. It offered him a bedsit, but he did not respond due to his hospitalisation. When the department found he had been hospitalised, it agreed to backdate the termination of the lease on his previous flat, so he would not owe double rent.

We contacted the tenant's psychiatrist who confirmed she believed his continued tenancy after May 1997 had exacerbated his psychiatric condition. We then asked the department why it had decided not to re-house the tenant on the basis of his psychiatric condition and why it had not contacted his psychiatrist for her comment before making this decision.

The department responded that the tenant's application for priority re-housing had been refused as he was receiving support for his psychiatric condition and had sought an apprehended violence order 'in an attempt to restore neighbourhood harmony'. Staff are not required to contact an applicant's psychiatrist or doctor when assessing all applications of this sort and, in this case, the information provided was deemed adequate.

We agreed it was unclear whether seeking further advice from the tenant's psychiatrist would have changed the department's decision at the time. The department assured us it has appropriate support in place for clients suffering from mental illness, including the provision of specialist senior client service officers for clients with complex and high support needs. These positions had not been in place when this tenant's first application was assessed and the department undertook to have a specialist officer visit the man at his new home to offer him support in sustaining his current tenancy.

### All in a name?

The carer of a person with multiple disabilities complained to us about the Department of Housing's apparent lack of action in finding suitable accommodation for the woman in her care.

The woman had been accepted for priority housing in 1995. As the department was unable to meet her housing needs in departmental accommodation, she was offered a head lease property which she accepted. She was advised in writing she would remain on the waiting list for departmental accommodation.

In 1997 she was told the department was no longer going to head lease properties and she would be relocated to a departmental property and was asked to complete a relocation form. In subsequent discussions with the department she was told her name was no longer on the waiting list for accommodation, having been removed when she accepted the head leased property. Both she and her carer were extremely distressed — this seemed to be in direct contradiction to what they had been told earlier and they feared it would mean no offer of accommodation would be forthcoming before the head lease expired. The carer complained to the Ombudsman as she was unable to get accurate information from the department about what assistance it would be able to offer. The woman was experiencing considerable stress due to the uncertainty about her accommodation, which was exacerbating her medical condition and affecting her general health.

After a number of inquiries from this office, the department informed us they would assist the woman to find accommodation in the private rental sector through the Disability Subsidy Scheme and that she was on the priority rehousing list for the appropriate area. This satisfied the woman's immediate needs but we were still concerned at the seemingly contradictory information we had been given about why her name had not remained on the waiting list.

We made further inquiries with the Director-General of Housing. He advised *'the apparent conflicting advice in previous department correspondence about this issue is really only a technicality'*. He explained the department has a waiting list for applicants seeking public housing and a rehousing list for tenants who are approved for relocation to alternative departmental accommodation. When the woman had been granted the head lease, her status had changed and the department had transferred her name from the waiting list to the rehousing list. This was an administrative process which did not disadvantage her housing application. The director-general apologised for any misunderstanding or anxiety that may have occurred over this issue.

### My house is falling to pieces

During a visit to a local Aboriginal land council to participate in an information day, a man approached our Aboriginal Complaints Officer with a complaint about the Department of Housing. The tenant said a number of repairs, including fixing a broken window, were needed to the house he and his family were renting from the department.

Our officer was able to visit the house that day and assess the problem first hand. A number of repairs were outstanding. Some plasterwork had been done that needed sanding and painting to finish the repair. There were gaps between the floor and skirting board big enough to see the ground from inside the house. A broken window next to the back door needed fixing as it was both a security and safety risk. The security light above the back door had been 'fixed' by the department, but shorted just afterwards because of an electrical fault.

Our officer assisted the tenant to write a complaint. This simply listed the repairs needed, explained that over a period of approximately nine months the man had made a number of calls to the department's local office and had personally visited the office to request repairs, but they had not been done.

Our officer rang a person in the department's maintenance area who was in a position to organise repairs quickly for the department's tenants. As a result, the repairs were organised and completed within ten days. As well as carrying out the requested repairs the department checked whether any other repairs were needed and conducted a technical inspection after work was completed to ensure that everything was in order.

We rang the man to confirm that the repairs had been completed and were satisfactory. He said the repairs were complete and he was very happy with the result.

### Who owes?

We received a complaint from a financial counselling service on behalf of a Central Coast Aboriginal woman. The woman had been a Department of Housing tenant but had needed to leave the area for family reasons. The woman claimed she had gone to the local office of the department with another woman with whom she had been sharing the house. They had arranged to have the tenancy changed into the second woman's name. The paperwork was completed and the woman travelled interstate.

When the woman returned to the area three years later and again sought assistance from the department, she was told she owed approximately \$600 in rent arrears and would not be provided with any assistance until the debt was paid in full.

The woman rang the department and was told nobody could locate the lease termination on her file. In the meantime, the woman was forced to obtain private rental accommodation and found herself unable to meet rental payments and bills.

Our Aboriginal Complaints Officer rang the department to discuss this complaint. The

department's officer said he would question the officer responsible for the woman's former premises. Within three days of receiving notice of the complaint the department told us further inquiries would be needed. Two weeks later, the department sent us a letter saying the woman had been inadvertently charged rent for her property after requesting transfer of the tenancy. An arrears debt of \$615 was removed from the woman's previous rental account and she was then able to apply for housing assistance from the department.

## TRANSPORT

### Fretting for his guitar

A traveller complained to us that Countrylink lost his guitar and case, yet refused to compensate him for the loss. Countrylink told the man that compensation is only available for items that come within the definition of passenger luggage, for example clothing or belongings carried for personal use. Items such as his guitar and case, jewellery, cameras or money are not classed as passenger luggage.

Our inquiries revealed that Countrylink staff should not have booked the complainant's guitar as passenger luggage in the first place. In addition, the Countrylink ticket wallet warns that liability for booked luggage is limited to a maximum of \$300, but does not explain compensation is only available for restricted types of items. We wrote to the State Rail Authority (SRA) about the matter and it undertook to pay the man \$300 for the loss of his guitar, as it had been wrongly booked as passenger luggage. It also agreed to bear in mind our comments about the ticket wallet, when it is next reprinted.

### Train travel turn-off

A father complained about his son's experience on a recent train journey. His son has an intellectual disability.

The man's son had been travelling on a Countrylink train from Sydney to the NSW north coast. He had bought a ticket but, due to an error when it was produced, it was overprinted in red ink. A ticket inspector believed his ticket was invalid

and, despite the son's protests, he was made to leave the train while it was still within the Sydney metropolitan area. Fortunately, he was able to find his way back to his father's house.

He was very upset and his father was very angry that his son had been placed in such a vulnerable position. He could not complete his journey as it was a holiday period and all other public transport was fully booked — he refused at that time to use the train again in case he was treated in the same way.

His father had written to the SRA with his complaint and had been offered reimbursement of any out of pocket expenses. He felt this was an inadequate response to what had been a serious and distressing incident for his son, who had not been at fault.

We made inquiries with the SRA. Countrylink reconsidered the case. The acting general manager apologised for the incident and acknowledged that, while he found no individual staff member had acted out of anything other than the highest motives, the result had clearly caused a good deal of inconvenience and upset. In addition to renewing the offer to pay any out of pocket expenses due to the incident, Countrylink offered a complimentary Countrylink holiday to father and son.

#### **Fare's fair**

A student wrote to us complaining he had been fined by the SRA. He said he had inadvertently bought a child's ticket from a machine rather than a student's ticket. These tickets cost the same amount so the SRA suffered no financial loss and he enjoyed no gain. His appeal to the Infringement Processing Bureau (IPB) was rejected with a standard response which bore no relation to the case he had pleaded.

We only inquire into complaints about infringement notices in the most exceptional circumstances. The reason is that the IPB and the Local Court provide two means of appeal both of which can overturn the notices. We lack that power.

In this case we made inquiries because it appeared the circumstances were exceptional in that the SRA had suffered no financial

disadvantage. Our inquiries resulted in the SRA waiving the fine, while reminding the student of the need to travel on the correct ticket.

#### **Dreaming of a quiet Christmas**

For some years, at Christmas, residents living in Sydney's Inner West — across the road from a rail siding — experienced annual track work. During the holiday period, night turned to day as powerful lights illuminated the area, to allow a series of trucks to deliver a stockpile of works material. Part of the trackwork involved running a machine known as a 'dynamic track stabiliser' along the track. The machine's vibrations were clearly felt by the residents.

The work finished, the lights were turned off, and the holidays ended leaving behind a series of cracks and other, relatively minor, damage in the residents' homes. Fed up, the residents began to complain about the nuisance the work caused, as well as the damage. Rail Services Australia (RSA) was not convinced the claimed damage was attributable to its machinery. Communication between the parties was poor, partly because the RSA had no specific system to deal with complaints from the public. The level of trust between the parties was low and, although in time both obtained expert advice, neither made the advice available to the other.

An investigation officer read the file, spoke to all parties about the outcomes they were seeking, and convinced them of the benefits of using our mediation service. Three residents attended, acting on behalf of four resident families. Three RSA representatives also attended.

Often government agencies find it useful to have a team present at mediations. Common teams include a senior manager, who can be delegated full authority to settle, a technical expert, who can help with explanations to both sides about the area or activities under examination, and a legal expert, who can assist with questions of potential liability. If the individual complainants wish it, they too may arrange for technical and legal support. During the process itself, mediators use a variety of methods to deal with any perceived power imbalances. One of

## PUBLIC AUTHORITIES

the simplest is to ensure all parties have a fair opportunity to speak. Another method may be to use a private session to assist a party to decide how best to make an offer of settlement.

Initially, both sides had concerns but, despite these concerns, they all came to the mediation session with a genuine desire to settle their various disputes. When this desire exists, it is our experience that any dispute, no matter how difficult, can be settled, sometimes with consequences that are ultimately to the great benefit of both sides. Happily, this was the case here.

During the discussion, much of it highly technical, it became obvious that some of the residents had developed a deal of expertise about the nature and capability of the machinery in use. Initially, the RSA agreed to a number of commonsense suggestions put forward by the residents about future operations at the siding. Once sufficient discussion had taken place for both sides to develop a degree of trust in the other, settlement of the claims for damage took place. Then, with the parties having no need to negotiate further, they had a very productive discussion about future communication. One resident was able to make and have accepted some technical suggestions regarding future use of the track stabiliser in such a way as to minimise damage to any adjoining property. Christmas should now be a lot quieter.

## UTILITIES

### A watery response

A man complained Sydney Water had failed to respond to his oral and written complaints about water seeping through a retaining wall near a block of units. The water had formed a stagnant pool and he was concerned cracks in the retaining wall suggested it had become unstable. As we had received previous complaints regarding Sydney Water's delay in responding to complaints (see last year's annual report, p.53), we were interested to see if this complaint demonstrated further problems of this nature.

Our inquiries revealed that, after receiving a complaint about the seepage, Leichhardt Council had referred the matter to Sydney Water in November 1996. Six months passed and, in May 1997, our complainant wrote to Sydney Water, council's general manager and the Minister for Urban Affairs and Planning about the authorities' failure to resolve the matter. The Minister replied to our complainant in August 1997, explaining that Sydney Water's investigations had revealed the seepage was due to natural groundwater and therefore not Sydney Water's responsibility. Council also wrote to the complainant, but he had still not received a written response from Sydney Water.

We contacted Sydney Water and it agreed a response was needed, along with an apology for the delay. It explained that a number of people had complained about this matter and, although it had responded to another complainant in late 1996, it had omitted to send a similar response to our complainant.

Sydney Water also assured us that mistakes of this sort should have been addressed by a revised complaints management policy which applies to complaints lodged after July 1996. The policy requires staff to register all complaints on the same issue separately, so that each individual complainant receives a response. We hope this complaint only demonstrates 'teething problems' with the new policy, and we will be alert for any further complaints about Sydney Water on this issue.

### Watt's the problem?

An electrical engineer suffered damage to his compressor. He believed this was caused by a period of low voltage supply. He submitted a compensation claim to energyAustralia. The electricity distributor wrote back denying liability.

The man then wrote to us complaining that, among other things, energyAustralia was liable and that its response was inadequate. We seldom investigate matters of liability as the claimant has a satisfactory, alternative means of redress via their insurance company and ultimately the courts. However we do expect that adequate reasons are given if liability is denied. This enables the

claimant to make a reasoned assessment about the utility of pursuing the matter.

We wrote to energyAustralia expressing our concern that its response had failed to explain both the cause of the altered voltage supply and why it did not consider itself liable in this circumstance.

EnergyAustralia proposed a meeting with the Ombudsman officer dealing with the complaint. As a result of this meeting it sought our advice about how to prevent such complaints in future. It also wrote to the complainant providing him with a full explanation of why it did not consider itself liable in this instance.

We have since provided energyAustralia with proposals to improve its correspondence to claimants.

#### **Less than Frank Zapper**

In May 1997, the switches on a stove and freezer owned by a North Curl Curl man were blown out. A repairer told the man that a surge of power, caused by a faulty powerline, had caused the damage. The man made a claim on energyAustralia for the cost of the repairs and the spoiled food in the freezer.

Early in July, the man received a letter saying investigation into the matter had failed to uncover evidence of any supply fluctuation, and the claim for liability was therefore denied. However, when the man telephoned energyAustralia he was told the letter had been sent by mistake, and that he should ignore it. Another letter, saying the matter was being investigated, arrived shortly afterwards, but when the man heard nothing further from the authority in October, he complained to us.

We raised the matter at the meeting with energyAustralia, and also followed up the matter over the telephone. In February 1998, energyAustralia wrote to the man confirming there had been a supply irregularity. The authority also apologised to the man for the inconvenience and frustration he had suffered in resolving the matter and offered, in view of all the circumstances of the case, to make an ex-gratia payment equal to the amount of the man's claim.

#### **Current account problems**

A man from North West NSW complained to Advance Energy that the amount charged on his electricity bill was too high and the bill itself was incomprehensible. Advance Energy sent him a new bill which showed a different total of electricity units used but the same amount owing. On receiving the second version of the bill the man complained to this office.

We rarely investigate complaints about the amount a person owes on an electricity account as we are unable to establish the number of electricity units a complainant has used. In this case it was unclear whether Advance Energy itself knew how many units the complainant had used.

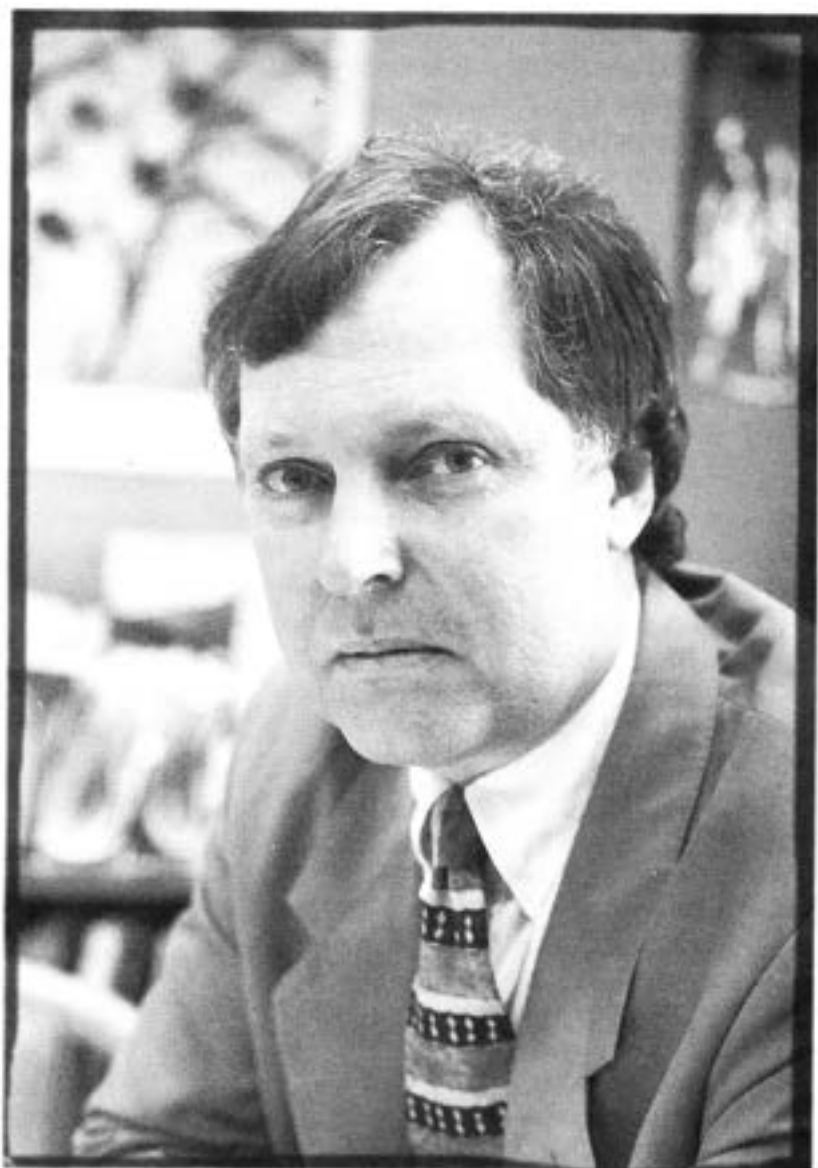
We contacted Advance Energy which said the total amount owed on the complainant's bill was accurate and explained why the bills showed differing numbers of units used. It agreed its bills were difficult to understand and told us it was in the process of updating them. It attributed the problems to difficulties in standardising the accounting procedures of the five electricity distributors from which it had been formed.

Due to the complainant's constructive approach, Advance Energy invited him to take part in the customer consultative committee involved in redesigning the electricity accounts.



Thank you very much for delving into our complaint about council. We appreciate your assistance and your obviously correcting council's attitudes towards these sorts of applications.

*A complainant*



Greg Andrews, Assistant  
Ombudsman (General Team)



# local councils

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>89</b>
<b>Issues</b>	<b>91</b>
Enforcement action .....	91
Coordination failures .....	95
Defamation .....	97
Development plans .....	99
Damage to private property from development .....	100
Councils and mediation .....	101
Councils and poultry farmers .....	102
Councils and young people .....	104
Planning law reform .....	104
Duplication .....	104
Use and abuse of legal advice .....	105
A matter of concern .....	105
Managing local councils .....	105
<b>Cases</b>	<b>106</b>
Processing development applications: How not to do it ...	106
Sacking the general manager: How not to do it .....	109
Hooked on fees .....	113
A table for 200 please .....	114
Council processes: Hair today, gone tomorrow .....	116
Bioremediation bungles .....	117

## Overview

In the past year, the total number of complaints received about local councils grew by 21%. We received 976 formal written complaints in 1997-98 compared to 805 in 1996-97.

Complaints in most categories increased. The biggest increase was in complaints about corporate and customer service issues. These include how well councils provide information to the community, treat members of the public and handle complaints about their activities. Complaints about development applications and rezoning also increased significantly.

We finalised 987 formal written complaints in the past year. This is an increase of nearly 24% over the number of complaints finalised in 1996-97. We completed preliminary investigations into 577 of these complaints and we finalised formal investigations into 12 of these complaints. A total of 15 of these complaints were outside of our jurisdiction.

**Figure 1: Written complaints received about local councils**  
A five year comparison

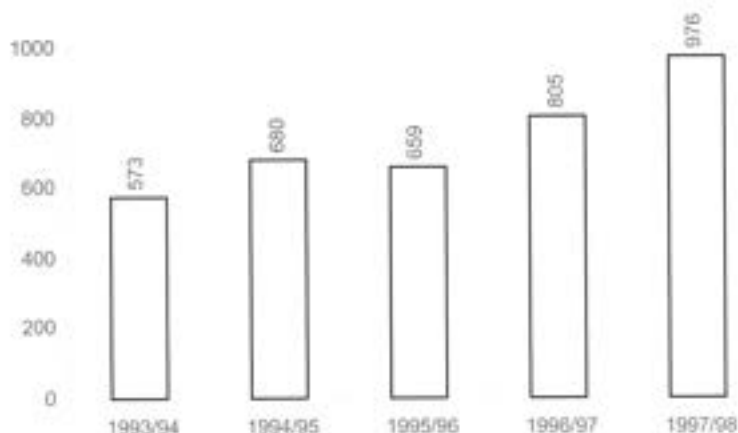


Table 1: Nature of written and oral complaints about local councils  
1997-98

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
<b>Building</b> Building inspections, objections to building applications, conditions/refusal of application, processing	37	185
<b>Community services</b> Parks and reserves, other facilities	28	26
<b>Corporate/customer services</b> Meetings, elections, tendering, provision of information, contracts, resumptions, unfair treatment, liability, complaint handling	274	544
<b>Development</b> Objection to development applications, conditions/refusals of applications, processing	172	465
<b>Enforcement</b> Failure to enforce BA/DA conditions, orders, unauthorised works	77	122
<b>Engineering services</b> Failure to carry out work/inadequate work, road closures/ access, parking, traffic, drainage/flooding, works	81	181
<b>Environmental services</b> Pollution, tree preservation, noise, health inspections, garbage collection, dog orders	65	193
<b>Misconduct</b> Misconduct of councillors/staff, conflict of interest, pecuniary/non-pecuniary interest	67	90
<b>Rates and charges</b>	76	125
<b>Town planning</b> Rezoning, s.149 certificates, existing use/consent	47	48
<b>Policy/law</b>	1	
<b>Faulty procedures</b>		
<b>Other</b>	43	198
<b>Non-jurisdictional issues</b>	8	17
<b>Total</b>	<b>976</b>	<b>2,194</b>

Of the 577 preliminary investigations we carried out, 503 resulted in the complaint being resolved or mediated or the complainant being assisted in some other way.

Of the 12 formal investigations we completed, nine resulted in formal reports containing adverse findings. The other three investigations were discontinued, in one case because the complaint had been resolved to our satisfaction.

We received 2,194 oral complaints (mostly by telephone) about local councils in 1997-98. This is an increase of 9% over the number of oral complaints we received in the previous year.

Last year, we received 94 requests to review our decision not to take further action on complaints about local councils. We finalised 95 reviews.

## Issues

### ENFORCEMENT ACTION

Councils perform two related functions in connection with regulating building and development activity. Their first function is to consider applications and issue consents to permit building and development activity to proceed. Their second function is to carry out an ongoing role to enforce the law in this area. They do this by making sure conditions of consent are being complied with and that no building or development activity is being carried out without the required consent.

Generally speaking, councils give the second function a lower priority and fewer resources than the first. Most councils see themselves primarily as 'gatekeepers' – putting most of their time and attention towards ensuring that applications for consent are dealt with properly. Once applicants are past the gate, they are much less likely to have ongoing dealings with the council. If they do so, it is generally as a result of the council reacting to complaints and criticism rather than as part of any broader monitoring program.

We are aware that some councils have ongoing compliance programs. These programs generally focus on commercial and industrial areas. Staff carry out occasional checks on businesses and factories to determine if they are complying with their consents.

Table 2: Complaints about local councils  
1997-98

<b>Received</b>	
Written	976
Oral	2,194
Reviews	94
<b>Total</b>	<b>3,264</b>
<b>Determined written complaints</b>	
Formal investigation completed	9
Formal investigation discontinued	3
Preliminary or informal investigation completed	577
Assessment only	383
Non jurisdiction issues	15
<b>Total</b>	<b>987</b>
<b>Current investigations (at 30 June)</b>	
Under preliminary or informal investigation	127
Under formal investigation	6

Recent changes to planning law may free up council resources to focus more on enforcement issues. The planning law changes have also created a new range of orders councils can issue in response to breaches of consent conditions and unauthorised activity.

Problems with enforcement action generate a lot of complaints. We carry out preliminary investigations into many of these complaints. The greatest source of complaint is inaction by the council. We generally do not investigate complaints from people who have been issued with orders because they are able to defend these orders in court.

### **What do we expect of councils in this area?**

It is vital that only sensible and enforceable conditions be imposed on consents in the first place. Too often problems arise because conditions are not sufficiently comprehensive, the meaning of conditions is unclear (and the lack of specificity means they are unmeasurable and unenforceable), compliance with the condition is costly or otherwise difficult to determine or compliance is impracticable or unlikely given the nature of the conditions imposed.

Subject to resource constraints, councils should ideally have a program for systematically auditing compliance with conditions of consent, particularly for developments that will or are likely to have a significant impact on the environment in general or the use and enjoyment of neighbouring properties in particular.

Councils should have a system for logging and responding to complaints about non-compliance with conditions of consent and unauthorised activity.

Unless they have previously done so and are satisfied no further action is required, councils should investigate these complaints in a timely fashion and inform the complainant of the outcome.

Decisions about what further action is required should take account of the particular circumstances of the case, be reasonable and be consistent with previous practice.

Councils should develop policies on investigation and enforcement. Most importantly, these policies should set out what factors the council will consider when determining what if any further action is required. There are several models used by other agencies that provide a guide on what these policies might say, for instance the prosecution policies adopted by the Environment Protection Authority (EPA) and the National Parks and Wildlife Service.

Councils should try to incorporate alternative dispute resolution principles and strategies into their procedures for responding to complaints.

While it is possible and acceptable in individual cases for councils to decide to take no action in response to a possible breach (typically where there is no evidence the breach is causing damage to the environment or to the amenity of neighbouring properties or the public), councils must not adopt policies of not enforcing the law in particular areas or in relation to particular matters.

Here are some cases that cover the main areas of complaint, i.e. inaction, delay, and inadequate action in response to suspected or proven breaches or unauthorised activity.

### **Not 1, not 2...but 14!**

A resident of south-western Sydney complained to us about Campbelltown Council failing to act on breaches of development consents. The complainant also said several operations were being allowed to continue despite not having development consent.

The complainant raised several cases with us. We decided that an inspection of the sites in question was the only way to determine the validity of the complaints. Council agreed to this course of action and the inspections were conducted by two of our staff in the company of a council officer and the complainant.

About 13 separate sites were inspected. In relation to some sites, more than one allegation had been made. Evidence of some unlawful activity was found in most of them. After the inspections, the parties met at the home of the complainant and

discussed the options available to resolve all the problems. We made a record of the options discussed and sent them to council for follow up action.

Within four weeks, council advised us that action had been taken on 14 of the above matters. Council had conducted further inspections of some of the sites. Council was also writing to several of the business or property owners in order to resolve the problems identified.

### **Resolved...well, almost**

We received a complaint from a woman in the eastern suburbs of Sydney about Waverley Council's handling of her complaint. Her neighbour had piled up dirt on his side of the fence, causing damage to the fence and causing dirt to spill onto her property. The complainant had written to council twice. Council had reminded the neighbour of his responsibilities, but to no avail.

We initially advised the complainant to wait until council responded to her latest letter. She contacted us a short time later advising that council had now issued an order for work to be done by her neighbour. The order allowed the neighbour six months to do the work. The complainant said this was too long. We made inquiries and concluded that, in the circumstances, the time frame was reasonable and that, in any event, no action was necessary. Council assured us the neighbour would be lodging a building application to complete the remedial work within a few weeks. The building application was indeed lodged a few weeks later.

The complainant contacted us again. She said the application did not cover all the required work. On looking again at the file, we had our own concerns about how council could ensure the neighbour carried out the work even if he got an approval. We contacted council again. In response, council included the omitted works as a condition to the consent. Council also issued an order for completion of the required works within a 180 day period.

### **Council Mowing Service Inc**

South Coast residents, who have been living next to an unfinished house for 14 years, complained to us that the unfinished house was frequented by drug users and attracted vermin and snakes. They complained that Shellharbour Council had done little to resolve the problem.

Council told us that it had carefully considered whether it could issue an order for demolition or completion of the unfinished house. Council's legal advice was that it could not issue any orders to have the house demolished or completed. This aspect of the complaint could not be resolved.

Council also told us that it had issued seven orders on the owner to clear vegetation and one order to fence the land. The owner had ignored five of the orders to clear vegetation. In response, council carried out the work and recovered the cost of the clearing from the owner. Council told us it did not recover any of its administrative costs involved in issuing orders from the owner. We indicated it should do so in future and council agreed.

Council said it did not prosecute the owner in these cases because of the delay and cost of prosecution. We suggested that council's reluctance to prosecute the owner meant it was providing the owner with a de facto mowing service. In response, council said that staff would recommend prosecution of the owner at the next appropriate opportunity. This action resolved the complaint.

While prosecution is not always appropriate, if orders issued by councils are continually ignored, councils should take this into account when deciding whether to prosecute or to carry out the work themselves.

### **Beauty parlour dispute gets ugly**

In 1990, Rockdale Council approved a development application for a gymnasium and beauty salon. There were conditions attached to the development consent relating to noise control and parking. These conditions were designed to protect the amenity of nearby residents.

In response to residents' complaints that these conditions were not being complied with, council reminded the gym operators of their obligations.

One frustrated resident wrote to us after it became clear the noise and parking problems had still not been resolved, despite council's reminder letter. Council told us that in 1996, a further application was lodged to extend the hours of operation of the business. Council postponed making a decision on this application until it had consulted interested members of the community. It also decided the original noise control and parking works required under the conditions of the existing development consent had to be completed before it would deal with the further application.

Unfortunately, council did not set a time frame for completing the noise control and parking work. Residents continued to suffer. Council agreed that the conditions of the earlier consent needed to be complied with. In response to our inquiries, council wrote to the operators about the work to be done and set a deadline for responding. Council also commenced noise level monitoring and inspections of the premises to monitor compliance with the conditions. We decided these actions resolved the complaint.

### Let's get serious

An exasperated mid North Coast resident complained to us about Port Stephens Council. He had been complaining to council for more than two years about illegal work occurring on a neighbouring property.

He claimed the neighbour's house did not comply with the approved building plans and that the septic tank on the property had not been approved by council. He claimed a large shed erected on the site was not in the correct position and was built with materials not approved by council. He also said a swimming pool had been built without consent, despite previous warnings by council about carrying out illegal building work. The complainant believed the neighbour was conducting a business from the premises involving the use and storage of heavy vehicles and equipment. He said this commercial use was contrary to the zoning requirements for the area.

The complainant raised each of these matters with council as they arose. He continued to raise them when he could see no change in the neighbour's conduct. Eventually the man turned to us for assistance.

Council replied to our inquiries explaining it had taken a facilitative approach with the neighbour. This involved attempting to resolve problems through discussion and negotiation. Council cited a number of meetings with the neighbour and a number of inspections of the property. A number of notices had been served on the neighbour stating legal action would be taken if he did not comply within a certain time. No legal action had been instituted, despite little or no action having been taken to comply and even though the time periods had expired.

Council claimed it had some success with its approach. The neighbour eventually lodged applications to amend the building approval for the site and submitted an engineering certificate for the shed. Council believed the major concerns had been addressed.

The complainant remained dissatisfied with the situation. He also believed quicker and stronger action by council may well have prevented some of the neighbour's later breaches and omissions. We agreed with the complainant.

While the Ombudsman strongly supports informal and speedy resolution of problems to avoid unnecessary expense, local councils have an obligation to uphold the *Local Government Act* and the *Environmental Planning and Assessment Act*. Where the law is being repeatedly flouted, councils must act.

We strongly recommended council develop policies and procedures to guide staff in determining when formal enforcement action should be pursued. Such documents would inform staff and the public of the factors council would consider when deciding whether to take legal action over matters like building works carried out without approval. Council agreed with this recommendation. Council also sent a number of staff to a workshop which included information on how to deal with unlawful development and building.

### On the level?

Residents of northern Sydney complained to us about how Willoughby Council dealt with a development application for house extensions on a neighbouring property. The complainants objected to the application. They insisted that the extensions breached the council's height limit of eight metres.

Council consented to the application. Later, during construction, council inspected the work and discovered the extensions did exceed the height limit. Council said the height had been difficult to determine because the natural ground level of the property was difficult to determine.

Council then considered a few alternatives to overcome the problem. One option was for the neighbour to apply for a further development consent. Council got legal advice and decided to invite the neighbour to apply for a building certificate. This certificate operates to prevent a council from taking action to have a building demolished or altered even though it breaches planning or building requirements. The neighbour applied for the certificate which council issued.

We carried out inquiries. Council told us that applications now had to include evidence that the work would not exceed the height limit. Council also decided that even though the extensions breached the height limit, it did not believe this had an adverse effect on the complainants, the other neighbours or the environment. Having reviewed the matter, we decided not to take any further action.

The complainants then asked us to review our decision. They pointed out that had council considered a further development application, they would have got notice of the application as well as a chance to object. Because council decided to invite a building certificate, they had no further say in the matter.

We discussed this issue with senior council planning staff. At least one council we are aware of notifies residents of applications for building certificates where the application is sought because building work breaches planning or building requirements. Council staff agreed this suggestion

had merit and that they would consider recommending that council adopts this practice. This undertaking resolved the complaint. We commend this practice to all councils using building certificates in these situations.

### A table for 200 please

In 'A table for 200 please' later in this section, we set out the details of an investigation we recently completed into the conduct of Griffith City Council. The case is another example of inadequate action to enforce conditions of a development consent.

## COORDINATION FAILURES

Councils are quite complex organisations providing a range of services to their communities. Most councils have structures that cluster staff and resources around certain key activities like planning, engineering, community service and corporate services.

The range of activities councils undertake becomes more broad every year. Sometimes, members of the public are unclear about who is responsible for what within their council. Sometimes, council staff appear very confused about these questions as well.

We also find cases where the confusion arises out of disputes between council staff that are not resolved by more senior officers. Many decisions councils make are made by professionally trained experts or technicians. Internal disputes can arise which seriously delay decisions and cause unnecessary inconvenience to the public.

We understand that co-ordination failures can occur from time to time. What we expect is that councils strive to ensure it is clear both inside the council and to the public just who is responsible for all significant functions. We also expect that, where there are internal disputes over issues affecting the public, these matters are quickly identified and referred to more senior officers who can make a final decision. Here are some cases that show how these problems can arise.



### **Circular key**

A young woman bought a property in southern Sydney with front and rear access. Restricting her access to her rear driveway was a locked gate installed by Sutherland Council. The gate was to prevent unauthorised vehicle access to a nearby fire trail. Fortunately, the previous owner of the property provided the woman with a key to the gate.

A year later police borrowed the woman's key to get access to the fire trail. However, the police could not open the lock. They found that it had been changed.

The woman wrote to council requesting a new key. She explained that she would abide by any restrictions council placed upon its use. Over the next nine months, eight council officers from different departments told her variously that she could and could not have a key. No key was forthcoming.

The woman complained to us. We contacted council which attributed the delay to confusion among council departments. Each department believed another had responsibility for authorising the issuing of the key. Following our inquiries, council apologised to the complainant and issued her with a key subject to conditions.

### **We don't talk any more**

A couple from the Newcastle area were very concerned Newcastle Council was not communicating with them regarding a development consent they had obtained. The consent allowed them to build a house and was due to lapse in May 1998 unless they physically commenced work before then.

The development consent included a condition requiring them to upgrade the access road before any building approval would be granted. The couple began negotiating with council in early 1998 so that they could commence work before the consent lapsed. They submitted details on the proposed road. They made a number of submissions but received no formal response from council. The date on which the development consent expired approached.

We made inquiries. There appeared to be a difference of opinion among council's engineers about the appropriate standard of construction for the road. We know experts can differ on occasions but in this case, council clearly had to respond to the couple's plans and to make a final determination.

The acting general manager looked into the complaint and very promptly came up with a proposal to resolve the problem. He outlined the steps council would take to finalise approval of the plans for the road. He also gave us an approximate time frame and assured us that, if the development was not physically commenced before the consent lapsed, council would waive the application fee on a new DA and would not seek to impose any higher engineering standards. We were satisfied this resolved the matter.

### **I'm a lumberjack and I'm OK!**

Councils protect the trees in their areas by enforcing tree preservation orders. These orders make it an offence to remove or lop a tree without the consent of the council. Councils can also give permission to remove trees when they issue building approvals or development consents.

A complaint from a resident of Shoalhaven Council shows how confusion can arise because of these two methods for permitting trees to be removed. The complainant got notice that his neighbour wanted to put extensions on his house. The complainant inspected the plans for the extensions which disclosed that only one tree was to be removed from the site. Later, when work on the extensions commenced, workers in fact removed several trees and severely lopped several others. Council officers told the complainant that there were three separate divisions responsible for tree removal. We made inquiries with the council. Council said that the building approval included permission to remove one tree. The property owner made separate application under council's tree preservation order to remove a further seven trees. Council gave permission to remove three of these trees and to lop the remaining four trees. Council apologised for any inconvenience caused to the complainant.

We wrote to council suggesting that it needed some arrangements to ensure that, where different divisions are responsible for tree removal, they are aware of all applications to remove trees and can comment on them. We also said that council might need to notify residents of some applications to remove trees.

Council said that the problem identified in this case was lack of proper communication where a person seeks permission under council's tree preservation order to remove trees due to building works. To deal with this, council decided to change its application form for permission to remove trees to require applicants to state if the application relates to recent or proposed building works. This will ensure that staff responsible for the building works can comment on the application to remove trees. Council also decided to include in reports by inspectors on these applications a requirement to consider whether public notification of the application should occur. We considered this action resolved the complaint.

## DEFAMATION

In our last two annual reports, we noted that we receive complaints about councils, councillors and council staff threatening defamation action against members of the public.

These threats are often disturbing because of their potential to stifle legitimate debate about local issues. They can also silence critics and scare off complainants. Sometimes, of course, members of the public go too far. On the other hand, we believe that local councils need to recognise that the law of defamation is different for comments about political and public issues. In simple terms, it is harder to prove defamation in these cases precisely because the courts recognise how important it is for people to freely discuss political and public issues.

We are working with the Local Government and Shires Associations on a publication that will give councils some guidance in this area. This publication will also discuss how councils should deal with difficult complainants.

We believe it is important to recognise that, when councils and the public deal with each other, both parties have a responsibility to act appropriately. We spend a lot of time and effort trying to improve the standards of conduct and service provided by councils and State Government authorities. We also do a lot of work educating the public about how to pursue their complaints. We make it clear that the public are entitled to a decent standard of conduct and service. We also stress that members of the public must show patience, courtesy and respect when they deal with State and local government.

In the past year, we again received complaints that raised the issue of defamation. The first case described here concerns councils providing a third party with a potentially defamatory document. The second and third cases are a little different. They show how councils not only threaten defamation but occasionally receive threats of defamation. In one case, there was a willingness to rectify the problem. In the other, a different conclusion might be drawn.

### For your eyes only

The secretary of a residents' committee complained about the way her council responded to a letter she wrote. She asked whether a council staff member had done work for a consultant that the council had later engaged to prepare an environmental impact statement on a proposed development.

The council told the complainant it referred her letter to council's solicitor for 'comments regarding possible defamation' of the staff member. The council also investigated the claims. The council subsequently advised the complainant it had obtained legal advice and considered the specific questions and statements in the letter to be 'both vexatious and defamatory'. The council also told the complainant that, in the event of any repetition of the statements, the council staff member would be advised to institute defamation proceedings without further notice.

Soon afterwards, the complainant received a letter from solicitors acting for the council's consultant. The letter advised that the council gave

the consultant a copy of her letter. The letter also said the imputations in her letter were regarded as being 'defamatory and actionable'. The complainant was asked to provide a written undertaking not to publish any similar imputations or statements in the future and to publish a satisfactory apology to their client in a local newspaper.

The council told us the complainant's letter was released to the consultant in accordance with the council's policy on access to information and to assist with the council's own investigation of the matter.

In last year's annual report, we mentioned how the most common practice in relation to defamations threats was for a resident's letter containing allegedly defamatory remarks to be referred to the council's solicitors for advice, followed by a letter from the solicitors to the resident threatening defamation action. We also set out our concern about unsolicited referral by councils of potentially defamatory information to third parties. Both occurred in this case.

We support the free flow of information between councils and their communities. However, this must be lawful, part of a consistent policy or practice or justified for some other reason. For instance, the *Local Government Act* restricts disclosure by councils of information they obtain for the purposes of administering that legislation.

In this case there was no evidence to suggest the council acted unlawfully. However, it was far less clear that the council's actions in sending the letter to its consultant conformed with its usual policy or practice. The council's claim that it sent the letter to assist in its investigation was more convincing. Nevertheless, there remained some doubt about whether the council was genuinely investigating the claims or merely letting its consultant know what was being said.

The council's response to our inquiries was not entirely satisfactory. However, since neither the council staff member nor the consultant instituted defamation proceedings, we decided there would not be any utility in formally investigating the complaint.

Councils need to carefully consider whether it is justifiable to expend council resources financing legal advice on whether material defames councillors and staff. Councils must also demonstrate that there is a valid reason to pass on material they receive from members of the public to third parties. It is not legitimate in our view for councils to do so merely because they believe the third party may have been defamed.

### **Your views will be considered!**

Increased levels of community consultation lead to increased openness and accountability in local government. Interested persons appreciate the opportunity to put their views forward. However, one North Coast resident who complained to us last year was left wondering whether she would have been better off keeping her views to herself.

Nambucca Council invited submissions on its draft management plan. This is a plan all councils must produce annually. The plan sets out various information including the activities the council proposes to carry out and the rates, charges and fees the council proposes to impose in the coming year.

The resident made a submission which criticised council's general performance. It also criticised council's expenditure on legal costs. The general manager later wrote a report to council summarising the contents of all the submissions. The general manager specifically commented on some of the submissions including the one made by the resident. He stated in his report that the resident had objected to a local resort development. He added that council incurred legal costs over this development because of a third party appeal against council's consent to the resort. The general manager said there was a good chance the third party appeal was *'being funded by Legal Aid, i.e. the ratepayer through taxes is paying twice'*.

The resident complained that the report singled her out with special comments on her submissions. She complained that the resort was a separate issue. She added that she was not involved in the third party appeal.

We were concerned about the relevance and tone of these and other comments in the general

manager's report. For instance, the report suggested one resident would better understand council's capital works program if he *'took the time to study council's budgets...'*. In response to another submission critical of the cost of a roundabout and road upgrading, the report stated *'it would be interesting to petition the residents now with the threat to take the road away and see what the reaction was'*.

After conducting inquiries, we wrote to the general manager suggesting that some of his comments appeared to have little relevance to issues related to the draft management plan. We also suggested other remarks appeared to be sarcastic, threatening and inflammatory. We asked the general manager to give us an assurance that he would make objective remarks confined to putting the submissions in context in any future reports. We also asked him to explain his remarks to the residents concerned. The general manager gave the assurance requested and advised he would write to the residents concerned explaining his remarks. These actions resolved the complaint to our satisfaction.

### Taping of council meetings

During the year we made inquiries regarding a number of complaints about the reliability of tape recordings of meetings of one Sydney council.

On four separate occasions, complainants had been unable to obtain information from tape recordings made by the council. In some of the cases, the tapes had been sought because comments had been made by councillors during the meetings in question that may have been defamatory of the complainants.

The council had a number of reasons for not being able to produce the information:

- the tape of one meeting had got caught in the recording system and snapped;
- operator error at another meeting led to sections of the meeting not being recorded and one meeting was not recorded at all;

some tapes were inaudible; and

- at another meeting, the tape had run out and was being changed over at the time of the contentious speech.

Taken together, these matters indicated the council was unable to rely on tape recordings of meetings as a record of proceedings. The council argued that the official record of its meetings was not the tape, but the minutes. The council pointed out there was no statutory requirement for it to tape record meetings at all.

We believe it is desirable for councils to maintain records of meetings in as complete and accessible a form as possible. A full tape recording of a meeting makes it difficult to dispute what was actually said during a meeting. Indeed, tapes are often used to check on the accuracy of draft minutes of meetings and to this extent in fact complement the official record. The quality of recordings in some instances made the tape recordings next to useless for this purpose. Fortunately, since that time, the quality of recordings has improved markedly, although the council still does not have a taping system capable of guaranteeing that the whole meeting will be taped.

### DEVELOPMENT PLANS

Each year, we receive numerous complaints about development applications. We tend to give priority to complaints that reveal flaws in the assessment and determination process. We pay particular attention to complaints about problems in notifying members of the public about development applications. We believe that if the public is to make proper use of an invitation to comment on a development application, the information on the application needs to be accurate.

A couple of complaints we received last year show how important it is for members of the public to get a true picture of a development if they are to take advantage of the chance to comment on the application.

### Losing perspective

Marrickville Council sent a woman a copy of the plans for a building application her next door neighbours had lodged. The plans also showed the houses adjoining the proposed building. The proposed house appeared to be no higher than the adjoining houses. On that basis, the woman did not object to the building application, which was duly passed. However, when the building was constructed, it became apparent that it was much higher than the surrounding houses. The woman complained to us.

Applicants only have to submit plans showing *'the height and external configuration of the building in relation to the site on which it is proposed to be erected'*. The plans did this. However, they were misleading because they did not accurately reflect the scale of the proposed building in relation to the surrounding buildings.

We suggested to council that many people would rely on the scale suggested by the plans rather than determine the actual height of the proposed building. Council agreed to ask all future applicants to verify that drawings showing the height of the proposed buildings in relation to adjoining buildings are drawn to scale. If applicants cannot do so, they will be asked to omit adjoining building from their plans. Other councils may wish to consider introducing a similar policy.

### Spot the difference

We recently completed a major investigation into the way Ku-ring-gai Council dealt with two development applications. One issue that was not raised by the complainants nevertheless caused us great concern.

The complainants had lodged a development application. After further discussions with council staff, they lodged amended plans. One objector was particularly anxious to identify the amendments and complained to council that it was extremely difficult and time consuming to do so.

While we were investigating the complaint, the objector's complaint came to our attention. We agreed that it was very difficult for anyone to

identify the changes, particularly as many of the changes were small. Not only were objectors potentially disadvantaged, council staff could also have difficulty working out all of the changes.

In our final report on the investigation, we recommended that council adopt a policy requiring applicants who lodge amended plans to lodge a 'marked up' plan. This is a plan that details all revisions by reference to the original plan. We are monitoring compliance with this recommendation.

## DAMAGE TO PRIVATE PROPERTY FROM DEVELOPMENT

Each year we receive complaints about councils failing to do anything about developers damaging neighbouring properties. Most councils consider this to be a private legal matter between the developer and the adjoining property owner.

Our general approach is that if the complaint demonstrates that the property damage is a result of the council failing to enforce the conditions of consent, we expect the council to investigate the matter and take appropriate action. However, it is not the council's responsibility to get the developer to pay compensation for damage unless this is bound up with a condition of consent. If councils want to assist with compensation negotiations, they can do so. This assistance is commendable. If councils make promises to offer assistance, we expect them to be honoured.

Complainants should raise their concerns about damage to their property with their councils if they believe that the developer is breaching conditions. At the same time, they should put any claims for damages directly to developers. If this is not successful, they can initiate legal action against the developer. Sometimes, we do intervene in these cases. Here is one example.

### Waterworld

A Castlecrag resident complained about damage to her property caused by water flowing from her neighbour's property. Willoughby Council had approved a subdivision application on the neighbour's land. The complainant was concerned

that council was not enforcing the conditions of the subdivision approval relating to drainage.

The complainant told us she had inspected the drainage plans and believed the works undertaken so far did not conform with these plans. She had approached council several times about this but the problem was unresolved.

As this case involved damage to property, resulting from of a failure to comply with consent conditions, we made inquiries. We discovered that council had previously told the developer to carry out drainage works. In response, the developer's solicitors told council they wanted to make modifications. We were satisfied council had delayed action in good faith in the belief an application for modifications would be forthcoming. It was not, even though a year had passed.

Council agreed that further action needed to be taken to prevent any water damage to the complainant's property. Council promptly served a notice of intention to issue an order on the developer. The order required a lengthy list of works to be completed within 60 days.

## COUNCILS AND MEDIATION

We continue to practise and advocate mediation in all areas of government, including local government. This year, we formally mediated some complaints. More commonly, we used the techniques our staff have acquired through mediation training and practice to resolve complaints.

Mediation is a highly effective tool we use to resolve complaints about councils. It is a method that councils can and do use to resolve disputes between residents over decisions councils must make.

This year, we completed a major investigation into Ku-ring-gai Council's development assessment processes (see the case study, 'Processing development applications: How not to do it' later in this section). One of our main recommendations was that council develop a formal and

comprehensive mediation program to deal with disputes between applicants and objectors over development applications. We also argued that council show a greater commitment to mediation as a way of resolving appeals to the Land and Environment Court against its decisions.

We also lodged a detailed submission to a NSW Parliamentary Estimates Committee inquiry into legal costs and the use of alternative dispute resolution in local government. In our submission, we again argued for a greater commitment by all councils to mediation methods.

### Give peace a chance

Staff at our office are often requested to speak about mediation and our mediation program at conferences and seminars. Recently our Alternative Dispute Resolution (ADR) Coordinator spoke at a local government seminar about the use of mediation within councils. Following the seminar, we were contacted by a council experiencing conflict over development in its area. The problem involved a group of residents and council. Council requested that we arrange a mediation between all parties, on a fee for service basis. All parties were asked to contribute to the cost of the mediation.

We agreed to do this, and contacted all the parties in turn to discuss the matter. As we did so, the matters in issue became clearer but more numerous and the number of affected parties grew. We decided to hold a multi-party mediation and to hold lengthy preliminary conferences to prepare all parties. We did this with a view to keeping the eventual face to face meeting to a maximum time of one day.

The mediation conference was tightly structured, and the timetable was agreed by all present before we began discussions. The overall structure kept the process running smoothly, despite the large number of affected people present.

By using a mediation process involving outside mediators, council was able to get all the people involved together to discuss all the issues at once. A great deal of common ground emerged, as did a mutual understanding of the tension between two common desires. One was to keep intact certain

natural aspects in the area, and the other was a wish to undertake economic development. Major areas of dispute were clarified and resolved to the satisfaction of all concerned. Following this clearing of the air, many side issues were also discussed and in some cases resolved, at least on an interim basis. The parties agreed to meet again in approximately six months time to continue to discuss ongoing development in their area. Council had not only resolved a multifaceted issue to the satisfaction of those affected, it had also put in place an ongoing form of local participation in council activity.

### **To lease or not to lease?**

An inner city resident wrote to us about a community theatre company which had been allowed the use of a former church hall run by Sydney Council. On a number of occasions, the resident had complained to council about breaches of the theatre company's development consent including out of hours use. He was also concerned that the theatre company had exclusive use of the hall for a nominal rental.

We spoke to council. Council's response indicated there were no irregularities with the lease of the hall and that it had tried to resolve the resident's other concerns. The resident then alleged to us that the theatre company had been sub-letting the hall to other artistic bodies for a fee.

We raised this further allegation with council which took the matter up with the theatre company. Council told us that a solicitor acting for the theatre company advised council that *'it is common for theatre companies to permit other companies to use their premises, on occasion, sometimes for goodwill alone, but usually for a fee or promise of future use of space or perhaps goods or props'*.

Council then sought legal advice. The advice was that the theatre company could not part with possession of the hall under its lease with council. Council formally advised the theatre company that any use of the premises in the future by any person other than that company would be considered to be a breach of the lease and that it would take legal

action. We were satisfied with council's actions and closed our file.

Later, we were very pleased to hear that council and the theatre company were mediating with the residents to try to resolve ongoing concerns arising out of the use of the hall in a high density inner city area. This positive approach will help to identify and resolve issues in a more comprehensive way than the more reactive approach council had previously taken.

## COUNCILS AND POULTRY FARMERS

Every year we receive complaints about inaction by councils in response to complaints about poultry farms. The complaints to this office indicated that the most significant problem in this area concerns odour from existing (and often long established) poultry farms.

### **I don't like it like that...**

In this case, our intervention prompted Wollondilly Council to introduce an after-hours service to investigate breaches of development consent and/or breaches of relevant pollution legislation. A poultry farm had been built next door to the complainant's property in 1986. He said that, since then, he had repeatedly requested council to take action to rectify the stench caused by the facility which houses over 100,000 birds.

Particularly objectionable was the odour of ammonia, which was present when machines called 'foggers' were switched on within the chicken sheds. This usually took place in hotter weather. The complainant said that when the wind blew from a certain direction, the smell made his house uninhabitable. The man said that he had sent over 50 unanswered letters to council about the sheds.

Council had imposed a condition on the development consent for this farm as follows:

*No nuisance is to be caused to adjoining properties by reason of the emission of noise, smell, waste water, waste products, or otherwise.*

Council has an ongoing responsibility to enforce this condition. However, council told us that before it would contemplate enforcement action it had to be convinced that a nuisance existed. Moreover, the council officer who observed the problem needed to be an officer authorised to take action under the *Clean Air Act*.

The complainant had been unable to get an authorised person on his property at the time the smell was at its worst. Not only did wind conditions affect the smell, the problem created the greatest inconvenience at night or on weekends. The complainant acknowledged council had made some inspections of the property but said council officers generally inspected the property 3 to 4 days after his complaints had been lodged and not at night or on weekends.

While a council report in April 1992 suggested that the odour problem was of the sort that *'is to be expected from a poultry establishment'*, a senior representative of the Environment Protection Authority (EPA) had reported in January, 1994 that, *'strong poultry odours and ammonia were detected outside of [the complainant's] home. These odours had also infiltrated throughout the inside of the home...I believe the odours that I detected emanated from the neighbouring poultry sheds'*.

Police reports of a visit to the complainant's property in January, 1994 stated *'while police were on the premises the stench from the sheds was disgusting with a high odour of ammonia'*.

A number of councillors, including a serving mayor, visited the property and agreed a problem existed. One councillor wrote:

*I simply feel so badly for the family, having visited their residence and been greatly offended by a rancid, lingering stench from the poultry farm which made me physically nauseous. The property is a very handsome property, but I would hate to live there.*

Council had made efforts to address some of the broader problems involving poultry farms, including setting up the poultry farms committee to which the neighbours of poultry farmers made contributions.

The introduction of an after-hours inspection service following our inquiries also made a big difference.

According to a report to a committee of council in May 1998,

*In the period 5 January to 22 April, 1998, a total of 83 responses have been made to complainants outside of normal working hours. By far the most frequent type of complaints are odour, dust or noise complaints about poultry farms.*

*The operation of the [after-hours] service thus far has proved to be of substantial benefit to council in the investigation of complaints that occur outside of normal working hours and it is considered that it is providing a good level of service to the community.*

We also suggested a number of actions council could take in this case to resolve the situation to the satisfaction of all parties.

Pollution control laws were recently overhauled with the introduction of the *Protection of the Environment Operations Act*. Under this Act the EPA is responsible for regulating activities which are most likely to have a significant regional impact. Councils are responsible for those activities which are likely to have a local (or lesser) environmental impact.

Schedule 1 of the Act says that poultry farms that are intended to accommodate, for commercial production, more than 250,000 birds are to be licensed by the EPA. Poultry farms beneath this threshold are regulated by councils.

The poultry farm in this case was the responsibility of council. With the licence requirement as it is, only about seven poultry farms are required to obtain pollution licences. Yet we generally find that the EPA, as a specialist pollution enforcement organisation, is much better equipped than councils to respond to complaints like this one. With greater responsibility for poultry farms falling to councils, we believe they need to improve their performance in this area.



### COUNCILS AND YOUNG PEOPLE

Our Youth Liaison Officer has had regular contact with council community officers and youth development officers throughout the year. These are most often people who provide valuable services to and support for young people in their local communities. They also integrate the efforts of youth workers and youth service providers throughout the area. We recognise the importance of their work, commend their dedication and encourage councils to support their efforts.

The Department of Local Government has produced a document called *How Local Councils Consult With Young People*. It is a very useful document for councils and provides a blueprint for improving relationships between young people and the community in general. We encourage councils to support groups such as youth councils and youth committees, especially where these groups have real input into the consultative processes of the council.

For young people and councils, public space issues (like young people sharing public space and what facilities they can make use of) are still a source of concern. There are some very good approaches to these issues emerging. Some councils require applications for retail developments to include provision for youth services and facilities. Councils that have developed a local crime prevention plan under the *Children (Protection and Parental Responsibility) Act* can apply for endorsement of the plan from the Attorney General as a Safer Community Compact. This endorsement means councils can access the Safer Communities Development Fund to meet the cost of improved facilities.

### PLANNING LAW REFORM

On 1 July 1998, significant changes to the planning system took effect. For the Ombudsman, the most significant of these changes is the new role the private sector can perform in approving certain types of minor development.

Private accredited certifiers will be performing a public role. We mentioned last year that we are concerned that the public interest is protected in this process. To this end, the Ombudsman and the ICAC have been given jurisdiction over the conduct of accredited certifiers. It is now possible to complain to the Ombudsman about maladministration involving accredited certifiers and to the ICAC about corrupt conduct involving accredited certifiers.

Complaints about an accredited certifier are meant to be primarily the responsibility of the body that accredited the certifier in the first place. These accreditation bodies are required to investigate complaints about accredited certifiers to determine if they should be the subject of disciplinary action.

We are working on a task force looking at applications from a number of organisations to become accreditation bodies. We hope that through this process, we can establish useful working relationships with these bodies and ensure that their codes of conduct and complaints and disciplinary procedures are satisfactory.

Because of the detailed complaint handling functions that accreditation bodies have been given, most complaints about accredited certifiers will be referred to the relevant accreditation body for investigation. We will still be looking with great interest at how well these bodies carry out these important functions.

The reform of the planning system now turns to the process of making environmental planning instruments. The Department of Urban Affairs and Planning is intending to release a discussion paper on reform to this area of planning law later this year. Public participation in planning law is a key component in this area of the law. For this reason, we will be following the reform process closely.

### DUPLICATION

In last year's annual report, we set out the results of some work we had done to determine how often the Ombudsman and the Department of Local Government duplicated effort in investigating the

same complaints. We were pleased to find there was very little duplication.

In the past year, we have held regular liaison meetings with the ICAC and the Department of Local Government. As we said in last year's annual report, there are legal limits on the information we can provide to the department. We take care to ensure that information is only provided to the department where it is lawful for us to do so.

### USE AND ABUSE OF LEGAL ADVICE

In last year's annual report, we set out a number of cases of what we believe are unsatisfactory practices in connection with the use of legal advice by councils. We concluded the article by outlining some draft general principles for councils obtaining and using legal advice. In the past year, we have added to the draft principles and consulted with the Law Society of New South Wales. We intend to proceed with further consultation with the interested parties before releasing the general principles.

### A MATTER OF CONCERN

We received a complaint that a council had improperly exhumed a corpse. We made inquiries into the allegation. Council told us that it had discovered the wrong body had been placed in a reserved plot. An exhumation had indeed occurred.

We learned that after the cemetery administration realised it had made a mistake it decided to open the grave and re-inter the misplaced remains. Before doing so, council consulted with the Department of Health, which did not object. An apology was also made to the family who owned the site.

Given the highly regrettable nature of the original misunderstanding, it seemed to us that council had acted promptly and appropriately to address the situation. More importantly, council has taken steps to prevent future incidents of this kind. A protocol is now in place to check proposed grave sites against a photocopy of the cemetery before

every burial. This should ensure that reserved plot holders will be interred in their chosen plot.

### MANAGING LOCAL COUNCILS

In the past two annual reports, we have discussed our concern about conflict in local councils between councillors and senior managers, particularly the general manager. Our attention has been drawn to this problem through complaints and other information we have received from councillors, senior council staff and residents concerned at the impact of these conflicts on the running of their councils.

In the past three years, 19 councils experiencing these sorts of conflicts have come to our attention. Several complaints highlighting these conflicts were received in the reporting year.

Is there a problem in this area? There are two schools of thought on this. One view claims that local councils experience similar rates of turnover of senior staff as State Government departments. Proponents of this view have tended to emphasise the number of general managers who have been dismissed or had their contracts paid out (13 in the past three years) as the definitive measure of the extent of such conflict.

The contrary view is that there are major differences between the structure and operations of local and State government that mean comparisons between the turnover of senior staff at the two levels of government are inappropriate. Local councils exhibit much less capacity to resolve conflicts quickly. The conflicts generally endure for extended periods (unlike most conflicts between a minister and a director-general) and therefore have a much greater impact on the functioning of the organisation. The financial burdens of early termination are also harder for councils to bear.

This view also holds that the extent of the problem should be measured not just by the number of dismissals. Our own experience suggests a significant number of general managers resigned during periods of open conflict with mayors and/or councillors. Of the 19 cases that came to our

attention, four general managers were dismissed or paid out while four others resigned. In six of the councils, significant conflict continues. In another five, conflict has abated.

While the situation is not a crisis, it is a significant enough problem to warrant close scrutiny. We note that the Auditor-General has been reported as expressing concerns about this issue. The Commissioner of ICAC has been reported as expressing concern about job security for senior council staff.

While we have expressed some ideas about the causes of the current problem, we do not attribute blame to either councillors or general managers. We accept that the problem is in part due to the process of adjusting to big changes in how councils are run that may, therefore, gradually improve over time. However, this is not a sufficient reason to ignore the problem.

We believe that a better understanding of the extent of the problem is desirable. We have held discussions with the Department of Local Government, the Local Government and Shires Associations and the Institute of Municipal Management regarding a survey we proposed into perceptions about the extent of conflict and its causes. We are considering this issue further.

In our investigations to date, we have advocated three broad measures to reduce conflict between general managers and mayors. They are:

- clarification of the respective roles and responsibilities of the general manager and mayors/councillors, by way of legislative change or by some other means;
- more training for candidates and newly elected councillors on the respective roles and responsibilities of general managers and mayors/councillors; and
- dispute resolution mechanisms for councils experiencing conflict.

Already, the department, the associations and the institute have held discussions looking at what steps can be taken along these lines. We believe

that, in conjunction with the review of the *Local Government Act* that is now due, these measures should be further considered by the Minister for Local Government and the department.

In the past year, we finalised two investigations that looked at conflicts between the general managers and councillors of Ku-ring-gai Council and Auburn Council. Details of these investigations are set out below.

## Cases

### PROCESSING DEVELOPMENT APPLICATIONS — HOW NOT TO DO IT

Last year we finalised one of our most extensive investigations into the conduct of a local council. The investigation commenced in March 1994 but was delayed for nearly two years after the council under investigation, Ku-ring-gai Council, challenged our right to investigate in the NSW Supreme Court. Council's challenge was unsuccessful and the investigation resumed in January 1996 with several days of hearings using our royal commission powers (we reviewed the result of the court case in the 1994–95 annual report at pp.98–99).

#### The complaints

The owners of a large property in northern Sydney wanted to subdivide their land, sell their existing home on the rear portion and build a new home for their family on the front portion. Their application relied on the old dual occupancy provisions that allowed landowners to subdivide and develop larger residential blocks.

The complainants told us that council had consented to their first development application (DA) but then rescinded this consent without good reason and later voted to refuse it. They also complained that the then mayor had conducted a personal vendetta against them to force them to take legal action to obtain a consent. They alleged that there were several irregularities in the way their second DA was assessed and determined. The second DA was also refused by council.

The complainants also told us that council had deliberately delayed their freedom of information (FOI) application to prevent them from using the documents during their appeal against the refusal of the second DA.

### **Divisions on council**

Council was sharply divided on factional grounds between 1991 and 1995. The majority faction had an anti-development or community rights outlook on planning issues. The minority faction had, by the standards of the area, a more pro-development outlook. Alongside these political differences of outlook were personal conflicts between some councillors. The relationship between the majority faction and council staff was also poor. Factional and personal conflict and tensions between councillors and staff were important factors in the way this case unfolded.

### **Community activist**

The role played by a member of the public, who acted on behalf of the complainants' neighbours, was another important factor. This person ('the main objector') had been a community activist prior to the events under investigation. She had also assisted in the election of a number of councillors in the 1991 election. After the election, she maintained contact with one of her ward councillors ('the ward councillor'). She contacted him from time to time to discuss local issues of concern. The ward councillor also contacted her from time to time to request her advice on matters before council.

### **The first development application**

The complainants lodged the first DA in late 1992. The town planning report recommended approval and council voted unanimously to approve the DA in April 1993. We found that the then mayor and the ward councillor voted for approval because they mistakenly believed the complainants' neighbours were satisfied with the development. We concluded these councillors had placed undue weight on the objections of the neighbours, rather than the merits of those objections. A few days after the meeting, the neighbours raised their

concerns with the main objector. She met with the mayor and the ward councillor and outlined her concerns about the DA. The next day, the mayor inspected the site with the main objector. At the next council meeting, council voted on factional lines to rescind its approval of the first DA.

The reason given for the rescission was that the neighbour had been denied natural justice by not being able to speak to council at the meeting where the DA was approved. However, we concluded council rescinded the consent not because of a denial of natural justice but because the majority faction wanted more time to consider the concerns raised by the main objector. While the neighbours and the main objector were present at the council meeting when the rescission motion was passed, the complainants were deliberately not given prior notice.

Council then invited the neighbours to lodge further submissions on the DA. Nobody else was invited to comment further on the DA. A town planning consultant lodged a submission on behalf of the neighbours as did the main objector. These submissions claimed the DA did not comply with council requirements and that this had been ignored in the report on the DA. Council subsequently voted to refuse the DA on factional lines.

We concluded council was wrong to refuse the DA without first obtaining a detailed response from its town planning staff to the matters raised in the submissions on behalf of the neighbours. We criticised council for not discussing these matters with the complainants to see if they could be resolved by amending their plans.

### **The second development application**

Just before council voted on a second DA lodged by the complainants, the main objector met with the mayor, the ward councillor, the town planner assessing the second DA and the acting general manager. The town planner made notes at the meeting which suggested he believed he was being pressured by the mayor.

We were critical of a number of aspects of this meeting. It was our belief that the chief town planner or his deputy should have attended this meeting to ensure the town planner assessing the DA was not subject to undue pressure. We criticised the mayor for questioning the assessing officer's impartiality during this meeting. We also criticised questions being asked of the assessing officer about his views on the DA. We found the meeting influenced the assessing officer even though only the mayor intended this to occur.

We found that the town planning report on the second DA, read as a whole, suggested the DA was worthy of consent. We also found it was unacceptable that the report contained no recommendation to that effect. Council voted to refuse the second DA, broadly on factional lines.

### **Why the applications were refused**

We concluded that even though there were some problems with the two DAs, council subjected them to much greater scrutiny than was normally the case. We found that the problems with the two DAs went only some way to explaining why council refused them. We found that the fact there were deeply dissatisfied objectors went further in explaining those decisions. In particular, amendments to the second DA eliminated all but two aspects of the application that did not comply with council requirements and the application only breached these two requirements in a minor way. Yet, council staff did not recommend consent and council remained unwilling to approve the DA.

We concluded the mayor's attitude and approach demonstrated his personal mistrust of the complainants and the mistrust of the majority faction towards council town planning staff.

### **Council's defence of the appeal**

The complainants appealed to the Land and Environment Court. We concluded that council's defence of the appeal was unsatisfactory in a number of respects. The hearing took four days, much longer than appeals for comparable developments. Looking at appeals of this type over a three year period, the case was 64% more costly than the next most costly such appeal (council's

total legal costs and disbursements for the appeal were over \$42,000). We concluded council had been more determined than usual to defend this decision. We also expressed concern about how much contact the main objector had with council's legal representatives during the appeal (this consisted of at least three meetings with council's lawyers, 18 telephone calls and five letters).

### **The FOI application**

In January 1994, the complainants applied under FOI for all notes of the meeting involving the main objector, the mayor and the assessing officer. The complainants did not receive the documents until July 1994. We found a number of flaws in council's processing of the FOI application. Council's consultation with third parties was inadequate. Because the initial application was determined by the acting general manager, council had no power to carry out an internal review of its determination. Council purported to do so anyway. As a result, the complainants had to wait four months longer than necessary for the documents.

We found that the mayor appeared to have intervened inappropriately in the processing of the FOI application. Further, we criticised the mayor for using council's solicitors to give advice on whether he had been defamed in one of the documents the subject of the FOI application.

### **Mayoral intervention**

Looking at the case as a whole, we concluded the mayor routinely intervened in matters of day-to-day management that were the responsibility of the acting general manager. Their difficult relationship demonstrated the problems that can arise if councillors intervene in the general manager's areas of responsibility. These two key figures failed to develop a suitable working relationship. We put forward a number of options for improving this aspect of local government including:

- providing guidance on the role and responsibilities of the general manager;
- providing assistance to councils experiencing conflict, including a system of peer review panels;

- developing a model system of performance review and reappointment panels;
- encouraging councils to implement orientation and training programs for new councillors; and
- enhancing the existing seminar program for new councillors to provide greater emphasis on the respective roles and responsibilities of councillors and staff.

### Our recommendations

We made a number of recommendations concerning council's development assessment processes. We also recommended consideration be given to a number of changes to legislation and court practice including:

- amendments to s.352 of the *Local Government Act 1993* to prohibit councils and councillors from directing staff on recommendations or advice;
- including in the *Environmental Planning and Assessment Act 1979* a provision allowing for the court to order compensation to be paid by councils if they refuse a DA due to vexatious or unmeritorious submissions; and
- introducing a presumption in favour of costs for applicants in the Land and Environment Court where DAs comply with council requirements but are nevertheless refused by the council and later approved by the court.

We also recommended that council:

- pay 75% of the complainants legal costs in relation to the appeal against the refusal of the second DA;
- adopt a policy requiring town planning reports to include a clear recommendation for consent or refusal; and
- carry out a legal audit of its current procedures for processing FOI applications.

Of the 26 recommendations we made, 15 have already been complied with wholly or in part. Council has complied with most of the recommendations concerning its development assessment processes. These changes will improve

community understanding of the assessment process, provide greater transparency to the process of assessing applications and conducting appeals and encourage council to make greater use of alternative dispute resolution strategies when dealing with development applications. Unfortunately, council has decided that it will not pay compensation to the complainants.

We are currently monitoring compliance with the remaining recommendations. The decision not to comply with our recommendation regarding compensation, together with council's response to the other recommendations, will be taken into account when deciding whether to report the matter to Parliament.

### SACKING THE GENERAL MANAGER — HOW NOT TO DO IT

Auburn Council dismissed its general manager in somewhat unusual circumstances on 27 February 1996. Shortly after this, the former general manager and the former human resources manager, who had earlier been dismissed, complained to this office. These and other complaints received at the time drew our attention to what were, for some, disturbing events during the months following the election of the new council on 9 September 1995.

The crux of the problem was deep conflict between the then general manager and the human resources director on one hand and some of the newly elected councillors and the then mayor on the other. Most councillors on the newly elected council had not previously held office. The new line-up of councillors changed the power balance and politics of the council. Nevertheless, a councillor with previous local government experience was elected as mayor on 25 September 1995.

The relationship between the general manager and the then mayor suffered a serious decline shortly after the mayor's election. The former general manager and the former human resources director alleged that the mayor had embarked on a strategy to remove senior staff who challenged his authority. Further, the complainants alleged that

council had breached the provisions of the *Local Government Act* in the manner in which they were dismissed.

### Incidents leading to the complaint

In general terms, the complainants alleged the conduct of the mayor and/or council was beyond power or otherwise improper. A large number of incidents were used to demonstrate the truth of this allegation. These incidents included:

- the mayor as chairperson at council meetings on many occasions did not allow senior staff to advise, address or respond to council on matters before it for consideration;
- council resolved to impose a staff freeze (even though there was an approved management plan, organisation structure and budget in place) and required the general manager to obtain council's approval to fill each vacant position (council effectively appropriated to itself the general manager's statutory power to appoint staff);
- the mayor directly engaged a consultant without a resolution of council;
- the mayor and council removed duties from the human resources director over the objections of the general manager;
- the council purported to remove the day-to-day management powers and functions of the general manager;
- the council closed council and committee meetings to the public on numerous occasions contrary to the provisions of the *Local Government Act*;
- the mayor attempted to later reinstate various delegations to the general manager which had been removed by council resolution (in the absence of a resolution of council rescinding or overturning its earlier decision to remove them);
- the council resolved to terminate the employment of the human resources director despite objections from the general manager;
- council failed to comply with the requirements of the *Local Government Act* and council's code of

meeting practice in calling the meeting at which council resolved to terminate the general manager's employment; and

- the mayor, who called the meeting, failed to notify councillors of the purpose of the meeting (meaning that some did not realise its importance and did not attend) and failed to comply with the requirements in giving adequate notice of the meeting and advance notice that the meeting was to be a special meeting rather than merely a meeting of councillors.

The investigation involved reviewing the relevant council files and taking evidence from the complainants, the mayor, several councillors and several staff members using our royal commission powers.

At one stage, we commenced a concurrent investigation into a complaint about the council's handling of an FOI application lodged by the former general manager. Under his FOI application, the former general manager sought access to various documents including copies of diaries he had kept while he was working for the council. Instead of dealing with the application itself, the council initially passed the application onto its solicitors to process. However, there is no provision in the FOI legislation for a determination to be made by any person other than an officer of the council.

Following further inquiries, however, the council allowed the former general manager access to the documents the subject of the application, including his diaries. As a result of the council's cooperative approach, we considered the FOI complaint to have been resolved.

### Why the general manager was sacked

During our investigation, the mayor questioned the competence of both the former general manager and the former human resources director. He also questioned their understanding of the obligations, responsibilities and powers of the general manager. The mayor expressed concern that the former general manager was unduly influenced by the former director of human resources. After a formal investigation we concluded that the mayor's allegations had the hallmarks of *ex post facto*

justifications for the conduct of the mayor and council, rather than being the genuine reasons for the actions taken by council.

There were several reasons on which we based this conclusion. The main reason was that the mayor brought forward no evidence during the investigation which demonstrated that the former general manager had been warned of concerns the mayor claimed existed about his competence while he was employed by council. An auditor's report and a management review relied upon by the mayor to support his arguments were not provided to councillors until after the general manager's contract had been terminated. In any event, most of the matters raised by the mayor occurred very soon after the majority of councillors were first elected to council. We concluded that the majority of councillors therefore had insufficient time and experience in civic office to assess the general competence of the former general manager.

There were various options open to the council to address any concerns it may have had about the competence of the general manager and the human resources director that were both lawful and reasonable. Instead, council acted unreasonably and contrary to law.

### Causes of conflict

Deteriorating relationships between councillors and senior staff, poorly managed conflict and, ultimately, the costly sacking or resignation of the general manager are events that have occurred several times in councils in NSW in recent years. The cause of these problems appears to be the enhanced powers of the general manager under the *Local Government Act* and conflict over what constitutes the appropriate roles of general managers, mayors and councillors.

There have been what we consider a higher than expected number of resignations and dismissals since the changes to the Act came into effect. A number of these cases have been brought to our attention through complaints. In several other cases, there has been ongoing serious conflict between councillors and the general manager which has not resulted in the resignation or the

dismissal of the general manager but has created an atmosphere of continuing tension and patent or latent hostility.

We also know of councils where the general managers concerned are prepared to concede a considerable amount of their statutory power to the mayor and the councillors to avoid conflict. All councils should have the services of an independent administrator with managerial competence and authority to ensure that the day-to-day affairs of the council are properly managed and the policy directions set by the elected representatives are implemented.

Candidates for civic office understandably expect that, as councillors, they will be able to exercise substantial influence over the affairs of the council. Typically, this includes an expectation that they will have some say in the day-to-day affairs of the council. On coming into office, they confront a legal division of powers and responsibilities which gives them fewer direct powers than the general manager over many of the important areas of council activity. The contract under which a general manager is employed, however, is a contract with the elected council and this gives the councillors the power to dismiss their general manager, albeit often at considerable expense to ratepayers.

As was the case at Auburn Council, a number of serious cases of conflict have involved general managers new to local government. Local government's new commitment to managerial autonomy has attracted many senior managers without local government experience. Some have adapted well. Some have not, as they are unused to dealing with the demands of a group of elected councillors and to the blurred lines separating their responsibilities from those of the mayor and councillors. As a result they are unable to develop and maintain the required relationships or achieve their management goals.

### Recommendations

We recommended council develop a policy on the provision of information to councillors and on the interaction between staff and councillors. We also



recommended that the Department of Local Government advise all councils by circular to implement training programs for candidates and new councillors on their roles and responsibilities. We recommended that the Minister for Local Government review the adequacy of the provisions of the *Local Government Act* governing the respective roles and responsibilities of councillors and general managers. We also requested that the Department of Local Government request the Local Government and Shires Associations to join it in providing training for candidates for local government and new councillors with particular emphasis on the respective roles and responsibilities of councillors and staff.

Auburn Council responded constructively to our recommendations. The then mayor is reported to have welcomed the report, adding that it '*highlighted deficiencies in the system created by the Local Government Act 1993*'. The then mayor reportedly said that some of the issues have already been addressed and added that he believed the report provided valuable guidance to both councils and general managers on how particular issues should be handled in future.

### Options for resolving management problems

One question arising from our investigation into Auburn Council is what councils can do when they are concerned about the performance of the general manager and the overall management of the council. Failure to deal with these situations properly can paralyse the operations of the council and ultimately lead to costly moves to terminate the contracts of senior staff. While some of the options may be obvious, for the sake of fullness, we set them out below, generally in order of seriousness:

- seek the advice of the Department of Local Government and/or the Local Government and Shires Associations as to how to address concerns about the management of the council (either face to face, over the telephone or in writing);
- the mayor may raise concerns about the management of the council with the general manager, either:
  - on an informal basis arising out of concern held by the mayor and/or by one or more councillors, or
  - on the basis of a specific resolution of the council to that effect;
- establish a peer review panel to review the situation;
- require the general manager to provide an explanation (either orally or in writing to the mayor or council) in relation to matters of concern;
- formally review the performance of the general manager (possibly using a performance review panel consisting of a councillor nominated by the general manager, a councillor nominated by the council and a third independent person). This review could be conducted either:
  - pursuant to the general manager's contract of employment, or
  - pursuant to a specific resolution of the council to that effect;
- seek independent legal or other technical/professional advice;
- obtain an independent review of the management and/or financial position of the council from a suitably qualified management consultant, accountant, auditor, solicitor or other appropriate expert;
- seek independent assistance to facilitate meetings aimed at resolving disputes or concerns about perceived problems with council management (particularly where there is direct conflict in views on specific issues);
- request the Department of Local Government to carry out either:
  - a management overview of the council, or
  - an investigation into matters or areas of concern about the working or activities of the council as a whole, or the conduct or management of the general manager (pursuant to s.430 of the *Local Government Act*);

- the council may direct the general manager to prepare reports in relation to the areas of concern and/or the council developing policies in relation to such matters;
- the council may adopt policies that guide or direct (as appropriate) the general manager and other staff in the performance of their work and activities in the areas of particular concern to council;
- the council may ask the general manager to show cause why action should not be taken by the council pursuant to the general manager's contract of employment, to terminate that employment; and
- negotiate with the general manager to terminate his or her employment by agreement between the parties.

## HOOKED ON FEES

We receive a lot of complaints about rates, charges and fees imposed by local councils. We do not investigate most of these complaints. Resource issues like setting rates, charges and fees are matters that councils should be able to determine without outside interference. Councils must consult their local communities every year and consider their views before finalising rates, charges and fees. Councils do this by detailing the proposed rates, charges and fees in annual draft management plans.

However, there was one complaint that we investigated because the allegations appeared to raise a serious anomaly. We received a complaint from a group of North Coast fishing enthusiasts that the fee Tweed Council charged for beach vehicle permits was much higher than the fee charged by other coastal councils. Some councils charged no fee. Many others charged between \$15 and \$30. Tweed Council charged \$200. The complaint suggested that, contrary to council's claim that it was merely recovering the cost of the service, council set a fee designed to maximise its income.

We made inquiries. Council's calculation of the cost of the service it provided to beach vehicle permit holders varied significantly from one year to

the next. Council failed to satisfy us that it was complying with its legal obligation to consider certain factors when it set this fee. We decided to investigate whether council's calculation of the cost of this service was correct.

We looked at how council calculated the cost of providing beach access for vehicles over a number of years. Council insisted that it calculated the cost by attributing to this service all direct and overhead costs generated by this service. This method is meant to calculate the true cost of services. Councils can then make more effective decisions about how to allocate resources.

While the investigation was under way, council adopted a more sophisticated method to calculate the cost of this service called activity based costing. This method is more effective in identifying relationships between indirect costs and activities. Council began using this method in 1995–96.

The methods councils use to calculate the cost of services are matters for councils. What concerned us in this case was how costs varied significantly from one year to the next. This in turn raised questions over whether council had reliably attributed costs to the service provided to beach vehicle permit holders.

For instance, in 1994–95, council decided to attribute the cost of its beach patrol contract with the Surf Life Saving Association as a cost of providing its service to beach vehicle permit holders. Few if any of these patrols covered beaches open to permit holders. The following year council did not include this cost. Over a number of years, the cost of maintenance varied from \$10,235 to \$21,600 to \$11,423. For three years, council treated the cost of beach litter collection as a cost of providing the service to beach vehicle permit holders. Then council dropped it from the list of costs. The result of this variation was that the total cost of the service ranged over a few years from as low as \$26,749 to as high as \$73,421.

We were also concerned that council did not clearly set out what factors it had taken into account in setting the fee. Council included some general details in the draft management plan each

year. It was therefore virtually impossible to determine what specific factors council had taken into account in setting this particular fee.

We prepared a draft report that was particularly critical of the way council calculated the cost of the service it provided to beach vehicle permit holders and the amount of detail given to councillors and the general public about how it determined this fee.

In response to the draft report, council conceded that some of the information that it produced which we relied on in writing the draft report was not as accurate as it might have been. Council also provided additional evidence to satisfy us that staff provided councillors with sufficient information about this fee.

Council also gave us an independent auditor's report on how it calculated the costs for this service. This report satisfied us that council was now accurately and reliably calculating the cost of this service.

Importantly, the cost of the service calculated using the activity based costing method was about the same as the income council derived from issuing permits. In other words, we were satisfied council was not overcharging for this service, even if council's past calculations were unsatisfactory.

We intended to make a number of recommendations at the conclusion of the investigation. Council advised us that it would take the following action in response to our draft recommendations:

- review its method of costing its activities in light of best practice for costing activities;
- incorporate the costs indicated by this review in its 1998–99 fee structure;
- review the format of information provided to councillors to determine if it should provide further details on what factors are relied on in determining fees; and
- review the environmental information provided to permit holders.

Because of council's action, we decided to discontinue the investigation.

### A TABLE FOR 200 PLEASE

A plant nursery owner complained about Griffith Council's handling of his complaints over five years about the operation of a restaurant next door. The nursery owner complained that functions were being held at the restaurant for up to 200 people when it had development consent for only 56 seats. The restaurant had only 11 car spaces. Overflow parking associated with large functions crowded out potential nursery customers and harmed his business. He also complained that, although council knew the restaurant had fraudulently obtained its liquor licence for a 120 seats, council had failed to act. The nursery owner was also concerned that council continued to hold functions at the restaurant and that the mayor's 50th birthday party had been held there.

We carried out a formal investigation of the complaint. The Ombudsman held hearings in Griffith and Sydney pursuant to her royal commission powers. Evidence disclosed a sorry tale of poor record-keeping, lack of any system for having files requiring follow up action re-submitted to the responsible staff, scarce resources and confusion (assisted by staff changes) at council. These problems were exacerbated by council's pro-development attitude geared to facilitating approvals rather than enforcing consent conditions attached to such approvals.

#### Deficient development application

The restaurant's DA had been deficient. Among other things, it did not specify in words the number of seats. It showed 56 seats at 14 tables on the DA plan. Nonetheless the DA was approved in December 1990 (*in accordance with the accompanying plan*). One condition required installation of extra parking spaces to bring their number to 14. Council's parking code for restaurants required one space per six patrons and one space per three employees. No extra spaces were ever installed.

In January 1991, a building application (BA) was submitted for the restaurant with a plan showing a slightly larger floor area than that in the DA plan and 15 car spaces. It did not show a seating plan. With a minor amendment to relocate some toilets, the BA was approved in April 1991.

The restaurant operators obviously believed themselves immune from council sanctions and experience has justified that confidence. Their pre-opening publicity in July 1991 claimed a capacity of 150 seats. The council promptly sent a warning letter about this claim exceeding the 56 seats approved in the development consent, but did not act to enforce the warning. The operators almost immediately applied for a liquor licence and submitted a council stamped and signed approved copy of the amended BA plan which had a bogus section sticky-taped over the main floor area showing 120 seats at 12 tables. On this basis, the liquor licence was finally approved for 120 seats.

Council had got wind of the operator's fraudulent liquor licence application and wrote to the Licensing Court in April 1992 saying *'the details submitted to the court in regard to seating capacity conflict with council's approval'*. Curiously, this letter — which was on the court file — escaped the attention of the Liquor Administration Board officers handling the application and it was not brought to the attention of the magistrate who approved the licence application in December 1992 with the file noting *'no objection'*.

### Health and parking concerns

The nursery owner persistently complained to the council about health and parking issues with the restaurant. Council staff conducted inspections and more warning letters were written. No follow up action was taken. It was clear that the restaurant operators were notified in advance about some inspections to check on patron numbers and parking.

As parking was the worst problem, council staff (on their own initiative) drew plans for the installation of 18 extra parking spaces for the restaurant. Within the parking code these could

justify increasing the number of seats consented to by about 100. In November 1992, council quoted \$13,700 for the installation but the restaurant operators said they could not afford this sum. In October 1994, council quoted \$8,500 to install seven spaces but this was also declined. The council resources spent on these plans and quotes were wasted.

In early August 1993, a council officer discovered the doctored plan on the Licensing Court file. A council letter was drafted to the Licensing Court in Sydney, but dispute over its wording resulted in no letter being sent. The court clerk had also asked that the council provide him with a copy of the genuine plan, but this was not done.

A report of the court file discovery was considered a week later by a meeting of the council. It resolved that the matter be referred to its solicitors to lodge an objection with the Licensing Court to amend the licence to comply with council's consent. Nothing was done for four months until legal advice was sought about prosecuting the restaurant operators in the Land and Environment Court, a course rather different to that contained in the council resolution.

### 'Tit for tat' complaint

In the meantime the restaurant operator had made a 'tit for tat' complaint about the nursery owner's storage of compost and a resultant dust problem. This led to a prosecution notice from the EPA that was subsequently withdrawn.

Following staff changes at council, the nursery owner was pressed to put his complaints in writing despite there being ample material on council's less than complete files to document his complaints. In the absence of action, the nursery owner widened his complaints to the Department of Local Government, the ICAC and finally the Ombudsman.

We found the council's conduct was unreasonable in failing to enforce the seating capacity consent conditions for the restaurant, failing to follow up with the Liquor Administration Board the council's knowledge that the restaurant's

liquor licence was fraudulently obtained and failing to have in place two key administrative systems: a comprehensive council-wide system for having files requiring follow up action re-submitted to the responsible staff; and a regime that required the recording of all oral communications of substance and the prompt filing of all relevant documents for safekeeping.

We recommended that the council review its administrative systems and procedures with a view to ensuring that the two key systems noted above were in place. The council has told us that it has complied with all the recommendations.

### COUNCIL PROCESSES – HAIR TODAY, GONE TOMORROW

A developer who had an unhappy history with Griffith Council complained about council's handling of development, building and hairdressing licence applications for the then Mayor's daughter. He was also aggrieved at the way in which the council had handled his complaints about these matters.

This complaint was investigated in conjunction with the matters relating to the restaurant operation described above, and involved evidence taken on oath using the Ombudsman's royal commission powers. Both involved development matters with the council and most of the witnesses were common to both cases. There were irregularities, mainly blanks, in council's building and development registers relating to development which involved the conversion of a butcher's shop to a hairdressing salon.

The poor state of council's records (also found in the course of the restaurant investigation) meant it was unclear as to whether a separate BA had been lodged for the salon, although a lodgement fee had been paid. We concluded that although a separate BA fee had been paid, the development had been treated as a joint DA/BA.

The salon opened in October 1992 and the mayor's daughter was charged a full year's licence fee rather than the correct charge of half the fee.

There was a delay in inspecting the new salon and the licence was not issued until February 1993 which meant the salon operated illegally for four and a half months. Evidence confirmed that the council placed a low priority on inspections of hairdressing premises. After the overcharge in 1992, the council failed to charge the mayor's daughter any licence fee in 1993, although no-one could explain why.

We made adverse findings about council's handling of the development, building and licence applications of the mayor's daughter. We also made an adverse finding — consistent with our finding in the restaurant case — about council's record keeping procedures.

Our complainant had formed the view that the council was incompetent and discriminatory in the way it dealt with developers. To gather evidence to support this view he took to inspecting a variety of council development records — as he was entitled to do. In September 1996, the complainant (in the company of a friend) was inspecting records relating to the hairdressing salon when he was confronted by the mayor in the council's offices. An unseemly altercation ensued which we concluded involved, at the very least, conduct unbecoming a mayor. We also said of the mayor that:

*Involving himself in any way in issues relating to his daughter's development could only be done by a person blind to a particularly stark example of a conflict of interest.*

That blindness continued at the following council meeting when the mayor's conduct in relation to the complainant and his friend was questioned. The mayor remained in the chair for discussion of his own conduct despite the general manager's advice that he should not do so. The audio tape of the meeting made clear he used his position in the chair to interrupt and choke off his critics. We found the mayor's conduct in relation to the complainant and his friend breached the council's code of conduct and was unreasonable and otherwise wrong in terms of s.26(1) of the *Ombudsman Act*.

## BIOREMEDIATION BUNGLES

In late 1994, Hornsby Council purchased the right to use a process for recycling vegetative waste (known as bioremediation) from a Victorian company. It later lodged a development approval with itself to operate the bioremediation facility at a site at Thornleigh. In late 1995, as a result of the controversy related to this proposed development and prior to deliberating on the application, council asked the Ombudsman to investigate the decision making process related to the bioremediation facility. We also received complaints from a resident action group (which later successfully challenged the council's DA in the Land and Environment Court) and some other individuals.

### Preliminary investigation identifies problems

A preliminary investigation was critical of some of the key administrative steps council had taken to implement the project. In particular, it revealed:

- council conducted a relatively shallow scrutiny of the basic technological/scientific claims of the process and the quality of the product despite being aware of certain information which brought into question some of the claims of its inventor;
- council failed to follow prudent business practice by investigating the financial viability of its contracting partner to determine if it could meet its obligations under the agreement;
- council ignored legal advice that there needed to be an objective critical analysis of the income/expenditure forecasts provided in a feasibility study carried out by the vendor;
- there was no documentation of reference checks claimed to have been performed or of any internal assessment of the feasibility study's projections;
- council's review and consideration of the financial implications of the proposal did not meet expected best practice requirements although they were later addressed;
- council failed to consider whether there were any viable alternative processing options against which to benchmark the proposal; and

- council failed to obtain legal advice about tendering obligations applied to its proposed plant acquisition strategy and was imprudent in accepting the manufacturers quotes without independent assessment of their value for money.

We decided there was no utility in carrying out further investigation, principally because council was bound in contract by its previous resolutions and had taken some corrective action on a range of matters. Other matters could no longer be corrected because of subsequent events.

In May 1996, the then mayor referred to us some new claims by a councillor that there were improprieties associated with the leasing of the plant and the equipment associated with the bioremediation facility. Other similar complaints were received at the same time. We decided to investigate, including taking evidence on oath using our royal commission powers.

### No cost/benefit analysis

Due to the lead time involved in manufacturing the equipment, council had resolved to acquire the bioremediation plant prior to the lodgement of the DA. Council initially funded progress payments through working capital but later negotiated an operating lease for the equipment which was valued at \$2.17 million. We found that at no time was any cost/benefit analysis done for the options of acquiring the bioremediation equipment by way of lease or outright purchase either from accumulated investments or through borrowing. We found council's own strategic financial plan assumed such an analysis would be done.

### Failure to obtain competitive quotes

While council entered the lease believing it was not required to tender for the lease facility, we found the failure to obtain the lease through a competitive quotation process akin to tendering amounted to a failure to exercise the diligence and care expected of a council in the management of public funds.

Council had been provided with one quote for the lease from a financier recommended by the

vendor of the process. Council sought another quote from United Pacific Finance (UPF), a broker that it had been using for some years. However, in this instance, UPF decided not to act as a broker but to offer a lease facility itself. Despite claims to the contrary, we found that no other quotes had been sought. Council's financial controller also changed the lease term from seven to ten years at one point and failed to get any new competitive quotes apart from an updated quote from UPF. It may have been the case that the quote offered by UPF represented the most economically advantageous deal that council could have negotiated at the time. However, by failing to obtain competitive quotes for the same term from a number of other providers council was simply not in a position to know if that was the case.

It had been claimed that the lease term was extended so that repayments would fit the budget. However, the payments under the ten year lease had a more adverse impact on council's uncommitted cash flow position than the seven year lease and was marginally more costly in terms of total payments.

### Poor documentation

Council also failed to keep proper documentation of the quotation process. No working papers could be found. Copies of all the correspondence received from UPF and the associated company that actually offered the lease were not filed. This raised questions of how council's auditors could actually audit the lease transaction. We found that there was a breakdown in some of the obligations imposed on the general manager and the responsible accounting officer under the Local Government (Financial Management) Regulation.

### Poor decision-making practices

We were also critical of the way the general manager authorised the lease. The lease documentation was signed on the basis of an oral report to the general manager from council's financial controller that it was the most advantageous and the most economical arrangement that he was able to arrange for the council. We considered this to be a wholly

inadequate basis upon which to approve a financial and contractual transaction of this magnitude. The lease involved payments of over \$3.3 million over a ten year term which would have a significant effect upon council's finances. It was incumbent upon the general manager to properly satisfy himself that the lease proposal was not only suitable but the most cost-effective option. He was not able to do that by the method he chose, nor could it have been demonstrated to have been the case. We concluded that the general manager failed to exercise the due diligence reasonably expected of a person in his position in the circumstances.

This failure was also evident in the signing of a purchase agreement. To effect the lease, council had to sell the plant to the lessor and then lease it back. This required council to verify that it was the owner of a list of equipment that it had in its possession or would shortly have in its possession. However, council was not in a position to warrant that the goods in the agreement were *'the absolute unencumbered property of the renter and that the renter was capable of passing valid and unimpeachable title in the goods'* to the lessor. At that stage, council was only making progress payments upon some equipment and the lease also included equipment that had not even been ordered.

We were satisfied that there was no criminal intent in the execution of the purchase agreement or an associated invoice that was raised. However, it was unclear how the general manager could have properly satisfied himself at the time that council's interests were protected. On his own admission, the general manager believed that he had not even read the purchase agreement in detail. While we accepted that no apparent difficulties arose from the signing of this contract, we considered it to be an error of judgement that had the potential to put council at risk of a contractual dispute.

At the time the lease was entered, all concerned parties expected the development approval process would be relatively smooth and the facility would come on stream by September 1995 or a little later. In fact, it has still not been established to this day.

### Lease terms were onerous

On execution of the lease, council started paying instalments on the equipment as if all the items had been ordered and supplied. Over half a million dollars worth of equipment covered by the lease had not even been ordered resulting in an effective over payment to the financier. This produced a net cost on the lease of nearly \$40,000 per annum which could have been avoided. In addition, the general terms of the lease were also onerous as far as council's interests were concerned. An analysis by the Audit Office showed that acquiring the equipment by leasing rather than borrowing added approximately \$95,000 to council's costs, depending on the assumptions used. Not only did council contract to acquire equipment through lease payments that were far more onerous than payments they would have had to make if they had borrowed funds, council gained none of the benefits usually associated with operating leases because the lease was a finance lease.

We also looked at council's more general practice when acquiring equipment. Despite a strategic financial plan, which clearly envisaged a formal cost benefit analysis being carried out for all plant and equipment acquisitions, it appears council adopted only one leasing strategy for such acquisitions. By doing so it failed to properly consider other acquisition options such as loans even though it was in a very healthy financial position.

### Leases were wrongly classified

Concerns about the bioremediation lease arising from our investigation lead to a re-evaluation of all of council's then operating leases. The majority also had to be reclassified as finance leases which had a substantial impact upon council's disclosable debt. The principal effect of this was to increase council's debt service ratio by 257 points as the leases increased council's long term disclosable debt by \$3.425 million. The analysis of council's 30 active leases by the Audit Office showed only two demonstrated any economic benefit from leasing versus borrowing. While it is accepted that operating leases are entirely appropriate for the acquisition of some equipment, other things being

equal, in the case of the bioremediation lease and the other leases subsequently reclassified by council, none of those advantages associated with operating leases applied.

We looked closely at the relationship between council and UPF. The professionalism that it had demonstrated in working for council over time and the respect with which the company was held by council staff meant that the responsible council staff grew so accustomed to seeking their advice and accepting that they produced financially advantageous outcomes that, at least in regard to the bioremediation lease, they were lulled into not testing that assumption. There was no evidence revealed in the inquiry suggesting any improper or corrupt relationship between council staff and UPF.

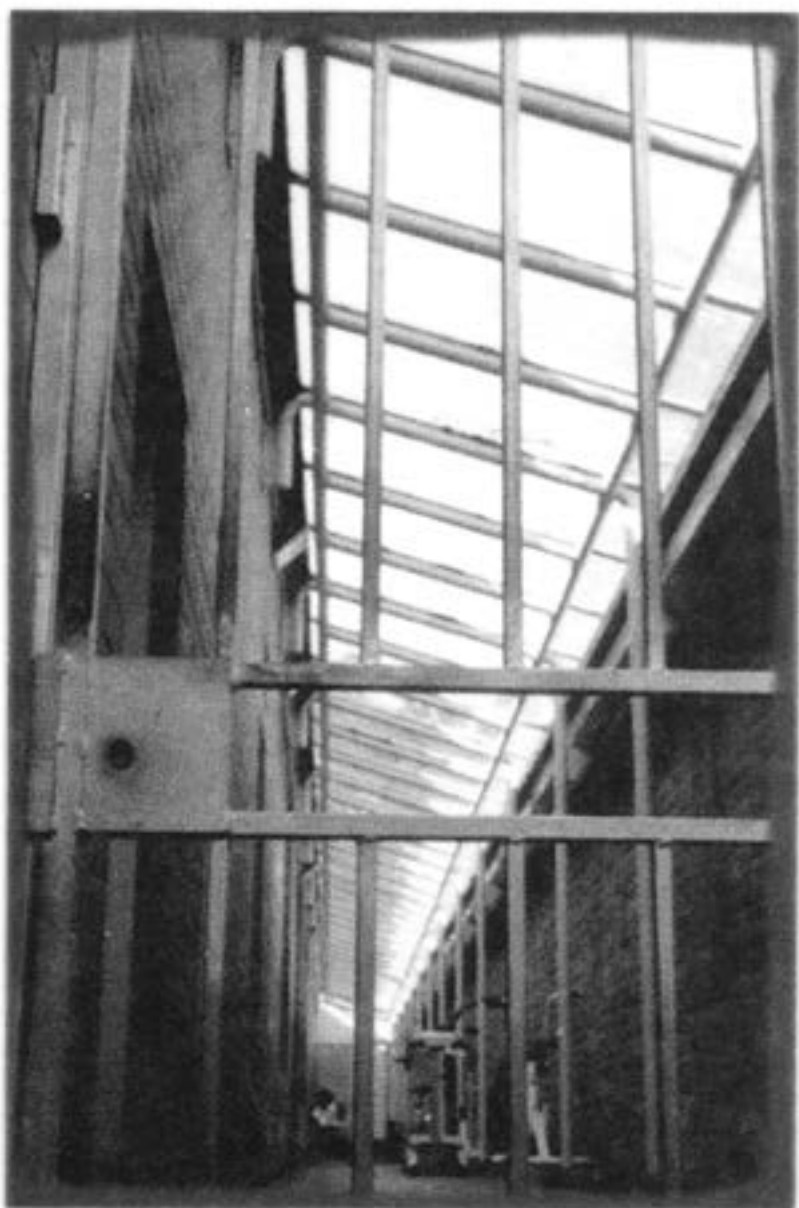
### Reforms recommended

Finally, it became apparent during the investigation that Hornsby Council's experience with operating leases may be a microcosm of more general developments in the local government industry. Consequently, we made a number of recommendations to the minister for changes to auditing arrangements in local councils. Hornsby Council, both during and subsequent to the investigation, implemented a range of new procedures to plug the holes revealed by the investigation and made the subject of recommendations. Implementation of these recommendations is still being monitored.



Thank you for your intervention  
after months of red tape and  
frustration. You have restored  
my faith in the system.

*A complainant*





# correctional centres

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>121</b>
<b>Issues</b>	<b>125</b>
Corrections Health Service .....	125
How we deal with the workload .....	125
Contacting the Ombudsman .....	126
Reduced access to amenities .....	127
Investigating... ..	127
...And why we do it .....	128
Visits .....	129
Classification .....	132
The Intensive Case Management Program .....	134
Transports .....	134
Protection .....	136
The importance of good reporting .....	137
Escapes .....	138
<b>Cases</b>	<b>139</b>
I am not really that interesting ..	139
A wee spot of bother .....	140
Procedural fairness, again .....	141
Escaping responsibility .....	142
Transfers – justifiable concern .....	143
Setting the record straight .....	143
No chance to grieve .....	144
Dispensing with prescriptions .....	144
Belated christmas spirit .....	145
But I know you don't like me .....	145
Increasingly anxious .....	145
Counting the days .....	146
Are they serious? .....	146
You can't take it with you .....	147

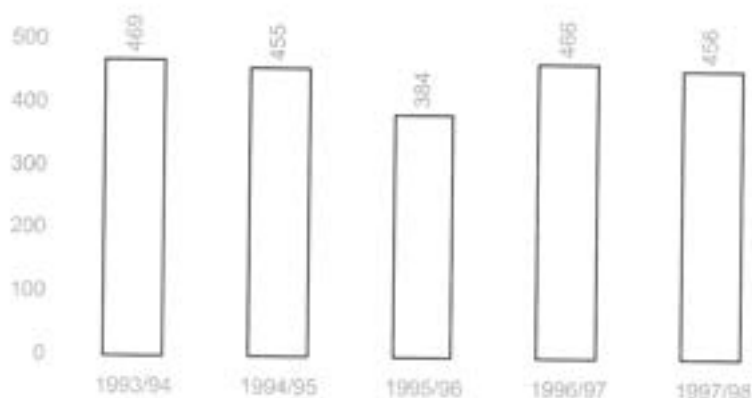
## Overview

This section covers complaints about the Department of Corrective Services and Corrections Health Service, including complaints from correctional centres, periodic detention centres and matters relating to the Probation and Parole Service.

This year we received 456 written complaints and 1,828 informal oral complaints in relation to the Department of Corrective Services and 33 written and 43 oral complaints in relation to Corrections Health Service. Oral complaints are made by telephone and during visits by investigation officers to correctional centres. We also received 13 requests to review our initial determination, slightly more than half the number received in the previous year.

**Figure 1: Written complaints received about Department of Corrective Services\***

A five year comparison



\* Excludes Corrections Health Service but includes complaints for the privately-run Junee Correctional Centre

Table 1: Nature of written and oral complaints about correctional centres  
1997-98

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Buy-ups	6	46
Classification/placement	54	112
Daily routine Access to amenities/activities, access to telephones, general treatment	50	201
Day and other leave	9	32
Failure to ensure physical safety	19	59
Food and diet	7	35
Legal	6	21
Mail Delays, interception	12	47
Medical Access to services, methadone, dental, standards of care	16	132
Officer misconduct Threats/harassment, assaults, racist abuse	62	112
Periodic detention	3	11
Probation and parole	2	16
Property Loss, delay in transferring, confiscation, failure to compensate	65	178
Record keeping and administration Inaccurate records, private cash control, sentence calculation, warrants, failure to reply/supply information	31	140
Segregation Unreasonable, failure to give reasons	4	36
Security Urine analysis, cell and strip searches	6	30
Transfers Unreasonable or refusal to, form of transport, interstate, delay	26	169
Unfair discipline	10	83
Visits Treatment of visitors, visitor bans, access to visitors, searches	24	141
Work and education Access to, removal of	7	81
Other	37	146
<b>Total</b>	<b>456</b>	<b>1,828</b>

Table 2: Written complaints about correctional centres received, by institution  
1997-98

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Bathurst	16	52
Berrima	8	19
Cessnock	11	51
Cooma	5	7
Dept of Corrective Services	108	391
Glen Innes	4	6
Goulburn	34	50
Grafton	10	38
John Morony	16	40
Junee	47	308
Kirkconnell	9	45
Lithgow	14	28
Long Bay, Special Care Unit	3	14
Maitland	6	14
Malabar Special Program Centre	7	21
Malabar, 4 Wing	1	5
Mannus	2	1
Metropolitan Remand Reception Centre	45	176
MMTC, Remand Centre	3	17
Mulawa/Norma Parker/Emu Plains	33	150
Oberon	1	2
Parklea	7	50
Periodic detention centres	1	25
Prison Hospital	6	35
Reception Industrial Centre	3	15
Silverwater	27	151
Special Purposes Prison	4	35
St Heliers	6	14
Tamworth	1	2
Training centre	7	27
Others	11	14
<b>Total</b>	<b>456</b>	<b>1,828</b>

The number of written complaints was similar to last year's total. However, oral complaints rose by 24%. There was a huge increase in complaints (56%) taken during visits to correctional centres.

The latter increase can in part be accounted for by the increase in the number of visits we undertook. Some matters would undoubtedly not have been brought to our attention if we had not advertised our presence in a correctional centre.

We finalised 451 written complaints, with preliminary or informal investigations being conducted, either in writing or by telephone, on approximately 69% of complaints received. Three formal investigations were initiated, one of which was discontinued as reported below, another resulted in no adverse finding and the third, at the time of writing, was not finalised.

This year there were significantly fewer complaints about transfers and about segregation. On the other hand, complaints about daily routine — everything from access to inmate development staff or the telephones and general treatment — rose significantly, as did complaints about record keeping. This latter category included complaints about sentence calculation, warrants, inaccurate records and, of course, inmate cash accounts. It is difficult to extrapolate trends from this information except perhaps to note that, while what might be termed very serious complaints of assault and other mistreatment are down, complaints about the everyday running of correctional centres and some areas of the department's head office have increased markedly.

Table 3: Complaints about correctional centres and the Department of Corrective Services

1997–98

<b>Received</b>	
Written	456
Oral	1,828
Review	13
<b>Total</b>	<b>2,297</b>
<b>Determined written complaints</b>	
Formal investigation completed	2
Formal investigation discontinued	2
Preliminary or informal investigation completed	311
Assessment only	132
Non jurisdiction issues	4
<b>Total</b>	<b>451</b>
<b>Current investigations (at 30 June)</b>	
Under preliminary or informal investigation	109
Under formal investigation	2

## Issues

### CORRECTIONS HEALTH SERVICE

The total number of complaints, oral and written, about Corrections Health Service (CHS) have risen by approximately 27%, from 59 to 75. The larger part of this increase comprises oral complaints — principally those taken during correctional centre visits — which rose from 31 to 43. Forty three written complaints were finalised.

Table 4: Nature of written complaints about  
Corrections Health Service  
1997-98

Access to medical services	10
Standards of care	11
Dental services	2
Methadone	2
Officer misconduct	4
Threats/harassment, assaults, Racist abuse	
Unhygienic conditions	2
Other	1
<b>Total</b>	<b>32</b>

Table 5: Complaints about  
Corrections Health Service  
1997-98

<b>Received</b>	
Written	32
Oral	43
<b>Total</b>	<b>75</b>
<b>Determined written complaints</b>	
Preliminary or informal investigation completed	33
Assessment only	9
Non jurisdiction issues	1
<b>Total</b>	<b>43</b>
<b>Current investigations (at 30 June)</b>	
Under preliminary or informal investigation	3

Part of the increase can be traced to Mulawa Correctional Centre where two separate matters each sparked a number of complaints. In addition, the provision of services at the Metropolitan Reception and Remand Centre, including access to the clinic and to doctors, was a fertile area for complaint. The service appears to have taken steps to address issues which arose following the commissioning of the centre. While complaints from this source continue, the numbers have dropped.

During the year, the new chief executive officer of Corrections Health Service met twice with the Ombudsman. Officers of the two organisations met on a third occasion to confirm procedural agreements. The tone of these meetings appears to indicate a welcome return to a cordial working relationship. This should, in turn, facilitate the resolution of complaints about the service.

### HOW WE DEAL WITH THE WORKLOAD

While the number of written complaints to us about gaol issues have fallen slightly this year, inquiries from inmates made by telephone and during visits by us to correctional centres have, as noted above, increased enormously. Complaints dealt with during visits rose by 54% from 1996-97 with overall inquiry numbers rising by about 20%. These matters are generally dealt with informally with us providing information, sometimes with the assistance of a discussion with the governor or a call to the relevant gaol or section of the department. This method is also used to deal with a large percentage of the written complaints directed to us. This relatively easy resolution of complaints is not always possible. When telephone calls fail, we are forced to write to the department or to set up meetings with relevant officers in order to pursue a resolution.

In September 1997, we wrote to the commissioner expressing concern at the length of time it was taking for the department to reply to our written inquiries. This letter noted that we are not immune from delay, but were keen to work with the department to minimise the difficulties apparently experienced in responding within a

reasonable time frame. The commissioner indicated that his department appeared to be dealing with a record number of written inquiries although he had no indication of *'a dramatic deterioration in conditions or behaviour within [his] Department'*. He indicated a willingness to assist with Ombudsman inquiries, and was as keen as us to find the most efficient way to do so. Officers of the two organisations met in October 1997 and a commitment to resolving complaints informally and quickly was renewed.

Articles were included in the department's regular bulletin. These articles explained the purpose of our inquiries and asked for full co-operation with oral inquiries in order to minimise the number of written inquiries.

In this last year we were able to complete a full program of 42 visits to correctional centres. While this required considerable dedication of our resources, we believe the benefits are tangible in that we can deal with inmates' concerns at an early stage. Meetings with the governor and other key staff of the centre are often immensely useful to our staff; we get information about local issues and the functioning of particular centres which enables us to answer telephone inquiries, and allows us an opportunity to develop working relationships with correctional centre staff. In recognition of the efficiency of this work, the department's operations procedures manual was amended in January 1998 to ensure governors of correctional centres would be on duty on the day of visits by our staff.

Broader corrective services issues are discussed by senior members of the department and our office at meetings held every few months. Knowing what is going on in the department, including changes to policies, structures of individual centres and other procedural issues, adds to the body of information from which we can draw and allows us to deal with complaints without having to ring or write to the department.

Informal communication about complaints appears to be working well. It is only when we have to write for information and explanations that the process falls down. In the last year, there have only

been 49 such inquiries (excluding property matters which we refer directly to the department) and yet the average turn around time to the department is in the region of 90 days, with the response time ranging from ten to 220 days. While the staff of the department's Ministerial Liaison Unit are always responsive to inquiries about delayed matters, it is still rare for a departmental officer to ring us and discuss problems or request an extension. This continues to be of concern to us because, from our long experience in dealing with complaints, often a delay in finalising a matter itself creates dissatisfaction on the part of the complainant.

## CONTACTING THE OMBUDSMAN

Ombudsman staff visiting Kirkconnell Correctional Centre sighted a staff memo which said all requests made by inmates for telephone calls to a number of organisations including our office should be referred to the area manager. We discussed this with the deputy governor who agreed this practice would no longer be required for calls to the Ombudsman. A little while later, we received a complaint which said notices had been posted at Parklea Correctional Centre stating:

*Inmates wishing to contact the Ombudsman are to inform their Wing Officer, who will inform the Area Manager. Your request will then be registered.*

This notice raised a similar issue.

Our obvious concern is that such requirements may make some inmates reluctant to contact us. Justifiably or not, we feel some inmates may be hesitant to put their name down to see the Ombudsman, or to telephone us, if they felt the gaoil staff are keeping a record of their having done so. On the other hand, when representatives of the office visit correctional centres, it is convenient if a list of inmates who wish to see us is available. We wrote to the department about the matter.

The department replied the sign had been meant only to assist our staff. They argued that 'registration' does not necessarily involve staff

taking any details about the nature of the enquiry. Our problem with the wording of the sign, however, was that it did not make this clear. We wrote back suggesting the sign could be re-worded to better reflect its actual intent. We suggested the sign might be re-worded as follows:

*Inmates who wish to contact the Ombudsman can:*

*Telephone the Ombudsman (this call is free);*

*Write to the Ombudsman on the forms provided; or*

*Put their names down with their Wing Manager, or Area Manager to see representatives from the Office of the Ombudsman on their next visit to this centre.*

On our next visit to Parklea we observed the original sign had been taken down but not replaced.

## REDUCED ACCESS TO AMENITIES

Part of the rationale for our visits to correctional centres is that we can observe at first hand issues arising and, sometimes, effect a resolution before a problem blows out of proportion.

When we visited the Industrial Training Centre (part of the Long Bay complex of prisons) in January we encountered a high degree of dissatisfaction with some aspects of life in the centre. There was an unusual degree of agitation for a minimum security prison, where many of the inmates were preparing to leave custody in a short time. Almost 200 inmates, from a prison population of around 320, had signed a petition protesting about the management of the prison. Besides the petition, more than 40 inmates had put down their names to see us about a single issue raised in it, i.e. the number of lock-ins. Due to staff shortages, if an officer is off sick or is away for any other reason then inmates are locked into their cells at times when they would normally be able to walk around the prison yard. Besides inmates, we also received a number of informal complaints about this issue from staff. Staff stand to gain from overtime payments,

which are often the only way to avoid lock-ins. More importantly, staff dislike the increase in tension which regular lock-ins produce.

Another issue which caused a good deal of frustration was the fact that the sports oval had been effectively closed for many months. Inmates and officers told us the oval was only open three or four times a year on gala days because of security concerns. When we last visited the centre in June 1997, the governor told us a major security fence was going to be installed. On our January visit, however, there was no sign that a fence was any closer to being erected. A number of inmates told us that no such fence was needed. To make the oval secure, they said, all that was needed was for one extra officer to be rostered on to supervise activity in the oval.

Two days after our visit we met with senior operational staff about these issues. We passed on our observations about the frustration resulting from the frequency of lock-ins and the limited access to the sports oval. They agreed only one additional staff member would be required to ensure the oval could be re-opened on a regular basis. Within another two working days, and within a week from the date of our visit, a new activities/supervision staff position had been created.

## INVESTIGATING...

We began three formal investigations in the corrections area during 1997-98. Two of these were still to be completed at the end of the reporting year — one concerned the alleged illegal segregation of an inmate at Junee Correctional Centre and the other related to the actions by the Department of Corrective Services in assisting a high profile inmate to prepare for parole. Case studies of these matters will be included in next year's annual report. The third investigation focused on the grounds on which an inmate was reclassified in February 1997. This case study is outlined below.



### ...AND WHY WE DO IT

An additional component to the third investigation raised questions about the accuracy of the information provided by the department to our inquiries. The investigation was eventually discontinued, not least because the inmate chose to take action in the Supreme Court against the department, and the matter of his classification was settled on terms not to be disclosed. We could only assume these terms were satisfactory to the inmate as we heard no more from a formerly persistent complainant.

The inmate's initial complaint was lodged with us in October 1996. He was alleging he had been given contradictory reasons for his reclassification from a minimum C3 classification to a medium B classification. We made telephone inquiries over a period of time trying to resolve the alleged contradictions. The inmate had been told initially his classification was the result of charges to be heard against him relating to drugs and money found in his cell at Silverwater Correctional Centre. He was then told this was not the only reason, and the department had intelligence information implicating him in drug dealing activities at Silverwater. The drug charges were dismissed at court but his return to C3 was by no means assured.

#### Questions asked

As we were unable to resolve the matter through telephone calls, written inquiries were sent off in March 1997. We asked for access to the intelligence material referred to above and to the investigation report. We also asked for copies of all the material made available to the case management committee which rejected a recommendation the inmate be reclassified as C1. Many more telephone calls followed, with the department's written response being received on 15 July 1997. By this time, the inmate had lodged a writ in the Administrative Division of the Supreme Court alleging the department had failed to act in a lawful or reasonable manner in relation to his classification, not least because of its reliance on unsubstantiated allegations against him. Generally this would have allowed us to decline the matter on the grounds of the inmate having alternative and satisfactory redress of his

complaint. In this case, however, we were concerned at apparent contradictions in the advice provided to this office and that sworn by a superintendent of the department in an affidavit to the Supreme Court. A notice of investigation was issued on 16 September 1997.

#### The response

When the department's response was received on 10 October, it objected in the strongest terms to the suggestion of it deliberately misleading the Ombudsman. Some of these objections were phrased as part of a quite personal attack on the investigation officer. The response, however, omitted to answer some of the questions asked, this being a contravention of s.18 of the *Ombudsman Act* which entitles the Ombudsman to require the production of information for the purpose of investigation. While the substantive part of the department's response resolved the issues which had been made subject of investigation, we could not allow the s.18 requirement to remain unfilled. Yet again we resorted to the telephone in an attempt to have the matter resolved without recourse to the more formal mechanisms available to us. Despite promises of responses, the department did not provide the requisite information until March 1998 — six months after the information was first required to be produced — again accompanied by criticism of the investigator.

#### Finally

At this point, we were able to discontinue the investigation which no longer had any utility — the matters raised in the Supreme Court had been settled, the inmate was out on parole and the apparently contradictory advice had been satisfactorily explained. Given the extraordinary length of time it had taken to reach this point, and the unnecessarily aggressive manner of departmental officers during this time, the Ombudsman believed it was necessary to convey our concerns about the way the department had conducted itself — particularly in view of the considerable work being done to put the relationship between the two organisations on a better footing.

### Matters arising

This investigation highlighted a matter which has been of concern to us for some time, and is as yet unresolved. This primarily concerns what the department calls 'intelligence information' — in this case 'sustained and reliable intelligence' which, on close examination, was revealed to be nothing of the sort. The intelligence reports themselves were evaluated by departmental officers as 'reliability unknown' and all referred to a three week period in September 1996. In addition, there was no indication of any attempt being made to test the allegations even though the department placed significant reliance on these reports in its management of the inmate right up until his parole in March 1998.

We were also concerned at an apparently deliberately damaging overstatement of the inmate's misconduct in gaol. He was described to the Supreme Court as having '... a very lengthy history of offences and misconducts within the prison system' — a statement obviously intended to indicate that he was a management problem. However, his history of misconduct in the system only included three offences in 1994, and the charges laid in September 1996 which were dismissed by the court.

It is not difficult for an inmate to develop a particular kind of reputation in the correctional system, and often such reputation may be warranted. However, it is also only fair and proper for the department to have properly supported and documented allegations and intelligence if such an inmate is to suffer from his or her reputation.

### VISITS

Problems with visits are an ongoing source of complaint to our office.

We received 147 oral complaints about visits during the last year. These complaints came from inmates as well as their visitors. Complaints about visits at the new Metropolitan Remand and Reception Centre (MRRRC) were perhaps the most consistent over the year. Some of the very earliest complaints from the MRRRC were about delays in

processing visitors. The size of the MRRRC, combined with its function as a reception and remand facility, mean that not only do many thousands of inmates pass through the centre, but many visitors also. All adult visitors are entered on to the biometric identification system. Initially, only male visitors were put on the system, but it has now extended to female visitors. Unfamiliarity with the new technology, and the sheer volume of people to be processed, often resulted in considerable delays.

The MRRRC also operates a booked visit system where visitors have to ring the centre and book a time for their visit. Initially, only one person was taking bookings. Both visitors and inmates have complained that inability to get through to the booking officer has prevented them from having a visit. Since early 1998, two people have been taking the bookings, so there has been an improvement. According to the MRRRC management, the booking system is regularly audited, with their most recent audit indicating that the majority of calls for visits were answered within one minute. Problems still occasionally arise but these appear to result from problems with the telephone lines themselves, not with centre staff. Problems with some visitors still waiting long times to see inmates are still being reported.

Last year's annual report outlined the close attention given by our office to a number of complaints about bans and restrictions and, in particular, about apparent inconsistencies in the application of the restrictions. Although we received a similar number of written complaints about visits over the past year, different issues were raised. A number still related to restrictions, but an examination of the complaints indicated other issues which needed to be addressed. One formal investigation, arising from a complaint by a visitor, was completed during the year.

Contact visits between inmates and their family and friends are the norm in NSW correctional centres. However, actions by some inmates and/or their visitors will result in them being placed on restricted visits and, for some visitors, being banned from visiting any correctional centre for a period of time.

**Case 1**

One complaint received during the year arose after a young woman was placed on restricted visits because of allegations of sexual activity between her and the inmate she visited. Both the inmate and the visitor strongly denied that any sexual activity had occurred. Arrangements were made with the department to view the video tape which had recorded that day's visits. After viewing the tape, it was agreed that sexual activity had probably occurred and that the operations senior assistant commissioner was not unreasonable in restricting the visitor to box visits for six months. However, in considering the restriction, a question arose as to whether cl.107(1) of the Prisons (General) Regulation used to implement the restriction, could be legitimately used in this instance.

Clause 107(1) of the Regulation allows the commissioner to direct that a person be prevented from having physical contact with an inmate if the commissioner reasonably suspects that the person is likely to introduce contraband into the correctional system. While there is a provision in the Regulation for terminating a visit if a visitor or inmate acts in an *'offensive, unseemly, indecent or improper manner'*, this relates only to the visit at which the conduct occurred. At the time of the complaint, cl.107(1) was regularly used to restrict identified visitors.

In correspondence sent to the commissioner we questioned the use of cl.107(1) in this and similar matters. We also raised the department's provision of information to visitors about appropriate conduct on visits. In reply to our concerns, the commissioner advised that, although he considered there was no imperative to amend cl.107(1) *'an amendment is desirable in order to put the issue beyond doubt'*. He also acknowledged the need for further information to be provided to visitors through the department's new visitors handbook. Action has commenced on both these issues.

**Case 2**

As well as restricting visitors' contact with inmates to prevent the introduction of contraband into a correctional centre, visitors can be requested to undergo a strip search by a police officer. If a visitor

is suspected of bringing contraband into a correctional centre, senior staff can request that police attend the centre to interview, and if necessary, search the visitor. The decision to search has to be made by the police officer as correctional officers have no authority to search a visitor or direct that a strip search be conducted by police.

Police officers have the legal authority to conduct a strip search, and a search of a motor vehicle pursuant to s.357E of the *Crimes Act*, s.37(4) of the *Drug (Misuse and Trafficking) Act* and s.3 of the *Search Warrants Act*. These powers cannot be delegated. The *Correctional Centres Act* does not give correctional officers the authority to strip search visitors to correctional centres, although they can strip search inmates. A recently completed formal investigation of both the Police Service and the Department of Corrective Services demonstrated that some police and correctional officers were unclear as to their powers with respect to strip searches.

Five young women visitors to a maximum security correctional centre were strip searched by two female correctional officers. The search was conducted at the request of male police who were at the gaol in response to an intelligence report which alleged that a female visitor to the centre may be in possession of a firearm. While the allegation was serious, and could not be ignored, the handling of the situation, especially by the police, left a lot to be desired. Although the police had had several days to arrange for female police officers to be available to attend the gaol, they failed to do so.

The deputy governor gave permission for the female correctional staff to conduct the searches as he believed police had the authority to delegate their searching powers when required. The Police Service suggested that it was a *'misunderstanding'* on the part of the police officers as to their searching powers.

The Department of Corrective Services responded to the incident in a timely manner and issued advice to all staff with respect to their limited search powers. They also advised them that they could not be directed to carry out a search by police. The Police

Service, on the other hand, issued advice to their staff that, provided the person to be searched gave permission, the police could use a correctional officer to conduct the search. This was at odds with the Department of Corrective Services' advice, and clearly outside the legislation. Following further correspondence, the Police Service has provided officers with the correct information.

### Case 3

Visitor details are recorded on the department's computer data base and cross referenced against the inmate being visited. This should ensure that any restrictions or bans against either the inmate or the visitor will be immediately obvious to the officer recording the visitor's details. However, errors still occur, especially if the officer is unfamiliar with the visitor screens on the data base.

An inmate recently transferred to a minimum security centre several hours from Sydney, complained that during a visit with his wife, they were approached by an officer and told that his wife was a banned visitor. The visit was then terminated. This was the second visit he had had at the centre since his transfer. Inquiries he made during the week following his visit indicated that his wife was suspected of bringing drugs into the gaol where he was previously held. As a result of these suspicions she was banned. The inmate denied any wrongdoing on the part of his wife or himself.

When inquiries were made by this office, it was found that the inmate's wife was not a banned visitor. Her name was 'flagged' on the computer — this indicated that there were suspicions that she may have been involved in bringing contraband into the gaol. However, it was intended only to alert visits officers to the concerns held by the security staff so that a close eye could be kept on the visit.

The governor of the gaol was contacted and informed of the problem. He agreed to follow this up with all visits staff, and to make sure that any officers who were to work in visits were properly informed about the notations on the visits screens. The inmate's visits with his wife were immediately reinstated.

### Case 4

Errors also occur if officers do not know, or seek to obtain, accurate information as to who may or may not visit a correctional centre. Visitors on probation, parole, licence or recognisance at the time they intend to visit, are only allowed a contact visit if they are members of the inmate's immediate family. This includes an established de facto relationship. If there is no family relationship, a 'non-contact' or box visit can be allowed.

A recently released former inmate of Goulburn Correctional Centre visited his co-accused at the centre. When he next went to visit, he was denied a visit because he had an outstanding community service order. He contacted the Probation and Parole Service and his solicitor, who assured him that a community service order should not prevent him from visiting an inmate. He returned to the gaol and passed on this information to the officer. He was again refused a visit. We rang the centre and spoke to the Governor who agreed that the visits should have occurred. The Governor also agreed to speak to the officer involved. The complainant has not reported any further problems with visits.

### Case 5

During a visit to the Malabar Special Programs Centre an inmate complained that he had not been provided with information about the special conditions imposed on visits in the section where he was housed. As a result, he and his visitors were chastised by an officer during a visit which caused embarrassment and distress to his visitors.

The inmate was housed in a wing which runs programs for sex offenders, including those convicted of offences against children. The inmate involved had not been convicted of an offence against a child. Prior to his transfer to participate in a special program, the inmate had been housed in another correctional centre where there were no special conditions on visits. However, stringent visiting conditions existed in this wing, including the need to obtain special permission to have children visit and close supervision of the visit. As his offence was not against a child, he was granted permission for his grandchildren to visit.

During the first visit at the centre, one of his grandchildren climbed onto his lap. An officer immediately approached and informed the inmate and the visitors that this was not permitted. Although he agreed that special conditions should apply in the wing, the inmate felt that he should have been made aware of these special conditions prior to the visit.

The complaint was discussed with the governor of the centre, who agreed to make further inquiries about it. The governor's reply included copies of notices issued to staff and inmates in relation to visits. While the notices prior to the inmate's complaint were clear that children could only visit in special circumstances, the information did not provide any direct advice that children were not permitted to sit on an inmate's lap. A new notice was included which provided clear advice as to what physical contact was allowed.

### Case 6

Visitors to correctional centres are not usually permitted to take any bags into the visiting area. This restriction doesn't extend to professional visitors who often need to take bags holding documents into a visit or to correctional staff who may need to take a bag with them to work. At the MRRC an x-ray machine, like those used at airports, is installed to inspect any bags being taken into the centre. The x-ray machine, situated between the visitors' reception and waiting area and the entry into the gaol, was the cause of a complaint to our office during the year.

The mother of a 22 month old toddler complained that while waiting in the visits reception and waiting area her child's fingers became jammed in the machine. Although released quickly, the child remained extremely upset for over an hour. A correctional officer contacted the gaol clinic and asked for a nurse to attend the waiting area. No medical staff attended.

When contacted, the operations manager confirmed the incident. Although medical staff are not employees of the Department of Corrective Services, the operations manager said he would take up their failure to respond to the incident with

the nursing manager at the centre. Apparently, when contacted the medical staff told the correctional officer to apply an ice pack to the child's fingers. Both the officer and the operations manager said that, under the circumstances, the advice was useless because ice packs are not available in the reception area.

As well as the lack of assistance provided by the clinic, the mother was concerned that the placement of the machine enabled children to have easy access to it. In response to this issue, the operations manager said that a glass screen was to be erected between the x-ray machine and the reception area. This would prevent any accidental access to it and upgrade the general security of the area. The changes were made a short time later.

## CLASSIFICATION

The prison regulations require the Department of Corrective Services to regularly review each inmate's classification. This is done every six months in accordance with established procedure. Unsented inmates are generally dealt with as posing a high security risk, not least because they are often unknown quantities. Consequently, their classification is reassessed after sentencing since at that point not only security but access to developmental programs becomes an issue. Because classification affects access to developmental programs, and consequently can affect an inmate's early release date, we receive many complaints about classification. We seldom investigate these as the department has established appeal procedures; we often make enquiries, however, to ensure the procedures are being followed.

### Case 1

An inmate at the Malabar Special Programs Centre complained to us that he had missed out on having his classification and placement reviewed. For this inmate, a successful review would have enabled him to participate in TAFE courses and short periods of external leave in preparation for his eventual release from custody.

The Malabar Special Programs Centre is located within the Long Bay Correctional Centre site and offers various programs for inmates with special needs within the correctional system. In order to participate, inmates are assessed at their gaol of classification, moved to the centre for the duration of the program, then returned to their gaol of classification.

Our inquiries revealed that, due to staffing constraints, the practice of the department was to defer the six monthly reviews of inmates participating in programs until they returned to their gaol of classification. This was contrary to established procedure and unfair to inmates who held a legitimate expectation of six monthly review.

During further inquiries, the assistant director of classification and movements told us that staff from the department would meet to discuss this problem. The assistant director later wrote to our office to advise:

*All inmates who are attending Programs at the Malabar Special Programs Centre, Long Bay, and whose six (6) monthly review date falls due whilst at the MSPC will, in accordance with our legislative requirement under the Correctional Centres (General) Regulations have their classification, placement and programs reviewed by the Centre's Case Management Team.*

#### Case 2

The wife of an inmate complained her husband's classification had not been reviewed at Parramatta Correctional Centre for a fifteen month period during 1995 and 1996. Although his classification had subsequently been reviewed, she was concerned the delay may have caused him to miss opportunities to participate in programs and slowed his progress towards eligibility for pre-release programs.

We wrote to the department about the delay and asked if any procedures were in place to prevent similar occurrences. The department acknowledged a fifteen month delay had occurred, explaining audits of inmate classification at Parramatta in 1995

had not identified this inmate as overdue for review. It argued this particular inmate had not been disadvantaged by the delay, but acknowledged a similar delay may have had a more significant effect on other inmates' classification. The department undertook to review the inmate's classification as soon as he became eligible for consideration for pre-release programs.

The department also advised the responsibility for auditing of case management and classification had been shifted to a more autonomous section of the department. Under this system, identified staff travel to all correctional centres to audit the case management of individual inmates every three to four months. We share the department's hope that this 'external' auditing will result in fewer delays or oversights in the future.

#### Case 3

We also received a complaint that a young inmate's classification had not been reassessed after sentencing, although he had since been in three different gaols. By the time of the complaint, the inmate had finally been reclassified to a young offender's institution. The complainant remained concerned that the delay could affect the date the inmate would become eligible for works release. We wrote to the department about the delay and asked if the reclassification could be backdated to ensure his future options would not be affected by the delay. The response explained the reasons for the delay but claimed it could not backdate the new classification.

The matter was resolved by the department promising to reassess the inmate's classification six months after the date on which he should have first have been reassessed.

#### Case 4

An inmate complained he had completed the Intensive Case Management Program (ICMP) at Goulburn Correctional Centre in 1996 but had since been referred back to the program twice. Staff at the gaol confirmed that on each occasion he had been assessed and found to be unsuitable for the program.

We made inquiries and found the recommendations had been made by the Serious Offenders Review Council (SORC) and accepted by the Commissioner for Corrective Services. We requested a meeting to view the documentation from the Department of Corrective Services about the issue in the inmate's file.

It appeared the inmate might have been thought to have not completed the program, as he had been transferred from Goulburn Correctional Centre for medical reasons. However, there was no documentation in the file to show he had in fact been participating in any program which had been interrupted. There was also no documentation about ICMP goals and achievements which indicated the inmate's progress or otherwise, or any correspondence or reports from the gaol explaining the decisions not to accept the inmate into the program.

We wrote to SORC with our observations and concerns, noting such information from the Department of Corrective Services would undoubtedly assist in a future determination of the appropriate placement for the inmate.

### THE INTENSIVE CASE MANAGEMENT PROGRAM

We received a number of other complaints about the ICMP during the year. Having been dealing with them as individual files, we decided the time had come to look at the program as a whole. The program, established in 1996, and comprising two stages, is used for the management and control of violent and extremely disruptive inmates in the correctional system. The operational instructions for the program summarise its function as follows:

*It will provide the opportunity, support and direction needed by inmates who have demonstrated violent or excessively disruptive behaviour to change that behaviour, so as to return to, and remain in, the mainstream inmates population.*

The instructions also referred to ongoing evaluation of the program, and an independent review after 12 months.

Inmates on Stage 1 are held in the high security unit at Goulburn where their living conditions are of minimum standard and their only association is with correctional officers. The program is not, however, meant to constitute segregation, nor substitute for segregation. Inmates complained nonetheless of their limited contact with program staff, visitors and legal representatives.

Concerned that at least some of the inmates who contacted us appeared to be held on Stage 1 without chance of progression, we wrote to the commissioner asking about the management of inmates in accordance with the policy. It turned out that two of the inmates were being held in the unit for security reasons and were not truly part of the program. Assessment of the others is similar for mainstream inmates: their performance is measured against the goal and objectives agreed with psychologists, education or alcohol and other drugs officers. There had been no contractual agreements specifically made with these inmates which allowed them access to programs and services addressing their offending behaviour and thereby returning to normal discipline. Despite this, inmates had moved through the program.

The commissioner advised a review of the program and the proposed redevelopment had been initiated. He also noted the proposed redevelopment of Goulburn Correctional Centre would allow for the provision of a program which addresses violent and disruptive behaviour. This office has subsequently made submissions to the commissioner critical of the findings of the review team. We will continue to monitor developments with the ICMP.

### TRANSPORTS

On a visit to Long Bay Prison Hospital we conducted an interview with a young inmate who told us he had been raped by another inmate while travelling in a prison escort vehicle. The vehicle in question was fitted with video surveillance equipment, but this equipment was not working. The inmate was extremely distressed. A few weeks later, he attempted to commit suicide by hanging himself. Tragically, this attempt led to serious brain damage.

We made extensive inquiries into the matter. Some of the answers we received were disturbing. The vehicle in which the inmate was being transported on the date of the alleged sexual attack, in August 1997, was a 16 seat vehicle. This is the type of vehicle most commonly used to transport inmates to and from court appearances. These vans have four separate compartments in which inmates can be carried. Multiple compartments are necessary because protection inmates and strict protection inmates are always transported in separate compartments to other inmates. However, because of the limited number of vehicles on the road, protection inmates are not necessarily transported separately from other protection inmates. Inmates who have a particular wish to be kept away from another inmate can request not to be transferred in the company of that person. The victim of the sexual assault made no such request about his alleged assailant. All vehicles are meant to be fitted with video equipment to allow officers to monitor each compartment for the security and safety of inmates. However, we were advised that, of the 14 vehicles of this type operating within the Sydney area, only five had functioning video equipment on the day of the alleged assault.

At the time of the assault, officers used five inch screens to monitor the compartments. Officers could either scroll through to look at the compartments individually or have all four compartments simultaneously on screen. However, the screens, which were already small, had poor picture definition when the image was quartered in this way.

As a result of the alleged rape, the department took action to minimise the possibility of any such incident occurring in the future. When we went to the Transport Unit on 4 December 1997 we were told 11 of the 14 vehicles had functioning video equipment and the three remaining had been scheduled for repair. This was a significant improvement. We were also told the equipment is now audited to ensure it remains functional. In addition, all of the vehicles are now fitted with nine inch screens, rather than five inch screens, making superior picture resolution possible for those officers

monitoring the conduct of inmates on board the vehicles.

#### Case 2

Six inmates were hospitalised due to heat exhaustion when they arrived at Goulburn Correctional Centre from Junee Correctional Centre. The media reported the incident and we wrote to the department asking for the report of its investigation into the incident.

According to this report, the airconditioning on the escort truck was not working on the day the incident occurred but officers did not notice anything unusual while observing the inmates during the journey on the video surveillance monitor. The report also revealed transport staff had expressed serious concern about the airconditioning systems used on escort vehicles ten months before the incident. One month before this incident, a report had been written detailing other cases of inmates requiring medical attention due to the failure of airconditioning on escort vehicles. The report stated:

*It is only a matter of time before we are faced with the death of an inmate on one of these vehicles due to heat exhaustion caused by airconditioning failure.*

We understand the department has now replaced the airconditioning systems on its long haul vehicles, such as those used to transport inmates from Sydney to Junee, and will replace the airconditioning on its short haul vehicles next year.

This should resolve the most immediate problem. However, departmental reports suggest the problem was known long before remedial action was taken. We are currently investigating further the reasons for the failure to act more quickly.

#### Case 3

An issue that has generated regular complaints to this office over a number of years is the method of transporting inmates with disabilities or medical conditions. It has been the practice for Corrections Health Service (CHS) doctors to recommend special transport, usually by car, for inmates who have



medical conditions or disabilities which would, or could, be aggravated if transported by prison van. This recommendation has then to be considered by the chief executive officer of the CHS who makes the final decision to request car transport.

With the introduction of newer vehicles of different design, some of the concerns about the vans were apparently eliminated. In a 1997 memorandum to the operations assistant commissioner the then chief executive officer of the CHS agreed the department's vehicles were suitable for transporting inmates with disabilities or medical conditions. This was apparently based on the newer vehicles having individual, foam covered seats, seat belts and adequate suspension. The department's response to the memorandum has been to transport all inmates, regardless of medical certificates specifying car transport, by prison van or bus.

When this office received yet another complaint from an inmate with a serious back injury who had been transported by prison van instead of the car transport requested and approved by the CHS, we wrote to the CHS seeking clarification of their policy of continuing to issue medical certificates for car transport. We believe if all inmates are to be transported by prison van or bus, regardless of their medical conditions, medical certificates for car transport should not be issued; the practice is superfluous and confusing for inmates who then have an expectation that they will be transported by car. The previous blanket agreement that the department's buses were equal to a car put doctors who considered an inmate had a genuine need for car transport, and who issued a medical certificate on that basis, in a difficult position. The department was still apparently within its rights to ignore such a request.

Advice at the time of writing is that the health service has reviewed and simplified the policies in this area. However, negotiations with the Department of Corrective Services continue over the provision of car transport in these special cases. We await a copy of the new policy and agreement between the authorities.

## PROTECTION

There are of course always inmates in correctional centres who are afraid for their safety and wish to be held in protection, or strict protection. We regularly receive complaints from inmates about their association difficulties — particularly that they have been placed with people who have previously assaulted them (or are likely to at some future date) or that they are at risk just by being in a particular institution. Because protection inmates are held away from the mainstream population there are always constraints on their access to amenities and even to some centres which do not cater for them; we regularly receive these complaints as well.

A number of complaints were received during the year alleging the department was putting inmates at risk by accommodating them at centres where they had previously experienced problems. In two cases, we inquired as to whether appropriate alerts had been included on the department's computer system. It turned out the inmates in question had made general statements about their fear of being in particular centres, but had not nominated any specific persons who represented a threat. No alerts are registered on the basis of this level of information for obvious reasons, not the least being the possibility the unidentified person believed to be a threat may no longer be at the centre. As a result of our inquiries, however, the commissioner advised the Operations Branch would review the practices and procedures associated with registering alerts on the system, and the Sentence Administration Unit was preparing a protocol for computer entries which required certification of data — alerts being one of these entries.

In a third case, it was alleged by a family member that an inmate was not only in the same centre as someone who had assaulted him six months earlier, but was in fact in the same wing. Inquiries were made as to how this could have come about. The department advised:

*Most assaults are one-off incidents with no future ramifications and do not require the separation of inmates.*

In this situation, as for all other requests for non-association, the inmate has to make a specific request nominating an individual who represents a threat. Once the assault became known, the wing officer spoke to the inmate in question. As it turned out, he had no problem with his previous assailant and in fact had chatted to him just that morning. This seemed to confirm the department's advice and the specific complaint was therefore declined. The general issue remains of interest to us.

The Special Purpose Centre at Long Bay caters for those inmates who are in custody in relation to criminal convictions but are also on the witness protection program. Security for this centre is obviously a very particular issue. Two matters arose during the year which we decided warranted attention because of their potential impact on security.

A unit for intellectually disabled inmates was opened at the SPC in October 1995 which can accommodate up to 20 inmates but is rarely full. The arrangement was intended to be temporary while an alternative facility was built. During this year, a number of the witness protection inmates complained to us that they believed their safety was compromised by sharing visiting facilities with the intellectually disabled inmates and their visitors. We were told of intellectually disabled inmates who, after release from the centre, approached the relatives of witness protection inmates saying they had seen them on visits to the centre. In addition, when intellectually disabled and witness protection inmates have been transferred to other institutions, the intellectually disabled inmates have in some instances publicly identified protection inmates as being Crown witnesses. Unlike the witness protection inmates, intellectually disabled inmates are not required to sign a contract upon admission to the centre which would bind them to keep such things confidential. There would be obvious problems associated with such an attempt.

As a result of us raising this issue, in correspondence and meetings with senior departmental staff, alternative visiting arrangements were made. This included separating the visiting times for protection and intellectually disabled

inmates to minimise the contact between the two groups and their visitors.

The department anticipates the completion of the purpose built facility at Long Bay which will house intellectually disabled inmates sometime before the end of 1999.

The second issue was that of food. Until recently, witness protection inmates were allocated rations and catered for themselves. This is a very expensive option for the department, and participation in the centrally prepared cook and chill meals was considered. These meals are prepared in the Silverwater kitchen and then batched for delivery to specific centres. Because of the need to ensure meals for witness protection inmates are not tampered with in any way, it was proposed an officer from the SPC go to the kitchen and randomly select meals from the racks. This way, any attempt to interfere with the food would have to be a large scale operation.

We spoke to senior staff of the department who noted their own concerns. We were very pleased to hear shortly after this meeting that the SPC was trialling a system of cooking meals at its own kitchen but not participating in the broader program. This arrangement should still save money without compromising the security of the consumers.

## THE IMPORTANCE OF GOOD REPORTING

In the event of a serious incident in a correctional centre, such as a fight or an assault, there are a number of administrative tasks which have to be completed by senior correctional staff. These include: notifying senior personnel in the department, contacting outside authorities such as the police and, if an inmate is hospitalised, advising the next of kin.

During the year, two matters dealt with by this office highlighted deficiencies in the format of the documents used to report serious incidents, particularly fights or assaults. One case also revealed that a correctional centre was acting outside departmental policy with respect to

notifying inmates' next of kin on their hospitalisation for a serious injury.

### Case 1

An inmate involved in a fight with other inmates at a correctional centre lost consciousness and a short time later, died. As a death in custody, the matter was subject to a coronial inquest. During the inquest, considerable time was spent questioning Department of Corrective Services staff and police officers to determine how soon after the incident correctional staff had contacted the police, and how quickly the police had responded. This was necessary because neither the centre nor the police had recorded the time of the call, who made the call or who received the call at the police station. While the police had apparently attended the centre within a reasonable time, the lack of appropriate records by either authority was of concern.

We raised this issue with both the police and the department. Enquiries with the police indicated that, since the incident, the police had initiated a policy of recording all calls for assistance on the COPS data base. This meant that the time, who made the contact, as well as who received the call, was recorded.

We wrote to the Commissioner of Corrective Services suggesting the department alter the assault/fight report form so that precise details covering police contact could be recorded. The department agreed to change this form, as well as the forms used to report other serious incidents. The commissioner also advised us that amendments had been made to the report forms to ensure details relating to the notification of an inmate's next of kin were documented following a serious incident. A notice was sent to all regional commanders and governors advising them of the changes.

### Case 2

The second case concerned an assault at the same correctional centre and resulted in an inmate being hospitalised after suffering a number of stab wounds. He required surgery and further hospitalisation at the prison hospital at Long Bay. The inmate's next of kin were not notified of his condition until a week after the assault when, at the

inmate's request, the welfare officer telephoned his family.

It is departmental policy to advise the next of kin if an inmate is involved in a serious incident which results in hospitalisation. In view of the changes to the reporting forms previously outlined by the commissioner, we were very concerned about what appeared to be an immediate breach of procedure. When we inquired, we found the correctional centre had been operating under its own interpretation of what constituted hospitalisation and when it was necessary to contact the next of kin. Inquiries also revealed that this incident occurred prior to the introduction of the new reporting forms.

In his reply to this office, the commissioner acknowledged the correctional centre had been acting outside policy. He advised the centre had now adopted the correct practice of notifying the next of kin if an inmate is hospitalised after a serious incident. The commissioner also agreed to change the checklist which accompanied the report forms, to ensure this duty was not overlooked by staff.

## ESCAPES

On 10 December 1997, the Ombudsman made a report to Parliament on the investigation of the escape of George Savvas from Goulburn Correctional Centre.

The report provided only a brief overview of the investigation as the full report detailed security arrangements and intelligence. The Ombudsman's summary was that:

*The available evidence suggests George Savvas' escape was an audacious and opportunistic act that took full advantage of the administrative failings in the set up and supervision of the temporary visitors' centre.*

Such failings included the failure to account for inmates before their visitors left and the absence of even a head count of visitors arriving and leaving the centre. This allowed Savvas to walk out with his visitors, having got out of his security overalls

and into a shirt, trousers, wig and false moustache. It was about 20 minutes before his absence was detected and the alarm raised.

Part of the Savvas investigation by us included a review of the department's response to a number of other significant escapes. Our conclusion was that the response was generally satisfactory in that, while there were deficiencies in the paperwork, the investigations were prompt and adequate. In addition, recommendations made following these investigations had largely been implemented.

The Ombudsman recommended improved guidelines for handling intelligence information; guidelines for the management of high risk inmates; a review of the duties of the monitor room officer at Goulburn; and improvements in security assessments and their documentation. These recommendations were accepted by the commissioner. They supplemented measures already announced by the Minister for Corrective Services, which included the introduction of the biometric identification system.

## Cases

### I AM NOT REALLY THAT INTERESTING ...

In February 1997, an inmate wrote to us complaining about his being categorised as an inmate 'of public interest'.

The *Correctional Centres Act* 1952 was amended in December 1996 to include 'public interest' as a factor to be taken into account in the management of serious offenders. The point of this amendment was to formalise the need for serious offenders to be held in appropriately secure institutions, and to be returned to the community at the appropriate time. There are another group of inmates who are categorised as being of 'public interest' by the Commissioner of Corrective Services. These inmates are not serious offenders (defined in the Act to include people convicted of murder, those serving sentences of more than 12 years, and so forth) but have been convicted of offences about which the community may have justifiable concern. These offences include certain

drug and sexual assault crimes, crimes of violence, or significant white collar crime such as fraud.

The effect of the additional categorisation is that applications from 'public interest' inmates to participate in external, unescorted leave before their release from gaol are subject to an independent assessment by the pre-release leave committee, a committee of the Serious Offender Review Council. Participation in pre-release leave is a privilege which must be earned by an inmate, and successful completion of a temporary leave program is viewed as a significant demonstration that the inmate is able to return to normal community living. Public interest inmates must be a year closer than ordinary inmates to the end of their minimum term of imprisonment before they are eligible for such leave.

At the time of the complaint, the criteria which had been applied to the complainant was '*...convicted of fraudulent behaviour, false pretences or corruption with a minimum or fixed term of three (3) years or more, or inmates with a history of such offences*'. The complainant (Mr D) was serving a sentence including a fixed term of three years for fraud, which ended in September 1994, and a further term of four years and ten months, with a fixed term of three years from October 1994 to October 1997, for drug cultivation. He argued that he was wrongly made a public interest inmate in December 1996 since he had already served the sentence for the fraud offence and his sentence for the drug offence was less than the minimum set out as being of public interest.

The pre-release leave committee argued that the complainant's total sentence term was the governing factor. Concerned that this assessment might not be valid, we wrote to the commissioner in March 1997 asking for clarification and for legal advice on this point. His reply was not received until June 1997. The reply advised that no legal advice was sought as '*he was considered to satisfy the definition*'. The commissioner noted:

*To be considered as a public interest inmate for drug offences, an inmate must be currently serving a sentence with a minimum term of more than five years. To be considered a public*

*interest inmate as a result of fraud offences, an inmate need only be convicted of an offence with a minimum term of three years or more. Mr D's total sentence period includes a fixed three year term for fraud as part of a total sentence term of three convictions for fraud and one for 'cultivate prohibited plant'. Mr D's sentence for fraud expired on 30 September 1994 but, as stated, he was convicted and sentenced for fraud as part of his current term. According to the Operations Procedures Manual, which was released in November 1996, Mr D satisfies the definition of a public interest inmate.*

This explanation did not clarify the legal basis for the department's decision to deal with concurrent terms of imprisonment as a single sentence. We believed that, if the net effect was to the detriment of the inmate, as it was in this case, then the department should be relying on a specific legal provision. None existed. In addition, it became clear the department was not applying this rationale consistently.

A different inmate complained about his categorisation as public interest. In his case, the department put forward a quite contradictory argument:

*Mr L who is serving a minimum term of 8 years 6 months and 8 days on a number of convictions including 'receiving' and 'supplying a prohibited drug' does not strictly comply with the public interest criteria. His minimum term in relation to the drug convictions is two years...*

The complainant, Mr L, was identified as being of public interest because the commissioner so viewed him, not because he fell into any of the identified criteria.

We wrote again asking for clarification, and suggesting the relevant sections of the operations procedures manual be revised in order to stop any confusion arising in the future. The commissioner replied, calling the views of the office 'misconceived' and suddenly arguing that Mr L could in fact meet the public interest criteria as 'although his minimum term for the drug offence was 2 years, he was serving a minimum term of

over 8 years'. He stated that the department was, however, not relying on total sentence calculation, but on the wording of the criteria in relation to 'serving' or simply 'convicted of'. He noted that the wording of the criteria would be reviewed to ensure no further confusion arose.

The commissioner's explanation was still unsatisfactory. It meant that should Mr D return to gaol at some future date, convicted of something completely unrelated or even minor, he could still be categorised as being of public interest. Our concern was that the operating instructions could be improperly discriminatory.

While the commissioner did not acknowledge any error in the categorisation of Mr D, he did advise finally that the public interest criteria were being redrafted having regard to our comments. The redrafted criteria are, at the time of writing, not final because they are part of a wider review of privileged leave programs. Drafts make it clear, however, that the current term of imprisonment is the relevant one.

This was a very long argument. Ultimately, if the criteria on which the department based its decisions were clear it would not only improve the administration of the system, but also reinforce the rationale for making some inmates work harder for their return to the wider community.

## A WEE SPOT OF BOTHER

An inmate wrote to us claiming he had been unfairly targeted for urine testing for drugs.

The Department of Corrective Services had a clear procedure about the documentation which should accompany a urine test. When staff targeted an inmate for urine testing, if the urine taken showed traces of drugs, then the officer collecting the urine sample was required to fill out an incident report detailing why it was believed the inmate was under the influence of drugs. There was no such obligation if the urine was 'clean'.

In fact, the urine of the inmate in question was consistently found to be 'dirty', that is, traces of narcotics had been found in his urine. So, while our

inquiries did not support the inmate's claim of being treated unfairly, there did appear to be a problem with the paperwork which should have supported charges resulting from the urine tests.

Our telephone inquiries suggested there was confusion, in more than one institution, about the necessity to fill out and then place on file these reports. In this case, it appeared that the paperwork involved in disciplinary charges laid against the inmate was missing. For some time, it seemed as if the department could not supply evidence to back up the punishments it had imposed. Not until we made formal written inquiries was the relevant documentation found to be attached to the inmate's case management file.

In a complaint received at about the same time, an inmate at the Goulburn Correctional Centre was refused contact visits for three months after his urine test results revealed he had taken illicit drugs. Intelligence information obtained by the prison suggested that drugs may have been supplied to the inmate during visiting times.

The inmate's partner, a regular visitor to the centre, complained to our office that the results of the test were inaccurate and the visiting restrictions unfair. She also said that her partner and herself were being victimised by the prison authorities.

We have previously investigated the department's procedures for the collection and testing of urine samples and are satisfied the procedures adopted by the department are satisfactory to ensure the accuracy of the results. In this case, the department's decision to restrict visits was reasonable given the evidence that the inmate had taken illicit drugs.

During our inquiries, we once again became concerned that the requisite information was not being recorded before a senior officer authorised the collection of the sample. We made further inquiries with the commissioner who responded as follows:

*...the Department's policy will be altered to provide that a written report must be submitted in all cases before a Commissioned Officer can*

*authorise a targeted urine test under clause 174, even if the officer suspecting drug use is a Commissioned Officer.*

This change in policy, whereby all targeted urine tests are accompanied by a written report, is much welcomed. This should protect departmental officers from precisely the charge made by these inmates — of targeted urine testing being used as means of harassment.

It is, of course, still essential the staff of correctional centres ensure that all reports relating to punishments are correctly prepared and collated. The failure of the officers involved to record the information required at the time of these complaints made it difficult to ensure the regulations were followed. Proper documentation is not only a legislative or policy requirement, but is an essential tenet of procedural fairness.

## PROCEDURAL FAIRNESS, AGAIN

An inmate complained his external leave privileges had been withdrawn and his visits restricted due to an allegation he had behaved inappropriately with children during visits at Silverwater Correctional Centre. He believed he had not been given the opportunity to respond to the allegations about his behaviour at the time it was reported to have occurred. Our inquiries revealed staff at Silverwater Correctional Centre had become concerned about the inmate's interaction with children during visits, but had not reported their concerns in writing until up to two weeks later, when other inmates threatened the inmate because of his behaviour on a further visit. Staff then reacted quickly by reporting to the Serious Offenders Review Council their concerns and the threats from other inmates. The inmate was soon transferred to another institution and the council restricted his contact with children until such time as it could be satisfied he did not pose a danger to them.

The Ombudsman has no jurisdiction over decisions of the Serious Offenders Review Council. However, we were concerned about the officers' conduct at the gaol. We wrote to the department and asked why officers did not formally record their

concerns about the inmate's behaviour until other inmates made threats against him. We also asked if staff had intervened during visits or directly indicated to the inmate that his behaviour was inappropriate.

The department advised officers had 'curtailed' the inmate's behaviour by distracting him and his visitors, and had reported their observations verbally to senior staff. Apart from this, no other action seemed to have been taken until complaints from other inmates were received. Written reports were not generated by officers until it became clear the inmate may have been in danger from other inmates. It also seemed officers had only spoken to the inmate about his behaviour at the time of his transfer from Silverwater Correctional Centre.

If staff had told the inmate they thought his behaviour was inappropriate when it was first observed, he would have had the opportunity to desist, and they could have made an initial assessment of the risk he posed to children. They could also have decided to restrict further visits while the matter was referred to the Serious Offenders Review Council for urgent attention. Either course would have reduced any risk to his child visitors and minimised the anger evoked in other inmates.

We wrote back to the department expressing these views. However, the commissioner replied suggesting our approach was not only naive, but implied according procedural fairness to an inmate should take precedence over the obligations of staff to ensure the safety of children involved. He also complained we had made formal findings against the department without the authority of a formal investigation.

We work on the assumption the department welcomes feedback regarding possible improvements to its procedures. We therefore replied, suggesting the commissioner had misconstrued our letter. It was clear we had made no formal findings under the *Ombudsman Act*, but had merely made an observation, in the context of advising the department no formal investigation would be undertaken, that the issue appeared to be largely unresolved.

We raised the issue of ensuring inmates are accorded procedural fairness in our annual report last year and, although the circumstances of this case are different, the commissioner's response perhaps indicates the department has not taken our comments on board. According inmates procedural fairness in a correctional context does not necessarily pose a threat to the security of the gaol or the safety of the community. As this case demonstrates, it may actually improve the management of correctional centres. Earlier intervention in this inmate's behaviour may have in fact enabled a better resolution for all concerned.

## ESCAPING RESPONSIBILITY

### Are you old enough?

A 26 year old inmate contacted us to complain about receiving an E classification. This classification is reserved for inmates who have been convicted of escaping or attempting to escape. Such inmates are felt to represent special risks to security and must demonstrate the existence of special circumstances and the significant rehabilitative effect of a reclassification to minimum security before they can earn privileges such as work release.

This complainant told us he thought the classification was unfair as he had never attempted to escape from an adult prison. He admitted he had once attempted to escape from a juvenile justice centre, but he didn't feel this youthful indiscretion should count against him. We made inquiries and found that any person in custody who attempted an escape when they were over the age of 18 is automatically given an E classification, regardless of whether the escape attempt was from a juvenile justice centre, a correctional centre, or from police custody.

The inmate in question had told us he had attempted to get away from a juvenile justice centre sometime in 1989. We checked his date of birth and found it was in November 1971. Then we checked the date of his escape attempt. It had taken place in October 1989, which made the date of the offence one month shy of the complainant's 18th birthday. After this was taken into account, the

department acknowledged that ‘a bit of an error’ had been made, and agreed to review the inmate’s security classification.

#### Or bold enough?

A different inmate also argued against his E classification, but this time on the grounds he had been wrongly released from a Townsville lockup when he was a juvenile, and that he had never intended to escape. He argued the law at the time was unable to cope with the fault being entirely that of the police and so he was technically charged with escape. After checking, including newspaper coverage from the event in 1990, we discovered that bail papers had been prepared for another person, but wrongly given to our complainant, who hastily signed them and walked very quickly away from the lock up. Not only was he convicted of escape, but was given a custodial sentence. Not really a technical escape as argued to us and so not a matter we took any further.

The inmate was still keen to argue his case with a program review committee, but it does not appear they agreed with him either.

### TRANSFERS — JUSTIFIABLE CONCERN

A number of inmates complained to this office about being unreasonably transferred out of Junee Correctional Centre due to the discovery of a serious security breach. Another complained he was not issued his prescribed medicine during the resultant lock-down. The security breach was in the form of weapons and associated articles being found within the secure area of the centre.

On receipt of the complaints we wrote to Junee Correctional Centre and the department seeking explanations for the basis of the transfers, and reasons for the alleged failure to provide the prescribed medication. In response, the department forwarded a report of the discovery and subsequent investigation.

Although the investigation did not produce sufficient evidence to pursue action against any of the inmates involved, Junee staff were satisfied only these inmates had the opportunity to arrange

the introduction of the weapons and other articles. Relocation of the inmates was warranted in order to protect ‘*the good order and discipline of the gaol*’. The senior assistant commissioner of operations concurred and the transfers proceeded.

This office accepted the department’s explanation for the transfers and declined the complaints as the Ombudsman was satisfied the department had acted reasonably, particularly as the inmates were transferred but not reclassified. This action was obviously aimed at the security of the centre without unreasonably punishing implicated inmates.

And the medication? If a claim is made about failure to be issued with prescribed medication, a current prescription is needed. In this case, there was not a current prescription, and the complaint was declined.

### SETTING THE RECORD STRAIGHT

An inmate complained Parklea Correctional Centre had not kept accurate records of the adjudication of a charge that he refused to comply with an officer’s direction. The form recorded the inmate’s plea as ‘guilty’, but a plea of ‘not guilty’ had also been circled and then crossed out. The inmate claimed he had signed the form when it showed a plea of ‘not guilty’ and the plea was changed without his knowledge.

Although inmates have the opportunity to read over the form when they are informed of the governor’s decision regarding a charge, changes of this nature may well affect the process and outcome of the adjudication. We wrote to the department suggesting officers should, as a matter of course, get the inmate to initial any significant changes to the form. The department’s response was that the officer involved claimed the inmate changed his plea during the hearing of the charge and the form was changed then. It agreed, however, the officer should have had the inmate formally acknowledge the change. The governor reminded his managers of their responsibilities in such cases.



## OVER COMPENSATION

An inmate complained to us he had been incorrectly assessed to pay the Victims Compensation Levy. He believed the levy had been introduced after he was charged and he was therefore not liable to pay. He had made a number of complaints to the Department of Corrective Services but had been told he was liable.

We checked the relevant legislation. The *Victims Compensation (Amendment) Act 1989* commenced on 1 September 1990 and provided the compensation levy did not apply to offences committed before this date. The inmate had been charged in January 1990 and a notice to pay the levy issued by the Supreme Court. We asked the NSW Attorney General's Department, who issue the relevant notices, to review the inmate's liability to pay the levy.

After reviewing the evidence, the Attorney General's Department concluded it was clear the inmate had been incorrectly assessed to pay the Victims Compensation Levy. The Chief Executive Officer of the Supreme Court made arrangements for the notice to pay the levy to be withdrawn. Following a further application to the Department of Corrective Services, the money which had been incorrectly deducted was refunded to the inmate.

A similar complaint was made to us during a visit to Junee Correctional Centre. An inmate said he was paying the Victims Compensation Levy on eleven charges instead of the two he thought were his liability. He had requested clarification with the gaol administration and had written to the court. He did not receive a reply to either request.

In response to a call from us, Junee agreed to check the inmate's warrant file. It was found he was only liable for the levy on two charges and not the eleven he was paying. The overpayment was refunded to him.

## NO CHANCE TO GRIEVE

An inmate at Junee Correctional Centre complained he had been refused permission to attend the funerals of his parents in Tamworth. He had applied to attend his mother's funeral on the

day after he heard of her death, but was told on the night before the funeral he could not attend, as the department could not transport him to Tamworth in time. Six months later, his father died and he applied to attend the funeral on the day he heard the news. The funeral was delayed in order to give the inmate more time to travel to Tamworth. However, yet again, he was not permitted to attend. He was, of course, very distressed at being denied the opportunity to grieve with his family and friends at the funerals of both of his parents.

We wrote to the department and it explained the inmate's attendance at his mother's funeral had been approved by the senior assistant commissioner. However, as no accommodation was available in Tamworth for officers at the time, due to the influx of people attending the Tamworth Country and Western Music Awards, it was not possible to arrange for the inmate to attend the funeral.

During our preliminary enquiries, staff at Junee told us the inmate had not been able to attend his father's funeral as they had not been able to arrange overnight accommodation for him at Tamworth Correctional Centre. However, further inquiries revealed Tamworth Correctional Centre had no record of inquiries from Junee about accommodation at the time of the funeral. It then emerged Junee Correctional Centre staff had failed to send the relevant documentation for approval by the senior assistant commissioner.

The department agreed staff at Junee Correctional Centre had not followed the correct procedures in the case of the inmate's father's funeral and, as a direct result, he had been denied the opportunity to attend. Junee Correctional Centre's general manager wrote to the inmate expressing his regret at the errors that had been made.

## DISPENSING WITH PRESCRIPTIONS

Further problems with record keeping were found by CHS management when they checked their records after several inmates complained to this office about receiving incorrect medication. It appears that a practice of one nurse 'pre-dispensing'

medication into a paperbag and another nurse dispensing to the patient had developed at Mulawa to facilitate the large number of medications delivered to the different housing locations around the gaol. This was, however, outside the CHS policy. Of the three inmates who complained about receiving the wrong medication, only one incident could be confirmed. The inmate returned the medication to the clinic the following day and was given the correct medication. The incident was confirmed by the nurse who received the medication when it was returned (and who had delivered it the evening before) but no record had been made of the incident either in the inmate's progress notes or in the ward notes.

A further problem of nurses not signing for medication was highlighted during our inquiries. Again, CHS management thought this problem arose when nursing staff delivered medication and omitted to sign on their return to the clinic. Accordingly, a review was requested of the dispensing and clinical incident recording system at Mulawa to ensure its compliance with CHS policy.

Since the same nurse had been involved in several incidents, CHS transferred him to a lower security correctional centre where the nurse's recording of clinical incidents and dispensing of medication could be more closely kept under review by the nursing unit manager of the clinic.

### **BELATED CHRISTMAS SPIRIT**

An inmate complained he had paid \$40 to attend a Christmas family day picnic, but when he was unexpectedly transferred to another correctional centre before the picnic, the department refused to refund the \$40.

Over and above the matter of principle, \$40 may represent almost a month's income for an unemployed inmate. We wrote to the department. It agreed to refund the \$40, as the inmate could not have known he would be unavailable for the picnic.

### **BUT I KNOW THEY DON'T LIKE ME**

An inmate telephoned us to complain he had been classified to a particular gaol but, as soon as he arrived, he had been placed in segregation and informed he would have to move again. The inmate had been aware there might be other inmates at the gaol who did not want to associate with him and had asked this be checked before he was transferred. He had been told there was no problem.

We made enquiries with the department. The story became more complicated. There was nothing on the department's computerised management system (OMS) to show other inmates had a problem associating with our caller and, as far as classification staff were aware, the inmates who might have been concerned had left the gaol.

After numerous telephone calls, we finally got to the bottom of the problem. There were in fact two groups of inmates who, for different reasons, did not want to associate with our complainant. One group had moved from the gaol, the other had not. One inmate still at the gaol had made an application to the governor indicating he had an association problem with a number of other people, including our complainant. However, instead of following the correct procedure and entering this against each person's name on OMS, the gaol had merely entered the list against the inmate who made the application. It was only when our complainant arrived at the gaol that the problem was recognised.

Classification staff arranged to see the complainant and explain what had happened. Another placement for him was arranged and the staff of the gaol in question reminded of the correct procedure to be followed to ensure the problem did not occur again.

### **INCREASINGLY ANXIOUS**

At Mulawa, an inmate suffered an anxiety attack in her cell in the early hours of the morning. The inmate was worried that she was having a heart attack as she has a family history of heart disease. Her cell mate called for assistance from the correctional officers, who in

turn contacted the clinic for a nurse to attend the unit. When the nurse attended he checked the inmate's pulse and then left, informing the inmates and correctional staff that he was returning to the clinic to call an ambulance and write a referral for the hospital. He then left the inmate in the care of her cell mate who had had some first aid training, but did not feel competent to deal with the situation. The nurse did not return to the unit to check on the inmate. She was subsequently taken to hospital by ambulance.

Both inmates were upset that the nurse had not stayed with them until the ambulance arrived. The inmate who suffered the attack believed she was not provided with adequate medical attention by the nurse, while her cell mate felt that she had been placed in a position of enormous responsibility, and one that she was not equipped to deal with.

The CHS agreed with some of the concerns raised by the inmates. The inmate did not suffer a heart attack; she had an anxiety attack of the type she had suffered before. The nurse was apparently familiar with her medical history and made an assessment of her situation which included calling the ambulance so that she could be assessed at the hospital. There was no indication though, that he informed the inmate or those with her of his assessment of her condition, leaving them to assume the worst.

When the inquiries were being made about this complaint, no record of the incident could be found in the inmate's progress notes. While the nurse was sure he had written the notes, as required by CHS policy, neither progress notes nor ward notes of the incident could be found. As a result, the nursing unit manager counselled the nurse to emphasise that incidents should be properly documented and filed.

### COUNTING THE DAYS

An inmate telephoned us, worried his release from prison was being delayed. He had been told he had to serve extra days in gaol for warrants which had recently been served on him. The inmate thought

warrants run from when they are signed for. He had signed for the warrants while at Lithgow and had then been transferred to Junee Correctional Centre. He knew it had taken a number of days for the warrants to arrive at Junee and he believed this was why he had been told he would be released seven days later than he had expected.

We made inquiries with staff at the Warrants Index who confirmed the inmate was correct, warrants run from when they are executed. They found a mistake had been made. Instead of the date the inmate signed for the warrants at Lithgow being entered — the correct date — the date the warrants arrived at Junee had been used. This would have led to the inmate serving an extra seven days in gaol. The records were immediately corrected, thereby avoiding unlawful detention of the inmate.

### ARE THEY SERIOUS?

A minimum security inmate wrote to this office during the year suggesting the Department of Corrective Services' efforts to reduce gaol drug trafficking and violence through 'standovers' were not really serious. He based his claim on departmental signs he saw displayed around the gaol and in the cell area of various court complexes. The signs encouraged inmates to provide information about drug trafficking, and correctly suggest it is not only inmates, but their families who are affected by the activities. Unfortunately, the only telephone number provided was a 1800 number which inmates are unable to access through the gaol telephone system.

We referred the complaint directly to the department with a request that they correspond directly with the inmate about the matter. The most recent advice from the department is that they have written to the inmate acknowledging his complaint, and that inquiries are underway about the use of the 1800 number on the signs.

## YOU CAN'T TAKE IT WITH YOU

A man was released from the MRRC in Sydney after serving a short sentence for failing to pay traffic fines. He was unable to collect his property because, he discovered, it had been sent to Goulburn. He was told the property could be mailed on to him. He moved to near Coffs Harbour. He telephoned us when the department told him that, in fact, it was the department's policy that he would have to pick up the property himself.

We called the property section. They were sorry the man had been given wrong advice, but policy was policy. We went higher up, to the department's administration manager. We argued the department's policy may be that prisoners should collect their own property when released, but that an implicit part of this policy was that the property should be available for collection. As the property had not been available for collection, and as it would be extremely inconvenient for the inmate to collect it now, we felt the department should accept responsibility for sending the property on. When the department agreed, we provided them with the address and contact details of the complainant.

We appreciate the amount of detail and explanation that you have included in your letter. Your letter clarifies the position of your office and what we would be required to establish for an investigation to be instigated.

*A complainant*



Jacqui Yanez,  
Inquiries Officer



## juvenile justice centres

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>149</b>
Resolving oral complaints .....	151
Centre visits .....	152
Implementation of recommendations from the Ombudsman's report of the <i>Inquiry into Juvenile Justice Centres</i> .....	153
<b>Issues</b>	<b>153</b>
Behaviour management .....	153
Strip searches .....	154
Telephone contact .....	155
Transfers .....	155
Punishment and confinement records .....	156
<b>Cases</b>	<b>159</b>
A thorough resolution .....	159
Religious observance .....	159
Organising life after release .....	159

### Overview

Oral complaints and inquiries about young people in juvenile justice detention centres rose markedly this year. A total of 309 oral complaints were received in comparison to last year's total of 185. Written complaints by contrast totalled only 14 in comparison with 31 for 1996-97. (The latter figure was higher than most previous years due in part to the publicity surrounding the Ombudsman's *Report of Inquiry into Juvenile Detention Centres*). Our increased presence in the centres may have short circuited the need for some detainees to make written complaints.

Recognising the problems that people in custody can have, our staff try to give priority to calls from juvenile detainees as they do for adult prisoners. Rather than ask them to send us a written complaint or tell them who they can call, we will often try to clarify or resolve their concerns by making our own telephone inquiries, often the same day. We recognise the difficulties and reluctance young people can have in putting their complaints in writing. This is particularly the case for young people in custody. Many of the concerns raised require immediate assistance. For example, a detainee would see little point in us making inquiries about the decision to deny a detainee leave or a visit on a particular weekend which had already passed.

We have formed a small group of staff within the office to deal particularly with calls from juvenile detainees. These officers aim to deal with the concerns promptly and fairly, while keeping the young person informed of progress. We require written complaints from detainees in only the most serious matters. Even then, we try to arrange for the young person to be helped in writing out their complaint. This may mean contact with an official visitor or another person having no conflict of interest in the matter. In some cases we have been able to attend the centre to take the complaint from a detainee ourselves. However, our resources to do so are limited.

Table 1: Nature of written and oral complaints about the Department of Juvenile Justice  
1997-98

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Buy ups	1	5
Classification		8
Daily routine	1	67
Day/other leave		11
Fail ensure safety	2	11
Food		17
Legal		3
Mail		7
Medical		20
Non jurisdiction	2	5
Officer misconduct	5	42
Probation/parole		1
Property		8
Records/administration	2	3
Security		4
Segregation		2
Transfers	1	33
Unfair discipline		21
Visits		12
Work and education		3
Other	5	26
<b>Total</b>	<b>14</b>	<b>309</b>

Action on 290 oral complaints was finalised in 1997–98. Despite the increase in oral complaints made to our office, almost half (150) resulted in preliminary investigations being made with the Department of Juvenile Justice. A further 135 individuals were assisted by way of advice, explanation or referral to a more appropriate agency. Only five were requested to submit a written complaint to our office.

Of the written complaints, seven of the 14 concerned allegations of assaults or serious harassment of detainees by staff. Four of these seven followed face to face interviews with Ombudsman staff who were able to assist the detainees to put their complaints in writing. As the department had not had the opportunity to consider the allegations made, all these matters were referred to the department for their investigation and response. Twelve written complaints were finalised in 1997–98. Preliminary investigations were made in nine cases. Three were declined as premature and referred to the department to give it the opportunity to resolve the matter directly with the complainant.

## RESOLVING ORAL COMPLAINTS

The increase in oral complaints was unexpected. We had anticipated the increased frequency of visits by official visitors to the centres (usually fortnightly) and the regular attendance at centres by solicitors from the Children's Legal Service would reduce the number of oral complaints to us. That we received only 3 inquiries regarding legal matters for the whole year suggests the latter service has proven effective and is well used. Perhaps the main reason for the increase was our increased presence in the centres, as discussed below.

The majority of the 309 oral complaints received about the Department of Juvenile Justice involved more than one issue. **Table 1** shows a breakdown of those issues recorded as the primary or main issue raised in the inquiry. It does not show the total number of issues raised with our office.

**Table 2: Outcome of oral complaints about the Department of Juvenile Justice**

1997–98	
Explanation, advice or referral given	135
Advised to submit written complaint	5
Preliminary or informal investigations made	150
<b>Total</b>	<b>290</b>

**Table 3: Complaints about the Department of Juvenile Justice received by institution**

1997–98		
	WRITTEN COMPLAINTS	ORAL COMPLAINTS*
Cobham	1	11
Kariong	3	96
Keelong		11
Minda	2	27
Mt Penang	2	57
Reiby	3	30
Riverina	1	22
Worimi		20
Yasmar		14
Other	2	21
<b>Total</b>	<b>14</b>	<b>309</b>

\* Oral complaints are not always about issues involving the centre where the detainee resides. 177 were about system-wide practices or incidents at other centres.



The three most frequently raised primary issues were:

- the daily routine within centres, being 22% of all oral complaints received (this includes general treatment and access to amenities such as programs and equipment);
- staff misconduct, representing 13.6% of all oral complaints (of this figure, ten involved allegations of assault, eight of racist abuse and eight of threats or harassment by staff); and
- transfers, being 10.7% of the total.

The overall trends are similar to previous years, although the proportion of oral complaints identifying food/diet as a primary issue is lower than figures for previous years where it usually accounted for 10% of all oral complaints received.

Many oral complaints concern matters that appear on the surface to be minor, but if not resolved quickly, have the potential to inflame the detainee and create added management problems.

### CENTRE VISITS

The Ombudsman conducts regular inspections of the state's nine juvenile justice centres. Each centre was inspected twice during 1997-98 by at least two and sometimes three Ombudsman officers. Worimi, Mt Penang and Minda each received three visits. In most cases, either or both the office's Youth Liaison Officer and Aboriginal Complaints Officer were involved in the inspection. These visits permit us to make direct contact with detainees and staff and to see first hand the general conditions they experience. In addition to taking complaints, inspecting the centre grounds, school and program areas, we routinely examine centre records including punishment books, segregation and confinement log books, telephone log books and individual files if particular concerns are raised.

Since the release of the Ombudsman's *Report of Inquiry into Juvenile Detention Centres* in December 1996, our regular visits have permitted us to gauge the impact within centres of departmental changes made in response to its recommendations. We have introduced more formalised pre-inspection meetings within the office to ensure our visits are targeted to gather information on those matters of most concern to this office. Many of these relate to matters identified in the Ombudsman's report.

Each visit usually takes a full day. While it is recognised as a necessary and appropriate use of our resources, the absence of two or three staff from the office means there are fewer people available to answer telephone inquiries. This has put significant pressure on our staff, especially as the number of inquiries has increased.

## IMPLEMENTATION OF RECOMMENDATIONS FROM THE OMBUDSMAN'S REPORT OF THE INQUIRY INTO JUVENILE DETENTION CENTRES

We have continued to enjoy a constructive relationship with the Department of Juvenile Justice in 1997–98. We are aware of the ongoing work being undertaken by all levels within the department to implement the recommendations from the Ombudsman's report. To date we have generally been pleased by the positive changes occurring both in policy and practice. There is still much work to be done if the department is to reach its target of implementing all recommendations by December 1998. The implementation of some of the recommendations, notably those relating to the closure of Minda and Worimi, will be delayed pending the construction and opening of other centres. While interim improvements and maintenance of the buildings have been undertaken at Minda to improve physical safety and appearance, the need for its closure remains, as is the case for Worimi.

During the year we readily accepted the department's invitation to comment upon a preliminary draft of their client complaints policy and procedures to be used within the centres. The development of such a policy was a major recommendation in the Ombudsman's report. The challenge was to design a system that supported front line staff in rapidly responding to simple complaints before they escalated into management problems, at the same time as logging sufficiently accurate complaint data to identify trends and to act as a quality assurance mechanism. We understand the policy is soon to be issued to the centres.

## Issues

### BEHAVIOUR MANAGEMENT

The Ombudsman's report strongly criticised the department for failing to operate meaningful and appropriately designed behaviour management schemes. Each centre had developed its own system of behaviours and rewards. Most relied upon a points system, with points to be awarded by staff. Most had become de facto punishment systems. Points were routinely deducted for inappropriate behaviour. The Ombudsman recommended the department review the operation of the schemes in use in the centres and develop more appropriate ones in consultation with experts in the field.

Table 4: Complaints about the Department of Juvenile Justice

1997–98

<b>Received</b>	
Written	14
Oral	309
<b>Total</b>	<b>323</b>
<b>Determined written complaints</b>	
Preliminary or informal investigation completed	9
Assessment only	3
<b>Total</b>	<b>12</b>
<b>Current investigations (at 30 June)</b>	
Under preliminary or informal investigation	6
Under formal investigation	–

We were therefore concerned to find the department initially left the development of new systems to each centre with little or no guidance or support from central office. Some centres did make their own links with child psychologists and similar experts. Others however appeared to do little to effect positive change. Even those centres enthusiastic to improve their systems seemed to be unable to complete the task. During routine visits to centres we would regularly be told the centre had almost completed the new scheme and its implementation was only weeks away. Unfortunately, we were told the same story by the same centres six or more months apart. Needless to say the energy and enthusiasm of those workers and detainees consulted in the initial planning phase had well and truly waned. No doubt part of the difficulty in completing the work was the high number of other changes occurring at the same time.

We believe this crucial area needs to be led by the department's central office to ensure consistency across centres. Central office is best placed to call upon the services of specialists in the area to develop the basic principles and strategies to be included in each centre's behaviour scheme. We raised our concerns informally with the department on more than one occasion. Shortly after this, the department organised a combined workshop on the issue for those responsible for developing the new schemes. In April 1998, the department released a new policy document, *Use of Incentive Schemes at Juvenile Justice Centres*, which sets out the key principles to be complied with in all such schemes operated within the centres. Some centre staff are frustrated that this guidance has come so late, when they have struggled alone for so long. Considering the potential impact of behaviour management schemes for detainees, we believe such a document is a necessary addition to the department's policies.

## STRIP SEARCHES

Strip searches are one of the most uncomfortable, intrusive and embarrassing procedures that can be required of a detainee. They can, however, be vital for the safety and security of the individual and others. During our visits to the centres, Ombudsman officers were frequently asked to explain the rights of detainees and staff during a strip search, and the appropriate procedure to be used. In some cases detainees were obviously distressed and/or angry at having been strip searched. They wanted to know their rights so they would feel less vulnerable and more in control in future. We found a deal of confusion in some centres, including among senior youth workers.

Some detainees alleged they or their friends had been made to squat or do star jumps while naked. Others alleged they were made to stand naked for a long time, and suffered inappropriate remarks or gestures from staff. A small number alleged staff had touched them during the search. None of these actions are permitted. Our staff explained the appropriate process to the detainees and, with the detainees consent, reported any particular matters to the centre managers for investigation. We commonly requested advice on the outcome of such investigations. In most cases there was insufficient evidence to substantiate the allegations but staff were reminded of the appropriate procedures.

Part of the confusion may have been created by the department's then review of the search policy. Our office provided a number of comments and observations on the use of strip searches to the department. These were incorporated into the review which took some months to complete. An interim policy was circulated earlier this year of which some staff were not aware. It is understood a final policy has now been developed and is soon to be released. We understand it is to emphasise that strip searches are to be done only when individual circumstances require, and are to be considered exceptional rather than routine procedures. This accords with our comments. We will be monitoring the implementation of the policy.

Without waiting for the release of the final policy, we have strongly encouraged all centre managers to arrange for a simple explanatory poster to be displayed in those rooms usually used for strip searches. The poster should set out in simple language how such searches are to be conducted and what staff can and can not request detainees to do. This should reduce the possibility of future confusion and tension. Centre managers have agreed to this suggestion.

## TELEPHONE CONTACT

In her report, the Ombudsman recommended a number of changes to improve contact between detainees and their family and support networks. The Ombudsman's inquiry found 25% of detainees in custody in a sample two week period had no telephone contact with their family during that time. 76% had three or less calls in that time. Detainees are entitled to a minimum of two phone calls each week to their family or other approved persons and additional calls at the discretion of the manager.

We focused on this issue during our visits to the centres. We found that, while the centres kept records of telephone numbers dialled by staff, there was often no indication of whether the call was successful, i.e., if someone had answered and spoken to the detainee. If the person could not be reached on the particular night there was no guarantee the detainee would receive another opportunity to make that call. The method of recording usually made it difficult to determine if a particular detainee had not had telephone contact with family or friends in a number of weeks. In some centres the records were of use only to disprove detainees' complaints that they had not been permitted a phone call on a given night. In a few of these cases we found that while a number had been dialled and recorded, the detainee had not been able to speak to the nominated person.

We have regularly suggested centres review their telephone records system to ensure they record not only the number or person called, but whether the call is successful. We have further

recommended the records be organised to permit ready identification of those detainees who have not had phone contact with a close friend or family for some time. Once identified, this information should be referred to the caseworker for possible action. Most managers have agreed with these suggestions. These systems will continue to be examined in future visits.

## TRANSFERS

Transfers were the third largest source of complaints received about the Department of Juvenile Justice. Some complained of being denied transfers to other centres. Others complained of being transferred to an inappropriate centre. In most cases the complainants believed the move did not recognise their need to be close to their family or other supports. The department faces an unenviable task of having to prioritise the relative needs of detainees and their families with the security and operational needs of the centres. With only nine detention centres across the state, and with some being largely for those on remand, clearly not all detainees can be accommodated at the centre closest to their family.

The Ombudsman's report of the *Inquiry into Juvenile Detention Centres* recorded concern at the number of transfers occurring within the system. It appeared some transfers were occurring for the needs of the centre, and in response to numbers, with little consideration given to the individual's needs and case plan goals. The Ombudsman made a number of recommendations to reduce the number of 'operational' or arbitrary transfers and ensure detainee needs are more fully considered in placement and transfer decisions. The following case study illustrates the continuing need for better communication and preplanning by those arranging transfers.

### Should he stay or should he go?

A detainee complained about being unreasonably transferred back to Kariong Juvenile Justice Centre from Riverina Juvenile Justice Centre. He didn't believe his conduct required him to be moved back. We wrote to the department. We asked why

the detainee was returned. We also asked what the department had considered before it approved the detainee's transfer to Riverina.

The department explained the decision was largely based on the department's inability to provide the appropriate level of counselling for the detainee at Riverina. The initial transfer to Riverina was to facilitate increased family contact. It had been recommended by the manager and a counsellor at Kariong. The transfer was on a trial basis with a settling in period to be allowed before the detainee began counselling at Riverina. The transfer report stated that counselling would be able to be maintained on transfer to the western region.

The detainee stated that he was not told the transfer was on a trial or temporary basis. After spending nearly three months at the centre, a teleconference was held involving staff from the department's western regional office, head office and Riverina Juvenile Justice Centre. This was the first time inquiries appeared to have been made to determine if appropriate counselling could in fact be maintained for the detainee at Riverina. The detainee was a repeat sexual offender whose offences were characterised by a large degree of violence. He was seen to be a serious risk to individuals, both in the community and within the juvenile justice system and was considered in need of an intensive intervention program to address his offending behaviour. When it became apparent that such a program could not be provided at Riverina, he was moved back to Kariong.

We acknowledge family contact was obviously a commendable reason for considering the transfer. That it proceeded without adequate preparation and explanation was most unsatisfactory and created expectations with the detainee that were not able to be met.

Had the department considered all of the detainee's needs, it would have identified the lack of appropriate counselling resources at Riverina. This would have allowed the department to either:

- refuse the transfer
- proceed with the transfer and ensure such counselling was available; or

- proceed with the transfer on a temporary basis purely for the purpose of facilitating family contact.

All of this should have been explained to the detainee at a case conference. Instead, the transfer proceeded on faulty information and Riverina inherited an additional management problem. The subsequent transfer also resulted in distress and resentment on the part of the detainee and his family.

By the time we examined the matter, little redress was available. We reinforced with the director-general the need for the department to improve the transfer process as previously recommended in our report of the *Inquiry into Juvenile Detention Centres*.

## PUNISHMENT AND CONFINEMENT

Another regular feature of our centre visits is a random review of the minor misbehaviour books which record the conduct the subject of an internal disciplinary charge (e.g. disobeying rules or instructions), the outcome and punishment given to detainees. From our reviews we have found:

- Punishments now reflect the full range of punishments permissible under the *Children (Detention Centres) Act*:
  - Loss of leisure and additional duties as well as cautions now appear more frequently. The Ombudsman's inquiry had previously found confinement to be the predominant punishment given. Similarly, rather than giving the maximum length for a punishment, e.g. three days loss of leisure or 12 hours confinement, individuals may be given one day, or three hours confinement. In some cases, the records show the punishment was reviewed after a period of time and further reduced so that, for example, a three hour confinement was reduced to two hours as the young person had calmed down and apologised for their behaviour.

- Inadequate completion of records:
  - To ensure the safety of detainees placed in confinement (and also segregation), staff are required to check on them at least every 15 to 20 minutes. Depending upon the detainee, the interval may be shortened to five minutes. In some cases, constant supervision has been required. Staff are meant to record their checks in a log book, detailing the time of the check and what the person was observed doing. Deficiencies in these records were highlighted in the Ombudsman's report. We have continued to find records obviously completed either before or after the time shown on the record. Ditto marks are relatively common. Occasionally, we have found gaps in time of more than 20 minutes between checks. We have frequently raised these concerns with centre managers. While the paperwork is cumbersome, the physical checks are for the protection of the detainee and the records ultimately for the protection of the staff and the centre. Falsified or incomplete records protect no one. Due to the persistence of the problem, we have again drawn these issues to the director-general's attention.
- Inappropriate placement in confinement:
  - Paperwork indicates that a number of detainees were placed in confinement prior to inquiry into a disciplinary charge by a senior officer. In some cases, detainees were placed in confinement for up to an hour before the inquiry was held. Although the particular volatility of a situation may require immediate segregation to prevent harm or injury, the description of the situation and the person's behaviour did not always support the need for the segregation. The determining officer may also be swayed in his or her decision regarding choice of punishment by the need to uphold the actions of staff. We suggested that, where segregation is considered necessary, the time spent in segregation be effectively deducted from any later confinement period determined for the detainee. These issues

were raised for the director-general's attention.

The issue of confinement and segregation is well illustrated by the following case.

#### Confinement by any other name ...

During a routine visit to Reiby, a 17-year-old detainee complained he had been held in confinement for almost 18 hours. He knew it was illegal for a detainee to be confined for more than twelve hours. He also complained he was not given a mattress, even though he was confined through the night. We raised the matter with the centre manager and asked for copies of their records. We did not quite expect the story that unfolded.

The detainee had been given six hours confinement for disobeying instructions and abusing staff. He was placed in the confinement room at 6.15pm. Staff soon noticed he was smoking, which meant he must have had a lighter. They requested he hand it over. He refused. He was then placed in segregation. During segregation, staff checks were recorded every 15 minutes. His segregation continued from 6.30pm until 11.45pm when he surrendered the lighter. He was then made to serve the remainder of his original period of confinement. Observations were then recorded every 20 minutes. The observation log book states the detainee was 'released to own room' at 5.30am. In reality, he was given a mattress and remained in the room until 8.30am. No staff observations were recorded after 5.30am. It was clearly more convenient that he not be sent back to the dormitory until 8.30am to avoid possible disruption to the unit. The practice of having the detainee sign his agreement in advance to remain in the confinement room until the usual wake up time was not followed.

The initial response to our inquiries was less than satisfactory. Clearly there was embarrassment over the incident. We were told staff had been reminded to provide a mattress at the usual bed time. It was also suggested that the detainee must have been held in segregation from 5.30am to 8.30am and that staff had been reminded of the need to complete the appropriate paperwork. We took our concerns to the director-general.

Segregation is used as a mechanism to remove a detainee from contact with others where there is a danger to the person or others. In this case, while the detainee's status changed, it made no difference to the conditions of his isolation. We consider segregation was inappropriately used in breach of s.19 of the *Children (Detention Centres) Act 1987* which provides:

*(1) If the superintendent of the detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the superintendent may, whether or not with the consent of the detainee direct the segregation of the detainee, subject to the following conditions:*

...

*(b) the duration of the segregation shall be as short as practicable but, in any case, shall not exceed 3 hours, or with the approval of the Director-General, 6 hours, in any period of 24 hours.*

...

*(2) A detainee shall not be segregated under this section by way of punishment.*

...

*(4) A detainee shall not be segregated under this section unless the superintendent of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.*

The officer authorising the segregation could not have believed on reasonable grounds that the segregation was necessary. There was a practicable alternative. The detainee was already isolated from others and under the regular observation of staff. The only change that was required, if any, was to increase the frequency of staff observations. Many detainees in confinement are checked at five or ten minute intervals.

As the segregation lasted for over three hours, s.19(1)(b) required it be approved by the director-

general. This function has been delegated to centre managers. The approval of the acting centre manager was dated the day after the segregation occurred. On its face, the segregation appeared not to have been lawfully authorised at the time it occurred. Upon inquiry, however, the department advised the acting centre manager had given verbal authorisation at the time, but had not signed the relevant forms until the next day. The department is to alter its forms to permit the recording and verification of verbal approvals.

### Stopping the clock again?

The detainee saw no difference between his periods of segregation and confinement. We agreed with him. This situation resulted in the detainee being in isolation for more than 14 hours. The maximum permissible period of confinement permitted by the Act is three hours for a detainee under 16 years of age and 12 hours for those 16 years and older, (s.21(1)(d)). It was, therefore, also contrary to these provisions.

The scenario strongly echoes an earlier practice of 'stopping the clock' which the department ceased following our intervention. This is detailed in our annual report for 1992-93 (p.167). The practice was to suspend the confinement when it was interrupted by the hours a detainee would otherwise have spent locked in his or her room, as at night. This period was not counted as part of the confinement and the detainee was required to serve the remaining period of time in the morning. In response to our criticism at that time the department obtained Crown Solicitor's advice which agreed with our view that the practice was outside the intention of the legislation. The practice was stopped. The use of segregation in this case seems to be opening a door we had thought was firmly shut to such unacceptable and unlawful practices.

The department acknowledged the situation was inappropriate and the matter has been discussed with the officers responsible. The director-general has also written to the detainee expressing regret at his experience and explaining steps to be taken to ensure it is not repeated.

## Cases

### A THOROUGH RESOLUTION

A detainee telephoned us to complain that he had been treated unfairly by a youth worker at a juvenile justice centre. He told us he and another detainee had refused to go to school. He had been punished but the other detainee had been allowed to go back to school with no punishment. He believed he had been treated differently as he is Aboriginal.

We called the centre. The acting centre manager was aware of the incident. He explained a number of detainees had refused to go to school. After discussion the others had agreed to attend but the detainee who called us had refused and became very angry. This resulted in him being punished. The acting centre manager offered to talk to everyone involved in the incident and call us back.

He subsequently advised us that he was satisfied the incident had been dealt with appropriately and the punishment justified. However, he was concerned that the detainee felt that he had been unfairly treated. The misbehaviour had been unusual from this young man and he believed it was important any underlying issues were sorted out. He arranged for the detainee and a youth worker to talk about the whole incident rather than allow emotions to simmer and possible further misbehaviour to result. All concerned felt that a good resolution had been achieved.

### RELIGIOUS OBSERVANCE

A detainee telephoned us to complain he had been refused permission to observe the requirements of his religion upon the death of a close family member. He had not previously had reason to show outward signs of his religious convictions while in custody. His religion required him to abstain from shaving for a number of days after the death of his relative. He had been told by the centre manager he must comply with the department's requirement

that detainees be clean shaven or he would be punished.

The Children (Detention Centres) Regulations 1995 require centre managers to:

*take all reasonable steps to facilitate the participation of detainees in the religious observances of their respective religious denominations.*

We spoke with the centre manager concerned. Some doubt existed at the centre about the genuineness of the detainee's religious conviction. The centre's records did not show his faith and the manager believed he might be aware of the religious observance required by having recently shared a room with someone who was Greek Orthodox. However, the manager agreed to reconsider the detainee's request.

The centre manager subsequently advised us that, having discussed the matter at length with the detainee, he was satisfied the religious request was genuine and that all disciplinary measures were withdrawn. He would be permitted not to shave for the prescribed period.

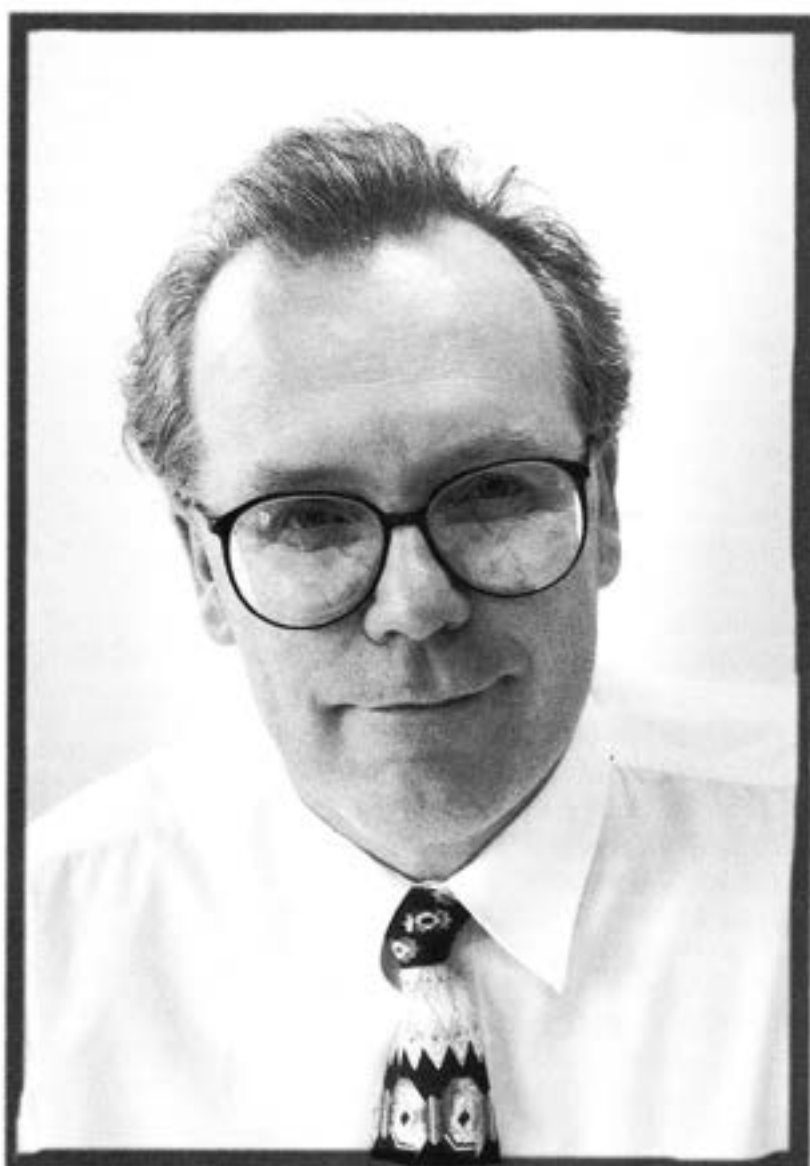
### ORGANISING LIFE AFTER RELEASE

A young man called us from Kariang Juvenile Justice Centre. He was to be released in a few days. He told us he had a son to support and wanted to call his previous employers to arrange work as soon as possible after his release. He said he had not been permitted to make the calls. We contacted the centre manager. He explained the calls had probably been refused as the casework coordinator position was temporarily vacant. The manager arranged for the acting casework coordinator to sit with the young man the next day while he tried to arrange future work.



Your comments over the handling of this matter have been noted and will be the subject of management action to improve the handling of FOI applications. The service remains committed to upholding the provisions of the *FOI Act* and appreciates your feedback on this particular issue.

*An agency*



Chris Wheeler,  
Deputy Ombudsman



## freedom of information

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>161</b>
Summary .....	161
Complaints determined .....	163
Complaints received .....	163
<b>Issues</b>	<b>166</b>
Commercial in confidence agreements and Prince Alfred Private Hospital .....	166
Consulting applicants on the scope of applications .....	167
<b>Cases</b>	<b>169</b>
Healthy respect .....	169
Read all about it? .....	169
Indigenous secrets? .....	169
Petitions .....	171
Improper commercial actions — should that be disclosed? .....	172
Yes, we have the document you want .....	172
I want to be a cop! .....	173
That inspector swore at me .....	173
Oh no, not the auditors again! ..	174
Rail Services Authority .....	174
Sydney Cove Authority .....	174
<b>Audit statistics</b>	<b>175</b>
Summary .....	175
Use of FOI by the public .....	175
Determination of FOI applications by NSW agencies .....	176
Complaints to the Ombudsman ..	176
Other applications .....	176
Amendment of records .....	176
Resource implications of the FOI Act .....	177
Ombudsman audits .....	177
Audit program .....	177
FOI annual reporting .....	177
Audit of summaries of affairs of NSW Government departments/ statutory authorities .....	178
Audit of summaries of affairs of local councils .....	180

## Overview

This section contains an account of our work and activities under the *Freedom of Information Act* for the 12 months ended 30 June 1998, and our plans for the 1998–99 year. It, and **Appendix 9**, also constitute our Freedom of Information Annual Report, meeting the annual reporting requirements of s.68 of the *Freedom of Information Act* and cl.9 of the Freedom of Information (General) Regulation.

### SUMMARY

In 1997–98 the number of FOI complaints made to this office increased by 31% from 131 to 171. For the ninth successive year, we finalised more files than in the previous year, this year determining 11% more complaints than in 1996–97. Unfortunately, for the first time since 1994–95, we completed fewer complaints than we received.

**Figure 1: Complaints about FOI received and determined**  
A five year comparison

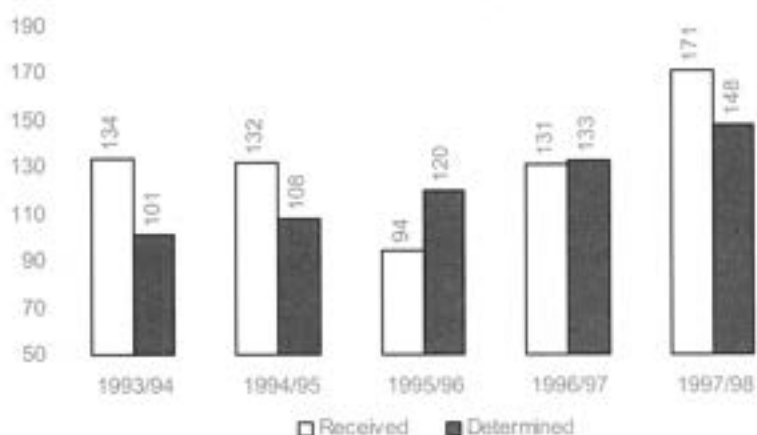
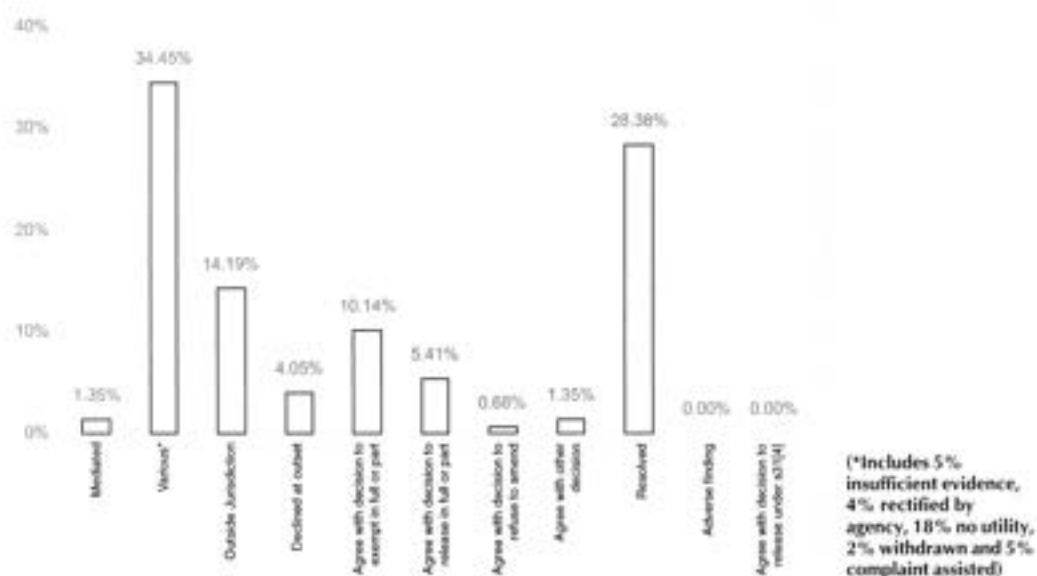


Table 1: Nature of written and oral complaints about FOI  
1997-98

	WRITTEN COMPLAINTS	ORAL COMPLAINTS/ ENQUIRIES
Access refused	101	45
Advice, pre-internal review		79
Amendment to records	1	2
Charges	13	10
Corrupt conduct		1
Documents not held	1	
Documents withheld, delayed, not held or lost		43
Failure to notify		4
Inquiries from agencies		33
Lost documents	4	
Processing delays	9	
Third party objections	12	16
Withholding documents	14	
Wrong procedure	16	34
General advice given		93
<b>Total</b>	<b>171</b>	<b>360</b>

Figure 2: Outcomes of FOI files completed  
1997-98



## COMPLAINTS DETERMINED

Of the complaints resolved, half were completed by the release of relevant documents. The other half were resolved by agencies addressing delays and making determinations, discounting charges, agreeing to appropriate administrative actions or providing explanations and/or apologies for inadequate processing.

Of matters resolved through the release of documents, half were achieved using s.52A of the *FOI Act*. As explained in last year's annual report, this provision gives agencies the opportunity to redetermine an FOI application which has been sent to us for review. Redetermination under s.52A carries with it all the protections which the Act affords any agency in relation to the original FOI determination. Without that protection, we believe we would see, as we did before the introduction of s.52A, a significant number of agencies unwilling to alter incorrect or unreasonable decisions.

Where we agreed with agency determinations, we agreed in full with decisions to fully exempt material on fewer occasions than last year, but we agreed with decisions to partially exempt more often. We also agreed with agency decisions to release documents to a greater extent than last year.

In a number of the complaints represented in **fig 2** as 'various', appropriate action to resolve matters had been taken by the agencies before we were able to take any substantive action on the complaint. With other complaints, inquiries revealed that the documents subject of the FOI applications were genuinely not available, either because they were lost or not held by the agency. Some complaints concerned minor processing errors which did not justify detailed investigation. In others, inquiries revealed that the FOI applications had not been properly made — for example, that no application fee had been sent.

## COMPLAINTS RECEIVED

### Increase

In order to understand the significant growth in complaints received, we conducted an analysis of agencies the subject of complaint, and compared these with 1996–97. However, we found little to explain the increase.

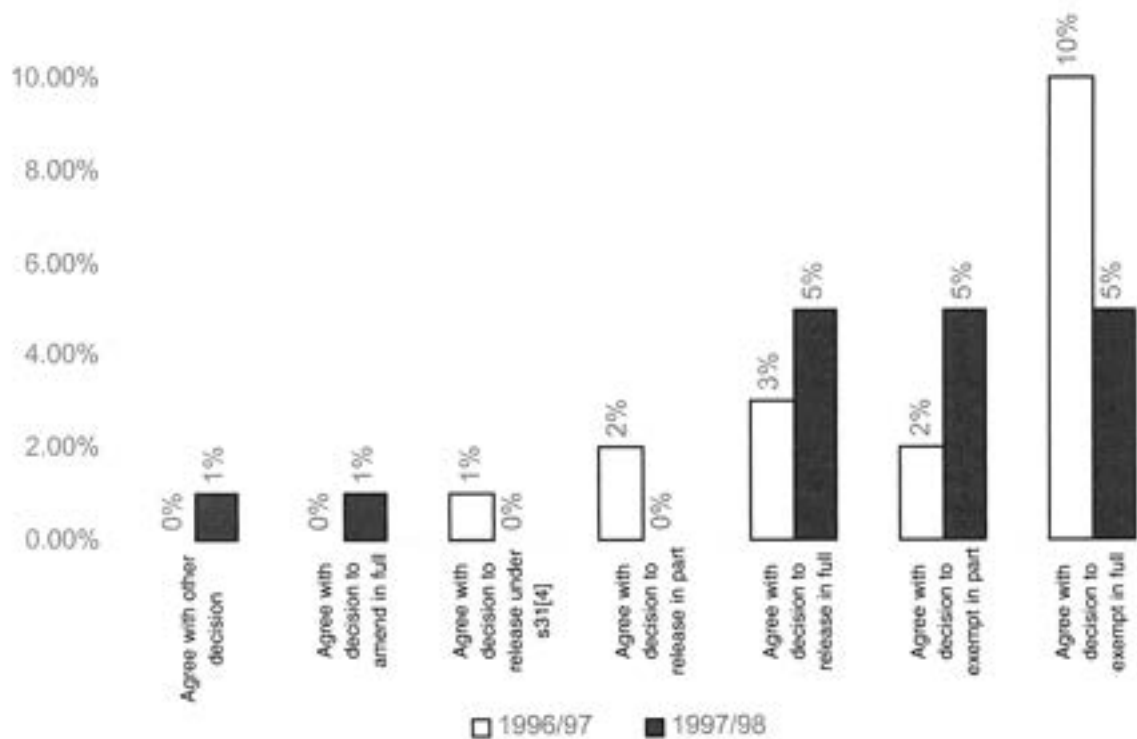
There was a noticeable expansion in the number of councils complained about (38%) and of complaints about local councils (58%) but we are not aware of any local government events which would account for this. There was a considerable increase in the number of complaints about the Police Service (118%). Considering the number of applications made to the Service each year (2,290 in 1996–97) an increase of 13 requests for external review is not significant. Likewise, the overall increase in complaints cannot be

said to represent a definite trend in the way FOI is being used in the community generally or responded to by government. The fact is that the increase remains small when compared to the number of FOI applications made to NSW government agencies this year (by our estimate, probably a little over 10,000 — see 'Audit statistics' later in this section).

The following appear to us, on the anecdotal evidence available, to have contributed to this year's increase in requests for external review of FOI decisions:

- a growing awareness of the Act in the community generally;
- a gradual increase in the use of the Act by the media;
- a wider spread of agencies the subject of complaint (which may suggest that agencies inexperienced in FOI have made poor determinations and may be more conservative in their decisions); and
- agencies may be getting better at communicating the availability of external review processes.

Figure 3: Agency determinations as percentages of all files determined



## Nature of complaints

Half of the complaints received were requests for external review of agency decisions to refuse access to documents in whole or part. The bulk of the rest of the complaints were about:

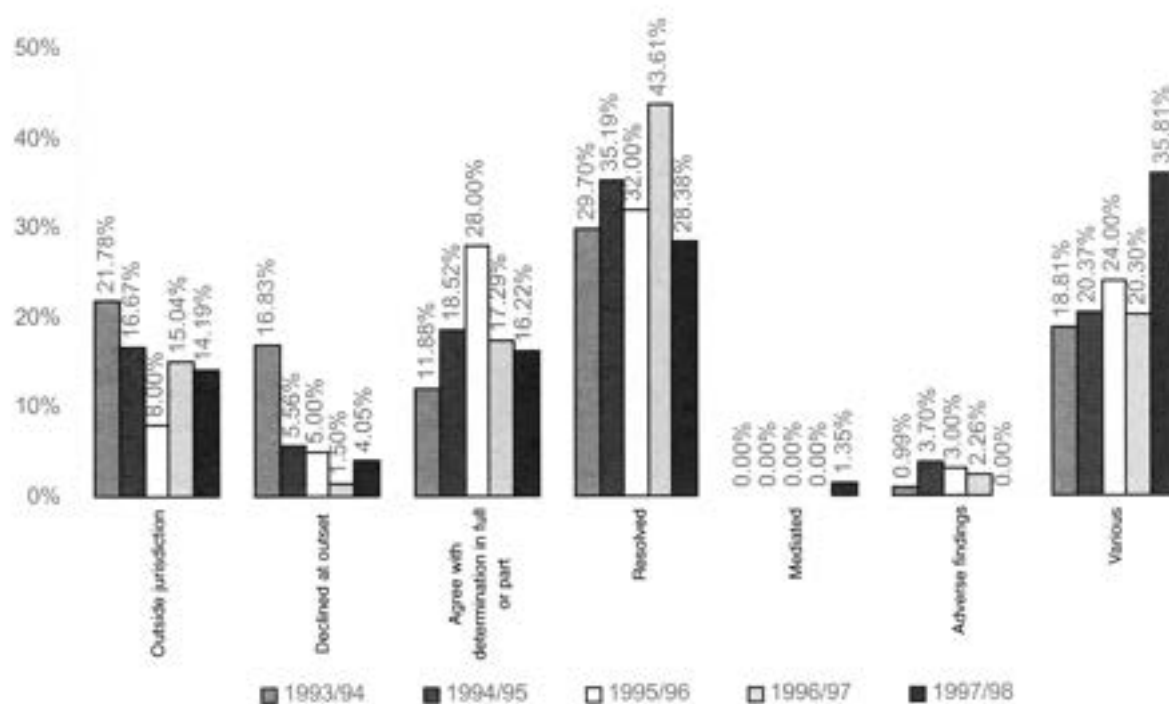
- wrong procedures;
- agencies withholding documents;
- third party objections to agency decisions to release documents;
- excessive charges; and
- breaching of statutory time limits.

## Action on delays

The average time taken to complete files this year decreased to less than 21 weeks (compared to 27 weeks last year). Our aim is to have no files more than a year old by 30 June 1999. To achieve this it will be necessary to finalise and close a number of old files which may result in a temporary increase in average completion times.

Note: Third party objections relate to those instances where a third party objects to agency decisions to release documents to an FOI applicant because the third party considers such disclosure would be unreasonable disclosure of their personal or business affairs.

**Figure 4: Complaints about FOI completed**  
A five year comparison



## Issues

### COMMERCIAL IN CONFIDENCE AGREEMENTS AND PRINCE ALFRED PRIVATE HOSPITAL

In last year's annual report, we highlighted our investigation into the FOI determinations of the Central Sydney Area Health Service (CSAHS). This matter involved an application by a medical specialist for all documents relating to a proposal to build a private hospital at Camperdown on land owned by the CSAHS. The CSAHS had refused the medical specialist access to any documents relating to the private hospital. This refusal was based on a confidentiality agreement signed by the CSAHS and Macquarie Health Corporation Ltd, the company building the private hospital (as well as cl.4(1)(d) — '*prejudicing...the impartial adjudication of any case*' — and cl.15 — '*substantial adverse effect on...financial or property interests*' — of Schedule 1 to the Act). In the confidentiality agreement, the CSAHS undertook to do all it could to exempt documents relating to the private hospital project from release under the *FOI Act*.

Even though the contract to build the private hospital had been signed in 1989, at the time of our final report in May 1997, no building work on the private hospital had commenced.

In November 1997, the Ombudsman made a special report to Parliament expressing concern that the CSAHS had refused to comply with her recommendations that, in the public interest, it release all the documents relating to the proposal to build the private hospital.

The Ombudsman's report to Parliament highlighted her concern that the public should be informed of the long delay in the process to build the private hospital — a delay that was clearly contrary to the public interest and had led to the expenditure of vast amounts of public monies and resources. The recommendation was also made with regard to the Ombudsman's concern that the confidentiality agreement between the CSAHS and Macquarie Health Corporation amounted to an effort to predetermine exemption of the documents under the *FOI Act*. The Ombudsman considered that this was contrary to the public interest and not in the spirit of the Act.

As we detailed in last year's annual report, under s.52(4) of the *FOI Act* we cannot disclose information in documents that an agency has claimed is exempt. We subsequently received legal advice from the Crown Solicitor that we could not release any exempt matter to the Parliament in making a special report under the *Ombudsman Act*. In reporting to Parliament we were, therefore, unable to refer to material claimed as exempt by the CSAHS. However, our report did

Table 2: Complaints about Freedom of Information  
1997-98

<b>Received</b>	
Written	171
Oral	360
Reviews	10
<b>Total</b>	<b>541</b>
<b>Determined written complaints</b>	
Formal investigation completed	0
Formal investigation discontinued	1
Preliminary or informal investigations completed	120
Assessment only	6
Non jurisdiction issue	21
<b>Total</b>	<b>148</b>
<b>Current investigations (at 30 June)</b>	
Under preliminary or informal investigation	50
Under formal investigation	5

Table 3: Complaints resolved  
(as a percentage of all completed matters)

	1996-97	1997-98
All documents released	16%	7%
Some or most documents released	16%	7%
Resolved for other reasons	11%	14%
<b>Total resolved</b>	<b>43%</b>	<b>28%</b>

recommend that the *FOI Act* be amended to enable the Ombudsman to release exempt matter to Parliament, where we deem this to be in the public interest. To our knowledge, no action has been taken on that recommendation.

In the report to Parliament, the Ombudsman recommended that 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*. To our knowledge, no action has been taken on this recommendation.

## CONSULTING APPLICANTS ON THE SCOPE OF APPLICATIONS

The Ombudsman takes the view that consultation with applicants on the scope of their FOI applications is an important part of processing large applications. In this regard, s.25(1)(a1) of the Act provides that an agency may refuse access to documents on the basis that the work involved in dealing with the application would substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions. However, s.25(5) of the Act also provides that, prior to refusing access on that basis, agencies must first endeavour to assist the FOI applicant to amend the application so that the work involved in dealing with it would no longer substantially and unreasonably divert the agency's resources.

Such consultation will often save the agency time and trouble. Further, ill feeling on the part of applicants and complaints to this office may be avoided if agencies:

- take the time to explain to applicants, clearly and objectively, based on solid evidence, the workload implications of their applications; and
- seriously seek to meet applicants' needs when negotiating narrower terms for their application.

In our view, before s.25(1)(a1) is relied upon, documentary evidence of a reasonably detailed discussion with the applicant (under s.25(5)) and a reasonably detailed breakdown of cost estimates, should exist. Further, where such discussion is

considered impossible because of a breakdown in communication between the agency and the applicant, as a result of a pre-existing dispute, agencies should consider alternative options. For example, agencies could arrange for an independent person to approach the applicant with a detailed and supported explanation of the difficulties raised by the application, with authority to negotiate narrower terms acceptable to the applicant.

The importance of agencies consulting with applicants on the scope of their applications where they appear to be too broad, is illustrated in the following examples.

### Case 1

A doctor's FOI application was acknowledged 15 days after receipt, only six days prior to the statutory time limit for completion of the application. The agency (an area health service) requested four weeks — presumably an additional four weeks — to comply because of the scope of the application. Despite the extension, the area health service was unable to complete the application until a month after the extended date.

The terms of the FOI application were, in our view, very clear. They concerned documents created as a result of a letter of complaint written by the applicant about internal management problems in the hospital to which the applicant had visiting rights. The applicant suspected very little had been done about the complaint and wished to see any documentation that had been generated, to see what progress had been made. Any documents that pre-dated the letter of complaint the applicant wrote to the hospital were, therefore, irrelevant to the FOI application. However, all the documents to which the service provided access, bar one, pre-dated the letter of complaint. The one document provided which was dated after the letter of complaint was also irrelevant due to its content.

It seemed clear to us that the area health service had seriously misinterpreted the terms of the FOI application and, as a result, the applicant suffered a significant disadvantage in terms of delay. A telephone call from the service to the applicant would have immediately revealed that



any documents prior to the letter of complaint the applicant had written to the hospital, were irrelevant to the application.

### Case 2

A regulatory body refused access to the records and recommendations of an advisory council in relation to a function of the body. The basis of refusal was s.25(1)(a1). Our inquiries revealed the terms of the application encompassed a large amount of documentation going back to the mid 1980s, including minutes and information on personal files of small businesses which would have required consultation prior to release. This, combined with the small size of the agency, suggested that the amount of work involved in processing the application may have been unreasonable. However, the agency's FOI determinations did not give any details to back up the claim of unreasonable workload (such as the approximate number of documents covered by the terms of the application, or an estimate of the number of staff required to process the application within 21 days and the number of hours required to do so). There was also a question as to whether the agency had known of, and followed the requirement in, s.25(5). This office explained to the applicant the difficulties inherent in the terms of the FOI application and the applicant was prepared to significantly limit those terms. The agency very quickly gave the applicant the documents covered by the new terms.

### Case 3

A local council applied to a county council for, among other things, all documents in relation to all approvals and consideration by the county council under the *Environmental Planning and Assessment Act* and the *Local Government Act*. The county council refused access under s.25(1)(a1), estimating 100 to 150 hours of processing time and the full time attention of two staff members and other staff part time. This estimate surprised the local council, who suspected that the county council did not in fact hold any such documents. The local council believed that the county council was not, and never had been, an approval authority under these or any other Acts. Part of the purpose of the

application was to obtain a written statement from the county council (for the local council's own legal purposes) that would support its belief that no documents were held.

Our inquiries revealed that the county council had been in existence for about 30 years. The general manager contended that there was no time limit in the FOI application and that it therefore had to be taken as applying to the full 30 years. In our view, he could not have said for certain whether documents existed or not for that period as he had only been employed there for five years. He may have had an idea, however, to properly meet his obligations under the *FOI Act*, he would have needed to be reasonably certain as to the existence or otherwise of such documents. He would therefore have had to examine many of the old records to determine whether or not such documents were held.

This process would clearly have been very time-consuming if done thoroughly, as required if his obligations under the Act were to be met. It was difficult to say whether the 100 to 150 hour estimate was a reasonable, but our experience of the FOI process suggested that it could take that long.

We did, however, have some concern with regard to reliance on s.25(1)(a1) given that it did not appear that the agency had taken appropriate steps to assist the applicant to amend the application. The general manager of the county council informed us that he had spoken to the local council's general manager about the application, who had said he wanted it to stand. In our view, s.25(5) requires a more thorough negotiation between agency and applicant than this conversation suggested and we informed the general manager of the county council accordingly.

## Cases

### HEALTHY RESPECT

A lobby group acting on behalf of a major chain of health product related shops complained about the failure of the Department of Health to release certain documents to them under the *FOI Act*. The application and its refusal were the culmination of a longstanding dispute between the parties. The lobby group requested a review of the decision. The department claimed various exemptions based on legal professional privilege, documents prepared for cabinet and the fact that many documents concerned the affairs of third parties. As no permission for release had been given, disclosure was seen as unreasonable.

An external review by this office of the quantity of documents involved would have taken a great deal of time. The FOI officer concerned knew the mediation process offered an opportunity for speedy resolution of all the issues. At the very least, the potential existed for the request for documents to be narrowed, after discussions, to a more manageable level.

Even more than usual, the issues of communication and relationship were paramount. The face to face contact provided by mediation encourages frank discussion and allows significant misconceptions to be clarified. Delays and poor communication were acknowledged. As the air cleared on these issues, the more technical aspects of the dispute became easier to deal with. Because each party was open about its interests, each quickly came to understand and accept the other's interests as being legitimate. Within a short time it was agreed that certain documents would be released and the request for other documents was withdrawn.

The entire matter was resolved and the parties left the mediation with an increased understanding of each other's position and some positive ideas on how to avoid a similar situation in the future. The specific, actionable problem was used to create systemic improvement in the agency's policies and procedures, to the benefit of all members of the public.

### READ ALL ABOUT IT!

One matter identified as amenable to resolution by mediation involved an FOI request to the NSW Police Service by a journalist on a Sydney daily newspaper. The journalist was seeking information about a sensitive area of police activities and the application had been refused on various grounds.

With some hesitation, the parties agreed to come to a mediation session held by this office, with two neutral mediators assisting the parties to discuss the issues and come up with solutions. Knowing that one party was a newspaper caused a good deal of alarm about confidentiality, so this was the first matter addressed. It was dealt with by our standard agreement to mediate, coupled with assurances and undertakings to keep the discussions 'off the record'.

The newspaper representatives explained the nature of the information they were seeking and why they wanted it. In the light of the recent Royal Commission the information was certainly newsworthy, and the Police Service representatives understood this. However, the police representatives were in turn able to explain that much of the information requested either did not exist or would be meaningless, and hence the impracticality of the FOI request in its current form.

In addition, there were some public interest aspects against releasing the information which had to be balanced with the public's interest in the information being made public. As their understanding deepened, the newspaper representatives acknowledged the concerns of the police. The parties began to consider ways in which both sides could benefit from an exchange of information. As the benefits of the mediation process became tangible, both parties relaxed their initial positions and an agreement was reached.

### INDIGENOUS SECRETS?

The Australian Museum received an FOI application for the entire catalogue to the Museum's Australian Aboriginal collection. The applicant received access to some copies of one catalogue but was denied access to another set

which the museum considered to contain information that was secret and sacred to Aboriginal communities. The documents referred in detail to secret/sacred objects held by the museum and to the secret community stories relating to those objects. The first catalogue contained brief references to each *tjuringa* and to other secret/sacred objects but did not contain the level of detail required by the applicant, an independent researcher. Issues for this office to consider in relation to the request included whether the Ombudsman should view the documents given their cultural sensitivity, whether the museum's determinations were deficient, and whether any exemption clauses in Schedule 1 of the *FOI Act*, such as cl.6, cl.13 and cl.16, applied to the documents.

We came to the preliminary view that the determinations of the FOI application were deficient in that the reasons given for the refusal of access did not specify that the documents were exempt under s.25 of the Act and did not specify under which clauses in Schedule 1 exemption was claimed. Reliance was placed entirely on the museum's policy of restricted access to the collection. We were aware that the initial determination was based closely upon advice from the Crown Solicitor's office, however, we considered it unfortunate that the sample notice of determination at the end of the advice apparently did not reflect the discussion of possible exemption clauses in the body of the advice.

It became apparent during our inquiries that the cultural sensitivity of the objects and the closed catalogue was extreme — only two or three staff in the museum had access to the separate locked storage area in which the catalogue and the objects were housed, and those staff only had access by agreement with the Aboriginal community. Consequently, although we had statutory power to examine the catalogue under the *FOI Act*, we decided not to exercise that power in order to avoid the likelihood of offending the Aboriginal community. Instead, we asked the museum to provide details as to the precise categories of information on the catalogue and for samples of the cards with exempt matter deleted but described by type. We concluded that a substantial amount of

information in relation to each object could not reasonably be classified as secret/sacred, for example, the object number, date of acquisition, place and community of origin, type of object, donor or history of acquisition, condition, dimensions, and of what the secret/sacred objects were made.

Given the museum's obvious concern about disclosure, we considered whether any exemption clauses in Schedule 1 applied in relation to the remainder of the information on the catalogue cards and the attachments to them. We decided that cl.6 was most unlikely to apply to any information in the catalogue. While it was clear that information about the objects was of great personal value to Aboriginal communities, we thought it unlikely, from the information supplied by the museum that much of that information concerned, in the terms of s.31 and cl. 6 of Schedule 1 of the Act, the personal affairs of any person, living or deceased. For a conclusion to be made otherwise, in our view it would have had to refer to that person. As we understood it little, if any, of the information on the cards referred to persons. Where it did, however, we acknowledged the possibility that cl. 6 might apply.

In our view, cl.13 (documents containing confidential material) was unlikely to apply to any information in the catalogue. It appeared clear from the information supplied by the museum that the vast majority, if not all, of the items, and the information and/or photographs about them, were received by the museum at a time well before their cultural sensitivity was appropriately acknowledged. In this context, their receipt by the museum in no way incorporated any expectation or understanding of confidentiality — of the objects themselves or the catalogue entries in relation to the objects. The museum's policy made a statement which supported this view:

*Initially objects of a secret/sacred nature were collected by the Australian Museum as exotic examples of Australian Aboriginal material culture. In this sense they were viewed in much the same light as other objects and there were no special concerns about their storage or handling.*

The museum supplied ample evidence of the extreme cultural sensitivity surrounding secret/sacred objects and some of the information, such as their associated stories, and photographs, which related to them. It also provided evidence of the adoption of a widespread, and probably universal, policy in Australia of restricting access to museums' holdings of such objects. The museum advised the Ombudsman that to make secret/sacred information available to anyone not approved to examine the material would violate the trust of the Aboriginal community and would not be in the public interest. Further, that there was concern that if the museum were to make information available, the Aboriginal community would be likely to take legal action against the museum.

The museum pointed out that its policy stated as a *'guiding principle'* that *'consultation with Aboriginal people about Aboriginal heritage and culture is essential'* and *'consultation means that museum staff will talk with Aboriginal communities in order to gain their opinion and their advice about the current and future protection and management of Aboriginal heritage and culture within the Museum's jurisdiction'*. The policy further stated that the museum *'has a moral obligation to curate the secret/sacred collection in line with the wishes of the appropriate Aboriginal person or persons with proven rights of access/ownership'*. In line with this policy, an Aboriginal heritage advisory committee was established by the museum to ensure Aboriginal input.

For these reasons, we concluded that disclosure of the catalogue to the applicant could reasonably be expected to have an adverse effect on the museum's function to consult with, and seek the opinion and advice of, Aboriginal communities about Aboriginal heritage and culture. We concluded that cl.16(a)(iv) of Schedule 1 of the Act applied to the catalogue. This clause has a public interest component. After an examination, we concluded the public interest in disclosure was outweighed to a considerable extent by the public interest in the museum maintaining good relations with the Aboriginal community.

We took the unusual course of making a suggestion under s.52A of the Act that a particular exemption clause be applied to the documents. Suggestions made by this office under s.52A usually disagree with an agency's claim of exemption and suggest release of documents. However, on this occasion, we suggested that the Australian Museum review its determinations and refuse access to the entire catalogue of the *tjuringa* collection on the basis the documents were exempt under cl.16(a)(iv) and (b) of Schedule 1 of the *FOI Act*. However, more in line with usual practice, we then suggested the museum decide that it was practicable to give access to copies of the entire catalogue from which the exempt matter had been deleted. We also suggested that, prior to deleting the exempt matter, the Australian Museum consult with the applicant under s.25(4)(b) of the Act to determine if he wished to be given access to such copies.

As we had not seen the relevant documentation we urged that the museum take great care to only delete material which could legitimately, if disclosed, bring about the effects in cl.16(a)(iv) and (b). The suggestion was fully adopted by the museum. Although the request for external review was considered resolved to the Ombudsman's satisfaction, the applicant was not satisfied as, in his view, his research required total access.

## PETITIONS

A member of Parliament requested an external review of a local council's decision to release a petition signed by a number of neighbours in relation to the erection of unapproved aerials on a roof. The MP had, on the petitioners' requests, submitted the petition to council with a covering letter. On receiving an FOI application for the petition, council decided the petition was a public document. The MP unsuccessfully objected to this decision at the internal review stage and subsequently complained to us. Issues for this office to consider in relation to the MP's request included whether the petition was a public document, whether the petition contained personal affairs information, and whether disclosure of the petition would constitute the unreasonable disclosure of personal affairs.

We learned that the petition had been tabled in open council and was available for inspection on that day and the next under s.11 of the *Local Government Act*. Further, the council had an informal practice to make available documents tabled in open council without the need for an FOI application. The petition would therefore probably have been made available at any time after the tabling. We concluded that, given this practice, council could have refused access to the petition on the basis that it was a document available from, or available for inspection at, council, free of charge, in accordance with council's policies and practices (s.25(1)(b1)).

We considered that a petition is by nature a public document. We thought it doubtful that, given the public context of a petition, it would be reasonable to consider the names, addresses and signatures as information concerning the personal affairs of the signatories in the terms of s.31 and cl.6. In this particular matter, after consultation, only one petitioner objected to their details being disclosed — in our view, insufficient grounds for an entire petition to be exempted from release. We agreed in full with the council's decision.

### IMPROPER COMMERCIAL ACTIONS – SHOULD THAT BE DISCLOSED?

We received a complaint from a former commercial contractor with the Department of Corrective Services who had been providing services to a commercial unit within the department. He had applied to the department for two reports written by a senior staff member about allegations of misconduct involving departmental staff and another private contractor. One of the reports, which was withheld in full by the department, contained information about the FOI applicant in addition to the allegations about the staff and another contractor.

We approached the department with the view that the information in the report that concerned the contractor who had made the FOI application should be released to him. We also felt that certain information in the report that concerned the affairs of the department should also be disclosed. We

agreed with the department that allegations of misconduct about departmental staff were appropriately exempt, as the release of such material may unnecessarily damage the reputation of those staff members. We also agreed that information in the report about the business or commercial affairs of other private contractors should remain exempt. Very reluctantly, the department agreed to release those parts of the report to the contractor that we did not consider should remain exempt.

In finalising the complaint we advised the department that we did not agree with its view that information disclosing that a private contractor had improperly overcharged the department for the provision of goods could be considered to be information of a 'commercial value' (to that private contractor) that would be damaged if it was released.

### YES, WE HAVE THE DOCUMENT YOU WANT...

A prominent journalist applied to the Department of Education and Training for documents showing an analysis of the performance of schools using a new system that had recently been adopted called the 'value added measure'. Following clarification of the terms of her request, the department told her that it had one document that she wanted. The department also advised her that this one document had been prepared for submission to Cabinet and was therefore exempt under cl.1(1)(a) of Schedule 1 in the *FOI Act*. After receiving the journalist's complaint we wrote to the department expressing our surprise that they should hold only a one page document detailing such an important and complicated analysis of school educational results. In her letter to us, the journalist had also expressed surprise that the department should only have 'one document' relevant to her FOI application. In our view, from the context and terms of the department's response to the FOI application, it was reasonable for the applicant to understand from the department's determination that the document consisted of only one page. It turned out,

however, that the document was 45 pages and consisted of:

- a one-page covering letter to the Director-General of the Cabinet Office;
- a four-page Cabinet Office minute;
- an attachment of 11 pages being a table showing a preliminary analysis of value added data in high schools; and
- an attachment of 25 pages being a table showing a preliminary analysis of value added data in primary schools.

The department subsequently advised us that the Director-General of the Cabinet Office had issued a certificate under s.22 of the *Ombudsman Act* for the document in question. Under this section, a certificate indicates that a document is a Cabinet document and is exempt under cl.1(1)(a) of Schedule 1 in the *FOI Act*. Because a certificate had been issued by the director-general, we were unable to obtain the document in order to verify whether it was, in fact, exempt under this clause. However, we advised the department in very strong terms that we considered its advice to the journalist was misleading, as it appeared to have been designed to make her believe the department held only one page and not the 45-page report that actually existed.

### I WANT TO BE A COP!

We received a complaint from a woman who had been denied access to documents by the Police Service that related to her failed attempt to be accepted as a police officer. After putting in her employment application with the Police Service, she found out that a serving police officer lived in the same street as her. She subsequently attempted to befriend him in an effort to learn more about the role of police officers. However, after some time her efforts in friendship seemed to move onto the level of fixation. The serving police officer subsequently put in a submission to the personnel area of the Police Service highlighting his concerns that she may not be suitable for a police career. His submission was soon supported by reports submitted about her by members of the public who

knew her and expressed their concerns that, due to her personality, she would probably not make a good police officer. She applied under the *FOI Act* for all these submissions about her. The Police Service refused her access to all the material.

We agreed with the determinations to exempt the submissions from the public as we considered it is important that the Police Service not be hindered in receiving appropriate confidential information from members of the public about applicants who may not have the capacity to properly perform the duties of a police officer. This may occur if the public became reluctant to provide information about Police Service applicants because their submissions were released. However, we did recommend to the Service (under s.52A of the *FOI Act*) that the police officer's submission about the applicant be released to her as he was acting largely in the course of his official duties. The Police Service released the report.

### THAT INSPECTOR SWORE AT ME!

We received a complaint from a former official of a metropolitan council. He had recently resigned. While still employed with the council he had been the subject of a written complaint by a professional in the building industry. The allegation made to the council was that the former official had acted improperly in carrying out his official duties and had offered a bribe to the professional concerned, an action that may constitute corrupt conduct. The former official had applied for access to the letter of complaint about him. The council refused him access to the entire letter under various clauses of Schedule 1 in the *FOI Act*. While the council did not handle his FOI application particularly well, we nevertheless agreed that the letter of complaint about the official was appropriately exempt. This was on the basis that the release of complaints about the conduct of officials may result in members of the public being reluctant to lodge such complaints in future. We felt there was a strong argument that it was in the public interest that councils continue to be informed by the public of possible inappropriate conduct by staff or councillors.

**OH NO, NOT THE AUDITORS AGAIN!**

We received a complaint from a volunteer worker who had been part of an community group working in a primary school. Some money which the group had taken in selling products at the school had been disappearing over a period of time, which resulted in the Department of Education and Training conducting an internal audit investigation into the missing funds. The audit report found another volunteer worker in the group had possibly misappropriated some funds but that the volunteer who had complained to us had not acted improperly. The complainant had applied to the department under the *FOI Act* for the audit report. However, the department had refused her access. We agreed with the department that release of that part of the audit report concerning the personal affairs of other people would be unreasonable. However, we did not agree with the department's view that a release of that section of the report dealing with the complainant would prejudice any further investigation of the issues raised in the report (based upon information we had received, no further action about the issues raised in the report would be taken). The department agreed, reviewed its determinations under s.52A of the *FOI Act* and released those parts of the audit report to the complainant that related to her.

This case can be distinguished from the previous case on the basis that it did not concern a letter of complaint, and the content of the relevant document did not include allegations about the conduct of the FOI applicant.

**RAIL SERVICES AUTHORITY**

The FOI applicant in this instance commenced employment as a solicitor with the then Rail Services Authority (RSA). Following continuing concern about his capability to adequately perform his duties, the solicitor's employment contract was terminated prior to him becoming a permanent employee. A psychiatrist's report about him had been requested by the RSA just two weeks after his employment was terminated. He subsequently applied under the *FOI Act* for the psychiatrist's report. The RSA denied him access, claiming the

report was subject to legal professional privilege as it was requested for the dominant purpose of reasonably anticipated legal proceedings involving the solicitor and the RSA.

Following our inquiries, we disagreed with the RSA as it seemed to us that the psychiatrist's report was obtained in the normal process of dealing with his worker's compensation claim, which meant that the report could not be subject to legal professional privilege. The RSA agreed to release the report to the solicitor.

**SYDNEY COVE AUTHORITY**

A former contractor with the Sydney Cove Authority had applied for access to numerous documents relating both to himself and a decision of the authority to award a maintenance contract in which he was not the chosen tenderer. In its determinations of his FOI applications the authority followed a particularly legalistic approach. The Ombudsman believes that determinations under the *FOI Act* should be easy to read and not be based upon complicated legalistic principles. The authority refused the former contractor access to numerous documents under cl.6, cl.9, cl.10 and cl.16(a)(iv) of Schedule 1. Following our examination of the complaint we did not consider that various documents should be exempt, particularly those in which the contractor had been criticised by the authority. Following our representations, the authority agreed to release most of the requested documents.

## Audit statistics

### SUMMARY

During the year, we conducted a second audit of compliance by government agencies with the annual reporting requirements of the *FOI Act*. From the audit it appears that:

- our estimate of the overall number of FOI applications made to NSW agencies in 1996–97 decreased by about 6% from the previous year, primarily because area health services have now adopted ‘open access’ policies;
- while the number of applications resulting in full or partial release of documents decreased slightly from the previous year, the number of applications resulting in access being completely refused remained largely the same;
- little use was again made of the right to seek the amendment of records where they are considered to be incomplete, incorrect, out of date or misleading;
- the Act does not have significant resource implications for most agencies;
- there has been a continuing poor level of compliance with FOI annual reporting, although some there has been some improvement over the previous years;
- there has been a serious failure by a significant number of NSW Government agencies to comply with the summary of affairs requirements of the Act (for example at least 68 agencies failed to publish a summary of affairs in the June reporting period and at least 29 agencies have failed to do so in the last four reporting periods);
- a review of the summaries of affairs published by NSW Government agencies in the last two reporting periods indicates a significant, widespread and increasing failure to comply with the requirements of the Act; and
- a review of the summaries of affairs published by local councils in the past two reporting periods indicates that the improvement achieved in the June ‘97 reporting period has largely been maintained, although there is an increasing number of councils failing to comply.

While 132 agencies were the subject of this audit, the results are drawn from 113 annual reports for the year 1996–97. The remainder consisted of ministerial offices (whose statistics were all included in the Premier’s Department’s annual report), and agencies that failed to publish an annual report for 1996–97.

### USE OF FOI BY THE PUBLIC

The information contained in the audit indicates that the access to information provisions of the *FOI Act* appear to be significantly underused by the public. Arising out of our 1995–96 audit, we estimated that most NSW agencies would have received on average less than eight FOI applications in that year. This figure is unlikely to have changed significantly and is assumed to be still relevant for the 1996–97 reporting year.

Table 4: Reviews and appeals

	1995–96		1996–97	
	No.	%	No.	%
Internal reviews	115	9.5 <sup>(1)</sup>	141	10.7 <sup>(1)</sup>
Upheld	70	61 <sup>(2)(3)</sup>	83	59 <sup>(2)(3)</sup>
Varied	31	27 <sup>(2)(3)</sup>	42	30 <sup>(2)(3)</sup>
Ombudsman reviews	94 <sup>(4)</sup>		131 <sup>(4)</sup>	
District Court appeals	9 <sup>(5)</sup>		13 <sup>(5)</sup>	

#### Notes:

- 1) Percentages of FOI applications refused in full or refused in part.
- 2) Percentages of internal review applications.
- 3) Not all results were included in the audited annual reports and some applications were not determined during the reporting year.
- 4) Actual number of applications for review by Ombudsman in that year.
- 5) Actual number of appeals notified to Ombudsman by District Court Registry.



We estimated 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. For 1996–97, we estimate this overall figure actually declined by approximately 600 to around 10,200. This is explained by the significant decrease in FOI applications to area health services (1,157 between 1995–96 and 1996–97). The reason for this decrease is the adoption by area health services of ‘open access’ policies recommended by the Department of Health. If the numbers of FOI applications to area health service are deleted from the calculations for both years, the number of FOI applications to the remaining 120\* agencies increased by over 7% (i.e. from 4,923 in 1995–96 to 5,308 in 1996–97).

### DETERMINATION OF FOI APPLICATIONS BY NSW AGENCIES

In 1996–97 all requested documents were released in approximately 78.3% of the determinations reported in the audit (a decrease of 2.4% from 1995–96). A large majority of determinations (89.3%) resulted in the release of either all or some of the documents requested (a decrease of 3% from 1995–96).

Only 6.7% of reported applications resulted in access being completely refused (the same as 1995–96). A further 11% resulted in access being refused in part (a similar result to 1995–96). In relation to the 1,318 applications refused in whole or in part, 141 applicants (10.7%) then sought an internal review by the agency concerned. Of these only 42 (29.7%) were reported as being successful with the original determination being varied.

### COMPLAINTS TO THE OMBUDSMAN

Of the 83 reported applications for internal review which were fully unsuccessful (i.e. the original determination was upheld), it was reported by agencies that approximately 56% complained to the Ombudsman. In fact, it is likely this figure was much higher — the audited agencies may not have been informed about complaints to the

Ombudsman which were declined (for example, due to lack of jurisdiction where the applicant had failed to apply for an internal review, or complaints that were withdrawn), or complaints made by third parties objecting to decisions to release documents.

The actual number of FOI related complaints made to the Ombudsman in the last five years are set out in **fig 1**.

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 four appeals were reported by the audited agencies as having been made to the District Court. Notifications to the Ombudsman from the District Court Registry indicate that in fact 13 appeals were lodged in that period from determinations made by all agencies in NSW.

### OTHER APPLICATIONS

At least 1,374 of the applications reported to have been made to NSW agencies in 1996–97 were determined on the basis that the documents did not exist (e.g. 1,150 applications to the Police Service seeking the applicants’ criminal records where no trace of such records could be found) or did not need to be released under FOI for various reasons (such as where the documents were otherwise available).

No ministerial certificates were reported to have been issued under s.59 of the *FOI Act* (a ministerial certificate is taken to be conclusive evidence that documents are restricted documents, i.e. 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* (where a person is of the opinion that information in an agency’s records is incomplete, incorrect, out of date or misleading). There were only 11 reported applications made for amendment of personal

records in 1996–97 (down from 14 reported in 1995–96). 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 continues to be 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:

- 15% of the audited agencies (i.e. 20) received 82% of the FOI applications reported in the audit (the 20 agencies that appear to have received the most FOI applications in NSW received 60% of our estimate of the total number of applications in 1996–97);
- 17% of audited agencies (i.e. 23) received no FOI applications and made a nil return;
- the remaining 68% of audited agencies received an average of only 14 FOI applications each (on the basis of our 1995–96 audit results it is likely that most agencies in NSW would have received less than eight FOI applications);
- the 47 agencies that reported having consulted with members of the public each consulted 24 people on average; and
- from the available figures it can be assumed that most agencies would not have been required to consult with more than a total of 10 people in the course of 1996–97 prior to releasing documents.

## OMBUDSMAN AUDITS

As mentioned in our 1995–96 annual report, 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:

- 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
- the administration of FOI by the agency, including FOI statistics, an assessment of the impact of the *FOI Act* on the agency's activities, and so on.

We have continued our program to audit compliance by government agencies with the requirements of the *FOI Act*. The audit program 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, *Annual Reporting in the NSW Public Sector*).

## AUDIT PROGRAM

The FOI audits for 1996–97 included an assessment of compliance:

- by a sample of 133 agencies with the annual reporting requirements set out in s.68 of the *FOI Act*, cl.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;
- by NSW Government agencies with the summary of affairs requirements set out in s.14 of the *FOI Act*; and
- by local councils with the summaries of affairs requirements in s.14 of the *FOI Act*.

## FOI ANNUAL REPORTING

Our 1997–98 audit revealed a continuing poor level of compliance by public sector agencies with the annual reporting requirements of the *FOI Act*, although there was some improvement on the level of compliance identified last year:

- 37% of the agencies audited did not comply with the FOI annual reporting requirements:
  - 2% completely failed to comply compared with 13% last year (i.e. no annual report or no reference to FOI reporting requirements);
  - 35% inadequately complied compared with 39% last year (i.e. the content and format of the FOI information contained in the annual reports did not comply with annual reporting requirements in significant respects);
- 63% of the agencies adequately or fully complied with annual reporting requirements:
  - 10% adequately complied — the same as last year (i.e. the content and format of the annual reports generally complied, although certain information was not included);
  - 17% lodged nil returns compared to 19% previously (i.e. the agencies reported they received no FOI applications); and
  - 36% fully complied with FOI annual reporting requirements compared to only 19% previously.

The marked improvement in the number of agencies fully complying is most likely due to the fact that, following last years audit, we wrote to all agencies that failed to comply, outlining our particular concerns.

### AUDIT OF SUMMARIES OF AFFAIRS OF NSW GOVERNMENT DEPARTMENTS/ STATUTORY AUTHORITIES

We conducted an audit of compliance by NSW Government departments and statutory authorities with the summary of affairs requirements in s.14 of the *FOI Act*. This audit is in four stages:

- stage one involved identifying the agencies that have failed to produce statements of affairs, including looking at whether this failure is ongoing;
- stage two involved a review of the contents of the December 1997 summaries of affairs;

- stage three involved a comparison with the June 1998 summaries of affairs; and
- stage four will involve writing to non-complying agencies reminding them of their obligations under the *FOI Act* and providing certain guidance to assist compliance.

As stated in last year's annual report, it is 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 s.14(4) of the *FOI 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 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 aware (s.15(3)). In relation to this last point, in effect s.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.

### Stage one

FOI Government Gazettes for December '96, June '97, December '97 and June '98 were reviewed to determine which agencies have failed to publish their summary of affairs as required under s.14 of the *FOI Act*. For comparison purposes, the number of agencies that published summaries of affairs in mid 1990 (the first reporting period after the commencement of the Act) is also included. The overall results are shown in **table 6**.

From stage one of the audit, it appears that:

- at least 68 agencies failed to publish a summary of affairs in the June 1998 Government Gazette (see **table 5**);
- at least 29 agencies failed to publish summary of affairs in the last four reporting periods (see **table 7**); and
- sixteen agencies published a summary of affairs in the June 1998 reporting period but had not done so in the previous reporting period.

The results of stage one of the audit indicates a serious failure by a significant number of NSW Government departments and statutory authorities to comply with the statutory requirements under the *FOI Act* to publish a summary of their affairs in the Government Gazette in June and December of each year.

### Stage two

The summaries of affairs published in the December 1997 Government Gazette were assessed and compared to a list of documents that should appear in such summaries.

The assessment found that, of the total of 102 agencies that published a summary of affairs in the December 1997 reporting period:

- 46 (i.e. 45%) appear to have fully complied with the requirements of s.14 of the *FOI Act*;
- 36 (i.e. 35%) only partially complied; and
- 20 (i.e. 20%) failed to comply with requirements to a significant degree (see **table 8**).

The results of stage two of the audit indicate a significant failure to comply with the summary of affairs requirements of the *FOI Act*.

If the results of stages one and two of the audit are combined:

- 35% of the identified 156 State Government agencies completely failed to comply with the statutory requirements;
- 13% of the 156 agencies published a summary of affairs that failed to comply with the statutory requirements to a significant degree;
- 22% published a summary of affairs that failed to fully comply with requirements; and
- only 30% of the identified 156 agencies fully complied with the requirements of s.14 of the *FOI Act*.

### Stage three

The summaries of affairs published in the June 1998 reporting period were accessed and compared to the results for the previous reporting period (see 'Stage two' in this section).

The assessment found that, of the total of 87 agencies that published summaries of affairs:

- 42 (i.e. 48%) appear to fully comply with requirements of s.14 of the *FOI Act*;
- 25 (i.e. 29%) only partially complied (primarily because they did not include many of the policy documents held by most, if not all, agencies); and
- 20 (i.e. 23%) failed to comply with requirements to a significant degree (see **table 9**).

The results of stage three of the audit indicate a significant and increasing failure to comply with the summary of affairs requirements of the *FOI Act*.

If the results of stages one and three of the audit are combined:

- 44% of the identified 155 State Government agencies completely failed to comply with the statutory requirements;

- 13% of the 155 agencies published a summary of affairs but failed to comply with the statutory requirements to a significant degree;
- 16% published a summary of affairs that failed to fully comply with requirements; and
- only 27% of the identified 155 agencies fully complied with the requirements of s.14 of the *FOI Act*.

If the results of stages one, two and three of the audit are compared in relation to the summaries of affairs published in the December '97 and June '98 gazettes, it appears that there has been:

- a 9% increase in the percentage of identified agencies which completely failed to comply with the statutory requirements in relation to s.14 of the *FOI Act*;
- a 15% decrease in the number of agencies publishing a summary of affairs;
- no change in the number of agencies publishing summaries of affairs that fail to comply with statutory requirements to a significant degree;
- a 30% decrease in the number of agencies publishing a summary of affairs that only partially complied with the statutory requirements; and
- only a slight increase in the number of agencies that published a summary of affairs that fully complied with the statutory requirements.

These results indicate a significant and widespread failure to comply with an important requirement under the *FOI Act*, and that the problem is increasing.

### Stage four

Letters will be sent to all agencies that either failed to publish a summary of affairs or that published a summary that is deficient to a significant degree:

- reminding them of their statutory obligations; and
- enclosing a copy of the list of documents that should be considered for inclusion in a summary of affairs.

## AUDIT OF SUMMARIES OF AFFAIRS OF LOCAL COUNCILS

A review of the December 1997 and June 1998 reporting periods indicates that the improvement achieved by councils in the June 1997 summaries of affairs has largely been maintained.

A very rough guide to compliance with the requirement to list all policy documents in summaries of affairs is the length of each council's summary of affairs. **Table 10** shows the changes in the length of council summaries of affairs from June 1995.

As can be seen from **table 10**, since this office wrote to all councils in late 1996 indicating an intention to audit summaries of affairs and enclosing a list of policy documents most likely to be relevant to a local council in NSW, there has been a significant increase in the number of pages in the Government Gazettes containing council summaries of affairs and a 50% increase in the average length of council summaries of affairs.

Unfortunately, there are an increasing number of councils failing to lodge their summary of affairs (i.e. five in June 1997, ten in December 1997 and 12 in June 1998).

Further, a brief review of the contents of summaries of affairs published in the December 1997 and June 1998 indicates that some councils are still not complying with the statutory requirements to list all policy documents.

Table 5: Agencies that failed to publish a summary of affairs in the June 1998 reporting period

Aboriginal Affairs, Department of	Hope Healthcare Limited	
Aboriginal Land Council	Independent Commission Against Corruption	
Advance Energy	Independent Pricing and Regulatory Tribunal	
Ageing and Disability, Department of	Institute of Sport	
Ambulance Service of NSW	Integral Energy	
Archives Authority of NSW	Lotteries Corporation	
Area Health Services:	Meat Industry Authority	
Central Sydney	Mineral Resources, Department of	
Far West	Ministry of Urban Infrastructure Management	
Greater Murray	National Parks and Wildlife Service	
Illawarra	New Childrens Hospital	
Macquarie	Public Works and Services, Department of	
Mid Western	Rail Services Authority	
New England	Rice Marketing Board	
North Sydney	SAS Trustee Corporation and FSS Trustee Corporation	
Northern Rivers	State and Regional Development, Department of	
Southern	State Forests of NSW	
South Eastern Sydney	State Library/Library Council of NSW	
Western Sydney	State Rail Authority	
Art Gallery of NSW	State Transit	
Australian Museum	Sydney Ports Corporation	
Cobar Water Board	Training and Education Coordination, Department of	
Community Services Commission	Transgrid	
Corrections Health Service	Transport, Department of	
Crime Commission	Transport and Air Transport Council	
Director of Public Prosecutions	Universities:	
Education and Training, Department of	Charles Sturt	
Energy, Department of	New England	
Fisheries	Western Sydney	
Gaming and Racing, Department of	Wollongong	
Greyhound Racing Council Board	Vocational Education Training, Board of	
Harness Racing Authority	Waste Recycling and Processing Service of NSW	
Health Care Complaints Commission	Women, Department for	
Heritage Council of NSW	<b>Total</b>	<b>68</b>
Heritage Office		

Table 6: Agencies and the publishing of summary affairs

Date of Government Gazette	Jun 1990	Dec 1996	Jun 1997	Dec 1997
Agencies publishing a summary of affairs	180	94	93	102
Agencies failing to publish a summary of affairs	-	62*	63*	54*
% of agencies failing to comply	-	40%	40%	35%

\* While these figures are based on 156 identified agencies (155 for June 98), they are not based on a comprehensive list of the several hundred bodies that are agencies for the purposes of the FOI Act (although most agencies listed in schedules 1 and 3 of the Public Sector Management Act are included).

Table 7: Agencies that failed to publish a summary of affairs in the last four reporting periods

Aboriginal Land Council, NSW	Greyhound Racing Control Board
Advance Energy	Harness Racing Authority
Ambulance Service of NSW	Heritage Council of NSW
Area Health Services:	Institute of Sport
Greater Murray	Integral Energy
Illawarra	New Children's Hospital
Mid Western	Rice Marketing Board
New England	School Education and Training, Department of
North Sydney	State Library/Library Council of NSW
Northern Rivers	State Transit
South Eastern Sydney	University of New England
Southern	Urban Infrastructure Management, Ministry of
Australian Museum	Vocational and Education Training, Board of
Community Services Commission	Women, Department for
Corrections Health Service	

Table 8: Agencies whose summary of affairs for the December 1997 reporting period did not comply with the requirements of s.14 of the FOI Act to a significant degree

Aboriginal Affairs, Department of	Judicial Commission of NSW
Archives Authority	Protective Commissioner
Central Coast Area Health Service	Public Guardian
Cobar Water Board	Rail Access Corporation
Crime Commission	SAS Trustee Corporation and FSS Trustee Corporation
Darling Harbour Authority	Sporting Injuries Committee
Election Funding Authority	State Electoral Office
Electricity Transmission Authority	Sydney Cove Redevelopment Authority
Freight Rail Corporation	Technical and Further Education, Department of
Independent Commission Against Corruption	Treasury Corporation

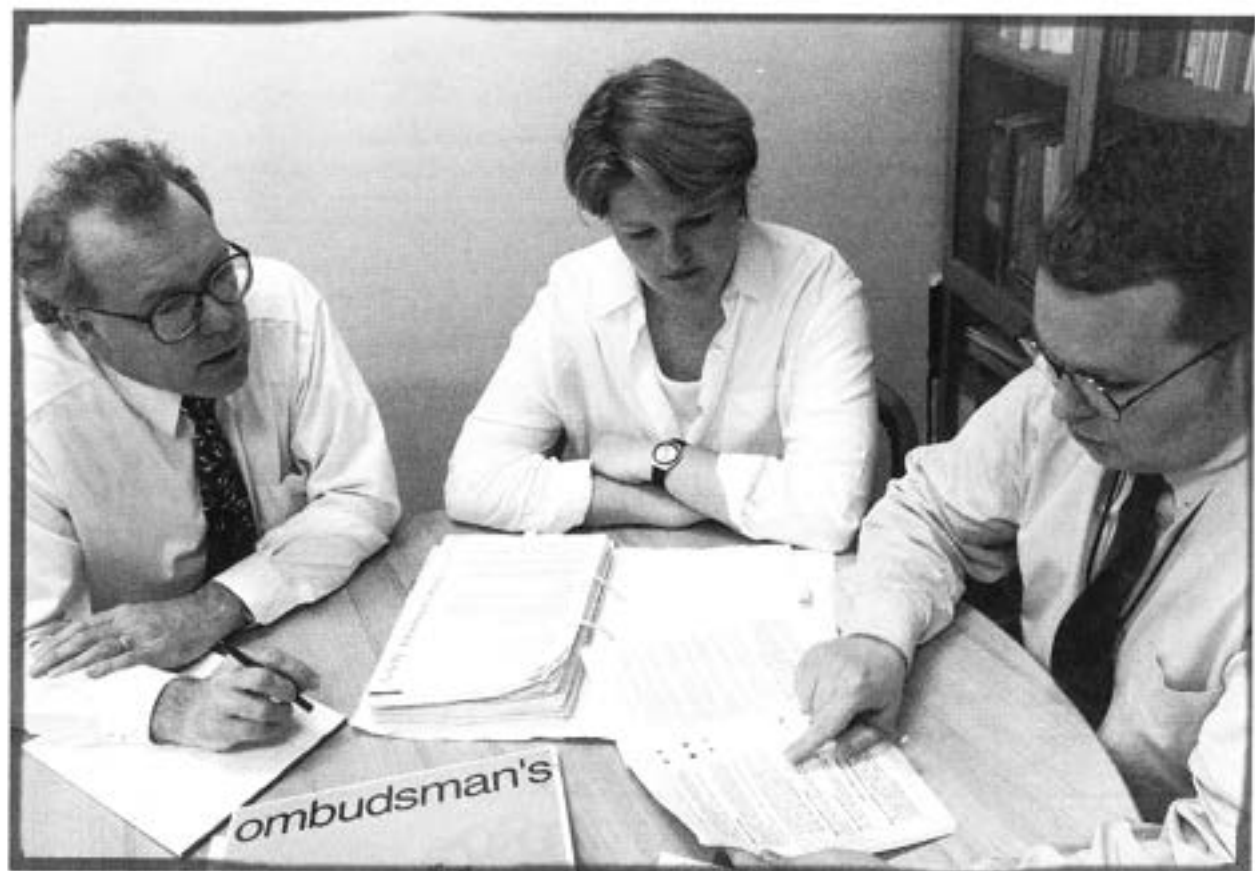
Table 9: Agencies whose summary of affairs for the June 1998 reporting period did not comply with the requirements of s.14 of the FOI Act to a significant degree

Board of Studies	Ministry for Police
Bicentennial Park Trust	Protective Commissioner
Central Coast Area Health Service	Public Guardian
Darling Harbour Authority	Rail Access Corporation
Coal Compensation Board	Sporting Injuries Committee
Electricity Transmission Authority	State Electoral Office
Freight Rail Corporation	Sydney Opera House Trust
Financial Institutions Commission	Sydney Cove Redevelopment Authority
Judicial Commission of NSW	Treasury Corporation
Mines Subsidence Board	

Table 10: Audit of local council summaries of affairs

Date of Govt. Gazette	Pages in Govt. Gazette	Annual % increase	Cummulative % increase	No. of councils reporting	Average no. of pages per summary
June '98	500	0%	34%	165	3.0
Dec '97	509	0%	34%	167	3.0
June '97	519	15%	34%	172	3.0
Dec '96	442	22%	23%	174	2.5
June '96	346	-	-	170	2.0
Dec '95	346	1%	1%	165	2.1
June '95	342	-	-	169	2.0





Chris Wheeler, Deputy Ombudsman with Jo Rainford and Grant Poulton, Investigation Officers

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## protected disclosures

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>185</b>
The work of the protected disclosures implementation steering committee .....	186
The review of the <i>Protected Disclosures Act</i> .....	192
Mechanisms for handling staff concerns .....	192
<b>Issues</b>	<b>192</b>
Managing those who make disclosures .....	192
<b>Cases</b>	<b>193</b>
Police whistleblowers .....	193
Faulty policy .....	195
Pride in prejudice — a film treatment .....	197
Department acts to recognise whistleblowers .....	198

## Overview

Protected disclosure complaints went up 20% last year to 216 with formal written complaints up 15% (to 97) and informal oral complaints and inquiries up 25% (to 119).

The large jump in informal oral complaints and inquiries is, in part, attributable to the number of telephone inquiries that the office receives from people either contemplating making a protected disclosure or who are seeking advice relating to the investigation of a disclosure. We expect this function to increase during the next year. The increase is one of the by-products of the protected disclosure workshops that were held during the year. One of the primary aims of these workshops was to let people know about the advice and information service provided by this office (see **table 1**). By agreement between the investigating authorities under the *Protected Disclosures Act*, this office acts as a first port-of-call for people seeking advice about the Act.

The formal written complaints covered a wide variety of subjects and several case studies appear later in this chapter. One notable feature of protected disclosures that differentiates them from other complaints is that dealing with protected disclosures is usually far more resource and time intensive. Ensuring that people who make such disclosures are protected from retribution adds an additional complexity to the proper investigation of their allegations.

We do not include most whistleblowers from within the Police Service in our protected disclosures statistics, even though such disclosures numbered over 760, because:

- there are complexities involved in identifying whether a matter falls under the obligation in cl.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 made by members of the Police Service that we do include in our statistics are made by unsworn members of the Police Service, made directly to our office and/or are made anonymously by police. The reason for including these three types of disclosures in our protected disclosure statistics is that the complexities involved in identifying whether a matter falls under the obligation in cl.30 of the Police Service Regulation or under the *Protected Disclosures Act* do not arise with respect to these types of complaints.

As noted in table 1, since the Act came into operation on 1 March 1995, this office has handled 557 protected disclosures complaints and inquiries. Our role in handling protected disclosures represents only one of the several aspects of our work in this area. Our other roles reflect the objects of the Act which are to:

- enhance and augment established procedures for making disclosures;
- protect persons from reprisals that might otherwise be inflicted on them because of their disclosures; and
- provide for those disclosures to be properly investigated and dealt with.

We have, therefore, continued to focus a considerable amount of our work in this area on assisting public sector managers to translate the goals of the Act into effective workplace policies, procedures and practices. In the main, we have sought to do this by working cooperatively with the other investigating authorities that are specified in the Act as well as with the other members of the Protected Disclosures Implementation Steering Committee.

### THE WORK OF THE PROTECTED DISCLOSURES IMPLEMENTATION STEERING COMMITTEE

The committee included the Deputy Ombudsman and the projects officer from this office, representatives from the Audit Office, the Independent Commission Against Corruption (ICAC), the Police Integrity Commission (PIC), the Department of Local Government, the Cabinet Office, the Premier's Department and the NSW Police Service. During the year, the committee undertook a number of major initiatives, including:

- a series of 11 workshops for local government officials on better management of protected disclosures;
- a series of 11 workshops for State Government officials on better management of protected disclosures;
- the auditing of compliance by public authorities with the Premier's Memorandum (96-24) of November 1996 requiring public authorities to develop, implement and supply to the Premier's Department an internal reporting policy pursuant to the *Protected Disclosures Act*; and

Table 1: Complaints and inquiries about protected disclosures  
1997-98

Year	Informal oral complaints and inquiries	Formal written complaints	Total
1994-95*	19	7	26
1995-96	70	66	136
1996-97	95	84	179
1997-98	119	97	216
<b>TOTAL</b>	<b>303</b>	<b>254</b>	<b>557</b>

\* The Act commenced on 1 March 1995 so statistics are only available for the period from 1 March 1995 to 30 June 1995.

- a comprehensive evaluation of the internal reporting policies adopted by the public authorities subject to the memorandum.

#### Workshops for local and State Government officials on better management of protected disclosures

All 22 workshops involved representatives from this office and the ICAC as presenters. The 11 local government workshops involved a representative from the Department of Local Government as one of the presenters and the 11 State Government workshops involved a representative from the Audit Office as one of the presenters.

All of the workshops were facilitated by Julie McCrossin. Julie's reputation greatly assisted with the marketing of the workshops, particularly in regional areas. Based on the evaluations we received, she made the workshops not only extremely useful but also practical and entertaining. We received many comments from participants that the workshops were among the most memorable and enjoyable training they had ever done.

One of the principal aims of the workshops was "a hearts and minds" exercise designed to generate support for, and commitment to, whistleblowers and the proper handling of their disclosures. The evaluations clearly show that the workshops went a long way towards this goal. This office would therefore like to formally thank Julie for her outstanding contribution to the success of the workshops.

In addition to the scheduled workshops referred to above, at the request of the State Transit Authority (STA), representatives from this office and the ICAC, and Julie McCrossin delivered three better management of protected disclosures workshops to about 40 of the STA's senior managers. The workshops were specifically tailored to the STA's needs. Representatives from this office gave the STA's chief executive officer, Mr John Stott, a personal briefing about the Act and workshops.

At other times during the year, at the request of a number of agencies, representatives from this office spoke to gatherings of public officials about protected disclosures.

The committee is proposing to build on the success of the better management of protected disclosures workshops by putting together a further eight workshops to be held in early 1999 focusing on the better investigation of protected disclosures about maladministration and serious and substantial waste. The workshops will also deal with the relationship between investigating protected disclosures and employee discipline processes. A

**Table 2: The better management of protected disclosures workshops**

The following table sets out the location and date of the workshops, their audience and attendance figures

LOCATION	DATE	ATTENDANCE	
Sydney	24 Sept '97	26	L
Wagga Wagga	8 Oct '97	13	L
Parramatta	13 Oct '97	27	L
Maitland	15 Oct '97	13	L
Tamworth	3 Nov '97	15	L
Coffs Harbour	3 Dec '97	18	L
Dubbo	5 Dec '97	10	L
Broken Hill	8 Dec '97	17	L
Bathurst	10 Dec '97	14	L
Queanbeyan	11 Dec '97	12	L
Batemans Bay	12 Dec '97	8	L
Dubbo	15 April '98	14	S
Chatswood	22 April '98	24	S
Parramatta	13 May '98	45	S
Newcastle	18 May '98	24	S
Sydney	27 May '98	59	S
Sydney	3 June '98	60	S
Wagga Wagga	10 July '98	16	S
Goulburn	15 July '98	18	S
Lismore	21 July '98	19	S
Armidale	24 July '98	14	S
Sydney	4 Aug '98	20	S
<b>TOTAL</b>		<b>486</b>	

\* L= local government workshop S= State Government workshop

working party consisting of representatives of this office, the Department of Local Government, the Audit Office and the Premier's Department are currently designing the workshops which, it is anticipated, Ms McCrossin will facilitate.

**Auditing compliance with the Premier's memorandum and the evaluation of internal reporting policies**

One of the key steps that public sector agencies may take to implement the Act is the development and adoption of an internal reporting policy/system. At present the legislation makes this a discretionary decision on the part of agencies.

In November 1996 the Premier issued a memorandum to all NSW Government agencies listed in Schedules 1 and 3 of the *Public Sector Management Act* as well as several other significant public sector agencies. The memorandum confirmed:

*...the Government's requirement that all public agencies implement within their organisations, by 30 January 1997, documented internal reporting procedures that provide clear and unequivocal protection to employees who make protected disclosures.*



The memorandum requested that a copy of the internal reporting procedures adopted by agencies be sent to the Premier's Department so that an assessment of the extent and form of implementation of the Act could be carried out.

Copies of all responses received by the Premier's Department were forwarded to this office for assessment. We conducted an audit of all documentation received, based on an assessment of compliance with 12 relevant criteria (see **table 3**).

The results of the audit were reported to the Protected Disclosures Implementation Steering Committee. Where deficiencies were identified, the Deputy Ombudsman sent out over 90 letters on behalf of that committee identifying these problems to the agencies concerned.

Of the approximately 130 agencies that were initially sent the Premier's Memorandum, only 85 agencies (i.e. 63%) responded over the next six months. On 7 July 1997, Col Gellatly, Director General of the Premier's Department, wrote to the agencies who had not responded reminding them of the requirements set out in Premier's Memorandum 96-24. A further 28 agencies (i.e. 21%) then responded.

On 1 June 1998, the Deputy Ombudsman wrote to the remaining agencies listed in Schedules 1 and 3 of the *Public Sector Management Act* that had not responded. The agencies were informed that they may be the subject of criticism in the Ombudsman's 1997-98 Annual Report if they did not forward to the Ombudsman copies of their adopted internal reporting documentation by 30 June 1998.

In preparing statistics as to the results of the audit it is relevant to note that:

- some agencies have ceased to exist over the period of the audit (e.g. HomeFund and the Sydney Market Authority) or have been amalgamated with other agencies (e.g. Landcom);
- some agencies came into existence after the Premier's memorandum (e.g. the Olympic Roads and Transport Authority);

- some agencies whose documentation was initially assessed as being inadequate have since demonstrated that the problems have been addressed; and
- some agencies have not provided revised documentation for assessment.

From information available as at the date of writing, 123 agencies had responded to the memorandum, the Premier's Department letter or the Deputy Ombudsman's letter and seven agencies are yet to respond. Of the relevant agencies:

- 36.5% (i.e. 50 agencies) had documented their policies to a standard that was adequate or very good (of these 31 had adopted the model policy and most of the others had based their policy on the model);
- 16% (i.e. 22 agencies) had adopted policies that were generally adequate (although each was sent a letter setting out various deficiencies);
- 38% (i.e. 52 agencies) had inadequate policies (each was sent a letter setting out the deficiencies);
- 3.6% (i.e. five agencies) responded but had not in fact adopted an internal reporting policy for the purposes of the Act;
- 0.7% (i.e. one agency) had no staff; and
- 5.0% (i.e. seven agencies) had not responded.

Letters will be sent in the near future to the 57 agencies that had inadequate policies or that had not in fact adopted a policy. The letters will ask for:

- advice as to the action taken or proposed in response to the comments made about their documentation; and
- a copy of any revised documentation.

While the memorandum was sent to over 130 agencies, this did not include any of the several hundred boards, committees and local councils in the State, for example the 18 area health boards,

176 local councils, 117 local Aboriginal land councils, and so on.

In relation to local councils, the Department of Local Government developed a self assessment survey which was sent out to each council asking them to answer various questions concerning their internal reporting systems. This survey was sent to all councils in March. As at 30 June 1998, we were informed that, after much follow-up, responses had been received from all 176 local councils. Of these:

- 147 councils had an internal reporting system (although in 11 cases this had not been formally adopted by the council); and
- 29 councils did not have an internal reporting system.

The results also indicate that:

- 52 of the councils that had an internal reporting system had not informed outdoor staff of the policy;
- 37 of those councils had not informed councillors; and
- 28 had not informed indoor staff.

When considering the above responses, it is relevant to note that the Department of Local Government has sent two, and possibly three, departmental circulars to all local councils on this topic and has supplied a copy of a model internal reporting policy to all councils.

Assessing the 100-plus internal reporting systems and providing more than 90 agencies with detailed assessments of the deficiencies in their documentation was labor-intensive and unfunded by any special allocation for this purpose. A similar comment can be made in relation to the work undertaken by the Department of Local Government.

Our next strategy is to try to get the 600 or so government boards and committees to develop and implement an internal reporting system. Our first step will be to sort these boards and committees into groups by reference to whether they have their

**Table 3: Evaluation of internal reporting policies**  
 Criteria against which each internal reporting policy was assessed

<p><b>A. Internal reporting policy adopted by agency</b></p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> </ol>	<p><b>G. Roles and responsibilities of participants defined:</b></p> <ol style="list-style-type: none"> <li>1. Detailed information provided</li> <li>2. Some information provided</li> <li>3. Only passing reference</li> <li>4. No information provided</li> </ol>
<p><b>B. Advice to staff about IRP/IRS:</b></p> <ol style="list-style-type: none"> <li>1. Circular to staff, inclusion in code of conduct or procedures manual and inclusion in induction material</li> <li>2. Circular to staff</li> <li>3. Advice to managers only</li> <li>4. No action</li> </ol>	<p><b>H. Advice as to how disclosures will be dealt with:</b></p> <ol style="list-style-type: none"> <li>1. Detailed information provided</li> <li>2. Some information provided</li> <li>3. Only passing reference</li> <li>4. No information provided</li> </ol>
<p><b>C. Expression of management support:</b></p> <ol style="list-style-type: none"> <li>1. Strong and clear expression of opposition to conduct covered by Act, and of support for whistleblowing and whistleblowers</li> <li>2. Expression of support for whistleblowers (i.e. that whistleblowers will be protected)</li> <li>3. Only passing reference</li> <li>4. No reference to management support</li> </ol>	<p><b>I. Identification of external reporting options:</b></p> <ol style="list-style-type: none"> <li>1. Full details provided (i.e. roles, addresses, phone numbers)</li> <li>2. Identification of each external agency and some information provided</li> <li>3. Only passing reference to external agencies</li> <li>4. No information provided</li> </ol>
<p><b>D. Information about the Act included in documentation:</b></p> <ol style="list-style-type: none"> <li>1. Summary of the Act and the meaning of key terms</li> <li>2. Brief summary of key provisions of the Act and brief explanation of key terms</li> <li>3. Little reference to Act or significant inaccuracies</li> <li>4. No reference to provisions of the Act</li> </ol>	<p><b>J. Advice as to protections available:</b></p> <ol style="list-style-type: none"> <li>1. Full details provided as to statutory and administrative protection</li> <li>2. Provision of the Act outlined or reproduced</li> <li>3. Only passing reference</li> <li>4. No information provided</li> </ol>
<p><b>E. Internal reporting channels identified:</b></p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> </ol>	<p><b>K. Advice as to confidentiality:</b></p> <ol style="list-style-type: none"> <li>1. Provisions of the Act outlined or reproduced plus statement of commitment to or the importance of confidentiality</li> <li>2. Provisions of the Act outlined or reproduced</li> <li>3. Only passing reference</li> <li>4. No information provided</li> </ol>
<p><b>F. Numbers of alternative internal reporting channels identified:</b></p> <ol style="list-style-type: none"> <li>1. Small number of senior officers but relative to size agencies</li> <li>2. All senior officers above supervisor/manager level</li> <li>3. All supervisors/managers and above</li> <li>4. No reporting channels identified</li> </ol>	<p><b>L. General adequacy of documentation:</b></p> <ol style="list-style-type: none"> <li>1. Very good</li> <li>2. Adequate</li> <li>3. Inadequate</li> <li>4. Non-existent or significantly misleading</li> </ol>

Table 4: Mechanisms for handling staff concerns

PROBLEM	INITIAL CONTACT	OTHER OPTIONS	WORKPLACE MECHANISM
Workplace conflicts or grievances	Supervisor or manager	Grievance officer or director	<i>Grievance policy</i> <i>Dispute handling policy</i>
Personnel problems (e.g. performance issues)	Supervisor, manager or director	Personnel officer or EEO coordinator	<i>Discipline policy</i> <i>EEO policy</i> <i>Managing unsatisfactory performance policy</i> <i>Performance management policy</i>
EEO concerns (e.g. discrimination on the basis of sex, age, race etc.)	Supervisor or manager	EEO coordinator	<i>EEO policy</i> <i>Reasonable adjustment policy</i>
Harassment	Grievance officer	Personnel officer or EEO coordinator	<i>Harassment policy</i>
Occupational health or safety problems	Supervisor or manager	OH&S committee member or personnel officer	<i>OH&amp;S policy</i>
Process and procedure problems	Supervisor or manager	Director, internal auditor or quality management team (if any)	<i>Internal audit</i> <i>Risk management policy</i>
Ethical or other misconduct concerns	Supervisor or manager	Director or CEO	<i>Code of conduct</i>
Corrupt conduct or fraud (where an officer 'suspects on reasonable grounds' a matter concerns or may concern corrupt conduct)	Supervisor, manager, director or CEO	ICAC or police	<i>Corruption/fraud prevention policy</i>
Corrupt conduct, maladministration or serious and substantial waste (where there is sufficient evidence to 'show or tend to show' the alleged conduct)	Nominated disclosure officer, disclosure coordinator or CEO	NSW Ombudsman, ICAC, NSW Auditor General, PIC or PIC Inspector	<i>Protected disclosures</i> <i>internal reporting policy</i>



own employees and then target those boards and committees with the most employees.

In broad terms, the goal of this office is to ensure that by the end of the next calendar year, most public officials in this State that are covered by the Act have access to an internal reporting system and that the systems are adequate.

### THE REVIEW OF THE *PROTECTED DISCLOSURES ACT*

The Parliamentary Committee on the Office of the Ombudsman and PIC reviewed the Act in 1996. The committee made 24 recommendations for changes to the Act. The Government has indicated its intention to introduce legislation that will address two of the issues arising out of the committee's review (and it is possible by the time this report is published that the legislation may have been introduced to the Parliament). These issues are:

- clarifying the position of police officers in relation to the Act; and
- amending s.20 the Act to reverse the onus of proof for the criminal offence of detrimental action.

This office supports these changes to the Act and made submissions on the matter to the Cabinet Office. The parliamentary committee has announced plans to conduct a further review of the Act sometime during the coming year to which this office will make a submission.

### MECHANISMS FOR HANDLING STAFF CONCERNS

Most public authorities have a comprehensive framework for dealing with staff concerns. In many instances, there are a plethora of policies from which to choose. The task for public sector managers is to ensure that the appropriate policy and procedure is applied to the particular circumstances of the case.

When a complaint or report is received, the first step is to determine whether a matter falls under

the *Protected Disclosures Act*, or into another category which may be handled by other internal mechanisms in the agency. Possible mechanisms for dealing with staff concerns that may be in place in an agency are listed in **table 4**.

## Issues

### MANAGING THOSE WHO MAKE DISCLOSURES

Another issue echoed in many of the cases involving protected disclosures is the level of reassurance and information provided to the person who made a protected disclosure. Many of those who approach our office after having made a disclosure within their organisation do so out of frustration and/or anxiety that the substance of their disclosures has been brushed under the carpet by the organisation, and that they have become known as troublemakers or disgruntled employees and vulnerable to harassment, if not dismissal.

Much of this stems from a failure by the public authority concerned to appropriately manage the disclosure, as well as the concerns and needs of the person making the disclosure.

The *Protected Disclosures Act* requires agencies to whom protected disclosures are made or referred to protect the identity of the person making the disclosure (s.22) and to notify the person who made the disclosure of the action taken or proposed to be taken in response to the disclosure (s.27). These provisions recognise the needs of the person making the disclosure. The Ombudsman's protected disclosures guidelines provide more specific guidance on measures considered necessary to fulfil such obligations and the type of support that should be provided to persons making the disclosures (see *Protected Disclosures Guidelines* paras 4.3–4.7, 7.11 and 7.12).

We cannot over-emphasise the need for agencies to acknowledge the emotional stresses experienced by those who, by making protected disclosures, may be jeopardising their jobs and careers. Even if the substance of the disclosure may

be considered relatively insignificant in comparison to the overall work of the agency, and its occurrence reasonably explained or tolerated in the circumstances, the person making the complaint usually will not understand or accept a quick decision to dismiss the disclosure. That person needs to know what decision has been made, how and by whom. He or she will need to be reassured that the matter has been or is to be actively considered by a person with sufficient expertise and independence from individuals who may reasonably be considered responsible for the alleged inappropriate conduct.

The outcome of that independent consideration should be communicated to the person, together with reasons for that decision. If they have not had a chance to speak with the review or investigating officer directly, such an opportunity should be offered to ensure the person feels all their concerns have been understood by those making the decision. Although the Act only requires notification of action within six months, we believe agencies should regularly inform the person making the disclosure of progress or any action being taken. If the agency believes they are limited in the information they can provide, the reasons for this should be explained to the person who made the disclosure. People may feel isolated and vulnerable if such information and contact is not provided. Nominating a particular officer with whom that person can talk further about their concerns may also be appropriate and even essential in some cases.

Similarly, the authority should caution the individual about their own behaviour (see *Protected Disclosures Guidelines* para 4.3). They must understand that telling others they made a disclosure or otherwise commenting upon action being taken in response to it may well expose them to harassment. Informing work colleagues that they are going to be investigated would clearly not engender harmony in the workplace. The converse may also occur, where, without support or feedback following the disclosure, the person becomes increasingly isolated within the organisation, viewing all negative actions that may occur towards them in the workplace as retaliation for their disclosure. Morale and performance of that

individual and their colleagues may well drop in such circumstances. Subsequent disciplinary action against the person making the disclosure may well be defended by claims of retaliation in breach of the *Protected Disclosures Act*. We believe this scenario is best avoided by providing appropriate levels of support and management from the outset.

## Cases

### POLICE WHISTLEBLOWERS

The Ombudsman maintains a special interest in matters reported by police officers as internal witnesses. Careful consideration is given to how these matters should be dealt with because of the risks associated with reporting fellow officers for misconduct. Those risks are considerable and have been highlighted by research conducted by the Police Service. For these reasons, Ombudsman investigators liaise closely with case officers of the Internal Witness Support Unit and the police investigating the allegations. These investigations are subject to the oversight of this office. Regular meetings are held with the Internal Witness Support Unit to identify matters in which an internal witness may be at risk and require support. This office has developed procedures for identifying police officers who may be at risk of a pay-back complaint and assistance has been provided to the Police Service to develop its policies and guidelines covering this problem.

Pay-back complaints are designed to damage the reputation and credibility of an internal witness. Whilst the timing may indicate malicious intent on the part of the accuser, the veracity of the allegation still needs to be carefully scrutinised. If the allegation is fabricated, every effort is made to identify and prosecute the accuser. One such matter is highlighted in the case studies below. That matter also raises important issues relating to the need to appoint sensitive and skilled investigators to deal with complaints made by internal witnesses.

The office is represented on the Internal Witness Advisory Council which meets quarterly and provides advice on policy and procedures

concerning police internal witnesses. During the course of the year, we assisted the Police Service in its development of a policy for recognition of internal witnesses who report misconduct or maladministration.

The Ombudsman has developed a policy for government authorities and agencies on restitution for persons who have suffered personally, financially or professionally as a result of maladministration. The principles in this policy are being considered by the Police Service in relation to internal witnesses who have suffered detriment as a result of reporting another officer.

We also released a policy, 'Consequences for Whistleblowers', which sets out the principles to be adopted by government authorities and agencies when dealing with whistleblowers who may be involved in misconduct themselves. In circumstances where an internal witness has been involved in misconduct, that is to say an internal witness who does not have 'clean hands', any action taken against that officer in relation to their misconduct should be reasonable, proportional and consistent. These principles and the document as a whole have been adopted by the Service.

Extensive research has been conducted by the Police Service over the last two years. The research demonstrated that harassment and victimisation of internal witnesses is a major problem to be overcome for both internal witnesses and for the Police Service. It has effects on the willingness of officers to report misconduct, increases the rate of stress-related illness, workers compensation claims, and demands on welfare, rehabilitation and psychology services. The effect is to punish those officers who report misconduct as required by the Service's statement of values which is strongly promoted by the organisation. Another study, conducted by the St James Ethics Centre, identified within the Police Service a drop in the percentage of internal witnesses experiencing harassment or victimisation since becoming an internal witness (from 69% of internal witnesses in 1996 to 52% in 1998). The level of satisfaction with the way the Service dealt with these issues increased from 19% to 46%.

These are very positive outcomes for the Internal Witness Support Unit and the Ombudsman recognises the enormous success of the Police Service's program for internal witnesses. However, the Ombudsman has dealt with a number of cases which highlight the problems many officers who report misconduct still face despite the excellent support provided by the Internal Witness Support Unit. These cases reflect the existence of a negative culture among some officers. As a result of these and other cases, the Ombudsman is contemplating issuing as special report to Parliament. (In the case studies which follow we have used the abbreviations IW to denote internal witness and AWD to denote alleged wrong doer.)

### Case 1

A probationary constable had been assigned to work with another officer sorting firearms handed in at a suburban station. The probationary constable (IW) reported seeing the senior officer (AWD) take a piece of equipment from a rifle and place it in the AWD's locker. The AWD was subsequently charged with theft and the matter proceeded to court. The IW suffered considerable harassment as a result of making the report. This included snide comments from other officers and the IW's vehicle being extensively scratched. The IW received anonymous phone calls even after the IW transferred to new patrols.

The IW gave evidence in criminal proceedings against the AWD and the AWD was found guilty of a related offence. The AWD is now the subject of dismissal proceedings.

### Case 2

Another internal witness (IW) who had twice reported misconduct by fellow officers was harassed and victimised. After reporting each matter, the Internal Witness Support Unit had arranged for the IW to be transferred to avoid further intimidation. The IW could not avoid returning to the patrol when the IW had to appear at a local court matter. The IW felt victimised by officers who made snide remarks in the IW's presence. The conduct of officers with whom the IW had worked led the IW to feel that the IW could no longer trust fellow officers.

**Case 3**

A fabricated allegation was made by telephone to the Police Service's Customer Service Unit. The caller (A) alleged that two police officers (who were IWs) had engaged in misconduct of a sexual nature in a police car while on duty. A identified themselves as a member of the public travelling in a vehicle behind the police car in which the sexual conduct was alleged to have occurred. After sounding the horn at the officers, A alleged the officers threatened A with an infringement notice. A stated that A was from Queensland however, when pressed, provided a Sydney address (which turned out to be the address of the parents of a police officer at the same patrol as that of the IWs). After an investigation by the Service, the Ombudsman identified further avenues of inquiry and another investigator was requested following negative comments made about one of the IWs by the investigator. The IWs suffered considerable stress in this matter and, with extensive assistance from the Internal Witness Support Unit, have now returned to work. Formal dismissal proceedings against the police officer who made the false allegation have been instituted.

**Case 4**

Three police officers and a public servant at a patrol have given evidence which has led to the charging of three officers with assault upon an Aboriginal prisoner. The AWDs were placed on restricted duties at the Police Station and their appointments taken from them. Each of the IWs allegedly suffered some form of harassment. The public servant IW wore head phones as part of the job and the IW found them twisted into the shape of a noose. A false eye was put on the IW's desk and upended pins were stuck on the IW's armrest. The IW was concerned about possible physical violence. One of the IWs had their vehicle scratched resulting in \$1000 worth of damage. The IW was the subject of humiliating comments and was quite distressed. The IW's spouse was allegedly 'tailgated' by one of the AWDs. The spouse would not formally report the incident because the spouse was fearful of what further incidents might occur.

This office discussed options with the Internal

Witness Support Unit including whether the Service could suspend the AWDs in light of the fact they had been charged. The region could not afford to have staff off because there were no officers available to replace them.

The Police Service later suspended the AWDs from duty and initiated dismissal proceedings. One of the AWDs has been charged with harassing an internal witness.

**FAULTY POLICY**

An ex-employee of a local council alleged his contract of employment had not been renewed in retaliation for making a protected disclosure about mismanagement and possible corruption within his work unit. He had initially reported his concerns to his immediate supervisors. When he felt nothing was being done, he made a protected disclosure to the council's audit section in accordance with the council's internal reporting procedures. Upon their investigation, a number of procedural irregularities were found in the allocation of work among particular contractors and recommendations were made for improvements within the unit. The employee complained a short time later about having responsibilities removed from him and harassment from other staff. He was advised to use the council's standard grievance mechanism. When the complainant came to us, he believed no action had been taken against those responsible for the inappropriate conduct. He also claimed the council breached s.27 of the *Protected Disclosures Act* which requires the body to whom the protected disclosure is made to notify the person who made the disclosure of the action taken or proposed to be taken in respect of the disclosure.

An investigation was commenced into the conduct of the council and relevant staff relating to:

- action taken in response to the disclosures and whether any recommendations made as a result of internal investigations had been implemented;
- action by the council to ensure no detrimental action was taken against the person making the disclosure, and also what information and support had been provided to him during and at

the conclusion of the council's investigation;  
and

- council's general policy and procedures concerning protected disclosures and how staff are informed of these.

On the information provided, it appeared the council and its staff had acted reasonably in response to the substance of the disclosures made by the complainant. The matter had been referred for investigation by his immediate superior and some initial inquiries had been commenced. This action may not have been fully explained to the person by the council. After receiving the protected disclosure the audit unit commenced its own investigation and took over the initial inquiries made to that date. The recommendations that resulted included the recovery of money from a contractor and formal counselling of a staff member. These had been acted upon by the time of our investigation. Council was also able to provide reasons for the non-renewal of the individual's contract which were unrelated to the protected disclosure.

It was decided further inquiries would be unlikely to establish evidence of wrong conduct that would justify further action and the investigation was discontinued. We did however raise a number of systemic points with the council, as detailed below.

### Dealing with reprisal allegations

Most of our criticism related to the council's response to the individual's allegations of reprisal for having made a protected disclosure. We consider the *Protected Disclosures Act* imposes a heavy duty on all public authorities to have in place strong and clear procedures for dealing with such concerns.

In this case, the auditors had referred the complainant to the council's human resources unit, stating he needed to commence a grievance through the council's standard grievance policy. This was in accord with council's internal reporting policy. We consider this practice completely inappropriate for those who make protected disclosures. Standard grievance policies do not

provide the level of safeguards required to protect the identity of such people. Many will already feel significantly stressed and alienated. Having to use standard processes which often require complainants to directly face those they believe to be victimising them would be contrary to the intent of the Act, and make it unlikely that the person would pursue their concerns through that agency.

Further, the requirements of a grievance handling procedure as opposed to an internal reporting system for protected disclosures are very different. For example the aim in relation to a grievance handling procedure is to resolve a complaint or dispute, whereas this is generally not the objective in relation to a protected disclosure about any of the matters referred to in the *Protected Disclosures Act*. The principle applying generally to grievance handling procedures — that grievances should be dealt with as close to their source as possible — is not an applicable principle for dealing with protected disclosures. A protected disclosure is more than merely a dispute between an employee and management, or between two employees. Theoretically, the disclosure should be in the public interest and the person making the disclosure in no way owns, or has any proprietary right to it, once it has been made. The issues that are the basis for a valid protected disclosure cannot be resolved by an agreement between the person making the disclosure and any other public officials or agency concerned.

We advised the council that its policy:

*...suggests a failure to accept the positive obligation cast upon it by the intent of the Protected Disclosures Act to ensure those who make disclosures in accordance with it are indeed protected. Public authorities must be seen to act positively and promptly to ensure allegations of reprisal are fully investigated, and if substantiated, appropriately dealt with. As well as protecting the person who made the disclosure, such action is required to send a clear message to all in the agency that people who make disclosures can be confident of the support and protection of the agency.*

## Records

Although requested, the council was unable to provide us with any detailed written records or notes to show when and what allegations of reprisal were received and/or investigated by council staff. For an authority to be able to defend itself against any claims of reprisal, or inaction in responding to allegations of reprisal, it needs to have in place recording systems which ensure that full and accurate records are made and retained, for example, which document not only what may have been alleged, but also how it was dealt with and the reasons for any decision taken.

We strongly recommended the council review its current policy and consider how its staff may take a more pro-active role in ensuring reprisals do not occur.

Council advised it would consider our comments in reviewing its code of conduct, particularly in relation to the reporting of corrupt conduct, and in consequent changes to council's internal reporting procedure and its grievance handling mechanism.

## PRIDE IN PREJUDICE — A FILM TREATMENT

The office received a protected disclosure from an employee of the NSW Film and Television Office (FTO). The complainant alleged a colleague had displayed racist and homophobic prejudices that appeared to impair his advocacy of certain projects submitted to the FTO for funding. It was also alleged that the colleague had participated in discussions about the funding of a particular project without disclosing a potential conflict of interest in relation to the producer of that project and that he had used his position at the FTO to promote his own project.

The complainant originally made the disclosure in part in a letter to the previous acting director of the FTO but subsequently contacted this office. The complaint to us coincided with the appointment of a new director. The complainant told us that the new director had divulged the complainant's identity to the colleague in the course of her

investigation of the complaint and the complainant was now being intimidated by the colleague.

The complaint raised a number of other issues of concern to this office including the apparent lack of compliance with funding guidelines with respect to certain projects, the apparent absence in the FTO of any mechanism to enable employees and officers to make protected disclosures, and ignorance of the terms of the Act.

Our preliminary inquiries revealed the new director first dealt with the disclosure after the colleague stormed into her office in her first week at the FTO demanding to see a copy of the letter containing the complainant's disclosure. The complainant had told several other colleagues of the disclosure, one of whom had told the colleague. The director obtained the complainant's verbal consent to show the colleague the letter and did so. While the Act requires such consent to have been in writing, the director had not breached the Act by divulging the complainant's identity because the complainant had already done so herself.

Nevertheless, the director admitted that being new to the NSW public service, she was ignorant of the terms of the Act. Upon becoming aware of the disclosure, the director obtained a copy of the Act, sought advice from the Deputy Ombudsman and subsequently obtained a copy of the Ombudsman's *Protected Disclosures Guidelines*. She then sent a summary of the Act to all staff and implemented an internal reporting system based on the model devised by this office.

The director had also, independent of this office, investigated the complaint made in the letter to the previous acting director and sought to address the issues raised by it.

The director had subsequently revised the code of conduct applying to FTO staff which covered issues such as discrimination, conflicts of interest, employment outside the FTO and the use of FTO property for personal purposes. All staff members had been required to sign the revised code of conduct. She had also reformed the funding guidelines to provide a clearer set of expectations about the FTO's decision-making processes without

needlessly curtailing the discretion essential to the funding regime.

The extensive reforms undertaken by the director addressed the systemic issues we had identified as arising from the complaint. Nevertheless, the responses we received to our preliminary inquiries from all the relevant parties suggested there was some foundation to many of the complaints against the colleague. Whilst it was unclear whether he harboured the prejudices alleged by the complainant, there was evidence to suggest he had a conflict of interest with respect to one of the funding decisions he participated in and had failed to declare that interest in breach of the code of conduct then in operation. However, the evidence suggested his input had not been crucial in reaching that decision. The colleague also admitted to using his position at the FTO and FTO resources to promote his own project in breach of the code of conduct. When the colleague subsequently resigned from the FTO we decided there was no utility in investigating his conduct further.

### DEPARTMENT ACTS TO RECOGNISE WHISTLEBLOWERS

Arising out of the Royal Commission and a subsequent investigation by Justice Slattery, the Department of School Education (now the Department of Education and Training), initiated disciplinary action against a number of teachers for allegedly failing to report the paedophile activities of another teacher (who has since been convicted) over many years.

Several of the teachers who were departmentally charged complained to the Ombudsman that they had in fact reported the conduct of the alleged paedophile over a number of years to the school principal, and in some cases to other departmental officers, yet no action had been taken in response to their concerns. The teachers also complained that they had become scapegoats.

We raised the matter with the department which engaged an independent consultant to identify and review the validity of the teachers' concerns and to advise the director-general and the Minister on whether action should be taken in relation to their concerns and, if so, the nature of that action.

As a result of the consultant's investigation, a number of the teachers received a written apology from the director-general over the department's preparedness to charge them despite their willingness to report their concerns about the conduct of the teacher in question and to assist the Royal Commission.

The department provided this office with a copy of the consultant's reports in this matter which contained a number of recommendations on how matters such as this should be dealt with. We will be monitoring so as to ensure the issues raised in the consultant's reports are followed through.



## witness protection

1997-98 ANNUAL REPORT

### Overview

The Ombudsman has a unique role as a result of the passing of the *Witness Protection Act 1995*. This Act put into place a mechanism for appealing against decisions made by the Police Commissioner in which an application to enter the witness protection program is refused. It also allows a participant who has been terminated from the program to appeal to the Ombudsman. Any decision made by the Ombudsman replaces that of the Commissioner of Police.

In this, the second full year of our role under the Act, the Ombudsman received only three appeals. All of these related to the refusal by the Commissioner of Police to accept the appellant onto the witness protection program. No appeals were received as a result of a participant having his/her participation on the program terminated.

Of these appeals, one was successful and the appellant was taken onto the program. We were contacted some time after this decision and the witness indicated that the matter was progressing well and that the officers of the Witness Security Unit (WitSec) were providing a high level of support and assistance.

Our secondary role under the Act involves dealing with complaints relating to the witness protection program. These are far more numerous than the appeals and usually concern practical management difficulties experienced by people on the program, although some allege misconduct. The management difficulties relate to issues such

as accommodation, the passing on of mail and access to services provided by government departments. The approach that is taken to resolve complaints is largely informal. We are conscious of the unique relationship between the complainants and the police officers who have responsibility for their protection, and it is our aim to deal with complaints in such a way as to cause minimal disruption to that relationship. In many cases, issues can be resolved by our officers helping improve communication between the parties.

### CASES

#### Case 1

A prisoner contacted the office to complain about the level of protection offered to his family who were on the program. The inmate was concerned that WitSec did not have sufficient information about potential threats to allow them to properly protect his family. WitSec principally relies on operational police to advise them of the nature of the threats against participants. In this case, however, the inmate had given further information to police after he went into custody and the officers involved had not advised WitSec of this. The inmate did not wish to compromise his wife's security by giving her details, but sought to contact WitSec directly. The WitSec officers assumed that the issue related to his own security within the prison, which is not within their jurisdiction. The information that the threat had changed was simply not getting through to the people who 'needed to know'.



When we approached the commander of WitSec to pass on the information from the inmate, the potential repercussions of the situation became clear. Effectively, WitSec was being asked to protect the family without any idea of the nature and location of some of the main threats against them. Urgent consultation took place between all concerned and measures have now been introduced to ensure that any changes in the threat to inmates' families will be immediately communicated to WitSec.

### Case 2

As in previous years, we have attempted to deal with most complaints from witnesses on the program through conciliation, viewing formal investigations as potentially damaging to relationships between participants and the case officers who would continue to play such an important role in their lives and those of their families. On some occasions, however, this has not seemed appropriate and more formal investigations have been called for.

A witness complained about the conduct of the accompanying WitSec officers when the witness and their young children travelled to an area outside Sydney where they were required to attend court. All of the group booked into a motel.

The witness complained that they and their children were left on their own at the motel while the police officers went out for dinner and drinks. The following morning the complainant, who stated that they had spent the night in fear, learnt from the motel managers that the room in which the police officers were staying had a damaged internal door and a pile of water-soaked bed linen left on the floor. The complainant felt strongly that the behaviour of the police sent to provide protection had been less than professional.

An investigation followed. As a result, the Service took the following action in relation to those officers present at the motel:

- The commander of the state protection group spoke to the involved officers and enforced the expected standard of conduct required of those officers specifically chosen for this area of the Police Service.
- The managers of the motel were offered a formal apology on behalf of the officers concerned.
- The officers concerned were not allowed to perform any supervisory duties until the commander of the unit was satisfied that they could responsibly fill that role.

# S

## special audits

1997-98 ANNUAL REPORT

### Controlled operations

The past year saw the commencement of the *Law Enforcement (Controlled Operations) Act 1997* which brought with it a new role for the Ombudsman.

The Act provides for the authorisation, conduct and monitoring of operations involving what might otherwise be unlawful activities by specified law enforcement agencies. This was done in order to remove any doubt as to the status of evidence obtained in the course of such operations and as to the liability of those participating. It was enacted as a response to the ruling in *Ridgeway's case* ((1995) 184 CLR 19) and also in compliance with a recommendation of the Royal Commission. The Act provides for controlled operations to be authorised and conducted by four law enforcement agencies: the NSW Police Service, the NSW Crime Commission, the Independent Commission Against Corruption (ICAC) and the Police Integrity Commission (PIC). It came into operation on 1 March 1998.

The Act also confers upon the Ombudsman the role of independently monitoring the law enforcement agencies' compliance with the Act. The granting of an authority to carry out a controlled operation can be distinguished from the use by these agencies of telephone interceptions or listening devices, in that both of these require a judicial officer to grant a warrant, having first examined the basis of the application. In the case of controlled operations, the authority is granted from within the respective agencies by the chief

executive officer (although in the Police Service, this has been delegated to the deputy commissioner). Accordingly, it is monitoring by this office that constitutes the prime oversighting of the use of this contentious power.

The Act requires that the Ombudsman be notified of the granting, variation or renewal of an authority, and of the receiving of a report by the relevant chief executive officer on the conduct of an authorised operation within 21 days. It further requires that we inspect the records of each law enforcement agency at least once every twelve months although we may do so more often. The Ombudsman is also empowered to make a special report to Parliament at any time with respect to any inspection conducted and must report to Parliament at the end of each financial year.

In this, the first year in which the Act has been in operation, we have been heavily involved in consultation with respect to both the drafting of the Act and Regulations and the compilation of protocols and procedures by the various law enforcement agencies, as well as in the mandatory inspections of records and monitoring of notifications.

As might be expected, the first year of the new regime has seen a number of "teething" difficulties. Possibly as a result of these, there have been substantially fewer authorities granted than we had anticipated — in the four months after the commencement of the Act only 47 controlled operations were authorised. The vast majority of these related to crimes involving prohibited substances and the authorities were largely granted

to allow police and other law enforcement operatives to participate in the purchase and supply of drugs. It is too early to comment upon the success or otherwise of these operations, some of which are ongoing.

It was always anticipated that the Police Service would authorise the majority by far of controlled operations. This has been the case, but the number of authorities granted remains far lower than initial estimates. One reason for this seems to lie in the basic lack of familiarity with the new procedures by those officers who would be most expected to use them. There is a perception, particularly from within local area commands, that the Act's requirements for obtaining an authority are so cumbersome and time-consuming as to potentially render proposed operations impracticable. The Act had already been amended after we identified a problem relating to the inability to make applications by facsimile. This presented huge logistical problems for the police in particular. The officers involved in the administration of the Act within the Service are putting a great deal of effort into producing procedures that are as simple and efficient as possible within the demands of the legislation. It is likely that this, in addition to widespread education programs within the Service, will assist in overcoming this difficulty.

The legislation calls for the Minister for Police to review the Act after it has been in operation for twelve months *'to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'*. It may be that this review will provide a useful vehicle to explore any operational or legislative changes that may be required to optimise use of the new legislation.

A separate annual report detailing the Ombudsman's work and activities under the Act was presented to Parliament in October 1998.

## Telephone interception

One little-known function of the Ombudsman arises from the legislation that governs the interception of telecommunications, or 'phone tapping'. The law relating to phone tapping in NSW is a complex meshing of both federal and State legislation. There are four agencies within NSW which can apply for a warrant to intercept telecommunications: NSW Police Service, the NSW Crime Commission, the ICAC and the PIC. This power was extended to the PIC on 10 July 1998.

A telephone interception warrant can only be issued by a federal court judge, a family court judge or an Administrative Appeals Tribunal member. In order to obtain such a warrant, it is necessary to show that it is likely to assist the investigation of a serious offence such as murder, kidnapping or drug trafficking. Before granting a warrant the judge must consider the issue of privacy, the extent to which the interception is likely to assist the investigation and what other means of investigation are available and their likely success.

The agencies are required to retain comprehensive records concerning the interceptions and one of the functions of the Ombudsman is to carry out inspections of those records and report to the Attorney General concerning compliance with the Act. A minimum of two inspections of the records of each agency must be carried out each year. The *Telecommunications (Interception) (NSW) Act 1987* forbids the Ombudsman from including any details of the inspections in this office's annual report. Each year, the Ombudsman is required to report to the Attorney General on the outcome of inspections as soon as practicable before 30 September.

# C

## continuous improvement

1997-98 ANNUAL REPORT

Overview	203
Issues	205
Technology .....	205
Complainants survey .....	205
Inquiry customer satisfaction survey .....	205
Benchmarking .....	207
Review of policies, procedures and practices .....	207
Complaint handling in the public sector .....	207
Dealing with our own complaints .....	208
Our guidelines .....	208
Corporate support .....	209
Total quality management .....	209

### Overview

The ability of the office to deal with increasing complaint levels and to absorb new functions can be attributed to the commitment of staff and to the success of efforts to continuously improve our processes. The importance of this is reflected in our corporate plan which focuses attention on these areas — as well as complaint handling and access and awareness — as a means to best achieve our mission.

To improve our performance, the office has identified the following four strategies:

- the better use of technology;
- surveying complainants and public authorities (as resources permit);
- monitoring our performance to develop benchmarks both internally and with other agencies that enable us to focus on improving our work processes and accountability; and
- reviewing our policies, procedures and practices.

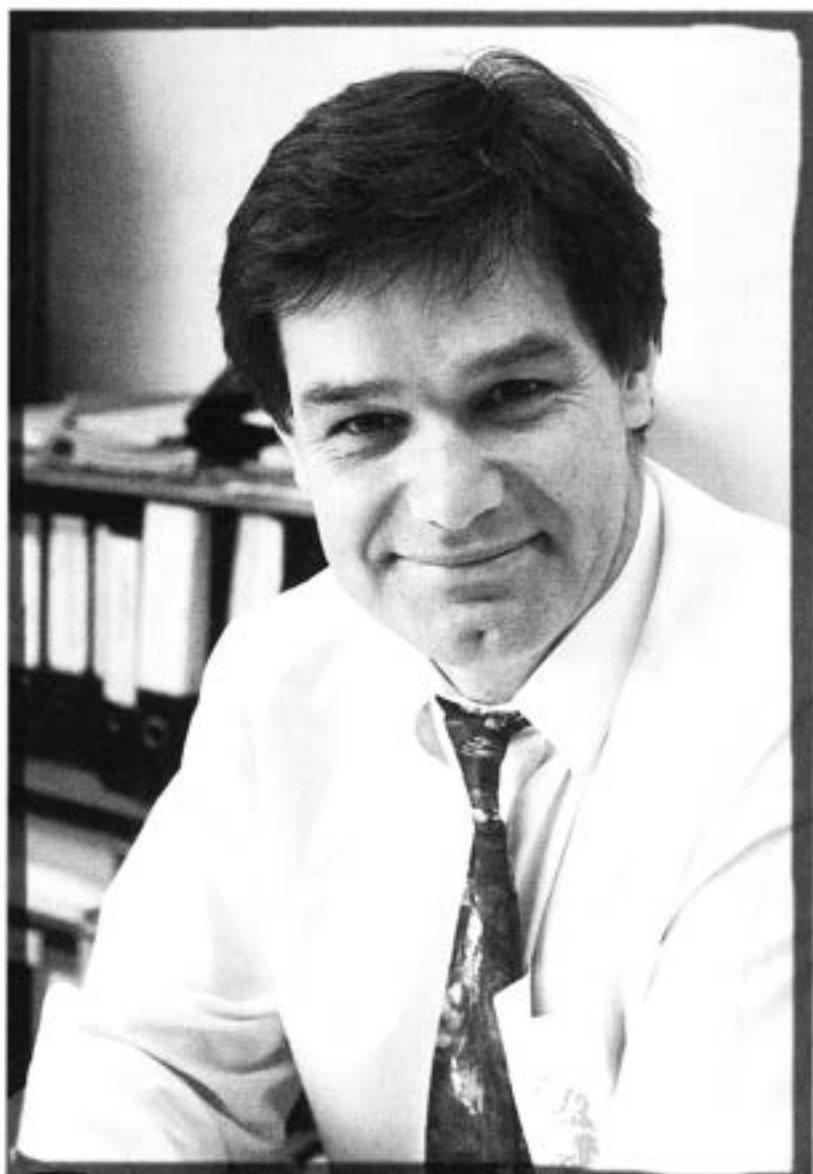
The planned outcomes of these strategies are:

- improved service delivery;
- more efficient and effective complaint handling;
- continual improvement of our performance according to clearly communicated guidelines; and
- reporting mechanisms that demonstrate the quality of our work.

Irrespective of the outcome of your investigation and recommendations, it is my duty to thank you and all members of your staff for your kind support and belief in bringing this case to justice.

Last, but most importantly, I wish to convey my sincere thanks to the Ombudsman Ms Irene Moss, AO, as I wish her every success in bringing respect, justice and good will to the Office of the Ombudsman.

*A complainant*



Steve Kinmond, Assistant  
Ombudsman (Police Team)

## Issues

### TECHNOLOGY

#### Case management and reporting

We have modified our case management system to improve both complaint management and internal and external reporting.

A range of software programs have been used to assist us in designing reports to better analyse complaint patterns and trends.

Our reporting capabilities will be further developed under the police complaints case management system.

#### Police complaints case management system

As mentioned in previous reports, this office, the Premier's Department, the Police Service and the Police Integrity Commission are developing a new enhanced case management system. This system will replace several systems used within the Police Service and will be linked with the two oversight agencies to form a single and complete record of complaints against police.

Although the development of this system is taking longer than initially anticipated, the benefits for this office include:

- increased intelligence gathering capabilities;
- increased capacity to oversight complaints about police;
- greater analysis tools that will allow us to examine trends in particular police commands or patrols and trends relating to particular policing issues; and
- increased productivity.

#### Intranet

An assessment of our information requirements revealed a need for an office-wide intranet to facilitate the sharing of knowledge, procedures and information. Our current case management system provides structured data relating to specific files

but is not capable of effectively delivering non-structured information. An intranet is a logical way to integrate a number of disparate information databases.

#### Internet

We are developing an internet site to allow easy access to a range of information about our office including publications such as the annual report, brochures and a number of our guidelines.

The site will also allow users to lodge complaints electronically with a form that can be sent via email.

#### Upgrading our equipment

Following a review of our equipment needs during the reporting year, we submitted a proposal to the NSW Treasury for funding. This request was approved and we are now purchasing new laptops, a new PABX telephone system and hearing room equipment.

### COMPLAINANTS' SURVEY

In the past we have surveyed public authorities and the public about a range of matters including their perceptions of the complaints process. However, due to limited funds and increased workload we have not been able to undertake either survey in the past year.

### INQUIRY CUSTOMER SATISFACTION SURVEY

During May 1998, the office conducted a customer satisfaction survey in order to gain a greater insight into how we are viewed so that we can continue to improve the service we provide.

An independent interviewer was engaged to complete as many interviews as possible during a one week period. Over the course of that week, every caller who made contact with either an

inquiries officer or a back-up inquiry officer was given the opportunity to participate in the survey. In total, 91 callers were surveyed. This represented 19% of the telephone inquiries taken by the office during that period.

### **Gender, ethnicity, disabilities**

Slightly more than half of the respondents (54%) were male. Nine per cent of callers were from a non-English speaking background, 8% had a disability and 2% were either Aboriginal or Torres Strait Islander.

### **Age**

The majority of callers (77%) were aged between 25 and 59. Nineteen per cent were 60 or older and 4% were under 25.

### **Useful and practical**

Ninety per cent of callers surveyed believed they had received useful information from the inquiry officer who had dealt with their complaint. Ninety-one per cent of callers believed they had been given practical suggestions to resolve their problem. More than two-thirds of callers were given a suggestion about who else they could contact in regard to their matter.

### **Hesitations or difficulties in contacting the office**

The majority of the survey participants (89%) did not experience any hesitation in ringing the office for assistance, and 91% said that they had not encountered any difficulty or delay in getting through to the office or to one of our inquiry officers. Ninety-nine per cent indicated the information they had been given was easy to understand.

### **Purpose of call**

Each of the callers was asked what it was that they had hoped to achieve by calling the office. An equal number of participants indicated that they had wanted to either lodge a complaint or try to have their complaint resolved (31% each). Other reasons nominated by callers were that they just

wanted to talk to someone about their problem (25%); seek some specific kind of action or redress (20%), for example an apology, compensation, disciplinary action etc; to get some general information (15%); to just inform the office of the problem (1%); to try to prevent this sort of thing happening in the future (1%); or to try and get the offending behaviour stopped (1%).

When callers were asked what they intended to do about the complaint once they had spoken to the office, approximately 40% of callers said they would now go somewhere else more appropriate as suggested, 27% said that they would write to the Ombudsman, 25% indicated that they would pursue the matter directly with the authority concerned, 4% were going to take some other form of action, while 3% were undecided on further action.

### **Courtesy**

All of the people surveyed found the officer who dealt with their call to be polite. When questioned about how helpful the inquiry officer had been, most of the callers thought the inquiry officer they had spoken to had been very helpful (67%) or at least fairly helpful (31%).

### **Suggestions**

Callers were asked whether they had any suggestions about how the Ombudsman's staff could have been more helpful to them. Suggestions included the Ombudsman being able to take complaints over the phone without the need to have formal complaints in writing, the Ombudsman having greater powers and not using recorded phone messages.

### **General comments**

The vast majority of the comments about contact with the office were positive and many of the callers stated that they were 'very impressed' and had received good, sound and prompt advice. Some of the callers indicated that they felt the Ombudsman should have more power but, given the circumstances, had received the best advice possible.

## BENCHMARKING

It is not easy to make comparisons with other agencies as there are significant differences between jurisdictions. We are a general jurisdiction watchdog body where other watchdog agencies such as the Legal Services Commission, Community Services Commission, Privacy Committee and the Health Care Complaints Commission have a more narrowly focused jurisdiction.

We use the number of complaints received or finalised as the basis of our performance statistics. Other agencies use the number of allegations contained in complaints or the number of matters looked at during the year.

Keeping these differences in mind, we have been involved in formal benchmarking exercises with a number of complaint handling organisations such as the Human Rights and Equal Opportunity Commission as well as other Ombudsmen around Australia. The results of these benchmarking activities have been positive, indicating that we are able to finalise complaints in most cases quicker than similar agencies.

We also monitor how we compare with the specialist watchdog agencies in NSW by analysing their performance statistics in their annual reports.

We will be formalising our benchmarking activities with relevant agencies in line with the Government's service competition policy.

## REVIEW OF POLICIES, PROCEDURES AND PRACTICES

### Planning days

As part of our annual planning cycle, staff in each investigative team, as well as corporate support, have separate planning days. These planning days identify key issues for the coming year, priorities and expected outcomes. The results of these planning days form the business plans for each team.

The planning process encourages full and frank discussion on our work processes and how we can

improve our processes. It enables the office to deal with increasing complaint numbers while reducing the time taken to finalise matters. For example, the time taken to finalise freedom of information complaints has reduced from an average of 34 weeks in 1994-95 to an estimated 20 weeks in 1997-98, despite increases in the number of complaints received.

## COMPLAINT HANDLING IN THE PUBLIC SECTOR

For the past four years, this office has maintained a consistent program of training for public servants to assist them and their departments, authorities or local councils to achieve best practice in the area of customer service and complaint handling systems. During this time, there has been a distinct shift in both attitudes and procedures within the public service. Most departments and authorities now have an accessible, simple, fair and relatively speedy process for handling customer complaints. However, there is opportunity for improvement in the areas of effective, comprehensive redress, and analysis of complaint information in order to improve service. As in other areas of the public sector, resources are an issue, however, an increasing body of senior managers in the Government sector are supportive of change and improvement in this area.

Growing demand for front-line staff training in how to deal with customers and customer complaints has been met by our new course, Complaint Handling for Frontline Staff, which we presented nine times, training 164 people. Two regional areas invited us to present the course, which was delivered in Wagga Wagga in April 1998, and in Armidale in May 1998. Plans are underway for a far North Coast course and more frontline courses will be offered at our Sydney office during 1998-99.

In addition to the new course, demand for our manager's course on devising the necessary systems for a comprehensive approach to customer feedback almost doubled. The course, Understanding Complaint Management, was



delivered nine times, to 169 participants. Six of the courses were held in Sydney, and one was held in Wagga Wagga and two interstate.

During 1997–98, under the auspices of the West Australian and Tasmanian Ombudsman, we were again invited to present our courses interstate. In December 1997, Assistant Ombudsman Greg Andrews and alternative dispute resolution coordinator Natasha Serventy presented the manager's course in Perth. In February 1998, Greg and Natasha were joined by training officer Matina Psaltis in Hobart and, because of enormous demand, presented three courses back-to-back.

Over the past four years, our courses have changed to keep up with new ideas and customer feedback, and we are pleased to see participants return for refresher courses. Evaluations follow every course, and are usually very positive. While demand exists, we will continue to offer both courses to all government staff and managers.

In 1998–99, we plan to introduce further training in how to deal with difficult complainants. The increasing income generated by these courses is a welcome contribution to the cost of carrying out investigation work.

#### **Talks on complaint handling/mediation to outside agencies**

Ombudsman staff are regularly asked to present talks and workshops at seminars and conferences. In March 1998, alternative dispute resolution coordinator Natasha Serventy spoke at a joint Public Accounts Committee/Law Society seminar, *Dispute Management in Local Government*. Her topic was the selection of an appropriate mediator in local government disputes. Later that month, Natasha and acting senior investigator Margo Maneschi spoke at the *Reaching Common Ground* conference on the techniques and traps of accountability in local government.

In May 1998, training officer Matina Psaltis spoke to 160 revenue protection officers from City Rail on handling complaints at the staff's Ethics Day.

#### **DEALING WITH OUR OWN COMPLAINTS**

We consider complaint feedback to be a valuable tool in assisting us to monitor our performance and fine tune our procedures. A number of the complaints we receive from members of the public and public authorities stem from a misunderstanding of our role, procedures and/or ineffective communication. When we receive this type of complaint we generally respond by contacting the complainant and providing further information to clarify the situation. However, on a broader level, we also use this type of information when developing our access and awareness programs, reviewing our publications and assessing our training needs.

Complaints about delays are assessed against our target turnaround times. Increasing numbers of complaints about public authorities — and static resources — has resulted in a slight increase in turnaround times generally. Where complaints about delays are justified, we take some form of remedial action which may include offering an apology, explaining resource constraints, reviewing the officer's workload and assisting in setting work priorities.

Most of the complaints we received during 1997–98 fell into the two broad categories mentioned above. However, we also received several complaints about minor inaccuracies in a couple of items in our previous annual report. As a result, we have reviewed our editing procedures to ensure a more rigorous and coordinated approach.

#### **OUR GUIDELINES**

One way of reducing our work is to provide guidance to public officials as to acceptable conduct and to improve the way public authorities deal with complaints thereby reducing the complaints coming to the office. To this end we have produced a series of guidelines. These guidelines have been well received. A list of our guidelines is in **appendix 5**.

## CORPORATE SUPPORT

The NSW Government has highlighted possible savings from reviewing corporate support activities throughout the public service. Pay increases have been awarded to all public servants on the basis of potential savings through the corporate service review processes.

We review our corporate services area on a continuing basis and have in the past transferred 'savings' to core business activities. During the reporting year, we have had to change processes in our personnel area in particular due to our inability to fund the personnel officer position while still having to carry out these duties.

We also reviewed the work of the public relations area. This review resulted in a better allocation of duties and accountabilities. We expect these changes will improve our access and awareness program.

We will review our records area during the 1998–99 year in response to the new *State Records Act*.

## TOTAL QUALITY MANAGEMENT

As mentioned in last year's annual report, the office participated in a quality assessment process. This assessment provided a baseline which will be used for strategic and organisational change and continuous improvement. Assessments were made on seven categories — leadership, planning, information, people, customer focus, process and performance.

We are working through the results of the assessment process and making changes as necessary.

It is the Government's intention that all agencies will be reassessed at a later date to identify what improvements, if any, have occurred.

I write to express my appreciation for your recent presentation to school principals. Your talk was challenging and constructive. You promoted excellent values and strategies in regard to how we should respond to complainants. You achieved this in a non-threatening manner and significantly influenced many of the principals present.

*A district superintendent*



Andrew O'Brien, Youth Officer

# e

## ensuring we are accessible

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>211</b>
<b>Issues</b>	<b>212</b>
Inquiries .....	212
Working with ethnic communities .....	212
Working with young people .....	213
Working with Aboriginal people — General team .....	214
Working with Aboriginal people — Police team .....	216
Working with women .....	217
Working with people with a disability .....	218
People in detention .....	218
Regional outreach .....	218
Information and publications .....	218
Media liaison .....	219

## Overview

The NSW Ombudsman provides a vital public service to the people of NSW and access and awareness issues play an important role in the equitable provision of that service. The right of review available through our office is of no use to a person who is not aware of our existence or who for physical reasons is unable to gain access to our services. Therefore, one of our corporate goals is to increase awareness of our role and functions and to promote access for all.

We have been fortunate that some access and awareness activities have been funded by Government. For instance, we were provided with funding to establish the Aboriginal Complaints Unit in the police team and we were successful in obtaining funding for our Youth Officer. However, we have not been allocated any resources for other access and awareness activities and, as such, the work has primarily been undertaken by investigative staff in addition to their other duties.

This office is subject to both legislative and government access and awareness policy requirements, particularly in the provision of services for women, people with a disability and people from non-English speaking backgrounds. However, these programs have not been funded and must compete with complaint handling activities for human and other resources.

To focus our limited resources on access and awareness, the office has developed a plan which outlines action based strategies, clear performance indicators, nominated responsible personnel and relevant timeframes. The document is structured as a series of work plans, each specifically designed for the various targeted groups, i.e. 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 performed by the office occurs alongside internal strategies to improve the general sensitivity needed in handling complaints and responding to an increasingly diverse clientele.

The following is a report on our access and awareness activities during 1997-98.

## Issues

### INQUIRIES

1997-98 was another busy year for inquiries with a 28% rise in the number of telephone calls received. We took 20,119 calls from people seeking information or making oral complaints — 4,421 more calls than the previous year.

Inquiries is the first point of contact with the office for most members of the public. Once an inquiry officer has assessed the nature of the complaint, the caller is advised whether the matter falls within the jurisdiction of this office and, if so, whether a written complaint is required. The caller is then asked what efforts they have made to resolve the complaint directly with the agency involved.

Traditionally, the Ombudsman is an avenue of last resort. It is, therefore, our policy to encourage agencies to deal with their own complaints unless it is clearly inappropriate. Agencies should be given the opportunity to address problems before our office becomes involved. If a person has not taken this approach, we will generally advise them to write to the head of the agency about their complaint. We invite them to contact us again when they receive the agency's response if they remain dissatisfied with the handling of the matter or there is evidence of maladministration.

When we assess what action to take on complaints we also consider whether other review/appeal mechanisms exist for this type of issue. Where there is an alternative and satisfactory means of redress available we generally advise the caller to take up that course of action. We may

also send the caller a copy of our brochure, *Tips for making a complaint*, to assist them with their letter of complaint. The brochure outlines the type of information to be included in the letter, to whom it should be addressed and the action required.

If the matter is not too complex, we will make a quick call to the agency in an effort to resolve the matter over the phone. Approximately 7% of inquiries are resolved in this way. If a matter does not fall within the jurisdiction of the office, we will suggest other ways to resolve the problem, for example we have leaflets on other relevant agencies which we send out to callers as required.

Inquiry officers 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. In the past year, we also exchanged information with the Spanish and Latin American Association for Social Assistance (SLASA).

With the number of telephone inquiries increasing, we rely on the support of a select group of experienced investigation officers to take calls when our three inquiry officers are not available. This is preferable to keeping callers on hold or returning calls at a later stage.

### WORKING WITH ETHNIC COMMUNITIES

As reported last year, we have begun a program of consultation of peak community groups. The aim of these consultations is to improve our profile as well as ensuring that ethnic communities have a clear understanding of our role and function. We visited at least 13 peak or community groups, providing information to workers and advice about our role.

A larger scale consultation was hosted with the Vietnamese community. These consultations include presentations by senior staff and provide an opportunity for community members to raise issues of concern. They also generate interest from the ethnic media.

In addition, we distributed our nine community language brochures — Arabic, Croatian, Chinese, Greek, Italian, Spanish, Serbian, Turkish and Vietnamese — to community and other groups.

### Ethnic media

All media releases relating to the public release of our reports were sent to the ethnic media. A staff member was also interviewed about the role of our office by Chinese Radio 2AC.

### Festivals

We participated in a number of community festivals including the St George Migrant Information Day and the Bankstown Multicultural Day. We intend to participate in more festivals during 1998–99.

### Government agencies

Staff have been liaising on a regular basis with the Police Service as part of our monitoring of the implementation of the Service's Ethnic Affairs Policy Statement.

### Activities within the office

Cross cultural sensitivity training was provided to staff during the reporting year. Adult Migrant Education Service conducted the training which aimed to improve the skills of staff in appropriately dealing with clients from diverse cultural backgrounds

### Future plans

Our plans for the coming year are listed in **table 1** in the format required by the Ethnic Affairs Commission and our Ethnic Affairs Policy Statement.

## WORKING WITH YOUNG PEOPLE

The second year of the access and awareness program for young people has seen the office in regular contact with youth groups and children. As reported last year, the aim of this contact is to inform young people about their right to complain and the way to do so. We make it clear to them that their complaints will be taken seriously and that we have given priority to providing young people with good service. We have continued our policy of providing a specialist focus for youth by maintaining a youth inquiry team to deal with inquiries and complaints from young people.

Some of the highlights of the youth access and awareness program were:

- provision of a Youth Liaison Officer to speak to groups of young people and to individual complainants;
- development and distribution of an easy to use complaint form;
- publication of a youth specific brochure;

Table 1: Future plans for working with ethnic communities

Key result area	Initiative	Timeframe	Intended outcome
Social justice	Liaise with peak NESB bodies and use NESB networks	ongoing	Increased community awareness. Improve lines of communication
Community harmony	Provide representatives to speak at meetings of NESB group	ongoing — on request	Increased community awareness and improve our understanding of community needs
	Attend community festivals and cultural activities	ongoing	Increased community awareness and improve our understanding of community needs

- distribution of information packs at university orientation days and expositions;
- consultations with youth workers across NSW who provide many complaints on behalf of young people; and
- the development of a program of peer advocacy for young people.

As a result of this access and awareness program, the number of complaints and enquiries from, and on behalf of, young people has increased. For a summary of these complaints and inquiries see **table 2**.

The pattern of complaints shows a range of issues, especially in those departments that have the greatest contact with large numbers of young

people. These departments and case studies are discussed throughout this report.

We are committed to:

- a major distribution of our information package for young people — the package contains a contact card, our youth brochure, a complaint form and a youth poster;
- continuing contact with all schools, TAFE and youth groups;
- the provision of information on the internet;
- further development of a network of support people for young complainants; and
- the monitoring of complaint patterns on youth issues and special reports where appropriate.

Andrew O'Brien has replaced Stephen Waite as the Youth Liaison Officer. Prior to joining the office, Andrew was the executive officer of the NSW State Network of Young People in Care (SNYPIC). He has also been a high school teacher. Andrew brings a range of skills, experiences and contacts to add value to the solid foundations of access and awareness for young people about the office.

**Table 2: Complaints and inquiries received from and on behalf of juveniles**

Department	1996-97	1997-98
	Total	Total
Ambulance Service		1
Attorney General's Dept		1
Birpal Local Aboriginal Land Council		1
Board of Studies		1
Community Services	1	7
Corrective Services	5	19
Councils	3	1
Gaming and Racing		1
Health	2	2
Housing	4	6
Juvenile Justice	121	168
Ombudsman		1
Police	178	363
Roads and Traffic Authority	1	4
School Education	33	25
State Rail Authority	1	8
State Transit Authority	1	1
TAFE/university	3	5
General	15	19
Non-jurisdiction	12	14
<b>Total</b>	<b>380</b>	<b>648</b>

### WORKING WITH ABORIGINAL PEOPLE — GENERAL TEAM

During the last 12 months, we have been very busy undertaking general liaison with Aboriginal people, organisations and communities, as well as participating in gaol visits, juvenile justice centre visits and regional outreach trips. As a result, the number of contacts made with the office by Aboriginal people has increased.

While knowledge of the role and responsibilities of our office is increasing in Aboriginal communities, there is still a long road to travel. Under the terms of the *Ombudsman Act 1974*, we can only make adverse comment and recommendations when a formal investigation has been conducted and there is evidence to substantiate our findings.

This high standard means that public authorities and agencies generally respect our findings and

follow our recommendations. However, the negative side to this is that complainants are required to provide reasonably solid information to substantiate their allegations. This is often difficult given the literacy and numeracy skills of some Aboriginal people, and the level of resources available to them. We are continually looking to develop ways to address this problem, such as including specific strategies within our access and awareness program.

### Visits to gaols and juvenile justice centres

Over the last 12 months our Aboriginal Complaints Officer (ACO), Nathan Tyson, has participated in 17 visits to adult correctional centres and juvenile justice centres throughout NSW.

Both the Department of Juvenile Justice and the Department of Corrective Services continue to improve their policies and programs in relation to Aboriginal people. Unfortunately, delays in responding to our correspondence mean that complainants are sometimes forced to wait for a response to their concerns. We are currently working to address this situation.

A major source of complaint to us from Aboriginal inmates is that they are placed in institutions where family contact, in the form of visits, is not possible because of the location of the institution and travelling distances involved. The Royal Commission into Aboriginal Deaths in Custody recommended that, where possible, Aboriginal inmates and detainees be placed close to their families and communities. The Department of Corrective Services acknowledges this recommendation but is unable to consistently implement it due to the limited number of beds both within individual correctional centres and the system generally. While this does not represent maladministration on the part of the department, it remains an important concern, particularly to Aboriginal people and communities.

### Access and awareness

The ACO has participated in three regional access and awareness trips over the last 12 months. Regions covered include Cooma/Bega, Coffs Harbour/Lismore and Wollongong/Nowra. Local Aboriginal land councils and other Aboriginal

organisations in these areas were contacted and we provided information about our role. The ACO has also participated in presentations to the general public concerning our role and responsibilities.

When consulting Aboriginal communities, we make every effort to ensure that Aboriginal custom, protocol and self-determination are respected. As a result, many positive contacts have been made in Aboriginal communities throughout NSW. From the feedback we have received, this method of access and awareness works well, and knowledge of our office and what we do is being passed on through the informal oral networks utilised by Aboriginal people.

### ICAC project

As reported last year, our ACO was directly involved in the Independent Commission Against Corruption's (ICAC) corruption prevention operation focusing on the Aboriginal land council system. We presented a submission to the ICAC on the project, which was viewed positively and taken into consideration, along with those of other departments, agencies and individuals.

The report from the project was launched in April 1998, at Sydney Town Hall, followed by a number of regional launches throughout NSW. The volume contains 26 recommendations which cover many of the issues and suggestions made in our submission. When implemented, these recommendations should see an improved and more effective Aboriginal land council system that will benefit Aboriginal people and communities.

### NSW Aboriginal land council system

The majority of inquiries received by our ACO continue to focus on the land council system. During the year, the ACO commenced regular liaison with land council officers in an attempt to set up a workable system for referral and complaints resolution. This is an ongoing aspect of the ACO's work. It is hoped that the review of the *Aboriginal Land Rights Act*, planned by the Department of Aboriginal Affairs, will provide improvements to the legislation which will enhance complaint resolution.



## WORKING WITH ABORIGINAL PEOPLE — POLICE TEAM

During our first year, the Aboriginal Complaints Unit within the police team focused specifically on conducting access and awareness field trips to both remote country areas and the metropolitan region. During the 1997–98 year, we have focused on conducting meetings in response to the particular needs of diverse communities and establishing mechanisms to deal with systemic issues and community/policing problems.

In response to concerns raised by the Aboriginal Legal Service (ALS) about the increase in complaints from the South Coast concerning young Aboriginal people, our unit and the ALS participated in a police training day at Moruya. The aim was to provide a forum where we could raise concerns, examine ways of dealing with problems and provide an opportunity for the police to understand the role our unit plays in complaints handling.

An Aboriginal consultative committee has continued to meet on a monthly basis at Nowra. Meetings are held between our office, the ALS and the local area commander to discuss local community issues. Due to the recent restructure of all Aboriginal legal services throughout NSW, and a fall in complaints from this area, these meetings are only called when issues and problems arise. As a result, good communications now exist between all three parties.

Other activities during 1997–98 included:

- continuing access and awareness field trips to remote country areas;
- meeting with Chris Cuneen (Sydney University) and the Police Service prior to the launch of the NSW Police Service Aboriginal Policy Statement and Strategic Plan;
- meeting at Blacktown with the ALS, the Police Service and complainants to discuss issues arising out of complaints, community/policing issues and systemic issues;
- meeting with members of Aboriginal communities at Tamworth and Armidale to examine increasing problems with young people frequenting shopping centres/arcades and allegedly harassing shoppers;
- providing support to complainants participating in conciliations at Tingha, Wollongong, Lismore, Campbelltown, Tamworth, Blacktown and meeting with members of the Aboriginal community at the conclusion of conciliation;
- a meeting at Green Valley Community Centre with Aboriginal community people and police ACLO's to discuss:
  - the functions of our unit;
  - access and awareness;
  - problems with police and public authorities;
  - how to make a complaint;
  - ways of improving relationships between police and communities;
  - issues involving Aboriginal juveniles;
  - sensitive issues relevant to individual community people;
- meeting/conducting a workshop with mid-North Coast Aboriginal community members and representatives from the Police Service to set up a consultative committee to discuss a joint action plan and the implementation of Aboriginal strategic plan;
- regular liaison with the Aboriginal Woman's Legal Resource Centre, Stanmore, with a focus on domestic violence issues within Aboriginal communities; and
- inter-agency meetings at Nowra and Lismore to look at community and legal issues.

## WORKING WITH WOMEN

In November 1996, the Government released its Action Plan for Women which complemented its Social Justice Direction Statement. The objectives of the action plan are to:

- reduce violence against women;
- promote safe and equitable workplaces which are responsive to all aspect of women's lives;
- maximise the interests of women in micro-economic reform;
- promote the position of women in society;
- improve the access to educational/training opportunities for women; and

- improve health and quality of life for women.

All areas of NSW Government must work to bring the needs of women into their policies and programs, if women are to achieve the level of participation they deserve.

**Table 3** reports on our implementation of the plan. As can be seen, the office did not take action on a number of strategies as these were not areas in which the office operates.

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Table 3: Action plan for women — our implementation

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Objective	What we have done/are doing
Reduce violence against women	Recognising that victims of domestic violence often find it difficult to complain about the services that they receive, our office prepared and circulated a discussion paper on the policing of domestic violence: <ul style="list-style-type: none"> <li>– approximately 60 submissions were received and have been analysed</li> <li>– we will be making a report to Parliament on this issue (see <b>Police</b> in this report).</li> </ul>
Promote safe and equitable workplaces which are responsive to all aspects of women's lives	Our work conditions including: <ul style="list-style-type: none"> <li>– part-time employment and leave for family responsibilities</li> <li>– harassment prevention policies</li> <li>– merit-based appointment.</li> </ul>
Maximise the interests of women	No specific strategies were developed by this office to promote the position of women in micro-economic reform.
Improve the access to educational/training opportunities for women	<ul style="list-style-type: none"> <li>– 62% of our staff are women</li> <li>– 50% of our staff above grade 6 are women</li> <li>– 50% of our management committee are women, including the Ombudsman</li> <li>– all our team managers are women</li> <li>– we have flexible work practices including leave for family responsibilities.</li> </ul>
Promote the position of women	No specific strategies were developed by this office to improve the health and quality of life for women in society, however, we are working with a number of agencies to improve the provision of health and other services to women in prison.

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## WORKING WITH PEOPLE WITH A DISABILITY

Our work in this area needs to be improved and, as such, is a priority area for 1998–99. Some of the work we have done during the year includes:

- holding discussions with the Disability Council of NSW:
  - we will continue to make similar contact with other peak groups during the next reporting year;
- developing guidelines on how to deal with complainants who have mental health problems:
  - to support these guidelines, staff attended a half day training course conducted by the Department of Health on this issue; and
- raising with the managers of our building concerns about general access to the building and the difficulty in accessing facilities for people with a disability:
  - building management have acknowledged these concerns and submitted an improvement plan to the building owners.

**Appendix six** contains the annual report of our disability strategic plan.

## PEOPLE IN DETENTION

Visits to juvenile detention centres and correctional centres remain an important part of the accessibility of our office. Forty two visits to correctional centres and 21 visits to juvenile detention centres were made in the reporting year. Our staff met with gaol governors, conducted inspections of facilities and discussed complaints with inmates.

## 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 1997–98 four separate trips were undertaken and

presentations given to various groups including Aboriginal, youth, welfare workers and State Government employees as well as the general public.

Complaints taking sessions provided community members with the opportunity to personally discuss problems with our staff. A bimonthly complaint taking program in Newcastle remained a priority and officers were regularly booked by people seeking our assistance.

We will continue our regional access program as well as tapping into the Government access program as a means of disseminating information on our role.

## INFORMATION AND PUBLICATIONS

Through brochures and reports we provide information to community groups, government organisations and the general public on request. See **Appendix five** for our publications list and an order form.

In 1996–97 we:

- expanded our guidelines series by producing and distributing:
  - *Ombudsman's FOI Policies and Guidelines*
  - *Guidelines for dealing with difficult complainants*
- tabled seven reports in Parliament; and
- distributed a newsletter, *The Public Eye*, providing an update on the current matters and issues of interest to this office:
  - the Ombudsman expects to publish this newsletter twice a year.

We will be issuing *Guidelines for the redress of maladministration* in 1997–98.

## MEDIA LIAISON

Over 30 media releases were distributed relating to various issues including the public release of reports and regional outreach visits. Personal interest in the Ombudsman and her work continued during the year with profiles appearing in a range of publications. The Ombudsman was also profiled by ABC radio.

We also provided training to journalists on the Freedom of Information legislation.



Anna Anderson,  
Public Relations Officer

Having read your letter I find it hard to believe that you have obtained more information in a matter of weeks than I could in the last 12 months.

*A complainant*



Rebecca Garcia, Accounts

# C

## a cooperative and productive workplace

1997-98 ANNUAL REPORT

<b>Overview</b>	<b>221</b>
<b>Personnel</b>	<b>222</b>
Staff .....	222
Wage movements .....	223
Managing unsatisfactory performance policy .....	223
Training and development .....	223
Occupational health and safety	223
Equal employment opportunity	224
Staff exchange program .....	224
<b>Industrial relations</b>	<b>224</b>
Joint consultative committee .....	224
New awards .....	227
Part-time work .....	227
Grievance procedure .....	227
Traineeships/apprentices .....	227
<b>General management</b>	<b>227</b>
Research and development .....	227
Overseas travel .....	227
Code of conduct .....	228
Environmental issues .....	228
<b>Information management and library</b>	<b>228</b>
Police Complaints/Case Management system .....	228
Year 2000 compliance .....	229
State Records Act .....	229
Our web page .....	229
<b>Financial services</b>	<b>231</b>
Revenue .....	231
Expenses .....	231
Assets .....	233
Liabilities .....	233
Other .....	234
<b>Internal audit</b>	<b>234</b>
<b>External audit</b>	<b>234</b>
<b>Financial statements</b>	<b>235</b>
Notes to financial statements .....	242

## Overview

With increasing demands on our resources, it is important that the working environment is supportive to staff and provides the necessary flexibility to enable staff to balance their professional and personal lives. Our staff are the key to the success of the office.

To achieve this goal, the office is developing or enhancing a range of programs that will improve both flexibility and productivity. These programs include revising our equal employment opportunity (EEO) program, making available flexible work options and strengthening the existing staff/management consultative arrangements.

In particular, we pursue strategies that will result in:

- a cooperative and productive work environment;
- information management and technology systems that support core business needs;
- better allocation of resources; and
- demonstrated accountability, both internal and external, in the use of resources.

These issues will be explored in this section. We will also provide details of the work of the corporate support area of the office which has responsibility for implementing a number of the strategies for improving our working environment.

The aims of the corporate support area, which comprises personnel services, financial services, public relations, information management and library services are:

- to provide efficient and effective support to the core activities of the office;

- to make the most effective use of resources available to the office;
- to maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment;
- to increase parliamentary and community awareness of the role, function and services offered by the Ombudsman; and
- to maximise the use of information technology to enhance productivity and the achievement of internal management and accessibility goals of the office.

As reported last year, the Government has announced that it is committed to reducing corporate service expenditure throughout the public sector. We acknowledge that agencies should improve their processes, reduce unnecessary expenditure and divert resources to core business activities. We have been doing this for a number of years. However, the need to find funds within our existing allocation to cover pay increases (ie pay increases negotiated by the Public Sector Management Office within Premier's Department but not fully funded by the Government) will in all likelihood result in both corporate service and core business staff reductions.

## Personnel

Due to funding issues, the office has been without a personnel officer for most of the reporting year. The work of this position, including recruitment, leave administration, payroll and occupational health and safety has been undertaken by the manager corporate support and the staff clerk. As a result of the staffing reduction, some work normally undertaken by the position has been delayed.

The key outcomes for 1997-98 were:

- development of a policy for managing unsatisfactory performance;
- cultural awareness training for staff; and
- development of an Employee Assistance Program.

In 1998-99 we will:

- develop a working from home policy; and
- review our occupational health and safety (OH&S) program.

## STAFF

As at 30 June 1998, we had an effective full-time equivalent staff number of 76.36 as shown in **table 1**. These figures do not include staff on leave without pay. The full-time equivalent of part-time staff is counted, not the actual number of part-time staff.

**Table 1: Staff levels**  
A four year comparison

	June 1995	June 1996	June 1997	June 1998
Statutory appointments	4.0	4.0	4.0	4.0
Investigative staff	52.9	55.2	63.9	62.36
Administrative staff	12.8	13.1	13.8	10.0
<b>Total</b>	<b>69.7</b>	<b>72.3</b>	<b>81.7</b>	<b>76.36</b>
Trainees (externally funded)	2.0	2.0	2.0	0

## WAGE MOVEMENTS

During the reporting year public servants were awarded the following pay increases:

- 3% effective 11 July 1997; and
- 2% effective 9 January 1998.

The Statutory and Other Offices Remuneration Tribunal awarded increases to the statutory officers as follows:

- Ombudsman — 5% increase effective 1 October 1997;
- Deputy Ombudsman and Assistant Ombudsman — the tribunal approved increases of up to 6% subject to a formal performance review. Due to budgetary constraints, the Ombudsman, with the support of the affected officers, approved the same percentage increase effective from the same date as the increases paid to public servants. This delayed the pay increase for several months.

## MANAGING UNSATISFACTORY PERFORMANCE POLICY

This policy has been developed to give a structured approach to the issue of unsatisfactory performance. It outlines for staff the process that will be followed in those circumstances where performance is below the acceptable standard. It will also assist supervisors and managers in dealing in a sensitive way with performance issues.

The policy is based on guidelines issued by the Premier's Department and has been developed in consultation with the joint consultative committee. The guidelines form part of the existing performance management policy and should be read in connection with that document.

## TRAINING AND DEVELOPMENT

Continual training and/or professional development of staff is seen as critical to the ability of the office to meet its 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.

The office uses a number of training providers. There is a reliance on external providers, although some specific job-related training is developed and conducted in house.

During the reporting year, the office spent about \$32,000 on training. This represents 0.5% of total expenses.

## OCCUPATIONAL HEALTH AND SAFETY

### Workplace inspections

During the year, one workplace inspection was conducted. The inspection identified a number of matters that needed to be improved such as placement of telephone lines and poor lighting. We also asked occupational health and safety specialists from Sydney hospital to inspect a specific work area as there was some concern about its layout.

### Employee assistance program

We engaged Industrial Program Services (IPS) to provide staff with an employee assistance program. This program is a confidential counselling service that assists staff, their partners and families in helping to solve personal problems. Persistent personal problems may eventually impact on job performance and, as such, it is in the best interests of the office and the person concerned to ensure that any problems are resolved.

### Self defence training

The office organised self defence training for staff during the year which was primarily attended by staff working in high risk areas such as front line positions and specialist investigative areas.

### Dealing with difficult complainants policy

We reviewed our policy for dealing with difficult complaints and reissued the policy to all staff. As well, we engaged the services of the Department of Health to provide training to staff on dealing with people with mental illnesses.



### Hepatitis vaccinations

All staff who visit correctional centres were vaccinated against hepatitis A and B.

### Other issues

We continued to have all new staff undergo an eye examination. As well, existing staff are re-examined every two years. We see this as important as eye strain is a common complaint for staff who use computer equipment.

During the reporting year we had no workers compensation claims.

We reviewed the security of the reception areas during the year and as a consequence sought funding from NSW Treasury to undertake some modifications. This funding was approved and, at the time of writing, it is expected that work will soon begin.

## EQUAL EMPLOYMENT OPPORTUNITY

Our major EEO achievements for the year were:

- development of a policy for managing unsatisfactory performance;
- surveying staff about the implementation and use of flexible work practices;
- providing cultural awareness/sensitivity training to staff who deal with clients from non-English speaking backgrounds as well as for clients who are Aboriginal.

EEO initiatives for 1998–99 include:

- reviewing our higher duties and short-term relief policy;
- reviewing our performance management system; and
- reviewing our EEO program.

Tables 2 and 3 show a breakdown of staff:

- by salary level, gender and EEO target group; and

- by employment basis (i.e. permanent, temporary, full-time or part-time), gender and EEO target group.

## STAFF EXCHANGE PROGRAM

As reported last year, the Ombudsman and the Commissioner for Local Administration in the United Kingdom negotiated a staff exchange program. The aim of the exchange was to facilitate closer contact between similar jurisdictions, enhance the experience of staff and explore other approaches to complaint handling and investigative techniques.

The exchange concluded during the year. The Commissioner for Local Administration was so impressed with our staff member that he offered her employment at the end of the 12 month exchange.

### Chief and Senior Executive Service

The Ombudsman is the only woman appointed to a SES or CEO position. She was the only woman occupying such a position in the last reporting period. See **table 4**.

### Ombudsman's performance statement

For the Ombudsman's performance statement, see the **Foreword** of this report.

## Industrial relations

### JOINT CONSULTATIVE COMMITTEE

The joint consultative committee (JCC) which comprises representatives of staff, the Public Service Association (PSA) and management, meets regularly to discuss issues.

During the year, the JCC reviewed or developed a number of policies including the code of conduct and managing unsatisfactory performance. The JCC also negotiated a new flexible working hours agreement.

Currently, the priority of the JCC is to identify ways the office can fund unfunded pay increases awarded to staff.

Table 2: Percent of total staff by level

Subgroup as percentage of total staff at each level

Subgroup as estimated percentage of total staff at each level

LEVEL	TOTAL STAFF	Respondents	Men	Women	Aboriginal & Torres Strait Islander people	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
<\$23,339									
\$23,339–\$34,269	11	100%	9%	91%	0%	82%	64%	27%	9.1%
\$34,270–\$43,336	15	100%	20%	80%	6.7%	13%	13%	0%	0%
\$43,367–\$56,080	39	100%	44%	56%	5.1%	21%	5%	0%	0%
>\$56,080 (non SES)	13	100%	54%	46%	0%	31%	15%	8%	0%
SES	3	100%	100%	0%	0%	0%	0%	33%	0%
<b>TOTAL</b>	<b>81</b>	<b>100%</b>	<b>38%</b>	<b>62%</b>	<b>3.7%</b>	<b>28%</b>	<b>16%</b>	<b>6%</b>	<b>1.2%</b>
Estimated subgroup totals		81	31	50	3	23	13	5	1

Table3: Percent of total staff by employment basis

EMPLOYMENT BASIS	Subgroup as a percentage of total staff in each category				Subgroup as estimated percentage of total staff in each category				
	TOTAL STAFF	Respondents	Men	Women	Aboriginal & Torres Strait Islanders people	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	55	100%	45%	55%	3.6%	29%	18%	5%	1.8%
Permanent part-time	9	100%	0%	100%	0%	22%	22%	0%	0%
Temporary full-time	12	100%	25%	75%	8.3%	25%	0%	33%	0%
Temporary part-time	1	100%	0%	100%	0%	100%	0%	0%	0%
Contract SES	3	100%	100%	0%	0%	0%	0%	33%	0%
Contract non-SES	1	100%	0%	100%	0%	100%	100%	0%	0%
<b>TOTAL</b>	<b>81</b>	<b>100%</b>	<b>38%</b>	<b>62%</b>	<b>3.7%</b>	<b>28%</b>	<b>16%</b>	<b>6%</b>	<b>1.2%</b>
Estimated subgroup totals		<b>81</b>	<b>31</b>	<b>50</b>	<b>3</b>	<b>23</b>	<b>13</b>	<b>5</b>	<b>1</b>

## NEW AWARDS

As a public sector agency, the salaries paid to staff and their conditions of employment are negotiated by the Public Sector Management Office of Premier's Department (PSMO) and the relevant unions. During the reporting year, a new conditions of service award was negotiated by the PSMO and the unions.

Our joint consultative committee negotiated changes to the flexible working hours scheme. The agreed changes were referred to the PSA and the PSMO for their endorsement which was given. A new flexitime agreement is now in operation.

## PART-TIME WORK

The office continued to promote part-time work. A number of staff sought short term part-time arrangements to complete a course of study such as at the College of Law.

## 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.

## TRAINEES/APPRENTICES

Due to the withdrawal of funding by NSW Treasury, we are no longer participating in the Careerstart Traineeship program. The office does not employ apprentices.

# General management

## RESEARCH AND DEVELOPMENT

The Ombudsman was not involved in any research and development projects other than the Police Services Employee Management system and the Aboriginal strategic plan referred to elsewhere in this report.

## OVERSEAS TRAVEL

Only one staff member travelled overseas during the reporting year. Greg Andrews, Assistant Ombudsman (General), was in Papua New Guinea from 8 February to 14 February 1998. Mr Andrews is part of the Technical Monitoring and Review Group (TMRG) for the AusAid PNG Ombudsman Commission Institutional Strengthening Project. This project provides assistance to the PNG Ombudsman Commission to improve its management and professional skills and systems so that it can conduct its work efficiently and effectively. We have received a fee for our participation in the TMRG. All travel and costs associated with our involvement are met by AusAid.

Table 4: Chief and Senior Executive Service

	Total at 30 June 1997	Total at 30 June 1998
SES level 8		
SES level 7		
SES level 6		
SES level 5		
SES level 4	1	1
SES level 3		
SES level 2	2	2
SES level 1		
CEO	1	1
<b>Total</b>	<b>4</b>	<b>4</b>

\* CEO positions listed under s.11A of the Statutory and Other Offices Remuneration Act 1975, not included in Schedule 3A of the Public Sector Management Act 1988

## 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. The code, which is reproduced in **appendix 8**, was reviewed and modified during the reporting year.

## ENVIRONMENTAL ISSUES

### Waste reduction

During the year, the office developed a 'waste reduction strategic plan' as required by government policy. The plan, which was submitted to the Environmental Protection Authority for assessment, requires the office to identify its waste materials (which are mostly paper products). We developed strategies to avoid the generation of this waste, or if it is unavoidable, identify reuse or recycling strategies. We are required to report to the EPA within two years on our progress in reducing waste.

### Recycling

We participate in our building's recycling program. This program recycles paper, glass, aluminium and P.E.T. bottles.

### Water usage reduction

Building management has put in place a water saving strategy throughout the building.

## Information management and the library

Information systems provide a range of services including records management, computer support and the library.

During the reporting year, the focus of our information technology (IT) staff member was on Year 2000 issues and the Police Complaints Case Management system (PCCM). This meant that some outcomes scheduled for the 1997-98 reporting year have been delayed.

In 1998-99 it is intended that we:

- review our records management program to ensure consistency with the new *State Records Act*;
- review and update our IT strategic plan and identifying our needs for the next three to five years; and
- finalise our Year 2000 program.

## POLICE COMPLAINTS/CASE MANAGEMENT SYSTEM

In its interim report, the Royal Commission recommended that a new, enhanced and integrated PCCM system should replace several systems used within the Service and link with oversight agencies to form a single, complete record of complaints against the police.

The Premier's Department established a project on behalf of the Service and the oversight agencies (i.e. the 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 acquiring and developing those systems.

This initiative has been given funding approval by NSW Treasury and will have a major impact on the work of this office and indeed the way oversight of police is conducted in NSW. The final specification stage of this project commenced later than anticipated by the participating agencies. It is now expected to be at tender preparation stage by December 1998.

## YEAR 2000 COMPLIANCE

This office began a Year 2000 compliance study in 1997 that was formalised following the release of Government guidelines and a methodology in November 1997. The scope of the risk assessment and management plan recognises that this issue has the potential to seriously disrupt the business of the office in terms of its impact on core complaint handling and administrative systems. All systems and computerised equipment are being assessed for compliance and a risk assessment is being done to determine the impact of failure.

The plan will:

- identify internal and external resources (software and components of hardware with in-built software) that need assessment;
- identify specific resources that support critical business functions and ensure their compliance as a priority; and
- predict the consequences of the failure of critical business functions should compliance not be achieved so that strategies can be incorporated into the office disaster recovery plan.

Certificates of compliance will be sought from suppliers of critical business applications and rectification strategies will be determined.

The plan is approaching its final stages prior to submission for audit by the Government Information Management Board and NSW Treasury for funding of the remediation strategies. Contingency plans will be in place in 1999 ensuring the continued operation of office systems should critical business systems fail. The plan will include provision for

confirmation of the office assessment from an independent third party. The estimated total cost of the office's risk at this stage is \$152,000.

## STATE RECORDS ACT

Under the new *State Records Act* agencies must establish and maintain a records management program which conforms with standards and codes of best practice approved by the State Records Authority. To ensure this office complies with the new Act, a review of our records management program will be undertaken during the 1998-99 year.

## OUR WEB PAGE

Our web page can be found at:

[www.nswombudsman.nsw.gov.au](http://www.nswombudsman.nsw.gov.au)

The web page contains the following:

- information on our role and functions;
- select publications including details of special reports to Parliament;
- the annual report; and
- information about job vacancies.

Figure 1: Revenue sources as at 30 June 1998

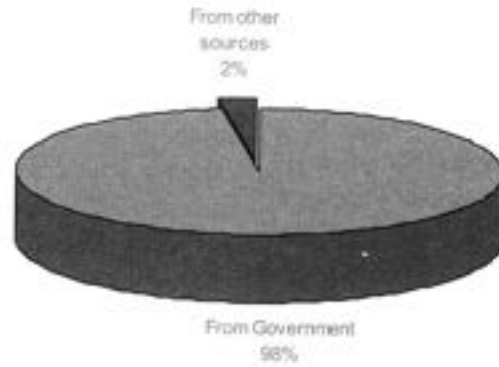


Figure 2: Revenue from other sources

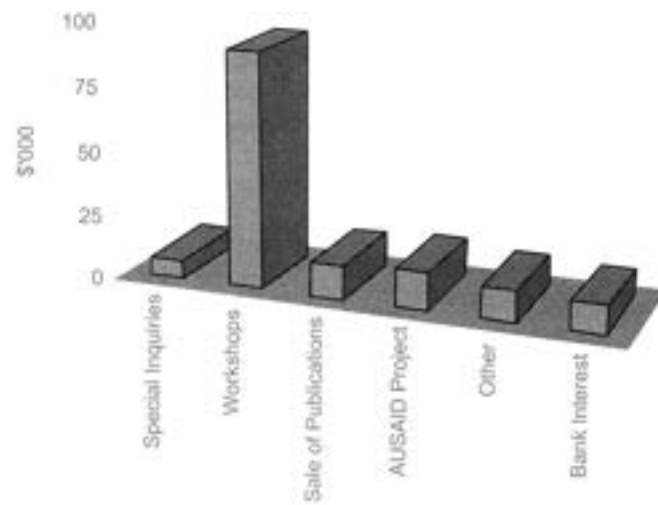
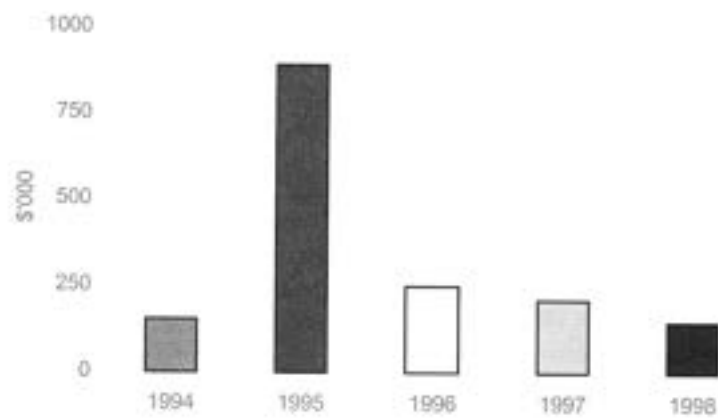


Figure 3: Self generated revenue  
A five year comparison



## Financial services

Financial services includes budgeting, management reporting, accounts payable and purchasing. The key outcomes for 1996–97 were:

- completion of an accounting manual;
- introduction of a computerised invoicing and accounts receivable system; and
- refinement of program budgeting and streamlining of internal and external reporting.

In 1998–99 our priority will be to finalise our internal audit program based on the statement of best practice issued by NSW Treasury.

### 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 and mediations on a user-pays basis and conducting training courses for public sector agencies. A breakup of revenue generated, including capital funding is shown in **table 5**. **Figures 1,2** and **3** compare revenue generated by the office.

**Table 5: Revenue, including capital funding  
1997–98**

<b>Government</b>	
Appropriation	5,476,000
Acceptance of superannuation and long service leave	394,124
Capital funding	28,000
<b>From other sources</b>	
Special inquiries	7,495
Publication sales	13,855
Bank interest	10,864
Training courses	91,525
Trainee subsidy	1,376
Miscellaneous	25,304

### EXPENSES

Most of our revenue is spent on employee expenses. These include salaries, superannuation entitlements, long service leave, payroll tax etc. Last year we spent more than \$4.7 million on employee expenses.

The day-to-day running of the office, including rent, postage, telephone, stores, training, printing and travel cost over \$1.17 million. Depreciation of computer equipment, furniture and fittings and other office equipment cost \$413,259. **Figures 4** and **5** summarise expenses incurred during the year.

#### Consultants

During the year we used one consultant to provide expert advice and assistance. The total cost of that consultant was \$2,124 and as such there was no individual consultancy that cost 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

**Figure 6** represents stores expenditure during the year. Stores includes asset purchases such as office and computer equipment, furniture and fixtures and consumables such as stationery. Because our day-to-day stores expenditure is small, the purchase of major items can cause marked abnormal fluctuations in the level of monthly expenditure.

**Figure 4: Expenses**

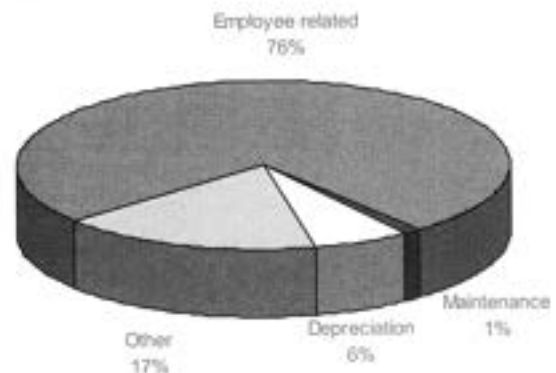




Figure 5: Comparison of expenditure

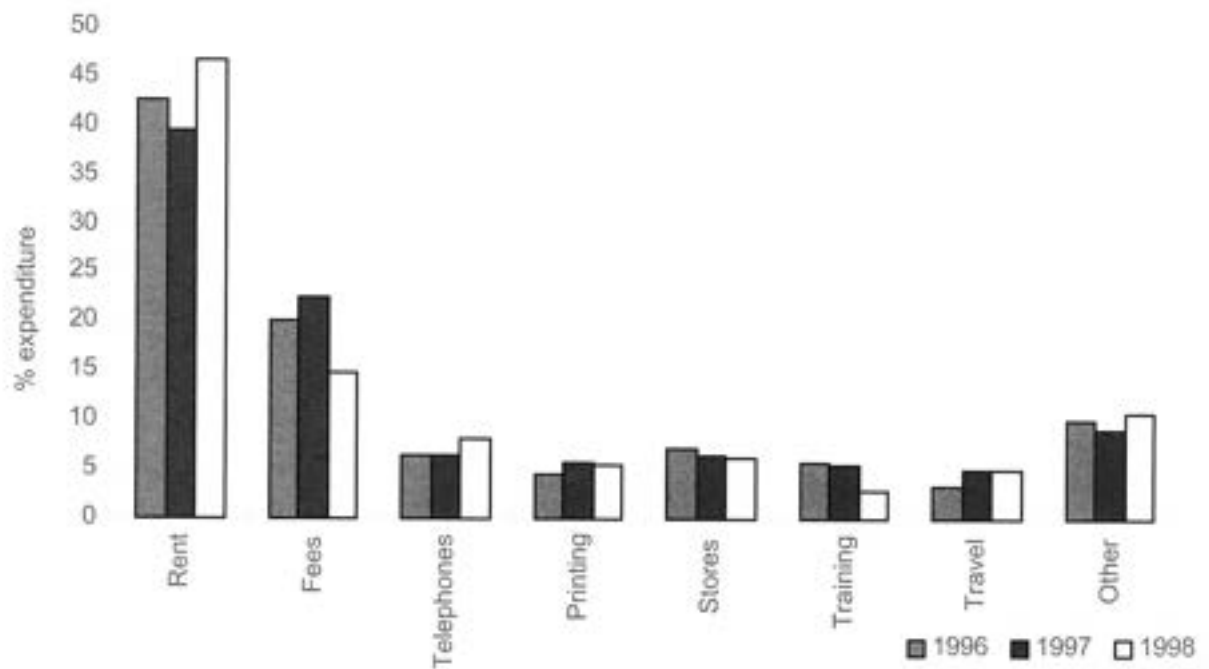
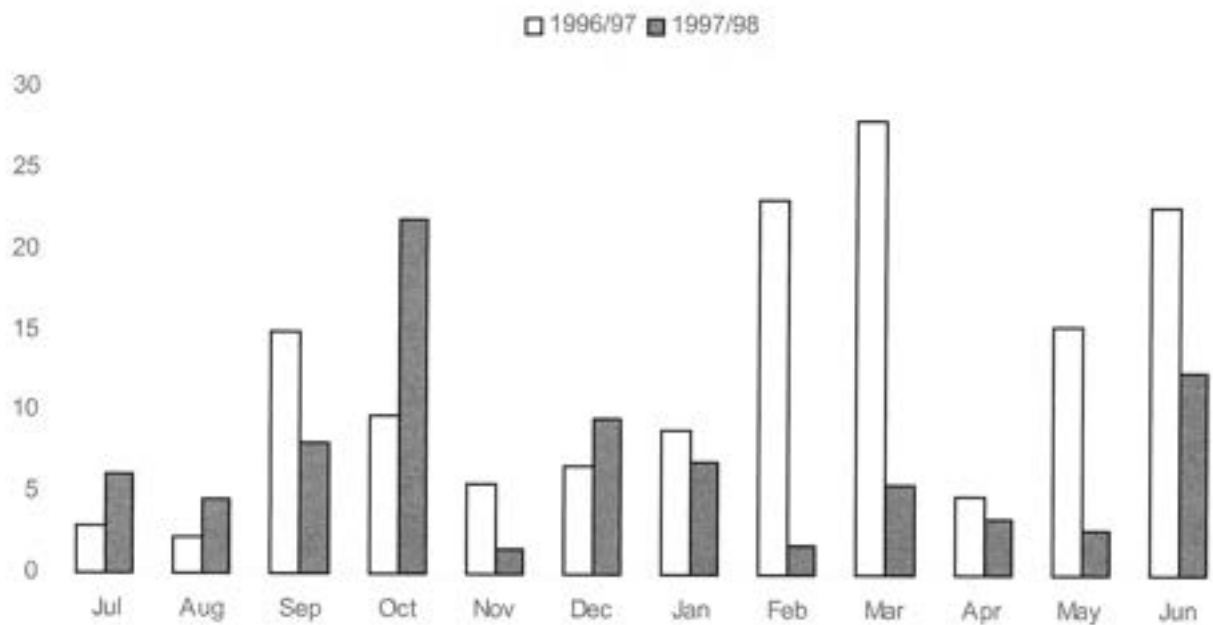


Figure 6: Stores expenditure



## ASSETS

### Major works in progress

We were not involved in any major capital projects during the reporting year.

### Minor works

Funding of \$28,000 was provided to purchase new photocopiers and other minor computer and office equipment.

### Land disposal

We did not dispose of any land or property.

## LIABILITIES

The office has two sources of liabilities — the creditors who are owed money for goods and services they provide and staff who are owed accrued leave entitlements.

### Accounts payable policy

We continue to implement an accounts payable policy. The policy states that all accounts shall be paid within the agreed terms or within 30 days of receipt of invoice if terms are not specified.

Suppliers are notified of the policy in writing when orders for goods and services are placed with them.

We regularly review our payment policy. We aim to pay all accounts within the vendor credit terms 98% of the time. During 1997–98 we paid 99% of our accounts on time compared with 96% the previous year. We have not been required to pay penalty interest on outstanding accounts. See **table 7**.

### Value of leave

The value of recreation (annual) leave and extended (long service) leave owed in respect of all staff for the 1996–97 and 1997–98 financial years is shown in **table 8**.

Table 6: Major assets on hand

Description	June 1997	Acquisitions	Disposals	June 1998
File servers (mini computer)	1	0	0	1
Hub (terminal servers)	5	0	0	5
Personal computers	97	1	1	97
Printers	17	0	1	16
Photocopiers	4	2	2	4
Television and video equipment	7	2	0	9

Table 7: Accounts on hand as at 30 June 1998

Current (i.e. within due date)	\$121,759
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	\$121,759

Table 8: Value of recreation and extended (long service) leave

	June 1997	June 1998
Recreation leave	\$228,179	\$212,903
Extended (long service) leave	\$486,166	\$515,299

## 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 include the investigation area. An example of risk management in this area is the assessment of complaints to determine those to be investigated or declined.

The office participates in NSW Treasury's managed fund. This fund is the State Government's self insurance scheme. The scheme is administered on behalf of the Government by the GIO. The office selects the lowest layer of insurance offered, as the number of claims received is negligible.

## Internal audit

The Ombudsman engages the services of an accounting firm to undertake the internal audit function. The internal audit, at present, consists of:

- an audit of internal controls within the accounting, payroll and leave administration functions;
- review of the office's statutory obligations such as calculation and treatment of payroll tax and fringe benefits tax; and
- reviewing financial statements prior to them being submitted to the Auditor-General.

As mentioned in last year's annual report, we will need to review our internal audit program in response to NSW Treasury's statement of best practice on internal control and internal audit. This statement expands the scope of internal control from traditionally focusing on financial controls and legal compliance to incorporating an assurance that an agency's operations are being conducted efficiently and effectively to achieve the agency's objectives. Although some work has been done on the review of our current program, it needs to be finalised. As such, it is a priority area for the 1998-99 year.

## External audit

As can be seen in **Financial statements** in this report, the Auditor General has qualified our accounts. We are not the only public sector agency whose accounts have been qualified.

During the reporting year the Ombudsman's budget allocation was supplemented by \$69,000 to take account of a back-dated pay increase negotiated after the budget was authorised, as well as to provide funding for our new function under the *Crimes Amendment (Police and Public Safety) Act*. The funding was provided by NSW Treasury and the office assumed NSW Treasury had obtained the appropriate approval. No advice was received from NSW Treasury to indicate that the amounts supplemented had not been approved in accordance with the appropriate legislation.

The Auditor-General took the view that the amounts supplemented to this and other agencies were in breach of the *Constitution Act 1902*. We understand that the Auditor-General and NSW Treasury had lengthy discussions about this matter and how it would impact on the financial reports of agencies. We understand that the Auditor-General and NSW Treasury agreed that each agency's financial report would be qualified rather than NSW Treasury accounts, although the 'error' was outside the control and, at least in our case, the knowledge of each agency.

At the time of writing, the Government had introduced a Bill into Parliament to make the supplementation of funds to agencies 'legal'. If this Bill is passed, the Auditor General will reissue his audit opinion.



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 1998. The Ombudsman is responsible for 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. My responsibility is to express an opinion on the financial report 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 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 were compliance with Treasurer's Directions in respect of usage of fuel cards.

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 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.

**Qualification**

As disclosed in the summary of compliance with financial directives, during the year \$69,000 was appropriated from the Consolidated Fund without being prescribed by an Act of Parliament. In my opinion, this breaches section 45 of the *Constitution Act 1902* and other related statutory requirements. This unauthorised appropriation has been recognised in the financial report.

**Qualified Audit Opinion**

In my opinion, except for the non-compliance with the *Constitution Act 1902* and other related statutory requirements referred to in the qualification paragraph, the financial report of the Ombudsman's Office complies with section 45E of the *Public Finance and Audit Act 1983* 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 1998 and the results of its operations and its cash flows for the year then ended.

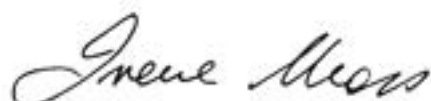
A. C. HARRIS

SYDNEY  
2 September 1998

## 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

14 July 1998

NSW Ombudsman

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SYDNEY  
NSW 2000

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**OMBUDSMAN'S OFFICE  
OPERATING STATEMENT  
FOR THE YEAR ENDED 30 JUNE 1998**

	Notes	Actual 1998 \$'000	Budget 1998 \$'000	Actual 1997 \$'000
<b>Expenses</b>				
<b>Operating Expenses</b>				
Employee related	2(a)	4,767	4,803	4,636
Other operating expenses	2(b)	1,112	1,127	1,260
Maintenance	2(c)	63	40	53
Depreciation and amortisation	2(d)	413	407	398
<b>Total expenses</b>		<b>6,355</b>	<b>6,377</b>	<b>6,347</b>
Less:				
<b>Retained Revenue</b>				
Sale of goods and services	3(a)	14	16	15
Investment income	3(b)	11	15	18
Grants and contributions	3(c)	1	26	49
Other revenue	3(d)	124	57	140
<b>Total retained revenue</b>		<b>150</b>	<b>114</b>	<b>222</b>
Loss on sale of non-current assets	4	(1)	—	(9)
<b>NET COST OF SERVICES</b>	<b>17</b>	<b>6,206</b>	<b>6,263</b>	<b>6,134</b>
<b>Government Contributions</b>				
Recurrent appropriation	5(a)	5,476	5,410	5,254
Capital appropriation	5(b)	28	25	124
Acceptance by the Crown Transactions Entity of employees entitlements and other liabilities	6	394	398	399
<b>Total Government Contributions</b>		<b>5,898</b>	<b>5,833</b>	<b>5,777</b>
<b>DEFICIT FOR THE YEAR</b>		<b>(308)</b>	<b>(430)</b>	<b>(357)</b>

The accompanying notes form part of these statements.

**OMBUDSMAN'S OFFICE  
STATEMENT OF FINANCIAL POSITION  
AS AT 30 JUNE 1998**

	Notes	Actual 1998 \$'000	Budget 1998 \$'000	Actual 1997 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash		131	(20)	17
Receivables	8	21	29	31
Other	9	126	98	91
<b>Total Current Assets</b>		<b>278</b>	<b>107</b>	<b>139</b>
<b>Non Current Assets</b>				
Plant and equipment	10	376	382	764
<b>Total Non-Current Assets</b>		<b>376</b>	<b>382</b>	<b>764</b>
<b>TOTAL ASSETS</b>		<b>654</b>	<b>489</b>	<b>903</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Accounts payable	11	81	54	54
Employee entitlements	12	342	326	310
<b>Total Current Liabilities</b>		<b>423</b>	<b>380</b>	<b>364</b>
<b>TOTAL LIABILITIES</b>		<b>423</b>	<b>380</b>	<b>364</b>
<b>NET ASSETS</b>		<b>231</b>	<b>109</b>	<b>539</b>
<b>EQUITY</b>				
Accumulated funds	13	231	109	539
<b>TOTAL EQUITY</b>		<b>231</b>	<b>109</b>	<b>539</b>

The accompanying notes form part of these statements.

**OMBUDSMAN'S OFFICE  
STATEMENT OF CASH FLOWS  
FOR THE YEAR ENDED 30 JUNE 1998**

	Notes	Actual 1998 \$'000	Budget 1998 \$'000	Actual 1997 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(4,491)	(4,544)	(4,338)
Other		(1,206)	(1,174)	(1,358)
<b>Total Payments</b>		<b>(5,697)</b>	<b>(5,718)</b>	<b>(5,696)</b>
<b>Receipts</b>				
Sale of goods and services		14	18	16
Interest received		13	15	21
Other		163	83	178
<b>Total Receipts</b>		<b>190</b>	<b>116</b>	<b>215</b>
<b>CASH FLOWS FROM GOVERNMENT</b>				
Recurrent appropriation		5,476	5,410	5,254
Capital appropriation		28	25	124
Cash reimbursements from the Crown Transaction Entity		143	155	124
<b>Net Cash Flows from Government</b>		<b>5,647</b>	<b>5,590</b>	<b>5,502</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	17	<b>140</b>	<b>(12)</b>	<b>21</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Proceeds from sale of plant and equipment		-	-	4
Purchases of plant and equipment		(26)	(25)	(124)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(26)</b>	<b>(25)</b>	<b>(120)</b>
<b>NET INCREASE/(DECREASE) IN CASH</b>				
Opening cash and cash equivalents		114	(37)	(99)
		17	17	116
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	16	<b>131</b>	<b>(20)</b>	<b>17</b>

The accompanying notes form part of these statements.



**OMBUDSMAN'S OFFICE  
PROGRAM STATEMENT EXPENSES AND REVENUES**

AGENCY'S EXPENSES AND REVENUES	Program 1*		Program 2*		Total	
	1998 \$'000	1997 \$'000	1998 \$'000	1997 \$'000	1998 \$'000	1997 \$'000
<b>Expenses</b>						
Operating expenses						
Employee related	(2,733)	(2,624)	(2,034)	(2,012)	(4,767)	(4,636)
Other operating expenses	(628)	(700)	(484)	(560)	(1,112)	(1,260)
Maintenance	(37)	(31)	(26)	(22)	(63)	(53)
Depreciation and amortisation	(240)	(231)	(173)	(167)	(413)	(398)
<b>Total Expenses</b>	<b>(3,638)</b>	<b>(3,586)</b>	<b>(2,717)</b>	<b>(2,761)</b>	<b>(6,355)</b>	<b>(6,347)</b>
<b>Retained Revenue</b>						
Sale of goods and services	7	9	7	6	14	15
Investment income	6	10	5	8	11	18
Grants and contributions	1	41	-	8	1	49
Other revenue	16	21	108	119	124	140
<b>Total Retained Revenue</b>	<b>30</b>	<b>81</b>	<b>120</b>	<b>141</b>	<b>150</b>	<b>222</b>
Loss on sale of non-current assets	(1)	(5)	-	(4)	(1)	(9)
<b>NET COST OF SERVICES</b>	<b>(3,609)</b>	<b>(3,510)</b>	<b>(2,597)</b>	<b>(2,624)</b>	<b>(6,206)</b>	<b>(6,134)</b>
Government contributions	3,313	3,266	2,585	2,511	5,898	5,777
<b>DEFICIT FOR THE YEAR</b>	<b>(296)</b>	<b>(244)</b>	<b>(12)</b>	<b>(113)</b>	<b>(308)</b>	<b>(357)</b>

\* The name and purpose of each program is summarised in Note 7.

**OMBUDSMAN'S OFFICE  
SUMMARY OF COMPLIANCE WITH FINANCIAL DIRECTIVES  
FOR THE YEAR ENDED 30 JUNE 1998**

	Actual appropriations		Estimated expenditure	Actual appropriations		Estimated expenditure
	Original	Revised		Original	Revised	
	1998 \$'000	1998 \$'000	1998 \$'000	1997 \$'000	1997 \$'000	1997 \$'000
<b>Recurrent appropriations</b>						
Program 1*	3,042	3,084	3,084	3,099	2,972	2,972
Program 2*	2,368	2,392	2,392	2,247	2,282	2,282
	5,410	5,476	5,476	5,346	5,254	5,254
<b>Capital appropriations</b>						
Program 1*	14	17	17	76	84	84
Program 2*	11	11	11	36	40	40
	25	28	28	112	124	124
<b>Total appropriations (includes transfer payments)</b>	<b>5,435</b>	<b>5,504</b>	<b>5,504</b>	<b>5,458</b>	<b>5,378</b>	<b>5,378</b>

Variances 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 cash expenditures which are financed by the Consolidated Fund as distinct from cash expenditures financed by their own user charges. As a result, they are not able to determine accurately the exact amount of the cash expenditures that are related to the Consolidated Fund. However, the amount of revised appropriation should approximate the actual cash expenditure of Consolidated Fund monies by agencies.

	1998 \$'000	1997 \$'000
Appropriation in Budget Papers	5,435	5,458
Section 24 - Transfers of functions between departments	-	-
Section 26 - Commonwealth Specific Purpose payments	-	-
Additional Appropriations	-	-
<b>Original Appropriation</b>	<b>5,435</b>	<b>5,458</b>

In accordance with Government-wide and past practices, Consolidated Fund expenditures of \$69,000 were made during the year on the understanding that they had been authorised by the Treasurer or that they would be authorised. It has now been confirmed by the Audit Office that these expenditures had not been authorised before 30 June 1998. This has led to a breach of s45 of the Constitution Act 1902, of s21 of the Public Finance and Audit Act 1983 and of applicable Treasurer's Directions. The Treasury had advised that this issue is to be addressed in the current proposals to reform the State's financial, audit and annual reporting legislation.

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 other mandatory professional reporting requirements, 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, other mandatory professional reporting requirements 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/amortisation of Non-Current Physical Assets*

Depreciation/amortisation 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/Amortisation rates used are:	
Computer equipment	33.33%
Office equipment	20%
Furniture and fittings	10%
Leasehold improvement	life of lease contract

*(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.

*(j) Financial Instruments*

Financial instruments give rise to positions that are financial assets or liabilities (or equity instruments) of either the Office or its counterparties. These include Cash at Bank, Receivables and Accounts Payable. Classes of instruments are recorded at cost and are carried at net fair value.

The 1997-98 financial year is the first year that Australian Accounting Standard AAS 33, "Presentation and Disclosure of Financial Instruments" is being applied. Comparative amounts have not been provided as it is considered impractical to do so.

*(i) Cash*

Cash comprises cash on hand and bank balances within the Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11am unofficial cash rate adjusted for a management fee to Treasury. The average interest rate during the year and the year end interest rate were 4.03% and 4.01% respectively. The Office does not have any bank overdraft facility.

*(ii) Receivables*

All trade debtors are recognised as amounts receivable at balance date. Collectability

of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectable are written off. A provision for doubtful debts is raised when some doubt as to collection exists. The credit risk is the carrying amount (net of any provision for doubtful debts). No interest is earned on trade debtors. The carrying amount appropriates net fair value. Sales of publications are made on 14 day terms. Fees for workshop are paid in advance or in accordance with the Ombudsman's policy on the provision of credit.

**(iii) Trade Creditors and Accruals**

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to supplies (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the of the month following the month in which an invoice or statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. No interest was paid during the 1997-98 year.

**(K) Year 2000 Millennium Issue**

The Office is investigating if and to what extend the date change from 1999 to 2000 may effect its activities. To ensure that all significant operations are year 2000 compliant, the Office has established a program to overcome the impact of the transition to the year 2000 on the Office and its customers. The Office does not expect its activities to be significantly impacted by the date change.

## 2. Expenses

(a)	Employee related expenses comprise the following specific items:	1998 \$'000	1997 \$'000
	Salaries and wages (including recreation leave)	4,053	3,951
	Superannuation	274	264
	Long service leave	100	118
	Workers compensation insurance	19	17
	Payroll tax and fringe benefits tax	302	268
	Payroll tax on superannuation	19	18
		<u>4,767</u>	<u>4,636</u>
(b)	Other operating expenses	1998 \$'000	1997 \$'000
	Auditor's remuneration	13	12
	Rental expense relating to operating leases	520	496
	Insurance	5	6
	Consultants Fee	2	-
	Fees	152	272
	Telephones	91	80
	Stores	69	81
	Training	32	68
	Printing	61	73
	Travel	56	63
	Motor vehicle	21	20
	Postal and courier	23	35
	Advertising	21	12
	Books and subscriptions	32	29
	Energy	14	13
		<u>1,112</u>	<u>1,260</u>
(c)	Maintenance	1998 \$'000	1997 \$'000
	Repairs and routine maintenance	63	53
(d)	Depreciation and Amortisation expense	1998 \$'000	1997 \$'000
	Depreciation		
	Computer Equipment	251	279
	Furniture and Fittings	13	13
	Office Equipment	31	26
	Amortisation		
	Leasehold Improvement	118	80
		<u>413</u>	<u>398</u>

During the year amortisation expense of leasehold improvement has been accelerated because the lease contract on office accommodation is due to expire on 31 December 1999. The increase in leasehold improvement amortisation was due to this adjustment.

## COOPERATIVE AND PRODUCTIVE WORKPLACE

### 3. Revenues

(a)	Sale of goods and services	1998	1997
		\$'000	\$'000
	Sale of Publications	13	15
	Other	1	-
		<u>14</u>	<u>15</u>
(b)	Investment Income	1998	1997
		\$'000	\$'000
	Bank interest	11	18
(c)	Grants and contributions	1998	1997
		\$'000	\$'000
	Police pilot project	-	30
	Trainee Salary Subsidy (ATS/Career Start)	1	19
		<u>1</u>	<u>49</u>
(d)	Other Revenue	1998	1997
		\$'000	\$'000
	Specific Projects	7	33
	Workshops	92	77
	AUSAID PNG Ombudsman Institutional Strengthening Project	15	-
	Sitting/review fee	9	27
	Mediation fee	1	3
		<u>124</u>	<u>140</u>

### 4. Loss on Sale of Non-current Assets

	Loss on disposal of property, plant and equipment	1998	1997
		\$'000	\$'000
	Proceeds from sale	-	4
	Written down value of assets sold	(1)	(13)
	Loss on disposal of property, plant and equipment	<u>(1)</u>	<u>(9)</u>

## 5. Appropriations

	1998 \$'000	1997 \$'000
(a) Total recurrent appropriations (per Summary of Compliance)	5,476	5,254
<b>Recurrent appropriations (per Operating Statement)</b>	<b>5,476</b>	<b>5,254</b>
b) Total capital appropriations (per Summary of Compliance)	28	124
<b>Capital appropriations (per Operating Statement)</b>	<b>28</b>	<b>124</b>

## 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 or other government agencies:

	1998 \$'000	1997 \$'000
Superannuation	275	263
Long service leave	100	118
Payroll tax	19	18
	<b>394</b>	<b>399</b>

## 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

	1998 \$'000	1997 \$'000
Sale of publications	-	1
Bank interest	5	7
Workshop fees	6	11
Specific project	-	10
Salary reimbursement	1	2
Mediation fees	1	-
Long service leave reimbursement from Treasury	5	-
Travel advance	1	-
Telephone rebate	2	-
	<u>21</u>	<u>31</u>

Management considers all amounts to be collectable and because of this there is no need to establish a provision for doubtful debts.

## 9. Current Assets – Other

	1998 \$'000	1997 \$'000
Prepayments		
Salaries and wages	7	-
Maintenance	23	30
Rent	48	40
Subscription/Membership	10	10
Training	2	9
Motor Vehicle	1	1
Insurance	31	-
Employee assistance program	2	-
Travel	1	-
Other	1	1
	<u>126</u>	<u>91</u>

## 10. Non-current Assets – Plant and Equipment

At cost unless otherwise stated	Computer Equipment		Furniture & Fittings		Leasehold Improvement		Office Equipment		Total	
	1998 \$'000	1997 \$'000	1998 \$'000	1997 \$'000	1998 \$'000	1997 \$'000	1998 \$'000	1997 \$'000	1998 \$'000	1997 \$'000
Balance 1 July	876	1,099	190	129	663	603	182	246	1,911	2,077
Reclassifications	-	(9)	-	75	-	-	-	(66)	-	-
Additions	7	43	-	11	4	60	15	10	26	124
Disposals	(11)	(257)	(1)	(25)	-	-	(16)	(8)	(28)	(290)
<b>Balance 30 June</b>	<b>872</b>	<b>876</b>	<b>189</b>	<b>190</b>	<b>667</b>	<b>663</b>	<b>181</b>	<b>182</b>	<b>1,909</b>	<b>1,911</b>
Accumulated depreciation										
Balance 1 July	509	484	153	86	369	289	116	167	1,147	1,026
Reclassifications	-	(4)	-	74	-	-	-	(70)	-	-
Depreciation/ Amortisation for the year	251	279	13	13	118	80	31	26	413	398
Writeback on Disposal	(10)	(250)	(1)	(20)	-	-	(16)	(7)	(27)	(277)
<b>Balance 30 June</b>	<b>750</b>	<b>509</b>	<b>165</b>	<b>153</b>	<b>487</b>	<b>369</b>	<b>131</b>	<b>116</b>	<b>1,533</b>	<b>1,147</b>
Written Down Value										
<b>At 30 June 1998</b>	<b>122</b>	<b>367</b>	<b>24</b>	<b>37</b>	<b>180</b>	<b>294</b>	<b>50</b>	<b>66</b>	<b>376</b>	<b>764</b>
<b>At 30 June 1997</b>	<b>367</b>	<b>615</b>	<b>37</b>	<b>43</b>	<b>294</b>	<b>314</b>	<b>66</b>	<b>79</b>	<b>764</b>	<b>1,051</b>

The Office has fully depreciated assets (valued at cost) as follows:

Computer equipment	\$281,000
Office equipment	\$46,000
Furniture and fittings	\$63,000

These assets are still being used by the Office.

## 11. Current Liabilities – Accounts Payable

	1998 \$'000	1997 \$'000
Accrued Expenses	50	50
Payroll Tax	3	-
Superannuation	1	-
Prepaid Workshops	13	1
Workshop Income Distribution	11	-
Fringe Benefits Tax	3	2
ATS (Careerstart Subsidy)	-	1
<b>Creditors</b>	<b>81</b>	<b>54</b>

## 12. Current Liabilities – Employee Entitlements

	1998 \$'000	1997 \$'000
Recreation leave	213	228
Annual leave loading	36	39
Accrued salaries and wages	41	-
Payroll tax on recreation and long service leave	50	41
Workers compensation on recreation leave	2	2
Aggregate employee entitlements	<u>342</u>	<u>310</u>

## 13. Changes in Equity

	1998 \$'000	1997 \$'000
Balance at the beginning of the financial year	539	896
Surplus/(deficit) for the year after extraordinary items	(308)	(357)
Balance at the end of the financial year	<u>231</u>	<u>539</u>

## 14. Commitments for Expenditure

## Operating Lease Commitments

Commitments in relation to non-cancellable operating leases are payable as follows:

	1998 \$'000	1997 \$'000
Not later than one year	506	421
Later than one year but not later than 2 years	254	419
Later than 2 years but not later than 5 years	-	209
Later than 5 years	-	-
	<u>760</u>	<u>1,049</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 service was lower than budget by \$57,000 which was primarily due to higher than anticipated retained revenue generated. Operating expenses were \$51,000 less than budget however maintenance and depreciation expenses were \$29,000 more. There was a \$1,000 loss on the sale of non-current assets.

### Other

The large variance in cash and accounts payable balances compared with budget was due to changes in procedures relating to year-end salary accruals initiated by the NSW Treasury. The upward movement was also attributable to revenues generated from conducting workshops and participation in an overseas aid project. The increase in cash will be used to partially cover the cost of salary increases next financial year.

## 16. Cash and Cash Equivalents

For the purposes of the Statement of Cash Flows, cash includes cash on hand and at bank. Cash at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:

	1998 \$'000	1997 \$'000
Cash	131	17
Closing Cash and Cash Equivalents (per Cash Flow Statement)	131	17

## 17. Reconciliation of Net Costs of Services to Net Cash Flows From Operating Activities

	1998 \$'000	1997 \$'000
Net cash flows from operating activities	140	(21)
Depreciation/Amortisation	(413)	(398)
Recurrent and capital appropriation	(5,504)	(5,378)
Acceptance by Crown of liabilities	(394)	(399)
Decrease / (increase) in provisions	(32)	(17)
Increase / (decrease) in receivables	(10)	-
Increase / (decrease) in prepayments and other assets	35	16
Decrease / (increase) in creditors	(27)	30
Loss on sale of plant and equipment	1	(9)
Net cost of services	(6,206)	(6,134)

## PUBLIC AUTHORITY COMPLAINTS DETERMINED 1997-98

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/minor/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complaint assented	Investigation declined - insufficient evidentiary utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Advance Energy	0	0	0	1	0	0	0	1	0	2	0	0	0	0	0	4
Age & Disability Service	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Agriculture Department	0	2	1	0	1	0	1	0	1	0	0	0	0	0	0	6
Amaroo Local Aboriginal Land Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Ambulance Service of NSW	1	0	0	1	2	0	2	0	0	1	0	0	0	0	0	7
Anti-Discrimination Board	0	0	1	0	2	0	1	0	0	0	0	0	0	0	0	4
Attorney General's Department	2	0	0	1	0	0	4	1	0	2	0	0	0	0	0	10
Audit Office	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Bega Local Aboriginal Land Council	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Birpai Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Building and Construction Industry Long Service Payment Corporation	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Building Services Corporation	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Bureau of Crime Statistics	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Central Coast Area Health Service	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Central Sydney Area Health Service	2	0	1	2	0	0	0	0	0	1	0	0	0	0	1	7
Charles Sturt University	0	0	0	1	0	0	1	1	0	0	0	0	0	0	1	3
Chiropractors & Osteopaths Registration Board	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Community Justice Centre	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Community Services, Dept of	18	8	2	3	9	0	7	3	8	3	8	8	8	8	8	37
Crown Solicitors Office	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	2
Dairy Corporation of NSW	0	0	0	1	0	0	2	1	0	0	0	0	0	0	0	4
Darlington Local Aboriginal Land Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Delta Electricity	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Dental Board of NSW	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Department of Education and Training	58	4	1	7	17	0	21	8	1	9	2	1	1	8	8	122
Department of Land and Water Conservation	9	9	8	2	6	1	10	2	1	5	8	8	8	8	8	27
Department of Local Government	2	0	0	1	0	0	2	0	0	2	0	0	0	0	0	7
Department of Mineral Resources	0	0	0	2	0	0	2	0	0	0	0	0	0	0	0	4
Department of Public Works	0	2	0	0	1	0	2	1	0	1	0	0	0	0	0	7
Department of Transport	0	1	1	4	1	8	6	9	8	2	8	8	8	8	8	15
Department of Urban Affairs	1	0	2	4	2	8	4	1	9	3	8	8	8	8	1	18
Director of Public Prosecutions	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dust Diseases Board	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Energy Australia	8	8	1	1	4	8	4	8	8	7	8	8	8	8	8	17
Environmental Protection Authority	0	0	0	3	1	0	0	1	1	1	0	0	0	0	0	13
Ethnic Affairs Commission	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Fair Trading, Dept of	8	8	8	3	9	8	18	6	8	18	8	8	8	8	8	46
Far West Area Health Service	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Film and Television Office	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Financial Institutions Commission	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Fire Brigades NSW	1	0	0	0	0	0	0	2	0	0	0	0	0	0	0	3
Freightcorp	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Gaming & Racing, Dept of	0	0	0	0	1	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/minor/insufficient interest/commercial matter	Right of appeal or review	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant amiable	Investigation declined - insufficient evidence/probability	Investigation declined on resource/priority grounds	Resolved to Complainant's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Gilgandra Local Aboriginal Land Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Goldenfields Water County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Great Southern Energy	0	0	0	1	0	0	0	0	0	3	0	0	0	0	0	4
Greater Murray Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Greyhound Racing Control Board	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Guardianship Board	4	0	0	1	0	0	0	0	0	0	0	0	0	0	0	5
Health Care Complaints Commission	0	0	0	2	0	0	5	4	0	0	0	0	0	0	0	11
<b>Health Department</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>20</b>
Heritage Council of NSW	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	2
Home Care Service of NSW	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Home Purchase Assistance Authority	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
<b>Housing Department</b>	<b>3</b>	<b>0</b>	<b>9</b>	<b>12</b>	<b>20</b>	<b>0</b>	<b>29</b>	<b>3</b>	<b>0</b>	<b>25</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>100</b>
Hunter Area Health Service	0	0	1	1	2	0	0	0	0	0	0	0	0	0	0	4
Hunter Water Corporation	0	0	0	1	0	0	0	1	0	1	0	0	0	0	0	3
Illawarra Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Industrial Relations, Dept of	1	0	0	0	1	0	1	0	0	2	0	0	0	0	0	5
Integral Energy	0	0	0	0	1	0	4	1	0	1	0	0	0	0	0	7
La Perouse Local Aboriginal Land Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
Land Titles Office	0	0	2	1	1	0	2	1	0	0	0	0	0	0	0	7
<b>Legal Aid Commission of NSW</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>4</b>	<b>5</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>19</b>
Legal Practitioners Admissions Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Lord Howe Island Board	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Macquarie University	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Mental Health Review Tribunal	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Mid North Coast Area Health Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Mid Western Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Motor Vehicle Repair Industry Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
National Parks & Wildlife Service	2	0	1	1	4	0	2	1	0	1	0	0	0	0	0	12
NSW Aboriginal Land Council	0	0	0	0	3	0	2	0	0	1	0	0	0	0	0	6
Northern Rivers Area Health Services	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Northern Sydney Area Health Service	1	0	0	3	1	0	0	1	0	0	0	0	0	0	0	6
Northpower	0	0	0	0	2	0	5	1	0	4	0	0	0	0	0	12
NSW Fisheries	2	0	0	2	1	0	4	2	0	2	0	0	0	0	0	13
NSW Lotteries	0	1	0	1	1	0	0	0	0	0	0	0	0	0	0	3
NSW Medical Board	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2
<b>NSW Valuer General's Office</b>	<b>3</b>	<b>0</b>	<b>22</b>	<b>2</b>	<b>19</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>50</b>
Nurses Registration Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Office of Protective Commissioner	1	0	0	1	3	0	1	0	0	0	0	0	0	0	0	6
Office of Public Guardian	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
<b>Office of State Revenue</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>10</b>	<b>3</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>47</b>
Public Trustee	3	0	0	0	0	0	2	0	0	1	0	0	0	0	0	6
Rail Access Corporation	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Rail Services Australia	2	0	0	0	0	0	1	0	0	0	0	0	0	0	0	3
Real Estate Services Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1

APPENDICES

Public Authority	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	Permitted, referred to authority	Investigation declined on resource/urgency grounds	Complainant assisted	Investigation declined - insufficient evidentiary utility	Investigation declined on resource/urgency grounds	Referred to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Red Chief Aboriginal Land Council	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
Registry of Births, Deaths & Marriages	0	0	0	1	4	0	0	0	2	0	0	0	0	0	7	
Rental Bond Board	0	0	0	0	1	0	1	0	1	0	0	0	0	0	3	
<b>Roads And Traffic Authority</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>12</b>	<b>21</b>	<b>0</b>	<b>19</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>62</b>	
Rural Fire Service	1	0	0	1	0	0	1	0	1	0	0	0	0	0	4	
Rural Lands Protection Boards	0	0	0	1	0	0	1	1	0	0	0	0	0	0	3	
Sheriff's Office	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
South Eastern Sydney Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
South Western Area Health Service	0	1	0	2	0	0	1	0	1	0	0	0	0	0	5	
Southern Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Southern Cross University	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
Southern Sydney Area Health Service	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	
State Electoral Office	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
State Emergency Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
State Forests	0	0	0	3	0	0	0	0	0	0	0	0	0	0	3	
<b>State Rail Authority of NSW</b>	<b>5</b>	<b>0</b>	<b>9</b>	<b>6</b>	<b>11</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>1</b>	<b>9</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>50</b>	
State Superannuation Investment & Mgmt Corp	2	0	0	0	0	0	3	0	0	7	0	0	0	0	12	
State Transit Authority of NSW	1	0	0	1	2	0	3	2	0	1	0	0	0	1	11	
Strata & Tenancy Commissioners	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
Superannuation Administration Authority	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
Sydney Market Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
<b>Sydney Water Corporation</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>6</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>22</b>	
Teacher Housing Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Totalizer Agency	0	0	0	1	1	0	1	1	0	0	0	0	0	0	4	
Transgrid	0	0	1	0	1	0	1	0	0	0	0	0	0	0	3	
University of New England	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
University of Newcastle	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2	
University of Sydney	0	0	0	0	2	0	7	0	0	0	0	0	0	0	9	
University of Technology	0	0	0	1	1	0	2	1	0	0	0	0	0	0	5	
University of Western Sydney	0	1	0	1	0	0	1	0	0	0	0	0	0	0	3	
University of Wollongong	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2	
Veterinary Surgeons Investigating Committee	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	
Waterways Authority	0	0	0	2	2	0	0	2	0	1	0	0	0	0	7	
Western Sydney Area Health Service	0	0	1	3	0	0	0	0	0	0	0	0	0	0	4	
Workcover Authority	2	0	0	5	4	0	7	1	0	1	0	0	0	0	10	
<b>Total</b>	<b>120</b>	<b>16</b>	<b>72</b>	<b>143</b>	<b>200</b>	<b>1</b>	<b>144</b>	<b>74</b>	<b>7</b>	<b>148</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>4</b>	

## LOCAL GOVERNMENT COMPLAINTS DETERMINED 1997-98

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	Pressure referred to authority	Investigation declined on reason/proportionality grounds	Complainant assented	Investigation declined - insufficient evidence to satisfy	Investigation declined on reason/proportionality grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Albury City Council	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Armidale City Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Ashfield Municipal Council	0	0	2	2	1	0	3	1	0	0	0	0	0	0	0	6
Auburn Council	0	0	0	1	1	0	0	1	0	1	0	0	1	0	3	6
Ballina Shire Council	0	0	0	1	1	0	2	1	0	0	0	0	0	0	0	5
Bankstown City Council	0	0	0	1	0	0	3	0	0	0	0	0	0	0	0	4
Barraba Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Baulkham Hills Shire Council	1	0	1	3	1	0	6	8	8	3	0	0	0	0	0	25
Bega Valley Shire Council	0	0	0	0	3	0	2	2	0	1	0	0	0	0	0	8
Bellingen Shire Council	0	0	0	1	2	0	3	1	0	2	0	0	0	0	0	9
Blacktown City Council	0	0	0	3	0	0	3	1	0	2	0	0	0	0	0	9
Bland Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Blayney Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Blue Mountains City Council	0	1	1	3	0	0	2	2	0	0	0	0	0	0	0	9
Botany Bay City Council	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	2
Broken Hill City Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Burwood Municipal Council	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Byron Shire Council	0	0	1	0	0	0	4	1	0	0	0	0	0	0	0	6
Carbone Shire Council	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	3
Camden Municipal Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Campbelltown City Council	0	0	0	1	1	0	2	0	0	4	0	0	0	0	0	8
Castelfrey Municipal Council	0	0	0	4	2	0	6	1	1	3	0	0	0	0	0	19
Casino Municipal Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Central Darling Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Cessnock City Council	0	0	0	1	1	0	6	0	0	1	0	0	0	0	0	9
Clarence River																
County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Cobar Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Coffs Harbour City Council	1	0	7	5	3	0	5	3	0	1	0	0	0	0	0	25
Concord Municipal Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Cooma-Monaro Shire Council	0	0	0	3	0	0	0	0	0	1	0	0	0	0	0	4
Coonabarabran Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Coatlands Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Copmanshant Shire Council	0	0	0	0	1	0	4	1	0	0	0	0	0	0	0	6
Corowa Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Council of the Shire of Wakool	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Cowra Shire Council	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	3
Crookwell Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Deniliquin Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Drumoyne Municipal Council	0	0	0	2	1	0	1	0	0	0	0	0	0	0	0	4
Dubbo City Council	0	0	1	1	0	0	0	0	0	1	0	0	0	0	0	3
Dumaresq Shire Council	0	1	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Eurobodalla Shire Council	1	2	0	4	3	0	7	4	1	0	0	0	0	0	0	22
Evans Shire Council	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Fairfield City Council	1	0	0	0	0	0	2	0	0	2	0	0	0	0	0	5
Forbes Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Glen Innes Municipal Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Gloucester Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2



APPENDICES

Local Council	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Insufficient/insufficient internal/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, returned to authority	Investigation declined on resource/priority grounds	Complaint avoided	Investigation declined - insufficient evidence/probability	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
<b>Gosford City Council</b>	1	0	2	2	3	0	11	1	0	4	0	0	0	0	0	24
Goulburn City Council	0	0	0	2	0	0	1	0	0	0	0	0	0	0	0	3
Grafton City Council	0	0	0	1	0	0	2	0	0	1	0	0	0	0	0	4
Great Lakes Council	0	0	1	0	1	0	5	1	0	1	0	0	0	0	0	9
Greater Lithgow City Council	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	3
Greater Taree City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Griffith City Council	1	0	0	1	1	0	1	1	0	0	0	0	0	0	0	7
Gunnedah Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1
Gunning Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Guyra Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Hastings Council	0	0	0	1	0	0	3	0	0	2	0	0	0	0	0	6
Hawkesbury City Council	0	0	0	1	0	0	2	1	0	1	0	0	0	0	0	5
Hay Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Holroyd City Council	0	0	0	0	1	1	3	0	0	2	0	0	0	0	0	7
<b>Hornsby Shire Council</b>	0	1	6	10	2	0	6	1	0	1	0	0	0	0	3	30
Hume Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Hunter Hill Municipal Council	0	0	0	1	1	0	1	0	0	0	0	0	0	0	0	3
Hunterville City Council	0	0	0	1	1	0	1	0	0	0	0	0	0	0	0	3
Inverell Shire Council	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0	3
Jerilderme Shire Council	0	0	0	0	2	0	2	0	0	0	0	0	0	0	0	4
Junee Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Kempsey Shire Council	0	0	0	1	2	0	1	0	0	0	0	0	0	0	0	4
Kiama Municipal Council	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Kogarah Municipal Council	0	0	2	1	0	0	2	0	0	0	0	0	0	0	0	5
Ku-Ring-Gai Municipal Council	2	0	1	0	4	0	4	0	0	1	0	0	0	0	1	13
Kyogle Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
<b>Lake Macquarie City Council</b>	1	0	0	2	2	0	7	1	0	2	0	0	0	0	0	15
Lane Cove Municipal Council	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	3
Leeton Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
<b>Leichhardt Municipal Council</b>	0	0	2	2	5	0	9	1	0	5	1	0	0	0	0	25
Liston City Council	0	0	2	1	0	0	4	1	0	0	0	0	0	0	0	8
Liverpool City Council	0	0	2	3	2	0	3	1	0	1	0	0	0	0	0	12
Lockhart Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Lower Clarence County Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Maclean Shire Council	0	0	0	1	0	0	4	0	0	0	0	0	0	0	0	5
Maitland City Council	0	0	2	2	2	0	2	0	0	2	0	0	0	0	0	10
Manilla Shire Council	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Manly Municipal Council	0	0	0	3	1	0	0	1	1	3	0	0	0	0	0	9
<b>Marrickville Council</b>	0	0	1	3	3	0	6	0	0	3	0	0	0	0	0	16
Moree Plains Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Moreman Municipal Council	0	0	0	3	0	0	1	3	0	3	0	0	0	0	0	10
Mudge Shire Council	0	0	1	2	0	0	2	1	0	0	0	0	0	0	0	6
Mulwaree Shire Council	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Murrumbidgee Shire Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Muswellbrook Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Nambucca Shire Council	0	0	0	4	1	0	0	0	0	1	0	0	0	0	0	6
Namabri Shire Council	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	2
<b>Newcastle City Council</b>	1	0	4	5	4	0	12	4	0	4	0	0	0	0	0	34
North Sydney Council	1	0	2	1	2	0	2	1	1	1	0	0	0	0	0	11
Nymboida Shire Council	0	0	0	1	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	Insufficiently/insufficiently 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/utility	Investigation declined on resource/priority grounds	Referred to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding	
Orange City Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Parramatta City Council	0	0	9	6	1	0	39	2	0	3	0	0	0	0	0	60
Perry Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Perth City Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Pitwater Council	0	0	3	2	1	0	9	2	0	5	0	0	0	0	0	22
Port Stephens Shire Council	0	0	1	5	1	0	2	1	0	2	0	0	0	0	0	12
Queanbeyan City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Quirindi Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Randwick City Council	0	0	0	1	1	0	2	0	0	2	0	0	0	0	0	6
Richmond River Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Rockdale Municipal Council	1	0	0	1	1	0	2	0	0	1	0	0	0	0	0	6
Ryde City Council	0	0	0	0	3	0	3	0	0	0	0	0	0	0	0	6
Rylstone Shire Council	0	0	1	1	1	0	2	0	0	0	0	0	0	0	0	5
Score Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Shellharbour City Council	0	0	0	1	1	1	10	0	0	2	0	0	0	0	0	15
Singleton Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Snowy River Shire Council	0	1	0	20	0	0	1	0	0	0	0	0	0	0	0	22
South Sydney Council	1	2	1	3	4	0	3	1	0	5	0	0	0	0	0	20
Strathfield Municipal Council	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Sutherland Shire Council	0	0	2	1	0	0	9	2	0	8	0	0	0	0	0	22
Sydney City Council	0	1	2	1	0	0	1	0	0	2	0	0	1	0	0	8
Tallaganda Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Tamworth City Council	0	0	0	1	0	0	2	1	0	2	0	0	0	0	0	6
Temora Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
The Council of Shellharbour	0	0	1	1	0	0	0	0	0	2	0	0	0	0	0	4
The Council of the Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Tumbarumba Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Tumut Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Tweed Shire Council	0	0	0	2	0	0	55	4	0	2	0	1	0	0	0	64
Ulmara Shire Council	0	0	0	1	0	0	3	1	0	0	0	0	0	0	0	5
Uralla Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	0	1	1	0	1	1	0	0	0	0	0	0	0	0	4
Walcha Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Walgett Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Warringham Council	0	1	2	1	0	0	5	0	0	1	0	0	0	0	0	10
Waverley Council	0	1	1	2	0	0	1	0	0	2	0	0	0	0	0	7
Weddin Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Wellington Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Wentworth Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Willoughby City Council	0	0	0	3	1	0	3	0	0	6	0	0	0	0	0	13
Wingcarabee Shire Council	0	0	1	0	0	0	3	0	0	0	0	0	0	0	0	4
Wollandilly Shire Council	0	1	0	6	0	0	7	0	0	3	0	0	0	0	0	17
Wollongong City Council	0	0	2	2	3	0	5	1	0	0	0	0	0	0	0	13
Woolahra Municipality Council	0	6	3	3	1	0	6	1	2	1	0	0	0	0	0	23
Wyong City Council	0	0	1	1	1	0	6	2	0	1	0	0	0	0	0	12
Yamowla Shire Council	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Yass Shire Council	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	3
Young Shire Council	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	2
<b>Total</b>	<b>15</b>	<b>15</b>	<b>79</b>	<b>192</b>	<b>93</b>	<b>4</b>	<b>369</b>	<b>68</b>	<b>6</b>	<b>133</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>9</b>	<b>987</b>

## FOI COMPLAINTS DETERMINED 1997-98

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total
	No jurisdiction	Trivial/negligible/insufficient interest/commercial matter	Right of appeal or review	Explanation or advice provided	Preliminary, referred to authority	Investigation declined on resource/priority grounds	Complainant assented	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	
Ambulance Service of NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Anti-Discrimination Board	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Armidale City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Attorney General's Department	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Ashurst Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Australian Correctional Centre	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Australian Museum	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Ballina Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Baulkham Hills Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Botany Bay City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Cabonne Shire Council	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	2
Canterbury City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Central Coast Area Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Central Sydney Area Health Service	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Clarence River County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Community Services, Dept of	0	0	0	0	0	0	0	3	0	1	0	0	0	0	0	4
Copeland Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Corrective Services, Dept of	1	0	0	0	0	0	0	3	0	2	0	0	0	0	0	6
Dairy Corporation of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Department of Land and Water Conservation	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Department of Local Government	2	0	0	0	0	0	0	1	0	0	0	0	0	0	0	3
Department of Mineral Resources	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Department of School Education	1	0	0	0	1	0	0	5	0	5	0	0	0	0	0	12
Department of Urban Affairs	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Drumoyne Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Fairfield City Council	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Fire Brigades NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Gaming & Racing, Dept of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Gosford City Council	0	0	0	0	0	0	0	6	0	0	0	0	0	0	0	6
Health Department	1	0	0	0	1	0	0	0	0	2	1	0	0	0	0	5
Hoboyd City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hunter Area Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hurstville City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Independent Commission Against Corruption	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Industrial Relations, Dept of	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Jerrilderie Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Kogarah Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Lake Macquarie City Council	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Lismore City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Macquarie University	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Maitland City Council	1	0	0	0	0	0	0	1	0	1	0	0	0	0	0	3

Public Authority	Assessment only						Preliminary or informal investigations						Formal investigations				Total
	No jurisdiction	Trivial/minor/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant advised	Investigation declined - insufficient evidence/no ability	Investigation declined on resource/priority grounds	Resolved to Complainant's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding		
Marland Rural Lands Protection Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1		
Manilla Shire Council	1	0	0	0	0	0	0	1	0	1	0	0	0	0	3		
Manly Municipal Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
Mandokville Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
Minister for Education and Training	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1		
Namandero Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
New England Area Health Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1		
Northern Sydney Area Health Service	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
NSW Fisheries	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1		
NSW Valuer General's Office	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
Office of Financial Management	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2		
Pacific Power	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
Paramatta City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
Police Service	7	0	0	0	0	0	2	10	0	2	1	0	0	0	22		
Rail Services Corporation	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
Roads And Traffic Authority	0	0	0	0	0	0	2	0	0	1	0	0	0	0	3		
Shoalhaven City Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2		
Snowy River Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
South Sydney Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
State Rail Authority	1	0	0	0	0	0	0	0	0	1	0	0	0	0	2		
State Transit Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
State Valuation Office	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
Sydney Cove Authority	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
Tweed Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1		
University of New England	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
University of NSW	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2		
University of Western Sydney	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1		
University of Wollongong	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
Western Sydney Area Health Service	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2		
Willoughby City Council	0	0	0	1	0	0	0	1	0	0	0	0	0	0	2		
Woolahra Municipal Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1		
Workcover Authority	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1		
Wyong Shire Council	1	0	0	0	0	0	0	3	0	0	0	0	0	0	4		
<b>Total</b>	<b>21</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>7</b>	<b>20</b>	<b>0</b>	<b>41</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>148</b>		

## SUMMARY OF NON-POLICE COMPLAINTS DETERMINED 1997-98

Public Authority	Assessment only						Preliminary or informal investigations					Formal investigations				Total	
	No jurisdiction	Trivial/insubstantial/insufficient interest/commercial matter	Right of appeal or redress	Explanation or advice provided	Premature, referred to authority	Investigation declined on resource/priority grounds	Complainant assailed	Investigation declined - insufficient evidentiary utility	Investigation declined on resource/priority grounds	Resolved to Ombudsman's satisfaction	Mediation	Resolved during investigation	Investigation discontinued	No adverse finding	Adverse finding		
Departments & statutory authorities	120	16	72	143	200	1	244	74	7	148	4	1	1	0	4	1035	
Local councils	15	15	79	192	93	4	369	68	6	133	1	1	2	0	9	987	
Correctional centres & juvenile justice centres	5	3	2	62	75	2	197	50	4	102	0	1	1	1	1	506	
Freedom of information	21	2	0	1	3	0	7	70	0	41	2	1	0	0	0	148	
Outside jurisdiction	467	0	0	0	0	0	0	0	0	0	0	0	0	0	0	467	
Total	628	36	153	398	371	7	817	262	17	424	7	4	4	1	14	3143	
																+ current as at 30.6.98	515
																- current as at 30.6.97	447
																<u>Total received for year ended 30.6.98</u>	<u>3,211</u>

## Publications

The *Ombudsman Act* prevents the office from releasing any information relating to an investigation unless it has been tabled in Parliament. For this reason, most of the Ombudsman's reports are not available to the public. The following is a list of reports which have been made public during the past five years. To obtain a full list of publications contact the Publications Officer (02) 9286 1072.

### REPORTS TO PARLIAMENT

Reports to Parliament are \$10 unless otherwise stated.

#### Councils and local government

##### 1996

- Botany Council: Botany Council's Challenge to Limit the Scope of the FOI Act and the Jurisdiction of the Ombudsman

##### 1995

- Good Conduct and Administrative Practice

##### 1994

- Hawkesbury City Council's Conduct Relating to Orange Grove Mall, Richmond

#### Correctional centres

##### 1997

- The Savvas Report
- Mulawa Report — \$50

#### Freedom of Information

##### 1997

- Prince Alfred Private Hospital Project
- Implementing the FOI Act: A Snap Shot

##### 1996

- Botany Council: Botany Council's Challenge to Limit the Scope of the

FOI Act and the Jurisdiction of the Ombudsman

##### 1995

- Freedom of Information — The Way Ahead

##### 1994

- Proposed Amendment to the Freedom of Information Act 1989

#### Police

##### 1998

- Police Adversely Mentioned at the Police Royal Commission
- Risk Assessment of Police Officers

##### 1997

- Alison Lewis and Lithgow Police
- Conflict of Interest: A Service-wide Problem
- Conflict of Interest
- The Foster Report

##### 1996

- The Weston Report
- Police and Insurance Investigators
- The Piat Report
- Police Conciliation Update

##### 1995

- Confidential Information and Police
- NSW Police Complaints System
- Raymond Denning — Withdrawal from the Witness Protection Scheme
- Race Relations and Police
- Police Internal Investigations — Poor Quality Police Investigations into Complaints of Police Misconduct

##### 1994

- Police conciliation — Toward Progress
- Improper Access and Use of Confidential Information by Police
- Urgent Amendments to Section 121 of the Police Service Act

#### Public authorities

##### 1997

- The STA Report

##### 1996

- Inquiry into Juvenile Detention Centres — \$50

##### 1995

- Psychologists Registration Board

## GUIDELINES

##### 1998

- Dealing With Difficult Complainants — \$15

##### 1997

- Administrative Good Conduct — free
- Principles of Administrative Good Conduct — free
- Ombudsman's FOI Policies and Guidelines *second edition* — \$30
- Ombudsman's Protected Disclosures Guidelines *second edition* — \$30

##### 1996

- Electorate Officers Information Kit — free

##### 1995

- Ombudsman's Effective Complaint Handling Guidelines — free
- Ombudsman's Good Conduct and Administrative Practice For Councils *second edition* — \$30
- Ombudsman's Good Conduct and Administrative Practice For Public Authorities and Officials — \$50

## BROCHURES

- General information
- Some tips for making a complaint
- Problems with police?
- Problems in detention?
- Trouble with council?
- Unhappy with an FOI decision?
- Mediation
- Got a complaint? (youth brochure)
- NSW Ombudsman — your watchdog (printed in the nine community languages)

## Publication order form

If you are unsure of the price of a publication, please call the Publications Officer on (02) 9286 1072.

### BROCHURES

All brochures are free — please write the quantity in the box provided.

- General information
- Some tips for making a complaint
- Problems with police?
- Problems in detention?
- Trouble with council?
- Unhappy with an FOI decision?
- Mediation
- Got a complaint? (youth brochure)
- NSW Ombudsman — your watchdog:
  - Arabic  Chinese
  - Croatian  Greek
  - Italian  Serbian
  - Spanish  Turkish
  - Vietnamese

### REPORTS TO PARLIAMENT

Special reports to Parliament are \$10, except where otherwise stated. To order, either:

- send a cheque with this form, or
- for government departments/organisations:
  - **fax or post a purchase order**, stating the title/s and quantity required. We will forward the publications with an invoice.

Title: \_\_\_\_\_

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Title: \_\_\_\_\_

Quantity:

### GUIDELINES

Some of the guidelines are free. To order free guidelines, please fill in the details below. To order all other guidelines, either:

- send a cheque with this form, or
- for government departments/organisations:
  - **fax or post a purchase order**, stating the title/s and quantity required. We will forward the publications with an invoice.

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Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Postcode: \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

### POST OR FAX THIS FORM TO:

Publications Officer  
 NSW Ombudsman  
 Level 3, 580 George Street  
 SYDNEY NSW 2000  
 Tel: (02) 9286 1034  
 Fax: (02) 9283 2911

NSW Ombudsman

## DISABILITY STRATEGIC PLAN ANNUAL REPORT FOR 1997-98

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"> <li>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.</li> <li>The support for our disability planning is communicated to staff at induction and then on a regular basis through access and awareness activities.</li> </ul>
2. Establish and implement planning structure and processes with customer representation.	<ul style="list-style-type: none"> <li>Initial contact has been made with a number of community organisations in the implementation of strategies.</li> <li>Further consultation will occur during the coming year.</li> </ul>
3. Establish staff disability awareness process/program.	<ul style="list-style-type: none"> <li>All staff will be informed of the office's Disability Strategic Plan at induction.</li> </ul>
4. Develop and refine data base - customer and staff.	<ul style="list-style-type: none"> <li>Statistics on staff have been collected (on a voluntary basis) for EEO reporting purposes for some time. The office has a 100% response rate.</li> <li>Some statistics on clients are obtained through our client surveys. However these are only a sample of people who use our services, not all.</li> </ul>
5. Review representation of people with a disability in consultation processes and advisory and policy structures.	<ul style="list-style-type: none"> <li>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.</li> </ul>
6. Develop accessible and appropriate complaints and appeals mechanism for people with a disability.	<ul style="list-style-type: none"> <li>The office has an internal complaints mechanism that could be used by staff with a disability.</li> <li>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 Premier's Memorandum.</li> </ul>
7. Initiate evaluation and review process with customer representation. Link with broader standards and Quality Assurance process.	<ul style="list-style-type: none"> <li>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.</li> <li>We also plan to evaluate the program through general client surveys as funds permit.</li> </ul>



## REPORT FORMAT 2 — OUTCOMES REPORT

KEY RESULT AREA 1	TO ENSURE ACCESS FOR PEOPLE WITH A DISABILITY TO SERVICES PROVIDED BY THE NSW OMBUDSMAN
<p>Strategy One</p> <p>Action</p> <p>Target</p> <p>Responsibility</p> <p>Status</p> <p>Comment</p>	<p>Review building access for people who have a disability</p> <ul style="list-style-type: none"> <li>• Review building access for people with a sight or physical impairment and make recommendations to building management for changes to improve access if required</li> <li>• Ensure all country outreach venues are accessible to people who have a physical disability</li> </ul> <ul style="list-style-type: none"> <li>• Review of building accessibility and recommendations put to building management by end April, 1995.</li> <li>• All venues for country outreach visits are accessible for people with a physical disability</li> </ul> <p>Manager Administration and Public Relation Officer</p> <p>Discussions have occurred with Building Management</p> <p>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.</p>
<p>Strategy Two</p> <p>Action</p> <p>Target</p> <p>Responsibility</p> <p>Status</p> <p>Comment</p>	<p>Review access for people with a hearing impairment</p> <ul style="list-style-type: none"> <li>• Purchase a TTY telephone and train staff in its use</li> <li>• Promote the telephone by including the number on stationery brochures, forms and advertisements</li> <li>• Write to peak organisations advising them of the telephone number</li> <li>• Advertise the telephone number in peak organisation newsletters and other appropriate media</li> <li>• Continue advertising country outreach visits in regional and local press</li> </ul> <ul style="list-style-type: none"> <li>• TTY installed and training completed by September, 1995</li> <li>• Publicity program to be completed by December, 1995</li> </ul> <p>Manager Administration and Public Relation Officer</p> <p>TTY telephone installed and number publicised on letterhead and brochures</p> <p>The above action has been implemented.</p>

KEY RESULT AREA 2	TO ENSURE OPPORTUNITIES FOR WORK AND CAREER DEVELOPMENT
<p>Strategy One</p> <p>Action</p> <p>Target</p> <p>Responsibility</p> <p>Status</p> <p>Comment</p>	<p>Provide appropriate work place technology and equipment for staff who have a disability</p> <ul style="list-style-type: none"> <li>• Assess the equipment needs of new staff who have a disability</li> <li>• Undertake a survey of existing staff to ensure current staff with a disability have access to required technology</li> <li>• Ensure appropriate staff receive available literature on equipment available to assist people who have a disability</li> <li>• Assess the need of special equipment for new staff</li> <li>• Provide funds in the annual budget for the purchase of special equipment for staff who have a disability</li> </ul> <ul style="list-style-type: none"> <li>• Staff with a disability will have specialised equipment available to assist in performing their duties.</li> <li>• Funds will be available for purchasing appropriate equipment for staff who have a disability.</li> </ul> <p>Manager Administration</p> <p>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.</p> <p>7% of staff have indicated that they have a disability (Source: EEO statistics). Where necessary, modifications to work have occurred and specialist equipment purchased.</p>
<p>Strategy Two</p> <p>Action</p> <p>Target</p> <p>Responsibility</p> <p>Status</p> <p>Comment</p>	<p>Review the principle of reasonable adjustment, as it applies to the workforce, including position descriptions for new and existing staff</p> <ul style="list-style-type: none"> <li>• Review existing internal policies on employment that will impact on people who have a disability</li> <li>• Ensure the principle of reasonable adjustment is included in these policies</li> <li>• Provide information for managers and supervisors to raise awareness of reasonable adjustment</li> <li>• Review through discussion with staff who have a disability, the implementation of reasonable adjustment</li> </ul> <p>Improvements in individual productivity as positions are tailored to special needs (to be assessed under performance system)</p> <p>Manager Administration</p> <p>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.</p> <p>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.</p>

APPENDICES

KEY RESULT AREA 2	TO ENSURE OPPORTUNITIES FOR WORK AND CAREER DEVELOPMENT (CONT.)
Strategy Three	Provide opportunities for the employment and training of people who have a disability
Action	<ul style="list-style-type: none"> <li>• Identification of positions that could be filled by a person with a disability and amend position descriptions as required</li> <li>• Contact peak bodies which assist people with a disability to find employment when appropriate positions become available</li> <li>• Investigate opportunities for temporary employment or work experience</li> <li>• Develop and monitor career development plans for staff with a disability in line with the office's performance management system</li> </ul>
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.

## Legal changes

### POLICE AND PUBLIC SAFETY

The *Crimes Legislation Amendment (Police and Public Safety) Act 1998*, which came into effect 1 July 1998, is part of the NSW Government's response to ongoing community concerns about violence in public places and the capacity of police to deal effectively with knife-related crime. Its provisions include greater powers for police to search for and confiscate knives in public places or schools, and powers to direct disruptive individuals or groups to move on.

In introducing the 'Police and Public Safety' legislation, the Minister for Police said "*the Government's aim is to reduce crime involving knives and to reduce the number of persons who routinely go out armed with knives*".

The legislation charges the Ombudsman with the responsibility of monitoring the operation of the Act. For 12 months from the commencement of the Act, the Ombudsman will scrutinise the exercise of the powers conferred on police by the amendments to the Summary Offences Act and the Crimes Act. Our scrutiny of the new powers will include consultations with young people and youth advocacy groups, police officers, victims of crime and others with an interest in the legislation. At the end of the 12 months we will formally report our findings to the Minister and Commissioner for Police.

### CONTROLLED OPERATIONS

In 1995, the High Court of Australia found that evidence obtained during a controlled importation of prohibited drugs organised by the Australian Federal Police was *prima facie* inadmissible because the actions of the law enforcement officers engaged in the controlled importation were unlawful: *Ridgeway v R* (1995) 184 CLR 19.

The *Law Enforcement (Controlled Operations) Act 1997*, which came into effect on 1 March 1998, is a response to the decision in *Ridgeway*. It permits certain prescribed NSW law enforcement agencies - the NSW Police Service, the ICAC, the NSW Crime

Commission and the Police Integrity Commission - to engage in conduct which, but for the Act, would be unlawful (controlled activities). Evidence thereby obtained will not be affected by the rule in *Ridgeway*, although the courts will continue to exercise their discretion to exclude evidence, the prejudicial value of which is considered to be outweighed by its probative value.

The Act gives the Ombudsman an oversight role in relation to compliance by the law enforcement agencies with the Act. The Ombudsman must be notified within 21 days of the granting, variation or renewal of an authority, and is obliged to inspect the records of each law enforcement agency at least once a year "for the purpose of ascertaining whether or not the requirements of this Act are being complied with" (S22(1)). The Ombudsman must report annually to the Presiding Officers of both Houses of Parliament regarding her inspections and may also at any time make a special report to Parliament. The contents of these reports are restricted by the need to ensure confidentiality concerning law enforcement operations and to protect the personal safety of those involved (S24(1)).

### OMBUDSMAN ACT

On 3 June 1998, the Governor, by Proclamation, amended Schedule 1 of the *Ombudsman Act 1974* by omitting from clause 12 the words "*to the Ombudsman or to another person who has referred the disclosure to the ombudsman under Part 4 of that Act for investigation or other action.*"

Under section 12 of the Ombudsman Act, a person may not complain to the Ombudsman about the conduct of a public authority if the conduct is (among other things) of a class described in Schedule 1 of that Act. By virtue of clause 12 of Schedule 1, prior to its amendment, a person may not complain to the Ombudsman about the conduct of a public authority relating to:

- "*the appointment or employment of a person as an officer or employee; or*
- *matters affecting a person as an officer or employee, unless such conduct arises from*

*making a protected disclosure (within the meaning of the Protected Disclosures Act 1994) to the Ombudsman or to another person who has referred the disclosure to the Ombudsman under Part 4 of that Act for investigation or other action."*

The Proclamation to omit the words "to the Ombudsman or to another person who has referred the disclosure to the Ombudsman under Part 4 of that Act for investigation or other action" from clause 12, enabling a complaint to be made about conduct arising from a protected disclosure regardless of to whom the protected disclosure was made.

The Ombudsman Act was also amended by the Statute Law (Miscellaneous Provisions) Act 1998. The object of this amendment was to ensure that the Ombudsman has the power to investigate the conduct of a Department as well as the conduct of any person employed in a Department. The amendment commenced on the 30 June 1998.

The Administrative Decisions Legislation Amendment Act 1998 introduced s.35C into the Ombudsman Act. This section entitles the Ombudsman to refer to the Administrative Decisions Tribunal any legal question arising out of a decision made by a government agency which the Ombudsman is investigating where the agency's decision could also be reviewed by the Tribunal.

### ADMINISTRATIVE DECISIONS TRIBUNAL

The Administrative Decisions Tribunal Act 1997 established an Administrative Decisions Tribunal with responsibility for reviewing the decisions of public authorities. In view of the potential for overlap between the jurisdiction of the Tribunal and the Ombudsman's Office in considering the conduct of public authorities, Section 39 of the Act permits the President of the Tribunal and the Ombudsman to enter into arrangements designed to avoid inappropriate duplication of reviews and inquiries.

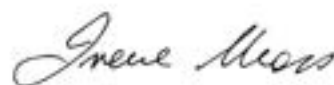
## Code of conduct

Staff in any organisation need to behave in a way which will promote public confidence and trust in the organisation. Public sector staff in particular are expected to do their work with efficiency, fairness, impartiality and integrity.

This code has been developed using the Model Code of Conduct for NSW Public Sector Agencies issued by the Premiers Department. This model sets out the minimum standard applicable to all public servants. Additional topics, which reflect the specific needs of this Office, have been included in the NSW Ombudsman Code of Conduct acknowledging our unique role and our responsibility to maintain public confidence and trust in the institution of the Ombudsman.

It is the aim of this code is to establish a common understanding of the standards of behaviour expected of all staff working in this office. However, the document cannot cover every possible situation which may arise. If you are uncertain of what to do in a particular situation, ask your supervisor or a senior officer for guidance.

The code will be reviewed annually and updated. If you have comments or suggestions for improving the code, please refer them to the Manager Corporate Support who has responsibility for reviewing this code.



Irene Moss  
Ombudsman

### MISSION AND VALUES

The office is accountable to the public of New South Wales 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:

- ensuring an appropriate response to complaints about public authorities; and
- promoting fairness, integrity and improved public administration in NSW.

The public have a right to quality service from the NSW Ombudsman. That service will be characterised by all staff:

- acting with integrity and impartiality;
- setting aside personal interests and views in the discharge of our functions;
- acting conscientiously and competently;
- treating individuals and organisations courteously, attentively and sensitively;
- implementing fair and equitable procedures;
- using resources efficiently and effectively; and
- providing a service that is accessible to everyone.

### 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, Telecommunications (Interception)(New South Wales) Act 1987, Freedom of Information Act 1989, Witness Protection Act 1995, Protected Disclosures Act 1994 and the Law Enforcement (Controlled Operations) Act 1997*) 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.

### WHO THIS CODE APPLIES TO?

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.

### GENERAL PRINCIPLES

#### Respect for people

Staff are to treat members of the public and their colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations. In this regard, they should perform their duties in a professional and responsible manner.

Staff should also ensure that their decisions and actions are reasonable, fair and appropriate to the circumstances, based on a consideration of all the relevant facts, and supported by adequate documentation.

#### Integrity and public interest

Staff are to promote confidence in the integrity of public administration and always act in the public interest and not in their private interest.

Staff should protect the reputation of the office. They should not engage in activities, at work or outside work, that would bring the office or the public sector generally into disrepute.

#### Responsive

Staff are to provide a relevant and responsive service to our clients and customers, providing all necessary and appropriate assistance and fulfil the office's service performance standards.

Staff should provide information promptly and in an appropriate format that is easy for the recipient to understand. The information should be clear, accurate, current and complete.

#### Economy and efficiency

Staff should keep up to date with advances and changes in their area of expertise, and look for ways to improve performance and achieve high standards of public administration.

They should use their authority, available resources and information only for the work related purpose intended.

### GUIDE TO ETHICAL DECISION MAKING

To assist in fostering a climate of ethical awareness, conduct and decision making in this office, staff may find it useful to refer to or consider the following five points when making decisions:

- is the decision or conduct lawful?
- is the decision or conduct consistent with government policy and in line with the office's objectives and code of conduct?
- what will the outcome be for the staff member; work colleagues; the office; and other parties?
- do these outcomes raise a conflict of interest or lead to private gain at public expense?
- can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

### CONFLICTS OF INTEREST

Conflicts of interest exist when it is likely that an employee could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty.

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 Corporate Support 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 Corporate Support. 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 Corporate Support or the relevant statutory officer. Such consultations will be treated confidentially and may avoid harm or embarrassment to the office and yourself.

## 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
- avoidance of 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 if necessary or appropriate be brought to the attention of an appropriate senior officer.

## 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 the Ombudsman's obligation of notification under the Act.

You must report any breaches of this code to the Ombudsman or another senior officer.



## 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 significant precautionary or remedial action that it 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.

## 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.

## DISCRIMINATION AND HARASSMENT

Staff must not harass or discriminate against their colleagues or members of the public on the grounds of sex, marital status, pregnancy, age, race, ethnic or national origin, physical or intellectual impairment, or sexual preference. In addition, staff must not harass or discriminate on the grounds of political or religious conviction.

Managers must make sure that the workplace is free from all forms of harassment and discrimination. They should understand and apply the principles of equal employment opportunity and ensure that staff they supervise are informed of these principles. Managers should also take all necessary steps, such as training and other active measures to prevent and deal with harassment and discrimination in their work area.

## FAIRNESS AND EQUITY

Issues or cases being considered by employees should be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, in a non-discriminatory manner and in conformity with natural justice.

When using any discretionary powers, staff should ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

## PUBLIC COMMENT ON THE WORK OF THE OFFICE

This section should be read in conjunction with the Media Policy and any memorandum issued by the Ombudsman concerning the disclosure of information.

You must not engage in public comment, whether through public speaking engagements, comments to newspaper or radio or television journalists, letters or articles to newspapers or other publications that:

- comments on the work of the office unless you have prior permission or delegated authority of the Ombudsman
- is the expression of private views but by implication is capable of being perceived as official comment from this office

You can disclose official information which is normally given to members of the public seeking that information.

In discussing any other work of the office outside the office, you must confine yourself to material that has entered the public domain by way of Annual Reports, Special Reports to Parliaments, Reports of the Joint Parliamentary Committee on the Ombudsman, media releases authorised by the Ombudsman or public addresses given by the Ombudsman or other statutory officers.

You must refer all media inquiries to the media officer unless you are a 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.

## PROTECTING CONFIDENTIAL INFORMATION

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 (including the confidential databases of other agencies) 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.

## DRUGS AND ALCOHOL

You must not perform your job, remain at work or undertake any office related activity if you are impaired by alcohol or other drugs, including those prescribed by your doctor.

The office does not condone the use of illicit drugs or excessive alcohol. The Ombudsman would expect that staff would not engage in such activities. More specifically:

- there is a prohibition on the use of illicit drugs:
  - in the workplace, whether that be at the office or at a temporary location when required to travel;
  - on the way to or from work;
  - at Ombudsman related functions.
- there is a prohibition on the use of alcohol:
  - during work hours, other than moderate consumption with meals or at official office functions;
  - during any part of the day prior to attending work;
  - when driving office vehicles.

## USE OF OFFICIAL FACILITIES

You must use any resources and equipment of the office economically and without waste. When using equipment you must exercise care and follow operating 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 office stationery, equipment or postage for private purposes 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.

### SECONDARY EMPLOYMENT

You must obtain approval from a senior officer delegated to give such approval for any outside employment that you intend to engage in.

You must not engage in any outside employment or remuneration that would conflict or compromise your duties as an officer of the Ombudsman.

### POLITICAL AND COMMUNITY PARTICIPATION

Staff must make sure that any participation in party political activities does not conflict with their primary duty as an officer of the Ombudsman to perform their duties in a politically neutral manner.

Within the context of the requirements of this code, staff are free to fully participate as volunteers in community organisations and charities, and in professional associations.

### REPORTING CORRUPT CONDUCT, MALADMINISTRATION AND SERIOUS AND SUBSTANTIAL WASTE OF PUBLIC RESOURCES

Staff are urged to report suspected corrupt conduct, maladministration and serious and substantial waste

of public resources. The *Protected Disclosures Act 1994* provides certain protection against reprisals for employees who report such matters either to the principal officer (ie the Ombudsman) or to one of the other investigative bodies – the ICAC, PIC, the Inspector General of the PIC or the Auditor General.

Disclosures may also be made to the other statutory officers under the office's internal reporting procedures for the purposes of the *Protected Disclosures Act*.

Managers must ensure that all staff have information about the office's internal reporting procedures. The person dealing with the protected disclosure should notify the staff member who made the disclosure, of the action taken or proposed to be taken in relation to the disclosure, and the outcome of such action.

### POST SEPARATION EMPLOYMENT

Employees should not use their position to obtain opportunities for future employment. They should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the office.

Former employees should not use, or take advantage of, confidential information obtained in the course of their official duties for any purposes.

All staff should be careful in their dealing with former employees and make sure that they do not give them, or appear to give them, favourable treatment or access to confidential information.

### 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 unless the wearing of such clothes is appropriate for the particular circumstance (eg if the likely audience is young people). 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.

## SECURITY

You must maintain security of the office and any keys, mil keys or swipe cards that you have. You are also responsible for the security of any file (complaint files as well as administrative files) in your care.

To help ensure that proper security is maintained for the office, staff should ensure that:

- they only use the office for work related purposes, or authorised purposes (for example study);
- mil keys are only issued or retained in a permanent basis by those staff who can demonstrate that they regularly use the office for work related purposes out of hours;
- staff must exercise discretion in relation to bringing guests into the office;
- all guests of staff must be accompanied and supervised at all times by a member of staff; and
- all persons allowed into this office who are not members of staff must be accompanied and supervised at all times by a member of staff.

You must make yourself familiar with any security procedures followed in the office including emergency and fire procedures.

## 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
- 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.

## STATEMENT BY STAFF MEMBER OR POTENTIAL STAFF MEMBER

I have read and understand the NSW Ombudsman's Code of Conduct and agree to abide by its terms.

Name: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## FREEDOM OF INFORMATION APPLICATIONS TO OUR OFFICE

The following information is provided in accordance with 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*. Under section 9 and Schedule 2 of the FOI Act, the Ombudsman is exempt from the operation of the Act in relation to its complaint handling, investigative and reporting functions. We therefore rarely make a determination under the Act, as most applications we receive, and indeed all applications this year, related to our exempt functions.

## CLAUSE 9(1)(A) AND (2) OF THE REGULATION AND APPENDIX B OF THE MANUAL

## SECTION A – NUMBERS OF NEW FOI REQUESTS

We received seven new FOI applications in the 97-98 year. None from 96-97 were brought forward into 97-98. All seven applications were processed and five were completed, none were withdrawn and two were transferred out.

FOI requests	Personal	Other	Total
A1 New (including transferred in)	7	0	7
A2 Brought forward	0	0	0
A3 Total to be processed	7	0	7
A4 Completed	5	0	5
A5 Transferred out	2	0	2
A6 Withdrawn	0	0	0
A7 Total processed	7	0	7
A8 Unfinished (carried forward)	0	0	0

## SECTION B – WHAT HAPPENED TO COMPLETED REQUESTS?

All the completed 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. Two applications were transferred to the Police Service.

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*	5**	0**

Notes: \*The figures on the line B5 should be the same as the corresponding ones on A4. These applications related to functions of the office which are excluded from the operation of the Act. Therefore while five applications were completed, they were not completed in terms of B1-B4.

## 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 four application fees of \$30. Three cheques were returned and a money order sent onto the Police Service with a transferred application.

	Assessed Costs	FOI Fees Received
H1 All completed requests	\$0	\$120

#### 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	7	0
J2 22-35 days	0	0
J3 Over 35 days	0	0
J4 Totals	7	0

#### SECTION K – PROCESSING TIME

All applications were dealt with in 0-10 hours.

Processing hours	Personal	Other
K1 0-10 hours	7	0
K2 11-20 hours	0	0
K3 21-40 hours	0	0
K4 Over 40 hours	0	0
K5 Totals	7	0

#### 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
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L2 Number of Ombudsman reviews finalised	0
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L3 Number of District Court appeals finalised	0
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#### 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 did not impact to a significant degree on our activities during the year. The preparation of our Statement of Affairs and Summary of Affairs also does not take much 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.

## Speeches and oral presentations

The following lists the major presentations by staff during the year.

### THE OMBUDSMAN

#### July 1997

- Speech to the Institute of Municipal Management State Conference — *Managing your relationships: fear and loathing in local government*

#### Oct 1997

- Local Government and Shires Associations 1997 State Conference — *Key note address*

#### Feb 1998

- IRR Conference — *Contracting out and accountability*

#### Mar 1998

- University of Western Sydney's International Women's Day Celebrations — *Home Alone*
- The Open Government Network Reaching Common Ground Conference — *The case for open and accountable government*

#### April 1998

- Launch of the report Legal Needs of NESB residents in Fairfield — *Launch Speech*
- Launch of the NSW Audit Office's Better Practice Guide on Corporate Governance — *Launch Speech*

#### May 1998

- Annual Conference of Spokeswomen — *Closing Address*

### THE DEPUTY OMBUDSMAN

#### July 1997

- Attorney Generals Department — Address on Protected Disclosures

#### Aug 1997

- College of Law Seminar — *Review of administrative conduct and review of FOI determinations*
- FOI Practitioners Network Group — *Results of FOI audits*
- Annual Conference of the Australian Institute of Environmental Health and Australian Institute of Building Surveyors — *Managing the risks*

#### Sept 1997

- Audit Office — Address on Protected Disclosures

#### Dec 1997

- Whistleblowers Australia Inc Conference — Address by Chris Wheeler.

### ASSISTANT OMBUDSMAN (POLICE)

#### July 1997

- Police Service — Employee Management: (new principles for conducting investigations into police complaints)

#### Sept 1997

- Police Service — Address on Conciliation

#### Jan 1998

- Police Service — Role of the Ombudsman and Employment Management (new principles for conducting investigations into police complaints)

#### Feb 1998

- Police Service — Employee Management (new principles for conducting investigations into police complaints)
- Police Service — Role of the Ombudsman and Employment Management (new principles for conducting investigations into police complaints)

#### Mar 1998

- Police Service — Role of the Ombudsman

**May 1998**

- Attorney General's Inter-agency meeting (with Complaints Manager) — Address on Domestic Violence

**June 1998**

- Police Service — Role of the Ombudsman and Employment Management (new principles for conducting investigations into police complaints)

**ASSISTANT OMBUDSMAN (GENERAL)****Dec 1997**

- Disability Services Commission (WA) Seminar in Complaint Management — Key note address Understanding Complaint Management

**April 1998**

- Health Care Complaints Commission — Functions and procedures of the Ombudsman

**OTHER STAFF****July 1997**

- Fairfax journalists — Freedom of Information
- Greek Welfare Centre (Crows Nest) — Role of Ombudsman

**Aug 1997**

- Immigrant Women's Speakout — Role of the Ombudsman
- Police Service — Role of the Ombudsman
- Police Service — Role of the Ombudsman and Employment Management (new principles for conducting investigations into police complaints)
- University of Western Sydney Models of mediation and system design course — Mediation at the NSW Ombudsman's Office
- Melville High School — Role of Ombudsman
- News Limited Journalists — Freedom of Information
- African Communities Council — Role of Ombudsman

- Canterbury Bankstown Migrant Resources Centre — Role of Ombudsman
- Greek Welfare Centre (Bankstown) — Role of Ombudsman
- Northern Rivers Regional Organisation of councils (NOROC) — Conflict in Local Government

**Sept 1997**

- Police Service — Role of the Ombudsman (five presentations)
- University of Technology Court based dispute resolution workshop — Mediation at the NSW Ombudsman
- Greek Welfare Centre (Kingsford) — Role of Ombudsman

**Oct 1997**

- Police Service — Role of the Ombudsman (four presentations)
- Skill Share — Role of the Ombudsman
- Inner Metropolitan Regional Organisation — Tender workshop

**Nov 1997**

- Police Service — Role of the Ombudsman (two presentations)
- Parramatta and Ryde Women's Court Assistance Scheme — complaint process and domestic violence

**Dec 1997**

- Police Service — Employee Management

**Jan 1998**

- Police Service — Employee Management (two presentations)
- American Students Study Tour Group — Role of the Ombudsman

**Feb 1998**

- Police Service — Domestic Violence and Domestic Liaison Officers
- Department of Juvenile Justice — Role of the Ombudsman



## APPENDICES

- Police Service — Role of the Ombudsman and Employment Management

### Mar 1998

- Radio 2AC — Role of the Ombudsman
- Police Service — Employee Management
- Arabic Welfare Centre — Role of Ombudsman
- Northern Sydney Regional Organisation of Councils — Special Presentation: Local Government Purchasing
- Law Society/Public Accounts Committee, panellist in Interactive Seminar Dispute management in Local Government — The Selection of the appropriate Mediator

### April 1998

- Police Service — Role of the Ombudsman
- Police Service — Employee Management
- Corrective Services Academy — Role of the Ombudsman

### May 1998

- Police Service — Domestic Violence
- Cityrail — Revenue Protection Staff's Ethics day — Complaint Handling
- Corrective Services Academy — Role of the Ombudsman

### June 1998

- Fairfield Migrant Inter-agency Committee — Ombudsman and equity
- Police Service — Employee Management and Investigation Reports
- Police Service — Role of the Ombudsman and Employment Management
- Address to School Principals at Hurstville — Handling Complaints for the benefit of your students
- Department of Education and Training District Office — Handling Complaints for the benefit of your students
- Consumers Federation of Australia — Key note address: The Fundamentals of Dispute Resolution

## Submissions

### COUNCILS

- Campbelltown Council — sale of surplus land
- Lake Macquarie Council — draft tenders and quotation policy
- Grafton Council — vexatious complaints
- Auburn Council — proposed joint venture with the police service
- Bingara Council — provision of information
- Griffith Council — draft memorandum of understanding between staff and councillors

### PUBLIC AUTHORITIES

- National Parks and Wildlife — draft prosecutions policy
- Department of Local Government — proposed changes to s.55 of the *Local Government Act*
- Department of Education and Training on Draft Procedures for Suspensions and Expulsions
- ICAC inquiry into Aboriginal Land councils
- Department of Juvenile Justice draft complaints Handling Policy and Procedures

### CABINET OFFICE

- Proposed amendment to the *Local Government Act* regarding enforcing Ombudsman recommendations
- Proposed amendment to the *Local Government Act* regarding closed meetings
- Various submissions regarding the Bills related to the Children's Commission and Ombudsman Amendment Bill
- Law Enforcement (Controlled Operations) Bill and related regulation
- Submissions to Ministerial working party re-proposed amendments to the *Police Service Act*.

### ATTORNEY GENERAL

- Detailed submission re draft *Crimes Amendment (Detention After Arrest) Regulation*.

### POLICE SERVICE

- Detailed review with recommendations to Deputy Commissioner's arrest working party re. proposed *Code of Practice: Custody, Rights, Investigation, Management, Evidence*.
- Advised and assisted in the development of curriculum for specialised training of officers participating in the Police Service's youth liaison officer program.  
Responses to Police Service reports on Employee Management, including recommendations from the *Progress Review: Employee Management* by Police Service consultant Janet Ramsey in December 1997.
- Detailed review of trial to change complaints system in the *NSW Ombudsman evaluation of the second phase of the EMS Pilot Project*, January 1998.
- Developed *Statement of Principles* and detailed guidance for the Police Service to use in applying Employee Management principles to complaint handling.
- Reports to Police Service about serious delays in the Police Service's responses to complainants.

### OTHER

- BWC Pty Ltd — 'good neighbour': proposal involving local government
- Parliamentary Accounts Committee — discussion paper of legal costs and local government
- ALRC and HREOC's Inquiry into Children and Legal Processes
- Policing Domestic Violence in NSW: A Discussion Paper

## Significant committees

### INTERNAL

#### Management Committee

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

#### Joint Consultative Committee

- Chris Wheeler — Deputy Ombudsman
- Stephen Kinmond — Assistant Ombudsman (Police)
- Anne Radford — Manager General Team
- Anita Whittaker — Manager Corporate Support
- Vince Blatch — staff representative
- Christine Burgess — staff representative
- John McAteer — staff representative
- Lindy Annakin — alternate staff representative
- Margo Maneschi — alternate staff representative
- Steve Turner/Andrew Holland — PSA representatives

#### External (office representatives only)

##### Protected Disclosure Steering Committee:

- Chris Wheeler — Deputy Ombudsman
- Grant Poulton — Investigation Officer (Projects)

##### Ethics Working Party

- Chris Wheeler — Deputy Ombudsman
- Grant Poulton — Investigation Officer (Projects)

#### NSW Public Sector Corruption Prevention Committee

- Grant Poulton — Investigation Officer (Projects)

#### Community Service Review Council

- Irene Moss — Ombudsman
- Chris Wheeler — Deputy Ombudsman (alternate)

#### Ombudsman Network (Network of accountability agencies)

- Irene Moss — Ombudsman
- Chris Wheeler — Deputy Ombudsman

#### Australasian Ombudsman

- Irene Moss — Ombudsman

#### Internal Witness Advisory Council

- Stephen Kinmond — Assistant Ombudsman (Police)
- Peter Law — Investigation Officer

#### Police Complaint Case Management Steering Committee

- Stephen Kinmond — Assistant Ombudsman (Police)

#### PNG Technical Review and Monitoring Group

- Greg Andrews — Assistant Ombudsman (General)

#### Public Service Panel for the Churchill Fellowship

- Greg Andrews — Assistant Ombudsman (General)

#### Prison Legal Service Advisory Committee

- Lindy Annakin — Senior Investigation Officer

- A**
- Aboriginal Complaints Unit, 44–5, 211, 216
  - Aboriginal land council system, 215
  - Aboriginal Land Rights Act*, 215
  - Aboriginal Legal Service (ALS), 46, 216
  - Aboriginal people
    - arrest of children, 46
    - arrest of young persons, 46
    - complaints statistics, 45
    - housing complaints, 83–4
    - Ombudsman activities supporting, 214–16
    - police responses to requests for assistance, 45
    - police strategic plan, 45
    - public interest, 46
    - visits to people in detention, 215
  - Accountability of government, 67
  - Action Plan for Women, 217
  - Administrative Decisions Tribunal, 268
  - Advance Energy, 87
  - Annual reporting, 177–8
  - Attorney General's Department, 144
  - Audit Office, 119, 186, 187, 188
  - Auditor-General, 106
  - Australian Museum, 169–71
- B**
- Bioremediation, 117–19
- C**
- Cabinet Office, 186
  - Central Sydney Area Health Service (CSAHS), 9, 66, 79, 80, 166
  - Children (Criminal Proceedings) Act* 1987, 35, 41, 46
  - Children (Detention Centres) Act* 1987, 156, 158
  - Children (Detention Centres) Regulations 1995, 159
  - Children (Protection and Parental Responsibility) Act*, 104
  - Children's Legal Service, 151
  - Clarke Report (Dept. of Health), 79, 80
  - Clean Air Act*, 103
  - Commercial-in-confidence agreements, 9, 66, 67, 166–7
  - Commission for Children and Young People (proposed), 10
  - Commissioner of Local Administration (UK), 224
  - Commissioner of Police, 199
  - Complaint Handling in the Public Sector* (CHIPS), 8
  - Complaints
    - agency determinations, 164
    - formal written
      - percentage increase, 7
      - received and determined, 13
      - subject, 13
      - total number, 7, 12
    - growth, 163, 212
    - informal oral
      - percentage increase, 7
      - subject and inquiries received, 13
      - total number, 7, 12
    - from juveniles, 260
    - non-police, 260
    - percentage actioned, 7
    - reasons for, 8
  - Confidential Information and Police*, 31
  - Conflict of Interest and Police* 1998, 51
  - Consequences for Whistleblowers, 194
  - Consumer rights, 69
  - Controlled operations, 201–2, 267
  - Correctional centres *See also* juvenile justice detention centres
    - classification of inmates, 132–4, 142–3, 145
    - compensation issues, 144
    - complaints statistics, 122, 123, 124, 125–6, 129
    - deaths in custody, 138
    - drug information, 146
    - drug testing of inmates, 140–1
    - escapes, 138–9
    - formal investigations, 127–9
    - inmates contacting the Ombudsman, 126
    - lock-ins, 127
    - procedural fairness, 141–2
    - property collection, 147
    - protection for inmates, 136–7
    - public interest inmate, 139–40
    - reporting serious incidents, 137–8
    - strip searches, 130
    - transfers, 143, 145
    - transports, 134–6
    - visits, 129–32
    - visits by Ombudsman officers, 127, 218
    - warrants issue, 146
  - centres
    - Goulburn Correctional Centre, 131, 134, 138, 141
    - Intensive Case Management Program (ICMP), 133, 134
    - Junee Correctional Centre, 127, 144, 146
    - Kirkconnell Correctional Centre, 126
    - Long Bay Correctional Centre, 127, 133, 134, 137
    - Malabar Special Programs Centre, 131, 132–3
    - Metropolitan Remand and Reception Centre (MRRC), 125, 129, 132, 147
    - Mulawa Correctional Centre, 125, 145
    - Parklea Correctional Centre, 126–7, 143
    - Parramatta Correctional Centre, 133
    - Silverwater Correctional Centre, 128, 141
  - Correctional Centres Act* 1952, 130, 139
  - Corrections Health Service (CHS), 135–6, 146
  - complaints statistics, 121, 125
  - incorrect medication, 144–5
  - Countrylink, 84–5
  - Crime Commission, 201, 202
  - Crimes Act*, 31, 40, 52, 53, 130
  - Crimes Amendment (Detention After Arrest) Act* 1997, 40, 44
  - Crimes Legislation Amendment (Police and Public Safety) Act* 1998, 7, 18, 34, 267
- D**
- Deaths in custody, 138
  - Department of Corrective Services
    - Aboriginal programs, 215
    - car transport provisions, 136
    - classification of inmates, 132–4, 142–3

- complaints statistics, 121, 122, 124, 129
- documentation of drug tests, 140–1
- drug information, 146
- Ministerial Liaison Unit, 126
- strip searches, 130, 131
- Department of Education and Training, 71, 72, 73, 172–3, 174, 198
- Department of Fair Trading, 69–70
- Department of Health, 79, 80, 169
- Department of Housing, 82, 83, 84
- Department of Juvenile Justice
- Aboriginal programs, 215
- Department of Land and Water Conservation, 74–5
- Department of Local Government, 104, 106, 112, 115, 186, 187, 188, 189
- duplication of investigation, 104–5
- Department of Urban Affairs and Planning, 104
- Development applications See Local councils
- Development applications (DA), 99–100, 101
- cases, 106–9, 114–16
- Director of Public Prosecutions (DPP), 58
- Disability Council of NSW, 218
- Disability Services Act*, 263
- Drug (Misuse and Trafficking) Act, 130
- Drug Misuse and Trafficking Act* 1985, 54
- E**
- Electricity supplies, 86–7
- Energy/Australia, 86–7
- Environment Protection Authority (EPA), 92, 103
- Environmental Planning and Assessment Act* 1979, 94, 168
- Ethnic community, 212–13
- F**
- Flower and Hart case, 67
- Freedom of information
- audit statistics
  - amendment of records, 176–7
  - appeals, 175
  - applications, trends, 176
  - applications for nonexistent documents, 176
  - complaints to Ombudsman, 176
  - determination of FOI applications, 176
  - reviews, 175
  - summary, 175
  - summary of affairs requirements, 178–83
- cases
- Australian Museum, 169–71
  - delay in FOI application, 167–8
  - Department of Education and Training, 172, 174
  - Department of Health, 169
  - petition release by local council, 171–2
  - Police Service, 169, 173
  - Prince Alfred Private Hospital Project, 9, 66, 166
  - Rail Services Authority, 174
  - refusal of access by local council, 168
  - refusal of access by regulatory bodies, 168
  - Sydney Cove Authority, 174
- commercial-in-confidence agreements, 9, 66, 67, 166–7
- complaint statistics, 161, 162, 163–5, 166, 258–9
- complaints determined, 163
- complaints received, 163–5
- consulting applicants on applications, 167–8
- petitions, 171
- Freedom of Information Act* 1989, 8, 18, 66, 161, 163, 164, 166–7, 168, 169, 170, 171, 173, 174
- annual reporting requirements, 177–8
- Ombudsman audits, 177
- resource implications, 177
- summary of affairs, 178–83
- Freedom of Information (General) Regulation, 161
- G**
- Government lawyers, 10
- H**
- Health authorities, 79–82
- Housing complaints, 82–4
- How Local Councils Consult With Young People*, 104
- I**
- Independent Commission Against Corruption (ICAC), 104, 105, 106, 115, 186, 187, 201, 202
- Aboriginal land council system, 215
- Infringement Processing Bureau (IPB), 85
- Inquiry into Juvenile Detention Centres 1996, 149, 152, 155
- Institute of Municipal Management, 106
- Internal Witness Advisory Council, 23, 193–4
- J**
- Juvenile justice detention centres
- behaviour management scheme, 153–4
  - cases
    - religious observance, 159
    - telephone access refused, 159
    - unfair treatment, 159  - centres
    - Kariong Juvenile Justice Centre, 159
    - Minda, 152, 153
    - Mt Penang, 152
    - Reiby Juvenile Justice Centre, 157
    - Riverina Juvenile Justice Centre, 155, 156
    - Worimi, 152, 153  - complaints statistics, 159–50
  - complaints by institution, 151
  - daily routine, 152
  - outcome of oral complaints, 151
  - staff misconduct, 152
  - transfers, 152
  - confinement, 156, 157–8
- Inquiry into Juvenile Detention Centres, 153, 155, 156
- punishment, 156–8
  - segregation, 158
  - strip searches, 154–5
  - telephone contact, 155
  - transfers, 155–6
  - visits by Ombudsman officers, 218
- L**
- Land and Environment Court, 101, 108, 109
- Land tax complaints, 76–9

- Land Tax Management Act 1956*, 77, 78
- Landcom, 73–4
- Law Enforcement (Controlled Operations) Act 1997*, 7, 18, 201, 267
- Law Society of New South Wales, 105
- Legal advice, use by public authorities, 10
- Licensing Court, 115
- Liquor Administration Board, 115
- Lithgow Correctional Centre, 146
- Local councils, 11
  - bioremediation case, 117–19
  - building and development activity
  - consents, 92–3, 94, 96
  - damage to property from development, 100–1
  - development applications (DA), 99–100, 101, 106–9, 114–16
  - enforcement action, 91–5
  - house extensions, 95
  - illegal building work, 94
  - noise and parking conditions, 93–4
  - tree preservation orders, 96–7
  - unfinished building work, 93
  - cemetery administration, 105
  - complaint statistics, 89, 90, 91, 255–7
  - coordination failures, 95–7
  - defamation, 97–9
  - fees, 113–14
  - freedom of information, 168, 173
  - legal advice, 105
  - management, 105–6
  - sacking of general manager, 109–13
  - mediation, 101–2
  - meetings, 99
  - and poultry farmers, 102–3
  - protected disclosures, 189, 195–7
  - restricting access, 96
  - self assessment survey, 189
  - summary of affairs, 180, 183
  - and young people, 104
- councils*
  - Auburn Council, 106, 109–13
  - Campbelltown Council, 92–3
  - Griffith City Council, 95, 114–16
  - Hornsby Council, 117–19
  - Ku-ring-gai Council, 100, 101, 106–9
  - Leichhardt Council, 86
  - Marrickville Council, 100
  - Nambucca Council, 98
  - Newcastle Council, 96
  - Port Stephens Council, 94
  - Rockdale Council, 93–4
  - Shellharbour Council, 93
  - Shoalhaven Council, 96–7
  - Sutherland Shire, 96
  - Sydney Council, 102
  - Tweed Council, 113–14
  - Waverley Council, 93
  - Willoughby Council, 95, 100–1
  - Wollondilly Council, 102
- Local Government Act*, 94, 98, 106, 110, 111, 168, 172
- Local Government Act 1993*, 109, 112
- Local Government and Shires Associations, 97, 106, 112
- Local Government (Financial Management) Regulation, 118
- M**
- Mental Health Act*, 42, 53
- N**
- National Parks and Wildlife Service, 92
- O**
- Office of State Revenue (OSR), 76, 77, 78, 79
- Ombudsman
  - Aboriginal people, working with, 214–16
  - access, promotion of, 211
  - activities, 15, 17
  - annual report, 2
  - audit functions, 7–8
  - audits, 234–6
  - awareness raising activities, 211
  - benchmarking, 207
  - case management, 205
  - code of conduct, 227–8, 269–75
  - committees, 282
  - complainants' survey, 205
  - corporate support, 209
  - courses, 8, 207
  - disability strategic plan annual report, 263–6
  - duplication of complaint investigation, 104–5
  - environmental issues, 228
  - ethnic community consultations, 212–13
  - finances
    - assets, 233
    - expenditure, 231–2
    - funds, 12
    - liabilities, 233
    - revenue, 230, 231
    - services, 231
    - statements, 237–51
  - freedom of information, 276–7
  - functions, 2, 7, 18
  - guidelines, 8, 208, 218
  - history, 2
  - information, 218
  - information management, 205, 228–9
  - inquiries, 212
  - inquiry customer satisfaction survey, 205–6
  - insurance, 234
  - jurisdiction, 7
  - library, 228
  - media liaison, 219
  - mission, 4
  - objectives, 14–17
  - oral presentations, 208, 278–80
  - organisational structure, 19
  - outcomes, 15, 17
  - overseas travel, 227
  - people in detention, 7
  - people with disability, working with, 217
  - performance strategies, 203, 208
  - publications, 218, 261
  - records, 8, 17, 209
  - regional outreach, 218
  - reports, 12
  - research and development, 227
  - reviews, 207
  - risk management, 234
  - service guarantee, 4
  - staff, 12
    - employment basis, 226

- equal employment opportunity (EEO), 224
- exchange program, 224
- industrial relations, 224, 227
- levels, 12, 222, 225, 227
- managing unsatisfactory performance policy, 223
- occupational health and safety, 223–4
- performance strategies, 221–2
- reduction, 222
- training and development, 223
- wage movements, 223
- submissions, 281
- total quality management (TQM), 209
- values, 4
- website, 205, 229
- women, working with, 217
- year 2000 compliance, 229
- young people, working with, 213–14
- Ombudsman Act 1974*, 18
  - amendments, 267–8
  - complaints under, 15
  - documentation, 66, 173
  - exclusions from jurisdiction, 72
  - investigations under, 51, 128, 142, 214
- P**
- Parliamentary Committee on the Office of the Ombudsman, 192
- Phone tapping See Telephone interception
- Planning law reform, 104
- Police complaints/case management system, 205, 228–9
- Police Integrity Commission (PIC), 186, 192, 201, 202, 205
- Police Internal Investigations – Poor Quality Police Investigations into Complaints of Police Misconduct 1995*, 30
- Police Service See also Royal Commission into the NSW Police Service
  - Aboriginal Policy Statement and Strategic Plan 1998*, 45
  - Adverse Disclosures Project, 28
    - arrest and detention, 40–1
    - Aboriginal children, 41, 46
    - Mardi Gras, 41–2
  - case management system, 205, 228–9
  - Code of Conduct and Ethics*, 51, 52
  - Code of Practice for Custody Rights Investigation Management Evidence (CRIME code)*, 40
  - Commissioner's Instruction 22, 50
  - Complaints and Disciplinary System, 25
  - complaints statistics, 10, 12
    - 1997–98, 10, 12, 24, 25
    - action taken on police complaints, 23
    - allegations (all), 60
    - arrest/detention/warrant, 60
    - assaults, 59
    - breach of police rules/procedures, 61
    - complaints by police officers, 22–3
    - complaints by public, 22
    - complaints formally investigated, 23
    - conciliations, 55–6
    - criminal conduct, 59
    - inadvertent wrong treatment, 60
    - information, 61
    - internal management matters, 26
    - investigations and prosecutions, 60
    - management issues, 61
    - received and determined, 21
  - Computer Incident Dispatch System (CIDS), 48–9
  - conflict of interest, 51–2
  - controlled operations, 201–2, 267
  - criminal and serious misconduct allegations, 27
    - assaults, 28–9
    - drink driving offences, 30
    - driving offences, 36–7
    - fraud, 29
    - improper access to confidential information, 29, 47–8
    - cultural change, 37
    - domestic violence, 39–40
    - drugs and alcohol
    - implementation of policy, 54
    - national guidelines, 55
    - testing of police, 50, 54–5
  - Employee Management (EM) trials, 22, 25
  - freedom of information issues, 169, 173
  - Healthy Lifestyles Branch, 55
  - improvement to system, 11, 21
  - intellectual disability issues, 42–4, 50
  - Internal Affairs investigations, 28
  - internal management matters, 8, 22, 26
  - Internal Witness Support Unit, 23, 193, 195
  - investigations, deficient
    - delays, 21–2, 30
    - inappropriate response, 31–2
    - investigative errors and delay, 30
    - local area command complaint handling, 25, 26, 30
    - mental health issues, 42–4, 50
    - missing person investigations, 37–8
    - parking regulations enforcement, 58–9
    - police shootings, 44, 50–1
  - Procedures for the Evidence Act*, 40
  - protected disclosures, 185–6, 193–5
  - public mischief, 52–4
    - responding to:
      - Aboriginal community, 45
      - emergency calls, 48
      - risk assessment of police officers, 49–50
      - riots, Thredbo Disaster, 57–8
      - stress and trauma on police, 32
      - strip searches, 56–7, 130, 131
      - suspicious death investigation, 57
      - telephone interception, 202
      - tow operation tendering, 58
      - Witness Security Unit (WitSec), 199, 200
      - youth relations
        - deficiencies in response, 35
        - offences involving children, 35–6
        - operations guidelines, 34
        - youth liaison officer initiative, 33–4
  - Police Service Act 1990*, 18
    - complaints under, 15
    - dismissal of officers, 27

- investigations under, 31
- Police Service Amendment (Testing for Alcohol and Prohibited Drugs) Regulation 1997, 54
- Police Service Regulation, 185, 186
- Police Shootings 1990–1997*, 42
- Policy on the Suspension and Expulsion of Students from School*, 71
- Poultry farmers, 102
- Premier's Department, 186, 188, 205
- Premier's Memorandum (96–24), 8, 186–7, 188
- Prince Alfred Private Hospital Project, 9, 66, 166
- Prisons (General) Regulation, 130
- Private accredited certifiers, 104
- Procedures for the Evidence Act*, 40
- Protected disclosures, 8
  - better management workshops, 187
  - cases
    - Department of Education and Training, 198
    - local council, 195–7
    - NSW Film and Television Office (FTO), 197–8
    - Police Service, 193–5
  - complaints statistics, 185, 186
  - inquiries, 186
  - internal reporting policy/system, 188–9, 192
    - evaluation, 190
    - mechanisms for handling staff concerns, 191, 192
    - managing people who make, 192–3
- Protected Disclosures Act* 1994, 7, 8, 18, 185, 186, 192, 193, 196
- Protected Disclosures Guidelines*, 197
- Protected Disclosures Implementation Steering Committee, 186
- Protection of the Environment Operations Act*, 103
- Public authorities
  - commercial-in-confidence, 9, 66, 67, 166–7
  - complaints statistics, 63, 64, 65, 66, 252–4
  - conflicts of interest, 68
  - lawyers' role, 68
  - legal advice, 66–8
  - liability, automatic denial, 68
  - secrecy trends, 66
  - service delivery, 65
- Public Sector Management Act*, 188
- Public Sector Management Office (PSMO), 227
- Public Service Association (PSA), 224
- R**
- Rail Services Australia (RSA), 85–6
- Rail Services Authority, 174
- Railways, 84–6
- Royal Commission into Aboriginal Deaths in Custody, 215, 228
- Royal Commission into the NSW Police Service, 10, 21, 22, 23, 25, 201
  - allegations of less serious conduct, 28
  - allegations of serious misconduct, 27–8
- Royal Prince Alfred Hospital (RPAH), 79, 80
- S**
- Safer Communities Development Fund, 104
- Safer Community Compact, 104
- Schools
  - complaint resolution policy, 72
  - exclusions, 71
  - suspensions, 71
- Search Warrants Act, 130
- Security (Protection) Industry Act* 1985, 52
- Serious Offenders Review Council (SORC), 134, 139, 141
- Service guarantee, 4
- South Eastern Sydney Area Health Service (SESAHS), 81–2
- South West Centre for Public Health, 76
- State Rail Authority (SRA), 84–5
- State Records Act 1998*, 8, 17, 209, 229
- State Transit Authority (STA), 9, 187
- Sydney Water, 86
- T**
- Tamworth Correctional Centre, 144
- Taxation Administration Act* 1996, 79
- Telecommunications (Interception) (NSW) Act* 1987, 18, 202
- Telephone interception, 202
- Therapeutic Goods Act* 1966, 54
- Toxicology Specialists Pty Ltd (TSPL), 79–80
- Traffic Act* 1992, 58
- Transport complaints, 84–6
- U**
- United Pacific Finance (UPF), 118, 119
- University of Wollongong, 72–3
- Use of Incentive Schemes at Juvenile Justice Centres*, 154
- V**
- Valuation of Land Act* 1916, 76–7, 78
- Valuer-General, 76, 77, 78
- Victims Compensation (Amendment) Act* 1989, 144
- Victims Compensation Levy, 144
- W**
- Water supplies, 86
- Whistleblowers See Protected disclosures
- Witness protection, 199–200
- Witness Protection Act* 1995, 7, 18, 199, 200
- Y**
- Young Offenders Act*, 33, 36
- Young people
  - access and awareness program, 213–14
  - complaints, 10, 34, 35, 46, 214
  - and local councils, 104
  - and police, 33–6



## 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, first try to resolve the problem yourself. If this fails, contact us for help.

### How to make a complaint

Making a complaint is simple. Start by coming 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 fee 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. We will then tell you what the authority has said and what we think of its explanations. 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.

## CONTACT DIRECTORY

### General enquiries

<i>Telephone</i>	
Sydney metro. area	(02) 9286 1000
<i>Facsimile</i>	(02) 9283 2911
<i>Toll free</i>	
(outside Sydney metro. area)	1800 451 524
<i>Telephone typewriter (TTY)</i>	
For people with hearing impairment	(02) 9264 8050
<i>E-mail</i>	
nswombos@nswombudsman.nsw.gov.au	
<i>Office address</i>	
Level 3, 580 George Street, Sydney, NSW, 2000	
<i>Office hours</i>	
9.00am–5.00pm weekdays or by appointment	

### Interpreters

<i>For telephone enquiries</i>	131 450
<i>Written complaints:</i>	
Are accepted in any language and replies from our office will be translated if required	

### Aboriginal complaints officers

<i>Complaints about police</i>	
Laurel Russ	(02)9286 1089
<i>Other state government depts</i>	
Nathan Tyson	(02) 9286 1085

### Team Managers

<i>Complaints about police</i>	
Marianne Christmann	(02) 9286 1040
<i>Other state government depts</i>	
Anne Radford	(02) 9286 1018

### Courses

<i>Complaint Handling</i>	
Matina Psaltis	(02)9286 1006
<i>Managing Protected Disclosures</i>	
Chris Wheeler	(02) 9286 1004

### Freedom of Information

David Watson	(02) 9286 1081
Wayne Kosh	(02) 9286 1031

### Media enquiries

James Tremain	(02) 9286 1008 0417 233 320
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### Protected disclosures

Chris Wheeler	(02) 9286 1004
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### Publications

Jacqueline Spedding	(02) 9286 1072
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### Web site

[www.nswombudsman.nsw.gov.au](http://www.nswombudsman.nsw.gov.au)

### Witness protection complaints

	(02) 9286 1035
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### Youth officer

Andrew O'Brien	(02) 9286 1093
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