NSW OMBUDSMAN

98-99

ANNUAL REPORT

WHO WE ARE

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. Since inception there have been many changes; public authorities have merged and separated and there have been four very different Ombudsman.

WHAT WE DO

We investigate and report 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 126,000+ formal complaints and 172,000+ informal complaints.

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

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 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.

This report looks at our performance and organisation and 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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NSW Government publication

The Hon. Meredith Burgmann MLC
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 s.30 of the *Ombudsman Act 1974*, the Ombudsman is required to submit an annual report to Parliament. This is our 24th annual report and contains an account of our work for the twelve months ending 30 June 1999. This report is also made pursuant to s.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 1999) 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 s.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

NSW Ombudsman

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OMBUDSMAN'S

foreword

Irene Moss, AO,
NSW Ombudsman

The past year was a very significant year for us, with a major expansion of our jurisdiction, changes to our police oversight role, and the commencement or completion of a number of important projects.

CHILD PROTECTION

We have just commenced our new child protection role. Amendments to the *Ombudsman Act* have considerably expanded our jurisdiction, both in terms of the nature of the conduct and the bodies covered. The legislation gives us responsibility for monitoring and overseeing the investigation of child abuse allegations and convictions against employees of government and certain non-government agencies such as all private schools and child care centres. We are also charged with keeping under scrutiny the systems for preventing child abuse by employees of those agencies. Several thousand organisations are covered by these new provisions.

This legislation marks a radical extension of our jurisdiction. Until now, our involvement with organisations in the non-government sector has been restricted to the conduct of accredited certifiers and the management company responsible for the private gaol in Junee. With the passage of this legislation we now have jurisdiction over thousands of non-government schools, child care centres, residential child care centres, and organisations providing substitute residential care for children.

Child abuse allegations or convictions against the employees of these agencies must be notified to us. Our role is to ensure that investigations into allegations or convictions are properly conducted and that as a result appropriate action is taken. From our central vantage point we are also uniquely positioned to promote best practice among agencies, by co-ordinating the sharing of knowledge and experience and by offering assistance and advice with regard to the proper handling of such investigations.

Preparing for our new responsibilities has been a huge challenge and undertaking. We have established a new child protection team, headed by an Assistant Ombudsman, Ms Anne Barwick, who joined us in March 1999. On 7 May 1999, the *Ombudsman Amendment (Child Protection and Community Services) Act* commenced, giving effect to our new child protection jurisdiction.

While it is early days, and therefore premature to establish significant trends, I can say that most of the 315 notifications received at the time of writing relate to alleged physical abuse of children. There are a number of allegations of serious sexual and emotional abuse. Across all categories of child abuse notifications, there is an over representation of boys.

The response of agencies to these allegations has varied. Regrettably, some agencies have failed to treat

allegations of child abuse seriously, to investigate allegations thoroughly, and to undertake risk assessments. In some cases, the rights of employees to procedural fairness have not been addressed.

POLICE COMPLAINTS

There have been major enhancements to our role as part of an improved approach to the handling of complaints about police. Increasingly, our task is to scrutinise how well the Police Service is dealing with the issues raised by complaints about its officers.

Recent legislative changes promoted by us emphasise the Police Service's responsibility for determining how complaints are handled. This new scheme requires the Service to deal with the issues quickly and effectively, and to put in place measures to remedy poor performance and improve service to the public. As part of this process, police must consult complainants and endeavour to address their concerns.

Our job is to ensure the Service meets this challenge. An important part of our responsibilities under the new scheme is to 'keep under scrutiny the systems established within the Police Service for dealing with complaints'. This includes auditing complaint records, reviewing the performance of investigators, and assessing the willingness of local commanders to initiate appropriate management action.

We increasingly use complaints to highlight broader problems with police procedure and practice. Examples this year have included problems with the police preparation of evidence for court, the policing of domestic violence, the management of officers under serious stress, and the police use of capsicum spray. We have also highlighted difficulties with the loss of commissioner's confidence process which is used to decide whether officers should be removed, including the need for the Commissioner to have comprehensive information on officers of concern.

Our experience in examining police practices led to Parliament giving us specific responsibility for examining and reporting on the operation of new police powers, notably broader powers to search for and confiscate knives, give reasonable directions to members of the public, require names and addresses in certain circumstances, and stop and search vehicles. As with our broader oversight responsibilities, our reports on these powers will focus on their fair and effective use.

FREEDOM OF INFORMATION

This year we have seen a great deal of public discussion about openness in public administration. Our handling of FOI and related matters has reinforced our previously stated view that there is a need to review the *Freedom of Information Act (FOI Act)* to bring it into the electronic age. It has been 10 years since the Act commenced. In that time:

- numerous minor amendments have been made to the Act, without any overall review of how these amendments interact, leading to unintended complexities and even direct contradictions;
- some important judicial decisions in NSW, as well as elsewhere in Australia, have looked at the rights of the public to access government information;
- the way in which official records are made and stored has changed significantly, with the public sector moving more and more from a paper based environment into an information technology environment; and
- public sector agencies have been increasingly contracting out their functions and activities to bodies that are not subject to the *FOI Act*.

In addition, it appears that at least two other access to information regimes have been legislated in the past few years. One is found in the new *Privacy and Personal Information*

More serious matters continue to be investigated formally. There were 85 police officers criminally charged following investigations into complaints in the past year (this number may increase as the Police Service receives legal advice on other matters completed in 1998–99).

Our review of the s.181D loss of commissioner's confidence process from its introduction in December 1996 until February 1999, found that 465 police officers had been nominated for review. Of these, 69 officers resigned prior to any action being taken, 71 officers were issued with performance warning notices, and 90 officers were issued with s.181D notices anticipating their possible removal from the Service.

Of the 90 officers issued with a s.181D notice:

- 21 were removed from the Service on the Commissioner's order;
- 17 resigned;
- 40 were served with performance warning notices; and
- in 12 cases, the Commissioner decided not to make a removal order or issue a performance warning notice.

Protection Act 1998 and the other, contained in part two of the *Local Government Act 1993*, establishes a radical access to information provision in relation to information held by local councils.

Under each separate regime there are differences in the definitions of what is covered, the procedures required, the exemptions to production that are potentially available, as well as the protections available to the public sector agency.

Our recommended review of the *FOI Act* must address the complications and confusion that is, or is likely to be, created by the existence of these three separate mechanisms.

CUSTOMER SERVICE

Last year's annual report showed that 27% of complaints to us concerned service delivery problems such as delayed action or failure to act, failing to respond to correspondence and phone calls, rudeness and discrimination. Prompted by concern about the number of complaints we were receiving about service delivery by public authorities, we decided to make customer service an important priority and focus of our work over the past year.

Today's public service is a very different place to ten years ago. Government departments are now expected to develop guarantees of service, and members of the public have a justified expectation that they will be treated as clients or customers.

As I foreshadowed last year, continual complaints from citizens about basic customer service issues, often too trivial to investigate individually, have prompted me to inquire into the general standards of customer service across the public sector. Using a 'mystery customer' methodology, my staff are posing as ordinary citizens to sample the levels of service provided by a range of public authorities in person, on the telephone, by letter or email. The results of three such audits are included in the **Public authorities** and **Local councils** sections of this report.

The departments of Industrial Relations and Fair Trading were chosen because of their high level of service contact with the public. They also have a relatively high percentage of customer service problems and complaints made to the Ombudsman about them. Marrickville Council was chosen at random.

Overall the level of service provided by the Department of Industrial Relations to casual customers appears to be of a high professional standard. Telephone and personal contacts were responded to with appropriate levels of courtesy and interest, and our mystery customers were able to obtain answers to their queries in the vast majority of cases. The department performed extremely efficiently replying to correspondence, outperforming its own internal standard. This was not maintained, however, with its replies to email contacts. Indeed, 20% of our mystery customer emails were not replied to at all.

Personal contacts with staff at the Department of Fair Trading were likewise found to be of a high standard. However, our audit indicated that there are serious problems in the department coping with the current demands placed upon it by customers trying to obtain help by phone. An alarming 58% of the calls we made to the main contact number were unsuccessful. Furthermore, 95% of the calls that were answered then had to wait an average six and half minutes before connecting with a staff member! This indicates that the department may in fact be 'losing' a significant proportion of its potential customer base, through either insufficient staff to answer calls or shortcomings in its telecommunications equipment.

Our mystery customers were highly impressed by the superior courtesy and helpfulness of staff at Marrickville Council who they contacted in person or by phone. Unfortunately the service the council provided to citizens who contacted it by mail, or email, was poor in comparison. Less than half the emails we sent received replies and those that did were slow in coming. In addition, after two months, over 40% of our letters had not received a reply.

Through our feedback to the public authorities concerned, I hope to assist agencies to pinpoint areas for improvement and to encourage them to maintain high levels of customer service. Further mystery customer audits are currently under way.

Encouraged by the results obtained to date, we have recently entered into an arrangement with the Premier's Department to expand this project, and we are considering embarking on similar projects in collaboration with other specific watchdog bodies.

It has been gratifying to find that our work of the past few years in promoting better complaint handling in the public sector, through guidelines and training workshops is bearing fruit. A survey of complaint systems at the state and local government levels indicated significant improvements in the number of authorities implementing formal complaint policies and systems. Furthermore, agencies are not simply doing this to provide better service to individual clients or customers, many are also analysing these complaints to identify trends and causes in order to fix underlying problems.

In response to demand, our complaint management training workshops in the past year have focussed on assisting agencies develop complaint handling skills for their frontline staff, particularly for dealing with challenging or difficult customers. In addition to responding to citizen complaints we will continue this proactive service.

SYSTEMIC INVESTIGATIONS

We focus most of our investigative work on issues with a broad application because the grievances of individuals often highlight systemic problems in administration. Through our investigative work, or reports in the media, we can become aware of underlying systemic problems. We attempt to identify the underlying causes of these problems and address them through recommendations for changes to legislation, policies, procedures and/or practices.

For example, I initiated a major investigation into the general management of Kariong Juvenile Justice Centre following a series of riots there during March and April. The former Minister had also referred to me some serious allegations of racist and discriminatory conduct against Aboriginal detainees. The investigation has been wide ranging and includes examining the police response to the riots. Over 50 departmental staff were interviewed as were the majority of detainees present during the riots.

In June we issued an interim report. This addressed broad management issues such as security and the supervision and training of staff. In accordance with the requirements of natural justice, the department and the parties subject of proposed adverse comment were invited to make submissions in response to the interim report. Phase two of the investigation was still underway at the time of writing. This involved utilising our Royal Commission powers to examine a series of specific allegations of misconduct against staff. A report on this investigation will be issued shortly (see 'Kariong investigation' in the **Juvenile justice** section of this report).

Another example of a systemic investigation concerned the case of a number of hire car operators whose businesses suffered due to unreasonable fees charged by the Department of Transport contrary to the *Passenger Transport Act*. While the policy framework behind the legislation was aimed at encouraging the entry of new service providers, the department's actions defeated this purpose and unfairly favoured country taxi operators to the detriment of hire car operators and ultimately the public.

When some operators came near to successfully challenging the fees on appeal to the court, the department initiated action to change the legislation and revoke the right of appeal rather than acknowledge the problem and change its policies. Some justice will now be afforded to the affected parties as a result of the department's positive response to my recommendations following a protracted, and at times, unwelcomed investigation (see 'Killer fees' in the **Public authorities** section of this report).

LOCAL COUNCILS

This year we have continued to explore workable solutions to overcome the major impediments to effective local council administration. In previous annual reports and in other local government forums, I have made observations about two leading causes of below standard performance by local councils — conflict between ratepayers and councils, and conflict between mayors and general managers.

This year, complaints brought to us have highlighted a third significant source of conflict in the local government sphere — conflict between councillors themselves. Personal and ideological differences among councillors are to be expected, but in the instances brought to our attention such differences have developed to a point where they significantly interfere with the effectiveness and efficiency of councils operations.

The complaints we have received demonstrate how ill-equipped councils are to deal with such situations, and how little assistance is provided by the *Local Government Act*. Council codes of conduct and codes of meeting practice have proven inadequate to address the consequences of relationships that have deteriorated completely. The shortcomings in these tools include the lack of effective sanctions, little articulation of how complaints are reported and investigated, and few mechanisms to ensure such matters are dealt with impartially.

As with any other issue that reduces the capacity of local councils to serve their local communities, our focus has been on developing practical measures to reduce or rectify the problem of conflict when it arises. Training and alternative dispute resolution type processes are two extremely effective tools that we have been actively promoting. But conscious that such mechanisms will not resolve every conflict, we have begun exploring other possible measures. Some of the possible remedies that we have identified include:

- an externally triggered suspension provision available in serious circumstances;

- public censure by the Department of Local Government, the Minister, the Ombudsman or the ICAC;
- a legally enforceable direction to a councillor from the Minister on standards of conduct to be met, a breach of which may activate a power to suspend the councillor or specific monetary penalties; and
- the power to dismiss a councillor for a failure to comply with a direction, or a serious abuse of their office or the applicable law.

At this point we have only endorsed the first of these options, and recommended that the Minister for Local Government consider legislative amendments. This is an area that we will be looking at closely in the coming year.

COMPLAINT NUMBERS

While the focus of considerable effort by us in the past year has been on addressing systemic issues, the concerns of individual members of the public continue to be of great importance to us. As you can see from the statistics set out later in this report, last year we received over 20,000 informal complaints and over 7,000 formal written complaints — a total of approximately 28,000 complaints. Compared to last year, while overall complaint numbers are up, formal written complaints are down.

There are several possible factors accounting for this decrease including:

- the changes to the system of handling and oversighting complaints against police;
- the considerable work we have done to provide training in complaint handling across the public sector in the last two years, which has raised awareness among public authorities of the value of having an effective complaints system in place;
- the appointment of increasing numbers of complaints officers throughout the public sector demonstrating a greater willingness by public authorities to assume ownership of complaints;
- encouraging complainants who approach us informally to take their complaint to the public authority concerned in the first instance, and only if they are not satisfied with the response do we advise them to lodge a formal written complaint with us (it would appear that complainants concerns are being satisfactorily addressed at the agency level); and
- an increase in the complexity of the complaints being brought to us (an experience shared by Ombudsman across Australia) being a phenomenon consistent with the general trend among public authorities to take greater responsibility for the more routine customer complaints.

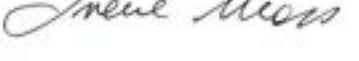
We received 4,402 written complaints about police in 1998–99, down from 5,034 in 1997–98. The fall in written complaints coincided with a rise in oral or informal complaints, consistent with changes to improve the Police Service's informal handling of less serious complaints.

CONCLUSION

The passage and commencement of amendments to both the *Ombudsman Act* and the *Police Service Act* during 1998–99 mark a significant milestone in our operations. Both pieces of legislation arose out of the recommendations of the Royal Commission into the NSW Police Service (hereafter referred to as the Royal Commission), and both are concerned, in part, to address serious systems deficiencies identified by the Royal Commission.

Over the past few years our emphasis on systems scrutiny and performance auditing has been expanding progressively. Our responsibilities under each of these new areas build on our considerable expertise, and I look forward to working with relevant agencies to bring about systems that provide greater accountability and benefit both the parties concerned and the wider community.

This is my final annual report as NSW Ombudsman. The challenges and rewards of this position have been enormous and it is with sadness that I say farewell. I am very proud that we enjoyed unprecedented levels of co-operation from public officials and widespread acceptance and regard from the community. This achievement would not have been possible without the dedication and efforts of my staff, and I pay tribute to all my staff for their hard work and support over the last four and a half years. I would also like to acknowledge the constructive approach of the Joint Parliamentary Committee to its statutory functions and I hope that the positive relationship that has developed between the Office of the Ombudsman and the committee is maintained into the future.



Irene Moss, AO
NSW Ombudsman

PRINCIPAL OFFICERS

NSW OMBUDSMAN

Irene Moss AO

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

In February 1995 Irene became the first woman to be appointed NSW Ombudsman.

DEPUTY OMBUDSMAN

Chris Wheeler

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

Chris was appointed as Deputy in 1994. He has a background in law and local government.

ASSISTANT OMBUDSMAN (CHILDREN & YOUNG PEOPLE)

Anne Barwick

BA, Dip Soc Wk

Anne has a background in welfare, health, education and disability in both the government and non-government sectors. Appointed in 1999.

ASSISTANT OMBUDSMAN (GENERAL)

Greg Andrews

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

Greg manages a diverse range of our activities. Appointed in 1988.

ASSISTANT OMBUDSMAN (POLICE)

Steve Kinmond

BA, LLB, Dip Ed, Dip Crim

Steve has a background in child protection, commercial litigation and migration. Appointed in 1995.

OUR FUNCTIONS AND JURISDICTIONS

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 inmates 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 *(Police Service Act 1990).*

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

5. Monitoring the implementation and effects of the new powers conferred on police by the *Police Powers (Vehicles) Act 1998.*

FOI

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

Protected disclosure

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

Witness protection

8. 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

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

Controlled operations

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

Child protection

11. Overseeing and monitoring the investigation of, and management response to, child abuse allegations and convictions against employees of certain government and non-government agencies; and keeping under scrutiny the systems for preventing child abuse by employees of those agencies *(Ombudsman Amendment (Child Protection and Community Services) Act 1998).*

ORGANISATIONAL CHART

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

Office of the Ombudsman

Ombudsman
Irene Moss, AO

Deputy Ombudsman
Chris Wheeler

Corporate and Executive Support

Manager:
Anita Whittaker BCom

12 staff

The Corporate and Executive Support Team includes specialised staff in administration, accounts, personnel, information systems, library, media, publications and technology support.

Assistant Ombudsman (Children and Young People)
Anne Barwick

Specialist Investigator:
Andrew Patterson B Bus (HRM)

11 staff

The child protection team was established in March 1999 and has an oversight, monitoring and investigation unit, an assessment and analysis unit and a policy and liaison unit.

Assistant Ombudsman (General)
Greg Andrews

Manager:
Anne Radford BA, Grad Dip Lib

30 staff

The general team handles complaints about government departments other than police (about 3,000 complaints and 23,000 inquiries).
It has specialised officers handling complaints from young people and Aboriginal people.

It also has officers specialised in handling complaints about local government, detention centres, freedom of information and witness protection.
It runs complaint handling training courses for public sector employees.

Assistant Ombudsman (Police)
Steve Kinmond

Manager:
Marianne Christmann BSc, LLB

38 staff

The police team received about 4,500 complaints about police officers.
The team has a specialised unit to deal with complaints by Aboriginal people.

COMPLAINTS AT A GLANCE...

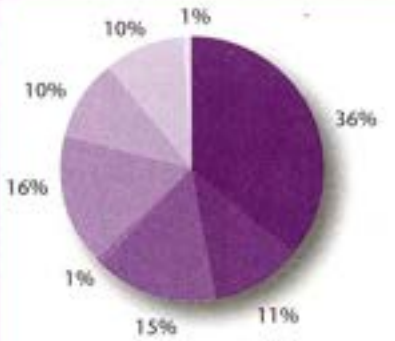


Figure 1: Subject of oral complaints and inquiries 1998/99

- Child protection
- Correctional centres
- Councils
- Departments
- FOI
- Police
- Information requests
- Bodies outside our jurisdiction

Total oral complaints received: 23,082

Total inquiries received: 2,490

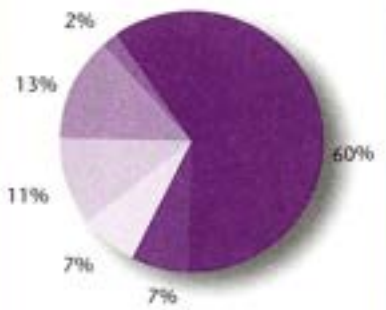


Figure 2: Subject of written complaints received 1998/99

- Correctional centres
- Councils
- Departments
- FOI
- Bodies outside our jurisdiction
- Police

Total written complaints received: 7,321

Of these, police matters total: 4,402

All other matters total: 2,919

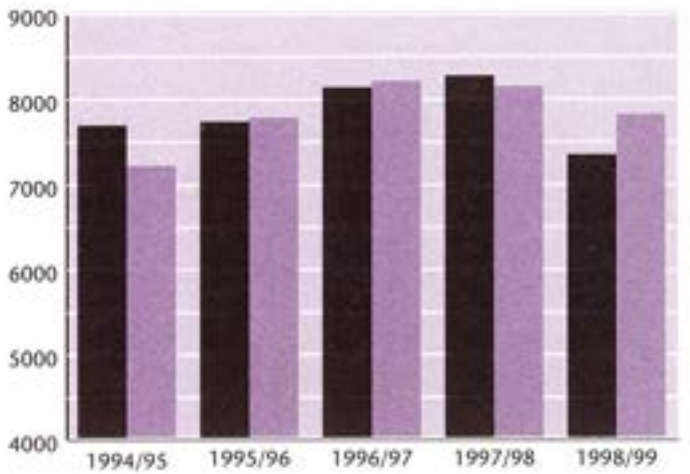


Figure 3: Written complaints received and determined 1998/99

determined received

FINANCIALS AT A GLANCE . . .

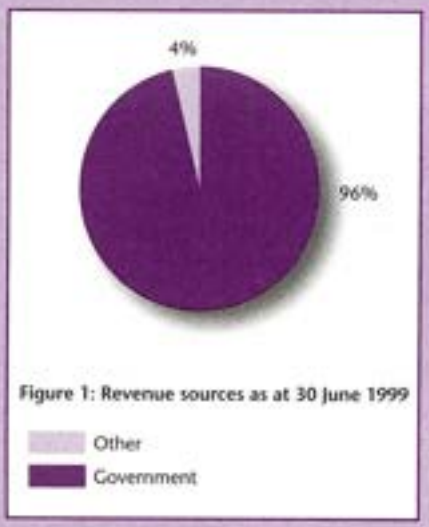


Figure 1: Revenue sources as at 30 June 1999

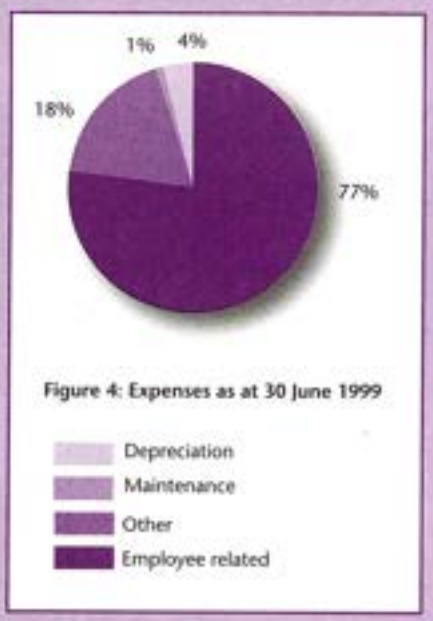


Figure 4: Expenses as at 30 June 1999

REVENUE

Total Government revenue for 1998/99 was $7,219,000. Total revenue from other sources for 1998/99 was $283, 276.

Our revenue was increased during the year to enable us to establish the child protection function. In addition, we received grants from the Premier's Department to continue the implementation of the Police Case Management System (PCCM), a joint project with Premier's Department, the Police Integrity Commission (PIC), the NSW Police Service and our Office. We also received funding for our Year 2000 project.

EXPENDITURE

Most of our revenue is spent on employee expenses and the day-to-day running of our Office. Employee expenses include salaries, superannuation entitlements, long service leave and payroll tax.

A full explanation of our financials can be found later in this report.

Revenue, including capital funding 1998–99

Recurrent appropriation	6,479,000
Capital appropriation	235,000
Acceptance of superannuation and long service leave	506,000
Total	**7,219,000**
From other sources	
Grants	116,000
Publication sales	31,121
Bank Interest	17,038
Training courses	86,168
AusAid project	10,500
Miscellaneous	21,449
Total other sources	**283,276**

Staff levels 1998/99

JUNE 1999	
Statutory appointments	5.0
Investigative staff	74.29
Administrative staff	12.2
Total	**91.49**
Trainees	1.0

YEAR 2000 . . .

The total cost of our Year 2000 program is estimated at $225,000. The risk factors acknowledge our dependence on timely information flow from other organisations, principally some of the larger Government departments.

See **A co-operative and productive workplace** later in this report for more details.

ENVIRONMENTAL ISSUES . . .

We have put in place a number of environmental programs including our energy management program and our waste reduction and purchasing strategic plan.

Some of our energy management strategies include:

- reduction of our total energy consumption, where cost effectively feasible, by 15 per cent of the 1995 level by 2001 and 25 per cent of the 1995 level by 2005;
- inclusion of 6 per cent Green Power in electricity use when available under contract.

We have a waste reduction and purchasing strategic plan that has been assessed by the Environment Protection Authority (EPA). They recommended the establishment of an auditing program to estimate the quantities of scheduled waste and the trialing of recycled paper.

We participate in the building's recycling program which covers paper, glass, aluminium and P.E.T. bottles.

The building owners have implemented a water saving strategy throughout the building.

See **A co-operative and productive workplace** later in this report for more details.

goals and results

GOAL ONE

To promote fair, accountable and responsive public administration and proper conduct by persons and bodies within our jurisdiction

Results and achievements

Complaints and investigations

> 92 per cent of complaints under the *Ombudsman Act* were assessed within 48 hours of receipt

> 64 per cent of complaints within jurisdiction of *Ombudsman Act* resolved through the provision of information/advice or constructive action by public authority

> 68 per cent of complaints under the *Police Service Act* were assessed and cross checked against police service systems within five working days

> 1,393 police cases were conciliated (28 per cent of all complaints about police)

> 79 per cent of surveyed complainants were satisfactied with the conciliation of their police complaint

> of the total complaints finalised under the *Ombudsman Act*, 6.7 per cent were the subject of a request for review of determination

> of the total complaints finalised under the *Police Service Act* , 2.4 per cent were the subject of a request for review of determination

> completed 13 direct investigations under the *Police Service Act*

Recommendations and suggestions

> 100 per cent of reports under *Ombudsman Act* contained recommendations involving changes to law, policy or procedures

> 100 per cent of recommendations made under the *Ombudsman Act* were implemented

> 90 per cent of all recommendations made under *Police Service Act* were implemented

> following our review, we successfully proposed legislative changes to streamline the police complaints system (legislative changes commenced March 1999)

Reports to Parliament

> made three special reports to Parliament

Child protection

> established a child protection function

> briefed all designated agencies and key public authorities on their child protection responsibilities

> established working parties involving interested agencies to look at child protection issues such as risk assessment, suspension and termination of personnel and standard of proof/duty of care

Public sector training courses

> conducted seven courses in complaint handling for frontline staff

> conducted three courses in understanding complaints management

> conducted six courses in dealing with difficult complainants

Future

Complaints and investigations

> continue to rigorously assess complaints

> maintain our current level of monitoring of police investigations

> increase our level of direct investigations

Reports to Parliament

> increase the number of special reports to Parliament

> finalise and submit a report of our monitoring of the effects of the powers conferred on police by the *Crimes Legislation Amendment (Police and Public Safety) Act*

> finalise and submit our report of our monitoring of the effects of the powers conferred on police by the *Crimes Legislation Amendment (Vehicles) Act*

> finalise and table in Parliament our report into the policing of domestic violence

Public sector training courses

> continue offering training courses and develop new courses in investigating complaints, including a specific course for protected disclosures

Guidelines

> publish guidelines on investigating complaints, options for redress for maladministration and service and communication in local councils

> review and combine our *FOI Policies and Guidelines* and the Premiers Department's *FOI Procedure Manual*

Auditing of agencies

> continue to audit agencies FOI annual reporting

> finalise our audit of agencies internal reporting policies for the purpose of the *Protected Disclosures Act*

GOAL TWO

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

Results and achievements

> modified our case management system to improve both complaint management and internal and external reporting

> developed a benchmarking exercise with other Australian Parliamentary Ombudsman

> reviewed our policy for dealing with complaints about our office

> developed an office intranet

Future

> continue benchmarking activities with relevant agencies

> review our records area in response to the new *State Records Act*

> continue the development and implementation of the Police Complaints Case Management System (integrating complaints information between ourselves, PIC and the Police Service).

> continue the development and implementation our office intranet

GOAL THREE

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

Results and achievements

> increased the number of inquiry officers

> visited peak ethnic community groups

> conducted community consultation with the Arabic community

> participated in community festivals

> revised and expanded the range of community language brochures

> developed and distributed an easy to use complaint form for young people

> distributed information on our child protection function to 7,000 agencies and groups

> revised access and awareness plan

> undertook access and awareness visits where presentations were given to various groups including Aboriginal, youth, welfare workers and State Government employees

> held bimonthly complaint taking sessions in Newcastle

> conducted 44 visits to adult correctional centres

> visited all juvenile justice centres

> developed an internet site

Future

> 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

> publish fact sheets on local government and prison issues

GOAL FOUR

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

Results and achievements

> continued our employee assistance program

> introduced a new flexible working hours agreement

> implemented our Year 2000 program

> developed a three year IT strategic plan

Future

> finalise a working from home policy

> review our performance management system

> upgrade information technology systems

> finalise Year 2000 program

> relocate office

> examine the impact of the GST

> develop a privacy management plan in accordance with the *Privacy and Personal Information Act*

> develop a records management plan

> finalise induction manual

improving public administration

CONTNETS

This section incorporates our work under Goal One of our Corporate Plan: To promote fair, accountable and responsive public administration and proper conduct by persons and bodies within our jurisdiction

Our fundemental aim is to ensure that maladministration and misconduct in the public sector are properly addressed and that bodies and people within our jurisdiction deal effectively and efficiently with complaints about their activities.

We scrutinise, and if necessary criticise, public officials and authorities as part of our complaint handling and investigation role. We provide guidance to public authorities and officials based on our experiences of individual complaints and investigations.

We attempt to resolve complaints in a prompt and fair manner. This often puts the initial responsibility on departments and authorities to provide their own solutions.

Our investigative resources are focussed on matters which raise systemic issues. The aim of our investigations is to improve policies and practices and to promote responsiveness and accountability from public authorities.

Other particular responsibilities include hearing appeals about witness protection, providing an avenue of external review for the freedom of information decisions of departments and authorities, providing advice to potential 'whistleblowers' and dealing with protected disclosures. We also audit records relating to intercepted telephone communications and controlled operations.

KEY STRATEGIES

> promote standards of excellence in public administration

> ensure allegations of misconduct against persons within jurisdiction are properly addressed

> identify and address deficiencies in public administration

> promote the use of alternative dispute resolution and mediation as a means of resolving complaints

> afford priority to complaints which identify structural and procedural deficiencies where it appears there may have been serious abuse of power, or which relate to issues of public interest

> audit the customer service and complaint handling procedures of public authorities

COMPLAINTS ABOUT

police

CONTENTS

The recent completion of structural reforms to the Police Service's complaints system has increased pressure for the Service to improve its complaints procedures. However, our monitoring indicates that the Service still has a long way to go.

A series of legislative initiatives promoted by us, and supported by the Police Integrity Commission (PIC) and Police Service, culminated in key amendments to the *Police Service Act* in March. These have given the Service the tools it needs to develop fairer, faster and more effective complaint processes.

The legislative amendments emphasise the Police Service's principal responsibility for dealing properly and effectively with grievances of members of the public. The revised scheme also strengthens our power to scrutinise the Service's complaint processes.

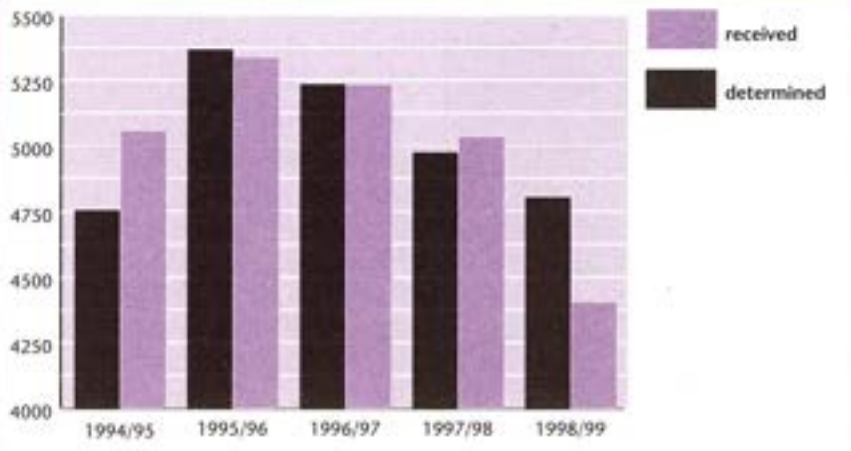


Figure 1: Written complaints about police received and determined
A five year comparison

We pushed for the changes because of concerns about how slowly the Service was implementing the recommendations about complaint handling made by the Royal Commission into the NSW Police Service (Royal Commission). These include linking complaint processes with broader reforms aimed at improving staff management, police practices, and public satisfaction with policing services.

The revised scheme ensures there are no structural impediments to the Police Service taking responsibility for the effectiveness of its complaints handling. The changes seek to make the Service more responsive to complainants concerns; promote the need to modify and manage the performance of officers the subject of serious or recurrent allegations; and broaden our capacity to assess the fairness and integrity of the Service's handling of complaints. Auditing forms an important part of our efforts to scrutinise police systems for handling complaints. This year we audited 403 police records of less serious matters, which revealed a number of local area commands were having some problems in dealing effectively with complaints.

Our work is increasingly focused on the performance of police commanders and investigators. We pay particular attention to their adherence to safeguards in the scheme, including statutory requirements to:

- carry out investigations into complaints in a timely and effective manner;

SNAPSHOT OF 1998–99

- Pressure by us for the Police Service to speed up reforms to its management of complaints culminated in extensive legislative amendment. Revisions to streamline and improve the management and oversight of complaints about police came into effect in March.
- We received 4,402 written complaints about police in 1998–99, compared with 5,034 the previous year. However, written complaints by police officers rose from 768 in 1997–98, to 806 complaints in 1998-99.
- A fall in written complaints by members of the public, from 4,266 complaints in 1997–98 to 3,596 complaints in 1998–99, was accompanied by an increase in informal or oral complaints to us. The fall in formal complaints can be partly attributed to improvements in the Police Service's informal handling of less serious complaints.
- Less serious police internal management matters do not need to be notified to us, but remain subject to our audit. The 403 matters we audited this year show the Service is dealing with most matters appropriately, but should have advised us of many more than it did, including some serious matters (see 'Keeping complaint systems under scrutiny' in this section).
- The audit included a review of 126 records held at 12 randomly-selected local area commands. Of these, 42 should have been assessed as complaints and recorded on the central police complaints system. Moreover, 35 of these 42 matters should have been referred to us for our scrutiny.
- There were 85 police officers criminally charged following investigations into complaints in the past year (this number may increase as the Police Service receives legal advice on other matters completed in 1998–99).
- Officers were counselled about their conduct or performance in relation to 1,126 complaints.
- Complaint outcomes increasingly include attempts to remedy the conduct complained of. Training is one indicator of this remedial approach. This year 127 complaints resulted in training programs for individual officers, compared with 95 in 1997–98. A further 282 complaints resulted in training for groups of officers at a local area, regional or Service-wide level, more than double last year's total of 129.
- Parliament gave us specific responsibility to review the implementation of expanded police powers under the *Crimes Legislation Amendment (Police and Public Safety) Act* and the *Police Powers (Vehicles) Act*. We initiated direct investigations in relation to each. Research activities included more than 100 hours of direct observation of police operations; analysis of statistical data from police, the Family Court, the State Debt Recovery Office and other agencies; interviews and consultations with a large number of key parties and focus groups; and surveys of police and legal practitioners.
- Our focus on identifying systemic issues included reports to Parliament on:
  - the need for the Police Service to better manage the risks posed by officers whose complaints history indicates issues of concern;
  - ensuring that the Commissioner has access to all relevant information when deciding whether to remove officers from the Service;
  - the management of and support for officers under stress; and
  - adopting best practice in criminal investigations, especially in relation to forensic evidence.

- keep complainants informed of the progress of inquiries, then advise them of the outcome; and
- seek complainants views on whether they are satisfied with the way in which their concerns have been addressed.

The indicators used in our assessments include:

- overall complainant satisfaction with the police response to their concerns;
- the time taken to investigate and resolve complaints;
- the rate of deficient investigations; and
- the adequacy of actions taken to manage officers and revise policies or procedures.

One tool which should refine and improve our assessments is an integrated information system that we are presently developing in conjunction with the Police Service and the PIC. When completed, the Police Complaints and Case Management (PCCM) system should give us and the PIC faster access to relevant complaint-related data held by the Service, and greatly improve our capacity to provide feedback on the Service's performance in this area.

We continue to directly investigate complaints about police, particularly where it is in the public interest for an independent agency such as ours to become involved. Our use of direct investigation powers has increased since the recent legislative changes took effect in March. An issue we are currently focusing on is the quality of formal statements made by police for briefs of evidence. Another focus is policing powers, where we have used our direct investigation powers to review the implementation of the *Crimes Legislation Amendment (Police and Public Safety) Act* and the *Police Powers (Vehicles) Act*.

We continue to carefully examine the way police officers interact with

members of the community. This year's report discusses our project on the policing of domestic violence, where support to victims is of critical importance. Another issue is police use of force, particularly the effectiveness and safety of the use of capsicum spray in apprehending offenders in violent situations. We also discuss our work in seeking to improve the way in which police interact with Aboriginal communities.

The recent legislative changes to the complaints system complement broader reforms, including Police Service restructuring in mid–1997. A practical effect of the restructure was to make local area commanders responsible for a broader range of management decisions, including decisions on how to investigate and resolve the bulk of complaints about their staff.

A related development is that, for the first time in years, the number of complaints about police by members of the public has fallen markedly. There were 3,596 formal written complaints from members of the public last year, down from 4,266 in 1997–98.

Significantly, this year's fall has been accompanied by an increase in informal or oral complaints about police to us. We received 3,561 oral complaints, 245 more than in 1997–98. We have increasingly taken the view that complainants should be encouraged to direct grievances to their local commanders and, where appropriate, try to have their concerns resolved without the need for a formal written complaint. We are also aware of commanders being much more conscious of the need to resolve less serious matters informally and expeditiously at the local level, to prevent them escalating into formal written complaints.

The drop in complaints by members of the public led to a fall in the overall number of complaints. Although written complaints by police officers rose slightly to 806 in the past year (up from 768 in 1997–98), the total number of written complaints about police was 4,402, compared with 5,034 the previous year.

Despite an increasing emphasis on informally resolving less serious matters, it is important to note that serious allegations continue to be referred for investigation, with our involvement. A number of these serious matters lead to criminal charges. There were 85 police officers charged following investigations into complaints in the past year (this number may increase as the Police Service receives legal advice on other matters completed in 1998–99).

We continue to oversight the Police Service investigation and resolution of all complaints from members of the public, both minor and serious, to ensure that all complaints are dealt with properly and effectively.

HOLDING COMMANDERS AND INVESTIGATORS TO ACCOUNT

The recent legislative amendments emphasise the Police Service's responsibility for dealing properly with complaints about its officers. They specifically require investigators to conduct the investigation of complaints in a timely and effective manner. Commanders are entitled, and expected, to adopt an appropriate management response to issues concerning the performance or integrity of their officers.

Our oversight role is increasingly focused on the adequacy of police investigations and the sufficiency of management action, and ensuring the accountability of police investigators and commanders for any shortcomings in this regard.

Our oversight has revealed that some commanders are doing a good job. They are using the increased flexibility of the revised complaints scheme to respond more quickly and effectively to issues as they arise. However, our monitoring has indicated the shortcomings of some commanders and investigators.

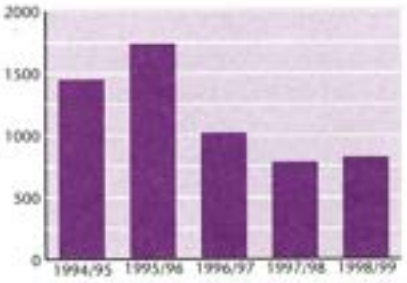


Figure 2: Complaints by police officers
A five year comparison

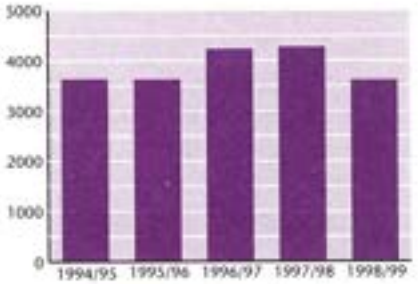


Figure 3: Complaints by members of the public
A five yearcomparison

Table 1: Complaints about police 1998–99

Complaints received	
Written	4,402
Oral	3,561
Reviews	116
Total	**8,079**
Complaints determined (written)	
Investigation completed	972
Investigation discontinued	174
Preliminary investigation completed	1,207
Assessment only	1,074
Conciliation	1,382
Total	**4,809**
Current investigations (at 30 June)	
Being conciliated	58
Under investigation	690

A corruption complaint

A local area commander in Sydney received information that police were receiving money from a pawn shop in the area. It was claimed that the transactions had been covertly video recorded by the shop's owner, and that two security guards at a local hotel had copies of the videotapes. The commander gave responsibility for 'discreet inquiries' into the matter to his crime manager, a detective sergeant.

The detective conducted some inquiries and reported that he was 'unable to identify the source of the information nor any involved officer'. The quality of his report was certified by the command's duty officer and endorsed by the local area commander.

We believed the detective's investigation was flawed for a number of reasons, including a failure to sufficiently clarify the facts before approaching pawn shop proprietors about the allegations.

We were also concerned that his supervisors approved his report. We launched a formal investigation into these matters, requiring explanations from all the officers involved and a review of their conduct by the region commander.

In response, the region commander said that, although all of the officers were experienced, 'on this occasion [they] seem to have overlooked some significant avenues that could have been explored'. The deficient investigation was referred back to the detective for further inquiries.

Our report emphasised that we would closely examine further investigations by the local area command, particularly those by the detective involved. The value of our investigation was also reflected in the detective's response to our observations:

> I totally accept responsibility for the investigation, the criticism levelled at me and the fact that my investigations will be closely monitored.

Police and drugs

We are also directly investigating an apparently deficient investigation by a detective sergeant into the possible involvement of a constable with drugs. The matter arose from the discovery of the constable's name and telephone number in the drug dealing book of a person arrested for the possession and supply of prohibited drugs.

After conducting some inquiries and briefly interviewing the constable on the day of her resignation from the Service, the detective reported that 'no evidence was obtained to indicate any impropriety or inappropriate association'. The local area commander endorsed this report.

We identified numerous lines of inquiry that had not been explored. Our investigation notice to the detective and his commander required them to provide information on these aspects of the matter. We requested the region commander and the commander of Internal Affairs to review the performance of the officers, and they are doing so.

Reviewing a commander's complaint handling

A local area commander conducted inadequate inquiries into a complaint that police had failed to respond to an urgent call for assistance, resulting in misleading advice about the matter to the Minister for Police (see 'Responding to emergency calls' in the **Police** section of last year's annual report).

Our investigation of this case included a recommendation that the Police Service should conduct an audit of the commander's complaint handling since the time of his appointment, and take this audit into account in pursuing management strategies in relation to the commander's performance.

Table 2: Action taken on police complaints
A five year comparison

	COMPLAINTS DETERMINED	DECLINED OR PARTIALLY INVESTIGATED	INVESTIGATED
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%)
1998–99*	4,809	3,837 (80%)	972 (20%)

* The figures for 1998–99 have been affected by legislative changes in March 1999 which reclassified some enquiries as investigations

Table 3: Complaints about police investigated
A five year comparison

	TOTAL INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING
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%)
1998–99*	972	435 (45%)	537 (55%)

* The significant decrease in 'adverse findings' and the corresponding increase in 'no adverse findings' in 1998–99 may partly be explained by legislative changes in March 1999 which reclassified some enquiries as investigations. However, the full reasons for these changes are not yet apparent.

In response, the region commander advised us that he had extended his monitoring of the commander's performance under an existing performance agreement. The agreement was to include a new outcome — the appropriate management of complaints about police. Indicators had been developed to review the commander's performance in this regard. We asked the region commander to advise us of the result of his review.

The region commander advised us that over six months of monitoring all the complaint files dealt with by the local commander revealed:

> clear evidence that his cavalier approach had been replaced with a much more responsible attitude . . . [the commander] knows that he can ill afford to be anything but vigilant with his responsibilities in regard to complaints handling.

Misconduct by a local area commander

Given the importance of the leadership role of Police Service commanders, misconduct on their part should be promptly and effectively dealt with by the Service.

The commander of police in a country town admitted to his unlicensed possession of a firearm and failing to ensure its security. Following his plea of guilty to criminal charges against him, a magistrate found the charges proved but recorded no conviction.

The commander also made an anonymous telephone call to his own police station, suggesting that some Aboriginal people in the town were going to 'set him up' over drug matters and 'run him out of town'. He only revealed to police that he had made the call after being told that the call could be traced. While he claimed the telephone call was intended as a joke, it was not treated that way by other police involved. The Police Service sought legal advice on possible criminal charges and was advised that there was sufficient evidence to support a 'public mischief' charge. That charge, and another charge of 'threatening telephone call', have now been preferred.

The commander was also found to have either neglected his duty or attempted to conceal police misconduct in relation to the submission of a false hurt on duty claim by one of his officers.

We had concerns about the substance and speed of the Police Service's management response to the various issues of concern. These concerns were discussed with the PIC, resulting in a decision for the PIC to monitor the matter. We have been advised that, following a further complaint about the commander's conduct, he has been removed from his command and transferred to another police station. The Commissioner of Police has also issued the commander with a s.181D notice.

POLICE AND THE CRIMINAL JUSTICE SYSTEM

A number of cases in the last year highlighted the need for our oversight of the role of the Police Service in the criminal justice system, and the need to clarify the roles of various agencies in that system.

We are particularly concerned about areas that might give rise to 'process corruption'. This is particularly important where the Police Service has a primary role in the criminal justice system. The Service is the agency entrusted with investigating crime, and the responsibility that comes with this role must be fully appreciated.

The Royal Commission into the NSW Police Service (Royal Commission) noted that process corruption flourished in an environment of poor investigative practices and supervision, inadequate training, and a longstanding acceptance in some quarters that the end justified the means. The Royal Commission also stated:

> regardless of the motives that sometimes underline its exercise, process corruption constitutes a gross distortion of police powers.

There were a number of high profile matters in which we took an interest. These cases reflect the public interest in the Service adopting appropriate procedures during the various stages of its involvement in the criminal justice system.

Preparation of police statements

Police statements must be prepared in a way that ensures they are accurate and fair. Charges are laid and considered on the basis of statements and briefs prepared by the police. Failure to maintain appropriate levels of integrity and professionalism can result in unwarranted anguish, expense and inconvenience for the various parties. It can also result in the conviction of the innocent and the acquittal of the guilty.

Deficiencies in the investigation and prosecution of crime result in unfairness and injustice. Police deficiencies in relation to the preparation of statements for court have the capacity to undermine confidence not only in the Service, but also in the criminal justice system.

It is essential that judicial officers can have confidence in the integrity of the Police Service's role in the criminal justice system. Matters that undermine that confidence have broad ramifications when judicial officers begin to question the veracity or reliability of police statements.

Fixing the brief

Following an arrest relating to possession of a prohibited drug, one of the arresting officers prepared a

statement and submitted it to the other arresting officer for checking. The statement was required to be served as part of a brief, and was unsigned. On the date the brief was due, the second officer signed the statement in the name of the first officer. After serving it on the defendant, the officer appeared to have second thoughts about forging his partner's name, and asked the defendant for the return of the brief. He indicated that he wanted to correct some spelling errors. The defendant had already given the brief to his solicitor. The solicitor contacted the officer to question why he was 'interfering with his client' and 'upsetting him'. The officer said that he wanted to fix some 'minor mistakes' in the statement.

The officer admitted his misconduct to his colleague and the prosecutor only when the full brief had to be submitted. This conduct was considered by the Police Service to be forgery. The Director of Public Prosecutions (DPP) found that 'there is sufficient evidence to commence criminal proceedings', but recommended against charging the officer on discretionary grounds. Instead, the DPP suggested that the officer be dealt with by managerial counselling. The Service accepted this advice, but we were not persuaded that counselling sufficiently addressed the officer's misconduct.

We noted that the Assistant Deputy Commissioner had advised all police:

> not only is this behaviour very serious and raises serious ethical questions, it is unlawful . . . serious consequences will follow if police adopt these methods . . . there is not an acceptable excuse for it . . . Police who choose to ignore that advice can expect serious consequences to follow.

We suggested a range of management options more suitable than counselling. However, the Police Service did not accept this suggestion. We are preparing a report on the matter.

Same statements, same mistakes

We received a complaint that two officers had unlawfully detained a member of the public. We were provided with copies of statements made by the officers in response to a request from their supervising officer.

The statements were identical in every respect, except that the officers names were exchanged. The similarity extended to the same mistakes. If the statements were taken at face value, each officer had separately and independently handed the same bag to the complainant as he left the police vehicle in which he had been detained.

We raised our concerns that neither of the statements had been prepared on the basis of independent recollection by the officers. Their commander advised us that he would speak to both officers about the need to prepare future reports based on independent recollection.

Short cuts

While investigating a complaint by a member of the public who alleged an assault by police after being detained on suspicion of shoplifting, a police officer prepared statements from two security guards who had apparently witnessed the incident.

We were provided with the statements prepared by the officer, along with a covering report from the local area commander. We noted that the statements were identical, save for the change of names and an additional paragraph included in one of the statements. On the second page of the second guard's statement, the name of the first guard appeared at the top but was crossed out in ink, with the name of the second guard handwritten underneath.

We commenced an investigation into the preparation of the statements and their ratification by the local commander. We required the officer and the local commander to attend a hearing. Prior to the proposed hearing, the officer and commander made written submissions.

The officer advised that he had prepared the statements on a word processor, and had used the first guard's statement as the basis for preparing the second guard's statement. He acknowledged that the procedure was incorrect, and attributed the error to a lack of concentration.

The commander accepted the officer's explanation, but stated that the practice of using shortcuts needed to cease and that, to achieve this, an information and education package should be developed. He also advised that he had learnt that he needed to be more thorough in his review.

We acknowledged the candour of the officers, and have sought a response from the Service on the commander's suggestion of information and education on the preparation of statements.

The interview

Three police officers provided statements in the brief of evidence against a man charged with custody of an offensive implement. The arresting officer, a senior constable, prepared his statement on the day of the arrest, based on notes said to have been taken at the scene of the arrest. The senior constable's statement included admissions based on the notes supposedly taken throughout his conversation with the suspect. The statements of the constable and probationary constable, both of which were prepared some weeks after the arrest, repeated the substance of the

alleged conversation, and confirmed that the senior constable was taking notes at the time of the arrest.

Under cross-examination, the senior constable conceded that the notes relating to his conversation with the suspect were first recorded at the police station after the arrest rather than at the scene. The charges were dismissed, with the magistrate saying that the senior constable's version of events could not be relied upon because of the misrepresentation concerning when the notes were taken, and that the constable and probationary constable essentially restated the senior constable's original account.

As part of our investigation, we referred to the need for improvements to brief handling by police. We were particularly interested in the practice of police assisting one another when preparing statements without any acknowledgment of this assistance in their statements.

In response to our concerns, the Service advised us of a project it was undertaking to improve the quality of criminal briefs. We made it clear that the issues raised by this matter relating to statement preparation and testifying at court should be considered as part of that project. We also sought advice on how the Service proposed to improve brief preparation generally, including mandatory reviews of all prosecutions involving inappropriate conduct by police.

Seeking independent advice

There is much truth in the adage that 'justice must not only be done, it must be seen to be done'. Even if decisions made by police in the course of a criminal investigation might be correct in substance, police may sometimes need to seek independent advice.

We have considered several matters that indicate the merit of the Police Service thinking more broadly about the appearance of some of its decisions, particularly in relation to the need to seek advice from the DPP.

A number of cases during the year highlighted the need for an understanding of the circumstances where it is advisable for the Police Service to seek, and heed, the advice of the DPP.

Advice on an officer's murder

Following the murder of an off-duty constable at Fairfield in 1997, police charged a number of people with various offences relating to his assault and murder. Charges against two of those people were withdrawn in September 1997, with media reports indicating that the Crown Prosecutor was critical of the Police Service's handling of the investigation which led to the charges being laid. An internal police complaint was made in relation to the matter, in addition to a complaint from the solicitor of one of those charged.

Following a claim for ex gratia compensation by one of the complainants, the DPP advised the Attorney General that there was insufficient evidence to warrant charging the complainant with murder, or any related offence. His decision to discontinue proceedings was reached 'after a massive police brief was thoroughly reviewed with the care warranted by the sensitivity and significance of the case'.

In the light of the criticisms reflected in the complaints, we asked the Service to review the original police investigation. After examining this review, we considered it failed to adequately address the issues arising from the complaint, and asked that a further review be conducted. We emphasised that this review needed to focus on what lessons could be drawn from the management of the original investigation and the original review.

In agreeing to identify the shortcomings arising from this matter, the Service acknowledged that there was value in addressing a number of issues, including:

- the risk of a high emotional response by police in such situations;
- the need to develop, from the outset, a close working relationship between investigating police and the advocate from the DPP and/or the Coroner's Office with carriage of any associated prosecutions;
- a requirement for differences of opinion between investigating police and the prosecutor to be aired and resolved through structured mediation and facilitated discussion; and
- consideration of the appointment of an adviser or mentor to act as a sounding board throughout the investigation process, to increase the potential for quality and professionalism.

We noted the need for dispassionate advice in such matters. We acknowledged the difficulty of the circumstances faced by the officers investigating the murder of their colleague. However, we also emphasised that it is because police and public emotions run high in cases of this type that the DPP's role as an independent and experienced practitioner is so important.

The DPP advised us:

> whilst there is no general obligation upon police — by law or by practice — to seek the advice of my Office before charging, it is a step frequently taken especially in cases of unusual complexity or sensitivity. An investigation by police of the murder of a police officer is one circumstance where it might be thought to be appropriate to take it.

The DPP went on to suggest 'there would be merit in the Police Service agreeing to guidelines or a protocol for the seeking of advice before charging, even if the document did nothing more than to identify broad categories of cases in which that should occur'.

The Service has since advised us that the Police–DPP Prosecution Standing Liaison Committee is currently developing an enhanced advice protocol, particularly relating to consultation and advising on the sufficiency of evidence in investigations and prosecutions. It is intended that this advice will be made available to DPP prosecutors and police in the near future.

Disregarding advice

When a police investigation into a complaint that an officer had assaulted a member of the public found the allegation to be not sustained, it was nevertheless decided to refer the matter to the DPP for further advice. This decision was apparently made because the officer had been dealt with in relation to similar matters in the past. The brief of evidence was made available to the DPP, along with the investigating officer's reasons for believing that prosecution of the officer would be unsuccessful.

The DPP advised the Service that, after careful consideration of the brief, there was sufficient evidence to commence criminal proceedings on a charge of assault. However, the local area commander subsequently advised us that he was of the view that the DPP had failed to take adequate notice of the submission made by the investigating officer, and that a criminal charge would not be pursued.

The commander had previously advised us that he would rely on the DPP's advice to determine the appropriate course of action. We were concerned that, when the advice indicated that there was sufficient evidence to commence proceedings, the advice was ignored. We suggested that only in exceptional circumstances would it be reasonable for the Service to reject the advice of the DPP on whether charges should be brought against a police officer.

We recommended that Service-wide policies and practices should be developed on:

- the circumstances in which the Service should seek advice from the DPP regarding possible criminal charges against a police officer; and
- the circumstances in which it is appropriate for the Service not to charge an officer where the DPP has advised that there is sufficient evidence for a charge, as well as the appropriate level at which such decisions should be made.

We also suggested case studies should be used to enable a practical understanding of the sorts of issues that should be taken into account by police in deciding whether to seek the advice of the DPP. We await the Service's advice on these recommendations.

MISTAKES IN A CRIMINAL INVESTIGATION

We recently made a special report to Parliament about errors in a criminal investigation by police, resulting in the detention of a young man in custody for an inordinate period. Our report highlighted the need for prompt compensation to the young man. It also highlighted deficiencies in police investigative practice, and the need for police to be well equipped in the use of DNA testing as an investigative tool.

Our report stemmed from a complaint by the young man's family while he was still in custody. The man had been refused bail after being charged by police with the kidnapping and sexual assault of a young woman.

The family claimed their son was innocent. They questioned the reliability of photo identification by the victim upon which police had relied to prefer charges. They were concerned about the adequacy of police inquiries into a nominated alternative suspect. The family also complained of police delay in arranging for DNA testing of their son's blood sample, which they said should prove his innocence.

After unsuccessful attempts to conciliate the complaint, the Police Service advised us that the criminal investigation had been conducted 'in a professional manner'. Nevertheless, the Service acknowledged a 26-day delay in transporting the young man's blood sample for DNA testing.

Concerned by the number of unresolved issues, we conducted our own investigation into the matter. This included a hearing at which we obtained evidence from the detective in charge of the criminal investigation.

We found that police had sufficient grounds for initially charging the young man. However, we had significant concerns about their further investigation of the crime. We identified various matters and lines of inquiry that police should have considered in investigating the involvement of the alternative suspect.

Our investigation also established that there had been a 51-day delay by police in facilitating DNA testing. The initial 26-day delay in providing the young man's blood to the laboratory was compounded by a further 25-day delay in providing a blood sample from the victim. Both samples were essential for DNA testing. Significantly, DNA testing established the young man's innocence. It was also crucial in proving the guilt of the alternative suspect, who was convicted and

sentenced to a term of imprisonment.

Our investigation led the Police Service to review its procedures and police training in the area of DNA testing. Samples needed for such testing are now provided to the laboratory within three days. The Service also recognised the need to develop a training program to enhance police understanding of DNA testing, particularly in view of recent initiatives in the area of forensic evidence.

We recommended the Police Service should provide an apology to the young man and his family for the deficiencies in the criminal investigation and the Service's initial failure to recognise those deficiencies. The Service agreed to provide an apology.

We also recommended the prompt payment of compensation, emphasising the unnecessary length of the young man's 83 days in custody, and the grave impact of the matter on both him and his family. Our special report stressed that unreasonable delay in the payment of compensation would compound the injustice.

SERIOUS POLICE MISCONDUCT

We continue to oversee the Police Service investigation of complaints about criminal and other serious misconduct by police. We check that the investigation has been rigorous and that adequate action has been taken, including the institution of criminal proceedings and/or the implementation of an appropriate management response to issues of concern.

Commissioner's confidence power

One of the important results of the Royal Commission's work was the creation of the commissioner's confidence power. Section 181D of the *Police Service Act* conferred on the Commissioner of Police a broad power to remove a police officer from the 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 a significant innovation, designed to allow the removal of an officer where there were serious concerns about the integrity or performance of the officer.

However, some difficult issues arose in the practical application of the s.181D power. There was a need for the Police Service to define the types of misconduct sufficient to justify an officer's removal from the Service. There were also questions

'My family and I wish to express our sincere thanks for your professionalism, patience and unbiased conduct throughout the most complex and protracted investigation.'

COMMISSIONER'S CONFIDENCE STATISTICS

Statistics on the commissioner's confidence process from its introduction in December 1996 to February 1999

Nominations

Four hundred and sixty five (**465**) police officers had been nominated for consideration under the s.181D process.

Resignations prior to any action

Sixy nine (**69**) officers resigned while being considered for possible action under s.181D.

Performance Warning Notices (PWNs), not involving a s.181D notice

Seventy one (**71**) officers were issued with PWNs without proceeding to the point of a s.181D notice being issued. Of the 71 PWNs, **21** were issued by the Commander of Internal Affairs and **50** by the Commissioner of Police.

Section 181D notices

Ninety (**90**) officers were issued with s.181D notices anticipating their possible removal from the Service.

Outcomes following the issue of a s.181D notice were as follows

Twenty one (**21**) officers were removed from the Service on the Commissioner's order.

Seventeen (**17**) officers resigned.

Forty (**40**) officers were served with PWNs.

In **12** cases, the Commissioner decided not to make a removal order or issue a PWN.

Other matters

Sixty three **(63)** officers were still under consideration at the time of the review.

Twenty four **(24)** officers had been medically discharged.

One hundred and forty eight **(148)** matters had been finalised by management action.

as to the level of evidence required to justify a s.181D order, and issues about appropriate procedure. The adequacy of the Service's approach to these matters had the potential to become the subject of scrutiny by the Industrial Relations Commission if an officer sought review of the Commissioner's order.

The Service's resolution of the problems involved has been continually evolving. We recently investigated difficulties with aspects of the s.181D process, including the extent to which officers' complaint profiles were considered in the process. Our investigation, which became the subject of a special report to Parliament in August, is discussed in further detail below.

Reviewable actions

A critical issue has been how the Police Service should respond to the situation of an officer the subject of serious concern, where their removal from the Service was not considered appropriate. The Royal Commission recommended the introduction of managerial sanctions for some matters of this kind, such as the reduction of a police officer's rank, grade or salary, or deferral of salary increment. The Royal Commission also contemplated that the imposition of these sanctions would be capable of review.

Although the Commissioner's confidence power was introduced quite promptly, it was not until March that legislation came into operation providing for reviewable actions. This delay was the result of prolonged negotiations about the proper scope and exercise of a reviewable action power.

The *Police Service Act* now permits the Commissioner to order a reduction of a police officer's rank, grade or salary, or deferral of salary increment, where the officer engages in misconduct or their performance is unsatisfactory after participation in a formal remedial performance program. Requirements of procedural fairness must be observed before an order can be made. An order is also reviewable by the Industrial Relations Commission. The officer has the burden of establishing that the order is "beyond power or is harsh, unreasonable or unjust". In deciding whether to uphold, vary or revoke the order, the Commission must have regard to the interests of the applicant and the public interest.

We will be monitoring the extent to which the Police Service uses, or refrains from using, the option of reviewable orders in cases of misconduct or unsatisfactory performance. It remains to be seen what forms of police misconduct will attract a reviewable sanction.

Performance warning notices

An important consequence of the belated introduction of reviewable actions was the development of the Performance Warning Notice (PWN). At various stages of the s.181D process, the Commander of Internal Affairs or the Commissioner can issue a PWN to the officer the subject of consideration. As its name suggests, the notice warns the officer of the possibility of their removal from the Service in the event of further misconduct. The notice also appears to create a sound basis for the future application of s.181D if significant concerns about the officer's conduct arise again.

Apart from serving the officer with the notice, the officer's commander is entitled, and expected, to formulate and implement other suitable management action. Difficulties with this feature of the system have also been the subject of investigation by us (see "Adequate management action" in this section).

Our investigation: The case of officer X

Our investigation of the s.181D process was launched when we became concerned about delay by the Police Service in finalising its investigation of a woman's complaints about an officer's harassment of her.

This officer already had an extensive complaints history, including police findings of:

- inappropriate involvement in police matters concerning family and friends;
- improper use of his official position for private purposes;
- associating with criminals or people of questionable character;
- a failure to appreciate the responsibilities of officers to report misconduct;
- improper access to, and release of, confidential information;
- dishonesty; and
- inappropriate conduct towards women.

Eventually, we were advised that the Commissioner, after considering the officer's possible removal from the Service under s.181D, had decided to issue a PWN. This notice referred to the following misconduct by the officer:

- a criminal offence of stalking the complainant,
- unlawfully entering her house and removing an answering machine tape,
- making an unauthorised journey in a police vehicle to her home, and
- improperly accessing computer information about her.

We expanded the scope of our investigation to examine the basis for the Commissioner's decision to issue a PWN.

We found that the officer's full complaint profile had not been

provided to the Commissioner. Existing guidelines permitted the omission of matters 'which are historical in nature or which have been previously dealt with by the Service', unless they were 'of a similar nature linked to the contemporary behaviour of the officer'.

We believed the current guidelines were too narrow, and recommended that they be revised to ensure that all relevant information regarding an officer's fitness to continue as a member of the Service should be put before the Commissioner. We noted that the Industrial Relations Commission had not yet produced a definitive ruling on the s.181D process, but believed that it would have no objection to the Commissioner considering historical information.

On the day of our special report to Parliament about the matter, the Commissioner said that he would ensure that relevant complaint histories would now be included with the material to be considered by him in s.181D matters.

We shared the Commissioner's concerns that the s.181D process may have become unnecessarily 'complex and legalistic [and] not reflective of the intentions of the Royal Commission', and suggested that a meeting of key players to discuss streamlining the process would be useful. The Commissioner has accepted the need for such a meeting.

In this particular case, we recommended that the Commissioner review his decision not to remove the officer involved. In response, the Commissioner advised us that he had obtained legal advice that it would be unreasonable for him to revisit his original decision on the basis of material which should have been known to him at the time.

We were concerned that the Service's remedial programs for the officer appeared to be directed to getting the officer back on an operational footing, rather than remedying his patterns of misbehaviour. We therefore recommended additional action 'aimed at minimising any risks this officer may pose both to the Police Service and the public'. The Commissioner agreed to implement our recommendation, by requiring a comprehensive management program for this purpose.

Since we made our special report to Parliament in August, we have discovered that the region commander was aware that the officer engaged in secondary employment in June while he was on sick report. This was in breach of the conditions attached to the Police Service's approval for the secondary employment.

In view of the fact that the officer's misconduct occurred following the issue of a Performance Warning Notice, the matter has been referred for the Commissioner's consideration under s.181D. We await with interest advice as to the outcome, particularly in light of the Commissioner's comment in response to our special report that the officer would be removed from the Service 'if he breathes out of tune'.

It is a matter of serious concern that the Police Service did not promptly notify us of this new complaint about the officer's conduct nor advise us of the complaint for the purposes of our special report to Parliament. We are seeking an explanation from the Service in relation to these failures.

Adequate management action

Commanders are expected to take appropriate management action in response to issues of unreasonable or improper conduct by their officers. Where there are serious concerns about an officer's conduct or integrity, the development of an adequate management response is of particular importance.

Once an officer who has reached the point of receiving a PWN, a difficult issue also arises as to how to ensure their future performance is satisfactory. There is no point in leaving such officers disgruntled and ineffective. It is therefore critical to ascertain the progress of officers following service on them of a PWN.

Case

A woman complained that her former partner, a police officer, had breached an apprehended violence order and broken into her home. However, the woman was reluctant to have the complaint pursued, claiming fears of reprisal by the officer. Nevertheless, her complaint that the officer had accessed computer information about her was investigated, resulting in the charging and conviction of the officer for illegal accesses. The officer was given a PWN, which, as usual, contemplated the implementation of additional management action by the officer's commander. However, the commander advised us: 'No managerial action or remedial programs were implemented by me, nor will they be . . . '

Case

An officer was charged with indecent assaults on his de facto partner's teenage son. Although the charges were dismissed, the magistrate expressed concerns about aspects of the officer's behaviour with the boy. The officer was subsequently given a PWN. His commander, the same person as in the above case, said that he had not taken any management action.

> In no way was there any correlation between [the officer's] office as a constable and the alleged aberrant

> behaviour . . . For my part, there is nothing I can seize upon to address managerially or by way of remedial program.

The commander also said that he found the standard general advice about the need for management action 'unhelpful' and that he had not had the benefit of the s.181D file or a transcript of the court proceedings.

We were concerned about the commander's response to both cases. Our provisional report recommended that a senior officer review the commander's handling of the cases, and that further consideration be given to management strategies for the officers of concern.

The Police Service's response revealed that the commander had, in fact, taken more extensive management action than he had previously indicated. The commander had counselled both officers and was monitoring their performance. The officer convicted of illegal accesses was subject to audits of his current accesses. The officer involved in the indecent assault case was not permitted to administer cautions to young offenders, and any contact with young people in the course of his duties was being closely monitored.

The commander has been advised of the desirability of initially providing more informative and comprehensive advice on such matters to us.

Supporting commanders

At a broader level, we recommended that the Police Service should review the adequacy of its procedures following the issue of PWNs, particularly in relation to the level of support and advice provided to commanders about further managerial action open to them.

In response, the Police Service advised us of some recent initiatives:

- changing the name Performance Warning Notice to Commissioner's Warning Notice to fully reflect the nature of the notice;
- including a more comprehensive statement of reasons in the notice; and
- not only the officer's local commander, but also their region commander, would be involved in discussions with the officer when the notice was served.

More importantly, the Police Service advised us that it would consider the following measures in its current project for enhancement of the s.181D process:

- communicating to commanders the availability of material assisting in the understanding of specific cases;
- formulating examples of best practice management action;
- enhancing support and advice to commanders — for example, through conducting risk assessments;
- clarifying approaches to managing officers where criminal proceedings left fundamental issues unresolved or resulted in no adverse comment;
- referring some matters for the use of reviewable actions; and
- improved communication between Internal Affairs and field commanders.

We support these developments. We look forward to the final outcome of the Police Service's work in this area, and will be interested in its impact on the management of officers involved in complaints of serious misconduct.

Case studies

The following cases indicate the sorts of criminal conduct, other serious misconduct and significant incompetence encountered by the Police Service and monitored by us. They also illustrate the Police Service's management response to the issues involved, including the use of the commissioner's confidence process and PWNs. In addition, the case studies demonstrate that there is an ongoing need to be vigilant in the fight against criminal and serious misconduct in the Police Service. It is an unfortunate reality that the Service will never be entirely free of corruption. The goal to be realised is a corruption-resistant Service.

Assaults

A constable pleaded guilty to the assault of a security guard at a club. The magistrate found the charge 'proved' but recorded no conviction. However, the officer is being considered for action under the s.181D process.

A senior constable was charged with an assault on his de facto wife. The charge was withdrawn in light of the wife's reluctance to give evidence at court. The officer was issued with a PWN. Additional management action included an assessment of the officer by the Healthy Lifestyles Branch; mentoring by a senior officer; regular reports by the mentor on the officer's behaviour; and a prohibition on the officer taking his firearms home when off duty.

Indecent assaults

A senior constable was charged with two counts of indecent assault on a person working at the police station. The charges were dismissed by a magistrate on the basis that they had not been proved 'beyond reasonable doubt'. However, on the evidence that was available, the Commissioner decided to remove

the officer from the Police Service under s.181D.

A senior constable was charged with indecent assaults on his stepdaughter, however the charges were withdrawn when she was unwilling to give evidence at court. We suggested that the Police Service 'should conduct a risk assessment of this officer and consider whether he is fit to be a serving member'. Action under s.181D was not taken, but the officer's supervisors were informed that his conduct should be monitored.

Improper computer accesses

A constable who had improperly accessed computer information was issued with a PWN. Apart from serving the notice on the constable, his supervisor only proposed to admonish him. This assessment did not take into account three further complaint matters involving the constable. After we raised our concerns, the commander agreed to our recommendation that the constable be placed under close supervision and that random audits should be conducted on his use of the computer.

A miscellany of misconduct

A senior constable was charged with a number of offences in relation to unlawful sexual activity, improper computer access, and drug and firearms matters. The Commissioner removed him from the Service under s.181D.

False evidence

Two senior constables were charged with, and committed for trial on, charges of 'giving false statements' in unsuccessful criminal proceedings against a person for 'resisting arrest'. The DPP ultimately withdrew the charges, and the officers involved were issued with PWNs.

The Police Service found that a constable had attempted to persuade other police officers to alter evidence in relation to a collision between two police vehicles. The constable is being considered for action under s.181D.

Drink driving offence

A senior constable was convicted of a mid range Prescribed Concentration of Alcohol (PCA) driving offence, as a result of which he was fined and disqualified from driving for four months. The Police Service's management response was a decision that the officer would not act as a shift supervisor or perform higher duties for four months. The officer was also to liaise with a Police Service welfare officer, and accept the allocation of a peer support officer to assist in his rehabilitation.

Misconduct and untruthfulness

A Police Service investigation found that a detective senior constable had improperly disclosed confidential information about a murder investigation and had been untruthful during the Service's investigation of the matter. The officer is being considered under s.181D in relation to his integrity.

An Internal Affairs detective was found by Internal Affairs to have made false entries in relation to the use of a police motor vehicle and to have been untruthful when investigated over the matter. His appointment as a sergeant was terminated, and he was transferred from Internal Affairs to restricted duties in a local area command. The detective resigned from the Service.

Unsatisfactory performance

A local area commander recommended the consideration of a constable for removal from the Service on the basis of a continued lack of competence and performance. The constable had been subject to numerous performance enhancement programs, none of which were successful in improving his performance. In making his recommendation for removal, the commander considered the constable:

> a considerable ongoing risk to the Police Service in terms of his incompetence, neglect of duties and the danger he poses to junior officers forced to work with him . . . his lack of performance may lead to dangerous situations for both police and the community.

The constable's continued service is under consideration.

Category 1 complaints

Especially serious complaints about police must be notified to both the Ombudsman and the PIC. Known as Category 1 complaints, these are complaints alleging the following kinds of police misconduct:

- perverting the course of justice;
- assaults causing serious injury;
- property offences where the value exceeds $5,000;
- offences involving a maximum sentence of five years or more;
- soliciting or accepting a benefit for failing to carry out police duties;
- seeking to improperly interfere in a police investigation;
- improperly failing to investigate an alleged offence by a police officer; and
- drug offences involving indictable quantities of drugs.

Although the PIC investigates a small number of these complaints itself, most are investigated by the Police Service. While the PIC actively monitors some of these police investigations, we oversight the bulk of them. We have established a specialist team with specific responsibility for oversighting the Police Service investigation of Category 1 complaints. There is ongoing liaison between the Ombudsman and the PIC to avoid any

unnecessary duplication of our functions in this area.

It is obviously important that the Police Service investigation of Category 1 complaints be particularly thorough. However, a PIC audit of such investigations revealed a range of problems, which are consistent with concerns expressed by us in the past. The problems identified by the PIC include:

- some complex investigations showed little or no planning;
- some investigation plans were not followed or their objectives were not achieved;
- appropriate inquiries were not always made;
- conclusions were not always supported by the evidence obtained; and
- some investigators had a conflict of interest.

To address these problems, Internal Affairs has recently embarked on a project to monitor and evaluate the quality of Category 1 investigations and to develop strategies to improve investigative standards.

Both the PIC and the Ombudsman have been involved in the development of this project, which is being piloted in the Georges River Region.

We trust that the Internal Affairs project, together with our continuing oversight role and that of the PIC, will ensure the improved quality of police investigations into allegations of serious police misconduct.

POLICING DOMESTIC VIOLENCE

On average, forty women die each year from domestic violence in NSW. Last year alone, police responded to 77,000 reported domestic violence incidents.

The Police Service has undertaken significant initiatives to deal with the problem. This year, more graphic television ads were screened to encourage the reporting of the crime. Extra photographic equipment to better record victims' injuries was also introduced. The Service's efforts in dealing with this complex social problem are commendable.

Marianne Christmann, Manager, Police Team, with Leena Pradhan, Investigation Officer.

We received around 60 submissions from a wide range of individuals and agencies in response to our discussion paper, *Policing domestic violence in NSW.*

However, complaints, inquiries and submissions to us continue to raise consistent themes and concerns about how police respond to domestic violence. The case studies below highlight some of those issues.

Escalating violence unchecked

A distraught mother complained to us about her local police not responding to a serious and escalating pattern of violence by her daughter's ex-partner over a three-week period. He had made numerous harassing phone calls to her daughter, thrown rocks at her house, cut the brake lines on her car and lit a fire under her house. He had taken no notice of the apprehended violence order (AVO) against him.

In desperation, the complainant called officers at another station who immediately arrested and charged the man and imposed strict bail conditions. She was still worried about her daughter's and grandchildren's safety in light of his volatile behaviour.

We contacted an inspector at the local station to discuss her daughter's immediate safety and protection. The inspector began negotiations with the Housing Commission to secure a 'safe house', expedited police investigations and met with the complainant to resolve her concerns.

In the meantime, the man was found underneath the daughter's car tampering with it. On this occasion he was promptly arrested, charged and denied bail. A further eight charges were laid when he later appeared at court.

The inspector's inquiries revealed serious weaknesses in the police investigation of the incidents and response generally. He arranged for the chief of detectives to review the entire case and for advice and guidance to be given to several

officers. Refresher training for the command on handling domestic violence incidents and a review of rostering practices also took place.

Cases of this kind highlight the need for a swift and appropriate police response to protect and support victims and prevent violence from escalating. A failure to act can have tragic consequences. Fortunately, in this case, a prompt and efficient police response occurred once the problem was drawn to their attention.

Police failing to act on assaults

A woman complained to us that police had failed to act when her estranged husband had assaulted her, breaking her nose, and threatened her with a pump action shotgun. He had also assaulted her son.

She claimed police were not interested in taking down the facts and that:

> . . . [the constable] approached me asking me to sign his note book, I was not sure 'what for' . . . I was not offered any choice. I was too distraught to think clearly and did not understand this to be an authorisation that he takes no action.

The complainant and her son subsequently made statements about the assaults, as she wanted her husband charged. At the time of making her complaint, police had not advised her whether they would charge him.

Police inquired into her complaint. The involved officer claimed that the complainant had not advised him of key facts when he attended, such as her son having been struck by her husband and a firearm having been produced during the altercation. However, he noted that the complainant had blood under her nose and there was some discussion about whether her nose was broken. While she was in two minds about whether she wanted her husband charged, he denied coercing her to sign his notebook.

In response to her complaint, the Police Service counselled the officer for failing to notify the Department of Community Services of a child involved in a domestic violence incident and made further inquiries to locate the shotgun.

We were concerned that the Service had failed to identify key issues and conduct more thorough inquiries. Police guidelines urge police to arrest an offender when satisfied that an offence has occurred and lay appropriate charges. Police are also required by law to take out AVOs when they suspect a domestic violence offence has been committed. Victim support is also required. None of these issues had been adequately examined.

We sent the complaint back for further investigation.

As a result of our intervention, the Service conceded police guidelines had not been complied with and took the following action:

- counselled the involved officer for failing to act on the assault on the complainant (it was accepted he was unaware of the assault on her son);
- rostered the officer to perform duty with the domestic violence liaison officer (DVLO) on AVO list days for two months to assist with victim support; and
- referred the case for internal legal advice on whether charges should now be laid against the complainant's husband for the assaults on her and her son (the advice was that, for various reasons, a charge was not appropriate).

While the outcomes were mostly positive, it is disappointing that the real issues of concern were not immediately identified and addressed by the Service.

Our domestic violence project

Last year's annual report outlined the initial stages of this project. A discussion paper, *Policing domestic violence in NSW*, was circulated in May 1998. We received around 60 submissions from a wide range of individuals and agencies.

Since that time, we have analysed complaints, submissions and recent studies in the area. We surveyed local area commands on the domestic violence training they had conducted. We liaised with community groups, government agencies and, of course, the Police Service on a variety of issues. We then finalised our report and sought the Service's response.

The report's focus is on assisting the Police Service to improve its service delivery in this vital area. For example, we recommend the Service systematically collect and analyse domestic violence data from its system to allow local, regional and state wide comparisons to be made. This would enable the Service to target its scarce resources in a more informed way, consistent with 'smart policing' initiatives in other areas.

We also recommend that the Service include its response to domestic violence as a performance indicator in its corporate plan, and improve accountability mechanisms for local area commanders. This would include commanders having to report to the Commissioner on their command's response to domestic violence at operation and crime review panels.

Other key recommendations include that the Service:

- develop adequate guidelines and training for police on the issue of witness protection, including the need for threat assessments and use of the Witness Security Unit in extreme cases;

- clarify its guidelines on the service of orders and summonses at the local level, including guidance on priorities, accountability mechanisms and keeping victims adequately informed;
- review its selection process for DVLOs and systems for determining the resources which should be dedicated to this role in each local area command; and
- evaluate the quantity and quality of training conducted.

We also recommend that the adequacy of police response times to domestic violence incidents be considered by the Audit Office in its audit of police responses to calls for assistance. Our report will soon be released as a special report to Parliament.

We hope that by emphasising the need to monitor service delivery at all levels, service will continue to improve and vitally enhance the safety of domestic violence victims.

OFFICERS UNDER STRESS

Last year's annual report discussed our investigation into police officers under stress. We recommended that the Police Service should:

- take steps to ensure that specialist debriefing teams are always called in to assist officers involved in critical incidents and that local commanders are appropriately involved in the process; 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.

In June, we made a special report to Parliament which discussed the Police Service's progress in responding to our recommendations.

The Police Service introduced some revised critical incident procedures in May 1998. These procedures closely involved local area commanders in the management of incidents affecting officers within their command. Commanders were to be notified of any critical incident and decide on the nature of the response required, including the use of critical incident debriefing teams where appropriate. Commanders were also to be responsible for monitoring the situation of the officers involved in the incident.

The Police Service committee established to consider our recommendations conducted a survey of police which revealed some disturbing trends:

- Only 60 per cent of officers involved in critical incidents had been offered support.
- Of those who were offered support, 72 per cent were not offered further assistance after initial intervention.
- 18 per cent of those interviewed indicated a clinically significant reaction to the incident; only half of this 18 per cent had received assistance.
- More experienced officers were significantly more likely to be affected.
- A third of those surveyed were unaware of the Service's psychology and welfare units.

The committee developed a proposal which suggested improvements to policy and procedure to overcome the problems involved. The Police Commissioner's Executive Team accepted some components of this proposal in April, while other aspects have been referred back to the committee for clarification and further consideration.

The committee had extensively discussed the possible use of directed professional assessments in the context of support for, and management of, officers under stress. However, a year after our original report to the Service, the committee had not formulated a firm proposal on this issue. We expressed our concerns about this in our special report to Parliament:

> I am concerned that the Service's work to date has not addressed the need for police managers, in certain circumstances, to have access to appropriate professional advice about the psychological well-being of their officers, particularly those who have been subjected to traumatic incidents. This advice is needed to assist police managers in making informed decisions as to how best to support their officers and to protect the interests of the community . . . It should be emphasised that police who are suffering stress may be placed in situations requiring them to make decisions with potential life and death consequences.

Accordingly we recommended that the Service should urgently develop mechanisms and guidelines for managers to obtain professional reports about officers under stress.

In August, the committee advised us that it was considering draft guidelines for the ongoing evaluation of officers psychological fitness for duty. The committee hoped to make a formal recommendation to the Commissioner in the near future.

The importance of managers having ready access to appropriate information is graphically illustrated by the following case.

A matter of survival

A constable and his colleague, a probationary constable with 13-days experience, tried to stop a man who was vandalising a tree. They chased him into a crowded party at a nearby residence, and apprehended him in a small room inside the house. When the owner of the house and other onlookers went to enter the room, the constable felt threatened, pointed his gun at the crowd and

threatened to shoot if they approached. The probationary constable defused tensions by attempting to calm the crowd and instructing her colleague to put his firearm away.

The constable later said that if the crowd had continued to approach, he would have been justified in shooting to protect himself, his colleague and the arrested man.

The Police Service report on the incident found that the threat from the crowd did not warrant the constable's dangerous reaction. The constable was counselled about his actions, and was referred to the police psychologist and a weapons training unit for assessment. His local commander restricted the constable's operational duties, pending an assessment of his suitability for stressful situations. He was also taken off field training duties until he is assessed as competent with the use of firearms and officer survival tactics.

With detailed assessments, the commander should be in a position to make informed decisions about the constable's ability to handle other stressful situations in the future.

CAPSICUM SPRAY

On 1 April 1998, the Minister for Police said:

> The issue of capsicum spray will give NSW police what they need to diffuse dangerous situations and save lives — theirs and others.

Capsicum spray was introduced into the Service in the wake of several tragic incidents, including the fatal shooting of Roni Levi at Bondi beach. When sprayed directly into the face it causes intense burning to the eyes, nose and throat, quickly incapacitating the person being sprayed. This enables police to gain control of the situation.

Police are only authorised to use capsicum spray to:

- protect human life — theirs and others;
- control people where violent resistance or confrontation occurs or is likely to occur; or
- protect themselves against animals.

Complaints to us about the use of capsicum spray often allege that police have used the spray to control situations where other less forceful options would have sufficed. Assessing when violent resistance or confrontation is likely to occur and making appropriate decisions about how to respond present difficulties for some police.

Spraying in anticipation of violence

A father complained that his 16-year-old son had been sprayed with capsicum spray by an officer. The son was at a party when police arrived to disperse the crowd. The son questioned an officer about a friend's arrest. Shortly after, he was sprayed in the face with capsicum spray. Police then drove off, leaving him incapacitated by the spray.

Police conducted inquiries into the incident. Three young people present said the complainant's son was standing at the rear of the police wagon, talking to his friend inside, when the officer sprayed him.

The involved officer described several young men yelling 'Get him out' and four men near the rear of the police wagon. One was pulling at the door bolt. The officer said:

> I did not want to get into a physical confrontation with these males and feared that without any restraint, they would attempt to release the gaoler out of the back of the truck. I then pulled out my capsicum spray, . . . and sprayed . . . in a downward motion towards the crowd of males at the rear of the truck in an attempt to restrain them . . .

The officer's commander found the officer's judgement of the situation unsatisfactory. He had failed to comply with police procedures and did not take steps to decontaminate people who may have been affected by the spray. The commander counselled the officer, made him undertake refresher training in the use of capsicum spray, undertook to monitor his use of the spray and removed him from supervisory duties for six months.

Of concern in this and similar complaints, is that the officer used capsicum spray without exploring other options. For example, the officer in this case could have locked the rear of the police wagon earlier, or called on officers nearby to assist him to secure the vehicle and leave the area.

Furthermore, the police had not experienced any violent resistance or confrontation. The young people had yelled at police and jostled them as they moved through the crowd. The officer justified his use of capsicum spray on the basis that a violent confrontation was likely to occur with the young men.

Large congregations of young people, protesters or other groups, who may be affected by alcohol or in an agitated state, are difficult for police to control. However, police must resist the temptation to deploy capsicum spray as a convenient first option for dealing with people in those situations.

Cases of this kind also raise the issue of possible criminal charges of assault. In this case, the complainant and his son were satisfied with the police response and did not wish to pursue the matter further.

Police misusing capsicum spray

A man complained to us that police had attempted to assault two drug users by spraying them with capsicum spray. He had approached two officers to report seeing two men who appeared to be using drugs. He took the officers to a spot which was two to three metres

above where the men were sitting. The complainant alleged that shortly after one officer drew a canister of capsicum spray and said 'This will fuck 'em'. The officer then said 'Hey' in a loud voice and sprayed down towards the men. The spray was deflected off a fence in front of them and blown backwards. The complainant and two people standing nearby were contaminated.

As we are examining police use of capsicum spray, we formally monitored the police investigation into the incident. Our investigation officer attended interviews and kept a close watch on the investigation.

The police officer justified his use of capsicum spray on the basis that he believed violent resistance or confrontation was likely to occur and was attempting to obtain control of the situation:

> . . . the two males refused to put the syringes down when requested, the syringe was pointed in the direction of police with a partial backfill of blood. The desperate attempt to continue injecting by the males knowing full well of the police presence and requests . . . I believe there was a potential for the syringe to either be squirted in our direction or thrown in order to prevent arrest . . .

As to the credibility of the officers account, the two witnesses said police had asked the drug users what they were doing and then deployed the spray. In this case it was significant that there was a two to three metre drop and wire fence between police and the drug users. The two users also left the area without being apprehended.

The officers commander accepted the officers acted in good faith but agreed more appropriate courses of action were available to resolve the situation. He managerially counselled the officers on their use of capsicum spray.

We had serious concerns about the officers account, the adequacy of the managerial action taken, and the quality of the Service's investigation. Key questions were not asked of witnesses, making it difficult to assess the officers conduct. We are currently pursuing the matter with the Police Service.

Monitoring police use of capsicum spray

We acknowledge the positive steps taken by the Police Service to safely introduce capsicum spray for use by its members. These steps include developing appropriate guidelines and training programs and only issuing the spray to officers who have completed the training.

However, it does not appear that the Service has any plan to systematically evaluate on a state-wide basis police use of capsicum spray or its effectiveness in certain situations. There also appears to be little accountability for officers in their use of capsicum spray.

Also of concern is police resorting to capsicum spray in custody situations when people are already under police control. An early police study revealed 25 per cent of incidents involving capsicum spray occurred in custody. High rates of secondary contamination were reported as a result.

Against this background, we recently commenced an investigation into the Police Service's policies and practices with respect to the use of capsicum spray.

The Service, in responding to a requirement to produce information, indicated that:

- monitoring capsicum spray use occurs locally through supervisors checking officers computer entries on COPS in relation to events and identifying inappropriate use of the spray;
- the Deputy Commissioner's office also oversights capsicum spray use through daily summaries of significant events;
- capsicum spray is now on personal issue to police, removing the need to securely store and record the movements of canisters; and
- an ultra violet dye contained in capsicum spray, which can be seen on people sprayed for up to 24 hours, is considered a reliable deterrent to the unauthorised use of the spray by police.

The Service appears overly reliant on officers recording details about their use of capsicum spray on COPS as a means of detecting inappropriate use. On a practical level, COPS entries tend to be brief and, by definition, made from the involved officer's perspective. This may limit their usefulness as an accountability mechanism. Local area commands may also have inconsistent practices in relation to police using the spray which the Service is not at present equipped to detect.

The Service also relies on people coming forward within 24 hours to complain as a deterrent to unauthorised use.

While we support police having access to capsicum spray for use in appropriate situations, our investigation is considering ways to better regulate police use of the spray and improve police accountability. We will continue our investigation and closely scrutinise police policy and practice in this area.

RISK ASSESSMENT

In October 1998 we made a special report to Parliament on the need for the Police Service to adopt risk assessment strategies when dealing with officers accused of misconduct. We were concerned about three

matters in particular where we felt that insufficient attention had been paid to patterns of allegations.

One case involved an officer with a pattern of complaints making similar allegations of sexual assaults against children.

Another officer was charged with five counts of sexual assault on a child. Despite two trials in which the jury was unable to reach a verdict, the Police Service gave no further consideration to the evidence presented to the court.

The third case involved an officer with a history of complaints, and who was alleged to have assaulted his former wife and current partner on separate occasions. The Service indicated that this officer's history was irrelevant in any assessment of his suitability for continued duty.

In response to these cases, we recommended that the officers be assessed to determine what risk they presented for the Service. Risk assessment involves evaluating patterns of alleged or established misconduct for the possibility of threat or harm. It also involves efforts to avoid future problems by identifying and managing the risk posed by a particular officer in a particular environment.

Our report acknowledged that Internal Affairs was developing and using techniques for assessing and managing risks. We were concerned, however, about those managers who failed to look at patterns of complaints that indicated issues of concern in relation to particular officers.

Risk assessment is a vital tool for making decisions in a range of environments, not only in policing. We believe that it is particularly useful for addressing issues of concern in the Police Service. To that end, we have encouraged greater appreciation and use of risk assessment strategies to deal with particular officers.

Training is an obvious remedy for improving the understanding and application of appropriate strategies. As a result of our report, the Police Service brought forward training sessions on risk assessment for regional commanders and Internal Affairs consultants. This training took place over December 1998 and January this year, and was conducted by the Strategic Assessments and Security Centre (SASC). We have been advised that it was well received.

Risk assessment tools vary in complexity, and extensive sources of information may need to be examined and assessed. The more complex tools may not be able to be employed in every instance. For instance, SASC performs an elaborate risk assessment which can take a number of weeks to complete. It is encouraging that some commands are now developing risk assessment tools to deal with situations that cannot wait for, or do not require, the more thorough assessment performed by SASC.

The shift in the Police Service from taking disciplinary action to implementing management action highlights the need for suitable strategies to manage the risks presented by particular officers. The point of risk assessment is not to discipline the officer, but rather to assess their ongoing suitability for employment in a particular capacity. The value of assessing risk is in being able to take context and environment into account. Risk assessment is therefore an important strategy for the effective management of employees and the environment in which they work. We continue to take the view that the most significant measure of success in this area will be a greater level of appreciation by managers of the need to identify and assess problem trends in the behaviour of officers, making appropriate reference to complaint profiles.

While some of the matters reviewed by us indicate that some commands are developing their skills in this area, there is still the need for greater use of risk management strategies by police managers. The following cases illustrate the value of thorough risk assessment.

A long complaints history

A constable had been the subject of 17 complaints including: an alleged sexual assault against the daughter of his then de facto wife; a number of assaults; excessive force; malicious damage; rudeness and incivility; harassment; and that he had instructed a police dog handler to set a dog onto the complainant.

Although the complaints against the officer were either not sustained or successfully conciliated, it was noted that he had a significantly higher number of complaints recorded against him than other officers in similar positions in the same command.

In the matter relating to the allegation of sexual assault, the officer was subsequently involved in his official capacity in a dispute between his former de facto partner and other people. We were concerned that the officer was unwilling to acknowledge his conflict of interest, so we sought a risk assessment.

An initial risk assessment performed by SASC found that the officer 'is considered a high risk to the Police Service as a result of his complaint history'. The assessment included recommendations as to how best manage the officer, including a 12-month performance enhancement program, mentoring, and consideration of other options should the officer not comply with the conditions.

The risk assessment was completed by the regional command and took into account the officer's complaint history, his transfer to a 'quieter' local area within the region, his

performance following that transfer, his expression of interest in special duties, and his potential as a future general duties officer.

Following this assessment, the local area commander entered into a performance management agreement with the officer for a period of 12 months, involving mentoring and his continued placement at the new location.

Two assault matters

A woman made a complaint that an off-duty police officer had assaulted her in a car park over a parking dispute. Following a police investigation, which could not determine where the truth lay, the matter was referred to the DPP for advice on whether a criminal charge should be preferred. The DPP advised there was sufficient evidence to support proceedings for a charge of assault, and proceedings were commenced.

Another allegation of assault was made against the officer, this time by his estranged wife. Criminal proceedings were commenced. In addition to the consideration of commissioner's confidence proceedings, the local area commander referred the relevant papers for risk assessment. We asked to be informed of the results.

We were subsequently advised that the officer was considered a risk to the operation of the command. He was placed on restricted duties, and his service firearm was removed from his possession. The risk management strategy remains in force until the conclusion of the various court proceedings and the commissioner's confidence process.

Unwelcome attention

Arriving home by car, a celebrity noticed a man sitting in a car outside the celebrity's residence. As a precautionary measure, the celebrity circled the block before returning to find that the car had left. Once inside his residence, he answered a video intercom call. He recognised the caller as the man he had seen outside. The caller said that he was a police officer collecting donations for a police charity. He was asked to produce identification and leave a business card. Although he flashed his badge, the officer failed to leave a card, and then left. The celebrity called police. Meanwhile, the officer returned to the residence where police responding to the call spoke to him.

We sought advice from the Service on what had been done about previous complaints against the officer. We noted that he was alleged to have improperly attempted to gain free entry to a leagues club by announcing that he was a police officer while refusing to show his identification. Although the DPP had advised that there was sufficient evidence to charge the officer with assaulting a club staff member, no charge was laid on discretionary grounds. When we had previously expressed concern about his continued employment, the officer was placed on extended probation, and was subject to a performance enhancement program. Other matters of concern related to the selling of Victorian police identification, and the unauthorised use of the police computer while it was logged on under another officer's name.

In light of the latest incident involving the celebrity, we sought advice on what was being done to assess the officer's suitability for continued employment in the Service.

Subsequent investigation established that, in addition to the matters we had noted, there were 45 sustained cases of unlawful access of the police computer, one other complaint of soliciting for gifts, and separate allegations of assault, misrepresentation, false reporting, unprofessional conduct, and inappropriate decision making.

Consideration was given to the removal of the officer from the Service, and the officer's employment was subsequently terminated.

ABORIGINAL COMPLAINTS AND RELATIONS WITH POLICE

Ensuring we are accessible

Our Aboriginal complaints unit was established in 1996 to give Aboriginal people greater access to our services. In its first year, the unit undertook an extensive access and awareness program. This included many field trips to remote rural, as well as metropolitan, areas.

The impact of the unit's work was felt in the following year. Written complaints by or on behalf of Aboriginal people about police rose from 209 (1996–97) to 225 (1997–98). That year, the unit worked hard supporting Aboriginal complainants and developing strategies to improve Aboriginal/police relations.

One such initiative was the trialing of Aboriginal Community Consultative Committee (ACCC) meetings at Nowra and Batemans Bay. The aim was to give Aboriginal people the opportunity to raise policing issues and minor complaints in an informal, culturally appropriate forum. This was such a success, that our unit introduced this approach to more remote areas this year.

Another development is a general shift in the way Aboriginal complaints are being handled. Written complaints to the unit have decreased by 18 per cent (down to 184 in 1998–99), while telephone complaints and inquiries from Aboriginal people increased by 30 per cent (from 52 to 74). This reflects the unit's ability to resolve

many issues affecting Aboriginal people and communities through informal means before they escalate.

Aboriginal Community Consultative Committee meetings

ACCC meetings may canvass community concerns about police operations which may impact disproportionately on Aboriginal people. Specific incidents may be raised relating to a person being strip searched, arrested for offensive language or mistreated in police custody, or about warrants being executed.

Case

An elderly Aboriginal woman came to a meeting upset that police had searched her house and taken numerous items, including all her clothing and shoes. Police believed the items were stolen. She just wanted an explanation and her property back. Our Aboriginal officer liaised with the police. Police advised her they had had a valid search warrant for the property, but agreed charges were unlikely to succeed in relation to the woman's clothing. The situation was explained, and the clothing and shoes returned.

The ACCC meetings have enabled many issues to be resolved quickly and informally to community members satisfaction. The participation of commanders in the process has contributed to their success and to improving Aboriginal/police relations in those areas.

Our goal is to encourage an ongoing commitment from police, Aboriginal communities and legal services to assume responsibility for effective complaints management at the local level. We believe this approach recognises the importance of Aboriginal people working through problems with police, with the objective of building more productive relations between communities and police.

While informal mechanisms work well for some matters, more serious allegations or complaints are still investigated. The unit closely oversights Police Service investigations into those matters. We also directly investigate certain complaints, as in the following case.

Terry Chenery (pictured) and Laurel Russ, Aboriginal Complaints Unit, Police Team, focus on developing strategies to improve relations between Aboriginal people and the police and for raising awareness of the Ombudsman's role in this area.

Police–Aboriginal Council and Koori Support Network

An Aboriginal employee of the Police Service complained about the operations of the Police–Aboriginal Council and the Koori Support Network.

The council gave advice to the Commissioner of Police to assist in the implementation of the Service's *Aboriginal Policy Statement and Strategic Plan*. The network provides 'a forum for the exchange of ideas of mutual interest, especially about staffing issues and conditions of employment' for the Service's own Aboriginal officers and employees.

Of particular concern were tensions that had developed within the network, and the failure of a workplace conference to address or resolve those tensions. The employee complained that, although these concerns had previously been raised with the Police Service, there had not been a prompt or adequate response.

In view of the importance of the issues involved, we investigated the matter.

Our investigation revealed that the Commissioner had become concerned about the effectiveness of the Police–Aboriginal Council. As

'...I would like to thank you for attending to police issues raised by us. I was most impressed by your ability to deal with sensitive matters efficiently and to the satisfaction of the Aboriginal community. My experiences from our trip reinforce my belief that a majority of grievances and complaints can be avoided or resolved through improved communication.'

a result, the Police Service, in consultation with the Department of Aboriginal Affairs, has developed a new three-tier structure to replace the council. This structure provides a mechanism for consultation at local, regional and executive levels. At the executive level, there is an Aboriginal Strategic Advisory Council. The Ombudsman herself is on the Council. This will enable us to assess its effectiveness.

Our investigation also focussed on the problems of the Koori Support Network. The workplace conference to attempt to resolve tensions in the network was well-intentioned. However, we expressed concerns about the adverse personal impact of the conference on key participants in the network. This had significant implications for the operation of the network generally.

A further conference took place to address the network's problems. The outcome has been a proposal to enhance the operation of the network. We considered this outcome should be beneficial, and have requested the Service to provide us with regular reports on the progress of the network.

Our report also concluded that the Service's communication with the complainant was seriously inadequate. On our recommendation, the Service's sponsor for Aboriginal issues has provided a personal apology to the complainant, acknowledging the legitimacy of many of the original concerns.

Evaluating the Aboriginal Policy Statement and Strategic Plan

The 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 the Ombudsman, a comprehensive evaluation of the strategic plan has been conducted.

The study examines practical measures undertaken by key local area commands in response to the plan. Researchers conducted 62 interviews with police and representatives of local Aboriginal groups. Four community meetings were also held. Statistical data relating to Aboriginal complaints dealt with by the unit was also carefully analysed.

A report is due to be finalised in November and will identify areas which need to be targeted to improve Aboriginal/police relations and provide a blueprint for future work by us and the Police Service.

MONITORING NEW POLICE POWERS — THE YEAR IN RESEARCH

Policing public safety

The *Crimes Legislation Amendment (Police and Public Safety) Act* which commenced operation on 1 July 1998, makes it an offence to carry a knife in a public place. It also provided police with powers to search for knives and other dangerous implements, give reasonable directions to people in public places, and demand the names and addresses of possible witnesses to serious offences.

We were made responsible for scrutinising the exercise of the powers conferred on police by the Act for the first twelve months of its operation.

When debating the legislation in April and May 1998, members of Parliament indicated that they considered our oversight role a significant safeguard on the implementation and exercise of the expanded police powers.

Our research project

From the outset, we recognised that the statutory obligations placed on us supplemented our existing role in dealing with any complaints arising from the implementation of the Act. A research project was established in September 1998 to coordinate and conduct a range of activities to give effect to our responsibilities.

Discussion paper

To assist in promoting the project, and in identifying key research questions, a discussion paper was prepared and circulated in December 1998. The discussion paper stated that the project would focus on whether the new powers were being used properly, fairly and effectively. It also canvassed the issues that had been raised during the Parliamentary debate on the Act.

Initial consultation

We identified a number of individuals and organisations as having an interest in the project, or capable of providing assistance, and involved them from the outset.

Emma Koorey, Research Officer, observed police practice by accompanying them in the course of their work. This allowed us to gain a more complete picture of police procedures and on the street practices.

These included youth groups, legal organisations, the Bureau of Crime Statistics and Research, academics, and the Police Association. Significant co-operation and input was received from the Police Service.

Understanding police powers

Information recorded on COPS was essential, but not sufficient, for monitoring police use of the powers. We believed that it would be particularly useful to gain an appreciation of how the powers were being integrated into standard police practice, particularly the policing of public space. We realised that it was difficult to examine the operation of the new powers in isolation from other powers and practices, and needed to understand the relationship between police practice, the other powers available to police and the new powers.

Observational research

Our strategy was to observe police by accompanying them in the course of their work to gain a more complete picture of police procedures and practices. In the early stages of implementation, there was a perception that the powers were used more often in specific operations rather than in the course of day to day policing. For this reason, we arranged to observe particular policing operations. Research practice elsewhere, as well as common sense, indicated that police were likely to modify their behaviour in response to being accompanied by our researchers. This was factored into our planning.

Focus groups

With the assistance of the Police Association, we conducted focus groups with police officers on the new Act. These groups offered an understanding of the views and considerations taken into account by police in applying the new powers. The frank approach of the participants provided much insight into the implementation of the Act.

Young people

Similarly, interviews conducted with young people, youth workers and youth organisations offered interesting and useful points of view. The potential adverse impact of the powers on young people, particularly in public spaces, was a significant feature of the Parliamentary debate on the legislation, and consideration has been given to this aspect in the course of our research. The concern of youth organisations meant that monitoring and evaluation of the powers was also conducted by several groups, and the results have been made available in submissions to our project.

Other contributions

Significant input into various aspects of the project was also provided by the Department of Education and Training, local councils and the Department of Local Government, the Family Court, the State Debt Recovery Office, the Infringement Processing Bureau, and the Youth Justice Conferencing Scheme.

In addition to fulfilling our statutory responsibility of keeping the new powers under scrutiny, the research project enabled us to become more actively involved in a number of matters relating to policing practice and the relations between police officers and other members of the community. The project has proved very useful in terms of gaining insights into the impact of the powers in various settings, and will greatly inform our ongoing role in overseeing the work of the Police Service in this area.

'I just wanted to thank you for your help. The coppers came out yesterday and we are trying to work things out, so thanks.'

Police powers over vehicles

The *Police Powers (Vehicles) Act*, which came into effect on 1 January, gives police the power to demand the name and address of drivers and passengers in vehicles suspected of being involved in a serious offence. Police are also permitted to search or stop and search vehicles in specified circumstances, and establish road blocks to undertake the search of vehicles.

The Act was identified as a further stage in the consolidation of police powers, following on from the passage of the *Crimes Legislation Amendment (Police and Public Safety) Act*. Again, specific provision was made for us to monitor the operation of the Act for the first twelve months, and to report to the Minister of Police and the Commissioner of Police.

While similar in purpose to the *Police and Public Safety Act*, the operation of the *Police Powers (Vehicle) Act* has been very different in practice. It has become apparent that the vehicles power is used far less often than the broader search powers, and is mostly used in response to events, not as part of active policing operations.

A number of initiatives have been undertaken regarding our monitoring of the legislation, including:

- briefing the Police Service on our research requirements;
- obtaining COPS data relating to the police use of the new powers;
- reviewing training on the application of the powers; and
- seeking information from local area commands on the nature and extent of the use of the powers.

Our monitoring indicates that there appears to be some confusion among police as to the nature of these new powers, and the relationship with other powers to stop and search vehicles generally.

As a consequence, our research strategy has been adjusted to take into account the need for clearly defined and understood powers in this area.

INFORMAL RESOLUTION

Fresh approach to resolving grievances

This year the *Police Service Act* was amended to require investigators in every matter to keep complainants informed of the progress of inquiries, advise them of outcomes and seek their views on the Police Service's handling of their matter. In the past, this approach was generally used only in relation to complaints dealt with by conciliation.

A related legislative reform removes the requirement on the Police Service to attempt to conciliate particular types of complaints. Instead, the onus is now on commanders to decide which matters are appropriate to resolve informally.

In reviewing police conciliations, we examine matters for any inappropriate use of this approach, or any failure to use informal resolution in circumstances where it clearly should have been used. Despite the need for further improvements, early indications are encouraging. For instance, in some areas police now routinely review failed conciliation attempts to consider the potential for alternative strategies.

The year in review

Several positive trends point to improvements in the police use of conciliation and other informal resolution techniques. One is the high number of matters referred for informal resolution. Of the 4,809 complaints determined in the past year, 29 per cent (1,382) were subject to an attempted conciliation, compared with 28 per cent (1,393) in 1997–98 and 25 per cent (1,309) in 1996–97.

Another promising development is that for the first time in several years, there is a marked improvement in conciliation outcomes. In 1997–98, 28 per cent (397) of conciliation attempts failed. This fell to 23 per cent (218) in the period from July 1998 until the legislative changes took effect in March. The rate continues to fall, since March, just 20 per cent (89) of attempts at informal resolution have failed.

Complainant satisfaction is an important indicator of the appropriateness of the police use of dispute resolution techniques. Our surveys of members of the public who participated in conciliations in 1998–99, demonstrate continuing high levels of satisfaction with the process.

The survey results show:

- 323 respondents (79 per cent) were satisfied or very satisfied with the way their complaint was handled, up from 75 per cent (313) in 1997–98;
- 335 respondents (82 per cent) indicated that the police officer handling their complaint took their concerns seriously and responded properly;
- 182 respondents (45 per cent) thought that the Police Service might improve as a result of the conciliation process; and
- 235 respondents (58 per cent) felt that an apology played a role in the resolution of their complaint and 257 respondents (63 per cent) said their decision to conciliate was influenced by the fact that the police involved would be spoken to about their conduct.

The following cases describe incidents that illustrate the continuing need to develop and enhance the Police Service's dispute resolution capacities.

Policing public protests

We participate directly in conciliations where police and members of the public have difficulty reconciling their respective concerns. One recurring issue is the policing of public demonstrations. A group which represents young people alleged that police were heavy-handed in dealing with an event involving young protesters. Event organisers believed that the police were in breach of a pre-arranged agreement about how the event was to be managed and problems addressed.

The group eventually agreed to discuss their concerns directly with police, but only with our involvement. We used a range of dispute resolution techniques to negotiate a successful outcome. Discussions included ways that police might minimise the disruption caused by public protests, without interfering with the lawful expression of protesters concerns. This cleared the way for an improved agreement on the policing of future events, and the local commander made a fresh undertaking that his officers would abide by the revised guidelines. With our encouragement, police acknowledged that if force was used in the way alleged by the event organisers, the use of such force was inappropriate.

Tackling a problem

Sometimes a more responsive approach at the outset can minimise the need for time-consuming inquiries. A man with a history of mental illness and strained relations with police, delivered a package to a busy police station. Concerns about the envelope prompted staff to evacuate the building. Police later approached the man, then chased and tackled him to the ground. He was released after it was established that the envelope merely contained correspondence.

The man complained about his treatment. The Police Service's report on the matter detailed the sequence of events and proposed no further action. As the officers involved were reacting to factors that were not apparent to the complainant, we suggested that the Service should explain its position and express regret for the injuries and distress caused. As far as the complainant was aware, he had merely handed information to police only to be then set upon by a number of police officers.

The local commander strongly rejected our suggestion. He endorsed the advice of an inspector in his command, who said an apology would serve no purpose. The inspector's advice included comments that the investigation into the man's treatment had been a waste of time, and that such investigations may validate suggestions that complaints about police officers be shredded rather than investigated. He said 'street people' and the mentally ill are drawn to the police station 'like moths to a flame'. The inspector indicated that these people are nothing but a nuisance to police.

Following a detailed report by us, the region commander provided the man with an explanation and apology. The region commander added:

> I am dismayed at the stance adopted by [the inspector]. In the context of 'customer service' his attitude is inexcusable, so much so that I will be discussing with his commander the issue of his future duties. I will need to be convinced that the inspector is fit to remain as a coach and mentor to junior officers within the command.

The region commander agreed that the matter should have been properly dealt with at the local command level, without the need for his or our intervention.

We recognise that police face many difficulties in dealing with people with mental illnesses, and that dispute resolution may not always satisfy complainants grievances. However, an attempt to offer an explanation at an earlier stage would have been preferable to the Service's earlier adversarial approach.

Recognising special needs

A recent example of a successful police conciliation involved a man with a mild intellectual disability who was the victim of a serious assault in his flat. An intruder broke in through a window and allegedly held a knife to the man's throat, gagged him, damaged the flat and stole property.

The victim's father complained that police detectives were reluctant to investigate the incident, were gruff and intimidating when dealing with his son, and made comments that the son interpreted as inferring that the attack did not occur. The father was concerned that police may not have investigated the attack at all had he not insisted that they take some action, and that the investigation was compromised by the officers dismissive approach.

In meeting with the victim and his father, the officer investigating the complaint said the police involved should have recognised the need for sensitivity. He acknowledged that the approach adopted had added to the victim's distress, and apologised for the officers inaction and unsympathetic attitude. The outcome plan included training for all police in that command on the special needs of dealing with people with an intellectual disability or psychiatric condition. The victim's father has offered to assist with the training.

KEEPING COMPLAINT SYSTEMS UNDER SCRUTINY

The recent legislative changes which give the Police Service broader discretion to determine how to handle complaints, also strengthen requirements for us to scrutinise the Service's complaints processes.

All written complaints by members of the public, as well as all serious complaints by police, must be recorded and notified to us. However, certain complaints by police are exempted from notification:

- less serious internal management matters, that should be recorded and dealt with as complaints, but are best resolved quickly by local management (e.g. minor matters of incompetence); and
- matters that are so inherently administrative or managerial in nature (e.g. absence from duty) that they should not even be treated as complaints.

We audited 403 matters originating from within the Police Service to assess how these 'non-notifiable' matters were handled and whether we should have been advised.

We found many matters, including some very serious allegations, had not been recorded appropriately, or notified to us as required by legislation. These included an allegation that an officer had improperly involved himself in an investigation of a relative accused of a road-rage incident. Another matter involved an officer with a large financial interest in a security company, in breach of Service guidelines designed to prevent conflicts of interest.

The 403 matters audited consisted of 277 complaints recorded on COPS, and 126 matters recorded locally at 12 randomly-selected local area commands.

After an initial review of the 277 centrally-recorded complaints, we selected 72 for further analysis. Our review showed that 16 were serious enough to require notification to us for assessment.

Of the 126 locally-recorded matters, we found that 42 involved issues serious enough to warrant an entry on COPS. Moreover, 35 of these 42 should also have been notified to us for assessment, including one which should also have been notified to the PIC. If the 12 local commands audited are representative of other commands, the Service is apparently failing to notify us of many complaints by police.

We have advised the Police Service of our findings and requested that the reasons for the recording and notification deficiencies be identified and the problems rectified as quickly as possible. We expect to expand our auditing program to keep under scrutiny other aspects of the Service's complaints processes. Of particular interest is how effectively the Service uses its discretion to determine how to handle complaints, and its compliance with basic legislative safeguards including the requirement to consult complainants and assess their satisfaction with the police response.

POLICE COMPLAINTS PROFILE

We manage complaints about police by creating a file for each complaint. Each file may contain a number of allegations about a single incident. For example, a person arrested following a fight at a hotel may complain to us about unreasonable arrest, assault and failure to return property. One incident, one complaint, many allegations.

In 4,809 cases determined this year, 8,338 allegations were made. The following tables list these in categories and show how each was determined.

Note: The category Not fully investigated includes matters that were discontinued or declined after preliminary inquiries were made.

Table 4: Criminal conduct

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	OTHER	TOTAL
Conspiracy/cover up	82	14	50	0	146
Theft	92	13	66	0	171
Consorting	50	2	25	0	77
Bribery/extortion	65	0	43	0	108
Dangerous/culpable driving	1	0	0	0	1
Drug offences	86	10	53	0	149
Fraud	15	6	31	0	52
Perjury	21	6	11	0	38
Sexual assault	31	6	26	0	63
Telephone tapping	5	0	1	0	6
Murder/manslaughter	5	0	3	0	8
Other	53	6	32	0	91
Total	**506**	**63**	**341**	**0**	**910**

Table 5: Assault

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Injury	233	31	208	0	472
No injury	71	14	46	2	133
Total	**304**	**45**	**254**	**2**	**605**

Table 6: Investigations and prosecutions

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Forced confession	10	2	7	0	19
Fabrication	71	8	38	0	117
Unjust prosecution	41	2	6	16	65
Suppression of evidence	9	2	5	0	16
Faulty investigation/ prosecution	299	73	114	271	757
Disputes traffic infringement notice	110	0	3	0	113
Failure to prosecute	134	10	39	190	373
Total	**674**	**97**	**212**	**477**	**1,460**

Table 7: Arrest/detention/warrant

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Unjustified search/entry	53	5	13	24	95
Unnecessary use of force/damage/ resources	92	5	71	20	188
Faulty search warrant procedure	20	1	13	2	36
Strip search	17	0	10	4	31
Improper detention of intoxicated person	3	1	2	1	7
Unreasonable use of arrest/detention powers	122	12	51	36	221
Total	**307**	**24**	**160**	**87**	**578**

Table 8: Inadvertent wrong treatment

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Administrative matter arising from investigation	19	0	0	0	19
Property damage	4	1	0	7	12
Outside jurisdiction	34	0	0	0	34
Total	**57**	**1**	**0**	**7**	**65**

Table 9: Abusive remarks or demeanour

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Race related	18	1	5	8	32
Other social prejudice	1	1	0	0	2
Traffic rudeness	40	5	4	59	108
Other	33	15	39	34	121
Total	**92**	**22**	**48**	**101**	**263**

Table 10: Management issues

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Failure to withdraw warrant on payment	2	0	0	1	3
Improper issue of summons, warrant/enforcement order	7	0	0	8	15
Delay in answering correspondence	24	0	1	9	34
Inappropriate permit/licence action	1	0	0	0	1
Condition of cells or premises	2	0	1	0	3
Other	81	42	7	9	139
Total	**117**	**42**	**9**	**27**	**195**

Table 11: Breach of police rules or procedure

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Sexual harassment	16	8	2	0	26
Traffic/parking offences	56	13	25	33	127
Failure to provide/delay legal rights	65	8	48	35	156
Failure to return property	46	2	11	30	89
Threats/harassment	361	29	115	147	652
Unreasonable treatment	288	24	93	331	736
Drinking on duty	13	11	7	0	32
Faulty policing	15	1	4	10	29
Failure to take action	176	23	51	309	559
Breach of police rules & regulations	344	276	115	21	756
Failure to identify/wear number	18	2	5	12	37
Misuse of office	44	17	19	4	84
Other	52	10	17	11	90
Total	**1,494**	**424**	**512**	**943**	**3,373**

Table 12: Information

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Inappropriate disclosure of confidential information	122	30	64	18	231
Failure to provide information/notify	66	43	26	57	192
Inappropriate access to confidential information	96	87	81	0	264
Providing false information	63	72	45	22	202
Total	**347**	**232**	**216**	**94**	**889**

Table 13: Summary — allegations

CATEGORY	NOT FULLY INVESTIGATED	ADVERSE FINDING	NO ADVERSE FINDING	CONCILIATION	TOTAL
Total	**3,898**	**950**	**1,752**	**1,738**	**8,338**

COMPLAINTS ABOUT

child protection

CONTENTS

We have distributed educational material to over 7,000 agencies and interest groups across the state.

In August 1997 Justice Wood handed down his three-volume report on the Royal Commission into the NSW Police Service (Royal Commission). The report contained 140 recommendations for dealing with patterns of child abuse and neglect occurring in government and non-government agencies. Justice Wood outlined cases where allegations of child abuse were ignored, patterns of offending behaviour overlooked, dismissed out of hand, or dealt with inappropriately. In some cases employers who were too close to the situation, or too concerned about potential embarrassment to their agency, failed to make the necessary decisions to remove child abusers from their agency.

In responding to the recommendations of Justice Wood, Parliament put the responsibility for employment decisions in these cases squarely on employers. Parliament also saw the need for the Ombudsman to oversee how well agencies dealt with child abuse allegations against their employees.

On 7 May, the *Ombudsman Amendment (Child Protection and Community Services) Act* commenced. To give effect to the child protection jurisdiction, we established a Child Protection Team. At the time of writing this report the team had been in operation for three months.

The Act requires heads of agencies of all public authorities, and certain non-government agencies, to report to us child abuse allegations and convictions.

The following government and non-government agencies have a particular obligation to report allegations of child abuse whether the alleged offence occurred inside or outside the workplace:

- Department of Community Services (DOCS);
- Department of Corrective Services;
- Department of Education and Training (DET);
- Department of Juvenile Justice (DJJ);
- Department of Health;
- Department of Sport and Recreation;
- area health services;
- non-government schools;
- child care centres;
- agencies providing substitute residential care;
- statutory health corporations; and
- affiliated health organisations.

By the end of June, 82 complaints and notifications had been received. Given the short reporting period, it is premature to comment on trends or patterns. From 1 July to 19 August the rate of agency notifications to us has significantly increased, with 315 notifications received. The statistics for the next year should establish patterns of allegations, and profiles of alleged offenders and victims. In the early stages an important part of our work has been community liaison, including advising agencies of legal and procedural issues relating to the legislation. Since December, 110 briefings to a range of government and non-government agencies have been conducted. Questions about the definition of child abuse, standard of proof, appropriate disciplinary action, and confidentiality have been raised.

THE OMBUDSMAN AMENDMENT (CHILD PROTECTION AND COMMUNITY SERVICES) ACT

The *Ombudsman Amendment (Child Protection and Community Services) Act* inserted a new part, Part 3A, into the *Ombudsman Act*.

This creates obligations on heads of designated agencies to notify us within 30 days of becoming aware of any child abuse allegation or conviction made against an employee of the agency. The insertion of Part 3A into the *Ombudsman Act* means that the other powers, functions and obligations that the Act gives to us also apply to the child protection jurisdiction.

Part 3A also confers the following functions on us:

- keep under scrutiny the systems for preventing child abuse by employees of designated agencies and other public authorities and the handling of, or response to, child abuse allegations or convictions by those agencies and authorities;
- oversee or monitor the conduct of an investigation by any public or private agency within its jurisdiction into an allegation or conviction of child abuse;
- determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation; and
- directly investigate a child abuse allegation or conviction against an employee of a designated agency, or the handling of or response to such a matter.

OMBUDSMAN REGULATION

Following advice from the Department of Health, it was apparent that a number of children's health services were not covered by our child protection jurisdiction. For example, while the department and area health services were covered by the Act, some children's health services, such as the New Children's Hospital, Westmead, were not covered. The types of organisations that we considered should be covered by the Act are defined in the *Health Services Act* as either statutory health corporations or affiliated health organisations.

In January a recommendation was made to the Cabinet Office to include these health services within the child protection jurisdiction as designated agencies. In May, the Ombudsman Regulation was published in the Government Gazette, giving us jurisdiction over statutory health corporations and affiliated health organisations.

OUR APPROACH

Encouraging agencies

Encouraging agencies to take responsibility for child protection is the underlying philosophy of the new system. The legislation anticipates that employers will be responsible and held accountable for making the right decisions about the employment and management of staff who work with children and young people.

Our initial approach will be to support agencies that act in good faith and show a willingness to acknowledge and rectify problems.

The Ombudsman is impartial

We are impartial and do not advocate for any particular section of the community. On the one hand, we have a core belief in the fundamental protection of children. Equally, we have a responsibility to recognise the rights of all individuals, including those of employees who may become the subject of allegations of child abuse.

Professional investigations

The most effective way to protect the interests of all parties is to carry out investigative work with the highest possible level of professionalism. In dealing with child protection issues and allegations, sound decisions can only be made if good quality information is available. We encourage the development by agencies of best practice methods in child protection investigations.

Natural justice

Fundamental to the commitment to the rights of all individuals is the requirement for natural justice. The principles of natural justice are an important element in the way we conduct our oversight, monitoring and investigation functions.

Consistency

All agencies will be dealt with in a consistent and impartial manner. Matters will be determined on merit, irrespective of whether the agency works in the government or non-government sector.

Co-ordination

We will work with other agencies responsibile for child protection to avoid duplication, maximise co-ordination and make the best use of resources.

WORKING WITH DESIGNATED AGENCIES

Employers and employees need to be clear about their responsibility under the Act. Both government, and now for the first time non-government, agencies are working with us to ensure quality child protection policy and practice. As part of a broad education program, we have held 110 briefings with 71 groups.

These groups include:

- all designated government agencies;
- representatives of designated non government agencies; and
- representatives of organisations interested in or affected by the legislative changes, such as unions, employer bodies, parent organisations, and community sector peak organisations.

Brochures and procedures have been distributed to all designated agencies and additional brochures will be developed for parents and for people with disabilities. We have adapted briefing materials to reflect the diversity of functions and interests of the agencies addressed. Many organisations have been quick to respond to their obligations under the Act and have been pro-active in informing staff of their new reporting obligations. Notably, the Department of Juvenile Justice promptly invited our staff to brief its executive team and to present information sessions to regional clusters. The Catholic education offices in the dioceses of Sydney and Parramatta have also organised briefing sessions by our staff for over 400 principals and assistant principals.

The Catholic Commission for Employment Relations (CCER), the Independent Education Union (IEU), the Liquor, Hospitality and Miscellaneous Workers Union and a number of children's services forums convened seminars for their members. Similarly, Pittwater and Newcastle councils invited us to address senior managers and front line workers.

It is disappointing that some government departments have been slow to advise their own staff of the reporting requirements. We will be requiring the directors-general of these departments to formally advise us of the strategies used to inform their staff and to provide copies of internal reporting mechanisms.

Issues for agencies

Meetings with the six designated government departments and other public authorities, such as local councils, focused on incorporating our notification procedure into each agency's existing internal reporting and risk assessment structures. Informing and advising staff is regularly raised as a priority issue. A local council human resources manager commented:

> The Act has far reaching implications for all council employees that should be carefully thought through before we act. There is a definite need to coordinate the approach across organisations such as the Department of Local Government.

We have been holding discussions with representative groups within the education sector including: the NSW Teachers Federation, the IEU, the Association of Schools and the Australian Heads of Independent Schools Association. Discussions sought to clarify the definition of abuse, responses to vexatious complaints, the observance of natural justice for employees the subject of allegations, and strategies for the transfer of information to other investigative bodies.

Meetings with ACROD, Association of Child Welfare agencies, people with disabilities, children's service advisors and the NSW children's services forum highlighted the need for agencies to provide training to staff in recognising and reporting child abuse. Many small agencies will need assistance with policy development, particularly in the area of disciplinary proceedings.

Meetings and briefings with agencies made apparent the need for clear advice and answers to key questions. Guidelines explaining key concepts in the legislation and providing advice on how to meet the statutory obligations have been distributed to designated agencies, public authorities, and interested parties.

Agencies are encouraged to provide feedback on the procedures so that the information provided continues to be appropriate. Early feedback from agencies has indicated that the procedures are informative.

INVESTIGATIONS

Once a designated agency notifies us of a child abuse allegation/ conviction we can respond in one of three ways: oversight, monitoring or direct investigation.

Oversight

Oversight involves examining the information provided by an agency to ensure that the response to the allegation is appropriate.

Monitoring

Monitoring, a more active and closer scrutinising role, includes periodic review of the agency's

investigation, providing feedback and sitting in on interviews.

Direct investigation

A direct investigation involves our assuming control of the investigation.

When the head of agency is satisfied that an investigation has been concluded, we must be provided with a final report, together with statements and supporting documents. We are then required to make two determinations — was the investigation into the child abuse allegation properly conducted?, and was appropriate action taken as a result of the investigation?

Where the investigation is shown to have deficiencies, we will issue a report with recommendations to the head of agency.

Direct complaints

We receive direct complaints from members of the community in relation to child protection matters. So far these have involved complaints about the way an agency dealt with the investigation of an allegation of child abuse. Any party, including alleged offenders, can raise complaints.

Own motion investigations

We can conduct an 'own motion' investigations into child protection systems or issues. This type of inquiry may arise where we have detected a significant systemic problem within an agency in relation to the way that agency deals with child protection issues.

Interagency Investigative Forum

In June the Interagency Investigative Forum was established to facilitate communication on the development of ideas and best practice initiatives in the child protection area. The NSW Police Service mooted the idea. It was agreed that, because we are an impartial body with a particular responsibility for the area of child protection, we would be the appropriate agency to convene and chair the forum.

The forum intends to focus its work on:

- enhancing child protection systems in designated agencies;
- developing risk assessment models in the employment context;
- developing models for managing allegations of child abuse against employees;
- developing models for best practice in child abuse/protection investigations;
- providing information to agencies on legal and ethical child protection issues;
- providing an avenue for research;
- utilising the range of agencies child protection experience; and
- communicating the forum activities across the sector.

The agencies that are currently involved are:

- NSW Ombudsman;
- Commission for Children and Young People (CCYP);
- NSW Police Service;
- Department of Community Services;
- Department of Health;
- Department of Education and Training (Case Management Unit and Industrial Relations Service);
- Department of Sport and Recreation;
- Department of Juvenile Justice;
- Catholic Commission for Employment Relations;

The forum has had two successful meetings and has established workgroups to develop specific ideas and initiatives.

Kariong investigation

Following four riots in April at the Kariong Juvenile Justice Centre, we were called upon to investigate the causes and conditions that led to the riots, with a particular emphasis on possible systemic issues within the facility. This investigation is being conducted jointly by our General Team and the Child Protection Team. The Kariong investigation is ongoing.

COMPLAINTS, INQUIRIES AND NOTIFICATIONS

As at 30 June, we had received 149 inquiries about child protection matters (see Table 1) and 82 complaints and notifications of allegations of child abuse (see Table 2).

From July until end September, 315 new notifications had been received. It is expected this pattern of notification will increase significantly as designated agencies become more aware of the procedures.

At this stage the observations we can make are that: most notifications relate to the alleged physical abuse of children; some reports received describe allegations of serious emotional and sexual abuse of children; there is an over-representation of boys as alleged victims; and there is a failure in some agencies to help staff deal with disruptive behaviour.

From some of the notifications received, there are examples of a failure on the part of agencies to: treat allegations of child abuse seriously; investigate allegations thoroughly and fairly; make appropriate decisions based on risk assessment; and ensure employee rights are addressed.

ISSUES

Development of draft 'class and kind' agreement with the Community Services Commission

The *Community Services (Complaints, Appeals and Monitoring) Act* allows the Community Services Commissioner and the Ombudsman to 'enter into arrangements regarding the co-operative exercise of their respective functions'. This section also provides for the Commissioner and the Ombudsman to enter into 'class or kind' agreements in connection with child abuse matters, and to disclose information to each other. On several occasions we have met with staff of the Community Services Commission to develop an interim protocol. It was agreed that an interim approach was more useful until experience can better inform a final agreement.

The main features of the interim agreement are:

- the exchange of a bi-monthly schedule listing complaints and notifications relating to the agencies within the jurisdiction of both the commission and ourselves;
- the handling of complaints about joint investigative teams by the Ombudsman; and
- a strategic monthly meeting and a six monthly joint review of the protocol.

Table 1: Inquiries received about child protection matters received by institution 1998–99

Agency	Inquiries
Non-government schools	46
Child care	24
Substitute residential care	6
Other public authority	18
Government schools	1
Government other	13
Other prescribed body	2
Public	18
Unions/Peak bodies	9
Non jurisdiction agency	12
Total	**149**

Table 2: Complaints and notifications of allegations of child abuse, received by institution 1998–99

Agency	Complaints/ notifications
DJJ	12
DET	19
DOCS	3
Health	1
Police	36
Non-government school	7
Child care centre	2
Substitute residential care	1
Other public authority	1
Total	**82**

Meeting with the Commissioner for Children and Young People

The *Ombudsman Amendment (Child Protection and Community Services) Act* enables us to disclose information about child abuse to the CCYP. Preliminary discussions have been held to develop appropriate information technology systems and to flag privacy issues. Decisions about the types of information to be exchanged will follow consultation and feedback from relevant stakeholders.

'Head of agency' for the Catholic Church

We have reached an agreement with the Catholic Commission for Employment Relations (CCER) to make a regulation specifying CCER's Executive Director as 'head of agency' for many designated agencies within NSW Catholic dioceses. We acknowledge the level of commitment to the protection of children emphasised by the bishops, the directors of schools, CCER and the Catholic Church Professional Standards Office in negotiating this agreement.

Disciplinary proceedings

The *Commission for Children and Young People Act* provides for a system of pre-employment screening for child-related employment. This is based on a risk assessment related to the preferred applicant which is carried out on information such as: relevant criminal records, certain apprehended violence orders, and relevant disciplinary proceedings

During discussions on the draft guidelines for pre-employment screening, it became apparent that many non-government organisations were unclear as to what was meant by the term 'disciplinary proceedings', as it is a concept mainly confined to the public sector.

Given our role in overseeing the disciplinary process in relation to designated agencies, we offered to provide advice to non-government agencies on what constitutes 'disciplinary proceedings' and how to establish a disciplinary scheme. This advice is currently being prepared, and should be available before the commencement of the pre-employment screening provisions of the *Commission for Children and Young People Act*.

Monitoring compliance with the Act

A system for monitoring agency compliance with the reporting requirements of the Act will be devised and applied. This will involve developing agency profiles, collecting predictive data and cross-checking with complaints received by alleged victims and alleged offenders. A methodology for tracking the implementation of recommendations will also be developed.

Our community liaison strategy — working together with stakeholders

Community liaison is a critical part of our work. Each member of the Child Protection Team has an education role and is taking an active part in delivering information sessions across the state.

Our liaison plan draws on a number of models including community development, interagency collaboration and building agency capacity. We aim to:

- encourage information sharing;
- encourage agency involvement and ownership;
- develop an understanding of agency child protection capacity;
- increase an agency's capacity by building on existing structures; and
- develop best practices.

Monitoring the handling of investigations by designated agencies

Our investigation unit will comment on the effectiveness of investigations undertaken by designated agencies and determine which kind of allegations may be exempt from notification. To this end data collection, development of benchmarks, and analysing the way agencies undertake investigations will be important strategies.

Scrutiny of systems for preventing child abuse and responding to allegations

Best practice guidelines will be developed to inform agencies of effective ways to prevent child abuse. Some excellent examples of practice already exist and will be incorporated into the guidelines. Tools for auditing agency practice will include audits, and meetings with staff and users of services.

CHALLENGES

How aware is our community?

There is an apparent level of reluctance on the part of some employees, and some bodies representing them, to believe that a fellow worker might be capable of the kind of appalling behaviour described in the report of the Royal Commission. This is despite a recent deluge of media reports of paedophile activity and the disclosure of corruption and cover up of past allegations of child abuse in organisations. It is also despite the willingness and commitment of the majority of employees to protect children. There is a prevailing mythology that once a convicted sex offender or child abuser has fulfilled their obligation to society, whatever the sentence/treatment, a 'cure' has been effected and the person will not re-offend. Research findings indicate the opposite is often the case.

Sandy Killick, Community Liaison Officer, Child Protection Team, is a key contact between our office and the community.

Real conflicts arise when employees are asked to report allegations of abuse against someone they know and trust. Many agencies have made great progress in this area since the Royal Commission. For others, the task of making sure all employees notify heads of agencies of any allegations of child abuse against fellow workers will take a major attitudinal shift. It will require effective education strategies on the part of employers, with our assistance and that of other child protection agencies. It will also require the building of trust and confidence in our team and the systems we oversee.

What standards of proof should apply?

Substantiation of allegations of child abuse is difficult, with conviction rates of alleged offenders lower than for any other criminal charge. While some jurisdictions have introduced reforms which promise to improve evidence taking from children and admissibility of such evidence in court, there remain other barriers.

For criminal allegations the evidence placed before the court has to establish beyond reasonable doubt that the alleged offender is guilty of the offence. For administrative and disciplinary matters, the test is theoretically lower – the evidence has to demonstrate on the balance of probabilities the offence was committed. However, there is a requirement that the more serious the allegation, the more compelling the evidence must be to bring an adverse finding — this is known as the Briginshaw principle. Effectively, this principle raises the standard of proof required in child abuse matters to a level approximating the criminal standard.

In the USA and other international jurisdictions, much less rigorous standards of proof are prescribed for

decision making in relation to child protection. In these jurisdictions, law makers have decided that the public interest in protecting a child is greater than an erroneous determination that someone has abused a child. These jurisdictions also apply the concept of 'unacceptable risk'.

Employers have a duty of care to protect vulnerable people, such as children. Allegations of child abuse against an employee suggest a risk to other children with whom the person will come in contact. It is time that, as a community, we debate whether the strict application of the Briginshaw principle in matters of child abuse is appropriate. The experience of other jurisdictions can inform us on this complex matter.

What is child abuse 'causing psychological harm'?

Psychological harm is the category of child abuse least understood and appropriately managed, yet it can cause significant long-term harm. Agency policy and procedures generally assist employees in understanding behaviours that constitute sexual assault, physical abuse and neglect. DET, for example, gives clear direction to teachers in defining situations where it is inappropriate to touch a student.

There is less clarity as to what constitutes behaviour causing psychological harm to a child. Teachers and childcare workers are particularly concerned that a range of unjustifiable allegations, under this definition of child abuse, will come to our attention.

The intent of the Act was to assume a broad definition of child abuse. The legislation also provides for the exemption from notification to us of classes and kinds of child abuse allegations. Initially we are considering using this provision to clarify the types of allegations of child abuse involving behaviour causing psychological harm which must be notified to us.

The scope of behaviour causing psychological harm that need not be notified to us will be clarified over time, based on the nature of the allegations made, the experience of agencies and the demonstrated ability of agencies to properly conduct investigations. The experience of the CCYP will also inform this work, as will the input from employee representative groups.

For behaviour to constitute psychological abuse, there should be two related elements: behaviour or misconduct that has resulted in abuse and some demonstrable evidence of harm arising from the behaviour.

Relevant behaviours would clearly include:

- consistently making excessive or unreasonable demands, or particularly serious individual examples of such conduct;
- placing a child in an environment significantly detrimental to child development;
- a pattern and course of conduct involving scapegoating, or humiliation;
- persistent and targeted verbal abuse; and
- failure to respond appropriately to threats of self-harm.

Demonstrable evidence of harm following unacceptable behaviour may include: vomiting, diarrhoea, sleep disturbances, extreme attention seeking behaviour and other behavioural disorders.

Child abuse needs to be something more than rudeness, insensitivity, and lack of interest or not including a child in a particular activity. It is reasonable to assume that on their own, none of these behaviours constitute child abuse for the purposes of the legislation. However, in the context of a course or pattern of conduct, they might do so.

It is reasonable to assume that the legislature intended psychological harm to be something more than children are likely to experience in their normal interaction with other students, teachers, siblings and parents. Pre-existing medical conditions and family circumstances need to be considered as they could account for what might first appear to be evidence of harm.

What information, why and to whom?

Inadequate record keeping of complaints and allegations has made it easy for child abuse offenders to move undetected from agency to agency, leaving them free to re-offend. There is a need for an exchange of information across investigative agencies to track the movements of offenders and to detect patterns and trends. At the same time, employees have a right to privacy and confidentiality. Balancing the rights of children to be free from abuse and the rights of employees to privacy will be of prime concern in determining what information needs to be exchanged and with whom.

FOI AND EMPLOYMENT SCREENING FOR CHILD PROTECTION

Introduction

The *Commission for Children and Young People Act* (the *CCYP Act*) expanded the coverage of the *FOI Act* into the private sector (s.43). Under that Act a person is entitled to apply for access to and/or correction of information about disciplinary proceedings taken by the person's employer (or a relevant professional or supervisory body) involving alleged child abuse or

sexual misconduct by the person or acts of violence committed by the person in the course of employment. This applies to both public and private organisations ('agencies') involved in child related employment.

Employment screening

The *CCYP Act* makes employment screening mandatory for preferred applicants for paid primary child – related employment. This obligation applies to all organisations involved with child related employment (s.37).

Primary related employment is defined in that Act (s.37(6)) and the *Child Protection (Prohibited Employment) Act* (s.3).

Employment screening can include checks for:

- any relevant criminal record of the person with respect to offences involving sexual activity, acts of indecency, child abuse or child pornography;
- any relevant apprehended violence orders (AVOs) made against the person on the application of a police officer or other public official for the protection of children; and
- any relevant disciplinary proceedings completed against the person by the employer or by a professional or other body that supervises the professional conduct of the employee, being completed proceedings involving child abuse or sexual misconduct by the employee, or acts of violence committed by the employee in the course of employment.

Options for access to information

There are two separate ways in which persons the subject of employment screening can obtain access to information that has or maybe used in employment screening:

Formal

FOI applications to the relevant agency(ies) for access to any documents containing information about relevant disciplinary proceedings; and

Applications to the Police Service for access to any documents concerning the applicant's criminal record (presumably documentation concerning any AVO made against the person on the application of a police officer or other public official) would have been available to the person concerned soon after the AVO was first issued; or

Informal

The employment screening guidelines required to be produced by section 35 of the *CCYP Act* (entitled *Employment Screening Procedures for Child Protection)* provide that:

- if an applicant's criminal record contains matters considered relevant to the position applied for, the applicant is to be contacted confidentiality and shown the record for the purpose of verifying its accuracy and to seek further details;
- if an applicant has been the subject of completed disciplinary proceedings in relation to child abuse, sexual misconduct or violence in the workplace, and is considered relevant to the duties of the position applied for, the applicant is to be contacted and given the opportunity to verify that the information relates to the applicant and commenting on any mitigating circumstances; and
- applicants are to be notified of information obtained about them during the screening process that may adversely affect their application.

Access to information under the *FOI Act*

The *CCYP Act* provides that where a person has been the subject of any relevant disciplinary proceedings, the person is entitled:

- to apply for access under the *FOI Act* to any documents of an agency containing information about those proceedings (s.43(1)); and
- to apply for the amendment of the agency's records relating to information about relevant disciplinary proceedings, on the basis that the information is, in the persons opinion incomplete, incorrect, out of date or misleading (s.43(3)).

The provisions of section 43 effectively extend FOI to cover all non-government organisations involved in child related employment that hold information concerning relevant disciplinary proceedings against current or former employees (extending to disciplinary proceedings completed within the period of five years immediately before the commencement of section 39 of the *CCYP Act*, which at time of writing, had not yet commenced).

Any provision of the *FOI Act* relating to fees and charges payable by applicants does **not** apply to such applications for access to documents (s.43(2) *CCYP Act*).

Where an employer is under a duty to notify the Commission for Children and Young People of the name and other identifying particulars of any employee against whom relevant disciplinary proceedings had been completed by the employer (s.39(1)), the

employer is under a further duty to retain records of information that the employer is supposed to so notify. That duty applies despite any requirement for disposal of the record, for example any regulation applying to records of information of disciplinary proceedings with respect to public sector employees (s.39(5)).

In assessing applications made for access to any documents containing any information about relevant disciplinary proceedings, while the presumption should be that documents the subject of such an FOI application should be released, exemption clauses in Schedule 1 of the *FOI Act* that may be relevant include clauses 4, 6, 9, 10, 13, 16 and 20.

Clause 4: Documents affecting law enforcement and public safety

In particular subclause (1) paragraphs (a), (b), (c), (e) and (h) (**however** it is important to note that clause (4)(2)(a)(v) provides that a document is not an exempt document by virtue of subclause (1) if it merely consists of a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation).

Clause 6: Documents affecting personal affairs

Which would only be relevant where the documents included information about persons other than the applicant.

Clause 9: Internal working documents

It is unlikely that this clause would be relevant because 'relevant disciplinary proceedings' are defined to include only completed proceedings and exemption under clause 9 should generally be claimed only in relation to documents that are relevant to decisions that are yet to be made. Documents about completed disciplinary proceedings are not the subject of any current decisions.

Clause 10: Documents subject to legal professional privilege.

Clause 13: Documents containing confidential material.

Clause 16: Documents concerning operations of agencies

Where it could be validly argued that disclosure of a document could reasonably be expected to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel and would, on balance, be contrary to the public interest.

***Clause 20(d): Relating to documents containing matter the disclosure of which would disclose matter relating to a protected disclosure within the meaning of the* Protected Disclosures Act.**

Amendment of records under the *FOI Act*

It is important to note that where an agency refuses to amend its records in accordance with an application, the notification to the applicant must, amongst other things specify the reasons for refusal and the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.

Further, where an agency refuses to amend its records, the applicant is entitled to require the agency to add to those records a notation specifying the respects in which the applicant claims the records to be incomplete, incorrect, out of date or misleading, and, if the applicant claims the records to be incomplete or out of date – setting out such information as the applicant claims is necessary to complete the records or to bring them up to date.

Agencies are then required to cause written notice of the nature of the notation to be given to applicant.

It is also relevant to note that where an agency discloses to any person (including any other agency) any information contained in that part of its records to which such a notice relates, the agency:

- is required to ensure that there is given to that person, when the information is disclosed, a statement stating that the person to whom the information relates claims that the information is incomplete, incorrect, out of date or misleading and setting up particulars of the notation added to its records under this section; and
- may include in the statement the reason for the agency's refusal to amend its record in the accordance with the notation (s.46(3), *FOI Act*).

As a matter of fairness and good practice, where an agency has previously disclosed to any other agency that it subsequently agrees to amend, it should:

- notify the applicant of the identity of the agency to whom the records had been provided; and
- inform that agency of the amendment it has made.

Given the requirements of section 39(1) and (2) of the *CCYP Act* for employers to notify the Commission for Children and Young People, and, on request, provide another employer with details of the disciplinary proceedings for the purposes of employment screening, it maybe necessary for applicants wishing to have their records amended to make separate applications to other agencies as well as to the commission.

COMPLAINTS ABOUT

public authorities

CONTENTS

The level and quality of customer service provided by general authorities is attracting our intense scrutiny. The public interest in this area is strong and we are keen to encourage improved customer service, as this should reduce the number of complaints ultimately coming to us.

As part of our work to lift customer service standards, we commenced a major initiative to audit the customer service of public authorities which were selected on their substantial level of public interaction. We used a carefully planned program of 'mystery customer' inquiries by our staff to the authorities. We started in April, and intend this audit to be an ongoing project We also hope to work with the Premier's Department to assist implementation of any improvements we recommend. We are also proposing to work with other specialist watchdog bodies such as the Health Care Complaints Commission, to undertake similar audits of the public authorities within their jurisdictions.

We have also conducted a survey of public authorities complaint handling systems, which is a key mechanism for monitoring quality and redressing shortcomings in customer service. During 1999–2000 as a further initiative we will enlist the public's help, asking them to provide us with examples of red tape or incomprehensible bureaucracy, whether it be legislation, regulations or policies that affect them. If appropriate we will approach the public authority concerned and recommend they seek to suitably amend their legislation, regulation or policy or, if this is not practicable, to issue clearer guidelines.

Complaint handling appears to be poor at universities. An unintended consequence of increasing fee levels, and the rising numbers of full-fee paying students, seems to be a greater readiness by students to complain about university services. Recent complaints to us suggest most universities need to improve their services in terms of enforcing proper codes of conduct, simplifying and clarifying their regulations (ensuring such embody transparency and procedural fairness) and that reasons are given for decisions (such as appeal or special consideration determinations) wherever practicable. Universities who are reluctant to embrace such principles, and whose behaviour generates complaints, will be pursued by us.

COMPLAINT NUMBERS

This year we received 967 formal written complaints and 3,620 informal oral complaints about the public authorities dealt with in this section. We also received 71 requests to review our initial determinations. A further 510 written complaints and 6,110 oral complaints were received about authorities, organisations and individuals not within our jurisdiction. Where a complaint falls outside our jurisdiction we provide appropriate referral information whenever possible.

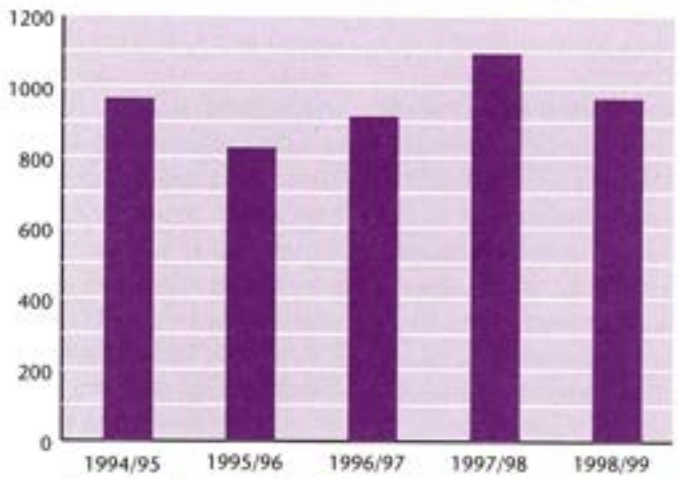


Figure 1: Written complaints about public authorities received
A five year comparison

Table 1: Nature of written and oral complaints about public authorities 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Approvals Grants, licences, permits, registrations, applications	71	345
Charges Level of charges, fees, penalties/refunds	100	386
Contractural issues Tenders, contracts, maintenance	65	298
Information Improper disclosure, refusal to alter/disclose, wrong advice	42	168
Management Supervision	13	100
Misconduct Corruption, conflict of interest	16	54
Natural justice Denial, procedural fairness/failure to give reasons, other procedural objections	37	118
Policy/law Objection to policy/law, faulty procedures	91	250
Regulation Discriminatory enforcement of regulations/law, failure to enforce/investigate, unreasonable/ unjustified enforcement	92	32
Service Delayed action, failure to act, no replies, poor service, rudeness, discrimination	271	932
Wrong decisions Prejudice, malice or bias, based on wrong facts, other reasons	38	466
Other	60	259
Non-jurisdictional issues	71	212
Total	**967**	**3,620**

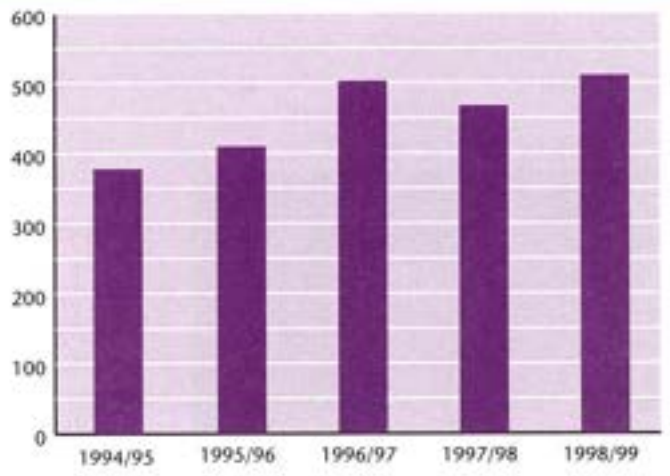


Figure 2: Written complaints received about public authorities outside our jurisdiction A five year comparison

Table 2: Complaints about public authorities 1998–99

Complaints received	
Written	967
Oral	3,620
Reviews	71
Total	**4,658**
Complaints received concerning agencies outside our jurisdiction	
Written	510
Oral	6,110
Total	**6,620**
Complaints determined (written)	
Formal investigation completed	4
Formal investigation discontinued	3
Preliminary or informal investigation completed	492
Assessment only	399
Non jurisdiction issues	106
Total	**1,004**
Current investigations (at 30 June)	
Under preliminary or informal investigation	123
Under formal investigation	3

Written complaints about authorities within jurisdiction fell by 12 per cent this year, but this followed rises of 20 per cent last year and 11 per cent the year before that. A five-year view suggests a very slight upward trend in this type of complaint. Oral complaints about public authorities within jurisdiction rose one per cent this year and those against bodies outside our jurisdiction rose by four per cent. Written complaints about non-jurisdictional matters rose nine per cent. This year we finalised 1,006 written complaints and 73 reviews about general authorities within jurisdiction.

We have several hundred general authorities within our jurisdiction and a feature of complaints about them is their wide diversity.

Complaints to us have covered universities, government trading enterprises such as Sydney Water, land tax, legal aid, health, transport, pollution and housing issues. This list is far from exhaustive and it is often difficult to discern meaningful trends in a wide variety of complaints.

Below, we report on our customer service audit, our complaint handling survey and cases where customer service was a prime issue. There are also a number of cases where we identified a systemic administrative flaw and ones where we prompted individual redress.

CUSTOMER SERVICE AUDITS

Since state public sector agencies introduced a guarantee of service initiative in the early 1990s, they have been urged to adopt a customer focus and to set performance standards for their services. This continues to be a priority of the current government. Despite such policies, and recent requirements of government agencies to adopt quality management policies and systems, we continue to receive many complaints about basic customer service.

In response to this we have begun a series of selected audits of the general standard of customer service across the public sector. We are using a mystery customer methodology. This technique is widely used in Australia and overseas in the private sector, and increasingly in the public sector, to measure the quality of customer service. It also provides a way for authorities to improve their understanding of the customer's perspective and to reinforce standards to their staff.

The aims of the audit are:

- to assess the standard of frontline customer service at selected public authorities whose core business involves a high level of customer/client contact;
- to highlight any deficiencies in the level of customer service provided by them;
- to report and make recommendations for improvement where the level of customer service is considered to be seriously deficient, unreasonable or discriminatory;
- to provide general feedback to the sampled agencies; and
- to motivate public sector staff to provide high levels of customer service, and to maintain customer service standards long-term.

People make assessments about the quality of customer service using the reference points of reliability, responsiveness, assurance, empathy and tangibles. As far as possible, our audit samples a number of objective measures to provide an overall insight into the quality of customer service provided by the agencies.

Mystery customers

We designed mystery shopping challenges around the main way citizens communicate with public agencies — face-to-face, or by telephone, letter or email. We tested, where possible, the published customer service standards of the agency which we took from their publications such as their guarantee of service and their annual reports.

The scenarios we used for making requests, or seeking information, were based on the agencies own published material, which described the services it provides, and also on real complaints made about the agencies to us. We limited the service requests we made to the provision of relatively simple information that should be easily available, or to actions that do not involve any unreasonable expenditure of time or physical resources on the agency's behalf. The mystery customers are drawn from our staff and include a range of ages, ethnicities and genders, to represent as far as possible the customer mix of the particular agency.

The main outcome of the audits is a report back to the agency on our findings. They are not an in-depth evaluation of an agency's organisational performance. Rather the audits use a randomly timed critical incidents data collection methodology to provide a snapshot of the agency's general standard of customer service. If the audits reveal major problems, we may use our ordinary investigation powers to take a closer look at the agency's systems and procedures.

The audits started late in the financial year and at the time of this report three were completed. Summaries of the first two appear below and that of the third, 'Marrickville Council' is in the local councils section of this report. Other audits are currently under way.

This year, our staff posed as 'mystery customers' to measure the customer service of public agencies. The service provided, information given and the timeliness of the response were measured against the agencies' own internal standards

Department of Industrial Relations

Thirty mystery customer phone calls were directed to the department during April and May. The calls were about award inquiries, industrial rights and obligations, licences, workers compensation and general information requests. Ninety-three per cent of calls were referred from the receptionist to another person, and approximately half of these referred calls were placed in a holding queue for a long time, an average of six minutes 42 seconds.

The person who eventually answered was judged on their basic customer service skills such as: giving the name of the agency or section(64 per cent); an appropriate greeting (75 per cent); and the person's name (seven per cent). At this referred tier of service, one would expect names to be provided automatically and appropriate greetings given in a higher percentage of cases than were recorded. The general level of courtesy could also be improved.

On average, staff were rated at 2.43 on a four point scale, which indicated that the courtesy they showed was somewhere between a neutral/business–like response and pleasantly courteous. Similarly on average the interest shown in the caller's problem was less than being helpful and actively interested with the majority of staff providing basic information, but no more, in an otherwise neutral fashion.

Only 67 per cent of calls were successful in reaching the people who were easily able to answer our questions or provide the information we sought. However, in the remaining cases the department's staff provided further referral information, usually including phone numbers of another section of the department or other relevant agencies for us to contact. On balance, the service provided by telephone to customers of the department is professional and of a high standard. We found improvements could come from a reduction in call waiting time and by staff personalising their service by automatically providing their names.

The department has a well-developed informative web page. It includes extensive award details which would be able to satisfy the information demands of many of its typical callers. Communication with the department is facilitated by a variety of email links directly from the web page. The department has set itself a standard of replying to emails immediately, or if they can't be, by the next working day. Only 20 per cent of our customer emails were responded to on the same day and another 20 per cent were responded to on the following day, which is a 40 per cent performance achievement against its own standard. The longest reply took eight calendar days. This indicates that the department has either an unrealistic standard for replying to emails on the basis of its current internal procedures or, the procedures are not being adhered to vigorously enough. The fact that 20 per cent of the emails sent to the department were not replied to at all also concerned us.

One email tested the department's ability to deal professionally with complaints. The response received demonstrated a number of positive features of best–practice complaint handling. Although the complaint by its nature could never be verified, the department's spokesperson apologised for the conflicting information that had been allegedly received. In this respect, they gave the customer the benefit of the doubt and provided an appropriate redress, a simple apology.

The reply, however, went further. It was clear that the complaint had been taken seriously, for a possible explanation of the alleged discrepancy in information from two sources within the department was provided (involving the timing of updates on two different data bases). The reply from the departmental spokesperson also used the complaint as an opportunity to sell the award subscription service of the department and pointed out the positive features of this service. The reply in general was friendly and entirely appropriate for the type of complaint that it addressed.

Written contacts

In responding to written correspondence the department performed exceptionally well. The department's standard for replying to written correspondence is a turn-around of one month, except where more detailed issues are involved and the reply might take longer. In such cases an acknowledgment is promised within seven days of the inquiry.

The department far exceeded this standard in replying to the mystery customer letters we sent. Where it was possible to calculate, the average time taken for the department to reply to letters was 6.1 days. A high proportion of letters were signed by a recognisable person, although less than half included an invitation to make further contact if more information was needed. All the letters were professional and adopted a business–like response. In many cases, the letters were supplemented with a variety of brochures and other additional information, all of which were of a high standard.

Face-to-face contact

The replies we received to the inquiry letters we sent were of a high standard, and this was also evident in the personal service provided to customers who attended the department. Our mystery customers rated the appearance of the facilities and the

staff highly in terms of their neatness and presentation. Core customer service skills, such as making eye contact (90 per cent) and giving appropriate greetings to customers (80 per cent) were also rated highly. The counter staff who made initial contact with our mystery shoppers were rated on average as being near pleasantly courteous, and the staff they were referred to were rated even higher. Both initial counter staff and the staff our customers were referred to were also rated highly in terms of the interest they showed in our mystery customer's problems.

Waiting times were at an acceptable level at the counter and when referred to a further staff member. Finally, the level of satisfaction of our mystery customers in achieving their goal in visiting the department was high, 80 per cent of the mystery customers found the department's staff were readily able to answer their question, or provide the information sought, without any difficulty.

We found improvements in face-to-face service could come through better sign posting, the adoption of name tags by staff and general refresher training on features of best practice customer service. Overall the level of service provided by the department to casual customers appeared to be of a high professional standard. The department's Director-General responded positively to the audit. The results were discussed with his senior executive and managers and the recommendations considered for inclusion in the department's 1999–2000 business plan.

Department of Fair Trading

The Department of Fair Trading has a relatively high number of customer contacts each year. Its 1997–98 annual report says that almost 800,000 customer inquiries were handled at its 23 customer service centres. With service demands at this level the department needs sufficient staff and sophisticated telecommunications and information retrieval technology to provide the level of customer–focused service it promises.

Telephone contacts

Our audit indicated that the department is having serious problems coping with its current level of customer phone inquiries. An alarming 58 per cent of the calls we made to the main contact number of the department were unanswered. In some cases, our mystery customers had to make calls over a number of days, and at different times before they were successful. A number of them reported that at that point they would have normally given up and only persisted for the purpose of the audit. Furthermore, the average wait in the recorded message queue was long, 95 per cent of our mystery shopper callers had to hold on for six and a half minutes before being connected with a customer service officer. This is also likely to encourage callers to hang up.

This indicates that the department may in fact be losing a significant proportion of its potential customer base either through insufficient staff to answer calls, or shortcomings in its telecommunications system. In its response to the audit, the department pointed out that calls to its Penrith call centre had doubled since 1997. They believed some technical difficulties, and an inability to fill staff vacancies because of the sector wide freeze on recruitment, had been behind the difficulties we experienced. The computer equipment used to manage incoming calls is currently being upgraded and the use of interactive voice response software to automate responses is under investigation. An exemption to enable the filling of vacant positions has been granted, and the Director-General has created seven additional positions to cope with the department's workload.

Once we were connected to a staff member we found the reception to calls by the department was good. Basic customer service skills, such as identifying the department and giving an appropriate greeting, were the standard, although only 37 per cent of staff gave their name.

Our mystery customers rated the courtesy of the customer service officers answering calls relatively highly, 2.69 on a four point scale, indicating that the standard of response to callers is more than mere business-like and verges on the pleasantly courteous. The interest shown in the customer's problem by these staff was also rated fairly highly, at 2.49 on a three point scale. This indicated they were not perceived as just neutral and business–like, but were seen as helpful and actively interested in the callers problems.

Best practice inquiry handling means that the first contact person is able to answer the majority of inquiries and refers a caller on only once if the call cannot be answered by them. The department performed well here, with only 26 per cent of the calls having to be referred to another person. However, one call transferred to an extension rang for eight hours unanswered before our mystery customer gave up!

Of the referred staff who actually provided the information sought by our callers, only a small proportion gave their name (14 per cent), although almost three quarters of them gave the name of the section of the department and 57 per cent of them gave an appropriate greeting. At this referred tier of service, one would expect names to be provided, or appropriate greetings given in a much higher percentage of cases. The level of

courtesy of the referral staff was similar to that of the initial staff who dealt with the inquiries, as was the level of interest they showed in our callers problems.

A high number (91 per cent) of calls were successful in reaching staff who were readily able to answer our questions, or provide the information we sought. In the remaining cases, the department's staff were usually able to provide further referral advice.

On balance, the service provided by telephone to customers of the department is professional and of a high standard, once they are actually connected to a staff member. We found the major areas for improvement were the provision of more incoming phone lines and a reduction in call waiting time. Staff could also personalise customer transactions by providing their names. The department advised us that it is revising its procedures manual for customer service staff to re-emphasise some of the best practice matters raised by our audit.

Email contacts

The department is lagging behind in the provision of email. Its web page contains only two specialist email links and the majority of the department's brochures and publications do not advertise the email addresses of department staff or their different branches. In the two cases where we were able to test the department's responsiveness to email sent via its web page, the department was slow in responding, 29 days in one case and 27 in another. This is well outside its own standards for responses to either telephone or letter contact, and is an area where significant improvements could be made.

Customer expectations about responses by email tend to be higher than for inquiries either by telephone or letter. Even with those, research indicates that expectations are high. For example, this year a survey conducted for the Customer Service Institute of Australia found that when people make a phone complaint 57 per cent expected it to be dealt with on the same day, with 45 per cent expecting it to be dealt with in the same week. For written complaints, 19 per cent of people surveyed expected an acknowledgment within 2 days and a further 64 per cent expected an acknowledgment within one week. Expectations of how quickly matters would be dealt with were also high. For written complaints, 46 per cent expected results within one week and 42 per cent expected a result in two weeks.

In the face of growing community expectations, it appears the department needs to give attention to setting and monitoring turnaround times for replying to its existing email. This needs to be done before expanding its email systems. In responding to our audit, the department acknowledged that the customer feedback section of its website had become a de facto inquiry or complaint point for internet users. A more satisfactory solution needed to be found and a proposal under its quality management program to handle electronic complaints is being considered.

Written contacts

When responding to written correspondence the department's turnaround time was exceptionally good. The department's standard is a turn-around of 15 days for response to letters. The department far exceeded this, with an average turnaround time of 9.4 days. However, it must be remembered that our mystery shopper letters called for relatively simple information. They did not require the department to carry out any detailed work, or an investigation.

They made good use of standard letters, which were of a uniformly high standard, easy to read and straight to the point. On the whole they adopted a professional, business–like response. In all cases, the writer was clearly identified and in all but two, where it was not appropriate, invitations were extended to contact the writer for further information or to just discuss the matter. This is good customer service practice.

While the department does not necessarily answer correspondence by letter, and makes use of the telephone presumably to cut time and cost, its performance in this area was not as good. The department sets a standard of five days for replying to correspondence by telephone. In our audit we found the telephone responses actually took longer than the written responses. The average time for telephone responses was 12.6 days, well outside the department's expected target time.

Our major concern in terms of the correspondence to the department was that 10.5 per cent of our mystery customer letters received no reply. At the time of writing the audit report two months had elapsed since these letters were sent.

Face-to-face contact

The high standard of written replies to customer inquiries was also evident in the face-to-face service provided to customers attending the Sydney Fair Trading Centre and the Hurstville Fair Trading Centre. Both of these centres received visits from our mystery customers.

We rated the appearance of facilities and staff reasonably highly in terms of their neatness and presentation. Poor signage at both centres was identified and the lack of chairs and waiting space at Hurstville was also particularly noted.

The department appears not to encourage staff to wear name tags,

or if it does, there does not appear to be high compliance (50 per cent at one centre, 60 per cent at the other). Even name tags with people's first name encourages a more friendly atmosphere. Core customer service skills such as making eye contact (100 per cent) and giving appropriate greetings to customers (70 per cent and 80 per cent) were rated very highly at both centres.

The courtesy of counter staff at both centres was rated on average as being more than neutral and business like. Sydney centre staff were perceived as being 'pleasantly courteous' although the Hurstville staff were seen as more neutral in their courtesy level. Similarly, the Sydney centre staff were perceived to show more interest in the visitors problems than those at the Hurstville centre. However, the level of courtesy and willingness to assist at each centre were both acceptable.

Waiting times were also at an acceptable level at both centres, although the Sydney centre performed better. Half of our mystery customers were served immediately at the Sydney centre, and the others on average waited a little over four minutes to be assisted. The worst was a wait of 16 minutes, which is considered unacceptable in a service centre of this type. At Hurstville more people had to wait in queues but the queues were shorter and certainly of an acceptable standard. Finally, our mystery customers level of satisfaction was high. Eighty per cent of the mystery customers at both centres found the department's staff able to easily answer their questions, or provide the information they sought.

We found improvements in face-to-face service could come through better sign posting, the wearing of name tags by staff and general refresher training on features of best practice customer service. The department pointed out to us that at the time of audit of the Sydney Fair Trading Centre, it was still completing its fit out and that additional signs have now been put in place. Also an automated ticket machine has been installed to facilitate inquiries. At Hurstville, the problems with signage outside the building had been raised with building management but the department had been advised its current lease precluded erecting such signage. It also acknowledged the space restrictions and informed us it is currently considering a proposal to relocate to another building, which would significantly improve the situation.

Overall the level of service provided by the department to casual visitors appeared to be of a high professional standard. However at the time of our audit, the department appeared to have some major problems with its telephone connection times which needs to be addressed. The department said it found our audit findings helpful and acted upon our observations. Copies of our report were forwarded to the managers of all Fair Trading centres with a view to improving performance across the state.

Complaint system survey

In response to a survey we conducted during the year, 119 different departments, agencies and statutory authorities provided details of their complaint systems to us. The survey examined how well public authorities were meeting commonly accepted best practice standards for complaint systems.

There has been a huge upsurge in implementing complaint policies and systems over the past few years. In 1991 we found that only 15 per cent of agencies surveyed had a complaint handling manual. In 1999, we found 49 per cent of agencies had a formal instruction manual for complaint procedures for their staff and 89 per cent had specific complaint policies. A further 3.4 per cent had undocumented standard practices. The larger the agency, the more likely it was to have a comprehensive complaint handling system with 14 per cent of agencies with less than 100 staff having no policy at all.

Performance standards relating to complaint management were evident in 67 per cent of agencies. These covered acknowledgment of receipt and completion/resolution of complaints within certain time frames and systems to check whether complaints had been acted upon.

Making the existence of a complaint system and its access points well known to an agency's clients and customers is a standard of an effective system. This is an area where the survey indicated improvements could still be made. Sixty five percent of the agencies that responded to the survey used brochures to inform the public about their complaint procedures, but only 18.5 per cent of agencies publicised their complaint handling information in community languages. Less than half, 44 per cent, utilised complaint feedback forms to note the receipt of customer feedback. One in three agencies, however, are starting to use a more sophisticated means of publicising their systems, such as including information about their complaint procedures on their web pages and/or advertising complaint hotlines.

Need to skill staff

A good sign of the increasing sophistication of complaint handling in the public sector is that many agencies recognise that effective complaint handling requires special skills. Sixty eight per cent trained their contact and frontline staff and 26 per cent of agencies trained all their staff. For

agencies with fewer than 100 staff it was less than 50 per cent.

As the *Ombudsman's Effective Complaint Handling Guidelines* make clear, quality customer service dictates that complaints must be handled well. Complaints can also be an important way to obtain customer feedback and provide data for continual improvement. However, to use complaints in this way requires having systems for recording and analysis.

The survey results demonstrated significant changes within the public sector. Eighty one per cent of agencies said they recorded complaints and suggestions, and 48 per cent did this using computer systems. Fifty nine per cent of agencies said they systematically analysed their complaint data to generate internal reports, which mostly went to senior management. However, 10 per cent of the agencies surveyed made this information available to all staff. While the majority of respondents said they recorded complaint data, only 63 per cent included details of the total number of complaints they received in internal management reports. This suggests many agencies only record complaints in individual files, which seriously impedes their ability to analyse complaint data for trends and underlying systemic causes.

Even the number reporting internal might be an overestimate, as less than 50 per cent of respondents were able to provide us with examples of such reports. Furthermore, some agencies appeared to only go half way in analysing complaint data. Seventeen per cent of the agencies who analysed their complaint data did not use the results to prevent the same problems recurring. Yet, this is the point of complaint analysis.

A similar survey was conducted of local government authorities some results of which are summarised in the Local Councils section of this report. We will publish a seperate, more detailed report of the survey focussing on best practice examples.

State Debt Recovery Office

There's no-one to take your call

In 1998–99 we received 218 complaints and inquiries about poor customer service provided by the State Debt Recovery Office (SDRO). The complaints focused on the delay in issuing enforcement orders, failure to respond to correspondence and an inability to get through to the office. We queried this with the SDRO which explained it lacked the resources to manage its workload.

The SDRO is a division of the Attorney General's Department and its role is to provide a debt recovery service to NSW government departments and agencies. It pursues overdue debts arising from court judgements, the issue of infringement notices, victims compensation determinations, or other debts as prescribed by regulation. Its authority to do this comes from *The Fines Act*. SDRO recovery action commences with issuing of an enforcement order, which is necessary for the person to discharge their debt.

The SDRO commenced on 27 January 1998 and we received our first call about them on the same day. A common complaint was that debtors had not been issued with enforcement orders and therefore could not satisfy their debts. Many complainants were angry that listed SDRO phone numbers were continuously engaged, and that their letters had received no acknowledgment, even after many months.

One woman who had written to the SDRO four times between May and September 1998 had received no response to any of her letters. In addition, her frequent attempts to phone the SDRO were unsuccessful. Within two weeks of us contacting the SDRO an enforcement order was issued to her and paid immediately.

We contacted the SDRO on a number of occasions over this period and sought explanations for the number and types of complaints we were receiving. It was clear the SDRO had been established with insufficient resources to deal with the state debt caseload that had built up over many years. The SDRO made submissions to have its resources strengthened and as a result, earlier this year, further resources were allocated to them. Since then we have noticed a decline in the number of complaints to us and believe this reflects the SDRO's ability to provide an improved level of customer service.

Department of Land and Water Conservation

Knock-down, but no drag-out

We assisted a farmer to obtain an ex gratia payment to defray the cost of repairing damaged fences.

In September 1996 an intense storm, which our complainant called a 'tornado', swept though his Binnaway farm, bringing down many large trees which fell from adjoining crown land across his boundary fence. He asked officers from the local 'forestry office' to help him remove 'their' debris so he could repair his fence. Officers inspected the damage, but said while it was within their power to remove the debris it was financially unviable. Not realising he had contacted State Forests, rather than the Department of Land and Water Conservation (DLWC), the complainant pursued 'the department' for some months by telephone without any result.

The complainant was concerned about DLWC's refusal to carry out

the work because it is an offence to enter crown land without permission or to remove timber, either 'living or dead, upright or fallen'. He wished to repair his fence to keep his cattle contained, but did not want to risk legal action.

However, after the loss of a cow and a calf through the broken fence, and without permission, he repaired the fence to protect his herd. His written requests to DLWC for financial assistance to defray the costs of removing the trees were refused and he complained to us. At that time we were also unaware that two authorities were involved. We believed, that as the owner of the trees, DLWC had some responsibility to assist with their removal from the boundary fence, even if they would not assist with the repair of the fence, or the loss of the cattle. DLWC's failure to grant permission for the farmer to enter crown land to carry out the work and remove the fallen trees was also an issue.

Our inquiries showed the complainant had initially pursued State Forests and not DLWC, which was not aware of the problem until it received his letter for financial assistance. In a practical sense the two authorities share tree ownership: State Forests owns the timber and forest products to the extent of their commercial use, otherwise, being on crown land, DLWC owns the trees 'living or dead, upright or fallen'. The initial inspection had been carried out by State Forests officers, who considered the fallen trees not to be of sawlog specification, and so declined to take any action.

DLWC said that although the local council could get natural disaster relief funding to repair roads and public facilities damaged by the storm, DLWC could not. Its insurance did not cover this situation. Without accepting liability for the matter, and despite the initial confusion, DLWC agreed to resolve the complaint. They made the offer of an ex gratia payment of $1,032. This was generous given that its officers had not been involved in the initial decision to decline to remove the timber.

'Thank you for your valuable assistance in securing a reply from the RTA. Without assistance from yourself I have no doubt the query of a single insignificant taxpayer would have remained unanswered.'

Roads and Traffic Authority

Backdown on backout

We helped secure a change to parking arrangements on a dangerous stretch of road. Our complainant lives on a busy Sydney road, which is also narrow and winding. When cars park on a section of the road, at the entrance to a culvert adjacent to his driveway, his view of the road is obstructed. He cannot safely exit his driveway without the assistance of another person, who has to stand on the road and stop the traffic. On week days, when he was at work, there was no-one available to help his wife negotiate this dangerous driveway exit.

The complainant made many approaches to the RTA, requesting no parking signs or barriers be placed on the road adjacent to his driveway to prevent cars parking in this spot, enabling him to have a clear view of the curve of the road. He also made a video from the driver's perspective, which showed the very short time span between the first sighting of an approaching vehicle and its arrival opposite the driveway. He sent the video to the RTA and his local council traffic committee with requests for assistance.

Although two RTA officers inspected the site, they declined his request because the area was very short of car parking spaces and many local residents did not have off street parking. Because the traffic volume was not high they felt the situation was not as dangerous as the complainant claimed. This decision prompted the complaint to us.

At an on-site meeting between all the parties the RTA officers saw the complainant's fear for his wife's safety was clearly genuine. When invited by the complainant to take their own car in and out of the driveway they found the situation from a driver's viewpoint was not as easy as they first thought. They also had trouble manoeuvring their car. This hands-on experience proved the complainant's point and the RTA agreed to install flexible guideposts as barriers to parking and to investigate the placement of a mirror on the opposite side of the road. The complainant and his wife were very happy with the outcome.

Department of Housing

Stand and deliver!

We obtained an apology for a family who were former Department of Housing tenants.

Due to its assistance during periods of family crisis the family were well disposed towards the department. They were also very proud of their record as good tenants. Before relocating to Western Australia the family left contact details with the department. At the time they left their rent account was unreconciled, but they were told that if the property was left clean and tidy any maintenance costs would be absorbed by the department. Nine months later, out of the blue, the family received a debt recovery agency claim for

$449. There was no indication how this claim had been calculated or what it represented. Recovery action was threatened unless immediate payment was made.

The family promptly sent a letter to the department by registered mail, explaining their distress at this turn of events. However, the letter was 'inadvertently misplaced' by the department and no reply sent. Six months later the debt collection agency sent the family a notice demanding payment of the claim within 72 hours. Intimidated, the family paid.

Our inquiries revealed the family did indeed owe three weeks rent. However, there was no record that the family was ever told of this debt. Although it was the department's responsibility to ensure clients reaching the end of their tenancy were aware of any outstanding debts, the account appears simply to have been included in a bulk transfer of unpaid accounts referred to the debt collection agency. The department failed to canvass repayment options available to former tenants indebted to the department.

The department acknowledged what it called teething problems in implementing its new debt recovery processes and apologised to the family for the distress which had been caused.

SYSTEMIC ISSUES

University complaints

The antithesis of procedural fairness

This year we received 46 written complaints about the ten universities in NSW. There were 28 such complaints last year. Some were about academic assessments of students work. In this respect it is worth restating our firm policy that we will not second-guess academic, technical or professional judgements made in good faith (see Handling Complaints about Authorities and Departments in our 1996–97 annual report).

However, a significant number of the complaints raised administrative issues especially relating to universities complaint handling, with the most serious concerning formal appeal procedures. We have already set out in the overview to this section how we intend to approach university complaints generally. The following case typified some of the systemic problems.

A PhD student at the University of New England (UNE) complained in 1997 about the failing of her thesis and the way in which her appeals against that decision were handled. She also complained about the adequacy of her supervision, but we declined to investigate that part of her complaint. Her main problem arose when her three thesis examiners disagreed. One passed the thesis, the other two called for a rewrite. We also had two similar cases this year involving disagreement among thesis examiners and unclear procedures for resolving that disagreement.

The re-written thesis

Our investigation found that after the initial disagreement, the UNE PhD committee, to which the examiners report, resolved that the student should be permitted to rewrite her thesis to take account of the examiners criticisms. She did so and re-submitted her thesis. UNE rules allow a thesis to be submitted only twice. Again the examiners disagreed. They made new criticisms of the thesis, which the student could not address because the thesis had already been submitted twice.

The PhD committee then appointed an adjudicator who, under the rules, was to consider the examiners reports. In order to properly assess the examiners reports the adjudicator believed he needed first to examine the thesis, which he did. The adjudicator's examination broadly reflected the criticisms already made of the thesis but did raise some new points. The adjudicator recommended the degree not be awarded.

The PhD committee met and notified the student of the adjudicator's report and invited her to make a submission to the Standing (Executive) Committee of the Academic Board which would consider her submission, together with the PhD committee's recommendation that the degree not be awarded, before making a final decision. Through her solicitor she made a 13-page submission that addressed both academic and procedural points.

Common committee membership

The chair of the standing committee was also chair of the PhD committee and there was another member common to both committees. Although UNE had no relevant guidelines on conflict of interest it told us:

> No member of the Standing Committee has advised that they considered any apparent conflict of interest in participating in the determination of an appeal against a decision they made as members of the PhD Committee.

No member of the standing committee had read the thesis in question and the academic points raised in the student's submission were not considered. The standing committee decided that the degree should not be awarded, but

'Thank you again for representing me with the Department of Housing. Without your help, I doubt that we would have been offered a property.'

provided the student with no reasons for its decision.

At this stage the student wrote to the internal UNE Ombudsman asking him to investigate her complaints about her supervisor, the examination of her thesis, her inability to answer new points raised in re-examination, the adjudication process and the common membership of the standing and PhD committees. Because he knew the student, the UNE Ombudsman declined to take the case, but passed it to the Deputy Vice-Chancellor (Academic) who himself was a member of the standing committee. He purported to investigate the complaint as a UNE Ombudsman, although he later said he had not acted in that capacity.

We found the UNE Ombudsman system lacked appropriate record keeping and failed to issue annual reports, which was particularly unfortunate given that the university had a succession of four Ombudsmen in the five years to 1997. We recommended, and UNE accepted, that an appropriate regime of record keeping and reporting should be introduced forthwith for the UNE Ombudsman.

While the UNE Ombudsman issues were important, our principal concerns related to the systemic procedural fairness issues, which had surfaced through the complainant's case. This led to us to further recommend:

- the PhD committee ensure thesis authors can submit, and have considered, academic argument about any point of new academic criticism raised during re-examination or adjudication of the thesis before the committee makes its final recommendation;
- the standing committee only consider appeals against the PhD committee's recommendations on procedural and not academic grounds;
- no members of the PhD committee should sit on the standing committee during its consideration of any appeal on a PhD committee's decision on a thesis.

The complainant, of course, wanted her failure changed to a pass. Despite our severe criticism of the handling of her case we noted in this respect we had:

> not been convinced that had those shortcomings [in procedural matters relating to consideration of her thesis] been absent, there was a significant prospect that the result for her thesis would have been different from the one already reached.

Unsurprisingly, the complainant was unhappy with this conclusion, but it was simply the product of our role as the objective investigator. We are not the advocate of either the complainant or the public authority subject of complaint.

The student's case, and our report, prompted a thorough review of UNE's PhD regulations and this resulted in a much clearer and fairer regime.

Department of Education and Training

Home and away

A complaint was made to us about punishment given to a student under a school's discipline policy covering behaviour out of school hours and off school grounds. As a result of this case, the Department of Education and Training issued a Legal Services Bulletin clarifying the `reach' of school rules.

The department also provided us with additional information explaining why the student had been punished for throwing eggs at a teacher's home. The department acknowledged the case raised questions about the jurisdictional extent of schools discipline policies and it would be timely to provide clarification to schools. The department's bulletin explained that the main issue for schools to consider is whether there is a genuine connection between an incident and the school relationship. If there is, disciplinary action is justified. If the connection to the school is merely incidental, it is not.

Address of convenience

Following our inquiries into a complaint about the Department of Education and Training's procedures for out of area school applications, the department amended its enrolment procedures to require the address given by parents to be checked against other residential evidence, such as rates notices, electricity accounts and telephone bills. School principals were reminded of the need to monitor parents addresses, to ensure they genuinely live where they claim.

Our complainant's application for her child to attend a school outside her area had been rejected. She was concerned that other parents had circumvented this rule by giving a home address, within the school's catchment area, where they did not actually reside. The department looked into the specific example the complainant had given and found the address in question was genuine. However, the department acknowledged a need to inhibit applications with false addresses.

Integral Energy

Electricity debt shocks

Following our inquiries Integral Energy amended their policy which threatened people with disconnection, and actual disconnection for other people's debts. A pensioner rang this office complaining her electricity was to be disconnected because of a debt owed by the person with whom she shared an electricity account. The debt related to a previous account

which had nothing to do with our caller.

Under the *Electricity Supply Act*, electricity distributors are obliged to supply electricity when people, who are connected to their system, make an application. The supply may only be denied in certain circumstances, including if the applicant has breached the customer contract.

Integral Energy told us its policy was to transfer debts from previous individual accounts to new joint accounts. This made all parties to the new joint account liable for debts on the previous individual accounts of any party. The distributor argued the threat of disconnection was the only way to ensure these debts were paid. Other forms of recovery action were too expensive, particularly when the joint account holders were pensioners.

We argued there was no reason to stop supplying electricity to the caller, so disconnecting her could be unlawful. We also pointed out the customer contract allowed the distributor to reclaim recovery costs from the individual debtor concerned. Integral Energy immediately agreed not to disconnect the caller. After further inquiries it amended its policy so individual debts are no longer automatically transferred to new joint accounts.

Dental Board

A painless extraction

The complainant was dissatisfied with how the Dental Board dealt with her complaint. As a result of our inquiries, the board provided an explanation for its actions and agreed to improve its customer service by amending its procedures.

We confirmed the board had taken a year to deal with the complaint and in that time failed to contact the complainant. When she finally received a response, the board's letter did not specifically address the issues she raised in her complaint, or indicate whether they were investigated by the Dental Care Assessment Committee (DCAC).

The board explained that it did not normally take so long to deal with complaints. However, in this case, the DCAC experienced difficulties contacting one of the dentists who had treated the complainant. The board explained it did not contact the complainant because it had no new information for her. Nevertheless, it expressed regret it had failed to do so. It agreed that in future, where such delays occurred, it would consider sending periodic letters to complainants advising them their complaints were still under consideration. The board also agreed to provide the complainant with reasons for its decision.

Sydney Water/EPA

Clearing the air

We helped residents obtain new procedures to minimise the odours from a sewage plant.

We received numerous complaints about offensive smells at a sewage treatment plant at Riverstone. In an effort to resolve the matter, we liaised with Sydney Water and the Environment Protection Authority (EPA) and attended a meeting to discuss the matter. As well as Sydney Water and the EPA, representatives from Blacktown and Hawkesbury councils and from a private company operating on the plant site, attended.

Following a sharp increase in the number of complaints, Sydney Water acknowledged there was a problem with plant odour. However, it was unclear which activity, or combination of activities, caused the problem. Following initial success in mitigating the odour it recurred with particular offensiveness towards the end of 1998.

Our inquiries revealed that some new operations had commenced on the site without community consultation. We pointed out that, even if a new development application was not strictly required, good sense should require community consultation before starting such operations. A number of residents were concerned that it was only since the problem emerged in May 1998 that they had been given any information and the ways in which the processes at their plant differed from those at other treatment plants.

Sydney Water agreed to implement further measures to resolve the problem. These included clearing stockpiles, ceasing programs, and restricting operations by the private company on site. The EPA explained it was responsible for renewing the sewage treatment plant's licence every year. The EPA undertook to make meeting pollution reduction guidelines a condition for licence renewal. We made clear that while we could not investigate the private company's conduct, we would expect Sydney Water to ensure the company complied with all appropriate odour rectification measures.

We were thanked by several residents who believed Sydney Water's response to the problem was aided by our involvement. We believe Sydney Water is making a genuine effort to resolve the problem and also feel the EPA's action would assist residents by make Sydney Water more accountable.

Vocational Education and Training Board

Letters in limbo

We prompted change to a ministerial correspondence system and the waiving of a substantial assessment fee.

A Western Australian man complained to us after he had

difficulties obtaining recognition of his aircraft industry trade skills by the NSW Department of Education and Training. The complainant had previously worked with British Aerospace Australia and served with the RAAF. In his attempts to obtain recognition over a 12-month period he had contacted various government departments and agencies, including the Vocational Education and Training Board. A number of unsatisfactory responses, then a failure to reply, led the complainant to contact us.

Our inquiries to the Minister's office identified a flaw in his department's correspondence management system. Previously, unacceptable draft correspondence was sent back to the department by the Minister for redrafting, but was not then placed on an urgent/priority list. As the redraft was not on this list, the Minister's office was unaware the response was still outstanding, or there was any delay in responding.

As a result of our inquiries the department changed its correspondence management system so that all correspondence returned by the Minister's office for redrafting is automatically included on the urgent/priority list.

The department still required the complainant to have an interview in Sydney, in order to have his trade skills and qualifications assessed and reclassified. However, due to the delay in responding to him it waived the usual $700 fee for such an assessment.

Department of Transport

Who's got the call?

A taxi owner's exclusion from the local taxi co-operative (for reasons not relevant to our inquiries) meant she was unable to access its radio network, which was the only one in the area. This put the owner in breach of her taxi licence conditions. It also meant the public effectively had one taxi less to call. For three years the owner tried numerous ways to remedy this situation. Attempts to sell the licence failed because potential buyers could not get assurances they could join the co-operative, or access the network.

The owner asked the Department of Transport to require the local radio network to accept her taxi. The department refused. She then asked permission to put her licence 'on hold' and this was also refused. At the same time the department threatened to remove her licence if its conditions were not met. Following her complaint to us, the department wrote to the owner waiving the condition that her taxi be part of a radio network and offering to approve the non-operation of the taxi.

The department claimed it had no legal means to compel a radio network to accept a taxi licensee as a member. However, authorities to operate taxi radio networks are granted under the *Passenger Transport Act* and this permits the department to impose conditions on them. We told the department it was obliged to determine if the radio network was operating reasonably in the public interest, and if not, to consider imposing conditions on the radio network's authority. We were concerned the local co-operative, rather than the department was effectively deciding who could operate taxis in the area.

The department eventually sought an explanation from the co-operative. While the department said it was not satisfied with the explanation, it did not want to impose particular conditions on that co-operative without consulting the industry generally. The department told us it was developing new taxi network standards and regulatory amendments, and hoped to have the new regulations in place by March.

We closed the case on the basis that the issue would be considered in the taxi network review and the complainant would be sent a copy of the discussion paper and invited to make a submission on it. Our decision was also influenced by our separate investigation of the department concerning private hire car licences, which seemed likely to recommend significant improvements in the department's administrative practices. In June the taxi owner told us no discussion paper had been received, and she was not aware of any new regulations. We have resumed inquiries.

Killer fees

The Department of Transport applied policies that were contrary to the *Passenger Transport Act* which threatened the viability of some existing and proposed hire car businesses. These policies resulted in unrealistic and inflated fees being imposed for short term hire car licences.

The Act was introduced in 1990 to remove restrictive regulations, allow entry of new service providers and create an environment conducive to the operation of market forces. From its inception, all licences for private hire vehicles were issued as non-transferable, short term licences with a fixed term of one year. The licence fee was to be determined by the Director-General reflecting his estimate of the open market value of the licence if it were transferable.

Initially, in areas where there were no existing hire cars, licences were issued free and subsequent licences cost 14 per cent of the value of the existing licences. Persons issued with licences were required to sign a document setting out the conditions of operation. One clause stated that, after the current licence expired, relative to the issue of any future license, the fee would be

indexed by the Sydney CPI. This condition was not honoured.

In 1990 the policy was changed so that subsequent licences were charged a minimum fee, or where there had been a sale, 14 per cent per annum, indexed, of half the last sale price of a hire care plate. If there was no hire car plate sale, but there had been a taxi plate sale, that sale price was used to set the hire car licence fee. This was commonly the case. In 1992, the policy was again changed so that no free licences were issued, but the minimum fee (then $3,200) applied.

The crux of the complaints received was that hire cars are not taxis, and therefore the short term licence fee should not be determined by reference to the value of a traded perpetual taxi plate.

Hire cars and taxis not equivalent

The investigation concluded that the department had a statutory duty to apply the provisions of the Act and that implicit in this duty was a responsibility to do so fairly and in the public interest. The department did not do this.

The department claimed in its letters to complainants, policy notes, advice to members of Parliament and to us that the policy was revised in 1992 to ensure equity across regions and between the taxi and hire car industries in country areas. However, the policy change favoured country taxi operators to the detriment of existing hire car operators and ultimately the public.

'I just can't thank you enough, somehow you have part solved a big problem no-one was interested in.'

The stated objective of the policy change was to discourage hire cars from acting as de facto taxis. The rationale was that the department had only limited field staff and financial resources to directly enforce regulations, and that the new licence fee policy would address the problem. In some cases the policy led to fee increases of more than 400 per cent. This made the short term hire car licences unviable and created a barrier to entry.

The Act required that the Director-General make his determination with reference to the market value of the licence. This was not done. The fees charged to the complainant in 1993 and 1994 were excessive. They were not based on market value but took into account irrelevant considerations such as the threat the hire car operators might pose to the viability of country taxi operators.

Failure to test the market

Apparently no market testing was carried out by the department until 1995, and then only in one area. The information which came from that research led, as part of a court settlement, to a drop in the complainant's licence fee from $10,900 to $1,000 and a refund of the earlier excessive fee. However, subsequent increases drove the complainant back to us arguing the department was still persisting in its discriminatory and unreasonable course.

In July 1997 the Act was amended, restricting the option of appeal to the Local Court over fees and removing the requirement that the fee reflect market value. The complainant's licence fee was subsequently increased to $11,900. It seemed an inescapable conclusion that the decision to change the Act was motivated by a desire to remove the problem rather than face it, ensuring that the status quo was maintained.

Our investigation found that senior management had stubbornly refused to consider that this complaint might have merit and that it was the policy that needed to be changed, rather than the legislation. The department used the excuse of pending reviews by external consultants to deter complainants and justify inaction. Reviews which were critical of the department's actions didn't have their recommendations implemented. Submissions by departmental officers that the fees were too high, and contrary to the Act, were also ignored, as was expert advice that the fee was excessive.

Unrealistic interest rate

In 1990 a ten year bond rate of 14 per cent was introduced, as a factor in setting fees, and the department persisted in using this for many years even though the rate fell significantly in subsequent years. All in all, the department's policies acted to dissuade, or preclude, would-be business people from applying for licences and conducting businesses which were otherwise lawfully permissible. Some existing licence holders went out of business due to the significant increase in fees.

In June 1998 the new Director-General announced a number of reforms to the hire car industry which included use of the current market bond rate, at that stage less than six per cent, and a competition policy review to be conducted by the Independent Pricing and Regulatory Tribunal (IPART). The matter of fees for short term hire car licences is still under review and awaiting the outcome of the IPART review.

As a result of our investigation, recommendations were made which included ex gratia payments to the complainants and a recalculation of fees paid by all affected licence holders, as well as other administrative improvements. The

department responded positively to the report and is in the process of implementing all the recommendations.

INDIVIDUAL REDRESS

Legal Aid Commission

Funding follies

A firm of solicitors complained that the Legal Aid Commission (LAC) had not paid its costs in accordance with LAC funding guidelines. As a result of our inquiries, the LAC reassessed the complainants costs and agreed to pay an additional $2,000.

Under LAC guidelines, funding is granted in stages. Funding for stages one and two of Family Court custody proceedings is paid as a fixed lump sum. However, funding for stage three proceedings, defined as those between the prehearing conference and up to and including the hearing, is provided as a lump sum fee, based on an estimated preparation and hearing time. The rate is $100 per hour.

The complainants applied for, and were granted, legal aid funding for stage one and two proceedings. They submitted an account for this work and were paid the applicable lump sums. They excluded stage three work from their account completed before the pre-hearing conference. They informed the LAC of this in their covering letter.

The complainants application for stage three funding was initially accepted. However, the LAC subsequently terminated funding. The complainants appealed to the Legal Aid Review Committee. Their appeal was dismissed. The LAC invited them to submit an itemised account for work done between the pre-hearing conference and the date on which funding was cancelled. The complainants account included the stage three work completed before the pre-hearing conference and work completed after funding was cancelled while they awaited the outcome of their appeal. The complainants sought $4,730 towards their costs and $1,541 for disbursements. After considerable correspondence, the LAC paid a total of $2,946. The complainants then came to us. At our suggestion, the LAC agreed to reconsider the complainants account. It then agreed to pay an extra $2,000.

Changed circumstances

A Blue Mountains woman complained to us that the LAC had rejected her request to waive a contribution of $1,051 levied against her. After we contacted the LAC it reviewed the case, agreed her request was reasonable and waived the contribution.

The LAC had aided the woman in a property settlement. This contribution was imposed when the court determined the woman receive the family home as part of that settlement and determined:

> The husband shall be solely responsible for the payment of the mortgage until it is discharged in full.

Imposition of the contribution, where the woman was receiving an effectively unencumbered property, would have been reasonable. However, shortly after the court determination the husband received a five year gaol sentence, closed his businesses and was no longer able to continue mortgage payments. The woman therefore became responsible for the mortgage and believed the contribution was now unreasonable. A view which we, and subsequently the LAC, agreed.

Sydney Water

Sydney Water's Rouse Hill charges: Part two

Publicity surrounding our investigation into Sydney Water's river management charge in the Rouse Hill Development Area (see the Protected disclosures section in this report) prompted a related complaint. Our complainant purchased a vacant block of subdivision land in the RHDA from a developer. After settlement, Sydney Water demanded a sewerage buy-in charge of $925. The charge is levied on all RHDA land owners. The complainant however had no notice of the charge prior to settlement. Following our inquiries, Sydney Water agreed to waive the charge.

In its determination on the charge, the IPART said it would be raised on registration of the plan of subdivision in Sydney Water's records. In the complainant's case, the plan was registered with Sydney Water on 10 March 1997. On that date, the developer was the land owner. The charge was not raised until 13 June 1997. By then, title in the land had passed to the complainant. Therefore the complainant, not the developer, was liable for the charge. The complainant felt the apparent injustice was compounded by the lack of notice of the charge prior to purchasing the land.

We discovered that, despite the IPART determination, Sydney Water's processes do not allow a charge to be raised at the time of plan registration. However Sydney Water's independent legal advice was that the IPART determination allowed it to delay raising the charge until the land to be charged is connected to the sewer.

In the complainant's case the developer's conduct delayed processing of the deposited plan. While this meant the charge was not raised until after settlement date (30 May 1997), it is likely that even had it been raised prior to settlement, the complainant would have borne its cost in one form or another. The IPART also determined that who pays the charge is a matter

for negotiation between the developer or purchaser.

Sydney Water's efforts

Nevertheless, Sydney Water has tried to ensure purchasers are notified of the charge prior to purchase. Where the charge has been raised but not paid by the developer, it will be disclosed in the s.66 certificate given to the purchaser. Even where the certificate does not disclose the charge, the certificate will be accompanied by a brochure containing information about the RHDA and the charge. Where a purchaser searches a RHDA property, they are sent a brochure outlining the background to the development and the charges applying in the area. Finally, the notice of requirements Sydney Water issues to developers provides information on the charge and requests that, in line with the IPART determination, developers inform prospective purchasers of the charge so they can make informed decisions.

The complainant's ignorance of the charge prior to settlement arose from an unfortunate set of circumstances. His solicitor applied for a s.66 certificate on 16 May 1997, but sent the application to the wrong post box number. Sydney Water did not receive the application until 27 May. As a result, the certificate disclosing the charge was not issued until 16 June 1997. While the charge would not have been disclosed in the s.66 certificate had it been issued before the charge was raised on 13 June 1997, the existence of the charge would have been disclosed in the brochure accompanying the certificate. Accordingly, had the complainant received the certificate prior to settlement, he would have had sufficient information about the charge to facilitate negotiations with the developer. The delay in issuing the certificate was clearly beyond Sydney Water's control.

We were unable to determine why the backup mechanisms noted above did not result in the complainant's solicitor, or the developer, advising the complainant of the charge before purchase. Sydney Water offered to waive the charge if given a copy of the settlement document as evidence the complainant was unaware of the charge. The copy was provided and the charge waived.

Department of Housing

Avoiding the trenches

We uncovered confusion in the Department of Housing's handling of a request for priority rehousing and we facilitated the installation of safety railing.

On one of our regular community visits to Newcastle, an elderly, almost blind, man complained to us about the department's decision to refuse his request for priority rehousing. He believed his poor vision placed him at serious risk of falling into stormwater drainage trenches dug around the paved area at the back of his house. The trenches were up to 60cm deep.

Our inquiries revealed the department had mistakenly understood the complainant was applying to be rehoused in one particular property only. We liaised with Maitland Council's community options service, who told us they would assist the complainant to lodge an appeal against the decision to deny priority rehousing.

In order to protect the complainant, we also asked him to agree to a suggestion by the department that the dangerous area be safety-railed pending his appeal. Once again, Maitland Council's community options service assisted, by undertaking to check that the railing complied with relevant Australian building standards. The appeal result is not yet known.

Love thy neighbour

We helped resolve a Newcastle woman's longstanding dispute with the Department of Housing by moving her into subsidised private accommodation.

The department told the complainant she would lose her rental rebate subsidy. Our inquiries revealed this threat arose from an intractable neighbourhood dispute, between herself and a neighbour who was not a Department of Housing tenant. In the meeting which eventually resolved this matter, the department acknowledged the neighbour was maintaining a level of surveillance on the complainant's house that bordered on harassment. This included videotaping the complainant's young teenage daughter as she sunbaked on the front lawn. An additional factor was that the neighbour's child attended the same school as the complainant's son. As a result of the dispute, her son was missing classes.

The department decided to rehouse the family. Unfortunately, the department's first attempt was unacceptable, as the property offered was directly opposite the business address of the hostile neighbour. Two more offers were made, which the complainant declined, because they were not located near a school able to provide special care for her son who had a long history of emotional distress and learning difficulties.

A systemic problem is that areas covered by the department's administrative units do not correspond to school zones. The complainant told us that after she refused the department's third relocation offer she received a telephone ultimatum from a departmental officer to either accept or face being taken to the

Residential Tenancies Tribunal on an unspecified charge.

At this point we met with senior departmental officers and the complainant. In view of housing stock shortage in areas requested by the complainant, she agreed to accept subsidised private rental accommodation within an area which could accommodate her son's schooling needs. The complainant would remain on the departmental list for housing stock within her area of choice.

State Rail Authority

It was a joke — this time

We helped solve a mystery after a Central Coast man received a rude letter purporting to be from the State Rail Authority (SRA).

In July 1998 the man wrote to the SRA about delays in rail service owing to track work. He received what he described as a prompt and pleasant reply. However, six months later, he was distressed to receive a further letter on CityRail letterhead which said:

> On receiving your last correspondence in regards to trackwork on the Newcastle line. My colleagues and I, in all our long careers, have never received a more feeble letter of complaint.
>
> Whilst we understand that you were placed at an inconvenience on that particular weekend, we cannot fathom that you, a responsible member of the public, cannot understand the need for a safe rail network.
>
> . . . I wasn't there for the Granville disaster, but I would like to think that by carrying out this essential maintenance, we are ensuring that an incident of that capacity does not happen again.
>
> You were only two hours late that weekend whilst 87 people perished that day at Granville in a matter of minutes.
>
> My advice to you is to cease sending these self centred letters and try and appreciate what a wonderful service we provide here at CityRail.

The letter was signed by a claimed 'Track Supt' and listed a return address. We queried the SRA about this curious exercise in customer service. We discovered the job title Track Supt no longer exists within the SRA, as the Rail Access Corporation now owns the railway tracks and leases their use to the SRA. We also found there was no SRA office at the address given in the letter. Our further inquiries revealed the letter stationery was of a format not used for over a year. While by now clear the letter was a hoax, the fact it had been sent on CityRail stationery, and must have come from someone who knew the man had made a complaint, concerned us.

When the complainant told some of his workmates the case was with us, they confessed to the prank. In closing the case we indicated to the SRA our concern that practical jokers were able to lay their hands on CityRail stationery. Obviously, future misuse could be of a more sinister kind.

Rural Fire Service/Office of Charities

Pass the parcel

We assisted a Blue Mountains man whose complaint was passed between three separate authorities, none of which initially did the right thing. We established where responsibility rested.

In June 1997 the man wrote to the Office of Charities about possible irregularities in the financial affairs of a volunteer bushfire brigade. The complaint was referred to the Department of Bushfire Services, now the Rural Fire Service, who, in turn, referred it to Hawkesbury Council saying:

> Some of the allegations made by [the complainant] are quite serious and the matter needs to be thoroughly investigated.
>
> It seems to me that the issue amounts to the failure to observe basic bookkeeping principles and as these matters often have far reaching implications it requires urgent attention.

In December 1997, the complainant wrote to us as the council had not responded to his concerns. When telephone inquiries to the council failed to resolve the matter, we wrote in February, March and June, 1998. The reply we received five days after our third letter did not fully address all the issues we had raised. In short, the council said it had obtained legal advice indicating the matter fell outside the council's jurisdiction. It remained unclear which authority, if any, had jurisdiction to look into the complainant's concerns.

Wrong section quoted

We next contacted the Office of Charities, to whom the original complaint had been made. That office then wrote to the complainant saying the brigade was exempt from the *Charitable Fundraising Act*. Unfortunately, the section of legislation cited referred to religious groups and the office apologised for quoting from an irrelevant section of the Act. It then told us the Rural Fire Service was the correct authority to handle the complaint.

In September 1998 we received an undertaking from the Rural Fire Service that the matter would be referred to the internal audit bureau. Unfortunately, further delays ensued. Following renewed representations from the complainant, we made further inquiries in February and were told the audit report 'had just arrived on the desk' and would be sent to the complainant and to us as soon as possible. The report was not sent until six weeks later.

We are monitoring the council's implementation of the auditor's recommendations.

COMPLAINTS ABOUT

local councils

CONTENTS

Although we can investigate complaints about local councils, councillors and council employees, we give priority to complaints about systemic and procedural deficiencies. In recent years, we have focused on complaints about inadequate enforcement action and about appropriate standards of conduct for councillors.

We also set standards of conduct for local councils by publishing guidelines and providing advice and assistance to councils on request. We also liaise with government and the peak bodies in local government on legislative and policy issues.

Although the number of written complaints about local councils increased 21 per cent last year, this year they resumed the long term trend of a gradual increase. We received 824 formal written complaints last year, 153 less than the previous year. However, this still represents an increase of nearly two per cent compared to 1996–97. We determined 14 more complaints than we received.

In 1998–99 the 2,344 oral complaints we received, mostly over the telephone, represent an increase of nearly seven per cent on the previous year.

As with last year, we received 94 requests to review our decisions about written local council complaints and finalised 94 review requests.

REORGANISATION OF THE DEPARTMENT OF LOCAL GOVERNMENT

In May, the Minister for Local Government announced that the Department of Local Government (DLG) was to be reorganised and relocated to Nowra. Significantly, the Minister announced that the department would no longer investigate complaints about specific council activities. The department intends to refer these complaints back to councils.

At present, the department's investigation and review branch can investigate complaints directed to the Minister or the department. We understand the department takes some investigative action on about 20–30 per cent of the complaints it receives. We have been informed that this branch will in future focus on complaints about pecuniary interest issues, competitive neutrality issues and on serious breakdowns in council operations.

We expect that this decision will significantly increase the local government complaints we receive. The department received nearly 1,300 complaints last year. Because of our complaint handling policies and our liaison with the department, there is little duplication of the work of either

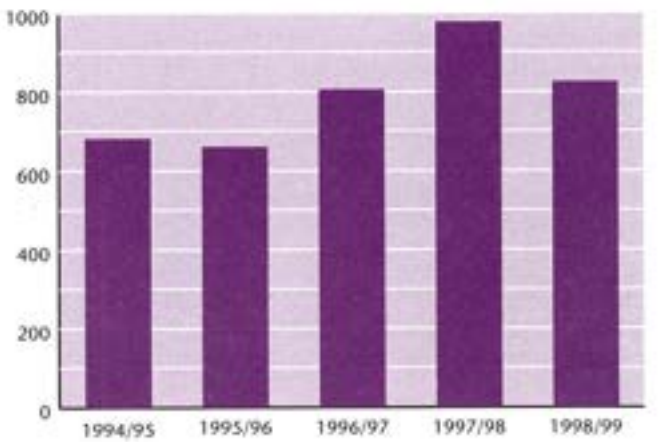


Figure 1: Written complaints about local councils received
A five year comparison

body. We anticipate that many of the complaints the department currently acts on will find their way to us. We can no longer treat the department as an alternative means of redress.

We will be closely monitoring the number of complaints received. If, as expected, there is a significant increase in complaints about local councils, we may be forced to adopt stricter tests in assessing whether to take action on complaints about local councils.

New power to enforce recommendations

Late in 1998 the *Local Government Amendment (Ombudsman Recommendations) Act* became law. This gives us the right to call on the Minister for Local Government to order local councils to comply with recommendations we make in our investigation reports.

Previously, the only option open to us if a council refused to comply with our recommendations was to report the matter to the Parliament. The Minister had no general power to direct the council to comply with our recommendations. This is in contrast to the general powers of a minister to issue directions to state government agencies within their portfolio. Therefore, reporting council cases to Parliament had a limited effect, other than drawing public attention to the actions of the local council.

Under the new law, the Minister can now call on the local council to report on what action it has taken or will take in response to our report. If the Minister is not satisfied with the response, they might order the local council to comply. This in effect mirrors the powers of a minister over state government agencies.

We can still report cases to Parliament. This would be considered where the case raised significant issues of public interest, or where the Minister was not prepared to order compliance despite a request from us to do so.

Table 1: Nature of written and oral complaints about local councils 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Building Building inspections, objections to building applications, conditions/refusal of application, processing	30	99
Community services Parks and reserves, other facilities	18	34
Corporate/customer services Meetings, elections, tendering, provision of information, contracts, resumptions, unfair treatment, liability, complaint handling	204	537
Development Objection to development applications, conditions/refusals of applications, processing	114	491
Enforcement Failure to enforce BA/DA conditions, orders, unauthorised works	127	179
Engineering services Failure to carry out work/inadequate work, road closures/access, parking,traffic, drainage/flooding, works	92	305
Environmental services Pollution, tree preservation, noise, health inspections, garbage collection, dog orders	61	248
Misconduct Misconduct of councillors/staff, conflict of interest, pecuniary/non-pecuniary interest	44	78
Rates and charges	60	145
Town planning Rezoning, s.149 certificates, existing use/consent	21	51
Policy/law Faulty procedures	1	
Other	42	159
Non-jurisdictional issues	10	18
Total	**824**	**2,344**

Table 2: Complaints about local councils 1998–99

Complaints received	
Written	824
Oral	2,344
Reviews	93
Total	**3,261**
Complaints determined (written)	
Formal investigation completed	3
Formal investigation discontinued	0
Preliminary or informal investigation completed	523
Assessment only	302
Non jurisdiction issues	10
Total	**838**
Current investigations (at 30 June)	
Under preliminary or informal investigation	114
Under formal investigation	1

CONFLICT IN LOCAL COUNCILS

Conflict within local councils, or between local councils and their residents and ratepayers is a customary feature of what are, after all, political organisations. Conflict becomes a concern to us when it begins to interfere with the proper functioning of the council. Serious conflict can paralyse decision-making and undermine provision of services to the community.

In previous annual reports, we have discussed our concern about conflict in local councils between councillors and senior managers, particularly the general manager. We noted last year that, in response to our concerns, the DLG, the Institute of Municipal Management (IMM) and the Local Government and Shires Associations (LGSA) met to discuss the issue. Following this meeting, the peak bodies agreed to take some action to improve the situation. This included:

- updating and revising the DLG's management planning guidelines;
- including in those guidelines clarification on what constitutes 'day-to-day management' (which is the specific responsibility of the general manager);
- giving emphasis to the roles of the mayor, the councillors, the general manager and staff in information provided to prospective councillors at the 1999 local council elections;
- giving emphasis to the relationship between councillors and the general manager in the LGSAs professional development courses;
- including in training provided by the IMM an emphasis on the relationship between councillors and the general manager; and
- including an appropriate mediation clause in the LGSAs standard contract for general managers.

A second kind of conflict, between local councils and residents and ratepayers, can impact on decision-making and service delivery. This is typically where members of the public, frustrated by the failure of their local council to meet their expectations, make unreasonable demands on the local council or exhibit aggressive behaviour towards councils employees. To assist councils in dealing with these situations, we recently developed guidelines on dealing with so-called 'difficult complainants'. We are completing a more specialised set of guidelines for local councils on the same theme, which is discussed later in this report (see 'Guidelines on service and communication' in this section).

A third sort of conflict within local councils that has attracted our attention is conflict between councillors. The day-to-day conflict between councillors over local issues is to be expected. However, we sometimes receive complaints that highlight conflicts interfering with the operations of the council. Typically, these conflicts are revealed in long, unproductive and acrimonious council meetings.

Case study: Fear and loathing in Ashfield

We spent a lot of effort last year dealing with seven complaints by councillors and staff at Ashfield Municipal Council. In all cases it was necessary to make inquiries and most complaints disclosed insufficient evidence of wrong conduct to warrant further attention. One complaint was the subject of a formal investigation. While we made no findings of wrong conduct, we nevertheless suggested measures to reduce tensions within the council which appeared to be the basis for the disputes referred to us.

The complaint we investigated a protected disclosures referred to us by the general manager.

The complainant alleged a councillor (councillor A) rang a local solicitor who was acting for a developer and told him another councillor (councillor B) intended to lodge a rescission motion. This motion would, if passed, overturn the council's decision made the previous evening, to rezone the developer's land to permit his proposed development. Councillor A allegedly informed the solicitor that councillor B intended to lodge the rescission motion to teach a third councillor (councillor C) a lesson over that councillor's opposition to another development.

It was alleged that councillor B also rang the solicitor that morning, confirming that he intended to lodge a rescission motion and admitting the motivation was to teach councillor C a lesson. The solicitor corroborated the allegations and supplied records of his conversations with the councillors.

If proven, this conduct would constitute maladministration by councillor B. Such conduct would breach his duty under the *Local Government Act* to act honestly in carrying out of his functions. It would also constitute conduct that was unreasonable and unjust.

The rescission motion was lodged the following day and was signed by councillor B and others. The complainant claimed none of the signatories to the rescission motion expressed any dissent when the council voted to approve the rezoning. We commenced an investigation into the conduct of all the councillors who signed the rescission motion.

Councillor A and councillor B denied making the comments alleged by the solicitor. Councillor B produced his own record of his conversation with the solicitor, which he claimed to have made shortly after speaking to the

solicitor. This record was markedly different. Importantly, the record did not contain any reference to the alleged comments that prompted the complaint.

The councillors who signed the rescission motion all stated in evidence they did so because they opposed the spot rezoning of the site ahead of gazetting the council's residential development strategy. They said this strategy would have rezoned the site anyway. This was consistent with their position on the issue all along. They also stated they believed their fellow signatories shared their concerns about the rezoning. There was no evidence to suggest the three signatories, apart from councillor B, signed the rescission motion for anything but legitimate reasons.

We concluded councillor B also had legitimate reasons for lodging the rescission motion. The only evidence suggesting otherwise was the solicitor's claims and records relating to the conversations with councillor A and councillor B. We concluded councillor A probably suggested the rescission motion was moved to teach councillor C a lesson. However, we were not satisfied that councillor B moved the rescission motion for that reason alone, or that he made such an admission to councillor A or the solicitor. We found no compelling evidence to explain why councillor B would make such an admission. In the absence of a rational motivation to do so, and in view of the conflicting evidence, we were not satisfied to the requisite standard of proof that councillor B made the alleged admission.

The evidence showed councillor B was not well disposed towards other councillors, including councillor C. Nevertheless, the balance of evidence suggested councillor B's reasons for initiating the rescission motion (and those of its other supporters) were legitimate, and sufficient to warrant the motion in their discretion. We accordingly found insufficient evidence to support a finding of any wrong conduct on the part of these councillors.

In the course of our investigation and in dealing with the other complaints, it was apparent to us that Ashfield Council was a place of intense political and personal rivalries. In our final report we therefore suggested that the council implement a dispute resolution process and a formal and transparent complaint handling process, in the hope this would manage the rivalries within the council.

Case study: Irreconcilable differences

Our efforts to assist Bega Valley Council to resolve a longstanding conflict between councillors and between some councillors and staff, was welcomed by senior staff, but discontinued when the DLG initiated a formal investigation into the council's decision to dismiss its general manager.

The council asked us for assistance in early 1998 after their staff members reported their concern about continuing dissatisfaction with their treatment by a number of councillors. Staff complained of an ongoing atmosphere of bitter personal criticism and suspicion towards them.

We visited the council, interviewed most of the councillors and a number of staff members, and wrote a long summary of our preliminary findings. The focus of our summary was to analyse the conflict. We also set out a series of practical recommendations designed to:

- clear the air;
- establish some ground rules for conduct during council meetings;
- establish some ground rules for dealing with complaints about staff;
- help the council to resolve some ongoing controversies; and
- review some outdated and counter-productive practices and procedures.

We warned the council that the available evidence was sufficient to justify an investigation. We also pointed out that other councils had been dismissed following breakdowns of the kind the council was heading towards.

Initially, the council took some positive action in response to our summary. However, a proposed meeting to allow councillors and staff to clear the air was indefinitely postponed after a number of councillors said they could not attend. A working party set up to implement our other recommendations was making very slow progress.

Then, without warning, councillors voted by a narrow majority to terminate the general manager's contract, just weeks after it had been renewed. The DLG conducted an investigation, followed by a public inquiry to consider whether the council should be dismissed. The inquiry recommended to the Minister that the council be dismissed, a recommendation accepted by the Minister. An administrator has now been appointed to run the council until 30 June 2001.

Senior staff and a number of councillors supported our recommendations, with the general manager describing them as 'a blueprint to construct a road to recovery'. However, the councillors in the majority faction were not prepared to commit to implement them. The inquiry noted as much, finding that most councillors did not recognise the need for change.

The support for our work from senior staff and some councillors shows that conflict analysis, if it is undertaken before destructive

patterns of communication and destructive relationships become entrenched, can assist councils experiencing conflict.

Case study: The way forward

There are, amid the many good things that councils have achieved, several examples of some notoriety that stem from conflict between councillors. Here are two that have come to our attention in the past year:

- one councillor was expelled under police escort from consecutive council meetings over a six month period before eventually apologising for allegedly swearing at the mayor and calling the mayor a liar during a council meeting; and
- another councillor was alleged to have treated a number of council staff members so poorly that he was restricted to obtaining information or making inquiries from staff only through the general manager.

Councils subject to inquiries to determine if they should be dismissed are typically those experiencing severe and entrenched conflict. In recent years, Burwood Council, Maitland Council and now Bega Valley Council were dismissed in these circumstances. Interestingly, in two of these cases, conflict between councillors became entwined in conflict between some councillors and the general manager.

It is unfortunate that dismissal of the whole council is the only legal option open in cases of severe conflict. In many councils experiencing serious conflict, most if not all of it can be attributed to one or two councillors. Yet there is no capacity to deal with these councillors other than under the council's code of conduct. In most cases this has a limited effect.

We believe there are other options that can help to resolve or reduce conflict between councillors. These options include strategies for avoiding or resolving personality clashes that frequently explain the sorts of tensions that arise.

We suggest:

- Ensuring that, through strategies like training new councillors on effective communication and conflict resolution and using team building strategies, councillors are given the skills and opportunity to establish effective working relationships quickly.
- Using alternative dispute resolution processes like mediation and conflict analysis when severe conflict is brewing. Conflict analysis is another alternative dispute resolution process worth trying. An independent observer can be engaged to listen, observe and analyse the way councillors communicate and to give advice on how this might be improved.
- Introducing suspension provisions that give the council, or some independent third party, the power to suspend the councillors from council meetings for a fixed period for proven misbehaviour (whether or not occurring during a council meeting). To prevent abuse of this power, we believe if councils have the right to suspend councillors, it should be on the vote of, say, two-thirds or three-quarters of the councillors. Councillors the subject of such action must have an opportunity to argue why they should not be suspended and have the benefit of some appeal mechanism.

We hope that these ideas will stimulate debate on this important topic. The professionalism and reputation of local government is best served if some of the more notorious cases of councillor conduct in the past several years can be avoided in the future.

Conflicts of interest

We continue to receive a significant number of complaints raising concerns about conflicts of interest on the part of councillors and staff. Where these complaints raise possible contravention of the pecuniary interest provisions of the *Local Government Act*, we generally refer them to the DLG. We generally take some action where complaints raise possible non-pecuniary conflicts of interest.

In our 1995–96 annual report, we commented on how councillors and council staff should avoid becoming complacent about non-pecuniary conflicts of interest. The law does not regulate these interests. Council codes of conduct set out requirements for dealing with non-pecuniary conflicts of interest. The model code of conduct requires:

> . . . a councillor, member of staff or delegate [to] avoid and appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.

The model code says that a conflict of interest arises:

> . . . if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his or her public or professional duties by that interest, or that a reasonable person would believe that the person could be so influenced.

The model code does not detail the sanctions that can be applied, leaving this to individual councils to determine.

In 1997, the Independent Commission Against Corruption (ICAC) and the DLG launched *Under Careful Consideration: Key Issues for Local Government*. This booklet sets out 13 integrated strategies for managing conflicts of interest. We particularly support the following strategies:

- providing objective advice on what comprises a conflict of interest;
- objective assessment and decision-making (by, for example, an ethics committee made up of councillors, senior staff and independent persons) so as to take decisions about what comprises a conflict of interest out of the hands of councillors and into the hands of people with greater experience and objectivity; and
- incorporating sanctions such as censure, public disclosure and counselling.

Codes of conduct should, in our view, be modified to provide for the strategies outlined in the publication. We are concerned that many councils have not done so. As a result, many councils still have codes of conduct with no mechanisms for objective assessment and decision-making, and with no sanctions for breach.

We raised our concerns with the DLG. The department has recently issued a circular to councils reminding them of the need to review policies, like the code of conduct, following the September elections. This is the ideal opportunity for councils to fully incorporate the 13 integrated strategies proposed in *Under Careful Consideration: Key Issues for Local Government* into their codes of conduct.

Case study: None so blind as in Griffith

A former general manager of the Murrumbidgee Irrigation Area Business Enterprise Centre Ltd (MIABEC) complained about the conduct of two MIABEC board members who, at the time of the complaint, were the mayor and deputy mayor of Griffith City Council. The matter appeared serious and we considered commencing an investigation.

However, we obtained crown solicitor's advice that the conduct of board members of a company was outside our jurisdiction. This was so, even where, as in the case of the mayor, his board position was that of Griffith Council's representative.

The complainant also complained to the council about the conduct of the two councillors in MIABEC. He registered a further complaint to us about the council's handling of his original complaints. He said the council had ignored obvious conflicts of interest. The DLG also referred to us a complaint by an ex-councillor about the council's alleged mishandling of complaints. After preliminary inquiries we commenced a formal investigation.

In last year's annual report we detailed an investigation that found the then mayor had not recognised a clear case of conflict of interest, which involved the council and his daughter's business. Our investigation on that case, issued in May 1998, recommended councillors be formally reminded of the need to avoid both pecuniary and non-pecuniary conflicts of interest. We also recommended that the DLG/ICAC booklet *Under Careful Consideration: Key Issues for Local Government*, which provides advice on conflict of interest, be made available (again) to all councillors.

In June 1998 the complainant sought to address the council about MIABEC and the conduct of the mayor and deputy mayor. When the complainant addressed the council meeting, the mayor declared a conflict of interest and vacated the chair. Not surprisingly, the complainant immediately objected when the deputy mayor assumed the chair. Despite three challenges, the deputy mayor refused to concede he had a conflict of interest in the item. He remained in the chair and frequently interrupted the complainant's address, debating points with him. Our investigation concluded that the deputy mayor's performance in this respect was, quite simply, a disgrace.

However, worse was to come. Following the meeting, a councillor wrote to the general manager expressing concern that the mayor, general manager and council had all failed to advise the deputy mayor of his conflict of interest in MIABEC matters aired at the three previous council meetings. She asked that her note be put on the agenda for the next council meeting.

At the next meeting she moved that allegations of conflict of interest currently before the council be referred to the LGSA's legal section for advice. Her motion provoked ill-informed opposition and attracted the votes of only its mover and seconder. During the debate on this motion the deputy mayor claimed that he had no conflict of interest in relation to MIABEC. He argued this was because he was unaware of the complainant's allegations about him, and that he sat on the MIABEC board as a private citizen, not as the council's representative. Our investigation found the first claim false and the second misconceived.

The motion was defeated and the effect of this was (as an investigation report noted) that the council, by its majority vote:

> . . . put its head in the sand and opted to maintain constructive ignorance of conflict of interest issues.

In September 1998, the council considered a draft policy *Conduct of Councillors and Staff in Addressing and Determining Development Applications*. The policy precluded councillors (and the council staff) from playing a role:

> . . . in the assessment or determination of applications submitted by relatives, close friends, business associates, employees, employers or other situations where the association is

such that it could be perceived to influence the councillor's decision . . .

Despite all the discussion and controversy about conflicts of interest in the proceeding months it was the deputy mayor who moved that the words 'close friends' be removed from the policy. The council pushed its head even further into the sand by passing his motion. Our investigation report recommended that the council restore the words 'close friends' to the policy. Council adopted that recommendation.

The council directly paid a number of legal bills for costs incurred by the council and the mayor in relation to MIABEC matters. Our investigation also looked at whether it was proper to make those payments. One bill for $500 related to attempts by the mayor to prevent the MIABEC board from referring to the Australian Securities Commission some of the complainant's allegations about the mayor's conduct as chairman of the board. The mayor failed to declare an interest in the business item that authorised payment of this bill. This was considered by the council 'in committee' which is in clear contravention of the provisions of the *Local Government Act* relating to open meetings of councils.

The investigation report noted:

> There was no justification for considering this bill payment 'in committee' and the only conclusion to be drawn is that Council had a 'guilty conscience' which caused it to exclude the public from witnessing its acquiescence to a payment that should not have been made.

We found the payment breached the council's own policy on payment of legal expenses of councillors. That policy permits the reimbursement of legal expenses to councillors in relation to certain inquiries or proceedings, provided they result 'in a finding substantially favourable to the councillor'.

The investigation report noted:

> It is one thing to offer assistance where an inquiry has commenced, but that is very different to paying legal expenses incurred in attempting to prevent reference of a councillor's conduct to a relevant investigating/enforcement body.

The report recommended that the councillor (now no longer the mayor) repay the $500. He subsequently did so.

Case study: A little knowledge can be a dangerous thing

We received a complaint that a councillor from Ballina Shire Council, who participated in the selection committee to assess expressions of interest to provide a legal service, had a conflict of interest. The complainant alleged the councillor had a close personal friendship with the principal of the successful firm. It was unclear whether the councillor's relationship with the principal of the successful firm gave rise to a conflict of interest. The councillor nevertheless agreed with our suggestion not to participate in the selection committee in the future.

The councillor told us he was asked to participate in the selection committee because of his knowledge of the participating legal firms, which had come from his former business relationships with them. The councillor had sold this business before the council called for expressions of interest from the firms.

The councillor described his relationship with the principal of the successful firm as being 'of a business type as well as social'. He said he had similar relationships with the principals of at least five other participating firms. He said he had also dealt with most of the other firms through his former business. He said he did not regard anyone associated with these firms as a close personal friend, and at no stage considered he should declare an interest because of these associations.

We considered that the councillor's relationship with the principal of the successful firm created a reasonable perception that his decision could be prejudicially influenced. In such circumstances, we suggested he should not participate in the selection process. The councillor agreed with us and undertook not to participate in the selection committee for the next expression of interest.

Case study: A flood of claims

We were able to resolve complaints about possible conflicts of interest by convincing Clarence River County Council to review its policies on councillor access to information in line with the publication *Under Careful Consideration: Key Issues for Local Government*.

The complainant alleged that the county council chair had been officially involved in a proposal by the council to build a flood levee. This councillor had a personal interest in the matter, as his property was affected by the floodwaters the levee was intended to control.

'We greatly appreciate your effort in solving our complaint about the council. We believe that your contact with the council was a big help in resolving the matter. We also feel much better now as we know that the residents can get the much needed help from the NSW Ombudsman. Like most other residents we are not looking for to be treated specially but only to be treated equally.'

There was no evidence the councillor had participated in county council meetings at which the proposal was discussed. However, there was evidence the councillor had been given virtually unrestricted access to council files and documents concerning the matter. The general manager had given the councillor this access, on the basis that he was chair of the county council.

We pointed out that dealing with conflicts of interest is not confined to meetings. The general principle is that where a councillor has a personal interest, their right to access information should be the same as that of any other ordinary member of the public. The county council responded positively, agreeing to review its policies in light of this principle.

Case study: Gravel going cheap

We resolved complaints about Maclean Council and Richmond River Council accepting free gravel from a gravel quarry operator which they were responsible for regulating. Both councils agreed on new procedures to ensure offers of this kind were dealt with more openly.

The complainants, local residents living near the quarry, alleged that the quarry operator had told them he had given free gravel to the councils. Both councils confirmed that free gravel had been accepted, although the quantities were quite small. In Maclean Council's case, the gravel was accepted so that it could be assessed to see if it was suitable for council road work. In Richmond River Council's case, the gravel was placed on roads primarily used by the quarry operator's trucks.

We were concerned that both councils had to regulate quarries run by the operator. We were concerned that the councils could be influenced, or be seen to be influenced, in their regulation of the quarries because they had accepted free gravel. The *Ombudsman's Good Conduct and Administrative: Practice Guidelines for Councils* state that council staff should not accept any benefit (other than of a token kind) for themselves or their council from any person which might be seen to influence them in their official capacity.

We asked the councils to do several things:

- ensure all staff are aware of the issues raised by offers of free material;
- ensure offers are carefully considered by the general manager having regard to the need for ethical and transparent processes;
- report all offers to the council; and
- report the particular donations to the council.

Both councils agreed to take all of the actions we requested.

CUSTOMER SERVICE

The major theme of this year's annual report is customer service. We want to improve the standards of service provided by councils and state government authorities, and much of our work is to ensure that the public gets a decent standard of service.

Our survey of public authority complaint handling systems (see Public authorities in this report) revealed mixed results for local councils. There have been significant improvements in some key areas of customer service since the last survey. These include:

- response rates;
- implementing formal complaint handling policies; and
- recording complaint information.

However, on the whole the results were disappointing. For instance, of the councils surveyed:

- while most have adopted them, one council in twenty still has no complaint handling policy;
- almost two-thirds of councils have no guarantees of service;
- almost half of councils have no standards for dealing with complaints; and
- less than one-third of councils make information about the complaints they receive public.

A separate report on this survey is being prepared.

We also recently conducted a customer service audit of Marrickville Council. The details of the audit are discussed below (see 'Customer service audit' in this section). In summary, while the council performed very well in personal contact and telephone service, its response to letters and emails was disappointing. Looking at the results of our survey and this audit, there is clearly work to be done in this area.

We plan to conduct further customer service audits of local councils. Later in this report, we also set out an important initiative we are taking in the coming year. We are issuing guidelines on communication and service, and in these we advocate the adoption of guarantees of service with specific service standards. In this way, the councils can demonstrate a commitment to good service and a willingness to assess their performance against identified measures.

Here are some cases that cover the range of council service issues we regularly deal with.

Case study: Enforcement action

We noted in last year's annual report that problems with enforcement action (or the lack of it) generate a lot of complaints. We also set out in last year's annual report a list of

expectations we have of local councils in this area. To summarise:

- councils should only impose sensible and enforceable conditions on development consents;
- ideally, councils should systematically audit compliance with conditions of consent, particularly in industrial, commercial and environmentally sensitive areas;
- councils should have a system for logging and responding to complaints about non-compliance or unauthorised activity;
- councils should investigate such complaints in a timely fashion and inform the complainant of the outcome;
- when councils decide whether to take further action, they must take into account the particular circumstances of the case, they must be reasonable and they must act consistently;
- councils should develop policies on investigation and enforcement including the factors the council will consider when deciding if further action is required;
- councils should incorporate alternative dispute resolution principles and strategies into their procedures for responding to complaints; and
- councils must avoid adopting blanket policies of not enforcing the law in particular areas or in relation to particular matters.

The following case studies show how effective our intervention can be. These cases cover the main areas of complaint: inaction, delay, and inadequate action in response to suspected or proven breaches, or unauthorised activity.

Case study: Surrounded by greyhounds

We get many complaints about the use of adjoining properties for the keeping of animals as these cause noise, odour and other adverse impacts. One such complaint, about Penrith City Council, concerned the use of an adjoining property for greyhound racing, trialing and boarding. The complainants said the local council for years had failed to take the action requested by neighbours.

At the time the complainants purchased their property, there were no greyhound racing facilities nearby. Shortly after they started building their home, they became concerned when their neighbour applied for approval for a greyhound racing track, which they subsequently received. The complainants said the council 'added insult to injury' by approving a similar facility at the rear of their property, despite many neighbours making objections about it.

The complainants felt surrounded by greyhounds, and were concerned that the training track was situated close to their fence. They also objected to the use of old noisy machinery to run the lure, noise from greyhounds at all hours, inadequate fencing and the traffic on the regular race days. Council responded that greyhound racing is a sport keenly followed in the district and that the area, once rural, was becoming more residential in character. This had resulted in conflicts that were difficult to resolve.

The council had been concerned about the matter for some time, but had been reluctant to deal with it directly. After we made inquiries, the council served an order on the owners to replace, or cease to use, the mechanically driven lure. The council called on the owners to engage a consultant to advise on noise attenuation measures and also told the owners to improve the fencing. In order to keep the problems under control, the council also held a series of meetings with neighbours and listed their problems. These were then taken to the owners to see if they could be sorted out. This type of facilitation role is a method that all councils could use in similar situations.

Case study: Condition critical

A complaint about a series of allegedly incompetent planning decisions by Deniliquin Council was resolved after the council agreed to measures to revise and introduce new development policies and to rectify some identified problems.

A former employee of the council and two serving councillors made the complaint and identified a number of cases where the council was accused of failing to enforce conditions of consent.

Following our initial inquiries, the council was advised that there appeared to be sufficient evidence to justify a formal investigation. The council policies on subdivision appeared to be contradictory, or not well understood, and there were doubts over the legality of a development consent council had issued to itself. Some conditions had been imposed on development consents that, on closer examination, did not achieve the outcomes the council intended. There was also evidence of long delays in enforcing conditions of consent.

So that the matter could be resolved the council was asked to consider some steps to rectify what we saw as the main deficiencies in their

'Thanks for sending that detailed letter to the council. You seem to understand the issues exactly. Dealing with two big powerful organisations is intimidating. The questions you've asked are great. At the very least they'll have to answer – and think more carefully about treating people reasonably and fairly.'

systems and procedures. The council's response to this was open and constructive:

- council, having acknowledged that its policies on subdivisions were, in places, confusing and inconsistent, agreed to revise these policies;
- council acknowledged it needed to adopt a s.94 contributions plan to ensure it could legally obtain from developers contributions towards the cost of road improvements necessitated by development;
- council obtained advice that a development consent it granted to itself in order to establish a tourist facility could be invalid, and agreed to consider a fresh development application; and
- council agreed to move promptly to ensure that outstanding conditions on a development consent were complied with.

What the case demonstrated is that deficiencies in the policies and procedures for assessing development applications show up in problems with enforcing conditions of consent. In this case, policies were in some cases confusing and contradictory, and conditions of consent in some cases failed to achieve what the council intended. Council simply did not have a policy with which to justify road work contributions from developers.

Case study: Pump primed

We obtained a $1,000 ex gratia payment for an elderly resident of Cooma-Monaro Shire Council, after the council acknowledged it had failed to enforce a condition of consent to a subdivision.

The condition stated that council was unable to guarantee water supply above a contour level of 825m. Therefore, the condition said the applicant had to install a pressure pump on lots above this level. The developer sold one lot to the complainant. According to the council records, parts of this lot were below 825m. So the lot as a whole was exempt from the condition. However, a subsequent engineering survey revealed the entire lot was in fact above 825 m.

In the meantime, the complainant installed her own water service. In view of the circumstances, the council offered the complainant an ex gratia payment towards the cost of the service. In the light of the issues raised by the complaint, council also decided to develop a policy to monitor compliance with conditions in development consents.

PROVIDING INFORMATION

One of council's important roles is to provide information upon request to members of the public. Recent amendments to the *Local Government Act* substantially increase the amount of information councils are required to make available.

In order to be able to provide this information, councils must first be able to identify and locate the records to which access is sought. This means that good record keeping practices are essential. The new *State Records Act* requires every public office to keep full and accurate records of its activities. The *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils* states that councils should ensure contemporary and adequate records are made and maintained in relation to their operations including decisions, contracts, transactions, negotiations, discussions, site visits/inspections, land use information and objections, as well as consents and certificates issued by them.

A central theme in a number of complaints to us over the last year has been the failure of the councils to provide information.

Case study: A failed record attempt

After we reviewed a complaint we referred it back to South Sydney Council, who took enforcement action against the neighbouring property. The complaint highlighted deficiencies in the council's record keeping and the need for accurate records as part of an effective complaint handling system.

The complainants alleged the council failed to take appropriate action in response to a number of complaints they had made about their neighbours. In particular, the council had failed to respond to their letters. It emerged that many of the letters were addressed not to council but to an individual councillor. Complainants should generally address their complaints about enforcement issues to the general manager. Nevertheless, following our intervention, council undertook to send a full report on the matter to the complainants.

The complainants had made several complaints by telephone to the council. Council told us it responded to many written complaints by telephone. Unfortunately, the council's files contained no record of these responses.

This fell short of the required standard. The Archives Authority of NSW states that records should be made to document and facilitate the transaction of business by government agencies. This includes the transaction of business by telephone. The *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils* also states that adequate and contemporary records should be made of any significant discussions with members of the public.

We told the council that if it was going to deal with complaints by telephone, it was essential that a

record should be made of such conversations. The resultant file note may well be the only record to show a response was provided and what happened in relation to a given complaint.

Case study: Meeting cycles

Wyong Shire Council agreed to introduce a new public access procedure at traffic committee meetings in response to a complaint we received from a local bicycle users group.

The complainants were concerned about getting their views on the impact of local traffic issues on cyclists across to the traffic committee. We were initially able to arrange for committee meeting agendas to be made available. This gave the complainants an opportunity to identify issues they considered important to cyclists. It was envisaged that the complainants could then seek permission to address the committee on those issues. However, this procedure proved impractical.

We then asked the council to reconsider the issue. We suggested that the best option would be for the committee to formalise a public access procedure. This would give any member of the public wanting to put forward a view an opportunity to do so. It would also give the committee some control over the time it set aside for hearings from interested members of the public.

The council then developed some simple public access guidelines. They provide that up to 45 minutes will be set aside at every meeting of the committee to allow members of the public to address the committee for up to five minutes on issues of interest.

NOTIFICATION AND CONSULTATION

Councils are facing increasing demands from their communities to tell them what they are doing, get their input and act on that input.

There are a number of statutory obligations on councils to be open and transparent in their decision-making. The *Local Government Act* provides for:

- the popular election of councillors;
- open and transparent decision-making at council meetings;
- mandatory community consultation in the development of annual management plans; and
- public access to a wide variety of local council records.

Under the *Environmental Planning and Assessment Act* councils are also required to undertake mandatory community consultation in developing local environmental plans, and mandatory or optional community consultation in assessing development applications.

We have looked into many complaints about councils failing to notify adjoining owners of building or development applications. For well over a decade, we have consistently argued that it was desirable for councils to notify adjoining owners, and other affected persons, about building and development applications.

We believe councils should adopt policies and practices that enable the community to be adequately informed of its activities. It is also important for councils to ensure that those members of the community whose interests are affected by a proposal are adequately informed, and given an opportunity to make written or personal submissions. The *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils* states that:

> . . . councils should ensure that persons whose interests are, or are likely to be, directly adversely affected in a material way by any impending decision of the council or a delegate are identified and appropriately notified. When in doubt it is advisable to notify. . .

Councils should give due consideration to any submissions which are relevant to the matters they are deliberating on.

A number of complaints over the last year concerned councils and their failure to consult, or consult adequately, over various applications and proposals.

Case study: We will consider your views?

Intervention by us led to Parkes Shire Council abandoning its practice of deciding in principle, under delegated authority, whether a development application should be approved prior to the public consultation period expiring.

We received a complaint that the council had decided, in principle, that a development application should be approved before the period for public submissions on it had closed. The complainants said that council considered the development application two days before the last day for lodging public submissions.

We told the council that public confidence in the consultation process was not enhanced by this practice, and we asked the council to review it. Council told us it had considered this and changed its policy. In future, development applications will not be determined prior to the closure of a public consultation period. This should reinforce public confidence in the consultation process.

Case study: Widening the consultation net

We were able to assist in reforming Wagga Wagga City Council's notification policy after we raised a complaint that a resident had not been notified of a number of development applications.

Council's response was very positive. It not only corrected the administrative error that led to the failure to notify the complainant, but it also made a number of reforms to its notification policy. These include listing development applications on the council's website, which is a useful approach for all councils, especially those in rural areas. This creates new opportunities for members of the public to scrutinise development proposals.

Council told us that the investigation:

> . . . has proven to be very useful and positive to Council. It will lead to changes to notification procedures and quality control systems . . . to be incorporated in the 'new' Notification Policy currently being developed by Council for Development Applications.

Case study: A matter of interpretation

We were able to obtain undertakings from Leichhardt Council to provide greater assistance to people from non-English speaking backgrounds after a couple were unable to participate in a decision-making process.

The council invited the couple to the council meeting at which it considered a development application by the complainants neighbours. Although the complainants first language was Arabic, both spoke some English. Recognising that technical, or quasi-legal, language would be used during the discussion, the council agreed to provide an interpreter. Unfortunately, the interpreter failed to arrive. The meeting went ahead and the application was approved, despite the couple objecting to the development.

The general manager said he regretted this situation had arisen. We said that if the same circumstances arose again the council had two options. Council could either use the 24 hour telephone service offered by the Translating and Interpreting Service, or put the meeting back until a translator was available. They agreed, and also gave an undertaking to make sure that up to date information about the development approval process was available in community languages.

Case study: Even good ideas work best in moderation

On the other hand, councils sometimes allow too much consultation, negotiation and conciliation during the approval process. A very determined objector can use the system to their advantage. This was the case at Leichhardt Council.

We came across an application that had undergone a process of consultation, mediation and revision for over two years. After consulting with a particular objector, the applicant changed his plans to address the particular issues of concern to the objector. The altered plans were then submitted to the council and the process began again. The objector was again notified of the revised plans and given a further opportunity to comment. The objector then made further objections.

This occurred on four occasions. The application was finally given a deferred commencement consent after the applicant lodged a review request with the council. What made matters worse for the applicant was that the plans the council finally approved were so similar to the first ones he submitted.

CUSTOMER SERVICE AUDIT

We are conducting a series of audits of customer service standards by public authorities using a mystery customer methodology (see Public authorities in this report). Marrickville Council was the subject of one of these audits. Mystery customers were drawn from our staff and engaged in 66 different service transactions with council, to test out how it treated its customers. These transactions included face-to-face meeting with staff at its Citizens Service Centre, phone calls to council, letters and emails.

The scenarios used were based on service information taken from council's own publications, backed by some physical research in the area, as well as being drawn from the range of complaints we receive about local councils. The service requests mainly sought information that should have been readily at hand and did not involve the council expending time or physical resources on investigations. The exceptions to this were some service requests to meet real problems that we identified through our research, such as a report of an abandoned vehicle in the council area and a request to fix some dangerous broken pavement.

Our mystery customers were very impressed with the customer service provided by staff at the Citizens Service Centre. They used comments such as 'very friendly and useful', 'excellent — friendly, efficient and knowledgeable', and 'exceeded my expectations'.

The signposting and physical appearance of the facilities in the centre were all rated very highly, as was the appearance of staff. Fifty per cent of our mystery customers were served without waiting, and for those who had to wait, the waiting time was very minimal. Basic customer services skills such as giving appropriate greetings and making eye contact were evident on

every visit to the centre. The courtesy of the customer contact staff was perceived to be 'pleasantly courteous' and the interest shown in the customer's problem was ranked at a level much more than a neutral/business-like approach, and much closer to a demeanour that communicated active interest and a willingness to help.

On 80 per cent of the visits made, the questions or problems presented by our mystery customers were solved by the first person they spoke to at the counter. Those that were referred to a second, or third, person rated them very highly in terms of their courtesy and helpfulness. In all, the mystery customers found that the council staff were readily able to answer the questions asked or provide the information sought without difficulty in seven out of ten cases.

The telephone service provided by the council also scored reasonably well, especially in terms of connectivity. Calls were answered quickly and 90 per cent went directly to a staff member without having to wait in a message or holding queue. The name of the council and appropriate greetings were given in all cases and the name of the officer provided in seven out of ten cases. The courtesy and interest levels shown by the telephone operators were of an acceptable standard.

On balance, the service provided by telephone to customers of the council was seen as professional and of a reasonable standard. A high 85 per cent of the calls made were successful in reaching people who were readily able to answer the questions asked or provide the information sought. However, in the remaining cases the council staff were usually able to provide further referral advice.

In contrast, the council's response to correspondence and email was disappointing. Council publishes its email address on its letterhead and in some of its publications. It operates a web page which has a few email links, but it mostly encourages people to contact the council by telephone and mail. Of the mystery customer emails sent to the council, only 43 per cent received a reply. At the conclusion of the audit, we had been waiting between 29 and 39 days for the outstanding replies.

Of the emails that were replied to, one came on the same day and the others took between 16 and 22 days. To computer-literate citizens such response rates and turnaround times would generally be perceived as unacceptable. This is an area where significant improvements can be made by the council in developing some standards for turnaround time on its existing email facilities before expanding this further.

The poor performance in responding to email was also found in relation to letters sent to the council by our mystery customers. We reported our findings to the council some two months after our first mystery letter was sent. At that stage, we had only received replies to 58 per cent of the mystery customer letters. The elapsed time for responses ranged from 38 to 59 days, which was well outside the council's internal standard of 21 days for a substantive or interim response to correspondence.

The council performed quite well in terms of the responses that we actually received. Its average turnaround reply time was 12 days. While the mystery customer letters mostly called for relatively simple information, in some cases, the council had conducted and reported on its investigations of some real problems that were identified in those letters. Council's letters were well presented and business-like in their tone. In all cases they adopted some basic best-practice standards of being signed by identifiable people and inviting further contact by telephone if additional information was required.

It was clear from our audit that citizens of Marrickville can expect a high quality of service if they turn up at the council chambers and deal face-to-face with staff, or ring them. However, it appears that relying on letters or email can be risky and there is a good chance that replies will be delayed if they are received at all. The general manager said our audit was 'interesting and opportune' for council.

During 1999–2000 we will be conducting further customer service audits of other local government authorities.

Guidelines on service and communication

We have recently done some work on how to deal with situations where the service expectations of members of the community are beyond what agencies can reasonably deliver. Complainants can become frustrated with what they perceive as poor service and this is sometimes exhibited in unreasonable demands on agencies or exhibiting aggressive behaviour towards agency employees. We have therefore developed guidelines called *Dealing with Difficult Complainants*. They deal with issues such as limiting access, dealing with aggressive behaviour and ensuring that agencies have appropriate security arrangements.

We are currently working with the LGSA on a more specific publication for local government, designed to give the councils guidance on dealing with similar types of situations.

What we propose in the guidelines is a framework based around good communication and good service. Local councils should be open, fair and consultative. Local councils

should also provide good service, and set, and try to meet, service standards. Members of the public can reasonably expect this from councils. There are also some things that local councils can reasonably expect from the public — like appropriate behaviour, reasonable expectations and a willingness to pursue any available alternatives.

The guidelines outline what members of the public should do if their local council does not meet their expectations. They also set out some limits local councils can consider imposing as a last resort in situations where they face unreasonable demands. The guidelines also provide advice on constructive ways of responding to damage, to reputation, or threats to the personal safety of councillors and council staff members. We believe that they provide a practical framework for introducing real improvements to service and communication in local government, as well as giving guidance on how to better handle some difficult challenges facing local government.

COUNCILS AND MEDIATION

We continue to practice and advocate mediation in all areas of government including local government. We continue to formally mediate some complaints, as well as use mediation techniques to resolve complaints.

The NSW Parliamentary Public Accounts Committee completed its inquiry into legal costs and the use of alternative dispute resolution in local government this year. In the final report, the committee recommends measures to ensure all councils make a commitment to the use of alternative dispute resolution. For example, the committee recommends that all councils formally incorporate provisions for the use of alternative dispute resolution in their policies. The committee recommends that councillors and staff be appropriately trained.

We welcome these recommendations. We already offer a mediation service to state and local government. We welcome the opportunity to resolve complaints and disputes in this way. One of the challenges for councils is to develop the knowledge and skills of their councillors and staff about alternative dispute resolution. We are examining ways in which we can offer our skills and experience to local councils to meet this challenge.

Here are some cases that highlight the effect mediation and conciliation can have in resolving seemingly intractable disputes.

Case study: The burdens of captaincy

We were able to successfully mediate a dispute that arose when the local council refused to ratify the election of the captain of the local rural fire brigade.

The captain who the brigade members elected was also a member of the local State Emergency Services (SES) group. He had been the captain for some years and had a high standing in the community. However, the council would not ratify his appointment as they said that there could be a problem if both the Rural Fire Service and the SES were called out to the same disaster.

The council appointed the deputy captain as the brigade captain. This caused a great deal of dissent among the brigade members who felt their wishes had been disregarded. The situation deteriorated when council's fire control officer proposed changes to the operating procedures for the brigade, without consultation with the brigade most affected by the changes. In an attempt to resolve the problem, the captain-elect said if he could remain as captain for the coming fire season he would not stand again for the captaincy the following year. The council refused the offer.

The matter was finally resolved after we held a formal mediation with all the affected parties. The settlement resolved the dispute over the captaincy of the brigade and put in place better consultation processes. Council agreed to allow the elected captain to remain in his position until the following season.

Case study: Deuce

A neighbourhood dispute, in which the local council had become embroiled, was set on the road to resolution after we chaired a conciliation meeting involving all the parties.

The dispute revolved around the neighbouring school's use of tennis courts which adjoined the complainant's property. The complainant alleged that the council had failed to intervene to prevent excessive noise from the tennis court. After our preliminary investigation, we were largely satisfied that the council had acted reasonably in investigating the complaints and in deciding not to take further action on the complaint. However, some aspects of the council's conduct still needed to be clarified.

The responsible investigator, who is experienced in mediation, arranged for the complainant to come to a conciliation meeting with a representative of the council and representatives from the school. At the meeting, the council was able to clarify its position.

More importantly, the complainant was able to clarify precisely what aspects of the use of the tennis court caused him and his family the greatest distress. The parties were able to agree on a mechanism for the complainant to report any inappropriate behaviour by students and any damage to his

property. The school agreed to take steps to reduce some of the noise. The parties agreed to work together to explore jointly funding an acoustic assessment of the use of the tennis courts.

While it is not our role to resolve disputes between neighbours, where they give rise to complaints about public authorities, we may become involved.

PLANNING LAW REFORM

It is now over a year since significant changes to the land use planning system took effect. These changes introduced a new role for the private sector. Private experts called "accredited certifiers" can now approve certain types of minor building and development, and carry out many of the checks that were previously only able to be done by the council during the construction of buildings.

We continue to work on a task force looking at applications from a number of organisations to become accreditation bodies. We have focussed our attention on the codes of conduct and complaints and disciplinary procedures set out in these applications.

So far, the changes have not generated any complaints about accredited certifiers. This is not surprising. As at 30 June, there were only two accreditation bodies and another two schemes under consideration. Further, only a handful of councils have introduced new local planning rules to allow accredited certifiers to approve work.

In the coming year, all councils that have not yet done so must introduce these rules for their local area. We anticipate that as the impact of the new law grows, we will begin to receive complaints and inquiries in this area. This will enable us to begin to assess the impact of these changes on the community.

FACT SHEETS

One new service we will be offering complainants in the coming year is a new form of advice called fact sheets. The fact sheets cover the main areas about which we receive complaints. We have produced the following titles:

- *Having trouble with your application for development consent?*
- *Unhappy about a proposed development?*
- *Having trouble with your rates and charges?*
- *Having trouble with unlawful development activity?*

The sheets are designed to give practical and useful information and advice to the people who contact us. We can give complainants some useful options that might enable them to resolve their problem, if we cannot investigate it. All subscribers to the *Ombudsman's Good Conduct and Administrative Practice: Guidelines for Councils* will receive a set of fact sheets to insert at the back of the guideline folder.

TENDERING

Councils are often big enterprises. They enter into a wide range of commercial contracts every year in order to deliver services to their local communities. They are custodians of public money. The risk of illegal or improper conduct is very real, as recent events before the ICAC show. So, both legal and ethical obligations apply to councils when commercial contracts are entered into. The principal legal obligation is for councils to tender for certain major contracts.

What do we expect of councils in this area? We expect councils to comply with their legal obligations to tender. Further, we also expect that councils will adopt fair and transparent processes before entering into commercial contracts not caught by the legal requirement to tender.

Many councils have policies adopting a sliding scale of measures depending on the value of the contract. For example:

- contracts worth close to the $100,000 threshold for formal tenders may be entered only after seeking expressions of interest by public advertisement;
- for contracts of an intermediate value, three written quotations could be required; and
- for contracts of lower value, three verbal quotations (duly recorded in writing) could be sufficient.

A recent survey by the DLG revealed that 17 of the 25 councils surveyed use the formal procedures laid down in the Act for contracts below the $100,000 threshold.

The key here is that fair and transparent processes should be adopted, even if there is no legal requirement to tender. Here are some cases that highlight our work on improving the legality, fairness and transparency of tendering processes.

Case study: Unspecified criteria

We were able to resolve a complaint about Ballina Shire Council failing to provide a written specification for its expression of interest for legal services when council agreed to change its procedures.

The complainant said that her firm might have been prevented from properly addressing the criteria set out in the expression of interest due to the lack of written specifications. The expression of interest was advertised as follows:

> Expressions of interest are invited from legal firms to carry out Council's conveyancing and some other legal work for a two-year period from April 1, 1997. Further details available on request.

The council gave further details orally to any firms making

inquiries. Firms were told to submit full details of their firm, and to indicate their scale of charges. Council also told each inquiring firm the extent of the work involved. The council told us it did not prepare a written specification because it did not expect many inquiries and because it did not have firm figures on the volume of work involved.

We accepted the amount of information available was restricted by council's inability to predict the precise nature of the legal services required. However, it appeared the selection committee judged the expressions of interest against two criteria that participants ought to have had the opportunity to address. The first was the requirement that the principal of the successful firm give priority to the council's business, and the attendant requirement for the firm to employ more than one solicitor. The second requirement was that the firm have sufficient knowledge of local planning instruments.

We believe that if these requirements could sway the selection committee in their choice of the successful firm, they ought to have been included as criteria in a written specification. In this way, all participants could address them. This would not only result in a fairer and more transparent selection process, it would also assist the selection committee to choose the firm most capable of meeting the council's needs as stated in the specification.

Council assured us that it provided all inquiring firms with the same information. We nevertheless observed that by providing such information orally, there was a danger firms could receive different amounts and types of information. Council was also unable to demonstrate that all firms received the same information. As a result of our inquiries, council agreed to prepare detailed written specifications for future expressions of interest.

Case study: Council's tendering procedures rubbished

We received a complaint from a garbage collection operator, who said that Wyong Council did not advertise its tender for the collection, transportation and disposal of waste and recyclable material in accordance with the Local Government (Tendering) Regulation. He said that as a result, he was prevented from submitting a tender. As a result of our inquiries, the council agreed to amend its procedures to comply with the regulation.

The complainant alleged he was told by a council officer the tender was to be advertised that week in *The Sydney Morning Herald*, *The Australian* and in local newspapers. The complainant purchased *The Sydney Morning Herald* for the next two weeks. The advertisement did not appear. He continued to monitor the local papers. The complainant subsequently discovered the tender was advertised in *The Sydney Morning Herald* a week after he discontinued buying it.

We made inquiries with the officer concerned. She confirmed the tender was advertised in *The Sydney Morning Herald*. She said the council had intended to advertise in *The Australian*, but that a mix up meant the advertisement never appeared. The tender was not advertised in a local newspaper. She told us that the council did not normally do so. She also claimed she told the complainant the tender documents would be available for purchase the week before they became available.

The regulation requires councils to advertise tenders in a Sydney metropolitan daily newspaper and, either a newspaper circulating in the council area, or a newspaper circulating in the district where potential tenderers are likely to be carrying on business or living.

The officer argued council complied with the regulations by advertising the tender in *The Sydney Morning Herald* because it was both a metropolitan daily newspaper and circulated in the council area. We believe this view is incorrect. The regulation requires the tender to be advertised in two newspapers. It appears to us that by failing to advertise the tender in a local newspaper, the council breached the regulation.

We took the matter up with the general manager. He was unwilling to concede the council breached the regulations but he undertook that in future all tenders would be advertised in both *The Sydney Morning Herald* and a local newspaper.

Case study: The tender trap

After a preliminary investigation by us, Eurobodalla Shire Council agreed to change its tendering procedures to put an end to a practice we feared could have contravened the tendering regulations.

The problem arose because the council had a policy of entering into contracts only with companies. However, it did not want to deter private individuals from lodging tenders. So it was prepared to allow any private individual who won a contract by tender to incorporate before the contract was signed.

The council advised that this practice was followed by a number of councils. We pointed out that the law on tendering suggested that when council accepted a tender, it had to enter into a contract with the tenderer, not another person or company. The council agreed to obtain legal advice and this raised further interesting issues. The legal advice suggested that the council's existing policy was not lawful, and further, that the policy of only

entering contracts with companies was not really necessary. Following this advice the council changed its policy and in future tenders from private individuals will proceed to contracts with those same individuals.

Councils may find it useful to review their policies and practices. It seems to be relatively common for councils to require contractors to be incorporated, but it is also not uncommon for councils to allow private individuals who successfully tender for work to incorporate. This case suggests the first requirement may not be necessary and the second practice may be unlawful.

RATES

Councils often find it hard to demonstrate to ratepayers the relationship between rates and the services they provide. Rates are, for most people, a sizeable financial burden and because of this councils need to ensure that their rating systems deliver efficient administration and provide clear information to ratepayers. Here is an example of the kind of matters concerning rates that come to our attention.

Case study: Land ownership — isn't it wonderful?

Some time after the computerisation of landholdings, the Valuer-General began putting a value on an 18 inch strip of land. The complainants did not realise they owned the strip. They thought they had disposed of it about 30 years before, after the previous owners reached an agreement with their neighbours to carry out a boundary adjustment. However, the strip had not been consolidated into their neighbour's title.

The complainants were shocked when they began to get rate notices 30 years after the subdivision. Because of changes to the law that came into effect in 1993, Baulkham Hills Council was obliged to impose rates on every piece of land given a value by the Valuer-General. So council began to charge the minimum rate of approximately $240 a year.

When the complainants purchased their land in 1967, it was described as the two separate titles. Later, when the land was surveyed for subdivision, the small strip was overlooked.

Many errors had been made along the way. The complainants had not properly instructed the surveyor when the land was subdivided. The surveyor himself may have erred. The complainants solicitors and the council had not noticed that the land was left out of the subdivision. The rates piled up and began to attract interest charges.

Solicitors acting for the complainants tried to resolve the problem by requesting the council to stop charging rates. Under the legislation council could not do this unless the land was amalgamated with an adjoining piece of land. The solicitor offered the land to the adjoining neighbours for the amount of the outstanding rates and charges. They were not keen to purchase the land as it was of no value to them. They were also concerned about the cost of altering their mortgage.

The matter was finally resolved after we sought help from the Land Titles Office and the council. A compromise was reached after months of correspondence and negotiations. The land was given to the neighbours for no charge, but not consolidated with their title. This means they will own the land, but as two separate parcels. The Land Titles Office agreed to prepare the transfer plan and other documents free of charge. Council agreed to drop all outstanding rates and associated interest charges amounting to $1,399.00 once the land is transferred to the neighbours, and to aggregate the land for future rating purposes. This avoided the need for alterations to the existing title and the mortgage documents. Under this plan, the new owner's rates increased by $1.97 per year. Previously, the strip attracted rates of $240 per year. The complainants solicitors also said they would reduce their charges to an absolute minimum. We were delighted that both authorities co-operated to assist in resolving this most unusual complaint.

THE ROLE OF A COUNCIL IN DEVELOPMENT APPLICATIONS

Case study: Drain, drain, go away

Intervention by us resulted in Newcastle City Council abandoning moves designed to force a New Lambton resident to grant an easement over his property. Our detailed preliminary investigation also revealed shortcomings in a number of council's administrative practices that have now been rectified.

The problem arose when the New Lambton resident complained about the council improperly facilitating the subdivision of a property to his rear. The council originally approved the subdivision, with a condition that required the subdivider to obtain an easement over the complainant's property. The complainant had no intention of granting the easement. So the council began to explore whether it could assist.

A council-owned pipeline draining a local road ran through the subdivided property, into the complainant's land and into a natural watercourse. The council first looked at whether it should resume an easement over this pipeline (with a view to allowing the subdivider to use the easement to meet the condition). Reports to the council indicated that this was

necessary in order to protect the council's pipeline. The council decided to resume land in order to create an easement.

The complainant was able to show that, contrary to the reports to the council, council's own legal advice was that they did not need an easement to protect its pipeline. The council staff also relied on advice from a government department that an easement should be created. However, this advice was not documented and was contradicted by written advice from the same department.

We also noted that the council's actions probably constituted an amendment to the subdivider's development consent. Yet this had not been done in compliance with the relevant legal requirements.

The council later obtained further legal advice that it had no power to resume. The council was advised by staff to take no action and leave the subdivider to resolve the problem himself. Some councillors clearly felt the council was obliged to assist in resolving the problem. This was in part because the council believed it had contributed to the subdivider's problem by not insisting on an easement when the subdivision creating the complainant's and the subdivider's lots was approved.

After considering the situation at length, the council received a further report recommending that council support the subdivider using a pump out system. The report also recommended that the council enter an agreement to contribute up to $10,000 towards legal action to assist the subdivider obtain an easement. The council so resolved.

We noted that this decision appeared to be contrary to the council's own policy on pump out systems. Council later acknowledged it should have obtained, as a condition of allowing a pump out system, an indemnity from the subdivider against any damage to the complainant's property. We also noted with alarm the council's decision to commit ratepayer's funds to solving the subdivider's problem in the absence of clear evidence it was a matter council bore responsibility to solve.

We considered the case warranted a formal investigation. In an attempt to resolve the matter, however, we asked the council to review the case. The council responded positively to the concerns we raised and voted to reverse its decision and leave the subdivider to solve the problem himself. Council's solicitors reviewed the case and described the advice and recommendations put to the council as 'slanted or perhaps directed so as to achieve a result giving the impression of apparent partiality'. They described council officers as having been 'overzealous in their attempts to achieve [a] result'. They also concluded that the council's decision to contribute towards the cost of court action might have been beyond their powers.

The council showed a refreshing support for a full review of its actions. Their senior staff acknowledged failings in the management of the case.

The council invited us to review all of the relevant files, and as a result of, or in conjunction with, this review:

- council finalised and adopted a new development control plan for subdivision and stormwater management;
- council adopted a policy of attaching legal advice to reports citing legal advice or making the legal advice available on request;
- council agreed to support our principles on appropriate use of legal advice ;
- council adopted a revised code of conduct and a policy on interaction between councillors and staff;
- council staff were instructed to make better use of file notes to record advice and other significant dealings with the public; and
- council staff members were alerted to some of the legal problems that arose in the case.

What the case demonstrates is that councils need to keep in mind what role they play in the development control process. Many councils speak of 'facilitating development' and to us this means providing an efficient and effective planning system. Such a system appropriately balances the rights of applicants to benefit from a decent standard of service and the rights of the community at large. It certainly does not extend to presenting advice described as 'slanted', overlooking proper processes, breaching policy without sufficient justification and expending substantial council funds for reasons not in the public interest.

COMPLAINTS ABOUT

corrections

CONTENTS

We received 462 written complaints about correctional centres, and 2,098 oral ones. These include complaints about the Department of Corrective Services, Australasian Correctional Management Pty. Ltd. (the operators of Junee Correctional Centre) and the Corrections Health Service.

This number represents a slight increase in written complaints, however, the number has remained fairly steady over the last three years.

Last year we reported a 24 per cent increase in oral complaints, this year the number has increased again, by a further 14.7 per cent. This represents a significant increase in our workload. While complaints about Junee Correctional Centre dropped, those about the Correctional Health Service rose. We received 19 requests to review our initial determinations, 17 of which have been finalised.

Anne Radford, Manager, General Team, plans a visit to a correctional centre with Vince Blatch, Complaints Officer.

The Department of Corrective Services manages diverse institutions and a spiralling inmate population — an extraordinarily complex task. Almost all aspects of inmates lives are controlled by this bureaucracy — from the number of socks they own, to their complete segregation from the rest of the population, sometimes for extended periods of time. In examining complaints, our focus is often drawn to the quality of the documentation created to support their decisions. The need for officers to keep accurate and relevant records of their decisions and actions is paramount. Of particular importance are officers reports on their use of force, segregation and behaviour management reports, and the recording and storage of 'intelligence' information. Complaints about these reports do not make up the bulk of our work. However, the administrative review process needs to be extremely thorough to ensure decisions and actions are well explained and supported, as these have the power to significantly affect people's liberty or physical wellbeing.

Table 1: Complaints about correctional centres and the Dept of Corrective Services 1998–99

Complaints received	
Written	434
Oral	1,952
Reviews	14
Total	**2,400**
Complaints determined (written)	
Formal investigation completed	3
Formal investigation discontinued	1
Preliminary or informal investigation completed	308
Assessment only	140
Non jurisdiction issues	5
Total	**452**
Current investigations (at 30 June)	
Under preliminary or informal investigation	81
Under formal investigation	1

WORKING WITH THE DEPARTMENT

We met with senior members of the department during the year to discuss and clarify current issues. The Director, Security and Investigations spoke to a team meeting to clarify the department's investigative units and procedures. Our senior investigator participated in a session for official visitors on the process of investigation and dealing with complaints.

These exchanges of information are immensely useful. Throughout the year we have received complaints about reduced access to activities and increased time in cells. Meeting with the department has given us a much greater insight into the resourcing issues facing the department, and steps being taken to resolve these. Understanding the situation has allowed us to explain the situation to unhappy inmates, even though we could take little other action.

On other occasions we have talked to the department about potentially damaging situations and have been able to deal with them at an early stage. One example of this was a perception we had that some correctional centre staff were developing a noticeable resistance to communicating with us. In some instances, posters advertising our attendance at correctional centres were not displayed. We also received complaints that inmates, particularly from minimum security centres, were being penalised for telephoning us. Such complaints are notoriously difficult to investigate and to respond to positively. We held a liaison meeting which allowed us to canvass a range of complaints. We were able to discuss finding a balance between encouraging inmates to deal with their complaints at correctional centre level, and hindering their legitimate access to us.

Following this meeting, the Senior Assistant Commissioner issued an instruction to all senior staff. This reaffirmed the department's obligation to facilitate contact between us and the inmates by telephone, and instructing governors to support our visits program. Since then there have been few problems.

Table 2: Nature of written and oral complaints about correctional centres 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Buy-ups	2	44
Classification/placement	34	130
Daily routine Access to amenities/activities, access to telephones, general treatment	65	235
Day and other leave	8	49
Failure to ensure physical safety	17	78
Food and diet	8	37
Legal	3	42
Mail Delays, interception	7	36
Medical Access to services, methadone, dental, standards of care	9	139
Officer misconduct Threats/harassment, assaults, racist abuse	60	127
Periodic detention	3	19
Probation and parole	5	27
Property Loss, delay in transferring, confiscation, failure to compensate	88	208
Record keeping and administration Inaccurate records, private cash control, sentence calculation, warrants, failure to reply/supply information	21	132
Segregation Unreasonable, failure to give reasons	5	52
Security Urine analysis, cell and strip searches	5	23
Transfers Unreasonable or refusal to, form of transport, interstate, delay	26	139
Unfair discipline	9	64
Visits Treatment of visitors, visitor bans, access to visitors, searches	22	153
Work and education Access to, removal of	7	75
Other	30	143
Total	**434**	**1,952**

VISITS PROGRAM

Section 12 of the *Ombudsman Act* makes specific reference to the rights of, and procedures for, persons 'detained by, or in the custody of, a public authority' to

make complaints to us. It is not difficult to see why Parliament should have singled out inmates in this way. Nearly every aspect of an inmate's life is controlled, and so the capacity for any maladministration to affect an inmate's physical or psychological wellbeing is overwhelming. The state therefore has a strong moral responsibility to ensure inmates are not impeded from complaining about correctional centre maladministration. However, inmates may have greater difficulty than most other groups in accessing our services, so our program of visits is a particular feature of the work we do in this jurisdiction.

During the year we made 44 visits to 27 correctional centres, our program achieving significant coverage. We also inspected two periodic detention centres at Bathurst and Parramatta and the Surry Hills court cell complex, which has been administered by the department since October 1998.

This represents a significant allocation of our resources. Generally, visits are done by two of our officers, although four officers visit the Metropolitan Remand Reception Centre (MRRC) three to four times a year depending on the size of the facility. Experience has proved that our commitment to meeting with correctional centre personnel, and discussing potential complaints with inmates, has enabled us to resolve many issues without resorting to a paper exchange. Inspections of the department's documents and premises also allowed us to develop a more accurate picture of the institutions we deal with, and gives us good grounding to discuss the concerns of inmates.

The work profile of these visits is extremely unpredictable. For example, on our first visit to Goulburn Correctional Centre in October 1998, we interviewed 45 inmates, on our second visit in May 1999 we interviewed only nine. Any matters we cannot resolve with executive staff on the day are brought back to our office for follow up. The complaints taken on these visits, as well as telephone calls from inmates and their families, make up the oral complaint part of our statistics.

JUNEE CORRECTIONAL CENTRE

Although we only visited Junee Correctional Centre once during the year inmates continued to have easy telephone access to us, including the ability to utilise our toll-free number. This is no longer available to inmates in all other correcitonal centres, following the introduction of the Arunta telephone system. This is a computer controlled access pay telephone system, designed for use by inmates in correctional facilities across Australia, and distributed by Telstra. The contract with Telstra does not allow for access to 1800 numbers, but this disadvantage to inmates is said to be offset by the system's increased efficiency and security.

We have not arranged interviews with periodic detainees because they are at liberty to contact us easily on days when they are not in custody.

This year we received fewer complaints about Junee

Table 3: Complaints about Corrections Health Service 1998–99

Complaints received	
Written	28
Oral	56
Total	**84**
Complaints determined (written)	
Preliminary or informal investigation completed	20
Assessment only	7
Total	**27**
Current investigations (at 30 June)	
Under preliminary or informal investigation	3

Table 4: Nature of written complaints about Corrections Health Service 1998–99

Access to medical services	14
Standards of care	10
Dental services	2
Officer misconduct	1
Unfair discipline	1
Total	**28**

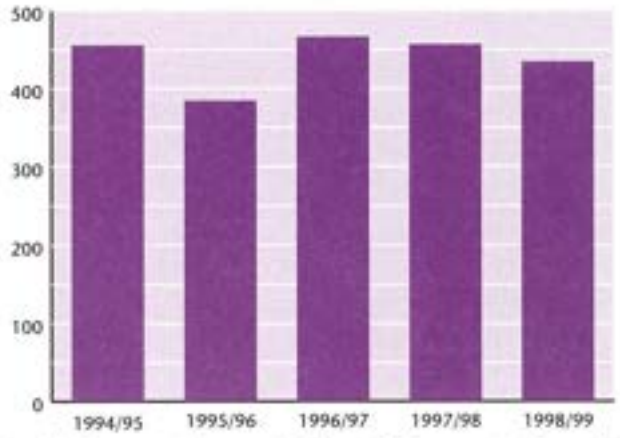


Figure 1: Written complaints received about the Department of Corrective Services*
A five year comparison

* excludes complaints about Corrections Health
* includes complaints from the privately run Junee Correctional Centre

Correctional Centre. If a Junee inmate complains about a matter which is the responsibility of the department, such as property lost during transfer to Junee, the complaint is recorded against the department. By and large, the staff of the centre have co-operated with us to resolve any complaints.

CORRECTIONS HEALTH SERVICE

Senior officers of the service met with us in December to discuss the work of the service and its future plans.

We have had regular contact with clinic staff in correctional centres, and when we have been unable to resolve issues at a local level, with head office personnel. There is every indication of the service's willingness to take complaints seriously and to deal not only with an individual's problem, but to look at generally improving service delivery.

Table 5: Written complaints about correctional centres, by institution 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Bathurst	16	56
Berrima	3	6
Broken Hill	3	4
Cessnock	11	100
Dept of Corrective Services*	115	341
Glen Innes	4	2
Goulburn	33	94
Grafton	9	54
John Morony	5	18
Junee	27	169
Kirkconnell	6	55
Lithgow	11	37
Long Bay, Special Care Unit	1	7
Maitland	1	2
Malabar Special Program Centre	0	36
Malabar, 4 Wing	0	7
Mannus	2	6
Metropolitan Remand Reception Centre	78	319
MMTC, Remand Centre	6	69
Mulawa/Norma Parker/Emu Plains	14	140
Oberon	0	1
Parklea	20	104
Parramatta	2	6
Parramatta Transitional centre	1	2
Periodic detention centres	8	30
Prison Hospital	6	32
Reception Industrial Centre	2	1
Silverwater	23	117
Special Purposes Prison	11	55
St Heliers	0	15
Tamworth	3	14
Training centre	7	31
Others	10	24
Total	**434**	**1,952**

* Only includes complaints about departmental issues

MANAGING DIFFICULT INMATES

Some inmates cause management problems which might involve fighting with other inmates, assaulting officers, refusing to obey orders or trafficking in illicit substances. These inmates can be placed on strict regimes called segregation, where their association with other inmates, and access to facilities and privileges, is very limited. This is not meant to be a form of punishment, though the conditions are sometimes almost indistinguishable. The legislation delineates it as a management tool to be used to ensure safety, security and good order within a correctional centre.

The legislation sets out procedures which apply to segregation. These include written reports, and a review by increasingly senior officers if the period of segregation is extended.

In the past, the department has managed segregated inmates poorly, and we have conducted and reported on a number of serious issues over the years. In recognition of the rigours of segregation, it is limited by strict legislative and procedural controls. We have worked hard to ensure appropriate safeguards are in place and also applied. For example, in 1992, a special report to Parliament resulted in the establishment of appeal rights for inmates segregated for more than 14 days. Problems can still occur and we pay close attention to complaints about segregation.

Case study: Too much too young

As a result of the riots at Kariong Juvenile Justice Centre four detainees under the age of 18 years were transferred, or remanded by a court, to the adult correctional system. Two older detainees were also transferred. They were all eventually placed in Parklea

Correctional Centre, the main institution for young offenders.

The two older detainees were placed with the mainstream gaol population. The four younger detainees were put in the segregation unit because of their age. They had limited association with each other and none with any older inmates. The Governor explained to us that the four would remain in the segregation unit until they turned 18. Segregation orders can be made for various reasons, including inmate safety. However, it was unclear to us why their level of risk would reduce when they turned 18.

The youngest of the four faced almost a year in segregation, including eight months completely on his own, and his behaviour was the reason given for his segregation. It is unclear how much his behaviour was influenced by his situation. It was difficult to know the cause of his misbehaviour as, more than two months after he entered the adult system, the department had still not obtained his juvenile case history.

Not long after his placement in Parklea, Wyong Children's Court ordered his return to the juvenile system. We understand from his lawyer that the court was persuaded that the adult correctional system was unable to provide him with 'suitable accommodation'. This is one of the matters the court must take into account when considering whether a juvenile should be placed on remand in the adult system. The young detainee's return to the juvenile system appears to have had a dramatic effect on his behaviour and he is in school full-time.

We wrote to the Commissioner to clarify whether inmates should be treated differently purely on the basis of age. His answer was 'no'. By the time of writing to him, two of the detainees had turned 18. Risk assessments on the two remaining inmates, who had not turned 18, determined they were able to enter the mainstream gaol population. We also asked the departments of Corrective Services and Juvenile Justice why relevant information was apparently not transferred with the youngest detainee to the adult correctional system.

Although the Commissioner's reply addressed our immediate concerns about the segregation issue, we continue to work with both departments to ensure similar problems do not recur.

Case study: Transporting segregation orders

An inmate complained to us that he was being unreasonably segregated at Lithgow Correctional Centre and then at the MRRC, when transferred there in order to go to court. It became clear the reasons for his segregation at Lithgow were quite appropriate. However, the MRRC had automatically continued his segregation without reviewing the situation. When that review was done, it became clear that his segregation was related to local Lithgow issues. The inmate was returned to the mainstream and the Commissioner wrote to him explaining the error. As a result of this matter, procedures at the MRRC have been tightened to ensure the need for continuing segregation orders is reviewed on the day of the inmate's arrival.

Case study: Inaccurate information leads to segregation

An investigation into Australasian Correctional Management (ACM) about the segregation of an inmate at Junee Correctional Centre resulted in a report of wrong conduct. Some of the issues we canvassed were: the preparation of reports containing reasons for an inmate's segregation; the adequacy of the records kept when an inmate was segregated; and the centre's failure to apply for an order to keep the inmate segregated for longer than two weeks. This latter point is required under the legislation. One of our findings was that the initial report about the inmate's segregation from the centre to the Department of Corrective Services contained wrong information. However, as some of the key officers involved in the segregation no longer work for ACM we were unable to make any findings about the reasons for the factual errors.

Our recommendations addressed deficiencies in the policies and procedures at Junee which were impeding this. To ensure inmates are segregated in accordance with the *Correctional Centres Act*, ACM has complied with each of our recommendations. This included the amending and issuing of up-to-date policy and procedure documents relating to segregation, and the creation of an appropriate 'audit trail'.

The Intensive Case Management Program

In last year's annual report we reported on our concerns about the management of inmates within the Intensive Case Management Program (ICMP) at Goulburn Correctional Centre. There is a growing trend towards the use of behavioural management programs across the department and, as identified in the department's own review of ICMP, there is a danger of such programs operating as, or being perceived as, segregation but without segregation's legislative protection. The program component must be the key to this difference. We understand the need for rigorous management of difficult and dangerous inmates, and at their best these behavioural management programs allow gaols to intervene to prevent problems escalating. For this to be achieved it is essential that such management is not only humane, but where possible aimed at returning these

inmates to the mainstream gaol population.

The ICMP has two stages. Inmates in stage one live in extremely reduced conditions. They are not only those who present extremely difficult management problems, e.g. ongoing violence to other inmates, continual escape attempts, but also other high profile inmates who are not strictly on the program, but who the department has decided need extremely high security. During regular visits to Goulburn Correctional Centre our observation of the conditions of stage one did not indicate that much had changed since we first reported on the management of this unit in 1992. That report noted:

> The conditions in stage one amount to a form of solitary confinement. Prisoners only ever see prison officers and then that is in the short periods when they are under escort from their cell in D wing into the HSU or when the cell door flap is opened when meals are provided. There is no direct means of communication with other prisoners . . .

This report led to the temporary closure of that unit and the development of an identifiable program for inmates needing this level of containment. This was the ICMP, which we understood to have a strong program component designed to improve the behaviour of inmates. In August 1998 we were given a copy of a review of the ICMP, and this was discussed at a liaison meeting in September. The concerns we still had were formalised shortly after that meeting.

In summary, the review found there was no formalised program. The reasons given were the inferior physical resources and the structure of the rest of the gaol, which did not allow for the dedicated use of inmate development services staff by those on the ICMP. The review conceded that any programs available to these inmates were virtually non-existent and ad hoc at best. The review also found that while monthly assessments were made of ICMP inmates, these assessments were based primarily on reports of inmate compliance with the unit's routine. The recommendations of the review appeared to be largely supported by the department. However, much of the implementation depends on the commissioning of the proposed new high security gaol due in mid–2000.

While we appreciated the frankness of the review, its results did not allay our concerns. If there was no real program component, then how was the unit functioning other than as a de facto segregation unit? If it was not a de facto segregation unit, was it solitary confinement? This is prohibited by the legislation. We asked the Commissioner to get independent legal advice on these questions because of the gravity of the issues involved.

Our critique prompted some significant changes to be made to the running of Stage one of the ICMP. The most important change has been the opportunity for inmates within very strict guidelines to spend time with others. Other initiatives included access to television, some educational and recreational activities and the possibility of individual work with psychologists. There will be no opportunity to start a full program until the new premises are available.

Stage two of the ICMP is for inmates on transition back into the mainstream gaol population and their circumstances are only somewhat more limited than the ordinary inmate population.

In May, during a routine visit to the gaol, we inspected the unit and spoke to each of the inmates. They told us the chance to associate with another inmate was working very well (a view confirmed by the staff in the unit) and that the regime as a whole, while still very strict, was much more humane. We will continue to monitor the situation.

Short Term Management Program at Parklea Correctional Centre

We received a number of telephone complaints that inmates at Parklea Correctional Centre had been placed in segregation without a segregation order. On contacting the gaol we were advised the inmates were not in segregation, they were on a Short Term Management program (STM). The STM program at Parklea was conceived to deal with young offenders arriving at the gaol with behavioural and other problems. It was to be used to assess the inmates problems by a range of specifically tailored programs. In practice, STM had no program component. It was almost identical to segregation, without any of the checks and balances provided for in the Act. Of particular concern to us was the lack of recorded reasons for inmates being put on STM and a review mechanism for this decision.

We met with senior corrective services staff to discuss the STM and they agreed it needed reforming. While programs must be designed to suit the needs of each individual centre, the experience of STM at Parklea indicates this may need to be done within a framework of minimum standards. We have begun an investigation of the use of segregation and STM at Parklea.

USE OF INTELLIGENCE INFORMATION

Obtaining and using intelligence information is an essential task for the department. Intelligence information can assist in maintaining the security of gaol perimeters by allowing interception of drug trafficking, blocking escape plans and dealing with other

threats. It also allows gaol staff to protect inmates from stand overs and assaults, and to deal with potential assailants. Sometimes inmates can be dealt with harshly as a result of allegations made against them, even when those allegations cannot be properly tested.

We understand the need of the department to make very conservative decisions, tending toward disadvantaging one inmate for the sake of ensuring wider security. However, we take very seriously complaints made about the misuse of such information, and always seek to ensure the department's conclusions and actions are in proportion to the likelihood of trouble. For this to work, the information must obviously be both accurate and accessible. A number of complaints were dealt with through the year, which indicate the different ways in which such information can be mishandled.

Case study: Too much information

While we were looking in an inmate's case file for quite different documents, we came across an intelligence report which identified another inmate who had given information to the department about drug dealing within a correctional centre. Given the relatively accessible nature of case files, and the danger of having such an informant identified, we raised this with the Deputy-Governor who undertook to have the document removed.

Case study: No contemporaneous reports at all

We tried to verify the reasons why an inmate at Kirkconnell Correctional Centre had been moved to the centre's secure compound from minimum security accommodation. The Governor and the Deputy Governor claimed to have had complaints from other inmates about the inmate's behaviour, and concerns that this inmate could be sexually assaulted by another inmate. They said they moved him for his own safety. We were given an undated, but clearly retrospective, report from the Deputy Governor on this matter. However, there were no reports or notes of interviews with any of the inmates involved, and no other investigation had been undertaken.

We were unable to resolve the inmate's complaint because of the lack of documentation. We made this point to the Commissioner, noting that better records would have allowed the complaint to be dealt with much faster and more informally, as well as assuring the accountability of decision-making at the gaol.

We had trouble dealing with another complaint from a Kirkconnell inmate for similar reasons. The response to our inquiries was very delayed because neither the Governor nor the Deputy Govenor was able to find relevant documentation, and when it was located it lacked any detail or contemporaneous evidence. It simply stated that the inmate had been dealt with in the way he had because there was 'intelligence' that he was standing over other inmates for sex.

We were told there were no written reports on this 'intelligence' as informal information was sufficient for action to be taken, and that it was sometimes dangerous to write this information down. We would agree that sometimes such information is difficult to verify, but if it is to be used against an inmate it must be recorded. Believing this matter to be primarily a management issue, we discussed our concerns with senior departmental officers.

THE NEED FOR RISK ASSESSMENT

In July 1998, the Malabar Security Unit received an anonymous phone call alleging that two inmates were planning to escape from Oberon Correctional Centre. Senior officers at Oberon were surprised because the two inmates seemed pretty settled. The officers thought it highly likely the inmates were being set up by a newly released inmate following disagreements in the gaol. However, because it was a minimum security centre, the Governor asked for the inmates to be moved until the matter was resolved. He said he would be happy to have the two back if their names were cleared. The inmates were moved and given a higher security classifications.

One of the inmates contacted us some months later because he seemed stuck with a higher security classification and a more secure placement. We made inquiries about the original allegation, and any efforts which had been made to prove or disprove it. As a result of poor communication, the gaol thought the Security and Investigations Unit was investigating, and that unit thought the gaol had taken responsibility. The only follow-up action taken was to record the denials of the two inmates. While we thought it unlikely an investigation of an anonymous telephone call would be very fruitful, we were concerned the two inmates would be disadvantaged by untested allegations.

As a result of us raising the matter, the inmates higher classification was recorded as being a temporary measure, pending the results of investigation. We then wrote to the Commissioner suggesting the department make a proper risk assessment of the two inmates. The final result was that our complainant not only had his

original minimum security classification reinstated, but was in fact judged as eligible for participation in external leave programs.

RECORD KEEPING

The importance of accurate records is discussed at the beginning of this section. Below are a number of complaints which have revealed gaps in information recorded and/or provided, which have led to problems for inmates and staff.

Reasoned response

During the year several inmates complained to us that they had not been provided with reasons why their applications for reduction in classification or inclusion in prerelease leave programs had been rejected. These applications were being processed through committees of the Serious Offenders Review Council (SORC), such as the Pre Release Leave Committee (PRLC), or by the council itself. While these committees make recommendations to the Commissioner on whether an application should be approved or rejected, it is the Commissioner who makes the final decision.

We argued that it was only fair and reasonable that the Commissioner provide reasons for his rejection of an application. In this way an inmate can be aware of the factors which were considered, and also of any issues which will need to be addressed before an application could be successful. The Commissioner told us that he usually provided his reasons to the committee either verbally or in a separate written advice. He will continue to do so when security concerns suggest inmates should not be given precise reasons. However, he also agreed to change the existing forms to allow for the inclusion of reasons.

Bailed-up

An inmate complained to us that he had completed three separate bail applications, but his correctional centre had failed to lodge them with the Supreme Court of NSW. When we asked, the centre could not prove whether or not it had lodged the applications, and a crosscheck with the Supreme Court revealed that only the third application had been received by them.

As it seemed quite likely this was a problem which would occur in other centres we raised the issue during a liaison meeting. This resulted in new procedures being established at correctional centres, principally the recording of bail applications in a register held in each wing office. Every centre should now be able to show that an application was issued to an inmate, when it was received back and by whom, and what was done with it.

In another case, Central Local Court granted a young man bail on his own recognisance. He was transferred to the MRRC until the next day, when he signed the bail form.

This man's solicitor wrote to us alleging corrective services staff at the court and the MRRC refused to allow the man to sign the bail form. His client wanted an apology and compensation. We contacted the MRRC, who claimed that the man had refused to sign the bail form because he wanted to stay with his brother, who was in custody until he had met his own bail conditions. The two were together from the night of their arrest until they signed their bail forms and left.

The centre had no contemporaneous documentation to support its claim that the man refused to sign his bail form. It relied on the memory of a single officer. Although it was not possible to determine the facts in this individual case, the man's allegation led the department to address this procedural issue. It has amended its recording practices so that if a person refuses to enter bail the relevant officer must document the fact.

Weeks, not months

We identified a discrepancy in the department's policy and practice when recording penalties imposed on inmates who return a positive urine test.

The department has an extensive urinalysis program aimed at reducing the illicit use of drugs and alcohol in correctional centres. Strict penalties are imposed on inmates who return positive urine tests. The policy sets out a general rule that the penalty for a positive test result is the inmate's removal from contact visits for a period of time.

Our attention was drawn to the discrepancy when an inmate who had received a twelve-week penalty was not returned to contact visits for an extra week. Our inquiries revealed that this was because the penalty period was recorded on the database as three months. It was recorded in this way because the database was only able to record days and months. Since most months are longer than four weeks, the actual penalty is often extended.

The department readily acknowledged the problem. As a result of our inquiries, the department amended the policy so penalties are recorded in days to accurately reflect a punishment imposed.

Case study: Overcompensation

An inmate at Junee Correctional Centre complained to us that cash was being wrongly deducted from his trust account. He also claimed incorrect deductions were being made from other people's accounts.

We contacted the gaol and were advised the inmate was correct on both counts. The deductions were for the Victim's Compensation Levy which the inmate had paid off two years before. The problem had been caused when information was transferred from the department's old computer database to its new one.

The inmate's account was refunded within two days. The department proposed to resolve this systemic problem by setting up a unit to ensure information on the computer database matches information on inmates warrant files. We have asked the department to contact us to confirm the unit has been set up and to advise us of its operating procedures.

Case study: Not very alert

We took action to prevent the transfer of an inmate who held grave fears about his personal safety. This inmate alleged that a custodial officer had seriously assaulted him. We took a statement from the inmate, who was then in Long Bay Hospital, and referred the matter to the department. We were told an alert would be placed against the inmate's name, meaning that the inmate was not to be sent to the correctional centre where the alleged incident took place.

Following medical treatment, he was transferred to a different centre. Shortly afterwards, late on a Friday afternoon, we received a telephone call from the inmate, who was very agitated, because he had been told he was to moved back to the centre where the alleged assault had taken place. We made urgent contact with the department to make sure the inmate was not transferred over the weekend.

Our subsequent inquiries revealed that the promised alert had not been placed on the department's computer system because the system indicated the inmate was in transit from Long Bay Hospital to another centre. As an inappropriate transfer always involves the possibility of serious consequences, we asked the department to take steps to avoid the recurrence of a situation of this kind. A modification was made to the department's offender management system.

Incident reports

After inquiries by us into an inmate's complaint of assault by correctional officers, we found that officers had failed to comply with department policy during and after the incident. As a result, the Senior Assistant Commissioner issued a direction reinforcing the reporting responsibilities of officers involved in the use of force.

The assault allegations were investigated by the Corrective Services Investigation Unit (CSIU) and its findings did not appear unreasonable. However, our review revealed that the officers involved, contrary to current instructions, had failed to videotape the incident when they could have, and after the incident, had failed to complete individual reports. When questioned during the CSIU's investigation eight months later, the officers were forced to rely on their memories. This matter highlighted the importance of accurate and timely recording of the use of force, for the protection of both inmates and officers.

In a more complex matter, the mother of an inmate at Parklea Correctional Centre contacted us in November. She alleged her son had been badly assaulted by officers, resulting in him losing consciousness. We were due for a routine visit to that centre shortly after and took the opportunity to interview the inmate about the allegations. We also viewed documents relevant to the incidents and spoke to centre management. Soon after, the inmate was moved to Goulburn Correctional Centre and after he arrived there he lodged a written complaint with us.

The young man had been involved in two incidents on the same day, with different officers, but both involving the use of force. The initial reports by the officers claimed their use of force was legitimate. We became aware of a witness to the second assault who believed the level of force was excessive, and we contacted the relevant regional personnel to ensure the witness was interviewed. Neither the centre nor the regional staff told us that an officer attending the first incident had put in an amended report indicating that excessive use of force had been used at that point as well. Even so, we were concerned that the inmate had been coerced into withdrawing the allegations he had made to departmental staff.

We thought that an investigation was being conducted and sought information on its results. We were advised that as a result of a series of internal mistakes, no investigation had been undertaken. Head office personnel had not realised there were two incidents involved and a senior regional officer had drawn a sloppy conclusion that no investigation was warranted. This was despite the existence of witnesses to the incidents. The department's investigations review committee accepted his recommendation without question. The inquiries we made enabled the department to review its decision and a proper investigation of both incidents has commenced.

LOST PROPERTY

Keeping track of the property of thousands of inmates moving around the state between correctional centres, courts and hospitals is a complex and time-consuming activity. In recognition of the absolute need for accurate records the department has adopted

extensive recording procedures and has charged the reception room officer in each centre with this responsibility. The inability to track the whereabouts of inmates property means that they sometimes have to live for months without basic items, and also, that compensation has to be paid. Because we receive so many complaints about lost property we generally refer them to the Commissioner for investigation and resolution. This is a longstanding arrangement. In some cases, where a resolution has not been readily achieved, we intervene.

Case study: The buy-up

An inmate of Junee Correctional Centre complained to us that he had paid for items he had never received. He had ordered these items through the buy-up system, which allows inmates to purchase goods. Eighty dollars had been deducted from his gaol account, but staff at the centre acknowledged they could not tell from his property card whether he had received the items. Recognising its responsibility, and with commendable speed and willingness, the general manager arranged for the $80 in dispute to be repaid.

Case study: Missing jewellery

We intervened in another dispute between an inmate and staff at Junee after correctional officers lost the inmate's wedding ring. The gaol eventually compensated him $150.00 for the missing ring.

He had initially been offered $50.00 compensation, on the basis that he had signed a disclaimer stating he had no property greater than $50.00 value. Also, he could not produce a valuation for the ring. The inmate denied signing the disclaimer, and when asked for a copy of this document, the gaol could not find it. On checking the department's property policy, which applied to Junee Correctional Centre, we found it did not put a restrictive value on inmate wedding rings.

An examination of the inmate's property records showed a further discrepancy. A bank card, which the inmate said he had signed out to his wife, was shown as being in the property room. A check of the inmate's property did not find the bank card although they did find documentation which supported his account of it being given to his wife. As a result, Junee decided to conduct a review of its property auditing process.

Case study: The buy-up (again)

After written inquiries by us, the Department of Corrective Services introduced new procedures for the return of goods purchased through the MRRC buy-up system. The inmate who complained to us was also paid compensation by the department.

The inmate had purchased a walkman, which proved to be faulty, through the MRRC buy-ups. Following the advice he was given he returned it, but in the next few months received no replacement, no compensation and not even an answer to his inquiries about what was happening. In response to our letter, the department admitted its inquiries were:

> complicated by a lack of stringent procedures for the return of faulty goods purchased through the buy-up contractors at the MRRC.

This meant it was not possible to identify what had happened to the faulty walkman or the request for its replacement. As a result the MRRC introduced new procedures and compensated the inmate for the item.

Case study: Lost dentures

An inmate alleged corrective services had lost his dentures from his valuables bag. His efforts to get the department to find them proved unsuccessful, so he wrote to us.

The department's documentation contained several anomalies, including contradictions between the inmate's property card and his computerised property records. When the inmate's valuables bag was opened, at the request of a member of the medical staff, it had a different seal number to that which appeared in the department's computer records. Further, the computer wrongly recorded the dentures as still being in the bag.

After reconsidering the matter, the department recommended its insurers compensate the inmate $600 as `the property records in this particular case lack credibility'.

Case study: Missing money

Throughout the year the MRRC has been the subject of a number of complaints about lost property. In recognition of the need to resolve the problem, a senior officer has been taken off other duties in order to concentrate on improving the reception room procedures.

Two separate complaints saw inmates reimbursed after their money was lost when they were received at the MRRC. Although records showed the money was signed for at the MRRC, it was not credited to either inmate's account.

At our request the department investigated each complaint and found that the inmates were entitled to be reimbursed for the missing money. The Commissioner wrote to the inmates and advised them that their money had been replaced. In one case this was $195.00, and in the other, $75.05. One inmate had waited seven months, and the other five months, for access to their money. Inmates who are able to work in gaol, receive on average $12.50 a week, but for many remand inmates there is no work available, so they are paid $10.50 per week. Inmates pay

for most of their own phone calls to family or friends, supplement their very basic toiletries and pay for any 'luxuries' such as tobacco or extra food items, out of their own money. So being without additional money for months can be frustrating.

When the Commissioner wrote to the inmates, advising them that their money had finally been credited to their accounts, it was disappointing to note that neither inmate was given any explanation for the missing money, or an apology. An apology is a basic tenet of complaint handling, particularly when fault is clearly identified, and these cases warranted this basic courtesy.

VISITS

Most of the complaints we receive about visits are from visitors, or those they are visiting, complaining about restrictions placed on them. These usually result from suspicion of trafficking in illicit substances, or inappropriate behaviour during visits. If necessary, we will view videotapes of incidents as well as assessing reports.

Case study: Too dressed up

Complaints from visitors are sometimes difficult to resolve because they relate to the personal attitude of correctional centre staff toward a visitor, or the interpretation of rules for visitors.

A young woman who regularly visits the MRRC complained there was no consistency by the staff of the interpretation of the dress rules for visitors. The visitor information pamphlet says visitors have to wear 'appropriate clothing' when they visit, and that no jewellery is allowed. Unfortunately this meant that what was acceptable by a staff member at one visit, was not acceptable on another occasion by someone else. This was confirmed by a senior staff member.

Rules relating to jewellery are especially difficult, because while officers can ask for all jewellery to be removed prior to a visit, some jewellery cannot comfortably or practically be removed. Correctional officers do not always exercise their discretion and sometimes insist all jewellery be removed, regardless of the visitor's discomfort.

In an effort to overcome the problem, the gaol is considering several options including: changing from written to pictorial signs to show what is unacceptable, including more information in the visitor information pamphlet; and introducing customer service training for staff working in the gate and visits area. We will continue to monitor this issue.

Case study: The exercise of discretion

A woman visiting her boyfriend at the MRRC was accused of passing him something under a security door. When she tried to visit next she was refused entry to the gaol. This refusal was confirmed by the Senior Assistant Commissioner, who imposed a six-month ban on her visiting any gaol in NSW. The woman wrote to us asking for a review of the ban, claiming she had done nothing but blow a kiss to her boyfriend through the door.

We looked at the reports on the incident and, having found them confusing, inspected the visiting area. Eventually, we agreed the department had sufficient grounds for its suspicions about the woman, and so was entitled to restrict her access. However, we were surprised at the severity of the ban, given that her boyfriend had been searched, nothing was found, and the woman had not had any problems previously.

The department has guidelines on restricting visitors to its gaols. These allow the delegated officer to consider a number of relevant matters when deciding what penalty to impose on a visitor suspected of trafficking contraband. These include previous incidents, any available intelligence, and whether the violation was intentional or unintentional. In this case, the officer who had recommended this penalty had left the department, and there was no record of what factors he had taken into account. We strongly recommended to the department that it needed to codify the sanctions imposed on visitors, and more particularly, that officers should record the reasons for any exercise of discretion. It agreed to do this and issue new guidelines.

SOME OTHER CASES

Case study: Access to traditional foods

An Aboriginal inmate complained that Aboriginal inmates had been denied access to traditional foods in their celebration of National Aboriginal and Torres Straight Islander Day of Commemoration (NAIDOC) in 1997. The Aboriginal Inmate Committee had requested the purchase of prawns, as well as other foodstuffs, to be eaten by indigenous inmates and their visitors during NAIDOC celebrations. The non-Aboriginal regional commander had refused the purchase, sensitive to the political and public ramifications of the department spending a considerable sum on what he regarded as a luxury food item. He also considered that prawns were an 'exotic', rather than indigenous foodstuff.

In an effort to resolve the issue, the department agreed to develop a policy on the availability of traditional foods. The policy was to be drafted in conjunction with the department's Indigenous Services Unit. This drafting has taken an extremely long time. At a liaison meeting in May, senior departmental officers told us it would be finalised in the near

future. At the time of writing, it has yet to be published.

Case study: It ain't easy wearing green

In September 1998 we were told the Governor of Parklea Correctional Centre had introduced a policy requiring all inmates going on leave to wear their green gaol clothing. Inmates were unhappy with this because it made them very visible to the general public and seemed to contradict the point of prerelease leave, which is to prepare inmates for successful reintegration into the community. The Governor had told them it was a state-wide departmental policy.

This was untrue. The Governor was relying on a procedure which was intended to allow inmates to wear their gaol clothes if they did not have any private clothing. Once we had drawn it to their attention senior departmental staff took steps to have the policy withdrawn.

TELEPHONES

Inmates who want to use the telephone are given a card on which the numbers they wish to ring are prerecorded. They have access to six numbers for contact with family and friends, and four numbers for legal advisers and nominated agencies such as us. The card also debits the inmate's telephone account for the cost of calls made.

On a visit to Parklea Correctional Centre we received a complaint from an inmate who said he had been refused a telephone call to our office. We spoke with the officer who had allegedly refused to place the call. He explained he had asked the inmate to fill out a form to get our telephone number put on his telephone card, but unfortunately no action had been taken on this for a couple of days.

We discussed the matter with the deputy governor, who showed us the form newly received inmates fill in, nominating the numbers they want on their telephone cards. He pointed out there was a field on this document where inmates could elect to have our number. We suggested that rather than have the inmates elect to do this, the centre could automatically place our number on every card, unless the inmate had a particular objection. We are currently negotiating with the department for this to happen at every centre.

At Kirkconnell Correctional Centre, inmates complained the gaol would not credit inmates with 40 cents per week for either a local call, or as a contribution to the greater cost of an STD call. The inmate suggested that this was contrary to departmental policy. The acting governor believed that due to its remote location this particular policy did not apply to Kirkconnell Correctional Centre.

Our reading of the Operations Procedures Manual indicated that all gaols were subject to the policy with unconvicted inmates allowed up to three local calls per week at departmental expense, and convicted inmates one call. The telephone credit is not cumulative, and is only due when calls are actually made. We passed this information on to Kirkconnell. The acting governor, having made her own inquiries, agreed that we were correct. She advised that, in accordance with the policy, a credit would be made to each inmate telephone account, as soon as the administrative process could be established.

At a liaison meeting, we raised a number of telephone use issues, including these two complaints. We were told inmate telephone accounts were automatically credited with 40 cents on Sunday nights, which should allow Kirkconnell a speedy resolution of its administrative task. We suggested that our telephone number be automatically included on all inmate telephone cards. Departmental officers agreed the number should be recorded as a legal call, because this ensured these telephone conversations could not be electronically monitored. The department was proposing to audit the existing arrangements in all correctional centres.

PRERELEASE LEAVE DISPUTE

A clash of views between the Commissioner and the SORC was fuelled by rumours of a conspiracy to hinder the parole of a notorious inmate. This led to serious allegations being made by SORC against the Commissioner for Corrective Services.

A highly complex investigation was held, involving the examination of thousands of pages of documents and the taking of sworn evidence from 17 witnesses. These included: the Commissioner, senior officers of the department and the chairman of the SORC. We were satisfied that the specific allegations made against the Commissioner were not sustainable.

The allegations

It was specifically alleged that the Commissioner had rejected the advice of the SORC on an appropriate prerelease program for a specific inmate. It was alleged that he had done this as a tactic to prevent the prisoner's release and further, that he had substituted his own plan which was designed to delay or prevent the inmate's parole. An additional allegation was that a senior psychologist within the department had attempted to induce another psychologist to produce an unfavourable report on the inmate in order to persuade the Parole Board of the inmate's unfitness for release, and the need for a lengthy gaol program.

The inmate's history

The inmate had a most unusual history. At the time of the investigation he had been in custody for over 24 years for the murder of a child and had been eligible for parole since 1994. Following a short-lived escape in 1985, extensive media coverage was given to any proposals to grant him prerelease leave or parole. From 1994, developments in his case had led to substantial legislative change in the *Sentencing Act*, the *Correctional Centres Act* and the accompanying regulations. As well, there had been ministerial directions to the then Commissioner which restricted the ability of this prisoner, and others in his class, to gain prerelease leave.

The story behind the allegations

The SORC has a statutory responsibility to provide advice to the Commissioner on the management of serious offenders, and advice to the Parole Board on their suitability for release. By the time of the Parole Board hearing (August 1997) the inmate had been eligible for preparole day and weekend leave for a period of 18 months. However, the inmate and others like him were in a catch-22 situation. They were not able to have preparole experience outside gaol (the usual requirement for parole), without first being approved as suitable for release on parole.

The SORC argued that an alternative way of preparing him for parole had to be found. They recommended that the Commissioner provide a prerelease program within the gaol. The following month the SORC established a special team, including a Department of Corrective Services (DCS) parole officer, a Professor of Criminology and a forensic psychiatrist, to devise a prerelease program to commence in October. Their recommendations to SORC and the Commissioner were that the inmate be allowed to work in areas in the Long Bay complex such as the cafeteria, maintenance area and the nursery, and to visit his psychiatrist's rooms and a parole office under escort.

The Commissioner believed the program did not comply with the Parole Board's recommendations that the program be a within-gaol one and rejected it. He advised the SORC of his reasons and said he had no objection to the inmate working anywhere within the Long Bay Complex.

Breakdown in communication

Up until February 1998, the Commissioner had not officially received from SORC a copy of their prerelease program, or any progress reports and his access to further information about the program was through his staff. The next Parole Board hearing was to be held in May and the Commissioner took steps to have an alternative program developed, which he sent to the Parole Board and SORC. In early March he directed the Governor of the Malabar Special Programs Centre (MSPC) to implement that program, which included a direction for the prisoner to work at the Panama nursery and be housed at the Industrial Training Centre (ITC).

It was neither appropriate, nor necessary, for us to form a view as to who was right in this situation. Ultimately it was the Commissioner's responsibility to provide a program for the prisoner, and the SORC's function ended with the provision of its advice and recommendations to the Commissioner. Clearly, the Commissioner at that stage had not arbitrarily rejected the advice, but had done so for the reasons he articulated, and which could be considered to be sufficient.

The Commissioner's actions prompted a stream of strongly-worded correspondence from the SORC chairman. In part this had been informed by rumours of impropriety, and other misunderstandings, which only became evident during the investigation.

Rumours and suspicions

The investigation revealed that the strong words in the chairman's correspondence were partly the result of a conversation with a particular senior executive officer who said that the Commissioner had openly stated he would not be recommending the inmate's release. The officer gave evidence that when he became aware that he may have misled the chairman by not clarifying the full context of the Commissioner's statement, he informed the Commissioner and made a file note of the matter. However, he did not see fit to correct his communication with the SORC chairman, telling us he believed his only obligation was to clarify the matter with his superior. We believed that no-one clarifying the statement for the chairman was a significant problem.

In the circumstances, the SORC chairman was obviously entitled to accept the statement at face value. Unfortunately, it also reinforced a perception that he had already formed about the Commissioner. He became suspicious that the rejection of SORC recommendations was not based on a merit evaluation, but was motivated by a hidden or biased agenda on the Commissioner's part. Even though there was evidence the Commissioner had made a number of public statements denying his intention to impede the inmate's release, the statement by the senior executive officer had gained a momentum, not only with the SORC, but also with members of the

department involved in the case. This fuelled the conspiracy theories.

The senior psychologist

An allegation against a senior departmental psychologist further heightened suspicions about the prerelease program dispute. In preparation for the May 1998 parole hearing a psychological report had been commissioned. The psychologist assigned to prepare the report perceived the briefing he got from the senior psychologist to be biased in a number of ways. He therefore concluded that a deliberate attempt was being made to influence him to write a corrupt report. He also believed other more senior staff were behind this, although he had no evidence to support that particular belief. Ultimately because of this the psychologist resigned his job.

Following an intensive examination of this aspect of the case, we were satisfied that the psychologist in question genuinely formed those perceptions. However, on the balance of probabilities, we came to the view that he was mistaken. We believed his perceptions about the briefing were inextricably associated with his feelings arising from a later exchange between the two psychologists over a disciplinary matter. Certainly his evidence fell short of the threshold for establishing a case of wrong conduct under the *Ombudsman Act*, and there was no independent evidence to suggest he was right.

The critical issue

For the purposes of this investigation, the critical issue was whether the Commissioner had reasonable grounds for rejecting the prerelease program recommended by the SORC, and whether there was any evidence to suggest that he acted capriciously or improperly, in forming his opinion. In the context of intense political and media interest, it was to be expected that the Commissioner would attempt to fulfil his statutory obligations in a cautious and defensible manner. Therefore in these circumstances, we did not consider the Commissioner's refusal to adopt the recommendations of SORC was motivated by improper reasons, or that they were a tactic to prevent the inmate's release. We found that he was motivated by legitimate concerns appropriate to his responsibilities in this case.

Similarly, we found no basis for the allegation that the Commissioner's prerelease plan was produced purely for the purposes of delaying or preventing the inmate's release. It arose as a consequence of advice solicited from appropriate staff within the department.

Of all the allegations, the suggestion that the Commissioner had insisted on the inmate's placement at the ITC and Panama nursery, in the full knowledge that his personal safety could not be assured in either location, appeared to have most merit. Conventional wisdom would suggest that an inmate who had been a notorious long-term protection prisoner would be vulnerable in any work situation with mainstream inmates. Certainly the inmate believed this, and while he agreed to comply with all other aspects of the Commissioner's plan, he refused to work in the nursery.

There were clearly divergent views among correctional staff about the advisability of placing him at the ITC and in particular the requirement that he also work in the Panama nursery. However, there was no doubt, that the Commissioner's sole reason for directing the inmate to work in the nursery was the professional advice he received from the Director of Corrective Service Industries. This was that the nursery work placement was the most suitable vocational preparation available to the inmate. He had also received assurance from staff that the arrangements at the nursery provided suitable safety for the inmate.

When the inmate initially refused to go to Panama nursery, the Commissioner called a meeting of senior staff to review that placement and the rest of the program. The SORC chairman had been invited, but had refused to attend. While there were different views on some of the program's components, the majority opinion was that the Panama nursery was suitable. The inmate still refused to go there, believing his life was at risk. Unfortunately, as a consequence of the stand off, the inmate did not work for several months.

At a hearing in May 1998, the Parole Board again refused parole, partly on the basis of the need for the prisoner to further participate in a prerelease program. It was also critical of his refusal to do what the Commissioner required. It was not until June that a SORC minute informed the Commissioner of security concerns about the Panama nursery placement. As a result, he was found alternative employment and continued with the program. Ultimately the Parole Board gave the inmate conditional release in mid–1999.

The findings

Having considered all the evidence, on balance, we were satisfied that the specific allegations made against the Commissioner and the senior departmental psychologist were not sustainable. It appeared the Commissioner had acted within the statutory duties and functions prescribed by the *Correctional Centres Act*. There was also no evidence that either political direction, or public opinion, had influenced his actions.

COMPLAINTS ABOUT

juvenile justice

CONTENTS

The series of disturbances at Kariong Juvenile Justice Centre in March and April attracted a great deal of media attention. While this has abated, our investigation of these events, the preceding events, and the general management of detainees at the centre continues. While we are still gathering and reviewing evidence, the final report will doubtlessly recommend extensive changes to the centre's operation. We have received the Department of Juvenile Justice's final progress report on its compliance with the recommendations in the 1996 *Report of the Ombudsman's Inquiry into Juvenile Detention Centres*. Although the department's report was six months overdue, it details the steps taken to address shortcomings in its treatment of juvenile detainees which were identified in our report. There have been genuine efforts made to make the system more responsive to the needs of young people, however, as evidenced at Kariong, there is still much to be done.

As implementation of the report's recommendations depends upon the commitment and cooperation of juvenile justice staff, particularly the management team within each centre, the extent of compliance varies considerably. Unfortunately, as we identified at the outset, the most needed and fundamental changes, including cultural change and improved programming and case management, are still to be enacted. These are significantly dependent on long-term commitment and coordination among agencies, as well as increased resources.

We will continue to give priority to oral complaints from young people in detention, without requiring them to make a written complaint. When young people phone us with an issue of concern we commonly call departmental staff, or ask to see relevant paperwork, on the same day the complaint has been made. Many oral complaints appear minor, but they have the potential to become significant management problems. The speed of our response and resolution is only possible with the cooperation and assistance of Department of Juvenile Justice staff.

Table 1: Complaints about the Dept of Juvenile Justice, received by institution 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Cobham	0	17
Kariong	5	62
Keelong	0	33
Minda	0	18
Mt Penang	1	24
Reiby	1	14
Riverina	0	26
Worimi	1	30
Yasmar	3	9
Other	5	10
Total	**16**	**243**

* Oral complaints are not always about issues involving the centre where the detainee resides. Many are about systemic practices or incidents at other centres.

Table 2: Nature of written and oral complaints about juvenile justice centres 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Classification/placement	0	4
Daily routine Access to amenities/activities, access to telephones, general treatment	2	51
Day and other leave	1	17
Failure to ensure physical safety	0	4
Food and diet	0	2
Legal	0	3
Mail Delays, interception	0	6
Medical Access to services, methadone, dental, standards of care	1	11
Non-jurisdictional	2	1
Officer misconduct Threats/harassment, assaults, racist abuse	2	14
Probation and parole	0	1
Property Loss, delay in transferring, confiscation, failure to compensate	0	13
Record keeping and administration Inaccurate records, private cash control, sentence calculation, warrants, failure to reply/supply information	1	9
Security Urine analysis, cell and strip searches	1	2
Segregation Unreasonable, failure to give reasons	0	2
Transfers Unreasonable or refusal to, form of transport, interstate, delay	0	19
Unfair discipline	1	27
Visits Treatment of visitors, visitor bans, access to visitors, searches	1	15
Work and education Access to, removal of	0	14
Other	4	28
Total	**16**	**243**

Table 4: Complaints about the Dept of Juvenile Justice 1998–99

Complaints received	
Written	16
Oral	243
Total	**259**
Complaints determined (written)	
Preliminary investigation completed	14
Assessment only	6
Total	**20**
Current investigations (at 30 June)	
Preliminary or informal investigation	3

Table 3: Outcome of complaints about the Dept of Juvenile Justice 1998–99

	1997/98
Explanation, advice, referral given	84
Advice to send written complaint	5
Preliminary or informal investigation made	171
Total	**260**

Two hundred and forty three oral complaints and inquiries about the Department of Juvenile Justice were received this year. While this is less than last year, it is still a significant increase on past years, especially as the general detainee population has declined.

The main issues most frequently raised in oral complaints include daily routine, unfair discipline and transfers.

Daily routine covers access to telephones and facilities, general treatment, lack of basic conditions, staffing levels/lockdowns, time out of their rooms and unhygienic conditions.

Unfair discipline commonly includes the length or nature of the punishment given, manner of discipline and loss of privileges.

Transfers take place between juvenile justice centres and between these centres and adult correctional centres.

With the commencement of our child protection function matters alleging abuse by staff, harassment and/or assaults on juvenile detainees are now categorised as 'child protection matters' and referred to the Child Protection Team. These matters are not reflected in our figures.

CENTRE VISITS

During the year we conducted 17 visits to nine juvenile detention centres. The majority received two visits. Our Youth Liaison Officer and/or our Aboriginal Complaints Officer were involved in most visits. In response to the disturbances at the centre in March and April this year, Kariong received additional visits. Our investigation into Kariong is discussed below.

Clearly a one-day visit by two officers cannot provide a comprehensive review of all aspects of each centre's operations. We use the visits as an opportunity to keep abreast of the centres daily routines and operations, and to inform ourselves of changes. It also gives us a chance to speak directly with young people, to remind them that they can call or write to us if they have significant problems with the department, or other public authorities. We can also deal with any specific complaints they may raise on the day. While ensuring we speak with all detainees who ask to see us, we also walk around the centre, noting the general standard of accommodation, the range of activities being conducted and the interaction between staff and detainees. Following our 1996 report on juvenile detention centres we have also conducted spot checks of particular operational matters to see how individual recommendations are being implemented. In nearly all cases during our visits the complaints received from young people were resolved on the same day. A small number were the subject of further inquiries by us, and some were referred to the department for further action and a report. A few complaints involved other agencies, including the police, which were either followed up or referred to appropriate bodies.

MATTERS WE COMMONLY RAISE

We have continued to emphasise the following matters on our visits to the centres, many of which are based upon the findings in our 1996 inquiry.

Punishment and confinement

We expressed the need for centres to reduce their reliance upon confinement as punishment for minor misbehaviour. Our review of centre records suggests most centres now use a wider range of punishments, including cautions, loss of leisure activities and additional duties. However, one centre has been particularly slow to reduce its use of confinement. As discussed in our 1996 report, this might be due to fewer activities or other benefits available in the centre, which reduces the availability of alternative punishments.

Incentive schemes

Our 1996 report found significant shortcomings in the incentive schemes in most of the centres. It found:

> The points system is routinely used as an informal and immediate punishment system rather than a positive incentive scheme in which detainees are encouraged and rewarded for appropriate behaviour. These schemes operate without input or guidance from any psychologist or other professional skilled in the area of child and adolescent development.

We made numerous recommendations for improvement emphasising:

- clarification of the distinct purposes of incentive schemes and disciplinary systems;
- communication of this to all levels of departmental staff;
- development of appropriate policies on these systems;
- consultation with operational and specialist staff;
- oversight by a senior psychologist; and
- a review of existing behaviour management strategies used in the centres to develop more appropriate ones, with input from suitably qualified experts and community organisations.

The department has supported the need for improvement in this area. In June 1998 it produced a policy on the design and use of incentive schemes in juvenile justice centres. It seems most centres have struggled to design and implement

appropriate schemes, partly because they require a significant attitudinal change in staff and detainees. Initially staff appear to have felt they were losing control as they are no longer able to reduce points earned by detainees.

Inappropriate behaviour, which amounts to a minor misbehaviour, is now to be dealt with through a separate misbehaviour system, rather than directly effecting the incentive points earned. A number of centres have made significant efforts to revise and implement more appropriate schemes. However, staff in some centres believe that the new schemes prevent them from requiring detainees compliance with routines. The department has further work to do in designing these schemes and in ensuring their staff understand the scheme's purpose.

Programs and activities

Our 1996 report found that a greater range of relevant and meaningful programs and activities are needed for detainees. The schools operating in each centre continue to be the major source of these activities, and there has been an improvement in the variety of programs and courses, and increased flexibility in the attendance required of detainees. While an increase in tertiary and further education courses has been noted, a number of centres appear to struggle to devise and run other regular programs of interest and relevance to detainees. Few professionally trained recreational instructors are employed in the centres and the lack of these programs is undoubtedly related to the limited resources of the centres and the department generally.

Strip searches

We have attempted to monitor the centres use of strip searches and to check whether the department's revised policy is being followed. The policy states that apart from key events, such as initial admission to the centre, strip searching should only occur when staff have reason to suspect a detainee is in possession of contraband, or self-harm objects, which cannot be detected by a clothed search. The policy was revised following criticism from ourselves and others that, due to its intrusive nature, strip searching should not be considered standard in all situations. In addition, many detainees have suffered abuse, making this practice traumatic. It appears strip searches continue to be routinely used, particularly following visits, rather than deciding the need for this on an individual basis. The new departmental policy has been frequently criticised by centre staff, many of whom incorrectly claim it completely prevents them from strip searching detainees. It is difficult to determine if this misunderstanding is due to a lack of communication and training in the new procedures, or if it reflects a reluctance to accept responsibility for individually determining when reasonable grounds exist.

We have also encouraged centres to place posters in the strip search areas explaining the accepted procedures for this type of search. Our officers made this suggestion following many inquiries from detainees about the strip search process. The posters should reduce misunderstandings between detainees and staff about the process. While most managers indicated agreement with the idea, some centres have been very slow to implement it.

Contact with family and friends

Our 1996 report recommended increased attention be given to encourage and facilitate regular contact between detainees, their families and/or other people who are significant to them. In our visits we regularly check centre records, including telephone and visitor logs, to ensure appropriate recording and review of the frequency of such contact. With our encouragement, most centres have refined their recording systems, making it easier to note when a detainee should be referred to a caseworker, or other counsellor, for assistance in contacting family or friends.

We have regularly raised our concerns on these and related matters with centre management, and in some cases with the department's central office. Many of these were examined in detail and made the subject of recommendations in our 1996 report, which the department agreed to implement. Given this, our discussions to date have been low key, with the intent of being supportive and encouraging improvements. We are awaiting the department's final report, on its implementation of the recommendations, before deciding if more formal action is required. An update on the department's implementation of our 1996 report is provided below.

Case study: Thinking outside the square

A detainee complained that while in detention he was not able to get one-on-one counselling for his drug and alcohol problems. We contacted the centre who told us the young man had behaved very aggressively towards the centre's female drug and alcohol counsellor and had made serious threats towards her. We did not approve of the detainee's actions, and did not

suggest that the counsellor be required to see the detainee. However, we did encourage the centre to consider other possible arrangements, in accordance with the department's policy to provide services which address offending behaviours. Drug and alcohol programs figure prominently in such services.

Following our inquiries, the centre decided to engage a male community drug and alcohol counsellor on a fee for service basis. The centre discussed this with the detainee, who was happy with this arrangement.

Case study: Religious understanding

Pressure was put on a detainee to shave at a time when his religion required him not to do so. The detainee tried to talk to staff about his religious observance, but he still experienced problems. Following discussions with us, the centre sought advice about his religious requirements and subsequently gave the detainee a note to carry with him confirming he had permission not to shave.

The Children (Detention Centres) Regulation provides centres should 'take all reasonable steps to facilitate the participation of detainees in the religious observance of their respective religious denominations'. Staff at another centre, where the detainee had previously been held, had made these arrangements. It was unfortunate that the experience of the first centre had not been passed on to the second.

Case study: Paper shuffling

Clothes belonging to one detainee were mistakenly issued to another, who left the centre taking them with him. The detainee who had lost the clothing spoke to the centre manager about the issue. The centre manager, recognising the detainee's limited literacy skills, arranged for another staff member to help him prepare a claim for compensation. However, this paperwork was not submitted for several weeks. When the detainee called us, he said the person preparing the paperwork had told him the claim would not be submitted until after a visit from head office, which was several weeks into the future. We called the centre to query the delay. The paperwork was completed as a matter of priority, and we were advised the detainee would get his refund by the end of the week.

COMMUNITY BASED OPERATIONS

We receive few complaints about the department's community-based services, including the supervision of community service orders and the operation of the intensive programs units. These services clearly impact upon a great number of young people and their families. While the lack of complaints may suggest fewer problems in the department's community-based services, it may also indicate less general knowledge of our role in these areas. It might also reflect the barriers experienced by young people, who might feel unable or unwilling to complain. We are considering strategies to increase our profile among young people and their families who come in contact with the department.

The following complaint suggests there is room for administrative improvement in at least one area of the department's community-based services.

Case study: Doing time twice?

A young Aboriginal person was arrested and held in a police cell for eight hours because warrants for his arrest were based upon incorrect information. He complained to us about the arresting police. It soon became clear responsibility lay more with the Department of Juvenile Justice than the police. A court issued the warrants after receiving information from the Department of Juvenile Justice that the complainant had breached his community service orders. Among other things, the department incorrectly claimed he had failed to complete 100 hours of work.

While completing his orders the complainant had been supervised by three different people of varying degrees of experience. This resulted in patchy and incomplete records. Although the complainant completed his required 100 hours work, his records showed he had completed only 20 hours. It was only after the complainant was arrested that a staff member recalled he had completed his hours. The staff member claimed she had placed the relevant paperwork under the door of the office for collection. She was unsure where the paperwork had ended up.

Following contact from us the department reviewed the situation and apologised to the young person. It also changed its procedures to ensure records of hours worked are updated each week and that breach action may only be commenced with a manager's approval.

KARIONG INVESTIGATION

We are investigating the management of detainees at Kariong Juvenile Justice Centre and specifically the four disturbances at the centre in March and April. The investigation stemmed in part from a complaint forwarded to us by the Hon. Faye Lo' Po, the then Minister responsible for Juvenile Justice, as well as from our own concerns about the events. The Minister asked for our help in examining issues raised by the complaint. This included inappropriate and discriminatory treatment, particularly of Aboriginal detainees, in the days prior to the disturbances. The complainant is a representative of an Aboriginal group who visited detainees at Kariong before and during the disturbances.

Although we started our investigation following the two March disturbances, due to the need for the police to complete their interviews regarding possible criminal charges, we were unable to speak with detainees for a number of weeks. Our efforts were further delayed by the subsequent disturbances in April. The general level of tension in the centre, the significant physical damage to the centre, and the series of lockdowns made it difficult for us to interview detainees and staff. We still visited the centre during this time to obtain documents, inspect the centre, check on the arrangements for detainees and staff and explain the nature of our investigation.

All Kariong staff were informed of our inquiry and invited to speak with us or to provide written submissions. We also invited submissions from other agencies who have had regular involvement with Kariong. Original documentation, files and other information have been obtained. Teams of our investigative staff have interviewed over sixty departmental staff and nearly all detainees who were at Kariong during the disturbances. This included those who were moved to the adult correctional system, either by a transfer under s.28 of the *Children (Detention Centres) Act*, or by court order. (This situation is detailed in the **Corrections** section of this report) Inquiries have also been made with the Department of Education and Training and the Department of Corrective Services.

The latter department provided a senior governor to temporarily manage the centre following the first three riots. It also supplied a number of highly trained emergency response staff to be on site in case of further problems. Although the emergency response team returned to normal duties after some weeks, the governor's temporary secondment continued for almost three months. A related investigation has commenced into the police response to the disturbances and their handling of allegations made by and/or against detainees. This followed suggestions that the time taken by police to interview staff and detainees, secure evidence and process those individuals who were to be criminally charged, delayed the re-establishment of centre routines and general order. Inquiries are proceeding.

Disturbances at Kariong Juvenile Justice Centre in March prompted our investigation.

Formal hearings under s.19 of the *Ombudsman Act* were held in August and September 1999 and individuals were required to give evidence on oath to help us determine specific allegations, which arose before and during the investigation. We also monitored the department's own investigation of certain allegations made against particular staff.

Although at the time of the writing of this report the investigation had not been completed, the evidence gained suggests inadequacies in security, staffing and programs available for detainees. We have also learned a great deal about the sequence of events prior to, during, and following the disturbances. A number of problems identified in our 1996 report related to staffing and the general culture at Kariong appear to have been largely ignored.

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN THE *INQUIRY INTO JUVENILE DETENTION CENTRES*

Our detailed report examined a range of matters related to the care and treatment of detainees in the state's nine juvenile detention centres. The report contained 239 recommendations for systemic improvement and its key findings have been detailed in earlier annual reports. Due to the large number of recommendations, and significantly, the deep need for cultural change identified in the report, we believed the department would require two years to implement the recommendations. While periodic progress reports were provided, we expected the department to provide a final report on its implementation of the recommendations in December 1998.

Due to competing priorities for the use of the department's central office resources, the time frame for the department's response was successively extended at the Director-General's request. These competing priorities included the development of a procedures manual for juvenile justice centres and the co-ordination of the development of national standards for juvenile detention centres. The serious disturbances at Kariong in March and April further delayed completion of the report.

The department's final report on implementation was received in July. The department claims to have implemented 110 recommendations, with 73 'partially implemented'. It is not clear whether full implementation is expected for these. A further 29 are noted as 'implementation expected' but no date is given for this. Twenty five have not been implemented. The Director-General notes that implementation of a number of recommendations is reliant upon additional resources and/or co-operation from other agencies. This has not been provided. Despite this, significant work has been undertaken to address many of the issues raised in the original report.

Our visits to the centres have revealed some centres have worked hard and consistently over the two years to bring about improvements in the general treatment of detainees. It is clear, however, that others have been unwilling or unable to bring about the recommended changes. Similarly, central office have provided a number of policy and procedural documents in line with the 1996 recommendations. Centralised and coordinated action is still needed to ensure outstanding recommendations are implemented. Much work is still to be done to ensure staff are not only made aware of these changes, but are informed of the reason for their introduction and are trained and supported in their practical application.

Some of the improvements in the treatment and management of detainees introduced in many centres include:

- greater range and more meaningful privileges and incentives for detainees, including earning items of clothing, use of television in their own rooms, later bed times and greater access to personal clothing and possessions;
- less use of confinement;
- greater access to and variety of TAFE related courses;

- increased availability of more flexible part-time enrolment of detainees in the centre-based schools;
- greater use of accreditation (including TAFE accreditation) and/or certificates of achievement for successful completion of courses;
- improved coordination between the Department of Education and Training and the Department of Juvenile Justice;
- more consistent opportunity for telephone contact with family and friends;
- greater clarity of the obligation of juvenile justice staff to respond to complaints made by or on behalf of detainees and their families (as set out in the department's new complaints policy);
- the retention and enhancement of the Children's Legal Service visiting program to the centres;
- the production of revised illustrated detainee induction booklets written in plain English; and
- production of an information booklet for parents of detainees, including Arabic and Vietnamese editions.

The need for fundamental cultural change was identified in our report and in its related recommendations for significant improvement in staff selection, training and support. These are still to be substantially achieved. Change in these areas is the most challenging for the department, as it is for any organisation. While long term success is dependent upon generational change, we believe the introduction of certain measures within the two years following the report, would have provided the infrastructure to maintain the impetus for this long term change.

These measures include not only the will and commitment of senior management, revised policies and codes of conduct, but also dedicated recurrent funding and continual review processes. While certain measures have been implemented, information obtained in the investigation at Kariong suggests there is still a great deal to be done. This is of grave concern. It is understood the department's requests for additional staff funding since the 1996 report have been largely unsuccessful.

Our 1996 report and the department's response sets out the standards now expected of NSW juvenile detention centres. The recently released national standards for juvenile custodial facilities provide further guidance. We shall be closely reviewing the department's implementation report and contrasting it with current practices evident from the complaints and inquiries we receive, and from our own visits to the centres. We are also considering more specific mechanisms to independently verify the extent to which the department's actions, in response to our report, have brought about lasting improvements in the care and treatment of detainees. We will also be closely monitoring the department's future actions to ensure outstanding recommendations are implemented to the fullest extent possible.

COMPLAINTS ABOUT

freedom of information

CONTENTS

The introduction of *Freedom of Information Act* (*FOI Act*) in NSW raised expectations of open government. In fact, it was said during the second reading speech that 'voters will have the opportunity to scrutinise the actions of the government and the bureaucracy'. However, after ten years of dealing with reviews of agency's decisions we are of the belief that the aims of the legislation have not yet been achieved.

It is positive to note that in most instances agencies grant full access to information relating to applicants personal affairs or for other non-contentious information. However, agencies rarely disclose sensitive, contentious or political information. In fact, claims of direct political interference in the processing of FOI applications and in the decisions of FOI practitioners continue to be raised from time to time. However, generally they are raised informally by FOI practitioners.

It is encouraging to see the growth of FOI usage over the years. From our review of FOI statistics in agencies annual reports, we estimate that approximately 10,000 FOI applications were made in NSW in 1997–98, in contrast to the reported number of applications in 1989–90 of 2,368 — a growth of 322 per cent.

This year marks the 10th anniversary of the *FOI Act*.

Wayne Kosh and David Watson, Investigation Officers, assist FOI practioners to understand the *FOI Act* and its practical implementation.

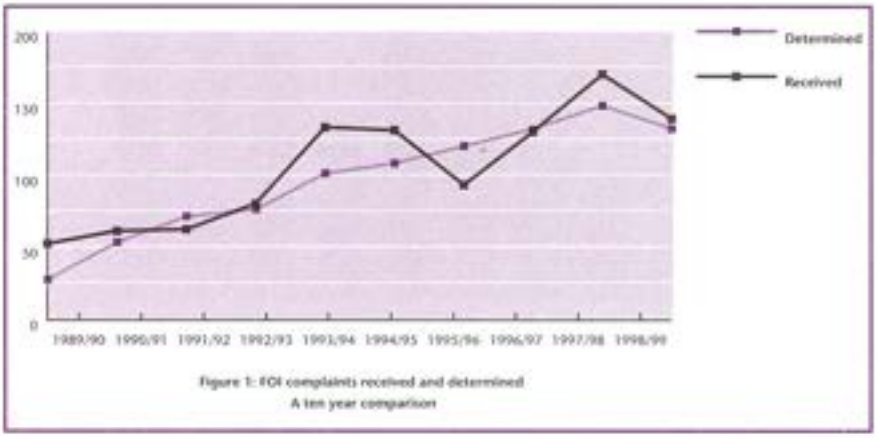


Figure 1: FOI complaints received and determined
A ten year comparison

In the 10 years of FOI in NSW we have received 1,061 FOI complaints, and have finalised 969 of them. Formal investigations have been conducted into 63 of these, resulting in 20 reports identifying maladministration. Informal investigations, often extensive, were conducted into a further 702 complaints. Of these, at least 280 matters were finalised for lack of evidence, no utility, because they were withdrawn, or because we agreed with the agency's determinations. At least 250 matters were resolved. A further 131 complaints were identified as non-jurisdictional, most of these almost certainly because internal reviews had not been conducted at the relevant agency.

COMPREHENSIVE REVIEW OF THE *FOI ACT* NEEDED

We call for a review of the NSW *FOI Act*.

The *FOI Act* needs a comprehensive review to ensure it's continuing relevance in the electronic age.

In the 10 years since the Act commenced:

- numerous minor amendments have been made to the Act without any overall review of how these amendments interact, leading to unintended complexities and even direct contradictions;
- some important judicial decisions in NSW, as well as elsewhere in Australia, have looked at the rights of the public to access government information, and the provisions of the Act have not been reviewed in their light;
- the way in which official records are made and stored has changed significantly, with the public sector moving from a paper based environment into an information technology environment. This will certainly have implications for access to computer records and will also affect the manner in which agencies publish their summaries and statements of affairs;
- public sector agencies are increasingly contracting out their functions and activities to bodies that are not subject to the *FOI Act*, such as private sector organisations or controlled entities established under the *Corporations Law Act*; and
- other legislation has been introduced which provides a right to seek access to, and amend, documents in some circumstances, creating confusion due to: different terminology used, different procedures involved, inconsistent expemption provisions; and a variation in available legal protection.

Other issues that need to be examined include:

- whether all current exemption clauses are still relevant;
- whether any exemption clauses need to be clarified in the light of judicial decisions;
- whether an overriding public interest test should be built into those exemption clauses in the *FOI Act* which do not currently have a public interest test;
- fees and charges;
- the way in which the *FOI Act* and the *Privacy and Personal Information Protection Act* interact (particularly given s.20(5) of the latter Act);
- the relationship between the *FOI Act* and the alternative access to information regime set out in s.12 of the *Local Government Act*;
- whether the Act should be expanded to cover the release of 'information' known to agencies, and not just the release of 'documents' held by agencies;
- whether there are too many agencies listed in Schedule 2 that are exempt from the *FOI Act* itself; and
- whether access can be granted under the *FOI Act* by electronic means, such as by email or through the internet.

It is interesting to note that, in recent years, the Parliament has included in many statutes a requirement that they be reviewed after a fixed period of one or more years. Recent reviews of FOI legislation in other Australian jurisdictions add further weight to the need for a review of the NSW *FOI Act*.

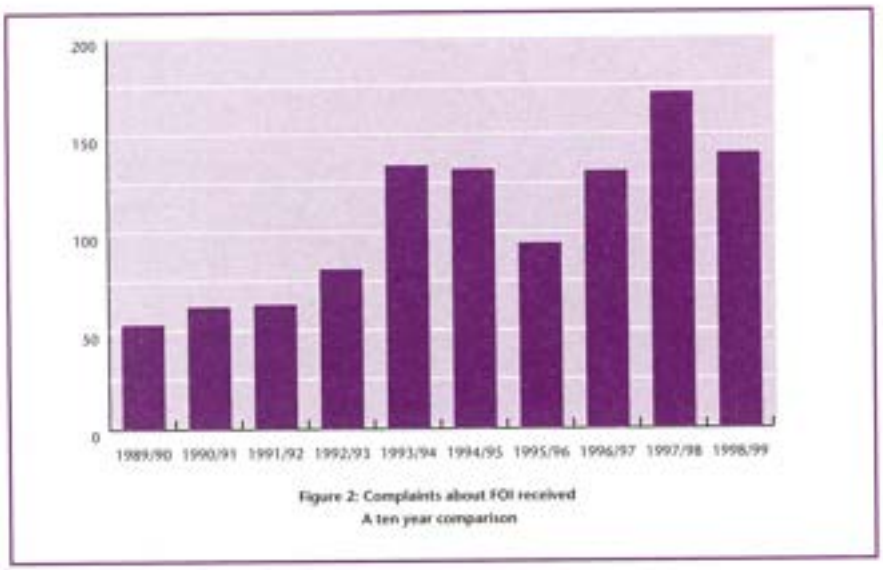


Figure 2: Complaints about FOI received
A ten year comparison

FOI COMPLAINTS

In October 1998 the Administrative Decisions Tribunal commenced operations, taking over the District Court's FOI external review function, promising flexible and accessible review processes. A number of aggrieved FOI applicants have already proceeded directly to the tribunal. In many instances this is understandable as they are able to obtain a binding determination from the Administrative Decisions Tribunal (ADT).

As a consequence, there has been a decrease in the number of written FOI complaints made to us, which fell from 171 to 140, down 18 per cent from last year, dropping them back to levels of previous years. Most complaints received were about refusal of access to documents, with a significant number also about agencies employing wrong procedures. The bulk of oral inquiries requested advice on how the *FOI Act* worked and, as every year, we received a significant number of inquiries from agency FOI practitioners seeking advice.

This year 37 complaints, approximately 28 per cent, of matters were resolved and of those, 18 were resolved due to the release of documents. A significant number of other matters were completed by us providing general assistance to complainants. For example, we provided explanations of FOI procedure and specific agency processes, helped to speed up agency determinations, and gave advice on a correct understanding of the *FOI Act*. While there was a drop of more than a third in our agreements with agency decisions, considering the relatively small numbers involved and the considerable variation from year to year, we attach no particular significance to this figure.

The average completion time rose by four weeks to 25 weeks in the 1998–99 year. We anticipate a similar average this year as we continue to complete old matters.

Although we did not achieve our aim of having no matters outstanding for more than a year by 30 June, we have decided to adopt that objective again for the 1999–00 year.

RECENT AMENDMENTS TO THE *FOI ACT* AND RELATED LEGISLATION

Section 24 of the *FOI Act* states that an FOI application must be determined within 21 days. In other words the agency must write to the applicant within 21 days advising them if access to the documents will be granted. If the agency does not determine the application within that time, s.24 provides that the agency has refused the applicant access to those documents.

Nevertheless, over the years, agencies have issued many late determinations regarding the release of documents. Such decisions may not have been covered by the protection provisions in the Act. In 1998, s.24

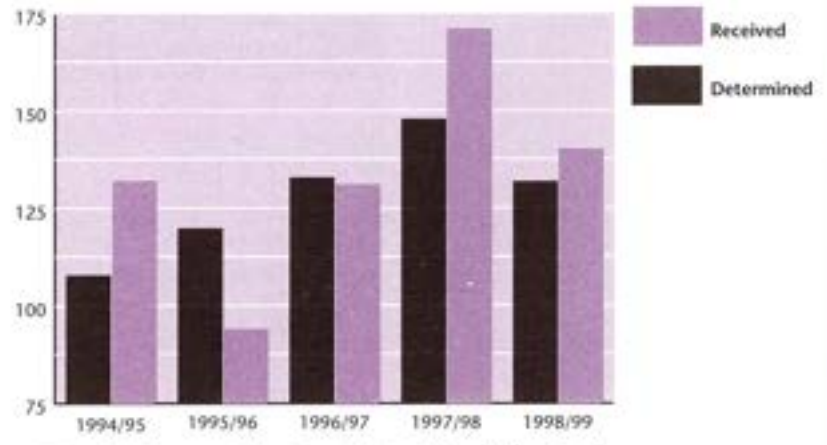


Figure 3: Written complaints about FOI received and determined
A five year comparison

Table 1: Complaints resolved (as a perecentage of all completed matters)

	JUNE 98	JUNE 99
All documents released	11 (7%)	12 (9%)
Some or most documents released	10 (7%)	6 (5%)
Resolved for other reasons	21 (14%)	19 (14%)
Total resolved	**42 (28%)**	**37 (28%)**

Table 2: Complaints about Freedom of Information 1998–99

Complaints received	
Written	140
Oral	396
Reviews	10
Total	**546**
Complaints determined (written)	
Formal investigation completed	0
Formal investigation discontinued	2
Preliminary investigation completed	116
Assessment only	7
Non jurisdiction issues	7
Total	**132**
Current investigations (at 30 June)	
Being conciliated	71
Under investigation	4

of the *FOI Act* was amended so an agency that releases documents after the 21 day period has expired is legally protected against actions concerning defamation, breach of confidence and certain criminal matters (ss.64 and 65 of the Act). Hopefully, this change to the Act will encourage agencies to release more documents, particularly if there has been any undue delay in dealing with the FOI application.

To clear up a previously confusing situation, s.34 of the Act was amended to provide that if an applicant does not receive a determination in response to their initial FOI application, the applicant has 49 days from the date of the application in which to ask for an internal review.

THE *FOI ACT* AND THE PRIVATE SECTOR

With the introduction in 1998 of the *Commission for Children and Young People Act* (the *CCYP Act*), the *FOI Act* now extends to some private sector agencies. These agencies include all private schools, private child care centres and kindergartens. Under the *CCYP Act* people who are seeking work in most child care-related jobs are, among other things, subjected to a check for any past disciplinary proceedings. A person can now apply under the *FOI Act* for access to any documents relating to any relevant disciplinary proceedings brought against them by any agency involved in caring for children, private or public. All the appeal provisions of the *FOI Act* will now apply if a person is unhappy with the manner in which an agency deals with their applications. The Ombudsman and the ADT can deal with FOI complaints and review applications about these private agencies.

The *CCYP Act* also allows that persons who have been the subject of disciplinary proceedings have a right to apply for amendment of the agency's documents under the *FOI Act*. A person can do this if they believe the agency's records are incomplete, incorrect, out of date or misleading. If the person is unhappy with the way in which the agency deals with their application for amendment of documents, they can complain to us or make a review application to the ADT.

Table 3: Nature of written and oral complaints about Freedom of Information 1998–99

	WRITTEN COMPLAINTS	ORAL COMPLAINTS
Access refused	69	44
Advice, pre-interview review	0	130
Amendment to records	7	14
Other	0	1
Charges	3	3
Documents destroyed	2	0
Documents not held	6	6
Documents withheld, delayed, not held or lost	13	12
Failure to notify	0	0
Inadequate disclosure of information	0	1
Inquiries from agencies	0	45
Investigation/prosecution misconduct	1	1
Processing delays	4	17
Third party objections	9	7
Wrong procedure	26	6
General FOI advice	0	108
Other	0	3
Total	**140**	**396**

Table 4: Completed files where Ombudsman agreed with an agency's determination

	1997/98	1998/99
Agree with decision to exempt in full	7	10
Agree with decision to exempt in part	8	4
Agree with decision to release in full	8	2
Agree with decision to release in part	0	0
Agree with decision to release under s31(4)	0	0
Agree with decision to refuse to amend in full	1	1
Agree with other decision	2	0
Total	**26**	**17**

Table 5: Outcomes of FOI files completed 1998–99

	1998/99
Outside jurisdiction	7
Declined at outset	7
Agree with decision to exempt in full or part	14
Agree with decision to release in full or part	2
Agree with decision to release under s31(4)	0
Agree with decision to refuse to amend	1
Resolved	37
Mediated	0
Complainant assisted (explanation advice/ other assistance provided)*	24
Various**	40
Adverse finding	0
Total	**132**

* in previous years this has been included in the various category

** includes insufficient evidence, rectified by agency, no utility and withdrawn

(Refer also to the Child protection chapter, section on 'FOI and employment screening for child protection').

ADMINISTRATIVE DECISIONS TRIBUNAL

ADT replaces the District Court

The *FOI Act* previously provided two avenues of external review for applicants who were unhappy with an agency's decision — the Ombudsman and the District Court. In October 1998 the ADT assumed the District Court role. Applicants can now proceed directly to either the ADT or us. The number of review applications already sent to the ADT indicate that it is being recognised as a more flexible and accessible avenue of review for FOI applicants than was the District Court.

Agreements between the ADT and the Ombudsman

Section 39 of the *ADT Act* allows an arrangement to be put in place between the ADT and the Ombudsman for the referral of matters which would be more appropriately dealt with by the other body, for matters that are before both bodies and for the 'co-operative exercise of the respective functions of the ADT and the Ombudsman'. This arrangement has been finalised and published in the *Government Gazette*.

To help ensure that we are able to abide by s.52(2)(c) of the *FOI Act* (which prevents us from investigating FOI matters which are before the ADT), the ADT changed the review application form so that FOI review applicants can signify whether or not they agree to our being informed of their application. At the time of writing we have received 22 notifications of review applications from the ADT.

Referral of legal questions to the ADT

Section 35C of the *Ombudsman Act* allows us to refer a legal question to the ADT for its opinion where the question arises out of a decision made by an agency that we are investigating. However, this section only applies to a reviewable decision under the *ADT Act*.

Referral of matters

An example of a matter which the ADT referred to us involved an application for the review of a FOI determination by the State Rail Authority. The question hinged on the adequacy of the authority's search for documents when processing the original FOI application. We are undertaking an 'own motion' investigation into this issue. An 'own motion' investigation is an investigation initiated by us.

We sometimes decide not to proceed with a matter because, in the circumstances, the ADT appears to be a better review avenue. Here are two examples.

Case 1: National Parks and Wildlife Service

We received two requests for an external review from a consultant acting on behalf of two aggrieved third parties who were opposed to decisions made by the NPWS to release information. The same consultant had, on behalf of one of these third parties, sought a previous external review of an FOI decision by NPWS. We made a detailed decision on that complaint in May this year (see 'National Parks and Wildlife: A secret service' below).

The issues raised in this year's matters were very similar to those raised in the earlier complaints, as were the arguments as to why documents should not be released. We decided it was unlikely that a review of the 1999 matters would result in substantially different decisions to that made in May on the earlier complaint. We thought it likely that the relevant third party would take the earlier matter to the ADT. If this occurred, and we continued our action on the 1999 complaints, both external review bodies would have been dealing, in effect, with the same agency, similar documents and the same or very similar FOI issues. We would also have been retreading ground already covered. Given our limited resources, we did not see this as being in the public interest. However, by our refusal to investigate these matters the way was cleared for the ADT to review, simultaneously, all three NPWS matters.

Case 2: Hawkesbury City Council

We received a request for a review from a complainant in relation to a second FOI application she had made to Hawkesbury City Council. The application raised similar issues, was similar in context, and was for similar documents to those requested in the first FOI application. The complainant had made a review application to the ADT about council's determinations of her first application, and a decision was pending. We declined to pursue the matter for similar reasons to those in the NPWS matter mentioned above. It was an inappropriate use of time and there was the potential for conflicting decisions being made on effectively the same matter by the two external review bodies.

SPECIAL BRANCH FILES

In 1996 The Wood Royal Commission into the NSW Police Service (Royal Commission), reported that officers from the NSW Police Service 'Special Branch' had undertaken surveillance and maintained files about the political activities and interests of certain

people. In 1998 the Police Integrity Commission (PIC), in a report to Parliament, found that special branch officers had destroyed a lot of these files without any consideration about whether such destruction was in breach of the law. It is now estimated that only 10 per cent of special branch files remain.

Since the NSW Police Commissioner closed down the special branch in 1997, we have received a number of complaints about the Police Service from people who had tried to obtain access to their special branch files under FOI. One of these complainants is an academic and a long time member of the Council for Civil Liberties (CCL). Given our complainant's long association with the CCL, it was quite likely that special branch held numerous documents about his political and social activities with that group. In responding to the initial FOI application the Police Service advised it would neither confirm nor deny whether any special branch documents about the complainant existed. However, it also informed the complainant that, if those documents did exist, they would be exempt (clause 4(3)(b) of Schedule 1).

The *FOI Act* contains a provision, clause 4(3)(b) of Schedule 1, allowing exemption of any documents, regardless of their content, created by the special branch. In the light of the criticisms made by the PIC in its report to Parliament about special branch, we took the view that it would not be reasonable for the Police Service to rely on this exemption clause. In June 1998 the Minister for Police set up a working party to make recommendations to him about the means by which the public should be allowed access to special branch files. The working party was also to advise the Minister about whether, and how, special branch files should be destroyed. The working party recommended that the *FOI Act* be used to allow the public to seek access to special branch files.

It took the Police Service more than two months to advise us that their database did not show there were any special branch files about our complainant. This seemed highly suspicious given the findings of both the PIC and the Royal Commission that special branch had accumulated files about groups such as the CCL. Several months went by without a further response from the Police Service. The Ombudsman herself then wrote to the Police Service asking for a response and for all the relevant documents in order to allow us to properly assess this complaint. As we received no response we commenced a formal investigation in which we compelled the Police Service to provide us with the relevant documents.

Following the commencement of our investigation, we held a meeting with Police Service senior management. As a result we were invited to examine the special branch files relating to our complainant and the CCL. However, it was not for several months after our examination of the files that the Police Service actually provided us with a copy of them.

Given the inappropriate conduct of the former special branch in compiling reports and information about legitimate political and social groups such as the CCL, we felt that it would be in the public interest for a prominent member of that group to be given access to the files. We subsequently wrote to the Police Service suggesting that the complainant be given access to all documents about the CCL, except information that would disclose the personal affairs of other people. We are still waiting for a response.

In response to our inquiries and suggestions about the release of special branch files, the actions of senior management appear to reflect a strategy to conceal past inappropriate conduct by police and to ignore and evade the Police Service's statutory obligations under the *FOI Act*. In our view senior management have been dismissive of the public interest. Further, their inaction is dismissive of the endorsement given by the Minister for Police of the recommendations of the working party. It remains to be seen whether special branch files will be properly released.

NATIONAL PARKS AND WILDLIFE: A SECRET SERVICE?

A conservation group requested the NPWS to provide access to documents relating to the Timbarra Gold Mine Project. The requested documents included field surveys, correspondence, responses to issues raised by NPWS, a report on Aboriginal heritage issues and s.120 licence documents under the *National Parks and Wildlife Act*. The NPWS granted access, but a third party which had been consulted by NPWS when dealing with the FOI application was aggrieved by the decision. It pursued both internal review and external review via a complaint to us. Issues that were raised included whether the secrecy provisions of the *Mining Act* and the *Environment Planning and Assessment Act* (*EP & A Act*) applied, whether the documents were exempt because of business affairs or secret or confidential content (clauses 7, 12, and 13), whether a deemed refusal of access to the documents applied, and whether the process of compiling and identifying the documents was adequate.

Secrecy provisions

The third party claimed that secrecy provisions applied to the documents under s.365 of the *Mining Act* and s.148 of the *EP & A Act*. They also claimed that the

documents were exempt under clause 12 of the *FOI Act* (which deals with documents covered by secrecy provisions) and that NPWS was **required** to exempt the documents. We rejected these views.

Were the documents secret?

As to whether the documents were covered by secrecy provisions, both s.365 of the *Mining Act* and s.148 of the *EP & A Act* appear, on their face, to apply to persons consciously aware of receiving information as a result of administering the relevant Act. The NPWS claimed that they received the documents pursuant to the *National Parks and Wildlife Service Act* and that therefore s.365 of the *Mining Act* and s.148 of the *EP & A Act* did not apply. The notion that secrecy provisions of Acts can apply at a distance from the agency which administered them is tenuous and was not supported by the arguments put forward. It seemed reasonable to us to accept the view of the NPWS that the secrecy provisions did not apply and that clause 12 could also not be applied.

Are the documents required to be secret?

One of the fundamental philosophies underpinning the *FOI Act* is the notion that a document **may be released** by an agency even if it is covered by an exemption clause (except where a ministerial certificate has been issued by the Premier). This philosophy is embodied in the essential distinction the Act makes between actions which are required of agencies (identified by the word 'shall') and those which are options for the agency (identified by the word 'may'). If, in this matter, the secrecy provisions of the *Mining Act* or the *EP & A Act* **had** to be adhered to in relation to the requested documents, the *FOI Act* would have had no role in relation to those documents. There is no point in there being a right to apply under FOI for a document unless it is a possibility access can also be given.

Parliament has made specific provisions in the *FOI Act* for documents that are not to be covered by the *FOI Act* (s.9 and Schedule 2). It has also specified in a number of other Acts that certain documents generated under a particular Act are not covered by the *FOI Act* (e.g. s.5ORC(6) of the *Gaming and Betting Act*). We take the view that, unless a ministerial certificate has been issued, documents which are not covered by specific provisions removing them from FOI coverage are intended by Parliament to be subject to the *FOI Act*. If a document is subject to the Act, it is within the absolute discretion of the agency holding the document whether to release it, even if a general secrecy provision applies. The department of Mineral Resources and the NPWS are not listed in Schedule 2 of the *FOI Act* and s.365 of the *Mining Act* and s.148 the *EP & A Act* do not contain specific provisions for classes of documents which are to be removed from FOI coverage.

Many documents are created and received every day by government agencies under Acts that contain secrecy provisions. For the *FOI Act* to have any effect in relation to these documents the position that clause 12 must be applied to them is untenable. We believe that this is in accord with Parliament's intentions. Consequently, it was within the discretion of the NPWS to release the relevant documents even if they were covered by secrecy provisions.

Exemptions

The third party also claimed that the documents were exempt under clause 7 (documents affecting business affairs) and clause 13 (documents containing confidential material). These claims were also rejected, primarily because the arguments in support of the exemptions did not relate to the specific content of the documents and because the content did not fall within the exemption criteria of the clauses.

Deemed refusal of access to documents

Because the NPWS was late in making its internal review decision, the third party argued that s.34(6) of the *FOI Act* applied, creating a deemed refusal of access that overturned the NPWS's initial decision. While recognising this as an unintended effect of the provision, we agreed. We also took the view that the deemed refusal of access took precedence over the late internal review decision which gave access. We therefore suggested that the NPWS review the deemed refusal decision under s.52A and release the documents. The NPWS adopted the suggestion.

Compiling and listing documents

There were significant difficulties in conducting this review because it was not clear precisely which documents were at issue. We took the view that the NPWS should have made a precise compilation and listing of the documents before consultation occurred, and that the compilation and listing should have been preserved, not only for the completeness of the NPWS's own records, but also with the ever present possibility of external review in mind.

IMPLEMENTATION OF OUR SUGGESTIONS AND RECOMMENDATIONS

Section 52A

Section 52A of the *FOI Act* provides a way for agencies to safely release documents which they have refused to release in their decisions prior to external review. Section 52A protects agencies from defamation,

breach of confidence, certain criminal actions and personal liability when they release documents as a result of:

- our making a suggestion or recommendation that the agency review its determination; and
- an agency undertaking to review its determination under s.52A in the course of a conciliation conducted by us.

Following are some examples of this office's use of s.52A in the past year.

Child abuse notifications — not all information is exempt

The parents of a child who had been the subject of an allegation of child abuse to the Department of Community Services (DOCS) applied under the *FOI Act* to the Department of Education and Training (DET) for access to relevant documents. The documents in question were two standard letters from DOCS to the person who made the allegation. These standard letters inform that person whether or not, with reasons, their information is considered as a notification of child abuse. DET refused access using clause 13(b) — information provided in confidence.

DOCS told us that it does not inform parents that their child has been the subject of an allegation if DOCS decides there is no evidence to indicate abuse or neglect. If the parents of the child find out that an allegation has been made about their child, DOCS will confirm this but will not release the identity of the person who made the allegation. In this case, the parents only suspected an allegation had been made. We concluded that there is considerable public interest in parents being made aware of government documents concerning the welfare of their children, providing the best interests of the children are not adversely affected. We suggested that the letters be disclosed to the parents with the identity of the informant deleted. In considering DET's claims we had serious doubts that the future supply of these letters would be prejudiced by their disclosure, so long as the identity of the informant was deleted. The department deleted the informant's identity and released the documents.

All or nothing

An application was made to Baulkham Hills Shire Council for documents about a proposed development. The council refused access to the documents under clause 6 (personal affairs), clause 10 (legal professional privilege) and the second part of clause 15 (that disclosure would, on balance, be contrary to the public interest). The documents included letters of complaint about the development, correspondence between council and its solicitors and draft letters prepared by council's solicitors. We considered that the letters of complaint were not exempt under clauses 6 or 10. While we agreed that most of council's correspondence with its solicitors was exempt under clause 10 we concluded that s.25(4) should have been applied i.e. that the legal advice be deleted from most of these letters. We found that the clause 15 exemption claim was incorrect.

The council only released some of the documents following our suggestion. The council refused to release to the applicants a copy of a letter which council had previously sent them on the basis that the copy was attached to a letter from council's solicitors and was therefore subject to legal professional privilege!

Where a suggestion under s.52A is not entirely followed, our view is that the review decision of the agency is not a legal determination under the *FOI Act* and therefore it does not attract the Act's protection provisions.

At this point, had the complainant not appealed to the ADT, a formal investigation of the matter would have been considered. Prior to the matter being heard at the ADT the council agreed to release a further document and on that basis the applicant decided not to pursue the review application to the ADT.

Improper conduct and personal affairs

Following a complaint involving the Northern Sydney Area Health Service (NSAHS) we succeeded in having an amendment made to s.24 of the *FOI Act* to allow agencies to release documents after the 21 day period has elapsed, with protection still applying. The matter arose when a journalist applied to the NSAHS for documents relating to an inquiry which was held into whether a senior public hospital manager had improperly dispensed drugs. The manager resigned during the inquiry. The NSAHS refused access to most of the documents about the inquiry, claiming release would be an unreasonable disclosure of the manager's personal affairs.

We did not believe that disclosure of the documents would be unreasonable, because the documents related to the manager's public position. Furthermore, we submitted that it was in the public interest that the documents be released as they related to an alleged misuse of a public official's position.

The NSAHS refused to review its determination as it was concerned that, because its original determination had been very late, it may not be protected under s.52A and that it could therefore be sued if it released the documents.

In writing to the NSAHS about this complaint, we expressed our concern that the NSAHS had

employed a particularly legalistic approach in dealing with our inquiries.

Use of statutory declarations as to whether documents have been found

An application was made to the Department of Gaming and Racing for internal audit investigative material. The department refused access using four exemption clauses which related to law enforcement, business affairs, internal working documents and agency operations (clause 4(1)(e), 7(1)(a), 7(1)(c), 9, 16(a)(i)). The applicant complained to us about the refusal of access, claiming that not all documents covered by the terms of the application had been identified.

After examining the matter we made a number of suggestions to the department under s.52A including that thorough searches for more documents be made, that any additional documents found should be listed as part of the review determination, that if none were found a statutory declaration be provided to that effect, and that the department should decide to release the documents claimed as exempt.

The department objected to a number of our suggestions, especially to the one regarding a statutory declaration, which it said, among other things, had no basis in law. It did not object to releasing the documents, however, having given consideration to changed circumstances since the original determinations were made. As mentioned above, we do not view a partial compliance with a suggestion made under s.52A to be a legal decision under the *FOI Act*.

The arguments put forward by the department in relation to the likely existence of further documents appeared reasonable. For this and other reasons we decided to withdraw the initial suggestions.

We issued a second letter under s.52A which made more limited suggestions, including that the department review its decisions and release the documents previously considered exempt. The department adopted these suggestions and released all relevant documents.

As to the department's contention that providing us with a statutory declaration had no basis in law, the terms of s.52A do not limit the suggestions that we can make. While, in general, suggestions relate specifically to the disclosure of information, other issues such as disputes about the amount of information held by an agency may be addressed. Reviews of decisions, whether at internal or external review stage, should address whether sufficient searches have been made and whether all documents held by the agency have been identified. Section 28(2)(e) of the Act contains a requirement that a notice of determination specifies the findings on any material questions of fact underlying the reasons for refusal to give access to documents. A strong argument can be put that a material question of fact will always be 'Which documents are covered by the terms of an application ?'. A statutory declaration as suggested would have provided the applicant, in a form which is widely considered as trustworthy, with a finding on the material question of which documents were held by the department.

Compromise is beautiful

The Police Service refused access to the computer entry and witness statements relating to an incident where the applicant had been injured. The Service relied on certain law enforcement exemption clauses and the personal affairs exemption (clauses 4(1)(a), 4(1)(e), and (6)). The applicant requested an external review, and during our preliminary inquiry process he said he would be satisfied with copies of the witness statements without identifying information. The Service agreed. To ensure that the Service was covered by the Act's protection provisions in releasing the information, we made a s.52A suggestion to this effect. The Service adopted the suggestion.

That airport noise again!

A group opposed to the use of Williamtown RAAF Airbase by civilian aircraft applied to Port Stephens Council for a copy of the part of the airbase's contract detailing the number of civilian aircraft permitted to use the airport during certain times of the day. Both Port Stephens and Newcastle councils had established a company to handle civilian aircraft movement at the airbase, with each council owning half of the company. The council refused the group access to the contract under clause 7, claiming that release of this information would adversely affect the business affairs of not only the company owned by the councils but the councils themselves.

We submitted to the council that as there was no sensitive business information in the relevant part of the contract and that release of permitted aircraft movements would enhance public accountability of the airbase, the relevant part of the contract should be released. The council agreed with our view, advising the company and Newcastle Council of their appeal rights under the *FOI Act* if they objected to release of the information.

Should defamatory statements be released under FOI?

A complaint was made to us about the Department of Corrective Services decision to refuse access to part of two letters. The letters had

been written by a private solicitor to a federal government department and had found their way onto relevant Department of Corrective Services files. The two letters written by the private solicitor contained remarks about our complainant that may well be uncalled for and defamatory. The department had refused the applicant access to these sections of the letters under clause 7 of Schedule 1, arguing that release of the remarks would harm the solicitor's business and professional affairs and may prejudice the ability of government to receive information from private solicitors.

We did not consider the letters should be exempt merely because they may have contained defamatory material. In general, it is in the public interest that defamatory remarks that serve no good purpose be released, because making such remarks could be contrary to the public interest. In our view, if there was to be an adverse effect upon the professional and business affairs of the private solicitor who wrote the letters, such an adverse effect may not be unreasonable considering the unnecessarily defamatory nature of the remarks. In our view, if release of the letters was to mean that private solicitors ceased making inappropriate, unnecessary and defamatory submissions to government departments, such an outcome would be in the public interest. This does not mean that defamatory remarks, made for legitimate purposes, should be so released.

The department agreed to review its determination under s.52A(1)(a) and release the letters to the applicant, pending the right of the private solicitor to appeal to the ADT.

"I appreciate your helpful comments and the time which you have spent in formulating advice to the University. I fully accept your first point and will endeavour to bring our responses in the FOI area closer to best practice."

SIGNIFICANT CASES

A second opinion on becoming a doctor

The University of Newcastle was the first university in Australia to offer admission to medicine on other criteria as well as the Higher School Certificate (HSC) results. Students wanting to study medicine, and whose HSC ranking is in the top 10 per cent of the state, are interviewed to determine their suitability. After the interview the applicant is scored and comments are made on six personality traits which have been assessed. This is used to determine whether a student is to be accepted into the School of Medicine. Our complainant, who was not successful, applied for access to the documents showing his scores and comments.

The university refused access to the documents under clause 16(a)(i) and (b) of Schedule 1 claiming that to release the documents would prejudice the university's assessment procedure. It was our view that if the complainant was to obtain access to the scores and comments about him, he would be able, at a future date, to provide responses that were not genuine, and the university would not obtain an authentic indication of his true ability, and this would prejudice its assessment procedure. Release of the answers and responses would also place first-time applicants at a disadvantage as they would not have, unlike previously failed applicants, their previous responses to allow them to re-assess how they should answer the questions. We therefore agreed with the university's determinations to exempt the material. We felt that it was in the public interest that the university should not be forced to change its assessment procedures to guard against the possibility of previously failed applicants supplying fabricated answers. We also felt that if applicants who had previously failed to gain entry to medicine were successful the second or third time around because they had fabricated their answers, this could lead to an increase in the number of students who failed their degree.

Access to information on a prisoner's classification

An inmate at a gaol requested information under FOI regarding a decision concerning his classification. The Department of Corrective Services refused access and provided very little information about the number or type of documents held.

The *Ombudsman's FOI Policies and Guidelines* states that notices of determination will be considered seriously deficient if they do not properly identify and describe all the documents covered by the application. However, the department argued that, in this matter, even if the applicant was told of the existence of certain documents, with no reference at all to their content, there would be a reasonable expectation of serious repercussions. This could easily lead to the future supply of confidential information to the department being prejudiced. After viewing the documents we agreed with their exemption under clauses 13(b) and 16(a)(iv) (i.e. that the information was obtained in confidence, and that disclosure could reasonably be expected to prejudice the future supply of information to the department and to have a substantial adverse effect on the

effective performance of it's functions). In this case, disclosure would have been contrary to the public interest.

'The FOI Act should never have been introduced!'

A former prison officer with the Department of Corrective Services, who had left for medical reasons, complained that he had been refused access to some disciplinary reports written about him. He also complained that other disciplinary reports had been wrongly filed on his personnel file. Those reports were removed when we pointed out that under personnel guidelines they should not have been placed on his personnel file if he had not been found guilty of a breach of discipline.

The department claimed that several disciplinary reports were exempt under clauses 6, 13(b) and 16(a)(iv) and (b) of Schedule 1 as the documents had been marked 'Private and Confidential'. We did not agree and asked the department to review its determination under s.52A(1)(a) of the Act and release the documents. We felt that the supervisors should stand by their comments concerning the prison officer. As well, normal personnel procedures state that staff should have the opportunity to sight and respond to all adverse reports.

Because 'Private and Confidential' had been placed on the reports does not mean they should be exempt under the *FOI Act*, particularly as the reports could be said to concern his personal affairs. The department did not agree and refused to release the reports.

In the end our complainant decided to lodge an appeal with the ADT. However, before the matter went to a hearing, the department and the applicant entered into negotiations with the department agreeing to release all documents it had previously maintained were exempt.

It is a matter of some concern that, when discussing this matter with us, a senior manager with the department stated that the *FOI Act* should never have been introduced and that the Act stopped public officials providing written reasons for their decisions. He claimed that the *FOI Act* has meant senior managers now verbally direct staff rather than place matters in writing so as to avoid material being sought under FOI.

Should HSC results be widely published?

A journalist applied to the Department of Education and Training for various documents about the HSC, including detailed state-wide results, trends in educational results and information on the state wide performance of all schools. The information sought by the journalist was contained in both written documents and on the department's computer system. The department's determinations were delayed and not made in accordance with obligations imposed by the *FOI Act*, as they did not properly set out those documents held by the department subject to the FOI application. In addition, the reasons for refusing access to the documents did not meet the requirements of the Act.

We held several meetings with, and made written inquiries to, the department in order to identify the precise documents and information requested. The journalist claimed that the department was misleading us by not providing all documents and information that were subject to the FOI application. During our inquiries, and well after it had determined the application, the department obtained a certificate from the Cabinet Office stating that two documents were Cabinet Office documents, which meant that the department did not have to provide those two documents to us.

As the journalist felt that the department would continue to mislead us and would, in their view, simply ignore any recommendations we made to release the documents, she decided to appeal to the ADT, as it has the power to direct an agency to release documents. We advised the journalist to complain to us again if the ADT should find that the department intentionally withheld documents from us during our inquiries about her complaint.

My business card is legally privileged!

We received a complaint from a doctor about the South Eastern Area Health Service (SEAHS). The doctor had been involved in an industrial dispute in a public hospital and had been denied access under the *FOI Act* to five documents, all of which were claimed to be subject to legal professional privilege. While two of these documents were certainly legally privileged, another report was not and was released to the doctor by the SEAHS as a result of our suggestion under s.52A of the *FOI Act*.

The other two documents were photocopies of the business cards of private solicitors representing the hospital in the industrial dispute. No other information was contained on the photocopies. The SEAHS's determination to exempt the photocopies of the business cards of the solicitors was supported by the legal firm representing the SEAHS. In telephone discussion with us, a partner of the private legal firm representing the SEAHS claimed that the determinations to exempt the business cards were correct and that copies of a solicitor's business cards could be subject to legal professional privilege.

We disagreed with what was clearly an absurd proposition and requested the SEAHS to release the

copies of the business cards to the doctor, which they did.

Should a private company use the facilities of a public hospital for profit?

A research scientist applied to the Department of Health for a report by us about the Department of Health itself. Our reports are not public documents unless the relevant minister, department or complainant make them public or we table the report in Parliament. The report concerned our investigation into the department's response to an internal audit report on the setting up of a private company by senior doctors at a public hospital. That company had been formed to allow those doctors to conduct tests for private customers using public hospital premises and public medical facilities. The audit report submitted that the medical staff involved may have committed wrong conduct and that the department should take measures to ensure procedures are put in place to prevent a similar problem recurring. The department had refused the scientist access to those parts of the report relating to the doctors, claiming release would be an unreasonable disclosure of their personal and business affairs.

We suggested to the department that the entire report should be released, as the reason the doctors had been able to establish the company was because they were publicly employed medical officials and had profited personally from the use of public facilities. In addition, we informed the department that the release of the remainder of the report would, in our view, be in the public interest. This would allow the applicant to learn that the department had not adequately complied with the recommendations of the audit report to ensure such improper conduct did not happen again. The department agreed to release the report.

A freeway through the centre of town!

In late 1997 it was decided to build an extension to the Hume Highway through the centre of Albury, rather than bypassing the city. Save Our City, a group opposed to the decision, applied to the Environment Protection Authority (EPA) for all documents concerning the EPA's involvement in the decision. While the group were given access to a lot of documents, some significant documents were claimed as exempt under clause 9 of Schedule 1 on the basis they were internal working documents of the EPA. The group told us that one of these exempt documents was leaked to it from the EPA. This document showed that the Department of Urban Affairs and Planning gave the EPA, late on a Friday afternoon, a report about options for the Hume Highway extension and asked for comments by the following Monday morning. The proposal to build the road through Albury was announced by the Minister four days later.

We wrote to the EPA expressing our view that the documents should not be exempt under clause 9 as a decision about the Hume Highway bypass had already been made. In addition, we felt that it was in the public interest that the FOI applicant be informed of the EPA's input and views regarding the proposal to build the freeway, particularly as the route had been a controversial choice. Although the EPA agreed to release most of these documents, it still refused to release some and belatedly claimed that one was a Cabinet Office document and should not be disclosed.

We also suggested that a 50 per cent reduction in processing fees should be given as we felt the FOI applications had been made in the public interest. The EPA agreed to this. The group has appealed to the ADT about the EPA's refusal to release the remaining documents.

This year marks the 10th anniversary of the *Freedom of Information Act*. David Watson, Investigation Officer, examines an FOI application for review.

SOME RESOLVED COMPLAINTS

Not special branch again!

Some time ago our complainant found a listening device in his home and alerted local police. When he suggested that there may be political motivations for the placement of the device, the local police called in officers from the former special branch. The special branch investigators wanted to take the device away, which our complainant would not allow. As a result of his contact with the special branch officers, he discovered that there may be a special branch file on him and applied for access to it under the *FOI Act*. He complained to us when the Police Service did not confirm or deny whether there was a special branch file about him.

Following months of inquiries, we were forced to use our powers under

the *Ombudsman Act* to compel the Police Service to provide to us the special branch documents about the complainant. We then invited the complainant to formally apply under the *FOI Act* to the Police Service to obtain access to his file, which subsequently occurred.

Access to subdivision plans

Wingecarribee Shire Council refused access to the plans of a small subdivision under clauses relating to personal affairs, internal working documents and endangerment to the security of a building (clauses 6, 9, 4(1)(g)). The FOI applicant was a developer who had been employed by the owner of a large suburban block of land to draw up plans for a group of townhouses. After the plans were submitted to council, the owner and the developer had parted company and the plans were not fully paid for. In his complaint to us, the developer stated that his plans had been copied by the owner's new architect and, with amendments expanding the number of units, had been resubmitted to council. The FOI application sought access to the amended plans. The applicant believed that a breach of copyright had occurred. Our preliminary inquiries revealed he may have been right. About 45 per cent of the plans were virtually identical to those prepared by the FOI applicant. Consequently, there was a certain irony in the council's determination which refused access in part on the basis that disclosure could reasonably be expected to endanger the security of the buildings (clause 4(1)(g)). When we discussed the matter with council the new general manager decided to release the plans.

How did you vote councillor?

A resident of Tweed Shire applied to Tweed Shire Council for documents showing how each councillor had voted on a successful motion to demolish an illegal balcony erected by the resident. The council refused access as the original meeting about the vote had been closed to the public. However, the only reason the meeting was closed was that it concerned the resident's personal affairs. Because the document sought merely showed how elected public officials had voted about an issue concerning his personal affairs, we suggested the council release the document, which occurred soon after. As a partial result of this complaint, the council changed its policy to always disclose how its councillors voted on a particular issue.

CONFIDENTIALITY AND FOI: THE USE AND ABUSE OF CLAUSE 13

Clause 13 and its equivalent in other jurisdictions is one of the most called upon exemption clauses in FOI. In our view this clause has been overused and its terms should be interpreted more narrowly than is usually the case.

Clause 13 states that a document is an exempt document if it contains matter the disclosure of which would found an action for breach of confidence. It is also exempt if it contains matter the disclosure of which:

- would otherwise disclose information obtained in confidence; and
- could reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
- would, on balance, be contrary to the public interest.

It is our view that parts (a) and (b) of clause 13 are mutually exclusive and that both parts cannot be used to exempt the same document, a view that is shared by Anne Cossins in *Annotated Freedom of Information Act* New South Wales (LBC Information Services 1997) (p400).

Clause 13(a)

In deciding whether or not clause 13(a) applies to documents, a FOI practitioner needs to construct a hypothetical case for breach of confidence against the agency. They must then decide whether or not that action would be successful. In our view *Re B and Brisbane North Regional Health Authority* (1994) provides an authoritative outline of the relevant tests that should be applied.

In deciding whether clause 13(a) applies, practitioners need to consider whether the information in the documents is:

Specific

Is it clearly identifiable, can the documents be listed in a schedule, have the specific parts of the documents which contain confidential information been identified and differentiated from other matter which is available for access under the *FOI Act*.

Confidential

Is it clear from the facts surrounding the documents that the confidential information in them has been disseminated, if at all, on a very limited basis, is not public, and is not widely known?

Covered by an obligation of conscience

Do the facts relating to the agency's receipt of the documents sufficiently suggest that an 'obligation of conscience' exists on the recipient not to disclose the information? If there is no explicit obligation, is there an implicit obligation to keep the information confidential in the circumstances of the confiding and receiving of the information?

Likely to be misused

Would disclosure under the *FOI Act* be likely to constitute an unauthorised use of the information?

Likely to cause detriment to the confider

Would the disclosure cause or be likely to cause detriment to the provider of the information?

Of sufficient public interest to warrant disclosure

In a hypothetical situation where a case for breach of confidence was brought against an agency, would the person disclosing the information be able to successfully defend their disclosure by arguing that it was in the public interest to do so?

Clause 13(b)

Some important issues to remember about clause 13(b) are:

If information is exempt under clause 13(b) it cannot be exempt under clause 13(a).

A reasonable expectation of prejudice to future supply will not exist where:

> Persons are under an obligation to continue to supply such confidential information (eg, for government employees, as an incident of their employment; or where there is a statutory power to compel the disclosure of information) or persons must disclose information if they wish to obtain some benefit from the Government (or they would otherwise be disadvantaged by withholding information)
>
> (*Re B* (1994) 1 QAR 279 at 341)

(there are many other instances where prejudice to future supply is not likely).

The public interest test is a separate test — it is not met just because the first two tests are met.

A determination must demonstrate the reasons for disclosure which are in the public interest as well as those which are against the public interest and must show that the latter outweigh the former.

Example 1

Where an allegation is made to an agency about a third party, there is generally a strong public interest in the allegations being released. For example, for the purpose of procedural fairness, or to discourage bad faith allegations. However, in particular cases, there may be even stronger public interest considerations in the non-disclosure of such allegations.

Example 2

In a clause 13(a) matter we accepted that this applied. At that time we did not consider the public interest defence as a test to be met before the clause could apply. The documents concerned were statements by former work colleagues of the applicant. The statements had been sought by the applicant's supervisor to prove an alleged pattern of conduct by the applicant. We found that the supervisor had given undertakings of confidentiality to the people making the statements. However, after a close examination, we concluded that there were overriding public interest concerns that required the release of certain statements. Briefly, some of these were:

- that the applicant be given, as a matter of procedural fairness, access to the statements which had been made about him;
- a number of precedents exist that uphold an individual's 'right to know' information that concerns them (the existence of the *FOI Act* establishes this);
- an organisation's assurances of confidentiality are not absolute. In future, information may be the subject of an FOI application and, if so, the decision whether or not to release the information will be made in accordance with the requirements of the *FOI Act*. In this situation, the promise of confidentiality cannot be guaranteed.

The practice of giving all-embracing assurances of confidentiality needs to stop. Hypothetically, a person disclosing the information the subject of an FOI application would be able to successfully defend themselves using a public interest argument against any action for breach of confidence.

Example 3

Documents concerning notifications of children at risk have been accepted by us as exempt under clause 13(b) although it may be a simple matter of identifying information in relation to the informant which is appropriately exempt.

Example 4

Notes made by inspectors during an audit via interviews with employees have been accepted as exempt under clause 13(b). The willingness of employees to speak in the future about problems in the workplace could be affected if the documents were disclosed, and there is a public interest in audits continuing to be effective.

Example 5

We disagreed with the exemption of a statement made by a staff member from Junee Correctional Centre about the FOI applicant in relation to a sexual harassment allegation. The applicant was dismissed following the allegation. The FOI applicant was already aware of the identity of the staff member and the nature of the allegations that had been made.

Example 6

Information relating to a complaint to the Anti Discrimination Board by an FOI applicant was accepted as exempt on the basis that information from the involved

parties was submitted in confidence and was essential to resolving complaints.

Example 7

Letters sent to the former Department of School Education by members of a community following an ongoing and intense dispute at the local school were accepted as exempt.

Example 8

A letter sent to the Roads and Traffic Authority claiming that an aged pensioner's driving was unsafe was accepted as exempt as we agreed that it was definitely in the public interest that people's lives on the road should not be endangered.

AUDIT STATISTICS

During the year we again audited compliance by government agencies with the annual reporting requirements of the *FOI Act* (our third audit of FOI annual reporting).

From this audit it appears that:

- our estimate of the overall number of FOI applications made to NSW agencies in 1997–98 is approximately 10,000, a decrease of about 2.5 per cent from the previous year, which in turn was about six per cent below our estimate for 1995–96;
- the number of applications resulting in full or partial release of documents increased by approximately 7.6 per cent over the previous year, however the number of applications resulting in access being completely refused remained largely the same. The fact that full and partial approvals, and refusals all increased over the same period was possible because the overall number of determinations increased over the same period by approximately seven per cent;
- as with previous years, little use was 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;
- there has been a continuing serious failure by a significant number of NSW government agencies to comply with the summary of affairs requirements of Act; and
- a review of the summary of affairs published by NSW government agencies in the last three reporting periods indicates a significant, widespread and increasing failure to comply with the requirements of the Act.

While 129 agencies were the subject of this audit, the results are drawn from 105 annual reports for the year 1997–98. The remainder consisted of ministerial offices whose statistics are all included in the Premier's Department's annual report, and agencies that failed to publish an annual report for 1997–98. The original audit of annual reports for 1995–96 involved 135 agencies, however, since that time six of those agencies have either been combined or privatised.

Use of FOI by the public

In our previous two annual reports we estimated that most NSW agencies would have received on average less than eight FOI applications each year. From the statistics available, we assume that this figure is still relevant for the 1997–98 reporting year.

In the our special report to Parliament in 1997, *Implementing the FOI Act — A snap shot*, we estimated that between 10,500–11,000 formal FOI applications were made to NSW public sector agencies in 1995–96, with our best guess being approximately 10,800. Arising out of our audit of FOI statistics for 1996–97 we estimated that this overall figure declined by approximately 600 to around 10,200 applications. From our audit of the 1997–98 statistics we estimate that the overall figure is now around 10,000. From these statistics we also estimate that approximately 75 per cent of those applications concerned the personal affairs of the applicant.

The decrease in the estimated numbers of FOI applications between 1995–96 and 1997–98 can be attributed primarily to the significant decrease in FOI applications to area health services, who together, were by far the largest recipients of FOI applications in 1995–96. This has resulted from their adoption of open access policies recommended by the Department of Health and strongly supported by us. Implementation of these policies has seen the number of formal FOI applications made to area health service's decrease by over a third in the last three years.

A further factor in the decrease is the adoption by many local councils of open access policies, normally including automatic public access to objections to development applications (DAs) on request. March 1998 amendments to the *Local Government Act* expanding the public's automatic right of access to documents should have a significant impact on the number of FOI applications to councils from next year.

Determination of FOI applications by NSW agencies

In 1997–98 all requested documents were released in approximately 76 per cent of determinations reported in the audit, a decrease of approximately 2.3 per cent from

1996–97. A large majority of determinations, 91 per cent, resulted in the release of either all or some of the documents requested, an increase of approximately two per cent from the 1996–97.

Only 7.9 per cent of reported applications resulted in access being completely refused, approximately a one per cent increase on 1996–97. A further 13 per cent of reported applications resulted in access being refused in part, an approximately two per cent increase on 1996–97. In relation to the 1,576 applications refused in whole or in part, approximately 150 applicants, 9.5 per cent then sought an internal review by the agency concerned. Of these only 42 (28 per cent) were reported as being successful with the original determination being varied.

Complaints to us

Of the 106 reported applications for internal review which were fully unsuccessful (i.e. the original determination was upheld), it was reported by agencies that approximately 37 per cent complained to us. In fact this figure is much higher. The audited agencies may not have been informed about complaints to us which were declined, for example 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 us was 140 (see table 7).

As in previous years the results of the audit indicated that most FOI complaints made to us appeared to relate to agencies that receive relatively few FOI applications.

Only seven appeals were reported by the audited agencies as having been made to the District Court now replaced by the ADT.

Refusal of applications

Included in the overall numbers of determinations, where access was refused in whole or in part, is a large number of instances where agencies reported that the basis of their decision was that the documents required were not held by the agency, or were otherwise publicly available (see table 6).

The total **percentage** of applications where access was reported to be refused (either in full or in part) in 1996–97 was approximately 18 per cent and in 1997–98 was approximately 21 per cent. However, after discounting the applications where the requested documents did not exist or were not held by the agency, or the documents were already publicly available, the percentage of reported refusals of access (in full and in part) to otherwise confidential documents in 1996–97 was approximately 13.6 per cent and in 1997–98 approximately 15 per cent.

Of the sample of 129 agencies the subject of the audit, those that refused most applications included the NSW Police Service, South Western Sydney Area Health Service, South East Sydney Area Health Service, Roads and Traffic Authority, Central Sydney Area Health Service, Department of Corrective Services, Department of Fair Trading, State Rail Authority and Department of Health.

Interestingly, three area health services are in the top ten agencies for refusals of access, whereas most of the other 14 area health services refused few, if any, applications.

A more meaningful picture can be obtained by ranking agencies on the basis of the percentage of total applications that were refused in full (see table 8).

Table 6: Documents not held or otherwise available

	1996–97	1997–98
Refusal (in full or in part):	1372	1576
• Not held or otherwise available (incorrectly reported as refusals)	339	457
• Refusals based on exemption clauses	1033	1119

Table 7: FOI complaints completed by category A five year comparsion

CATEGORY	1994/95	1995/96	1996/97	1997/98	1998/99
Outside jurisdiction	18	9	20	21	7
Declined at outset	6	6	2	6	7
Agreed with determination in full or part	20	33	23	24	17
Resolved	38	39	58	42	37
Mediated	–	–	–	2	0
Various	22	29	27	53	64
Adverse finding	4	4	3	0	0
Total	**108**	**120**	**133**	**148**	**132**

To put these statistics in proper perspective, the average refusal rate across all agencies the subject of the audit was 4.5 per cent.

Another interesting calculation is to look at the percentage of refusals, both in full and in part, compared to the total number of applications (see table 9).

To put the figures in this table in context, consider that for the sample agencies, the average number of applications refused in full was approximately 4.5 per cent, the average number refused in part was approximately 7.7 per cent, and the overall average for both full and partial refusals was 12 per cent.

While the high percentage of refusals is understandable from agencies such as the departments of Corrective Services, Community Services and Health, on the basis of the need for the protection of privacy or for security reasons, the reasons for the high percentage of refusals for other agencies are not so readily apparent.

Table 8: Percentage of applications refused in full

NAME OF AGENCY	TOTAL APPLICATIONS	NO. REFUSED IN FULL	% REFUSED IN FULL
Premier's Department	18	10	55.5
Olympic Coordination Authority	4	2	50
Attorney Generals Dept	11	5	45
State Transit Authority	10	3	30
Treasury (Office of Financial Management)	24	6	25
Industrial Relations, Dept of	17	4	23.5
State Rail Authority	93	19	20.4
Sydney Water	30	6	20
Fisheries, Dept of	25	5	20
Gaming and Racing, Dept of	31	6	19
South West Sydney Area Health Service	342	63	18
Central Sydney Area Health Service	244	44	18
Roads and Traffic Authority	286	52	18
Health, Dept of	70	12	17
Urban Affairs and Planning, Dept of	43	6	14
South Eastern Sydney Area Health Service	500	62	12.5
Corrective Services, Dept of	251	29	11.5
National Parks and Wildlife Service	37	4	10.8
Housing, Dept of	97	9	10
Land and Water Conservation, Dept of	69	7	10
Fair Trading, Dept of	216	19	8.8
Gosford City Council	104	9	8.6

Ministerial certificates

It is positive to note the fact that no ministerial certificates have been issued within the last two years. A ministerial certificate is taken to be conclusive evidence that documents are restricted documents, namely cabinet documents, executive council documents, or documents affecting law enforcement and public safety.

Amendment of records

As in previous years, very little use was made of the amendment provisions of the *FOI Act*. This is where a person is of the opinion that information in an agency's record is incomplete, incorrect, out of date or misleading. There were only eight reported applications

Table 9: Percentage of applications refused in part or full

AGENCIES	TOTAL APPLICATIONS	FULL REFUSALS %	PART REFUSALS %	TOTAL REFUSALS %	REFUSALS IN FULL OR PART
Attorney Generals Dept	11	45	45	90	10
Treasury (Office of Financial Management)	24	25	58	83	20
Premier's Dept	18	55	11	66	12
State Rail Authority	93	20	41	61	57
Health, Dept of	70	17	43	60	42
Community Services, Dept of	125	3	54	57	72
Urban Affairs and Planning, Dept of	43	14	39	53	23
Corrective Services, Dept of	251	11	40	51	130
Sydney Water	30	20	27	47	14
Environmental Protection Authority	86	8	37	45	39

made for amendment of personal records in 1997–98, down from 11 reported in 1996–97 and 14 reported in 1995–96.

As stated in previous annual reports, 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, from the 1997–98 annual reports:

- approximately 15 per cent of the audited agencies (i.e. 20) received 82.6 per cent of the **reported** FOI applications, a similar percentage to last year;
- the 20 audited agencies that received the most FOI applications received approximately 61 per cent of our estimate of the total number of FOI applications made in NSW in 1997–98, a similar result to last year;
- seventeen per cent of audited agencies, i.e. 22, received no FOI applications and made no return, a similar result to last year;
- the remaining 68 per cent of audited agencies, i.e. 87, received an average of 14.7 FOI applications each. On the basis of our 1995–96 audit results we estimated that it is likely that most agencies in NSW would have received less than eight FOI applications, a figure that is unlikely to have changed significantly for most agencies in 1997–98;
- forty eight agencies that reported having consulted with members of the public each consulted 48 people on average (although, if the 1,200 consultations conducted by the Department of Urban Affairs and Planning are not counted, then each agency consulted 23 people on average, a similar figure to last year); 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 within the course 1996–97 prior to releasing documents, a similar figure to last year.

Table 10 lists the 20 audited agencies that received most FOI applications in 1997–98. The numbers in brackets indicate the ranking of each of agency in relation to their 1995–96 annual reports. The agencies no longer appearing in the list include the Central Coast Area Health Service, Byron Shire Council, New Children's Hospital, Westmead, Department of Health and Hunter Area Health Service.

Table 10: Agencies receiving most FOI applications in 1997–98

	NO. OF FOI APPLICATIONS	1995–96 RANKING
NSW Police Service	1,952	(1)
South Eastern Sydney Area Health Service	500	(2)
WorkCover	402	(13)
South Western Sydney Area Health Service	342	(4)
Wentworth Area Health Service	328	(5)
Roads and Traffic Authority	286	(9)
Community Services, Dept of	251	(8)
Central Sydney Area Health Service	246	(7)
Western Sydney Area Health Service	217	(3)
Fair Trading, Dept of	216	(11)
Total	**4,740**	**(64.3%)***
Northern Sydney Area Health Service	198	(6)
Illawarra Area Health Service	197	(15)
Education and Training, Dept of	174	-
Sutherland Shire Council	149	(14)
Blacktown City Council	127	-
Community Services, Dept of	125	(18)
Gosford City Council	104	-
Housing, Dept of	97	-
State Rail Authority	93	(17)
Environmental Protection Authority	86	-
Total	**6,090**	**(82.6%)***

* percentages of total applications received by audited agencies (i.e. 7,368) in 1997/98)

Our audits

As mentioned in our last two annual reports, 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:

- 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.

In the past year we have continued our program to audit government agencies compliance with the requirements of the *FOI Act*.

Audit program

The FOI audits for 1997–98 included an assessment of compliance:

- by a sample of 129 agencies with the annual reporting requirements set out in s.68 of the *FOI Act*, cl.9 of the Freedom of Information (General) Regulation and Appendix B to the Premier's Department *FOI Procedure Manual* (3rd edition) in 1994; and
- by NSW government agencies with the summary of affairs reporting requirements set out in s.14(1) of the *FOI Act*.

FOI annual reporting

Our most recent audit revealed a continuing poor level of compliance by public sector agencies with the annual reporting requirements of the *FOI Act*.

Approximately 40 per cent of the agencies audited did not comply with the FOI annual reporting requirements, up from 37 per cent last year:

- three per cent completely failed to comply compared with two per cent last year, i.e. no annual report or no reference to FOI reporting requirements;
- thirty seven per cent inadequately complied compared with 35 per cent 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;

This included:

- eleven per cent increase in the number of agencies that failed to include the required assessment of their experience with FOI during the year, up from approximately 28 per cent in 1996–97 to 39 per cent in 1997–98; and
- a slight increase in the number of agencies that failed to record the necessary FOI statistics up from approximately 43 per cent in 1996–97 to 45 per cent in 1997–98.

Approximately 60 per cent of the agencies adequately or fully complied with annual reporting requirements, down from 63 per cent last year:

- forty three per cent adequately or fully complied, down from 46 per cent on last year i.e. the content and format of the annual reports either fully complied, or generally complied although certain information was not included; and
- seventeen per cent lodged no returns, similar to last year i.e. the agencies reported they received no FOI applications.

These deficiencies are both unacceptable and inexcusable. There is no doubt what is required to be included in annual reports, or the format that is to be adopted. These matters are clearly and comprehensively set out in the Regulation and Appendix B to the Premier's Department *FOI Procedure Manual*.

The types of common problems we identified during the audit included failure to:

- indicate how applications were dealt with;
- provide any statistics for the previous year;
- indicate whether any applications concerned the personal affairs of applicants, and if so how they were dealt with;
- properly record processing times. There appears to be a continuing belief on the part of a number of agencies that they still have 45 days in which to determine FOI applications, but this period has been 21 days for more than six years!;
- indicate whether any consultations took place, and if so how many;
- indicate the effect of FOI on the agency;
- provide information about internal and external reviews and appeals.

An additional problem appears to be a surprising belief by at least nine of the audited agencies that they are still able to exempt documents from release on the basis that they are more than five years old. This provision was repealed approximately seven years ago.

Summaries of affairs

We conducted an audit of compliance by NSW government departments and statutory authorities with the summary of affairs reporting requirements in s.14(1) of the *FOI Act*.

This involved determining which agencies had failed to publish a summary of affairs in December 1998 and June 1999 as required. The results of this assessment were compared to those for the June 1998, December 1997 and June 1997 reporting periods. This comparison included consideration of the average length of published summaries of affairs (admittedly a very rough and ready measure of performance with the content requirements of section 14(3)) (see table 11).

While the figures for the December 1998 and June 1999 FOI government gazettes show a distinct improvement both in the number of agencies publishing and in the average length of summaries of affairs, the results were disappointing in other respects:

In December 1998:

- at least 47 state government agencies failed to publish a summary of affairs;
- thirty one of the 68 agencies that failed to publish a summary of affairs in the June 1998 reporting period also failed to publish a summary of affairs in the December 1998 reporting period; and
- of the at least 29 agencies that failed to publish a summary of affairs in the last four reporting periods, 20 have now failed to published a summary of affairs for the last five reporting periods.

In June 1999:

- at least 39 state government agencies failed to publish a summary of affairs;
- twenty six of the 68 agencies that failed to publish a summary of affairs in the June 1998 reporting period also failed to publish a summary of affairs in the June 1999 reporting period, 23 of which also failed to publish a summary of affairs in the December 1998 reporting period; and
- at least 17 agencies have failed to publish a summary of affairs for the last six reporting periods.

These results are particularly unsatisfactory given the very recent steps taken by the Premier and the Director-General of the Premier's Department to remind ministers and agencies of their commitment to full and proper reporting, and of their responsibilities in regard to the publishing requirements in section 14 of the *FOI Act* (see *Ministerial Memorandum 98–30* and *Premier's Department Circular 98–93*). The Director-General specifically reminded chief executives of FOI publication and reporting requirements, including drawing attention to the due date for publication of summaries of affairs in the December FOI government gazettes.

The results of a similar review of compliance by NSW local councils with the summary of affairs reporting requirements in s.14(1) of the *FOI Act* over the last nine reporting periods are set out in below (see table 12).

Again we accept that the average number of pages in each summary of affairs is a very rough guide to compliance with the requirement to list all policy documents in summaries of affairs.

We wrote to all councils in late 1996 indicating our intention to audit summaries of affairs and enclosing a list of policy documents most likely to be relevant to councils in NSW. As can be seen from the table, since that time there has been a significant and sustained increase in the length of council summaries of affairs. Unfortunately there are still a number of councils failing to lodge a summary of affairs.

Table 11: Audit of summaries of affairs (Government departments and statutory authorities)

DATE OF GOVT GAZETTE	AGENCIES	NO. OF PAGES	AVERAGE NO. OF PAGES
June 1999	116	655	5.6
December 1998	109	597	5.5
June 1998	87	431	4.9
December 1997	102	482	4.7
June 1997	91	449	4.9

* not including two agencies that each published two separate summaries of affairs!

Table 12: Audit of summaries of affairs (Local council)

DATE OF GOVERNMENT GAZETTE	PAGES IN GOVT GAZETTE	ANNUAL % CHANGE IN NO. OF PAGES	CUMULATIVE % IN NO. OF PAGES PER SUMMARY	NO. OF COUNCILS REPORTING*	AVERAGE NO. OF PAGES
June 99	**529**	**5%**	**35%**	**167**	**3.1**
December 98	500	0%	32%	167	3.0
June 98	500	-2%	32%	165	3.0
December 97	509	-2%	33%	167	3.0
June 97	519	15%	34%	172	3.0
December 96	442	22%	23%	174	2.5
June 96	346	0%	1%	170	2.0
December 95	346	1%	1%	165	2.1
June 95	342	-	-	169	2.0

* out of a total of 177

1998/99

protected disclosures

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Our primary role in relation to protected disclosures is to deal with:

- **disclosures concerning maladministration by public authorities or officials;**
- **complaints concerning the implementation of the *Protected Disclosures Act*; and**
- **concerns raised, or complaints made, by whistleblowers and witnesses concerning detrimental action taken against them arising out of protected disclosures.**

By agreement between the investigating authorities under the *Protected Disclosures Act*, we are also primarily responsible for the provision of advice to public officials who are contemplating making a protected disclosure or who are charged with responsibility for the implementation of the Act.

The *Protected Disclosures Act* has now been in operation for over four years. The passage of the Act was a significant statement about the public interest in facilitating the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector. The Act promised practical measures to support the rhetoric about a fair, ethical and accountable public sector. The message, that officials who came forward with disclosures about corrupt conduct, maladministration and serious and substantial waste would be supported and protected, was given statutory force. It seemed that the Act would create substantial opportunities for public sector improvements.

The challenge over the last four years has been to ensure that rather than being merely symbolic, the Act is a practical, workable and effective mechanism for achieving its objectives. Two tangible measures of its impact are the extent to which agencies have committed themselves to the Act and its objectives; and the number of protected disclosures being made throughout the public sector. The results of our audit of agency internal reporting procedures, and a survey of protected disclosure co-ordinators, show that a substantial number of agencies have put into place systems to deal with disclosures and to inform staff about the procedures available.

However, there are still too many agencies that have failed to do so. Without proper systems in place to deal with protected disclosures, together with staff conversant with the complexities of the Act, we are concerned about the capacity of a significant number of agencies to appropriately deal with any disclosures they may receive.

From our audits and the survey of protected disclosure co-ordinators, it appears to us that the number of public officials using the Act to make disclosures about corrupt conduct, maladministration and serious and substantial waste has been low. Over 70 per cent of the protected disclosure co-ordinators who responded to the survey conducted by the Protected Disclosures Steering Committee reported that they have never dealt with a protected disclosure.

It seems unlikely to us that such low numbers of disclosures means that such problems do not exist in the public sector. The more likely explanations for this level of response by public officials to the Act include:

- concerns among public officials about how real the protections offered by the Act are;

- uncertainty among public officials about whether their disclosures will be pursued; and
- a perception, in some cases well founded, concerning the high threshold required in order for a matter to be a protected disclosure.

From the inquiries we have received we have also noted a reluctance on the part of public officials to make disclosures about industrial matters (such as selection procedures) directly to the agency concerned. These matters fall outside our jurisdiction, and in a large number of cases there is no other viable external avenue of redress. This disturbing observation indicates that such matters are going unaddressed, and that public officials from a range of agencies have little confidence that the spirit of the *Protected Disclosures Act* has or will be embraced within their agency.

The way in which an agency treats its whistleblowers is a good indicator of both its professionalism and its acceptance of the principles of accountability. The attitude taken by us has consistently been that it should make little difference whether a disclosure meets all the technical requirements of the Act or not. Provided it is a bona fide disclosure it should be dealt with in the same way in terms of protecting the whistleblower and responding to the disclosure.

In an effort to make the protections offered under the Act more meaningful, an amendment has been made to the *Protected Disclosures Act*. This effectively reverses the onus of proof in relation to 'detrimental action', i.e., reprisal action taken against a person for making a protected disclosure.

Once the whistleblower has demonstrated that they have made a protected disclosure, and have subsequently been subjected to detrimental action, it now is up to the defendant to prove that this action was not in reprisal for the whistleblower's disclosure. Only time will tell whether the reversal of the onus of proof has made a difference.

PROTECTED DISCLOSURES MADE TO US

Formal written protected disclosure complaints to us have been steadily increasing since the commencement of the Act. In the 1998–99 period we received 113 formal written protected disclosure complaints, a 16.49 per cent increase over the previous year. Informal oral complaints and inquiries fell from 119 to 87. Protected disclosures made directly to us by police officers accounted for 84 of the 113 formal written protected disclosures received.

It should be noted that the majority of cases of whistleblowing from within the Police Service are not included in these statistics. The only cases that are captured are those disclosures made by members of the Police Service directly to us, disclosures made by unsworn members of the Service and anonymous disclosures by police.

Amendments to the *Protected Disclosures Act* and the *Police Service Act* commencing in November 1998 put it beyond doubt that police officers can make protected disclosures under the *Protected Disclosures Act*. Even though there is a duty placed on police officers by the Police Service Regulation to report misconduct, s.9(4) of the *Protected Disclosures Act* now provides that any such disclosure is still made voluntarily for the purposes of that Act. Last year there were over 800 police internal complaints.

No internal protected disclosures were made to us.

PROTECTED DISCLOSURES MADE INTERNALLY TO PUBLIC AUTHORITIES

The survey of protected disclosure co-ordinators conducted by the Protected Disclosures Steering Committee provides a glimpse of the numbers of protected disclosures being made to public authorities. This survey showed that 173 protected disclosures had been dealt with by the respondents over their periods of appointment as protected disclosure co-ordinator. However, while the survey does provide some information on the topic, there are a number of reasons why the survey results do not provide a comprehensive measure of protected disclosures.

The survey was not specifically designed for this purpose, it was completed on a voluntary basis, and

Table 1: Complaints about protected disclosures A five year comparison

	WRITTEN COMPLAINTS	ORAL COMPLAINTS	TOTAL
1994–95*	7	19	26
1995–96	66	70	136
1996–97	84	95	179
1997–98	97	119	216
1998–99	113	87	200
Total	**367**	**390**	**757**

* The Act commenced on 1 March 1995. Statistics are only available from 1 March 1995 - 30 June 1995.

respondents were offered the option of responding anonymously. Moreover, the survey was designed to elicit the personal experiences of the individual protected disclosure coordinators, rather than the experience of the agency as a whole.

REPORTING ON PROTECTED DISCLOSURES MADE TO AGENCIES

In 1996 the Committee on the Office of the Ombudsman and the Police Integrity Commission (PIC) (Joint Parliamentary Committee) produced a report on the review of the *Protected Disclosures Act*. One of its recommendations was that statutory provision be made for regulations requiring public authorities to adopt uniform standards and formats for statistical reporting on protected disclosures.

Public authorities and statutory bodies are required under the *Annual Reports (Public Authorities) Act* and the *Annual Reports (Statutory Bodies)* to include in their annual reports details of the extent and main features of consumer complaints. However, there is no obligation to include equivalent information about internal complaints and in particular protected disclosures.

Information will be required by the Parliamentary Joint Committee to carry out the ongoing biannual reviews of the implementation of the *Protected Disclosures Act*, and to help ensure that agencies can be held properly accountable between such reviews. Given this, it would be of great assistance if the schedules to the Regulations made under the two annual reports Acts were amended to include a requirement to report on protected disclosures. This could include:

- the number of identified protected disclosures received;
- the number of protected disclosures referred on by the agency to another public official, public authority or investigating authority;
- the number of investigations undertaken and their outcomes;
- the impact of protected disclosures on the activities of the agency; and
- training and education initiatives undertaken to improve staff awareness and understanding of the *Protected Disclosures Act*.

In the absence of any action taken to date on the recommendation by the Joint Parliamentary Committee, we reviewed 75 annual reports for references to protected disclosures. Of the annual reports reviewed, 43 per cent contained some reference to protected disclosures. However, in the majority of cases this reference occurred in the context of the agency's internal reporting policy or, in varying degrees of detail, in the agency's code of conduct. In seven per cent of cases protected disclosures were referred to in the context of training. Only four per cent of annual reports provided statistics on disclosures received.

REVIEW OF INTERNAL REPORTING POLICIES

A Premier's memorandum, issued in November 1996, confirmed the requirement that all State Government agencies implement internal reporting procedures that provide clear and unequivocal protection to employees who make protected disclosures. In our last annual report we referred to the audit carried out by us into the internal reporting procedures adopted by state government agencies.

Responses from over 133 agencies were assessed. Where deficiencies were identified, the Deputy Ombudsman, on behalf of the Protected Disclosures Implementation Steering Committee, wrote to over 90 agencies drawing their attention to those problems. Responses from those agencies were then assessed and further communications sent to agencies where necessary.

To complete the review, and to develop a database of up-to-date internal reporting policies, letters were sent in April to 69 agencies requesting that they forward to us a copy of their current adopted internal reporting policy. At the time of writing responses had been received from 36 agencies. An assessment of the responses, or lack thereof, from the agencies found:

- thirty-three agencies, i.e., 48 per cent, had failed to respond as at the time of writing this report;
- ten agencies that responded had not addressed the problems previously brought to their attention;
- seven had made changes to their procedures/policies, but the documentation was still inadequate;

Table 2: Results of audit of standard internal reporting procedures

REVIEW PERIOD	VERY GOOD	ADEQUATE	INADEQUATE
1997/98	37 (28%)	15 (11%)	81 (61%)
1998/99	51 (39%)	16 (12%)	65 (49%)

- seven improved their documentation to an adequate standard; and
- five based their revised procedures on the model policy (Annexure A to the *Ombudsman's Protected Disclosures Guidelines*).

In summary, the results of our audit of the standard of internal reporting procedures are shown in Table 2.

As can be seen, the percentage of agencies whose documentation was at least adequate has increased from 39 per cent to 51 per cent between 1997–98 and 1998–99. Of the agencies whose documentation was found to be very good, or adequate, at the 1998–99 review, 39 had largely adopted the model policy and 17 had based their policy and/or procedures on the model to a significant degree (this was not always a complete success). In the coming year we intend to follow up with the 33 agencies that have not as yet responded to our April letters, as well as the agencies that did respond but whose documentation is still inadequate.

Agencies that do not respond to our requests for copies of internal reporting policies, or who do not properly address issues raised concerning the adequacy of such policies, will be named in submissions to the upcoming review of the *Protected Disclosures Act* and in our next annual report.

'Thank you for your detailed report and your invitation to comment further. Your suggestions for procedural improvement in the management of Protected Disclosures will be taken on board. Thank you for your advice and for highlighting opportunities for procedural improvement...'

SURVEY OF PROTECTED DISCLOSURE CO-ORDINATORS

In April the Protected Disclosures Steering Committee distributed a survey to all the protected disclosure co-ordinators in council and state agencies, metropolitan and regional, across the state. The purpose of the survey was to gauge the usefulness of, and level of satisfaction with, the resources produced to date to assist coordinators in their role. This will enable the committee and its member organisations to plan their future work programs and develop resources and training appropriate to the needs of co-ordinators across the state.

We received an encouraging 48 per cent response rate to the survey. Based on these results we were able to develop a profile of the 'average' protected disclosure co-ordinator. They have held the position for two years and are unlikely to have dealt with any protected disclosures in that time. The overall period for which co-ordinators had held the position ranged from 'as at the date of the survey' to five years. The survey also disclosed that while the maximum number of disclosures dealt with by any one co-ordinator was 50, the vast majority of co-ordinators (77 per cent) had never dealt with a disclosure.

The three principal resources available to assist protected disclosure co-ordinators are the *Ombudsman's Protected Disclosures Guidelines*, *ICAC's Introduction to Internal Investigation Booklet*, and the better management of protected disclosure workshop. The latter is conducted for local and state government officials at the instigation of the steering committee. Thirty one percent of co-ordinators had used one of these resources, 30 per cent had used two of them, 18 per cent had taken advantage of all three resources, while 21 per cent of co-ordinators had not used any. The survey results reveal that councils have a slightly higher use of resources than state agencies.

The most commonly used resource was the *Ombudsman's Protected Disclosures Guidelines*, followed by the *ICAC's Introduction to Internal Investigation Booklet*, and the better management of protected disclosures workshop. Not surprisingly the demand for these existing resources bore an inverse relationship to the resources already used. Co-ordinators were overwhelmingly positive about the resources. They reported that they provided a clear overview, good and practical guidance and that they alerted co-ordinators to the issues involved and their responsibilities under the Act. They also commented that they are a valuable reference tool and were useful in establishing the agency's internal reporting policy.

Co-ordinators were asked to nominate what they considered to be the greatest challenge to implementing the *Protected Disclosures Act* within their organisation. The results showed that staff understanding of the provisions was rated as the greatest challenge (nominated by 58 per cent of co-ordinators). The next most commonly identified challenge was the resources available to communicate with staff (25 per cent), followed by the co-ordinator's own understanding of the provisions (22 per cent) and management commitment to the aims of the Act (9 per cent). Several co-ordinators indicated that they did not perceive any challenges to implementing the Act.

Not surprisingly, those co-ordinators nominating their own understanding of the Act as the greatest challenge to implementing the Act had, on average, dealt with less disclosures, had been

co-ordinator for a shorter period of time and had used less resources.

Other challenges nominated by co-ordinators generally related to one of the following:

- maintaining their own awareness of the issues presented by the Act;
- maintaining staff awareness of the Act;
- overcoming staff reluctance to use the Act;
- dealing with staff apathy or indifference;
- staff confidence in the processes established through the Act or in the overall capacity of the Act to achieve its objectives;
- the time factor involved in dealing with disclosures, and
- management understanding of the Act.

The survey results provided valuable feedback on co-ordinators experiences with managing the Act. Many co-ordinators pointed to their lack of experience in dealing with protected disclosures. A proportion of the responses questioned the need and/or practicality of the legislation as regards smaller organisations (especially some of the smaller regional councils) and/or single purpose agencies.

A strong message conveyed by the survey responses is the on-going reluctance on the part of staff to make disclosures. Co-ordinators attribute this reluctance either to lack of confidence in the processes of the Act, or the culture that appears to prevail in certain quarters, which dictates that one does not 'dob in' a fellow employee. The difficulty involved in preserving the confidentiality of the whistleblower while investigating the disclosure was a further issue raised in the survey responses (see also case study 'Reconciling confidentiality with natural justice').

We continue to provide practical advice to public officials on a range of matters. Chris Wheeler, Deputy Ombudsman and Fiona Manning, Special Projects Officer, discuss amendments to the latest *Protected Disclosure Guidelines*.

Overall, the results of the survey give us confidence that protected disclosure co-ordinators and their agencies take seriously the objectives of the Act and their obligations under it. Many co-ordinators included comments in the survey which highlighted their organisation's commitment to the Act and the efforts that have been made to promote it. Contained in the survey responses are a variety of suggestions for additional resources that would assist co-ordinators in their task. The committee and its member organisations will be pursuing these suggestions.

THIRD EDITION OF THE OMBUDSMAN'S *PROTECTED DISCLOSURES GUIDELINES*

We have recently published the *Ombudsman's Protected Disclosures Guidelines (third edition)* to take into account amendments to the *Protected Disclosures Act* that came into effect on 27 November 1998 (referred to above). The guidelines have also been significantly expanded in the light of experience gained from the implementation of the Act. Copies are now available from us.

INVESTIGATION OF COMPLAINTS GUIDELINES

At the time of writing, we are finalising guidelines for the investigation of complaints. These guidelines are designed to assist in the investigation of complaints which raise administrative or disciplinary issues.

Despite the broader focus of the guidelines, there will be reference in relevant sections (in particular, the sections dealing with confidentiality and managing complainants) to the special considerations applying to the investigation of protected disclosures, and an examination of the practical implications of such considerations for investigators. A number of the appendices to the guidelines will relate exclusively to the conduct of investigations into

protected disclosures. These guidelines are due for release shortly.

CONFIDENTIALITY

Confidentiality is one of the most important and effective protections provided by the *Protected Disclosures Act*. For this reason, great importance must be placed on maintaining proper confidentiality of the identity of whistleblowers. We strongly support the principle that the identity of a person making a protected disclosure is to remain confidential and is not to be disclosed unless this is unavoidable.

The *Protected Disclosures Act* accepts that the right to confidentiality is a qualified one, and that there are circumstances where it will be possible or necessary to disclose identifying information. Section 22 of the *Protected Disclosures Act* provides:

> An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:
>
> (a) the person consents in writing to the disclosure of that information; or
>
> (b) it is essential having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
>
> (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

Depending on the nature of the protected disclosure, the investigating authority, public authority, officer or public official should be able to form a preliminary view on whether disclosure of identifying information will be necessary in order to properly conduct the investigation. Whistleblowers should be clearly advised at the outset of the terms of s.22. They should also be alerted that if the protected disclosure forms the basis of subsequent criminal or disciplinary proceedings it is most likely that the identity of the whistleblower will have to be disclosed, unless some form of suppression order is available and can be obtained.

In all cases where it is intended to identify a whistleblower, or to release information that would tend to identify the whistleblower, it is preferable that the whistleblower provides a written consent. If such consent is not forthcoming the investigating authority, public authority, officer or public official must carefully weigh the public interest in proceeding with the investigation against the public interest in protecting the whistleblower. Wherever s.22 criteria are determined to apply, the reasons for such decisions should be recorded on the file.

In practice, it is not always a clear cut exercise for the investigating authority, public authority, officer or public official to determine when the circumstances demand that identifying information be disclosed. However, as the following case study demonstrates, it is possible to extend procedural fairness to the person the subject of the protected disclosure whilst still preserving the confidentiality of the whistleblower.

Case study: Reconciling confidentiality with natural justice

We commenced an investigation into a complaint we had received arising from whistleblowing in a department of a regional TAFE college. Certain staff had made allegations of corrupt conduct, maladministration and serious and substantial waste by another member of staff. A preliminary internal investigation was commenced and staff members signed formal statements to investigating officers concerning corruption allegations against this officer. They say they were assured of confidentiality. Despite this, the statements were handed to the accused officer soon after.

At this time, it seemed the accused officer would face disciplinary proceedings. In fact, the accused officer never fully answered the case against him, and when he retired from TAFE on medical grounds (in mid 1996) the charges against him were dropped. The whistleblowers were not satisfied with this outcome.

For a complaint to be a protected disclosure within the meaning of the *Protected Disclosures Act*, it must be made to the head of the authority or to a person nominated within an adopted internal procedure established by a public authority for the reporting of allegations under the Act. The complainant, and his fellow whistleblowers, would need to have made their complaint directly to the head of the authority because of delays by the authority in establishing an internal procedure. The *Protected Disclosures Act* was proclaimed on 1 March, 1995. The TAFE Commission's protected disclosure guidelines were not published in the government gazette until 13 March, 1996.

We decided to make this matter the subject of an investigation. Partly this was because TAFE's responses to our preliminary inquiries appeared

to imply it believed the principles of procedural fairness always, or almost always, made it essential for the identity of the person/s making a disclosure to be revealed to the person named in the disclosure.

In taking this stance, TAFE relied on the provisions of the enterprise agreement governing disciplinary proceedings. In fact, this document only states that 'to accord the terms of natural justice' an employee who may be subject to the disciplinary process 'will be fully appraised of the subject matter of the disciplinary procedure [and] the relevant issues of evidence of the unsatisfactory conduct alleged'. It does not follow from this that the name of the person making the allegation shall be disclosed to the person about whom the allegation has been made.

The basic allegations made against the accused officer were that he had stolen TAFE property and had done private work using TAFE facilities. There was nothing apparent in the allegations that required the identities of the complainants to be revealed in order for the accused officer to be made aware of all relevant issues.

TAFE told us the disclosure of the preliminary investigation report and the signed statements which accompanied that report to the accused officer was:

> a conscious decision on the part of the Institute management based on the belief that the principles of natural justice required this level of disclosure in circumstances where the alleged offender was being charged as a direct result of, and on the sole basis of, those complaints. . . .Therefore I submit that s.22 of the Protected Disclosures Act was not breached as the disclosure was necessary for natural justice.

TAFE further advised that a TAFE Commission/Teachers Federation working party had been formed to review disciplinary procedures for teaching staff in the commission. TAFE advised the working party would review the issues raised in the case and seek compatibility with the *Protected Disclosures Act*. According to TAFE, a member of this working party who was involved in the case at issue had suggested:

> there is scope for improving the process whereby complainants and witnesses are advised of the extent to which confidentiality can be provided and the possible consequences of their signing a statement. In particular they could be notified of these in writing and could sign to indicate they have been so notified.

It seemed possible this could foreshadow a system whereby any employee of TAFE seeking to make a protected disclosure might be asked to sign a release form, to the effect that they understand confidentiality would not be guaranteed. Clearly this was not acceptable. We were pleased to be informed by the authority, when we had decided to make the matter the subject of an investigation, that:

> TAFE NSW recognises the importance of maintaining the confidentiality of those who make disclosures. This importance is needed, to protect those who make disclosures from reprisals, encourage disclosures to be made and facilitate follow-up action upon the disclosures. A decision not to maintain confidentiality will in all cases only be made on a case by case basis. The decision will only be made after properly considering the consequences of both doing so, and failing to do so.

This clarification of the authority's commitment to maintaining the confidentiality of whistleblowers reassured us that the authority's future practice would be in accordance with the Act.

PROTECTION FOR POLICE WHISTLEBLOWERS

Police whistleblowers continue to report harassment or victimisation as a consequence of becoming an internal witness. This can take a variety of forms including ostracism at work, verbal or physical harassment, being passed over for promotion or being given unfair assignments. Moreover, some police officers become the subject of pay back complaints. The case studies below illustrate the type of reprisals experienced by police whistleblowers.

Case study: Harassment of a police whistleblower

A police officer who was an internal witness in a serious complaint, reported that he was suffering stress, headaches and anxiety as a result of being victimised and harassed by the officers that he had previously reported. The allegations included threatening and harassing telephone calls to his home, barking noises being made in his presence by other officers, and the placing of an offensive cartoon on his desk. While the investigation was unable to identify any individual officer as having engaged in the misconduct, the Service agreed that the officer had genuine grounds to feel harassed.

Case study: Payback complaints against a police whistleblower

A senior constable was the subject of an apparent pay back complaint from a former supervising sergeant. The senior constable had earlier complained that the supervising sergeant refused to allocate police to a drug investigation and told him to flush a quantity of suspicious white powder down the toilet. As a result of the senior constable's complaint the sergeant was relieved of his supervising duties.

Shortly after, the sergeant submitted a report alleging that the senior constable was guilty of 'neglect of duty' after he had recorded information in a vehicle diary, but not in the police station record. The matter appeared trivial and a pay back complaint was suspected. The sergeant denied that his complaint was a pay back. However, the sergeant was subsequently found to have improperly obtained copies of statements from the investigation of the earlier whistleblower complaint against him. The sergeant is under a s.181D consideration, the loss of commissioner's confidence.

Protection against reprisals is provided by both the *Protected Disclosures Act* and the *Police Service Act*. Both Acts make it an offence to take detrimental action against another (police officer) that is substantially in reprisal for the (police officer) making a protected disclosure (under the *Protected Disclosures Act*) or protected allegation (under the *Police Service Act*).

'Detrimental action' is defined to mean action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment and
- disciplinary proceedings.

Case study: The first case of 'detrimental action'

In the first case of its kind, a senior constable was charged with 'taking detrimental action against a police officer' under s.206(2) of the *Police Service Act*. The summons was issued in response to the senior constable allegedly harassing another police officer who was a witness to an assault by the senior constable and two of his colleagues. Although the Director of Public Prosecutions subsequently withdrew the charge, the senior constable is under s.181D consideration.

Case study: Not a protected disclosure

A woman alleged her husband who worked for the same employer had been unjustly treated in reprisal for her having made a protected disclosure. Her husband had been initially requested, and then required, to fill a particular position which he refused. He was eventually dismissed. He had started legal action for 'wrongful dismissal'. She claimed the request to her husband was unreasonable as the position was below his level of qualification and would significantly limit his future career prospects. She claimed this amounted to detrimental action against her contrary to the *Protected Disclosures Act*.

The initial request to her husband was made within days of her first disclosure to her employer. Apart from this initial timing, we found little to support her claim that the employer's action was in reprisal for her disclosure. We also found there had been a history of disputes dating back some years between her husband and others in the workplace.

We decided the *Protected Disclosures Act* did not apply to her disclosure. She had initially complained that certain committee positions had been filled without a staff election as had previously been agreed. This did not involve 'action or inaction of serious nature' so as to amount to 'maladministration' under the *Protected Disclosures Act*. The woman later made what she claimed to be a further protected disclosure. This was some weeks after her husband had been requested to take up the new position. It also related to events that had occurred more than seven years earlier. Investigation of the matter at such a later date was highly unlikely to result in any systemic improvement. We decided there was no evidence available to support her claim and declined to formally investigate her complaint.

The Act is framed to provide protection to the person making the disclosure. It is currently unclear whether action taken against another, such as claimed in this case, will be viewed as being direct or indirect detrimental action against the person making the disclosure.

SYDNEY WATER'S ROUSE HILL CHARGES

We received a protected disclosure alleging Sydney Water had illegally levied a river management charge in the Rouse Hill Development Area (RHDA). Our investigation was discontinued when external legal advice was produced confirming that Sydney Water could levy the charge. Notwithstanding that it was ultimately discontinued, our investigation yielded tangible results. Sydney Water identified a number of properties outside the catchment upon which it had incorrectly levied the charge and reimbursed the owners with interest. It also formalised a policy reflecting its previous practice of waiving the drainage component of the charge payable on lots not benefiting from Sydney Water's drainage and treatment works.

The river management charge, now known as the Rouse Hill Charge, has two components: a recycled water charge and a stormwater drainage charge. The charge was originally levied under s.31(6) of the *Water Board Act* in a declared river management area. However, there is no longer any specific provision for the charge under the *Water Board (Corporatisation) Act*. The complainant alleged Sydney Water could not continue to levy the charge after that Act commenced on 1 January 1995 but continued to do so regardless.

We obtained copies of advice from one of Sydney Water's internal staff solicitors which appeared to support the complainant's claim. We also obtained documents suggesting that despite repeated attempts by a number of officers to bring the matter to the attention of senior management, Sydney Water was reluctant to address the issue.

When we commenced formal investigation of the complaint the then acting managing director responded by directing Sydney Water's Group Audit Branch to undertake a preliminary review of the matter. In his preliminary report, the internal auditor shared our concerns about Sydney Water's initial management of the issue of the legality of the charge, and its failure to seek immediate legal advice on the matter.

In addition to responding to our questions, Sydney Water's internal auditor recommended appointment of a project team to investigate the issues relating to the charge and that legal advice be sought.

In its subsequent report, the project team found legal advice from a prominent QC confirmed Sydney Water could levy the charge. Further, that some properties within the RHDA should not have been levied as they were outside the catchment to which the charge applies. As a consequence, the property owners were reimbursed with interest.

The question of whether the charge could be legally levied under the *Water Board (Corporatisation) Act* was central to our investigation. In light of the legal advice, our investigation was discontinued.

REFERRAL OF DISCLOSURES TO RELEVANT CENTRAL AGENCY FOR ACTION

Several whistleblowers approached us with serious concerns about the conduct of a senior officer of their agency. The whistleblowers made a number of allegations concerning the senior officer's performance which concerned working hours, sustained absences from the office, consumption of alcohol and the failure of other senior staff within the agency to act upon complaints about the senior officer's conduct.

As the disclosure substantially concerned the conduct of a public authority, relating to matters affecting the person as an officer or employee, it was not within our jurisdiction. However, s.25 of the *Protected Disclosures Act* says an investigating authority, such as the Ombudsman, can refer a protected disclosure to a public official or public authority considered to be appropriate in the circumstances to investigate the disclosure.

After meeting with the whistleblowers and obtaining further information and documentation from them we referred the protected disclosure to the relevant central agency for investigation on the condition that the whistleblowers would be protected and that their identities would be kept confidential. Following an investigation by that agency, the senior officer was removed from their position in accordance with the provisions of the *Public Sector Management Act*.

LIAISON GOES TOO FAR

An anonymous staff member of the Independent Commission Against Corruption (ICAC) made a protected disclosure, claiming an investigation officer at the ICAC had entered a secret sexual relationship with a target of one of ICAC's major investigations. It was claimed this compromised the investigation and led to it being abandoned despite the substantial budget and resources invested in it. It was suggested that senior staff were aware of the relationship and had conspired to conceal the misconduct, and further that the staff member was not appropriately disciplined. Other allegations were made relating to favouritism in appointments based on social and sexual relationships, and harassment of other staff.

An investigator had indeed formed a sexual relationship with the legal representative of a witness in an investigation. The investigator had been tasked as ICAC's liaison officer with this witness. While the solicitor appears not to have been classed as a target of the investigation, it was clear that they might have been considered in those terms by some of the investigators involved. In any event, given the circumstances, it was only reasonable to expect any ICAC officer dealing with them to do so at arms length and strictly "by the book".

The relationship was reported to senior staff after the officer eventually disclosed it during a drinking session with colleagues. The disclosure was not done proactively in accordance with the ICAC's code of conduct. Prima facie, their conduct therefore constituted a significant breach of that code. The relationship was inappropriate for two principle reasons: it posed a security threat to the investigation and also had the potential to bring the commission into disrepute. The most serious allegations that it had compromised the investigation and a cover up had occurred were found to be without foundation.

The investigator in fact had been used specifically as a liaison point due to their special skills. The investigator was not part of the team carrying out the investigation tasks into the solicitor's client's issues. There was no evidence that they had disclosed operational information and nothing had happened since to suggest the solicitor had received information that adversely affected the investigation. No part of the investigation had been abandoned, although it had moved to a new

Deputy Ombudsman, Chris Wheeler. Our primary role in relation to protected disclosures is dealing with disclosures about maladministration by public authorities; complaints concerning the implementation of the *Protected Disclosures Act* and whistleblowers' concerns about potential repercussions against them.

level which the anonymous complainant may have misinterpreted.

When the relationship was exposed, the potential security risk was recognised by all and the matter was reported to the commissioner and the officer was counselled. They were instructed to inform the solicitor that the relationship was unacceptable to the ICAC and that they could not see each other alone again. The officer was also removed from their tasks associated with the investigation.

One of the officers alleged to have had knowledge of the relationship was in fact overseas for most of the time the relationship had been conducted and did not return until after the officer had been removed from the operation. All the other officers who became aware of the relationship immediately reported it and the above action was taken. The allegation of a cover up therefore had no substance.

We had serious concerns that at the time no formal written account of the incident, or action taken, was made or recorded in official files. Notes were taken by the commission's solicitor, but in our view this was wholly inadequate. The commissioner had instructed a formal minute to be drawn up but due to operational pressures this had not been done.

During the preliminary inquiries and following the communication of some preliminary views from us, the commissioner met again with the officer. He reinforced the lack of judgement they had displayed and the seriousness with which the breach was regarded. The adverse affects it was likely to have on their prospects for promotion within the commission were also made clear. Directions were also given to have the matter formally noted on the officer's personnel file.

Ultimately, the issue of the adequacy of the disciplinary action was a matter for the commissioner. He had made his judgement in good faith taking account of some personal circumstances of the officer that were considered relevant and mitigating, as well as the significance of the breach of conduct. We, however, found it very difficult to accept in any objective measure that it was adequate given the seriousness of the breach. The commission must necessarily expect high standards of its staff in order to uphold its reputation and credibility.

However, at the time our inquiries were conducted it was some six months after the event. It was acknowledged that to vary the outcome at that time would have industrial implications as well as potentially being a denial of natural justice. The commissioner conducted a further counselling session with the officer, and steps were taken to properly record the matter in the officer's personnel file, so that it would not be lost sight of in the future. The commissioner addressed all ICAC staff in relation to the general issue arising from this incident. Given this we saw no point in pursuing the question of disciplinary action by further investigation.

Examination of recruitment files indicated there was insufficient prima facie evidence of any irregularities to warrant the further investigation of the allegations about favouritism in staff appointments and training opportunities. Likewise, the allegations of persecution and sexual harassment of staff lacked specific details, which made it doubtful whether they showed or tended to show either corrupt conduct or maladministration. Preliminary inquiries also suggested there had been no reported activity of sexual harassment within the commission of the nature suggested.

COMPLAINTS ABOUT

witness protection

We have a unique role as a result of the passing of the *Witness Protection Act*. This Act put into place a mechanism for appealing against decisions made by the NSW Police Commissioner, when 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 us. Any decision we make replaces that of the Commissioner.

This is our third full year in our role under the Act, and we received only two appeals. Both of these appeals related to the decision of the Commissioner to terminate protection and assistance under the witness protection program. No appeals were received as a result of any person being refused acceptance onto the witness protection program. Of these appeals one was successful and the appellant remained on the program. We have had no further contact with the participant.

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. The approach taken to resolve complaints is mainly informal. We are conscious of the unique and ongoing relationship between the complainants and the police officers who have responsibility for their protection. Therefore it is our aim to deal with complaints in a way which causes minimal disruption to that relationship. In many cases issues can be resolved by our officers helping to improve communication between the parties.

Through negotiations with the commander of the state protection group and the commander of the witness protection group, we have also been able to assist the police in refining some of their general procedures relating to the program.

Case study

In October 1997, we upheld the decision of the Commissioner to terminate protection and assistance for two persons on the witness protection program due to continued breaching of their Memorandum of Understanding. The memorandum sets out the reciprocal responsibilities of the witnesses and the police in the provision of protection and assistance under the program.

The participants had been relocated and as part of the termination decision the Deputy Commissioner undertook to have the local police in the area notified of their situation. This was to allow the former participants to have a connection with the local police in case they had any future security concerns.We endorsed this action in determining the appeal.

In January 1998, following an alleged attempt on the lives of these former participants it became apparent that the local police had not in fact been contacted. We contacted the Deputy Commissioner to clarify the situation. The Deputy Commissioner wrote back apologising for the failure of the Service to ensure the local area

police were adequately informed. The Deputy Commissioner provided the following explanation.

The state protection group which administers the witness protection program contacted the case officer for the witness and advised that officer to notify the local police of any particular security requirements. The case officer claims that he contacted a responsible officer in the local area, however the evidence surrounding this is far from convincing. The Deputy Commissioner indicated that the procedure would now be changed to transfer responsibility for notifying local police to the State Protection Group rather than relying on the case officer.

Case study

During the past year an own motion investigation was carried out in relation to some of the policies and practices of the witness security unit. This type of investigation is initiated by us and is not initiated by a complaint to us. This is authorised by the *Ombudsman Act*.

There were three areas of concern:

- The unit's use of the First Notice, whereby participants were given a formal warning in relation to a breach or breaches of the Memorandum of Understanding. These notices threatened immediate expulsion from the program for further non-compliance. While it was felt that the use of the First Notice was, and is, a valid management tool, the notice itself did not accurately reflect the participant's rights as set out in the *Witness Protection Act*;
- In some appeal cases, the appellant has alleged that they had further information which would support their application for entry to the program, but they did not believe that this was presented to the assessment committee; and
- The failure to give reasons in notices of refusal and termination which made it difficult for appellants to formulate a response to such decisions.

The Police Service responded very quickly to these concerns and they were resolved in the following manner:

- The First Notice was redrafted to reflect participant's rights under the *Witness Protection Act;*
- A procedure was initiated where the applicant reads and signs the application documents, ensuring they contain all the information they wish to have considered by the committee; and
- notices of refusal and termination will now include reasons for the decision to refuse an application, or terminate protection and assistance.

A VICTIM OF DOMESTIC VIOLENCE

One of our current focus issues is the police response to domestic violence (see 'Domestic violence' in **Police** section). An appeal, not reported on in last year's annual report, is relevant to this issue.

We upheld an appeal by a woman who had been the subject of domestic violence and had been refused admission to the witness protection program. Following the breakdown of a short de facto relationship, a woman was threatened and harassed by her former partner. As a result she obtained an Apprehended Violence Order (AVO) against him. However, she was subsequently stalked and assaulted by this former partner, who was ultimately charged and convicted of these and other related offences.

The man had a long criminal record and a history of stalking and had breached an AVO against a previous partner. He had also threatened the woman's family and friends.

The woman applied for protection under the witness protection program after he threatened to kill her on his release from gaol. Local detectives, who were knowledgeable about his history of harassment, supported the woman's application, as did a consultant psychiatrist. A formal risk assessment rated the risk as 'extreme', the highest level of risk, and recommended the woman's acceptance onto the program.

However, the witness protection assessment committee refused the application on the basis that there were 'viable alternative' methods of protection. They suggested a 'victim escape kit' and other protective measures which could be provided by the Police Service local area command. The woman appealed to us against the committee's decision.

We spoke with the local police who would have been responsible for assisting the woman and they advised us that they were not familiar with the 'victim escape kit'. At that time it had not received official endorsement, and there had been no substantive training of local police in using it. There was also no widespread experience at the local area command level of implementing the protection measures envisaged by the draft manual.

We were not satisfied that the relevant local area command had the capacity and resources to provide the range and level of protection needed by the woman concerned. He believed that she should be admitted to the witness protection program in order to benefit from the expertise of the witness security unit.

special audits

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CONTROLLED OPERATIONS

This year was our first full year in carrying out audits under the *Law Enforcement (Controlled Operations) Act*.

The Act provides for the authorisation, conduct and monitoring of operations by specified law enforcement agencies, which involve what might otherwise be unlawful activities. This was done in order to remove any doubt about the status of evidence obtained in the course of such operations, and the liability of those participating in them. 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 into the New South Wales Police Service.

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 us 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 first examine the basis of the application and then grant a warrant. In the case of controlled operations, the authority is granted from within the respective agencies by the chief executive officer. 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 we 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. We are 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.

The Police Service continues to handle by far the greatest number of applications, 142 this last financial year. Although some operational police continue to complain about the amount of paperwork involved and the time delays experienced, the procedures are becoming more streamlined.

During the year the Inspector of the PIC conducted a review of the Act 'to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'. We participated in this review along with representatives from the Ministry for Police and the law enforcement agencies involved. The review recommended several legislative changes that should assist those involved in the preparation and conduct of controlled operations. A separate annual report detailing our work and activities under the *Law Enforcement (Controlled Operations) Act* was presented to Parliament prior to the tabling of this report.

TELEPHONE INTERCEPTION

One of our lesser known functions 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 that can apply for a warrant to intercept telecommunications: NSW Police Service, the NSW Crime Commission, the ICAC and the PIC.

A federal court judge, a family court judge, or an Administrative Appeals Tribunal member are the only people who can issue a telephone interception warrant. 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 our functions 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* forbids us from including any details of the inspections in this office's annual report.

Each year we are required to report to the Attorney General on the outcome of inspections as soon as practicable before 30 September.

ensuring we are accessible

This section incorporates our work under Goal Three of our Corporate Plan: To increase awareness of our role and functions and to promote access for all.

We will continue to encourage greater use of our services. In the coming year we will focus on:

- *young people;*
- *indigenous people;*
- *people with disabilities;*
- *people from diverse cultural backgrounds;*
- *people living outside the metropolitan area; and*
- *distributing knowledge about our new child protection role.*

These objectives do not diminish the importance of promoting access and awareness to other groups and the community generally. It is intended that other groups will be the focus of our access and awareness activities in future years.

KEY STRATEGIES

> ongoing identification and targeting of people with special needs

> develop and implement an information strategy

ensuring we are accessible

CONTENTS

We provide a vital public service to the people of NSW. It is therefore essential that our organisation is accessible and that barriers preventing or limiting access be eliminated. We are committed to developing strategies which better target our services, particularly to the needs of disadvantaged groups. This is reflected in access and awareness being identified as one of our four corporate goals. During 1998–99, our access and awareness plan was reviewed and updated to respond to Government policy initiatives and our child protection role. The following is a report on our access and awareness activities for 1998-99.

For most members of the public, inquiry officers, like Jacqui Yanez, are the first point of contact with people who need advice or who want to make a complaint.

This year we handled more than 23,000 complaints and inquiries.

INQUIRIES

Our inquiry section is the first point of contact for people who need advice or want to make a complaint. During 1998–99, we handled more than 23,000 oral complaints and inquiries, about 3,000 more than during the previous financial year. Of those, 448 were made face-to-face.

To satisfy increasing demand and to provide the best possible service we:

- increased the number of inquiry officers from three to four in June and introduced lunch–time rosters;
- have a system for redirecting overflow calls to back–up staff, minimising the need for callers to be put on hold or to leave messages on answering machines;
- arrange and pay for telephone interpreting services for people of non-English speaking backgrounds;
- have a telephone typewriter (TTY) for receiving calls from people with a hearing impairment; and
- have two freecall lines numbers for callers outside Sydney.

How we handle inquiries

In the vast majority of cases we can provide the information or assistance callers need immediately, but if a request requires some research we will phone back with the information as soon as we find it. Our computer system has up-to-date information about a wide

range of issues which helps us provide consistent and accurate advice. Intensive and on-going staff training helps ensure that advice we give is correct and consistent.

If we do not invite a caller to make a complaint, for instance, if the issue is outside our jurisdiction, we explain why. If we can suggest another way to solve the problem, we do. Last year, we referred more than 4,000 callers to other agencies, and we often send callers a copy of our *Tips for making a complaint* brochure which lists all the major state and commonwealth complaint-handling bodies.

PEOPLE WHO WORK WITH CHILDREN

Promoting awareness of our new role in child protection is a high priority. Officers appointed to the child protection team have brought with them expertise from a wide variety of fields: social work, disability services, the Department of Community Services (DOCS), education, health, police special child protection investigation, probation and parole. This breadth of experience has been a tremendous asset which has helped us tap into networks across several sectors. The goal in all our liaison work is to help create an environment that supports agencies while they are implementing their new child protection responsibilities.

We have:

- distributed education material to about 7,000 agencies and interest groups;
- provided briefings to all designated agencies and key public authorities;
- liaised with peak bodies and interest groups who work with designated agencies;
- met with the non-government sector, recognising this is new territory for both parties;
- taken calls and provided advice on how to comply with child protection reporting;
- developed an understanding of implementation issues for different organisations;
- began work on a plain English version of our brochure *Child protection: Your responsibilities* for parents of people with a disability; and
- shared successful strategies with agencies.

During Child Protection Week we will be talking with parent groups and community-based organisations to explain our approach.

Inter-agency investigative forum

We established an inter-agency investigative forum, as a way of working with other agencies to develop and share models for best practice in child protection. The forum includes representatives from the Police Service, the departments of Community Services, Education and Training (Case Management Unit and Industrial Relations Services), Health, Sport and Recreation, Juvenile Justice and the Catholic Commission for Employment Relations. In the future, we will invite agencies to join forums on policy development and staff training to generate and share best practice advice.

Children with a disability

All children and young people have special needs, but we recognise that some — such as those with a disability — are particularly vulnerable. We are currently working with staff from the People with Disability (NSW) Inc. to raise awareness of the new child protection measures among advocates. We are also spreading the word via ACROD NSW and

'Thankyou for contributing to the success of the workshop . . . participants reported they enjoyed your presentation and gained new skills, strategies and knowlege as a result of your session.'

Table 1: Complaints and inquiries received by and on behalf of young people

	1996–97	1997–98	1998–99
Community Services, Dept of	1	7	0
Corrective Services, Dept of	5	19	38
Education and Training, Dept of *	36	30	126
Health, Dept of	2	2	2
Housing, Dept of	4	6	2
Local councils	3	1	5
Juvenile Justice, Dept of	121	168	251
NSW Police Service	178	363	442
Roads and Traffic Authority	1	4	4
State Rail Authority	1	1	4
State Transit Authority	1	1	0
Other depts and authorities	0	6	14
General inquiries	15	19	13
Outside our jurisdiction	12	14	27
Total	**380**	**648**	**928**

* formerly Department of Education and Technical and Further Education (TAFE) Commission

Ageing and Disability Department networks.

YOUNG PEOPLE

Following our continuing focus on young people there was an increase of about 45 per cent in the number of complaints and inquiries from or on behalf of young people in 1998–99.

We have refined its complaint-handling systems to make it easier for young people to make a complaint. We now have a protocol to ensure that young people are kept informed and involved in all aspects of the complaint-handling process. We have also maintained our commitment to providing dedicated officers for handling complaints from young people.

For the past year the focus of the youth access and awareness program has been on helping young people and youth workers develop skills to effectively resolve complaints themselves. Staff attended several peak youth organisation forums during the past year in an effort to improve the support youth workers provide to young people when making complaints.

We have also attempted to change young people's perception of complaints as negative and fruitless. One of our central messages has been that complaining can be positive and may improve services. It asks young people to trust themselves and their feelings about what has happened, and to tell someone who can help them take action to fix the problem. A summary of number of complaints and inquiries statistics is in table 1.

Highlights

Highlights for 1998–99 include:

- twenty five visits and presentations with young people and youth services;
- presentations to about 25 youth forums, conferences, etc;
- regional visits to Lismore, Wagga Wagga, the Clarence Valley and Wollongong;
- distributing more than 5,000 information packages which included our youth brochure, contact card, youth complaints form and youth poster;
- providing youth-specific information on our web site;
- visiting every juvenile justice centre across NSW; and
- presentations at universities and TAFE colleges.

Over the next 12 months we are committed to:

- working with student representative councils across NSW;
- liaising with police youth liaison officers about working with young people;

Andrew O'Brien, Youth Liaison Officer, is one of several staff who make regional outreach visits to promote the Ombudsman's role. This year Andrew visited Lismore, Wagga Wagga, the Clarence Valley and Wollongong.

- making presentations at local council youth inter-agency meetings;
- continuing our regular visits to every juvenile justice centre;
- continuing to monitor patterns of youth complaints; and
- redesigning the youth brochure to include a complaints form which conveys a positive message about making complaints.

ETHNIC COMMUNITIES

During the review of the office's access and awareness plan we acknowledged that each year we needed to focus on a specific ethnic communities, rather than stretching our resources over many communities. We have given priority to those which fell into three broad categories: those who arrived recently; those who are among the 30 largest communities in NSW; and those whose members have a relatively high level of contact with either police or other public authorities.

As a result of the review, we focused on Arabic-speaking communities this year. Although we have targeted certain sectors of Arabic community before, we thought there was scope for more work in this area, given the high levels of contact between members of that community and the police and a perception that they were under represented in our complaint statistics. During the year, we consulted several Arabic community groups, made presentations to Arabic community workers and translated our new general information brochure into Arabic. Later this year we will trial, in consultation with community workers, a program of complaint-taking sessions at community centres which have large communities of Arabic speakers. If successful, these will be used as a model for other communities.

Table 2: Future plans for working with ethnic communities

KEY RESULT AREA	INITIATIVE	TIME FRAME	INTENDED OUTCOME
Social justice	Liaise with peak NESB bodies and use NESB networks, particularly our targetted groups — Arabic, Pacific Islander, Philipino and Korean.	Ongoing during 1999/2000	Increase community awareness.
	Conduct complaint-taking sessions at suburban centres for Arabic community members and other members.	December 1999	Improve lines of communication. Increase office's accessibility. Increase complaints from Arabic communities.
	Launch and distribute community language brochures.	December 1999	Increase awareness among ethnic communities of their rights as citizens.
Community harmony	Provide representatives to speak at meetings of NESB groups.	Ongoing – on request	Increased community awareness and improved understanding of community needs.
	Attend community festivals and cultural activities.	Ongoing	Increased community awareness and improved understanding of community needs.

In 2000, we will work with Pacific Islander, Filipino and Korean communities, and in 2001, with Indian, Sri Lankan and Indonesian communities. Other communities which met the criteria, but which have been targeted in previous years, will receive follow-up contact.

While we focus resources on identified communities, we continue to attend other community festivals and information days and provide information, and speakers to other community groups as requested.

Highlights

Highlights for 1998-99 included:

- attending the St George migrant information day, the Auburn community forum and the Parramatta inter-agency forum;
- liaising with the Ethnic Communities Council, Muslim Women's Association, Lebanese Community Council, Australian Arabic Communities Council, Vietnamese Community in Australia, African Communities Council, Immigrant Women's Speakout, and Spanish and Latin American Association for Assistance (SLASSA);
- commissioning the translation of our *General Information* brochure into ten community languages, which the Ethnic Affairs Commission (EAC) will review for cultural appropriateness;
- agreeing on a joint launch of our new community language brochures with the Ethnic Communities Council; and
- regularly liaising with the Police Service as part of our monitoring of the implementation of the service's Ethnic Affairs Policy Statement.

Our future plans for the coming year are listed in table 2, in the format required by the EAC and our Ethnic Affairs Policy Statement.

WORKING WITH ABORIGINAL PEOPLE

We employ four officers with a special responsibility for handling complaints from Aboriginal people, and for raising awareness of the role and functions the Ombudsman among Aboriginal communities. The Aboriginal Complaints Unit (ACU) has three officers and is part of the police team. The unit was established in 1996 with funding from the state Government following a recommendation of the Royal Commission into the NSW Police Service. The ACU handles complaints about police from Aboriginal people and has helped improved communication between Aboriginal communities, legal services, police and our office. We also have an Aboriginal complaints officer who is part of our general team. The officer receives complaints from Aboriginal people about non-police matters and visits Aboriginal organisations and communities to raise awareness. They also visits correctional centres

and juvenile justice centres to take complaints from Aboriginal inmates.

The work of the Aboriginal Complaints Unit

The success of an innovative program to improve relations between Aboriginal communities and police, developed by the ACU in 1997–98, was expanded last year to communities in the State's far west.

The Aboriginal Community Consultative Committee (ACCC) model, which was piloted in Batemans Bay and Nowra in 1997–98 proved to be very successful in the south east region. Following this the Aboriginal communities, police and legal services requested it to be introduced in Moree, Bourke and Broken Hill.

In response to ACCC meetings, patrol commanders at Nowra and Batemans Bay have taken timely and appropriate action, resulting in a drop in written minor complaints from the south coast. They have also resulted in greater complainant satisfaction by providing regular feedback to complainants.

The model trialed on the south coast involves our officers meeting first with members of local Aboriginal communities to record their concerns, then taking those concerns to a meeting with local police and representatives of local Aboriginal legal services for discussion, resolution and updates. The ACCCs give Aboriginal people the chance to deal with minor complaints in a forum where they feel comfortable voicing their concerns. The committees have also enabled on-going contact between Aboriginal people, Aboriginal legal services, the Police Service and us, and helped improve Aboriginal/police relations.

The model developed on the south coast has been modified for the far west. Our staff met with Aboriginal community members, Western Aboriginal Legal Service representatives and the local area commander at the same time, rather than separately which is impractical because the remoteness of some of the communities involved.

It is hoped that the success of this model will encourage its adoption in other parts of NSW. We will continue to monitor and encourage police to implement practical measures to continue to improve these relationships.

Highlights

Highlights for 1998–99 include:

- conducting field trips to and workshops and/or meetings at Port Macquarie, Kempsey, Lismore, Coffs Harbour, Grafton, Yamba/Maclean, Ballina, Tamworth, Armidale, Moree, Bourke, Broken Hill, Walgett, Brewarrina, Dubbo, Batemans Bay, Nowra, Warilla, Wollongong, Glebe, City East;
- establishing ACCCs at Moree, Broken Hill and Bourke;
- developing efficient and effective process for dealing with minor complaints, and providing prompt responses from the Police Service while in the field;
- developing guidelines for written complaints (i.e. what should and should not be included in the letter, election of 'responsible person' to assist with written complaints in communities);
- on–going provision of advice to communities about the powers of police and the rights of young persons when arrested;
- advising people on referring matters outside our jurisdiction to other government agencies, including advice on criminal justice agencies in NSW;
- discussing/advising (and providing speakers at meetings) on police powers under *Crimes Legislation Amendment (Police and Public Safety) Act, Crimes Act, Summary Offences Act, Young Offenders Act, Intoxicated Persons Act, The Children (Protection and Parental Responsibility) Act*;
- providing an appropriate person to support young people in custody (i.e. at Bourke, Broken Hill, Moree, Mungindi, Boggabilla, Surrey Hills, Campbelltown, Wollongong, Batemans Bay and Nowra); and
- producing a plain English brochure for Aboriginal people titled *That's Not Fair!* which was printed in July 1999.

Our 'shopfront' program involved information and complaint–taking sessions at a local metropolitan Aboriginal land council.

This has improved our accessibility to Aboriginal people and communities.

Over the next 12 months we will:

- promote and distribute contact cards and the new Aboriginal brochures;
- maintain existing ACCC meetings and extend to smaller remote communities;
- improve access and awareness activities to areas which are currently under-represented in complaint statistics;
- continue to promote cultural awareness by participating in staff training days;
- continue to monitor police strategies for targeting repeat offenders;
- develop fact sheets about the rights of people when detained by police, arrested or held in custody; and
- implement 'responsible person' strategies for Aboriginal people in custody.

The work of the Aboriginal Complaints Officer

The number of complaints from Aboriginal people about non-police matters during 1998–99 was about the same as in the previous year. However, the 'quality' of complaints has improved. While we continue to receive complaints of a general nature, many complainants have exhaustively sought to solve their problem before they contact us. This indicates an increasing willingness to complain directly to the agency concerned before coming us, meaning that we can then process the complaint quickly. From this point it is often a relatively easy process of collating documents and correspondence from the authority concerned to assess whether preliminary inquiries or more formal investigations are warranted.

Earlier this year, the ACO began piloting a program of 'shopfront' information and complaint-taking sessions at a metropolitan local Aboriginal land council. This has improved our accessibility to Aboriginal people and communities and, if the pilot is successful, it might be extended to other land councils across NSW.

We have begun to increase our profile in the indigenous media. We plan to advertise at least four times a year in the *Koori Mail*, a national newspaper with an indigenous focus. We are currently scripting a series of community service announcements, which will be distributed to indigenous radio stations and programs in NSW, and we are being more active in promoting in regional media visits to regional communities by the ACO and the ACU.

In August 1998, we made a submission to the Department of Aboriginal Affairs review of the *Aboriginal Land Rights Act*. We believe our proposed amendments would improve the administration and accountability of the land council system.

Table 3: Action plan for women — our implementation

OBJECTIVE	RESULTS (WHAT WE HAVE DONE/ARE DOING)
Reduce violence against women	A final report based on responses to our discussion paper, *Policing Domestic Violence* has been finalised and will soon be in Parliament.
Promote safe and equitable workplace which are responsive to all aspects of women's lives	Our work conditions include: – part-time employment and leave for family responsibilities; – harassment prevention policies; and – merit-based appointment.
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 and training opportunities for women	– 61% of our staff are women; – 38% of our staff above grade six are women, including the Ombudsman and an Assistant Ombudsman;
Promote the position of women	– 75% of our managers are women; and – we have flexible work practices including leave for family responsibilities. No specific strategies were developed by this office to promote the health and quality of life for women in society, however, we work with several agencies to improve health and other s ervices to women in prison.

Over the next 12 months we will:

- continue trialing 'shopfront' information and complaint-taking sessions at a local Aboriginal land councils;
- increase awareness of the role of our work and encourage use of our services by liaising with Aboriginal communities and organisations;
- monitor complaints by Aboriginal people to identify systemic administration issues in NSW public authorities; and
- ensure our staff have completed Aboriginal cultural awareness training.

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 aspects 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, we did not take action on a number of strategies as these were not areas in which the office operates.

Highlights

Highlights for 1998–99 include:

- publishing a fact sheet for women;
- making presentations about women and policing at a NSW Legal Aid conference, a Ethnic Communities Council forum, and a regional violence prevention forum;
- attending the International Women's Day march; and
- holding a stall at the Go Girl Festival where we distributed almost 1,000 fact sheets.

WORKING WITH PEOPLE WITH DISABILITIES

In December 1998, the Government released its Disability Framework which outlines its commitment to improving opportunities for people with a disability to share fully in community life. Under the framework, each agency is required to develop a disability action plan and submit that plan to the Ageing and Disability Department (ADD) by December. We have begun the process of consultation with disability groups to assist in the preparation of our Disability Action Plan and will report fully on the plan and its implementation in our next annual report.

Highlights

Highlights for 1998–99 include:

- presenting to and consulting with People with Disabilities (NSW) Ltd. Arrangements have been made for a joint child protection forum and further consultation during 1999–2000;
- presenting to the Post Polio Association;
- working on our Disability Action Plan;
- commissioning the Royal Blind Society to reproduce all our information brochures in formats used by people with a print disability such as: audio tape, braille, large print, disc.
- providing copies of our pamphlets on computer disc for people who use screen reader software and speech reader hardware (the availability of information in this format is promoted in all new pamphlets);
- working on a plain English version of our brochure *Child Protection: Your Responsibilities* for parents of people with a disability;
- working on a picture language version of our *General Information* brochure for adults with an intellectual disability; and
- building management agreed to build toilets for people with a disability on our new tenancy on level 24.

Over the next 12 months we will:

- complete our Disability Action Plan and submit it to ADD;
- continue consultation with disability organisations;
- distribute copies of the audio tapes to more than 150 disability organisations, legal centres and detention centres across the State during the coming year;
- produce and distribute a plain English version of our brochure *Child Protection: Your Responsibilities* for parents of people with a disability;
- produce and distribute a picture language version of our *General Information* brochure for adults with an intellectual disability;
- have the Royal Blind Society assess our web site' accessibility for people with a print disability.

Appendix 6 contains the annual report on implementation of our disability strategic plan.

PEOPLE IN DETENTION

Visits to juvenile detention centres and correctional centres remain an important access and awareness issue for us. We made 40 visits to correctional centres, two to periodic detention centres, one to a court cell complex, and 17 to juvenile detention centres. We met with centre staff, conducted inspections of facilities and discussed complaints with inmates.

Lisa Du, Public Relations Officer, monitors the media and is the press contact for our Office. She is also responsible for co-ordinating public relations between ourselves and the community.

REGIONAL OUTREACH

We visited more than 40 towns, regional centres and metropolitan communities during 1998–99, and made presentations to a variety of groups including Aboriginal, youth and welfare workers, government employees and the general public.

INFORMATION AND PUBLICATIONS

Internet

Information about us can now be obtained online following the launch of our web site during 1998–99. The site has information about our role and functions, how to make a complaint, special types of complaints, job vacancies and publications. It also has links to relevant legislation and other complaint-handling organisations.

We will continue to develop the site to include a complaint form and a publications order form that can be emailed to us. We also plan to include our annual reports and guidelines in portable document format (PDF) for easy downloading from the site. The web site address is: www.nswombudsman.nsw.gov.au

Last year, we distributed over 70,000 publications to a range of individuals and government and non-government agencies across NSW.

Highlights

Highlights for 1998–99 include:

- producing information brochures and guidelines for notification of child abuse allegations and notification forms relating to our new child protection role;
- publishing the second edition of the our *Public Eye* newsletter;
- producing a plain English brochure, *That's Not Fair!*, for Aboriginal communities;
- updating the very popular brochure, *Tips for making a complaint;*
- updating the *General information* and *Problems with a police officer?* brochures;
- commissioning translation of the *General information* brochure into ten community languages;
- producing two new fact sheets: *Women's issues* and *Police complaints: The rights and duties of police officers;*
- updating and reprinting the *Ombudsman's Protected Disclosure Guidelines* to include changes to the *Protected Disclosures Act;*
- reprinting the *Dealing With Difficult Complainants* guidelines to meet overwhelming demand; and
- tabling three special reports in Parliament.

In 1999–2000 we are committed to:

- expanding our web site to include training information, news, media releases, and online forms for ordering publications and lodging complaints;
- auditing our web site to meet disability access benchmarks;
- expanding our guideline series to include *Options for Redress* and *Investigation of Complaints;*
- presenting more reports to Parliament;
- publishing a third edition of the *Public Eye;*
- continuing to update and distribute our series of pamphlets;
- producing four new fact sheets on local government issues;
- producing a plain English version of our brochure *Child Protection: Your Responsibilities* for parents of people with a disability;
- producing a picture language version of our *General information* brochure for adults with a intellectual disability; and
- produce and distribute audio tapes of all our information brochures for use by people with a reading disability.

a co-operative and productive workplace

This section incorporates our work under

Goal Two: To monitor our performance in order to continually improve the quality of our work, and

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

of our Corporate Plan.

Continuous improvement: We are committed to the continuous improvement of our services. We will do this by: using technology better; listening to feedback from complainants and public authorities; monitoring 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); and reviewing and refining our policies and processes.

Co-operative workplace: We are developing or enhancing a range of programs to improve our flexibility and productivity including our EEO program, the availability of flexible work options and strengthening staff/ management consultative arrangements. We continually upgrade the skills and experience of staff members in order to realise our aim of providing better information and services to members of the public, departments and authorities.

KEY STRATEGIES (GOAL 2)

> evaluate the effectiveness of our service (as resources permit)

> review internal complaint handling procedures

> identify appropriate measures to monitor and improve our performance

> demonstrated accountability through effective reporting

KEY STRATEGIES (GOAL 4)

> develop an integrated approach to management and employee relations

> develop our information management and technology systems to meet core business requirements in the context of the framework established by the Information Management and Technology Blueprint and other government policy documents

> review the internal allocations of funds and resources

1998/99

a co-operative and productive workplace

CONTENTS

With increasing demands on our resources, it is important that our working environment is supportive and flexible and promotes a continuous improvement of 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. We acknowledge that the key to our success is our staff, commitment to improving how we work.

To achieve these goals, we are always looking to develop, or enhance, policies or processes that will improve flexibility and productivity. This can include revising our complaint handling process or our EEO program, making available flexible work options, strengthening the existing consultative arrangements between staff and management or training other public sector agencies in the management of complaints.

In particular, we pursue strategies that will result in:

- a co–operative and productive work environment;
- information management and technology systems that support core business needs;
- better allocation of resources;
- demonstrated internal and external accountability in the use of resources (including benchmarking against other agencies); and
- improved policies, procedures and practices.

These issues will be explored in this chapter. We will also provided details on the work of the corporate support area of our organisation, which has responsibility for implementing a number of the strategies for enhancing our workplace.

The aims of the corporate support area, which comprise personnel services, financial services, public relations, records, Information Technology (IT) and library services are:

- to provide efficient and effective support to our core activities;
- to make the most effective use of resources available to us;
- 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 us; and
- to maximise the use of information technology to enhance productivity and the achievement of our internal management and accessibility goals.

Anne Barwick, Assistant Ombudsman, Children and Young People, facilitates a planning day for staff. These days are used to identify key issues for the coming year, set priorities and allow a frank discussion on our work.

PERSONNEL

Personnel services include recruitment, leave administration, payroll and occupational health and safety (OH&S). The key outcomes for 1998–99 were:

- the establishment of the child protection function including the development of position descriptions, the recruitment of staff and the development of security vetting procedures and psychological testing;
- reviewing a number of policies, including working from home and performance management.

These policies will be finalised in 1999–2000 after consultation with staff.

In 1999–2000 we will:

- review our occupational health and safety program particularly in light of the relocation of the office in November;
- finalise the induction manual; and
- develop a training program in response to the new computer systems to be implemented in late 1999.

Staff

As at 30 June, we had a full time equivalent staff number of 91.49 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.

Wage movements

During the reporting year public servants were awarded the following pay increases:

- three per cent then two per cent (a cumulative total of 5.2 per cent) effective 10 July 1998; and
- three per cent then two per cent (a cumulative total of 5.2 per cent) effective 8 January .

In its annual determination, the Statutory and Other Officers Remuneration Tribunal awarded increases to our statutory officers as follows:

- Ombudsman: 5.5 per cent increase
- Deputy Ombudsman and Assistant Ombudsmen: four per cent increase.

Personnel policies

Working from home

As more staff seek to work from home, either on an ad hoc or semi-regular basis, the Joint Consultative Committee (JCC) decided that a policy about this was required. Due to potential occupational health and safety issues, as well as the need to provide equipment, extensive research on this matter was required. Information was sought from the WorkCover Authority about our OH&S responsibilities and from other public sector agencies on how they implemented such a policy. At the time of writing consultation between management and staff was still occurring.

Performance management

Earlier this year the Public Sector Management Office (PSMO) issued revised performance management guidelines. Prior to the adoption of these new guidelines, we decided to review how we manage performance and whether the existing system has been modified in its application. This project is still ongoing, with an expected completion date of December this year.

Training and development

Continual training and/or professional development of staff is seen as critical to our ability to meet our goals and objectives. Usually the training needs of individual employees are developed during the negotiation of performance agreements. However, other training opportunities may arise during the year.

This reporting year, our staff attended a variety of training programs including developing decision making and management skills, information technology courses and training relating to tax reform and the introduction of the GST. All of these courses were provided by external training providers. Staff also attended conferences on policing and crime control, and ethics in policing.

Specific job or skills related training is developed and conducted in house with presenters/relevant staff from other agencies being invited to address our staff. For instance, a workshop on critical thinking skills was organised internally with Dr Francis Sofo of the University of Canberra as presenter.

An important aspect of staff training and development is the provision of study assistance for employees. During this reporting year, seven staff used study leave provisions to undertake tertiary education courses. During the reporting year, we spent $32,088 on training.

Table 1: Staff levels (a four year comparison)

	JUNE 1996	JUNE 1997	JUNE 1998	JUNE 1999
Statutory appointments	4.0	4.0	4.0	5.0
Investigative staff	55.2	63.9	62.36	74.29
Administrative staff	13.1	13.8	10.0	12.2
Total	**72.3**	**81.7**	**76.36**	**91.49**
Trainees	2.0	2.0	0	1.0

which represents 0.5 per cent of total expenses.

Occupational health and safety

Hepatitis vaccinations

We continued our program of vaccinating staff who visit correctional centres against Hepatitis A and B.

Eye examinations

As we are a computer-based office, eye strain is a common complaint for staff who use computers. To address this we have a policy requiring all new employees to undergo an eye examination and other staff also have an eye examination every two years.

Employee assistance program

We continued to provide staff with a confidential free counselling service through Industrial Program Services. This program is available to staff, their partners and family and helps to solve personal problems that, if not dealt with, may impact on job performance.

Workplace inspection

While no general workplace inspection was conducted during the year, we did arrange, in response to a staff member's request, for an independent workstation review.

Workers compensation

Two claims for workers compensation were received, one relating to injuries sustained on travel home from work. Two working days were lost due to the injury. There was no time lost with the other claim.

Equal employment opportunity

Our major EEO achievements for the year were:

- reviewing our higher duties and short term relief policy; and
- reviewing our performance management system (refer to above).

EEO initiatives for 1999–2000 include reviewing our EEO program. This was to be undertaken in the current year, but due to a range of circumstances was not.

In the reporting year, the Office of the Director of Equal Opportunity in Public Employment circulated information about the representation of target groups in individual public sector agencies.

This information was based on the 1997 EEO information collected from 71 agencies and ranks those agencies on the representation of each of the target groups. We were ranked:

- Seventh for the percentage of staff who are Aboriginal or Torres Strait Islander;
- fourteenth for the percentage of women employed;
- twenty first for the percentage of staff from a racial, ethnic and ethno-religious minority group; and
- fifty second for the percentage of staff who have a disability that required some adjustment.

Although we were ranked very low for the employment of staff with a disability which required adjustment, the representation of this group in the majority of public sector agencies is low. This issue will be examined when we prepare a disability strategic plan which is to be submitted to the Department of Ageing and Disability by December.

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.

Table 2: Percentage of total staff by level

LEVEL	TOTAL STAFF NO.	Subgroup as percent of total staff at each level			Subgroup as estimated percentage of total staff at each level				
		RESP.*	MEN	WOMEN	ATSIC*	ETHNIC*	ESL*	DIS*	DIS ADJ*
<$25,761	1	100%		100%					
$25,761 – $37,825	11	100%	18%	82%		82%	64%	27%	9.1%
$37,826 – $47,866	20	100%	35%	65%	5.0%	25%	30%		
$47,866 – $61,899	48	100%	40%	60%	4.2%	15%	4%		
> $61,899 (non SES)	16	100%	50%	50%	6.3%	31%	19%	6%	
SES	4	100%	75%	25%				25%	
Total	**100**	**100%**	**39%**	**61%**	**4.0%**	**26%**	**18%**	**5%**	**1.0%**
Estimated subgroup totals		100	39	61	4	26	18	5	1

* RESP = respondents
* ETHNIC = People from racial, ethnic, ethno-religious minority groups
* DIS = People with a disability
* ATSIC = Aboriginal people & Torres Strait Islanders
* ESL = People whose language first spoken as a child was not English
* DIS ADJ = People with a disability requiring adjustment at work

Table 3: Percentage of total staff by employment basis

EMPLOYMENT BASIS	TOTAL STAFF NO.	Subgroup as percent of total staff at each level			Subgroup as estimated percentage of total staff at each level				
		RESP.*	MEN	WOMEN	ATSIC*	ETHNIC*	ESL*	DIS*	DIS ADJ*
Permanent full-time	67	100%	43%	57%	6.0%	27%	18%	6%	1.5%
Permanent part-time	7	100%		100%		29%	29%		
Temporary full-time	16	100%	38%	63%		6%	6%		
Temporary part-time	5	100%	20%	80%		80%	40%		
Contract SES	4	100%	75%	25%				25%	
Contract non SES	1	100%		100%		100%	100%		
Casual									
Total	**100**	**100%**	**39%**	**61%**	**4.0%**	**26%**	**18%**	**1.0%**	
Estimated subgroup total		100	39	61	4	26	18	5	1

* RESP = respondents
* ETHNIC = People from racial, ethnic, ethno-religious minority groups
* DIS = People with a disability
* ATSIC = Aboriginal people & Torres Strait Islanders
* ESL = People whose language first spoken as a child was not English
* DIS ADJ = People with a disability requiring adjustment at work

Chief and Senior Executive Service (SES)

The number of SES officers increased by one during the reporting year due to the creation of an additional Assistant Ombudsman position to head the child protection team. This position was created as an SES level 2, similar to the other Assistant Ombudsman positions. See table 4.

Two CEO/SES positions are held by women. In the last reporting period only one woman occupied a CEO/SES position.

Table 4: Chief and Senior Executive Service

	30 JUNE 1998	30 JUNE 1999
SES Level 4	1	1
SES Level 3		
SES Level 2	2	3
SES Level 1		
CEO	1	1
Total	**4**	**5**

* CEO position 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*

Ombudsman's performance statement

See the foreword of this report for the Ombudsman's performance statement.

Industrial relations

Joint Consultative Committee

The JCC which comprises representatives of staff, the Public Service Association (PSA) and management, meets regularly to discuss issues of mutual concern including policy development.

During the year, the JCC reviewed or developed a number of policies, including the higher duties policy, and was near to finalising other policies including a working from home policy.

New awards

As we are a public sector agency staff salaries and conditions of employment are negotiated by the PSMO and the relevant unions. During the reporting period, the JCC negotiated and the PSMO and PSA endorsed a flexible working hours agreement. This agreement enables staff to take two flexidays each four weeks and/or accumulate flexitime. The implementation of this agreement is to be reviewed by the JCC.

Part-time work

We promote part-time work and at the 30 June, twelve staff were employed on a part-time basis.

Grievance procedure

Our a grievance procedure is 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.

Trainee/apprentices

We currently employ one trainee under the Government's 2000 by 2000 traineeship program. Our trainee attends TAFE one day each week as part of this program. We do not employ apprentices.

GENERAL MANAGEMENT

Benchmarking

It is not easy to make comparisons with other complaint handling or oversight agencies as there are significant differences between

The Ombudsman's office guarantees friendly and courteous attention for complainants visiting our office.

jurisdictions. For example, the nature of complaints vary between agencies. We are a general jurisdiction watchdog body, whereas other watchdog agencies, such as the Legal Services Commission, Community Services Commission, Privacy Committee or 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, whereas other agencies may 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 ombudsman across 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 are currently involved in a major benchmarking exercise with the other Australian parliamentary ombudsman.

We also monitor how we compare with the watchdog agencies in NSW by analysing their performance statistics in their annual reports. We need to formalise benchmarking activities with relevant agencies, in line with the NSW 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.

This planning process encourages full and frank discussion on our work processes and how we can improve. This has enabled us to deal with increasing complaint numbers, while reducing the time taken to finalise matters.

Complaint handling in the public sector

For the past five years, we have provided training for public servants in how to achieve best practice in the area of customer service and complaint handling systems.

Last year a number of public authorities sought assistance in dealing with customers and complainants who behaved in a violent manner, or who made unreasonable demands upon the organisation. We also experienced an upsurge in 'challenging complainants', and in September, 1998 we published some guidelines on how to handle these situations.

Our guidelines for *Dealing with Difficult Complainants* have been very popular, and we received many requests for some training to accompany them. After a successful pilot of the course for Department of Community Services, we provided five more 'open' courses, three in Sydney and two in regional NSW, training 108 participants. During the year we continued to provide these courses, and we are taking bookings now for the year 2000.

We continue to provide the popular complaint handling for frontline staff courses, which we presented seven times, training 124 people. Two regional areas invited us to present courses, which were delivered in Byron Bay in March and in Albury in May. Plans are under way for two Newcastle courses.

Most public service departments now have an accessible, fair, and relatively speedy process for handling customer complaints. There is still opportunity for improvement in the areas of

effective, comprehensive redress, and in the analysis of complaint information in order to improve service. As in other areas of the public sector resources are an issue, but an increasing body of senior managers in the government sector are driving change and improvement.

In addition to the two frontline courses, demand for our manager's course on the necessary systems for a comprehensive approach to customer feedback continues. A course in understanding complaint management was delivered three times to a total of 53 participants in Sydney.

Over the years, the courses have all changed to keep up with current trends and our own customer feedback, and we often see participants return for different courses. While demand exists, we will continue to offer the three courses to all government staff and managers.

The income generated by these courses contributes to the cost of carrying out investigation work.

Our guidelines

One way of reducing our work is to provide guidance to public officials on acceptable conduct and to improve the way public authorities deal with complaints. This will hopefully reduce the complaints coming to us. To this end we have produced a series of guidelines, which have been well received (see Appendix II).

Complaints about us

This year we revised our complaints and compliments policy. We believe this will enable us to deal more effectively with complaints and concerns about our performance and analyse trends in this important area.

We encourage staff to be open and responsive to complaints, compliments and suggestions about our service. We view complaints as a second chance to provide service and satisfaction where, for whatever reason, our initial attempts failed. It is also a valuable tool to assist us to monitor our performance and fine tune our procedures.

The majority of complaints we receive are about simple customer service issues. All our staff have a responsibility to deal with complaints made or referred to them and are empowered to resolve complaints wherever appropriate at first contact. Senior staff deal with unresolved complaints and investigation of serious allegations.

We received complaints about a range of issues including delay, allegations of bias, inaccurate information, failure to properly investigate, inappropriate referrals and poor customer service.

In most cases we have used complaint feedback as an opportunity to provide the complainant with explanations and further information about our policies and procedures. Where appropriate we have offered apologies and undertaken some form of remedial action. For example, in relation to complaints about delay we have reviewed the officer's workload and either assigned greater priority to the file or reallocated it for prompt attention. Other complaints outcomes include: reprinting a brochure to correct inaccurate information, creating a new procedure on our Complaints Management System (CMS) to assist in monitoring second review requests, updating our databases and discussing issues arising from complaints at our team meetings.

Research and development

We were involved in a number of research projects throughout the year. Specific details on these projects: the police and public safety project, the Aboriginal Strategic Plan and the Police Services Employee Management System, can be found in the **Police** section of this report.

Overseas travel

Mr Greg Andrews, the Assistant Ombudsman (General) travelled to Papua New Guinea (PNG) during the year as part of the technical monitoring and review group 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.

We are participating in this review on a fee for service basis. AusAid meets all the travel and costs associated with our participation.

Code of conduct

Our code of conduct provides practical guidance to 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 functions and powers. No change was made to the Ombudsman code of conduct during the reporting year.

ENVIRONMENTAL ISSUES

All organisations, including us, have an impact on the environment. This impact includes the generation of emissions and waste and the use of resources such as water and energy. To monitor and ultimately reduce our impact, we have put in place a number of

environmental programs including our energy management program and our waste reduction and purchasing strategic plan. As well, the owners of our building have been pro-active in improving the environmental performance of the building and have achieved significant results in water conservation, energy savings and reduction of CO_2 emissions.

Energy management

In late 1998 the Premier announced the Government Energy Management Policy. This policy committed each agency to sustainable energy use, lower greenhouse gas emissions, better financial performance and improved environmental outcomes. The policy outlined specific agency responsibilities which included:

- the establishment of performance goals and reporting on outcomes in the annual report;
- reporting energy consumption to the Department of Energy at the completion of each year; and
- adopting best practice in procurement of new assets.

We endorse this policy initiative. The Manager Corporate Support is our Energy Manager with day-to-day responsibility for implementation of this program.

Developing our goals

Our energy use is electricity and fuel for our cars. Our energy management strategies are:

- reduction of the total energy consumption, where cost effectively feasible, by 15 per cent of the 1995 level by 2001 and 25 per cent of the 1995 level by 2005;
- inclusion of 6 per cent Green Power in electricity use when available under contract;
- purchase of personal computers which comply with SEDA's Energy Star requirement;
- include energy efficiency as an additional selection criteria for the purchase of any equipment;
- include an appropriate energy management/environmental module in employee induction; and
- implement an employee education program.

Benchmarking

The government's policy requires each agency to establish benchmarks. The baseline year is 1995–96 and future reporting will be compared to this baseline.

Petrol consumption

As can be seen, there has been an increase in the litres of petrol used. This can be explained by the increased access and awareness activities undertaken by us, particularly by the additional staff employed for this purpose. For example, our Aboriginal outreach program has seen staff extensively travel throughout the State using our motor fleet. Although the litres used has increased, the cost per person has decreased while the litres per person and the gigajoules per person has remained consistent.

Table 5: Petrol consumption

	1995/1996	1998/1999
No. litres used	3269	4296
Cost	4264	3099
Litres converted to gigajoules	111.80	146.92
Staff no. at 30 June	69.7	91.49
Litres p.p.	46.9	46.96
Cost p.p.	61.18	46.96
Gigajoules p.p.	1.60	1.61

*p.p. = per person

Electricity consumption

As can been seen, there has been a reduction in our electricity consumption and cost. Due to an increase in staff number, the kilowatts per person, cost per person and gigajoules per person have substantially decreased. It should be noted however, that we are relocating at the end of 1999. We will have increased space that may lead to an increase in electricity costs.

Future direction

As this program is still in its development, there is little further to report against the goals outlined above. Our focus in 1999–2000 will be on ensuring that our computer upgrade program, including the leasing of personal computers, complies with SEDA's Energy Star requirements. We will also promote better energy use by a staff awareness program.

Other environmental programs

Waste reduction

As reported last year, we have developed a waste reduction and purchasing strategic plan. This plan was submitted to the Environmental Protection Authority (EPA) for assessment. In June the EPA advised that the

Table 6: Electricity consumption

	1995/1996	1998/1999
No. kilowatts used	133,630	126,704
Cost	16,254	13,094
Kilowatts converted to gigajoules	481.07	456.13
Staff no. at 30 June	69.7	91.49
Kilowatts per person	1917.22	1384.89
Cost per person	233.20	143.12
Gigajoules per person	6.90	4.99

actions proposed in our plan were good and should prove effective in minimising our waste. Some further steps were recommended to strengthen our program, including the establishment of an auditing program to estimate the quantities of scheduled waste and the trialing of recycled paper.

Recycling

We participate in the building's recycling program which covers paper, glass, aluminium and P.E.T. bottles.

Water usage reduction

The building owners have a water saving strategy throughout the building.

Technology

Streamlined and improved case management and reporting

We have been modifying our case management system to improve both complaint management and internal and external reporting.

We have used a range of software programs such as MapInfo and Access to assist us in designing a range of reports that enable us to better analyse complaint patterns and trends. Our intranet will allow staff to access these report at their desk top.

Intranet

Our intranet is being developed as part of a computer network upgrade. The intranet will provide access to complaints management information, precedent cases, Acts, Regulations, a range of management reports and corporate information. The new network will position us to take advantage of electronic service delivery initiatives wherever appropriate.

Internet

Information about our organisation can now be obtained on-line following the launch of our web site during 1998-99. The site has information about our role and functions, how to make a complaint, special types of complaints, job vacancies and publications. It also has links to relevant legislation and other complaint-handling organisations.

We will continue to develop the site to include a complaint form and a publications order form that can be emailed to us. We also plan to include our annual reports and guidelines in portable document format (PDF) for easy downloading from the site. The web site address is: www.nswombudsman.nsw.gov.au

Police Complaints/Case Management System

In the interim report of the Royal Commission into the NSW Police Service (Royal Commission), Justice Wood recommended that a new, enhanced and integrated Police Complaints Case Management System (PCCM) should replace several systems used within the Police Service. It should 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 (PIC) to review existing systems. The project's 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.

Following preliminary funding for pilot systems this year, further work on requirements and specifications was needed. By late this year the requirements and technical specification will be complete and the project advanced to tender stage.

Year 2000 compliance

Our Year 2000 program included risk analysis, remedial action (including testing) and contingency planning. The program has been evaluated and certified by an independent, accredited third party. There is no indication to suggest

Systems Administrator, Geoff Pearce and Elliot Davis, contractor, examine plans for the new network. The new network will improve our ability to analyse complaint patterns and trends.

that the program will not be achieved.

The total cost of our program is estimated to be $225,000. The risk factors acknowledge our dependence on timely information flow from other organisations, principally some of the larger government departments. Failure of major systems in these agencies will impact on the timeliness of inquiries conducted by us, but are not a serious risk to business continuity.

FINANCIAL SERVICES

Financial services including budgeting, management reporting, accounts payable and purchasing.

Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. In addition, the government makes provision for our superannuation and long service leave liabilities. We also generate revenue through the sale of publications, bank interest, undertaking special inquiries on a user pay basis and conducting training courses for public sector agencies. A break up of revenue generated, including capital funding is outlined in table 7.

Table 7: Revenue, including capital funding 1998–99

Government	
Recurrent appropriation	6,479,000
Capital appropriation	235,000
Acceptance of superannuation and long service leave	506,000
Total government	**7,219,000**
From other sources	
Grants	116,000
Publication sales	31,121
Bank Interest	17,038
Training courses	86,168
AusAid project	10,500
Miscellaneous	21,449
Total other sources	**283,276**

Our appropriation was increased during the year to enable us to establish our child protection function. In addition, funds in the form of a grant from the Premiers Department were received to continue the implementation of the PCCM. This is a joint project by the Premiers Department, PIC, Police Service and ourselves. Funding for Year 2000 rectification was also provided.

In 1999–00 our appropriation will increase again, to cover the full years costs of the child protection function. Funding was also provided as a one-off allocation, for the relocation of our office, the continuation of PCCM and the finalisation of the Year 2000 project.

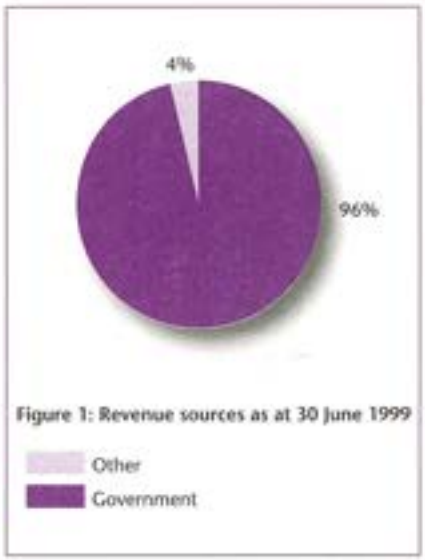

Figure 1: Revenue sources as at 30 June 1999

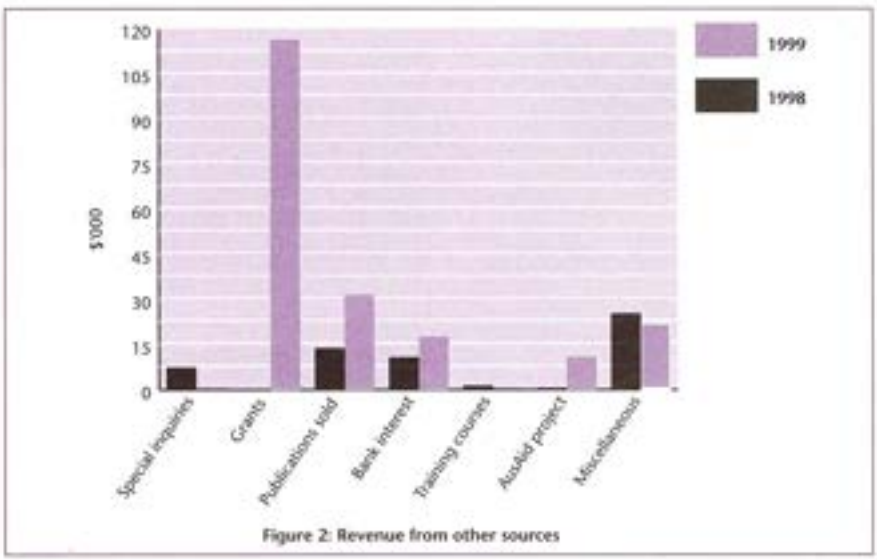

Figure 2: Revenue from other sources

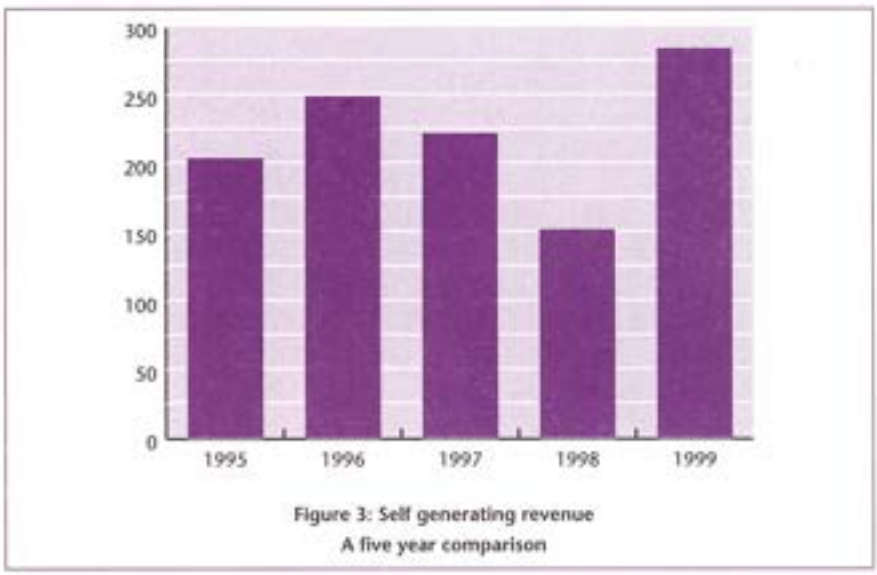

Figure 3: Self generating revenue
A five year comparison

Expenses

Most of our revenue is spent on employee expenses. These include salaries, superannuation entitlements, long service leave and payroll tax. Last year we spent more than $5.5 million on employee expenses. The day to day running of the office, including rent, postage, telephone, stores, training, printing and travel cost over $1.33 million. Depreciation of computer equipment, furniture and fittings and other office equipment cost $288,563.

The following is a summary of expenses incurred during the year.

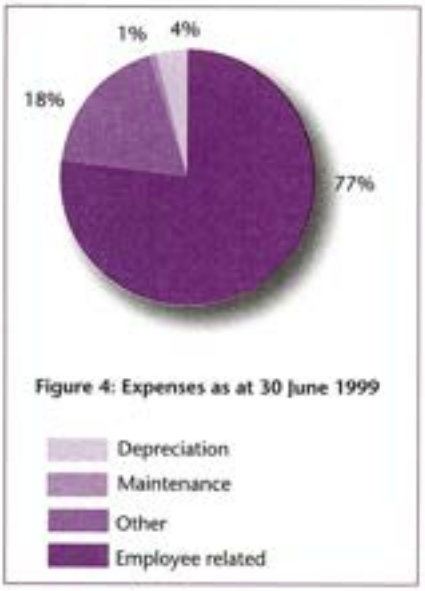

Figure 4: Expenses as at 30 June 1999

Consultants

We engaged three consultants during 1998–99. The Department of Public Works and Services was engaged to find alternative accommodation and negotiate a new lease. We spent $4,800 on a consultant to review and certify that our Year 2000 progress was on target and a further $1,700 on consultant for the PCCM. The total cost of these consultants was a $19,250 and as such there was no individual consultancy that cost at or in excess of $30,000.

Funds granted to non-government community organisations

We did not grant any funds to any non-government community organisation.

Stores expenditure

Figure 6 represents stores expenditure during the year.

It should be noted that stores includes asset purchases such as office and computer equipment, furniture and fixtures and consumables such as stationery. Because our usual expenditure is small, the purchase of major items can cause fluctuations in the level of expenditure.

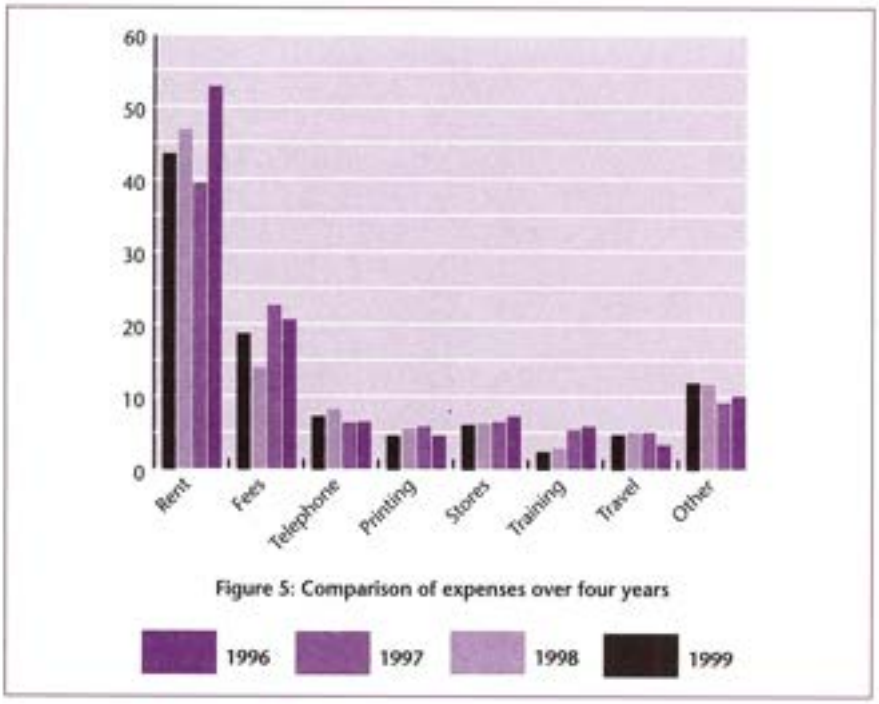

Figure 5: Comparison of expenses over four years

Stores purchases in February and March relate to the establishment of the child protection function and include the purchase of computer other office equipment and furniture. Expenditure in May and June relate to the Police Complaints Case Management project and our Year 2000 program.

Assets

Credit card use

We do not have any corporate credit cards.

Major works in progress

We were not involved in any major capital projects during the reporting year.

Minor works

We have an original capital allocation of $121,000 to purchase minor equipment, upgrade the PABX and voice mail systems and refurbish the reception area. However, the NSW Treasury approved additional capital funding of $150,000 for the establishment of our child protection function. Towards the end of the financial year funding was sought to address the Year 2000 compliance problem and a total of $222,000 was approved. Our request for unspent funds to be transferred to 1999–2000 to complete these projects was approved by Treasury.

We also we received a $116,000 grant from the Premier's Department to enable us to continue with the development of the PCCM.

In 1999–2000 we will undertake a number of asset improvement projects including an IT network upgrade, fit out modifications associated with relocating, Year 2000 rectification and continuation of the PCCM system project. Capital funds were also provided to continue the Year 2000 rectification project.

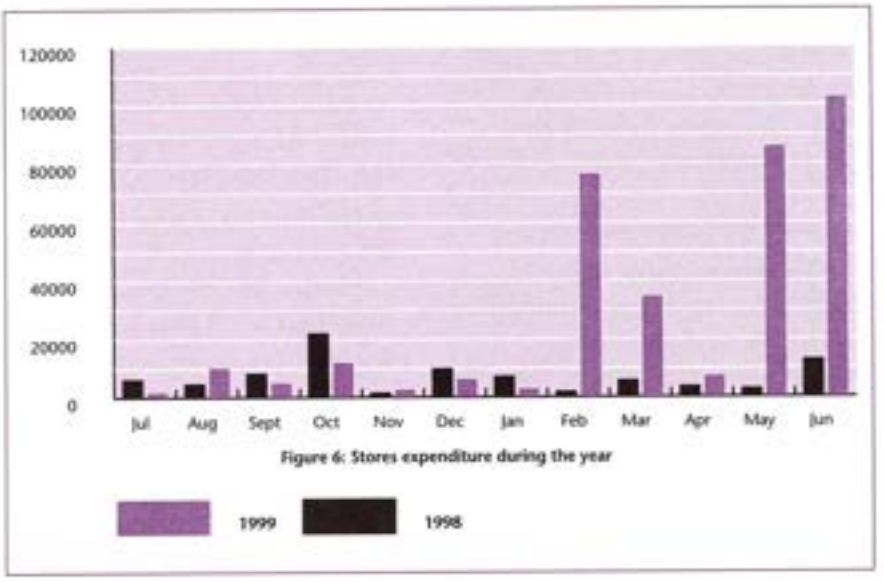

Figure 6: Stores expenditure during the year

Table 8: Major assests 1998–99

DESCRIPTION	JUNE 1998	AQUISITIONS	DISPOSALS	JUNE 1999
File servers (mini computer)	1	3	0	4
Hub (terminal servers)	5	0	0	5
Personal computers	97	18	5	110
Printers	16	1	1	16
Photocopiers	4	1	0	5
Televisions and video equipment	9	2	1	8

Table 9: Accounts on hand 1998–99

Accounts on hand as at 30 June 1999	
Current (ie within due date)	$99,952
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	**$99,952**

Table 10: Value of recreation and extended (long service) leave

	JUNE 98	JUNE 99
Recreation Leave	$311,043	$212,903
Extended (Long Service) Leave	$648,145	$515,299

Major assets

Table 8 represents our major assets on hand.

Land disposal

We did not dispose of any land or property.

Liabilities

We have two sources of liabilities, the creditors who are owed money for goods and services they provide and staff who are owed accrued leave entitlements.

Accounts payable policy

We continue to implement an accounts payable policy. The policy states that all accounts shall be paid within the agreed terms or within 30 days of receipt of invoice if terms are not specified. Suppliers are notified of the policy in writing when orders for goods and services are placed with them.

Accounts on hand

We regularly review our payment policy. We aim to pay all accounts within the vendor credit terms 98 per cent of the time. During 1998–99 we paid 96 per cent of our accounts on time compared with 99 per cent the previous year. We have not been required to pay penalty interest on outstanding accounts. See table 9.

Value of leave

The value of recreation (annual) leave and extended (long service) leave owed in respect of all staff for the 1997–98 and 1998–99 financial years is shown table 10.

'Thank you for you reply ... you have given my complaint considerable attention. I also understand that with a limited budget, you have to focus on what you believe is of greatest importance.'

RISK MANAGEMENT

We participate in the NSW treasury managed fund, which is the self-insurance scheme for state government agencies.

The fund encourages agencies to improve their performance in a range of areas, including prevention of claims, education and the adoption of risk management principles. Agencies are asked to self assess their performance against best practice indicators to monitor their progress.

Our self assessment showed a slight improvement from the 1997–98 assessment, 66.7 to 68.0, and that our overall risk profile was better than the Treasury managed fund average. However, the self assessment highlighted some areas where improvements can be made and strategies will be developed to address this in the 1999–2000 year.

It is our goal to continually improve our performance in this area, with specific a focus on overall risk management policy, OH&S and fleet management.

Worker's compensation

Traditionally, we have a small number of workers compensation claims each year, with most accidents occurring outside the workplace, e.g. when the staff member is travelling. To limit the number of claims, we have been active in promoting a safe work environment. Details of our OH&S program can be found earlier in this section.

Internal audit

We engage the services of an accounting firm to undertake the financial based internal audit function. This internal audit consists of:

- an audit of internal controls within the accounting, payroll and leave functions;
- review of our statutory obligations, such as the calculation and treatment of payroll tax and fringe benefits tax; and
- a review of the financial statements prior to submission to the Auditor-General.

We formed a subcommittee of the management committee in July to develop an internal audit program for our complaint handing and other non-financial activities. This is consistent with the Treasury's statement of best practice, which expands the scope of internal control to incorporate an assurance that an agency's operations are being conducted efficiently and effectively to achieve the agencies objectives.

Other risk management programs

In addition to the programs pursued by the Treasury managed fund, we have been addressing a range of risk management issues including: internal control; corruption prevention; fraud control; Year 2000; office security; disaster recovery and preventative maintenance of equipment.

With the establishment of the child protection team, we now have over 95 full-time and part-time staff. Megan Lovell, Staff Clerk, is one of the people responsible for recruitment, leave administration, payroll and occupational health and safety.

'Rarely do organisations get credit for the time and effort they put into assisting people, so on behalf of all concerned I would like to express appreciation to the Ombudsman's department for the support it has given me and to others, in dealing with the community concerns.'

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

Irene Moss
Ombudsman

14 July, 1999

NSW Ombudsman

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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 1999. The Ombudsman is responsible for the financial report consisting of the accompanying statement of financial position, operating statement, statement of cash flows, program statement and summary of compliance with financial directives, together with the notes thereto, and 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 and policy 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 comprised compliance with:

- core business activities being in accordance with *Ombudsman Act 1974*; and
- the time limits set in the *Annual Reports (Departments) Act 1985* for the presentation of the Office's annual report to Parliament.

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.

Audit Opinion

In my opinion the financial report of the Ombudsman's Office complies with section 45E of the Act and presents fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements the financial position of the Office as at 30 June 1999 and the results of its operations and its cash flows for the year then ended.

A. C. HARRIS

SYDNEY
17 August 1999

OMBUDSMAN'S OFFICE

Operating Statement
For the year ended 30 June 1999

	Notes	Actual 1999 $'000	Budget 1999 $'000	Actual 1998 $'000
Expenses				
Operating Expenses				
Employee related	2(a)	5,518	5,303	4,767
Other operating expenses	2(b)	1,275	1,084	1,112
Maintenance	2(c)	58	60	63
Depreciation and amortisation	2(d)	288	301	413
Total Expenses		7,139	6,748	6,355
Less:				
Retained Revenue				
Sale of goods and services	3(a)	33	17	14
Investment income	3(b)	17	9	11
Grants and contributions	3(c)	116	–	1
Other revenue	3(d)	117	36	124
Total Retained Revenue		283	62	150
Loss on sale of non-current assets	4	(1)	–	(1)
NET COST OF SERVICES	17	6,857	6,686	6,206
Government Contributions				
Recurrent appropriation	5(a)	6,479	6,415	5,476
Capital appropriation	5(b)	234	271	28
Acceptance by the Crown Transactions Entity of employees entitlements and other liabilities	6	506	425	394
Total Government Contributions		7,219	7,111	5,898
SURPLUS/(DEFICIT) FOR THE YEAR		362	425	(308)

The accompanying notes form part of these statements.

OMBUDSMAN'S OFFICE

Statement of Financial Position
As at 30 June 1999

	Notes	Actual 1999 $'000	Budget 1999 $'000	Actual 1998 $'000
ASSETS				
Current Assets				
Cash	16	577	626	131
Receivables	8	31	12	21
Other	9	129	90	126
Total Current Assets		737	728	278
Non Current Assets				
Plant and equipment	10	463	348	376
Total Non-Current Assets		463	348	376
Total Assets		1,200	1,076	654
LIABILITIES				
Current Liabilities				
Accounts payable	11	100	128	81
Employee entitlements	12	507	307	342
Total Current Liabilities		607	435	423
Total Liabilities		607	435	423
Net Assets		593	641	231
EQUITY				
Accumulated funds	13	593	641	231
Total Equity		593	641	231

The accompanying notes form part of these statements.

OMBUDSMAN'S OFFICE

Statement of Cash Flows
For the year ended 30 June 1999

	Notes	Actual 1999 $'000	Budget 1999 $'000	Actual 1998 $'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(5,031)	(5,032)	(4,491)
Other		(1,323)	(1,144)	(1,206)
Total Payments		(6,354)	(6,176)	(5,697)
Receipts				
Sale of goods and services		30	42	14
Interest received		13	9	13
Other		228	10	163
Total Receipts		271	61	190
Cash Flows from Government				
Recurrent appropriation		6,479	6,415	5,476
Capital appropriation		234	271	28
Cash reimbursements from the Crown Transactions Entity		192	188	143
Net Cash Flows from Government		6,905	6,874	5,647
NET CASH FLOWS FROM OPERATING ACTIVITIES	17	822	759	140
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of plant and equipment		1	–	–
Purchases of plant and equipment		(377)	(271)	(26)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(376)	(271)	(26)
NET INCREASE/(DECREASE) IN CASH		446	488	114
Opening cash and cash equivalents		131	138	17
CLOSING CASH AND CASH EQUIVALENTS	16	577	626	131

The accompanying notes form part of these statements.

OMBUDSMAN'S OFFICE

Program Statement — Expenses and Revenues
For the Year Ended 30 June 1999

AGENCY'S EXPENSES AND REVENUES	Program 1*		Program 2*		Program 3*		Not Attributable		Total	
	1999 $'000	1998 $'000	1999 $'000	1998 $'000	1999 $'000	1998 $'000	1999 $'000	1998 $'000	1999 $'000	1998 $'000
Expenses										
Operating expenses										
Employee related	2,925	2,733	2,315	2,034	278	–			5,518	4,767
Other operating expenses	635	628	525	484	115	–			1,275	1,112
Maintenance	31	37	26	26	1	–			58	63
Depreciation and amortisation	156	240	125	173	7	–			288	413
Total Expenses	3,747	3,638	2,991	2,717	401	–			7,139	6,355
Retained Revenue										
Sale of goods and services	(18)	(7)	(15)	(7)	–	–			(33)	(14)
Investment income	(9)	(6)	(8)	(5)	–	–			(17)	(11)
Grants and contributions	(116)	(1)	–	–	–	–			(116)	(1)
Other revenue	(17)	(16)	(100)	(108)	–	–			(117)	(124)
Total Retained Revenue	(160)	(30)	(123)	(120)	–	–			(283)	(150)
Loss on sale of non-current assets	1	1	–	–	–	–			1	1
NET COST OF SERVICES	3,588	3,609	2,868	2,597	401	–			6,857	6,206
Government contributions	–	(3,313)	–	(2,585)	–	–	(7,219)	–	(7,219)	(5,898)
NET EXPENDITURE/(REVENUE)	3,588	296	2,868	12	401	–	(7,219)	–	(362)	308

* 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 1999

	1999				1998			
	RECURRENT		CAPITAL		RECURRENT		CAPITAL	
	App* $'000	Exp* $'000	App* $'000	Exp* $'000	App* $'000	Exp* $'000	App* $'000	Exp* $'000
ORIGINAL BUDGET APPROPRIATION/EXPENDITURE								
• Appropriation Act	5,845	5,845	121	119	5,410	5,410	25	23
• Budget Variation Acts (ie Additional Appropriations)	570	440	150	115	–	–	3	3
	6,415	6,285	271	234	5,410	5,410	28	26
OTHER APPROPRIATIONS / EXPENDITURE								
• Treasurer's Advance	65	65	–	–	66	66	–	–
• s22 - expenditure for certain works and services	222	129	–	–	–	–	–	–
	287	194	–	–	66	66	–	–
Total Appropriations/Expenditure	6,702	6,479	271	234	5,476	5,476	28	26
Drawdowns from Treasury		(6,479)		(234)		(5,476)		(28)
Total Unspent Appropriations		–		–		–		(2)

Additional capital and recurrent appropriation was provided to the Ombudsman to establish the Child Protection jurisdiction by the 1998/1999 *Budget Variation Act*. Total recurrent expenditure was less than the total recurrent appropriation due to our Child Protection jurisdiction commencing in April 1999 which was later than expected. Funding provided under Section 22 of the *Public Finance and Audit Act*, 1983 for the Year 2000 rectification project was not fully drawn as the funding approval was not received until the end of the financial year limiting our time and ability to implement our program.

App* = APPROPRIATION **Exp*** = EXPENDITURE

OMBUDSMAN'S OFFICE

Notes to the Financial Statements
For the year ended 30 June 1999

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 General Government Sector 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

OMBUDSMAN'S OFFICE

Notes to the Financial Statements
For the year ended 30 June 1999

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.

(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 period and the period end interest rate were 3.86% (4.03% 1997–98) and 3.79% (4.01% 1997–98) 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 approximates 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 suppliers (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 end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. No interest was paid during the 1998/99 year.

(k) Year 2000 Date Change

The year 2000 issue is the result of shortcomings in many electronic data processing systems and other electronic equipment that may adversely affect the NSW Ombudsman's operation on the date change from 1999 to 2000.

The NSW Ombudsman implemented a program to address the potential computer system failures attributable to the date change from 1999 to 2000. The program includes risk analysis, remedial action including internal testing and contingency planning. There is no

OMBUDSMAN'S OFFICE

Notes to the Financial Statements
For the year ended 30 June 1999

indication to suggest that the program will not be achieved.

Because of the unprecedented nature of the Year 2000 issue, its effects and the success of remedial action will not be fully determinable until the year 2000 and thereafter.

2. EXPENSES

	1999 $'000	1998 $'000
(a) Employee related expenses comprise the following specific items:		
Salaries and wages (including recreation leave)	4,648	4,053
Superannuation	325	274
Long service leave	159	100
Workers' compensation insurance	23	19
Payroll tax and fringe benefits tax	341	302
Payroll tax on superannuation	22	19
	5,518	4,767

	1999 $'000	1998 $'000
(b) Other operating expenses		
Auditor's remuneration	14	13
Rental expense relating to operating leases	555	520
Insurance	6	5
Consultants fee	19	2
Fees	221	152
Telephones	94	91
Stores	79	69
Training	32	32
Printing	60	61
Travel	62	56
Motor vehicle	23	21
Postal and courier	32	23
Advertising	34	21
Books and subscriptions	31	32
Energy	13	14
	1,275	1,112

	1999 $'000	1998 $'000
(c) Maintenance		
Repairs and routine maintenance	58	63

	1999 $'000	1998 $'000
(d) Depreciation and Amortisation expense		
Depreciation		
Computer Equipment	116	251
Furniture and Fittings	12	13
Office Equipment	27	31
Amortisation		
Leasehold Improvement	133	118
	288	413

3. REVENUES

	1999 $'000	1998 $'000
(a) Sale of goods and services		
Sale of Publications	32	13
Other	1	1
	33	14

	1999 $'000	1998 $'000
(b) Investment Income		
Bank interest	17	11

	1999 $'000	1998 $'000
(c) Grants and contributions		
Trainee Salary Subsidy (ATS/Career Start)	–	1
Police Complaints Case Management (PCCM) Project	116	–
	116	1

OMBUDSMAN'S OFFICE

Notes to the Financial Statements
For the year ended 30 June 1999

	1999 $'000	1998 $'000
(d) Other Revenue		
Specific Projects	–	7
Workshops	87	92
AUSAID PNG Ombudsman Institutional Strengthening Project	11	15
Sitting/review fee	6	9
Mediation fee	1	1
National Investigation Conference	11	–
Others	1	–
	117	124

	1999 $'000	1998 $'000
4. LOSS ON SALE OF NON-CURRENT ASSETS		
Loss on disposal of property, plant and equipment		
Proceeds from sale	1	–
Written down value of assets sold	(2)	(1)
Loss on disposal of property, plant and equipment	(1)	(1)

	1999 $'000	1998 $'000
5. APPROPRIATIONS		
(a) Total recurrent appropriations (per Summary of Compliance)	6,479	5,476
Recurrent appropriations (per Operating Statement)	6,479	5,476
(b) Total capital appropriations (per Summary of Compliance)	234	28
Capital appropriations (per Operating Statement)	234	28

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:

	1999 $'000	1998 $'000
Superannuation	325	275
Long service leave	159	100
Payroll tax	22	19
	506	394

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.

(c) Program 3 **Resolution of Child Protection Related Complaints**

Objectives: To determine whether child abuse allegations or convictions against employees of government and certain non-government agencies have been dealt with properly.

OMBUDSMAN'S OFFICE

Notes to the Financial Statements
For the year ended 30 June 1999

8. CURRENT ASSETS – RECEIVABLES

	1999 $'000	1998 $'000
Sale of publications	3	–
Bank interest	9	5
Workshop fees	3	6
Salary reimbursement	11	1
Mediation fees	–	1
LSL/First State Super reimbursement from Treasury	–	5
Travel advance	2	1
Telephone rebate	3	2
	31	21

Management considers all amounts to be collectable and as such, no provision for doubtful debts has been established.

9. CURRENT ASSETS – OTHER

	1999 $'000	1998 $'000
Prepayments		
Salaries and wages	–	7
Maintenance	23	23
Rent	46	48
Subscription/Membership	12	10
Training	5	2
Motor Vehicle	1	1
Insurance	39	31
Employee assistance program	2	2
Travel	–	1
Other	1	1
	129	126

10. NON-CURRENT ASSETS – PLANT AND EQUIPMENT

	Computer Equipment		Furniture & Fittings		Leasehold Improvement		Office Equipment		Total	
	1999 $'000	1998 $'000	1999 $'000	1998 $'000	1999 $'000	1998 $'000	1999 $'000	1998 $'000	1999 $'000	1998 $'000
Cost										
At 1 July	872	876	189	190	667	663	181	182	1,909	1,911
Additions	257	7	–	–	31	4	89	15	377	26
Disposals	(14)	(11)	(5)	(1)	–	–	(51)	(16)	(70)	(28)
At 30 June	1,115	872	184	189	698	667	219	181	2,216	1,909
Depreciation										
At 1 July	750	509	165	153	487	369	131	116	1,533	1,147
Depreciation/Amortisation for the year	116	251	12	13	133	118	27	31	288	413
Writeback on Disposal	(14)	(10)	(4)	(1)	–	–	(50)	(16)	(68)	(27)
At 30 June	852	750	173	165	620	487	108	131	1,753	1,533
Carrying Value										
At 30 June	263	122	11	24	78	180	111	50	463	376
Fully depreciated assets (at cost)*	810	281	61	63	–	–	37	46	908	390

*These assets are still being used by the Office.

The increase in fully depreciated assets for computer equipment was primarily due to the Complaints Case Management System and most of the Office's computers being more than 3 years old.

Normal depreciation of these assets is 3 years. It is expected that these assets will be replaced.

OMBUDSMAN'S OFFICE

Notes to the Financial Statements
For the year ended 30 June 1999

11. CURRENT LIABILITIES– ACCOUNTS PAYABLE

	1999 $'000	1998 $'000
Accrued expenses/ trade creditors	71	50
Payroll tax	6	3
Superannuation	4	1
Prepaid workshops	10	13
Workshop income distribution	6	11
Fringe benefits tax	3	3
	100	81

12. CURRENT LIABILITIES – EMPLOYEE ENTITLEMENTS

	1999 $'000	1998 $'000
Recreation leave	311	213
Annual leave loading	45	36
Accrued salaries and wages	82	41
Payroll tax on recreation and long service leave	66	50
Workers compensation on recreation leave	3	2
Aggregate employee entitlements	507	342

13. CHANGES IN EQUITY

	1999 $'000	1998 $'000
Balance at the beginning of the financial year	231	539
Surplus/(deficit) for the year after extraordinary items	362	(308)
Balance at the end of the financial year	593	231

14. COMMITMENTS FOR EXPENDITURE

Operating Lease Commitments

Commitments in relation to non-cancellable operating leases are payable as follows:

	1999 $'000	1998 $'000
Not later than one year	595	506
Later than one year but not later than 2 years	671	254
Later than 2 years but not later than 5 years	1,998	–
Later than 5 years	–	–
	3,264	760

These operating lease commitments are not recognised in the financial statements as liabilities.

15. BUDGET REVIEW

Net Cost of Services

There has been an increase in the net cost of services this year as compared to the budget primarily as a result of higher employee related and other operating expenses due to the Ombudsman's new child protection function, the continuing development of the Police Complaints Case Management System (PCCM) and the Year 2000 rectification project. In addition, staff, along with other public servants, were awarded substantial pay increases in both July 1998 and January 1999.

Cash

The Ombudsman's cash balance is lower than the budgeted amount due to higher levels of expenditure on plant and equipment and other operating expenses. However some of this expenditure was offset by a higher than budgeted revenue received by the Office.

Others

Receivables are higher than budget due to the Office recouping salary related expenses of a staff member who worked part-time at the Child Protection Council. There was also higher interest income from our bank deposit.

Prepayments are higher due to general increases in other operating expenses.

OMBUDSMAN'S OFFICE
Notes to the Financial Statements
For the year ended 30 June 1999

The increase in liabilities was primarily due to the full impact of salary increases during the year on employee entitlements and the recruitment of additional staff for Child Protection Unit.

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:

	1999 $'000	1998 $'000
Cash	577	131
Closing Cash and Cash Equivalents (per Cash Flow Statement)	577	131

17. RECONCILIATION OF NET COST OF SERVICES TO NET CASH FLOWS FROM OPERATING ACTIVITIES

	1999 $'000	1998 $'000
Net cash flows from operating activities	822	140
Depreciation/Amortisation	(288)	(413)
Recurrent and capital appropriation	(6,713)	(5,504)
Acceptance by Crown of liabilities	(506)	(394)
Decrease / (increase) in provisions	(165)	(32)
Increase / (decrease) in receivables	10	(10)
Increase / (decrease) in prepayments and other assets	3	35
Decrease / (increase) in creditors	(19)	(27)
Net loss on sale of plant and equipment	(1)	(1)
Net cost of services	(6,857)	(6,206)

END OF AUDITED FINANCIAL STATEMENTS

appendices

CONTNETS

APPENDIX 1: PUBLIC AUTHORITY COMPLAINTS DETERMINED 1998-99

Public Authority	Assessment Only						Preliminary or informal investigations					Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Adult Migrant Education	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Aged & Disability Services	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	2
Agriculture Department	0	0	0	1	2	0	3	0	1	1	0	0	0	0	0	8
Ambulance Service of NSW	1	1	0	0	4	0	0	0	0	0	0	0	0	0	0	6
Anti-Discrimination Board	1	0	0	0	1	0	0	0	1	0	0	0	0	0	0	3
Attorney Generals Department	7	0	0	4	2	0	5	2	0	7	0	0	0	0	0	27
Audit Office	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Central Coast Area Health Service	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Central Sydney Area Health	2	0	0	0	0	0	0	1	0	0	0	0	0	0	0	3
Central Tablelands Rural Lands Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Central West Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Charles Sturt University	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Chiropractors & Osteopaths Registration Board	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
City Rail	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Commission of Inquiry for Environment & Planning	5	0	0	0	0	0	1	0	0	0	0	0	0	0	0	6
Community Service Commission	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
Community Services, Dept of	7	0	3	2	6	0	4	0	0	1	0	0	0	0	0	23
Condobolin Local Aboriginal Land Council	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2
Condobolin Rural Lands Board	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
CountryLink	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Dental Board of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Department of Education and Training	17	0	8	7	15	0	15	6	1	9	0	0	0	0	0	78
Department of Land and Water Conservation	0	1	0	4	9	0	15	1	0	6	0	0	0	0	0	36
Department of Local Government	0	0	0	1	1	0	3	1	0	0	0	0	0	0	0	6
Department of Mineral Resources	1	0	0	0	1	0	2	1	0	0	0	0	0	0	0	5
Department of Public Works	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Department of School Education	1	1	0	0	0	0	5	1	0	2	0	0	0	0	2	12
Dept of Sport & Recreation	0	0	0	0	0	0	2	1	0	1	0	0	0	0	0	4
Department of Transport	1	0	0	3	3	2	9	4	0	1	0	0	0	0	0	23
Department of Urban Affairs	1	0	0	2	3	0	5	1	0	2	0	0	0	0	0	14
Director of Public Prosecutions	3	0	0	0	0	0	1	0	0	0	0	0	0	0	0	4
Energy Australia	0	1	5	1	2	0	0	0	0	1	0	0	0	0	0	10
Energy Dept of	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Environmental Protection Authority	0	0	0	1	3	0	5	0	0	3	0	0	0	0	0	12
Ethnic Affairs Commission	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Fair Trading, Dept of	2	3	0	3	10	0	13	7	1	12	0	0	0	0	0	51
Far West Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Financial Institutions Commission	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Fire Brigades NSW	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
Gaming & Racing, Dept of	0	0	1	0	0	0	0	1	0	1	0	0	0	0	0	3
Geographical Names Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Goodooga Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Great Southern Energy	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Grey Hound Racing Control Board	1	0	0	1	1	0	2	0	0	0	0	0	0	0	0	5
Harness Racing Authority	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1

1 No Jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
4 Explanation or advice provided
5 Premature, referred to authority
6 Investigation declined on resource/priority grounds
7 Complainant assisted
8 Investigation declined– insuffient evidence/no utility
9 Investigation declined on resource/priority grounds
10 Resolved to our satisfaction
11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

Public Authority	Assessment Only						Preliminary or informal investigations					Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Health Care Complaints Commission	1	0	0	4	3	0	11	0	0	1	0	0	0	0	0	20
Health Department	2	3	1	2	2	1	1	2	0	1	0	0	0	0	0	15
Health Quest	0	0	0	2	1	0	0	1	0	0	0	0	0	0	0	4
Home Purchase Assistance Authority	0	0	0	0	0	0	1	0	0	3	0	0	0	0	0	4
Home Fund Commissioner	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Housing Department	3	2	6	16	25	0	35	7	0	29	0	0	0	0	0	123
Hunter Area Health Service	1	0	0	2	2	0	2	0	0	0	0	0	0	0	0	7
Hunter Water Corporation	1	0	0	0	1	0	4	1	0	0	0	0	0	0	0	7
Illawarra Area Health Service	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Independent Commission Against Corruption	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Independent Pricing and Regulatory Tribunal	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Industrial Relations Dept	0	0	0	0	2	0	1	1	0	2	0	0	0	0	0	6
Integral Energy	0	0	1	0	1	0	1	0	0	1	0	0	0	0	0	4
Internal Audit Bureau of	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Land Titles Office	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Legal Aid Commission of NSW	0	0	3	3	4	0	4	2	0	3	0	0	0	0	0	19
Liquor Administration Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Macquarie Area Health Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Macquarie University	1	2	0	0	1	0	1	1	0	0	0	0	0	0	0	6
Minister for the Arts	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Ministry for Forests and Marine Administration	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Moombahlene Local Aboriginal Land Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Motor Accidents Authority	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Motor Vehicle Repair Industry Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
National Parks & Wildlife Service	0	0	1	0	2	0	7	3	0	2	0	0	0	0	0	15
New England Area Health Service	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0	4
NSW Aboriginal Land Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
NSW Treasury	0	3	0	0	0	0	0	1	0	0	0	0	0	0	0	4
Northern Sydney Area Health Service	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
North Power Energy	1	0	2	2	2	0	1	0	0	0	0	0	0	0	0	8
NSW Board of Studies	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
NSW Fisheries	0	0	0	2	3	0	1	3	0	0	0	0	0	0	0	9
NSW Lotteries	0	0	0	2	0	0	2	0	0	0	0	0	0	0	0	4
NSW Medical Board	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Valuer General's Office	1	0	2	2	1	0	5	1	0	4	0	0	0	0	0	16
NSW Vocational Education	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Nurses Registration Board	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Office of Protective Commissioner	7	0	0	2	0	0	2	1	0	3	0	0	0	0	0	15
Office of State Revenue	0	0	2	6	4	0	11	2	0	2	0	0	0	0	0	27
Olympic Roads and Transport Authority	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Orange Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Public Trustee	3	0	0	0	1	0	6	1	0	0	0	0	0	0	0	11
Rail Services Australia	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Registry of Births, Deaths & Marriages	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	3
Rental Bond Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Residential Tenancies Tribunal	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2

1 No Jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
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10 Resolved to our satisfaction
11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

Public Authority	Assessment Only						Preliminary or informal investigations					Formal Investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Roads and Traffic Authority	4	0	3	9	28	0	14	5	0	5	0	0	0	0	0	68
Rural Assistance Board	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Rural Fire Service	0	0	0	0	1	0	1	2	0	2	0	0	0	0	0	6
Rural Lands Protection	0	0	0	0	2	0	4	1	0	0	0	0	0	0	0	7
Sheriffs Office	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
South Eastern Sydney Area Health Service	0	0	0	0	4	0	1	1	0	0	0	0	0	0	1	7
South Western Area Health Service	0	0	0	0	2	0	1	0	0	0	0	0	0	0	0	3
Southern Area Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Southern Cross University	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
State Debt Recovery Office	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
State Electoral Office	2	0	0	0	1	0	0	0	0	0	0	0	0	0	0	3
State Emergency Service	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2
State Forests	1	0	0	0	2	0	2	1	0	1	0	0	0	0	0	7
State Library of NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
State Rail Authority of NSW	4	0	7	2	9	0	4	2	0	8	0	0	0	0	0	36
State Superannuation Investment & Mgmnt Corp	1	0	0	0	4	0	2	1	0	3	0	0	0	0	0	11
State Transit Authority of NSW	2	0	0	1	5	0	2	2	0	0	0	0	0	0	0	12
Superannuation Admin Authority	1	0	0	0	1	0	0	0	0	1	0	0	0	0	0	3
Sydney Organising Committee for the Olympic Games	0	0	0	0	2	0	0	1	0	0	0	0	0	0	0	3
Sydney Water Corporation	1	0	0	4	6	0	6	1	0	10	0	0	1	0	0	29
Technical and Further Education	1	0	0	0	1	0	0	0	0	0	0	0	1	0	0	3
Totalizator Agency Board of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Transgrid	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	3
Tweed Lismore Rural Lands Protection Board	0	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	1	1	0	1	0	0	0	0	1	4
University of NSW	1	0	0	1	0	0	0	1	0	0	0	0	0	0	0	3
University of Newcastle	1	0	0	0	0	0	1	1	0	0	0	0	0	0	0	3
University of Sydney	0	0	0	0	2	0	3	1	0	0	0	0	0	0	0	6
University of Technology	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
University of Western Sydney	0	0	0	0	2	0	1	1	0	1	0	0	0	0	0	5
University of Wollongong	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Veterinary Surgeons Investigating Committee	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Waste Service NSW	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Waterways Authority	0	0	0	0	2	0	1	2	0	0	0	0	0	0	0	5
Wentworth Area Service	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Western Sydney Area Health Service	0	1	1	1	0	0	0	0	0	0	0	0	0	0	0	3
Workcover Authority	0	1	0	3	4	0	7	1	0	5	0	0	0	0	0	21
Total	**106**	**21**	**53**	**111**	**211**	**3**	**254**	**87**	**5**	**146**	**0**	**0**	**3**	**0**	**4**	**1004**

1 No Jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
4 Explanation or advice provided
5 Premature, referred to authority
6 Investigation declined on resource/priority grounds
7 Complainant assisted
8 Investigation declined– insuffient evidence/no utility
9 Investigation declined on resource/priority grounds
10 Resolved to our satisfaction
11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

APPENDIX 2: LOCAL GOVERNMENT COMPLAINTS DETERMINED 1998-99

Council	Assessment Only						Preliminary or informal investigations					Formal Investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Albury City	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Armidale City	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Ashfield Municipal	0	0	4	0	1	0	4	2	0	1	0	0	0	1	0	13
Auburn	0	0	0	0	2	0	3	1	0	0	0	0	0	0	0	6
Ballina Shire	0	0	1	0	4	0	2	1	0	3	0	0	0	0	0	11
Bankstown City	0	0	1	2	1	0	4	0	0	2	0	0	0	0	0	10
Bathurst City	0	0	0	1	0	0	0	1	0	2	0	0	0	0	0	4
Baulkham Hills Shire	0	0	4	4	1	0	13	5	0	3	0	0	0	0	0	30
Bega Valley Shire	0	0	0	1	1	0	3	2	0	2	0	0	0	0	0	9
Bellingen Shire	0	0	0	0	0	0	5	2	0	2	0	0	0	0	0	9
Berrigan Shire	0	1	0	0	0	0	1	1	0	0	0	0	0	0	0	3
Blacktown City	0	0	0	9	0	0	4	0	0	0	0	0	0	0	0	13
Bland Shire	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Blayney Shire	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Blue Mountains City	0	0	1	2	3	0	3	0	0	2	0	0	0	0	0	11
Bogan Shire	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Botany Bay City	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Bourke Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Broken Hill City	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Burwood Municipal	0	0	1	3	0	0	3	0	0	0	0	0	0	0	0	7
Byron Shire	0	0	2	2	2	0	4	1	0	0	0	0	0	0	0	11
Cabonne Shire	0	0	0	0	0	0	1	2	0	1	0	0	0	0	0	4
Camden Municipal	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Campbelltown City	0	0	0	0	1	0	2	0	0	3	0	0	0	0	0	6
Canterbury Municipal	0	0	0	1	0	0	6	0	0	2	0	0	0	0	0	9
Cessnock City	0	0	0	1	0	0	6	0	0	2	0	0	0	0	0	9
Clarence River	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Cobar Shire	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Coffs Harbour City	1	0	1	0	0	0	3	0	0	2	0	0	0	0	0	7
Concord Municipal	0	0	5	0	0	0	6	0	0	2	0	0	0	0	0	13
Coolah Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Cooma-Monaro Shire	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	3
Coonabarabran Shire	0	0	0	0	2	0	1	1	0	0	0	0	0	0	0	4
Cootamundra Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Copmanhurst Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Corowa Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Council Not Named	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Council of the City of Lithgow	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Cowra Shire	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Crookwell Shire	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Deniliquin Municipal	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Drummoyne Municipal	0	0	0	1	2	0	2	4	0	1	0	0	0	0	0	10
Dubbo City	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Dumaresq Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Dungog Shire	0	0	1	3	1	0	3	0	0	1	0	0	0	0	0	9
Eurobodalla Shire	1	0	0	0	0	0	4	0	1	4	0	0	0	0	0	10
Evans Shire	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Fairfield City	0	0	0	0	0	0	4	0	0	0	0	0	0	0	0	4
Forbes Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gosford City	0	0	3	2	7	0	9	1	0	7	0	0	0	0	0	29
Goulburn City	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Grafton City	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Great Lakes	0	0	0	2	1	0	2	0	0	3	0	0	0	0	0	8

1 No Jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
4 Explanation or advice provided
5 Premature, referred to authority
6 Investigation declined on resource/priority grounds
7 Complainant assisted
8 Investigation declined– insuffient evidence/no utility
9 Investigation declined on resource/priority grounds
10 Resolved to our satisfaction
11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

Council	Assessment Only						Preliminary or informal investigations					Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Greater Taree City	0	0	0	0	0	0	2	1	0	4	0	0	0	0	0	7
Griffith City	0	0	0	2	0	0	3	1	0	0	0	0	0	0	2	8
Gundagai Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gunning Shire	0	0	0	0	0	0	1	1	1	2	0	0	0	0	0	5
Hastings	0	0	2	1	2	0	2	2	0	1	0	0	0	0	0	10
Hawkesbury City	1	0	0	0	0	0	3	0	0	1	0	0	0	0	0	5
Holroyd City	0	0	2	0	1	0	5	0	0	0	0	0	0	0	0	8
Hornsby Shire	0	0	2	42	4	1	4	1	0	5	0	0	0	0	0	59
Hume Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Hunters Hill Municipal	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	3
Hurstville City	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	3
Jerilderie Shire	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Kempsey Shire	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Kiama Municipal	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Kogarah Municipal	0	0	1	1	0	0	3	0	0	1	0	0	0	0	0	6
Ku-Ring-Gai Municipal	0	0	0	1	1	0	8	1	0	0	0	0	0	0	0	11
Kyogle Shire	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2
Lachlan Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Lake Macquarie City	0	0	2	0	0	0	12	1	0	2	0	0	0	0	0	17
Lane Cove Municipal	0	0	0	1	0	0	0	1	0	2	0	0	0	0	0	4
Leichhardt Municipal	1	0	4	3	3	0	4	0	0	4	0	0	0	0	0	19
Lismore City	0	1	2	1	1	0	3	0	0	1	0	0	0	0	0	9
Liverpool City	1	0	3	1	1	0	2	0	0	6	0	0	0	0	0	14
Lockhart Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Lower Clarence County	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Maclean Shire	0	0	0	1	0	0	2	0	0	3	0	0	0	0	0	6
Maitland City	1	0	0	1	0	0	2	0	0	2	1	0	0	0	0	7
Manilla Shire	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Manly Municipal	0	0	1	1	2	0	0	0	0	1	0	0	0	0	0	5
Marrickville	0	0	0	2	2	0	2	0	0	3	0	0	0	0	0	9
Mid Coast County	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Moree Plains Shire	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Mosman Municipal	0	0	0	0	1	0	1	1	0	0	0	0	0	0	0	3
Mudgee Shire	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Murrurundi Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Muswellbrook Shire	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Nambucca Shire	0	1	1	1	0	0	1	1	0	1	0	0	0	0	0	6
Narrabri Shire	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Narrandera Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Newcastle City	0	0	3	1	2	0	10	3	0	6	0	0	0	0	0	25
North Sydney	0	0	1	0	2	0	3	0	0	2	0	0	0	0	0	8
Nymboida Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Oberon Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Parkes Shire	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Parramatta City	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Penrith City	0	0	0	0	0	0	2	0	0	2	0	0	0	0	0	4
Pittwater	0	0	1	1	2	0	4	0	0	7	0	0	0	0	0	15
Port Stephens Shire	1	0	1	0	3	0	8	0	0	1	0	0	0	0	0	14
Queanbeyan City	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Quirindi Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Randwick City	0	0	0	0	1	0	4	0	0	3	0	0	0	0	0	8
Richmond River Shire	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	2
Rockdale Municipal	0	0	0	1	1	0	2	1	0	1	1	0	0	0	0	7
Ryde City	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	2
Rylstone Shire	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Scone Shire	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Severn Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1

1 No jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
4 Explanation or advice provided
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8 Investigation declined– insuffient evidence/no utility
9 Investigation declined on resource/priority grounds
10 Resolved to our satisfaction
11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

Council	Assessment Only						Preliminary or Informal Investigations					Formal Investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Shoalhaven City	0	0	1	2	2	0	8	4	0	4	0	0	0	0	0	21
Snowy River Shire	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2
South Sydney	0	0	2	2	7	0	3	0	0	4	0	0	0	0	0	18
Strathfield Municipal	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Sutherland Shire	0	1	4	4	0	0	9	1	0	2	0	0	0	0	0	21
Sydney City	0	0	0	0	1	0	1	2	0	0	0	0	0	0	0	4
Tallaganda Shire	0	0	0	2	0	0	0	0	0	1	0	0	0	0	0	3
Tamworth City	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Temora Shire	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Tenterfield Shire	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Shellharbour	0	0	2	0	1	0	1	0	0	0	1	0	0	0	0	5
Tumut Shire	0	0	0	2	0	0	1	0	0	1	0	0	0	0	0	4
Tweed Shire	1	0	1	1	1	0	4	1	0	3	0	0	0	0	0	12
Ulmarra Shire	0	0	4	0	0	0	1	1	0	2	0	0	0	0	0	8
Uralla Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City	0	0	0	1	0	0	1	1	0	2	0	0	0	0	0	5
Walgett Shire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Warren Shire	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Warringah	0	0	1	0	1	0	3	1	0	1	0	0	0	0	0	7
Waverley	0	0	1	2	1	0	9	0	0	2	0	0	0	0	0	15
Weddin Shire	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Willoughby City	0	0	2	1	0	0	1	0	0	4	0	0	0	0	0	8
Wingecarribee Shire	0	0	0	0	1	0	2	1	1	3	0	0	0	0	0	8
Wollondilly Shire	0	0	0	0	1	0	1	0	0	2	0	0	0	0	0	4
Wollongong City	0	0	2	2	1	0	7	5	1	1	0	0	0	0	0	19
Woollahra Municiple	0	0	1	1	1	0	4	0	0	3	0	0	0	0	0	10
Wyong City	0	0	0	1	2	0	2	1	1	4	0	0	0	0	0	11
Yallaroi Shire	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Yarrowlumla Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Yass Shire	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Young Shire	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Total	**10**	**4**	**74**	**136**	**87**	**1**	**290**	**63**	**5**	**161**	**4**	**0**	**0**	**1**	**2**	**838**

1 No Jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
4 Explanation or advice provided
5 Premature, referred to authority
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7 Complainant assisted
8 Investigation declined– insuffient evidence/no utility
9 Investigation declined on resource/priority grounds
10 Resolved to our satisfaction
11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

APPENDIX 3: FOI COMPLAINTS DETERMINED 1998-99

Agency	Assessment Only						Preliminary or Informal Investigations					Formal Investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Ambulance Service of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Attorney Generals Department	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Baulkham Hills Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Bellingen Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Blacktown 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	1	0	0	0	0	0	0	0	0	1
Central Sydney Area Health Service	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Community Services, Dept of	1	0	0	0	0	0	1	2	0	0	0	0	0	0	0	4
Consumer Claims Tribunal	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Corrective Services, Dept of	0	0	0	1	0	0	1	2	0	4	0	0	0	0	0	8
Cowra Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Dept of Education	0	0	0	0	1	0	1	4	0	4	0	0	0	0	0	10
Department of Land and Water Conservation	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Dept of Public Works	0	0	0	0	0	0	1	1	0	1	0	0	0	0	0	3
Department of School Education	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Director Public Prosecutions	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Eastern Sydney Area Health Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Energy Australia	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Environment Protection Authority	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	3
Eurobodalla Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Fairfield City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Far West Area Health Service	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Gaming & Racing, Dept of	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Gosford City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Great Lakes Council	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Griffith City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Hawkesbury City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Health Care Complaints Commission	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Health Department	0	0	0	0	0	0	2	1	0	1	0	0	0	0	0	4
Heritage Council of NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Holbrook Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Home Care Service of NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Hunter Area Health Service	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Industrial Relations, Dept of	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Ku-Ring-Gai-Municipal Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Maclean Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Macquarie University	0	1	0	0	0	0	0	1	0	1	0	0	0	0	0	3
Motor Accidents Authority	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
National Parks & Wildlife Service	0	0	0	0	0	0	0	1	2	0	0	0	0	0	0	3
Northern Sydney Area Health Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
NSW Fisheries	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
NSW Valuer General's Office	0	0	0	0	0	0	1	1	0	1	0	0	0	0	0	3
Office of Financial Management	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Office of Protective Commissioner	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Office of Public Guardian	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Orange Local Aboriginal Land Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Parramatta City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Penrith City Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Police Service	5	0	0	0	0	0	5	6	1	3	0	1	1	0	0	22
Port Stephens Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1

1 No Jurisdiction
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8 Investigation declined– insuffient evidence/no utility
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11 Mediation
12 Resolved during investigation
13 Investigation discontinued
14 No adverse finding
15 Adverse finding

Agency	Assessment Only						Preliminary or informal investigations					Formal Investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Rail Services Australia	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Roads And Traffic Authority	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Shoalhaven City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
South Eastern Sydney Area Health Service	0	0	0	0	0	0	1	1	0	2	0	0	0	0	0	4
Southern Area Health Service	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
State Forests	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
State Rail Authority of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Sutherland Shire Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Tweed Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
University of New England	0	0	0	0	0	0	1	2	0	0	0	0	0	0	0	3
University of Newcastle	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Waste Service NSW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Wingecarribee Shire Council	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Work Cover Authority	0	0	0	0	0	0	1	2	0	0	0	0	0	0	0	3
Total	**7**	**2**	**1**	**3**	**1**	**0**	**24**	**53**	**4**	**35**	**0**	**1**	**1**	**0**	**0**	**132**

APPENDIX 4: SUMMARY

Public Authority	Assessment Only						Preliminary or informal investigations					Formal Investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Departments & statutory authorities	106	21	53	111	211	3	254	87	5	146	0	0	3	0	4	1004
Local councils	10	4	74	136	87	1	290	63	5	161	4	0	0	1	2	838
Correctional centres & juvenile justice centres	7	2	1	3	1	0	24	53	4	35	0	1	1	0	0	132
Freedom of information	7	5	5	57	76	3	221	60	2	59	0	0	1	2	1	499
Outside jurisdiction	510	0	0	0	0	0	0	0	0	0	0	0	0	0	0	510
Total	**640**	**32**	**133**	**307**	**375**	**7**	**789**	**263**	**16**	**401**	**4**	**1**	**5**	**3**	**7**	**2983**

+ Current as at 30.06.99	452
- Current as at 30.06.98	515
Total received for year ended 30.06.99	2920

1 No Jurisdiction
2 Trivial/remote/insufficient interest/commercial matter
3 Right of appeal or redress
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9 Investigation declined on resource/priority grounds
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15 Adverse finding

APPENDIX 5: FREEDOM OF INFORMATION APPLICATIONS TO US

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 s.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 relate to our exempt functions which was the case with all but one application this year.

CLAUSE 9(1)(A) AND (2) OF THE REGULATION AND APPENDIX B OF THE MANUAL

Section A: Numbers of new Foi requests

We received eight new FOI applications in the 98–99. None from 97–98 were brought forward into 98–99. All eight applications were processed and completed, none were withdrawn or transferred out.

FOI requests	Personal	Other	Total
A1 New (including transefered in)	8	0	8
A2 Brought forward	0	0	0
A3 Total to be processed	8	0	8
A4 Completed	8	0	8
A5 Transfered out	0	0	0
A6 Withdrawn	0	0	0
A7 Total processed	8	0	8
A8 Unfinished (carried forward)	0	0	0

Section B What happened to completed requests?

Seven of the eight completed applications were for documents which related to the our complaint-handling, investigative and reporting functions. In these matters an explanation of s.9 and our inclusion in Schedule 2 of the *FOI Act* was provided. The other application sought access to documents held by a private medical practioner. In that matter the applicant was advised to contact the doctor concerned.

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*	8**	0**

Notes: *The figures on the line B5 should be the same as the corresponding ones on A4. All but on of these applications related to our functions which are excluded from the operation of the Act, while the other sought access to a document not held by us. Therefore while eight 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 us this year.

Ministerial certificates	No issued
C1 Ministerial certificates issued	0

Section D: Formal consultations

No requests required consultations, formal or otherwise.

Request requiring consultations	Issued	Total
D1 Number of requests requiring 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.

Requests for notification	Total
F1 Number of requests for notation	0

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 S.19 (applic incomplete, wrongly directed)	0	0
G2 S.22 (deposit not paid)	0	0
G3 S.25(1)(a1)(diversion of resources)	0	0
G4S.25(1)(a) (exempt)	0	0
G5 S.25(1)(b), (c), (d) (otherwise available)	0	0
G6 S.28(1)(b) (documents not held)	0	0
G7 S.24(2) — deemed refused, over 21 days0	0	
G8 S.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 two application fees of $30 and one of $40. All cheques were returned to the applicant.

	Assessed costs	FOI fees received
H1 All completed requests	$0	$100

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 Finaincial hardship – pensioner/child	0	0
I3 Finaincial hardship – Non profit organisation	0	0
I4 Totals	0	0
I5 Significant correction of personal records	0	0

Section J: Days to process

Seven applications were dealt with within 21 days, while one was dealt with in 22–35 days.

Days to process	Personal	Other
J1 0-21 days	7	0
J2 22-35 days	1	0
J3 Over 35 days	0	0
J4 Totals	8	0

Section K: Processing time

All applications were dealt with in 0-10 hours.

Processing hours	Personal	Other
K1 0-10 hours	8	0
K2 11-20 hours	0	0
K3 21-40 hours	0	0
K4 Over 40 hours	0	0
K5 Totals	8	0

Section L: Reviews and appeals

No applications proceeded to internal review. Under s.52(5)(d) of the Act no determinations by us are capable of external review by this us. No applications were finalised by or indeed proceeded to the District Court.

Internal reviews finalised	Total
L1 Number of internal reviews finalised	0

Ombudsman reviews finalised	Total
L2 Number of Ombudsman reviews finalised	0

District Court appeals finalised	Total
L3 Number of District Court appeals finalised	0

Section L: Details of internal review results

Bases of internal review			Personal	Other
Grounds on which internal review requested	U*	V*	U*	V*
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
L 10 Totals	0	0	0	0

* U = Upheld
* V = Varied

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.

APPENDIX 6: Disability Strategic Plan Annual Report for 1998–99

In April, 1995 our Disability the Disability Strategic Plan was submitted to the Ageing and Disability Department. This plan is required under s.9 of the *Disability Services Act* and aims to identify and implement initiatives that will enhance service delivery to people with disabilities. In accordance with the NSW Government's Disability Policy Framework, we are revising our Disability Strategic Plan in consultation with disability groups. A new plan will be submitted to the Ageing and Disability Department in December 1999. The following is a report on the implementation of the current plan.

REPORT FORMAT 1: PROCESS ITEMS REPORT

Item 1

Stated commitment to disability planning by management which is communicated to staff

Comment

- The Ombudsman and Management Committee strongly support any avenue that improves our service delivery to all groups particularly people who are in some way disadvantaged.
- The support for our disability planning is communicated to staff at induction and then on a regular basis through access and awareness activities.

Item 2

Establish and implement planning structure and processes with customer representation.

Comment

- Initial contact has been made with a number of community organisations in the implementation of strategies.
- Further consultation will occur during the coming year.

Item 3

Establish staff disability awareness process/program.

Comment

All staff are informed of the office's Disability Strategic Plan at induction.

Item 4

Develop and refine data base – customer and staff.

Comment

- Statistics on staff have been collected (on a voluntary basis) for EEO reporting purposes for some time. The office has a 100% response rate.
- Some statistics on clients are obtained through our client surveys. However these are only a sample of people who use our services, not all.

Item 5

Review representation of people with a disability in consultation processes and advisory and policy structures.

Comment

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.

Item 6

Develop accessible and appropriate complaints and appeals mechanism for people with a disability.

Comment

The office has developed guidelines on internal complaint-handling mechanisms that have been circulated to other agencies and have been endorsed by the Premier in a recent Premier's Memorandum.

Item 7

Initiate evaluation and review process with customer representation. Link with broader standards and Quality Assurance process.

Comment

This plan has been 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.

REPORT FORMAT 2: OUTCOMES REPORT

KEY RESULT AREA 1

To ensure access for people with a disability to services provided by the NSW Ombudsman

Strategy 1

Review building access for people who have a disability

Action

- Review building access for people with a sight or physical impairment and make recommendations to building management for changes to improve access if required.
- Ensure all country outreach venues are accessible to people who have a physical disability.

Target

Review of building accessibility and recommendations put to building management by end April, 1995.

- All venues for country outreach visits are accessible for people with a physical disability.

Responsibility

- Manager Corporate Services and Public Relation Officer.

Status

- Building management has submitted a development application to the council for

modifications which included improved disability access. Although redevelopment is a commercial decision, building management has taken on board representations by the Ombudsman regarding disability access.

Comment

In our lease renegotiation, we sought and building management agreed to install a toilet for the disabled on our floor.

Strategy 2

Review access for people with a hearing impairment

Action

- Purchase a TTY telephone and train staff in its use.
- Promote the telephone by including the number on stationery brochures, forms and advertisements.
- Write to peak organisations advising them of the telephone number.
- Advertise the telephone number in peak organisation newsletters and other appropriate media.
- Continue advertising country outreach visits in regional and local press.

Target

- TTY installed and training completed by September, 1995.
- Publicity program to be completed by December, 1995.
- Responsibility Manager Corporate Services and Public Relation Officer.

Status

TTY telephone installed and number publicised on letterhead and brochures.

Comment

The above action has been implemented.

KEY RESULT AREA 2

To ensure opportunities for workload career development.

Strategy 1

Provide appropriate workplace technology and equipment for staff who have a disability.

Action

- Assess the equipment needs of new staff who have a disability.
- Undertake a survey of existing staff to ensure current staff with a disability have access to required technology.
- Ensure appropriate staff receive available literature on equipment available to assist people who have a disability.
- Assess special equipment needs of new staff.
- Provide funds in the annual budget for the purchase of special equipment for staff who have a disability.

Target

- Staff with a disability will have specialised equipment available to assist in performing their duties.
- Funds will be available for purchasing appropriate equipment for staff who have disabilities.

Responsibility

Manager Corporate Services.

Status

Needs of staff who have a disability are discussed with the individual staff member and equipment purchased. Funding has been provided from existing stores budget.

Comment

Five per cent of staff have indicated they have a disability (source: EEO statistics). Where necessary, modifications to work have occurred and specialist equipment purchased.

Strategy 2

Review the principle of adjustment as it applies to the work force, including position descriptions for new and existing staff.

Action

- Review existing internal policies on employment that will impact on people who have a disability.
- Ensure the principle of reasonable adjustment is included in these policies.
- Provide information for managers and supervisors to raise awareness of reasonable adjustment.
- Review through discussion with staff who have a disability, the implementation of reasonable adjustment.

Target

Improvements in individual productivity as positions are tailored to special needs (to be assessed under performance system).

Responsibility

Manager Corporate Services.

Status

This is being done on a case by case basis. A number of staff have had their duties reviewed in accordance with the principles of reasonable adjustment.

Comment

There has not been any difficulty to date in modifying position descriptions of staff under the reasonable adjustment principle. It is not envisaged that any difficulty will occur in the future.

Strategy 3

Provide opportunities for the employment and training of people who have a disability.

Action

- Identification of positions that could be filled by a person with a disability and amend position descriptions as required.

- Contact peak bodies which assist people with a disability to find employment when appropriate positions become available.
- Investigate opportunities for temporary employment or work experience.
- Develop and monitor career development plans for staff with a disability in line with the office's performance development system.

Target

Increase over time the number of staff who have a disability.

Responsibility

Manager Corporate Services, managers and supervisors.

Status

This strategy has not been fully implemented as yet although the office has explored participating in various training programs.

Comment

We have had discussions with a training provider about participating in a training programs and we will provide some opportunities in 1999/2000.

APPENDIX 7: SIGNIFICANT COMMITTEES

Internal

Management Committee

Irene Moss, Ombudsman

Chris Wheeler, Deputy Ombudsman

Greg Andrews, Assistant Ombudsman (General)

Stephen Kinmond, Assistant Ombudsman (Police)

Anne Barwick, Assistant Ombudsman (Children and Young People)

Anne Radford, Manager General Team

Marianne Christmann, Manager Police Team

Andrew Patterson, Specialist Investigator (Child Protection)

Anita Whittaker, Manager Corporate Support

Kim Swan, Senior Investigation (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

John McAteer, Staff Representative

Lindy Annakin, Alternate Staff Representative

Wayne Kosh, Alternate Staff Representative

IT Committee

Greg Andrews, Assistant Ombudsman (General)

Stephen Kinmond, Assistant Ombudsman (Police)

Anne Barwick, Assistant Ombudsman (Children and Young People)

Beth Cullen, Manager Assessment and Analysis (Child Protection)

Anne Radford, Manager General Team

Anita Whittaker, Manager Corporate Support

Geoff Pearce, Manager IT

Access and Awareness Committee

Chris Wheeler, Deputy Ombudsman

Anne Radford, Manager General Team

Anita Whittaker, Manager Corporate Support

Marianne Christmann, Manager Police Team

Laurel Russ, Senior Investigation Officer (Aboriginal Complaints Unit)

James Tremain, Public Relations Officer

External (office representatives only)

Protected Disclosures Implementation Steering Committee:

Chris Wheeler, Deputy Ombudsman

Fiona Manning, Investigation Officer (Projects)

Ethics Working Party

Chris Wheeler, Deputy Ombudsman

Fiona Manning, Investigation Officer (Projects)

NSW Public Sector Corruption Prevention Committee

Fiona Manning, Investigation Officer (Projects)

Community Services 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)

John McAteer, Investigation Officer

Police Complaints Case Management Steering Committee
Stephen Kinmond, Assistant Ombudsman (Police)

Police Complaints Case Management Working Party
Geoff Pearce, Manager IT

Qualitative and Strategic Audit of the Reform Process of the NSW Police Service (QSARP)
Stephen Kinmond, Assistant Ombudsman (Police)

Juvenile Crime Prevention Advisory Committee
Margo Maneschi, Senior Investigation Officer

Prisoners Legal Service Advisory Committee
Lindy Annakin, Senior Investigation Officer

Department of Local Government Liaison Committee
Anne Radford, Manager General Team

Dominic Riordan, Senior Investigation Officer

Department of Urban Affairs and Planning Accreditation Task Force
Dominic Riordan, Senior Investigation Officer

Interagency Investigative Forum

Anne Barwick, Assistant Ombudsman (Children and Young People)
Andrew Patterson, Specialist Investigator (Child Protection)

APPENDIX 8: LEGAL CHANGES

Ombudsman Amendment (Child Protection and Community Services) Act

The *Ombudsman Act* was amended in December 1998 to give the Ombudsman oversight of allegations of, and convictions for, child abuse against employees of certain designated government and non-government agencies. The Act also applies to all other public authorities in certain circumstances.

The *Ombudsman Amendment (Child Protection and Community Services) Act* inserted a new part, Part 3A, into the *Ombudsman Act* to enable the Ombudsman to oversee and monitor investigations into allegations of child abuse against employees of designated agencies, oversee and monitor the action taken in respect of such employees; directly investigate allegations of child abuse, as well as the handling of or response to such allegations; and to keep under scrutiny the systems used by designated agencies for protecting children.

Part 3A commenced operation on May 7, 1999. For further information on the implementation of Part 3A of the *Ombudsman Act*, refer to the body of this Report.

Ombudsman Regulation 1999

Part 3A of the *Ombudsman Act*, relating to the Ombudsman's child protection jurisdiction, places particular obligations on certain government and non-government agencies. These agencies are referred to in the Act as designated government agencies and designated non-government agencies.

Section 25A (1) of the Act allows agencies to be prescribed as designated government agencies and designated non-government agencies for the purposes of Part 3A.

The Ombudsman Regulation 1999, gazetted on May 7, 1999, prescribed statutory health corporations and affiliated health organisations within the meaning of the *Health Services Act 1997* as designated agencies.

Police Service Amendment (Complaints and Management Reform) Act

The *Police Service Amendment (Complaints and Management Reform) Act 1998* came into effect on 8 March 1999, introducing significant amendments to the *Police Service Act* in relation to the management of complaints about police conduct.

The effect of the amendments is discussed in the introductory overview discussion in the **Police** section of this report.

The *Police Powers (Vehicles) Act*

The *Police Powers (Vehicles) Act* 1998 came into operation on 1 January 1999. The Act confers powers on police in relation to the stopping of vehicles.

The legislation charges the Ombudsman with the responsibility of monitoring the exercise of police powers conferred by 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 amendment. At the end of the 12 months we will formally report our findings to the Minister and Commissioner of Police.

Protected Disclosures Act

The *Protected Disclosures Amendment (Police) Act 1998*, which came into effect on 27 November 1998, put beyond doubt that police officers can make protected disclosures under the *Protected Disclosures Act*.

That amendment to the *Protected Disclosures Act* also effectively reversed the onus of proof in relation to the offence of 'detrimental action' in that Act

(s.20). Now, once a whistleblower has demonstrated that they made a protected disclosure and were subjected to detrimental action, it lies on the defendant to prove that the detrimental action was not substantially in reprisal for the whistleblower making the protected disclosure (s.20(1A)).

Local Government Act

The *Local Government Act* was amended in November 1998 to provide that the Minister for Local Government may order a council to do such things or refrain from doing such things arising from recommendations contained in a report made by the Ombudsman (under section 26 of the Ombudsman Act) as are specified in the order (s.434A). The council must comply with any such order made by the Minister.

APPENDIX 9: SUBMISSIONS

Police Service Act

Recommended substantial revision to streamline and improve the management and oversight of complaints about police in NSW. Prepared in conjunction with the Police Integrity Commission and the Police Service.

Police Complaints and Case Management System

Detailed review of the Ombudsman's requirements for the PCCM, a computer system to link the Ombudsman, PIC and Police Service's complaint information systems.

Ethnic Community Liaison Officers

Contributed to review of the Police Service's ECLO program.

Detention After Arrest

Submission to review of investigative detention provisions of the *Crimes Amendment (Detention After Arrest) Act*.

Police Academy

Contributed to review of Safe Custody Working Party review of safe custody course, and revision of training for statement preparation.

Code of Conduct and Ethics

Submission on Police Service's review of the code.

Investigation guidelines

Comments on Internal Affairs' Georges River Region Pilot Site: Guidelines for Managing Category 1 Investigations.

Reports to Police Service

On expediting its responses to complainants, and on its use of alternatives to arrest and charging of Aboriginal people.

Monash University Centre for Police and Justice Studies

Submission for a comparative study of police complaints systems in Australian jurisdictions.

COUNCILS

Pittwater Council

Policy concerning on-street parking.

Pittwater Council

Policy on secondary employment.

Tweed Shire Council

Policy concerning community liaison and complaints management.

Gosford City Council

Policy concerning community liaison and complaints management.

Cabonne Council

Ombudsman's new powers in the administration of local government.

Sutherland Shire Council

Establishment of a Sutherland Shire Council Ombudsman.

Lismore Council

Policy on payment of legal expenses to councillors in relation to the discharge of functions of civic office.

Clarence River County Council

Policy on conflicts of interest between county council and constituent councils.

Greater Taree City Council

Policy on reasonable expenses for production of documents under subpoena

Blacktown City Council

Policy on sale of information to commercial interests.

Eurobodalla Council

Policy on complaints and service requests.

PUBLIC AUTHORITIES

Department of Aboriginal Affairs

General commentary and observations on the operation of the Aboriginal Land Rights Act 1983

(NSW) and the Aboriginal Land Council System.

Department of Urban Affairs & Planning
Sydney Water Licence Regulator - operational audit.

Department of Urban Affairs & Planning
Accreditation schemes for professional bodies.

Motor Accidents Authority
Complaint handling procedures.

Department of Local Government
Changes to tendering regulation.

Victims Services
Complaint handling procedures.

CABINET OFFICE

- Various submissions relating to the legislative response to the recommendations of the Royal Commissions into the NSW Police Service relating to child protection, including the Commission for Children and Young People Bill, Child Protection (Prohibited employment) Bill and Ombudsman Amendment (Child Protection and Community Services) Bill.
- Proposed regulation under Part 3A of the *Ombudsman Act* to nominate statutory health corporations as designated government agencies and affiliated health organisations as designated non-government organisations
- Proposed regulation under Part 3A of the *Ombudsman Act* to nominate the Ambulance Service as a designated government agency
- Proposed regulation under Part 3A of the *Ombudsman Act* to nominate family day care services as designated non-government agencies

PREMIER'S DEPARTMENT

- Submission on Guidelines for Pre-employment Screening under the *Commission for Children and Young People Act*
- Information technology requirement in child protection jurisdiction
- Performance Indicators for Strategic Policy and Reform.

AUDIT OFFICE

- Information about complaints received about the Office of the Protective Commissioner and Public Guardian and the Office of the Public Trustee.

OTHER

Northern Territory Ombudsman
Policy on searching prison cells.

APPENDIX 10: 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 are $10 unless otherwise stated.

Councils and local government

- *Botany Council: Botany Council's Challenge to Limit the Scope of the FOI Act and the Jurisdiction of the Ombudsman* (1996)
- *Good Conduct and Administrative Practice* (1995)
- *Hawkesbury City Council's Conduct Relating to Orange Grove Mall, Richmond* (1994)

Correctional centres

- *The Savvas Report* (1997)
- *Mulawa Report* (1997) $50

Freedom of information

- *Prince Alfred Private Hospital Project* (1997)
- *Implementing the FOI Act: A Snap Shot* (1997)
- *Botany Council: Botany Council's Challenge to Limit the Scope of the FOI Act and the Jurisdiction of the Ombudsman* (1996)
- *Freedom of Information: The Way Ahead* (1995)
- *Proposed Amendment to the Freedom of Information Act 1989* (1994)

Police

- *Loss of Commissioner's Confidence* (1999)
- *The Norford Report* (1999)
- *Officers Under Stress* (1999)
- *Police Adversely Mentioned at the Police Royal Commission* (1998)
- *Risk Assessment of Police Officers* (1998)
- *Alison Lewis and Lithgow Police* (1997)
- *Conflict of Interest: A Service-wide Problem* (1997)
- *Conflict of Interest* (1997)
- *The Foster Report* (1997)
- *The Weston Report* (1996)
- *Police and Insurance Investigators* (1996)
- *The Piat Report* (1996)
- *Police Conciliation Update* (1996)
- *Confidential Information and Police* (1995)
- *NSW Police Complaints System* (1995)
- *Raymond Denning Withdrawal from the Witness Protection Scheme* (1995)
- *Race Relations and Police* (1995)
- *Police Internal Investigations: Poor Quality Police Investigations into Complaints of Police Misconduct* (1995)
- *Police conciliation: Toward Progress* (1994)
- *Improper Access and Use of Confidential Information by Police* (1994)
- *Urgent Amendments to Section 121 of the Police Service Act* (1994)

Public authorities

- *The STA Report* (1997)
- *Inquiry into Juvenile Detention Centres* (1996) $50
- *Psychologists Registration Board* (1995)

GUIDELINES

- *Child Protection: Your New Responsibilities* (1999) free
- *Dealing With Difficult Complainants* (1998) $15
- *Effective Complaint Handling Guidelines* (1995) free
- *FOI Policies and Guidelines second edition* (1997) $30
- *Good Conduct and Administrative Practice For Councils second edition* (1995) $30
- *Good Conduct and Administrative Practice For Public Authorities and Officials* (1995) $30
- *Protected Disclosures Guidelines third edition* (1999) $30

BROCHURES/INFORMATION KITS/PAMPHLETS

KITS (free)

- General information kit (includes one copy of each brochure, *Functions & Jurisdictions* information sheet and publication order form)

FACT SHEETS (free)

- *Women's Issues: The Ombudsman and You* (1999)
- *Police complaints: Rights & Duties of Police Officers* (1999)

BROCHURES (free)

- *Child protection* (1999)
- *Courses for Frontline Staff and Managers* (training) (1999)
- *General information* (1999)
  (Available soon in: Vietnamese, Chinese, Arabic, Spanish, Greek, Turkish, Korean, Serbian, Italian and Croation)
- *Got a complaint?* (youth brochure) (1998)
- *Mediation*
- *Problems with police?* (1999)
- *Problems in detention?* (1998)
- *Some tips for making a complaint* (1999)
- *That's not fair!* (Aboriginal brochure) (1999)
- *Trouble with council?* (1996)
- *Unhappy with an FOI decision?* (1998)

INFORMATION SHEETS (free)

- *Administrative Good Conduct* (1997)
- *Principles of Administrative Good Conduct* (1997)
- *Functions and Jurisdictions of the Ombudsman* (1999)

ANNUAL REPORT

NSW Ombudsman Annual Report 1998–99, 1997–98, 1996-97, 1994-1995 (unavailable), 1993-1994

NSW Ombudsman Controlled Operations Annual Report 1997–98, 1998–99

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Chinese ☐ Arabic ☐	
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Turkish ☐ Koren ☐	
Serbian ☐ Italian ☐	
Croation ☐	
• Got a complaint? (youth brochure)	☐
• Guarantee of Service	☐
• Problems in detention?	☐
• Problems with police?	☐
• Some tips for making a complaint	☐
• That's not fair! (Aboriginal brochure)	☐
• Trouble with council?	☐
• Unhappy with an FOI decision?	☐

INFORMATION/FACT SHEETS	QTY
• Functions & Jurisdictions of the NSW Ombudsman	☐
• Police Complaints: Rights & Duties of Police Officers *(for police officers)*	☐
• Women's Issues	☐

POSTERS	QTY
• NSW Ombudsman: Turn to us	☐

YOUR DETAILS:

Name _____
Organisation _____
Address _____
Postcode _____ Telephone: _____

APPENDIX 11: STATUTORY DISCLOSURE REQUIREMENTS REFERENCE

This appendix has been prepared to assist the reader to locate in the report those matters specified by statutory, and other, disclosure requirements.

OMBUDSMAN ACT 1974

Section 30(1)

Prepare a report of the Ombudsman's work and activities for the preceeding 12 months, as soon as practicable after 30 June in each year, and furnish the report to the Presiding Officer of each House of Parliament.

Annual Reports (Departments) Act 1985

9(1)	The Annual Report shall comprise:	
9(1)(a)	– Financial statements	Complies
9(1)(b)	– Auditors opinion	Complies
9(1)(b1)	– Response from the Department Head to Auditor-General's report	N/A
9(1)(c)	– Report of operations	Complies
9(1)(d)	– Other prescribed matters	Complies
9(2)	Treasurers directions	N/A
10	Report of operations prepared within 4 months	Complies
11(1)	Report shall include:	
11(1)(a)	– charter	Complies
11(1)(b)	– aims and objectives	Complies
11(1)(c)	– access	Complies
11(1)(d)	– management and structure	Complies
11(1)(e)	– summary review of operations	Complies
11(1)(f)	– legal change	Complies
11A	Letter of submission to include:	
11(a)	– submission to Minister	Complies
11(b)	– provisions under which report has been prepared	Complies
11(c)	– if late, length of delay and reason for s.16 extension	N/A
11(d)	– if no s.16 application made, reasons for delay and failure to make application	N/A
11(e)	– signed by Department Head	Complies
12(1)	Submission within 4 months to Minister	N/A
12(2)	Submission to Treasurer	Complies
14	Public availability	Complies

Annual Reports (Department) Regulations

4	Start and finish of audited financial statements clearly indicated	Complies
5(a)	Major assets, other than land holdings, and major acquisitions	Complies
5(c)	Code of conduct amendments or new replacement code	N/A
5(d)	Matters significantly affecting reporting in 1998-99 of financial operations, other operations or clientele complies	Complies
5(e)	Number of annual report copies printed and average cost of each	Complies
6	Identification of any unaudited financial statements or reports	N/A
7	Performance of executive officers	Complies
8	Total number of executive positions, comparison with previous year, the number of females in that total and that comparison with previous year*	Complies
10(2)	Annual report table of contents and index	Complies
12(1)	Public availability of annual report	Complies

Matters referred to in Schedule 1

Information required in report of operations - to the Annual Reports (Department) Regulations

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Notes

* The report complies with all requirements under Premier's Department Memorandum No. 91-27 except for that which requires inclusion, on the front cover, of the legend: "The New South Wales Government, putting people first by managing better". This decision not to include these words is based on the NSW OMBUDSMAN's independence of government.

N/A Not Applicable.

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WHO CAN COMPLAIN TO THE OMBUDSMAN?

Anyone can make a complaint to the Ombudsman. If you do not want to complain yourself, you can ask anyone — a relative, friend, solicitor, welfare worker — to complain on your behalf. A member of Parliament can also make a complaint for you.

How do I make a complaint?

Start by contacting the authority involved. Many have customer service centres for handling complaints from the public. If you need advice at any time, you can phone us. If you are unhappy with the way an authority has handled your complaint, you can complain to us.

All complaints to us must be in writing. Your complaint can be in any language. If you have difficulty writing a letter — due to language or a disability — we can help. We can also arrange for translations, interpreters and other services.

What should I include with my complaint?

It is important that you briefly explain your concerns in your own words. There should be enough information for us to assess your complaint to determine the most appropriate response.

When writing your complaint, you should consider all the relevant facts (e.g. What happened? Who was involved? When and where did the events take place?) and what action or outcome *you* would like to see as a result of your complaint.

You complaint should include copies of all relevant corespondence between you and the agency.

What happens to my complaint?

A senior investigator will read your complaint to see whether we have the power to investigate. We do not have resources to investigate every complaint, so priority is given to serious matters, especially if it is an issue likely to affect other people. If there are reasons why we cannot take up your complaint we will tell you.

If we have the power and the resources to examine your complaint, we will phone the authority or person involved and ask for an explanation. Many complaints are resolved at this stage. If we are not satisfied with the authority's response, we may investigate. If we are going to investigate your complaint an investigator will contact you.

What happens in an investigation?

The first step in an investigation is to require the authority to comment on your complaint and explain its actions. We will tell you what the authority has said and what we think of its explanation. Some matters are resolved at this stage and the investigation is discontinued.

If the investigation continues, it can take several months until a formal report is issued. You will be told if your complaint is going to be dealt with in this way and what is likely to happen. During investigations the Ombudsman may use her Royal Commission powers to demand information or documents. Such powers, however, are used only in special circumstances.

If we find your complaint is justified, the findings are reported to the authority concerned and the relevant minister. You are also told of the conclusions and findings.

In a report, the Ombudsman may make recommendations. We cannot force a public authority to comply with recommendations, however, authorities usually do accept the Ombudsman's recommendations. If they do not, the Ombudsman can report to the Parliament.

What if I am unhappy with the Ombudsman's actions?

If you are unhappy with the our decision you can ask for your case to be reviewed. However, a decision will only be reviewed once. All reviews are conducted by senior staff and by someone other than the officer originally assigned your complaint. Telephone or write to the Complaints Manager in either the General, Police or Child Protection Team if you have a suggestion, complaint or want to request a review of any decision.

If you are unhappy with any of our *procedures*, contact the Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission. The committee monitors and reviews the Ombudsman's functions. However, it cannot review the Ombudsman's decisions about individual complaints.

Address your letters to:

Clerk to the Committee
Committee on the Office of the Ombudsman and the Police Integrity Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

To obtain this information in a community language, large print format or on audio tape, please contact the publications officer on 9286 1072.

NSW OMBUDSMAN

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Email: nswombo@
nswombudsman.nsw.gov.au

Hours of opening
Monday to Friday
9am – 5pm or at
other times by appointment

NEED HELP?

If you have a complaint about a NSW Government authority or public servant, you can tell the Ombudsman.

The Ombudsman is independent, impartial and provides services free of charge.

We will give your complaint 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 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 these limits we will do whatever we can to help you.

What you can expect from the Ombudsman

- *friendly, courteous attention*
- *the personal assessment of every written complaint by a senior officer*
- *totally independent advice*
- *investigations in private*
- *procedures that are fair to you and the authority concerned*
- *clear explanations about what we can and cannot do*
- *regular information about the progress of your complaint*
- *full reasons for any decision we make.*

NSW Ombudsman website:
http://www.nswombudsman.nsw.gov.au