

Secret world of ombudsmen

Gosford gets ombudsman

Gosford Shire Council has appointed a retiring newspaper editor, Mr T. J. ... of Gosford, as ombudsman at a salary of \$4500 a year.

Ombudsman Kept Busy

Support for an ombudsman in NSW had tremendously increased in the past few months.

HOW TO BE AN OMBUDSMAN

A talk on the art of ombudsmanship was given by Mr. John Booth at the last meeting of ...

Ombudsman for NSW

THESE ARE good reasons why NSW should appoint an ombudsman, as the Law Reform Commission has recommended. The present Minister of Justice, Mr. Madson, argued the appointment more than a decade ago, and the Premier said nearly seven years ago that consideration of the desirability of creating the position would be one of the first tasks of the newly appointed Law Reform Commission. Other reasons, however, were given priority, and it is only now that the Attorney-General is ready to put a recommendation to State Cabinet. It is expected that NSW will be following in the footsteps of Western Australia and South Australia, who have modelled their legislation partly on the New Zealand pattern.

NSW may move to appoint an ombudsman

By JOHN O'HARA, State Political Correspondent

The New Attorney-General, Mr. Madson, is expected to recommend to State Cabinet next week that NSW should appoint an ombudsman.

Appointing an Ombudsman

MR — Your leading article on the appointment of an ombudsman in NSW is a timely one. It is a position which has been discussed for many years but has not yet been implemented.

NSW decision yet on ombudsman

By JOHN O'HARA, State Political Correspondent

The NSW Government has not yet decided whether to appoint an ombudsman. The issue is still being debated in State Cabinet.

Ombudsman stir mounts

By JOHN O'HARA, State Political Correspondent

The NSW Government is expected to announce its decision on whether to appoint an ombudsman in the next few weeks.

OMBUDSMAN CHOSEN

By JOHN O'HARA, State Political Correspondent

New South Wales has its first ombudsman — but his identity will not be officially disclosed until possibly three weeks.

First ombudsman is a Sydney solicitor

By JOHN O'HARA, State Political Correspondent

The State's first ombudsman, whose identity will not be officially disclosed until possibly three weeks, is a Sydney solicitor.

FINE WON'T STOP OUR 'MR FIX IT'

Unofficial ombudsman to battle on

HE WORKS TO RIGHT WRONGS

NSW likely to appoint ombudsman

Recommendation by law reform body

Self-appointed ombudsman

Woman may be 'Ombudsman'

North Sydney Council may soon appoint woman as its first 'mini-ombudsman'

Selecting the Ombudsman

Mr SIR, The Attorney-General is expected to announce the name of the person who will be appointed as the first ombudsman in NSW.

Ombudsman beats Govt committee

Cabinet left to choose from list of six

Ombudsman begins work, unofficially

Mr Kenneth Booth has been appointed as the first ombudsman in NSW. He will begin his work in an unofficial capacity.

Ombudsman at last

The Minister of Justice, Mr Madson, has announced that the NSW Government will appoint an ombudsman.

Trouble shooter kept busy

Mr Madson's ombudsman is expected to be a busy man, dealing with a wide range of complaints from the public.

'Watchdog' confident of full co-operation

The State's first ombudsman is confident that government departments will cooperate fully with his investigations.

Ombudsmen gain strength

Ombudsmen were becoming increasingly important in Australia, an English law professor said last night.

Ombudsman to check on Govt

CONSERVATIVE Members of the NSW Legislative Council have urged the Government to appoint an ombudsman to check on its activities.

A 'servant' who's tough on red tape

The NSW Government is likely to appoint an ombudsman before the end of this year.

Search begins for an ombudsman

The NSW Government is expected to announce its decision on whether to appoint an ombudsman in the next few weeks.

Ombudsman selection

The NSW Government is expected to announce the name of the person who will be appointed as the first ombudsman in NSW.

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SHOOTER - SALARY \$27,400

By VINCE KELLY

Ombudsman has his own complaint...

TOO FEW PEOPLE COMPLAIN

The irreconcilable problems of authority versus the individual

— Ombudsman's headaches

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TOO FEW PEOPLE COMPLAIN



Who we are

Who is the Ombudsman?

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

What does the Ombudsman do?

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

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

If a complaint is justified, the Ombudsman will recommend action to fix the problem. This may solve an individual's complaint but more often will focus on fixing deficiencies in the law or with administrative practices, procedures or policies.

To our readers

Our annual report is a public record of our accountability. We are accountable to the people of NSW through the State Parliament. This summary of the annual report looks at our people, performance and organisation.

Front cover

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

Our mission

Our mission is to safeguard the public interest by providing for the redress of justified complaints and promoting fairness, integrity and practical reforms in public administration in NSW.

Our guarantee

Our Guarantee of Service states:

"If you have a complaint about a NSW government authority or public servant, we guarantee to give it the most careful attention.

If it is something we can and should investigate, we will do this as quickly as possible, acting fairly and independently. If your complaint is justified we will recommend changes to fix the problem.

If we don't investigate your complaint, we will explain why. If we can suggest another way to solve your problem, we will tell you.

There are limits to our powers and resources, but within those limits we will do whatever we can to help you."

Our values

Our key values are to:

- act with integrity;
- vigorously pursue truth, without fear or favour;
- set aside personal interests and views in the discharge of our functions;
- discharge all duties and responsibilities conscientiously and competently;
- treat our clients courteously, attentively and sensitively;
- implement fair procedures; and
- use resources efficiently and effectively.

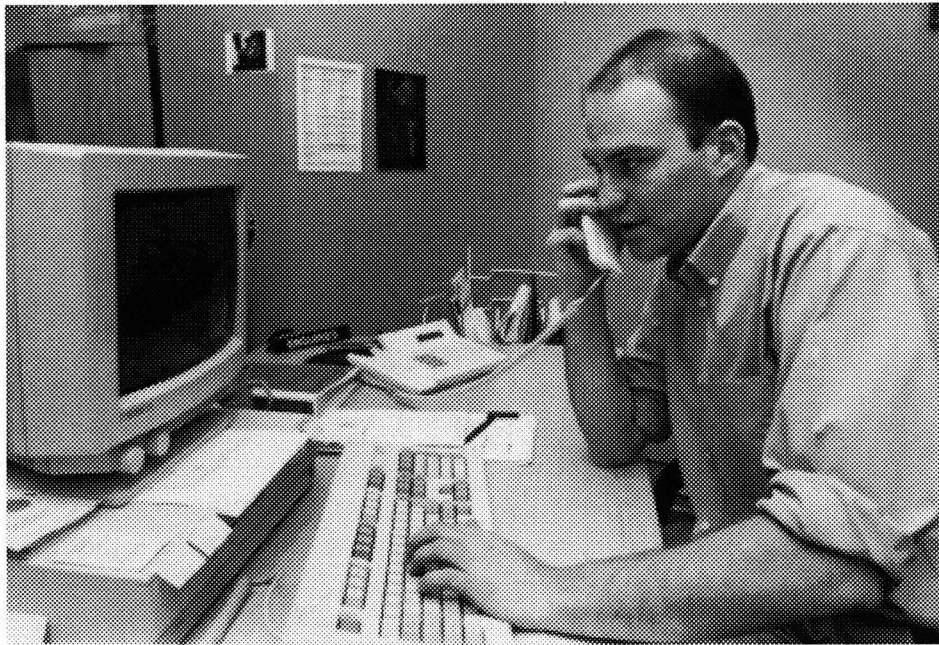
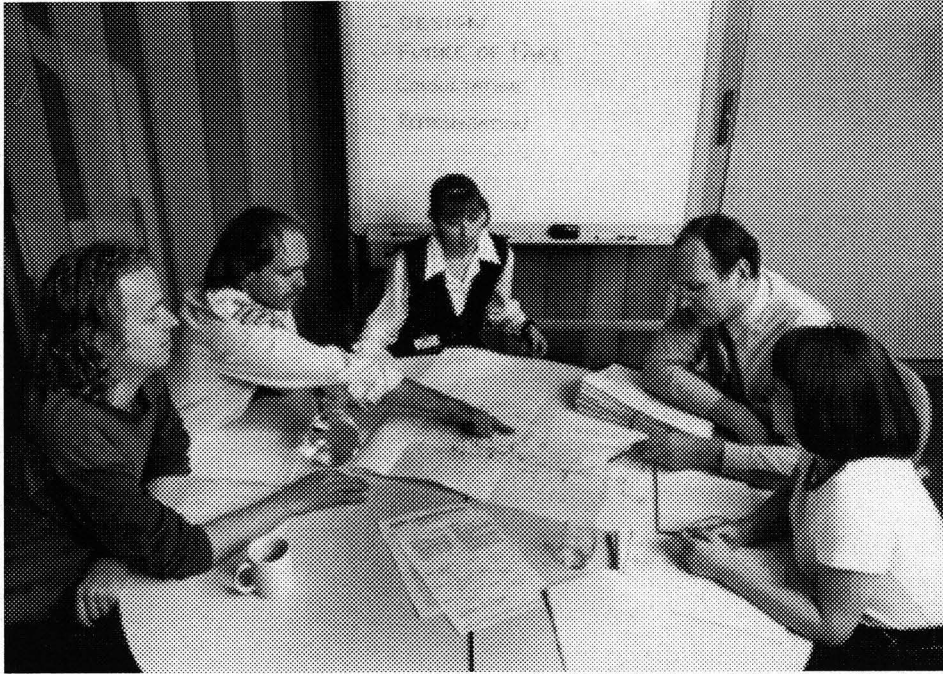
Contents

Overview 4

1994/95 at a glance 6

Our organisation 8

Our performance 10



Top: The Ombudsman encourages the informal resolution of complaints. Forms and agreements have been prepared to facilitate the mediation process, and staff have been involved in an ongoing training program on advanced mediation skills.

Mid: Our inquiries section provides referrals, advice and deals with informal complaints. During the year the team of three inquiries officers dealt with about 12,000 complaints, most were dealt with on the spot.

Lower: During our country outreach visits we spoke to more than 250 people, providing advice, referral information or assisting them to lodge formal complaints.

Overview

Historic beginnings

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

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

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

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

20 years of righting wrongs

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

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

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

In relation to **police**:

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

- where a police officer records an oral admission in a notebook or other similar document, even in a situation where a suspect refuses to sign it, the police officer is required to have an independent senior officer countersign the document and to give a copy of the document to the suspect;
- police do not involve themselves in investigations concerning their family, friends or neighbours;
- police are no longer permitted to make representations on behalf of members of the public in relation to traffic and parking offences;
- there has been a significant increase in the number of complaints about police being conciliated with complainants; and
- the Ombudsman is notified of all reports of death or injury in police cells and of any high speed pursuits resulting in injury or damage to property.

In relation to **local councils**:

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

In relation to **other public authorities**:

- public authorities can now be prosecuted by regulatory agencies for breaking the law (particularly prosecutions for pollution offences);

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

In relation to **prisons:**

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

Vital statistics

Resources

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

Complaints

Formal written complaints received 1994/95:

Police	5,056
Other	2,580
Total	7,636

Informal oral complaints received 1994/95 12,914

Complaints received since establishment:

Formal	95,000
Informal	100,000+

Increases in complaints:

Annual increase	7 - 10%
Since 1985/86	60%

Reports

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

Staff

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

94/95 at a glance

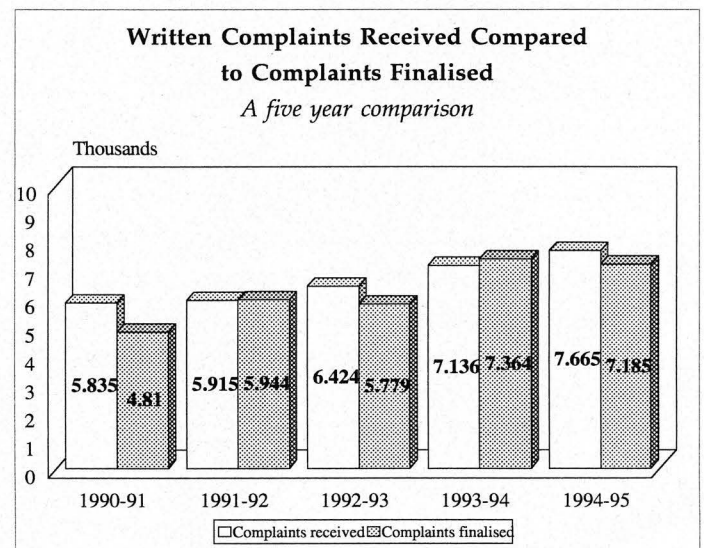
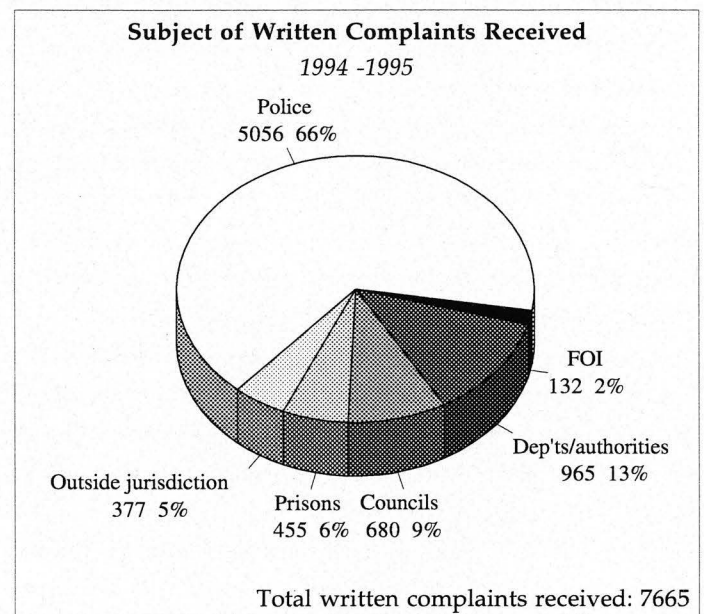
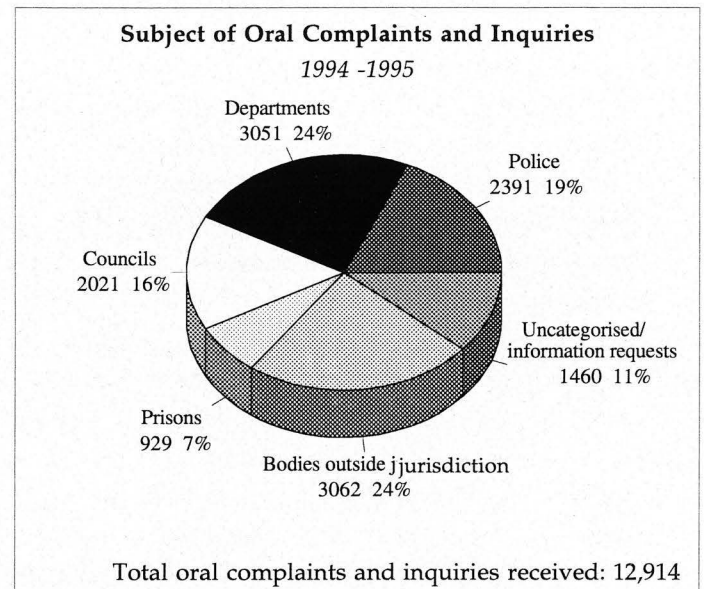
Achievements

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

Challenges

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

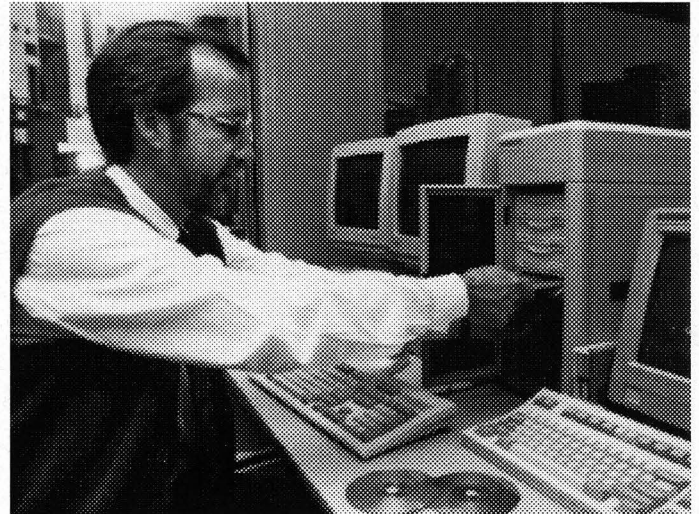
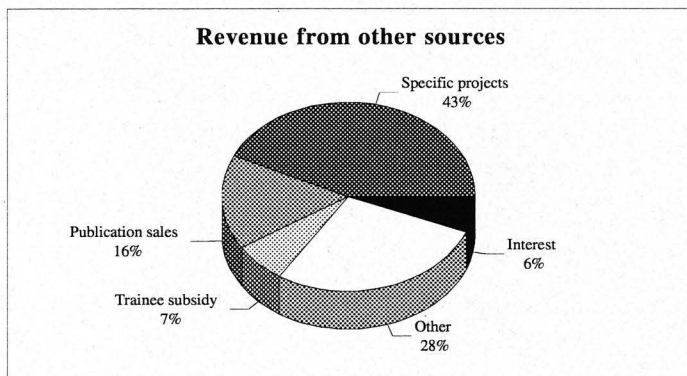
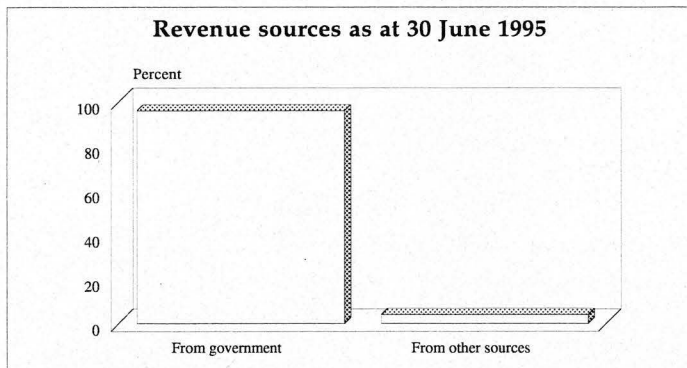
Complaints received and finalised



Financial statistics

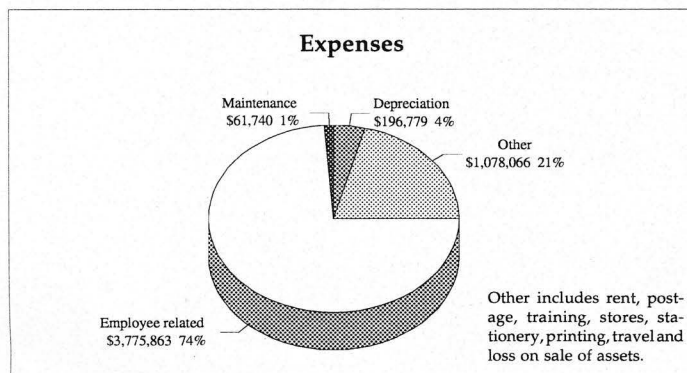
Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. In addition, the government makes provision for our superannuation and long service leave liabilities. We also generate revenue through the sale of publications, trainee subsidy, bank interest and by undertaking special inquiries on a user pay basis.



Expenses

Most of our revenue is spent on employee expenses. These include salaries, superannuation entitlements, long service leave, payroll tax etc. Last year we spent more than \$3.7 million on employee expenses. The day to day running of the office, including rent, postage, telephone, stores, training, printing and travel cost just over \$1 million. Depreciation of computer equipment, furniture and fittings and other office equipment cost \$196,000.



Top: The installation of a new computer system will help to improve response times and the collection of statistics.
Lower: We received more than 7,000 written complaints during the year.

Our organisation

We are organised around the types of complaints our clients bring to us. Most complaints are about the police service and its officers. Therefore more than half of our investigators work in a team which specifically deals with complaints about police. Complaints about other state government authorities are dealt with by our general team.

The type of people who work for us as investigators come from a wide range of backgrounds, including:

- former state, federal, Hong Kong and military police;
- local government and town planning;
- specialist local government and environmental law;
- youth and community work;
- mediation;
- journalism, teaching, policy advice, research, accounting, management consulting; and
- other investigative agencies.

The unique mix of people and expertise within the office ensures the workings of the public sector are thoroughly understood, and that positive and useful recommendations are consistently made.

Methods

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

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

Focus

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

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

Functions

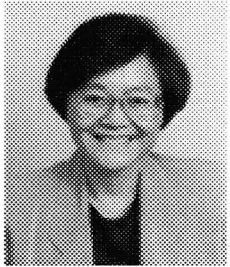
Our functions can be categorised into six core areas:

- (1) dealing with complaints about the conduct of NSW public authorities (including NSW government departments, statutory authorities, local government councils, public officials and employees);
- (2) regular visits to and inspections of gaols and juvenile justice institutions;
- (3) civilian oversight of police investigation of complaints about police (which has included direct investigation of such conduct where this was considered appropriate and the necessary funds were available);
- (4) external review of complaints about the determination of FOI applications;
- (5) auditing of certain records of agencies authorised to intercept telephone communications; and
- (6) advice on the Protected Disclosures Act.

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

NSW Parliament

Joint Parliamentary Committee
on Office of the Ombudsman



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



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

Administration
Public Relations
Information Systems
Research
Aboriginal Liaison



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

**Manager
General Team**
Anne Radford
BA, Grad Dip Lib



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

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

Freedom of
Information
Investigation
Team

General
Investigation
Team

Telecommunications
Interception
Investigation
Team

Inquiries
Team

Police
Investigation
Team

Our performance

Key Corporate Goals	Key Achievement Indicators
<p>Complaint Assessment</p> <p>To give priority to complaints identifying structural and procedural deficiencies in NSW's public administration and individual cases of serious abuse of powers especially where there are no other means of redress.</p> <p>To ensure the timely and accurate assessment of complaints</p>	<p>98% of complaints under <i>Ombudsman Act</i> assessed within 48 hours of receipt (91% within 24 hours).</p> <p>90% of complaints under <i>Police Service Act</i> assessed within 48 hours of receipt.</p> <p>Average time taken to send acknowledgements on <i>Ombudsman Act</i> complaints: 7.8 days.</p> <p>Police complaints declined at outset: 66% notified within 14 days.</p> <p>Requests for review of determinations as percentage of total complaints finalised: <i>Ombudsman Act</i> complaints 6% Police complaints 2.3%</p> <p>Complaints within jurisdiction declined at outset: <i>Ombudsman Act</i> complaints 34% Police complaints 35%</p>
<p>Complaint Resolution</p> <p>To resolve complaints about defective public administration through conciliation, mediation or explanation where appropriate.</p>	<p>70% of complaints within jurisdiction of <i>Ombudsman Act</i> resolved through provision of information/advice or constructive action by public authority (15% increase over 93/94 results).</p> <p>1,185 police cases conciliated.</p> <p>53 conciliation audits conducted at police stations</p> <p>81% satisfaction rate among complainants with police complaints conciliated.</p> <p>92% of complaints made under <i>Ombudsman Act</i> finalised in less than 60 days (average: 41 days).</p> <p>Mediation service established.</p>
<p>Investigations</p> <p>To identify, investigate and report on, in particular, structural and procedural deficiencies in public administration and individual cases of serious abuse of powers.</p> <p>To achieve improvements in public administration through such things as informal negotiation, advice, guidelines, information and recommendations.</p>	<p>91% of recommendations made in reports under s.26 <i>Ombudsman Act</i> implemented.</p> <p>73% of recommendations made under <i>Police Services Act</i> implemented.</p> <p>77% of reports under <i>Ombudsman Act</i> contained recommendations involving changes to law, policy or procedures.</p> <p>24 police investigations formally monitored.</p>

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

Need help?

If you think a NSW public authority, public servant or police officer has acted in a wrong, unfair or unreasonable way you can tell the NSW Ombudsman.

When to complain

Unless it is a serious police matter try and resolve the problem yourself. If this fails, contact us for help.

How to make a complaint

Making a complaint is simple. Start by calling in or telephoning for advice.

If you decide to make a formal complaint, it must be in writing. You can write the letter in your own language. If you find composing the letter difficult, we can help. We can also arrange for translation and interpreter services.

Who can complain?

Any individual, company, organisation, association or public authority with an interest in the problem has a right to complain.

How much does it cost?

Nothing. The NSW Ombudsman does not charge any fees to resolve a complaint.

How long does it take?

The resolution of a complaint may involve just a few phone calls or may take several months, depending on its complexity and the evidence to be gathered.

How is my complaint dealt with?

As a first step, we will usually ask the authority for an explanation of what happened. Most matters are resolved at this stage.

If the Ombudsman decides to investigate, it is done confidentially. We will ask the authority to comment on your complaint and to explain its actions.

Then we tell you what the authority has said and what we think of its explanation. We may also give you the chance to send more details or to raise other issues.

When we have finished gathering all the facts, we will contact you to explain our conclusions.

If we do not investigate, we will explain why.

How can I contact the office?

You can contact our office from 9am - 5pm weekdays or at other times by appointment. We are located at: Level 3, Coopers and Lybrand Building 580 George Street, Sydney, 2000.

You can call the office on (02) 286 1000 or on free call 1800 451 524 for people outside the Sydney area.