



Fifty Years of the New South Wales Ombudsman

Lisa Murray

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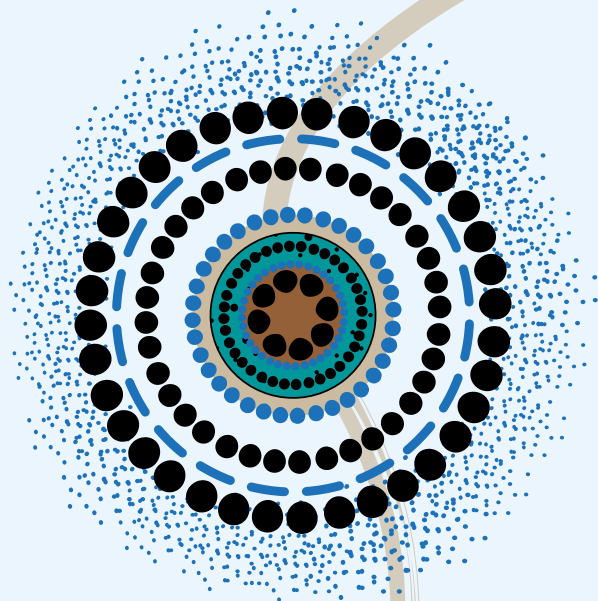
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Acknowledgement of Country

**We acknowledge the Traditional Custodians
of the land of New South Wales on which our
people live and work. We pay our respects to
all Elders past and present, and to the children
of today who are the Elders of the future.**



A message from the NSW Ombudsman

This year marks the 50th anniversary of the establishment of the NSW Ombudsman – half a century of unwavering commitment to independence, fairness and the public interest in New South Wales.

As we commemorate this important milestone, this report serves as a testament to the evolving role, impacts and the enduring legacy of the office over time.

Our functions and subject focuses have shifted significantly over the years. For much of our past, many of these changes could be presented as a steady and continual path of expansion and evolution, adding new bodies in jurisdiction and new functions. Legislative changes have frequently challenged us to focus on pro-active monitoring and review functions – allowing us to hone our capabilities for remedying not only individual injustices, but also looking to the systemic issues and injustices that drive them.

This expectation to be pro-active and to take a systems view is now widely accepted as central to the work of a modern-day Ombudsman. That said, throughout this growth and change over 5 decades, what has remained steady is the NSW Ombudsman's continued commitment to its original and enduring role of providing a free, generally accessible and effective complaint-resolution service – a function which sits at the heart of what it means to be an 'ombudsman'.

In this regard there are, from the very beginning of the office and continuing to this day, countless examples of small, quiet victories – individuals heard, difficult conversations had, decisions re-made, apologies given, policies adjusted, attitudes shifted – that didn't make headlines or even a footnote in this publication, but which have made a difference in people's lives.

Through this report we reflect on the office's past and consider our history and achievements. The report also sets the stage for thinking about the continuing need for and importance of the

Ombudsman's work going forward, particularly in an increasingly complex and continuously changing environment where community expectations evolve, trust in public institutions becomes harder to earn, distinctions between public and private become less distinct, fiscal challenges (for individuals and for governments) increase, and technology continues to advance rapidly.

In this context, we will continue to bring to light what needs to change to improve fairness. We will do this, as we always have, with independence and impartiality, an objective, open-minded and courageous evaluation and reporting of the evidence, an unrelenting focus on the public interest, and a commitment to fairness both in the outcomes we seek and the way we do our own work. These are some of the features of our 'Ombudsman-craft'.

The Ombudsman's office relies on the collective efforts of its staff, not just the individual Ombudsman. While the role began with one person, today it involves hundreds, whose contributions shape the office's success and future.

I thank all staff for their hard work and commitment and look forward to working through these challenges together in our pursuit of fairness for the people of NSW.

The legacy of those who came before us we seek to build on every day. I extend my thanks to all who contributed to this project sharing personal stories and information to collate our history.

I am deeply grateful to Dr Lisa Murray for her meticulous research and thoughtful storytelling, which brings together both major milestones and some of the lesser-known or obvious details to illuminate the rich history and impact of our office.

This report is also a tribute to the agencies we have worked with to improve fairness, and to all the people of NSW who have trusted us and brought their concerns to us. I commend the report to you all.

Paul Miller
NSW Ombudsman

The need for an Ombudsman

New South Wales was late to the party. It was the last mainland state to appoint an Ombudsman. The concept had been bandied about by politicians since the early 1960s. But it took until 1974 for legislation to be passed by Parliament establishing the office. The establishment of an integrity body is never straightforward, especially when politicians are involved. While public accountability is admirable, governments are often cautious about creating independent oversight bodies that they don't control.

What is an Ombudsman

A parliamentary ombudsman is an independent and impartial integrity body that oversees public authorities, such as government departments and agencies. It has investigative powers and provides an avenue for citizens to seek independent review of actions (or lack of action) from what is often experienced as faceless bureaucratic power. In New South Wales, the Office has evolved over the 50 years from the 'traditional' complaints function that sits at the core of parliamentary ombudsman to incorporating legislative audit and monitoring of new powers, identifying systemic issues in public administration and making recommendations for improvements.

Ombudsman. Definition:
'the panacea for all ills with
the foreign-sounding name'.

Australian academic, 1966 ¹

The institution of the ombudsman, and indeed the word itself, traces its origins back to Sweden. The Swedes created in 1809 as part of their constitution the office of *Justitie-ombudsman* to oversee the bureaucratic machinery. The term ombudsman translates roughly as 'representative [of the people]'. Other Scandinavian countries instigated ombudsmans in the early twentieth century, notably Finland in 1919 and Denmark in 1955.²

New Zealand was the first country in the British Commonwealth to establish an ombudsman's office. Sir Guy Powles, a former lawyer and diplomat, was appointed in 1962 and many looked across the ditch with envy. The United Kingdom followed suit in 1967. Western Australia was the first Australian state to appoint a parliamentary ombudsman, passing legislation in 1971. Officially titled the Parliamentary Commissioner for Administrative Investigations, Oliver Dixon, a former Crown prosecutor, commenced his role in April 1972. South Australia followed suit in December 1972 appointing Gordon Combe, formerly clerk of the South Australian House of Assembly, and in the following year Victoria appointed John Dillon in October 1973. Dillon had previously been a magistrate and was head of Victoria's Chief Secretary's Department for 13 years. Queensland's Parliamentary Commissioner for Administrative Investigations (later renamed the Ombudsman), Sir David Longland, a career public servant, commenced

in October 1974. Professor Jack Richardson, the first Commonwealth Ombudsman, was appointed by Prime Minister Malcom Fraser in March 1977. Tasmania didn't get its ombudsman until 1978.³

Today the concept of an ombudsman has been popularised and is widely accepted as an appropriate mechanism for complaint handling, oversight and appeals. Many industries have adopted the term to describe their commissioners and complaints bodies, including those with regulatory, prosecutorial and/or disciplinary functions. The effectiveness of any ombudsman relies upon independence, credibility and trust. To ensure a high level of public respect for the office, and to counter wide-spread uptake of the term to describe any administrative review function, the Australian and New Zealand Ombudsman Association adopted in 2010 a policy that defines the 6 essential criteria for the office of ombudsman: independence, jurisdiction, powers, accessibility, procedural fairness and accountability.⁴

Campaigning in New South Wales

The concept of an ombudsman for NSW was first raised in Parliament by the Liberals in 1960 but received little interest from the Heffron Labor government. Barrister Colin Begg, a Liberal member of the Legislative Council, floated the idea in 1960 and again in 1961, pointing to the success of the office in Denmark and Sweden, 'in the hope that in due course it may start to gain support and will receive some consideration by the government'. His interest was halting the 'octopus-like growth of administrative law' and the unjust decisions of despotic officials. In other words, the motivation was small 'l' liberalism against bad decisions and over-regulation.⁵

The Liberals adopted the appointment of a 'complaints commissioner' as part of their policy platform from 1962 and they continued to gently prosecute the idea throughout the early 1960s. John Maddison, Member for Hornsby, presented its desirability in his maiden speech in 1962.⁶ A progressive liberal and a committed legal reformer, Maddison became the chief advocate for an ombudsman within the Liberal Party. The Liberal-Country coalition, with Robert Askin at the helm, swept aside 24-years of successive Labor governments in 1965. Law reform was high on the agenda. The Askin government established the NSW Law Reform Commission in 1965. Both the Premier and the Attorney-General, KM McCaw, stated in 1966 that investigating the appointment of an ombudsman was a high priority.⁷

The Law Reform Commission's agenda, as established by the government, was ambitious and lengthy. It included citizenship rights of people under 21, liability and personal injury, and the *Defamation Act 1958*, as well as the proposal for an ombudsman. While the Commission had undertaken much research on administrative tribunals and the desirability to appoint an ombudsman, by December 1968 there was no report in sight.⁸ High profile cases alleging police misconduct in the late 1960s and early 1970s raised questions about whether an ombudsman's jurisdiction would cover police or whether a separate independent tribunal to handle complaints against police should be established. As the issue dragged on, there were community mutterings of broken promises, John Maddison, now Minister of Justice, grew impatient, and the Opposition leader Neville Wran adopted the appointment of an ombudsman as Labor policy should they win government.⁹

'If citizens are to maintain confidence in the administration and not become bitter and resentful, there is a need for some way of getting bureaucratic efforts corrected.'

Professor Wootten, Dean of the Faculty of Law, University of NSW, 1972¹⁰

The NSW Law Reform Commission's expansive report, *Appeals in Administration* (Report no.16), was finalised in December 1972. The wide-ranging terms of reference were partly to blame for the delays. The Attorney-General tabled the report in Parliament on 28 February 1973.¹¹

The population of New South Wales had reached 4,738,100 by the end of 1973. It was not only the most populous state in Australia, but it also had the most expansive bureaucracy. There were 25 ministries and 63,670 public servants, excluding teachers and employees of statutory authorities.¹² There were a range of avenues for redress across the public authorities, but vast areas were left untouched by statutory appeals.

The Commissioners neatly summarised the bureaucratic state of affairs which framed their investigations into the desirability of an ombudsman:

- '1 The growth of public administration is a characteristic of contemporary society.
- 2 The powers of public authorities to affect private rights have increased in recent decades and are increasing.
- 3 Problems of administrative justice cause concern in most parts of the world, including New South Wales.
- 4 When objectives of government policy have been determined, those objectives must be attained without unreasonable delay and account must be taken of the needs of public authorities to run the day-to-day government of the State.
- 5 Any official action should have "reasonable regard to the balance between the public interest which it promotes and the private interest which it disturbs", and be fair.
- 6 Any person adversely affected by an official action should be able to question the action simply, cheaply and quickly; and procedures should be available to him which are fair, impartial and, wherever possible, open.'¹³

The Commission was unequivocal in recommending the appointment of an ombudsman, arguing it would support improvements in efficiency and objectivity of public authorities, as well as strengthening citizens' confidence therein. By this stage, the Commonwealth Ombudsman had been established, providing a practical model operating in Australia.

Ombudsman. Definition: 'an impartial person who deals with specific complaints about official actions of public authorities and investigates, assesses and reports upon, but does not reverse or modify those actions.'

NSW Law Reform Commission, 1972¹⁴

There was little to be lost, and much to be gained. The key to success was establishing and maintaining the integrity, competence and status of the ombudsman and ongoing Ministerial support for the work of the ombudsman. A draft bill was prepared by the Commission to assist the government with the reform.¹⁵

In addition to an Ombudsman, the Law Reform Commission recommended that a Commissioner for Public Administration be appointed supported by an Advisory Council on Public Administration, and that a Public Administration Tribunal be constituted.

Attorney-General McCaw deftly deferred these questions. The tribunal was not enacted until 1997.¹⁶

There was disquiet among Ministers about the proposed ombudsman's powers and jurisdiction. It took 18 months from the tabling of the Law Reform Commission's report for Cabinet to endorse the creation of an ombudsman and prepare the bill. It seems The Hon John Maddison had few supporters within his own ranks.

The Ombudsman Bill was finally introduced into Parliament by the Minister for Justice, John Maddison, on 27 August 1974.¹⁷ The Labor opposition wagged accusatory fingers, railing at the 'outrageous delay' in presenting the legislation.¹⁸ It is said that the only reason the Bill got up was that Maddison threatened to resign over the issue.¹⁹



Progressive law reformer The Hon John Maddison, Minister for Justice, introduced the Ombudsman Bill into Parliament on 27 August 1974. (photographer: John A Tanner & Australian Information Service, 1974, National Library of Australia, nla.obj-137841628)

The Labor opposition supported the concept of an ombudsman, and thus the introduction of the Bill into Parliament, but had concerns the office would be a 'toothless tiger'.²⁰ The Bill diverted from the Law Commission's draft legislation in several ways and the chambers were full as members of Parliament 'listened to the battle of the giants and the various legal points of view expressed'.²¹

The exclusion of the police, local government and some quasi-government agencies, such as Sydney County Council, from the proposed scope of the ombudsman were singled out as limiting the office's purpose and impact. Maddison acknowledged that local councils garnered many complaints. He parlayed with critics, arguing that he didn't want the ombudsman to be overwhelmed and that once the office was up and running the jurisdiction of the ombudsman would be widened to encompass local government.²² The Governor and members of Parliament were also excluded from investigation by the ombudsman, a watering down of the Law Reform Commission's draft, but no Parliamentarian raised concerns about that. Concerns were, however, raised about staff being subject to the *Public Service Act 1902*, which could jeopardise the independence of the body. Ministerial responsibility and the provision for the ombudsman to consult the responsible Minister on whether to publish a report were hotly debated. Provision for a deputy ombudsman, a novel inclusion when compared to other existing Acts, was viewed with suspicion by the Opposition who thought it was an unnecessary doubling up of powers. The period for retrospectivity of complaints was also contested: how far back could the ombudsman turn their attention to investigate conduct prior to the passage of the legislation.

While the Labor opposition pushed for greater jurisdiction and independence, the Bill as presented by the Liberal government fundamentally prevailed.²³

NSW Ombudsman Act 1974

The *NSW Ombudsman Act 1974* was assented to on 18 October 1974 and came into immediate effect, except for Part 3 dealing with investigations which commenced on 12 May 1975.²⁴

A principal concept of an ombudsman is their independence from government. The NSW Ombudsman, and Deputy Ombudsman, were to be appointed by the Governor, upon recommendation by the Minister. The general staff were to be subject to the Public Service Act. These provisions caused friction between the Ombudsman and the government in the Office's first decade of operation.

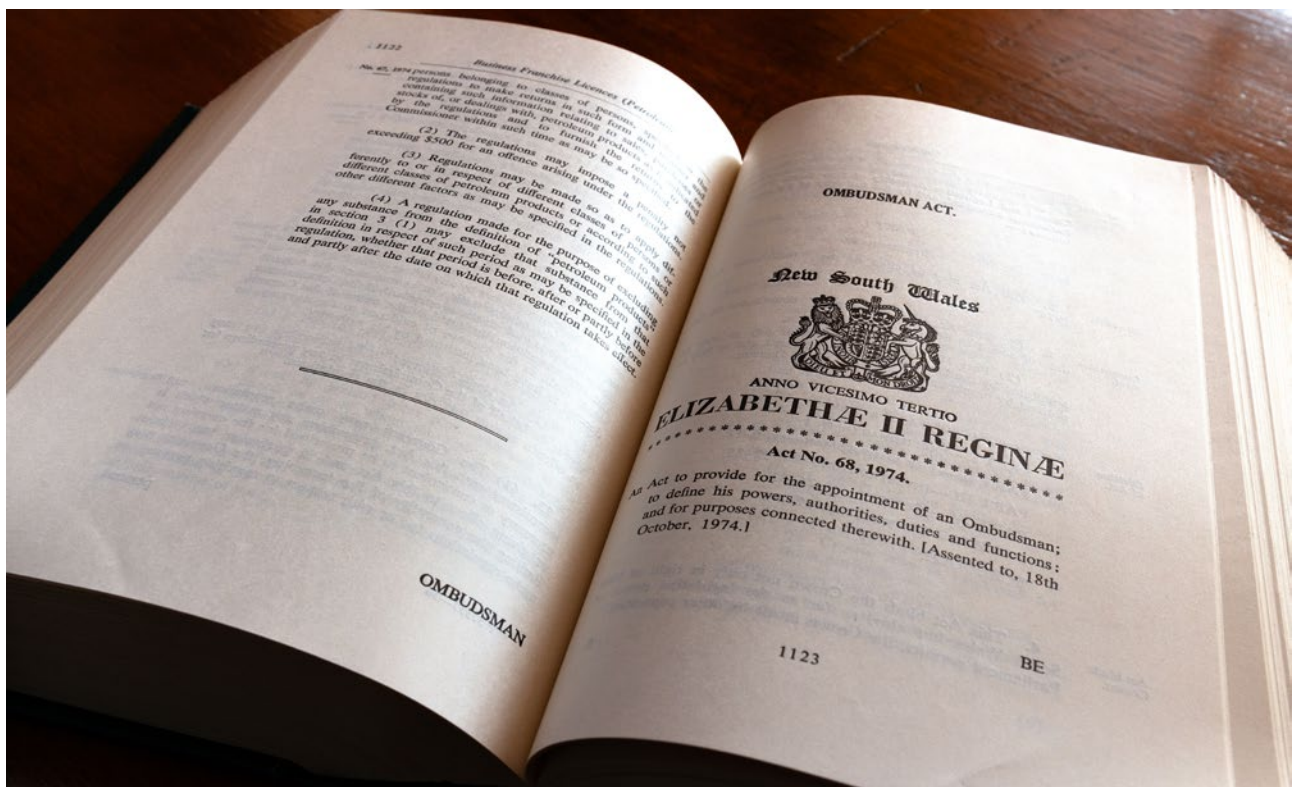
The NSW Ombudsman was focussed on investigating unlawful, unreasonable, unjust and otherwise 'wrong conduct' – both action and inaction – in relation to matters of administration by public authorities. (Wrong conduct was defined by the Act and extended beyond conduct that was 'contrary to law'.) Such investigations could be prompted by a complaint from the public or could be initiated by the Ombudsman themselves. The 'own motion' power is a significant power that enables the Ombudsman to identify and act on emerging and systemic issues.

Excluded from the Ombudsman's original jurisdiction were:

- the Governor
- Ministers of the Crown
- members of Parliament
- officers of Parliament
- officers of most courts and tribunals
- government legal advisers
- police
- local government.

Despite these exclusions, the definition of public authorities was relatively wide, covering over 400 government departments, statutory authorities, committees, boards and trusts. Complaints from the public had to be made in writing.

The investigation powers established were similar to a Royal Commissioner. The Ombudsman could access files and compel witnesses and evidence. Critical to fairness and impartiality was the provision that all investigations of complaints by the Ombudsman must be done 'in the absence of the public'. There could be no public hearings or disclosures of information to the general public during an investigation. The non-disclosure provisions, or what early Ombudsman described as 'secrecy' provisions, have (until very recently) caused irritation to successive Ombudsmen due to their inability to correct misinformation published in the media about potential or current investigations. This anomaly has recently been corrected.²⁵



Ombudsman Act 1974 (Act No. 68 of 1974)
(photographer: James Croucher, courtesy State Library of NSW)

If a finding of wrong conduct was made, the Ombudsman could recommend the conduct or decision be reconsidered, that action be taken to rectify, mitigate or change the conduct or its consequences, that reasons be given explaining the conduct, or that a law or practice could be changed. The key word in the legislation was ‘may recommend’. The Ombudsman had no power to reverse a decision and they could not compel any government department to do so either.

Report findings of wrong conduct were to go through a staged process of notification and presentation to the Minister, the government department and the complainant. It was a carrot and stick approach. The Ombudsman aimed through discussions and notification to the responsible Minister to persuade the government department of the error of its ways and cajole it to make amends. Until recently, presentation of the report to the Minister was the little stick. Making the report public by tabling it in Parliament was the big stick. As we shall see, only the most vexed issues and the most serious maladministration have been exposed through public reports over the last 50 years. However, the current practice in 2025 is that any report to a Minister is also reported publicly, at least in summary form in a casebook report published every 6 months. In this way, other administrators can learn lessons and consider recommendations made to other departments and public agencies.

The search begins

‘How to find the right man has been a major concern everywhere’, warned the NSW Law Reform Commission in 1972, citing the extensive review of international ombudsmen by Professor Walter Gellhorn, *Ombudsmen and Others* (1966).

Drawing upon Professor Gellhorn’s work, the NSW Law Reform Commission emphasised the integrity, status and competence of the Ombudsman. To be effective, they had to be persuasive and be respected. They had to be independent: ‘untroubled by political pressures or personal insecurities’, ‘free of partisan entanglements’. There could be no conflicts of interest. There was widespread international preference for legal training, but their qualifications were less important than ‘personal attributes’. Importantly, both the Parliament and public administrators had to be committed to the Office of the Ombudsman, its principles and governmental ideals.²⁶

‘There is nothing magical about an ombudsman. The mere existence of the office means little. The man in the office is what counts.’

NSW Law Reform Commission, 1972 ²⁷

As the enabling legislation was drafted and debated in Parliament, John Maddison spruiked the qualities required for the state’s first Ombudsman. At the second reading of the bill Maddison emphasised the intellect and efficiency of the officer, and their standing.

‘... the new and important office of ombudsman in New South Wales will affect government administration and benefit individual citizens. ... Whoever holds that office, whether man or woman, will need to have tremendous capacity and the respect of both the community and the administration.’

The Hon John Maddison, 1974 ²⁸

Maddison told the *Sydney Morning Herald* that he believed the Ombudsman should be ‘an independent-minded person whose great skills are as a persuader, rather than as an executive decision-maker’. They also needed to be ‘a person divorced from the political arena ... preferably with a strong knowledge of the law, although not necessarily practising in that field now ... [and] sensitive to people’s rights when they appear to have suffered injustice as a result of Government administration.’²⁹

Maddison hoped an Ombudsman would be appointed by October 1974. Just like the bill itself, it took a little bit longer than that.

The job was advertised nationwide in November 1974. Qualifications were succinctly described as ‘administrative experience at a high level; knowledge of the operations of Government in Australia and the organisation and procedures of governmental departments and agencies. Legal training and experience in conducting investigations would be an advantage.’³⁰ No mention was made of qualities and skills such as patience, courage, tenacity or persuasion.

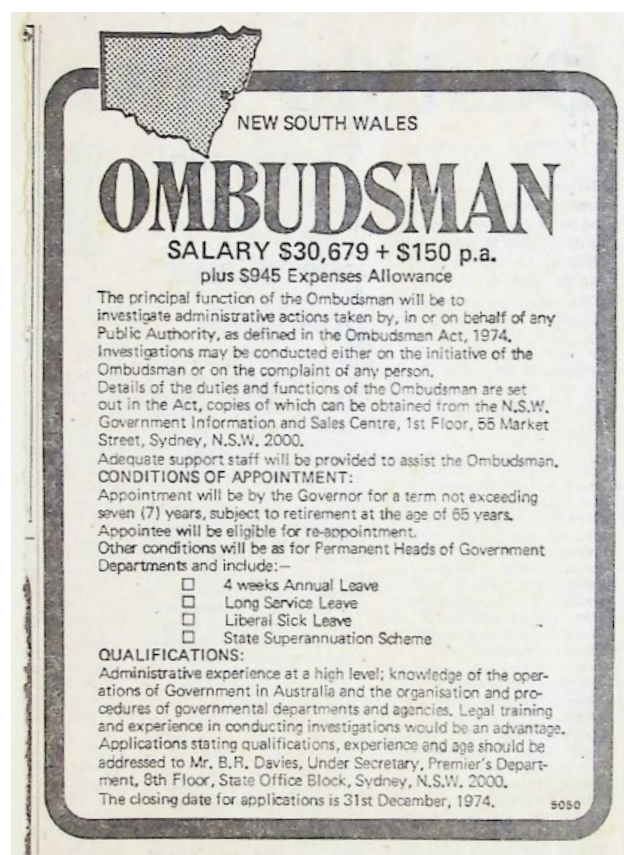
There were more than 80 applicants for the \$32,000-a-year job; only one of which was a woman.³¹ The Public Service Board held preliminary interviews in January 1975. Twenty-four longlisted candidates were then interviewed by a sub-committee of Cabinet in February.³²

The sub-committee comprised 4 government Ministers: the Hon. J.C. Maddison, Attorney General and Minister for Justice, the Hon. E.A. Willis, Minister for Education, the Hon. J.C. Bruxner, Minister for Decentralisation and Development, and the Hon. R.O. Healey, Minister for Health. The *Sydney Morning Herald's* state political correspondent John O'Hara reported that there were 'widely differing views' among the sub-committee regarding qualifications, policy and personality.³³ Unable to agree, the sub-committee referred a shortlist of 6 candidates back to State Cabinet on 4 March 1975, who also could not decide and referred the matter back to the sub-committee, suggesting the longlist should be re-examined. Maddison was frustrated and disappointed. Premier Tom Lewis tried to play down the divergent views in Cabinet, assuring the public that 'the ombudsman will be a person of the highest integrity, possessing patience and understanding'.³⁴

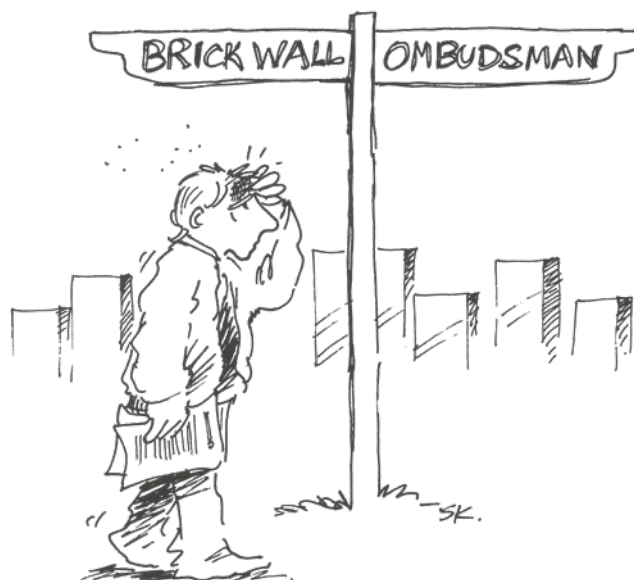
The state's first Ombudsman was finally selected and endorsed by Cabinet on 11 March 1975. Premier Lewis announced the appointment of Sydney solicitor Kenneth Smithers CBE on 2 April 1975. Smithers was empowered to investigate complaints from 12 May 1975.³⁵

At long last, NSW has got a public watchdog ... If he is to be fully effective, as we hope he will be, perhaps his first recommendation should be that the government acts speedily on his findings, and doesn't file them away on some dusty shelf.

Editorial, *Daily Telegraph*, March 1975³⁶



Job advertisement for the inaugural NSW Ombudsman, 1974. (Kenneth Smithers' scrapbook no 1, NSW Ombudsman's Office, courtesy: Liz Milverton and Jenny Harper)



Simon Kneebone, 'Brick wall - Ombudsman' [cartoon], 1989. (First reproduced NSW Ombudsman *Annual Report* 1988-89 p 1. © Simon Kneebone, courtesy: the artist.)

NSW Ombudsmans

1975–2025

There have been 8 NSW Ombudsmans. Each has brought their own style, leadership and panache to the role.

The term Ombudsman refers to both the person and the office they lead. It is gender-neutral, applicable to any Ombudsman regardless of gender. The traditional plural is ‘Ombudsmans,’ but ‘Ombudsmen’ is also widely accepted.

Kenneth Smithers CBE

1975–1981



Kenneth Smithers was appointed on 2 April 1975 as the first NSW Ombudsman. He retired on 17 June 1981, having served his full 7-year term.

Smithers was a distinguished Sydney lawyer and long-standing Liberal Party member. He was an elected member of the Council of the Law Society of NSW from 1952 to 1970, serving as president 1961–1963. He was also a member of the executive of the Law Council of Australia 1962–1970.

The first challenge for Smithers upon his appointment was setting up the Ombudsman's Office – staff, processes and procedures. He recognised the importance of raising the new Office's profile. He spoke on radio and gave over 200 press interviews in his first 12 months. Smithers visited clubs and community groups across New South Wales presenting talks that explained the Ombudsman's role.

The other challenge for Smithers was establishing the jurisdiction of the Office – what complaints were in or out of jurisdiction. Everything was new and required checking and testing. Over his 7-year term, he put forward several proposals for amendments to the Ombudsman Act, including wider powers over police. The first Australasian Ombudsmen's Conference was hosted by the NSW Ombudsman in November 1975, establishing the collegiate approach of the Office.

Smithers had patience and a wry sense of humour, something which came out in his annual reports. He recognised the importance of listening to people's complaints, even if they were misdirected, and

'From time to time, a public authority gets upset with what I have to say during the course of an investigation. This is good and as it should be for, without differences of opinion, life would indeed be dull. I become concerned, however, when a public authority appears to be adopting a resentful attitude as a matter of course.'

Ken Smithers, first NSW Ombudsman, 1981³⁷

providing advice. He focussed upon resolving complaints directly with departments, and would often discontinue an investigation if the issue could be resolved. He used his power on just 4 occasions to make a public report to Parliament, 3 about local councils and one relating to the Royal Commission into NSW Prisons. Nevertheless, he still irritated departments when he scrutinised them closely.

At the end of the inaugural Ombudsman's term in June 1981, the Office of the Ombudsman was receiving about 8,400 contacts annually.

After his term as Ombudsman, Smithers was appointed a part-time member of the Social Security Appeals Tribunal. He continued as a tribunal member until the year he died.

Kenneth Smithers died on 6 August 1996, age 80.³⁸

George Masterman QC

1981–1987



George Masterman QC commenced as the second NSW Ombudsman on 18 June 1981. Masterman announced his resignation on 3 September 1987, 9 months before the end of his 7-year term.

Masterman was a distinguished barrister, who was admitted to the Bar in 1957 and became a Queen's Counsel in 1972. Masterman was recognised as an expert in trade practices law. At the Bar, he frequently represented public interest and consumer groups, acting pro bono on cases that raised public interest questions, civil liberties or consumer rights.

With the Office's administration soundly established, Masterman focused on establishing the Office as a watchdog to be reckoned with, aggressively pursuing complaint investigations. It was said by some that he ran the Office like a floor of barristers. Masterman utilised the Ombudsman's Royal Commission-style powers to visit agencies unannounced and view files, do own motion reports and make special reports to Parliament. He railed against the non-disclosure provisions of the Ombudsman Act and the limitations on making public comment or reports public. During his term, Masterman made 51 reports to Parliament.

Masterman became an 'outspoken critic of Government secrecy and of corruption in the police force'.³⁹ He became astute at using the media and established a tradition of holding a press conference upon the release of his Annual Report. Masterman's outspokenness led to deteriorating relations with the Wran government (and particularly the Office of Premier and Cabinet) and several legal challenges by the Police Commissioner and the Police Association to the Ombudsman's jurisdiction ensued.

'While the Ombudsman's primary task must be impartial investigation of complaints, other functions flow naturally from that task. These include recommending administrative improvements, and providing information and advice about government services to complainants and other members of the public.'

George Masterman,
second NSW Ombudsman, 1984⁴⁰

The independence of the Office from government was vital for Masterman. It protected the Office's reputation as being vigorous, fair and impartial. This was formally recognised in February 1984 when the Ombudsman's Office was declared an 'Administrative Office' under the *Public Service Act 1979*.

At the end of Masterman's term in 1987, the Office of the Ombudsman was receiving around 15,000 contacts annually.

George Masterman QC died on 2 October 2016, aged 87.⁴¹

David Landa OAM 1988–1995



David Landa OAM was appointed Ombudsman on 1 February 1988. He served a full term, stepping down in January 1995.

Landa was a Sydney solicitor and the principal of the firm David Landa and Stewart. His law firm had a long connection with the NSW Labor Council. He was an elected alderman of Hunters Hill Council 1974–1980 and served a term as mayor. His father, Abe Landa, was a minister in the NSW Labor governments in the 1950s and 1960s.⁴²

When Landa was appointed in 1988 the role was described as ‘one of the most politically sensitive and powerful positions in NSW’.⁴³ He was probably picked by Wran as a less combative candidate than the former Ombudsman George Masterman and certainly, in the beginning, Landa claimed that he did not want a profile. But the Government and bureaucracy soon attracted his ire, and he became vocal in his critiques of government departments and the police. Like his predecessor, Landa became astute at utilising the media.

Notable cases of public interest, such as the *Report on Operation Sue* (1991), the *Toomelah Report* (1992), and *Race Relations and Our Police* (1995), all shone a light on discrimination and racism within the public sector. Landa created the first designated Aboriginal Investigation Officer position.

The Office’s jurisdiction over police was challenged once again, and there were several court cases, each of which found in favour of the Ombudsman. Premier Greiner accused the Ombudsman’s Office of ‘orchestrated leaks’ and Landa’s conduct was referred by the Minister for Police to the Independent Commission Against Corruption in 1993. He was fully cleared.⁴⁴

The Joint Parliamentary Committee was established during Landa’s term. While it was aimed clearly at supporting both the independence and the

‘Publicity is the Ombudsman’s ultimate weapon to influence public authorities to implement recommendations. Developing good media relations is, therefore, a fundamental survival strategy.’

David Landa, third NSW Ombudsman, 1994⁴⁵

accountability of the Office, it was a roller-coaster start. The party politics of the second Chairman, John Turner (National Party, Member for Myall Lakes), undermined the Committee and sought to discredit the Ombudsman and his Office. Both the Committee and the Ombudsman survived the battering; Turner was discharged from the Committee on 12 October 1993.⁴⁶

The Office’s jurisdiction expanded under Landa to embrace freedom of information complaints, protected disclosures (the term previously used to describe public interest disclosures), private prisons, and direct investigation of police complaints.

Landa insisted that complaints were a form of free market research and he encouraged government departments to take a less adversarial approach. The Complaint Handling in the Public Sector (CHIPS) program produced the *Guidelines for Effective Complaint Management* and mediation-style complaint resolution methods were introduced.

At the end of Landa’s term, the Office of the Ombudsman was receiving about 20,500 contacts annually.

David Landa OAM died on 21 November 2021, aged 87.

Irene Moss AO

1995–1999



Irene Moss AO was appointed in February 1995. She served nearly 5 years before resigning in November 1999 to take up a new appointment.

Moss was a public servant and magistrate, working in the NSW and Commonwealth spheres. Prior to taking up her position at the NSW Ombudsman's Office, Moss was the Federal Race Discrimination Commissioner 1986–1994 at the Human Rights and Equal Opportunity Commission. Much of her outlook and career has been shaped by her life experiences as a Chinese-Australian.

The appointment of the first female NSW Ombudsman created a great deal of media attention and interest.

Moss presided at a time of great upheaval in the jurisdictional area of policing. The Wood Royal Commission generated broad public debate regarding oversight of police conduct, in which Moss proactively participated. The Aboriginal Complaint Unit within the Ombudsman's Police Division was established in 1996, as was the external Police Integrity Commission.

She also faced a growing Office with insufficient resources. Moss prioritised complaints raising systemic and procedural deficiencies or serious abuse of power. Recommendations were aimed at being practical and effecting measurable changes. She saw her mandate as encouraging good public administration. After the tumultuous years of Masterman and Landa, Moss was a steady hand.

Under Moss the Ombudsman's jurisdiction expanded to cover witness protection, workplace child protection and controlled operations.

'We are not after scalps and do not keep score by the number of 'wrong conduct' reports that are issued. Rather, I consider our effectiveness should be measured by the results that are achieved. In other words my emphasis is on rectification not 'retribution''

Irene Moss, fourth NSW Ombudsman, 1995 ⁴⁷

For the first time, a new piece of legislation was enacted that required the Ombudsman to review its implementation.⁴⁸ This monitoring and review provision for legislation would be included in future legislation from time to time.

Moss highlighted the growing challenge of accountability with the advent of contracting out and corporatisation of government services. It opened the door to shifting blame and responsibility. Moss maintained that administrative law and accountability needed to apply to the private sector where they were funded by government.

When Moss resigned in 1999, the Office of the Ombudsman was receiving around 33,000 contacts annually.

Moss left the Office to become the Commissioner of the NSW Independent Commission Against Corruption from 1999 to 2004.

Bruce Barbour

2000–2015



Bruce Barbour was appointed in June 2000. He served two 7-year terms, plus an extra 1-year term, retiring on 30 June 2015. He is the longest serving NSW Ombudsman to date.

A lawyer by trade, Barbour started his career as an Investigating Officer at the NSW Ombudsman's Office under George Masterman. He went on to become a director at the Australian Broadcasting Tribunal, a member of the Casino Control Authority in NSW, and a senior member of the Commonwealth Administrative Appeals Tribunal. So his appointment as NSW Ombudsman in 2000 was something of a homecoming.

The year 2000 marked the 25th anniversary of the NSW Ombudsman. To mark the occasion the Office published *The Complaint Handler's Tool Kit*. The Office moved into a halcyon period of expansion and influence, publishing key guidelines in public administration, investigation, and complaint handling.

The Ombudsman's jurisdiction expanded dramatically under Barbour. Legislative monitoring of new laws and powers became a more common function. It included over the years new laws on police DNA testing, the sex offenders register, sniffer dogs, consorting laws, and controversial 'stop and search' powers. Amalgamation with the Community Services Commission brought with it new functions under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. The Office was now responsible for reviewable child and disability deaths, and the monitoring, inquiry and review of community services. A new statutory officer, the position of Deputy Ombudsman (Aboriginal Programs) was created to complement the Office's newly expressed statutory function to monitor Aboriginal programs.

Barbour instigated some significant own motion reports, including a review of the *Freedom of Information Act 1989* (2009), the use of Tasers (2008 and 2012), and *Improving the quality of land*

'We're here to represent the public's interest and to hold agencies to account. The moment they try to avoid our scrutiny that sends alarm bells to us and we want to know why.'

Bruce Barbour, fifth NSW Ombudsman, 2009 ⁴⁹

valuations (2005). These investigations teetered towards policy-making, the Ombudsman utilising his considerable powers of persuasion to effect meaningful change in public administration.

The one investigation that framed the end of Barbour's long tenure was not entirely of his own making, Operation Prospect. Requested by the government in 2012, this became (and still remains) the longest, most-complex investigation into police misconduct that the Ombudsman's Office has ever completed. The investigation also soured the Office's relationship with Parliament.

Under Barbour's charismatic leadership the NSW Ombudsman's Office contributed to the institutional strengthening and capacity building program for Ombudsman offices in the South-West Pacific. This program was supported by AusAid and created the Pacific Ombudsman Alliance. Barbour was also active in the International Ombudsman Institute, being Regional Vice President for the Australasian and Pacific Region. Barbour's 'outstanding services' for the entire Ombudsman community was recognised by the IOI in 2015, when he was awarded honorary life membership.

By the end of Barbour's tenure in 2014, the Office of the Ombudsman was dealing with about 35,500 contacts annually.

Bruce Barbour was appointed Chairperson of the Queensland Crime and Corruption Commission on 2 July 2022.

Emeritus Professor John McMillan AO 2015–2017



John McMillan was appointed Acting NSW Ombudsman in August 2015 and held the position until December 2017. (He was defined as Acting on technical grounds due to the statutory age for the position and because he was directly appointed with the express expectation that it would be a relatively short-term appointment.)

John McMillan was a professor of law in public administration at ANU before taking up appointments with integrity bodies. He was the Commonwealth Ombudsman (2003–2010) and the Australian Information Commissioner (2010–2015).

The priority for McMillan's appointment as NSW Ombudsman in 2015 was the completion of the Operation Prospect investigation. This ostensibly occurred in December 2016, with supplementary reports in 2017.

During this period the Office also saw a major contraction in its jurisdiction. After 39 years of the Ombudsman's independent scrutiny of the handling of complaints about police, it was decided that the function would pass to a new body. The Law Enforcement Conduct Commission came into effect on 1 July 2017.

Significant investigative reports tabled in parliament during McMillan's term included *Fostering economic*

'The core principles and objectives of an Ombudsman office change little over time, but adapt to deal with the different challenges of every age.'

John McMillan, sixth NSW Ombudsman, 2015 ⁵⁰

development for Aboriginal people in NSW (2016), *Water compliance and enforcement* (2017), and *Asbestos* (2017). The Ombudsman continued to monitor select – and frequently controversial – new policing laws, including the use of firearms prohibition order search powers and 'criminal organisation' declarations.

The Office played an important role preparing the NSW disability sector for the roll out of the National Disability Insurance Scheme and the transition of oversight to the NDIS Quality and Safeguards Commission.

At the end of McMillan's time, the Office of the Ombudsman was receiving about 46,100 contacts annually.

Emeritus Professor John McMillan now consults to integrity bodies on public administration issues.

Michael Barnes

2017–2020



Michael Barnes was appointed NSW Ombudsman in December 2017 and resigned in August 2020 after just over two-and-a-half years to take up a new appointment.

Michael Barnes was a lawyer in Queensland, with a strong interest in social justice. He served as the inaugural Queensland State Coroner (2003–2013) and then from January 2014 was the NSW State Coroner.

The Ombudsman's first 5-year review of the government's inter-agency plan for Aboriginal programs – OCHRE – was delivered (2019). Barnes heralded OCHRE a success and encouraged the government to step up and expand OCHRE's impact across the state. Another whole of government program reviewed by the Ombudsman during this period was the Commitments to Effective Complaint Handling.

Barnes oversaw the completion of a standing inquiry (2016–2018) into allegations of abuse and neglect of adults with disability in the community. This led to significant reforms, with the establishment of the Ageing and Disability Commission and the creation of a new Commissioner. Other significant public interest reports included another report on agricultural water compliance and enforcement (2018), and *More than Shelter* (2019) a focus on service response to unaccompanied homeless children.

Several functions were devolved to other agencies. Disability oversight moved to the NDIS and the Ageing and Disability Commission, the latter also picking up the Official Community Visitors Scheme for residential disability services and for children in residential out-of-home-care; and employment-related child protection reportable conduct scheme moved to the Children's Guardian.

'Public sector employees play a vital role in exposing wrong conduct and building public trust in government. Many of my office's recent investigations were triggered because of the valuable information we received from insiders.'

Michael Barnes, seventh NSW Ombudsman, 2019 ⁵¹

With the radical contraction of functions and focus returning once more towards the more traditional areas, Barnes sought to restructure the Office, disassembling the specialist units and revising complaint procedures. This was the first major shake-up for 20 years. Barnes appointed a new executive and with his newly appointed Deputy Ombudsman, Paul Miller, developed and launched a 5-year strategic plan.

Education and training by Ombudsman staff continued to be highly sought after, including internationally. The Ombudsman developed a child-focused complaint handling guide for the National Office for Child Safety.

When Barnes resigned in 2020, the Office of the Ombudsman was receiving around 33,100 contacts annually.

Michael Barnes is the current NSW Crime Commissioner. He commenced his appointment on 24 August 2020.

Paul Miller PSM

2022–present



Paul Miller PSM was NSW Acting Ombudsman August 2020 to May 2021. He was appointed Ombudsman for a 7-year term in May 2021, after acting in the role since Barnes' departure.

Paul Miller began his legal career at Allen Allen & Hemsley in Sydney. He moved into the NSW public sector in 2006 and was General Counsel and Deputy Secretary in the Department of Premier and Cabinet (2006–2016). Miller was appointed Deputy Ombudsman in April 2019.

Miller is the first Ombudsman to progress from Deputy Ombudsman to the top job and the first to have been a senior executive in a NSW government department. He picked up where Barnes left off, completing an office-wide restructure and rolling-out the strategic plan. Along with the rest of the nation, the Office was working remotely in 2020 and 2021 due to the COVID-19 pandemic. Recognising the unprecedented governmental upheaval caused by the pandemic, Miller delivered 2 reports documenting the measures taken by the NSW Government and their impacts on individuals during the COVID-19 pandemic.

Significant amendments to the Ombudsman Act were passed in 2022.⁵² This included alterations to non-disclosure obligations, finally achieving the changes which every single Ombudsman had requested. A total rewrite of the *Public Interest Disclosures Act* led to enhanced oversight functions for the Ombudsman in 2022.

'I am honoured to lead an organisation with core principles of independence, objectivity, transparency, fairness and impartiality. Our aim is to bridge the imbalance of power between individuals and government, helping to ensure that everyone receives the right services and is treated fairly.'

Paul Miller, eighth NSW Ombudsman, 2021 ⁵³

Miller has focused on supporting improvements in public administration through early guidance on emerging issues, including especially the use of AI and automated decision-making, as well as social media use.

He has sought to increase public transparency of the Office's work. In a significant innovation, the Office now publishes a bi-annual casebook presenting the details and findings of every investigation completed by the Office, where previously investigation reports only went to the relevant agency and its Minister (unless a decision was made to table a special report).

The Office of the Ombudsman dealt with nearly 30,000 contacts in 2024. In a major overhaul of the Office's infrastructure, a new case management system was rolled out in 2025.

Independence, funding and accountability

A key element of any integrity body is its independence from executive government and the administration. The relationship between the Ombudsman's Office, departments and executive government has been bumpy over its 50 years. Given the Ombudsman's role and functions, perhaps this uneasy relationship is inevitable.

When the Ombudsman's Office was established in 1975 the Liberal government emphasised the Ombudsman's independence. The statutory roles of the Ombudsman and Deputy Ombudsman were not subject to the Public Service Act, however all other staff were, and the Office's accommodation was determined to be 'separate and distinct' from offices occupied by any section of the administration. The Annual Reports of the Ombudsman were presented to the Premier who as the Minister responsible for the Office of the Ombudsman, tabled the reports 'as soon as practicable'.⁵⁴

The Office of the Ombudsman was originally closely associated the Premier's Department and this proved challenging in the first decade of the Office. The provisions of the Public Service Act meant that the Secretary of the Premier's Department was effectively 'the Departmental Head' of the Office of the Ombudsman. Communications with the Public Service Board on staffing and administrative matters had to pass through the Premier's Department. The Secretary could ultimately control and transfer staff to and from the Office. Much depended on the relationship of the Ombudsman with the Secretary. George Masterman, the second Ombudsman, concluded in 1983 that this administrative control was 'anomalous and undesirable'. He waged a campaign to uncouple the Ombudsman from the Premier's Department. On 24 February 1984 the Office of the Ombudsman was gazetted as a separate Administrative Office under the Public Service Act, giving it statutory independence.⁵⁵ It placed the Office on a similar footing to the offices of the Auditor-General and the State Electoral Commissioner.

The question remained whether the Ombudsman should be outside the Public Service Act altogether. Masterman reported that in Victoria, Queensland and Tasmania, as well as overseas jurisdictions, including New Zealand, both the Ombudsman and their staff were independent of the Public Service Board and the Public Service Act. The concept of the Office of the Ombudsman as being independent from the bureaucracy seemed to call for this clear division. Masterman maintained the 'fundamental principle' was that the Ombudsman was 'independent and responsible to Parliament, and not to any public service authority'.⁵⁶

The relationship between the NSW Ombudsman and the executive arm of government waxed and waned, often in accord with damning investigation findings. This uneasy relationship was viewed by some ombudsmen as inevitable given the nature of their work. The former Saskatchewan Ombudsman David Tickell commented astutely on this challenge on the eve of his retirement in 1985.

'To some extent, it may be inevitable that an Ombudsman who works up to his mandate will have something other than a smooth working relationship with the executive branch of government. The cumulative effect of appearing to be constantly in search of change and remedies for the public, and finding it necessary to air differences with the government in public several times each year, must put this relationship in some jeopardy. Sooner or later, there is a tendency to shoot the messenger when governments don't like the message. It may be because governments, once they settle in, wish to appear infallible and become less tolerant of differing views. It may also be because the Ombudsman is the recipient of only bad news and runs the risk of developing a jaundiced attitude towards government systems. In any event, there is no greater challenge for an Ombudsman than to attempt to maintain a good working relationship with government.'

David Tickell, Saskatchewan Ombudsman, 1985 ⁵⁷

In NSW it was entirely a matter for the Premier's discretion as to when a special report was tabled or (if Parliament was not sitting) should be made public. By the end of his term, George Masterman was at loggerheads with Premier Wran, and the Premier delayed the tabling in Parliament of 9 special reports until it was convenient for the executive government.⁵⁸ David Landa started off more amicably, but as he too doggedly pursued maladministration and asserted independence he fell out with Premier Greiner. In 1989 Premier Nick Greiner accused the Ombudsman's Office of 'orchestrated leaks' of a special report.⁵⁹

A disgruntled Premier Greiner, following disagreements with the Ombudsman regarding the circulation of provisional reports, unexpectedly raised the idea of a Joint Parliamentary Committee in 1989. The proposal was enthusiastically taken up by Ombudsman David Landa. In a special

report to Parliament on 19 July 1990, Landa endorsed the Premier's proposal and outlined changes to guarantee the Office's independence from executive government. It was, in fact, the second report in 3 years asserting the imperative need to increase the Ombudsman's accountability to Parliament.⁶⁰ Independence was for NSW Ombudsman David Landa 'no mere issue of academic principle'.

'The concept of the Ombudsman's independence from the executive is no mere issue of academic principle; rather, such independence is a practical necessity for an organisation whose task is to investigate citizens' complaints about maladministration by public authorities. Ministers are ultimately responsible for public authorities and governments have a tendency to view even constructive criticism of authorities under their control as criticism of their political administration. This is particularly so in Australia with its history of secrecy in public administration which has only recently begun to crumble with the adoption of Ombudsman and Freedom of Information legislation. Nevertheless, government dislike and react against public discussion and debate of issues of public administration, such as often occurs where the Ombudsman decides to report to Parliament.'

David Landa, third NSW Ombudsman, 1990⁶¹

Landa recommended major reforms, including:

- a Joint Parliamentary Committee be established to oversee the operations of the Ombudsman's Office, similar to that as established for the Independent Commission Against Corruption
- the Joint Committee be empowered to recommend to the Parliament the appointment of the Ombudsman, Deputy Ombudsman and Assistant Ombudsmen, and that such

appointments be made by the Governor upon an address of both Houses of Parliament

- the Joint Committee be empowered to recommend to the Parliament the appropriation of funds from Consolidated Revenue for the Office of the Ombudsman
- the Ombudsman report directly to the Speaker of the Legislative Assembly and the President of the Legislative Council and not to the Premier (as was the case in 1990)
- the Office of the Ombudsman be established as an independent statutory corporation, not subject to the Public Sector Management Act
- repealing of various provisions requiring Premier's approval for the delegation of powers, engaging expert investigative assistance, and appointing Special Officers.⁶²

The *Ombudsman (Amendment) Act 1990*, establishing the Joint Parliamentary Committee, was proclaimed on 18 January 1991. It was one of the most significant changes to affect the Office of the Ombudsman since it was established. The Office's perceived independence from the executive arm of government was enhanced and the Ombudsman was now transparently accountable to Parliament.

But Landa's other recommendations were only partially adopted by the government. After twice rejecting the recommendation of selection committees of an appointment of an Assistant Ombudsman, the government backed down and another amendment to the Act was passed enabling the Ombudsman to appoint persons to the statutory offices of Deputy Ombudsman and Assistant Ombudsman, while preserving Parliament's right to address the Governor for the removal of those persons from Office.⁶³

It was not until 1993 that the Ombudsman was enabled to present reports directly to the presiding officer of each house of Parliament – another important step in accountability and independence. Once again amendments to the legislation were required.⁶⁴ And the ongoing issue of funding was not satisfactorily resolved until 2023 (discussed further below).

The Joint Parliamentary Committee has been an important mechanism to support the independence of the Ombudsman's Office. The Committee monitors and reviews the role and functions of the Ombudsman's Office, may inquire into matters referred to it by Parliament, and reports to both Houses of Parliament. It consists of Members from both Houses - including representatives from government, opposition and independents – and meets annually with the NSW Ombudsman.

Over the years the Joint Committee has expanded to embrace other integrity bodies: the Police Integrity Commission (1996–2016), Information and Privacy Commission, and subsequently its Commissioners (2011–present), Convenor of the Child Death Review Team (2011–present), NSW Crime Commission (2012–present), Inspector of Custodial Services (2014–present),

Law Enforcement Conduct Commission (2017–present), and the Public Service Commissioner (2023–present).

The reports of the Joint Parliamentary Committee are all published on the NSW Parliament's website, providing an important level of transparency and accountability.⁶⁵



Simon Kneebone, 'Heel' [cartoon], 1991.

(First reproduced NSW Ombudsman *Annual Report 1990–91* p 27. © Simon Kneebone, courtesy: the artist.)

Funding

The funding of the Ombudsman's Office has for much of its existence been determined by Treasury through a budgetary process, with substantial – but not always transparent – input from Department of Premier and Cabinet. The annual appropriation with rolling forward estimates was generally unresponsive to requests for supplementation during a financial year to meet a rise in complaints. This was different to some overseas Ombudsman, who had relative freedom from a fixed-line budget. From the beginning, NSW Ombudsmen critiqued their budget allocations, pointing out in their Annual

Reports how the budget may limit or impair their functions of investigating public complaints. This practice was criticised by some politicians, however, the Ombudsmen always asserted their independence and maintained it was their 'right and duty' to comment on such matters to Parliament through their Annual Reports. Inadequate funding by government was a threat to the Office's independence and ability to carry out its statutory functions.⁶⁶

Traditionally most of the NSW Ombudsman's revenue has come from the government, although the Office over time generated a small, but increasing, revenue through the sale of publications and the provision of training on a fee-

for-service basis. Employee expenses account for the majority of expenditure, with IT infrastructure becoming an increasingly important area for maintaining productivity. Legal challenges to the Ombudsman's jurisdiction and other litigation in the Supreme Court added unexpected expenses to an already tight budget.

Receiving and investigating complaints are a core function of the Ombudsman. The challenge has always been how to assist the public and effectively investigate complaints within the constraint of funding allocations. Treasury did not view the Office as demand-driven according to the level of complaints received. So new procedures and approaches had to be applied as the Office grew in awareness, capability and jurisdiction. Building the capacity of the public sector to manage their own complaint handling systems was an important strategy to ensure the Ombudsman's Office remained a place of last resort. This strategy also allowed for a shift towards more systemic investigations of public administration.

The jurisdiction of the Office expanded, and alongside it the number of staff, but budgetary commitments remained effectively stagnant once inflationary trends were factored. The enforcement of efficiency dividends hurt the Office's budget as they did many other departments.

'Increased powers without adequate resources is a hollow victory.'

David Landa, third NSW Ombudsman, 1993 ⁶⁷

'The conferral of new functions without new funding is tantamount to a budget cut across the Ombudsman's office.'

Paul Miller, eighth NSW Ombudsman, 2021 ⁶⁸

Over the years, different Ombudsmans have made the case for new functions requiring additional budget allocation. It was extremely frustrating when legislation was introduced into Parliament, which had a bearing on the Ombudsman's jurisdiction, and the Office had not been appraised of it. Such practices made forward planning extremely difficult. Irene Moss and Bruce Barbour learnt from the challenges faced by their predecessors and insisted that new work came with new resources, through grant

allocation or central fund appropriation increases. By the time Bruce Barbour's term ended in 2015, the NSW Ombudsman's Office was the largest Ombudsman's Office in the country – indeed one of the largest in the world – and probably one of the best funded.

Yet funding and independence has remained a live issue in the last decade, not just for the Ombudsman's Office but for other integrity agencies too. Funding decisions were being made 'behind the cloak of "Cabinet confidentiality"'. There was a lack of transparency and no review processes. There was a funding bias toward new initiatives and government priorities, with core and ongoing statutory mandates being treated with fiscal disdain. Paul Miller, the state's eighth Ombudsman, warned that underfunding threatened the performance of legislative functions and risked 'contributing to the very problems that [integrity] bodies exist to address – namely a lack of public trust in the integrity, confidence, capability and fairness of public institutions.'⁶⁹

On 14 October 2019, the Legislative Council's Public Accountability Committee established an Inquiry into the budget process for independent oversight bodies, as well as the NSW Parliament. The 5 oversight bodies included within the inquiry were the Independent Commission Against Corruption (ICAC), the NSW Ombudsman, the Auditor-General, the Law Enforcement Conduct Commission (LECC) and the NSW Electoral Commission. In their interim report, delivered in March 2020, the Public Accountability Committee declared these 5 oversight bodies were 'the bedrock of government accountability in New South Wales', and warned against inadequate funding. Consequently, the Public Accountability Committee recommended a Parliamentary Committee should consider the annual budget submissions of oversight bodies and engage in a transparent review process. It was a strong vote of confidence by the Parliamentary Committee, but the government remained non-committal, awaiting the completion of yet another review.

While the Parliamentary Committee was considering the budget process, the government tasked the NSW Audit Office to undertake a performance review of the other oversight bodies. The commissioning of the performance review was a direct response by the Department of Premier and Cabinet to complaints from the oversight bodies, and especially the ICAC, about their funding and the manner in which that Department responded to their concerns. The Audit Office was

‘[Independent oversight bodies] are the bedrock of government accountability in New South Wales. It is vital that the oversight bodies are not prevented from performing their important work by inadequate funding.’

Public Accountability Committee,
NSW Parliament, 2020 ⁷⁰

charged with scrutinising the oversight bodies’ internal financial and management policies and practices. If the Department of Premier and Cabinet was expecting the Auditor-General to find that the bodies were not so much under-funded but rather ineffective managers of their funding, it was to be disappointed. To the contrary, the Auditor-General found the bodies were generally financially well-managed with appropriate and efficient processes. They also found the concerns of the oversight bodies about the current funding processes were well-founded, concluding that the current budget process threatened the independent status of integrity agencies and that the role of Department of Premier and Cabinet in reviewing their activities and outcomes was ‘inconsistent with the independence of the integrity agencies’.⁷¹

The Public Accountability Committee released their final report in February 2021. They reiterated their recommendation for a new budget process whereby the parliamentary oversight committees review the annual budget submissions of each integrity agency. Finally in September 2023, the NSW Special Minister of State John Graham announced that the funding of integrity agencies was ‘being put at arm’s length’. The integrity agencies were removed from all Department of Premier and Cabinet fiscal processes and excluded from efficiency dividends. Treasury now has a specialist integrity agency unit to represent the agencies’ budget requirements. Extra funding was announced, including \$30.5 million in expenditure over 10 years for the NSW Ombudsman to carry out additional duties and meet additional service requirements.⁷²

These reforms are a significant improvement, committing to sustainable, independent and adequate funding for integrity bodies, and assuring a transparent process for considering additional funding needs going forward. Their independence and the budget management

model has been reinforced by the release in August 2024 of the Charter of Independence for NSW Integrity Agencies. This Treasury Direction releases them from the control or direction of executive government in relation to financial matters.⁷³ The NSW Ombudsman’s Office, along with their fellow integrity agencies, can get on with their important work investigating and exposing maladministration and restoring public confidence in the capability and fairness of public institutions.

‘I have just read the report. It is a superb piece of forensic investigation and I wanted to thank you and your team most sincerely for the diligence, persistence and academic rigour that you brought to bear, in this matter.’

From a grateful stakeholder, 2018 ⁷⁴

Fairness

The NSW Ombudsman upholds good administrative conduct by investigating and resolving individual complaints and highlighting systemic issues. Good conduct and standards of service delivery include compliance with law or policy, acting fairly and reasonably, timeliness, and access to information.

“

‘If the results of your cases are published they should make interesting reading, a combination of Dorothy Dix, Who Done Its, & the Book of Records.’

Satisfied complainant, 1984 ⁷⁵

”

make a complaint against police were translated into 12 languages. Brochures were also specifically designed for juveniles in state institutions and for prisoners.

Redfern Legal Centre was a key ally promoting the Ombudsman’s services. They produced comics targeted at youth, as well as more comprehensive information within publications such as *The Law Handbook* and *Legal Rights and Intellectual Disability*, targeting different audiences.

Publicity

Once the Ombudsman Ken Smithers was appointed in 1975, it was necessary to get the word out that there was a new avenue for airing complaints. The message was simple: Got a complaint? Contact the Ombudsman.

In the first year of operation the Ombudsman produced a pamphlet to explain the role and scope of the Office’s jurisdiction. This was distributed to parliamentarians, government departments, all motor transport registries and all Courts of Petty Sessions, as well as solicitors and Legal Aid Centres. Brochures were also circulated to commonwealth agencies, local councils, permanent building societies and service clubs. The *Australian Women’s Weekly* featured a full page spread of the pamphlet’s content in September 1975.⁷⁶

Promoting the Office and the services it provides has been a persistent need over the fifty years. The Office has consciously sought to reach out to different audiences using different media.

The first decade saw a range of posters distributed to legal aid offices, community information centres, colleges, and post offices. Two pamphlets explaining the Ombudsman’s Office and how to

‘One of the problems in making the office better known is, of course, the name “Ombudsman”. It is not only difficult to understand but many have problems in pronouncing it and in spelling it. From time to time I have been addressed as “Omnibusman”, “Oddbodsman”, “Mr O. M. Budsman”, “Ombustsman”, “Odbunsmond” and various others. I can only hope that as time goes by the word will become more and more a part of the English language and its meaning easily understood.’

Kenneth Smithers, first NSW Ombudsman, 1976 ⁷⁷

A surge in telephone enquiries occurred when advertisements were placed inside government buses in Sydney and Newcastle in 1983 and 1984. This validated the Office’s strategy of broadening access. Regional visits by investigation officers started in 1982. Hosted in community centres, these visits were accompanied by a blitz of the local press and proved an effective way to break



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14th Floor, 175 Pitt Street,
Sydney N.S.W. 2000

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THE INVESTIGATOR

Newsletter of the Office of the Ombudsman

14th Floor, 175 Pitt Street, Sydney 2000. Phone: (02) 235 4000

Vol. 1, No. 3, July, 1987

Immunities the Key



— New York Investigator

The ability to offer immunity from prosecution in exchange for testimony — America's ultimate weapon against organised crime — has also been a major factor in the success of the New York Police Department (NYPD) campaign against police corruption, according to Bob Tomasini, a former investigator with the NYPD Internal Affairs Department.

"It really was the turning point," Mr Tomasini told a seminar of Ombudsman's Investigators.

"Nowadays they never know if the guy they're talking to is going to be turned around and testify against them.

"You might even offer immunity to the ringleader. The ringleader is the one who's likely to get the heaviest sentence, so he's in the weakest position — the easiest to turn around. And after all, we want to wipe out the corrupt organisation, not just catch the one guy."

Pro-Active Operations

Mr Tomasini also outlined the use by the NYPD Internal Affairs Department of 'pro-active operations' (where the anti-corruption authority actively seeks out misconduct). "The entire Police Force should be made aware of such a program," he said. "The pro-active approach is invaluable as a means of monitoring and improving overall police performance."

Incomparable Impact

After four weeks in Australia, Mr Tomasini said that the Ombudsman's Office had made an "incomparable impact" on him and he had been impressed by the "extraordinary eagerness" of the staff.

14 Years an Investigator

Bob Tomasini, for 14 years a member of the New York Police Department's elite Internal Affairs Department, came to the Ombudsman's Office for four weeks in March to lecture and conduct seminars on investigation techniques, particularly concerning alleged police corruption.

Mr Tomasini joined the IAD in 1973, at the beginning of its famous renaissance when New York adopted



Bob Tomasini of New York

the Knapp Commission's sweeping recommendations for the fight against corruption. He retired this year to take up full-time lecture and seminar work.

A Success Story

Board to be required to give reasons

The Ombudsman's Office got a good result for one complainant recently. The complainant had applied to the Board of Optometrical Registration for permission to call himself a "consultant", but the Board had refused his application and then refused to tell him why.

The Board said that it wouldn't give reasons because the law didn't require it to.

POLICE COMPLAINTS IN PERSPECTIVE

We spend most of our time studying incidents which have occasioned dissatisfaction with the police . . . We seldom have the opportunity to raise our heads and look at the wider scene of police work. When we do, we realise that for every incident of dissatisfaction there must be countless occasions on which the public have found the police courteous, courageous and resourceful.

— Sir Cecil Clothier, former UK Ombudsman

Reporting on the investigation, the Deputy Ombudsman, Dr Brian Jinks, said that to refrain from giving reasons for an administrative decision merely because there is no legal requirement to do so is both unconstructive and to invite doubt in the good faith in which the public authority acts.

The Board had a reason for making the decision, but it simply would not say what it was. Dr Jinks recommended that the Board give reasons in future, but it refused, so he made a special report to Parliament.

The Minister for Health, Mr Peter Anderson, told Parliament that the Board was not subject to his direction but he would review the law to require all registration boards to give reasons for their decisions.



down barriers by allowing personal interviews in a non-government environment. A trial of a shop-front branch in western Sydney in 1987 proved unsuccessful and was closed after 6 months, however general public awareness regional visits continued until 1991. A toll-free telephone service for regional NSW was introduced in 1989.⁷⁸

Radio community announcements were first produced in 1982, followed by announcements in migrant languages in 1984. Community radio promotions continued sporadically into the 21st century.⁷⁹

George Masterman was the first Ombudsman to seriously harness the media, particularly newsprint and television, to highlight the work and impact of the Ombudsman. He hosted press conferences with the release of each annual report, to promote

public discussion of the Ombudsman's oversight role. In recent years, online video content has become a key medium for succinctly presenting annual reports and key report findings in an engaging manner.

A short-lived public newsletter, *The Investigator*, was launched by George Masterman in 1985 and briefly revived by David Landa in 1990. The newsletter aimed to be an informal way of presenting a more human side to the Office – with staff profiles and short summaries of public interest cases – but fell by the wayside due to budget and caseload pressures. The newsletter established by Irene Moss in 1998, *The Public Eye*, suffered a similar fate.

Branded promotional merchandise, such as playing cards and rugby league footballs, are a more practical way of publicising the Ombudsman's contact details. These have proved popular at the Koori Knockout and among inmates in correctional centres.



Community language brochures produced between 2003 and 2004 (photographer: James Croucher)



Promotional materials featuring the Ombudsman's contact details and branding (photographer: James Croucher)

Types of complaints

The traditional core of Ombudsman functions are individual complaints about administrative conduct. Investigations of individual complaints may identify ill-judged or unfair decisions by public servants. It may expose gaps or inconsistencies in departmental procedures. The Ombudsman aims to identify the problems and recommend improvements.

Most complaints do not result in a formal investigation under the Ombudsman Act. Resolving issues quickly through inquiries made without commencing an investigation has been a consistent aim of the Office throughout its 50-year history. All complaints and investigations are treated confidentially, so the outcomes of much of the Ombudsman's work in the early resolution of complaints is unsung. To give parliamentarians and the public a sense of the range of enquiries undertaken by the Ombudsman each year, the first Ombudsman Ken Smithers started the tradition of publishing case notes or case studies in the annual reports.

‘Complainants object to all manner of things – basic policies of government, the workings of the legal system, human nature itself – in addition to the activities of bureaucrats, which are more directly the concern of the Ombudsman’s Office.’

George Masterman,
second NSW Ombudsman, 1985⁸⁰

The broad subject matter of grievances consistently related to customer service, procedures and the merits or reasoning of a decision, the complaint-handling process, the complaint outcome, and fees and charges.⁸¹ Dissatisfaction regarding delays or inaction were, and still are, at the core of many complaints.⁸²

The NSW Ombudsman is not the first stop for complainants but rather is ‘a final resort for aggrieved citizens’.⁸³ Complaints have to be



Simon Kneebone, 'That ... that was the Ombudsman', 1990.
(First reproduced NSW Ombudsman Annual Report 1989–90
p 134. © Simon Kneebone, courtesy: the artist.)

sifted according to jurisdiction and prioritised. Not surprisingly a fair proportion of complaints received by the Office were misdirected, that is outside the Office's jurisdiction, or concerned conduct excluded by the Act. This was particularly true in its early years. Since its establishment the Office has prided itself in being able to listen to the person's complaint empathetically and to advise where they might find help. Consequently, frontline staff including the receptionist and investigation officers are amongst the most knowledgeable people when it comes to navigating NSW government bureaucracies.



In 1994–95 the Office received more than 7,000 formal written complaints. To ensure complaints were tracked effectively, every written complaint received was made into a file. (*Annual Report 1994–95* pp 16–17)

For a complaint to be formally accepted, it was required until the year 2000 to be made in writing. Sometimes this proved to be a barrier, particularly for complainants in detention and custody, and those with language or literacy challenges. It became an acceptable practice for investigation officers in these circumstances to write down the verbal complaint and lodge a written complaint. Prisoners' access to the Ombudsman has been particularly fraught. Prison visits by the Ombudsman and the Prison Visitors Scheme (discussed below) has done much to ensure the rights of incarcerated individuals are safeguarded.

‘... I certainly appreciated your prompt attention and help with this problem. I just seemed to be getting nowhere. I have always been a strong advocate of the Office of the Ombudsman, and I now have a more personal confirmation of its value. Thank you again.’

A grateful complainant, 1994 ⁸⁴

A chronological list of the most significant changes in jurisdiction is provided in Appendix 2. Originally local government was excluded, but, as John Maddison promised, once the Office was up and running, this was added to the Ombudsman's remit. Complaints about councils quickly became 30% of the total number received.⁸⁵ One large category within local government was complaints about rates: disputes about the rateable amount, rates notices, the time allowed to pay rates, liability for water rates, and so on. Legislation introduced in 1983 restricted general rate increases, but it has not limited the flow of complaints.⁸⁶ Another long-standing area of complaint was the lack of notification of adjoining owners of building applications. The Ombudsman repeatedly recommended that councils needed to notify affected neighbours and to consider objections of such people.⁸⁷ It was not until 1993 that this became obligatory.

Policing is another area that consistently attracted a high proportion of complaints. The Ombudsman began oversight of police administration in 1975. Its ability to review and reinvestigate public complaints regarding police conduct gradually expanded from February 1981, despite resistance from many within the police force. By 1996 Irene Moss reported that complaints about police in ‘day-to-day matters’ consumed about two-thirds of the Office's resources. These complaints alleged unreasonable use of arrest and detention powers, unreasonable use of force, abusive behaviour, breaches of police rules and procedures and, perhaps most disturbingly, failure to take action.⁸⁸ More serious allegations of police misconduct, such as criminal conduct, serious neglect of duty, and harassment and racism, regularly featured in Ombudsman investigations. The Royal Commission into the NSW Police Service highlighted serious and systemic problems in the police service. One of the recommendations made in the Royal Commission's Interim Report was the establishment of an Aboriginal Complaints Unit within the Ombudsman's Police Team.⁸⁹ The Ombudsman tenaciously reviewed police conduct, and their widening powers, until July 2017 when responsibility for police oversight was transferred to the Law Enforcement Conduct Commission.

Inmates in correctional centres have faced similar issues over the 50 years of Ombudsman oversight. Top 6 subject areas of complaint relate to transfers, medical, visits and correspondence, discipline, loss or confiscation of property, and conduct of prison officers.⁹⁰

Contact statistics

The Ombudsman received 2,381 written complaints in the financial year 1975–76, its first year of operation. Due to the novelty of the Office, the telephone ran hot. The small staff of 14 employees dealt with approximately 3,600 telephone calls, plus ‘a considerable number’ of (uncounted) in-person enquiries and interviews. Thus in its first year the Office dealt with (what would be defined today as) 5,981 contacts (not including in-person).

Of the written complaints, they determined 453 were misdirected complaints, 221 were excluded complaints, and a further 34 were deemed inadmissible as the conduct occurred prior to the retrospectivity cut-off date of 18 October 1973.⁹¹

‘It is essential that complaints about delay, which have formed the basis of many of the complaints about public authorities, are not levelled at the Ombudsman’s Office itself. ... the appointment of additional staff will be required in order to deal with the anticipated additional complaints [from the extension of jurisdiction].’

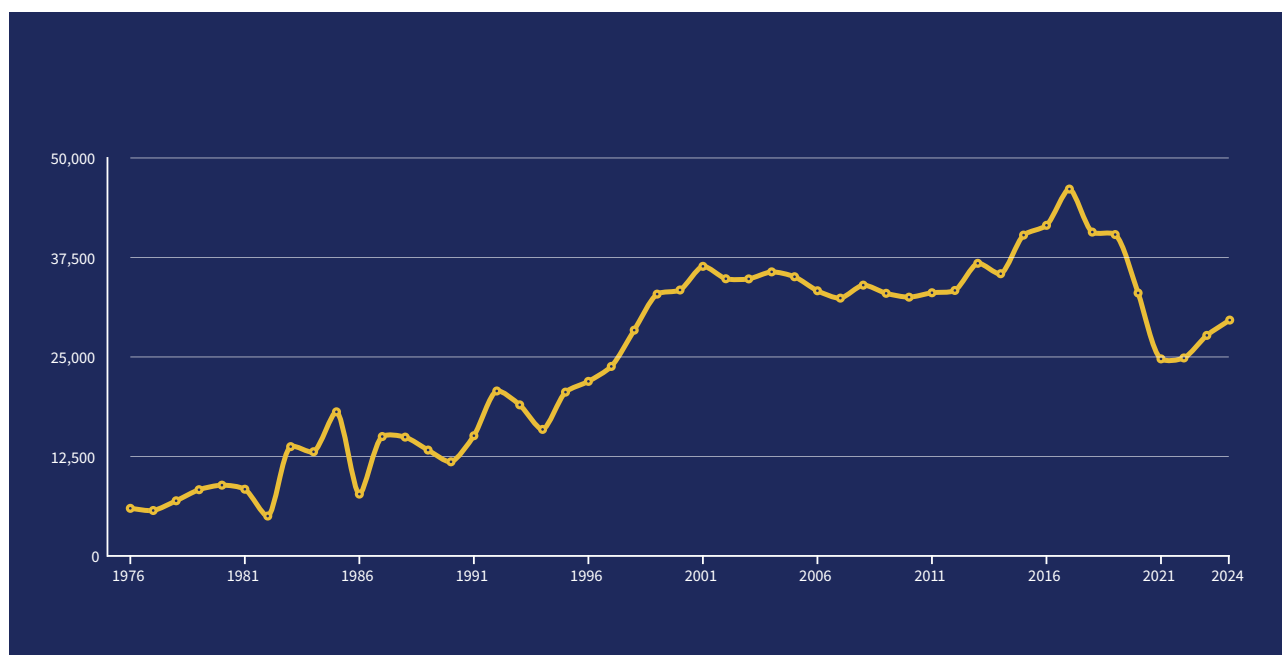
Kenneth Smithers, first NSW Ombudsman, 1976⁹²

Nearly 50 years on in 2023–24, the Office received 29,632 contacts, of which 14,770 were actionable complaints. The phone was still an important avenue for contacts, however this is now supplemented by electronic interactions via email, websites and widgets.⁹³

Each year the Ombudsman publishes in their annual report statistics concerning the number of complaints received. The chart below shows the trajectory of contacts made with the Ombudsman’s Office over 50 years.

The way statistics have been defined and gathered has changed over 50 years. The introduction of performance indicators for all government departments in the 1985–86 financial year led Masterman, for example, to re-evaluate the gathering of statistics to better reflect the work, workload and outcomes of the Office. The chart presents a single figure that is the sum of the formal complaints received plus the myriad of informal complaints, inquiries and referrals that the Ombudsman deals with every year. Collectively these are now called ‘Contacts’.

The rise and fall of complaint numbers roughly tracks the expansion and contraction of the Ombudsman’s functions. The dramatic drop from 2017 reflects the transfer of jurisdictions out of the Office (particularly the police, child protection and disability functions). Contact figures plateaued during the COVID-19 pandemic years of 2020 to 2022, but are now on the rise again.



Each year in the annual report the Ombudsman presents statistics regarding the number of complaints received. The way statistics have been defined and gathered has changed over the 50 years. This chart presents a single figure that is the sum of the formal complaints received plus the myriad of informal complaints, inquiries and referrals that the Ombudsman deals with every year. Collectively these are now called ‘Contacts’. The data is calculated on financial year, ending 30 June. (Annual Reports 1975–76 to 2023–24)

Compared to other offices in Australia and internationally, the NSW Ombudsman's Office consistently receives a large number of complaints. The challenge for each Ombudsman has always been managing and prioritising the volume of complaints within staffing resources.

Departmental statistics card, 1978 (reproduced in first *Office Manual*)

Departmental responses

It is never pleasant having your actions scrutinised and over the years many departments found the process uncomfortable.

The first Ombudsman Ken Smithers had a light touch when it came to investigations, and if a department acknowledged its wrongdoing during the course of an investigation and agreed to mend its ways, he would discontinue an investigation. The second Ombudsman George Masterman was much more persistent in his investigations, and he instructed officers on occasion to make unannounced visits to public authorities.

‘Why are you here without an appointment? You normally give us time to go through the files and pick out what is relevant to your investigation.’

A public authority officer during an initial discussion with the Investigation Officers, 1985 ⁹⁴

The point of unannounced visits was first, to obtain all the required evidence – particularly when it was suspected a public authority may not willingly provide all documents requested; second, to undertake urgent investigations or investigations of important public interest questions; and third, to keep public authorities from being complacent about the Ombudsman and take the Office's investigations seriously. The surprised responses

of a couple of public authorities in 1985 clearly vindicated Masterman's position. Masterman vowed to continue the practice. ‘Overseas they are a well recognised part of the Ombudsman investigative techniques on behalf of the citizen.’ ⁹⁵

NSW Ombudsmans consistently and persistently tried to take a positive approach, pointing out the benefits of investigations. George Masterman maintained ‘an important function of Ombudsman's investigations is to provide Ministers with an independent source of information about their Departments.’ ⁹⁶ The annual reports also provided an opportunity for the Ombudsman to publicly share learnings to the benefit of all public sector agencies. For many bureaucrats and advisers, these reports provided an unbiased view and clear insights into the functioning of the NSW bureaucracy.

David Landa tried to shift attitudes by reframing how departments viewed complaints. Rather than being viewed as criticism, he described them as ‘one of the best (and cheapest) forms of market research.’ ⁹⁷ Irene Moss encouraged public authorities to respond positively and openly to initial inquiries from the Office, noting that such willingness helps the ‘speedy and informal resolution of complaints.’ ⁹⁸ As many Ombudsmans have noted, obstructive behaviour by public authorities does not make the Ombudsman go away.

‘... as an ultimate objective, the Ombudsman can bring to the legislature [their] observations on the misworking of administrative legislation. [They] can also focus the light of publicity on [their] concern as to injustices and needed change. It must, of course, be remembered that the Ombudsman is also a fallible human being and not necessarily right. However, [they] can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If [their] scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good.’

Mr Justice Lee, NSW Supreme Court, 1982 ⁹⁹



THE LAMP OF PUBLIC SCRUTINY

The lamp of scrutiny is a metaphor that has been adopted by successive Ombudsmans and many staff over the years to succinctly explain and visualise their role. The metaphor is drawn from a 1982 NSW Supreme Court judgment. This cartoon was commissioned by Ombudsman David Landa for the front cover of the 1994 annual report. Steve Panozzo, 'The Lamp of Public Scrutiny' [cartoon], 1994. (First reproduced on front cover NSW Ombudsman Annual Report 1993-94. © Steve Panozzo, courtesy: the artist.)

Despite the Ombudsman's best intentions, departmental responses – and those of their Ministers – were not always so welcoming. The inquiries and investigations of the Office were regarded by some public authorities as 'aggressive and obstructive'. David Landa ruminated in his 1988–89 annual report that this was because 'traditionally governments have operated away from the public eye.' Landa took great pride in the role of the Ombudsman to 'bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds'.¹⁰⁰

'To have their operations examined by outside investigators may, indeed, be disturbing to some officials and may even be perceived as an attack on the government of the day. Being questioned about administrative procedures and times and dates, and being exposed to close scrutiny, has at times caused disquiet within public authorities.'

David Landa, third NSW Ombudsman, 1989¹⁰¹

Every Ombudsman has endured criticism from senior officials and Ministers. Particularly pronounced was the ongoing resistance of the NSW Police Service and the NSW Police Association to the Ombudsman's growing oversight. An adversarial position was often taken by police towards Ombudsman investigations. Legal challenges to the Ombudsman's jurisdiction, procedures and their adverse findings were another form of pushback by agencies. These lawsuits started in the early 1980s and, according to the Deputy Ombudsman Chris Wheeler, reached their peak in the first half of the 1990s.¹⁰² There were challenges, for example, about jurisdiction over universities, police, local government, freedom of information, and the process of procedural fairness.¹⁰³ These plaintiff actions were generally unsuccessful. The Supreme Court mainly found in favour of the Ombudsman, establishing that the powers of the Ombudsman are of necessity 'extremely wide' and should not be read down.¹⁰⁴

John McMillan, the former Commonwealth and NSW Ombudsman, has observed that a reactionary, defensive response was typical of an agency being investigated for the first time. However, as agencies became more familiar

with the Ombudsman's role and accustomed to the scrutiny, they became more cooperative and receptive to the Ombudsman's findings.

'The history of accountability in Australia, seen through the lens of Ombudsman experience, is that powerful organisations often resist probing scrutiny of their administration when this first occurs. There can be a backlash in litigation threats and exaggerated criticism of the oversight body. On the other hand, the equally profound experience of Ombudsman offices is that over time a different mood can prevail. There can be a growing recognition of the benefits of independent scrutiny, and a constructive exchange can occur between the agency and the oversight body concerning proposed findings and recommendations.'

John McMillan, sixth NSW Ombudsman, 2017¹⁰⁵

As the Office reached its 25th anniversary milestone, Bruce Barbour celebrated the Ombudsman's power to influence. Recommendations coming out of investigations were achieving a high rate of implementation. 'The positive acceptance of our recommendations by public authorities demonstrates the respect we have earned for our high professional standards.'¹⁰⁶

It is fair to say that dealings with government agencies in the second 25 years of the Ombudsman's history have been much more stable, bar the large-scale investigation Operation Prospect which had a disruptive influence on both the Office and its relationship with government and Parliament.

Improving complaint handling systems

Across its 50 years of operation, the Ombudsman has encouraged public sector organisations to take ownership of complaints and develop their own complaint handling systems. This was first encouraged under George Masterman,

with major programs under David Landa, Irene Moss and Michael Barnes, all tied to wider government initiatives.

David Landa embraced the ‘Guarantee of Service’ directive issued by Premiers Nick Greiner and John Fahey. He quickly issued the Office of the Ombudsman’s Guarantee of Service and spruiked the benefits to public sector agencies. Keen to establish the Ombudsman’s value to the public sector, Landa saw the Office could leverage their knowledge to improve complaint handling. The Assistant Ombudsman Greg Andrews devised *Guidelines for Effective Complaint Management*, first issued in 1992, which were a huge success and set the Ombudsman’s Office on a pathway of guidelines and training.¹⁰⁷

Under Irene Moss, the customer service of public authorities was audited using a ‘Mystery Shopper’ program. Frontline customer services were anonymously assessed across all forms of contact: telephone, mail, and in-person. At the conclusion of each audit, feedback was provided to the authority sampled, highlighting deficiencies and areas for improvement. Chris Wheeler was appointed Deputy Ombudsman in 1994 and took on the significant role of developing and updating the Office’s guidelines around complaint handling, good administration and apologies.

To mark the 25th anniversary of the Ombudsman’s Office, *The Complaint Handler’s Tool Kit* (2000) was published, combining into one volume their guidelines on how to respond to and manage complaints. Premier Bob Carr remarked at the launch, ‘We [the government and public sector] are in the business of service delivery and the Ombudsman is one of the pillars on which we base that commitment to service delivery.’¹⁰⁸

The government’s commitment to improving customer service and complaint handling was demonstrated when Michael Pratt was appointed the first Customer Service Commissioner in 2012.¹⁰⁹ The Commissioner’s 2015 Customer Satisfaction Measurement Survey kick-started a second wave Complaint Handling Improvement Program. The CHIP developed 6 best practice principles dubbed ‘The Commitments’: respect; information & accessibility; communication; ownership; timeliness; and transparency. The NSW Ombudsman was tasked with reviewing the level of implementation of the Commitments across the public sector, their effectiveness in improving complaint handling and any consequent increased satisfaction with government services.¹¹⁰

Michael Barnes, the seventh Ombudsman, presented to Parliament the Special Report *Complaint Handling Improvement Program: Commitments Implementation Review* on 31 August 2018.¹¹¹ The Ombudsman was granted in 2022 additional powers to review public authorities’ complaint systems.¹¹² This was in many ways a natural progression; the Ombudsman already had powers under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to review community service providers’ complaint handling systems. Expanding this function to cover all government agencies reinforced the framing of the Ombudsman as a proactive office positively influencing and improving the workplace culture and functioning of bureaucracies.

The NSW Ombudsman has continued to promote best practice. They participated in the review of the Standards Australia *Guidelines for complaint management in organizations* (AS 10002:2022), which incorporated the 6 Commitments adopted in CHIP (re-framed as the 6 principles for effective complaint management). The fourth edition of the *Effective Complaint Management Guidelines*, aligned to the new Australian standard, were published online in 2024.

Fair and reasonable conduct

A key function of the Ombudsman is to improve public administration. Whether dealing with individual complaints or addressing systemic issues, the Ombudsman’s Office reinforces the accepted principles of good conduct in public administration. These principles include compliance with law or policy, acting fairly and reasonably, timeliness, and access to information.¹¹³

One area where the Ombudsman has had particular success over its 50 years is in pointing out deficiencies in decision making, and requesting that decisions be reassessed by departments and agencies. The Ombudsman has always maintained that furnishing reasons for any decision is one of the basic principles of good administration and is often a requirement of procedural fairness. Explanations to a complainant should always include enough information to inform them about their appeal rights and the kind of case they would need to make in order to have their appeal fully considered.¹¹⁴

Case study

Who turned the water off?

Year: 2009

The Ombudsman received complaints from a number of tenants that several councils were either cutting off or restricting their water after the owners of the properties had failed to pay the rates. One of the complaints was made by a woman with 2 young children in the week before Christmas. They quickly contacted each council and made sure they dealt with the landowners, rather than punishing the tenants. They then made sure all councils were provided with advice about how to deal with similar situations in the future.¹¹⁵

Case Study

Naming the successful tenderer

Year: 1984

‘Mr. B., an unsuccessful tenderer for a government contract, complained that the State Contracts Control Board refused to reveal the name of the successful tenderer. The Deputy Ombudsman did not think the reasons for confidentiality were strong. He recommended that the regulations be altered so that names of successful tenderers can be supplied to other bona fide tenderers. The Ombudsman made a report to Parliament on this issue.’¹¹⁷ Consequently, the Public Service (Stores and Services) Regulation 1984 was amended.¹¹⁸

Local and state planning

In the second Annual Report of the Office of the Ombudsman, Kenneth Smithers made a keen observation about planning:

‘Planning. Whether it be the Planning and Environment Commission or a council, my investigations have disclosed that far too often the planners become absorbed in the niceties of planning and are very much inclined to forget that human beings are vitally affected by what the planner is doing.

Where it takes a long time to do nothing, people are affected even more. Numerous complaints to me are directed to these matters.’

Kenneth Smithers, first NSW Ombudsman, 1977¹¹⁶

Local government came within the Ombudsman’s jurisdiction from 1 December 1976. From the very beginning, there were a wide range of complaints. Many matters related to problems arising from noise, barking dogs, pollution of one sort or another, drainage problems, and actions which caused annoyance to neighbours. In the early days, many of these matters could be conciliated by Community Justice Centres and the Ombudsman’s Office readily pointed people in this direction.

One of the most ‘vexing problems’ identified early on by the first Ombudsman Ken Smithers was building and development applications. People complained their objections were not being taken into consideration. An associated problem was the notification to adjoining owners or persons affected by a development application. Smithers did a survey of councils in 1980 and found that ‘most Councils failed to give notification to persons affected.’¹¹⁹



Simon Kneebone, ‘The council didn’t tell us about that!’ [cartoon], 1989. (First reproduced NSW Ombudsman Annual Report 1988–89 p 177. © Simon Kneebone, courtesy: the artist.)

The second Ombudsman, George Masterman took up the mantle and over the following 3 years emphasised the importance of councils notifying adjoining owners. He also made a finding in 1982 that failure to allow the inspection of building application plans by ‘properly interested persons’ was ‘unreasonable and unjust.’ He made a report to the Minister for Local Government and Lands in February 1983. But promised reform moved at a snail’s pace. Masterman conducted another survey in 1985. By then more than half of the state’s local authorities notified adjoining owners, ‘at least

in some situations', with notifications being a more common practice among metropolitan than county councils.¹²⁰

'All citizens should, wherever possible, enjoy the same rights. The availability to citizens of the right to be notified of proposed building work which may affect the amenity of the area in which they reside, and to have their views and objections considered, should not be a lottery dependent on the policy of the council in whose area they happen to live.'

George Masterman,
second NSW Ombudsman, 1986 ¹²¹

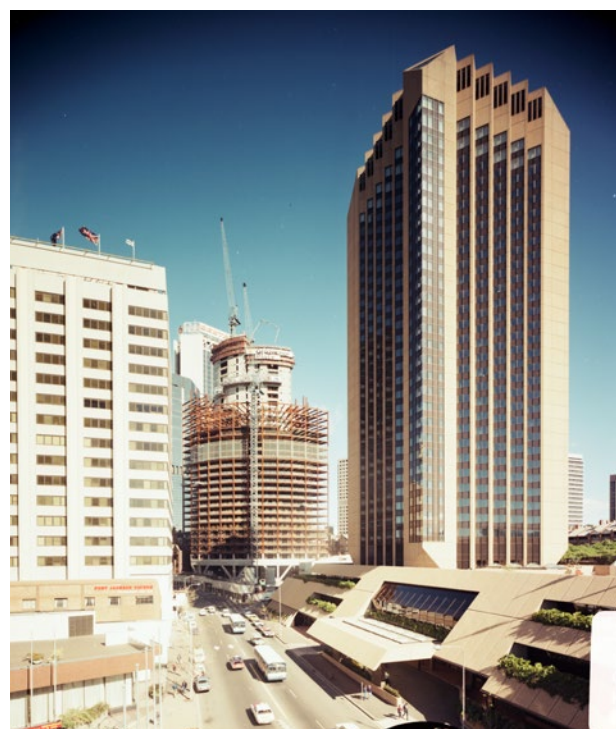
The Ombudsman kept scrutinising councils and calling out failures.

The state's third Ombudsman, David Landa, exulted in the 1989 Land and Environment Court of New South Wales finding which vindicated the Ombudsman's long-held views regarding council notification of adjoining land owners. *Porter v Hornsby Shire Council* enshrined the need for the practice of notification. 'Now, councils should be in no doubt whatsoever that adjoining owners must be notified of building applications and that any objections lodged by such owners, or any other properly interested persons, must be properly considered in the decision making process.'¹²² The requirement to notify interested persons was finally enshrined in the *Local Government Act 1993*.

The next struggle was around inspecting building and development application plans. Some councils in the 1990s started charging a service fee to inspect plans. This fee was found to be unreasonable by the Ombudsman. Nevertheless, some councils persisted and Orange City Council even charged a fee of \$30 (rising to \$100 after publicity) to process written objections. The Ombudsman recommended amendments to the local government regulations to make such fees illegal. This came into effect in June 1994.¹²³

Planning at a State level has also had recurrent themes. One which still resonates today is the ignoring or overriding of planning legislation by redevelopment authorities. Ombudsman George Masterman investigated the Sydney Cove Redevelopment Authority in 1985 over its planning

decisions for Grosvenor Place. The large 43-storey tower being developed for prestige offices, on a site bounded by George, Essex, Harrington and Grosvenor streets, Sydney, was predicted to have significant environmental effects, including overshadowing of Australia Square. Both Sydney City Council and the Department of Environment and Planning had been concerned about the adverse effects of the development and had done independent studies, none of which influenced the authority. Masterman considered overshadowing 'must be regarded an important planning issue', particularly when shadows were cast across public spaces during their peak use.¹²⁴ Masterman found the conduct of the Sydney Cove Redevelopment Authority wrong. He concluded the Grosvenor Place development in The Rocks area was commenced and continued in breach of the *Environmental Planning and Assessment Act 1979*. The Authority failed to comply with the provisions of the Act by giving its approval to the development without first preparing and exhibiting an environmental impact statement.



Grosvenor Place, August 1985. This redevelopment highlighted the importance of planning and environmental laws to protect the public interest. (Museums of History NSW – State Archives Collection: NRS-21689-2-47-GPO4_33512)

Masterman was realistic. He knew the development was not going to be pulled down at this stage. But he was very aware of the importance of planning and environmental laws protecting the public interest.

‘At stake is the principle whether an authority such as the Sydney Cove Redevelopment Authority, having responsibility for a significant area of the City of Sydney, is to exempt itself (or even be exempted by amending legislation) from any outside scrutiny on environmental grounds by bodies such as the Department of Environment and Planning or the Sydney City Council, let alone interested members of the public.’

George Masterman,
second NSW Ombudsman, 1985¹²⁵

The Sydney Cove Redevelopment Authority’s legislation was subsequently amended to ensure the authority had to prepare environmental impact statements for any future developments. The Ombudsman was satisfied with this outcome. He felt it endorsed the principle that no authority was outside of the law and it upheld the ability of regulatory bodies to scrutinise proposed developments.¹²⁶

Following the issues with the Sydney Cove Redevelopment Authority, the government changed its approach to setting up such authorities. The *Darling Harbour Authority Act 1984* exempted the Authority from compliance with legislative planning provision in NSW. It was not legally required to notify affected persons of any of its redevelopment proposals and it was not required to seek or consider any objections.

A complaint was made to the Ombudsman by residents in Murray Street, Pyrmont about the changing designs of a carpark at Darling Harbour. An original model of a low-rise carpark with landscaped rooftop had morphed into a high-rise car park and 2 hotels, having a major impact of their houses, their neighbourhood and their lifestyle. When the Ombudsman made enquiries, the Darling Harbour Authority responded, ‘We don’t consult, we inform.’¹²⁷

That may have been so. Nevertheless, the Ombudsman found they had ‘misled the public’. Masterman, and his successor David Landa, took the view that having commenced a process of public consultation at the beginning of a development – a development that was going to

change and evolve – they had ‘a very high duty’ to continue to inform and consult with the public, and particularly those specifically affected by major changes to the plans.¹²⁸

Abuse of office and conflicts of interest

Police have high standards to adhere to in terms of conduct and procedure. The Ombudsman over the years regularly received complaints about police drinking while on duty. A culture of drinking within the police force continued, even after random breath testing was introduced for the public. Given revelations during the Police Royal Commission concerning the consumption of alcohol on duty, Irene Moss felt a policy review would be timely, arguing ‘Any alcohol consumed on duty undermines the public perception of police as professional and disciplined.’ She negotiated with the Police Service for strict limitations on drinking while on duty.¹²⁹

Civilian oversight of police conduct regularly revealed that some police abused their position of power. They accessed confidential information for personal use or for friends, relatives or colleagues, used their position to get fines waived or influence decisions by public officials, and had conflicts of interest.

Conflicts of interest were also problematic for elected councillors in local government. The Ombudsman began highlighting the issue in 1983. After 10 years of case studies and discussion, councils were required to adopt codes of conduct covering conflicts of interest, as well as pecuniary disclosure requirements.

A new *Local Government Act* was passed by Parliament in 1993.¹³⁰ Several regulations made under the Act reflected reforms that the Ombudsman had been recommending for over 10 years. Building proposals were a key area. Councils were now required to consider the likely effect of a proposed building on adjoining land and buildings, as well as if the proposed building might adversely affect the drainage of adjoining sites.

In February 1995 the Ombudsman published *Good Conduct and Administrative Practice: Guidelines for Councils*. These practice guidelines set standards for several areas, including decision-making, complaint handling, tendering, use of resources, and conflicts of interest. It codified 19 years’ experience reviewing the conduct and administration of councils.¹³¹

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

A satisfied complainant, 1997¹³²

Investigating in the public interest

Over the years, the NSW Ombudsman has conducted major investigations of public interest issues. Sometimes these were triggered by an individual complaint. Moving beyond individual complaints to consider the bigger issues was first embraced by David Landa, who saw it as a useful strategy to reinforce the Ombudsman's 'value and credibility' to Parliament. He established a path for those that followed. Public interest special reports were often done with the cooperation of Ministers of the Crown and Parliamentary Committees. Sometimes these reports have been welcomed. Occasionally they have been resisted.¹³³

The following are just a few examples of NSW Ombudsman investigations and reports that were in the public interest. Grab an annual report from any year and you will find plenty of other extraordinary examples of the Ombudsman's tireless work for the people of New South Wales.

Inadequate maintenance at Electricity Commission power stations (1981–1982)

NSW shivered through the winter of 1981 as Premier Wran introduced power rationing to deal with the electricity shortages and hopefully avoid blackouts. In early December 1981 as summer loomed, power restrictions were again imposed in New South Wales, forcing the cancellation of the day-night Australia vs Pakistan cricket match at the Sydney Cricket Ground. These power restrictions were partly the result of the failure of generators at the Liddell Power Station and were exacerbated by strikes. The Ombudsman was inundated with complaints about the restrictions, particularly from small businesses. Sydney residents began dobbing in neighbours using air conditioners contrary to rationing. It was alleged in the media that the Electricity Commission of NSW had inadequately maintained its generators, particularly at the Liddell Power Station. Continued complaints and 'sustained public controversy' kept the receptionist at the Office busy.¹³⁴

(ADVERTISEMENT)

ELECTRICITY RESTRICTIONS

The Electricity Commission regrets that the failure of several large generating units coupled with industrial problems make it necessary to impose the following restrictions on the use of electricity.

| | |
|---|--|
| COMMERCIAL BUILDINGS AND FACTORY OFFICES (Office premises, warehouses, shops, restaurants, licensed premises, theatres, public halls, places of public amusement or entertainment.) | INTERIOR LIGHTING — Power for interior lighting must be restricted to no more than 50 per cent of normal usage at all times. DISPLAY AND EXTERNAL LIGHTING — Power must not be used at all for advertising signs, shop window lighting, under-awning lighting or any interior or exterior display or decorative lighting. AIR-CONDITIONING — Power must not be used for operating any air-conditioning plant, other than for ventilation purposes. LIFTS AND ESCALATORS — Power must not be used for the working of more than one-half of the number of lifts and escalators in a building. |
| RESIDENTIAL (Homes, flats, units, etc.) | AIR CONDITIONING — Power must not be used for operating any air-conditioning plant, other than for ventilation purposes or in the care of sick or aged persons or of infants. CLOTHES DRYERS & DISHWASHERS — Power must not be used to operate clothes dryers or dishwashers except in the care of sick or aged persons or of infants. LIGHTING — Power for all lighting must be restricted to no more than 50% of normal usage at all times except in the care of sick or aged persons or of infants. |

FOR FURTHER INFORMATION, RING SYDNEY 231 4000 OR 231 5000 AND ASK FOR INFORMATION CENTRE.
 The Commission seeks your co-operation in restricting your use of power to a minimum.

THE ELECTRICITY COMMISSION OF NEW SOUTH WALES
 December 5, 1981

The Electricity Commission of New South Wales, Advertisement – 'Electricity Restrictions' (*Sun-Herald*, 6 December 1981, p 205 Crown copyright material. Reproduction courtesy of Department of Climate Change, Energy, the Environment & Water)

‘The [Electricity] Commission announcements indicated that there was a significant possibility of restrictions being imposed during the 1982 winter months, with consequent adverse effects on individuals. Electricity cost increases flowing from the Liddell failures were inevitable. There was no detailed rebuttal by the Commission of the allegations. No other independent inquiry was announced or in prospect.’ Consequently, the Ombudsman George Masterman decided to investigate the allegations, using his Royal Commission-type powers. There were 7 terms of reference relating to the general inspection and maintenance procedures adopted by the NSW Electricity Commission for the power stations under its management since 1 July 1975, and specific maintenance regimes at the Liddell Power Station.

The investigation began on 4 February 1982. Evidence was collected from 52 witnesses and 168 exhibits tendered in evidence. The final report was completed on 22 December 1982 and sent to complainants, the Electricity Commission and the Minister. Masterman reported on the investigation in his 1982 and 1983 Annual Reports. Masterman made clear he was not empowered to determine the causes of the Liddell generator failures. Rather he was required to look at the action or inaction of the administration. The Ombudsman found that the failure to have appropriate maintenance procedures constituted wrong conduct. A program of internal generator inspection at Liddell should have been specifically developed. Masterman made 7 recommendations covering maintenance and management of the Liddell power station.¹³⁵

The Liddell Report was ‘favourably received’ by the press. It was one of the first large Royal Commission-type inquiries conducted by Masterman. The *Financial Review* described it as ‘a model of how to conduct an effective, productive and relatively expeditious inquiry in the operation of a semi-government authority. ... The result has been an extremely illuminating examination of a number of complex technical and managerial issues, conducted with a welcome absence of witch-hunting and concentrating on drawing out areas where remedial attention is needed.’¹³⁶

Hermitage Foreshore Track (1980–1985)

Peter Beggs, a Darlinghurst resident, contacted the Ombudsman’s Office in 1980 complaining about the inaccessibility of a foreshore reserve under the management of Woollahra Municipal Council. The Office discovered the public land, which extended

from Rose Bay Convent to Nielsen Park, had been resumed by the Lands Department back in 1912. The reserve was indeed currently under Woollahra council’s control but the National Parks and Wildlife Service and the Maritime Services Board also had abiding interests in the land. The public land was overgrown and encroached upon by multiple properties. The property owners, whose gardens, fences, toolsheds, rockeries and hedges impeded pedestrian thoroughfare, included the Department of Health and ‘several well-to-do and influential citizens’.¹³⁷ There was little appetite to clear the public land or provide access, enraging Mr Beggs. The complainant took it upon himself to start clearing the narrow band of public land himself, attracting the ire of property owners.

Following enquiries from the Ombudsman and widespread media coverage of Mr Beggs’ campaign, Cabinet decided to incorporate the reserve into the Sydney Harbour National Park. The reserve was eventually gazetted on 9 March 1984.¹³⁸ Mr Beggs continued to keep a watchful eye to ensure the pathway remained clear and accessible. Ombudsman George Masterman praised Mr Beggs’ for his persistence in protecting public land.¹³⁹ It took many years to rehabilitate the neglected reserve. The Hermitage Foreshore Track is now celebrated as one of Sydney’s ‘great coastal walks’.¹⁴⁰



Hermitage Foreshore track, Sydney Harbour National Park, 2024 (photographer: Simone Cottrell © Department of Climate Change, Energy, the Environment and Water, courtesy: DCCEEW)

Builders’ licences (2004–2018)

There has been a builders’ licensing scheme since 1972. ‘The public expect to be able to rely on a regulatory system to give them consumer protection’, Ombudsman Michael Barnes pointed out in 2018. ‘If the regulatory system fails, the financial and emotional consequences for homeowners can be devastating’.¹⁴¹ Over the years the Ombudsman has initiated 2 investigations (2006, 2018) and there has been a Parliamentary Inquiry (2007). All have led to incremental improvements protecting the consumer rights of thousands of people who use licensed builder services.

In financial year 2005–06 the Ombudsman investigated a complaint that the Office of Fair Trading provided incorrect information about a licensed builder engaged by a couple to build their dream home. The builder had made significant errors that were not covered by insurance. The Ombudsman's Office found the Office of Fair Trading had no criteria for assessing a builder's overall fitness to hold a building license. Furthermore, the Office of Fair Trading was siloed, with insufficient sharing of information between different areas of the organisation. As a result of the investigation, the Office of Fair Trading committed to some significant reforms. They developed staff guidelines for determining who was a 'fit and proper person' to hold a licence. The builder licences public register was updated to include, where practicable, all insurance claims made against a licensee and any outstanding appeals. The register was also modified to include consumer warnings and searching instructions for consumers were updated.¹⁴²

A Legislative Council Inquiry (2007) into the operations of the Home Building Service in Fair Trading found they were still struggling with the rigor of licence assessments. Law and regulation reforms in 2014 attempted to improve the system. A second investigation by the Ombudsman, triggered by a complaint in 2015, found continued problems. The Ombudsman Michael Barnes concluded there were 'serious and systemic issues' with both the public register and the home building licensing system. Much like in 2006, the 2018 report *Is your builder 'fit and proper'?* recommended modifications to the public register, better information sharing, and changes to staff guidelines.¹⁴³

In 2019, following further scandals about the quality of new apartment buildings, the NSW Government appointed David Chandler as the state's Building Commissioner. This was followed in 2023 with the establishment of the NSW Building Commission.

Operation Prospect (2012–2017)

In October 2012 Premier Barry O'Farrell approached the Ombudsman to undertake a specialised, large-scale investigation into historic allegations of police misconduct. The main focus was on a joint NSW Crime Commission and police task force covert investigation of serious police corruption between 1999 and 2000, named Operation Mascot, and the subsequent Police Integrity Commission hearings in 2000–2001, known as Operation Florida. The investigation was also to review the unauthorised access and release of confidential Crime Commission and police

records in 2010 and 2012 relating to this matter. As the leaking of documents revealed, nothing had really been resolved, allegations continued to bubble to the surface and make headlines, bitterness brewed. Adding to the controversy, some of the figures involved in the original operations now held senior ranks. Ombudsman Bruce Barbour decided that it was 'in the public interest to directly and independently investigate these allegations'.¹⁴⁴ The investigation was named Operation Prospect. It turned out to be a poisoned chalice.

Various parliamentarians and police disagreed with the Ombudsman conducting the independent investigation. There were calls for a Royal Commission. However, others believed given the time, money and necessary legislative powers, the Ombudsman's Office was theoretically well-placed to conduct the investigation. It was independent, could undertake the investigation quickly and simply, and was the only integrity body that had experience with police investigations but had no skin in the game.¹⁴⁵ Parliament consequently supplied extra funding and passed legislation granting special powers.

Operation Prospect became the largest and most complex investigation ever undertaken by the NSW Ombudsman's Office, and without a doubt the biggest by any Ombudsman Office in Australia. It took 4 years to complete and involved 2 Ombudsmen, Bruce Barbour and John McMillan, along with a separate unit of operational staff led by Deputy Ombudsman Linda Waugh. The investigation compiled over 1 million pages of source documents, conducted 107 private hearings and 67 interviews with 131 witnesses. A commitment to procedural fairness, a strong element of all Ombudsman investigations, saw the Ombudsman provide 1,425 pages of provisional findings to 38 affected parties and arrange 103 days of document inspection for 27 of the 38 parties. In response, the Ombudsman considered 61 submissions from the parties (comprising some 1,626 pages). There were more than 330 complaints, enquiries and public interest disclosures fielded as part of the investigation. The investigation was eventually finalised and, after failed litigation to stop the report being made public, the 6-volume report was tabled in Parliament in December 2016.¹⁴⁶ A further 2 reports were presented in 2017.

Call for information:

Operation Prospect - Investigations into allegations concerning officers of the NSW Police Force, NSW Crime Commission and Police Integrity Commission

The NSW Ombudsman is conducting an investigation (**Operation Prospect**) into allegations of serious misconduct by officers of the NSW Police Force, NSW Crime Commission and the Police Integrity Commission in relation to Operations / Strike Forces, Mascot, Florida, and other associated investigations during the period 1998 to 2003 (for further information refer to www.ombo.nsw.gov.au).

Operation Prospect's terms of reference include matters surrounding NSW Crime Commission Listening Device warrant 266/2000 and other associated warrants.

If you have any information relevant to this investigation, written details should be provided by no later than Friday 24 May 2013 via email to:

prospect@ombo.nsw.gov.au

or sent to:

Operation Prospect
NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

NSW Ombudsman, Advertisement – 'Call for information: Operation Prospect', 2013. (published on NSW Ombudsman website, accessed via Internet Archive)

The original Crime Commission investigations involved the extensive use of listening devices, telephone interceptions and integrity tests to snag evidence of corrupt behaviour. The core concern subsequently about these investigations was 'the fact that scores of police officers and some journalists were mentioned in affidavits and warrants that authorised the covert use of listening devices and telephone interception to investigate corruption and other offences' and not all the affidavits and warrants followed 'strict and faithful compliance' with legislative requirements.¹⁴⁷ The Ombudsman's report documented 93 individual findings against individual officers, the Crime Commission and the Police Force and made 38 recommendations. As McMillan later summarised, 'the findings were mostly tied to wrongful actions

that were taken by members of the Mascot Task Force in the course of their sustained and at times misdirected investigation of individuals. Common Ombudsman findings were that people were wrongly selected as investigation targets, warrants were sought on the basis of inaccurate or misleading information, and some private conversations were unlawfully recorded.'¹⁴⁸ The recommendations included 'making apologies to certain individuals affected by the Mascot investigations and associated events.'¹⁴⁹

While the Police Force accepted the recommendations of the Ombudsman, the NSW Crime Commission came out fighting. Its response was highly critical of the report, which they described as 'bizarre', 'ridiculous', 'inherently misconceived' and 'patently erroneous' and they categorically rejected the recommendations.¹⁵⁰ McMillan gave as good as he got, presenting 2 more Ombudsman reports to Parliament. On 6 December 2017 the Crime Commission issued outstanding apologies to the affected parties. Litigation in the courts (*Kaldas v Barbour* [2016] NSWSC 1880; *Kaldas v Barbour* [2017] NSWCA 275) was the long shadow of Operation Prospect, revealing the high stakes for some players. The courts found in the Ombudsman's favour, drawing a close to a controversial chapter in the Ombudsman's history.¹⁵¹

Operation Prospect was contentious and divisive. It could be argued that Operation Prospect, as an investigation, had little impact upon the wider public, and may not have been in the public interest, but it certainly was in the interests of the NSW Government and certain police to put to bed the allegations. Reflecting back on the investigation, former Ombudsman John McMillan has observed, 'Unresolved conflicts do not die easily, and this Ombudsman investigation initially fanned rather than quelled the controversy.'¹⁵² Throughout the process there was intense media and parliamentary scrutiny. Nearly all the parties involved were lawyered-up, and there were frequent threats of litigation. There were 2 upper-house Parliamentary Inquiries on the conduct and progress of Operation Prospect while the investigation was on-going, which ultimately contributed to further delays in the investigation being wrapped up.

Reflecting upon the circumstances of Operation Prospect, former Ombudsmen Bruce Barbour and John McMillan and former Deputy Ombudsman Linda Waugh all agree that Operation Prospect was the right thing to do. McMillan, however, cites it as a cautionary tale and advises 'an Ombudsman's

office should be highly cautious of being drawn into controversial and time-consuming investigations of this nature. There is a distinct risk of the investigation distracting the office (and the Ombudsman) from its other excellent and well-regarded work, and tarnishing the reputation of the office because of the brutal criticism that the investigation will attract from interested parties.¹⁵³

One outcome of Operation Prospect was unanticipated. Drawing upon the parliamentary review of the police oversight system undertaken by Andrew Tink, the NSW Government decided to abolish the Police Integrity Commission and the Police Division of the NSW Ombudsman. In their place Deputy Premier and Minister for Justice and Police, the Hon Troy Grant announced a new civilian integrity body: the Law Enforcement Conduct Commission (the LECC) to oversee both the police force and the NSW Crime Commission. But the LECC did not get all the jurisdiction or powers previously enjoyed by the Ombudsman so it was a net loss. Thus, on 30 June 2017, after 39 years of independent civilian scrutiny of the handling of complaints about police, the NSW Ombudsman's jurisdiction over police ceased and the citizens of New South Wales lost some oversight.¹⁵⁴

The use of Tasers (2008, 2012)

The restricted introduction of Tasers by the NSW Police Force in 2002 for specialist units, followed by a general roll out to frontline police in 2008 attracted media attention and community concerns. The use of force by police regularly generated complaints, so it was not surprising the introduction of a new weapon of force created some disquiet. Without clear operating procedures, it could be open to misuse and endanger lives. The Ombudsman undertook 2 reviews, presenting reports to Parliament in 2008 and 2012, believing it was in the public interest for 'a comprehensive and independent examination to be undertaken to establish if the procedures for Taser use were adequate and being interpreted correctly, and if the review and accountability processes were well designed and effective.'¹⁵⁵

The first review in 2008 found that police use of Tasers in NSW had been responsible to date, largely because they were deployed to well-trained, specialist officers. However, analysis revealed Tasers were ineffective in more than 25% of incidents. In addition, some system failings were identified. Reflecting upon overseas experience of wider use, Ombudsman Bruce Barbour recommended in his draft report to the Police Minister a 2-year

moratorium on a wider roll out of Tasers while these problems were considered. The government ignored this recommendation and while the Ombudsman's report was being finalised, the Minister for Police supported the Police Commissioner and announced a roll out of a further 229 Tasers to duty officers and the training of all first response police officers in their use. In the end all the Ombudsman's report could do was identify improvements to the police standard operating procedures and training, and emphasise the importance of further monitoring, especially given the planned roll out to general duty officers. The Ombudsman warned 'the risks of using Tasers are far higher when used by general duties officers'.¹⁵⁶

The second report was tabled in October 2012. The data of 2,252 Taser-use incidents was evaluated and the Ombudsman undertook detailed examination of 556 individual incidents. Research questions focussed on the application of police procedures, the effectiveness of training provided to officers, and how well the police internal review and accountability system was operating. Pleasingly, the Ombudsman's report supported the ongoing use of Taser weapons by the Police Force. The Ombudsman only found a small number of misuses or breaches. 'The positive nature of many of these findings,' Barbour stated, 'is a direct result of the strong accountability framework in place, the detailed rules and procedures for use, and the decision to have Taser Cam as a mandatory feature in each Taser.' The report made 44 recommendations to further strengthen the training, procedures and review system, thereby further minimising the risk of Taser misuse in the future. The majority of these recommendations were supported by the Commissioner of Police.¹⁵⁷

Asbestos (2010, 2012, 2017, 2025)

The management of asbestos has been an ongoing matter for the NSW Ombudsman. Due to the seriousness of asbestos-related diseases, which have no cure, this is an area of strong public interest.

Following the investigation of 3 specific asbestos-related issues from 2007 to 2009, the NSW Ombudsman decided to conduct a broader review to establish how the NSW government as a whole was responding to the asbestos problem. The people diagnosed with asbestos-related diseases in NSW were not simply workers. The cohort now also included tradespeople, home renovators, even innocent by-standers. It was estimated that the number of people who will die from mesothelioma will drastically rise over the decade.

The Ombudsman established that there was no lead or coordinating agency overseeing the management and containment of asbestos. Nor was there a statewide government plan for dealing with asbestos. The approach had been 'disjointed, ad hoc and confusing'. Many home renovators were oblivious to the risks, so there was need for a widespread campaign. Equally concerning, there were still major mining sites requiring careful management and containment. The funding currently available to deal with all these issues was inadequate.

The Ombudsman had concerns about public safety and made 4 key recommendations to the government to address systemic issues and reform the management of asbestos. First, establish and adequately fund a centralised Asbestos Coordination Authority. Second, introduce an Asbestos Act to address the management issues. Third, develop a state-wide plan. Fourth, ensure adequate funding for the statewide asbestos plan. Other important recommendations included the allocation of funding to remediate the Woods Reef asbestos mine site near Barraba, and the development of a model asbestos policy to be distributed to all local councils. The report was presented to Parliament in November 2010.¹⁵⁸

The government took the report seriously, and tabled their response in Parliament in August 2011. The government agreed to appoint a Heads of Asbestos Coordination Authorities chaired by SafeWork NSW, develop a state-wide plan for asbestos, fund a public awareness campaign and provide funding to remediate the Woods Reef asbestos mine. The Ombudsman was pleased at the government's positive response and kept a watchful eye on how the reforms progressed.¹⁵⁹

A complementary report looking at how the NSW Police Force manages hazardous building materials, particularly asbestos and lead based paint, in its property portfolio was completed in July 2012. Some 1,350 properties were managed by the force, including police stations, training facilities and residential properties. The report demonstrated the police force did not have adequate processes in place to manage hazardous materials. This was partly due to outsourcing. When the deficiencies were exposed, the police force responded with 'commendable speed and thoroughness'.¹⁶⁰

As foreshadowed, the Ombudsman tabled a second report about the NSW Government's approach to handling asbestos issues in April 2017. Once again the Ombudsman highlighted the dangers asbestos presents to the health of the NSW community.

The State-wide Asbestos Plan adopted in 2013 had had a positive impact.¹⁶¹ Significant progress had been made, particularly coordinating information, compliance and enforcement across different government agencies. The Ombudsman reported, 'NSW is now widely recognised in Australia as having a best practice approach to managing asbestos'.¹⁶² This was attributed by the Ombudsman to the work of the Heads of Asbestos Coordination Authorities. But there was still work to be done. Contaminated asbestos disposal sites utilised by James Hardie Industries remained unremediated. Regulation of private dwellings and the handling of small amounts of asbestos remained an asbestos management black spot. Many local councils were yet to adopt the Model Asbestos Policy developed by Local Government NSW. The Ombudsman repeated their earlier recommendation for a single agency to provide leadership and coordination in managing asbestos, suggesting the NSW Environment Protection Authority could take the lead.

Persistence has paid off. In 2019 the NSW government established a new statutory advisory committee to the NSW Environment Protection Authority – the NSW Asbestos Coordination Committee - supported by the allocation of \$12.7 million funding for the NSW Asbestos Plan.¹⁶³ However, the issue remains live. In 2024 the state's eighth Ombudsman Paul Miller commenced an investigation into the EPA's management of asbestos in discrete Aboriginal communities. The legacy of this hazardous material continues to challenge public agencies.



Woods Reef asbestos mine, 2010
(Annual Report 2010–11 p 33)

Upholding open government

Burgeoning bureaucracy, delegated decision-making and discretionary application of policies by public servants were key triggers for the creation of the NSW Ombudsman. Recommending administrative improvements, particularly to systemic problems, is a key flow on for the Ombudsman's role dealing with complaints.

From the very beginning, the Ombudsman encountered bureaucratise and obfuscation when making inquiries about intractable complaints. Ken Smithers, the first Ombudsman, shared in his early annual reports some of his favourite phrases. The failure to reply to correspondence was a common complaint of government departments. In one instance, Smithers recounted, the explanation given was that ‘unfortunately the letter did not run its full administrative course’.

Even giving an update on an inquiry could be opaque. Smithers reported in 1977 the frustrations of chasing a refund: ‘The complainant, after some considerable delay, received a reply that “the matter was currently receiving attention”. I then took the matter up and was informed that “inquiries in this matter are continuing”. When the matter was still unresolved, I made a further approach and was told “the matter is being actively pursued”. I then asked for the relevant file and found out the true story. What was being “actively pursued” was the file – it had been lost. The problem was then satisfactorily resolved’, and the complainant was finally reimbursed.¹⁶⁴

Smithers delighted in what Don Watson would later describe as ‘weasel words’, but the repeated excuses from administrators wore thin over the years.

Excessive delays by public authorities in responding to preliminary enquiries from the Ombudsman was like a red rag to a bull, warned newly appointed Ombudsman David Landa in 1988. Such behaviour effectively ensured that the Ombudsman took up a complaint. He gave fair warning, publishing a list of excuses that were unacceptable.¹⁶⁵

Case study

Hints for public authorities: excuses that this Office hear too often to be acceptable

Year: 1988

- the file is lost.
- the office is being re-organised and the file can’t be located (a subtle variation of ‘the file is lost’).
- your letter wasn’t received.
- your letter was placed on the wrong file.
- your letter wasn’t referred to me (the person who is allegedly dealing with the matter) for attention.
- the reply is ready but unfortunately the (Mayor/Director/etc) is unavailable to sign it until next week.
- the complainant is a pain in the neck and we don’t bother replying to him/her.
- the questions asked are too complex to prepare a reply within the time; sorry, I didn’t think I needed to advise you of the delay in replying.¹⁶⁶

Providing information and advice on government services to members of the public who contacted the Office was an important part of the job, particularly in the first decade. ‘On many occasions,’ Masterman observed, ‘would-be complainants are satisfied with an explanation of the administrative procedures applied to their cases.’¹⁶⁷ Time and time again the Ombudsman has pointed out the importance of being transparent in decision-making. Providing reasons for a decision goes a long way in addressing a sense of injustice.



Simon Kneebone, ‘Do we take the usual six months to reply?’ [cartoon], 1989.
(First published NSW Ombudsman Annual Report 1988–89 p 43. ©Simon Kneebone, courtesy: the artist.)

The machinery of government

Navigating the system has always been a challenge. ‘Individual citizens sometimes feel bewildered by complex government systems’, the state’s second Ombudsman George Masterman noted in 1984. The situation was just the same in 2000. ‘From an outsider’s perspective,’ Bruce Barbour, the state’s fifth Ombudsman, conceded, ‘government bureaucracies can appear extremely complicated and unwieldy. Members of the public do not always know which public authority to approach to have their grievances dealt with appropriately. They feel frustrated when they are passed from person to

person within an authority or told to approach a different public authority altogether.’¹⁶⁸

An important service of the Ombudsman’s Office was to help complainants identify the responsible government authority. This advice role would not necessarily result in the lodging of a formal complaint, but was greatly appreciated by complainants who were often at their wit’s end. For this reason, the Ombudsman kept statistics on telephone calls and in-person inquiries from its founding in 1975. But sometimes even the Ombudsman investigators were ‘baffled by the bureaucracy’, as the following 1988 case study demonstrates. Departmental restructures, or ‘machinery of government’ changes as they are now dubbed, only exacerbate the problems.

Case study

Want to get the run-around? Take a school bus!

Year: 1988

Recently a person from the Tuncurry area complained about the response made by the Lismore office of the Department of Motor Transport (DMT) to submissions about the local school bus service. On 9 June 1988, making preliminary enquiries, the Ombudsman’s investigator wrote to the Commissioner of Motor Transport; he sent a copy of his letter to the Lismore office. On 16 June, the Lismore office telephoned to say that responsibility for school bus services in the Tuncurry area had been transferred to the Hunter Region office of the Department, and the investigator’s letter had been sent there.

On 26 July, having heard nothing more, the investigator telephoned the School Student Transport Section of the Department’s Hunter Region office at Hamilton, and was told that a report had been sent on 22 June to the Transport Policy Branch at Rosebery. Upon telephoning that Branch, the investigator was told that a reply was ‘in the typewriter’ and would be sent to the Ombudsman, through the Department of Main Roads (DMR), within a few days.

The Government has decided to amalgamate the DMT, the DMR and the Traffic Authority into a new organisation to be called the Roads and Traffic Authority (RTA). There had been some administrative problems and, because the legal formalities had not been completed, the head of the new Authority, formerly the head of the DMR, was being referred to, not as Chief Executive,

but as Chief Executive Designate. He was also holding the position of Acting Commissioner for Motor Transport. He continued to work out of the DMR, and this explained why the DMT’s Transport Policy Branch was replying to the Ombudsman through the DMR.

But the complications did not end there. When the Ombudsman’s investigator telephones the Transport Policy Branch on 5 August to chase things up, he was told that the report had been sent, not to the DMR after all, but to the Urban Transit Authority (UTA). As part of the reorganisation, apparently, responsibility for school bus services had been given to the UTA. As a consequence, branches of the DMT, such as the Hunter District School Student Transport Section and the Transport Policy Branch, are to be transferred to the UTA, which will have its name changed to the State Transit Authority. The enabling legislation had not been passed, so the Chief Executive Designate of the RTA, in his capacity as Acting Commissioner for Motor Transport, had found it necessary to formally delegate his powers over school buses to the Acting Managing Director of the UTA.

The acting secretary to the head of the UTA was very helpful, but on 9 August she had to admit defeat – she had been unable to find the papers; there was no trace of them having been received at the UTA. The Secretary to the Chief Executive Designate of the RAT was also very helpful, and set up a determined search for the missing file. On 18 August the Ombudsman’s investigator

discovered that the papers had actually been received some time earlier by the Acting Managing Director of the UTA. The draft reply to the Ombudsman had been approved by him; but he felt it appropriate to refer the reply to the Chief Executive Designate of the RTA for signature. For some reason, his letter referring the papers and addressed to the DMR's Castlereagh Street offices (a large and imposing building), had been returned marked 'addressee unknown'. His secretary and the secretary to

the Chief Executive Designate combined their efforts, and were able to tell the Ombudsman's investigator that a reply was now on the way to him.

Meanwhile, the Hamilton office is trying to resolve matters personally with the complainant while, at the time of writing, the Ombudsman's investigator awaits, with perhaps diminished confidence, receipt of the Department's reply to his now 2-month old enquiries.¹⁶⁹

Time and time again, the Ombudsman has found that complaints involving multiple departments and agencies due to overlapping responsibilities are very difficult to resolve. The blame game often gave complainants and the Ombudsman the run-around.

'When more than one authority is involved it appears to be all too common for each authority to deny responsibility and blame the others. We receive many such complaints and often it requires quite a deal of persistence on our part to determine which authority should be held responsible.'

David Landa, third NSW Ombudsman, 1994 ¹⁷⁰

The plethora of authorities and legislative measures involved in the planning, management and control of Sydney Harbour and its foreshores came to the attention of the Ombudsman in 1981, due to a case concerning a proposed 'trot' mooring system in Sailors' Bay. A quick review of the administrative landscape by the Ombudsman revealed 3 Ministers of the Crown, 6 public authorities, 14 local councils, 16 Acts of Parliament and at least 14 local environmental planning instruments applied, not to mention the various regulations under key Acts. It created inconsistent application of legislation and conflicting approaches. The Ombudsman recommended to the Minister for Ports a comprehensive inter-agency review to rationalise the existing legislative control and administrative responsibilities and encourage the consistent implementation of the environmental impact assessment provisions. In other words, a single environmental plan should be developed for the harbour. While the Ombudsman's recommendations were accepted

by the Minister and the Maritime Services Board, reform inched forward at a 'snail's pace'. The Sydney and Middle Harbour Regional Environmental Plan and the Parramatta River Regional Environmental Plan were finally placed on public exhibition in August 1989, and finalised by July 1990, marking 10 years of Ombudsman scrutiny.¹⁷¹

Machinery of government changes refers to when governments decide to slice and dice responsibilities across departments and public service agencies, restructuring groups of public servants and reallocating their duties to reflect current government priorities. Such changes are not just the harbinger of new letterheads and email signatures. They are inherently risky, as they can disrupt service and program delivery, create administrative confusion and errors, lead to gaps in records management, and bamboozle the public.

Water management and compliance, a major issue for agricultural and environmental management in our state, is one area which has been impacted from machinery of government changes. The Ombudsman completed a major investigation of the Department of Primary Industries and Water NSW in 2018 which identified systemic issues associated with 'repeated agency restructures and transferring important responsibilities and staff'. Many of the recommendations for improvement were targeted at breaking the cycle and introducing better administration practices into the newly created Natural Resources Access Regulator.¹⁷²

In January 2024 the NSW Ombudsman released an occasional paper highlighting the challenges that machinery of government changes pose for program and service delivery. The aim of the paper is to foster awareness among public servants regarding the impacts of machinery of government changes and how poor administrative practices may be mitigated or prevented.¹⁷³

Freedom of information

‘I cannot place enough emphasis on the need for freedom of information legislation in New South Wales. There is no measure which would have a more widespread effect in improving the conduct of government and stimulating fair and rational behaviour in administration.’

Professor Peter Wilenski, Commissioner,
Review of NSW Government Administration, 1977 ¹⁷⁴

Guided by the Wilenski reports on government administration, and prodded by the passing of Commonwealth legislation and the introduction of a private member’s bill in 1982, Premier Neville Wran introduced a Freedom of Information Bill into the NSW Parliament in 1983.¹⁷⁵ Wran spoke boldly, but like many bills encouraging government accountability it languished with minimal government support.

‘It is a principle of open government that underlies this legislation. Open government is a central virtue for any democracy.’

Premier Neville Wran, 1983 ¹⁷⁶

The Ombudsman was a champion of the public’s right to access government information and lobbied for an Act to protect this right in legislation. It took a change of government to get it back on the agenda. Premier Nick Greiner described the legislation as vitally important.¹⁷⁷

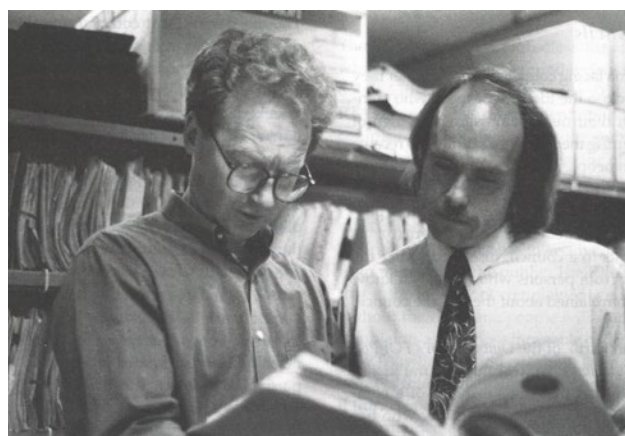
‘It will enshrine and protect the three basic principles of democratic government, namely, openness, accountability and responsibility.’

Premier Nick Greiner, 1988 ¹⁷⁸

The *Freedom of Information Act 1989* (FOI Act) came into force from 1 July 1989. There were of course exemptions, notably documents submitted to Cabinet. Not surprisingly the interpretation of exemptions and redacted material became hotly contested, particularly by the media.

The FOI Act granted the Ombudsman power to investigate complaints about the determination of FOI applications. The Ombudsman could use their formal powers under the *Ombudsman Act 1974* to investigate and report findings to Parliament. Throughout the Act’s 20-year history, this reporting strategy was used sparingly, with a preference for informally resolving matters. External appeals could also be made to the District Court under the FOI Act. From 1998, these external appeals were heard by the Administrative Decisions Tribunal.¹⁷⁹

At the time of the FOI Act’s introduction in 1989, Parliamentarians promised to monitor the legislation and review it after 2 years. This never happened. Five years on, there had still been no review. As the parting shot in his persistent campaign to amend the FOI Act, outgoing Ombudsman David Landa presented a report to Parliament calling for a thorough review of the Act and the establishment of an Information Commissioner.¹⁸⁰ In earlier public statements Landa lamented the lack of centralised statistics to enable an informed evaluation of the Act’s operation. This meant it was extremely difficult to analyse how NSW bureaucrats were actually applying the Act and where exactly reform was needed.¹⁸¹



FOI officers David Watson and Wayne Kosh confer over documents.
(*Annual Report 1995–96* p 125)

For the next 15 years the Ombudsman repeatedly called for the FOI Act to be reviewed. In the meantime, other legislation, such as the *Privacy and Personal Information Protection Act 1998*, created conflicts between privacy and access to government information. Technological advances towards the paperless office in the 21st century and the rise of the electronic document also created challenges in legislative interpretation and document access. To try and gain some consistency and guidance, the Ombudsman collaborated with the Premier’s Department and The Cabinet Office between 1998 and 2007 to produce a joint Freedom of Information procedural

manual.¹⁸² But still no review was forthcoming. The dysfunction of the Act was reflected in the fact that the *Sydney Morning Herald* had a dedicated FOI editor in this period, a journalist who exposed alleged government secrecy and championed access to information.



FOI guidelines were critical for the consistent determination of access requests. The NSW Ombudsman and the Premier's Department finally produced a joint procedural manual in 2007. (*Annual Report 1995–96* p 115)

Eventually Bruce Barbour, the fifth Ombudsman, took matters into his own hands, announcing in April 2008 that the Office would conduct a comprehensive review of the FOI Act. A discussion paper was released, 18 agencies' FOI practices were audited, forums held, statistics gathered and complaints reviewed. The special report *Opening Up Government* (February 2009) called for new legislation, a cultural shift across government and the public sector, a more proactive approach to the release of government information, stronger protections for FOI officers, and oversight of the Act by an independent information commissioner. The government accepted nearly all of the Office's 88 recommendations and quickly passed 2 new pieces of legislation - the *Government Information (Public Access) Act 2009* and the *Government Information (Information Commissioner) Act 2009*. Contrary to the Ombudsman's recommendation, the Houses of the Parliament and their committees were excluded from the definitions of 'public authority'. Barbour had also made the case for the new Information Commissioner being placed in the Ombudsman's Office, but the government rejected this. After 20 years, the involvement of the NSW Ombudsman in freedom of information matters ceased in early 2010.¹⁸³

Computers and automated decision making

The introduction of computers within public authorities to assist with administrative processes began in earnest in the 1980s. And with it, came the computer errors, such as the issuing of court summons when fines had already been paid.¹⁸⁴ Computers were a double-edged sword. They had the capacity to reduce inefficiencies and delays. But introducing computerisation into administrative processes was sometimes clunky, with the added human component of data entry errors. Transitions across from one computer system to another could also lead to data loss, or inadvertent merging of data. While these types of complaints were often relatively straightforward in principle, limited knowledge of how the computer system operated sometimes hampered easy resolution. Some bureaucrats also placed too much trust in the system. 'Disproportionate faith in the reliability of information stored in the computer, can sometimes lead to substantial delays in sorting these matters out,' the Ombudsman reported in 2000.¹⁸⁵

Case study

Computer error NOT in your favour

Year: 2000

An aged pensioner owned 2 adjoining identical blocks of land, his home being on one. He had arranged with the Office of State Revenue (OSR) to pay off a large land tax debt at a rate of \$200 per month – a substantial percentage of his monthly income. He had paid \$200 monthly without fail over a significant period.

The pensioner complained to us when, despite his regular payments, the OSR issued a statement of liquidated claim and started proceedings against him. Our inquiries revealed the claim had been generated via a computer error. As a result the OSR terminated its proceedings.¹⁸⁶

The capacity of technology in the 21st century to store and process large amounts of data is once more transforming public administration. The ways public officials make and document decisions, and the source of their advice or evidence to inform those decisions, now sits squarely in the digital space. Integrated database systems can and do provide access to information with speed, efficiency and consistency. However, as the case of ‘Robo debt’ demonstrated, technology can only improve public administration where it is expertly and ethically designed, tested, monitored and oversighted, where its legality has been established and where it does not contravene legal or human rights. Disproportionate faith in the computer system can lead to maladministration.

The state’s eighth Ombudsman Paul Miller first decided in 2020 to report to the NSW Parliament on the increasing use of machine technologies in NSW government decision-making processes, prompted in part by (what Miller would later conclude was) the unlawful use of such technology by Revenue NSW for its debt enforcement (bank garnishee) activities. The investigation considered its application through the lens of administrative law. Public sector administrators have discretionary powers, so the central question was, is the use of automation legally consistent with their statutory functions? Furthermore, can automated decision-making deliver the administrative law requirements for good decision-making? *The new machinery of government* report, presented to Parliament by the Ombudsman in November 2021, considered these questions, highlighted the risks, and outlined good practice guidelines for designing and implementing machine technology.¹⁸⁷ In releasing this report, Paul Miller hoped to improve the understanding and compliance of agencies, and also to promote public and Parliamentary debate around the adoption, limits, and regulation of automated decision-making technology in government.

The biggest challenge for promoting public debate on this issue was the lack of government transparency. *The new machinery of government* report revealed that the Ombudsman was unable to easily establish how NSW government agencies may be currently using machine technology to assist them. Government agencies were not obliged to report on the use of AI or other forms of automated systems. Consequently, it was impossible to say how those systems had been designed, what they were being used for, and if any legal advice had framed the design and operation of the systems.

‘Visibility is necessary for people to properly consider and exercise any decision review rights as well as for proper oversight. It is also key to supporting an informed debate about what assurance and regulatory frameworks may be appropriate for ADM use now and into the future.’

Paul Miller, eighth NSW Ombudsman, 2024¹⁸⁸

This led to the Ombudsman’s second report in 2024, mapping in detail the deployment of machine technology across NSW Government and local government.¹⁸⁹ The research was commissioned by the NSW Ombudsman and undertaken by researchers at the ARC Centre of Excellence for Automated Decision-Making and Society.¹⁹⁰ This research report was groundbreaking. It was the first systematic attempt in any Australian jurisdiction to comprehensively identify and publish the ways in which the public sector was using, or planning to use, automated decision-making systems in their administration of government services and functions. The research confirmed that automated decision-making was widespread in the public sector and rapidly increasing. While agencies were starting to put details on their website, supporting increased transparency, the report concluded voluntary reporting will not meet the visibility and regulatory challenges.

This is a rapidly developing area in public administration and you can be assured the Ombudsman’s Office, as they have done for 50 years, will continue to scrutinise these practices and procedures by public agencies and authorities.

Protecting human rights

The linking of parliamentary ombudsman and human rights is a relatively new development. In essence, it reflects the NSW Ombudsman's role championing fairness and the public interest. In many cases, the Ombudsman ensures those most vulnerable within our society are treated lawfully and fairly, and have access to the services and support that they are entitled to and need. But the association also reflects the broadening functions of the Office, particularly in Australia, and the development of international conventions on human rights.

The NSW Ombudsman over the years has been tasked with ensuring those provided with new administrative powers act lawfully. This monitoring and oversight role is discussed more in the following chapter. This chapter considers the impact of the NSW Ombudsman in investigating complaints which highlight injustices and maladministration that impact upon people's liberties and human rights. The Office's reporting regime, particularly its function of reporting directly to Parliament, its ability to identify systemic issues and make recommendations which preserve and enhance human rights, have led to significant protections and reforms for the people of New South Wales.

Policing

Law and order is an issue that directly impacts our community. Police are granted a great deal of power and discretion. It is important this authority is used appropriately. The Ombudsman has had a long, and occasionally turbulent, history overlooking police complaints from 1975 to 2017. During that time the Ombudsman's limited jurisdiction expanded substantially. It became the key civilian oversight body, monitoring the police complaints system, reviewing the investigation of individual complaints and scrutinising these processes to ensure they were fair and effective.

When the Ombudsman's Office was founded in 1975, they could only really look at police administration, not the conduct of a police officer when acting as a constable. It was not until 1979 that they were given authority to look at complaints of police misconduct. Initially their jurisdiction was constrained to assessing the adequacy of police investigations of complaints. Ken Smithers presented a special report to Parliament in 1982 describing the Ombudsman's powers in relation to police as 'impractical and ineffective'. His role investigating police misconduct was 'a dangerous charade likely to deceive members of the public into believing that there is a public watchdog with effective powers, when there is not.'¹⁹¹

Following police challenges to the Ombudsman's powers in the courts, recommendations from the Stewart Royal Commission, and swirling allegations of corruption, the Parliament passed in 1983 what Police Minister the Hon P T Anderson described as a 'new police discipline package' and George Masterman assessed

as 'something of a compromise'.¹⁹² The new approach to the complaint handling system involved initial investigation of complaints by the Internal Affairs Branch, followed by review and potential re-investigation by the Ombudsman's Office. However, the Ombudsman could only use seconded police for this role. Time limits for internal complaint investigations were imposed on police in 1987, allowing the Ombudsman to initiate investigations after that.

The Ombudsman's police function was beset with difficulties over the first 15 years. The NSW Police Association resented civilian oversight of the police force. The jurisdiction of the Ombudsman was tested in court several times through the 1980s. The first 2 Assistant Ombudsmen (Police) both resigned in protest due to the inoperability of the system. Police officers seconded to the Ombudsman's Office were labelled 'spies', subjected to harassment and discriminated against for promotions. The Commissioner of Police regularly ignored, or failed to implement, the recommendations made by the NSW Ombudsman.¹⁹³

'It is common practice for police to confer and 'get their stories together' whether for proceedings in court or for internal investigations. At its most innocent, this means conferring with other police to refresh each other's memory and produce an accurate and truthful account of events. At its worst, it means fabricating evidence to present a false, but consistent story to a court of tribunal. The dividing line between the two is difficult to determine and easy to cross.'

David Landa, third NSW Ombudsman, 1994 ¹⁹⁴

The Joint Parliamentary Committee considered the role of the Ombudsman in investigating complaints against police. Their report in April 1992 recommended significant reforms. Consequently in 1993 the Ombudsman was finally given a power of direct investigation without prior referral of the matter to police. There were also statutory amendments to encourage the greater use of conciliation and stronger powers for the Ombudsman to monitor internal police investigations.¹⁹⁵ The Ombudsman's broad function to oversight police misconduct was now established.

Complaints about police conduct and corruption kept surfacing. In 1988, the Independent Commission Against Corruption was established. From the late 1990s the Ombudsman was given a role reviewing the implementation of controversial legislation involving new police powers affecting individual rights. This is discussed in more detail in the section 'Monitoring and oversight'.

Serious allegations of entrenched corruption led Premier John Fahey to establish the Royal Commission into the NSW Police Service (the Wood Royal Commission) in 1994. Its terms of reference were later extended to encompass examination of the protection of paedophiles and pederasts by police. The whole system for the oversight of the conduct of police was under scrutiny – by the Parliament, by the Royal Commission, by the media and the public – including the role of the Ombudsman.

Irene Moss warned Parliament and the public, 'Don't throw the baby out with the bath water'. She maintained there was a fundamental difference

'The need to deal with serious corruption should not be at the expense of the public's right to have their complaints about day-to-day policing issues properly addressed.'

Irene Moss, fourth NSW Ombudsman, 1995 ¹⁹⁶

between complaint handling and corruption fighting.¹⁹⁷ As a response to the Interim Report of the Royal Commission handed down in February 1996, and in line with its recommendations, the government established the Police Integrity Commission, a new agency, external to the NSW Police Service, to investigate corruption or serious police misconduct, but maintained the Ombudsman's role overseeing everyday community policing and administration. That was a vote of confidence in the Office of the NSW Ombudsman.



Police patrolling the George Street cinema strip, 1999
(photographer: City of Sydney, courtesy: City of Sydney Archives, A-00048529)

In a significant step forward, in terms of cooperation and productivity, the NSW Ombudsman collaborated with the Police Service and the Police Integrity Commission from 1996 to 1999 to develop an integrated case management system for police complaints. Under the leadership of Irene Moss and later Bruce Barbour, the Ombudsman's Office worked to move the complaints system from an adversarial to a managerial or remedial model. As in other areas of public administration and complaints handling, managers – or in the case of police, local area commanders – were encouraged to take ownership for managing complaints and discipline.¹⁹⁸ The police became the main investigators of their complaints, with the Ombudsman checking process, conducting audits, and reviewing individual complaints. Monitoring of complaint categories and reinvestigating some individual complaints helped the Ombudsman to identify systemic problems and work with police to resolve them.

Case study

Assault

Year: 2001

A police officer reported that her colleague had committed an unprovoked attack on a member of the public involving a punch to the side of the head and a kick in the stomach. At the commencement of the shift he had allegedly told her 'I'm going to get into a fight tonight'. When asked by a senior officer about the incident, the officer allegedly sought to justify his actions by claiming that 'nothing would have been said in the old days'. Afterwards, he allegedly approached the complainant on a number of occasions to find out who had reported the incident and warned her 'you better be backing me'. The officer has now been charged with assault and the offence of harassing a whistleblower.¹⁹⁹

Complaints about police are often complicated. A complaint about one incident may encompass several allegations. 'For example, a person arrested following a fight at a hotel may complain to the Ombudsman's Office about unreasonable arrest, assault and failure to return property. One incident, one complaint, many allegations.'²⁰⁰ Many of the complaint categories consistently received by the NSW Ombudsman related to incidents or behaviour which were discriminatory or impinged on people's civil liberties. These included search without

warrant, wrongful arrest, unlawful detention, physical injury, strip searches, unauthorised access or release of criminal records or other confidential information. Serious cases of police misconduct could lead to charges and even dismissal.

Race-related abusive remarks, offensive language and social prejudice was a disturbing category of complaints about police that held up a mirror to the nasty undercurrent of racism and prejudice prevalent in Australian society. Several examples of the prevalence of racist and offensive language used by police to describe Vietnamese, Italian and Aboriginal people came to light through complaints in 1992 and 1993. Aside from the lack of cultural awareness, the investigations showed that a significant proportion of police commonly used offensive and derogatory terms around the police station, talking among themselves. The Ombudsman denounced such language as inappropriate in any context. He saw it as evidence that many members of the police held racially discriminatory views, and dismissed the feeble justifications that the words were only said in private.²⁰¹

'Police use of racist language is never acceptable and should be seen for what it is, the tip of the iceberg of deeper seated racist attitudes and behaviours which serve to undermine police and community relations in this State.'

David Landa, third NSW Ombudsman, 1993²⁰²



Simon Kneebone, 'I'm only racist in the privacy of ...' [cartoon], 1993. (First reproduced NSW Ombudsman Annual Report 1992-93 p 46. © Simon Kneebone, courtesy: the artist.)

David Landa, the state's third Ombudsman, had been at loggerheads with Premiers Greiner and Fahey for much of 1991 and 1992 regarding policing issues and Aboriginal Affairs. One such case was 'Operation Sue'. In 1990, 135 police conducted an unjustified dawn raid on 10 premises in The Block, Redfern. The police action was codenamed Operation Sue. Originally the Ombudsman made his report on Operation Sue under s.26 of the Ombudsman Act. The report was sent to the Minister for Police and Emergency Services, the Commissioner of Police, the police officers (the subject of the investigation) and the complainant. It was not public and could not be sent to anyone else. David Landa revealed in his 1990–91 Annual Report, that because of the public interest issues raised by his investigation and report, he had presented the report to Premier Greiner on 16 May 1991 under s.31 of the Ombudsman Act, recommending it be made public immediately (the NSW Parliament had been dissolved for elections to the 50th Parliament). But the Premier 'declined to act'. The report was not tabled until 2 July 1991 on the first sitting after the election, much to Landa's annoyance.²⁰³ Media coverage continued to highlight the poor relationship between police and the Aboriginal community. Jenny Brockie's disturbing documentary 'Cop it Sweet' (broadcast ABC TV 4 March 1992), which followed Redfern police on the beat, broadened the public debate about police culture, racism and the Aboriginal community.²⁰⁴

A spate of serious incidents involving police bias against other minority groups prompted further Ombudsman investigations. A melee at Turramurra railways station in 1991, in which the victims rather than the perpetrators were arrested, revealed police bias against Asian students (see case study).²⁰⁵ In 1993 the Ombudsman investigated an incident in Cabramatta, in which a Vietnamese motorist was assaulted and police colluded their evidence and applied ethnic stereotyping.²⁰⁶

Mounting media and political pressure eventually prompted the Minister for Police and Emergency Services, the Hon Terry Griffith to announce in October 1993 that the Ombudsman David Landa would conduct a wider investigation into the presence of racism in the police service. The Ombudsman's special report, *Race Relations and Our Police*, was tabled in Parliament in January 1995. An important feature of the report methodology was the distribution of a discussion paper to minority groups inviting comments and submissions, as well as receiving oral evidence.

Case study

Arresting the victims not the perpetrators

Year: 1991

Turramurra Railway Station, North Shore Line, Sydney, October 1991. A fight broke out between Asian and non-Asian students. When police attended, the students of Asian heritage were arrested and later charged. The non-Asian students were let go. 'This was despite independent eye-witness evidence that the Asian students were vastly outnumbered and appeared to be the victims.'²⁰⁷ There was widespread media coverage, raising questions and complaints. The internal police investigation itself was biased, designed to justify the police action, and cleared police of wrong-doing. The Ombudsman re-investigated and a report into the police handling of the matter was tabled in Parliament in June 1993. The report detailed the apparent bias and mistreatment of the students. Police acted solely on the information of the non-Asian students (who had also been involved in the fight) and failed to conduct a fair and balanced inquiry based on all the evidence. David Landa also found the police's treatment of the Asian students as oppressive. He recommended the destruction of photographs, fingerprints and any criminal records, and an apology given to the Asian students and their families. He also recommended the police be counselled as to the proper exercise of their powers. What particularly concerned Landa was 'the failure of the Police Commissioner to properly respond throughout the whole incident, a failure which brings into serious doubt the police commitment to an area of great public sensitivity'.²⁰⁸

This was the first time an investigation by the Ombudsman had invited submissions from the public. 'The report focused on the Police Service's practices and procedures in its dealings with racial, ethnic and other minority groups. It looked into areas such as operations, recruitment, education and training.' As a result, the Police Service adopted many of the Ombudsman's recommendations and produced an *Implementation Plan for the Charter of Principles for a Culturally Diverse Society (Ethnic Affair – Action Plan) Year 1996–2000*.²⁰⁹

Another disturbing category of complaints was the failure of police to investigate or failure to take action. This could relate to not taking requests for help seriously enough, not taking statements in a timely manner thereby prejudicing a person's legal rights, or not responding to an incident. Often these failures to investigate or take action were due to a misguided assessment of risk or urgency, but sometimes were also tainted by social prejudice.

Domestic violence was an area of policing that often suffered from a failure to take action. Complaints included instances of officers failing to serve apprehended violence orders, to act on breaches of domestic violence orders, or to take legal action against perpetrators of domestic violence. Recognising that some victims of domestic violence find it difficult to complain about the services they receive, the Ombudsman in the financial year 1997–98 embarked upon a project to look at initial police responses to domestic violence call outs; the service and enforcement of apprehended violence orders (AVOs); victim support; police training; and the lack of monitoring of service provision for domestic violence victims across the state. The project involved community visits and discussion paper consultation with stakeholders, as well as a review of complaints in this category. The special report to Parliament, *Policing Domestic Violence*, was tabled in Parliament December 1999. The report included 25 recommendations to improve services, guidelines and training, as well as overhauling the role of domestic violence liaison officers. Consequently, the Police Service implemented a new *Domestic Violence Policy and Standing Operating Procedures* in April 2000.²¹⁰

The Ombudsman presented a further report on domestic violence and policing in December 2006,²¹¹ reviewing progress and identifying ongoing and emerging concerns. The focus of the report was to identify areas for improvement and to continue to promote the need for 'good practice' of domestic violence policing across the state. The NSW Police Force accepted most of the Ombudsman's 44 recommendations, which included the need for better support for victims of domestic violence, better cooperation between police and other agencies and more effective frontline policing responses to domestic violence. Another key recommendation was the presence of full-time domestic violence liaison officers in all high-risk police commands. The report in turn framed Premier Morris Iemma's announcement in March 2007 on the government's strategy to tackle

domestic violence: more funding, more training, reform of the AVO system, and a new family and domestic violence unit within the NSW Police Force.²¹² While the Ombudsman's investigation findings may not be binding, they frequently have a major impact on government policies and agencies' strategies.

Police interactions with the Aboriginal community were often strained, as the narrative analysis and case studies in the Ombudsman's annual reports regularly attested. Key issues that have been consistently raised by the Ombudsman across the years include the need for ongoing cultural awareness training for police on the job (not just in the academy), distrust of police, false imprisonment, deaths and injuries in custody, failure to respond, and conciliation of complaints.

Case study

False imprisonment

Year: 2002

An Aboriginal man complained that police had wrongly arrested and detained him. He stated that he and another man had been sitting in a car one evening when a police vehicle pulled up next to them. Both men ran from the scene when they saw the police. The complainant stopped running when the police called out to him to stop. He claimed that the police pushed him away and abused him for running away, calling him a 'little black bastard'. He was then handcuffed and thrown head first into the back of the police truck. when he protested that he had done nothing wrong, the officers said, 'We don't care'. The complainant said he was bleeding from an injury to his head and had lacerations from the tightness of the handcuffs. The police apparently believed that a wanted man had also been in the vehicle and initially mistook the complainant for the wanted man.

The complainant stated that the officers said they would drive him home. He overheard the police radio confirming that he was not wanted for any offence. The police later told him that they were going to take him 'up the bush' and give him 'a hiding'. Eventually they stopped in a remote location, took the complainant from the back of the vehicle and told him to start running. The complainant feared that they might try to shoot him. It took him about an hour to walk back to his cousin's home. He had no shirt on and bare

feet. The police officers later claimed that the complainant was arrested and driven from the scene to avoid further breaches of the peace. They appeared unable to explain why they had driven him to a remote location rather than to his home.

The police have conceded that no breach of the peace had occurred and that the officers falsely imprisoned the complainant. They recommended that the officer principally responsible for the unlawful detention be considered for dismissal and that the other officer receive a Commissioner's Warning Notice. Criminal charges were not considered because the complainant was reluctant to pursue the matter. We are concerned that the police do not appear to have considered whether there is a need to compensate the complainant and will continue to monitor this matter closely.²¹³

A key recommendation from the Wood Royal Commission was the establishment of an Aboriginal Complaints Unit within the Police Division of the Ombudsman's Office. The Office had appointed an Officer back in 1989 to assist with complaints involving the Aboriginal community generally, but the high level of policing complaints pointed to a greater need to improve relations between police and Aboriginal communities.²¹⁴ The unit was established in 1996 with 3 staff and a 'significant travel budget'.²¹⁵ Emphasis was placed on improving police services to Aboriginal people, through access to the Ombudsman, promoting cultural awareness and consultation, and conciliating complaint matters and resolving issues at a local level.

'I would like to thank you sincerely for your efforts in this matter. I know you understand the problems faced by our service and our clients and it is very refreshing to have someone like yourself in a position of authority where you can demand and receive immediate action. It is a great benefit to the Aboriginal community to have Aboriginal people in such positions and we thank you very much for your assistance in this matter.'

An appreciative stakeholder, 1997²¹⁶

The Ombudsman's Office was tasked with auditing the police's implementation of their multi-year *Aboriginal Strategic Direction* (2003–2006 and 2007–2011). The Aboriginal team worked closely with the police service's own Aboriginal coordination team. Over time, and with the encouragement of the Ombudsman's continuous improvement audits, the police built up partnerships with other government agencies such as community services, probation and parole, health and education to deliver local initiatives tackling child abuse and sexual assault, domestic and family violence, substance abuse and crime prevention.²¹⁷

The success of the unit's work prompted the Ombudsman's Office to consider ways to extend this approach. In 2009, the Aboriginal Unit became part of the strategic projects division, with the aim of helping Aboriginal communities to engage and build bridges with other government services and agencies. The Ombudsman's work in examining interagency programs aimed at improving service delivery for Aboriginal people across Australia is discussed further in the Oversight and Monitoring chapter.²¹⁸

While the jurisdiction over police evolved over the period 1979 to 2017, the focus was always on holding police accountable for their decisions. Where weaknesses in policing practices and operations were identified, recommendations were made to improve procedures. Breaches of police rules or procedure consistently showed the need for education and reinforcement of the appropriate application of procedures. It was also about exposing the work culture of the police service and demanding fair, honest behaviour, as expected by the wider community.

Prison work

Prisoners form a vulnerable and often overlooked cohort in our community. Even when remembered, they often receive little community sympathy. The NSW Ombudsman's Office has an enduring role in relation to prisons, particularly visiting correctional centres and reviewing prisoners' complaints.

Despite being a large agency with dispersed facilities, Corrective Services did not have an internal complaints unit in the 1970s and 1980s. The first Ombudsman Ken Smithers recorded in his inaugural annual report that there were 3,112 inmates in NSW and the Office had received 249 complaints about prisons.

Following the Royal Commission into Prisons, headed by Justice John Nagle in 1977, the NSW government strengthened the Ombudsman's Office to deal with complaints by prisoners. Premier Wran rejected Nagle's recommendation that a special Prisons Ombudsman be appointed, believing it 'would not be conducive to an amicable solution of the present problems'.²¹⁹ This, along with the passing of the *Police Regulation (Allegations of Misconduct) Act 1978*, led to a separate section being established and an Assistant Ombudsman (Police & Prisons) given responsibility for investigating those complaints. Roger Vincent was appointed from 2 April 1979.²²⁰

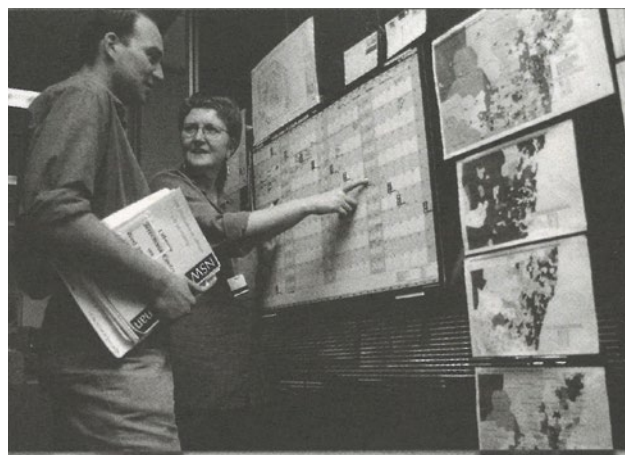
In 1985 the government established the Official Visitors Scheme for NSW prisons, as a way to establish an independent quasi-complaints body reportable to the (then) Corrective Services Commission. Official Visitors focussed upon the care, treatment and control of inmates. Recourse to NSW Ombudsman was to be a 'remedy of last resort'.²²¹ Staff from the Ombudsman's Office, while independent, maintain a working relationship with the Official Visitors Scheme.

In 1993 Junee Correctional Centre, the State's first privately managed prison, opened. It too came under the Ombudsman's jurisdiction. This was the first time that the Ombudsman's jurisdiction extended to the private sector.²²²

In 2024, there are 13,164 people in adult and juvenile custody (of which 4,184 were Aboriginal or Torres Strait Islander) and the Office finalised 3,576 complaints about adult correctional centres and

45 complaints from (or about) children and young people detained in a youth justice centre.²²³

Complaints from inmates comprise a large, specialised area of investigation. Staff working in this area have extensive knowledge of the correctional system and its associated legislation, policy and procedures. Since 1981 Ombudsman staff have undertaken regular visits to gaols and youth justice centres to facilitate an in-person complaints service. While cognisant of its responsibilities for dealing with individual complaints, the Office under George Masterman expanded its remit to a broader monitoring and reporting role on the procedures and policies of Corrective Services. Masterman observed in 1982 that many problems arose unnecessarily due to poor management skills or broken communication channels.²²⁴



Anne Radford, Manager, General Team, plans a visit to a correctional centre with Vince Blatch, Complaints Officer in 1999. (*Annual Report 1998–99* p 87)

So what do our corrections unit staff do in a typical week?

Year: 2004

Talk to about 50 inmates over the phone and respond to their inquiries and complaints. It is not unusual for callers to ring us simply for reassurance – to independently confirm advice they have already been given about policies, procedures or rights by correctional or professional staff within centres.

Respond urgently if, for example, the complaint concerns issues of safety or impending irreversible action, or is likely to lead to greater management problems unless it is attended to quickly. We may contact someone at a correctional centre, at Justice

Health (formerly called Corrections Health Service), or at DCS's head office to ask for information. We will also see if there is a way to solve the problem or if there is anything else that can be done.

Handle a number of written complaints that often raise more complex or serious matters. We may make inquiries of the centres concerned or perform other investigative activities.

Visit a correctional centre and meet with staff and management.

Plan our activities, share information and experiences within the team, and update the reference information we keep on correctional issues.²²⁵

Staff visiting a correctional centre will speak with inmates and staff. They will also meet with management to hear of any changes to procedure, which may trigger or provide context to complaints. Many of the complaints relate to day-to-day issues. Staff are encouraged to achieve fair, quick and practical outcomes. Over the years the NSW Ombudsman has worked to improve prisoners' access to essential medications. They have ensured those with a mental illness receive the medical care and support they need. The Ombudsman has also stopped prisons from using wall mounted restraints to restrain prisoners.²²⁶

The Office of the Ombudsman was regularly criticised for visiting prisons. Detractors ungenerously suggested that the Office was rustling up business, touting for complaints. But it is about equity of access. Prison visits also give Ombudsman staff 'a better perspective on a centre's environment, as well as immediate access to staff or documents to help get problems resolved.'²²⁷ The Ombudsman is there to ensure those held in our prisons are treated fairly, according to the law, and have the essential services they need.

Case study

Searching cavities

Year: 2014

Some officers incorrectly believe that a strip search can include searching an inmate's body cavities. This is an issue the Ombudsman has dealt with many times. In 2014 an inmate at the Long Bay Hospital was subject to regular strip searches because of an earlier escape. After one search, he called the NSW Ombudsman to complain as he had been asked to retract his foreskin. This was not permitted under Corrective Services NSW policy. An Ombudsman officer spoke with the general manager who agreed with the Office and spoke to the officer concerned to remind him of the proper procedures.²²⁸

One of the biggest challenges is ensuring that people detained in custodial facilities are aware of the Ombudsman's services. In 1984 the Office published a brochure targeted at juveniles in state institutions, featuring plain English information and 'lively illustrations'. This replaced a formally written printed sheet previously produced by the Department of Youth and Community Services. An explanatory brochure designed specifically

for adult inmates was distributed throughout the prison system in 1985, partly due to the instigation of the Minister's Official Visitors program.²²⁹



Brochure for juveniles in detention, 1984 (illustrator: Christine Alderton, courtesy: State Library of NSW, ephemera collection)



Prisoners and the Ombudsman brochure, 1985 (Annual Report 1984–85 p 55)

Aside from regular visits to correctional centres, inmates have always been able to call the Ombudsman's Office. In the financial year 2000–01 there was a 79% increase in the number of telephone calls made to the Office by inmates. This was partly attributed to a streamlined bureaucratic process with the call cost being directly debited to the correctional centre's account rather than the inmate having to reclaim the cost.²³⁰ Packs of playing cards featuring the Ombudsman's phone number proved a popular item with inmates in the early 2000s and may have encouraged contacts.

‘Every time I have rung them for help, they have fixed my problems straight away. I’m very satisfied ... I tell everyone in gaol to contact them when having a problem.’

A satisfied inmate, 2023²³¹

The other major barrier influencing access are concerns regarding confidentiality. In 1979 the Prisons Regulations were amended to ensure the confidentiality of letters between prisoners and the NSW Ombudsman. Yet this continued to be an issue through the 1980s. The right of detained persons to make a complaint to the Ombudsman, both written and oral communications, is now

protected in legislation, although complaint confidentiality still plays on the mind of inmates in 2024.²³²

Children and young people

The Ombudsman has had a role ensuring fairness and equity of government services to children and young people since 1975. Public authorities such as the Department of Education, the Department of Health, the Police Service and the juvenile justice system have always been scrutinised for their services to and treatment of young people. These have resulted in significant reforms. For example, following representations from the Ombudsman in 1994, police were now required to notify parents if their child *attended* a police station, voluntarily or otherwise, in relation to police matters involving them. Previously police would only notify parents or guardians if the child was to be *interviewed*.²³³

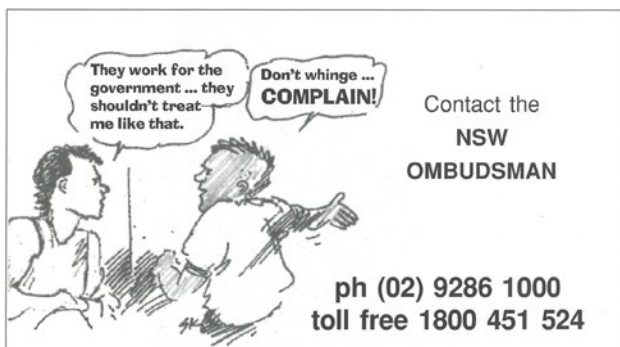
Reaching out to young people to ensure they knew of the Ombudsman's services was a key concern, especially in the first couple of decades of the Office's operations. Brochures and posters were produced by the Ombudsman's Office. The legal centres were also proactive by informing young people they could direct complaints to the Ombudsman.



Wollongong artist Jason Rogers met with students to gauge their reactions to his poster. (*Annual Report 1996–97* p 166)



Artwork commissioned for a youth poster and brochure, 1997
(artist: Jason Rogers, NSW Ombudsman's Office)



Youth contact card, 1997 (cartoonist: Simon Kneebone; *Annual Report 1996–97* p 169)

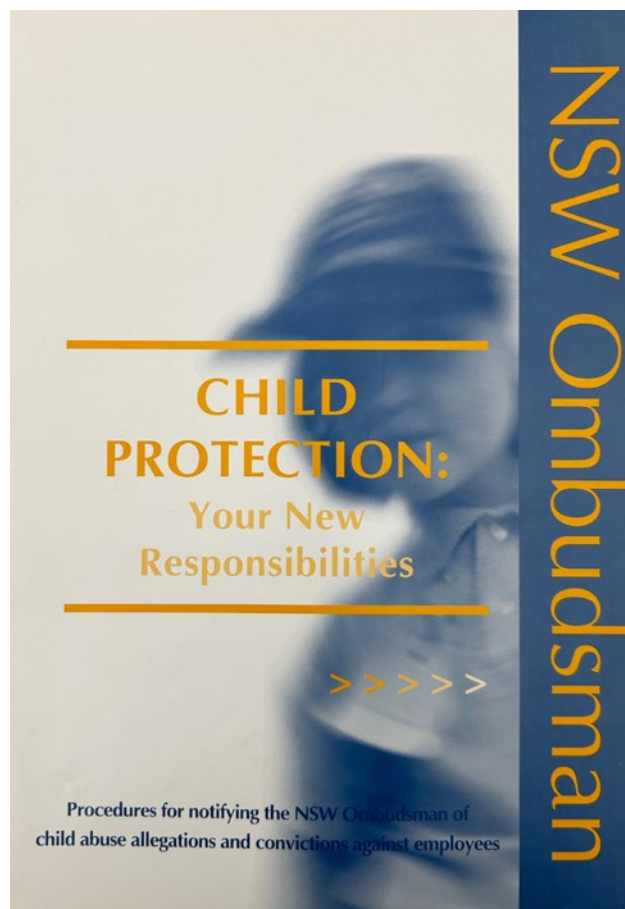
The Ombudsman's role in relation to children and young people was substantially expanded in 1998 to incorporate reportable conduct / workplace child protection, which continued until March 2020 when the reportable conduct scheme transferred to the Children's Guardian.²³⁴ This new function emerged from the findings of the 1997 Wood Royal Commission into the NSW Police Service and its paedophilia reference. Justice Wood identified cases across the public sector where allegations of child abuse were ignored or dismissed, agencies were blind to patterns of offending behaviour, and in many cases allegations were poorly or inappropriately handled. The Royal Commission made 140 recommendations designed to improve child protection. As well as setting up the reportable conduct scheme, an independent statutory organisation, the NSW Commission for Children and Young People, was established.²³⁵

'Decisions about child protection are inevitably and understandably going to generate a considerable amount of strong feeling. However, these feelings should not completely obscure the goal of creating a child protection system which is workable and fair to all.'

Irene Moss, fourth NSW Ombudsman, 1998 ²³⁶

The new function of child protection marked a radical extension of the Office's jurisdiction into the non-government sector. (Previously the Ombudsman only had jurisdiction over a private gaol in Junee.) The *Ombudsman Amendment (Child Protection and Community Services) Act 1998* commenced on 7 May 1999, bringing thousands of non-government schools and child care centres under the Ombudsman's purview, as well as broadening the Office's responsibilities for government agencies in the areas of community

services, corrective services and juvenile justice, education, and health. A new child protection team was established within the Office, headed by a new Assistant Ombudsman, Anne Barwick.



Procedures manual produced in 1999 by the NSW Ombudsman, guiding agencies and employers through their new responsibilities under the Ombudsman Amendment (Child Protection and Community Services) Act. (Museums of History NSW – State Archives Collection: NRS-18723-3-1-[1])

The new approach to workplace child protection rolled out in 1999 put the onus upon agencies as the employers to take responsibility for their employees. The Ombudsman's primary function was to oversee and help agencies conduct their own investigations. All child abuse allegations or convictions had to be notified to the Ombudsman within 30 days. It was the Office's role to ensure agency investigations were properly conducted with diligence and procedural fairness and that appropriate action was taken to minimise risk and protect children from physical, sexual and emotional abuse.²³⁷

The Ombudsman's involvement in child protection was aimed at improving the way agencies handled child abuse allegations. The Ombudsman could audit policies and systems, develop guidelines and training to educate employees, and build relationships with stakeholders and peak representative bodies who play a role in protecting children. A bimonthly Child Protection Forum was

convened by the Office from 1999 to assist with agency collaboration and discussion of current issues, investigative practice and policy changes in child protection.

The Ombudsman kept a critical eye on the work of employers and their handling of employee-related child protection matters. They undertook direct investigations when agencies were slow in notifying allegations,²³⁸ or serious gaps in investigations were identified. Many issues and complaints related to the lack of early intervention and the oversight and management of foster carers.

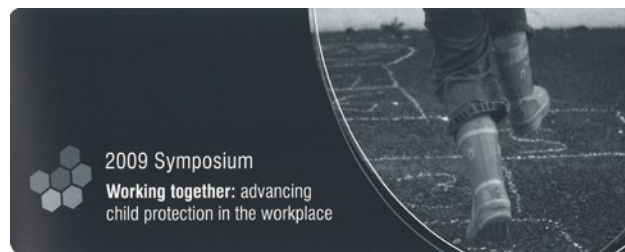
The amalgamation of the Community Services Commission with the Ombudsman's Office in 2002 brought wider remit for child protection oversight and introduced a new formal death review function to the Office. While the merger is discussed in more detail in the next section, suffice to say the reviewable death function applied to certain children and young people, including children in care, children who may have died from abuse or neglect, children in detention at the time of their death, and children (or their siblings) who had been reported to the Department of Community Services within the 3 years prior to their death.²³⁹

The deaths of 2 children in 2007 – Dean Shillingsworth, an infant who was murdered by his mother, and Ebony, a 7-year-old girl who died from starvation and neglect – shocked the public and garnered widespread media coverage. Consequently, the government established a Special Commission of Inquiry into Child Protection Services in NSW, headed by Justice James Wood. The Ombudsman also identified the deaths as reviewable under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and initiated investigations of the actions of the responsible agencies. Both these reports fed into Justice Wood's Inquiry and were subsequently made public in 2009 following the completion of criminal proceedings.²⁴⁰

Central to any effective child protection system is risk assessment and the provision of timely services and supports to protect children and assist their parents or carers. One of the things that became apparent to the Ombudsman and Justice Wood was that critical information about children relating to their safety, welfare and well-being was not being exchanged between agencies, often due to privacy concerns, which led to tragic consequences.

Justice Wood's Inquiry report was handed down 24 November 2008 with 111 recommendations. He called for a further shakeup of the child protection

system, with a focus on early intervention at a local level and legislative amendments to establish clear interagency information sharing and coordination. In response to the Wood Special Commission of Inquiry, the NSW government released a 5-year plan to reform child protection, *Keep Them Safe: A shared approach to child wellbeing* (March 2009).



The NSW Ombudsman hosted a 2-day symposium in 2009 bringing together expert practitioners to discuss the unique issues arising from the investigation of reportable allegations and convictions. Over 320 delegates attended the symposium. (*Annual Report 2008–09* p 55)

New functions and responsibilities were assigned to the Ombudsman's Office as a consequence of the government's *Keep Them Safe* plan. The Child Death Review Team (CDRT), established in 1996 and previously supported by the Commission for Children and Young People, transferred across to the Ombudsman in February 2011. The Office was also given responsibility of auditing the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*. (This will be discussed further below in 'Oversight and Monitoring'.)

The NSW Child Death Review Team (CDRT) is an unusual structure for the NSW Ombudsman's Office, since it comprises of external experts in healthcare, child development and child protection along with key agency representatives.²⁴¹ The CDRT maintains a register which examines the deaths of all children (0 to 17 years) that occur in the state. The register provides the team with a wholistic view, gathering data and classifying demographics, causes of death and patterns to identify trends and reduce the risk of preventable deaths. The CDRT also undertakes research to help prevent or reduce the likelihood of child deaths. Recent recommendations to government for improvements in legislation and policy cover areas such as sudden unexpected death in infancy (SUDI), private swimming pool regulation, road safety and transport, and suicide prevention.²⁴²

The annual and biennial reports of the CDRT make sobering reading. Taking a long view of the statistics over a 15-year period (2007 to 2021), the team have reported that infant and child death rates have declined. This is broadly consistent with trends across Australia. Despite this positive overall decline, there are inequalities, with certain

groups of infants and children continuing to be over-represented in NSW. These groups include males, Aboriginal and Torres Strait Islander children, those living in regional and remote areas of the state, and those from the most disadvantaged areas. Young people aged 15–17 years and children from families with a child protection history are also over-represented in deaths. Alarming unlike other causes of death, the rate of suicide has increased in NSW over the past 15 years, and in 2020–21 overtook transport as the leading cause of death due to external (injury) causes for children and young people aged 10–17 years.²⁴³

Case study

Seatbelts, child restraints and preventable deaths

Year: 2017–2021

The CDRT did focussed research on the role that seatbelts and child restraints can play in preventing the deaths of children in vehicle crashes. A review of 66 child deaths from vehicle crashes between 2007 and 2016 found more than half (35) had not been properly restrained, and almost a third could potentially have been saved if they had been properly restrained.

Inspired by the research report, the NSW Police Force launched in 2019 a child vehicle restraint program in Sydney's west to assist vulnerable families obtain and install the correct seats for their children. The program became statewide in March 2021. Police are now also trialling a diversion program, referring drivers to the child vehicle restraint program to ensure a compliant restraint is correctly installed, and then issuing a caution rather than a fine.²⁴⁴

The handling of child sexual assault continued to be a major topic of investigation in the 2010s. The Ombudsman reviewed progress on the government's *Keep Them Safe* plan, presenting a report to Parliament shining a spotlight on the fundamental weaknesses still evident in the child protection system.²⁴⁵ Two major inquiries were announced at the end of 2012. The federal government announced a Royal Commission into Institutional Responses to Child Sexual Abuse. As the only state Ombudsman with a child protection function, the NSW Ombudsman supplied important submissions and data to assist the Commissioner. In NSW there was a Special Commission of Inquiry

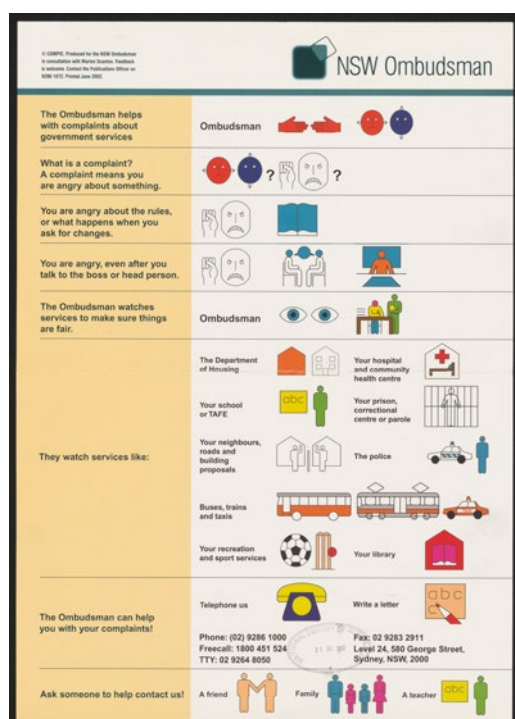
into matters relating to the police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle. The Office likewise provided detailed information to assist the inquiry. While all this was going on, the state's new Working with Children Check was introduced in June 2013.²⁴⁶

The Royal Commission into Institutional Responses to Child Sexual Abuse presented its final report in December 2017. The Royal Commission validated NSW's approach to child protection and recommended the reportable conduct scheme should be adopted in all other states and territories. They also made recommendations about the expansion of the scheme, particularly into the faith sector. These recommendations mirrored the views expressed by the Ombudsman in their 2016 report to Parliament, *Strengthening the oversight of workplace child abuse allegations*.²⁴⁷ The employment-related child protection reportable conduct scheme was transferred to the Children's Guardian in 2019, in line with the Royal Commission's recommendation 'that the oversight body for the reportable conduct scheme should also be responsible for monitoring and enforcing Child Safe Standards'.²⁴⁸

Everyone deserves shelter, yet thousands of children and young people cannot find this place of security in the 21st century. A staggering 5,000 unaccompanied children and young people, aged 12 to 18 years, reached out to a homelessness service in 2016–17 financial year seeking support and a place to stay. More than a third were under 16.²⁴⁹ In 2018 the Ombudsman presented a report to Parliament, *More than Shelter – Addressing Legal and Policy Gaps in Supporting Homeless Children*.²⁵⁰ The Ombudsman's investigation identified significant legal impediments concerning authority to make decisions, sluggish leadership by FACS implementing their Children Experiencing Homelessness policy (2015), a lack of basic data on children experiencing homelessness, and no regulatory standards. This report was welcomed by peak bodies, such as Yfoundations and Homelessness NSW, and FACS supported all of the recommendations in the report. The report elicited a promise from the Minister for Family and Community Services that the NSW Government would invest \$4.3 million over 3 years for 9 caseworkers to support unaccompanied children presenting to homelessness services. The Ombudsman has done 2 follow up reports, ensuring this issue remains in the public eye.²⁵¹

People with disability

Community services delivered by the public sector were under the Ombudsman's jurisdiction from 1975, with complaints and maladministration of the Department of Community Services being scrutinised in the same way as other public authorities. Then in 1993, Parliament passed the *Community Services (Complaints, Appeals and Monitoring) Act*. This Act was passed without consultation with the Office of the Ombudsman, catching David Landa by surprise. It possibly reflected a disintegrating relationship between the government and the Ombudsman. Landa complained that their jurisdiction had been 'robbed by stealth'. The Act established in April 1994 a Community Services Commission and a Community Services Appeals Tribunal, and (under Landa's reading) limited the Ombudsman's powers to matters of systemic misconduct or maladministration by the department or commission. Landa committed the Office 'to work cooperatively with the commission and tribunal to ensure no significant matters fall between the jurisdictional cracks.'²⁵²



Compic poster explaining the Ombudsman's services, created for people with intellectual disability, June 2002. (courtesy: National Library of Australia, ephemera collection)

The Community Services Commission lasted until 2002, when it was amalgamated into the NSW Ombudsman Office.²⁵³ Many members of the disability sector, especially advocacy groups, were not supportive of the merger. There were concerns about the loss of workplace culture and community

support, and that the commission's functions would get subsumed within the larger complaints agency. In an apparent olive branch to the sector, the legislation directed that a Community Services Division be established within the Ombudsman's Office, headed by the Community and Disability Services Commissioner, who would also be a statutory officer. Robert Fitzgerald, the current Commissioner, came across as part of the merger and was appointed Deputy Ombudsman. For the Ombudsman's Office, it was a significant expansion of oversight.²⁵⁴

The new Community Services Division, created in December 2002, kept under scrutiny all community services provided by the Department of Community Services and the Department of Ageing, Disability and Home Care, as well as several thousand non-government service providers who were funded, licensed or authorised by the Ministers responsible for these agencies. This encompassed child protection and support services, out-of-home care services for children and young people, home and community care services including things such as meals on wheels and respite care, services for people with a disability, and supported accommodation and assistance program services includes refuges, brokerage and referral services. The division was responsible for dealing with complaints, reviewing and improving complaint handling procedures, providing information and training, inspecting disability homes and boarding houses, and promoting access to advocacy support. The Ombudsman's wholistic role was to promote 'a robust, accountable and responsive community services system'.²⁵⁵

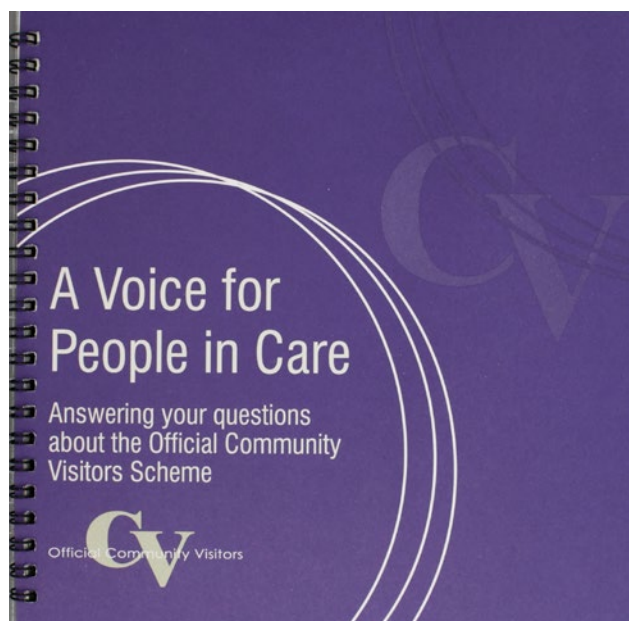
Prior to 2002, the former commission reviewed the deaths of people with a disability in residential care. On amalgamation, a formal death review function was legislated. Reviewing deaths was broadened to cover all people living in licensed boarding houses, all people with a disability in care, and certain children and young people, including those in care, deaths from potential neglect or abuse, and those in detention at the time of their death. The State Coroner also had a role to examine deaths of children and people with a disability. The Ombudsman focussed on identifying systemic issues, reviewing trends and patterns, and recommending improvements in policies and practices in an effort to minimise preventable deaths. Reviewable death work was legislated to have separate annual reporting to Parliament.²⁵⁶

Placing the death review functions with the Ombudsman was a radical break from 'traditional' Ombudsman responsibilities. No other Australian

ombudsman had similar functions in 2002; both Queensland and Victoria subsequently developed death review functions. The purpose in reviewing disability deaths was to reduce or remove risk factors, thereby lowering the number of preventable deaths.

There are major gaps in life expectancy for people with disability living in residential care. People in disability services die at least 25 years earlier; people in assisted boarding houses die around 20 years earlier. The Ombudsman's reviews consistently identified the need for more effective interagency coordination to ensure timely assessments, appropriate health treatments and support. Reviews of preventable deaths highlighted urgent action was required by support staff to address risks associated with medication, including medication errors and unsafe storage; breathing, swallowing and choking; fractures; bowel health management; poor first aid responses and obtaining urgent medical assistance; along with improved access to preventative health services and treatment, particularly for smoking, obesity and other lifestyle risks.²⁵⁷

Formal death review functions of people with a disability remained with the Office of the Ombudsman until 2019. After some confusion and overlap of the Ombudsman's functions with the NDIS Quality and Safeguards Commission, it was confirmed that the Ombudsman no longer had jurisdiction to review the deaths of adults with disability. This function officially ceased on 30 June 2022.²⁵⁸



Information booklet, Official Community Visitors Scheme, 2004
(Museums of History NSW – State Archives Collection: NRS-18723-1-2-[9])

The Official Community Visitor scheme, which came across from the Community Services Commission, was an important part of monitoring and quality assurance. Official Community Visitors ensured that children in residential care and people with disability living in supported accommodation and assisted boarding houses in NSW received the highest standard of care possible. They were independent, appointed by the then Minister for Community Services and the Minister for Ageing, Disability and Home Care. They were effectively the 'eyes and ears' of the Ministers and the Ombudsman. The Office of the Ombudsman coordinated this scheme from 2002 to 2020.²⁵⁹

Some of the most common issues identified by Official Community Visitors were concerns around individualised services, provision of a well maintained and home-like environment, appropriate and meaningful behaviour management plans, and delivering services with respect, privacy and dignity.²⁶⁰

Case study

Mobility allowance reactivated

Year: 2009

A 43-year-old man with a physical impairment lived in a disability accommodation service. He enjoyed his job at a supported employment service and relied on a mobility allowance to help him get to work. The service alerted the Official Community Visitor that the man had not been paid his allowance for some time.

Staff had tried unsuccessfully to have the issue resolved with Centrelink and the Office of the Protective Commissioner. Two weeks after the Official Community Visitor intervened, the Office of the Protective Commissioner contacted the man to inform him that he would be paid \$657 as back pay and his mobility allowance would be paid regularly in future.

The Official Community Visitor gave the service positive feedback about the advocacy they had provided for their client and suggested improvements that could be made to their systems to ensure all residents' allowances were regularly checked and updated.²⁶¹

The quality and services of supported accommodation and assisted boarding houses has been problematic for years. The majority of residents in boarding houses have a mental illness or a cognitive impairment, or both.

Many require daily supervision and support. Inadequate standards of care had been repeatedly highlighted in reports in the early 1990s – for example, the Chelmsford Report (1990), the Waddy Report (1991), and the Human Rights and Equal Opportunity Commission Report on Human Rights and People with Mental Illness (1993) – yet the systemic issues continued. Private boarding houses and hostels for people with an intellectual disability hit the headlines in 1993, thanks to the *Sun-Herald's* expose of sub-standard conditions. A ministerial taskforce was set up, and recommended a 5-year strategy to deal with problems of licensing and enforcement across multiple agencies.²⁶²



Newspaper headlines trumpeting the appalling substandard conditions of board houses and hostels for people with disabilities. (Annual Report 1993–94 p 67)

Licensed boarding houses were brought within the purview of the NSW Ombudsman in 2002. At that time, the Department of Ageing, Disability and Home Care (ADHC) were responsible for the licensing and compliance of boarding houses. Boarding houses that provide accommodation for 2 or more people with disability requiring supervision or support must be licensed. Complaint handling and monitoring by the Ombudsman over

the next 9 years raised serious concerns about the safety, health and welfare of residents in licensed boarding houses. Issues identified included a lack of occupancy rights; inadequate health care support and medication management; restrictions on residents' access to family, friends and support services; and inadequate protection against assaults and harassment by staff and other residents. As well as informally handling many day-to-day complaints, the Ombudsman undertook 3 formal investigations, an inquiry into ADHC's conduct into licensing and monitoring boarding houses, and 6 reports on the deaths of licensed boarding house residents.²⁶³

Despite making many recommendations for improvements and receiving repeated assurances from ADHC about its intentions to review and reform the boarding house sector, the lack of practical action spurred the Ombudsman to make a special report to Parliament in 2011. This ultimately led the NSW government to undertake significant legislative reform of the boarding house sector. The *Boardings Houses Act 2012* and associated regulations introduced minimum standards and safeguards, including mandatory registration, occupancy rights, 24-hour staffing, first aid certification, and improved incident reporting covering assaults and serious accidents.²⁶⁴

Deputy Ombudsman Steve Kinmond initiated a standing inquiry in July 2016 after identifying a major gap in existing safeguards for adults with disability living in community settings, such as the family home. Once again, the Ombudsman used its considerable powers to protect vulnerable people in our community. A number of serious allegations and notifications pointed to abuse and neglect by family members and other informal carers. The inquiry reviewed over 200 cases which occurred between 2015 and 2018. Many of the alleged victims had some form of cognitive impairment, some a physical disability, and most of the abusers had a close and personal relationship with the adult with disability, generally a family member or partner/spouse. The Ombudsman identified the need for a lead agency to coordinate information and intervene decisively to expose the abuse and break the cycle of inaction. In line with the NSW Law Reform Commission's review of the *Guardianship Act 1987*, the NSW Ombudsman strongly supported the establishment of an independent statutory body to investigate and take appropriate action against suspected abuse and neglect of vulnerable adults in NSW.²⁶⁵

The government listened and responded. The creation of the Ageing and Disability Commission in 2019 was a significant reform in New South Wales, championed by the NSW Ombudsman.

Case study

Boarding house breaches

Year: 2011

The Ombudsman's reviews of the deaths in 2011 of 4 residents of a licensed boarding house raised questions about the support needs of residents in that facility, the adequacy of the support provided, and the physical environment of the accommodation. One of the residents who died was elderly with high-support needs and frail health – and there were concerns about mould and rising damp, inadequate food for residents and poor staffing levels.

At the same time, there were complaints from an ex-staff member and media articles alleging serious problems at the boarding house. These included alleged sexual coercion among residents, problems with administering medication, residents being neglected, and criminal record checks not being done on prospective staff.

We spoke with ADHC about these allegations and concerns they advised that they would conduct a comprehensive review of the boarding house against the licence conditions and regulations, were investigating the complaint issues raised by the ex-staff member, and were working to improve the health and aged care support provided to residents.

ADHC's comprehensive review of the boarding house identified multiple significant breaches of the licence conditions and regulations – that confirmed many of the allegations that had been made – as well as a failure to meet requirements relating to the skills of boarding house staff, complaint handling, and the cleanliness and physical maintenance of the property. ADHC has provided advice about the actions they are taking in response to the review findings and we are continuing to monitor the progress of this work. We are also liaising on a regular basis with the Official Community Visitor for the boarding house to find out their views about residents and staff and the day-to-day conditions in the facility.²⁶⁶

The Commission's role is to protect older people and adults with disability from abuse, neglect and exploitation and to advocate for their rights.

The introduction of the National Disability Insurance Scheme (NDIS) in 2013 dramatically changed the landscape of disability services.²⁶⁷ The legislation transformed funding and service arrangements, moving away from broad state government funding of services (both government and private) to a federally managed fee-for-service, market-based approach. Perhaps most importantly, the NDIS shifted the ideology for support services, emphasising person-centred services, individual choice and control. The rollout of the scheme was gradual and the NSW Ombudsman did a lot of preparatory work to manage the transition and identify risks.²⁶⁸

On 3 December 2014, the *Disability Inclusion Act 2014* conferred a new and important function on the Ombudsman's Office and established the Disability Reportable Incidents scheme.²⁶⁹ Under this new function, the Department of Family and Community Services (FACS) and funded disability services were now required to notify the Ombudsman's Office of any allegations of serious incidents involving people with disability living in supported group accommodation. The Human Services Branch in the Office was restructured and a new disability reportable incidents division established to support the new scheme.

The Disability Reportable Incidents scheme was the first legislated scheme in Australia for the reporting and independent oversight of serious incidents involving people with disability in supported group accommodation. The Ombudsman's Office oversaw the actions and systems to prevent, handle and respond to specific reportable incidents, such as assault, sexual misconduct, ill-treatment or neglect, including employee-to-client incidents, client-to-client incidents, breaches of apprehended violence orders, and unexplained serious injury. The scheme became the model later adopted by the NDIS Quality and Safeguards Commission.²⁷⁰

The NDIS Quality and Safeguards Commission became active in NSW on 1 July 2018, and, along with the creation of the Ageing and Disability Commission in 2019, the disability functions of the NSW Ombudsman ceased. The NSW Ombudsman nevertheless continues to work to ensure fairness for people with disability. For example, in 2022 the Ombudsman presented a report to Parliament *Modifying public housing properties to meet the needs of tenants with disability – issues identified through complaints* (29 July 2022).

Oversight and monitoring

The NSW Ombudsman has kept under scrutiny the operation of new laws, telecommunication intercepts and covert operations. Inter-agency plans have been audited for effectiveness and impact. The Office's ability to see the whole picture – garnering information and influencing agencies – is invaluable in producing success where once there was failure.

The NSW Ombudsman's audit role commenced in the 1980s with specific statutory audit functions. Through the 1990s under the leadership of David Landa and Irene Moss the Office developed its oversight of legislative compliance by public authorities. Rather than simply reactive investigative work, the Office built its capacity to research systemic issues and public maladministration.²⁷¹ From 1998, the Ombudsman's role expanded as a legislative guardian, monitoring the impact of significant legislative changes and its impact on civil liberties.

Aboriginal programs

The Ombudsman has always had jurisdiction to receive complaints from the Aboriginal community about services from public authorities. While policing and the justice system were garnering some complaints, the Ombudsman was concerned that the number of complaints emanating from the community was quite low. David Landa believed the best and only way to 'break down the barriers' between his Office and the Aboriginal community was to employ an Aboriginal officer. Landa established a position specifically designated for an Aboriginal person. Joyce Clague MBE was employed in August 1989 as the first designated Aboriginal Investigation Officer. Clague was an Indigenous rights activist and became in 1966 the first Indigenous person to represent Australia at an UNESCO conference. In 1977 she helped establish the NSW Aboriginal Land Council, campaigned for the NSW *Aboriginal Land Rights Act*, and worked with others to form the Yaegl Local Aboriginal Land Council for her country around Maclean in the Northern Rivers.²⁷²

She was given a travel budget, and the imprimatur to commence an awareness campaign across the state. The Ombudsman accompanied her on some of those early trips, listening first-hand to grievances. Clague's impact was almost immediate. 'The direct intervention of this office and the skills of the Aboriginal investigation officer led ... to the appointment of 2 Aboriginal liaison officers to the Griffith [police] district.'²⁷³



Joyce Clague, the Office's first Aboriginal Investigation Officer, and Ombudsman David Landa. (*The New Investigator*, April 1990, courtesy: State Library of NSW. Used with permission of the Clague family.)

'The problem is that government departments and local councils are out of touch with the needs of Aboriginal people. Until they have enough Aboriginal people on their staff to provide a link with the communities then the problems are going to continue.'

Joyce Clague,
Aboriginal Investigation Officer, 1990²⁷⁴

No doubt having an Aboriginal Investigation Officer encouraged the Toomelah Local Aboriginal Land Council and the Toomelah Aboriginal Cooperative to approach the Ombudsman's Office in 1990 to follow up their complaints. The Australian Human Rights and Equal Opportunity Commission had published a report in 1988 exposing the poor living conditions of Aboriginal people living in Toomelah and Boggabilla, Moree Plains Shire, on the NSW – Queensland border. The houses were old, overcrowded and didn't protect people from the weather. The people of Toomelah did not have a proper water supply, which in turn meant the sewerage system didn't work properly. The unsealed access roads were frequently impassable. The local council were charging rates, but the services were virtually non-existent. The AHREOC Inquiry found 'there was a lot of buck passing and no one wanted to take responsibility for putting in services.' Justice Marcus Einfeld, who led the Inquiry, found the NSW Ministry of Aboriginal Affairs had 'abdicated its responsibilities to the Toomelah community'.²⁷⁵

The NSW government immediately abolished the Ministry for Aboriginal Affairs, replacing it with the Office for Aboriginal Affairs (OAA) within the Premier's Department. By March 1991 the OAA were dusting their hands, claiming 'the major government priorities for Toomelah had been achieved'. But the Toomelah Local Aboriginal Land Council and the Toomelah Aboriginal Cooperative begged to differ, coming to the Ombudsman with their grievances around the rates and the practicalities of services and rating. The subsequent investigation by the Ombudsman found 'The Office of Aboriginal Affairs failed in its mission to assist Aboriginal communities, and failed to coordinate the management of Aboriginal programs to achieve attainable practical results.' Landa asked the question: 'Does the Office of Aboriginal Affairs administer Aboriginal affairs?' He called for rates exemptions to be clarified, a statewide review to identify and prioritise basic government services for Aboriginal communities, along with a review of relations between Aboriginal land councils and the police.²⁷⁶

Landa's report, tabled on 9 November 1992, was greeted stonily by the government. But it forced the government's hand. The Ombudsman noted in his annual report the following year, 'Although this report was received with hostility and denial, its major recommendations were nevertheless subsequently implemented.'²⁷⁷

The Ombudsman kept scrutinising the government's response to Aboriginal relations and government agencies. The federal Royal Commission into Aboriginal Deaths in Custody's final report (April 1991) had a swathe of national recommendations, 2 of which particularly touched upon the NSW Ombudsman's responsibilities for prisons and police. The Ombudsman was fully aware of the limitations of his power, but the NSW government deemed the recommendations 'implemented'. Landa opined, 'The obvious question is whether the Royal Commission's recommendations are being implemented in reality or merely in the pages of government reports.'²⁷⁸ The United Nations proclaimed 1993 as International Year of the World's Indigenous People. Landa pointedly called on all Government agencies to 'look at whether or not their approach and the type of service delivery is appropriate and practical for Aboriginal people.'²⁷⁹

A specialist Aboriginal unit was established within the police division in 1996, in response to recommendations made by the Wood Royal Commission into police corruption. The primary focus of the unit was on resolving complaints

from Aboriginal people about police. In 2009 the Aboriginal unit was shifted to the strategic projects division to focus on reviewing whole-of-government service delivery.²⁸⁰

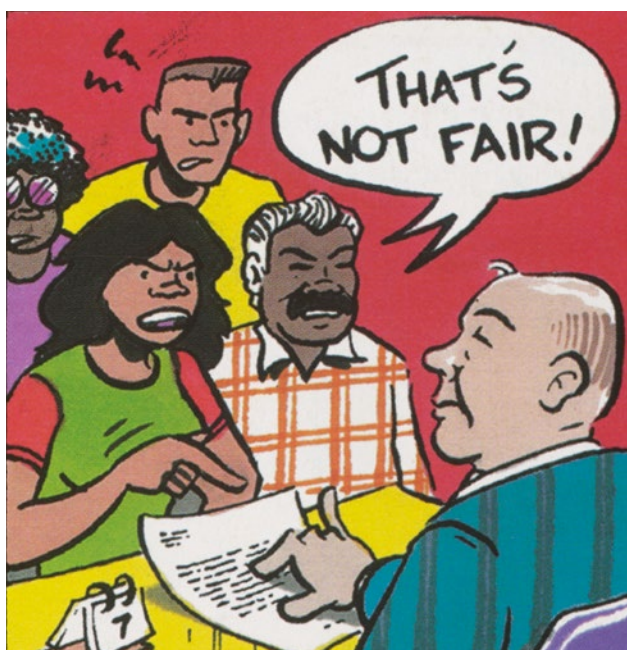


Laurel Russ and Kym Clifford, Aboriginal Complaints Unit 1998.
(photographer: Genevieve Broomham, *Annual Report 1997–98* p 45)

Child protection issues in Aboriginal communities drew increasing attention in the 2000s from the Ombudsman and others. Complaints highlighted the need for effective inter-agency responses. A taskforce report *Breaking the Silence* (2006) resulted in the government's *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* (2007–2011). The taskforce recommended independent oversight of the plan's implementation by the Ombudsman, but this was not initially executed by the government. Following criticism by Justice Wood, the government finally tasked this responsibility to the Ombudsman as part of their *Keeping Them Safe* (2009) strategy. The Ombudsman was required to work across government and non-government agencies and to analyse the delivery of services to Aboriginal communities across all 3 levels of government. This audit work led to other complementary projects, including a review of children at risk in 2 towns, Bourke and Brewarrina in western NSW.²⁸¹ The audit of the interagency plan led to a series of reports to Parliament, each highlighting the need to significantly improve the quality and efficiency of services delivered to Aboriginal communities.²⁸²

The multi-year audit was one of the largest single pieces of work the Ombudsman's Office had taken on up until that time.

The NSW Auditor-General conducted a performance review of *Two Ways Together – Partnerships: A new way of doing business with Aboriginal people*, the government's NSW Aboriginal Affairs Plan (2003–12). The damning report, released in May 2011, stated categorically that the plan had 'not delivered the improvement in overall outcomes for Aboriginal people that was intended. ... The disadvantage still experienced by some of the established 160,000 Aboriginal people in NSW is substantial.'²⁸³ Victor Dominello, the new Minister for Aboriginal Affairs in the recently



'That's not fair!' Brochure promoting the Ombudsman's services to Aboriginal people, 1999. (courtesy: National Library of Australia, ephemera collection)

elected O'Farrell Liberal government, jumped into gear. He appointed in August 2011 a Ministerial Taskforce on Aboriginal Affairs. The Minister wanted a reset. He directed the taskforce to recommend concrete reforms to improve service delivery in partnership with Aboriginal peoples, communities and entities. He wanted accountability and he wanted employment and educational outcomes for Aboriginal people in NSW.²⁸⁴

To assist the taskforce, the Ombudsman prepared a special report, *Addressing Aboriginal disadvantage – the need to do things differently* (October 2011). The Office summarised their multi-year auditing work. The Ombudsman Bruce Barbour called for major structural changes to shake up the siloed, 'agency-centric' approach to service delivery. Local communities needed a 'real say' in the delivery of local services, and a system of local accountability established. Courage was needed and 'bold approaches to the priority areas of education, building economic capacity, and protecting vulnerable children in Aboriginal communities.'²⁸⁵

The outcome of the Ministerial Taskforce was a new strategy for NSW: the OCHRE Plan. The acronym, specifically chosen for its culturally significant meaning for Aboriginal people in NSW, summarised the desired values and outcomes for Aboriginal communities: Opportunity, Choice, Healing, Responsibility, Empowerment. The government released the plan on 5 April 2013, which targeted 6 initiatives to be led by different agencies: local decision making; connected communities; Aboriginal language and culture nests; opportunity hubs; Aboriginal economic prosperity framework; and solution brokerage. It was all about strengthening the relationships and the partnerships between government and community. The Minister called it 'a new beginning'.²⁸⁶

The NSW Ombudsman was tasked with monitoring and assessing Aboriginal programs under the OCHRE Plan. This important new role, which recognised the Ombudsman's strong track record handling complaints from Aboriginal people and helping to identify and resolve both local and systemic issues, was formalised by the *Ombudsman Amendment (Aboriginal Programs) Act 2014*. The Act established a new statutory officer, the Deputy Ombudsman (Aboriginal Programs); the first position of its kind in Australia. Danny Lester, a proud Wonnarua man, was appointed as the inaugural Aboriginal Deputy Ombudsman on 7 October 2014. This was a significant moment, placing an Aboriginal leader in a statutory role to oversee prescribed programs. He could listen

to mob, have a seat at the table at relevant government meetings, and send a strong message – to both the Aboriginal community and the public sector – about values and accountability.²⁸⁷



Danny Lester was the inaugural Deputy Ombudsman (Aboriginal Programs), appointed in 2014. Shown here out on country meeting community in 2018, with Lulu Jarrett, Deputy Chair, Jaanyimili Bawrunga Bowraville Community Reference Group at Bowraville. (Annual Report 2017–18, p 58)

Lester prioritised respectfully and authentically engaging with communities out on country. He spruiked the Ombudsman's Office, but most importantly he listened, he had a yarn, he built relationships. All the time Lester was gathering data on the cultural impact of OCHRE, as well as responding to complaints on the ground, nipping problems in the bud, and providing feedback to government.²⁸⁸ Four successive annual reports highlighted progressive observations on the implementation of the OCHRE Plan.

The Ombudsman's 2016 special report to Parliament, *Fostering Economic Development for Aboriginal People in NSW*, was well received. A key takeaway from the report, which represented the views of Aboriginal stakeholders, was that 'increasing the economic prosperity of Aboriginal people is crucial to improving social outcomes, and sustaining and renewing Indigenous culture and languages.'²⁸⁹ Most of the report's recommendations were reflected in the NSW Government's Aboriginal Economic Prosperity Framework released in 2016–17.

The first 5-year assessment of the OCHRE Plan was presented to Parliament in October 2019. NSW Ombudsman Michael Barnes recognised the work of Deputy Ombudsman Danny Lester and his team in gathering the first-hand, lived experience of community, demonstrating how OCHRE programs are impacting the lives of Aboriginal people. The report amplified Aboriginal voices, and the 69 recommendations made were aimed at strengthening the delivery and impact of each initiative. The Local Decision Making initiative was described as 'a ground-breaking practice'. When the model took effect in November 2013, NSW became the first state in Australia to start a process of devolving decision-making powers to Aboriginal communities. This was 'a significant move towards supporting Aboriginal self-determination in NSW.' The promise of power-sharing was yet to be achieved, but the report encouraged government to redouble its efforts.²⁹⁰

Case study

Supporting Bourke's Aboriginal employment efforts

Year: 2017

After visiting Bourke in April 2017 to attend a meeting about Bourke's draft Aboriginal employment prosperity strategy, we arranged a roundtable in June 2017 between Aboriginal, Shire Council and business leaders from the community and the Deputy Premier, the Minister for Financial Services and Innovation, and the Minister for Aboriginal Affairs.

At this meeting, the Deputy Premier and Ministers agreed on the need to consider opportunities to support regional and remote communities to develop flourishing local economies and deliver tangible results. They also acknowledged the importance of community-led decision-making and collaborative action, as well as robust data collection to support evidence-based decisions.

Following the meeting, the Deputy Premier announced \$320,000 in government funding for the Bourke Shire Council to hire an employment strategy officer to work in partnership with the Aboriginal community, including the Maranguka Community Hub. Key areas of focus for the role will be promoting vocational education, training and jobs, and exploring opportunities arising from the anticipated opening of a new small livestock abattoir in 2018, which is expected to create up to 200 local jobs.²⁹¹

‘OCHRE has put a spotlight on the many strengths of Aboriginal people and communities, and what can be achieved when government and community work hand-in-glove with each other.’

Michael Barnes, seventh NSW Ombudsman, 2019 ²⁹²

Progress was demonstrated in all initiatives, but sometimes this was due to the drive, creativity and ‘sheer force of will’ of individual bureaucrats or leaders. The report highlighted the need for all public servants to move away from the ‘business as usual’ approach, and for a clear and strong commitment from government and the public service executive to continue implementing the plan. The repositioning of Aboriginal Affairs to sit within the Department of Premier and Cabinet, at the centre of government, since 1 July 2019 was identified as a positive step.

The NSW Ombudsman suggested the next iteration of OCHRE needed to expand the initiatives across the state and be ‘driven by strategic governance arrangements which given Aboriginal leaders a seat at the table with their government counterparts’.²⁹³ The Government announced it would review the OCHRE Plan in 2020, but this has not occurred, with policy discussions being overshadowed by the National Agreement on Closing the Gap. Nevertheless, there have been some significant reforms achieved from the Ombudsman’s report.

One recommendation was that NSW Treasury develop and publish an annual State of the NSW Aboriginal business sector profile based on relevant data and advice from the NSW Indigenous Chamber of Commerce and other sector representatives. The first *NSW First Nations Business Sector Report* was published by Treasury in October 2022.²⁹⁴

In 2024 the Ombudsman Act was amended to broaden the Ombudsman’s remit monitoring Aboriginal programs.²⁹⁵ Today the Ombudsman is required to monitor OCHRE, but also has the power to monitor other Aboriginal programs, ensuring ongoing independent oversight.

The second review of OCHRE was tabled in January 2025. The objectives of the government’s OCHRE plan had become overshadowed by the national ‘Closing the Gap’ program, and there was uncertainty over the status and priorities

of projects. The 10-year review demonstrated there was still a long way to go. The core recommendation of the Ombudsman Paul Miller and the Office’s second Aboriginal Deputy Ombudsman Leanne Townsend was that ‘the NSW Government unequivocally recommit to OCHRE as the state’s overarching plan for Aboriginal affairs’.²⁹⁶

Covert operations

The NSW Ombudsman has been tasked over the years with some important audit and monitoring functions in relation to covert operations by law enforcement agencies. These functions are not widely recognised, due to necessary limitations on reporting.

The *Telecommunications (Interception) (NSW) Act 1987* gave the NSW Ombudsman the power to inspect the records of authorities who intercept telephone calls within NSW. This responsibility commenced in 1988. The story Ombudsman George Masterman tells of how these powers were conferred on the Office is indicative of the lack of consultation between the government and the Ombudsman at that time.

‘At about 2pm on 19 November 1987 the Ombudsman’s Principal Investigation Officer was contacted by an officer of the Public Service Board. The Board’s officer asked whether there would be any staffing implications for the Office of the Ombudsman as a result of the Ombudsman’s new functions under the Telecommunications (Interception) (New South Wales) Bill. In this way, the Ombudsman was made aware that a wholly new function had been imposed on him; a function imposed without either consultation or advice by the government, and one which might be described as not related to the traditional work of an Ombudsman.’

George Masterman,
second NSW Ombudsman, 1988 ²⁹⁷

The origin for these powers lay in the recommendations of the 1986 Stewart Royal Commission into Alleged Telephone Interceptions. In 1987 the Commonwealth government introduced the *Telecommunications (Interception) Amendment Act* and required each State jurisdiction to pass complementary legislation. The combined effect of this legislation was to qualify the NSW Police Force and the NSW State Drug Crime Commission as eligible authorities to apply for a warrant to intercept telephone calls. The NSW Act had strict requirements for the authorities to keep detailed records relating to the exercise of their powers, report regularly to the NSW Attorney General and to destroy certain records when no longer required. The Ombudsman had an audit function to inspect records at least twice a year to ensure compliance and report annually to the NSW Attorney General. The focus was not on compliance with the approval procedures, but rather auditing the records associated with the warrants and how the information gathered was used. The Ombudsman was also given extensive powers to enter premises of the authorities, obtain access to records, and compel officers to disclose information. Masterman established a Telecommunications Interception Inspection Unit located in a separate secure area.²⁹⁸ Since that time, the range and form of communications covered under the Act grew substantially, along with the developing technology.²⁹⁹

Ten years later, the *Law Enforcement (Controlled Operations) Act 1997* expanded the Ombudsman's monitoring and audit function. It came into operation on 1 March 1998 and was one of the recommendations of the Wood Royal Commission. The Act allowed for controlled or 'undercover' operations to be authorised and conducted by 4 law enforcement agencies: the NSW Police Service, the NSW Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission. Controlled operations were used by these law enforcement agencies to expose criminal and corrupt behaviours. A common application of this Act was to authorise operatives to participate in the purchase and supply of drugs, for example. Authority to conduct these operations was granted from within the agencies, so the Ombudsman's monitoring was a significant and important form of civilian oversight of what was seen by some as a contentious power, open to misuse or abuse. Agencies had to notify the Ombudsman of each granting of authority and provide a report on the operation within 21 days. The Ombudsman had to present an annual report to Parliament at the end of the financial year.³⁰⁰

The *Listening Devices Act 1984* covered the use of bugs (as opposed to telephone interceptions). Originally, there was no external monitoring of compliance with the Act, not by the Ombudsman nor any other body. In 2007 the Listening Devices Act was replaced by the *Surveillance Devices Act 2007*, which introduced Ombudsman oversight into this area of covert operations. This Act allowed agencies to install or 'plant' devices for listening, optical, tracking and data surveillance. Warrants were overseen by certain judges. The Ombudsman had a role inspecting the surveillance device records to monitor compliance, by both the agency and their law enforcement officers. Annual reports had to be supplied to the NSW Attorney General and Parliament.³⁰¹

The NSW Government's desire to combat organised crime led to further covert operations legislation being passed in 2009. The Ombudsman's inspection and compliance functions were applied to 2 new areas. Covert search warrant powers came into effect on 7 April 2009. These were issued by Supreme Court judges to enable law enforcement officers to secretly enter and search premises to investigate serious criminal offences. The Ombudsman had to inspect the agencies records and report annually. The second new area of inspection was for a new form of search warrant – the criminal organisation search warrant. This was targeted at outlaw motorcycle gangs. The warrant had expanded validity (7 days rather than the 72 hours of regular warrants) and a lower evidentiary threshold. Once again the Supreme Court approved applications. The Ombudsman's role was to inspect these special warrant records every 2 years.³⁰²

In 2017 the Law Enforcement Conduct Commission assumed the Ombudsman's monitoring and audit functions under various covert powers legislation, including controlled operations, surveillance devices, and telecommunications interception and access.³⁰³

Whistleblowing

The *Protected Disclosures Act 1994* (PD Act, later renamed the *Public Interest Disclosures Act* or PID Act) provided a legislative framework to facilitate 'the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector'.³⁰⁴ It encouraged people 'on the inside' to speak out to expose wrongdoing. A public official could make a disclosure to the state's primary accountability bodies – the

NSW Ombudsman, the Auditor-General, or the Independent Commission Against Corruption (ICAC) (and later the Police Integrity Commission was added) – or to a member of Parliament, or to nominated officers within public authorities. Protected disclosures – or public interest disclosures as they are now known – are often referred to in the media as ‘whistleblowing’ and the person exposing the issue as a ‘whistleblower’. The PD Act protected people making a disclosure, granting them immunity from civil and criminal liability and protection from detrimental action. The PD Act was very technical, and its provisions only applied in certain circumstances.

The NSW Ombudsman has taken a leading role since the legislation was introduced in 1994. This area was steered for many years by Deputy Ombudsman, Chris Wheeler. The Office’s primary role was dealing with disclosures about maladministration by public authorities. The Office also had an important function dealing with allegations about reprisals against whistleblowers.³⁰⁵

‘Disclosures about serious and substantial waste, corrupt conduct and maladministration are clearly in the public interest. And so is their effective investigation and the implementation of changes which are necessary to prevent their recurrence. Many public authorities need to change their attitude to both whistleblowers and their disclosures and begin to regard them as a valuable management tool and source of information.’

Irene Moss, fourth NSW Ombudsman, 1997³⁰⁶

The NSW Ombudsman became a key source of advice on how to handle these difficult circumstances. The Office first published the *Ombudsman’s Protected Disclosures Guidelines* in 1996. They provided advice to prospective and actual whistleblowers, as well as guidance to public authorities outlining the interpretation and implementation of the Act. The guidelines were updated regularly to incorporate amendments to the legislation and to reflect the ongoing interpretation of the Act. Because all public authorities had to manage and respond to public interest disclosures, the Ombudsman has played a critical role building the capacity of organisations

through advice and training to improve their handling of disclosures. Workshops were specifically designed for protected disclosures coordinators and senior management in local councils and state agencies.³⁰⁷

‘Your letter and follow up recovery kit was greatly appreciated, you have been the only person who has explained or even tried to assist my situation. ... your letter of concern and assistance was like a breath of fresh air, and it is plain to see you take your job seriously.’

A grateful whistleblower, 1995³⁰⁸



Julie McCrossin presenting a workshop on ‘Better Management of Protected Disclosures’, 1999. (*Annual Report 1999–2000* p 122)

The NSW Ombudsman’s Office participated in a national research project ‘Whistling While They Work’. Commenced in February 2004 and led by Griffith University, the Australian Research Council funded project studied ‘current best practice’ systems for managing public interest disclosures, internal witnesses and professional reporting across the Australian public sector. Different regimes were compared and the organisational experience documented through surveys, structured workshops, interviews and questionnaires. The NSW Act was one of the regimes examined by the project, with Deputy Ombudsman Chris Wheeler contributing to the research. Wheeler co-authored 2 chapters in the project’s final report *Whistleblowing in the Australian Public Sector* (2008) and a new edition of the Office’s *Protected Disclosures Guidelines* was subsequently published in April 2009 to include insights from the ‘Whistling While They Work’ research project.³⁰⁹

The PD Act has been reviewed several times: in 1998, 2000, 2005, 2008–09. Each time the Act was reviewed the Ombudsman provided an extensive submission outlining the Office’s concerns about how the Act was working.³¹⁰ A major Issues Paper – *The Adequacy of the Protected Disclosures Act to achieve its objectives* – was released in April 2004, marking 10 years of operation of the Act. The Ombudsman stated ‘we believe it is clear that the Act in its current form fails to achieve its objectives’, and called for ‘constructive changes’ to how the scheme operated.³¹¹ A paper comparing legislation across Australia was published by the Commonwealth, NSW and Queensland Ombudsmen mid-way through the ‘Whistling While They Work’ project, a significant contribution to the public debate on legislative reform.³¹²



Chris Wheeler, Deputy Ombudsman and Fiona Manning, Special Projects Officer, discuss updates to the third edition of the Ombudsman’s *Protected Disclosures Guidelines* (1999) following amendments to the Act. (*Annual Report 1998–99* p 133)

When the Act was amended in 2011, it was renamed the *Public Interest Disclosures Act 1994* (PID Act). More importantly, the Ombudsman was given a new function to help implement the large-scale reform: they were now the central agency and owner of the public interest disclosures legislation. They were responsible for monitoring how the PID Act was implemented by public sector agencies. As part of this monitoring role, they were given a mandate to raise awareness and provide training to ensure agencies met their obligations under the Act. A dedicated PID unit was established to support this new function, developing new training, guidelines and model policies.³¹³

The Public Interest Disclosures Act was completely rewritten and modernised in 2022, following reviews by the Parliamentary Ombudsman Committee (2017), and the Parliamentary ICAC Committee (2018).³¹⁴ The NSW Ombudsman was integral to drafting the reforms and welcomed the bill’s passage, noting the Act is ‘simpler and easier to navigate and contains fewer ‘trip hazards’ for

would-be whistleblowers.’³¹⁵ A ‘speak up’ culture is being prioritised by Government as important for the state’s integrity. The NSW Ombudsman has new and improved oversight functions under the 2022 Act. It is the lead agency responsible for overseeing the operation of the PID Act.

The PID Act 2022 now requires all agencies to have policies and procedures in place to deal with public interest disclosures, and the Act imposes duties on agencies who receive a disclosure to take appropriate action. These reforms had been promoted by the Ombudsman since 2008. More public officials have also been brought under the Act.³¹⁶

Reflecting the importance of the PID Act, the Ombudsman must provide reports and recommendations to the Premier, as well as the Special Minister of State about proposals for legislative and administrative change. The Ombudsman’s Office has established a new Whistleblower Support Team to provide advice, assistance, support and resources to those contemplating or making a public interest disclosure.³¹⁷

Witness protection

Raymond Denning was admitted into the police’s witness protection program in 1991 after receiving death threats due to his decision to ‘roll’ and provide evidence in criminal matters. He was inducted into the scheme upon his release from prison in April 1993. The following month Police Commissioner Tony Lauer overruled the decisions of the Witness Security Assessment Committee and removed Denning from the program. On 10 June 1993, Denning rang the NSW Ombudsman’s Office to complain about the decision to withdraw him from witness protection. The next day Denning was dead.

Denning’s family made a formal written complaint to the Ombudsman on 7 July 1993. David Landa immediately began an investigation. Before he could finalise his report, Commissioner Lauer commenced a legal challenge in the Supreme Court in 1994, attempting to attack the Ombudsman’s procedures and findings. The Court quickly dismissed the case on 9 September 1994, paving the way for the Ombudsman to finalise his report for the Minister for Police. There was plenty of media interest in the Denning matter, and Landa used the publicity to great effect.

‘... it is in the public interest that this report be made public, given the publicity surrounding the litigation in the matter and the significance of the issues involved.’

David Landa, third NSW Ombudsman, 1995 ³¹⁸

The final report by the then former Ombudsman was made public in January 1995. Landa found that the Police Commissioner had acted ‘unreasonably’ in removing Denning from the witness protection program and that his actions were ‘oppressive’ to Denning.³¹⁹

The death of Raymond Denning ultimately led to reform and better oversight of the witness protection scheme. The passing of the *Witness Protection Act 1995* created a new responsibility for the NSW Ombudsman.³²⁰ The Office was now the appeal body for applicants and participants in the NSW Crown witness protection program against the decisions of the Commissioner of Police, whether that be inclusion in or removal from the scheme. As the Act created rights for protected witnesses, it also created a new category for complaints regarding the scheme’s operation.³²¹ This Act was significant in terms of the Ombudsman’s role. For the first time the Ombudsman was given a ‘determinative role’ rather than simply a ‘recommendatory role’ in the review of administrative action. There were also critical timeframes imposed. The Ombudsman had to determine appeals within 72 hours. The Office was provided with additional funding to support this new function.³²²

The Ombudsman’s function reviewing the witness protection scheme passed to the Law Enforcement Conduct Commission when that agency started on 1 July 2017.³²³

Legislative safeguard

From 1998, the Ombudsman’s role expanded as a legislative guardian, monitoring the impact of significant legislative changes. It all started with police powers, specifically the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*.³²⁴ Following increasing knife crime and the deaths of Constable David Carty and Constable Peter Forsyth, the Carr Labor government introduced legislation to prohibit carrying knives in a public place or school and give police wide-ranging

search and direction powers. It was a crackdown on ‘street gangs’ and ‘antisocial behaviour in public places’. The bill was controversial, with some parliamentarians accusing the government of creating a police state, and civil rights groups concerned about the targeting of youths and Aboriginal and Torres Strait Islander peoples. The inclusion of a 12-month legislative review by the Ombudsman was touted by the government as a safeguard mechanism on the exercise of expanded police powers.³²⁵ The *Policing Public Safety* report (November 1999) was the first of its kind in Australia, providing a comprehensive review of policing practices to search, give directions and require a person’s name and address. The Office’s review methodology included data analysis, observational research, stakeholder consultation and interviews. Analysis of police data clearly highlighted how targeted powers could disproportionately impact certain groups. In this instance, very high numbers of young people were searched for knives and ‘move on’ powers were directed mainly at young people and Aboriginal and Torres Strait Islander peoples. Tensions flared in the community when high profile policing was antagonistic.³²⁶

Between 1998 and 2015 the NSW Ombudsman conducted 28 reviews of legislation which granted police with new and extraordinary powers. This included the use of controversial ‘stop and search’ powers (both vehicles and people), sniffer dogs, capsicum spray, DNA sampling, on-the-spot criminal infringement notices, and consorting laws. With each review the Ombudsman scrutinised whether police had implemented the new laws ‘fairly and effectively’, and whether the laws were operating the way Parliament intended.³²⁷

Monitoring reports would highlight issues and make recommendations for improvements. Some reports, such as the use of Capsicum Spray which was introduced in 1998, demonstrated that the powers had been well managed.³²⁸ Other trials, such as drug detection dogs at road-side checkpoints, were ineffective. Heeding the Ombudsman’s recommendation, Parliament allowed the specific piece of legislation to expire.³²⁹ But police sniffer dogs were being used much more broadly under other legislation.

The *Police Powers (Drug Detection Dogs) Act 2001*, which commenced on 22 February 2002, had dramatically expanded police’s power to use sniffer dogs in a wide range of situations – including on train services, at licensed premises and in public places if a warrant is granted. The Ombudsman was tasked with a 2-year review, which attracted

unprecedented community interest given the law's impact on individual rights. The Ombudsman found during the review period that 17 drug detection dogs made 10,211 'indications' during police operations, nearly all of which resulted in the person being publicly searched. No drugs were found in almost 75% of the searches. There were serious civil liberties concerns around the recording of personal details where no offence had occurred. The successful prosecutions for drug supply (19 people) represented 0.19% of all sniffer dog indications, and many of these were young, male, first-time offenders. The Ombudsman concluded 'despite the investment of hundreds of thousands of dollars', sniffer dogs were not effective in detecting drug suppliers. The report made 55 recommendations on how the use of drug detection dogs could be made fairer, but the Ombudsman had 'significant misgivings' whether the Drug Dogs Act could ever be fair and cost effective. Consequently, the Ombudsman recommended Parliament consider whether the Act should be retained at all. Despite the findings of the Ombudsman, sniffer dogs remain part of the high profile, public policing toolkit.³³⁰

Monitoring police powers has now passed to the Law Enforcement Conduct Commission, but the Ombudsman continues to monitor the fairness and impact of other legislation. Throughout the COVID-19 pandemic, the Ombudsman kept a close watch on the rapidly changing regulatory environment, including documenting all the legislative amendments and public health orders in NSW. Hotel quarantine was a particular area that attracted a high level of complaints. The Ombudsman Paul Miller has delivered 2 reports to the NSW Parliament documenting the measures taken by the NSW Government and their impacts on individuals during the COVID-19 pandemic. The NSW Ombudsman also provided a voluntary submission to the Commonwealth Government's COVID-19 Response Inquiry. This form of monitoring and review is essential to identify lessons learned and improve government responses to future pandemics.³³¹

Case study

Sniffer dogs and personal details

Year: 2008

A man was searched by police during a drug detection dog operation at a nightclub, but no drugs were found. The man complained about police infringing his privacy by recording his personal details from his driver's licence without consent. The man was also concerned about the impact of being publicly searched by police in front of work colleagues.

As a result of a previous complaint, and the Ombudsman's review of the *Police Powers (Drug Detection Trial) Act 2003*, the NSWPF had already acknowledged that they did not have the power to obtain personal details from belongings during a search in which no offence was detected.

The Ombudsman once again reminded police of this and they apologised to the man and removed his details from the incident record in their operational database. In addition, they amended policies and procedures to ensure that officers are aware that there is no power to obtain or compel a person to provide details when no offence has been detected.³³²

With the loss of the police oversight function in 2017, Parliament had not called on the Ombudsman to undertake a formal legislative review (which had previously almost always been used in relation to laws relating to policing). However, in 2021, with the passage of the *Mandatory Disease Testing Act 2021* the Ombudsman was given a monitoring role.³³³ This Act permits the mandatory blood testing of a person who, from a deliberate action spreading their bodily fluid, puts a health, emergency or public sector worker at risk of contracting a blood-borne virus. The Ombudsman is required to report to Parliament on the operation and administration of the Act. The first review report was presented to Parliament in February 2025. The review, like some of the previous legislative reviews, showed that the legislation was flawed and largely ineffective, and was disproportionately impacting certain groups, including Aboriginal and Torres Strait Islander people. The core recommendation was that the government should consider whether the mandatory testing should be continued.³³⁴

Promoting integrity

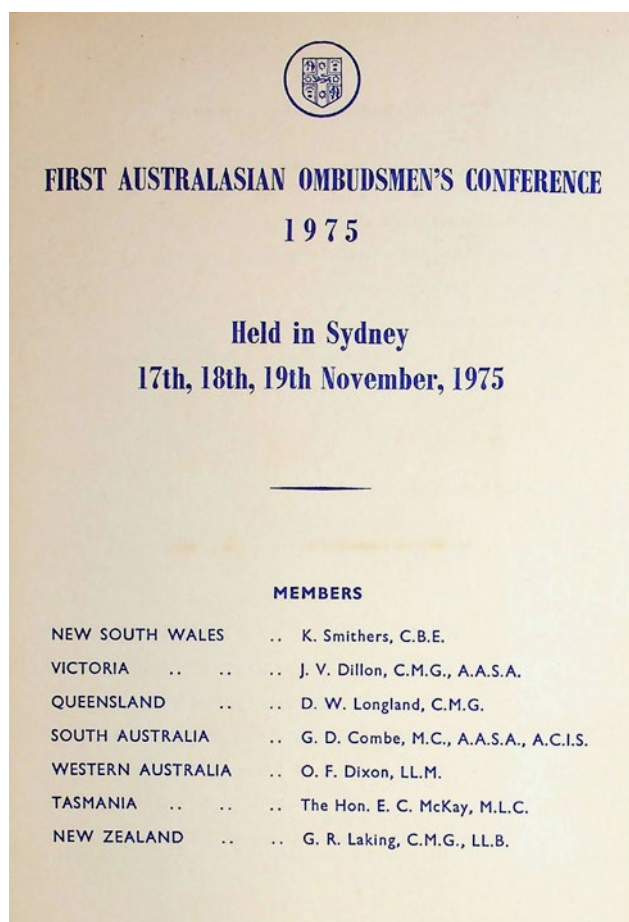
The Ombudsman's Office has always led by example, promoting integrity and encouraging public agencies to meet high standards of public administration and service. Connecting and supporting integrity bodies in NSW, around the country and across the world has been part of the NSW Ombudsman's work for 50 years.

From the outset, Kenneth Smithers took a proactive role networking with other Ombudsmen in Australia and the region. He hosted the first Australasian Ombudsman's Conference at the Office's headquarters, 17–19 November 1975. A long agenda of subject matter was prepared – from ex gratia payments to dividing fences – to discuss items of concern, approaches and procedures. The NSW Ombudsman's Office has continued to participate in the Australasian and Pacific Ombudsmen conferences over the course of its 50 years. Smithers also connected with Ombudsmen worldwide, attending the First International Conference of Ombudsmen held in Edmonton, Alberta, Canada, 6–10 September 1976.³³⁵

The annual reports have been an important mechanism for communicating to the public the principles and values of the Office, as well as highlighting, through case studies and observations, the failings and pitfalls of bureaucracies. Investigative reports – aside from public reports – were generally only made available to the relevant department and Minister. So there was plenty of practical advice that needed to be more widely disseminated.

The Office began publishing guidelines in 1992 and so began an important strand of the Office of the Ombudsman's work, which has now become a core function. The Office's early guidelines had been researched and developed by Assistant Ombudsman Greg Andrews, but with the appointment of Chris Wheeler as Deputy Ombudsman in 1994, this responsibility subsequently passed over to Wheeler. First came *Guidelines for Effective Complaint Management* to assist public agencies to set up and manage their complaint handling systems. This was well received, with agencies endorsing the guidelines or incorporating the principles into their systems. The guidelines are now in their fourth edition.³³⁶

Next came the Ombudsman's *FOI Policies and Guidelines* (1994). These guidelines were not intended to replace the Premier's Department's *FOI Procedure Manual* but rather focussed on the provisions of the FOI Act that related to the most common complaints considered by the Ombudsman.³³⁷ A combined policy and guideline document was eventually issued by the NSW Ombudsman and the Premier's Department in 2007.



Program for the First Australasian Ombudsmen's Conference, 17–19 November 1975. (Kenneth Smithers' scrapbook no 2, NSW Ombudsman's Office, courtesy: Liz Milverton and Jenny Harper)



Delegates of the First Australasian Ombudsmen's Conference, 17–19 November 1975, hosted by NSW Ombudsman Kenneth Smithers (centre). (Museums of History NSW – State Archives Collection: NRS-21689-1-25-GPO3_32438)



Ninth Conference of Australasian – Pacific Ombudsmen, Tasmania, 1986. NSW Ombudsman George Masterman is back row far right.

The *Good Conduct and Administrative Practice Guidelines* was published in 1995. One set of guidelines were aimed at public authorities and officials; another provided targeted advice for local councils. Based on 20 years of complaint investigations and reports, these comprehensive guidelines provided clear advice to the public sector of what conduct, procedures and decision-making processes were deemed as reasonable, acceptable and appropriate. This was a proactive, preventative measure, by codifying good administrative practice and encouraging sector learning from the mistakes of others. At the launch on 11 May 1995, the newly elected Premier, Bob Carr, applauded the initiative. He described the publication as 'a "One-Stop-Shop", helping to consolidate the plethora of reports and guidelines which outline administrative practice and good conduct in the NSW public sector.' The Premier strongly urged public authorities and officials to embrace the guidelines, declaring 'It will form the yardstick for a professional, quality public administration.'³³⁸



Geoff Schuberg, Assistant Commissioner of Police, Irene Moss, NSW Ombudsman, and Clover Moore, MP at the launch of the Ombudsman's *Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials*, 1995. (Annual Report 1994–95 p 10)

Building on the practice of informal dispute resolution and mediation, which Ombudsman David Landa first introduced in 1994, the Office published *Public Sector Mediation Guidelines* in 1997. These were prepared in conjunction with the Attorney General's Department and the Office of the Auditor General. The guidelines were specifically written for public sector managers considering mediation as an alternative dispute resolution process and were championed by the Premier.³³⁹ The Ombudsman's *Protected Disclosures Guidelines*, presenting guidelines on the interpretation and implementation of the *Protected Disclosures Act*, were into their second

edition by 1998. Another significant publication aimed at frontline staff was *Dealing with Difficult Complainants* (1998), which brought together many of the learnings from training in this area.³⁴⁰

A landmark publication acknowledged the Ombudsman's 25th anniversary. *The Complaint Handler's Tool Kit* (2000) combined several guidelines around complaint handling in the public sector into one volume. It became the definitive resource for all public officials, providing best practice guidance for complaint handling – from investigating complaints and dealing with difficult complainants to options for redress.

The NSW Ombudsman's guidelines have been widely adopted and adapted by equivalent organisations in Australia and New Zealand. Ombudsman David Landa gave consent, for example, to the Department of Local Government issuing a practice note to all councils in NSW based on the *Guidelines for Effective Complaint Management*. Similarly, Ombudsman Bruce Barbour proudly reported in 2004 that the Office's investigation guidelines informed guidelines published by the Crime and Misconduct Commission (Qld), the Corruption and Crime Commission (WA) and the WA Ombudsman. NSW's *Protected Disclosures Guidelines* had been used by the Public Sector Standards Commission (WA), the Victorian Ombudsman and the Tasmanian Ombudsman. Barbour also gave permission for the Northern Territory Ombudsman to adapt many of NSW's guidelines for their own use.³⁴¹

The leadership of the NSW Ombudsman's Office in developing guidelines has even influenced international public administration. The Office's *Complaint Handler's Tool Kit* was used in the development of the 2006 United Nations publication *Guide for Ombudsman Institutions: How to conduct investigations* produced by the Democratic Governance group at the United Nations Development Program Regional Centre for Europe and the Commonwealth of Independent States.³⁴²

The NSW Ombudsman's Office's experience improving public administration evolved into offering training opportunities. Training public sector staff is a key educational strategy for promoting fair, accountable and responsive administration. The workshops help agencies to understanding why they should take complaints about their performance seriously and how to deal with complaints properly.

The Office began offering training workshops in 1993–94 as part of the Ombudsman’s Complaint Handling in the Public Sector program.³⁴³ By the year 2001, the Office was running 4 regular training workshops on a fee-for-service basis: ‘Understanding complaint management’; ‘Complaint handling for frontline staff’; ‘Dealing with difficult complainants’; and ‘The art of negotiation’. A total of 14 workshops were presented in 2001, for 241 officers from government agencies and local councils. Most of the workshops were organised on request from individual agencies and local councils, and took place in regional areas as well as in Sydney.³⁴⁴ In 2025, the Office provides e-learning modules online, as well as face-to-face and virtual training workshops for the public and community sectors.

“**‘I write to express my appreciation for your recent presentation to school principals. Your talk was challenging and constructive. You promoted excellent values and strategies in regard to how we should respond to complainants. You achieved this in a non-threatening manner and significantly influenced many of the principals present.’**

A district superintendent, 1998 ³⁴⁵

An important initiative supporting the integrity agency sector has been the National Investigations Symposium. The idea of sharing approaches and ideas was first mooted by Assistant Ombudsman Greg Andrews in a meeting with the NSW Independent Commission Against Corruption. What started as a proposal for 2 agencies to informally share learnings quickly snowballed into a wider public sector event. The inaugural National Investigations Symposium was held 25–26 June 1996. Now in its 14th year in 2025, the 2-day symposium is the premier administrative investigations conference in Australia and is a joint initiative of the NSW Ombudsman, the NSW ICAC, and the Institute for Public Administration Australia (NSW).³⁴⁶

The professionalism and size of the NSW Ombudsman’s Office by the late 1990s meant that it was able to assist with institutional strengthening in the region. In 1996–97, for

‘You don’t make a lot of friends in this type of work. Agencies might appreciate that you contribute to reform and public administration, but they don’t like being investigated in the first place. Complainants don’t always get satisfaction. And you work under secrecy provisions. ... So, you have to get support from where you can get it and one of the few places is other Ombudsman. And for officers in smaller jurisdictions, it’s incredibly important.’

Greg Andrews, former Assistant Ombudsman 1987–2009, Deputy Ombudsman 2009–2010 ³⁴⁷

example, the Hong Kong Ombudsman sought the help of the Office to set up their own mediation unit. The Hong Kong Ombudsman paid for the Assistant Ombudsman, Greg Andrews, and the Alternative Dispute Resolution Coordinator, Natasha Serventy, to visit Hong Kong to provide advice and training for their ombudsman staff and public sector chief executives.³⁴⁸ Greg Andrews was also part of a Technical Monitoring and Review Group for the AusAid Papua New Guinea Ombudsman Commission Institutional Strengthening Project. This project aimed to improve the professional skills and management capabilities of PNG Ombudsman Commission staff, to strengthen capability and effectiveness. This project went for over 3 years.³⁴⁹

Regional leadership continued into the 2000s. The Commonwealth Ombudsman and the NSW Ombudsman together supported a linkage and strengthening program with the Indonesian Ombudsman Office.³⁵⁰ The foundation meeting of the Pacific Ombudsman Alliance held on 28–29 October 2008. For smaller Pacific nations, whose integrity agencies were small, sometimes only 2 or 3 people, with tiny budgets, having the guidance and support of the NSW Ombudsman was of enormous value. Several staff were seconded to assist with training and office procedures.³⁵¹



Helen Ford was seconded for one month to the Kiribati Public Service Office in 2012 to deliver training and develop tailored customer service and complaint-handling toolkits. This position was funded by the Pacific Ombudsman Alliance. (*Annual Report 2012–13* p 76)

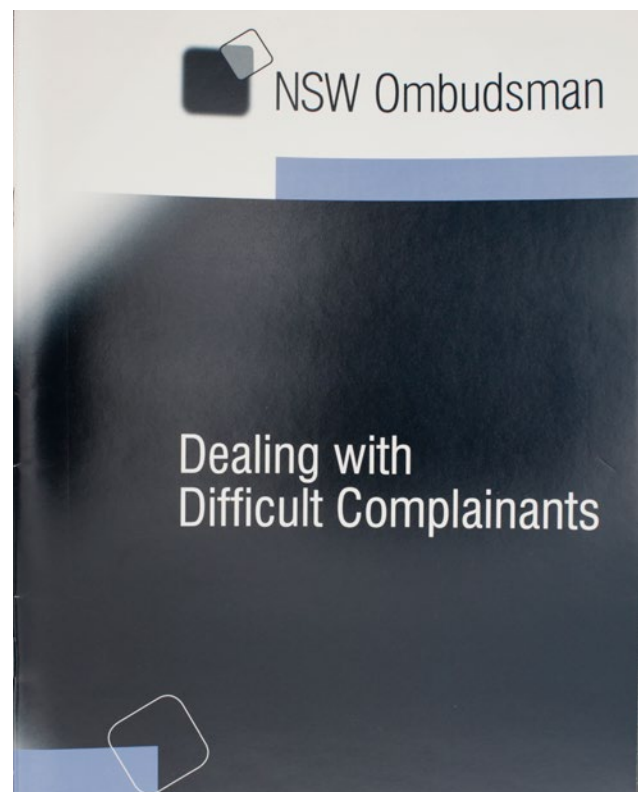
‘I was very pleased to have the opportunity to work in Kiribati and share my and the NSW Ombudsman’s experience. I believe contact like this is the starting point in building strong, long lasting complaint-handling systems, which will benefit the people of Kiribati.’

Helen Ford, Manager Projects and Major Investigations, 2012 ³⁵²

The NSW Ombudsman Office’s cost-effective training continues to be sought after by other Ombudsman offices in our local region and across the world. Managing unreasonable conduct workshops were presented in the United States and Canada in 2017 and 2018, for example, facilitated through the United States Ombudsman Association.³⁵³ The centrality of training for the continual improvement of public administration was recognised in 2024 when the Ombudsman Act was amended to include training as a core function.³⁵⁴



The *Protected Disclosures Guidelines* and associated fact sheets became a benchmark for other states. (2007)



The NSW Ombudsman’s *Dealing with Difficult Complainants* was first published in 1998. This edition dates from June 2004 and was included in *The Complaint Handler’s Tool Kit* (2nd edition).

Officework

‘The Ombudsman’s Office relies on the collective efforts of its staff, not just the individual Ombudsman. While the role began with one person, today it involves hundreds, whose contributions shape the Office’s success and future.’

Paul Miller, eighth NSW Ombudsman, 2025

Office locations

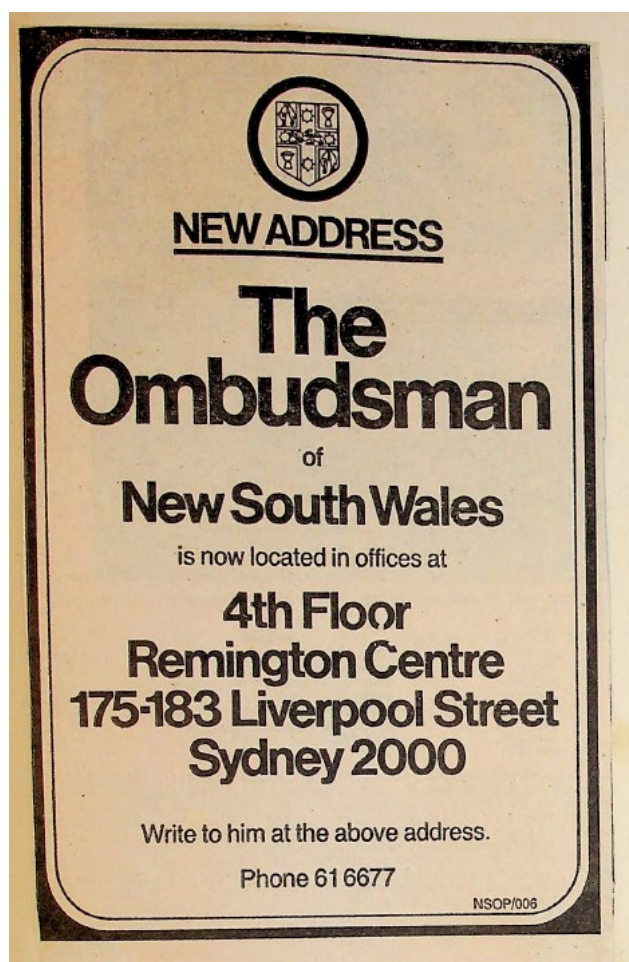
When Ken Smithers was appointed as the inaugural Ombudsman in April 1975, temporary offices were set up on level 16 of the Goodsell Building, in Chifley Square. When establishing the Office, the government committed to keeping the Office independent. Part of that was providing accommodation 'separate and distinct from that occupied by any section of the administration'. A lease was secured on the 4th Floor of the Remington Centre, 175–183 Liverpool Street, Sydney and the Office moved into its first permanent premises on 30 June 1975. Smithers was satisfied with the accommodation, noting in his first annual report, the furniture and fittings were 'modern and provide pleasant and congenial surroundings both for the staff and visitors.'³⁵⁵

The additional jurisdiction of local government demanded an expansion of staff and with it the need for further accommodation. While Smithers had hoped to secure offices adjoining the Remington Centre, the leasing of a substantial portion to the Police Department rendered that

plan 'inadvisable' in Smithers' eyes. Instead, the Ombudsman's Office moved to the 14th floor of Hooker House, 175 Pitt Street, Sydney in April 1978.

A branch office at Westmead Shopping Plaza opened 6 July 1987 for a trial period. Staffed by a receptionist and 2 investigation officers, Ombudsman George Masterman hoped it would make the agency much more accessible for people living in western Sydney. Its impact, however, was disappointing and the branch office was closed 6 months later.³⁵⁶

Staff numbers continued to grow in the late 1980s, and some additional office space was secured in George Street on a short-term basis to deal with the staff overflow. The entire Office eventually moved to Level 3 and part of Level 5 in the Coopers and Lybrand Building, 580 George Street, Sydney, commencing operations in the new premises on 9 October 1989. This relocation occurred after protracted planning and negotiation by the Office Accommodation Bureau of the Department of Administrative Services. The saga was critiqued by a frustrated David Landa as inefficient and costly.



Advertisement promoting the Ombudsman's new address, 1975. (Kenneth Smithers' scrapbook no 1, NSW Ombudsman's Office, courtesy: Liz Milverton and Jenny Harper)



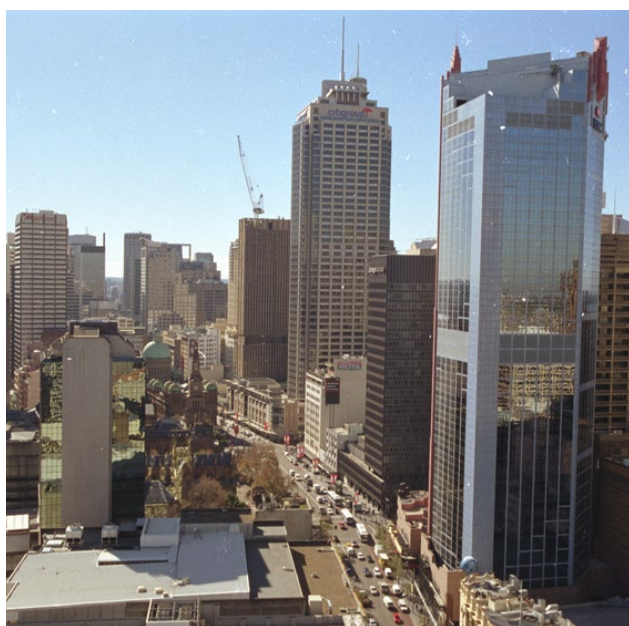
The Remington Centre, 175–183 Liverpool Street, Sydney, the Office's first permanent location. (Museums of History NSW – State Archives Collection, NRS-15721-1-4-190[1])



A short-lived branch office was established in Westmead in 1987. (*The Investigator*, newsletter, July 1987, courtesy: State Library of NSW)

The new office was officially opened by the Chief Justice of New South Wales, The Hon Mr Justice A M Gleeson on 31 October 1989.³⁵⁷

580 George Street, Sydney has remained the headquarters of the NSW Ombudsman's Office since 1989. The Office moved to Level 24 in the year 2000, gradually expanding over several non-contiguous floors. In 2025 the Office will consolidate its floorspace, reconnecting staff across levels 24 and 25.



Looking north along George Street, Sydney in 2002 with the NSW Ombudsman's offices located at 580 George Street on the right. (photographer: Brian McInerney, courtesy: City of Sydney Archives, A-00031573)

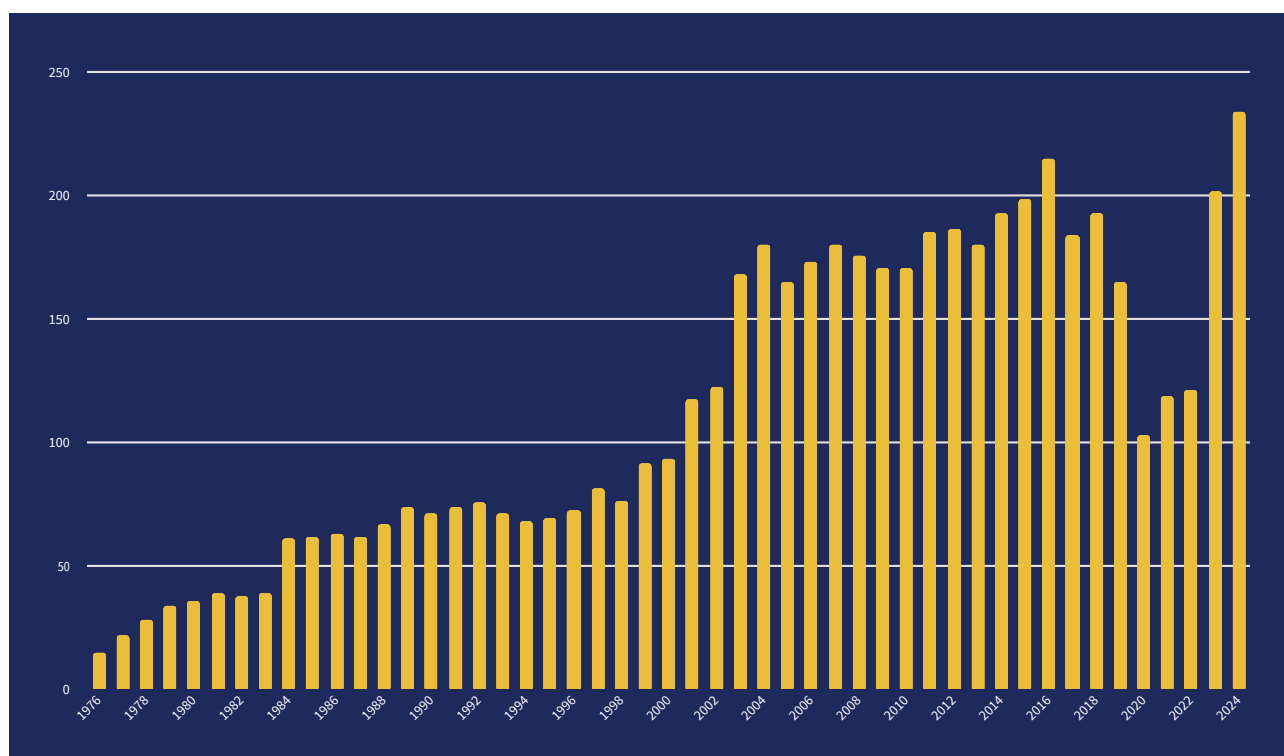
Staffing

The first Ombudsman was appointed on 2 April 1975. There was a delay in appointing staff, so when the Office commenced accepting complaints on 12 May 1975 Ken Smithers was supported by just 2 administrative staff and his personal secretary. By the end of the first year (June 1976), Smithers had recruited an investigations team: a Senior Investigation Officer, 5 Investigation Officers, and an Interviewing Officer. The Office of the Ombudsman was supported by a total of 14 staff in 1976, not including the Ombudsman himself.

In 2024 there are the 233.6 full-time equivalent staff in the Ombudsman's Office, reflecting the expansion of the Office and new responsibilities.

'It is testimony to the public service provided by the Ombudsman's office and the fulfilling nature of the work it performs that the office is able to consistently attract staff of high calibre. The vitality, talent and dedication of staff contribute significantly to the continuing success of the organisation.'

Bruce Barbour, fifth NSW Ombudsman, 2000³⁵⁸

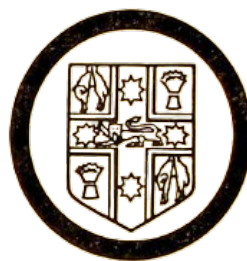


Staff numbers by financial year 1975-76 to 2023-24 (Annual Reports 1975-76 to 2023-24)

Logos

The logos of the Office of the Ombudsman have always invoked its focus as an independent integrity agency.

1975



The original logo, adopted soon after the Office was established in 1975, was a circle enclosing the shield of the NSW Coat of Arms. The subtle meaning of this logo was explained in an early office manual. The circle represented the earth – the universal nature of the parliamentary ombudsman – and ‘O’ for Ombudsman. The shield not only denoted the state jurisdiction but also affirmed the independent nature of the Office. The absence of the full coat of arms or badge of NSW alluded to the fact that the Office was not directly controlled by the state government.³⁵⁹

2000



The original logo had been retired by the late 1990s. Bruce Barbour refreshed the Office’s branding in the year 2000. The new logo was a simple graphic which symbolised ‘the tools that we use to accomplish our vision – clarity, focus, scrutiny and magnification’.³⁶⁰

2011



The logo was updated in 2011 for a contemporary interpretation, continuing to represent the Office’s ‘core objectives of providing focus and clarity.’³⁶¹

Thanks to the Ombudsman

The NSW Ombudsman commenced as a reactionary body responding to individual complaints. However, through its report recommendations, submissions to inquiries and participation in inter-agency forums, the NSW Ombudsman's Office has contributed to legislative reform and policy refinements. The Office's impact is incremental: pointing out deficiencies, recommending changes, suggesting alternative approaches. If there was an award for patience and persistence in government service, the Office of the Ombudsman would win hands down.

Fifty years of the NSW Ombudsman has led to transformational changes in public administration. The Ombudsman's Office does not achieve this on their own. Change is ultimately driven by responsible Ministers and the government departments themselves. But the Ombudsman is often the 'first responder', being the first to identify flaws, recommend improvements, and monitor new legislation.

The state's citizens have benefited from the Ombudsman's impartial scrutiny, with many standards and rights recommended by the Office now an accepted part of everyday life. Here are just a few examples which demonstrate the Ombudsman's ongoing impact.

Thanks to the Ombudsman...

1980

Public sector agencies accept the general principle that reasons should be given when they deny liability



1984

The Hermitage Foreshore walk was incorporated into Sydney Harbour National Park



1984/5

Sydney's Hyde Park was protected from overshadowing



1985

Government regulators are able to prosecute other government agencies for breaches of the law



1987

Public authorities are now regulated in the same way as private corporations in terms of the supply and advertising of goods and services



1988

Local councils now notify neighbours of proposed developments and take into account their views



c. 1988

The Proof of Identity Scheme was introduced by the Department of Motor Transport



1989

Ministers are empowered to make ex gratia compensation payments where recommended by the Ombudsman



1989

Access to government information is protected as a right



1990

There is greater coordinated control over development on the foreshores of Sydney Harbour (Regional Environment Plan for Sydney Harbour and the Parramatta River)



1990-91

Systematic bashing of prisoners in various gaols has been exposed



1991

Public authorities are implementing better internal complaint handling procedures to deal with citizen grievances (an issue championed by the Ombudsman since 1991)



1992

Amendments to the Stamp Duties Act make provision for refunds for duty paid on transfer of vehicles that are later seized by police as stolen



1993

Local 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*)



1993

Local councils have a statewide code of conduct addressing issues like conflicts of interest



1994

Parents are notified if their child attends a police station



1995

First comprehensive guidelines on good conduct and administration in the public sector published



1997

Police were required by law to tell anyone who was arrested that they can call a friend and lawyer, and let them do so



1999

The child protection reportable conduct scheme was rolled out across the state and training provided to agencies, schools and centres – the first in Australia.



2002

Government agencies can provide apologies to consumers without constituting an admission of legal liability – every state and territory has since followed suit



2005

The quality of land valuation issued by the Valuer General has improved



2007

The Office of State Revenue now publishes information on their website about the factors they consider when people apply for their fine to be waived



2007

A family and domestic violence unit has been established within NSW Police Force



2009

The *Government Information (Public Access) Act* was introduced, ushering in a new era of open government, with mandatory and proactive release of government information, overseen by a new independent Information Commissioner



2012

Mandatory registration of disability boarding houses and 24-hour staffing was introduced



2014

Aboriginal programs across NSW government are oversighted



2019

The Ageing and Disability Commissioner was established



2021

A statewide program fitting child vehicle restraints for vulnerable families is rolled out



2021

A statutory advisory committee on asbestos was established



2022

The *Public Interest Disclosures Act* was completely rewritten and modernised



Appendix 1

List of statutory roles

NSW Ombudsman

| | |
|--------------|---------------------------|
| 1975–1981 | Kenneth Smithers CBE |
| 1981–1987 | George Masterman QC |
| 1987–1988 | Brian Jinks (Acting) |
| 1988–1995 | David Landa OAM |
| 1995–1999 | Irene Moss AO |
| 1999–2000 | Chris Wheeler (Acting) |
| 2000–2015 | Bruce Barbour |
| 2015–2017 | John McMillan AO (Acting) |
| 2017–2020 | Michael Barnes |
| 2020–2021 | Paul Miller PSM (Acting) |
| 2021–present | Paul Miller PSM |

NSW Deputy Ombudsman

| | |
|--------------|---|
| 1977–1979 | Paul Stein |
| 1979–1982 | Daryl Gunter |
| 1983–1988 | Brian Jinks |
| 1988–1994 | John Pinnock |
| 1994–2019 | Chris Wheeler PSM |
| 2003–2004 | Robert Fitzgerald (Community Services and Community and Disability Services Commissioner) |
| 2004–2018 | Steve Kinmond (Community Services and Community and Disability Services Commissioner) |
| 2009–2010 | Greg Andrews (Police and Compliance Branch) |
| 2011–2017 | Linda Waugh (Police and Compliance Branch) |
| 2014–2017 | Michael Gleeson (Acting, Police and Compliance Branch) |
| 2014–2022 | Danny Lester (Aboriginal Programs) |
| 2019–2020 | Paul Miller (Review, Investigation and Community Services) |
| 2021–2022 | Helen Wodak (Acting, Projects and Systemic Reviews) |
| 2021–2023 | Sanya Silver (Acting, Investigations and Major Projects) |
| 2021–present | Monica Wolf (Chief Deputy Ombudsman) |
| 2022–2025 | Jacqueline Fredman (from April 2022 Complaints and Resolution; from October 2024 Health Administration) |
| 2022–present | Leanne Townsend (Aboriginal Programs) |
| 2022–present | Helen Wodak (Monitoring and Review) |
| 2023–2025 | Louise Lazzarino (Systems Oversight) |
| 2023–present | Sanya Silver (Investigations and Major Projects) |
| 2024–2024 | Megan Taylor (Health Administration) |
| 2025–present | Christopher Clayton (Senior Deputy Ombudsman, Systems Oversight and Reviews) |

NSW Assistant Ombudsman

| | |
|-----------|--|
| 1979–1981 | Roger Vincent |
| 1981–1984 | Susan Armstrong (Police and Prisons) |
| 1984–1988 | John Pinnock (Police) |
| 1986–1988 | Priscilla Adey (Police and Prisons) |
| 1988–2007 | Greg Andrews (General Division) |
| 1989–1990 | Graham Chegwiddden |
| 1991–1994 | Kieran Pehm (Police) |
| 1994–1995 | Sean Crumlin (Police) |
| 1995–2004 | Steve Kinmond (Police) |
| 1999–2009 | Anne Barwick (Children and Young People) |
| 2004–2008 | Simon Cohen (Police) |
| 2008–2009 | Greg Andrews (Police) |
| 2008–2009 | Monique Adofaci (General) |
| 2015–2019 | Julianna Demetrius (Strategic Projects) |
| 2015–2019 | Anita Whittaker PSM (Corporate) |
| 2019–2021 | Nicole Lawless (Complaints and Investigations) |
| 2019–2021 | Monica Wolf (Projects and Systemic Reviews) |
| 2021–2025 | Christopher Clayton (Chief Operating Officer) |
| 2022–2022 | George Blacklaws (Complaint Systems Review) |
| 2022–2023 | Louise Lazzarino (Systems Oversight) |

Appendix 2

Chronology of significant jurisdictional changes

| | |
|------|---|
| 1974 | Ombudsman Act 1974 passed. |
| 1975 | Office established. For the first time NSW citizens had a single independent body to make complaints to about government services. |
| 1976 | Local councils come within jurisdiction. |
| 1978 | Limited oversight role for police complaints (internal police investigations). |
| 1984 | Office given statutory independence when declared to be an 'administrative office' rather than part of the Premier's Department. |
| 1985 | Given power to conduct direct investigations of complaints against police officers using seconded police officers. |
| 1989 | Functions under Freedom of Information Act 1989 began. |
| 1990 | A parliamentary joint committee was established to oversee the NSW Ombudsman's operations. |
| 1993 | Ombudsman can directly investigate police complaints and also monitor police investigations. |
| 1994 | First whistleblowers legislation passed – Protected Disclosures Act 1994. Ombudsman given function of overseeing administration of the Act. |
| 1995 | Functions under the Witness Protection Act 1995 began. |
| 1997 | Given function of monitoring compliance of law enforcement agencies with accountability mechanisms for covert operations. |
| 1998 | First time Office given the function of reviewing the implementation of legislative changes to police powers. |
| 1999 | New child protection jurisdiction (reportable conduct scheme). |
| 2002 | Community Services Commission merged into Ombudsman Office. |
| 2009 | Government Information (Public Access) Act passed. Information Commissioner established – FOI functions transferred. |
| 2014 | Monitoring of government's plan for Aboriginal Affairs, OCHRE (Opportunity, Choice, Healing Responsibility, Empowerment) commenced. |
| 2017 | Law Enforcement Conduct Commission established – police complaint jurisdiction transferred. |
| 2018 | Disability Reportable Incidents Scheme moves with NDIS (excluding incidents involving supported group accommodation still operated by the Department of Communities and Justice). |
| 2019 | Ageing and Disability Commissioner established – coordination of Official Community Visitor (OCV) scheme transferred. |
| 2020 | Reportable conduct scheme for child protection transferred to the Children's Guardian. |
| 2022 | Review of deaths of adults with disability living in supported group accommodation or assisted boarding houses transferred to NDIS Quality and Safeguards Commission. |
| 2022 | Public Interest Disclosures Act 2022 passed – Ombudsman is lead agency responsible for overseeing the operation of the PID Act. |
| 2024 | Monitoring of Aboriginal programs expanded beyond OCHRE to other Government programs primarily directed to the health, or cultural, economic, education or other wellbeing, of Aboriginal persons or communities. |
| 2024 | Charter of Independence for NSW Integrity Agencies. |

Appendix 3

List of special reports to Parliament

The *Ombudsman Act* prevents the Office from releasing detailed information relating to an investigation unless it has been tabled in Parliament. The list below presents the special reports tabled in Parliament under the *Ombudsman Act*, major reports under the *Community Services (Complaints, Review and Monitoring) Act* and other major non-mandatory reports issued by the NSW Ombudsman.

The current practice in 2025 is that any report to a Minister is also reported publicly, at least in summary form in a casebook report published every 6 months. In this way, other administrators can learn lessons and consider recommendations made to other departments and public agencies.

The reports to parliament are listed under the following headings:

- Aboriginal
- Child death review team
- Community services
- Correctional centres
- Freedom of information
- Local government
- Ombudsman
- Police
- Public authorities

Reports are placed in chronological order and some are listed under more than one heading.

Historic reports are being systematically added to the Ombudsman's website and may be accessed at www.ombo.nsw.gov.au/reports.

Aboriginal

| | |
|------------|---|
| 18.03.1983 | Report on complaint against police by Neil Andrews, Solicitor, Aboriginal Legal Service |
| 18.03.1983 | Report on complaint against police by the Aboriginal Legal Service on behalf of May, Donn, Boyd and Bailey |
| 1.09.1987 | Failure of the Commissioner of Police to implement recommendations made by the Ombudsman in a report on the investigation of a complaint by Dr A Refshauge MP, about police conduct during the Redfern Riots of 2 and 3 November 1983 |
| 16.05.1991 | Public interest in releasing the Ombudsman's Report on Operation Sue (Redfern Raid) |
| 9.11.1992 | Report on Toomelah |
| 1.10.1996 | The Foster report [complaint against police conduct - arrest] |
| 1.04.2005 | Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006) |
| 1.11.2009 | The implementation of the Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing |
| 1.09.2010 | Improving service delivery to Aboriginal people with a disability |
| 1.12.2010 | Inquiry into service provision to the Bourke and Brewarrina communities |
| 1.10.2011 | Addressing Aboriginal disadvantage: the need to do things differently |
| 1.12.2012 | Responding to child sexual assault in Aboriginal communities (report under Part 6A CS (CRAM) Act 1993) |
| 1.05.2016 | Fostering economic development for Aboriginal people in NSW |
| 28.10.2019 | OCHRE review report |
| 28.02.2023 | Aboriginal outcomes strategy focus area 2 (Out of home care) – were the targets achieved |
| 6.11.2024 | Review of the DCJ Complaint System in respect of its Aboriginal child protection functions |
| 28.01.2025 | OCHRE 2024: current status and future direction report |

Child death review team

| | |
|------------|---|
| 1.09.2015 | Drowning deaths of children (private swimming pools) 2007-2014 |
| 1.10.2015 | A scan of childhood injury and disease prevention infrastructure in NSW |
| 1.08.2016 | Child Deaths from vaccine preventable infectious diseases, NSW 2005-14 |
| 1.06.2017 | Improving probity standards for funded organisations |
| 1.11.2017 | Childhood injury prevention: strategic directions for coordination in NSW |
| 1.11.2017 | Childhood injury prevention: strategic directions for coordination in NSW |
| 1.04.2018 | Spatial analysis of child deaths in NSW |
| 25.06.2019 | Review of suicide cluster and evidence-based prevention strategies for school-aged children |
| 1.08.2022 | The role of child restraints and seatbelts in passenger deaths of children aged 0-12 years in NSW |
| 9.12.2022 | Effects of perinatal conditions and local area socioeconomic status on early childhood mortality in NSW: linked data analysis |

Community services

| | |
|------------|---|
| 2.12.1991 | Failure of the former Department of Family and Community Services to issue instruction to Superintendents and staff on the requirements of the Children (Detention Centres) Act and its regulations, in terms of minor and serious behaviour and, in particular, instruction on dealing with assaults on detainees by detainees |
| 2.12.1991 | Public interest in releasing the Ombudsman's report on the failure by officers of the then Department of Family and Community Services to respond to allegations of assault of a detainee in a detention centre |
| 12.08.1993 | Report on the Department of Community Services and Brougham Residential Unit |
| 1.04.2000 | Handling of child abuse allegations against employees of the NSW Department of Education and Training |
| 1.04.2002 | DOCS Critical issues - concerns arising from investigations into the Department of Community Services April 2002 |
| 14.04.2004 | DADHC - the need to improve services for children, young people and their families: a report arising from an investigation into the Department of Ageing, Disability and Home Care |
| 9.05.2004 | Assisting homeless people: the need to improve their access to accommodation and support services: final report arising from an inquiry into access to, and exiting from, the Supported Accommodation Assistance Program |
| 17.08.2004 | Audit of individual planning in funded disability accommodation services (report under s.11(c) CS (CRAM) Act 1993) |
| 16.09.2004 | DADHC monitoring of disability services - final report (under s.11(c) CS (CRAM) Act 1993) |
| 1.12.2004 | Improving outcomes for children at risk of harm: a case study - a report arising from an investigation into the Department of Community Services and NSW Police following the death of a child |
| 16.12.2004 | Young people with disabilities leaving statutory care (report under s.13 CS (CRAM) Act 1993) |
| 16.12.2004 | Senior Officers Group for Intellectual Disability and the Criminal Justice System investigation - final report |
| 1.05.2006 | Services for children with a disability and their families: Department of Ageing, Disability and Home Care (DADHC): progress and future challenges |
| 1.06.2006 | DADHC: monitoring standards in boarding houses |
| 1.11.2007 | Situation of children younger than five in out-of-home care and under the parental responsibility of the Minister for Community Services (report under s.13 CS (CRAM) Act 1993) |
| 1.04.2008 | Family Support Services complaint handling review (report under s.14 CS (CRAM) Act 1993) |
| 8.06.2008 | Supporting people with an intellectual disability in the criminal justice system: Progress report |
| 30.01.2009 | Review of a group of children aged 10 to 14 in out-of-home care and under the parental responsibility of the Minister for Community Services (report under s.13 CS (CRAM) Act 1993) |
| 11.06.2009 | Individual planning in DADHC large residential centres review (report under s.11(c) CS (CRAM) Act 1993) |
| 30.06.2009 | Community Participation complaint handling review (report under s.14 CS (CRAM) Act 1993) |
| 1.10.2009 | The death of Ebony: The need for an effective interagency response to children at risk |
| 1.11.2009 | The implementation of the Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing |
| 1.12.2009 | The death of Dean Shillingsworth: Critical challenges in the context of reforms to the child protection system |
| 1.06.2010 | Planning and support provided by Community Services to a group of young people leaving statutory care (report under s.13 CS (CRAM) Act 1993) |
| 1.06.2010 | The need to better support children and young people in statutory care who have been victims of violent crime |
| 26.08.2010 | People with disabilities and the closure of residential centres |
| 1.09.2010 | Improving service delivery to Aboriginal people with a disability |
| 1.12.2010 | Inquiry into service provision to the Bourke and Brewarrina communities |

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| 1.12.2010 | Improving probity standards for funded organisations |
| 1.08.2011 | Keep them safe? |
| 1.08.2011 | More than board and lodging: the need for boarding house reform |
| 29.11.2012 | Denial of rights: the need to improve accommodation and support for people with psychiatric disability |
| 1.12.2012 | Responding to Child Sexual Assault in Aboriginal Communities (report under Part 6A CS (CRAM) Act 1993) |
| 1.08.2013 | The continuing need to better support young people leaving care (report under s.13 CS (CRAM) Act 1993) |
| 1.04.2014 | Causes of death of children with a child protection history 2002-2011 (special report under s.34H CS (CRAM) Act 1993) |
| 10.04.2014 | Review of the NSW child protection system are things improving? |
| 17.02.2016 | Strengthening the oversight of workplace child abuse allegations |
| 1.01.2017 | NSW Ombudsman Inquiry into behaviour management in schools |
| 1.06.2017 | Improving probity standards for funded organisations |
| 21.06.2018 | More than shelter – addressing legal and policy gaps in supporting homeless children |
| 5.10.2018 | The JIRT Partnership – 20 years on |
| 2.11.2018 | Abuse and neglect of vulnerable adults in NSW - the need for action |
| 19.10.2020 | More than shelter – addressing legal and policy gaps in supporting homeless children: a progress report |
| 29.07.2022 | Modifying public housing properties to meet the needs of tenants with disability |
| 31.08.2022 | Specialist homelessness services: helping people with high or complex needs |
| 29.05.2023 | More than shelter – special report |
| 5.07.2024 | Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities |
| 6.11.2024 | Review of the DCJ Complaint System in respect of its Aboriginal Child Protection functions |

Correctional centres

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| 29.12.1978 | Investigation of certain complaints made by prisoners to the Royal Commission into NSW prisons |
| 9.06.1982 | Report on the assault of Maria Jason at Mulawa Training and Detention Centre |
| 24.06.1982 | Report concerning cell searches at Parramatta gaol, January 1982 |
| 25.03.1985 | Report on the Corrective Service Commission and the treatment and rights of protection prisons (Own Motion) |
| 14.04.1986 | Report on failure of the Department of Corrective Services to accept Ombudsman's recommendations for establishing command structure and guidelines for control of prisons during strikes by prison officers |
| 17.04.1986 | Report on failure of Department of Corrective Services to accept Ombudsman's recommendations for payment of compensation for illegal detention |
| 2.12.1991 | Failure of the former Department of Family and Community Services to issue instruction to Superintendents and staff on the requirements of the Children (Detention Centres) Act and its regulations, in terms of minor and serious behaviour and, in particular, instruction on dealing with assaults on detainees by detainees |
| 2.12.1991 | Public interest in releasing the Ombudsman's report on the failure by officers of the then Department of Family and Community Services to respond to allegations of assault of a detainee in a detention centre |
| 4.05.1992 | Report concerning the Prisons (Segregation) Amendment Bill 1992 |
| 9.11.1992 | Report on Toomelah |
| 1.12.1996 | Inquiry into Juvenile Detention Centres [2 volumes] |
| 1.04.1997 | Mulawa Report |
| 16.12.1997 | The Savvas Report [Goulburn Correctional Centre] |
| 1.03.2000 | Investigation into Kariong Juvenile Justice Centre |
| 8.06.2008 | Supporting people with an intellectual disability in the criminal justice system: Progress report |
| 1.10.2011 | Kariong Juvenile Correctional Centre: Meeting the Challenges |
| 1.07.2012 | Managing the use of force in prisons: the need for better policy and practice |
| 8.06.2021 | Strip searches conducted after an incident at Frank Baxter Youth Justice Centre |
| 12.05.2022 | Strip searches in youth detention: a follow-up report |
| 21.08.2024 | Investigation into inmate discipline in NSW correctional centres |
| 21.08.2024 | Investigation into actions taken against bystander inmates following an incident at Clarence Correctional Centre |

Freedom of information

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| 26.09.1984 | Report concerning the GIO and the failure to reply to a reasonable request for information |
| 1.01.1990 | The operation of the Freedom of Information Act 1989 and the functions of the Ombudsman |
| 23.05.1990 | Report concerning the operation of the Freedom of Information Act 1989 and the functions of the Ombudsman |
| 17.03.1994 | Proposing Amendments to the Freedom of Information Act |
| 1.11.1994 | Freedom of Information Annual Report 1993–1994 (Includes the Ombudsman's FOI Policies and Guidelines) |
| 27.01.1995 | Freedom of information : the way ahead |
| 17.01.1996 | Botany Council's challenge to limit the scope of the FOI Act and the jurisdiction of the Ombudsman |
| 1.07.1997 | Implementing the FOI Act: A snap shot |
| 1.11.1997 | Prince Alfred Private Hospital Project |
| 1.02.2009 | Opening up government: Review of the FOI Act 1989 |

Local government

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| 22.08.1977 | Report concerning the resumption of land by Colo Shire Council (Bosanquet) |
| 24.08.1977 | Report concerning the destruction of trees by Lismore City Council |
| 21.02.1979 | Report concerning Inverell Municipal Council (Bailey) |
| 23.11.1983 | Report concerning Alderman B Antcliff and others and the Council of the City of Sydney |
| 1.05.1984 | Report concerning Randwick Municipal Council and processing of claims |
| 1.05.1984 | Report concerning Merriwa Shire Council and denial of liability |
| 1.05.1984 | Report concerning the decision to sell parts of the Hermitage Reserve |
| 4.05.1984 | Report concerning Mr D Roberts and North Sydney Municipal Council |
| 9.05.1984 | Report concerning the overshadowing of Hyde Park |
| 29.10.1984 | Report concerning Hurstville Municipal Council and failure to prevent alienation of public land |
| 25.03.1985 | Report concerning Mrs B Reardon and Mudgee Shire Council and water supply (wrongful imposition of fines) |
| 25.03.1985 | Report concerning the overshadowing of Hyde Park: second report (The Height of Buildings Advisory Committee and Sydney City Council) |
| 1.04.1985 | Report concerning the need to amend the Ombudsman's Act to make clear that local council employees are within the definition of 'Public Authority' under section 5(1) |
| 11.04.1985 | Report concerning Sydney City Council and action concerning lands known as the 'Gateway Site' [Circular Quay] |
| 11.04.1985 | Report concerning inquiries into complaints against Eurobodalla Shire Council (Hatton, MP) |
| 11.04.1986 | Report concerning Mulwaree Shire Council failure to give opportunity to make submissions |
| 17.04.1986 | Report on failure of Department of Local Government to properly investigate a complaint |
| 28.04.1986 | Report concerning council employees - whether Public Authority within Ombudsman Act |
| 14.11.1986 | Report on failure of Tweed Shire Council to regulate activities of a quarry |
| 8.05.1987 | Report on Mulwaree Shire Council's public liability claims procedures where liability in respect of claims has been denied (2 reports) |
| 9.11.1987 | Failure to act on recommendations - Randwick Municipal Council (Leonard) |
| 31.05.1988 | Report concerning the Council of the City of Lake Macquarie's failure to implement recommendations regarding unreasonable levy of rates |
| 31.05.1988 | Report concerning Bellingen Shire Council and the failure to implement recommendations |
| 29.07.1988 | Tallaganda Shire Council - failure to implement Ombudsman's recommendations to set a minimum amount of the rate under Section 126(2)(c)(iii) of the Local Government Act for vacant flood liable land |
| 31.03.1989 | Inaccurate media account concerning an investigation of Ashfield Municipal Council |
| 19.03.1990 | Report on the failure of Ryde Municipal Council to implement Ombudsman's recommendations that it adopt a policy notifying owners of adjoining properties of building applications. |
| 19.03.1990 | Report concerning amendments to the Local Government Act to require councils to notify owners of adjoining properties of building applications and to consider the objections of properly interested persons before determining building applications |
| 4.06.1990 | Soliciting of donations to a council project from developers with proposals before the Council for determination (Baulkham Hills Shire Council) |
| 25.02.1993 | Ombudsman's Report on the Local Government and Community Housing Program |
| 4.05.1994 | Hawkesbury City Council's conduct relating to Orange Grove Mall, Richmond |

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| 27.01.1995 | Good conduct and administrative practice |
| 17.01.1996 | Botany Council's challenge to limit the scope of the FOI Act and the jurisdiction of the Ombudsman |
| 21.08.2020 | Investigation into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces |
| 15.12.2020 | An inherent conflict of interest: councils as developer and regulator |

Ombudsman

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| 4.03.1982 | Report on the effectiveness of the role of the Ombudsman in respect of complaints against the Police |
| 11.08.1982 | Report on the limitations re: handling complaints against police – Tow Truck Racket |
| 14.09.1982 | Report on the limitations re: handling complaints against police – Blank Search Warrants |
| 17.09.1984 | Report concerning the Secrecy Provisions and the need to amend the Ombudsman Act to introduce section 35A of the Commonwealth Act |
| 1.02.1985 | Supplementary Report on Secrecy Provisions of the Ombudsman Act |
| 1.04.1985 | Report concerning the need to amend the Ombudsman's Act to make clear that local council employees are within the definition of 'Public Authority' under section 5(1) |
| 24.04.1986 | Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged misconduct |
| 28.04.1986 | Report concerning council employees – whether Public Authority within Ombudsman Act |
| 13.10.1986 | Report on need to amend secrecy provisions [Ombudsman Act] |
| 10.09.1987 | Proposed amendment to the Ombudsman Act to limit application of Item 12, Schedule 1. |
| 10.09.1987 | Report concerning the need to ensure the independence of the NSW Ombudsman's Office from restrictions of the Public Service Act and to increase its accountability to Parliament |
| 12.08.1988 | Misleading and inaccurate newspaper article alleging that the Ombudsman is investigating Mr J Hatton, MP |
| 18.08.1989 | Request for urgent amendment to the Ombudsman Act to enable the Ombudsman to delegate to the Deputy or Assistant Ombudsman a function conferred by section 19(2) of the Ombudsman Act |
| 19.07.1990 | Report concerning the Independence and Accountability of the Ombudsman |
| 2.10.1990 | Appointment of an Assistant Ombudsman |
| 21.06.1991 | The effective functioning of the Office of the Ombudsman |
| 18.07.1991 | Report on the role of the Ombudsman in the management of complaints about police |
| 17.01.1996 | Botany Council's challenge to limit the scope of the FOI Act and the jurisdiction of the Ombudsman |
| 1.08.1999 | Loss of Commissioner's confidence |
| 1.06.2010 | Removing nine words – Legal professional privilege and NSW Ombudsman |
| 1.11.2010 | Unresolved issues in the transfer of the NSW Child Death Review Team to the Office of the NSW Ombudsman |
| 20.11.2020 | Comments on clause 35 of the Mandatory Disease Testing Bill 2020 |
| 19.10.2021 | Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021 |
| 4.05.2022 | The Ombudsman's jurisdiction to investigate when there are related court proceedings |

Police

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| 4.03.1982 | Report on the effectiveness of the role of the Ombudsman in respect of complaints against the Police |
| 11.08.1982 | Report on the limitations re: handling complaints against police – Tow Truck Racket |
| 14.09.1982 | Report on the limitations re: handling complaints against police – Blank Search Warrants |
| 8.03.1983 | Report concerning complaint against police by CAMP Lobby Ltd |
| 18.03.1983 | Report on complaint against police by Mr James Matheson |
| 18.03.1983 | Report on complaint against police by Neil Andrews, Solicitor, Aboriginal Legal Service |
| 18.03.1983 | Report on complaint against police by the Aboriginal Legal Service on behalf of May, Donn, Boyd and Bailey |
| 18.03.1983 | Report on complaint against police by Mr EL Nam |
| 25.09.1984 | Report on the affairs of the Parramatta Police Citizens Boys Club (Azzopardi) |
| 25.09.1984 | Report concerning Administrative Procedures in the Traffic Branch of the NSW Police Department |
| 25.09.1984 | Report concerning complaints against police - Ainsworth and Vibert |
| 27.09.1984 | The Ombudsman under section 31 of the Ombudsman Act 1974, concerning administrative procedures in the traffic branch of the Police Department |

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| 1.04.1985 | Report of the Ombudsman under section 31 of the Ombudsman Act 1972 and section 32 of the police regulation (allegations of misconduct) act 1978 concerning the circumstances surrounding injuries sustained by Mr Bogdan Ostaszewski |
| 1.04.1985 | Report concerning injuries sustain by Mr Bogdan Ostaszewski |
| 11.04.1985 | Exclusion of Assistant Ombudsman and Civilian Investigation Officers from Investigation of Police Conduct |
| 7.04.1986 | Report under section 31 and 32. Complaints by Miles and McKinnon |
| 7.04.1986 | Report under section 31 and 32 concerning the delay in the investigation of a complaint by Miss WS Machin MP on behalf of Mr P Stewart about the conduct of the Police [alleged assault of blind people by Police] |
| 24.04.1986 | Report on need to end restriction on source from which Ombudsman can recruit investigators of alleged misconduct |
| 27.10.1986 | Report on delay in investigation of a complaint by Paul Mortimer |
| 25.03.1987 | Report concerning Bogdan Ostaszewski and the response of the Police Department to the report of the Ombudsman (refer to report 1 April 1985) |
| 27.04.1987 | Report concerning allegations appearing in various recent media reports and statements by the Minister for Police that the police complaint system is being abused |
| 8.05.1987 | Report concerning incorrect imprisonment for a fine already paid and inadequate initial investigation by police |
| 4.08.1987 | Report on the first three years of the new Police Complaints System |
| 12.08.1987 | Report concerning the failure of the Commissioner of Police to respond to a report made by the Ombudsman following the investigation of a complaint by Mr E Azzopardi about the conduct of police |
| 31.08.1987 | Failure to comply with recommendations contained in a final report under section 28 of the Police Regulation (Allegations of Misconduct) Act (Power) |
| 1.09.1987 | Failure of the Commissioner of Police to implement recommendations made by the Ombudsman in a report on the investigation of a complaint by Dr A Refshauge MP, about police conduct during the Redfern Riots of 2 and 3 November 1983 |
| 3.09.1987 | Failure to implement Ombudsman's recommendations re: arrest and police 'verbal' (Matthews) |
| 4.09.1987 | Failure of Police Department to implement Ombudsman's recommendations arising from his reinvestigation of 'Club 80' complaint |
| 10.09.1987 | Report concerning proceedings conducted in the Police Tribunal arising from investigations conducted by the Ombudsman (Parker) |
| 10.11.1987 | Decision to consent to discontinuation of investigation of complaint concerning the conduct of the Assistant Commissioner (Review), Mr RC Shepherd |
| 16.05.1988 | Report to Parliament under section 31 of the Ombudsman Act and Section 32 of the Police Regulation (Allegations of Misconduct) Act on proposals to amend the Police Regulation (Allegations of Misconduct) Act |
| 26.06.1988 | Report re: complaints of police misconduct determined between 1 July 1987 and 31 May 1988 that were the subject of investigation under Part IV of the Police Regulation (Allegations of Misconduct) Act |
| 10.11.1988 | Failure to obtain legal advice regarding departmental charges (anonymous and Love) |
| 31.03.1989 | Concerning a decision made on the basis of inadequate legal advice provided to the Commissioner of Police (Hunt) |
| 1.05.1989 | Inadequate training and procedures of the Special Weapons Operations Unit (Blackshaw) |
| 1.01.1990 | Incorrect imprisonment for a fine already paid and inadequate initial investigation of complaint by police |
| 24.01.1990 | Failure to obtain evidence adequate for the successful prosecution of a police officer charged with assault occasioning actual bodily harm |
| 4.04.1990 | Failure of the Commissioner of Police to take satisfactory actions in relation to previous recommendations of the Ombudsman concerning a review of the Special Weapons and Operations Squad procedures and instructions |
| 16.05.1991 | Public interest in releasing the Ombudsman's Report on Operation Sue (Redfern Raid) |
| 18.07.1991 | Report on the role of the Ombudsman in the management of complaints about police |
| 6.12.1991 | Report concerning information sought in Questions on Notice by Mr J Hatton, MP (tabled 11.12.1991) |
| 29.09.1992 | Complaints by Mrs Carolyn Rigg about the conduct of the NSW Police Service |
| 25.01.1993 | Inquiry into the circumstances surrounding the injuries suffered by Angus Rigg in police custody and into the subsequent police investigations |
| 25.06.1993 | Ombudsman's report on allegations of police bias against Asian students |
| 13.12.1993 | Urgent amendment to the Police Service Act |
| 17.03.1994 | Urgent amendments to Section 121 of the Police Service Act |
| 14.04.1994 | Improper access and use of confidential information by Police |
| 19.12.1994 | Police conciliation - toward progress |
| 24.01.1995 | Police internal investigations: poor quality police investigations into complaints of police misconduct |
| 25.01.1995 | Race relations and our Police |

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| 27.01.1995 | Raymond Denning: withdrawal from the Witness Protection Scheme |
| 13.12.1995 | NSW Police Complaints System |
| 20.12.1995 | Confidential information and Police |
| 28.05.1996 | Police conciliation update |
| 24.07.1996 | The Piat report |
| 26.08.1996 | Police and insurance investigators |
| 1.10.1996 | The Foster report [complaint against police conduct - arrest] |
| 1.10.1996 | The Weston report - concerning the unreasonable arrest of Mr Rodney Saunders |
| 1.05.1997 | Conflict of Interest |
| 1.06.1997 | Conflict of Interest: a service-wide problem |
| 1.08.1997 | Alison Lewis and Lithgow Police |
| 1.05.1998 | Police adversely mentioned at the Police Royal Commission |
| 1.10.1998 | Risk Assessment of Police Officers |
| 1.06.1999 | Officers Under Stress |
| 1.08.1999 | Loss of Commissioner's confidence |
| 1.08.1999 | The Norford report [complaint against police conduct - arrest and false imprisonment] |
| 16.12.1999 | Policing of domestic violence in NSW |
| 1.12.2000 | Police and improper use of email |
| 1.05.2002 | Improving the management of complaints: Identifying and managing officers with complaint histories of significance |
| 1.06.2002 | Speedometers and speeding fines: a review of police practice |
| 1.08.2002 | Improving the management of complaints - Assessing police performance in complaint management |
| 1.09.2002 | Improving the management of complaints: Police complaints and repeat offenders |
| 1.04.2003 | Speedometers and speeding fines: a review of police practice |
| 1.12.2004 | Improving outcomes for children at risk of harm: a case study – a report arising from an investigation into the Department of Community Services and NSW Police following the death of a child |
| 16.12.2004 | Senior Officers Group for Intellectual Disability and the Criminal Justice System investigation – final report |
| 1.04.2005 | Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006) |
| 1.08.2006 | Misconduct at the NSW Police College |
| 1.12.2006 | Domestic violence: improving police practice |
| 8.06.2008 | Supporting people with an intellectual disability in the criminal justice system: Progress report |
| 19.11.2008 | The use of Taser weapons by NSW Police Force |
| 1.07.2012 | Safe as houses? Management of asbestos in Police buildings |
| 1.10.2012 | How are Taser weapons used by the NSW Police Force? |
| 1.02.2013 | Ombudsman monitoring of the police investigation into the death of Roberto Laudisio-Curti |
| 20.12.2016 | Operation Prospect |
| 9.05.2017 | Operation Prospect: a report on developments |
| 1.12.2017 | Operation Prospect: second report on developments |

Public authorities

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| 29.11.1982 | Report on inadequate compensation of land in open space, corridor and similar zones – Department of Environment and Planning |
| 18.10.1983 | Report concerning Mr RC Osborne and the Department of Health |
| 18.11.1983 | Report concerning Dr M Wainberg, Dubbo Base Hospital and the Department of Health |
| 1.05.1984 | Report concerning citizens of Newtown and the Department of Environment and Planning |
| 1.05.1984 | Report concerning Mr S Jones MP on behalf of Mrs WJ Smith and the Department of Lands and the Land Commission |
| 1.05.1984 | Report concerning Mr IK Briggs and the Contracts Control Board |
| 1.05.1984 | Report concerning the decision to sell parts of the Hermitage Reserve |
| 4.05.1984 | Report concerning Mr HSS Willis and the Department of Environment and Planning |
| 26.09.1984 | Report concerning the GIO and the failure to reply to a reasonable request for information |

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| 11.04.1985 | Report on complaint by Mrs R Clayfield MP on behalf of Wilson's Creek Action Group about the Forestry Commission of NSW failure to prepare EIS [re construction of a road in the Nullum State Forest] |
| 11.04.1985 | Report concerning ex-gratia payments [Recommendation for amendment of Ombudsman Act to authorise departments and authorities to make ex-gratia payments recommended by the Ombudsman where a complainant has suffered financial loss as a result of the department's wrong conduct] |
| 13.06.1985 | Report on NSW Department of Health on procedural deficiencies in the laboratory of the Division of Forensic Medicine |
| 22.07.1985 | Report concerning Panania North Public School and the Minister for Education [Hon R M Cavalier MP] |
| 30.10.1985 | Report on Sydney Cove Redevelopment Authority failure to comply with EP&A Act in giving consent for redevelopment – Grosvenor Place |
| 28.04.1986 | Report on delay in increasing rate of statutory interest on outstanding amounts of compensation |
| 16.10.1986 | Report concerning the Board of Senior School Studies refusal to release marks to student who sat for leaving and HSC exams prior to 1978 |
| 11.11.1986 | Report on Port Kembla Coal Loader – Maritime Services Board |
| 11.11.1986 | Report on ex gratia payments by NSW public authorities |
| 14.11.1986 | Report concerning the failure of the Builders Licensing Board to inform of unavailability of insurance benefits and to give reasons for denial of insurance claim |
| 8.05.1987 | Report concerning delay by Water Resources Commission in processing an application for a joint water supply authority and failure to accept recommendation to pay compensation for delay |
| 12.05.1987 | Report concerning the Board of Optometrical Registration refusal to give reasons for any decision to reject an application |
| 31.05.1988 | Report concerning the Commissioner of Motor Transport to comply with recommendations re: stolen motor vehicles |
| 31.08.1988 | Failure of the Darling Harbour Authority to fully comply with recommendations |
| 29.11.1988 | Failure to obtain independent legal advice regarding departmental charges (re: Department of Agriculture) |
| 9.11.1992 | Report on Toomelah |
| 9.03.1993 | Ombudsman's Report on the State Electoral Office |
| 13.10.1993 | The Neary / SRA Report [State Rail Authority] |
| 13.12.1993 | Report on the Investigation into unnecessary and excessive delays in the handling of complaints by the Complaints Unit of the Department of Health |
| 3.07.1995 | Psychologists Registration Board |
| 1.12.1996 | Inquiry into Juvenile Detention Centres [2 volumes] |
| 1.09.1997 | The State Transit Authority report |
| 1.11.1997 | Prince Alfred Private Hospital Project |
| 1.04.2000 | Handling of child abuse allegations against employees of the NSW Department of Education and Training |
| 1.10.2005 | Improving the quality of land valuations issues by the Valuer General |
| 1.11.2010 | Responding to the asbestos problem – the need for significant reform in NSW |
| 1.12.2010 | Improving probity standards for funded organisations |
| 1.12.2010 | Inquiry into service provision to the Bourke and Brewarrina communities |
| 1.07.2012 | Safe as houses? Management of asbestos in Police buildings |
| 1.05.2013 | A level playing field? HSC Disability provisions |
| 17.02.2016 | Strengthening the oversight of workplace child abuse allegations |
| 1.01.2017 | NSW Ombudsman Inquiry into behaviour management in schools |
| 19.04.2017 | Asbestos: how NSW government agencies deal with the problem |
| 15.11.2017 | Investigation into water compliance and enforcement 2007–17 |
| 8.03.2018 | Correcting the record: investigation into water compliance and enforcement 2007–17 |
| 16.05.2018 | Is your builder fit and proper – the weaknesses of the home building licensing scheme in NSW |
| 17.08.2018 | Water: compliance and enforcement |
| 31.08.2018 | Complaint handling improvement program - Commitments implementation review |
| 28.10.2019 | OCHRE Review Report |
| 21.08.2020 | Investigation into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces |
| 20.11.2020 | Comments on clause 35 of the Mandatory Disease Testing Bill 2020 |
| 22.03.2021 | 2020 hindsight: the first 12 months of the COVID-19 pandemic |
| 19.10.2021 | Investigation into the procurement of an acting executive director at the former NSW Department of Planning and Environment |

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| 19.10.2021 | Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021 |
| 29.11.2021 | The new machinery of government: using machine technology in administrative decision-making |
| 29.07.2022 | Modifying public housing properties to meet the needs of tenants with disability |
| 7.09.2022 | The COVID-19 pandemic: second report |
| 25.10.2022 | Formal investigations – Summary report 2021–22 |
| 30.10.2023 | Formal investigations – Summary report 2022–23 |
| 7.03.2024 | A map of automated decision-making in the NSW Public Sector: A special report to Parliament |
| 30.04.2024 | Revenue NSW – The lawfulness of its garnishee order process |
| 30.07.2024 | Casebook July 2024: Investigations and complaint-handling case studies |
| 28.01.2025 | OCHRE 2024: Current status and future direction report |
| 30.01.2025 | Casebook January 2025: Investigations and complaint-handling case studies |

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Thanks to Cultural Pulse who designed the history report and the exhibition at Parliament House.

Dr Lisa Murray
Public Historian
2025

Endnotes

- 1 Quoted by B Johns, 'A challenging program for Law Reform Commission', *Sydney Morning Herald (SMH)*, 7 October 1966, p 2.
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