



## Theme

Change is hard work  
Good change is even harder  
The challenge is part  
of the reward

### Letter to Parliament

The Hon. M Burgmann MLC President Legislative Council Parliament House SYDNEY NSW 2000	The Hon. J Murray MP Speaker Legislative Assembly Parliament House SYDNEY NSW 2000
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Dear Madam President and Mr Speaker

I am pleased to present our 26th annual report to the NSW Parliament. This report contains an account of our work for the twelve months ending 30 June 2001 and is made pursuant to ss.30 & 31 of the *Ombudsman Act*. The report also provides information about my office's functions under the *Police Service Act* and information which is required pursuant to the *Annual Reports (Departments) Act*, *Freedom of Information Act* and *Disability Services Act*. The report includes updated material on developments and issues current at the time of writing (July–Sept 2001).

Yours sincerely



Bruce Barbour  
Ombudsman

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# Foreword



Bruce Barbour, Ombudsman

This has been a very busy year for the office. We have faced considerable challenges on a number of levels. As our workload and responsibilities keep expanding, we have reviewed our work practices to ensure that we continue to perform effectively.

This year has also been one of consolidation and change. We have maintained good working relationships with organisations we scrutinise and investigate, and also with fellow oversight bodies. The principles underpinning our office—integrity, fairness, independence, accessibility—have been reinforced through our work during the year. We have promoted these values through the advice we have given, and inquiries, investigations and training we have conducted.

In a climate of growing expectations, any organisation, whether public or private, faces the challenge of improving the way it does its work—to be more efficient as well as more accountable to its client base. We aim to help agencies meet this challenge thoughtfully and strategically.

One of our focuses is on systemic issues. We take a broad approach to complaints about the way an agency is functioning. Any suggestions we make for improvement are intended to address underlying causes of problems with performance and conduct.

Like other organisations, this office needs to evolve to maintain best practices. Last year I foreshadowed a review of our corporate direction. The review resulted in a new corporate image, a new corporate logo and a new corporate plan. Our new corporate direction better reflects the wide-ranging functions that we now perform and recognises more clearly the purpose of those functions. Our new logo symbolises the tools that we use to accomplish our vision—clarity, focus, scrutiny and magnification.

As well as providing a snapshot of the work that we did this year, this report provides me with an opportunity to publicly thank the staff for their dedication and hard work. It is their contribution that enables the office to maintain a strong reputation as a leader and innovator in the NSW public sector.

We remain committed to promoting good conduct and fair decision-making for the benefit of the whole NSW community. In the coming year, we will be developing new work practices to reflect the changes to our corporate direction and ensure we continue to effectively fulfil our vision.

Bruce Barbour  
**Ombudsman**

We measure our success by the numbers of matters resolved or rectified and the changes to policies and procedures that have resulted from our involvement



## Who we are

Like many of our counterparts around the world, our office was modelled on the Justitie-Ombudsman created in Sweden in 1809. The primary purpose of that body was to investigate complaints about government administration. Loosely translated, the term Ombudsman means ‘the citizen’s defender’ or ‘representative of the people.’

Today, many countries have adopted the Ombudsman concept. There are more than 150 Ombudsman-type bodies affiliated to the International Ombudsman Institute.

In NSW, the Ombudsman was set up in 1975 as an independent and impartial body—we do not take sides. We protect individuals from the inappropriate use of power by administrators by seeking out the truth and finding solutions that address both the individual’s justified concerns and broader more systemic public interest issues. In this way, we hope that the public as a whole benefits.

Originally our primary role was to review administrative decisions. Over the years our role has expanded and changed:

- we have experienced changes to the way we deal with complaints against police,
- we are now involved in the protection of children in agencies not within the public sector,
- we now oversight certain undercover operations of law enforcement agencies.

Since 1987, the NSW government has progressively introduced legislation allowing some public investigative bodies to engage in activities such as telephone tapping and DNA testing of people in prisons. Significantly, the government has turned to our office as a safeguard mechanism when it has introduced laws that expand administrative power and arguably impinge on civil liberties as a result. This year we were given further functions—to monitor the implementation of new police powers contained in the *Police Powers (Drug Premises) Act 2001* and the *Police Powers (Internally Concealed Drugs) Act 2001*.

Over the years, we have adopted more proactive approaches to improve public administration. We have evolved into an organisation that views complaints in their context and focuses on systemic issues. We educate decision-makers to try to prevent problems.

Our strategies have included:

- auditing the way different agencies are functioning,
- running education and training programs,
- producing practical guidelines and toolkits for agencies, and
- helping agencies set up complaints systems and providing guidance on how to investigate complaints.

In line with our expanding focus, we have revised our performance measures. Today, we measure success by the numbers of matters resolved or rectified and the changes to policies and procedures that have resulted from our involvement.

During the year we developed a new logo and corporate image. We also reviewed our corporate direction and revised our vision, mission, goals and strategies.

As the work we did during 2000–2001 is based on our previous corporate plan, this report discusses how we performed against that plan. Our plans for the future are based on our new corporate direction.

## The future—our new corporate direction



### Our vision

Fair, accountable and responsive administration in NSW agencies.



### Our mission

To promote good conduct and fair decision making in the interests of the NSW community.



### Our goals

- to assist agencies to remedy deficiencies and improve their service delivery
- to be a cohesive and effective organisation
- to be accessible and responsive
- to be a leader in standards of service.



### Our guarantee of service

We guarantee to give all matters referred to us proper consideration and attention. If we decide to investigate a matter we will do so as quickly as possible, acting fairly and independently.

If we decide not to investigate, we will provide reasons for our decision.

If there are alternative ways of dealing with a matter we will provide an explanation.



### Our values

In everything we do we will:

- act fairly, with integrity and impartiality
- treat individuals and organisations courteously and sensitively
- use resources efficiently and effectively
- ensure we are accessible to everyone.

Almost 16% of all the people employed  
in NSW come within our jurisdiction



# What we do

## Our jurisdiction

We currently have jurisdiction in relation to:

- well over 200 state public sector agencies, including departments, statutory authorities and the NSW Police Service,
- approximately 170 local councils,
- over 7,000 agencies providing children's services, including area health services, non-government schools, child care centres and agencies providing substitute residential care.

This translates to over 365,000 public sector employees and over 100,000 people who work for agencies providing children's services. Almost 16% of all the people employed in NSW come within our jurisdiction.

Although our jurisdiction now extends over some private agencies and individuals, our primary focus remains on the conduct of public sector agencies and public sector staff.

Privatisation, corporatisation, outsourcing, new technologies, and changes in the way agencies relate to and work with each other have all changed the way the public sector does its work. One of the more recent changes has been the emergence of cooperative inter-agency initiatives. Joint Investigative Teams, made up of officers from the NSW Police Service and the Department of Community Services, are a good example of this. These factors, as well as changes in the expectations of members of the public, have had an impact on the way we respond to complaints about public sector agencies.

## Legislation governing the work of the Ombudsman

We have responsibilities under the following legislation:

- *Child Protection (Offenders Registration) Act 2000*  
—main provisions expected to commence in September 2001
- *Crimes (Forensic Procedures) Act 2000*
- *Freedom of Information Act 1989*
- *Law Enforcement (Controlled Operations) Act 1997*
- *Ombudsman Act 1974*
- *Police Powers (Drug Premises) Act 2001*—commenced 1 July 2001
- *Police Powers (Internally Concealed Drugs) Act 2001*—expected to commence February 2002
- *Police Powers (Vehicles) Act 1998*—ceased with our report to the Minister in August 2000
- *Police Service Act 1990*
- *Protected Disclosures Act 1994*
- *Telecommunications (Interception) (NSW) Act 1987*
- *Witness Protection Act 1995*

## Our activities

We perform a wide range of activities to achieve our goals.

This report discusses what we did this year under the following activity headings.



Our internal structures have changed in response to changes in our jurisdiction, increased workload or to help us improve our processes



# Our organisation

## Our staff

We recognise that our staff are our most important resource and the success of the office depends on them.

The people who work for us come from a wide range of backgrounds including state, federal and overseas police, other investigative backgrounds, state and local government, town planning, youth and community work, journalism, teaching and the law.

This unique mix of people and expertise ensures that we thoroughly understand the workings of the public sector and can consistently make positive and useful recommendations.

We have a dedicated team of 133 officers working on either a full or part time basis.

Further details on our staff can be found in 'Corporate'.

## Our team structure

Our office is divided into four teams—the general, police and child protection teams, each headed by an Assistant Ombudsman, and the corporate support team, led by the Manager, Corporate Support.

### *The general team*

The work of the general team is very broad. The team targets maladministration in all public sector agencies. It deals with appeals against decisions relating to Freedom of Information applications and audits various records of investigative agencies. The team is also primarily responsible for assisting and referring people who telephone our office with inquiries. The team undertakes a range of activities including investigations, informal complaint resolution, regular visits to juvenile justice centres and correctional centres, performance audits and training programs. For more details, see 'Scrutiny', 'Investigations and complaint resolution' and 'Appeals and reviews'.

### *The police team*

The police team deals exclusively with the NSW Police Service (police service). Complaints against police officers continue to constitute the bulk of the complaints we deal with. The team is responsible for monitoring the police service's investigations of these complaints. Complaints involving very serious matters are scrutinised individually while complaints involving less serious matters are scrutinised by audit. If necessary, we have the power to conduct direct investigations. The team also scrutinises the effectiveness of the police service's systems and practices and then suggests how they can be improved. We scrutinise the complaints system to make sure that complaints are investigated properly and are used as a management tool. Complaints can provide useful intelligence on problem areas and be helpful when developing strategies for improving the police service's performance. The team is also responsible for monitoring the impact of new legislation that gives police additional powers. For more details, see 'Scrutiny'.

### *The child protection team*

The child protection team is responsible for monitoring investigations by a wide range of government and non-government agencies into child abuse allegations made about their employees. We also keep under scrutiny the systems these agencies have in place for preventing child abuse by their employees and for handling child abuse allegations. We also educate agencies about broader child abuse issues and conduct research into trends and patterns of abuse to help us develop a strong foundation for future child protection strategies. For more details, see 'Scrutiny'.

### *The corporate support team*

The corporate support team includes personnel, financial services, public relations and publications, records management, information technology and library services. For more details, see 'Corporate'.



## Organisational chart



**Bruce Barbour** LLB  
Ombudsman



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

Ombudsman

Child Protection Team

Deputy Ombudsman

General Team

Corporate & Executive Support

Police Team



**Anne Barwick**  
M Mgt (Community)  
BA Dip Soc Wk  
Assistant Ombudsman  
(Children & Young People)



**Greg Andrews**  
BA (Hons) M Env Loc Gov Law  
General Cert Public Sect Mgt  
Assistant Ombudsman  
(General)



**Steve Kinmond**  
BA LLB Dip Ed Dip Crim  
Assistant Ombudsman  
(Police)

We use internal processes and information from external sources to continually monitor our performance and help us improve our service



# How we operate

We pride ourselves on the quality of our work and the standard of our service. The environment in which we operate is never static so we have to be able to adapt to and accommodate change. We use internal processes and information from external sources to continually monitor our performance and help us improve our service and the processes we use to provide that service.

Performance measures are established at the corporate, team and individual staff level. Generic measures applying to the activities of each of the investigative teams supplement office wide measures of performance. Each team produces monthly operational review reports containing work input/output statistics and identifying major issues arising out of investigations. Workflow statistics are used to inform procedural changes.

We monitor the level of implementation of the recommendations we make in formal reports and have also started to record the implementation of suggestions made more informally.

## Corporate planning

One of our priorities during the year was the development of a new vision and direction. A committee was established to review the existing corporate plan and to assess its ongoing relevance in light of legislative and work practice changes. The committee worked directly with the Ombudsman and included representatives from each of the teams.

We have adopted a new corporate plan and this is now the foundation for all our business planning. For the new vision, mission and goals, see page 3.

### *Team planning*

Each team holds annual planning days to identify key issues for the coming year, priorities and expected outcomes. Business plans are developed based on the outcomes from the planning day.

These planning days provide an important opportunity to reflect on our performance and ways in which it could be improved. This process has helped us adopt more strategic approaches to achieving our goals and more streamlined ways of dealing with increasing complaint numbers while reducing the time taken to finalise matters.

### *Planning committee*

During the development of the corporate plan, the Ombudsman decided to form a standing committee of staff and management that meets on a quarterly basis to review the implementation of the corporate plan and discuss office-wide issues of concern. The initial meeting was held in February 2001 and topics such as the corporate plan, complaints management database, recruitment, access and awareness, training and office communication were discussed. The planning committee has proved to be a valuable forum and will continue to coordinate major continuous improvement projects.

## Performance indicators

We are currently reviewing our performance indicators—at the organisational, team and individual level. We are doing this to ensure that our indicators adequately reflect the impact of our work (outcomes) rather than focus on activities. We report our performance in our annual report as well as in the NSW Budget papers. We are also planning to put statistical information on our web site. For more details about performance results, see the sections of this report where our activities are discussed.

## Benchmarking

We are taking part in a benchmarking program with other Australian Ombudsmen and have agreed on a range of indicators using common definitions of inputs. Data collated over a specified period is pooled to calculate a national average for each indicator. The national averages

will be used to compare the performance of each individual office. Significant deviations from the national average will be used as starting points to benchmark processes among the different offices. It is recognised that deviations are to be expected and that they may not necessarily indicate superior or inferior performance. They may be the outcome of factors such as different case mixes, different levels of case complexity, and differing statutory procedural requirements. Exploring the reasons for any significant differences is a very beneficial aspect of the benchmarking exercise.

The results to date from this benchmarking exercise have been positive. Our performance compares favourably with that of other Ombudsman offices.

### Changes to team structures

During the year, two of our investigative teams—the child protection and police teams—reviewed their structure.

The NSW Treasury reviewed the level of funding for our child protection function at the beginning of the reporting year. This review and the subsequent increase in our resources gave us the opportunity to reassess the structure of the child protection team and the way we work. We recognised that it would be more advantageous for the team to move towards specialisation, allowing staff members to develop specialist knowledge and relationships with key stakeholders in different agencies. The team now has two discrete units—the investigation and training unit and the assessment and monitoring unit. This is a change from the original structure of the team which allowed staff to undertake generic duties and enabled us to quickly build broad expertise across many agency groups.

Staff in the assessment and monitoring unit are assigned to particular agencies or agency groups. They hold portfolios for the Catholic Commission for Employment Relations, independent schools, child care centres, local councils, and the Departments of Education and Training, Health and Juvenile Justice. The initial feedback from agencies has been very positive, as they now have a designated person to contact when questions arise. The change also allows us to make sure that our advice to agencies remains consistent and of a high quality.

The police team has begun a major restructure designed to improve its focus on scrutinising serious complaints about police. A projects intelligence and auditing team will be created to enable us to better identify and remedy deficiencies in the way the NSW Police Service (police service) handles complaints. The new structure will allow us to more effectively use information holdings and trend analysis, particularly in relation to broader systemic issues, and identify officers who pose a risk to the service.

### Development and review of policies, procedures and practices

The police and general teams each have a procedure manual to guide staff in the discharge of their functions. These manuals help to achieve consistency and best practice in our work. They are regularly reviewed and, if necessary, revised in light of developments in our functions and powers. The police team completed a major revision of their manual during the year. The child protection team are currently finalising their manual.

In March 2001 we finalised our 'Section 19 Manual' to assist in the conduct of section 19 inquiries. The manual summarises the legal principles relevant to a hearing held under section 19 of the *Ombudsman Act*.

Following structural changes, the child protection team reviewed their procedures and work practices. The assessment process was streamlined to promote more open and informal communication, including the use of schedules and pro forma letters.

Our work is also guided by the standards set out in our published guidelines. For more details about our guidelines, see the publications list in the Appendices.

### Internal audits

In our police and child protection teams, we introduced an internal audit procedure to ensure consistency in our assessments and advice to agencies.

A senior staff member from our child protection team examined a number of completed investigation files using an investigative best practice tool we had developed. We are refining that tool and will continue to audit files on a selective basis.

We also audited 330 police matters of a relatively serious nature—but which were not serious enough to warrant referral to the Police Integrity Commission (PIC)—to find out how well the police service investigated these matters and how well we monitored those investigations. The results will help us decide how we should scrutinise investigations into allegations of this kind.

These audits are in addition to the monitoring of performance that occurs in regular supervisory sessions with staff.

### Risk management

We are developing a risk assessment model for police complaints. An intensive two day workshop was held in June 2001 to identify and analyse risks and to develop a risk management framework. A draft framework has been prepared containing an overview of risk management and police complaints. Also included is a list of possible risks, results and treatments for each stage of the

complaint process. We have also begun work on a risk management model for child protection matters. Work on this will continue during the coming year.

#### Statement of responsibility

The Ombudsman, senior management and other staff have put in place an internal control process designed to provide reasonable assurance regarding the achievements of the office's objectives. The Ombudsman, Deputy Ombudsman and Assistant Ombudsman assess these controls.

To the best of my knowledge, the systems of internal control have operated satisfactorily during the year.



Bruce Barbour  
**Ombudsman**

## Resources committee

We established a committee of staff to review existing policies, procedures and practices and suggest ways in which we could improve the quality of our service. During the year the committee reviewed a number of ways that the general team carried out its complaint handling work. One issue that emerged was the way that the team responds to oral inquiries and written complaints and whether we could improve our service by dealing with written complaints over the telephone. On the basis of the work of the committee, we sought legislative changes to the *Ombudsman Act*. The Parliament agreed to some of the changes but we are still required to finalise all complaints in writing. For more details, see 'Legal Changes' in the Appendices.

## Internal communications

### Staff meetings

We are continually trying to improve our internal communication systems. We hold staff meetings once a month and senior management meetings once a week. Teams and inter-team groups meet regularly to discuss topical issues and share information.

### Office intranet

The introduction and continued development of the office intranet offers opportunities to improve the efficiency and effectiveness of our work. The intranet currently gives

staff easy access to complaints management information, precedents, legislation and a range of management reports and corporate information.

## Training and development

We hold regular in-house training sessions to keep staff up to date with developments in legislation and relevant public administration issues. For example, during 2000–2001 we have had training sessions on:

- DNA testing and the *Crimes (Forensic Procedures) Act 2000*
- 'Dealing with underperformance by police officers: A best practice human resources perspective'
- monitoring investigations
- police powers of search and entry
- police service whistleblower complaints
- risk management
- the *Freedom of Information Act 1989*
- dealing with difficult complainants
- legislation and operations of the Department of Community Services (DoCS)
- dealing with protected disclosures
- avoiding paper warfare in dealing with complaints
- the *Young Offenders Act 1997*
- strategic questioning.

Staff also received training on letter and report writing, our case management system, investigative techniques, interviewing children, mediation and negotiation, conflict resolution and our own complaint handling training course. Staff also attended presentations by representatives of other agencies about their roles and functions.

## Agreements and regular liaison with other agencies

### Liaison meetings

With the proliferation of watchdog agencies over the past decade, the potential for duplication and wasting scarce resources has increased. The existence of various bodies with similar functions can also create additional complexities, confusion for the public and increased chances of certain matters falling between the cracks. To reduce these risks, we have continued to meet regularly with the Independent Commission Against Corruption (ICAC), the Department of Local Government, the Inspector-General of Corrective Services and PIC. These meetings provide a forum to discuss matters of policy that bring both short and long-term benefits to members of the public. They facilitate the exchange of information and help us to identify issues of concern. Regular dialogue also creates the possibility for joint investigation or project work.

### *Class or kind agreements*

In some cases our relationship with other agencies has been formalised in 'class or kind' agreements and memoranda of understanding. These arrangements help to clarify the respective responsibilities of each agency. We have memoranda of understanding with the Administrative Decisions Tribunal, ICAC, the Inspector-General of Corrective Services, the Community Services Commissioner, the Director General of DoCS, and the Energy and Water Ombudsman NSW (EWON).

This year the Ombudsman made a class or kind determination for the Department of Education and Training and the Catholic Commission for Employment Relations for the notification of child abuse allegations. For more details about these agreements, see 'Scrutiny'. The Ombudsman also has a number of class or kind agreements with PIC which have been developed after consultation with the police service.

### *Ombudsman network*

We host regular meetings of agencies with similar functions and roles. The network includes the CEOs of the Health Care Complaints Commission, the Community Services Commission, the Legal Services Commission, ICAC, EWON, the Anti-Discrimination Board, the Judicial Commission, NSW Privacy and PIC. The aim of the network is to raise issues, share information and improve and enhance the operations of participating agencies.

### *Joint initiatives group*

At the September 2000 meeting of the Ombudsman network it was decided that each agency would nominate a member of staff to get together to discuss options for providing training for investigators. The joint initiative group was formed with our general team manager coordinating the activities of the group. To date the group has organised a number of information sharing forums and training sessions and developed a protocol for staff rotations throughout the network agencies. A number of subgroups have been formed to look at specific issues such as joint publications and joint access and awareness activities.

## **Complaints and compliments**

We have developed a 'Complaints and Compliments' policy to provide a framework for using customer feedback to continually improve our services. The policy recognises that complaints can help us to identify areas of our service that need improvement or show where expectations of service levels exceed what we can reasonably deliver. The policy also acknowledges that compliments are a useful tool for obtaining feedback on the aspects of our service that we do well.

Complaints, compliments and suggestions for improvement are recorded and analysed to identify areas that need improvement. Complaints about our service are dealt with on at least two levels. First we try to address the dissatisfaction of the complainant with the service they have received or believe they should have received. Secondly, we consider action to prevent similar complaints in future.

Where appropriate, we take some form of remedial action to resolve complaints. We have offered apologies, updated our databases, reviewed workloads giving greater priority to identified files, or reallocated matters for prompt attention. We have also made various changes to our procedures including amending our acknowledgment form, brochures and standard letters to better explain what we do and how we do it.

### *External feedback*

We ask participants at our training courses, policy workshops and briefings whether their expectations were met, what were the most and least important aspects of the training, and any suggestions for improvement. This feedback is used to modify and improve the format and content of our courses and ensures that we continue to provide information that is of value to the participants. Evaluation forms are also given to people who participate in either a mediation or conciliation run by this office.

**Figure a: Complaints about us**

<b>Issues</b>	<b>Number</b>
Bias/unfair treatment/tone	9
Confidentiality/privacy related	6
Delays	25
Denial of natural justice	3
Failure to deal appropriately with complaint	13
Lack of Feedback/ response	12
Limits to jurisdiction	3
Faulty procedures	1
Inaccurate information/wrong decision	6
Poor customer service	5
Other	2
<b>Total issues</b>	<b>87</b>
<b>Total complaints</b>	<b>82</b>
% of all written complaints determined	0.84%

**Figure b: Complaints about us—outcome**

<b>Outcome</b>	<b>Number</b>
Unjustified	35
Justified or partly justified	16
Some substance and resolved by remedial action	31
<b>Total complaints</b>	<b>82</b>

## Requests for review of decision

Any person who has lodged a complaint with us and is dissatisfied with a decision or finding may ask for that decision to be reconsidered. Review requests are most commonly received from complainants whose complaints we have declined. All reviews are carried out by a different staff member. This person has equal or greater seniority than the person who originally dealt with the complaint. We only allow one request for review of a matter so once the Ombudsman has considered the findings of the review the matter is closed. Generally, we do not reconsider decisions about a Freedom of Information complaint if the applicant has a second avenue of external review to the Administrative Decisions Tribunal.

### Performance indicator

Requests for review of decision			
	Target	99/00	00/01
General	< 6.0%	6.3%	4.5%
Police	< 1.8%	1.5%	1.3%
Child protection	< 1.0%	0.5%	0.2%

**Interpretation**  
This performance indicator refers to the number of requests for a review of our decision as a proportion of the total matters finalised. Separate figures are kept for each of the investigative teams. The results for each team are well under the targets set.

**Figure c: Requests for review of decisions (percentage of complaints received)**

	No.	%
Child protection	5	0.40%
Corrections	8	2.10%
Freedom of Information	8	5.80%
Local councils	70	7.20%
Other public sector agencies	65	5.20%
Outside our jurisdiction	0	0.00%
Police	71	1.40%
<b>Total</b>	<b>227</b>	

**Figure d: Outcomes of requests for review of decisions**

	A1	A2	Res	Reo	Total
Child protection	1	0	1	0	2
Corrections	4	7	0	1	12
Freedom of Information	11	2	1	0	14
Local councils	27	35	2	4	68
Other public sector agencies	39	17	3	6	65
Outside our jurisdiction	6	2	0	0	8
Police	59	0	7	0	66
<b>Total</b>	<b>147</b>	<b>63</b>	<b>14</b>	<b>11</b>	<b>235</b>

A1=original outcome affirmed after file review  
A2=original outcome affirmed after telephone enquiry  
Res= resolved Reo=reopened

## Complainant satisfaction survey

In May–June 2000, we conducted a satisfaction survey of all complainants whose complaint had been determined by the general team between 1 April 1999 and 31 March 2000. Two slightly different questionnaires were sent. The standard questionnaire was distributed to complainants whose complaints were the subject of preliminary investigations, formal investigations or mediations. The other questionnaire was distributed to complainants whose complaints were outside our jurisdiction or were declined at the outset for discretionary reasons. There was a 32% response rate.

The survey did not canvass complaints dealt with by our police and child protection teams as our primary role in these areas is one of monitoring, review and scrutiny rather than direct complaint handling.

The survey asked a range of questions including:

- how complainants found out about the Ombudsman
- the role of the Ombudsman
- expectations about how complaints would be handled
- expectations about time taken to finalise a matter and the actual time taken
- ease of understanding communications
- preferred means of dealing with the office
- level of contact expected
- satisfaction levels.

Similar surveys in 1993 and 1995 had shown that satisfaction with our determinations and overall outcomes was directly linked to whether resolution was in the complainant's favour. If a matter was resolved, complainants tended to rate all aspects of our service highly. If the matter was not resolved in their favour, ratings were lower. This trend was repeated in the 2000 survey. The results from the complainant survey will help us improve our service to the public. In particular, we will use the information about our complainant profile when reviewing our access and awareness program in late 2001. The issues raised will also inform our business planning and any review of our policies, process or work practices.

### Finding out about the Ombudsman

Complainants found out about us in a variety of ways. Fifty three percent of complainants were already aware of the office—up from 7% in the 1995 survey. The media was the second highest source of information followed by friends, legal advisers, pamphlets and politicians.

### Expectations about the role of the Ombudsman

Most complainants understood that our role was to investigate complaints and recommend changes if decisions are wrong, investigate and find the truth, independently assess complaints, be the avenue of last resort and provide advice or information. Some complainants wrongly thought that our role was to act on their behalf. A small number thought our role was to provide compensation.

### Expectations about the ways complaints would be handled

About 55% of complainants expected a formal report while 22% expected simple written advice. Significantly, only 3% said that they expected telephone advice—down from 29% in the 1995 survey.

### Expectations about the time taken to finalise a matter and the actual time taken

Nearly 70% of complainants expected that we would finalise their matter within two months. About 66% responded that we took about the right amount of time or less time than they expected.

### Ease of understanding communications

Eighty percent of respondents said that our correspondence was informative and easy to understand. Letters advising complainants that we were declining to take up their matter elicited the most negative responses. Only 56% of respondents said that the reasons for our final decisions were clearly explained.

### Preferred means of dealing with the office

Interestingly, 60% of complainants said that they preferred to deal with us in writing rather than in person (29%) or by phone (20%). Complainants from a non-English speaking background, Aboriginal or Torres Strait Islander people or people with a disability preferred face-to-face contact.

### Level of contact expected

Fifteen per cent of complainants expected to be contacted weekly about the progress of their complaint. While 30% expected us to contact them monthly, only 14% said that this level of contact happened. Thirty seven percent responded that our only contact was when the final decision was made, but only 9% expected this. The frequency of contact with complainants is an important customer service issue and we will be looking at strategies to better meet expectations in this area.

### Satisfaction levels

There were significant improvements since the 1995 survey in satisfaction levels with the help and courtesy of staff, the promptness with which complaints were determined, and whether reasons for our final decision were clearly explained. The proportion of respondents saying our final decision was reasonable was also higher than the number satisfied with the actual decision.

A pleasing outcome was that 64% of people whose complaints we had to decline at the outset for various reasons indicated they would still refer future complaints to us. The level of confidence in the knowledge and expertise of staff was only 43%, even though the general satisfaction levels improved. However, it should be noted that roughly two-thirds of respondents whose complaints had been resolved were confident in our knowledge and expertise. We believe there may be a correlation between the level of confidence in our expertise and the outcome of the complaint.

## Joint Parliamentary Committee

In January 1991 a Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (commonly known as the JPC) was established with broad responsibilities for monitoring and reviewing the exercise of the Ombudsman's functions. The JPC is an important external agent of change. It helps us examine the way we exercise our functions and the priorities we give to various activities and projects. The JPC can review our reports, examine our policies, processes and practices, critically review our performance measures, look at complaints made about us, and suggest alternative ways of addressing various issues of public interest within our jurisdiction.

During 2000–2001 the Ombudsman gave evidence before the ninth general meeting of the JPC. The JPC also commenced an inquiry into Access to Information. We made a submission to this inquiry and the Ombudsman appeared before the JPC in August 2001 to give evidence in support of our written submission. For more details about our submission, see 'Appeals and reviews'.



# Highlights

## 1 Scrutiny

### Objectives

- To promote standards of excellence
- To identify and address deficiencies
- To give priority to complaints that identify systemic issues
- To ensure allegations of misconduct are properly addressed
- To promote the use of alternative dispute resolution
- To evaluate the effectiveness of our service

### Highlights

- Police service adopted the recommendations we made in our special report to Parliament in December 2000 about misuse of email
- Police service based their benchmarks for policing domestic violence matters on our recommendations
- The 'homeless protocol' we developed for the Olympic period is now used as a permanent guide for police
- Police service is now reviewing its policies about the behaviour of officers off-duty as a result of our involvement
- Significant improvements in quality of and time taken by agencies to finalise child abuse investigations and report the outcome to us as a result of our work
- Significant increases to the number of child abuse notifications from councils following our audit of their policies
- We successfully piloted new workshops about investigative practice into child abuse allegations, particularly where children need to be interviewed
- We conducted training in regional areas into how to develop child protection policies

## 2 Investigations and complaint resolution

### Objectives

- To promote standards of excellence
- To identify and address deficiencies
- To give priority to complaints that identify systemic issues
- To ensure allegations of misconduct are properly addressed
- To promote the use of alternative dispute resolution
- To audit customer service standards and complaint handling procedures
- To evaluate the effectiveness of our service

### Highlights

- Over 90% of recommendations made after formal investigations have been implemented by agencies
- We finalised more matters than we received
- The Department of Education has established a specialised investigation unit to deal with child abuse allegations as a result of our investigation
- Improvements to Kariong Juvenile Justice Centre have been made as a result of our recommendations in March 2000
- We developed a model enforcement policy to help local councils improve the performance of their enforcement function
- Several universities have reviewed their internal procedures as a result of receiving our investigation report (including recommendations) into the University of Sydney
- As a result of our involvement, the State Debt Recovery Office has changed its practices relating to the collection of unpaid fines and the handling of complaints about those practices

## 3 Appeals and reviews

### Objectives

- To promote standards of excellence
- To identify and address deficiencies
- To give priority to complaints that identify systemic issues
- To promote the use of alternative dispute resolution
- To evaluate the effectiveness of our service

### Highlights

- Resolved a significantly higher percentage of Freedom of Information (FOI) matters to our satisfaction, often through the release of documents
- Significantly increased the percentage of FOI matters finalised
- Our 'Access to Information' survey confirmed that the different schemes governing access to information (under the FOI Act, the *Privacy and Personal Information Protection Act* and the *Local Government Act*) are confusing practitioners
- We scrutinised more closely the merits of agency determinations and compliance with the FOI Act and are currently working on recommending improvements



**Our 2000–2001 corporate goals**

Goal 1: To promote fair, accountable and responsive public administration and proper conduct by persons and bodies within our jurisdiction

Goal 2: To monitor our performance in order to continually improve the quality of our work

Goal 3: To increase awareness of our role and functions and to promote access for all

Goal 4: To implement best practice management systems to foster a cooperative and productive workplace and ensure the effective use of available resources

<b>4 Reform</b>	<b>5 Access and awareness</b>	<b>6 Corporate</b>
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**Objectives**

To promote standards of excellence  
To highlight deficiencies in public administration and contribute to policy reform

**Objectives**

To increase awareness of our role, function and services by people with special needs  
To improve accessibility to our services

**Objectives**

To implement best practice management systems to foster a co-operative and productive workplace and ensure the effective use of available resources  
To develop an integrated approach to management and employee relations  
To develop office information management and technology systems to meet core business requirements  
To review the internal allocation of funds and resources

**Highlights**

- All universities in NSW received a copy of our report into the University of Sydney's assessment procedures to consider and adopt our recommendations
- Amendment to the *Freedom of Information Act 1989* to clarify that agencies such as the Supreme Court are subject to the Act
- Made detailed submissions to the Police Powers Taskforce on how the Law Enforcement (Powers and Responsibilities) Bill 2001 could be improved
- Contributed our views on an industrial award proposed by the NSW/ACT Independent Education Union to govern disciplinary proceedings in non-government schools

**Highlights**

- Dealt with a 9% increase in oral complaints and inquiries from 24,025 to 26,564
- Conducted information sessions about our child protection role, including reporting requirements, to over 1,300 people from 150 agencies
- Made presentations to ethnic community groups using interpreters
- Consulted peak community organisations and sent information packs to target groups
- Sought practical ways to mediate and conciliate long lasting disputes and mistrust between police and Aboriginal communities
- Participated in major women's functions such as International Women's Day Rally and Stop Domestic Violence Day
- Developed a Compic brochure —Compic is a picture language for people with an intellectual disability
- Distributed information to all correctional and juvenile justice centres, community centres, community organisations and networks, government information centres and community libraries

**Highlights**

- Facilitated the restructure of the child protection team
- Used technology more effectively to improve performance
- Finalised the accounting manual
- Implemented the GST
- Had an unqualified audit report
- Reviewed computer security systems
- Developed a new logo and corporate image
- Ran an extensive media campaign to coincide with the Ombudsman's visit to regional areas
- Completed the first stage of our web site review
- Completed an audit of our records management program and developed a records management policy
- Archived over 10,000 inactive files
- Established an IT help desk



# Year at a glance

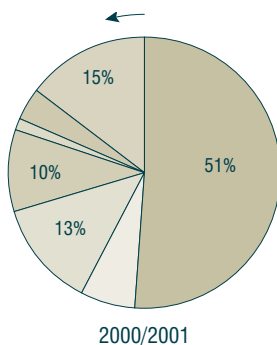
This year we received 9,820 written complaints and notifications (see fig e). They included complaints received directly from members of the public as well as complaints received via the police service and via agencies providing children’s services. The schemes for dealing with complaints about police and complaints involving agencies providing children’s services are explained in the Scrutiny section. Those complaints are largely dealt with by overseeing the organisation’s investigation into the complaint. However, if we consider we need to directly investigate such matters ourselves, we have the option to do so. Our powers include the power to investigate complaints about maladministration, child abuse or an agency’s response to allegations of child abuse and police misconduct.

Sometimes a special report to Parliament is necessary if, for example, an agency fails to follow recommendations we make following a direct investigation. This year we made a special report to Parliament about the misuse of email in the police service. This report and our other direct investigations into police are discussed in ‘Scrutiny’.

This year we received 26,564 oral inquiries, which was over 2,500 more than we received last year (see fig f). These inquiries were not considered to be formal complaints. However, the Ombudsman Act was amended recently to allow us to receive complaints orally in the future if we decide to (for further details, see ‘Legal Changes’ in the Appendices). Almost a third of the oral inquiries we received were outside our jurisdiction. Written complaints about matters outside our jurisdiction constitute only about 5% of total written complaints, but the numbers continue to increase over the years (see fig g). This year we gave advice and referral information on 10,390 matters that were outside our jurisdiction.

This year we determined 9,734 complaints, almost 2,000 more than last year (see fig h). This was in some part due to improved work practices within our office.

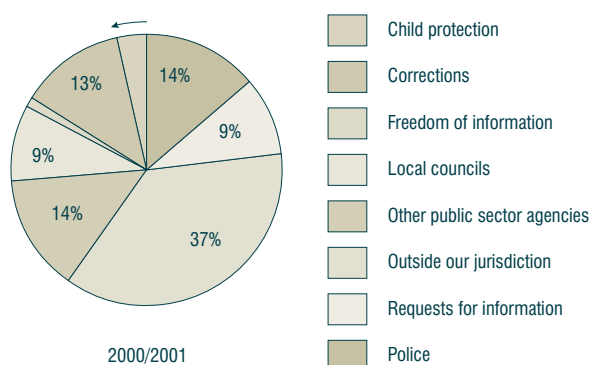
**Figure e: Written complaints and notifications received**



- Child protection
- Corrections
- Freedom of information
- Local councils
- Other public sector agencies
- Outside our jurisdiction
- Police

	99/00	00/01
Child protection	1,221	1,435
Corrections*	424	379
Freedom of information	158	137
Local councils	848	959
Other public sector agencies**	1,065	1,249
Outside our jurisdiction	530	639
Police	5,142	5,022
<b>Total</b>	<b>9,388</b>	<b>9,820</b>

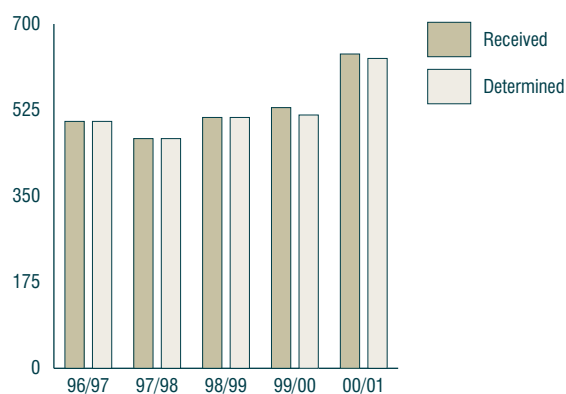
**Figure f: Oral complaints and inquiries received**



	99/00	00/01
Child protection	1,203	939
Corrections*	2,171	3,331
Freedom of information	328	312
Local councils	2,299	2,409
Other public sector agencies**	3,483	3,690
Outside our jurisdiction	9,388	9,751
Police	3,156	3,639
Requests for information	1,997	2,493
<b>Total</b>	<b>24,025</b>	<b>26,564</b>

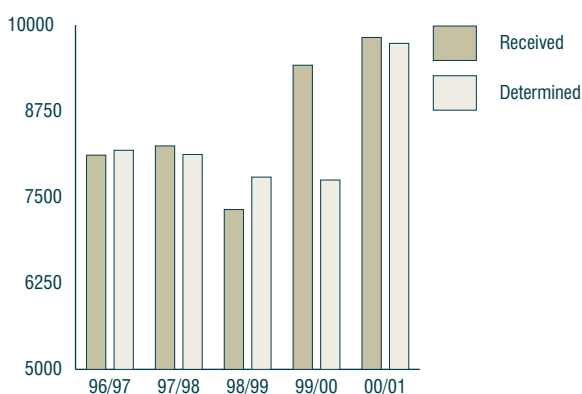
**Figure g: Complaints about matters outside our jurisdiction**

Complaints received 00/01	
Written	639
Oral	9,751
<b>Total</b>	<b>10,390</b>



Complaints (written)—five year comparison

**Figure h: Written complaints and notifications determined**



	99/00	00/01
Child protection	402	1,487
Corrections*	414	392
Freedom of information	139	188
Local councils	823	956
Other public sector agencies**	1,023	1,177
Outside our jurisdiction	515	630
Police	4,436	4,904
<b>Total</b>	<b>7,752</b>	<b>9,734</b>

\* This includes complaints and inquiries about the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice

\*\* This includes complaints and inquiries about all public sector agencies excluding the police service, local councils, the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice and excluding Freedom of Information complaints

We are continually trying to improve our internal communication systems. Our monthly staff meetings are a good opportunity for staff to share information, exchange ideas and welcome new staff.



The Ombudsman Bruce Barbour addresses staff at a monthly meeting.



Senior officers of our general team meet to discuss current matters.

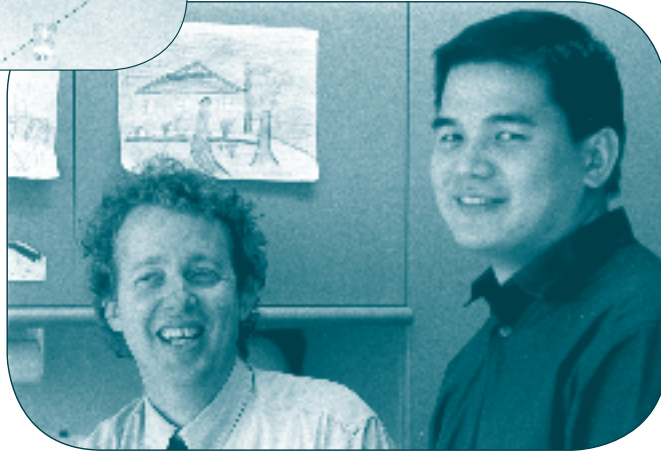


Photo: Joseph Lafferty

We have a dedicated team of 133 staff.



Bruce Barbour, Ombudsman, with Clare Petre, Energy and Water Ombudsman NSW, and John Wood, former Deputy Commonwealth Ombudsman at an Australian Institute of Administrative Law conference.



# Scrutiny

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We are responsible for making sure that the police service and agencies providing children's services deal with complaints properly

This section gives details of the work we have done in scrutinising systems and investigations, and monitoring the impact of new legislation. The main organisations we scrutinise are the police service and agencies that provide children's services.

The police service is responsible for dealing with complaints about its officers. We are responsible for making sure that they deal with those complaints properly. Part of our work also involves analysing complaint patterns and trends to help the police service gather intelligence from complaints and improve policing practices.

Government and non-government agencies that provide children's services are required to notify us of child abuse allegations they receive about their employees. We are responsible for overseeing the way agencies handle those allegations. As with the police service, we monitor the decisions agencies make in response to individual cases as well as the systems they have to deal with these matters.

Another role we have is monitoring the impact of significant legislative initiatives including a scheme allowing forensic procedures to be carried out on certain convicted and suspected offenders and the establishment of a national DNA database. We are also responsible for making sure that law enforcement agencies running covert operations involving undercover work and telecommunication interceptions comply with mechanisms designed to make them accountable for their actions.

We not only focus on the police service’s systems for handling complaints, but also look at policing practices to identify areas for improvement



## Police

Our work with the NSW Police Service (police service) focuses on:

- overseeing police investigations into allegations of police misconduct,
- helping the police service improve the way it investigates complaints,
- keeping the complaints system under scrutiny,
- directly investigating complaints where we decide this is necessary,
- working with the police service to improve the way it analyses and uses information contained in complaints to improve performance.

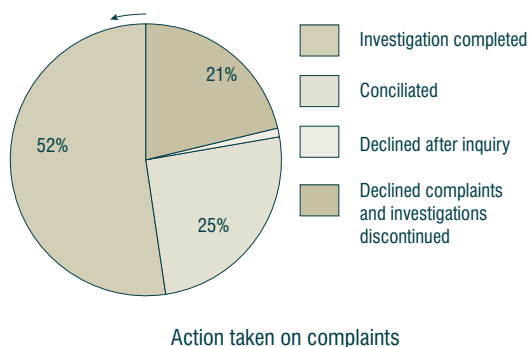
The *Police Service Act 1990* sets out the scheme for dealing with complaints about police. The essence of the scheme is that the police service itself is primarily responsible for investigating complaints, with the investigations being closely monitored by the Ombudsman. Very serious allegations such as perverting the course of justice, accepting bribes, malicious wounding and manufacturing prohibited drugs also have to be referred to the Police Integrity Commission (PIC). These very serious matters are called category 1 matters. Other matters are called category 2 matters.

With complaints where closer scrutiny is necessary, we may be present during every stage of the investigation. In all cases, we inspect the final report and advise the police service if we have identified any deficiencies or problems.

Members of the public can complain to the police service, to PIC or to us. We formally refer any complaints that we receive to the police service to be dealt with. To allow us to oversee the way it handles each complaint, the police service notifies us of the complaints it receives.

This year we received 5,022 written complaints about police officers (see fig 1). Some we received directly, others were received via the police service. They included 883 complaints by police officers, which is around 200 less than last year, and 4,139 from members of the public (see fig 2).

**Figure 1: Police complaints received and determined**



\*Complaints are dealt with by the police service and scrutinised by the Ombudsman

Complaints received	
Written	5,022
Oral	3,639
Reviews	71
<b>Total</b>	<b>8,732</b>
Action taken on complaints*	
Investigation completed	2,567
Conciliated	1,244
Declined after inquiry	51
Declined complaints and investigations discontinued	1,042
<b>Total</b>	<b>4,904</b>
Current (at 30 June)	
Under investigation	1,741
Being conciliated	385

## Reforming the complaints system

There has been considerable media interest recently about perceived problems in the police complaints system. Much of the commentary has been based on misinformation and a lack of understanding about the current system. It has been reported that some police officers themselves are concerned about the complaints system. It is the responsibility of the police service to disseminate factual information to all its officers to dispel this misunderstanding.

While improvements can be made to the way complaints are dealt with by the police service, we do not agree that there is a fundamental flaw in the police complaints system.

The Royal Commission into the NSW Police Service (Royal Commission) called for a fair, simplified and less formal complaint system where the police service is responsible for investigating complaints under the oversight of the Ombudsman. The new system began in March 1999. It put the onus on local commanders to conduct all aspects of the investigation and management of complaints, including keeping complainants informed and seeking their views on the outcome. It also requires immediate supervisors and commanders to act quickly before potentially corrupt practices and problems become entrenched.

### *Tailoring resolution methods to the specific complaint*

Since the new system was introduced, gradual progress has been made on improving the way the police service responds to complaints. This year the police service attempted to resolve about 25% of the 5,022 written complaints through conciliation. In 80% of cases this was successful. On the whole, members of the public are satisfied when their complaint is conciliated.

The police service is not required to take action in relation to all written complaints. Around 20% of complaints are declined. Only half of the complaints received needed to be formally investigated.

An important feature of the *Police Service Act* is that the investigation of each complaint can be tailored to suit the allegations. We have been encouraging the police service to assess matters more rigorously and to use a whole range of investigative strategies. We stress that we do not expect full scale investigations to be conducted in relation to matters that raise relatively minor issues.

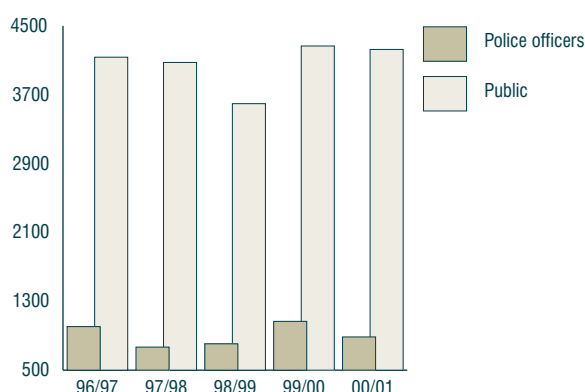
The type of inquiry required depends on the available evidence, the seriousness of the allegations and the outcomes which need to be achieved. One matter may require electronically recorded interviews with suspects, telephone records to be obtained and covert surveillance. Another matter may simply require a telephone call. Complaints raising customer service issues are often resolved by giving a simple explanation.

### *Excessive investigations*

We are concerned that in many cases police investigators conduct very resource-intensive investigations in circumstances where this is not warranted. Many internal police complaints arise from conflicts between employees and managers. We believe the police service should use alternative dispute resolution processes more often in these cases, as they are more outcome-focused, potentially quicker and generally less stressful for the people concerned (see case studies 1 and 2).

In some other matters, complainants raise serious allegations, but it soon becomes clear that there is no evidence supporting them and no justification for conducting a full-scale investigation. The service should take these factors into account when deciding the resources to be committed to a particular investigation.

**Figure 2: Complaints (written) received from police officers and members of the public —five year comparison**



### Performance indicator

#### Complaints conciliated

Target	99/00	00/01
25%	29%	25%

#### Interpretation

Conciliation is an effective way to deal with many complaints. This performance indicator refers to the percentage of complaints that are resolved by conciliation. The police service conciliates directly with the complainant and we audit the results. The result is consistent with the performance target.

### The results of investigations

It is important to recognise that a significant percentage of complaints have substance. The police service investigated around 600 more complaints this year than last year (see fig 3) and more of these investigations resulted in adverse findings (42% compared to 33% last year) (see fig 4). This increase reflects to some extent the results of ‘Operation Providence’—a large-scale inquiry into the improper use of email in the police service, which is discussed later in this section.

Counselling remains the most common management response to adverse findings. This year, in more cases than last year, adverse findings led to additional training for the officer concerned. In some cases, additional training was conducted for the entire local area command or the entire police service.

### Serious misconduct

The large number of incidences of criminal conduct brought to light through complaints each year highlights the importance of the complaints system.

This year criminal charges were laid against 79 officers—which is comparable to previous years. Adverse findings were made in relation to around 100 allegations of criminal conduct such as:

- theft
- attempts to pervert the course of justice
- serious assaults
- domestic violence offences
- illegal computer accesses
- various drink driving offences
- illegal drug use
- various firearm offences.

There were also 90 adverse findings made about police inappropriately using their position to obtain confidential information on members of the community (see Appendix A: Police complaints profile). Case studies 3, 4, 5, 6, 7 and 8 are examples of matters involving serious misconduct by police.

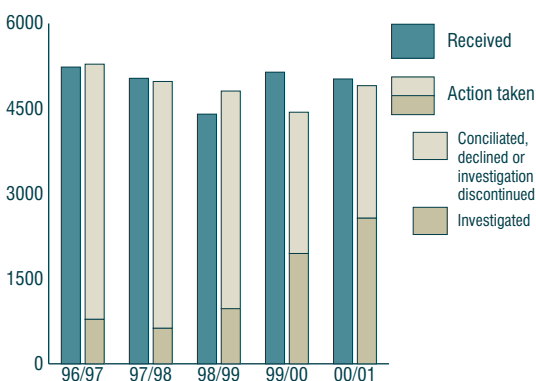
### Honest mistakes

We recognise that police officers do not have an easy job. Each year they attend to tens of thousands of incidents, often in difficult and stressful situations. Inevitably, mistakes will occur and some officers will exercise poor judgement.

We have made it clear that honest mistakes or isolated errors of judgment should not be dealt with in the same way as findings of corrupt conduct or criminal activity. However, there is a perception among police officers that if they are found to have made an honest mistake, their employment record will be tarnished and their career will suffer. We still regularly see examples of local commanders failing to properly record findings because of the perception that a finding that a mistake was made will prejudice officers’ careers. We support the principle that honest mistakes and isolated errors of judgment should not appear on the employment records of officers at all, but other findings should be.

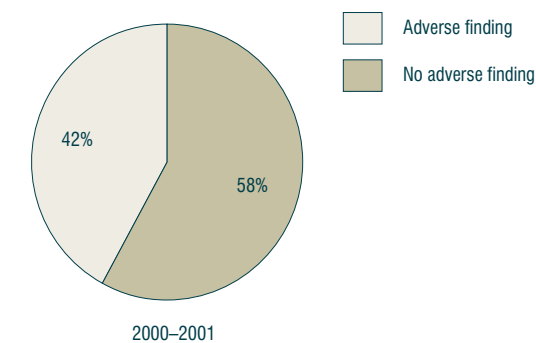
We have been urging the police service for some time to give their officers clear guidance on how various findings about them might be used in assessing their suitability for future positions. The system needs to be open and transparent and officers should be encouraged to admit to making mistakes without fearing potential damage to their careers. The police service needs to give officers the confidence to make decisions under difficult circumstances. If a decision was wrong but there was no ill intent, then the officer needs to learn from that mistake rather than being punished for making it.

**Figure 3: Police complaints received (written) and action taken—five year comparison**



Note to fig 3: Since March 1999 the figures have been effected by legislative changes which reclassified some informal inquiries as investigations.

**Figure 4: Adverse findings**



	99/00	00/01
Adverse finding	649	1,080
No adverse finding	1,296	1,487
<b>Total investigations completed</b>	<b>1,945</b>	<b>2,567</b>



## Case studies

### **Case study 1**

Two officers at the same police station made complaints concerning various conflicts in their workplace. Officer X alleged that his colleagues were harassing him and refusing to cooperate with him in carrying out their policing duties. Officer Y alleged that officer X had sexually harassed a junior female colleague. Other officers alleged that officer X had behaved inappropriately towards his male colleagues. One of the allegations was that on several occasions officer X had grabbed male officers on the genitals, as a form of greeting.

It was clear that the station was divided into two factions and that there were numerous, entrenched workplace conflicts that needed to be addressed. It was also clear that none of the officers wished to pursue any of the matters criminally.

The police service conducted a full-scale, formal investigation. As part of this process, the investigating officers conducted lengthy electronically recorded interviews with seven officers and obtained written reports from another 33 officers. It was found that both officers had behaved inappropriately in some respects.

Alternative dispute resolution techniques were also used to try to address some of the issues raised. The local area commander later reported that these techniques appeared to have been successful in resolving some of the complaints.

A police service solicitor reviewed the completed investigation and commented that a large resource-intensive investigation was not suitable for these kinds of complaints and that 'any fact-finding process should have been brief and to the point'. Having read the large report produced by the police service, we can only agree with these comments. We note the use of alternative dispute resolution techniques but remain concerned that so much time and money was spent on conducting a formal investigation.

We have written to the police service suggesting they consider giving investigators at the local command further training in complaint handling options.

### **Case study 2**

A police officer complained that a senior manager had refused to allow her to work as a detective, despite her successful completion of the detective education program. The police service conducted a lengthy formal investigation.

We were concerned about this response. We noted the following problems with the investigation:

- statements were taken from more than 10 officers and this process took more than six months,
- most of the officers were also questioned about their statements, which took more time and added little to the information they had already provided,

- there was an unreasonable delay in interviewing the senior manager in question,
  - the complainant was not advised of the outcome of her complaint until about 10 months after she made the complaint,
- not enough attention was paid to the complainant's welfare needs during the investigation.

For all the resources used for dealing with this complaint, very little was ultimately achieved. Even the complainant was unhappy with the outcome. We believe that because this complaint was essentially a dispute between an employee and a manager over a promotion, an alternative dispute resolution process would have been more suitable.

### **Case study 3**

A police officer was alleged to have told a colleague that he had fabricated evidence against a driver for the offences of low range PCA and driving while his licence was cancelled. He also issued court attendance notices to the driver for these offences. The matter was investigated. When the driver was interviewed, he also complained that the officer had fabricated evidence against him and had assaulted him.

As a result of the investigation, the officer was charged with five counts of perverting the course of justice and one count of assault occasioning actual bodily harm. The court attendance notices against the driver were also withdrawn.

### **Case study 4**

As a result of very unusual behaviour in the workplace, an officer was given a drug test. After providing a number of samples that appeared to have been tampered with, an undiluted sample was finally obtained indicating the presence of cannabis. He has now been charged with interfering with a drug sample and is being considered for removal from the police service.

### **Case study 5**

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.

### ***Primary responsibility lies with the police service***

As an oversight body, it is not our place to direct that investigations be conducted in a particular way. Our role is to scrutinise processes and make sure that the investigative decisions and management responses of the police service produce appropriate outcomes. If we find a pattern of deficient investigations, we may deal with the systemic problems rather than direct that each deficient investigation be corrected.

One risk in shifting primary responsibility for dealing with the majority of complaints to the local command level is a wide disparity in the quality of local investigations. The commitment to properly investigate issues can vary from one location to the next.

The police service has several resources that can be drawn on to manage this risk. A recent development has been to use the employee management branch to help local area commanders make management decisions, including responding to adverse findings against officers.

The Police Commissioner has also given a commitment to establish an external agencies response unit. The unit will be responsible for improving the quality of the police service's response to major issues raised by key oversight agencies—an area in which the police service has performed poorly. We will closely monitor the performance of this unit.

Finally, the police service is currently reviewing its professional standards managers. These managers are based in regional offices and have a pivotal role in ensuring the quality, consistency and fairness of local level complaints management. Their skills as investigators, and their ability to provide strategic advice on using complaints to identify and remedy broader deficiencies, are crucial to ongoing reforms.

### ***Complainant satisfaction levels***

Under the *Police Service Act*, the police service is required to report to us on whether complainants are satisfied with how their complaint was handled. We recently surveyed around 250 complainants across the state to assess their satisfaction and to verify information provided by the police service. We sent written surveys to complainants whose complaints had been formally investigated and received 71 responses. We also sent the surveys to complainants whose complaints had been resolved informally (for example, through conciliation) and received 157 responses.

Our survey found that 43% of complainants whose complaints had been formally investigated were satisfied with the way the police service handled the matter. In contrast, the police service reported to us that 73% of these complainants were satisfied. Our survey also found that 72% of complainants whose complaints had been resolved informally were satisfied. The police service reported that this figure was 92%.

Possible explanations for the discrepancies between our figures and the police service's figures are that complainants might be reluctant to tell investigating officers that they are dissatisfied with the way their complaint has been handled, or complainants may feel less satisfied after they have had time to reflect on the experience. One reason why more complainants whose matters were resolved informally were satisfied may be the fact that less serious complaints are more easily resolved to the satisfaction of complainants.

Until recently, many commanders did not appreciate their legislative obligation to consult complainants when investigating complaints. Over the last 12–18 months, we have worked to educate the police service about legislative responsibilities and the benefits of measuring complainant satisfaction. As a result, there has been a marked improvement in the number of reports about complainant satisfaction. However, we are still concerned that in over a quarter of complaints formally investigated by the police service, we were not advised about the complainant's level of satisfaction.

### **Our initiatives for reforming the police service**

Because our ultimate goal is to assist in improving policing generally, we not only focus on the police service's systems for handling complaints, but also look at policing practices to identify areas for improvement. An important strategy is to use complaints to see where problems have arisen or may arise in the future. In this way, we can help the police service implement more effective strategies to make the service resistant to corruption and improve overall performance.

We have taken significant initiatives to improve the handling of complaints. For example, we are:

- using information from complaints and other sources to profile regions and local area commands to identify significant trends and risks relating to complaint management,
- providing feedback about not only deficient investigations but excessive investigations—if an investigator has wasted resources investigating a minor complaint, it impacts on complaint management generally and decreases the resources available for policing and protecting the community,
- developing clear risk management guidelines to streamline complaint investigation and oversight.

### ***Auditing serious category 2 matters***

This year we conducted a comprehensive audit of 330 serious category 2 matters to establish how well they were being investigated by each region. These matters include allegations of assault, mistakes leading to death or serious injury, deliberate breaches of privacy and a range of other conduct with potentially grave consequences.

Our preliminary findings indicate that the police service still needs to make significant improvements to its investigative practice (for example, see case study 9). We propose to use the results as a benchmark to assess whether police investigative practices improve over time.

Our audit also looked at the quality of our own scrutiny of those investigations. We are now reviewing the results to decide whether we need to change the way we oversee serious category 2 matters. Some serious category 2 matters may warrant greater scrutiny (a more resource-intensive approach) and others may be better handled through auditing.

#### Performance indicator

Investigations directly monitored		
Target	99/00	00/01
20	24	28
<b>Interpretation</b>		
This performance indicator refers to the number of investigations that we monitor directly. Over the last two years we monitored significantly more complaints than our target.		

#### *Directly monitoring investigations*

Close scrutiny of an investigation sometimes requires us to be physically present at the interviews of officers and other witnesses. By directly monitoring investigations in this way, we can make sure that a particular investigation is conducted properly. We may directly monitor an investigation if:

- there are relatively serious issues involved,
- our attendance might lead to a more balanced exploration of the relevant issues,
- our experience has shown that investigations by particular area commands have been poorly handled in the past,
- we believe particular care is needed in collecting evidence on officers of concern,
- it is particularly important that the investigation is transparent because of relations between police officers and a particular community,
- the complainant may be vulnerable.

#### **Case study 6**

Following an evening at a pub two off-duty police officers were involved in an accident where the car in which they were travelling left the road and smashed through a fence before hitting the front wall of a house. The two police officers told the owner of the house that, although the car was owned by one of them, the driver was someone they had met at the pub but whose details were unknown to them. They claimed that he had approached them at the pub and offered to drive them home because he had noticed they had been drinking. The officers also told the home owner that the driver had jumped out of the car after the accident and run off into the night.

The subsequent police investigation revealed that both officers had lied to the home owner. One of the officers was found to have been driving the vehicle and was charged with driving in a dangerous manner. Both officers were charged with providing false information in relation to the accident. The police service is currently considering whether to remove both officers.

Unfortunately, there have been several other incidents of police seeking to cover up their involvement in serious motor accidents that have resulted in them being charged.

#### **Case study 7**

An incident arose at a local police station in which a probationary constable held his gun to the head of the ethnic community liaison officer. Other police officers in the room had grave concerns about his actions. After initially denying his actions, the probationary constable allegedly sought to justify his conduct by stating 'Oh my God. It was a joke, a nothing. Plenty of cops do it.' The police service failed to see the humour and terminated his appointment.

#### **Case study 8**

The mother of a twenty-year-old woman complained about the behaviour of a police officer towards her daughter. The investigation revealed that the officer had begun his relationship with the young woman through the internet. While on duty one night he picked her up and drove her around in a police vehicle for a number of hours. Their activities also included taking turns discharging his police service firearm in a State forest. The officer has now been charged with a firearms offence and his future with the police service is under consideration.

#### **Case study 9**

A senior constable from a metropolitan station was drunk at a police social function. He allegedly made sexually offensive remarks to a female officer and was alleged to have inappropriately touched and spoken to male officers. When he was removed from the function he threatened to take his own life. The complaint was principally dealt with by way of a workplace conference.

We had concerns about the way this investigation was conducted. The senior constable had a history of similar complaints but this was not considered when deciding to conciliate the complaint. In addition, some serious allegations did not appear to have been investigated. We were also concerned that the psychologist who examined the officer to assess whether he should carry a firearm was not fully aware of his complaints history, drinking history and all of the allegations. Because of the very significant public interest issues this complaint raises, we decided to conduct a direct investigation of the matter. This investigation is continuing.

### *Examples of changes to police practices as a result of our work this year*

We focus on systemic issues identified by complaints and also actively encourage the police to do so. Our intervention has resulted in an examination of police practices relating to:

- the way that search warrants are executed (see case study 10),
- the receipt of donations from private organisations (see case study 11),
- the enforcement of bail conditions placed on young Aboriginal people (see case study 12),
- the disclosure of confidential information to third parties (see case study 13),
- the use of force and capsicum spray (see case studies 14 and 15),
- domestic violence situations (see case study 16).

#### **Officers charged with drink driving offences**

In an audit of complaint files relating to police charged with drink driving offences, we found that 43 off-duty police were charged with these offences over a period of three years (from July 1997 to June 2000). Thirty five of these matters involved mid or high range prescribed concentration of alcohol.

We were concerned about whether there was a consistent response by the police service to each offence and whether they were using their powers to conduct random drug and alcohol tests on at-risk officers. Because of these concerns, we decided to investigate the service's response to drink driving offences involving off-duty police officers.

During the course of our investigation a matter arose which illustrated the ongoing problems that the police service is experiencing with drink driving offences involving off duty police officers and the need for a more sophisticated management approach to dealing with these matters.

A police officer driving his private vehicle on the wrong side of a major highway collided with a motor cycle seriously injuring the rider and killing his own passenger. The officer was eight times over the legal limit at the time of the accident. The same officer had previously been issued with a performance warning notice arising out of a dangerous driving conviction in which risks were identified relating to possible alcohol misuse. Following this accident, the officer was charged with various drink driving and dangerous driving offences and it was recommended that he be suspended without pay and considered for removal from the service.

A number of other cases also serve to illustrate the continuing difficulties being experienced by the police service in dealing with off duty drink driving offences.

One officer returned a positive result to a random breath test and allegedly abused the officers who conducted the test as well as requesting that they let him off because 'we all stick together'. He continued his abuse and threats at the station and was later convicted of a high range offence. The officer has since resigned from the service.

On another occasion an officer driving a covert police vehicle gave a high range reading when subjected to a random breath test. He was served with a court attendance notice and issued with a licence suspension and was later convicted of the high range offence.

Our investigation found that the police service has no clear policy to deal with officers charged with off-duty drink-driving offences. We have recommended that they develop a detailed policy to ensure a consistent management response to these matters and that the policy be promoted and enforced. We have also suggested that they provide appropriate support for the officers involved. Finally, we recommended that they clarify the circumstances which would warrant the targeted testing of officers considered to be at risk of committing repeat offences of this kind.

We expect that the police service will make a formal response to our report in the near future.

#### **Misuse of COPS information**

Improper access by police officers to the police computer system (COPS) is an invasion of privacy and a criminal offence. The seriousness of this issue and the important role auditing plays in the prevention and early detection of improper access is clear from case studies 17, 18 and 19.

After local area commanders were given the responsibility for auditing the use of COPS by officers, we noticed a marked decrease in the number of complaints about improper access by officers. The decrease could have been a result of the police service raising officer awareness and implementing strong sanctions for misusing COPS. However, it could have also been due to a decrease in the frequency or quality of audits conducted by local commands. To be sure, we decided to investigate the auditing of COPS by commanders.

Details of audits for two six month periods were provided by 37 local area commands. Our investigation revealed infrequent and poor quality auditing practices. Only about half of the 37 local area commands were meeting expectations in conducting audits on a quarterly basis and only 13.5% conducted audits of 100% of staff. The methodology differed from one command to the next and the officers responsible for doing the audits were not given adequate training.

### **Case study 10**

As part of an investigation into a drug-related murder, police raided residential premises in the Newcastle area. It was alleged that a police officer, who was also responsible for video-taping the raid, had turned a blind eye when alerted to the presence of marijuana. When interviewed, the officer explained that she had not continuously video-taped the raid. Although they thought the search would take a number of hours, the raiding party had only brought along video batteries with a total life of 60 minutes. The officer explained that it was normal procedure for the video camera to remain off until incriminating articles were found. The video camera would then be turned on and the articles filmed in situ.

We were concerned that turning on a video camera and filming only after incriminating articles were found does little to protect police officers from the frequent complaint that drugs were 'planted' by officers conducting the search. It also fails to act as a safeguard against corrupt police 'planting' incriminating articles.

We recommended that the entire search process be filmed, starting with the announcement by police of their presence. We have since been advised that the standard operating procedures for video or audio-taping of search warrants and planned operations have been amended to provide for continuous filming.

### **Case study 11**

An anonymous person complained that a civilian volunteer who worked for a Police Citizens Youth Club wore full police uniform when seeking donations from businesses for the local area command. An investigation found that the volunteer had sought donations but did not represent himself as a police officer.

However, the investigating officer found that the local area command had received donations from registered clubs, including \$3,200 from a local RSL. The police service's sponsorship and endorsement policy prohibits the acceptance of donations from registered clubs because it creates an actual or perceived conflict of interest for police. The risk is that the police could be accused of favouritism if they take or fail to take action in relation to the club.

The local area commander arranged for the donation to be paid back to the RSL. The RSL then gave the money to a Rotary Club which then donated the money to the local area command. The commander arranged this as he was advised by other commands that it was acceptable to receive donations from registered clubs provided it was paid via a community service organisation.

We were concerned that this practice circumvented and was contrary to the spirit of the sponsorship policy. We recommended that officers be reminded that the police

service cannot accept donations from registered clubs, including through a community service organisation. We also recommended that the police service consider auditing the application of its policy across local area commands. In addition, we have asked the service to consider amending its policy so that cash donations of more than \$2,000 must be notified to a central police service agency and the recording requirements for donations are clearly stated. The police service has advised it will revise its policy in light of our recommendations.

### **Case study 12**

Over the past 18 months we have received a number of complaints from a NSW regional centre relating to the policing of bail conditions placed on Aboriginal young people. We decided to conduct direct investigations into some of these complaints. With the assistance of Special Crime and Internal Affairs Command, we examined 6 months of police records from the local area command.

Our research produced some stark findings. Approximately one quarter of all arrests of young people (aged under 18 years) involved a breach of bail conditions. In 60% of these arrests, the breach of bail conditions was the main reason for the arrest. Children of 11, 12 and 13 years were highly represented among the young people arrested. Almost all the young people arrested for breach of bail were from an Aboriginal or Torres Strait Islander background. In many instances, children were arrested very late at night or in the early hours of the morning.

We believe that children being outside their homes during these times may be evidence of wider social problems in this community. In coming months we will be bringing together local Aboriginal representatives, police and other government and non-government agencies to try to address some of the complex problems affecting this community.

### **Case study 13**

Police investigated the cause of a fire that had destroyed a family home and attached takeaway food shop. They regarded the circumstances as suspicious and believed the fire was deliberately lit. After considering evidence from an expert witness called by the family, the Coroner found that the fire was accidentally caused by an electrical fault in a refrigerator motor. The family later complained about the investigation into the fire. In particular, they alleged that confidential information had been released to insurance company representatives. The police service investigated their complaint and identified several problems with the investigation into the fire.

We reviewed the investigation into the family's complaint and decided to use our Royal Commission powers to obtain the insurance company file and evidence from an insurance company investigator. The police service had not been able to obtain this material during their investigation.

Our investigation showed that the police had released information to insurance company representatives. This included communicating their belief that an accelerant was used and various fire scene test results. At this time there are no clear guidelines available to police about what information can be released to insurance companies. In August 1996 we had recommended in a special report to Parliament that existing guidelines should be clarified. However, the police service's response was that it believed the guidelines were sufficient. This matter further demonstrates that the guidelines were and are inadequate.

We also found that the police did not investigate whether an electrical fault had caused the fire. We were concerned that police had dismissed the possibility of an electrical cause without conducting inquiries and despite the contrary views of other professionals who examined the scene.

We have recently made preliminary recommendations that the police service apologise and consider making an act of grace payment to the complainants. We have also recommended that it clearly define the kinds of information that may be released to insurance companies.

#### **Case study 14**

We became concerned about the way a regional local area command was handling a significant number of complaints involving allegations of assault and unnecessary force. Many of these complaints involved Aboriginal people and young people. This command had a higher than average number of complaints involving these kinds of allegations.

Many of the involved officers had complaint histories that included a large number of assault allegations. We considered many of the police service's investigations into these complaints were of poor quality. They failed to pursue important lines of inquiry and identify serious issues relating to policing practices within the command. In addition, the management response to the issues identified was manifestly inadequate.

We decided to conduct our own investigation into one matter involving the arrest of an Aboriginal woman that resulted in serious injury. The police service agreed with our provisional findings that the investigation was of poor quality and is now investigating the complaint again. We are also conducting a further investigation into six other complaints where our preliminary view is that there are extensive failings in the police service investigations, findings and management action.

#### **Case study 15**

A young person complained that he was sprayed excessively with capsiicum (OC) spray during his arrest, causing burns and irritation to his eyes and arms. The police investigation found that the arresting officer acted appropriately and within guidelines during the arrest. The arresting officer also admitted spraying the OC spray in the direction of the young person, who was driving a stolen car.

We wrote to the police service expressing our concerns about the use of OC spray on a person driving a moving vehicle, due to the potential for a serious accident. We were also concerned that the arresting officer had not followed procedures for returning, reviewing and storing the used OC spray cannister.

Further inquiries by the police service established that the officer had not followed the correct procedure for recording OC spray use. They found that the officer was justified in using the OC spray to avoid being run over but we were still concerned about the use of OC spray against a driver of a moving car. Recent advice from the police service indicated that our view has now been accepted and the officer has been counselled about both matters.

#### **Case study 16**

A woman alleged her former partner attended her workplace in breach of an apprehended violence order and violently assaulted her. Police told her that they would try to locate the man and charge him. The next morning a police officer telephoned the woman and told her that her former partner was at the police station and wanted to collect tools from her home. The woman told the officer that the man was wanted by police for assaulting her. She urged him to place the man under arrest. The woman was then told her former partner was allowed to leave the station. Soon after, he came to her home accompanied by police officers to collect his tools. The complainant again explained that the man was wanted by police and only after further telephone calls did officers finally detain him. The woman complained that police officers had behaved rudely and would not listen to her account.

The police service described this complaint as 'relatively minor in nature'. The only action taken was that an officer was reminded of his responsibility to behave professionally when dealing with the public.

We were not satisfied with the police investigation and were concerned that they had not attempted to verify the information provided. We also noted that officers did not enter information about the alleged assault onto the police computer system and relevant policies were not followed. More importantly, we were concerned that the failure to listen to the complainant placed her and attending police at risk of violence.

Following a further investigation, the police service accepted our observations and took further management action including counselling and training of the involved officers.

### **Case study 17**

A woman was sitting in her car at a beachside carpark when she noticed another vehicle pull up alongside her driven by a male. She claims that he began making eye contact with her, and that a short while later she noticed that he was naked from the waist down and masturbating. The woman noted the registration details of his car and immediately left the area. The woman reported the incident to local police that evening.

The vehicle registration was linked to a police officer. As part of their investigation, police conducted an audit of the officer's computer accesses. The audit revealed that the officer had obtained significant access to information about the wilful and obscene exposure complaint about him. The officer also accessed his own details.

The officer was charged and convicted of wilful and obscene exposure and unlawful access of a computer system. He is also a candidate for dismissal from the police service.

### **Case study 18**

The stepfather of a police officer complained that his estranged stepdaughter may have inappropriately accessed details of family members on the police computer system. The stepfather had previously complained that the officer had victimised and harassed family members.

An audit of the officer's computer accesses over a three year period revealed that she made a total of 78 accesses in relation to six family members and herself. A further 81 questionable accesses were also discovered.

The officer pleaded guilty to 75 charges of unlawful access to a computer system and was convicted. She was dismissed from the police service.

### **Case study 19**

A complaint was made alleging that a police officer had threatened and harassed a member of the public because he had formed a relationship with the officer's ex-wife.

As part of the investigation an audit of the officer's accesses to the police computer system over a two year period revealed a total of 69 accesses made in relation to his ex-wife, her current de-facto and previous partner. The officer argued that he was entitled to make the accesses because he was concerned for his ex-wife's safety. During the investigation two female officers provided evidence that they both feared this officer, and believed he was driven by jealousy rather than genuine concern for his ex-wife.

The officer was charged with a number of unlawful accesses to a computer system and is currently awaiting hearing. The officer is also a candidate for dismissal from the police service.

### **Case study 20**

A complaint was received about an off-duty police officer who was unlicensed and was involved in an accident while driving an unregistered and uninsured car. As a result of the criminal investigation, the officer was summonsed for a number of criminal offences including negligent driving and using an unregistered and uninsured car.

There were many problems with the police investigation into the complaint. For example, the investigator did not:

- take a statement from the officer involved until five months after the accident,
- interview the passenger of the car or other witnesses about the officer's level of intoxication, even though there was evidence to suggest that the officer may have been intoxicated,
- take into account evidence that conflicted with the officer's account that mechanical problems had contributed to the accident,
- explore evidence which suggested that the officer had lied about his car being towed to a friend's house after the accident—the contrary evidence suggested the car had been driven away,
- investigate whether the officer had been driving police vehicles while his licence was cancelled.

In addition, no management action was taken by the local area commander to address the officer's conduct.

Because of these serious deficiencies, we conducted an investigation into the conduct of the investigating officer and the senior officers who had approved the investigation, including the local area commander. As a result of our investigation, the region commander reviewed the way in which the police service had originally handled this matter. We are still awaiting a satisfactory conclusion to this matter.

### **Case study 21**

A supervisor suspected that an officer had destroyed police documents to obtain a 300% shift loading. The documents contained records of sick leave taken by the officer. The supervisor found the remnants of the missing documents, which were later reconstructed, in the station's shredder bin. During the investigation, the officer stated that he had photocopied one document, the roster, so he could pursue the issue of the shift loading with the police union. He said that on his way back from the copier, he put the roster through the shredder but he did not know why he did this. He agreed that the destruction of the documents meant that he could claim the shift loading worth about \$620.

The Director of Public Prosecutions (DPP) stated that there was sufficient evidence to charge the officer with destroying documents with intent to defraud. The DPP also stated that the Police Commissioner could dismiss the officer and may decide to do this instead of charging him.

The local area commander decided not to charge the officer and not to have the officer's future reviewed by the Police Commissioner. While acknowledging that an offence had been committed, the commander took the view that his conduct amounted to a 'technical offence' only, and that he did not pose a risk to the community. The commander also noted that the officer had been honest and truthful during the investigation and that police service policy was that officers should not be punished for honest mistakes. For these reasons, the commander decided to issue the officer with a warning notice.

We were concerned about this management response as the core issue was the integrity required of a serving police officer. It appeared that the officer had been less than forthright before the investigation. In our view, the commander had completely misunderstood the intent of the police service's policy regarding honest mistakes. We recommended that a senior officer review the commander's management decision. The commander acknowledged that there were shortcomings in the management decision and agreed in hindsight that the officer's conduct had warranted stronger action. The police service has introduced new safeguards to ensure that management decisions in serious cases are approved by the region commander. We are encouraged by this constructive response.

### **Case study 22**

After the police service took over two years to finalise an investigation into a complaint, despite repeated requests from our office for advice on the progress of the matter, we decided to investigate the reasons for the delay. Our investigation exposed significant problems with a particular command's practices for managing and monitoring complaints from the public.

These included a problem with monitoring and managing multiple complaints from the same complainant. In this particular case, the complaint was not recognised as a new complaint, because complaints had been received from the complainant before. Consequently, no record of the new complaint was made on the police computer system. In fact, the complaint raised issues that were different from previous complaints and should have been dealt with as a separate complaint.

As a result of our investigation, the region commander has taken steps to improve complaint handling practices, including:

- preparing and distributing uniform complaint handling guidelines throughout the region,
- undertaking an audit of every complaint in the region.

We anticipate that problems with the recording of complaints will be addressed through the shared complaints tracking system known as the C@ts.i system, which is currently being developed.

### **Case study 23**

A constable complained that while visiting her colleague, a probationary constable, he pointed an unloaded police service pistol at her temple and pulled the trigger. The constable could not be sure that the pistol was unloaded. Her version of events was significantly different from his. We were concerned that the police service had failed to fully investigate the incident. In particular, the investigators failed to ascertain why the probationary constable had his pistol at home and whether his arrangements for storing the pistol were adequate and complied with the *Firearms Act*. We were also concerned about the inadequacy of the management action taken by the police service, which included extending his probationary period for 3 months, restricting his duties and requiring him to undergo further pistol training and psychological assessment.

Because of the significant public interest issues raised by the complaint, we decided to conduct a formal inquiry, taking evidence on oath. After hearing from a number of police officers, we formed the view that the probationary constable gave an untruthful account of the incident to minimise his own misconduct. We concluded that he committed a grave breach of conduct when he pointed the pistol at his colleague's head and pulled the trigger. He did not have permission to have his pistol at home and the storage arrangements were totally inadequate. The pistol was kept in a cashbox stored under some clothing in a cupboard and the ammunition was placed under the cashbox.

We recommended that the police service consider terminating the probationary constable's employment. After reviewing the material from our inquiry, the region commander formed the view that the probationary constable lacked the integrity necessary for the position of constable and he was suspended with pay. A recommendation that his employment be terminated is currently being considered. The region commander also advised that he will be reviewing and evaluating current arrangements for officers to take firearms home.



We recommended that the police service develop an audit policy to ensure consistency in auditing across all commands. In June 2001, the Command Management Framework (CMF) was introduced and will be applied throughout the police service. The CMF is an audit tool that provides a framework for risk assessment and accountability. We have provided input into the guidelines to be given to commanders as part of its introduction. We will also help evaluate the CMF over the next 12 months, particularly in relation to whether it addresses the issues raised in our investigation.

### Seeking advice from the Director of Public Prosecutions

Over two years ago, following a number of poor decisions by commanders in either failing to seek advice from the Director of Public Prosecutions (DPP) or in rejecting the advice received, we recommended that the police service develop clear guidelines for when commanders should seek advice from the DPP on possible criminal charges against police. We also asked the police service to set out the circumstances where officers may reject the DPP's advice to prefer a criminal charge and who should have the authority to make that decision.

Last year the police service developed a draft policy which we believed was inadequate. This policy has still not been finalised. The current draft policy canvasses the issues of when matters should be referred to the DPP and the procedure when the police service decides not to follow the DPP's advice. While the latest draft of the policy answers our concerns to a significant extent, the very slow progress brings into question the police service's commitment to it. We will continue to encourage the police service to finalise the policy document.

### Directly investigating complaints

Sometimes we use our power to directly investigate complaints and the way they have been handled. We will do this if we consider that commanders or investigators have failed to properly investigate significant allegations of misconduct or the management action taken is grossly deficient. This year we conducted a number of direct investigations (see case studies 20, 21 and 22).

On occasion, we will directly investigate allegations of misconduct. Where complaints raise significant integrity or competence issues they may be well suited to an inquiry style investigation where the Ombudsman can assess the evidence and credibility of witnesses (see case study 23).

### Performance indicator

Direct investigations completed		
Target	99/00	00/01
14	14	14
<b>Interpretation</b>		
This performance indicator refers to the number of direct investigations we completed. This year we finalised 14 matters, which was also our target.		

### Special report to Parliament: 'Police and Improper Use of Email'

In last year's annual report we outlined our concerns about the police service's email pornography inquiry, Operation Providence, which we monitored directly.

The investigation was held into the transmission of over 100 inappropriate images via the police service email system. The images included photographs and video-clips, ranging from soft pornography to graphic depictions of sexual violence and bestiality. The investigation involved at least 460 officers across all police regions. Many officers, including investigators, strongly believed that circulating these offensive images was not inappropriate.

We provided a provisional report to the police service for comment in July 2000. We found that more than a third of the 400 completed investigations into the email abuse were deficient. In several cases investigators did not:

- have regard to the complaints history of officers,
- properly classify images,
- use effective investigations techniques or clarify issues,
- reach appropriate findings.

In almost a third of cases investigators and commanders implemented management action that was inconsistent with the police service's own guidelines for dealing with these matters.

Our provisional recommendations included that the police service review the substandard investigations and the conduct of investigators and commanders. We asked the police service to implement effective email auditing and improve the education of officers about email responsibilities. We also recommended that the police service develop new strategies to confront inappropriate cultural values demonstrated by a large number of officers.

It took around five months for the police service to respond to the report. The service advised us that it had instituted a program to review investigations, remedy deficiencies and initiate management responses against investigators and commanders who failed to perform their duties. The response did not provide details of how this would be achieved in a timely manner.

Our special report, tabled in Parliament in December 2000, adopted the recommendations made in our July 2000 provisional report. In our special report we also expressed our belief that similar conduct may exist in other public sector agencies. All agencies need to have good policies and consistent standards, as well as pro-active auditing and investigative activity, to address the problem of email abuse.

In April 2001, the police service responded to our special report and accepted the validity of our findings and recommendations. However, its response failed

to properly detail any strategies to implement the recommendations. For this reason we again wrote to the service. In June 2001, the service indicated that it is unlikely that the review of the original investigations will be completed before September 2001 and a new email policy consistent with our recommendations will not be completed before August 2001 and not implemented before November 2001.

The service also failed to provide any advice of plans for pro-active auditing but did refer to new arrangements, such as the establishment of the external agencies response unit, which will improve the coordination of responses to our reports.

The response to our special report is symptomatic of the police service's responses to many of our reports. The service has acted too slowly in reviewing reports and acting on recommendations. This diminishes the effectiveness of our recommendations and unfairly affects officers concerned. There is also sometimes a breakdown in communication between senior managers and those who are required to implement their decisions. We will continue to monitor this issue closely.

**Monitoring implementation of recommendations in our domestic violence report to Parliament**

In last year's annual report we gave details of our special report to Parliament about policing of domestic violence in NSW. The report made 25 recommendations to improve the police service's monitoring of its service delivery in domestic violence situations. The police service agreed to implement our recommendations and has since given us two interim reports documenting its progress. It is pleasing that many of our recommendations have now become the benchmarks against which the policing of domestic violence will be assessed.

**Performance indicators**

<b>Reports recommending changes to law, policy or procedure</b>		
<b>Target</b>	<b>99/00</b>	<b>00/01</b>
70%	89%	71%
<b>Interpretation</b>		
At the conclusion of a formal investigation we issue a report containing recommendations for improvement. This performance indicator refers to the percentage of those reports where we recommend changes to law, policy or procedure. Our reports and recommendations relate to how systems should be changed as well as holding individual police officers and commanders to account. This year we met our target.		
<b>Recommendations implemented</b>		
<b>Target</b>	<b>99/00</b>	<b>00/01</b>
80%	89%	100%
<b>Interpretation</b>		
At the conclusion of a formal investigation we issue a report containing recommendations for improvement. This performance indicator refers to the percentage of those recommendations that were implemented. We cannot force the police service to implement our recommendations but where they do not, we can report the matter to Parliament. This year 100% of our recommendations were adopted and are being implemented.		

We will continue to evaluate the police service's implementation of the recommendations. We recently completed a six month audit of complaints about the policing of domestic violence to help us measure the practical impact of our recommendations. We have also reviewed complaints about individual police officers who have allegedly committed crimes of domestic violence, including breaches of apprehended violence orders. We are currently in the process of analysing the results.

**Expanding and using intelligence holdings**

One way to improve performance is to analyse trends and patterns in the way complaints are handled and in the way the police service is performing overall. Our work has identified patterns of management action taken in response to findings against police officers, officers who may be of concern due to their complaint history and differences in the way different regions and local commands handle complaints.

**Development of an integrated intelligence database**

We are working with the police service and PIC to create an integrated database to help improve the collection, monitoring and analysis of complaints and complaint-related data. The Police Complaints Case Management (PCCM) project is funded by the government and managed by the Premier's Department. Part of the PCCM project is the development of an intelligence system known as the Police Oversight Data Store (PODS) and a shared complaints tracking system known as the C@ts.i system.

PODS is part of a broader effort to upgrade the analytical capacity of our office, PIC and the police service. As the new systems become operational over the next year, information about officer performance, local and regional complaint trends and emerging risks should become more accessible. Other advantages, such as the C@ts.i system's capacity to improve timeliness, should benefit managers and investigators handling complaints as well as the complainants and officers concerned.

Our role in the project team is to work closely with the police service to encourage commanders to use these new tools effectively. We expect to complete this project within the next 12 months.

**Auditing complaints and trend analysis work**

We also audit complaints to gather information about problem areas, including police officers that should be of concern to the police service. Our auditing and trend analysis work has started to identify:

- officers who have been the subject of a significant number of complaints and some basic information about the risks that they present,

- the patterns of management actions used by commanders, showing that many continue to rely heavily on an uncreative disciplinary approach discredited by the Royal Commission,
- differences in complaint handling performance, including the number of deficient investigations, across various regions of the police service,
- trends in complainant satisfaction levels,
- differences in the time taken for different area commands to finalise matters.

We have been sharing our trend data with the police service to help them understand how their systems are working and identify areas for improvement.

We are also measuring how well the police service deals with police misconduct against key criteria. Legislative changes, which we lobbied for, clarified the police service's responsibilities when dealing with complaints. This is enabling us to set benchmarks to measure the performance of particular commanders and investigators.

### *Officers of concern project*

The 'officers of concern' project is an intelligence-driven auditing activity designed to identify high-risk police officers and prompt action to address the risk factors.



**I joined the police team in October 2000 in the newly established position of Manager Intelligence. This new role is one element of our office's changing approach to the oversight of complaint management in the police service. Focusing on complaint trends and patterns can not only improve complaint handling processes but the performance of the police service overall, leading to reduced complaint numbers in the long run. Clare Wilde**

The project uses information we gather in dealing with individual complaints and information from the police complaint information system to identify officers who present a significant risk to the service. Officers who have been identified include:

- officers with poor complaint records
- officers who have been the subject of particularly serious complaints
- officers whose complaint history reveals a pattern of distinct and concerning behaviour.

Once identified, a profile is prepared of the officer that can be used when we next oversee an investigation involving that officer. In certain cases, we may raise our concerns with the local command or at the regional level and ask them to assess the identified officer.

An example of an officer identified was a senior constable in a regional centre. He had had over 30 complaints made against him in an 11-year period. Allegations

of assault, mistreatment, unreasonable force, abusive language and racist abuse made up 60% of the complaints. Six of the alleged assaults were on Aboriginal young people.

The officer has had two adverse findings made against him, both for the assault of Aboriginal young people. On one occasion he was charged with assault but the charge was dismissed at court. The officer had been managerially counselled 10 times, entered into a performance agreement and put on restricted duties. He was nominated for consideration of removing him from the service but was instead issued with a warning notice.

A further three complaints alleging that he assaulted Aboriginal young people are currently being investigated. The profile reveals that the officer needs intense monitoring and supervision should he remain in the police service. We believe he should be seriously considered for removal if further complaints are substantiated.

## Improving communication within the police service and between our organisations

The continuing poor coordination between the various divisions of the police service remains a significant impediment to reform. Even when there is consensus on the need for change, poor coordination can prevent many practical improvements from being made.

Earlier this year we set up a joint standing committee with the police service to try to improve coordination in responding to complaint-related issues. This committee gives senior staff from our organisations a forum to raise current issues and coordinate projects. In addition, the Ombudsman and Police Commissioner continue to meet regularly to discuss key developments and senior staff, project teams and investigators also meet as issues arise.

## Improving the relationship between police and community groups

Our community work is helping to improve the relationship between police and groups in the community including marginalised Aboriginal groups, homeless people and people from ethnically diverse backgrounds. While the need for change is evident to all concerned, opportunities for change are frequently missed. Policing of these groups occurs in the context of social and economic hardship, acute disadvantage, endemic crime and high rates of victimisation. These factors can reinforce conflicts both within communities and between the police and the community.

We run specific programs to improve relations between police and certain community groups, in particular regional Aboriginal communities. Problems sometimes arise when police investigations target people who are part of a minority community. This can lead to many members of those communities feeling that they have been unfairly targeted.

We encourage the police service to improve its communication with community groups when such concerns are raised. For example, see case study 24. Face-to-face meetings where the police can address community concerns directly and explain the reasons for the policing approach can often be helpful.

### *Aboriginal communities*

As an outsider to conflicts between police and community groups, we can often act as an intermediary to help resolve conflicts. Our Aboriginal Complaints Unit (ACU) is working on creative community consultative programs, often in situations where police–community relations are severely strained or have broken down. The ACU's intervention has succeeded in bringing a number of communities and their local police together and enabled them to talk to each other on how to remedy problems and improve services. See case study 25.

We tailor our approach to each individual community. We listen and ask questions so we fully understand the issues before trying to negotiate practical measures to build confidence between the key players. Our success can be attributed to the skill of our ACU staff and their commitment to negotiating culturally relevant solutions to long-standing problems.

The ACU is actively engaged in community work in more than a dozen locations, including a number of towns in Western NSW with a disproportionately high number of complaints. To be effective, our ACU staff must be accepted by those communities before attempting to introduce any initiatives. This can only come from frequent face-to-face contact with the community.

Community visits can take several different forms ranging from a formal community meeting to personal appointments with community members and meetings with the local police commander. The most effective approach depends on the circumstances of each community and the state of its relations with police at the time.

In some areas the preferred approach is to set up a community consultative group consisting of invited Aboriginal representatives. One committee we recently established and have been working closely with includes Aboriginal representatives from the police service, the Aboriginal Legal Service, the Department of Education and Training, the Department of Health, courts and other government agencies. Aboriginal community elders also play an important role.

The committee is modelled on similar groups that we have convened in other locations and meets regularly to talk about issues in a confidential environment. It has succeeded in bringing about important changes. Similar committees in other areas have also been successful in handling serious concerns before they escalate into complaints. Another approach is to organise public meetings where issues can be discussed directly with the local police and possible solutions can be debated.

Our efforts to bring an Aboriginal perspective to police relations with Aboriginal communities often involve the following:

- We find appropriate community representatives. We understand the need to take into account the ages of participants and their capacity to relate to community elders, young people and others. The particular tribe or community faction and the gender of participants can also affect their capacity to effectively represent the community.
- We recognise that the gender, age and racial background of our own representatives has an influence on how we work with communities. Factors such as the seniority of staff who attend meetings, their knowledge of policing practices and their capacity to identify creative solutions to entrenched issues is also important.

Bourke community meeting (left to right):  
 Joanne Scott, Aboriginal Complaints Unit  
 Matt McPhee, Duty Officer Bourke Police  
 Allistair Ferguson, Western Aboriginal Legal Service  
 Douglas Dennis, Aboriginal Community Liaison Officer  
 Marjorie Edwards, Community Elder  
 Victor Minniecon, Aboriginal Home School Liaison Officer



- We make regular visits to establish our relationship with the community and demonstrate our commitment to change, especially in areas where past attempts to improve police–community relations have not been sustained.
- We work towards managing the expectations that the community has of police.
- We make sure that we always have a community contact introduce us at public meetings, especially when attending a forum for the first time. This clarifies our connection with the community and helps build rapport and earn respect.
- We target significant matters without neglecting smaller ones. We also try to follow up every inquiry.

We have found that our community-specific approach provides a better basis for the community's ongoing engagement with local police. Over time, we reduce our involvement and encourage police and the community to seek their own solutions to issues.

In the past year we have increased our use of direct monitoring to improve the way complaints are investigated in situations where this may affect the relationship between local police and the community. Attending selected interviews of officers and other witnesses enables us to take a more proactive role in making sure that all parties are treated fairly. Close scrutiny is also often necessary to allay community concerns about the commitment of police to examine relevant evidence.

Monitoring is also one of our primary strategies for assessing the quality of investigations into complaints by young people. We encourage local commanders to consider what particular measures need to be used to elicit quality evidence from young complainants. See case study 26.

### *Homeless people*

In the lead up to the 2000 Olympics in Sydney, there were concerns about how police would deal with homeless people during the Olympic period. The Olympic Co-ordination Authority developed a 'Homeless Protocol' for the Sydney area with input from community organisations and police. The protocol was endorsed by a number of government agencies including the police service. It was based on the principle that all people have a right to be in public places and attend public events unless they are threatening the safety of others or causing a serious disturbance.

To make sure the protocol was working and to deal with any problems quickly, we organised for senior representatives from the police service, Shelter NSW, Sydney City Council, NSW Council of Social Service and our office to meet regularly before and during the Olympic period. The success of the protocol and these regular liaison meetings was documented by a survey of homeless people conducted by Shelter NSW. The survey showed a continuing improvement in the way homeless people perceived their treatment by authorities, particularly police. While the survey did identify some ongoing problems with the treatment of young homeless people, it also credited police for responding to the spirit of the protocol, particularly in relation to people over 40-years-old.

The liaison meetings have continued and the protocol now provides a permanent guide for police in the Sydney CBD. When concerns about the treatment of homeless people arose in Parramatta, we again responded by bringing together community, local government and senior police representatives to resolve problems. We showed them the Sydney CBD protocol as a guide. Parramatta police have now developed specific training on homelessness for local police and a homeless protocol for the Parramatta area.

**Case study 24**

When police pulled over a driver late last year for failing to wear a seatbelt, a major community incident developed. Over 30 police and up to 200 members of the public, including the elderly parents of the driver, became involved. Capsicum spray was used by police and an officer drew his pistol.

Police alleged that they had been assaulted in the affray. Members of the public alleged that they had been assaulted by police, that unnecessary force had been used and that generally the police had over-reacted to and consequently escalated the situation. Some people were arrested, handcuffed and taken away in caged trucks. Afterwards, 10 people were charged with 40 offences including assaulting police.

The police service investigated the complaints against their officers and found that they had acted appropriately. We believed that some of the concerns had not been addressed and convened a meeting with a representative of the community and the police to look for alternatives to resolving some of the matters arising from the incident. The police reconsidered some of their actions following the meeting, but generally remained of the view that their officers had acted appropriately. About half the criminal charges against defendants have now been withdrawn. The remainder will be heard late in 2001.

This kind of matter raises very difficult issues. The police service has not recognised that policing in the area is likely to be more difficult if they do not try to deal with the concerns of the people involved in this incident more constructively. As things currently stand, the police service will not take any conciliatory measures until after the court proceedings. By that time, the opportunity for a productive outcome may have been lost. The police officers concerned also have an interest in an outcome being reached sooner.

We communicated our concerns to the police service and await their response and the outcome of the court hearings.

**Case study 25**

In one regional centre with a troubled history of Aboriginal community–police relations, our ACU staff meet regularly with community elders and representatives from the local police and the Aboriginal Legal Service to discuss and resolve policing issues. This committee also involves Aboriginal staff from other agencies including the Department of Juvenile Justice, local courts and the Aboriginal Medical Service.

The committee has dealt with significant incidents such as serious assaults, rapes and serious affrays and addressed sensitivities relating to the policing of major community events. It has established mechanisms for Aboriginal people to directly access senior officers and improved the

consistency of police service action on contentious issues. The committee maintains a list of trained ‘interview friends’ who may be easily contacted by police officers to support Aboriginal people in custody.

A key advantage of having a locally based committee is the ability of both police and the community to convene a meeting at short notice to respond to issues that arise. The group’s success in quickly clarifying and defusing hotspots is helping to build community confidence in their local police. Over time, this committee is establishing a reputation for honest and constructive exchanges. It also helps coordinate the response of various agencies that deal with the police.

The committee now meets without our assistance. We have maintained our contact with the community by participating in regular liaison meetings with some agencies. We remain interested in the work of the committee and will continue to closely monitor the investigation of police complaints from this area.

**Case study 26**

We received a complaint that a 10-year-old Aboriginal boy was strip-searched at the police station. We were told that the police officer conducting the search was the only person present during the search. The boy’s parents were not present or even contacted. The complaint alleged that the officer rubbed his hands up the young boy’s naked legs during the search.

We decided to closely monitor the investigation of the complaint because of the age of the boy and because we knew that the Aboriginal community had a tense relationship with local police officers. We were physically present throughout the investigation and attended all interviews of the young people and police officers involved.

The investigation found that two young people were taken to the station during the incident and both were strip searched in separate rooms by different police officers. Neither of the boys’ parents were contacted and neither police officer witnessed the other officer’s search. No record was made of taking the young people to the police station or conducting the searches.

The conduct of both officers was found deficient and both have since received formal counselling. They have also received increased supervision concerning custody management. Changes in standard operating procedures for the police station charge room closed circuit TV (CCTV) cameras will ensure that tapes are labelled and kept for an appropriate period. In addition, we found that the CCTV cameras could be easily interfered with so that relevant footage would not be recorded. We recommended that the current system be upgraded to make the cameras more secure and more effective.



Victor Darcy, ACU with members of the Coonabarabran community (left: Kerry Ashby, right: Dallas Chatfield)

**The Coonabarabran community project came about from two specific complaints involving Aboriginal young people. When the wider community found out we were in town lots of people wanted to meet with us. As a result of our project, many lines of communication have opened and the whole of the community is benefiting as a result. Victor Darcy**

### Improving the way the police service supports its officers

An important aspect of our role involves encouraging the police service to improve its systems of support for police officers. Policing operations routinely expose officers to difficult, stressful and potentially dangerous situations. The service's systems for supporting officers must be of the highest quality to enable it to provide timely and effective intervention for any officers showing signs of not coping or having other difficulties. Complaints and related information often contain signs that officers are not coping well.

The police service has developed an effective program over the past few years for supporting officers who report the misconduct of their colleagues. This is in contrast to the old system where officers were not protected from reprisals for doing this. However, providing adequate support for these officers remains a difficult and complex task. Our experience has been that there are still circumstances where whistleblowers are harassed by their colleagues or left unsupported by their commander. See case study 27.

#### **Case study 27**

A junior constable complained that he had been subjected to sustained 'under-handed harassment' by other staff within his local area command after reporting an alleged assault by another officer. He told us that his colleagues ignored him and stopped conversations or left the muster or meal rooms when he entered.

The initial investigation found that none of the officer's allegations were substantiated and no further action was warranted. We had serious concerns about the failure of the investigator and the local area commander to properly consider the evidence that clearly demonstrated a lack of support for the officer in the workplace.

We disagreed with the police service's findings and requested the investigation be reviewed. In particular, we referred to

the findings of the Royal Commission which identified 'silent treatment' of whistleblowers as the most common form of harassment within the police service.

The police service agreed with our concerns. An adverse finding has now been recorded against the constable's supervising sergeant and management action taken to improve his understanding of harassment issues and develop his supervisory skills. We are pleased with the significant education, training and policy initiatives developed within the command in response to the matter.

However, we continue to have concerns about the management environment that allowed this form of harassment to continue in the first place. It is worth noting that the junior constable left the police service after suffering a stress-related condition. We are now pursuing our outstanding concerns with the service.

In May 1998, we released the final report of our 'own motion' investigation into the referral of officers under stress for professional assessment. In the report we recommended urgent action to improve the identification and management of stressed officers. In October 1998 a court awarded a police officer \$746,000 in damages after finding the officer suffered post-traumatic stress disorder as a result of being given significant responsibilities to investigate serious child abuse cases despite being relatively inexperienced. The court also found the service had breached its duty of care in not providing her with adequate support.

Our concern at the slow and limited response by the police service to our May 1998 recommendations led us to make a special report to Parliament in June 1999—'Officers Under Stress'. That report highlighted alarming deficiencies in the service's capacity to help staff showing signs of not coping. It clearly demonstrated the need to implement systems to support and manage officers whose exposure to trauma or cumulative stress has affected their well-being. In response the service took a number of steps towards improving the system for assessing and supporting officers who have to deal with traumatic incidents. However, it failed to heed a key recommendation: the need for commanders to be proactive in referring officers for professional assessment

whenever they see signs that the officers are not coping. This reluctance to refer officers showing obvious signs of stress is illustrated by case study 28.

In February this year another court judgment reinforced the earlier one by awarding damages of \$664,000 arising from psychiatric injury. The officer involved had reported to internal affairs his suspicions that a senior colleague was engaged in serious corruption. The reprisals he suffered included becoming the target of a murder conspiracy and being transferred to a one-officer station. This case highlights the continued inadequacy of the police service's support systems for officers experiencing difficulties.

The Assistant Ombudsman (Police) met with the NSW Police Service and the Police Association in April this year to further press our view that commanders should be formally instructed to refer apparently stressed officers for professional assistance.

In July 2001 the service told us it was including specific responsibility for monitoring staff welfare in the formal job responsibilities of all supervisor and commander positions. It also issued a policy 'The Commander's Role in Helping to Maintain the Psychological Wellbeing of Their Staff' that set out procedures for a graduated series of referrals for officers depending on the level of need. We will continue to monitor the implementation of the policy.

### **Case study 28**

In the period 1997–1999, police officers reported concerns they had about the behaviour of a senior constable following his marriage breakdown. It was alleged that while taking medication for his depression, he:

- attempted suicide,
- abusively accused other officers of sleeping with his wife,
- threatened to assault other officers at his station,
- exploded fireworks next to the station armoury and feigned injury from a purported gunshot,
- used capsicum spray without authorisation, and assaulted people (including a young person) whom he had arrested.

During that time, the officer was charged with two counts of assault occasioning actual bodily harm and with the breach of an apprehended violence order. He also breached his subsequent bail condition. Despite these complaints, his superiors had purported to 'manage' the senior constable without referring him for professional assessment.



Part of our work involves helping agencies improve their investigative practices and analysing trends of child abuse to give agencies qualitative information that can help them prevent abuse from occurring



## Child protection

The Ombudsman has a role under the Ombudsman Act 1974 to monitor and oversee the investigation of child abuse allegations against employees of government agencies and certain non-government agencies. Generally, the agencies we oversee are those that provide services to children such as schools, child care centres and out-of-home care service providers.

Our role was established as part of the government's response to the findings of the Royal Commission into the NSW Police Service (the Royal Commission) in 1997. The Royal Commission also looked at paedophilia in NSW and found that there had been a lack of commitment, cooperation, coordination, liaison and oversight by various agencies in preventing and dealing with the abuse and neglect of children.

Under the present scheme, all allegations or convictions relating to child abuse by employees of agencies specifically designated in the Ombudsman Act (even if the alleged child abuse did not take place in the workplace) must be reported to the Ombudsman by way of a notification. In addition, all other government agencies must notify us of any allegations of child abuse by employees if the abuse arises in the course of employment.

Our responsibilities include:

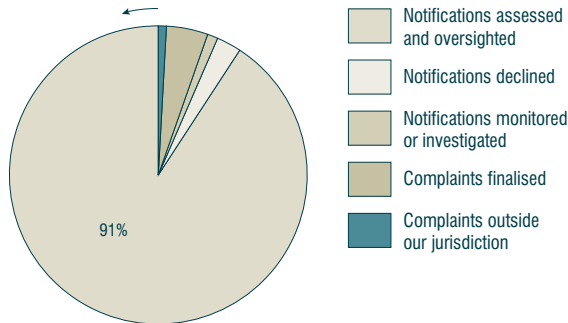
- overseeing and monitoring investigations of child abuse allegations against employees,
- conducting direct investigations into those allegations if appropriate,
- scrutinising child protection systems,
- handling complaints about the way agencies have dealt with child abuse allegations,
- assessing and analysing trends and patterns of child abuse in the workplace,
- developing policies, procedures and guidelines for effectively managing child protection investigations, and
- conducting education, training and liaison activities.

This year the government gave us additional funding for this role. The impact of this decision on the structure of our child protection team is discussed in 'How we operate' at the beginning of this report.

Members of the public can complain directly to us about the way an agency has handled a child abuse allegation. This year we received 56 complaints. Complaints are not all finalised in the year we receive them. This year we finalised 67 complaints (see fig 5). Some of these matters had already come to our attention through notifications from the agencies concerned. Many of them were declined at the outset for being premature because the agency had not yet completed its investigation. When this is the case, we may suggest that the complainant raise their concerns with the agency directly or, with the complainant's permission, we raise those concerns with the agency ourselves. We may also take those concerns into account as we monitor the investigation.

Complaints remain a useful source of information about an agency's processes and practices in the child protection area. We recently produced a fact sheet called 'Making a complaint to the NSW Ombudsman about an allegation of child abuse against an employee' to help members of the public understand our role and responsibilities.

**Figure 5: Child protection notifications and complaints received and determined**



Notifications and complaints determined (written)

Notifications and complaints received	
Written notifications	1,379
Written complaints	56
Oral inquiries	939
Reviews	5
<b>Total</b>	<b>2,379</b>

Notifications and complaints determined (written)	
Notifications declined	40
Notifications assessed and overseen	1,350
Notifications monitored	14
Notifications investigated	3
Complaints finalised	67
Complaints outside our jurisdiction	13
<b>Total</b>	<b>1,487</b>

Current	
Notifications awaiting assessment and oversight	68
Notifications being monitored	2
Notifications under investigation	11
Complaints awaiting assessment	19

### Notifiable incidents of child abuse

Last year we identified differing reporting patterns across industry and sector types and decided to explore the reasons for these patterns. Although most agencies are clear about reporting allegations of serious sexual abuse, some have been reluctant to report certain allegations of physical abuse. Some will only report allegations of physical abuse if a child has been harmed. Agencies are often concerned about the impact that such a report would have on the employee concerned.

The legislation clearly requires agencies to report any allegation of child abuse by an employee. The first element of the definition of child abuse is that it includes assault, including sexual assault, of a child. By law, an assault requires no actual physical contact. An intentional or reckless act that leads another person to fear immediate personal violence counts as an assault.

This year the Association of Child Welfare Agencies (ACWA) questioned the need to notify the Ombudsman of all allegations against employees. ACWA, on the advice of a board member, suggested that the legislation did not require notification of 'trivial matters which would normally be dealt with by managers in organisations as issues requiring informal guidance and correction. An example is smacking, contrary to the disciplinary code of the organisation, or other forms of discipline which might be inappropriate but are not harmful to the child.'

The essence of their view was that incidents in which a child was not harmed, and which would not therefore be reportable to the Department of Community Services (DoCS), need not be notified to the Ombudsman. They

argued that the word assault (as used in the *Ombudsman Act*) should not be given its strict legal meaning, but instead should be interpreted to mean that physical contact of a trivial nature was not to be classified as an assault.

As ACWA's view brought into question the advice that we had previously provided to agencies and the policies that we had implemented, we asked an experienced barrister to provide an independent review of the meaning of child abuse. His advice was that our interpretation of 'child abuse' is correct because under the proper principles of statutory construction, 'child abuse' includes all assaults, regardless of whether any physical harm is caused or threatened. He wrote:

What is required to be reported to the Ombudsman is the extent of allegations concerning child abuse, the investigations that have been undertaken and their results. What permits the Ombudsman to adequately perform his monitoring role is the receipt of information about these matters. It makes little practical sense to restrict that flow of information...

He advised that our guidelines are consistent with the proper meaning of the term 'child abuse' for the purposes of administering government policy.

We need to be notified of all incidents that could constitute child abuse so that we can make sure that each incident is recorded and appropriately investigated. Our role would be diminished if incidents were not reported on the grounds that they were examples only of 'technical assaults'.

The breadth of the requirement to report incidents to the Ombudsman was made clear in the 'New South Wales Interagency Guidelines for Child Protection Intervention'. These guidelines state that 'the Ombudsman has to be notified of any allegation against a person employed or engaged by an agency, whether or not there is any supporting evidence that the abuse has taken place'. This year we received a case that illustrates the importance of reporting what may, on the surface, appear to be relatively minor matters. Sometimes on closer examination, these minor matters are signs of more serious child abuse that would not otherwise have been revealed (for example, see case study 29).

### *The impact of physical abuse*

As well as fulfilling our statutory functions, we try to help agencies better understand child protection issues generally. Last year we undertook a research project to clarify the definition of behaviour causing psychological abuse. Agencies have told us that our advice on this topic has been helpful. This year we decided to do a research project on issues relating to the physical abuse of children. In particular, we looked at the impact of physical abuse on children and at what point such conduct becomes abusive. Essentially, the research showed that children who were subjected to physical abuse often suffered from both short-term and long-term psychological harm.

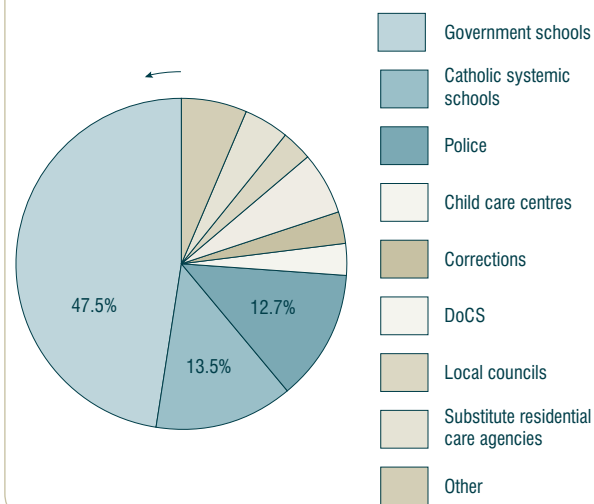
### **Changes in notifications**

The main requirements that agencies within our child protection jurisdiction must comply with are as follows:

- Child abuse allegations or convictions against employees must be notified to the Ombudsman within 30 days of the agency becoming aware of the allegation or conviction.
- The agency must inform us whether or not they intend to take any disciplinary or other action in response to the allegation or conviction, and their reasons for taking or not taking such action.
- The agency must also inform us of any submissions made by the employee involved regarding the action that the agency intends to take.

One of the major issues that we are still dealing with is under-reporting and late reporting. Our education and training initiatives are targeted at explaining to agencies within our jurisdiction the kinds of allegations that must be notified to us. Sometimes we are alerted to matters that should have been notified, but have not been. For example, a parent who was dissatisfied with the way an agency handled an allegation may complain to us. Regrettably, when we bring the matter to the attention of the agency concerned, many agencies still do not accept that they have failed to comply with their obligations.

**Figure 6: Notifications by agencies**



This year we received a total of 1,379 written notifications and complaints (see fig 5) compared to 1,221 last year. In 70% of these cases, agencies subsequently sent us final documentation of completed investigations for assessment. This figure is significantly higher than last year's figure of 48%.

### *Agencies who notified us this year*

This year most of the notifications we received were from government schools, followed by Catholic systemic schools and the police service (see fig 6).

While government schools remain the most significant single source of notifications, their notifications represented a much smaller proportion of total notifications than last year. The fall in this figure is partly due to an increase in reporting from agencies in other categories, but is mainly due to a decrease in the number of notifications from the Department of Education and Training (DET).

### *The problem of under reporting*

Last year we discussed the many reasons why genuine child abuse allegations are not reported to us. People in some agencies deny the problem exists, fail to recognise certain behaviour as abusive or do not want to damage the agency's or the alleged abuser's reputation. Information from the matters that we deal with and anecdotal information from people we speak to at forums and workshops suggests that these concerns are still inhibiting agencies from reporting child abuse allegations.

Sometimes the first we hear of a child abuse allegation is when an employee or parent complains to us about the way the matter was handled by an agency. In these cases, the agency has clearly failed to understand, or was unaware of, its reporting obligations. When we contact the agency to seek a notification, we take the opportunity to explain their reporting obligations to them (for example, see case study 30).

## Case studies

### Case study 29

DoCS notified us of an allegation that a foster carer had smacked a child in their care. The child initially told the notifier of only one incident of smacking which had left a bruise. When witnesses were interviewed, other allegations of physical abuse were described, including picking the child up by the ears causing a loss of hair behind the ear.

One allegation was found to be sustained. The foster carer explained that the incident had occurred because of the stress of unemployment and other resource issues.

An assessment was conducted into the risk posed by the foster carer to the children remaining in their care. The assessment took into account the fact that an allegation of child abuse had been sustained as well as the risk of emotional damage to the children if they experienced another change in placement. It was considered that changing the placement of the children posed a more significant risk than them remaining with the carer.

The foster carer was counselled about the impact that any form of violence would have on the child, given their background and exposure to domestic violence before coming into care. Strategies were put in place to allow the carer 'time out' from the care of children. For example, the child who had been smacked was due to start preschool shortly after the incident. These strategies were seen as additional safeguards for monitoring any recurrence of smacking the child.

We decided that this matter had been investigated in an appropriate manner and the action taken by DoCS was in the best interests of the child and the foster carer.

### Case study 30

A parent complained to us about the behaviour of an employee of a public sector agency towards his primary school aged son.

The agency's view was that it was not required to notify us about the allegation because the subject of the allegations was not an employee of the agency.

Our view was that the agency was under an obligation to notify us of the allegations because although the person owned and operated his own business, he had been 'engaged' by the agency to provide a service to children.

This view was accepted by the agency and they proceeded to investigate the matter. We were pleased to see the agency demonstrate a capacity to plan and conduct relevant investigations and identify other matters that constituted reportable allegations.

### Independent schools

As we did last year, to better understand reporting rates in schools, we compared reporting rates of government schools, Catholic systemic schools and independent schools. We found that independent schools had significantly lower rates of reporting than government and Catholic systemic schools. We do not believe that independent schools are so vastly different from other schools that the number of child abuse allegations would differ significantly. We believe that the incidence of child abuse allegations is similar in all schools—the difference in the numbers is more likely to be due to a failure by independent schools to report a significant number of these allegations.

This year we spoke to the principals of independent boarding schools in a meeting convened by the Association of Independent Schools (AIS) at our request. We explained the obligations of school principals and clarified their reporting requirements. Despite these efforts, we have only received a few notifications since that time. The continuing resistance of some independent schools to fully meet their reporting obligations is of concern and we will continue to work directly with these schools to ensure they comply with their legal responsibilities.

There are a small number of exceptions where independent schools have comprehensive child protection policies, a commitment to supporting child protection initiatives, are meeting their reporting obligations and have conducted investigations in a professional manner. We have audited these schools and in the coming year will work with them to introduce class or kind agreements, allowing them to report to us by schedule.

### DoCS and the Catholic Commission for Employment Relations

Two areas that were mentioned in last year's annual report as providing lower than expected notification numbers were DoCS and Catholic systemic schools. Catholic systemic schools and Catholic organisations providing substitute residential care are covered by the Heads of Agencies agreement with the Catholic Commission for Employment Relations (CCER). CCER is therefore responsible for reporting allegations on behalf of these Catholic organisations.

We felt that low reporting rates related to protracted internal practices which were causing delays. We required both DoCS and CCER to forward their outstanding notifications as a matter of urgency so that we could help them review their systems. Discussions with CCER identified the need to increase the resources for their child protection team. DoCS and CCER have undertaken to forward their notifications within the required reporting period.

As a result of our discussions, the number of notifications received from both DoCS and CCER increased in 2000–2001. However there is still room for improvement in the timeliness of these notifications.

### ***Reporting of allegations involving children with a disability***

Studies in Australia and overseas report that children with a disability are at a higher risk of being abused than other children. Research has also found that some offenders seek employment, including voluntary work, in places where they have unsupervised access to vulnerable children. We anticipated a higher notification rate involving this high-risk group than has been the case.

We are currently working with key disability service providers in both the government and non-government sector to make sure they are aware of their reporting responsibilities.

Our work has included:

- suggesting to DoCS that they include information about reporting requirements in their training package for disability workers on the Children and Young Persons (Care and Protection) Act 1998,
- providing information sessions for disability workers and child and family team members at DoCS community service centres in metropolitan and rural regions,
- presenting information sessions to the Northcott Society in Parramatta and a disability interagency meeting in Hornsby,
- presenting a policy development workshop, with the assistance of Interchange, to 16 service providers in the Hunter Region and a briefing session to 20 service providers in the Southern Highlands,
- presenting a paper at a forum organised by People with Disabilities, a peak consumer body,
- contributing an article to 'Networking News', a newsletter produced by ACROD a peak industry body for providers of services to people with disabilities.

### ***Improvements in the time taken for agencies to investigate allegations***

There have been significant improvements over the past 12 months in the time taken by agencies to complete investigations and advise us that investigations have been completed. This year, around 23% of notifications comprised both the initial notification and the final reported outcome of the agency's investigations, and were received within the prescribed 30 days. This figure is up from around 15% last year. We are encouraged by the higher number of investigations being completed within 30 days.

In matters where we received a notification and then later received the final investigation report, the average time between receiving the initial notification and the final report was four and a half months, compared to six months last year. Again, we are encouraged by the faster completion of investigations.

Our own turnaround times have improved significantly over the past 12 months. Unless we decide to directly monitor or investigate a matter, we usually assess the initial notification and then the final investigation report. This year, the average time taken to assess notifications was just over a week (a significant improvement from last year) and the average time taken to assess final reports was 33 days. Over the next 12 months, we expect that further improvements will occur in overall turnaround times. This will benefit both complainants and employees who are the subject of allegations.

### ***Reductions in the number of unsatisfactory investigations***

The percentage of investigations assessed as unsatisfactory decreased significantly from 55% last year to 25% this year. Given the number of notifications received from DET, we believe that significant improvements to the department's investigative practices largely account for this change.

### ***Changes in the way we require notification: class or kind determinations***

The Ombudsman has the power to exempt matters of a 'class or kind', as he determines, from the notification requirements of the *Ombudsman Act*. We have used this power to allow agencies to follow less demanding administrative procedures for reporting certain minor matters.

From the work we did last year with DET and CCER, we found that both agencies responded positively to our suggestions about improving their handling of child abuse allegations. As a result, this year the Ombudsman made a class or kind determination for each agency that permits them to report minor matters by schedule. The determinations are identical and mean that these agencies now use monthly schedules to notify conduct such as:

- first time allegations of physical assault that involve pushing, pulling, or poking a child, with no apparent harm to the child, or the use of restraint or excessive force which does not cause apparent harm or injury to a child, in a situation which is reasonably perceived to be harmful or threatening to the safety of a child or group of children (for example, intervening in a fight between children),

- allegations of neglect involving a failure to provide supervision or adequate medical treatment where the risk of harm was reasonably perceived at the time to be low,
- physical abuse incidents or misconduct that may constitute child abuse, where there is no apparent harm to the child, and which have been disclosed by the employee involved and which are the first incident of alleged child abuse involving the employee.

The agencies are also permitted to use monthly schedules to report those matters that were finalised in preceding months. In addition, the determinations clarify that certain conduct prima facie does not constitute child abuse in itself and therefore does not require notification. This includes comforting a distressed child in the playground or classroom, guiding a child by the shoulders, arms or hands or turning a child’s chin to attract attention without the use of force.

We intend to audit the matters advised by schedule three months after each determination starts and advise the agency in writing if and when we are going to conduct future audits.

We plan to review the existing class or kind determinations and consider extending or reducing their scope, depending on how well the agency is fulfilling its reporting requirements. We are also keen to make new determinations for other agencies that show thorough compliance with their reporting requirements.

**Performance indicators**

<b>Time taken to assess notifications</b>		
<b>Target</b>	<b>99/00</b>	<b>00/01</b>
92% within 5 days	35%	66%
<b>Interpretation</b>		
This performance indicator refers to the time taken to assess notifications to determine what form our scrutiny will take. Although the target was not met, there was significant improvement in the time taken to assess matters this year.		
<b>Average time taken to assess final investigation reports</b>		
<b>Target</b>	<b>99/00</b>	<b>00/01</b>
30 days	NA	33 days
<b>Interpretation</b>		
This performance indicator refers to the time taken to assess whether or not investigations have been conducted satisfactorily. This year we aimed to assess final investigation reports within a month. We took slightly longer than the target.		

**Our initiatives for improving the way agencies handle child abuse allegations**

*Responding to notifications*

Our scrutiny of notifications and investigation reports provide us with a good opportunity to help agencies on a case-by-case basis. Different matters involve different challenges and we try to provide advice that is tailored to the facts of the particular case. Each case also adds to our knowledge and experience and allows us to help agencies who may face similar issues in the future (see case studies 31, 32, 33, 34).

*Auditing policies and systems*

One of our major roles is to keep the policies and systems of agencies within our child protection jurisdiction under scrutiny.

**Auditing local councils**

We decided to conduct an audit of local council child protection policies because it was clear that some councils were not aware of their reporting obligations under the *Ombudsman Act*.

The audit began as a response to feedback from briefings we presented to local councils which suggested that councils needed help in developing child protection policies. We prepared a publication 'Developing a child protection policy: A practical guide for agencies' as a first step in helping agencies develop their child protection policy. We also presented policy development workshops to local councils around the state.

We sent a letter and a copy of our publication to all local and county councils reminding them of their child protection obligations. The letter also informed councils that we would be requesting a copy of their policies starting in August and continuing on a scheduled basis. We requested 50 policies and provided comprehensive advice on the 36 policies we received. This audit will continue over a two-year period enabling us to request and assess the child protection policies of all councils.

The policies of most councils demonstrated a good understanding of their reporting obligations and set out effective reporting procedures for child abuse allegations. There is still some confusion about differences in definitions and the responsibilities of the three main child protection agencies—the Ombudsman, DoCS and the Commission for Children and Young People (CCYP). Our new publication, 'Child protection legislation: What employers and employees need to know', has helped clarify the differences between our organisations.

There has been an increase in notifications of child abuse allegations from councils since we first requested policies and held policy development workshops. We received 50% more notifications in the 10 months after July 2000, when we first requested policies, than we did in the 12 months between July 1999 and 2000. This year we have also seen a significant increase in the number of notifications received from councils that had not notified previously.

### Auditing other agencies

This year we also requested, reviewed and provided feedback on the policies of 80 other agencies, including independent schools, government agencies, child care centres and substitute residential care facilities. To scrutinise some agencies more closely this year, we used an audit methodology we developed in 1999–2000 to conduct pilot audits of 10 agencies from metropolitan and country areas.

We targeted:

- community based child care centres
- local council run child care centres
- substitute residential care facilities
- disability services providing residential care
- independent schools
- Catholic schools
- government schools.

We examined agency policies and then made an on-site visit to the agency. We interviewed CEOs and a selection of staff at each agency. In some cases we also interviewed parents. During the audits we took the opportunity to make presentations to staff and other interested parties. Feedback and evaluation forms indicated that there was a reduction of apprehension about our office and a greater understanding of our role in child protection.

## Case studies

### **Case study 31**

Multiple allegations were made against two employees from a juvenile justice centre. One of the employees was the subject of five allegations of physical abuse in a two-year period. The centre did not have a system for identifying and handling multiple allegations against employees. We discussed this issue with them and provided information about risk assessment in such cases. We also suggested how they could change their investigative practices to deal with multiple allegations. The centre now plans to set up a system to track multiple allegations against employees.

### **Case study 32**

The Department of Education and Training satisfactorily investigated an allegation that a teacher had kicked a 7-year-old male student.

However, after the investigation had been completed, the teacher concerned gave the department a statement that he had obtained from a witness, a more junior staff member. The department decided that the statement did not alter the finding and so did not take any further action.

We advised the department that we were concerned about the actions of the teacher and their failure to recognise that his actions were inappropriate. We pointed out that the witness might have felt intimidated being questioned by the teacher in this way and discouraged from reporting such matters in the future.

The department acknowledged the validity of our concerns and wrote to the teacher advising him that it was inappropriate to approach witnesses in this way.

### **Case study 33**

Through the introduction of employment screening, a health service became aware that one of their employees had previously been convicted of the sexual assault of his daughter. The agency acted appropriately by reviewing the employee's duties, including the likelihood of him having unsupervised contact with children, and notifying our office. The agency decided to retain the employee's services, but restrict his duties to adult-based services. However, they did not have a specific strategy in place to monitor the daily work of the employee and did not consider it necessary to inform his line manager of the reasons for the restrictions.

As it was possible that the employee could come into contact with children during his work, we recommended that the agency advise the employee's line manager of the situation so he could be closely monitored. We also recommended that regular meetings be held with the employee to discuss his progress. The agency implemented these recommendations and is continuing to monitor the employee.

### **Case study 34**

An agency received information that a volunteer had previously been convicted of the indecent assault of a child in another state. After undertaking some inquiries and confirming this information, the agency decided that the volunteer could continue their duties as long as they did not have unsupervised contact with children. Our inquiries showed that the agency could not guarantee that the volunteer would not come into contact with children. We expressed some concern about the potential risk that the volunteer posed and asked the agency to review their decision. The agency subsequently decided not to use this volunteer in the future.

### Case study 35

An independent school contacted us for advice about how to handle serious allegations that had been made against a teacher. We reviewed the information they had gathered and met with them to discuss the action they should take.

We found a lack of coordination between DoCS and the Joint Investigative Team which was leading to confusion and delay. We encouraged the school to take immediate action itself to address the needs of the children involved. We continued to work closely with the school and DoCS during the investigation into the allegations.

### Case study 36

We received a final report from a designated agency about a completed investigation into allegations that a teacher had emotionally abused her child at home.

The agency had limited its investigation to establishing that there was no teacher–student relationship between the parties concerned. It did not continue the investigation to find out whether or not emotional abuse had actually occurred. The agency also did not clarify the nature of the alleged abuse with DoCS, even though it knew DoCS was also making inquiries into the matter.

We asked the agency to conduct further inquiries into the matter. These inquiries revealed that a consultant psychiatrist from DoCS had diagnosed the child as having a psychiatric disorder resulting from a severely disturbed mother/daughter relationship and that DoCS were considering protective action in relation to the child. The agency then assessed whether there was any risk to children within the workplace in light of this information. We were satisfied with the agency's risk assessment and subsequent action.

### Case study 37

We were concerned about the way the Department of Education and Training had investigated a number of matters. In two of the matters, one relating to allegations of sexual abuse and the other to allegations of physical abuse, the department had found the allegations against the teachers were 'not sustained'. We considered the department's response was unsatisfactory because of procedural deficiencies in the way it gathered evidence and therefore began a direct investigation into each of these matters.

Our investigations revealed information about the department's systems that caused us concern. We decided to begin a new and comprehensive investigation into how the department responded to child abuse allegations generally. The three investigations were eventually merged into one. Our final report gave the results of our comprehensive investigation, with the first two investigations included as examples of unsatisfactory investigations.

We audited over 250 investigative files. We also examined the department's policies, examined complaints made to us by the general public including teachers, and examined the department's notifications. In addition, we sought submissions from a range of individuals and organisations that had concerns about departmental investigation procedures.

We found that there was significant room for improvement and recommended that the department:

- improve investigative skills training for departmental investigators,
- consider appointing investigators from outside the department,
- review its policies relating to child protection and investigation of child abuse allegations,
- standardise the conduct of disciplinary hearings,
- change its practice with respect to protected disclosures, and
- improve investigative practice, particularly methods for interviewing witnesses and recording witness statements.

We provided the department with our comments about systemic issues as we identified them, rather than waiting until the final report at the end of the investigation. The department was responsive to our comments and had an effective change process in place before the final report was issued. This enabled a number of recommendations to be implemented immediately.

The level of cooperation shown by the department during the investigation was very good and we welcome the Director General's commitment to comply with our recommendations. Mechanisms are now in place to implement our recommendations by the end of 2001. We meet regularly with the department to oversee the implementation of these recommendations. To date, the department has:

- revised policies,
- amalgamated two units to form the child protection investigation unit,
- initiated a full training program for staff in the investigation unit,
- proposed amendments to the *Teaching Services Act* to appoint independent experts as prescribed officers and to provide for greater flexibility in dealing with allegations of child abuse against employees,
- implemented a best practice model for investigations and adopted a continuous improvement process, and
- participated in our training course on interviewing children.



Overall, the agencies audited demonstrated a high level of commitment to the protection of children. However, staff were generally unaware of their legal responsibilities including their responsibility to report allegations of child abuse to the Ombudsman. In some cases, we suggested improvements to the agency's child protection policy.

### *Directly monitoring investigations*

We will usually directly monitor an investigation if the matter involves serious allegations and the agency needs or requests assistance to conduct the investigation properly. This year we monitored six investigations.

Although the legislation only requires the CEO of an agency to notify the Ombudsman within 30 days of becoming aware of an allegation, we encourage agencies to consult with us and forward a notification as early as possible. This allows us to provide advice about appropriate investigative practices at an early stage in the investigation. In some cases, early notification is crucial because it allows us to ensure that the children are provided with immediate counselling or other assistance which is not otherwise being provided by the agencies dealing with the matter (for example, see case study 35).

Designated agencies must notify us of child abuse allegations against their employees, even if those allegations relate to conduct that occurred outside the workplace. This includes allegations of child abuse occurring in the employee's home (for example, see case

study 33). These matters raise risk management issues for agencies. To properly protect children in their care, an agency must take an interest in whether or not such allegations are substantiated. Only then are they able to make a proper assessment of the risk posed by a particular employee to the children in their care (see case study 36).

### *Direct investigations*

Although our primary function is to oversee and help agencies conduct their own investigations, we have the power to conduct our own investigations if we believe it is necessary. We use this power sparingly. For example, we might use it if:

- there is prima facie evidence of systemic failure,
  - an agency appears unable to properly investigate an allegation, or
- there is a significant conflict of interest that could impact on the integrity of an investigation.

This year we undertook fewer investigations of misconduct of individual employees and concentrated more on investigating systemic issues. This new focus allows us to help agencies make broader changes to the way they deal with child abuse allegations. We completed three direct investigations into DET which we started last year (see case study 37), and began 11 new investigations (see case studies 38, 39 and 40).

### **Case study 38**

We are currently investigating a complaint from a parent of children enrolled at a non-government primary school that various school employees had subjected his children to ongoing physical and emotional abuse. We sought a notification from the principal of the school and requested that the matter be investigated. We also asked the school to give us a final report of their investigation, findings and actions taken.

After many months and numerous contacts with the school, we received their report. We assessed the conduct of the investigation and decided that the school and the Catholic Education Office had not properly identified the incidents as child abuse and had conducted an inadequate investigation into the matter. It was also apparent that some of the employees who were the subject of the allegations were not aware of the allegations. We decided to directly investigate the matter, particularly the systemic issues such as the delays and the adequacy of the school's internal reporting system and investigative procedures.

### **Case study 39**

In May 2001, we received 50 notifications from DoCS regarding allegations of child abuse made against employees. A substantial number of the notifications related to allegations of child abuse made against departmental foster carers. Many of the notifications were several months old and contained serious allegations of physical and sexual abuse of children in foster care placements. In particular, seven of the notifications raised specific concerns about the recruitment, training, induction and support of foster carers by DoCS.

The apparent failure in the case management of these foster care placements and the impact upon the safety of the children led us to a decision to conduct a wide ranging investigation.

This investigation started on 29 June 2001 and will examine the systems in place to prevent child abuse against children in departmental foster care placements. It will also examine the assessment and case management practices for foster care placements. We will review policies and procedures for the recruitment, assessment and training of departmental foster carers and the conduct of the departmental investigations into the seven allegations of child abuse made against foster carers.

**Case study 40**

We completed two investigations into allegations of child sexual abuse involving teachers.

In the first case, the allegations involved ‘grooming behaviour’ by a teacher. This term is used to describe a process whereby sexual offenders condition and build rapport with children in order to reduce their resistance to, and increase their compliance with, sexual abuse. The agency investigated the matter and found that the allegations had not been sustained. As a result of our assessment of the investigation and complaints we received about the way the investigation was conducted, we decided to directly investigate the matter.

At the end of our investigation, we recommended that the agency immediately undertake a risk assessment and consider transferring the teacher to a non-child contact area. We also recommended that the agency consider re-opening the case. The agency has complied with our recommendations and we await advice as to the outcome.

The second case was an historical allegation of child sexual abuse involving a teacher who is in current employment. We investigated the matter and obtained extensive evidence which had not been considered in the agency’s investigation. We recommended the agency re-open this matter and provided guidance on lines of questioning they may wish to pursue with witnesses. The agency has re-opened the case and will report to us at completion.

**Update on last year’s special report to Parliament**

We discussed in last year’s annual report a special report we made to Parliament in April 2000 under section 31 of the *Ombudsman Act*. The report concerned the disciplinary framework used by DET to deal with child abuse allegations against their employees.

Our report underlined the need, first identified in the Royal Commission, for a system of risk assessment to be used to make decisions about allegations against people working with children. We also identified the shortcomings in the disciplinary system currently used by the department.

A key issue was what management should do when allegations could not be proved beyond a reasonable doubt, but the available evidence was sufficient to cause concern. In these cases, staff are often returned to positions where they have direct unsupervised contact with children. We believe that the level of evidence required to sustain a criminal conviction is different from the level of evidence required to change the management of a particular member of staff.

We also drew attention to the risk to children when a number of similar allegations had to be dealt with in isolation from one another and the department was prohibited from warning staff against any future occurrences of inappropriate conduct because an allegation had not been proved to the high standard required.

The department accepted the validity of our concerns and responded positively to the recommendations. This year we have continued to monitor the department’s implementation of our recommendations.

Although the department considers that the solution to these problems is to change the statutory requirements that have made the current system so rigid, it has introduced some elements of risk assessment into its procedures. The department has also obtained legal advice about its ability to place staff in alternate duties when allegations of child abuse are made, during the investigation of those allegations, or when the allegations have not been proven to a criminal standard of proof but the department still has concerns about the member of staff.

The department has done some risk assessments as part of its process of returning staff to their former or equivalent positions. We evaluated these risk assessment procedures but unfortunately found them to be rudimentary and ineffective. We are continuing to work with the department regarding these matters.

**Performance indicators**

Reports recommending changes to law, policy or procedure		
Target	99/00	00/01
100%	100%	100%
Interpretation		
At the conclusion of a formal investigation we issue a report to the agency concerned containing recommendations for improvement. This performance indicator refers to the percentage of those reports where we recommend changes to law, policy or procedure. This year 100% of our reports contained recommendations for changes to law, policy or procedure.		
Recommendations implemented		
Target	99/00	00/01
100%	N/A	92%
Interpretation		
At the conclusion of a formal investigation we issue a report to the agency concerned containing recommendations for improvement. This performance indicator refers to the percentage of those recommendations that were implemented by the agency. We cannot force agencies to implement our recommendations but where they do not, we can report the matter to Parliament. This year 92% of our recommendations were implemented.		

## Analysing trends and patterns

It is important to try to understand the characteristics of incidents that lead to allegations of child abuse so that we can try to prevent those incidents from recurring. We have found it useful to analyse the age and sex of the alleged offenders, the age and sex of the alleged victims and other factors affecting the relationship between an alleged offender and an alleged victim.

### Type of abuse

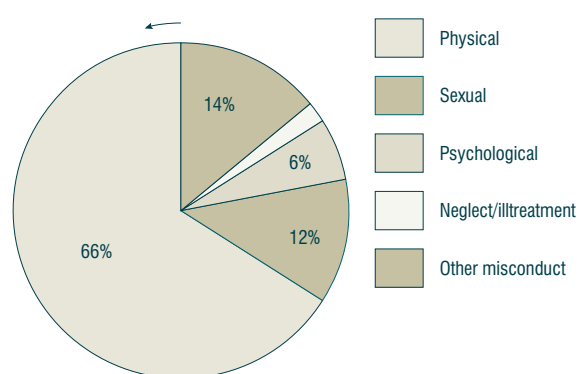
Child abuse notifications this year demonstrated similar patterns to last year. With the exception of sexual abuse notifications, which decreased by 5% from the previous year, the breakdown of notifications by the primary or most serious type of allegation showed little change. The majority of notifications are still about allegations of physical abuse (see fig 7).

### Alleged victims

Boys remain almost twice as likely (59%) as girls (31%) to be notified as the alleged victim of abuse involving employees. Boys are identified as the sole alleged victims in 71% of physical abuse notifications, 46% of psychological abuse notifications, 30% of sexual abuse notifications and 33% of notifications involving other misconduct.

This year we observed similar patterns in the age breakdown of allegations involving boys and girls to last year. Figure 8 shows that the highest risk category for boys is of physical abuse occurring between the ages of 13 and 16 years. The allegations involving girls are distributed more evenly with the peak for girls occurring at 15 years of age (see fig 9). Figure 8 also shows the proportion of physical abuse allegations where the alleged offender was a police officer and the alleged victim was a boy.

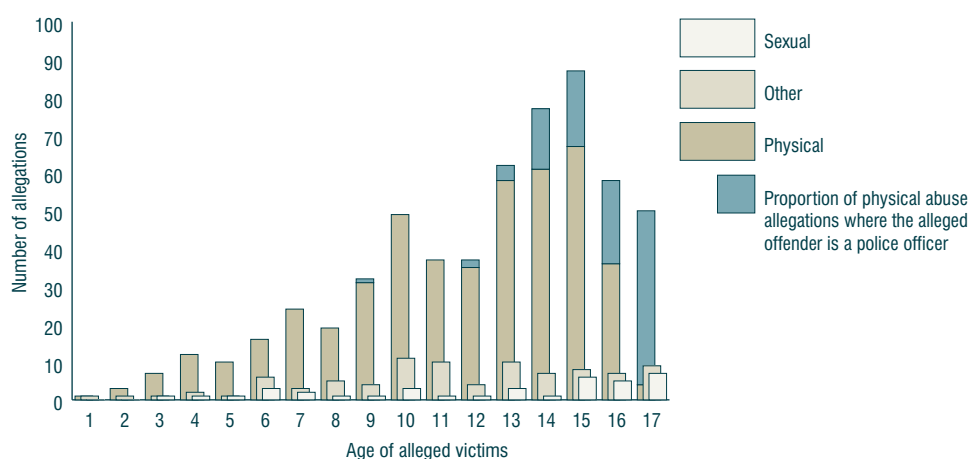
**Figure 7: Breakdown of notifications into primary allegation**



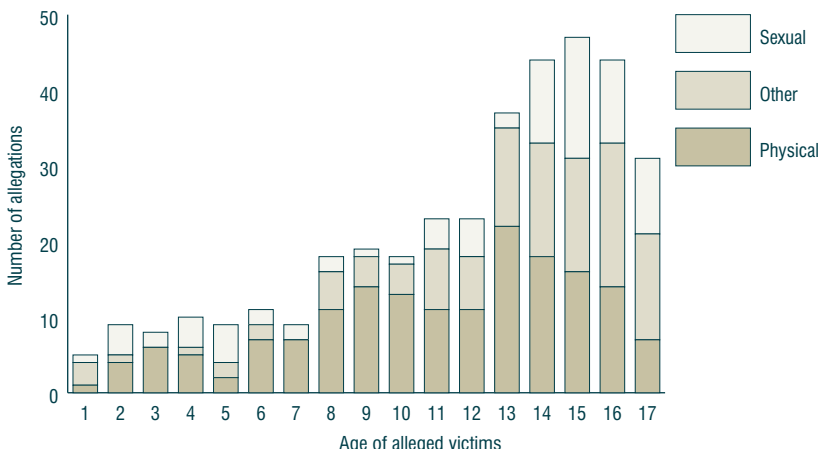
### Alleged offenders

Males were the alleged offenders in approximately 65% of notifications. They were identified in 61% of physical abuse allegations and 81% of sexual abuse allegations. In contrast, females were identified as the alleged offender in 59% of psychological abuse allegations and 61% of allegations of neglect. However, it is important to note that there were only 94 allegations of psychological abuse and neglect, compared with 914 allegations of physical abuse. Figure 10 shows the different kinds of allegations made against males and females.

**Figure 8: Age of alleged victims (male) and abuse type**



**Figure 9: Age of alleged victims (female) and abuse type**



**Police officers**

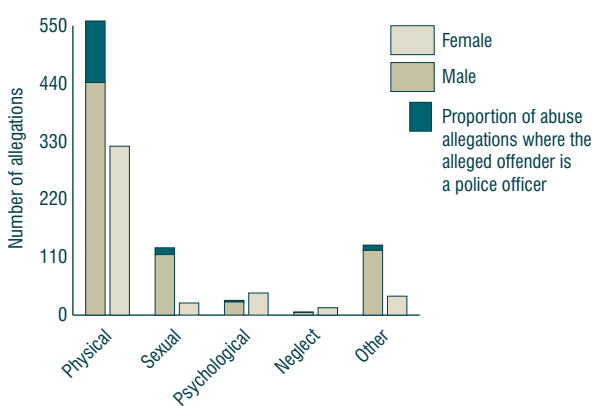
Our analysis has found that notifications relating to the behaviour of police officers show different trends to notifications overall.

Of the allegations involving police, 80% were of physical assault or the use of excessive force. A significant proportion of these arose in the context of the arrest of young people. The officer allegedly involved was identified as male in 83% of cases and as female in 3% of cases. In the remainder of cases, the officers allegedly involved were both male and female or the sex of the officer was not stated.

Almost 90% of the young people involved were male and at least 8% were Aboriginal young people. Where they stated their ages, 80% of the boys alleged to be victims were between 15 and 17 years old.

When we looked at allegations of physical abuse of 17 year old males, we found that 92% of the allegations were made against police officers (see fig 10).

**Figure 10: Sex of alleged offenders by primary allegation**



**Developing our relationships with others**

A large part of our work involves developing and sustaining relationships with agencies within our jurisdiction and other agencies who play a role in the child protection scheme. We also need to acknowledge and respect the relationship that we have with the main parties involved when there is a child abuse allegation—the child who is the alleged victim and the employee who is the subject of the allegations—and with any groups representing their rights, such as unions. In this section, we discuss our relationships with:

- employees who are the subjects of child abuse allegations and their unions,
- other government agencies that play a role in protecting children (CCYP and DoCS),
- peak representative bodies of agencies within our jurisdiction (AIS and CCER),
- agencies within our jurisdiction servicing remote communities.

**Employees and unions**

As our focus is on child abuse allegations in the workplace, each individual case involves not only a child but also a person who is an employee. We need to balance the interests of all parties who are involved and to stay objective and impartial.

Unions have been active in protecting the rights of employees and providing policy advice to government on the current child protection scheme. We meet regularly with a range of unions and the NSW Labour Council to explain our role and the way we work. We also ask for their comments on issues if this is appropriate.

We strongly promote good investigative practice in all agencies within our jurisdiction. Agencies investigating

child abuse allegations are no different. One element of a good investigation is that procedural fairness must be afforded to the subject of the allegations.

The bulk of our work is focused on complaints of child abuse, where the employee is the subject of the complaint. However, this year we received a number of complaints where the employee was the complainant. We take such complaints seriously. This year we satisfactorily resolved a number of complaints from unions representing employees who were dissatisfied with the way a particular investigation was conducted or the action taken following such an investigation (see case study 41).

#### Contribution to the debate about a draft award application

We also take an active interest in any union action that may affect the investigation of child abuse allegations. For example, this year the NSW/ACT Independent Education Union (IEU) started proceedings in the Industrial Relations Commission of NSW for a new industrial award to govern the conduct of disciplinary proceedings in non-government schools. We were given copies of the material that the IEU submitted to the Commission in support of its application.



**I have worked at the Ombudsman's office for 2 years, first within the general team and now as an assistant investigation officer in the child protection team. My new position gives me an exciting opportunity to work within a team that is applying a relatively new piece of legislation.** Tamaris Cameron

The purpose of the proposed award was to specify the procedural fairness requirements that all disciplinary proceedings would have to observe. One of the provisions of the proposed award was that our benchmark material on procedural fairness must be referred to in the conduct of disciplinary proceedings. Although the proposed award sought to increase the effective application of procedural fairness in disciplinary proceedings, we believed that entrenching specific principles in an award would have the opposite result.

We felt that common law principles of procedural fairness would be unnecessarily restricted by specifying them in an award. The flexibility of the principles enables them to be applied to the circumstances of any particular case. Specifying procedures to be followed in every case would remove this flexibility and could well disadvantage the staff member subject to an allegation or produce a result that was against the best interests of the child involved.

#### Case study 41

We received a complaint from the Independent Education Union about the way in which DoCS investigated allegations of child abuse against a child care worker it was representing. DoCS told the worker's employer that some of the child abuse allegations were confirmed and withdrew approval for the worker to continue any direct contact with children.

The worker was not given an opportunity to present her side of the story.

We decided to investigate and found that DoCS had not afforded the worker procedural fairness. We felt that DoCS overall response was inadequate and we made a number of recommendations, including amending DoCS policy and practice in employment-related child abuse investigations. We intend to monitor the way DoCS implements our recommendations.

We provided a letter to the IEU commenting on the proposed award and sent copies to the other parties to the award application—CCER and AIS. All parties found our letter useful and it was tendered at the Commission's hearing on 16 May 2001. The matter was adjourned to enable the IEU to make further submissions.

### *Commission for Children and Young People*

We have a cooperative working relationship with CCYP and we both have key roles in implementing the NSW government's response to the Royal Commission's recommendations about the protection of children.

This year, a number of representative bodies and agencies that fall within the jurisdiction of both the Ombudsman and CCYP asked for clearer and more consistent definitions of the common terms used in the *Ombudsman Act* and the legislation that established CCYP. In response, we are jointly preparing some information about the relationship between the activities of our office and CCYP. The document aims to provide a step-by-step guide to the different reporting requirements employers must comply with.

### *The Department of Community Services*

DoCS has the lead responsibility for providing and coordinating the community response when intervention is necessary for the care and protection of children and young people. While other agencies have important roles in child protection, DoCS has the mandate to coordinate responses by receiving, assessing and investigating reports of child abuse and neglect.

This means that it is in the unique position of receiving and acting on information about children who may have been abused, as well as receiving and acting on information concerning allegations against its own employees. We work with DoCS in relation to both these aspects. We receive and assess notifications about DoCS employees and, in some cases, request information from DoCS about its investigations concerning employees of other agencies.

We negotiated a memorandum of understanding with DoCS in 1999 which was amended and ratified by the Ombudsman and the Director-General in October 2000. The Ombudsman and the Director-General met in January 2001 to discuss matters relating to DoCS' responsibilities to the Ombudsman and the timeliness of their notification practices.

We also meet with staff from DoCS on a regular basis to discuss issues relating to their reporting requirements. This approach helps us to monitor DoCS' practices and address issues as they arise.

### *The Association of Independent Schools*

AIS is an industry body that provides advice and advocacy services to independent schools. We are regularly contacted by AIS to clarify procedures and seek advice about particular cases. We discuss issues of concern to their members, such as the types of matters that should be reported to us and the standard of the information that we expect in those reports. AIS is a valuable and effective link between independent schools and our office. Their staff have also been regular participants at our interagency investigative forums.

We try to provide AIS with as much information as it needs to give its members proper guidance. Some agencies feel more comfortable contacting their industry body for advice, rather than dealing with our office directly (see case study 42).

### *Catholic Commission for Employment Relations*

CCER is responsible for fulfilling the reporting requirements for Catholic systemic schools and Catholic organisations providing substitute residential care, rather than the head of each of those agencies such as the principal of a Catholic school. It is an industry body that represents employers under the control of the Catholic Bishops of New South Wales and the Provincials of Religious Orders.

This year we met with CCER to discuss the way they were fulfilling their reporting requirements as we were concerned about the timeliness of their reports. We examined their internal reporting arrangements and discussed different methods that could streamline their processes.

We now meet monthly to:

- discuss progress on individual cases and provide feedback about issues arising in matters we have assessed,
- discuss procedural issues, such as definitions of misconduct, psychological abuse and appeal mechanisms,
- monitor the effectiveness of their internal reporting processes.

These meetings provide a useful forum for issues to be discussed and allow us to track improvements in CCER's processes.

### *Remote communities*

In last year's annual report we expressed our concerns about the under-reporting of allegations of abuse of Aboriginal children. This year we tried to improve our understanding of child protection issues in rural and remote communities. We decided to take a community-based approach, rather than focus on individual agencies.

In April 2001 we visited Broken Hill and surrounding districts. We took the opportunity not only to learn, but also to tell people about our role in the overall child protection strategy. We discussed our child protection role, the reporting requirements of agencies and the need for agencies to have clear processes for dealing with allegations of child abuse against their employees.

We met with people from government and non-government service providers, including health workers, foster carers, family support workers and people working with Aboriginal communities. Over the three days of our visit, people spoke openly about the issues and the strategies being developed to address them.

Some agencies outlined preventative strategies that they had already put in place. For example, Broken Hill Council had introduced clear procedures for its pool attendants that include guidelines for removing children from the pool area. By deciding what is acceptable in this situation and advising employees of council's position, it is less likely that a child would be handled inappropriately and allegations of child abuse made against employees.

However, we also identified several areas of concern. We found a lack of a coordinated approach to child protection. We were also concerned about the lack of training opportunities in child protection for employees.

Some of these issues were discussed in a subsequent meeting with the Cabinet Office and will be considered as part of the ongoing work of the Child Protection Senior Officer's Group. This group has representatives from various government bodies overseeing the implementation of the government's child protection strategy.

### **Education and training**

A focus of our child protection team has been to educate agencies about their obligations to notify the Ombudsman of any child abuse allegations received. Last year we highlighted a gap in the investigative skills of a large number of agencies. To obtain a better picture of the nature and scale of these deficiencies, we conducted a training survey that canvassed the training requirements of a wide variety of agencies within our jurisdiction. We sent out 4,500 questionnaires to agencies and received approximately 1,000 responses.

Agencies rated training in investigative skills as a high priority, particularly agencies in rural areas where access to training activities is limited. In response to these findings, this year we developed new training programs dealing with investigative skills.

In this section, we discuss:

- the investigation workshops that we developed and successfully piloted this year,
- interagency investigative forums,
- our information sessions about the reporting requirements of agencies,
- our policy development workshops to help agencies develop internal child protection policies, and
- the new publications released this year.

#### *Investigation workshops*

The first course we developed was a one-day workshop providing basic knowledge of the investigative process. This workshop was piloted with two groups—principals of Catholic schools and staff of Catholic welfare agencies. Both workshops were organised by CCER.

The aim of the workshop was to increase participants' knowledge, skills and awareness of investigative practice to enable them to effectively respond to allegations of child abuse against their employees.

We evaluated the workshops and received positive feedback and some good suggestions. We have made changes to the workshop format as a result of the evaluation and will continue to offer these workshops to interested groups.

The second course was an intensive five-day course covering theoretical and practical aspects of investigative interviewing of children. This course was piloted with investigators from the Child Protection Investigation Unit of DET. The feedback we received was very positive. We propose to offer both courses to agencies during the coming year.

During 2000–2001 we also ran a number of information sessions on investigative skills and aspects of the legislation.

**Case study 42**

A small rural independent school contacted the AIS for help with investigating an allegation of physical abuse by a teacher. This was not an isolated incident. The school stated that parents had lodged numerous complaints over the previous months about the teacher's angry outbursts to the children. Anger management counselling had been made available to the teacher but there was no obvious change in his behaviour.

The AIS gave advice about physical and emotional abuse and the harm that may be caused by the inappropriate use of power, such as shouting and belittling children. The school was also advised that part of dealing with the allegation and its consequences included conducting an assessment of the risk that the teacher posed to the safety of the children in his care.

As the teacher did not recognise the seriousness of his behaviour, the school decided to relieve him of his teaching duties. The AIS advised the school that they were required to notify our office and DoCS.

**Case study 43**

The manager of a childcare centre notified us about the way that a staff member had been interacting with children at the centre. Several parents and visitors had complained about the staff member in writing. It was alleged that the staff member had pulled a number of young children off the floor by one arm and had dragged one child along the floor by one hand. Other allegations included speaking very loudly and harshly to young children.

The manager relied on our guidelines and the centre's existing policies to investigate the allegations.

The staff member was given numerous opportunities to respond to the allegations and a union representative offered support during interviews. At the end of the investigation the staff member was dismissed because their behaviour amounted to misconduct under the centre's policies.

After the investigation, centre staff worked together to incorporate our more recent material into their policies about allegations against staff members. We reviewed the action taken by the centre and found that the investigation had been conducted thoroughly and comprehensively. All available evidence was appropriately assessed. The investigation plan and all records were meticulously documented.

Centre staff were very positive about the information and feedback that we gave them.

**Interagency investigative forums**

We established the interagency investigative forum in 1999 to promote good investigative practice across agencies within our jurisdiction. We have reviewed its operation and changed the focus from one of policy development about good investigative practice to practical training.

The forum is attended by representatives from CCER, DET, AIS and the Departments of Health, Juvenile Justice and Community Services.

**Information sessions**

This year we presented information sessions on reporting requirements to the CEOs of agencies, their executive teams, human resource managers and other managers. Our audiences included area health services, area dental managers, local councils, substitute care providers, WorkCover, the Ambulance Service and public sector agencies providing transport services.

Over 1,300 people from 150 agencies attended these information sessions.

**Policy development workshops**

As agencies become more aware of their reporting requirements, we have begun to focus on helping agencies develop their child protection policies.

We found that many agencies were failing to conduct satisfactory investigations because they had an inadequate, or non-existent, child protection policy.

We targeted child care centres as the priority group for policy development training. Children's services advisers from DoCS helped coordinate the project. We held workshops in Nowra, Bomaderry, Wagga Wagga, Albury, Picton, Maitland, Newcastle, Tamworth, Armidale, Inverell, Young, Dubbo, Orange, Shellharbour, and various Sydney metropolitan locations. Over 500 participants from 332 agencies attended the workshops and the feedback indicated that all workshops were well received.

We also presented policy development workshops to local councils around the state in response to requests for assistance following our audit of council policies, which was discussed earlier.

**New publications and articles**

This year we produced a number of publications and articles to help agencies deal properly with child abuse allegations. They are discussed in 'Access and awareness' and listed in full in our publications list in the Appendices. We are pleased to see that our guidelines are being used by agencies to deal with child abuse allegations. It is also encouraging to see agencies updating their internal policies to incorporate our new guidelines (see case study 43).



The 'Policing Public Safety' report was the first of its kind in Australia. It provided a comprehensive review of policing practices associated with the new powers for police to search, give directions and require a person's name and address in certain circumstances



## Monitoring the implementation of legislation

Since 1998, Parliament has given us an expanding role in monitoring the impact of significant legislative changes to policing powers.

The first of these legislative reviews, monitoring the police use of new search and other powers introduced by the *Crimes Legislation Amendment (Police and Public Safety) Act 1998*, culminated in a detailed report called *Policing Public Safety*. We completed the report in November 1999 and the Minister for Police tabled it in Parliament in June 2000.

The *Policing Public Safety* report was the first of its kind in Australia. It provided a comprehensive review of policing practices associated with the new powers for police to search, give directions and require a person's name and address in certain circumstances. It analysed the impact that these powers had on the community, particularly young people and Aboriginal people who already had a high level of contact with police. It included recommendations on how the police use of these provisions could be improved through legislative, procedural and other changes.

We also reviewed the use of powers under the *Police Powers (Vehicles) Act 1998*. This Act extended police powers to establish roadblocks, search vehicles and demand names and addresses of drivers and passengers in specified circumstances. Our report, called *Vehicle Powers, Questions and Answers*, was completed in August 2000 and tabled in Parliament in December.

The reviews of both Acts involved detailed research and consultation with people affected by or interested in the operation of the Acts. These included the police service, the Police Association, young people and youth advocacy groups, civil liberties organisations, and victims of crime. The recommendations in both reports aimed to improve practices associated with the police service's use of the new powers.

The strongest indication that the recommendations in our reports had been taken into account by the government came in June this year when the Attorney General's Department published an exposure draft of the *Law Enforcement (Powers and Responsibilities) Bill 2001*. This legislation is intended to consolidate various police powers, including a number of ill-defined common law powers, into a single piece of legislation as recommended by the Wood Royal Commission in 1997. In addition to consolidating existing powers, the exposure draft responds to many of the legislative and procedural changes recommended in our reports.

We have supplemented the advice in our *Policing Public Safety* and *Vehicle Powers, Questions and Answers* reports with a detailed submission to a Police Powers Taskforce on how the *Law Enforcement (Powers and Responsibilities) Bill 2001* might be improved. The taskforce is made up of representatives of the Parliamentary Counsel's Office, Attorney General's Department, NSW Police Service, Ministry for Police and the Cabinet Office. Our aim was to assist police by suggesting further amendments to clarify and simplify the laws relating to policing powers and practices, while improving outcomes for members of the public who come into contact with police. The draft legislation also includes significant extensions to our research and monitoring role in relation to several new powers.

Parliament has since extended our monitoring role by requiring us to review the implementation of the following Acts:

- Crimes (Forensic Procedures) Act 2000
- *Child Protection (Offenders Registration) Act 2000.*
- *Police Powers (Drug Premises) Act 2001*
- *Police Powers (Internally Concealed Drugs) Act 2001.*

The *Crimes (Forensic Procedures) Act* sets up a scheme for carrying out forensic procedures on suspected offenders, people convicted of serious indictable offences, and people who volunteer to undergo forensic procedures. It also provides for the storage, use and destruction of material derived from those procedures and the establishment of a national DNA database. This is a landmark piece of legislation that is expected to have a far-reaching impact on police investigative procedures. We are required to conduct a two-year review of the exercise of police functions under this legislative regime, with a particular focus on the adequacy and reliability of testing procedures.

The *Child Protection (Offenders Registration) Act* sets up a scheme for the compulsory registration of convicted child sex offenders and other serious offenders believed to pose a significant and ongoing risk to child safety. Implementation of the Act requires a significant level of cooperation and planning by a number of government agencies, including the police service, the courts and the Departments of Health, Corrective Services and Juvenile Justice. We have to scrutinise the operation of the provisions of the Act for the first two years and expect to report our findings by early 2004.

The *Police Powers (Drug Premises) Act* and the *Police Powers (Internally Concealed Drugs) Act* are part of the government's initiatives to extend police powers to curb drug-related crime, particularly in the Sydney suburb of Cabramatta and other locations with a conspicuous drug trade. We are required to scrutinise the operation of the new provisions under both Acts for the first two years and then report our findings. The drug premises legislation came into effect in July 2001 and the internally concealed drug search provisions are expected to begin in February 2002.



**Prior to joining the Ombudsman I worked in policy and research areas in various government agencies.**

**When I finished my law degree in 1998, I was employed as an investigator in the police team.**

**Since returning from maternity leave in 2001 on a part-time basis I have been involved in new intelligence-driven projects and research.**

**I enjoy utilising my analytical skills and experience in developing innovative systems and practices to improve our impact on the police service.**

Shelagh Doyle

We have suggested that the Ombudsman be given a uniform audit role in relation to the three different Acts regulating the use of listening devices, telecommunications interceptions and undercover operations



## Covert operations by law enforcement agencies

In NSW there are currently three pieces of legislation which authorise law enforcement agencies such as the NSW Police Service, the Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission, to commit acts, for the purposes of investigations, that would otherwise be illegal. These three Acts are:

- *Telecommunications (Interception) (NSW) Act 1987*
- *Listening Devices Act 1984*
- *Law Enforcement (Controlled Operations) Act 1997.*

The Acts give authorised law enforcement agencies the power to intercept telephone conversations, plant listening devices (commonly known as ‘bugs’) to listen to and video conversations and track positions of objects, and carry out undercover operations which may involve committing breaches of the law (for example, being in possession of illicit drugs).

The agencies may only use these powers if they follow the approval procedures and accountability provisions set out in the relevant Act.

### Different approval and accountability regimes

The three Acts were developed in isolation and, as a result, the accountability processes set out in them are quite different from each other. There are two significant differences.

The first is that to plant a bug or intercept a telephone conversation, an officer must apply to a judicial officer (or, in the case of telephone intercepts, a member of the Administrative Appeals Tribunal (AAT)) for a warrant. To conduct an undercover operation, an officer need only apply to the chief executive officer of their agency.

The second difference is that the Ombudsman monitors compliance with the accountability schemes set up for the use of telephone intercepts and undercover operations. There is no external monitoring of compliance with the *Listening Devices Act* (which governs the use of bugs) by the Ombudsman or any other body.

In addition, our role in relation to controlled operations is significantly different from our role in relation to telephone intercepts.

### *Controlled operations*

There is a strict regime of accountability for controlled operations which aims to minimise abuse of the operational realities of criminal and corruption undercover work. As agencies do not have to consult anyone external to the agency before carrying out undercover operations, we have a significant role monitoring the approval process. Agencies are required to notify us within 21 days if an authority has been granted or varied, or a report has been received by the agency's chief executive officer on the conduct of a controlled operation.

We are also required to inspect the records of each agency at least once every twelve months. We have the power to inspect those records at any time and make a special report to Parliament.

### *Telecommunication interceptions*

As a judicial officer or member of the AAT already scrutinises the process of granting a warrant for a telephone interception to be carried out, our role does not include ensuring compliance with approval procedures. Instead, we audit the records of agencies carrying out telephone interceptions. The records document the issue of warrants and how the information gathered was used. Some of the records have to be given to the Attorney-General, kept under secure conditions, or destroyed once specified conditions no longer apply.

Our role is to ensure that these provisions are complied with. We are required to inspect each agency's records at least twice a year. We also have discretionary power to inspect their records for compliance at any time.

### *Law Reform Commission review of surveillance operations*

The Law Reform Commission is currently reviewing the laws that apply to surveillance operations, which includes the law regulating the use of bugs. In response to an issues paper released by the Commission in 1997, we suggested that the Ombudsman should be given a uniform audit role in relation to all three Acts.

This would help ensure that agencies complied with the terms and conditions of approvals and the information obtained from operations authorised under each Act was used appropriately.

### **Our reporting requirements**

We must report on our work in the area of controlled operations and telecommunication interception in two separate reports.

We are required to deliver the report on our telecommunication interception work to the Attorney-General within three months of the end of the financial year. We are forbidden from including details of this work in our annual report.

We are required to present the report on our controlled operations work to Parliament as soon as practicable after the end of the financial year. This year's report is available from our office.

### **Recent amendments**

This year, amendments to the controlled operations legislation allowed three Commonwealth bodies—the National Crime Authority, the Australian Federal Police and the Australian Customs Service—to conduct controlled operations within NSW. Our monitoring role has therefore expanded to include these bodies.

Under recent amendments to the *Telecommunications (Interception) Act 1979 (Cth)*, the Inspector who oversees the operations of the Police Integrity Commission was given the power to receive restricted records and information obtained from telecommunication interceptions carried out by certain law enforcement agencies.

A similar amendment has not yet been made to the NSW Act. We therefore cannot, at this stage, inspect any of the telecommunication interception records kept by the Inspector.



# Investigations and complaint resolution

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We focus our resources on matters that will most benefit the NSW public, we give priority to complaints about systemic issues or serious abuses of power

This section gives an overview of our investigative work and the work we have done to resolve complaints informally. Protected disclosures are also covered in this section. These are a specific type of complaint received from 'whistleblowers'.

The Ombudsman was originally established to deal with complaints from members of the public about administrative conduct of NSW public sector agencies. We were set up to be a more accessible, less formal and quicker alternative to the court system. Over the years, we have expanded and evolved significantly and now perform many more activities. These include training people in areas such as complaint management and negotiation skills, which are also discussed in this section. At the same time, the number of complaints that we deal with each year continues to increase.

When we receive complaints about maladministration, we try to resolve them informally, without invoking any formal powers of investigation. To focus our resources on matters that will most benefit the NSW public, we give priority to complaints about systemic issues or serious abuses of power. We also encourage complainants and agencies to try to resolve matters themselves before contacting us.

The information we gather through our complaint work helps us to decide which issues or agencies should be targeted through audits. For example, this year we ran a 'mystery shopper' audit of the State Rail Authority, which is discussed in this section.

Performance indicators

Time taken to assess complaints		
Target	99/00	00/01
90% within 48 hours	92%	85%
<b>Interpretation</b>		
This performance indicator refers to the time taken to assess complaints for which our general team is responsible. We have consistently achieved our target, but this year there was a slight reduction in the percentage of complaints assessed within 48 hours.		
Average time taken to determine complaints		
Target	99/00	00/01
7.1 weeks	7.2	9.5
<b>Interpretation</b>		
This performance indicator is the average time taken to finalise complaints for which our general team is responsible. We were over our target of about seven weeks (excluding freedom of information matters) with the average time taken being 9.5 weeks. The major factor affecting the time taken was the significant increase in complaints received and processed. Written complaint levels in this area of our jurisdiction increased by over 12% this year.		

This year we received complaints of maladministration about a wide variety of public sector agencies. We determine these complaints in a variety of ways, details of which can be found in the Appendices. It is important to remember that although the performance of an agency may affect the number of complaints and inquiries we receive about it, other factors also affect the number of complaints. These include:

- the number of employees in the agency
- the customer-service focus of the agency (for example, the Department of Housing would have more dealings with members of the public than the Premier’s Department)
- whether or not the agency has an internal system to deal with complaints.

This section gives details of our work in the following areas:

- General complaint work
- Mystery shopper audit: the State Rail Authority
- Fines
- Department of Community Services
- Protected disclosures
- Universities
- Local councils
- Corrections
- Training in complaint management.

## What is fair, accountable and responsive administration?

The *Ombudsman Act* gives us a starting point for understanding the nature of conduct which is **not** fair, accountable and responsive. We have the power to investigate conduct, laws or practices that are:

- contrary to law
- unreasonable
- unjust
- oppressive
- improperly discriminatory
- based on improper motives
- based on irrelevant grounds
- based on irrelevant considerations
- based on mistake of law or fact
- those for which reasons should be given but are not given
- otherwise wrong.

Working definitions of these phrases may be found on our web site.

Many of the matters that we deal with can be successfully resolved through informal dispute resolution techniques, often with our office acting as a facilitator



## General complaint work

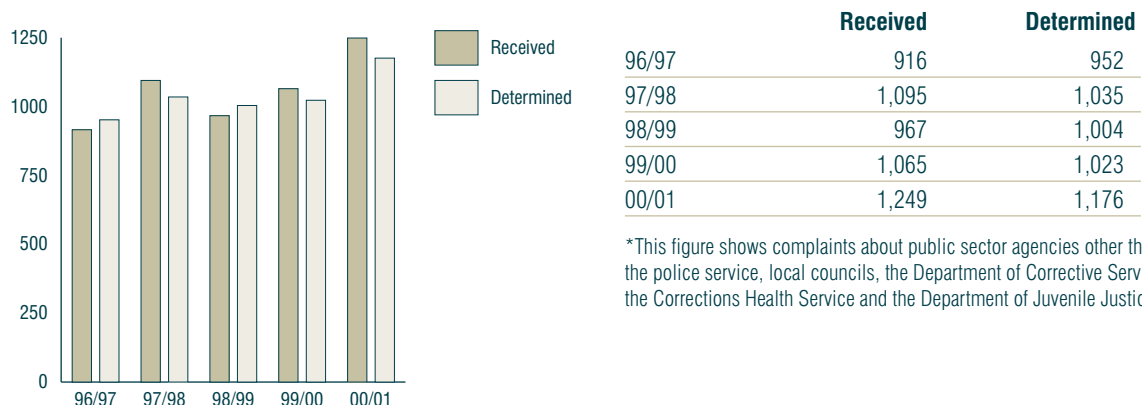
No matter what the subject of a complaint may be, we always emphasise the principles of good administrative practice in our work with public sector agencies.

Formal investigations are resource-intensive and not always the most appropriate way to achieve a satisfactory outcome for a complainant or for an agency. Many of the matters that we deal with can be successfully resolved through informal dispute resolution techniques, often with our office acting as a facilitator. However, we also expect agencies to recognise the importance of good customer relations and be committed to addressing individual problems brought to their attention as well as any systemic issues that an individual complaint may highlight.

This year we received close to 5,000 written complaints and oral inquiries about public sector agencies other than the police, local councils, correctional centres or juvenile justice centres (which are discussed separately later in this report). Our complaint numbers continue to increase (see fig 1).

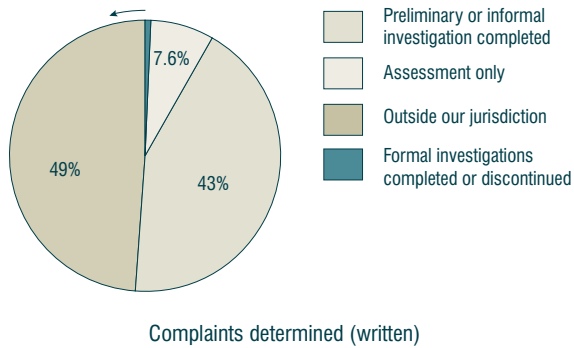
We do not determine every complaint in the same year that it is received. Of the 1,177 written complaints determined this year, the majority were resolved through preliminary investigation or declined after assessment (see fig 2).

**Figure 1: Complaints (written) received and determined  
—five year comparison\***



\*This figure shows complaints about public sector agencies other than the police service, local councils, the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice

**Figure 2: Complaints received and determined\***



\*This figure shows complaints about public sector agencies other than the police service, local councils, the Department of Corrective Services, the Corrections Health Service and the Department of Juvenile Justice

**Complaints received**

Written	1,249
Oral	3,690
Requests for review of our decision	65
<b>Total</b>	<b>5,004</b>

**Complaints determined (written)**

Preliminary or informal investigation completed	575
Assessment only	505
Outside our jurisdiction	89
Formal investigation completed	5
Formal investigation discontinued	3
<b>Total</b>	<b>1,177</b>

**Current investigations (at 30 June)**

Under preliminary or informal investigation	141
Under formal investigation	9

**Figure 3: Subject of complaints**

	Written	Oral
Approvals	66	308
Charges	121	352
Child protection (non-employment related issues)	42	130
Complaint handling	23	42
Contractual issues	65	306
Customer service	301	1093
Information	112	184
Law enforcement	146	128
Management	11	19
Misconduct	46	67
Natural justice	17	66
Objection to a decision	63	385
Policy/law	90	230
Other	84	207
Non-jurisdictional issues	62	173
<b>Total</b>	<b>1,249</b>	<b>3,690</b>

About a quarter of the complaints we received were about customer service (see fig 3). This year we worked with several agencies that have a high level of contact with members of the public and for whom good customer service should be a priority. The work we did with the State Rail Authority and the fine enforcement bodies (the State Debt Recovery Office and the Infringement Processing Bureau) is discussed in greater detail later in this section.

We also worked with the Superannuation Administration Corporation (SAC). A common perception among complainants is that the SAC's customer service centre acts as a barrier to client contact. Most complaints are about being given unclear, confusing or inaccurate advice, having telephone calls and letters responded to late or not at all, and having to deal with a different customer service staff member each time. Poor customer service can have a serious effect on people making difficult decisions about their financial future. See case study 44 for an example of our work in this area.

Case studies 45, 46, 47, 48 and 49 give examples of some of the issues we have helped to resolve this year.



## Performance indicators

Complaints resolved through the provision of advice or constructive action by public sector agency		
Target	99/00	00/01
65%	64%	66%
<b>Interpretation</b>		
This performance indicator refers to the percentage of general team complaints within jurisdiction that were finalised by one of the following means:		
<ul style="list-style-type: none"> <li>declined at the outset or declined after preliminary inquiries with provision of information or advice on applicable law and procedures, or suggestions of how to resolve the complaint at a local level,</li> <li>resolved to our satisfaction by the public sector agency following our preliminary inquiries and/or our intervention,</li> <li>formally conciliated.</li> </ul>		
The result is consistent with our performance target.		

Recommendations implemented		
Target	99/00	00/01
100%	90%	100%
<b>Interpretation</b>		
At the conclusion of a formal investigation we issue a report to the agency concerned containing recommendations for improvement. This performance indicator refers to the percentage of such recommendations made by the general team that are implemented by the agency. We cannot force agencies to implement our recommendations but where they do not, we can report the matter to Parliament. This year 100% of our recommendations were adopted and are being implemented.		

Reports recommending changes to law, policy or procedure		
Target	99/00	00/01
100%	100%	100%
<b>Interpretation</b>		
At the conclusion of a formal investigation we issue a report to the agency concerned containing recommendations for improvement. This performance indicator refers to the percentage of those reports where the general team recommended changes to law, policy or procedure. This year we met our target.		

## Case studies

### Case study 44

When a woman complained to us about the delay in rolling over some of her superannuation funds, our inquiries showed that the amount which had already been rolled over was in fact all that she was due. The woman was under the impression her roll over amount should have been higher. Our inquiries revealed that her impression was understandable because for almost two years superannuation guarantee contributions belonging to another member with a similar name were being incorrectly credited to her First State Super account. The SAC agreed that the woman's problem had arisen because she had not been contacted by their staff despite many assurances that she would be. An explanation and an apology were all that were required to resolve this complaint.

### Case study 45

The complainant represented property owners affected by Sydney Water's application of the 1987 Backlog Sewerage Policy. Many people were out of pocket following the review of that policy and felt that they should be compensated.

The complainant had successfully negotiated with Sydney Water to provide ex gratia payments to property owners who had made contributions under the policy. When he sought payment of interest on these amounts, he met with resistance from Sydney Water and contacted our office.

After our intervention, Sydney Water agreed to make a further ex gratia payment to the property owners, reflecting an

interest rate of 8.57%. The total payments made by Sydney Water came to \$235,308. Sydney Water is to be commended on its willingness to negotiate.

### Case study 46

In last year's annual report we referred to the case where the Department of Transport had been imposing exorbitant fees on applicants for short-term hire car licences without due regard to the requirements of the *Passenger Transport Act 1990*. Our investigation recommended ex gratia payments to the complainants and a recalculation of fees paid by all affected licence holders, with a refund where relevant. The department has now identified the eligible short-term hire car licence holders and paid out many of the claims.

A new Director-General was appointed to the Department of Transport in November 2000. Since then, the relationship between the department and this office has improved dramatically. We were impressed by the willingness of the new Director-General to right past wrongs and finally establish appropriate complaint handling procedures in the hire car and taxi area of the department.

This more positive attitude was demonstrated in the department's handling of a more recent complaint. A taxi driver complained that incorrect information had been included in the department's taxi driver authority renewal form. The form indicated that a person could not renew their driver authority unless they had completed the Taxicare Professional Development Training Program organised and run by the Taxi Council.

The department confirmed that the program was not compulsory, that the Taxi Council was not connected with the department and the Taxi Council was not representative of all taxi drivers. The department took immediate steps to amend the form to make it clear that completing the program was not a prerequisite for renewing a taxi driver authority. A staff member then contacted the complainant and informed him of the action taken to resolve the problem.

### **Case study 47**

We received a complaint about the policies and procedures of the Methadone Program administered by the Department of Health. We believe that proper administration of this program is crucial as the consequences of deficient administration could be very serious.

The first step to ensuring proper administration is having adequate policies and procedures to regulate the program. We made inquiries about the department's policies and procedures for this program and about any monitoring mechanisms that were in place to ensure compliance with the procedures by clinics, prescribers and dispensers.

We gathered written information from the Director General and met with relevant departmental staff. From the information gathered, we were satisfied a number of significant changes were being made to the operation of the Methadone Program, many as a result of initiatives from the Drug Summit.

We concluded that, although the complaint raised serious concerns, it was too soon for us to form a definite view on the adequacy or otherwise of the regulation and monitoring of the program.

We told the department we were concerned about the adequacy of the monitoring mechanisms, in particular the lack of provision for random inspections. It was clear the department's Pharmaceutical Services Branch did not have enough staff to carry out random inspections and the department acknowledged the branch worked exclusively on the basis of complaints received. We advised them that, for such a sensitive program, a monitoring system that relies entirely on complaints is at risk of failing to identify some non-compliant areas.

Because we remain concerned about the way the program is being conducted, we advised the department that we will conduct a future monitoring exercise to find out:

- the outcome of the initiatives from the Drug Summit,
- how they have impacted on the policies and procedures in place to regulate the program,
- what monitoring mechanisms are in place to ensure compliance with those procedures.

### **Case study 48**

In last year's annual report we wrote about two investigations being run simultaneously in relation to Aboriginal land councils. Following consultation with the Minister for Aboriginal Affairs, we issued reports containing a number of recommendations to change both procedures and legislation. Our investigations were about breaches of the *Aboriginal Land Rights Act 1983* by Red Chief Local Aboriginal Land Council (LALC) which had failed for a number of years to hold annual meetings or to present financial statements and audit certificates. At the same time we investigated the NSW Aboriginal Land Council's lack of assistance to Red Chief LALC in meeting the requirements of the Act.

Our recommendations were directed at changing procedures in the LALC and clarifying the role of the NSW Aboriginal Land Council when similar breaches occur. We also made recommendations specifically about matters to be addressed as part of the review of the *Aboriginal Land Rights Act 1983*. We were pleased to work with the Department of Aboriginal Affairs when they prepared the draft amendments to the legislation. We also provided comments to the Cabinet Office on the draft Cabinet Minute. We anticipate the changes to the legislation will substantially address many accountability and procedural matters that we have been concerned about for a number of years.

### **Case study 49**

A woman purchased a car for her son in 1999 and was referred to a mechanic to assess the car's roadworthiness. The mechanic gave the car a pink slip. The next day a friend told her the car should never have been certified as roadworthy. The car was eventually inspected by the Road and Traffic Authority (RTA) who said that extensive work had to be done before it would be roadworthy. The woman estimates it cost her \$3000 to have the car fixed.

She then made a FOI application to access the RTA's file about the mechanic. She found that the RTA had previously investigated the mechanic on a number of occasions for alleged improper conduct but all those documents were now missing. As this made it very difficult for her to take action against the mechanic in a small claims tribunal, she complained to us. Our preliminary view was that there was no evidence that the file had been improperly hidden or destroyed or that the RTA's record keeping procedures were systematically flawed. We believed that the most likely explanation was that the RTA had simply lost the file. We arranged a conciliation between the complainant and the RTA and the RTA agreed to pay \$2000 to compensate her for lost expenses.



## Mystery shopper audit: State Rail Authority

In 2000–2001 we continued our program of mystery shopper audits of the general customer service standards of selected public sector agencies. We test those standards by pretending to be ordinary customers. We visit the agencies with requests for information or to conduct simple transactions, we write them letters, ring them up and send emails and then monitor their responses. The audits are not intended to be an in-depth evaluation of the agency's performance, but are rather aimed at providing a snapshot of the agency's general standards of customer service.

This year we focused on the State Rail Authority (SRA). We conducted separate audits of two of State Rail's services—Countrylink and CityRail.

We have also been working with the SRA to improve its procedures for handling complaints about ticket inspectors. We have focused on the need to properly investigate complaints about serious misconduct and quickly and effectively resolve complaints about less serious matters.

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### Countrylink

We conducted our audit of Countrylink between April and July 2000. At that time, they did not have any publicly available performance standards but they told us that they were in the process of developing them.



#### *Telephone*

Our audit found high standards of telephone service on the Arrival and Departures and Holiday lines. Calls were generally connected to an interactive message bank or a customer service officer relatively quickly. However the interactive message bank on the Arrivals and Departures line was ineffective in giving the information sought and all our callers needed personal assistance. This was of particular concern as 60% of calls involved simple requests for fare and timetable information. We suggested Countrylink review the information presented on their Arrival and Departures line.

However, once connected to a customer service officer, we found that service standards were generally good and our mystery customers were given the information they wanted in a reasonably quick 3 minutes and 15 seconds on average. Impressively, the information was given by the first person spoken to in 95% of cases.



#### *Email*

Countrylink encourages email communication and advertises their email address on their letterhead and web page and in some of their publications. Customer expectations of email contact tend to be higher than telephone or written inquiries. We found that Countrylink largely met this expectation, responding to 89% of emails. All replies were received within 2 days, the average being 0.75 days. We commend Countrylink for their efforts to encourage electronic communication and for using that medium effectively.



#### *Letters*

Unfortunately, Countrylink did not perform as well in their responses to our letters. The letters only required relatively simple responses but we received replies to only 80% of the letters sent. The average turnaround time was 16.5 days, which is longer than the widely accepted standard of 14 days for acknowledgement. Another interesting finding was that of the two forms of responses—either a brochure was provided or a letter was written—the average time taken to provide brochures was 20 days, which was surprisingly longer than the average time taken to respond by letter. Seventy percent of letters went unanswered or unacknowledged for longer than 14 days. We told Countrylink that we considered this to be an area requiring attention.



#### *Travel centres*

Our mystery customers rated the standard of service provided in the travel centres they visited as above average and rated the physical facilities highly. All inquiries were handled by the first customer service officer, which was in line with best practice customer service. The average waiting time was 1 minute 10 seconds with 58% of our customers being served immediately. Only 11% of visits involved a wait of more than 5 minutes.

## CityRail

Our audit of CityRail was conducted from January to July 2000 in two parts. The first followed the traditional format used in previous audits. Mystery customers contacted the CityRail Infoline/Your Say Line, visited CityRail Information Centres and wrote to and emailed CityRail.

The second part involved using the facilities offered at Town Hall and Fairfield stations. We tested:

- waiting times at ticket windows and machines,
- the operation of machines,
- the accuracy of indicator boards and announcements, and
- timetable compliance of services departing from those stations.

The audit took into account the publicly available standards of customer service produced by CityRail. At the time of the audit, CityRail did not have a guarantee of service but they have since implemented a 'Customer Service Commitment' which is available on their web site.



### *Telephone*

CityRail's Infoline/Your Say Line is operated under contract by a call centre. In most cases our mystery customers were connected to the interactive message bank in a relatively short time. However the interactive message bank was not effective in giving the information sought. Most scenarios involved simple requests for timetable or fare information or information about lost property. Only 30% of the scenarios were expected to need personal assistance. However only one of our callers was able to obtain the information they required from the message bank. We suggested that CityRail review the information presented.

Once connected to a customer service officer, the service provided was professional. All our inquiries were answered and, in 82% of cases, by the first officer taking the call. On average, the information was obtained in 3 minutes and 51 seconds. However, we found that there was scope to improve levels of courtesy and to personalise transactions by providing names. CityRail told us that they have appointed a customer complaints officer to improve the way complaints are managed.



### *Email*

At the time we did our audit, the only way to contact CityRail electronically was through the CityRail web site. We suggested a more recognisable email address, preferably with 'CityRail' in the title. If this was advertised in railway stations and put on CityRail letterhead it would encourage more customers to communicate electronically. CityRail now gives their email address as [feedback@staterail.nsw.gov.au](mailto:feedback@staterail.nsw.gov.au) which is much more recognisable. Our audit found CityRail performed quite strongly, responding to 89% of our emails. All replies were received within two days, the average being 0.89 days.



### *Letters*

Responses to our letters were not quite as impressive. We only received replies to 60% of our letters. Half of those not responded to were simple requests for information and the other half were complaints. We advised CityRail that their complaint handling systems may be deficient.

Of the responses received, most were received within the widely accepted standard of 14 days. The average was 10 days. CityRail told us they are developing strategies to make sure all correspondence is answered promptly and have employed additional staff to help reduce the number of unanswered letters. We have continued to monitor this through the complaints we receive.



### *Information centres*

The audit results for face to face contact at CityRail information centres suggested substantial room for improvement. Signage and the physical appearance of facilities were rated marginally above average. Although staff were reasonably neat and tidy, the audit results suggest deficiencies in basic customer service skills. Counter staff gave appropriate greetings in only 43% of cases and in 29% of cases dealt with our mystery customers without making eye contact with them. Nametags were only observed in 36% of cases.

All customer inquiries were handled by the first customer service officer seen. The average waiting time was a minimal 1 minute and 10 seconds. While all mystery shoppers found that CityRail staff were able to help them, only 50% indicated satisfaction with the service provided. In many cases their dissatisfaction stemmed from displays of overt rudeness by the staff they encountered.



### ***Ticket counters***

Our observations of counter staff at ticket windows were similar. Staff were neat and tidy, but there were deficiencies in basic customer service. No staff wore nametags. At Town Hall station, counter staff gave appropriate greetings in only 21% of cases. However, eye contact was made in 88% of cases. At Fairfield station, eye contact was made in every case but appropriate greetings were given in only 13% of cases. Our mystery customers considered staff at both Town Hall and Fairfield to be business like in their dealings.

We suggested to CityRail that their customer service standards could be improved by providing their staff with appropriate training. CityRail told us they had developed a customer service training program which would start with pilot groups in May 2001. We will monitor CityRail's performance in this area.



### ***Buying tickets at Town Hall and Fairfield***

Our audit also tested facilities at Town Hall and Fairfield stations. At Town Hall, we found ticket machines operated on 89% of occasions when we tested them and dispensed change on 84% of occasions. At Fairfield, the ticket machines were in operation and dispensed change every time we used them. CityRail told us its own monitoring indicated a 98% performance by ticket machines.

We found that ticket machines were readily accessible. The average waiting time was 21 seconds at Town Hall and 13 seconds at Fairfield. Waiting times for ticket windows were higher than for machines, with an average waiting time of 1 minute and 10 seconds at Town Hall and 1 minute and 17 seconds at Fairfield. Overall, the average waiting time to purchase a ticket from either a ticket machine or ticket window was 45.5 seconds at Town Hall and 45 seconds at Fairfield.



### ***Signage at Town Hall and Fairfield***

We rated the signage at Town Hall as slightly less than adequate. At Fairfield on the other hand, the signage was more than adequate. At Town Hall, information about service times and destinations on indicator boards outside the barriers was correct on only 35% of occasions. The indicator boards on the platform were correct on 74% of occasions. At Fairfield, information on indicator boards outside the barriers and on the platform was correct on every occasion.

The results for Town Hall however reflect the fact that the station was being renovated for the Olympics when the audit was done.



### ***Platform announcements at Town Hall and Fairfield***

At Town Hall, platform announcements were made in 84% of cases and were correct 91% of the time. At Fairfield announcements were made in 93% of cases and were correct in every case. However, if trains were delayed, the length of the delay or the reasons for it were only announced in 11% of cases at both stations.



### ***Trains running on time***

We also measured the timetable compliance of CityRail services and compared our results with CityRail's.

Under CityRail's measures, suburban trains arriving within 3 minutes of the scheduled time and intercity services arriving within 5 minutes of the scheduled time are measured as running 'on time.'

In our audit we measured lateness in a way that conforms more closely to commonly held perceptions of lateness. Only trains arriving during the first 60 seconds after the scheduled arrival time were treated as being 'on time'. For example if a train scheduled to arrive at 9.50 am arrived

being on-time running services. The picture that emerged was somewhat different to the one portrayed by CityRail's statistics. Figure 4 compares the percentage of trains running 'on time' according to CityRail and according to our audit.

**Figure 4: Percentage of trains running 'on time.'**

Month 2000	Cityrail's results	Our audit results
Feb	82.6%	67%
Mar	78%	63%
May	77.6%	33%
June	84.3%	52%

**Town Hall**

We audited 85 services from Town Hall over a period of 4 months. By our criteria, 53% of the services left at the scheduled time. Late running trains left Town Hall 3 minutes and 8 seconds late on average. These trains ranged from being 20 seconds late to 12 minutes and 40 seconds late. Early departing trains left Town Hall early by 1 minute and 19 seconds on average, ranging from 25 seconds to 3 minutes and 55 seconds.

**Fairfield**

We audited 15 services from Fairfield. By our criteria, only 33% of trains we audited arrived at Fairfield on time and only 15% of the services leaving Fairfield arrived at their destination in the city on time. On average, late running trains left Fairfield 1 minute and 46 seconds late and arrived at their destination 5 minutes and 46 seconds late. These trains ranged from being 1 minute to 5 minutes late. Trains from Fairfield arriving late at their destination ranged from being 2 minutes late to 22 minutes late.

We suggested to CityRail that these statistics might explain the negative public perceptions of the quality of their service sometimes reported in the media. For CityRail to successfully address these concerns, they may need to measure their performance using more realistic criteria. We suggested that they consider reframing their definition of what constitutes a service running 'on-time' to better reflect the public's understanding of that term.

Although CityRail acknowledged that their performance during our audit fell below the accepted targets, they did not specifically address this point. However they agreed to try and improve their 'on time' performance by introducing a rigorous daily review procedure.

**Improvements since our audit**

Since the audit, CityRail has made significant improvements to facilities. All stations have timetables on permanent display and have digital voice activated announcement systems (DVS) either linked to automatic train location systems or manually activated by staff. This gives access to real time running and delay data which overrides the DVS to give alternate train running announcements. Key stations have plasma screen or LED train information display systems. These information systems give real time information both at station entry points and on platforms.

**Complaint handling procedures —ticket inspectors**

During 2000–2001, we received a number of complaints which suggested that the SRA did not have an effective system for handling complaints about revenue protection officers, more commonly known as ticket inspectors. Some complaints showed an apparent failure by the SRA to investigate very serious allegations about excessive use of force by ticket inspectors.

In these cases it appeared the SRA relied on the fact that the police had decided not to take action. Although a matter may not amount to criminal conduct, it may still be unprofessional. Our inquiries showed that when the SRA investigated complaints from the public, the investigators routinely failed to identify or obtain key video and witness evidence. In some cases the investigations appeared to amount to nothing more than comparing the word of the complainant against that of the ticket inspector who was subject of the complaint. Not surprisingly, this investigative process will rarely, if ever, establish the facts of a complaint. This is unsatisfactory for all parties concerned, including the ticket inspector.

For example, one complainant alleged he was assaulted by a ticket inspector. The police declined to take action but the man pursued his complaint with the SRA. It took the SRA a year to get a statement from the ticket inspector concerned and another year to get a statement from his colleague who was a witness to the incident. No other witnesses were identified or interviewed.

After reviewing the SRA's complaint handling process, we met with senior SRA staff to discuss our concerns. As a result of our involvement, the SRA began working on a draft complaint handling policy. We have seen a copy of the draft and are satisfied that they are committed to improving the current situation. We will continue to take a close interest in the development and implementation of the policy.

We expect agencies to have systems in place to enable them to recognise and correct errors swiftly when they come to light



## Fines

A new fines enforcement system came into operation in January 1998. The system involved the creation of the State Debt Recovery Office (SDRO) within the Attorney General's Department. The Infringement Processing Bureau (IPB) of the NSW Police Service is responsible for the administration of nearly all fines issued under the new system.

This year we have continued to receive a large number of complaints about the fines enforcement system. We therefore reviewed a cross-section of this year's complaints to see if they highlighted any systemic problems.

Our review indicated a number of possible administrative problems that could have a significant impact on individual members of the public. We focussed on ensuring that, if such problems occurred, the individual had the opportunity to seek redress without, for example, losing their driver's licence.

### I didn't know I had a fine

One issue was that many complainants alleged they had not been aware of the fine until they received a letter from the SDRO advising them that their driver's licence was to be suspended in a couple of days. These letters also advise the person that they must pay not only the fine but an extra charge for recovering the debt. The complainants claimed they did not even have time to pay the money before their licence was suspended.

We suggested to the SDRO that administrative procedures be amended to give a longer period of time between the notification of suspension and actually suspending the licence. This would give people who had not previously known of the fine more time to pay the debt or exercise their option to defend the matter in court.

### Fines left over from the old system

Among the matters referred to the SDRO in 1998 were a large number of fines issued by courts under the old system. The SDRO is responsible for collecting unpaid debts going back more than 10 years. This is a difficult task especially as no enforcement action may have been taken in the years since some of the fines were issued. Also, the people from whom these debts are to be collected may not know or remember anything about the fines. The letter from the SDRO may be the first time for more than a decade that they have been notified that a fine was imposed on them.

People may also have difficulties in deciding what to do. They may not recall the alleged offence or whether they paid the fine. If they did pay the fine, they may not have kept any proof of payment—ten years is a long time to keep a receipt. Relevant information is not provided with the SDRO's letter so the person may not have enough information to properly consider what action is appropriate. They also have limited time in which to find the information.

## Lifting sanctions

The other main issue identified in the review was the SDRO's alleged failure to lift sanctions, such as suspension of a driver's licence, even though the defaulter had entered a time to pay agreement to clear the debt. A small number of complainants claimed that the SDRO was willing to enter into a time to pay agreement, presumably because it accepted they could not afford to pay the debt in one go, but was only willing to reinstate their driver's licence if they provided sufficient evidence of their need for the licence. This could be evidence from a prospective employer about the nature of the work to be performed. The need to look for a job did not appear to count as sufficient evidence. Some unemployed complainants were in the difficult situation of trying to find a job without a licence (some jobs require the applicant to have a driver's licence) but not being able to pay the fine precisely because they were unemployed.

## Discussions with the IPB and the SDRO

We were concerned that the SDRO and IPB did not appear to recognise the seriousness of the issues raised by the people who had contacted our office, or to be taking responsibility for addressing those issues. We therefore met with both agencies to discuss our concerns.

At the meeting it was agreed the SDRO would consider extending the period between sending the letter advising that the person's driver's licence would be suspended unless the fine was paid and actually suspending the licence. The SDRO recently advised that it has extended the period of time from one to two weeks. In addition, the SDRO clarified that they will generally lift sanctions if the person enters a time to pay agreement and can provide independent evidence that they need the licence to generate income to pay the debt. They may also lift sanctions if the person can demonstrate a social or other need for the licence and has entered a time to pay agreement. In such cases independent verification is required. The SDRO has given us a copy of the guidelines it uses to make these discretionary decisions.

We understand that the SDRO has recently reformed their internal complaint-handling system and we will continue to monitor the situation. Case studies 50, 51, 52 and 53 are a small sample of the many complaints that we received this year about the fines system. As the case studies show, many matters involve administrative errors.

We recognise that when an agency deals with a very high volume of matters, these sorts of errors are inevitable. However, we expect agencies such as the IPB and the SDRO to have systems in place to enable them to recognise and correct these kinds of errors swiftly when they come to light. People who have suffered as a result of an administrative error should not have to either seek intervention from the Ombudsman or dispute the matter in court to have the error corrected.

## Case studies

### **Case study 50**

A complainant with several fines sent a cheque to the IPB for the matters she did not wish to dispute and sent explanations to them about other matters she wanted to contest. Our inquiries revealed an administrative error had led to an adjudication being made on the uncontested matters, while the ones she wished to dispute had been wrongly referred to the SDRO. The IPB apologised for the error and the complainant was able to contest the disputed matters before the local court.

### **Case study 51**

In several cases complainants sent payments for fines to the IPB after the due date but failed to receive refund cheques from the IPB after these matters had been passed on to the SDRO. Our telephone inquiries confirmed in some cases a cheque had not been sent. The IPB is supposed to send these refunds as a matter of priority. In other cases, the IPB's records showed refunds had been sent but as these had apparently not arrived the IPB agreed to cancel the original refund cheques and send the complainants another cheque.

### **Case study 52**

After making some inquiries into a complaint, we discovered that the IPB had sent the wrong standard letter to a person who wished to contest a fine before a court. Following our intervention, he was able to defend the matter in court. We also asked the IPB to make sure that their standard letters clearly explain when the person can elect to take their case to court and what they have to do. This matter is still being considered by the IPB.

### **Case study 53**

A person complained to us that his driver's licence had been suspended without him knowing about the fine. Our inquiries showed that it was most likely that a person travelling on a train without a ticket had, when apprehended by a revenue protection officer, given the name and former address of the complainant. All the correspondence about the fine, up to the notice of suspension, had gone to that address. As the case was one where an annulment of the fine would almost certainly have been granted if the complainant had applied for one, the IPB agreed to withdraw the fine.



From the complaints that we have received this year, we have identified a number of systemic issues of concern



## Department of Community Services

One of the more significant changes this year was the expansion of our role relating to complaints about the Department of Community Services (DoCS). This arose as a consequence of legal advice obtained by the Minister for Community Services that certain complaints were outside the jurisdiction of the Community Services Commission (CSC), in particular, complaints about certain child protection and out of home care matters.

We have had to re-allocate existing resources to deal with this additional work until Parliament decides how such complaints will be dealt with in the long term. We have not received additional funding.

Under the new arrangements, the CSC referred to us some matters that it had been dealing with. From those and other complaints that we have received this year, we have identified a number of systemic issues of concern. We will continue to assess whether complaints warrant formal investigation, inquiry or referral to DoCS for resolution.

Case studies 54, 55, 56 and 57 illustrate some of the issues we have considered this year.

## Case studies

### **Case study 54**

A woman complained that her niece and nephew had been locked in a police cell with their mother.

Four children were found wandering in the street. They were picked up by police and taken to the local police station where the mother of two of the children was already in custody. DoCS was called and took two children back to their family, leaving the other two children with their mother at the police station.

DoCS advised us that its staff were not aware that any of the children had been locked in a cell, but acknowledged that a police station was not an appropriate place for children. DoCS staff are meeting with police to develop protocols to deal with situations where police pick up unattended children.

### **Case study 55**

A teenage girl with an acquired brain injury had run away from home and was living on the streets. She was living a very high risk lifestyle and family and DoCS caseworkers were extremely concerned for her.

The girl's mother complained to DoCS and to our office that the level of intervention was inadequate to make her daughter safe. Although she complained about the inadequacy of services provided, the girl's mother also recognised the level of assistance and commitment given to her daughter by the staff involved.

Our inquiries showed that the primary problem was that the services available to assist the girl were limited and could not fully meet her special needs. This matter highlights a systemic failure to provide appropriate accommodation for a young person with particular needs whose life is in crisis.

Our inquiries confirmed that DoCS, together with different agencies, continue to provide the girl with as much assistance as they can.

### **Case study 56**

Staff in a group home called DoCS with concerns about a teenage resident. The teenager had severe disabilities and had been placed in full time care some years earlier as the family could not manage the teenager's needs. There were concerns the teenager may have been sexually abused while on a family visit but, due to the severity of the teenager's disabilities, it had not been possible to establish whether or not this was true. The home had to provide blended food for the teenager during visits to the family, and on one extended visit it was found that the teenager had not been washed. The family acknowledged that they had problems coping.

Unexpectedly, the family contacted the group home and said they were coming to collect the teenager to live with them. Staff at the group home felt the teenager would be at grave risk if returned to the family. There appeared to be no provision for the teenager's special needs. The staff notified DoCS but, after they received no response, they complained to us.

Our inquiries showed that the matter had not been allocated to a DoCS caseworker because other cases were assessed as having higher priority. After some discussions, DoCS agreed to review the case. The next day the case was allocated to a senior caseworker. She visited the teenager and agreed the teenager would be at risk if moved from the group home. The family agreed that they would not move the teenager over the weekend and would attend a protection planning meeting the following week.

We contacted DoCS after the protection planning meeting. The family recognised that they would not be able to care for the teenager in their home. DoCS agreed to find out if there was a group home closer to the family and the family agreed the teenager should stay at the current group home if appropriate alternate facilities were not available.

### **Case study 57**

DoCS conducts risk assessments of people with access to the most vulnerable members of society. However, it does not have any procedures for conducting risk assessments on its own staff, even when allegations are received about members of staff being a potential threat to vulnerable people.

DoCS made this admission in response to our inquiries into an allegation against a DoCS worker in a group home for adults with disabilities. The worker had previously been the subject of multiple allegations of assault and professional misconduct.

Since we received the complaint, responsibility for group homes has been transferred from DoCS to the Department for Ageing, Disability and Home Care Services. We will pursue this issue with both departments.



Agencies need to recognise that whistleblowing can result in stress and that they have an obligation to provide ongoing support, reassurance and protection for the whistleblower



## Protected disclosures

Protected disclosures are made by 'whistleblowers' —people 'on the inside' speaking out to expose wrongdoing. In NSW, the *Protected Disclosures Act 1994* (the PD Act) sets out a scheme which gives certain types of disclosures statutory protection. The PD Act protects whistleblowers by making it an offence to take detrimental action against them because of their disclosure.

A person can only be considered to be a whistleblower if they are working in the state public sector or for a local council and the information relates to an agency in the state public sector or a local council. They have to make their disclosure to the head of the agency about which they have concerns or to the Audit Office, the Independent Commission Against Corruption (ICAC), the Police Integrity Commission or the Ombudsman, depending on the nature of the information.

### Encouraging protected disclosures

Our office wants to encourage people to make protected disclosures. We believe that the staff of an organisation are in the best position to know how well it is performing its functions and whether there is anything or anyone inhibiting that performance. By actively using this information and addressing the deficiencies that protected disclosures highlight, agencies can become fairer, more accountable and more responsive in the way they operate.

Agencies need to provide a supportive environment that encourages their staff to make protected disclosures. People will not come forward if they think they will not be taken seriously, that nothing positive will be done or that they will be punished for speaking up.

To develop a supportive environment for whistleblowers within the NSW public sector, we have tried to make sure people feel comfortable contacting our office and also helped agencies create a supportive environment for their own staff.

### Contacting our office

We are happy to provide practical verbal advice to people contemplating making a protected disclosure, even if they wish to remain anonymous. We also have information about how to make a protected disclosure on our web site and in our brochures.

If someone makes a protected disclosure to us about maladministration, we will deal with it impartially and, if possible, confidentially. If it is not something we can deal with, we will give the person relevant advice and refer them to another agency if appropriate.

If someone claims that they have suffered detrimental action as a result of having made a protected disclosure, we will take these issues up with the agency concerned, if warranted (see case study 58).

This year we received 97 complaints that were classified as protected disclosures (see fig 5). Of these, we undertook formal investigations in relation to the more serious matters and resolved many issues informally with the agency concerned. See case studies 59 and 60 in this section and case studies 63, 64, 65 and the discussion of the University of Sydney in the section on universities for examples of our work in this area.

**Figure 5: Protected disclosures received  
—five year comparison**

	96/97	97/98	98/99	99/00	00/01
Written	84	97	113	78	97
Oral	95	119	87	65	56
<b>Total</b>	<b>179</b>	<b>216</b>	<b>200</b>	<b>143</b>	<b>153</b>

**Complaining to the whistleblower’s own agency**

We have helped agencies to create a supportive environment for not only whistleblowers, but also those who are the subject of a disclosure and other staff members who may be affected.

We provide advice to agencies that contact us for assistance and this year we set up a pilot email information line to share resources with over 100 Protected Disclosures Coordinators in councils and public sector agencies. For example, we circulated a research study conducted by the police service into the effects of being a police whistleblower. In December 2000 we ran a workshop in Coffs Harbour with other members of the Protected Disclosures Act Implementation Steering Committee (the ‘Steering Committee’). The workshop was for people responsible for administering the PD Act and the feedback was very positive. We will also be releasing the fourth edition of our guidelines for agencies on how to interpret and implement the PD Act soon.

**Agency obligations**

Whistleblowers are not only protected by the PD Act. If a person suffers as a result of having ‘blown the whistle’, they may also be able to take legal action against their employer for breaching their common law duty of care towards their staff. This year, *Wheadon v State of New South Wales*, a case decided in the District Court of NSW, highlighted how essential it is that public sector agencies handle disclosures made by whistleblowers properly.

In March 1987, a police officer (the whistleblower) made a statement to the Internal Affairs section of the police service alleging corruption on the part of a senior officer. This year the whistleblower was awarded over \$600,000 in damages after the court found that the police service had breached its duty of care by failing to provide proper care and support and failing to prevent him from being victimised and harassed.

This case has several consequences for agencies. Agencies need to recognise that whistleblowing can result in stress and that they have an obligation to provide ongoing support, reassurance and protection for the whistleblower. In particular, the onus is on the agency to provide counselling (even if the employee does not ask for it) and to actively protect an employee from reprisals.

This year we dealt with a case that raised another interesting issue. The PD Act protects public officials from detrimental action if they speak out about the inappropriate conduct of another public official. It does not provide the same protections to people who speak out but are not public officials. Interestingly, in South Australia non-public officials are afforded those protections.

In the case we dealt with, a councillor was criticised by a member of the community who happened to be employed in another part of the public sector. The council initially treated the critic like any other member of the public. However, the effect of the PD Act was that the person’s criticism could be considered to be a protected disclosure. Any threats of legal action by the councillor against the critic might therefore be ‘detrimental action’ under the PD Act and carry criminal sanctions (see case study 61).

## Reforming the system

The system for protecting whistleblowers is only six years old. As a member of the Steering Committee established to develop strategies for more effectively implementing the PD Act, we continue to play a role in improving this system. The Steering Committee met five times this year and has representatives from the ICAC, Audit Office, Department of Local Government, Premier's Department, The Cabinet Office, PIC and the Internal Witness Support Unit of the police service.

In August 2000, the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (JPC) produced a report on its second review of the PD Act and made several recommendations. This year the Steering Committee has continued to lobby for the adoption of these recommendations, some of which are discussed below.



**I started work as an inquiry officer in March this year. I answer inquires about a broad range of issues from lots of different people.**

**In this position I have developed skills in effective complaint handling and now have a thorough working knowledge of the Ombudsman's role. My job is a challenging one, with a varied workload that has expanded even within the short time I have been here. David Wright-Smith**

### Correctional officers

Correctional officers have a statutory obligation to report misconduct, but to be protected under the PD Act, a disclosure must be voluntary. That is, the disclosure must not be made because a person had a duty to make it. Following a recent amendment to the PD Act, correctional officers making an obligatory disclosure may still be protected under the Act.

### Protected disclosures unit

This year we wrote to the Premier strongly supporting the JPC's recommendation to create a dedicated Protected Disclosures Unit. This unit would be a centralised expert service which would:

- provide advice, education and training
- systematically scrutinise and monitor the way public sector agencies handle disclosures
- use qualitative and quantitative information about the overall scheme to provide strategic direction and recommend reform.

The Premier rejected the proposal on the basis that many of these functions are already being performed by the Steering Committee and its members, although not in any systematic way.

### Other issues

Other legislative reforms that we strongly support include:

- extending to two years the statute of limitations in relation to bringing charges against a person for taking detrimental action against a police officer who makes a protected disclosure,
- making the Department of Local Government another external body to which protected disclosures can be made,
- reversing the onus of proof in relation to allegations made under the *Police Service Act 1990* which would be categorised as protected disclosures if made under the PD Act,
- requiring public sector agencies to inform staff of internal reporting systems setting out how to make a protected disclosure, and allowing our office to monitor compliance with this requirement,
- providing for the courts to be able to make orders suppressing the publication of material which would tend to disclose the identity of someone who has made a protected disclosure.

## Case studies

### **Case study 58**

A member of a unit of the State Emergency Service (SES) voiced some concerns about the use and accountability of funds by the unit. He alleged that, in response, the unit controller responsible for controlling and coordinating the activities of the unit advised him that his position as president of the auxilliary was no longer required.

He then tried to raise his concerns at the divisional level. They dismissed the issues without apparently making any inquiries. It was only when he raised his concerns with State Headquarters that an internal audit was conducted.

The complainant offered to step aside from the unit until the audit was complete to prevent any disharmony. He asked that his name not be mentioned to anyone except the Director General. Contrary to this request, a letter was read out at a meeting of members of the unit that implied that he had stepped down because he was under investigation.

He complained to our office that his confidentiality had been breached. He also claimed that although the final audit report had made some recommendations about the issues he had raised, those recommendations had not been followed.

We decided to make some inquiries as we were concerned about the way the SES appeared to have handled this protected disclosure. We were particularly concerned that the complainant may have suffered detrimental action as a result of coming forward.

We found that there appeared to be serious flaws in both the way the SES handled this particular matter and in their general systems for dealing with protected disclosures. A complicating factor was that there was a degree of animosity between the complainant and his unit controller.

When we raised our concerns with the SES they, to their credit, conducted a further investigation and produced a report which recommended:

- counselling the officers who had failed to deal with the original protected disclosure appropriately,
- developing and circulating relevant policies and procedures for reporting and handling protected disclosures, and
- engaging a professional mediator to address the ongoing conflict in the unit.

Following this report, we were advised that the unit controller had written the complainant a letter revoking his appointment as Deputy Rescue Officer and asking him to show cause why he should remain a member of the unit. The letter failed to advise the complainant of any rights of appeal or review that may have been available to him. We were concerned about the unit controller's conduct and obtained an agreement from the SES that:

- the 'show cause' proceedings would be stopped,
- the complainant would be given a copy of the second audit report, and
- the validity of the complainant's concerns would be formally acknowledged.

We also met with senior members of the SES to discuss some systemic issues. We reinforced the need for the SES to implement an effective internal complaint handling and reporting policy and offered to help them with this. We also clarified with them that it is not the complainant's responsibility to ask that a complaint is dealt with under the PD Act—it is the agency's responsibility to deal with it appropriately.

### **Case study 59**

The day after a senior ICAC officer was offered a job with another public sector agency, a fax was sent anonymously to that agency's Director-General warning that the officer would bring trouble to the agency. The fax made several allegations about the officer's management practices and the way the officer treated staff. It also contained statements that a court of law would be likely to find defamatory.

The fax header indicated that it had been sent from an ICAC fax machine.

After receiving a protected disclosure about this matter, we decided to initiate an investigation on the basis that if the fax had been sent by an ICAC officer, such conduct could constitute corrupt conduct under section 8 of the ICAC Act. Under section 8, corrupt conduct includes conduct that involves the misuse of information or material that the person has acquired in the course of his or her official functions. It also includes conduct that involves a breach of public trust.

Further, the public expects that employees of ICAC will adhere to very high ethical standards. We were satisfied that the public would consider the sending of the fax and its nature unacceptable for an ICAC employee. The conduct also appeared to breach certain provisions of the ICAC Code of Conduct.

The evidence showed that the fax header had been tampered with and had not been sent from an ICAC machine. Instead, it was most likely that the fax had been sent by a former employee of ICAC from a residential fax machine. We found that the former employee had probably been told about the senior officer's job offer by a friend still working at ICAC. There was nothing inappropriate about this as the information was not confidential.

The former employee was summonsed to give evidence about his knowledge of the matter. He objected to giving particular evidence pursuant to section 21 of the *Ombudsman Act* on the ground that it may tend to prove he was liable to a civil penalty. If he had been a public official at the time the fax was sent, he would not have been able to claim privilege and could have been directed to answer all relevant questions.

In the evidence that the former employee did give, he admitted he had ill feeling for the senior officer and that he wanted to avoid having any further association with that person. Ironically, he had applied, and was being considered, for a position in the same agency that the person had been appointed to, which we believe may have motivated him to send the fax.

As the person responsible was not a public official at the time the fax was sent, the investigation was concluded with no recommendations made.

### **Case study 60**

Last year we reported that we had conducted a preliminary investigation into allegations that senior officers at the ICAC had covered up a sexual liaison between an investigator (A) and a suspect's solicitor (B). This year we received further allegations that a senior officer (C) had given misleading evidence during that preliminary investigation in an attempt to cover up the way the ICAC had managed the situation. Our preliminary investigation found no evidence of a cover up, although we had certain concerns about the way the situation had been managed.

The more recent allegations were made in three documents, at least two of which were protected disclosures. An investigation was commenced. We held a hearing and took evidence from a number of ICAC staff.

We concluded that C had not provided a fully accurate picture of the nature of the ICAC's interest in B during our previous preliminary inquiries. Although C's view appeared to be based on an honestly held belief, it had the effect of

understating the seriousness of the situation and mitigating its mismanagement. We also found that C withheld details that were relevant to our initial inquiries. However, we were satisfied that C had not deliberately sought to mislead our office.

Another one of the allegations was that C had failed to keep proper documents, enabling C to cover up the poor management of the liaison. We found that a number of ICAC officers had poor standards of record-keeping, but this seemed to be more a deficiency of practice rather than a deliberate ploy to cover up the relationship and management's response to it.

We found the specific allegations not sustained. However, because much of the evidence obtained related to management and administrative issues within the ICAC, we prepared a report for the ICAC Commissioner to inform future improvements to the operations and practices of the ICAC.

### **Case study 61**

A person wrote to her local council complaining that a councillor's behaviour in a council meeting was sexist. In dealing with the complaint, the mayor of the council gave a copy of the complainant's letter to the councillor and asked him to comment. Shortly afterwards, the complainant received a letter from the councillor's solicitors threatening defamation action unless she signed a statement withdrawing and apologising for remarks made in her letter.

We told the general manager we were concerned at such conduct and asked him to speak to the councillor. The councillor's solicitors later wrote to the complainant withdrawing their earlier threat.

It later emerged that the complainant worked at the local public school and was therefore a 'public official' under the PD Act. Her allegations of sexist behaviour could be construed as being allegations of maladministration, which includes conduct that is 'improperly discriminatory.' The threat of legal action against her could therefore have been classed as detrimental action under the PD Act.

Our recommendations to the University of Sydney were circulated to all NSW universities and have already drawn a number of positive responses



## Universities

This year has seen an increased emphasis on our work with universities. Universities have not traditionally seen themselves as part of the mainstream NSW public service. This may be because they have a specialist role in the education field and receive a large part of their funding from the Federal Government. However, universities are constituted under state legislation and fall under the same legislative jurisdictions and requirements as other NSW public sector agencies.

A number of calls have been made for a national University Ombudsman, including from a number of vice chancellors of NSW universities. It is interesting that this has come at a time when our scrutiny of universities has increased. A national Ombudsman for universities would create a duplication of roles because State universities are already subject to scrutiny by State Parliamentary Ombudsman.

We finalised 45 complaints about universities this year. Common themes were customer service issues and complaint handling procedures, such as the level of service received or the adequacy of information provided to students. Some universities do not seem to appreciate the need to improve in this area although we have found most of them willing to listen to our concerns and consider recommendations. We were pleased to read that the Vice-Chancellor of the University of Sydney, Professor Gavin Brown, was reported in the press in July 2001 as saying that he had been 'entirely happy' with the Ombudsman's work with his university. However, we also noted his comments that the investigation had been an 'unpleasant learning experience' for them.

We have also dealt with a number of complaints about conflicts of interest and a culture where the standards of good management practice expected of other public sector agencies are apparently not seen as applicable to the university concerned. Some of these concerns arose from the way in which universities respond to the requirements of legislation such as the *Freedom of Information Act 1989* (FOI Act) and the *Protected Disclosures Act 1994*.

See the discussion about the University of Sydney and case studies 62, 63, 64, 65 and 66.



## University of Sydney

We received two protected disclosures about the circumstances surrounding the awarding of first class honours to a student enrolled in the School of Biological Sciences at the University of Sydney. The circumstances arose in 1998 and involved allegations of plagiarism, bullying, sexual harassment, serious academic misconduct, conflicts of interest and nepotism.

In our investigation of this highly involved matter we used our Royal Commission powers, including holding hearings to take evidence from 27 witnesses. We discovered substantial deficiencies in the university's complaint handling procedures and record keeping practices and in their administration of academic assessments. The university inappropriately took an adversarial approach to resolve a particular allegation and this meant that all parties, including the student involved, were left dissatisfied.

Because the university did not handle the matter properly, it escalated and both the student and the supervisor took legal action against the university. The matter received substantial media coverage and is estimated to have cost the university more than \$1 million to date.

The series of events started when an honours student alleged that one of her assessment tasks had been plagiarised by another student. The university investigated but found no evidence to substantiate her allegations. We found that this investigation was very competent.

The student then alleged that her thesis supervisor had sexually harassed and bullied her. These claims were made to the Chair of the Honours Examination Committee (the Chair) who already had a hostile relationship with the supervisor.

Our investigation found that the student effectively received four forms of special consideration because of the stress that she claimed to have suffered as a result of the plagiarism allegations and the alleged sexual harassment. As a result of receiving this special consideration, a penalty of 4.4% for late submission was not applied and the student's final assessment was increased by a further 2.4% to 79.6%, which rounded up to 80%. This gave her the minimum mark necessary for first class honours. This special treatment was contrary to the university's special consideration policy, and the actions of the examiners after their meeting with the student were also contrary to the policy governing the marking of theses.

The special consideration took the following forms:

- Firstly, following the initial investigation, the Head of School (the Head) unilaterally granted the student an extension of three days to hand in her thesis.
- Secondly, the Chair appears to have unilaterally granted the student a separate extension of three days after she applied under the policy for special consideration.
- Thirdly, during a meeting between the student and the three examiners marking her thesis, one of whom was the Chair, the student burst into tears and told the examiners about the stress that she had been suffering so they increased her mark out of sympathy. This was despite the fact that the policy states that a student's mark can only be increased if their academic performance at the meeting warrants a higher mark.
- Fourthly, either the Chair or all the examiners at the honours examiners meeting (the evidence of several witnesses was conflicting) decided that no late penalty should apply to the student's mark, even though her thesis was submitted 10 days after the due date. Even assuming that the student had been granted a six-day extension, the thesis was still four days late.

It was difficult to make conclusive findings about what actually took place because many decisions and discussions were not recorded or were recorded poorly. Poor records also made the true position of the student's marks and penalties difficult to determine. Both the examiners' decisions and their subsequent reconsideration of the student's results were seriously flawed. In our report, we highlighted the serious risk of marks being corrupted if proper records were not kept, particularly of reasons why special consideration was granted. The lack of records made it very difficult to scrutinise the Chair's conduct and we made several recommendations about the need for the university to improve its record-keeping practices.

As we were also concerned about the repeated failure of university staff to comply with the special consideration policy, we included model special consideration guidelines in our investigation report. These guidelines set out a stringent process for dealing with applications for special consideration based on stress.

Immediately after the honours examiners meeting, the student's supervisor complained to the Head about the failure to apply a late penalty to the student. The Head then instructed the Chair to apply a penalty to the student's mark. He did not have the power to do this. The Chair stated that she was instructed to reduce the overall mark to 79%, but the Head denies this. The student was therefore to be granted second class honours.

When the student was advised of this news, she lodged a written complaint with the university. She complained about the investigation into her allegations of plagiarism and about the sexual harassment. She had earlier placed a statutory declaration with the Student Representative Council setting out her grievances and she included this with her written complaint. The university investigated the sexual harassment allegations in accordance with rarely used provisions of the industrial award then covering academics.

We found that the university's investigation was seriously deficient. Instead of taking an inquisitorial approach, the university took an adversarial approach and tended to act as prosecutor on the student's behalf. This was the primary cause of the escalation of events over the next nine months.

The supervisor complained that the Chair had fabricated complaints against him and that his confidentiality had been breached. He took three separate Supreme Court actions against the university, its investigators and the people who had complained about him. These were settled on terms not to be disclosed and the supervisor resigned from the university. As a result of the legal proceedings, the investigation into the sexual harassment allegations was not completed.

The university could have avoided this kind of legal action had it investigated the allegations properly. We recommended that the university improve its investigative practices to make sure that they meet the following criteria:

- procedural fairness—for both complainant and staff member
- speed—so that opportunities for misconduct repetition, breaches of confidentiality and the build-up of bitterness are minimised
- confidentiality—for all parties until the investigation process is completed
- meticulous record-keeping—including recording reasons for all significant investigation-related decisions.

The student also continued to be dissatisfied with the way the university had handled her grievances. She complained to the Anti-Discrimination Board (ADB) about the university, her supervisor and the Head. After the ADB rejected her complaint, she took legal action in the Supreme Court and the Court of Appeal is currently considering the matter.

She also complained about the Head to the university. The student told an ADB officer her complaint against the Head was to put pressure on the university. At our hearings, her aunt testified that the complaint was a 'back-up.'

We found that the university's response to the complaints against the Head was also flawed. The Pro Vice-Chancellor was responsible for making inquiries and he had the impression that the Vice-Chancellor wanted the student's honours result upgraded. During our hearings, the Vice-Chancellor denied that this had been his intention. After his inquiries (which we found to be partial), the Pro Vice-Chancellor wrote a memo to the Vice-Chancellor that we found was factually incorrect and otherwise misleading, but supported the result he believed the Vice-Chancellor wanted. The memo ended by suggesting that the Vice-Chancellor destroy it after reading 'since if accessed under freedom of information, it could damage the university's defence of any external actions brought by [the student].' This was a highly inappropriate suggestion which, commendably, the Vice-Chancellor ignored. We recommended the university conduct further training to ensure compliance with the *State Records Act 1998* and other record-keeping policies.

Despite arguments by the Head, the Dean of Science was convinced by misleading information to recommend that the original decision of the examiners' meeting should be restored. So, 16 months after the student was awarded second class honours, her result was upgraded to first class honours.

Throughout this matter, the student was given advice and support by her aunt who was employed by the university as Manager, Industrial Relations. We found that the aunt failed to recognise that she had a perceived conflict of interest, if not an actual conflict, in this matter and should not have become involved. In response to our concerns, the university has agreed to review its code on conflicts of interest to better conform to our 'Good Conduct and Administrative Practice Guidelines.'

Our recommendations to the University of Sydney were circulated to all NSW universities and have already drawn a number of positive responses. Some universities are conducting administrative reviews to change their local procedures to conform to our recommendations. One university advised that its existing procedures are consistent with the principles we promoted.

## Case studies

### Case study 62

We received a complaint from an academic whose contract of employment with Southern Cross University had been terminated some years ago for alleged unsatisfactory performance. He applied to the university under the FOI Act for documents about his employment, including a report on the program that he taught at the university.

The university did not deal with his application according to the terms of the FOI Act. It claimed that a copy of the report about the teaching program could not be found and that the senior academic who wrote the report had destroyed his copy about three years ago. The university told us it is the general practice of academics to only keep documents for as long as they are useful and then, depending upon storage space, dispose of them. We pointed out that the *State Records Act 1998* and good administrative practice require documents not to be destroyed whenever an academic 'felt like it.'

The university finally located a large number of the documents, including the report. It had given the original documents to its representative in industrial proceedings and had not kept copies. The university has now included all these documents in its records and has set up a working group to develop record keeping policies that meet the requirements of the *State Records Act*.

Our inquiries about the university's handling of the particular FOI application and its commitment to good administrative practice are continuing.

### Case study 63

In early 2001 we received a complaint from an academic about the process of honours assessment in the Department of Biological Sciences at Wollongong University. The allegations related to the assessments of two particular students. This matter has received extensive media coverage.

The academic claimed that, at the honours assessment meetings in November 1997 and November 2000, he had been effectively instructed to upgrade marks. He also claimed that the marks had been upgraded by 'non-experts' in the department and were contrary to the views of the expert external examiner and his own views. He described himself as the 'expert supervisor.'

The academic claimed that the process of honours assessment gave insufficient weight to the views of 'internationally-recognised scientists' (that is, himself and the external examiner), and too much weight to 'the superficial opinions of non-experts in the discipline area.' This led to a student being inappropriately granted a PhD.

From the information the academic provided, the situation could be summarised as follows. The assessments concerned occurred in 1997 and 2000 and involved two students whom he was supervising, one of whom was a full fee paying overseas student. The honours thesis assessment procedure used involves assessment by three or four examiners. The examiners are usually one or two external experts in the discipline area, chosen by the supervisor, and one or two staff from within the department who have PhDs in a related field.

The marks given by each examiner are averaged, with equal weight being given to each mark. The examiners' reports are then considered by an Honours Examination Committee (the committee) made up of all available academic staff members on campus with PhDs.

At a committee meeting, the standard practice is to present and discuss all collated marks and make available examiners' reports and a copy of the thesis. The student's supervisor is given an opportunity to interpret, defend or rebut the comments of the examiners. The committee has the discretion to place more weight on the external expert examiner's mark. The committee then decides on the final mark and the grade of honours to be given.

In the matters raised by the complainant, he strongly supported the assessment of the external examiner. However, the committee did not agree to give the external examiner's mark any extra weight. The complainant believed that the committee should have exercised its discretion in these two cases but he was the only academic member of the department who was unhappy with the process. The other 13 academics fully endorsed the mark.

In his complaint, the complainant conceded that the individual marks of each examiner were not actually altered, as originally alleged. The student was properly given the mark that was the average of the marks given by each examiner. We informed the complainant that, in our view, the fact that this was higher than the mark given by the external examiner did not constitute an 'upgrading' of the mark. None of the information indicated that the complainant had been directed or instructed in any way to change the mark. As he was not an examiner, he had no power to cause the mark to be changed anyway.

It also appeared to us that at the core of the complainant's grievance was his belief that the committee should, as a matter of course, prefer the assessment of the external examiner to the assessment of internal examiners. If such an approach were standard practice, there would be little purpose in appointing any thesis examiners other than the external expert selected by the supervisor.

We advised the complainant of our views and offered to review any further material that showed that our observations were inaccurate or our conclusions flawed. The complainant did not provide any further material.

The complainant was subsequently dismissed by the university. He took legal action and recently the Federal Court found that the dismissal had not been in accordance with the university's enterprise agreement for academics.

### **Case study 64**

A senior manager in the Educational Testing Centre at the University of NSW lodged a protected disclosure with the NSW Audit Office. She made significant allegations about the centre, including allegations that the centre had seriously mismanaged its finances, had entered into inappropriate contractual agreements for a major IT development and had not followed tendering procedures. She further alleged that nepotism and cronyism were rife at the centre. She also complained about how the university had investigated her concerns and failed to protect her from bullying and harassment when her confidentiality was breached.

The complainant had earlier raised her concerns directly with the university. When the internal audit unit examined the centre's financial matters and staff records, it found there was some basis for the complainant's allegations and recommended that certain procedures be implemented.

The NSW Audit Office decided it would carry out an audit of the adequacy of the university's governance and also referred the matter to us. We began a formal investigation into the adequacy of the university's own investigation of the allegations, the treatment of the complainant as a whistleblower, and the university's overall response to its internal audit findings. This investigation is ongoing.

### **Case study 65**

An academic at the University of Sydney complained to the university about how the Vice-Chancellor had dealt with a complaint made against him by a colleague. The university recognised it may be inappropriate for a member of university staff to investigate the complaint against the Vice-Chancellor, as all staff ultimately report to him. The university advised the academic to write to us if he wanted to pursue his complaint and the Chancellor contacted the Ombudsman to discuss the problem.

The situation arose when the academic publicly criticised the work of a newly appointed colleague. The colleague complained that he was harassing her. The Dean of another faculty made preliminary inquiries into the allegation of

harassment. On the basis of his findings, the Vice-Chancellor wrote to the academic stating that although the investigation had not found that he had behaved in a way that constituted harassment, it was strongly recommended he should undergo counselling.

He strongly objected to the letter on the basis that he felt that counselling constituted disciplinary action and there was no basis for the university to take such action. There are procedures that must be followed before formal disciplinary action can be ordered against an academic and his complaint was that the Vice-Chancellor had not followed these procedures.

We investigated both the way in which the complaint against the academic was dealt with and the apparent lack of procedures to deal with complaints about the Vice-Chancellor and senior university officers. A final report has now been issued and a number of recommendations made. We recommended that the University develop procedures for dealing with complaints about the Vice-Chancellor and develop guidelines on the general process to be followed when conducting an investigation. Important elements of the investigative process must include procedural fairness and good record-keeping practices, particularly in relation to decisions made and the reasons for decisions.

### **Case study 66**

The complainant had applied to enrol in the continuing professional development program at the University of Sydney's Faculty of Health Sciences. He paid a non-refundable fee of \$120 and submitted four pre-course assignments for assessment. When he was told his enrolment had been unsuccessful, he asked for his assignments back as he wanted to know what the university had thought of them before he presented them to his employer.

After a long delay, two assignments were returned with comments but two were missing. The returned assignments had been removed from the presentation folder and the comments were minimal. After our intervention, a third assignment was located but had no comments on it. The fourth assignment was never located. On our recommendation, the Faculty of Health Sciences has introduced new procedures for the presentation of assignments and the handling and return of marked assignments.

Our recommendations influence broader local government practices and have changed the way councils are regulated



## Local councils

We continue to receive increasing numbers of complaints about local councils, with the total number of written complaints increasing by 13% this year. However, this increase was largely accounted for by a series of multiple complaints against three councils over single contentious issues. These were changes to the waste collection contract in Gosford and Wyong councils and the tender process for the management of a swimming pool owned by Eurobodalla Council. Oral inquiries also increased by 5% this year and complaints about corporate service functions and customer service issues more than doubled.

One possible explanation for the increasing numbers of complaints is the impact of urbanisation on the work of councils. Neighbourhood disputes appear to be increasingly common and councils often become involved. Our experience is that councils often have to balance competing interests, and even if we consider that the council has acted reasonably in the interests of the wider community, many complainants remain dissatisfied.

### Changing council practices

By giving priority to complaints about systemic and procedural deficiencies, we have achieved numerous changes in the practices and procedures of the councils we investigate. Our recommendations also influence broader local government practices and have changed the way councils are regulated. Our preliminary approach is to focus on resolving the complaint if this is possible. In many cases this also results in changed practices that benefit the whole community, not just the individual complainants.

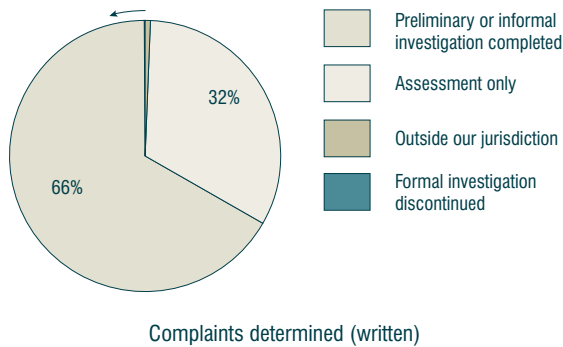
Apart from corporate and customer service issues, complainants are largely concerned about the processing of development applications and perceived failures of council to enforce conditions attached to development approvals. In this section, we discuss improvements we have made to council practices in exercising their enforcement functions and managing councillor misbehaviour.

#### *Improving how councils exercise their enforcement functions*

Most councils devote considerable resources to processing development applications. Councils mostly see themselves as 'gatekeepers' – they control development in their area by making sure that applications for consent are dealt with properly. They give less priority to ensuring that conditions of consent are being complied with and that building or development activity is not being carried out without consent.

Councils are responsible for enforcing the provisions of various Acts. These Acts include the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993*, the *Companion Animals Act 1998*, the *Protection of the Environment Operations Act 1997* and the *Swimming Pools Act 1992*.

**Figure 6: Local councils complaints received and determined**



**Complaints received**

Written	959
Oral	2,409
Request for review of our decision	70
<b>Total</b>	<b>3,438</b>

**Complaints determined (written)**

Preliminary or informal investigation completed	637
Assessment only	312
Outside our jurisdiction	6
Formal investigation discontinued	1
<b>Total</b>	<b>956</b>

**Current investigations (at 30 June)**

Under preliminary or informal investigation	79
Under formal investigation	—

While some councils have ongoing compliance programs, most enforcement action is prompted by complaints and criticism rather than as part of any broader monitoring program. This case-by-case approach to enforcement often leads to inconsistencies in the way councils deal with different matters. Inconsistent treatment can sometimes expose councils to accusations of bias and favouritism.

Common complaints about enforcement issues include:

- failing to record complaints about unlawful activity,
- delaying or failing to investigate complaints about unlawful activity (see case study 67),
- failing to inform complainants of the outcome of investigations and the reasons for decisions on enforcement action (see case study 68),
- responding inconsistently to like situations.

Our inquiries often reveal broader problems with policies or practices. This year we discovered that many council staff failed to keep records of their inspections and conversations (see case studies 69 and 70). This is contrary to good administrative practice and the requirements of the *State Records Act 1998*, and can lead to incorrect action being taken (see case study 70).

We also conciliated a complaint where a council took enforcement action against a person who felt the action was unjust and coercive (see case study 71). In another case we found that council had not taken enforcement action because they could not legally do so but, through our involvement, they agreed to try to address the concerns of the complainants (see case study 72).

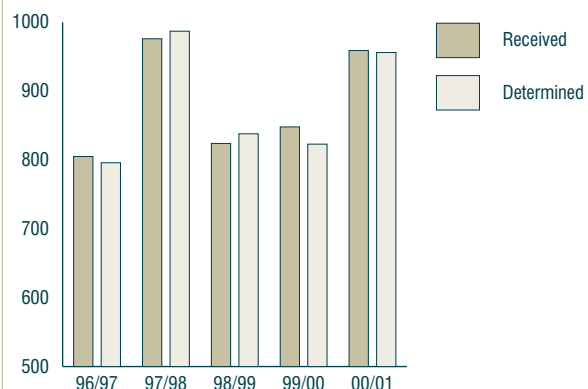
Having identified the area of enforcement as one in which councils need more guidance, we worked with the Local Government and Shires Associations and the Departments of Local Government and Urban Affairs

and Planning to develop enforcement guidelines to help councils achieve greater consistency and transparency when exercising these functions.

The guidelines contain a model enforcement policy and a set of good practice standards against which council decisions can be fairly judged. They include:

- information on how to operate a system to record and respond to complaints and other reports of unlawful activity,
- advice on obtaining information during an investigation,
- a checklist of matters to be considered when conducting an investigation, particularly matters that can easily be overlooked,
- guidance on making a fair, consistent and transparent decision when responding to evidence of unlawful activity.

**Figure 7: Local council complaints (written) received and determined—five year comparison**



## Case studies

### **Case study 67**

Owners of terraces complained that Woollahra Council had allowed an unauthorised and illegal demolition and subsequent building works to take place at an adjoining terrace despite their continuing complaints.

It transpired that work had begun without council being notified or a dilapidation report (a condition of the development consent) being received. Structural damage was seen within days of work commencing yet the only action that council took for four months was to contact the builder, who reassured them that everything was fine.

The complainants claimed that damage had been caused to their properties. They were also concerned that a former council building surveyor was acting as building adviser to the neighbour, and complained of bias and inconsistency by council staff in dealing with this development application. The problems were compounded by the failure of council to respond to correspondence. The complainants also claimed that file notes of meetings with the building adviser and correspondence were missing from council's file.

After a lengthy delay, and after the work had been completed to a stage where it was difficult to remedy the problems, council finally issued notices including a 'direction to stop work.' The neighbour did not comply. Council officers did not seem to be aware that they could have used 'emergency powers' to stop the building work. This inaction allowed the building to proceed through to completion without the problems being rectified.

Although council was aware that there are developers and builders who avoid contact with council in order to progress work to a stage where they know that it is unlikely that council or courts can, or will, order demolition, it still did not act on the residents' complaints. Instead council relied on the opinion of the builder who caused the damage in the first place.

After an initial unsuccessful attempt to obtain information from council, we raised our specific concerns regarding complaint handling and the lack of action. In the meantime, the complainants took legal action for the damage. They were successful and the Supreme Court ordered rectification assessed at \$100,000. The inspections carried out clearly showed that the complainants' concerns were justified.

The response of council's recently appointed Manager, Compliance to our concerns was very positive. He instructed members of staff to take note of the issues we raised and reinforced the importance of responding to complaints quickly, keeping complainants informed and making sure full and accurate records were kept of their activities, which would help prevent any perceptions of bias or corruption.

### **Case study 68**

We made inquiries into a complaint that a council had failed to take enforcement action. Our inquiries showed that council had investigated the issues raised by the complainants and taken enforcement action. However council admitted that it did not convey the outcome of these inspections to the complainants. After our involvement, council advised the complainants of the status of the matter and undertook to keep them informed of any future enforcement action. We also suggested that council consider changing its complaint-handling practices so complainants are always told about the results of their complaints.

### **Case study 69**

Muswellbrook Shire Council failed to give the complainant access to notes made by council staff during two inspections of the complainant's property. Our inquiries revealed that no notes had been made. Council advised that it was not generally the practice of staff to make notes. After we discussed the issues with council, they agreed that staff should keep notes of inspections particularly when they related to complaints. Council undertook to develop a form on which notes could be made and directed staff to make notes when doing property inspections.

### **Case study 70**

The complainant discovered that Auburn Council had impounded his car without his knowledge. When he asked council for an explanation, they did not respond. He complained to our office.

Our inquiries found that council staff had been notified that the car had been abandoned and sent a notification to the registered owner requesting that it be removed by a certain time, otherwise council would be forced to move it. The complainant bought the car after the notification was sent and the previous owner did not alert him to the notification. The complainant then moved the car 30 metres from where it had been parked.

When council staff conducted a final inspection of the car, the description of the car's location was not clear so they were not able to tell whether the car had actually been moved. We also found that the final inspection of the car had not been documented.

As a result of our inquiries, council changed its procedures. It introduced a new impounding form requiring details of the final inspection to be recorded including the exact location of the car. Council will also recheck the RTA Drives database for a change of ownership before making final arrangements to tow an abandoned vehicle.

**Case study 71**

A person was in the process of redeveloping a commercial property. When he lodged a development application for the renovations, council staff went through the property file and discovered that it had no record of payment of a section 94 contribution of over \$60,000 for car parking. This contribution was associated with a previous development application approved approximately 20 years ago. Council made it a condition of the new consent that the applicant pay the outstanding contribution.

The property had changed hands several times in the past 20 years and had been further developed in minor ways. Conveyancing checks carried out when the applicant bought the property had failed to uncover this outstanding fee.

Despite objecting strongly and disputing council's legal right to charge the fee, for commercial reasons the applicant felt forced to enter an agreement with council not to contest the condition in court if council allowed him to pay the fee over time. Contesting the condition would have significantly delayed the work and had serious financial ramifications for the applicant. However, he complained to our office that the council's conduct was unjust and coercive.

We conciliated this complaint. The council was very supportive of the development but felt it had a public duty to attempt to recover the outstanding fee. Council agreed to refund the money paid to date if the complainant proceeded with a further development and completed additional work on council land that would provide pathways that would benefit the local community. If the complainant failed to complete the work within a certain timeframe, the council would keep the money already paid, which was almost \$40,000. The remaining debt was waived.

**Case study 72**

Noise emissions from several dehusking facilities were affecting neighbouring residents. Lismore City Council had conducted noise testing but the noise levels detected fell within the Environmental Protection Authority's limits. Council was therefore unable to take any legal action. The residents were frustrated that council was unable to find other ways to deal with the problem.

As a result of our inquiries, council advised it would visit the facilities and ask the operators to turn off silo fans and air conditioning units from late evening until morning. Council also told us they would check whether or not the facilities required development applications. They further advised that, as a long-term strategy, they would have discussions with the industry to develop a code of conduct for the sites, including ways of containing noise to an acceptable level.

**Case study 73**

A councillor complained that her exclusion from council meetings was for political reasons. After considering three complaints against the councillor by residents and a fellow councillor, council found she had breached its code of conduct and asked her to apologise to the various offended parties.

After a complaint by another councillor about a further incident, the mayor issued a minute complaining of a pattern of behaviour that went beyond mere code of conduct issues. He pointed to the councillor's refusal to obey any direction. The minute prompted a resolution, later adopted by council, which referred to this pattern of conduct. Council resolved to exclude the councillor from future council meetings until she apologised to a resident for one of the earlier incidents.

Under the circumstances, we did not consider council's decision unreasonable. However we suggested that council tape its meetings in the interests of transparency. This would ensure any future act of disorder giving rise to expulsion could be independently verified.

**Case study 74**

We received complaints that a councillor had run meetings of a local progress association in an undemocratic and intimidatory manner. The complainant also expressed concern that the same councillor had been made chairman of an important task force and that he would use his position to prevent any environmentalists from putting forward their views. Our inquiries revealed that although council had some control over the make-up of task forces, its control over community forums such as the progress association was limited to funding. Council issues guidelines for the conduct of the meetings but it is up to the association itself to ensure they are followed. We therefore do not have jurisdiction over the local progress association and declined this matter on that basis.

The complainant later wrote to us again complaining that the same councillor had identified the complainants and their complaints at an open meeting of the progress association. The minutes of the meeting containing this information were posted on a community notice board. The complainant was concerned that publication of her name on the community notice board would affect her husband's business.

We wrote to the general manager of council pointing out that people should be able to complain to us without being intimidated or suffering other consequences. He agreed to discuss the matter with the councillor to ensure it did not happen again. He also agreed to alter council's code of conduct to prevent such conduct from recurring.



### *Improving the way councillor misbehaviour is managed*

In previous years we have focused on the issue of conflict within councils. Conflict can arise between councils and residents, councillors and senior staff and between councillors themselves. A certain level of conflict is a normal feature of councils as they are essentially political organisations. Conflict only becomes a concern when it interferes with the proper functioning of councils. If the conflict between councillors becomes so serious that the council can no longer function effectively, councillors can be dismissed and an administrator appointed. This was the case for Burwood, Bega Valley and Maitland Councils. It is more problematic, however, where councils are destabilised by the conduct of a single councillor or a minority of councillors. The media have recently highlighted an example of this at Ku-ring-gai Council.

One strategy which councils have been using more and more to deal with these situations is to exclude councillors from meetings for acts of disorder. Some councils have continued to expel councillors from subsequent meetings if they refuse to apologise for an earlier act of disorder. We consider this to be an unsatisfactory solution as it is open to abuse by majority councillors. We have seen cases this year where exclusions have depended on minority councillors offering apologies that had to be 'acceptable' to the council—that is, the majority faction. Given the bitterness between factions in many councils, unjust outcomes could result.

Last year we wrote to the Minister for Local Government suggesting this problem could be addressed by introducing a legislative power of suspension. We suggested a number of options, including an independent third party having the power to suspend councillors from council meetings for a fixed period for proven misbehaviour. This would include serious or repeated breaches of the council's code of conduct.

The minister initially rejected our suggestion, but we were pleased when he recently announced he would be examining a range of measures to curb councillor misbehaviour. However, he seems to have incorrectly interpreted our proposal as being limited to councils taking their own action against councillors so we have written to him raising our concerns. See case studies 73 and 74 for examples of complaints that we have received about these issues.

### **Improving complaints systems and conflict management processes**

We help set standards of conduct for councils by publishing guidelines such as our 'Better Service and Communication—Guidelines for Local Government', and providing advice and assistance on request. Deficiencies in councils' complaints systems often come to our attention through complaints. However, as well as helping councils remedy deficiencies on a case-by-case basis, we also conduct forums to raise general awareness of these issues. We frequently liaise with government and the peak bodies in local government on legislative and policy issues to tackle larger systemic problems.

#### *Better complaint handling*

We continue to deal with many complaints that could have been resolved by councils with an effective complaints system in place.

Any such system must have a process for advising every complainant of the outcome of their complaint. This year we dealt with some cases where councils had taken enforcement action in response to a person's complaint, but failed to tell the complainant, leaving them with the impression that nothing had been done despite their complaint (see case study 68). It is also crucial for councils to be transparent in their decision-making. If a complaint is rejected, the council should give proper reasons for this decision (see case study 75).

Sometimes we find that because their systems are deficient, councils deal with complaints by ignoring the problem and refusing to communicate with the complainant. Often the complainant will then complain to our office and our inquiries will reveal that the complainant had a legitimate problem that could have been resolved by council if council had dealt with the issues at the outset (see case study 76).

When we receive complaints, we often ask councils to provide us with copies of their complaint handling policies. We are concerned at the number of councils that still do not have a policy in place. An effective complaints system helps an organisation identify and address problems at the outset. Complaints that escalate within an organisation or involve external agencies like the Ombudsman can require a disproportionate amount of time and resources to resolve. Like most organisations, councils need to apply risk management principles to complaints and integrate the handling of complaints into their customer service policies.

**Case study 75**

A resident complained to Blacktown City Council about tree roots entering their drains. Council denied liability but failed to give clear reasons. As a result of our inquiries, council agreed to give comprehensive reasons for its decision and a copy of a research paper supporting its position.

**Case study 76**

When a fence dividing the complainant's land from land owned by Shoalhaven City Council fell down, she rang council to ask for its contribution to a new fence. Council told her it was not liable. We did not agree. After our inquiries, council agreed to obtain advice from the Department of Local Government about whether it was liable under the *Dividing Fences Act 1991*. The department advised council it was liable for half the cost of the replacement fence. In the meantime, we advised the complainant that she could claim the money from council.

**Case study 77**

A council was engaged in legal proceedings with a complainant. The complainant raised a number of issues about council's treatment of her. One of the matters she complained about was that, in notes on a council file, a council officer had carelessly betrayed his feelings about the possibility that the complainant would be moving from council's area. He had written on the complainant's letter referring to the sale of her property the words 'someone should buy the purchaser a beer!'

We reminded council that recording inappropriate personal comments on files had the potential to be embarrassing if they became public. Council accepted our criticism and agreed to be more careful about this in the future. Nevertheless, we acknowledged the difficulties that council had in managing this person. Significant resources had been devoted to dealing with her aggressive attempt to avoid paying her rates. We gave council a copy of our 'Better Service and Communication—Guidelines for Local Government' to help it deal more effectively with complainants that it found difficult to manage. We hope that council staff may feel less inclined to inappropriately record their feelings on council files in future.

**Case study 78**

A man complained that Walgett Shire Council had closed a meeting to the public on a number of occasions. The minutes of the meeting indicated the closures amounted to almost half the meeting. With one possible exception, the closures were to discuss issues that could be discussed in a closed meeting. However, this may not have been apparent to the public at the meeting. The minutes suggested that council did not give full grounds for any of the closures. After our inquiries, council's then acting general manager agreed that in future council would give reasons and grounds for any

decision to close part of a meeting and those reasons would be recorded in the minutes.

**Case study 79**

The complainant wanted to set up a stall outside a church. Bankstown City Council refused to grant approval and did not give any reasons for its decision. The complainant knew that council had allowed other street stalls to operate and believed its refusal was unfair. Our inquiries showed that council did not have a formal written policy on street stalls and made decisions on applications based on past practice. As a result of our inquiries, council agreed to develop a formal policy on street stall approvals and to give reasons for its decisions.

**Case study 80**

Gunnedah Shire Council granted a pistol club financial assistance to build a pistol range. After a dispute about the construction site, council made the club pay back the grant. This decision had serious financial implications for the club. Council's reason for withdrawing the grant was that the pistol range was to be built on the wrong site. After the pistol club complained to us, we made inquiries which revealed that council had not inspected the sites concerned when it made its original decision. Given that the location of the site was an important consideration, this was a substantial oversight in its procedures. As a result of our involvement, council rescinded its resolution requiring the club to repay the grant money and allowed the pistol range to be built on the club's preferred site. Council also reviewed its policies and procedures for granting financial assistance. In future, applicants will be required to provide more detailed information about proposed projects.

**Case study 81**

Rural town halls are required to pay rates to Lismore City Council. As a matter of policy, the council waives the entire amount of rates paid by each hall. They also give each hall \$1,000 every year for building maintenance and insurance. In 1999, council changed this policy to include a site that was not classified as a hall (site 1). Council staff later recommended that council provide funding for the building and maintenance of another site (site 2) that was similar to site 1 and therefore appeared to be covered by the policy. Site 2 was a community centre for a community well-known for its alternative lifestyle. Despite the staff recommendation, council refused to fund site 2 on three occasions and gave no reason for its decision.

We told council that its decision appeared to be an inconsistent application of its policy. If council was to fund site 1 then it should also fund site 2. The decision about whether or not particular sites should be funded is one for council to make. Our main concern is that comparable sites should be treated the same. As a result of our inquiries, council decided to stop funding all non-rural hall sites so that it applied its funding policy consistently.

### *Dealing appropriately with difficult complainants*

We recognise that just as councils have certain obligations to the communities they service, members of the community wishing to complain to their council have responsibilities too. These include:

- communicating with council staff in an appropriate manner
- giving councils all the relevant information about their complaint at the outset
- not making excessive and unreasonable demands on the resources of councils.

A challenging complainant can consume a disproportionate amount of a council's resources and affect its ability to meet its service obligations to other

members of the community. As the Department of Local Government's reports on Bega Valley Shire Council and Maitland City Council showed, in extreme cases, the behaviour of a small group of residents can affect the overall functioning of the council. Our service guidelines set out some limits councils can impose as a last resort when dealing with complainants who are unwilling to accept their responsibilities.

A number of complainants against whom councils have applied such policies have complained that their rights had been denied. These policies are not intended to deny access. Instead, the 'right' of one member of the public to complain must be balanced against the rights of other members of the public to benefit from the use of the resources that would otherwise be used to deal with the complaint (see case study 77).

### **Addressing problems identified through complaints**

#### *Improving access to councils*

Two sections of the *Local Government Act* aim to ensure transparency in council operations and decision-making. Section 10 entitles everyone to attend council meetings and section 12 entitles everyone to inspect a wide range of council documents free of charge.

Councils are only allowed to close their meetings to the public in limited circumstances. If a council closes its meeting it must specify on what legal power it relies, describe the matter that is to be discussed in the closed section of the meeting, and set out the reasons why that part of the meeting is being closed. This is designed to provide a reasonable balance between the need for a degree of confidentiality for certain sensitive matters and the need for transparency and accountability in decision-making. In previous years we have reported on our concerns about the inappropriate closure of meetings and the failure by councils to meet these requirements. This continues to be a problem in some areas (see case study 78).



**I started with the Ombudsman in January 1989 and worked as an investigation officer under David Landa and Irene Moss until my 'retirement' in mid 1997. I returned eight months later when asked to help out, initially as a full-time replacement and later as a part-timer, a position I still hold.**

**When I started, the office was situated in rather small and cramped quarters in Pitt Street. Staff dealt with all types of complaints—general, local council and police matters. Since then the office has been restructured into more specialised teams and has doubled in size. Beverly Willis**

Complaints have also revealed situations where councils have not met their obligations under section 12. Last year we expressed concern that, with certain requests for information, section 12 can place a significant administrative burden on councils while not bringing appreciable benefits to the public beyond those already available under the *Freedom of Information Act 1989*. However, the majority of requests for information from councils are for material that should be publicly available. The JPC is currently conducting an inquiry into the conflicting information regimes in NSW. For more details about our submission to this inquiry, see the discussion on freedom of information in 'Appeals and reviews'.

### ***Improving the way councils exercise their discretion***

Councils perform a wide range of functions and will not always have a policy to guide every decision they make. However, for those areas where councils commonly exercise their discretion, we encourage them to adopt policies setting out the general approach to be followed (see case study 79). This helps to make sure that decisions are fair and consistent and the merits of the particular case are taken into account.

We expect policies to state the objective and the criteria used to guide decision-making. The policy should also ensure that:

- all relevant and legal requirements are complied with
- all relevant factors are considered
- there is general consistency in decision-making
- the decision-making process is open and accountable.

If a council's policy does not have these characteristics, we ask them to amend it (see case study 80).

We occasionally encounter a council which has developed a policy that is, intentionally or unintentionally, discriminatory. In these cases, we encourage the council to change its policy to remove any discriminatory impact (see case study 81).

This year we investigated a council that had a policy to guide its decision making but refused to apply it when making a decision. As a result, the decision was based on irrelevant considerations and was discriminatory. The council reversed its decision as a result of our investigation (see case study 82).

### ***Rates and charges***

Under the *Local Government Act*, councils are required to produce an annual management plan. The public has the chance to comment on a draft of this plan before it is finalised and council must consider all submissions received. This is meant to ensure a reasonable level of accountability by councils in determining the levels of rates and charges.

We do not act on complaints that are simply objections to rates and charges because we believe that setting rates and charges is an expression of a council's policy on resources. We will usually only consider such complaints if there is evidence of improper or unlawful conduct. For example, we may pursue complaints that show that a council has incorrectly calculated, applied or collected rates, fees or charges and has failed to correct its error (see case study 83). Such errors may reveal broader systemic failures and our inquiries often result in councils making changes to the way they administer rates and charges (see case study 84).

Some complaints raise questions about the legality of charges levied by councils and have ramifications beyond the council concerned. In those cases, our intervention helped to clarify the legal issues and raised the possibility of legislative reform to better reflect the needs and current practices of councils (see case study 85).

### ***Defamation action***

In previous years we have reported on complaints about councils, councillors and council staff threatening defamation action against members of the public. Such threats have the potential to stifle legitimate debate about local issues, silence critics and drive away complainants.

We discuss this issue in our publication, 'Better Service and Communication—Guidelines for Local Government.' We encourage councils to try to resolve disputes and minimise the impact on the rights of members of the community to participate in the affairs of council. Legal action should only be considered after all other reasonable and appropriate alternatives to resolving disputes have been attempted. Further, if a complainant happens to be employed in a public sector agency, any action taken against them may be considered to be 'detrimental action' under the *Protected Disclosures Act 1990*.

**Case study 82**

We investigated a complaint by a Byron Shire councillor about council's refusal to pay his legal expenses. The complainant incurred the expenses defending assault charges and successfully appealing his conviction. The charges arose from an incident that occurred as the complainant attempted to leave the chamber during a council meeting.

Council refused to pay the complainant's legal expenses under council's policy on the payment of councillors' expenses because it was of the opinion that 'the act which led to the expenses being incurred was not related to the performance of his functions as a councillor'. This was contrary to council's own legal advice that the complainant was discharging a function of civic office at the time of the alleged assault and that his claim was valid and reasonable.

In contrast, council approved another councillor's claim for expenses with little scrutiny. That claim related to expenses incurred by the councillor in obtaining legal advice about whether council had grounds to dismiss a former general manager. It was unclear how expenses of this nature could be claimed under the policy.

We believe that political considerations informed council's decision to refuse the complainant's claim. We also consider that council spent an inappropriate amount of resources on denying the complainant's legitimate claim. Obtaining legal advice twice, then ignoring the advice and still refusing to pay the claim, was particularly regrettable. If they had followed the policy, these additional expenses could have been avoided.

After our involvement, council resolved to adopt our preliminary findings and proposed recommendations. They agreed to pay the complainant's expenses, receive training in the exercise of discretion and the application of council's policies, and review the adequacy of their current policy.

**Case study 83**

When the complainants bought a block of land 10 years ago, Bega Valley Shire Council's Bermagui office told them they could not connect to the water supply. They therefore installed a water storage tank on their property. Despite this, council charged the complainants a water access fee. Most of the surrounding neighbours were not charged the same fee. The complainants queried the fee a number of times but council gave no clear explanation for it. When they queried it in 1999, council explained that it had charged the water access fee because the complainants had always had access to connect to the water supply. This contradicted the advice given in 1990.

When the complainants asked for a refund of the \$3073 they had paid, council refused, so they complained to us. Council advised that the complainants had always had access to the water supply and had been charged accordingly. However, council found that the complainants had been misinformed

about this access by council staff. To compensate them, council offered to either refund the money paid or apply it to the cost of providing connection to council's water supply.

**Case study 84**

A new landowner paid Holroyd City Council a construction bond of \$1462. Because the Land Titles Office had not yet notified council of the change of ownership, council's computer system automatically recorded the bond as having been paid by the previous landowner. When the complainant went to recover the bond, council refused to pay. They had already paid the bond to the previous owner through the automated computer system and the cheque had been cashed. Council told the complainant to recover the money directly from the previous owner.

We were of the view that council was responsible for the situation. The complainant should not have to take legal action against the previous landowner because council's procedures were flawed. As a result of our inquiries, council agreed to write another cheque for the same amount to the complainant and change its procedures for dealing with these matters. In future, council will put a note on the file to indicate the land has been sold and the receipt issued in another name. The bond could then be allocated to the correct owner once the Land Titles Office notified council of the land transfer.

**Case study 85**

We received a number of complaints from residents about an infrastructure rental charge that Wingecarribee Shire Council levies on its water and sewerage funds. The general fund levies a flat 6% charge on water and sewerage turnover as rental on infrastructure running through council owned land.

Our inquiries showed that the charge is not passed on to ratepayers. It is purely an exercise in apportioning costs. The money raised is quarantined and used exclusively on infrastructure maintenance and renewal. The Department of Local Government advised us that it monitored council's draft plans of management and the money raised could be clearly tracked through these plans. The charge is therefore raised and applied in a transparent manner.

The complainants claimed the charge was illegal but it was unclear whether this was the case. However, we were concerned that the practice had the potential to allow councils to evade rate capping requirements. We have raised our concerns with the Department of Local Government and suggested a number of measures to ensure that if other councils begin to raise such charges, they should be required to do so in a transparent manner. Also these charges should not be raised at the expense of water and sewerage infrastructure. The department has advised that it will consider the issue as part of its National Competition Policy legislative review and the proposed implementation of a National Tax Equivalent Regime.

Our visits to centres allow us to resolve quickly many small complaints and, more importantly, identify systemic problems that may not otherwise have become apparent



## Corrections

In this section we discuss the work we have done this year with correctional centres, the Corrections Health Service and juvenile justice centres. Around 65% of written complaints received were resolved through a preliminary or informal investigation (see fig 8).

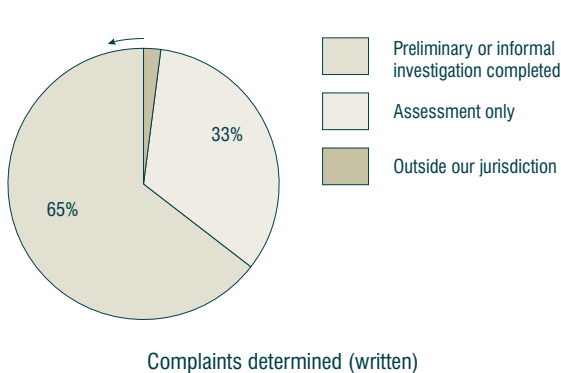
### Correctional centres

#### Visits to correctional facilities

Our program of regular visits to correctional centres and other facilities helps to improve their administration. This year we made 46 visits to correctional centres, three to court cell complexes run by the Department of Corrective Services (DCS) and two visits to periodic detention centres.

The focus of our visits to court cell complexes and periodic detention centres has been to inspect the conditions of the facilities and amenities rather than to take complaints. We feel that people being held in these facilities have sufficient access to our office and we do not need to take complaints in person during our visits. People in periodic detention are only in custody for a few days at a time and therefore have the same opportunities to contact us as other members of the public. Similarly, those held temporarily in court cells will either be released shortly or placed in a correctional centre and they can access our office from there.

**Figure 8: Corrections complaints received and determined\***



\*This figure shows complaints about the departments of Corrective Services and Juvenile Justice, the Corrections Health Service and Australasian Correctional Management Pty Ltd (operating the private facility Juncie Correctional Centre)

#### Complaints received

Written	379
Oral	3,331
Request for review of our decision	8
<b>Total</b>	<b>3,718</b>

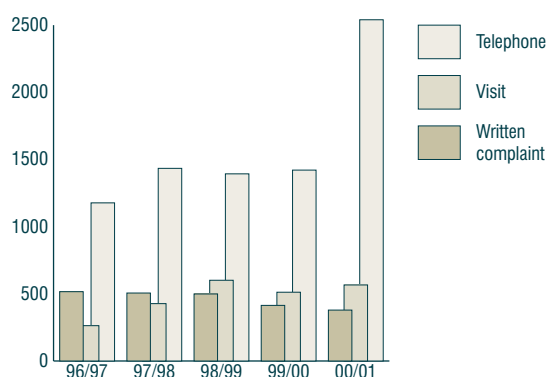
#### Complaints determined (written)

Preliminary or informal investigation completed	253
Assessment only	131
Non jurisdiction issues	8
<b>Total</b>	<b>392</b>

#### Current investigations (at 30 June)

Under preliminary or informal investigation	48
Under formal investigation	3

**Figure 9: How inmates contacted us  
—five year comparison**



This year there has been a 79% increase in the number of telephone calls made to us by inmates (see fig 9). It seems likely that this is partly due to the cost of the call now being directly debited to the correctional centre's account rather than the inmate having to reclaim the cost.

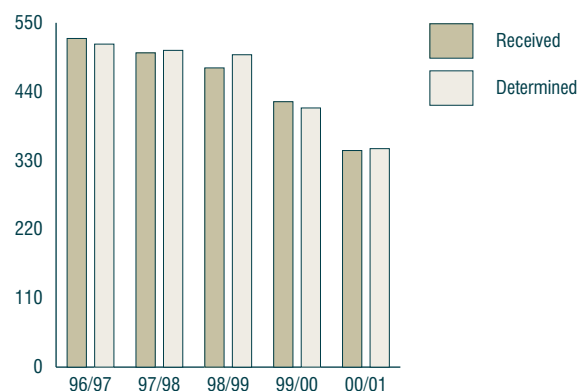
Whatever the reason, inmates now have ready access to our services. The focus of our visits to correctional centres no longer needs to be the quick resolution of individual problems. We are in a better position to focus on more serious and systemic issues during those visits.

In the coming year we intend to monitor trends or patterns of phone contact so we can respond if any problem areas arise. Our visits will concentrate on centres which generate the largest number of complaints or where we feel there are issues of ongoing concern.

### *Improving our relationship with the Department of Corrective Services*

We have continued to work closely with DCS staff at all levels to identify where problems are occurring and help develop appropriate and workable practices and procedures. This increasingly positive relationship is partly due to regular liaison meetings between senior staff of our two organisations and the contacts we make during visits to correctional centres and other DCS units. It is also a reflection of DCS becoming more accountable and less resistant to criticism of its performance and systems, particularly when workable improvements are recommended. This year a number of formal changes were made to DCS procedures in response to our informal inquiries (see case study 86).

**Figure 10: Corrections complaints (written) received and determined—five year comparison\***



\*This figure shows complaints about the departments of Corrective Services and Juvenile Justice, the Corrections Health Service and Australasian Correctional Management Pty Ltd (operating the private facility Junee Correctional Centre)

A good example of the effectiveness of our relationship is the implementation of reforms following our investigation last year of segregation and short term management practices at Parklea Correctional Centre. DCS accepted all 18 of our recommendations and has conducted a thorough review of all relevant procedures. The only matters which appear to be outstanding relate to the negotiation of performance agreements for governors of correctional centres, which is an industrial matter, and the style of audits, such as cross matching legal directions with cell records. The establishment of a Probity and Performance Branch within DCS may provide the proper opportunity for the in depth audits we recommended.

This year, we began a further investigation of segregation procedures and the administration of an inmate's right of appeal to the Serious Offenders Review Council (see case study 87).

Liaison meetings have also helped us to more effectively monitor situations that involve more than one correctional centre, such as complaints about lockdowns and inmates not being given their entitlements to spend time out of cells. For a number of months DCS provided information on 'time out of cells' for inmates at the Metropolitan Remand and Reception Centre and the Metropolitan Medical Transit Centre as well as information on staffing levels and other relevant matters. We have also raised issues about the situation at Lithgow, Grafton and Goulburn correctional centres. Although we appreciate operational difficulties with inmates' rights to spend time out of their cells, particularly in relation to staffing, legal entitlements are clearly not negotiable. This year, several correctional centres changed their arrangements to make sure that time out of cells is provided.

### Working with the Inspector General of Corrective Services

In July 2000, the Ombudsman and the Inspector General of Corrective Services, who oversees the operations of the Department of Corrective Services, signed a memorandum of understanding covering referral and monitoring protocols between our two agencies. It was hoped that this would encourage liaison and minimise the potential for duplication of work. However during the year it has become apparent that operational difficulties have not yet been overcome.

A listing of all complaints received by the Inspector General showed that in quite a number of instances they had taken up matters already dealt with by our office. In addition, when we have discussed particular complaints with governors of correctional centres, we have sometimes been told that the matter has already been raised by the Inspector General.

Inmates are obviously confused about the different functions of our two agencies. For example, some have asked us to refer a complaint to the Inspector General or review the work of that office. If inmates have made a complaint initially to the Inspector General, we generally decline to take any action. We have only accepted referrals from them in a few instances.

We have scheduled further meetings with the Inspector General to try to address these issues.

### Complaints about correctional centres

This year the complaints we received about correctional centres raised a number of interesting issues, including the conditions for female inmates, property, access to documents and the management of serious offenders.

#### Conditions for female inmates

During the year we have been concerned about conditions for housing women in correctional centres that primarily accommodate men. Once again, we have taken into account resourcing constraints. However DCS's response to our inquiries about the substandard accommodation of women at Bathurst, and the management of women housed in the medical clinic at Junee correctional centre, has simply been that women are held in these areas for as short a time as possible. Much appears to depend on the commissioning of the new correctional centre for women at Windsor. In the meantime, we will continue to make sure that appropriate accommodation and services are provided for female inmates.

#### Property

Property—its confiscation, loss and lack of compensation—continues to be a significant problem for inmates. This year we dealt with more than 300 inmates with complaints about this issue, most of which we referred directly to the Commissioner for Corrective Services for resolution. Occasionally, we will become involved in matters if they raise systemic issues or we believe our early intervention might prevent the escalation of an otherwise minor matter (see case studies 88 and 89).

#### Access to documents

A number of inmates contacted us after being told they could only access documents on their case files if they made a formal application under the *Freedom of Information Act*. In each case, we contacted the governor of the centre concerned to confirm that he or she had the discretion to allow inmates to read their files under supervision. DCS's policy is a little contradictory, but it appears that governors are able to provide access to an inmate's files without an FOI application, as long as any sensitive documents have been removed. These sensitive documents should probably not be on those files anyway.

#### Management of serious offenders

Under the *Correctional Centres Act 1952*, the 'public interest' has to be taken into account in the management of serious offenders. If an inmate is designated as being 'of public interest', their access to privileged leave programs is affected. The process of designation needs to be clear, consistent and transparent but this year we dealt with some matters that raised concerns about the process (see case study 90).

Case studies 91, 92, 93 and 94 give further examples of our work with correctional centres.

**Figure 11: Nature of correctional centre complaints**

	Written	Oral
Buy-ups	3	112
Classification/placement	25	203
Community Programs	0	2
Daily routine	24	394
Day and other leave	8	29
Failure to ensure physical safety	20	75
Food and diet	1	47
Information	0	1
Legal	2	112
Mail	5	54
Medical	7	150
Officer misconduct	59	226
Periodic detention	4	20
Probation and parole	5	37
Property	48	294
Record keeping and administration	27	198
Segregation	6	57
Security	3	41
Transfers	22	247
Unfair discipline	9	102
Visits	31	160
Work and education	6	93
Non-jurisdictional issues	7	52
Other	24	250
<b>Total</b>	<b>346</b>	<b>2,956</b>



## Case studies

### **Case study 86**

An inmate complained to us that his application for parole was refused because he had not completed certain courses, in particular a violence prevention course. He felt that he had not been given the opportunity to do the courses concerned and therefore the advice to the Parole Board was unreasonable. The Parole Board's decisions are outside our jurisdiction but we did make inquiries to check that inmates such as the complainant were assessed for relevant courses and given the opportunity to complete them. Although we were satisfied with the explanation provided for the particular problems faced by the complainant, the commissioner agreed to review procedures generally to make sure no other inmates were disadvantaged.

Another issue we were concerned about was a reference written by a correctional officer supporting the complainant's parole. The complainant had shown us the reference to support his contention that he should have been paroled. We had concerns about the style of the reference as it was not objective or factually based, but rather a personal impression of the complainant. We raised our concerns with the commissioner and he issued an instruction in June 2001 on preparing reports on inmates. The instruction makes it absolutely clear that individual officers are not entitled to provide personal references, and official reports about inmates must be confirmed by senior officers and should include only factual and objective information. Commissioner's instructions are a lawful order and carry more weight than a procedural or policy guideline.

### **Case study 87**

In May 2001 we began an investigation focusing on a direction to segregate a particular inmate from 31 July 2000. The segregation direction was not revoked until 27 October 2000, following our inquiries.

This inmate has been in prison for a number of years and has a long history of being extremely difficult to manage. He does not dispute this. His concern was that his history was ruining any chance he had of reform and that his long periods in segregation (including being segregated more than once during 2000) were based on reputation rather than current behaviour.

We rarely question DCS's reasons for operational decisions about security as we are not usually in a position to assess immediate risks and the response to those risks. However in this case, we were particularly interested in the basis for DCS's decisions to segregate this inmate and in the accuracy and timeliness of the documentation.

The second matter of concern was that the inmate had, between January and August 2000, completed three applications for Serious Offenders Review Council (SORC) to review his extended segregation. Preliminary inquiries showed that because of administrative problems, SORC did not appear to have had the opportunity to review his segregation.

This matter is still under investigation.

### **Case study 88**

We received a complaint from an inmate who had been placed in a safe cell because of threats of self harm. All his property was taken from him, including three diaries and his glasses. He claimed that when he was released a couple of days later, these items could not be found. We were concerned that the correctional centre did not appear to have adequate procedures for recording the property taken from an inmate.

Once they recognised the problem, the correctional centre readily agreed to our recommendations for improving these procedures. However, although they accepted responsibility for the lost property early in 2001, the inmate was not compensated for some months and then only after we had contacted DCS several times.

### **Case study 89**

We intervened in a case where some of an inmate's property had been wrongly assessed as being excess to his entitlement and sent out of the correctional centre to a storage area. The property was legal papers the inmate was relying on to prepare his appeal. The correctional centre acknowledged its error but tried to charge the inmate \$100 for the return of his papers. After some negotiation, DCS bore the cost of returning the property and agreed to clarify the property entitlements of inmates appealing against their convictions.

### **Case study 90**

In our 1997–1998 annual report, we reported a matter which raised concerns about the criteria used to decide whether or not an inmate is 'of public interest.' Inmates who have this status are subject to more stringent assessment before they can, for example, access privileged leave programs. At that time, the commissioner responded to our concerns by agreeing to redraft the criteria. We were satisfied with this response and did not pursue the case any further.

In May 2000 another inmate complained to us about being improperly designated as being 'of public interest.' We found that DCS had not been using the revised criteria because the redraft had not been completed. The commissioner took immediate action to finalise the revision and on 9 June 2001 the revised criteria were published. The commissioner also undertook to ensure that, as part of regular classification assessments, all inmates wrongly designated as being 'of public interest' would have their status reviewed and changed.

**Case study 91**

An inmate complained to us that his classification review was months overdue and his requests for review were being ignored. When we made inquiries at the correctional centre, we were told by an area manager that the inmate could not be reviewed as he was not at his centre of classification. We were unsure whether this was a legitimate reason for failing to review an inmate's classification. The classification branch of DCS advised that it was not. If an inmate was due for review, that review could be done wherever the inmate was being held.

We also found that the review date for the inmate had been wrongly entered as 20/5/2009. This explained why the system had not shown the review as being overdue. This technical problem was found to have affected quite a few inmates and steps were immediately taken to reset all the classification dates. In addition, the complainant's classification was immediately reviewed.

**Case study 92**

An inmate was transferred from a correctional centre where he had been held for four years. He had been very settled and stable at this centre, in contrast to his earlier years in custody. As he was employed in a key position, he believed he would stay at the centre under the informal practice known as a 'work hold.' Work holds can affect the placement and classification of an inmate, so written guidelines and procedures are necessary to make sure that there is a consistent and fair approach that neither favours nor disadvantages individual inmates.

When we wrote to the commissioner, he agreed that a policy would be drafted. It was included in the new 'Classification and Case Management Procedures Manual' published in October 2000.

**Case study 93**

An inmate complained that he had been transferred from a correctional centre on the basis of false allegations. The aim of our inquiry was to find out what intelligence had been gathered by DCS, what steps had been taken to authenticate it and where it was stored. The correctional centre did not have an officer responsible for intelligence at the time and the

material appeared less organised than it should have been. However, the acting governor of the centre undertook to put a system in place and store sensitive documents more securely. The commissioner confirmed that he considered the current systems adequate, but also advised us that an increase in security was proposed. The commissioner also advised that the Corrections Intelligence Group (CIG) was developing a protocol for maintaining intelligence material which would incorporate compliance checks.

An important element of intelligence material is its timeliness. One matter raised with us indicated some problems with the timely communication of information between different branches of DCS. An inmate was hastily transferred from Long Bay to Goulburn in May 2000 because of concerns about threats to security, specifically the possibility of a correctional officer being taken hostage. We did not question the operational imperative of this action but felt that the supporting documentation did not seem to justify the drastic action taken against the inmate.

The governor of the receiving centre immediately revoked the existing segregation direction which seemed to indicate that he was unaware of the possibility of ongoing security issues. In addition, the High Security Inmate Management Committee minutes did not reflect any knowledge of the situation until July, some two months after the inmate's transfer. It is therefore not clear when the governor of the Long Bay centre informed CIG of the situation and provided relevant intelligence for use by other officers. We are continuing our inquiries and focusing on making sure that procedures are in place to ensure the timely and accurate recording and dissemination of intelligence information.

**Case study 94**

Student evaluations of a course at the Corrective Service Academy were very critical of a particular lecturer. Staff at the academy chose to deal with this situation by destroying the evaluation forms. We discussed this with State Records and they agreed that the records should not have been destroyed without proper disposal authority. State Records have since been working with DCS to establish a comprehensive records disposal authority as well as improve record keeping generally.

## Corrections Health Service

For many years we have been able to quickly resolve inmate complaints about Corrections Health Services (CHS) by dealing directly with the nursing unit managers at the centres concerned. We obtain written consent from inmates if we need access to their medical records, but otherwise deal with matters as informally as possible. Some difficulties with this practice arose during a visit to Bathurst Correctional Centre in November 2000 when we were refused access to information requested. Although that matter was resolved, we thought it timely to confirm existing arrangements.

In response to our letter, the CEO of the CHS gave us a copy of the NSW Health Privacy Code of Practice 1998. This allows our office access to medical records only during formal investigations, and then only by liaising with the Health Service Development and Executive Unit. Such cumbersome procedures do not help us to resolve minor problems quickly. The CHS appears to be bound to follow the code of practice, even when inmates have given written consent for the release of their records. We are currently trying to improve this situation and re-establish our ability to resolve relatively minor matters informally.

This year we also started an investigation into CHS procedures for transporting inmates who have special transport needs because of their medical conditions (see case study 95).

**Figure 12: Nature of Corrections Health Service complaints**

	Written	Oral
Information improper disclosure	1	0
Medical	14	127
Officer misconduct	1	3
Records/administration	1	4
Other	1	18
<b>Total</b>	<b>18</b>	<b>152</b>

## Juvenile justice centres

### Visits to juvenile justice centres

We recognise the particular difficulties young people, and especially those in detention, have in making complaints. To make sure that they have access to our office, we have a Youth Liaison Officer and other specialised staff dedicated to dealing with their complaints.

We have a regular program of visits to juvenile justice centres. Two staff go on each visit and this year we made 16 visits. During the visits we talk to detainees and staff, inspect the centre, school and program areas and examine centre records including punishment books, confinement records and 'use of force' forms. Detainees have the opportunity to talk to us about any concerns they have about the operation of the centre and how they are progressing. We obtain information about the programs run by each centre and the level of participation in those programs. We also examine a random selection of case files to review the management of individual cases.

**Figure 13: Nature of juvenile justice centre complaints**

	Written	Oral
Daily routine	2	37
Day and other leave	0	12
Failure to ensure physical safety	1	8
Food and diet	0	25
Information	1	0
Legal	0	1
Mail	0	1
Medical	1	4
Non-jurisdictional	3	7
Officer misconduct	3	32
Probation and parole	0	2
Property	1	7
Record keeping and administration	0	8
Security	0	5
Segregation	0	8
Transfers	1	8
Unfair discipline	0	20
Visits	0	11
Work and education	0	4
Other	2	23
<b>Total</b>	<b>15</b>	<b>223</b>

**Figure 14: Outcome of oral complaints about juvenile justice**

Explanation, advice, referral given	62
Advice to send written complaint	12
Preliminary or informal investigation made	151
<b>Total*</b>	<b>225</b>

\* not all oral complaints finalised in year of receipt

### **Case study 95**

Over a number of years we have dealt with complaints from inmates who need special transport arrangements due to medical conditions. In our 1997-1998 annual report we reported that DCS and the CHS had worked together to develop a new policy to address this issue. We were told that difficulties in the provision of special transport for inmates had been resolved.

After a complaint from an inmate who is an ambulant paraplegic that he was not being escorted in accordance with the new policy, we found that significant problems still existed. Our inquiries showed that the service's clinic staff had little or no understanding of the policy and the provision for special transport arrangements, and the head office of the CHS was deficient in its record keeping. It was clear that the CHS and DCS had conflicting views about the standard of, and facilities offered by, the current fleet of vehicles and plans for its enhancement. There were also communication problems within the escort unit itself as well as between the CHS and DCS.

Notices of investigation were issued to the CHS and DCS. Our aim was to ensure they finally agreed on a workable procedure for providing appropriate transport for inmates with relevant medical conditions. We also investigated the transporting of the complainant.

We facilitated a meeting which brought together senior officers of the CHS and DCS and a number of agreements were reached.

### **Case study 96**

A detainee was isolated for a combined period of 18 hours. This was made up of three hours segregation, 12 hours of confinement and another three hours segregation. There were discrepancies in the records and the paperwork did not indicate that the necessary authorisation had been sought or granted. The department told us this action was part of the detainee's case plan but our inquiries showed that the case plan was severely deficient, with no provision for the effective ongoing management of the detainee's behaviour.

Following our inquiries a change in procedure at the juvenile justice centre was introduced. Senior staff at the centre now have to give permission for a detainee to be placed in consecutive periods of confinement and segregation. The department has also developed a new form to make sure that these approvals are clearly recorded.

### **Case study 97**

Inquiries made following a complaint from a detainee revealed staff were finding his behaviour very difficult to manage. At the time, the department had no policy for managing difficult behaviour of this kind. The centre had placed the detainee on one-on-one supervision for four days so that his behaviour could be closely monitored. He was kept in the confinement area of the centre and had been stripped of his clothes on occasion, as staff were concerned that he would use them to harm himself. The detainee was subsequently transferred to another centre.

We were concerned about the department's apparent failure to put in place an adequate behaviour management plan for the detainee and have asked for an explanation. Such a plan may have avoided the need to confine the young person for such a long period of time or remove his clothes. We have also requested information about how other detainees with similar needs will be supported in the future.

### *Changes arising from our Kariong investigation*

The report of our 'Investigation into Kariong Juvenile Justice Centre' was tabled in Parliament in March 2000. While the report dealt with the circumstances surrounding the four riots at Kariong in March and April 1999, a number of the 64 recommendations had implications for all juvenile justice centres administered by the Department of Juvenile Justice.

During the year, the department has reported on its implementation of the recommendations and the majority of them have now been implemented. We have continued to monitor compliance and have been pleased to see practical evidence of the changes during our routine visits to Kariong. The physical presentation of the centre is now markedly improved and the new management team, established after the riots, has made impressive efforts to address the fundamental problems at the centre.

One of our major criticisms was the lack of activity for many detainees. Up to half of them had little or no involvement in the centre's school or other recreational or vocational programs. There has been a demonstrable increase in both the number of programs and activities offered and the level of participation by detainees. We also recognise the impact that the enthusiastic participation in the life of the centre by the school principal and her staff has made.

One of our major recommendations was that the department refocus Kariong's role to provide programs specifically designed to respond to the special needs of maximum security detainees and detainees considered to be 'difficult.' The Council on the Cost and Quality of Government also recommended structural and functional reform in all juvenile justice centres in its 'Report on Juvenile Justice Centres.'

The department has advised us that they are currently reviewing the role and structure of Kariong, particularly in relation to therapeutic programs. We will continue to monitor how these developments affect the operation of Kariong and other juvenile justice centres.

### *Changes to the way difficult behaviour is managed*

The Kariong investigation revealed that staff often had to manage very difficult situations and sometimes used force and restrained detainees without adequate guidance or training. In response to our recommendations, the department developed a policy and procedures for managing difficult behaviour. We provided comments during the development of this policy and emphasised the need for it to be based on principles of behaviour management and casework.

Although we realise that the use of force and restraints may be necessary in extreme situations, we believe that physical intervention should only be used as a last resort. Case planning and appropriate programs are crucial to properly managing a detainee's difficult behaviour. The department is now providing training in the new policy to all staff.

This year we dealt with a number of complaints about the management of detainees exhibiting behaviour that was difficult to manage, including serious self-harming behaviour. We had some concerns about some of these matters, particularly the use of confinement and segregation (see case studies 96 and 97).



Clockwise from top: Victor Darcy, Aboriginal Complaints Unit and Andrew O'Brien, Youth Liaison Officer, with a detainee and an Aboriginal Education Assistant with the Department of Education and Training, at the Orana Juvenile Justice Centre

Photo: Mervin Bishop

**An important feature of each visit to a juvenile justice centre is to see the programs available for young people to participate in.**



Left to right: Andrew O'Brien, Youth Liaison Officer, John Mosley, School Principal, Leonie Bender, Centre Manager, Victor Darcy, Aboriginal Complaints Unit and the Coordinator of Operations at Orana Juvenile Justice Centre  
Photo: Mervin Bishop

### **At each visit we meet with the relevant managers to discuss the operation of the centre and resolve issues that arise from the visit.**

Confinement is one of the punishments permitted by the *Children (Detention Centres) Act 1987*. Its use is limited to three hours for a detainee who is under 16 and 12 hours for a detainee who is 16 years old or more. Segregation is only to be used to protect a detainee's personal safety or the personal safety of someone else and must be for as short a period as practicable. This means not more than three hours or, with the approval of the Director-General, six hours in any period of 24 hours. The effect of using segregation and confinement consecutively, whether or not it is intended, is that the detainee can be isolated for periods in excess of these limits. Such matters need to be closely examined to determine whether the law and departmental procedures are being abused or whether staff have no reasonable alternatives to deal with very difficult behaviour.

The new policy on managing difficult behaviour offers the opportunity for more constructive management of these young people.

#### ***Drug detection dogs***

As part of its efforts to reduce drugs and contraband, the department has introduced drug detection dogs to conduct searches in centres. We became aware of some initial problems when a number of detainees at Frank Baxter Juvenile Justice Centre contacted us, concerned that they had not been present while their rooms had been searched. Centre management explained that they had only been given short notice of the search team's arrival and staff had not wanted to disrupt detainees who were attending programs.

The department acknowledged that a serious breach of policy had occurred. Specific procedures for using drug detection dogs are to be incorporated into the department's operations manual. We observed proper procedures being used during subsequent searches carried out at Reiby Juvenile Justice Centre.

#### ***Changes to the keeping of records of incidents***

One of our ongoing concerns with juvenile justice centres is the quality of record keeping. A centre is required, by law and departmental policies, to keep records of certain activities. These include records documenting instances when force is used or when a detainee is confined, segregated or searched. While we appreciate that such requirements can seem burdensome, these records are an important accountability mechanism and provide evidence of what occurred if complaints of inappropriate conduct are made.

Following our Kariiong investigation, we recommended that the department establish a system to permit better tracking and monitoring of records relating to serious incidents. In response, the department is developing a computerised incident management system. In the interim, they have revised and improved a number of their forms and are introducing a numbering system to allow easier cross referencing. We will monitor this new incident management system once it is implemented.

A key strategy in promoting fair, accountable and responsive administration is training agencies to understand why they should take complaints about their performance seriously and deal with them properly



## Training in complaint management

A key strategy in promoting fair, accountable and responsive administration is training agencies to understand why they should take complaints about their performance seriously and deal with them properly. Part of good administration is treating customers with respect, and this requires complaints to be dealt with effectively and efficiently. Agencies can then use the information that complaints provide in a strategic way to improve their performance.

In order to properly manage complaints, agencies also need sound investigative and negotiation skills.

This year we co-sponsored the Third National Investigations Symposium with the ICAC and the Institute of Public Administration Australia. The conference was held in November 2000 and covered topics relating to the latest trends and techniques in administrative investigations.

We run regular training workshops on a fee-for-service basis. This year we offered four main workshops: 'Understanding complaint management', 'Complaint handling for frontline staff', 'Dealing with difficult complainants' and 'The art of negotiation'.

All the frontline workshops are highly interactive and differ depending on the skills and attitudes of the participants. Workshops are well attended and enthusiastically received, judging from the evaluation reports we receive.

We conduct most of our workshops on request from individual agencies and local councils. We conducted a total of 14 workshops during the year, nine of them were held outside Sydney in Bega, Grafton, Coffs Harbour and Katoomba. A total of 241 officers from a wide variety of NSW government agencies and local councils participated.

We are pleased to see the change that our training has encouraged. We have found that many agencies whose staff have participated in our courses have now implemented effective complaint handling systems. We now find less need to conduct our 'Understanding Complaint Management' workshop.

We also develop our training resources to meet the changing needs of agencies within our jurisdiction. This year we launched 'The Art of Negotiation' in response to a survey that we conducted into the training needs of agencies.

We are pleased to see the change that our training has encouraged

## Workshops

### *Understanding complaint management*

This course provides an introduction to best practice complaint systems. It covers:

- understanding a complainant's needs and expectations
- practical features of effective complaint management systems in the public and private sectors
- the interrelating roles of management and frontline staff in responding to complainants
- using complaints as a monitoring and planning tool.

### *Complaint handling for frontline staff*

This course provides a framework for dealing with customer complaints. Course components include analysing customer needs and strategies for dealing with various types of complainants, including angry ones.

### *Dealing with difficult complainants*

This course is a specialised, advanced skills course providing a matrix for dealing with difficult customers and clients while meeting their needs. Participants are taught skills for analysis of client behaviour that is difficult to handle and effective communication skills for difficult circumstances.

### *The art of negotiation*

This course covers practical skills involved in negotiations, including:

- looking at negotiation from many angles
- clarifying the needs of both parties
- dealing with unexpected negotiations
- overcoming blocks and feelings of disempowerment.

### **Some comments from past participants:**

'Extremely stimulating and very informative in a way that will assist in our complaint handling in the workplace'

'Refreshing to have a course delivered from people who actually deal with similar problems. Enjoyable, informative, lateral. Thanks'

'Most rewarding and enjoyable experience. Reinforced the need to treat people as you wish to be treated, provided the human touch'





# Appeals and reviews

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We have been very effective in persuading agencies to resolve matters to our satisfaction by meeting with them face-to-face

This section gives details of the work we have done and the responsibilities we have for dealing with complaints about Freedom of Information applications and appeals relating to the witness protection program. It explains:

- our work reviewing how agencies handle freedom of information applications,
- our strategies for resolving complaints from the public about how an agency has handled their application,
- our strategies for improving compliance with the Freedom of Information Act 1989,
- how we handle complaints from people in the witness protection program,
- our contributions to the reviews of the Witness Protection Act 1995 and legislation providing access to information.

Our survey confirmed that the inconsistent schemes allowing access to information continue to cause confusion

Access provisions need to be simplified and rationalised into one piece of legislation



## Freedom of Information

### Performance indicators

Average completion times for FOI matters		
Target	99/00	00/01
18 weeks	19	45

**Interpretation**  
 This performance indicator refers to the average time taken to finalise FOI matters. This year was an unusual one for the FOI staff. We vigorously reviewed all current FOI matters and finalised over 35% more files than last year, including a number of extremely old matters. This has resulted in a significant blow-out of the average time taken to complete files. However, this should be a one-off event and we expect next year's result to be closer to the target level of 18 weeks. (It should be noted that the median time for completing FOI complaints was 24 weeks.)

The Ombudsman has a role under the *Freedom of Information Act 1989* (the FOI Act) to externally review conduct of public sector agencies in relation to FOI applications by the public for access to information held by the agency. We review how agencies handle FOI applications and the merits of the decisions they make.

Most of the complaints we receive are about an agency's decision to refuse access to a particular document. We have the power to recommend that the release of a document would, on balance, be in the public interest, even if legally the agency is not obliged to release it.

We also provide guidance and assistance to agencies about their decisions and processes.

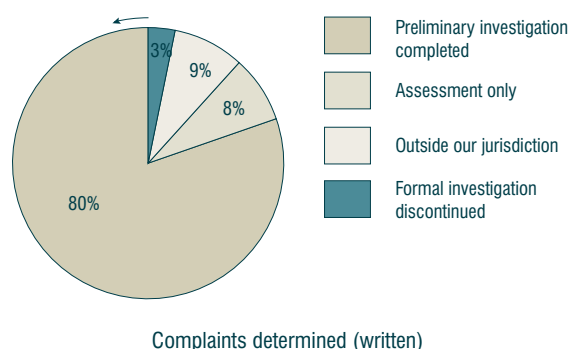
Over the past decade the number of FOI complaints we have received has continued to increase, as have the number of matters finalised each year. We also resolved significantly more matters to our satisfaction this year. In most cases this resulted in documents being released. This was largely because of changes to our work practices.

Our fifth audit of FOI reporting by agencies found that FOI continues to be widely used by members of the public, with approximately 8,300 applications estimated to have been made in the year 1999–2000. While in the past five years there had been a downward trend in the numbers of FOI applications, but this year we saw the number return to the 1995–96 level.

This year's review of compliance with 'summary of affairs' reporting requirements in section 14 (1) of the FOI Act identified a significant failure to comply. Of the several hundred public agencies required to report, only 93 complied. Six area health services, three universities, the Department of Community Services and the police service, among others, failed to comply.

Although a majority of local councils complied, the number has decreased over the past five years, from 172 in 1997 (which was close to 100% of councils that year) to 139 (out of 172) this year. A list of the major agencies that failed to report in June 2001 will be sent to the Premier.

The results of our audit and our review are available on our web site. Due to resource constraints, it is unlikely we will be able to carry out further annual audits or reviews of FOI reporting by agencies.

**Figure 1: Freedom of Information complaints received and determined****Complaints received**

Written	137
Oral	312
Reviews	8
<b>Total</b>	<b>457</b>

**Complaints determined (written)**

Preliminary investigation completed	151
Assessment only	15
Outside our jurisdiction	16
Formal investigation discontinued	6
<b>Total</b>	<b>188</b>

**Current investigations (at 30 June)**

Preliminary or informal investigation	26
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This year we scrutinised in more detail the determinations made by agencies that were the subject of complaints to us. We assessed how well those determinations had complied with provisions of the FOI Act. The results of our audit are discussed later in this section.

**Changing the way we deal with FOI complaints**

Our office has a specialised FOI Unit which deals with FOI complaints. It is headed by the Deputy Ombudsman. This year we have changed the way we deal with FOI complaints. We have:

- narrowed the focus of the work of the FOI Unit
- set up a program of regular file reviews by the Deputy Ombudsman
- given our preliminary views to agencies at an earlier stage
- held a number of issues resolution meetings with agencies.

This year we determined 188 complaints, some of which were relatively old. This was significantly more than last year. The vast majority of complaints (151) were resolved by conducting a preliminary investigation and then holding an issues resolution meeting with the agency concerned (see fig 1).

**A change of focus**

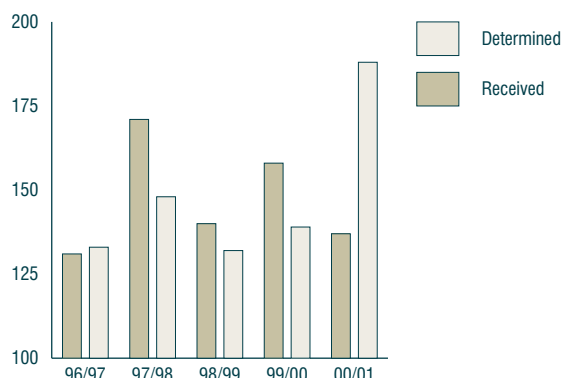
This year we have only investigated or made preliminary inquiries into a complaint if:

- the complaint raises or involves an issue of significant public interest—we may still decline such a matter if we believe the applicant could make a review application to the ADT and is likely to do so if we decline their complaint,
- the complaint raises or indicates the existence of a significant systemic issue in the way an agency deals with FOI applications or they appear to misuse exemption clauses,
- there are special circumstances, such as the information in the documents is particularly important to the applicant and they have no right of review in the ADT or it would be unreasonable to expect them to apply for a review.

With some of the matters we decline, we advise the complainant to make a review application to the ADT. For example, we do this if:

- there is considerable urgency involved,
- the same issue is already before the ADT, particularly if the agency is a party to the proceedings,
- we have been unsuccessful in the recent past in dealing with the agency concerned,
- the agency is unlikely to agree to any suggestion we make about the merits of the application because of, for example, political sensitivity.

**Figure 2: FOI complaints (written) received and determined—five year comparison**



**Figure 3: Nature of complaints about FOI**

	Written	Oral
Access refused	77	39
Advice, pre-internal review	0	67
Amendment to records	5	3
Charges	3	4
Documents destroyed	2	0
Documents not held	3	4
Documents concealed	8	11
Documents lost	3	3
Inquiries from agencies	0	2
Pre-application enquiry	0	75
Pre-internal review enquiry	0	47
Third party objections	5	3
Wrong procedure	30	17
General FOI advice	0	33
Other	1	4
<b>Total</b>	<b>137</b>	<b>312</b>

We generally do not advise complainants to refer their complaint to the ADT if this is unlikely to be a viable option. For example, if:

- it appears the agency has acted entirely appropriately,
- the personal circumstances of the complainant would make it difficult for them to conduct an ADT case, or
- an application to the ADT would be out of time and, if so, it is unlikely to be accepted as a special case.

### Regular file reviews

The Deputy Ombudsman meets regularly with FOI staff to review the current position of each file and the substantive issues involved. Priorities are sometimes adjusted, particularly if a file has not been finalised within a certain period of time. Appropriate decisions are then made about how to proceed with each case. We have also streamlined the process where we receive several files raising similar issues. Where we can reasonably expect cooperation from the agencies concerned, we address the general issues raised rather than focus on the specific details of any particular matter. We then expect the agencies to deal with each individual complaint in light of our discussions.

### Preliminary views

Some complaints relate to decisions by agencies to exempt certain documents from release. To properly assess the agency’s conduct and decision, we ask them to provide us with copies of the documents. After assessing the documents, we put a preliminary view to the agency and ask for their response. We do this if:

- there is sufficient information for us to be reasonably certain about the relevant facts and issues, and
- there is a likelihood that if the agency agrees with our preliminary views and takes appropriate action, the identified problem will be resolved.

### Issues resolution meetings

This year we held meetings with 20 different agencies to discuss issues raised by complaints about which we had formed preliminary views. These meetings were overwhelmingly positive and productive and resulted in over 50 complaints being resolved. In the majority of cases agencies have either agreed with our preliminary view or we have reached a compromise position to resolve the matter.

### Auditing agency determinations

We receive complaints relating to a wide range of issues including the merits of agency determinations, the adequacy of a search for documents, the amount of advance deposits and delays. This year, we decided to scrutinise matters concerning the standard of agency determinations. Of the 188 complaints finalised this year, 119 were about the agency’s determination. The determinations were made by 50 different agencies.

When we assess complaints, we usually focus on whether the determination was fair and reasonable in the circumstances. We often note deficiencies in complying with the requirements of the FOI Act and bring these to the attention of the agency concerned.

Our audit involved assessing compliance with the requirements set out in sections 24, 25(4), 25(5), 28 and 34 of the FOI Act as well as an overall assessment of the notice of determination. We intend to advise relevant agencies of the results of our assessment and our recommendations for improvement.

Common deficiencies identified included:

- failing to specify the date on which the determination was made (this is important for determining when the 60-day appeal period expires),
- failing to give sufficiently detailed reasons to explain the decision (20% of determinations audited merely quoted exemption clauses),
- refusing access to the whole document when access could have been given if the exempt matter had been deleted—this was the case in 50% of determinations audited,
- failing to determine the matter within 21 days, in circumstances where the delay was not authorised by the Act,
- failing to complete internal review determinations within 14 days.

Almost 40% of determinations were seriously deficient, including almost 70% of determinations made by councils. In these matters, key elements were missing or there was significant lack of compliance with the requirements of the Act. As only 50% of determinations largely complied with the requirements of the FOI Act, we intend to continue working with agencies to improve this situation.

## Issues raised by complaints this year

### *Applicability of the 'frankness and candour' argument to FOI*

This year the State Rail authority based its decisions to refuse access to board papers and the minutes of board meetings on an argument that if these documents were made public, candid debate at board meetings would be hampered. This argument is inconsistent with the principles and spirit of the FOI Act and has been repeatedly dismissed, in court decisions about FOI matters in various jurisdictions, as a legitimate reason for withholding information.

The High Court has observed that the argument that government employees may be less candid with their advice in the future if documents disclosing their opinions were released is of such slight concern that it may be dismissed (*Sankey v Whitlam* (1978) 42 CLR 1). Justice Mason took the view that allowing access to such documents would act as a deterrent against advice which is specious, expedient or inappropriate.

More recently, this issue was considered by the District Court (*Helen Hamilton v Environmental Protection Authority*, 5 August 1998) where Judge Ainslie-Wallace suggested that for a 'frankness and candour' argument to successfully prevent access to records of a public sector agency, the agency would need to produce 'evidence to the effect that past experience has shown such a want of candour as to predict it happening in the future'. See case study 98.

### *The meaning of 'public authority' under the FOI Act*

The objective of the FOI Act was to introduce a wide ranging scheme to provide for open government in NSW. This is clear from the Second Reading Speech. The provisions of the Act and the definitions of 'public authority' and 'public office' suggest the intention was to cover most, if not all, bodies established for a public purpose.

This year, in response to an FOI application, the Supreme Court argued that it did not have to comply with the provisions of the FOI Act because legally it did not fall under the definition of 'public authority.' Rather than being established by a NSW statute, the Supreme Court was established by Royal Charter. In our view NSW courts are bodies established for a public purpose and their administrative conduct should be transparent to ensure proper accountability to the public.

The Supreme Court also argued that the information being sought under the FOI application—a list of reserved judgments outstanding for over six months for each judge of the Supreme Court, the Court of Appeal and Court of Criminal Appeal—was exempt from the FOI Act because it was part of the court's 'judicial functions'.

We recognise courts are accountable through legal processes for the exercise of their judicial functions. The FOI Act was clearly drafted with the intention of ensuring that its operation did not interfere with the proper administration of justice. However, courts also have administrative functions and the exercise of these should be transparent. We believe the reference to 'judicial functions' in the FOI Act was intended to be read narrowly to ensure maximum scope for the coverage of the Act. In our opinion, the list of reserved judgments was primarily information of an administrative nature.

We successfully sought an amendment to the Act to extend the meanings of 'public authority' and 'public office' to include bodies such as the Supreme Court. This should remove any uncertainty. We also proposed that the Act be amended to clarify the meaning of 'judicial functions' so that documents containing primarily administrative information are covered by the Act. No action has yet been taken on this suggestion.

## Case studies

### **Case study 98**

We received two complaints about the State Rail Authority's (SRA) refusal of FOI applications for access to minutes of SRA board meetings and board papers.

The SRA argued that candid debate would be hampered if these documents were released. They felt that the minutes of board meetings should remain confidential in the same way as those of private sector boards. This would effectively allow the SRA to refuse access to these documents whenever it was requested under the FOI Act.

The approach taken by the SRA concerned us. The SRA board is a public sector agency subject to the same accountability mechanisms as other public sector agencies.

We advised the CEO of our views on the 'frankness and candour' argument. The newly created Office of the Co-ordinator General of Rail (the Co-ordinator) advised that they saw some merit in the position we were advancing and arranged for senior officers to reconsider the applications. We then met with the Corporate Counsel for the Co-ordinator and the SRA who agreed with our preliminary view that a substantial amount of the material previously considered exempt was in fact not exempt. It was agreed that the FOI applications would be reviewed on this basis.

SRA Corporate Counsel agreed to seek advice on this matter from a senior barrister nominated by us and to provide copies of that advice to our office.

The advice from the senior barrister confirmed our views. He advised that the 'frankness and candour' argument could only be used to inhibit the disclosure of documents in very limited circumstances. In his view, in general terms, the argument is limited to records of 'high level discussions' such as Cabinet documents or ministerial decision and policy making documents. He further advised that 'even in those cases, it is more likely that other considerations of the public interest will weigh more heavily on the determination of access.'

### **Case study 99**

The complainant had made an FOI application for a copy of the lease agreement for a public swimming pool between a council and a private company. The Department of Land and Water Conservation consulted the council, which did not object to the release, and the company, which did object. The department exempted the agreement as a 'document affecting business affairs' and noted that there was a confidentiality clause in the contract. We could not see any information in

the contract that would be commercially sensitive to either the council or the company. We also felt that the contract's confidentiality clause was contrary to the spirit of the FOI Act as it stated that the contract should not be disclosed without the agreement of both parties. We advised the department that we felt the whole contract should be released to the complainant and they complied with our suggestion.

### **Case study 100**

Even though the Premier's Memorandum (Disclosure of Information on Government Contracts with the Private Sector) does not apply to councils, we think it should be used by councils to help them decide whether contracts should be disclosed to FOI applicants.

We are currently dealing with a complaint where a council refused a person's application for access to a contract signed by the council with a private company. The contract was to supply and install street furniture and outside permanent toilets in the council's area.

We believe that most of the contract should be disclosed to the complainant, except for some specific financial information. We had a meeting with the council at which we expressed our preliminary view. Council advised that it had refused the application because the company objected to disclosing the contract, even though the FOI Act gives council the discretion to form its own view separately from the company. This matter is ongoing.

### **Case study 101**

The complainant applied for access to the employment contract for the general manager of a council. The council refused access to the contract because it claimed that the details were exempt under section 12(7) of *the Local Government Act*. That section provides that a document does not have to be disclosed to a member of the public if it deals with personnel matters about any member of staff.

The council refused to send us a copy of the contract for six months, so we eventually had to use our coercive Royal Commission powers to force the council to provide us with a copy of the contract.

We have indicated our preliminary view to the council that, except for the general manager's private residential address, the contract should be disclosed to the applicant. As the council has rejected our preliminary view, we are considering making a report to Parliament highlighting our concerns about this matter.

### *Disclosure of information about government contracts with the private sector*

Many FOI applications are for access to details of contracts between public sector agencies and the private sector. The common response of agencies has been to refuse access on the basis that the contracts are commercially sensitive and are commercial 'in confidence'.

In April 2000, the Premier issued a Memorandum (No. 2000-11) called 'Disclosure of Information on Government Contracts with the Private Sector.' It set out the information that can be released about all government contracts, including the name of the tenderer, prices to be paid by the agency and significant evaluation criteria. More extensive information must be disclosed for contracts over \$5 million involving issues such as private sector financing and asset transfers. The memorandum also refers to matters that should not be disclosed such as sensitive financial information about contractors or information that would lead to commercial disadvantage for the contractor.

Although we have found the memorandum to be helpful in dealing with FOI complaints about agencies refusing to disclose contract information, we also consider the public interest should be the ultimate determining factor in deciding whether details of contracts should be disclosed. For example, if we consider that the terms of a contract are contrary to the public interest, we may recommend or suggest that the contract, or relevant parts of it, be disclosed even if it could be exempt for other reasons. See case studies 99 and 100.

### *Release of contracts of employment of senior public officials*

Each year we receive complaints from people who have been refused access to the contracts of employment of CEOs or senior staff of public sector agencies (SES officers).

Public officials employed for fixed terms usually have a written contract that sets out the terms and conditions under which they are employed or appointed to their position. As CEOs and SES officers have a large degree of responsibility and can have a significant impact on the public in performing their duties, it is accepted that their level of accountability must be high. Part of the transparency needed to ensure this accountability includes making information such as the following publicly available:

- the terms under which individual CEOs and SES officers are appointed and how they are meant to perform their roles and duties,
- any other benefits or advantages provided in the contract over and above the stated remuneration for a position,
- the criteria used to measure the officer's performance,
- any circumstances in which the employment or appointment can be terminated by the employer or the government before the end of the contract,
- any specific requirements imposed by the employer in the contract that are relevant to the performance of the officer's functions.

This kind of information should generally be in the public domain, except for details such as the private residential address of the public official.

Some may argue that a person's salary concerns their personal affairs and should not be publicly disclosed. Under the FOI Act, if disclosure would involve an unreasonable disclosure of a person's personal affairs, then the information does not need to be disclosed. However, a lot of information about the contracts of employment of SES officers is already in the public domain. For example, information about the remuneration levels or ranges applicable to any position in the public sector is generally available through awards, determinations of remuneration tribunals published in the Government Gazette, job advertisements and annual reports. See case study 101.

## Developing new guidelines

During the year, we continued to work on a joint Ombudsman/Premier's Department FOI manual to replace the guidelines currently published by both our agencies. We expect that the manual will be published before the end of 2001.

## Submissions to the Access to Information Inquiry

In April 2001 the JPC announced its intention to hold an Access to Information Inquiry into a range of issues. In June 2001, we made a submission to the inquiry, which included the following issues.

In our 1999–2000 annual report, we discussed the proliferation of schemes allowing access to information. There are currently four separate Acts which provide access. They are:

- the FOI Act, which applies to all documents, including personal information, held by all public agencies including local councils,
- the Privacy and Personal Information Protection Act 1998 (the PPIP Act) which applies to personal information only,
- the Local Government Act 1993, which applies to all documents, including personal information, held by local councils,
- Part 6 of the State Records Act 1998, which allows people to inspect certain records of a public sector agency that are over 30 years old, or to apply for those records to be made the subject of a direction to allow access.

The significant differences between the schemes have led to considerable confusion among FOI/privacy practitioners, other people in the public sector and members of the public. This widespread confusion was confirmed by the results of our 'access to information survey' which were also included in our submission.

We were concerned about the impact of technological changes to methods of record-keeping on the operation of the FOI Act, particularly records kept electronically, and, more recently, the keeping of those records in shared data warehouses. We recommended that amendments should be made to the Act to address access to information held in electronic records.

We suggested that the rights of a person under Part 4 of the FOI Act to apply for an agency's records to be amended should be protected from the operation of section 21 of the *State Records Act*.

Under section 21, the alteration of an agency's records is an offence except in certain circumstances, one of which is the amendment of records under Part 4 of the FOI Act. Part 4 of the FOI Act therefore only has effect because it is referred to in the regulations under the *State Records Act*. This reference could be removed by an administrative act. We recommended that the protection be strengthened by including a provision in the FOI Act to provide that Part 4 is not subject to s 21 of the *State Records Act*.

## Access to information survey

We conducted an access to information survey which confirmed that the inconsistent access to information schemes that apply in NSW continue to cause confusion among practitioners in the FOI and privacy areas, other public officials and members of the public. In April 2001, we sent the survey to FOI / Privacy co-ordinators in public sector agencies and local councils and sought information about:

- their experience with implementing the PPIP Act,
- their understanding of the relationship between the FOI Act and the PPIP Act,
- their views on the interrelationship between the different access to information schemes, the FOI Act and the PPIP Act, and
- their views on the level of understanding their agency has about how the FOI Act and the PPIP Act interrelate with each other.

We received 98 responses. Some significant findings were that:

- Over 60% of those surveyed found the interrelationship between the schemes confusing and/or incomprehensible,
- 91% of the 20% who found the interrelationship clear and simple or understandable still gave incorrect answers or were unsure of the answer as to whether at least three provisions of the FOI Act applied to applications for access under the PPIP Act,
- Over 80% gave incorrect answers or were unsure of the answer as to whether at least three provisions of the FOI Act applied to applications for access under the PPIP Act,
- Only two respondents correctly identified all of the nominated provisions of the FOI Act which applied to applications for access under the PPIP Act. (Interestingly, one of these respondents said that they thought the interrelationship between the access to information regimes in the two Acts was clear and simple, understandable as well as confusing),



- More than 50% of respondents stated that people in their agency understood how the FOI Act and the PPIP Act interacted only generally or not at all.

Our survey also found that in the year since the access to information scheme in Part 2 of the PPIP Act began, in July 2000, people have not been using it. Of the agencies who responded, only 11 of them have received requests and there have only been 54 requests in total. In contrast, in the year before the scheme started, over 5,800 applications were received under the FOI Act for access to information concerning personal affairs held by all the agencies we audited.

It is difficult to reconcile the confusion created by the alternative schemes with what appears from our survey to be the minimal use of the scheme in the PPIP Act.

We hope that our submissions to the inquiry will encourage the JPC to recommend some changes to the current access to information schemes.

### **Case study 102**

The applicant was a former general manager of a rural area health service who had developed a very strained relationship with her area health service board. The Minister for Health set up an inquiry into the problems at the health service and a written report was produced. While the applicant was still the general manager, the health service board tried to redeploy her. She eventually resigned and then applied under the FOI Act for the inquiry report and the hundreds of documents that were created during the dispute.

Although she was given many documents, including parts of the report, a lot of material was determined as exempt under clauses 6, 10, 13(b) and 16 of Schedule 1. Some attachments to the report were also missing.

She complained to us. We did not believe that all the exemptions applied. We also found that the applicant had been charged excessive processing charges. As a result of our inquiries, NSW Health agreed to reduce the processing charges, release numerous additional documents and provide the missing attachments.

### **Case study 103**

A doctor working in the New England Area Health Service (NEAHS) requested access under FOI to a draft area health plan for the New England area. He was given access to all but

three pages of the plan. The three pages were not provided because the NEAHS considered them to be 'internal working documents' that dealt with a proposed extensive reduction to health services within towns in the New England area. A final decision was subsequently made about the draft plan and a final report was released, without the apparent extensive reductions detailed in the draft plan. As a final decision had been made, we suggested that the three pages in the draft plan should be released. The NEAHS agreed and released the three pages.

### **Case study 104**

A Member of Parliament (MP) applied for access to the Commissioner of Police's diary for the first three months of 2000. The NSW Police Service refused access to the entire diary under most parts of clause 4 of Schedule 1 of the FOI Act. After the MP complained to us, we examined the diary which was kept on a computerised database. The police service reasonably claimed that many details of the Commissioner's meetings and activities are security related and confidential. We discussed the matter with the MP's adviser and found out that the MP was only interested in obtaining details about the Commissioner's attendance at public functions. As these details were not related to police service issues, the police service was willing to release this material to the MP.



## Witness protection

### Witness Protection Act

The Ombudsman has the power to hear appeals arising from the exercise of certain powers under the *Witness Protection Act 1995*. We are also responsible for handling complaints from people who are participating in the program.

The Act gives the NSW Commissioner of Police the power to refuse someone entry to the witness protection program or terminate their participation in it. The person directly affected by such a decision can appeal to our office. Any decision we make replaces that of the Commissioner. The Ombudsman must determine an appeal within 72 hours of receiving it. This is our fifth full year in this role under the Act. We received no appeals this year.

Complaints that we receive about the witness protection program usually relate to ongoing management practices and personality conflicts between participants and their case officers. Due to the ongoing and unique relationship between the participants on the program and the police officers responsible for their protection, we usually take an informal approach to resolve these issues. In some cases our staff negotiate with the commander of the state protection group to refine procedures that generate recurring complaints. The management of the witness protection program has become more sophisticated over the years and there were only a small number of complaints this year.

One of the provisions of the *Witness Protection Act* is that the Act must be reviewed once it has been in operation for five years. The responsible Minister must assess whether the policy objectives of the Act are still valid and whether its terms remain appropriate for achieving those objectives. This review is currently being conducted. We made submissions to the review and expect the results of the review within the next 12 months.

### Child Protection (Offenders Registration) Act

In June 2000, the *Child Protection (Offenders Registration) Act 2000* was passed by Parliament. Its main provisions have not yet come into operation but we expect the scheme to start later in 2001.

The Act requires people convicted of certain offences against children to provide personal information to the Commissioner of Police. This enables the Commissioner to maintain a register of offenders believed to pose a risk to the safety of children.

In practice, the person has to report to a police station and give the information to a police officer.

Some of the people required to provide this information may be current or past participants in the witness protection program. Current participants may find it risky to report in person at a police station. The Act therefore allows them to provide the information in writing to a police officer authorised by the Commissioner.

The Commissioner can make a similar order for participants who are about to leave the witness protection program. If the order is made in their favour, they are permitted to provide the information in writing to an authorised police officer.

As the Commissioner may also make an order not to allow the person to provide the information in writing, the Act gives the person the right to appeal against such an order to the Ombudsman.

We are also responsible for monitoring the operation of the Act after it comes into operation. For more details about our monitoring role, see 'Scrutiny'.



# Reform

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We try to promote fair, accountable and responsive administration by providing comments and advice, making submissions and putting forward proposals on a range of topics relating to public administration

This section gives details of the work we have done to contribute to policy reform in NSW. We try to promote fair, accountable and responsive administration by providing comments and advice, making submissions and putting forward proposals on a range of topics relating to public administration.

In this section we discuss proposals that we made to the government suggesting that:

- elements of good customer service for public sector agencies be brought together into a comprehensive customer service framework and implemented by legislation,
- legislation be implemented to allow apologies to be given by public sector officials without exposing them or their agency to civil liability.

This year we also made a number of other key submissions including:

- a detailed submission to the Police Powers Taskforce on how the Law Enforcement (Powers and Responsibilities) Bill 2001 might be improved (for more details see 'Scrutiny'),
- a detailed submission to the JPC's access to information inquiry (for more details see our discussion of freedom of information in 'Appeals and reviews').

This year, at our request, the Minister for Education circulated our report into University of Sydney assessment procedures to all universities to encourage them to adopt our recommendations for improvement. For more details see 'Investigations and complaint resolution'.

A summary of other submissions we made this year and advice we gave is included at the end of this section.

We have suggested to the government that a ‘Customer Service Act’ could address a range of issues such as ethics, guarantees of service, internal complaint handling, reasons for certain decisions, internal review of decisions, information available to the public and protection from liability



## Improving customer service in the public sector

Over the last decade there have been several initiatives in the area of customer service. Each has been introduced or developed in isolation, with varying levels of government and public sector support.

We have therefore suggested to the government that the elements of good customer service should be brought together into a comprehensive customer service framework. This would:

- demonstrate the government’s commitment to good customer service,
- help the public sector to understand the various elements of good customer service and how they interrelate,
- encourage the public sector to provide a high standard of customer service,
- help members of the public to understand their rights and the standard of service to which they are entitled
- assist the Ombudsman to promote good customer service throughout the public sector.

We believe that the proposal would be best implemented by legislation, as this is the only way that full coverage of the public sector can be achieved.

A ‘Customer Service Act’ could address a range of issues such as ethics, guarantees of service, internal complaint handling, reasons for certain decisions, internal review of decisions, information available to the public and protection from liability.

We have been involved in most of these customer service related issues to some extent and with varying degrees of success. For example:

- ethics—we have produced and published various guidelines on good conduct in the public sector,
- guarantees of service—we have promoted the adoption by agencies of guarantees of service and looked at the implementation of such guarantees as part of our ‘mystery shopper’ audits of agencies,
- internal complaint handling—we have promoted internal complaint handling in the public sector by publishing a series of guidelines, providing training, and auditing complaint handling systems,
- giving of reasons—the failure of a public agency to give reasons is one of the kinds of conduct listed in section 26 of the Ombudsman Act and is a topic dealt with in our good conduct and administrative practice guidelines,
- internal review of decisions—we have promoted the internal review of decisions, particularly in our freedom of information review role,
- information available to the public—we have carried out several audits of compliance by agencies with the summary of affairs requirements in the FOI Act and encouraged them to publish lists of all their policy documents,
- complaint resolution—we have promoted protection for internal complainants and effective complaint resolution and published guidelines such as ‘Options for redress—Guidelines for redress for detriment arising out of maladministration’ and ‘Protected Disclosures Guidelines’.

We have written to the Cabinet Office with our proposal but have not yet received a response.

**We suggested to the government that legislation be introduced to make apologies or expressions of sympathy or regret given by public sector officials to help resolve a complaint inadmissible in any civil proceedings**



## Offering apologies

In March we made a suggestion to the government which could significantly assist public sector officials to deal with complaints and address justified concerns raised by members of the public.

Research in the area of customer satisfaction shows that giving an apology is often the most effective way to deal with a complaint. Many complainants just want an agency or its staff to listen to, understand and respect their concerns, and give them an explanation and apology. For example, large numbers of complaints to the police are successfully conciliated by the giving of an explanation and an apology.

Public sector officials should be encouraged, where appropriate, to try to resolve complaints by giving a clear, sincere and timely apology.

A major reason why such apologies are not forthcoming is the issue of legal liability. A common view is that an apology equates with an admission of legal responsibility. If this is the case, it may affect the legal position of the government, minister or agency if they are taken to court by someone seeking compensation for the consequences of the conduct apologised for.

This perceived risk often prevents public sector officials from giving an apology where it would otherwise be appropriate. It is not easy to construct an apology that will be acceptable to an aggrieved person but not contain an admission of responsibility. To simply apologise or express regret without connecting that apology or regret with the particular conduct concerned is unlikely to be acceptable.

Many statutory authorities in NSW have protections against liability for anything done in good faith for the purpose of executing one or more statutory provisions or Acts. These provisions are generally read narrowly by the courts and are unlikely to be interpreted as protecting an agency from any liability that may flow from giving an apology.

We suggested to the government that legislation be introduced to make apologies or expressions of sympathy or regret given by public sector officials to help resolve a complaint inadmissible in any civil proceedings.

This would not be detrimental to the rights or interests of members of the public who have legitimate legal claims against an agency as in practice, without legislation of this kind, an aggrieved person would probably receive no apology—and consequently, no admission of responsibility—at all.

In contrast, the practical consequence of introducing legislation of this kind should be that more public sector officials would be encouraged to say 'sorry' and more members of the public are more likely to feel satisfied that their grievance has been taken seriously. An apology shows an agency taking moral, if not legal, responsibility for their actions and the research shows that most people would be satisfied with that.



## Submissions

### Access to information regimes

We made detailed submissions to the JPC for its review of the alternative access to information regimes that apply in NSW. For more details see our discussion of freedom of information in 'Appeals and reviews'.

### Anonymous complaints

In response to a request, we gave Shellharbour Council advice on how it should deal with anonymous complaints.

### Community disputes and grievances

In response to a request, we gave Fairfield Council advice on its draft policy on community disputes and grievances.

### Complaints and discipline system

We made a submission to the Professional Standards Council about its complaints and discipline system.

### Conflict of interest

We made a submission to Abbott Tout Solicitors, who were acting for a number of local councils. The submission dealt with conflicts of interest that arise when elected officials solicit and receive campaign funds for themselves or their political parties.

### Disciplinary proceedings

We made a number of submissions on proposed changes to disciplinary systems that apply in areas within our jurisdiction. We commented on the Non Government Schools (Disciplinary Proceedings) Award 2000 (for more details see the discussion of child protection in the Scrutiny section) and the proposed regulations under the *Teaching Services Act 1980* and the *Technical and Further Education Commission Act 1990*. We also made a submission to the Commission for Children and Young People regarding the proposed revision to the definition of 'relevant disciplinary proceedings' used in connection with employment screening requirements.

### Environmental Planning and Assessment Act

We made a submission to the Department of Urban Affairs and Planning about proposed amendments to Section 109ZG of the *Environmental Planning and Assessment Act*, relating to conflicts of interest of accredited certifiers.

### Ethics/ethical conduct

We made a submission to the Institute of Surveyors NSW about their Code of Ethics. We also made a submission to Dr Brian Farrell, Senior Lecturer in the School of Accounting at UTS on ethical conduct in local government.

### Freedom of Information Act

We asked the Premier to consider an amendment to the *Freedom of Information Act* to bring the Supreme Court within its coverage. The necessary amendment has been passed and took effect on 17 July 2001. For more details see our discussion of freedom of information in 'Appeals and reviews'.

### Independent local Ombudsman

In response to a request, we gave Eurobodalla Shire Council advice on establishing an independent local Ombudsman.

### Inmate application/statement process

We made a submission to the Inspector-General of Corrective Services on the review of the inmate application/statement process.

### Inmate property

We made a submission to the Inspector-General of Corrective Services on the review of the handling of inmate property.

### Legal Aid Commission - review of the grants division

The Legal Aid Commission asked our advice during the review of its grants division.

### Misbehaviour of councillors

We made a submission to the Department of Local Government about options for dealing with misbehaviour by councillors.

### Performance assessment regime for commercial bus contracts

We made a submission to the Department of Transport about implementing the performance assessment regime for commercial bus contracts.

### Performance indicators

We provided assistance to the ICAC in the development of its performance indicators.

### Police powers

We made a detailed submission to the Police Powers Taskforce on how the Law Enforcement (Powers and Responsibilities) Bill 2001 might be improved. For more details see 'Scrutiny'.

### Tendering and contract management

We made detailed submissions to the ICAC in response to a draft discussion paper on tendering and contract management.

### Water and sewerage contributions

In response to a request, we gave Bellingen Shire Council advice in relation to its review of water and sewerage contributions for the Urunga catchment.



# Access and awareness

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We are committed to developing an effective access and awareness program to improve our services to the public in general and to disadvantaged groups in particular

We are committed to developing an effective access and awareness program to improve our services to the public in general and to disadvantaged groups in particular. We believe it is essential that our office is accessible to anyone who needs our services and any barriers are identified and eliminated.

One of our corporate goals is to be accessible and responsive. To achieve this goal, we try to improve access to our services and achieve greater public awareness of the functions of our office.

Our access and awareness strategies include:

- identifying and targeting people with special needs,
- consulting peak groups and key referral agencies and developing protocols for ongoing communications,
- participating in community events and forums,
- making presentations to and developing an outreach program for target groups,
- developing and distributing information,
- developing and implementing training and information for staff of other agencies,
- minimising cultural and linguistic barriers to access.

One of our major challenges is how to best use our resources to meet both our responsibilities to the community at large and the legitimate expectations of the external agencies who oversee the implementation of the government's disability, ethnic affairs and women's policies.

To minimise duplication our staff involved in access and awareness activities work together to deliver information about our services to a range of community groups rather than just focusing on their particular target group. This means that we can maximise our visits to regional centres and ensure that the greatest number of people receive information about our services.

As our resources are limited, we have had to find creative and cost effective ways to pursue our access and awareness strategies. We are working with other complaint handling agencies to develop joint initiatives such as presentations to community groups, information stalls at community festivals and joint publications.

We are also improving our web site. General information about the office, including information in a number of community languages, can be downloaded. All our publications are available from our web site—either to download or order through our online publication form.

This section gives details of the work we have done to improve the accessibility of our services to young people, ethnic communities, Aboriginal people, women, people with a disability and people in rural areas. We also report on the implementation of a range of government policies and have included details from our recent complainant satisfaction survey.



Some of our inquiries staff: (left to right) Lin Phillips, David Wright-Smith, Judith Brownhill, Jacqui Yanez and in front, Sheila O'Donovan

**I've been with the Ombudsman for 10 years now and seen many changes. However, my dedication to my job has not changed—I'm still committed to serving the public and finding solution to many difficult situations.**

**My area of particular interest lies in assisting those from non-English speaking backgrounds whose voices sometimes cannot be heard.** Jacqui Yanez





## Inquiries

Our inquiries staff are usually the first point of contact for members of the public. Most people who contact us want help in resolving complaints about NSW government departments, local councils or police. Some complaints can be resolved by a quick phone call to the department or agency concerned. We keep up to date with the internal review protocols within agencies so that we can make the most appropriate referral in the circumstances.

Some calls relate to matters outside our jurisdiction. In these instances we provide the callers with appropriate referrals. We also help callers by providing information packages or referring them to our web site.

As the first point of contact, our inquiries staff are able to detect trends in the matters we receive and advise investigation staff of emerging issues that may need further attention.

Some highlights for 2000–2001 include:

- dealing with a 9% increase in oral complaints and inquiries from 24,025 to 26,582,
- taking responsibility for inquiries about our child protection jurisdiction—previously handled by our child protection team,
- increasing the number of inquiries staff from 4 to 5 to make sure that our customer service standards are maintained.



## Complainant profile

In last year’s annual report we mentioned that we had just surveyed general area complainants whose complaint had been determined between 1 April 1999 and 31 March 2000. This survey was to assess their level of satisfaction with our service. The survey asked a range of questions including how easy our communications were to understand, the preferred means of dealing with our office, the level of contact expected and satisfaction levels. Respondents were also asked questions such as their age, sex and if they were born overseas so that we could develop a complainant profile.

Figure 1 compares the complainant profile to the profile of the NSW population taken from the Australian Bureau of Statistics 1996 census. More complaints were received from Aboriginal or Torres Strait Islander people and older people than the representation of these groups in the NSW population. The profiles of the complainants who responded to our survey are consistent with the NSW population for people from non-English speaking backgrounds but women, people with a disability, people outside Sydney and young people are significantly under represented.

The complainants survey gave us valuable information for improving our access and awareness program. We will be focusing on developing strategies to improve the representation of women, people with a disability and people outside Sydney. The increase in complaints we received from young people may indicate that only a small percentage of this group responded to our survey. Although this may explain why young people were under represented, we will continue to develop strategies to target young people.

For more details about this survey, see ‘How we operate’.

**Figure 1: Complainant profile**

	NSW%*	Comp.%
Women	50.6	34.5
Born overseas	23	25.8
Non-English speaking background	15.7	16
Aboriginal or Torres Strait Islander	1.7	3.4
Person with a disability	17	7.3
Over 45 years of age	33.8	67
Under 25 years of age*	52	4.7
Outside Sydney local government areas	55	40

\*Australian Bureau of Statistics 1996 Census

\* Ombudsman survey age under 30 years



## Children & young people

We work with young people and youth workers to provide information, support and training about the role of our office and the complaint process. We also promote awareness of our child protection role and educate designated government and non-government agencies about their obligations.

Some highlights for 2000-2001 include:

- conducting information sessions about our child protection role, including reporting requirements, to over 1,300 people from 150 agencies,
- working with disability organisations to raise awareness of our role in child protection,
- making 52 visits and presentations to young people and youth workers including meeting youth interagency networks, visiting juvenile detention centres and giving presentations at conferences and seminars,
- focusing on youth issues in regional and rural NSW including visits to Lismore, Grafton, Glenn Innes, Tamworth, Port Macquarie, the Blue Mountains and Lithgow.

This year we presented information sessions on our office, child protection reporting requirements as well as the complaint process to the CEOs of agencies, their executive teams, human resource and other managers and youth workers. Our audiences included public sector agencies, area health services, local councils, substitute care providers, youth networks, disability groups, the police service and young people.

In response to youth worker's concerns, we have developed information sessions on how young people should best make a complaint about government services, with an emphasis on informal resolution at the local level.

Police interaction with young people is still a major concern and this is reflected in the number of complaints about the behaviour of police towards young people (see fig 2). We have provided input to the police service's youth policy statement and meet regularly with members of the police service about improving their interaction with young people.

We have been working with disability organisations to raise awareness of our role in the child protection area. Issues that have arisen from our briefings include the alleged overuse of restraint for children with disabilities and the placing of children with disabilities in aged care facilities due to lack of alternative care placements.

We contributed articles for the 'Our Schools' newspaper, which is distributed to every school and home in the St George and Sutherland regions. One article was about the responsibility of CEOs of government and certain non-government agencies (including all schools) to notify the Ombudsman of any child abuse allegation or convictions against employees. We also included information about how parents could complain to us if they had concerns about the way an agency had conducted an investigation. For more details on the work we have done with children and young people see 'Investigations and complaint resolution' and 'Scrutiny'.

**Figure 2: Complaints and inquiries received by and on behalf of young people\***

	96/97	97/98	98/99	99/00	00/01
Community Services, Dept of	1	7	0	13	291
Corrective Services, Dept of	5	19	38	119	37
Education and Training, Dept of **	36	30	126	205	174
Health, Dept of	2	2	2	4	0
Housing, Dept of	4	6	2	7	4
Local councils	3	1	5	19	3
Juvenile Justice, Dept of	121	168	251	232	218
NSW Police Service	178	363	442	510	521
Roads and Traffic Authority	1	4	4	4	3
State Rail Authority	1	8	4	3	4
State Transit Authority	1	1	0	2	0
Other depts and authorities	0	6	14	29	12
General inquiries	15	19	13	4	10
Outside our jurisdiction	12	14	27	25	11
<b>Total</b>	<b>380</b>	<b>648</b>	<b>928</b>	<b>1,176</b>	<b>1,288</b>

\* excluding child protection related notifications and complaints

\*\*formerly Department of Education and Technical and Further Education (TAFE) Commission



## Ethnic communities

As a designated agency under the Ethnic Affairs Priority Statement (EAPS) program, we are required to develop an EAPS plan. This plan identifies the strategies that we will implement to improve our services to the diverse community of NSW. We have to report to the Community Relations Commission on the implementation of this plan and must also detail our progress in our annual report.

Some highlights for 2000–2001 include:

- making presentations to ethnic community groups including the Australian Lebanese Welfare Group using trained interpreters,
- consulting peak Indonesian, Indian and Sri Lankan community organisations and sending information packs to all community groups within the three target communities,
- following up previous consultations with Korean and Filipino community organisations,
- providing further training on the complaint process to Arabic workers,
- making presentations on the role of our office and the complaint process to the Korean Worker's Network and Assyrian Australian Association,
- sending information packs, including our language brochures, to all community centres in NSW,
- participating in the St George Migrant Information Day and Fairfield Refugee Week Information Day.

Each year we focus on specific ethnic communities. We target emerging communities or existing large communities where no previous contact has been made. This year we targeted the Indonesian, Indian and Sri Lankan communities. We also continued our work with the Fijian, Korean and Filipino communities that we targeted last year.

We are also working with other complaint handling agencies to develop joint access and awareness initiatives for ethnic communities. Figure 3 shows our plans for next year.

**Figure 3: Ethnic communities—future plans**

Key result area	Initiative	Timeframe	Intended outcome
Planning	Review and update our Access and Awareness Plan including our EAPS program	December 2001	A new three year Access and Awareness Plan developed
Social justice	Liaise with peak ethnic community organisations and develop effective strategies to improve access by our target groups Provide training on the complaint handling process to community workers Develop strategies to involve ethnic media in raising awareness Establish effective system to collect ethnicity data of complainants	Ongoing during 2002–2004	Increased community awareness Improved lines of communication
Community harmony	Provide speakers to make presentations to NESB groups Attend community festivals and cultural activities	Ongoing	Increased community awareness and improved understanding of community needs



## Aboriginal people & communities

We have four staff who are specifically employed to handle complaints from Aboriginal people and raise awareness in the Aboriginal community.

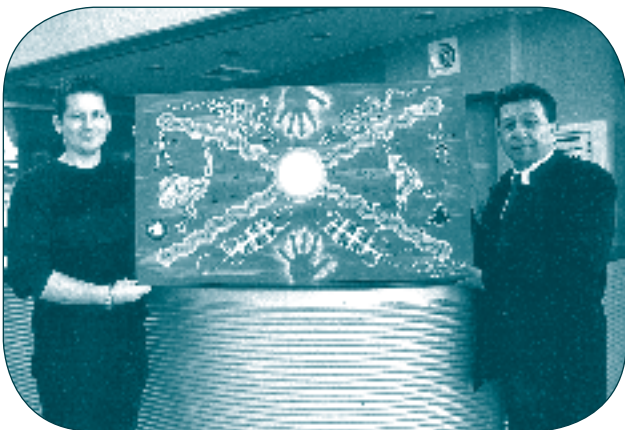
Some highlights for 2000–2001 include:

- visiting and consulting with Aboriginal communities in Casino, Albury, Moree, Toomelah, Bourke, Broken Hill, Wilcannia, Walgett, Brewarrina, Dubbo, Menindee, Orange, Cowra, Narromine and some metropolitan areas,
  - forming community committees to address local policing issues,
  - encouraging police to deliver short educational tutorials during local community meetings to increase the communities knowledge of policing practices,
  - seeking practical ways to mediate and conciliate long lasting disputes and mistrust between police and the Aboriginal community—one incident in a remote country town was conciliated within 24 hours,
  - liaising and networking with Aboriginal community groups to raise awareness of our office,
- providing advice to other government departments on access and awareness strategies,
  - attending events such as Red Ochre Awards, Centenary of Federation and Australia Day celebrations to raise the profile of our office.

During the year we continued our focus on developing practical measures to break down the mistrust that affects relations between police and Aboriginal people. We successfully established Ombudsman, Police and Aboriginal community (OPAC) committees that meet regularly to discuss and work through problems affecting local communities.

We have increased our monitoring of complaints to enable us to gather first hand knowledge of local policing trends in communities where police relations with Aboriginal communities have been tense and difficult.

For more details on the work we have done with Aboriginal communities see our discussion of police in 'Scrutiny'.



Andrew O'Brien, Youth Liaison Officer and Victor Darcy, Aboriginal Complaints Officer

Photo: Mervin Bishop

**The artwork in the picture was done by a group detainees at the Orana Juvenile Justice Centre. The painting represents the coming together of Aboriginal people from all the corners of Australia.**



## People in detention

We continued our program of visits to correctional and juvenile justice centres. These visits are an effective means of resolving issues before a formal complaint is made.

We made 46 visits to correctional centres, two to periodic detention centres, three to court cells and 16 visits to juvenile detention centres. These visits are an opportunity to meet staff, inspect facilities and resolve complaints.

Telephone inquiries from prisoners and detainees increased by almost 79%.

For more details about people in detention see 'Investigations and complaint resolution'.



## Regional outreach

During 2000-2001 we visited more than 40 towns and regional centres. We conducted complaint taking sessions, undertook community consultations, briefed public sector agencies and community groups, ran policy development workshops and inspected correctional and juvenile justice centres.

Bruce Barbour, the Ombudsman, participated in these outreach programs and visited Tamworth, Port Macquarie, Grafton, Lismore, Wagga Wagga and Dubbo. He met members of the local community, staff of agencies and the media. He also talked to school children about the role of our office.

We recognise the disadvantage caused by distance that people outside Sydney face. We have a number of strategies to minimise this disadvantage including a free call service where people outside Sydney can call us for the cost of a local telephone call. We include our free call number and our web and email addresses in all regional telephone directories.

We have distributed information to all government access centres in regional and rural NSW.



## People with a disability

The NSW Government Disability Policy Framework requires agencies to have a Disability Strategic Plan that identifies the way services to people with a disability will be improved.

During 2000–2001 we have undertaken a range of initiatives to improve access for people with a disability. Some highlights include:

- reviewing and updating our Disability Strategic Plan,
- consulting disability groups about our plan and the implementation of strategies,
- disseminating information about child protection legislation to disability services and groups,
- providing training on policy development to disability services,
- developing a Compic brochure—Compic is a picture language for people with an intellectual disability,
- researching and developing a disability awareness training program for staff.

During the year we continued to consult with peak disability organisations, such as the Department of Ageing, Disability and Home Care, PWD, ACROD, DCS Disability Service and the Spastic Centre. We have received valuable information and assistance from these groups that will help us review our Disability Strategic Plan.

We have worked with a number of disability organisations to raise awareness of our child protection role and focus on specific issues that may affect children with disabilities and their carers. We have conducted policy development sessions for these organisations and addressed training sessions and conferences.

We have researched disability awareness training for our staff and this will be conducted in the coming year.

Our report on the implementation of our Disability Strategic Plan is in the Appendices.



## Women

Our access and awareness activities for women focused on consolidating and strengthening contacts with peak women’s organisations.

Some highlights for 2000–2001 include:

- making presentations to women’s groups including women from non-English-speaking-backgrounds,
- participating in major women’s functions such as 2001 International Women’s Day Rally and Stop Domestic Violence Day,
- updating our ‘Women’s Fact Sheet’,
- circulating information about our services using various women’s networks and programs including the ‘Women on Wheels’ program targeting country women.

We also implemented a range of initiatives to meet the objectives of the NSW Government’s Action Plan for Women. Figure 4 gives details of our progress.

**Figure 4: Action plan for women—our implementation**

Objective	What we have done/are doing
Reduce violence against women	Conducted a 6 month audit of all domestic violence (DV) related complaints about police to identify any improvements and ongoing problems in police handling of DV matters Worked with the police service on a DV project targeting Aboriginal women in the Orange area Updated our Women’s Fact Sheet and distributed it to women via community networks and information stalls Participated in the Stop DV Day activities in Parramatta
Promote safe and equitable workplaces which are responsive to all aspects of women’s lives	We have adopted flexible working conditions to be responsive to women’s needs, including flexible working hours, part-time and job share arrangements, and leave for family responsibilities We have harassment prevention policies in place
Maximise the interests of women	No specific strategies were developed by this office to promote the position of women in micro-economic reform
Improve the access to educational and training opportunities for women	We play no external role in improving access to educational and training opportunities for women However, women in our office are provided with many educational and training opportunities to further their careers
Promote the position of women	66% of our staff are women 59% of our staff above grade six are women, including an Assistant Ombudsman 75% of our team managers are women Employment and promotion decisions are based on merit No specific strategies were developed to promote the health and quality of life for women in society. However, we work with several agencies to improve health and other services for women in prison.



## Public relations & publications

Our public relations and publication unit coordinates our access and awareness program and develops support material such as brochures, guidelines and fact sheets. During the year we have been working closely with community groups such as disability and ethnic groups to make sure that our access and awareness objectives are met.

Some highlights for 2000–2001 include:

- updating and publishing a range of material including brochures, fact sheets, guidelines and reports,
- implementing an extensive media campaign using television, radio, newspapers and newsletters to coincide with the Ombudsman's visit to regional areas,
- completing the first stage of our web site review including converting publications into internet accessible formats,
- distributing information to all correctional and juvenile justice centres, community centres, government information centres and community libraries,
- issuing two special reports to Parliament—'Police and Improper Use of Email' and 'Vehicle Powers: Questions and Answers' (tabled by the Minister for Police),
- distributing advice to councils on obtaining and distributing legal advice,
- completing the Compic brochure, which will be printed and distributed in the coming year,
- producing a community announcement CD to distribute to radio stations to support our visits to Aboriginal communities.

We published or reprinted a range of material to help both complainants and agencies. These publications include:

- 'Child Protection Legislation: What employers and employees need to know',
- a brochure on the new forensic procedures law,
- guidelines on better service and communication for local councils,

- 'Effective Complaint Handling; Options for Redress and Protected Disclosure Guidelines' (reprinted),
- brochures for the Aboriginal community (reprinted),
- youth brochure (reprinted),
- information sheet for women (reprinted).

This year we published a new version of 'Child Protection: Responding to Allegations of Child Abuse against Employees' to better meet the needs of those who use this publication. We reviewed the previous version and sought input from a representative group of agencies. We expanded the publication to include further information about our child protection role and about the responsibilities of agency CEOs, provided practical advice about investigative processes, more definitions and some answers to frequently asked questions. In addition, we published a new fact sheet titled 'Fact sheet No.4—Stages in the investigative process', which focuses on the key issues to consider at the various stages of an investigation into an allegation of child abuse by an employee.

There is a complete list of our publications in the Appendices.

### *Web site—[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)*

The internet provides a simple, direct and accessible forum for promoting awareness of our services and we are continually improving both the look and content of our site. Our web site contains a range of information including our English language brochures and fact sheets which are accessible in HTML and portable document format (PDF). Our community language brochures and a number of our reports are downloadable in PDF.

We have developed an online complaint form to help people who want to make complaints. We have had a steady increase of complaints coming to us by our online complaint form or by email.

We also have an online registration form for the training courses we conduct and an online publication order form.

To ensure that the site meets our customers' expectations, we invite people to give us feedback on our web site.



## Speeches and presentations

Some of the major speeches and presentations given by our staff in 2000–2001 are outlined below.

### July 2000

Beth Cullen, Manager Assessments, gave a presentation at the People with Disabilities Forum.

### August 2000

Brendan Delahunty, Research Manager, and Emma Koorey, Research Officer, spoke at the University of NSW on 'Policing Public Safety'.

### September 2000

Steve Kinmond, Assistant Ombudsman (Police), gave a Continuing Legal Education presentation to Western Aboriginal Legal Service solicitors on issues associated with complaints about police.

### November 2000

Bruce Barbour, Ombudsman, opened the National Investigation Symposium and spoke about the importance of quality investigations.

Lily Enders, Senior Investigation Officer, presented a paper at the international conference of the American Society of Criminologists in San Francisco. The paper was on computer access/ethics and was called 'Policing Privacy and the Information Age: Unauthorised Access and Inappropriate Disclosure of Information Complaints in New South Wales'.

Brendan Delahunty and Emma Koorey addressed a Police and Community Training forum at Lakemba.

Anne Marie Hudson, Policy Officer, addressed the Northern Beaches Child at Risk Seminar.

Katharine Ovenden, Senior Investigation Officer, spoke at Wollongong Council's Purple Ribbon Month.

### December 2000

Steve Kinmond addressed the NSW Police Service's employee management branch.

### February 2001

Greta McDonald, Customer Service Manager, and Nicola Mostert, Investigation Officer, gave a talk on complaint handling to the NSW Water Police.

### March 2001

John McAteer, Investigation Officer, and Carol Ranft, Complaints Officer, spoke to senior police about aspects of complaint handling.

Steve Kinmond and Clare Wilde, Manager Intelligence, gave a presentation to Deputy Commissioner Jeff Jarratt on police complaints management.

Steve Kinmond and Jo Scott, Investigation Officer, spoke to the National Indigenous Legal Studies class at Tranby College in Glebe about the role of the Ombudsman and the Aboriginal Complaints Unit.

Steve Kinmond gave a presentation to police in the Newcastle area on the Ombudsman's role and a presentation on Complaint Performance in the Hunter Region at a workshop convened by the Hunter Region Command on 'Managing Conduct and Performance in the Workplace'.

Bruce Barbour gave a presentation to the NSW Police Service region commanders and senior executive on the police complaints system and their role in ensuring effective complaint handling.

Chris Wheeler, Deputy Ombudsman, spoke to staff from a number of watchdog agencies about proactive strategies, cost effective investments and better administration.

### May 2001

Lily Enders had an article published in the Australian Journal of Information Systems. The article is called 'Cops, computers and the right to privacy in the information age: unauthorised access and inappropriate disclosure of information complaints in New South Wales'.

Steve Kinmond spoke at the E-Corruption Symposium organised by the ICAC. His presentation was called 'Balancing Surveillance and Trust'. He also addressed the NSW Police Service's professional standards managers.

### June 2001

Bruce Barbour was a speaker at the Canadian Council of Administrative Tribunals Conference in Quebec City. His speech compared the role of the Ombudsman and Administrative Tribunals in a broader administrative framework.

Steve Kinmond addressed NSW Police Service's professional standards managers and local area commanders from the North Metropolitan Region Command at a two-day workshop. The presentation covered complaint handling issues and performance in the North Metropolitan Region.

Anne Barwick, Assistant Ombudsman (Children and Young People), made a presentation to the Aboriginal Statewide Foster Carer Support Service Conference.

## Briefings for overseas visitors

We are often asked to brief overseas delegations on the work of our office. During the year Indonesian officials establishing an Ombudsman in their country spent two days at our office talking to senior staff. The Inspector General of the Transitional Administration East Timor attended a workshop on the role and function of the Ombudsman.





# Corporate

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The 25% increase in staff at the office had a significant impact on our corporate support team who had to absorb the additional work this generated

This section gives details of the work of our corporate support team. The team includes personnel, financial services, public relations and publications, records management, information technology (IT) and library services.

We aim to:

- provide efficient and effective support to the core activities of the office,
- make the most effective use of resources,
- maximise productivity and staff development and ensure a healthy, safe, creative and satisfying work environment,
- increase parliamentary and community awareness of the role, function and services offered by the Ombudsman,
- maximise the use of information technology and introduce appropriate technology to increase productivity and accessibility.

This year was an eventful one for the corporate support team and we faced many challenges. The 25% increase in staff at the office had a significant impact on our team, as we had to absorb the additional work this generated. We had to review our work practices as well as prioritise tasks. There was some reduction in service to staff, but considering the increase in workload this was to be expected.

We identified technology as one way to improve our performance. Personnel, accounts, records and IT examined the ways that technology could improve their work processes. The electronic transfer of information between personnel and accounts improved payroll processing and accounts payable data entry. The development of archive reports will streamline the transfer of inactive records to State Records, improving our records management program.

IT introduced a number of systems to improve network reliability and user support. They have also been working closely with our police team to develop the Police Complaints Case Management (PCCM) system.

New tax laws became effective in July 2001 and, like most businesses, the capture of GST information and reporting to the Tax Office has had a significant impact on the workload of accounting staff. However, early preparation and an extensive review of systems before July 2000 has helped us to meet our initial and ongoing obligations.



## Personnel

Personnel services include recruitment, leave administration, payroll and occupational health and safety (OH&S). Our key achievements for 2000–2001 include:

- implementing the restructure of the child protection team including recruiting additional staff,
- auditing personnel records including leave histories,
- streamlining processes to improve performance particularly in the area of leave liabilities and salary reconciliations,
- better use of technology particularly in data entry and the referral of information both internally and externally.

Next year we will finalise our performance management, equal employment opportunity (EEO) and OH&S programs.

### Staff

As at 30 June 2001, we had a full-time equivalent staff number of 117.2, as shown in fig 1. These figures do not include staff on leave without pay. Staff numbers are expressed in terms of full-time equivalent, so the actual number of part-time staff is not reflected in the table.



**I joined the Ombudsman’s office in 1988 and worked full-time in administrative and personnel positions until 1997. I returned in May 2000 as a part-time personnel officer.**

**I have seen changes to our jurisdiction, a substantial increase in the number of staff, more flexible work practices and improvements to office technology and systems.**

**The dynamic culture of the organisation is the only aspect which seems constant. Returning to the Ombudsman’s office has been very rewarding.** Jayson Leahy

**Figure 1: Staff levels—four year comparison**

	98	99	00	01
Statutory appointments	4	5	5	5
Investigative staff	62.4	74.3	75	96.2
Administrative staff	10	12.2	13.6	16
<b>Total</b>	<b>76.4</b>	<b>91.5</b>	<b>93.6</b>	<b>117.2</b>
Trainees	1	1	1	1

## Wage movements

Public servants were awarded a 2% pay increase effective 5 January 2001.

In its annual determination, the Statutory and Other Officers Remuneration Tribunal awarded increases to our statutory officers. The Ombudsman, Deputy Ombudsman and Assistant Ombudsman were awarded a 2% increase effective 1 October 2000 and a further 2% from 1 April 2001.

## Personnel policies

The Public Sector Management Office (PSMO) negotiates the working conditions and entitlements of public sector staff. This year the PSMO issued a variation to the Crown Employees (Public Service Conditions of Employment) Award 1997. No new internal policies were negotiated during the year but we are currently developing a working from home policy. We are also reviewing our performance management, EEO and OH&S programs which will be finalised next year.

## Training and development

During 2000–2001 we spent \$75,000 on training which is 0.78% of our total expenses. Staff attended a variety of training programs, including letter and report writing, training in our case management system, mediation and investigative techniques. These courses were provided by external training providers.

Specific job or skills-related training was developed and conducted in-house with presenters or relevant staff from other agencies being invited to address our staff.

An important aspect of our staff training and development is the provision of study assistance. During 2000–2001, 21 members of staff used study leave provisions to undertake tertiary education courses.

In addition to these activities, a comprehensive IT training program was developed for IT staff. This program will be implemented during 2001–2002 to strengthen IT skills to accreditation standards, particularly in security specific technologies.

## Occupational health and safety

We have a number of programs to meet our obligations under OH&S legislation. Specific initiatives include:

### *Hepatitis vaccinations*

Staff who visit correctional centres are vaccinated against Hepatitis A and B.

### *Eye examinations*

Staff spend a substantial proportion of their work day using computers, which can lead to eye strain. We organise an eye examination for all staff every two years so that any potential problems can be detected.

### *Flu shots*

Like many organisations, we experience high absenteeism during the flu season. This year we organised flu shots for staff to minimise absences on sick leave. About half of the staff participated in the program.

### *Employee assistance program*

We provide staff with a confidential free counselling service through Industrial Program Services. This program is available to staff, their partners and family and helps to solve both work and personal problems that, if not dealt with, may impact on job performance.

### *Workplace inspection*

We conduct two types of workplace inspections. The first is an ergonomic assessment of workstations, computer placement and lighting conducted by an external OH&S specialist and the second is a general audit of hazards conducted by staff who have been trained in safety audits.

We did both types of inspections during 2000–2001. We found that our workstations were not suitable and needed to be replaced. NSW Treasury has provided funds for this purpose and new workstations will be purchased in 2001–2002.

### *Training*

Training is an important aspect of our OH&S program. During the year we provided training in:

- rehabilitation coordination
- how to conduct an OH&S audit
- first aid
- emergency evacuation training for wardens.

**Figure 2: Percentage of total staff by level**

Level	Subgroup as percent of total staff at each level				Subgroup as estimated percentage of total staff at each level				
	Staff no.	Resp*	Men	Women	ATSI*	Ethnic*	ESL*	Dis*	Dis Adj*
<\$26,802	2	100%		100%		100%	50%		
\$26,802–\$39,354	13	100%	31%	69%		69%	54%	31%	15%
\$39,355–\$49,799	30	100%	20%	80%	3.30%	17%	13%	3%	
\$49,800–\$64,400	60	100%	32%	68%	3.30%	17%	10%	2%	1.7%
>\$64,400 (non SES)	24	100%	54%	46%	4.20%	13%	8%	8%	
SES	4	100%	75%	25%				25%	
<b>Total</b>	<b>133</b>	<b>100%</b>	<b>34%</b>	<b>66%</b>	<b>3.00%</b>	<b>22%</b>	<b>15%</b>	<b>7%</b>	<b>2.30%</b>
Subgroup totals		133	45	88	4	29	20	9	3

\* Resp = respondents

\* ATSI = Aboriginal and Torres Strait Islander people

\* Ethnic = People from racial, ethnic, ethno-religious minority groups

\* ESL = People whose language first spoken as a child was not English

\* Dis = People with a disability

\* Dis Adj = People with a disability requiring adjustment at work

**Figure 3: Percentage of total staff by employment basis**

Employment basis	Subgroup as percent of total staff in each category				Subgroup as estimated percentage of total staff in each employment category				
	Staff no.	Resp*	Men	Women	ATSI*	Ethnic*	ESL*	Dis*	Dis Adj*
Permanent full-time	80	100%	40%	60%	3.80%	23%	16%	5%	1.30%
Permanent part-time	13	100%		100%	23%	23%			
Temporary full-time	21	100%	33%	67%	4.80%	14%	10%	14%	9.50%
Temporary part-time	7	100%	14%	86%	43%	14%			
Contract SES	4	100%	75%	25%			25%		
Contract non SES	7	100%	29%	71%		14%	14%	14%	
Casual									
<b>Total</b>	<b>133</b>	<b>100%</b>	<b>34%</b>	<b>66%</b>	<b>3%</b>	<b>22%</b>	<b>15%</b>	<b>7%</b>	<b>1.90%</b>
Subgroup totals		133	45	88	4	29	20	9	3

\* Resp = respondents

\* ATSI = Aboriginal and Torres Strait Islander people

\* Ethnic = People from racial, ethnic, ethno-religious minority groups

\* ESL = People whose language first spoken as a child was not English

\* Dis = People with a disability

\* Dis Adj = People with a disability requiring adjustment at work

## Workers compensation

The office participates in the NSW Treasury Managed Fund, a self-insurance scheme for the NSW public sector. We have strategies to minimise our workers compensation claims including workplace inspections and the provision of a counselling service. Our claims have been generally limited to one or two per year.

The performance indicator 'Workers compensation claims' shows a comparative statistical analysis of workers compensation claims and compares our performance with the overall performance of all participants in the NSW Treasury Managed Fund. This analysis does not include claims received between March and June 2001. We received one claim during this period, relating to injuries sustained on a journey home from work. This claim has been accepted by our insurers.

### Performance indicator

Workers compensation claims	00/99		00/01	
	Fund*	Omb.	Fund*	Omb.
No. of claims	14,428	3	10,080	0
No. of staff	174,018	95	173,276	95
No. of claims per staff	0.083	0.032	0.058	0
Average cost per claim	\$7,192	\$2,138	\$4,472	\$0
Average cost per staff	\$596	\$68	\$260	\$0

\*NSW Treasury Fund's comparative statistical analysis 99/00 & 00/01 as at 31 March 2001. 00/01 figures are to March 2001 only.

**Interpretation**  
This performance indicator compares our performance with the overall performance of all participants in the NSW Treasury Managed Fund. As can be seen, we did not have any claims in the reporting period, down from three the year before. We have a number of strategies to minimise accidents in the workplace, which are detailed in 'Occupational health and safety' in this section.

## Equal employment opportunity

We are committed to the principles of EEO and have a program that includes policies on performance management, grievance handling, harassment-free workplace and reasonable adjustment. We met our major EEO objectives for 2000–2001.

### *A sound information base*

We achieved a 100% response rate from staff to our EEO survey giving us a sound information base about the composition of our workforce.

### *Ensuring staff views are heard*

We provide mechanisms for staff to contribute their views about the planning and management of the office. Staff are involved in business planning and raise issues through the Joint Consultative Committee (JCC).

### *EEO outcomes included in agency planning*

EEO accountabilities are included in business plans, performance agreements and work plans.

### *Fair policies and procedures*

We continued to promote flexible work practices including part-time work, working from home and use of family and community service leave.

### *Needs-based program for EEO groups*

We provided training and development opportunities for EEO groups based on a needs-based program.

### *Managers and staff informed, trained and accountable for EEO*

Our induction program for new staff includes a section on EEO and our performance agreements and work plans include EEO accountabilities.

### *A workplace culture displaying fair practices and behaviours*

We have consultative arrangements in place, a harassment free workplace and grievance policies.

### *Improved employment access and participation by EEO groups*

We offer traineeships to improve the employment access and participation of young people.

### *A diverse and skilled workforce*

Our staff come from a variety of backgrounds and experience. Figures 2 & 3 show the gender and EEO target groups of staff by salary level and employment basis (that is, permanent, temporary, full-time or part-time).

The government has established targets for the employment of people from various EEO categories. Measurement against these targets is a good indication of the success or otherwise of our EEO program. The performance indicator 'Employment benchmarks' compares our performance to the rest of the public sector and to government targets.

In 2001–2002 we plan to:

- analyse the data from our EEO survey for use in EEO planning,
- review our grievance policy,
- conduct exit interviews with staff leaving the office,
- review recruitment strategies to ensure that EEO groups are appropriately targeted,
- identify strategies to improve representation of EEO groups, particularly people with a disability and people whose first language is not English.

Performance indicator

Employment benchmarks				
Representation	Gov target	Pub sec*		Omb**
		99/00	99/00	00/01
Women	50%	54%	62%	66%
ATSI	2%	1.5%	4.90%	3%
ESL	19%	13%	14%	15%
Dis	12%	6%	7%	7%
Dis Adj	7%	1.90%	1.90%	2.3%

\*Pub sec=public sector \*\*Omb=Ombudsman

**Interpretation**  
 We exceed the government target for the employment of women and Aboriginal or Torres Strait Islander people. We exceed public sector employment patterns for people with a disability and people whose first language is not English, but we fall behind the government target in both these categories. The representation of women, people whose first language is not English and people with a disability requiring adjustment has improved since the last reporting period. There has been a decrease in the representation of Aboriginal or Torres Strait Islander people. The representation of people with disability remains the same. In the coming year we will need to focus on improving strategies for the employment of people with a disability.

**Chief and Senior Executive Service**

The office has five senior positions—the Ombudsman, Deputy Ombudsman and three Assistant Ombudsman. A woman currently holds one of those positions. There was no change to the number of senior positions during the reporting year. Details of the levels of senior positions are in figure 4.

Figure 4: Chief and Senior Executive Service

	2000	2001
SES Level 4	1	1
SES Level 2	3	3
CEO*	1	1
Total	5	5

\*CEO position listed under section 11A of the *Statutory and Other Offices Remuneration Act 1975*, not included in Schedule 3A of the *Public Sector Management Act 1988*

**Executive remuneration**

The Statutory and Other Offices Remuneration Tribunal (SOORT) determines the remuneration level of the Ombudsman and other senior executive staff. Usually SOORT reviews remuneration annually. Figure 5 details the Ombudsman’s remuneration.

Figure 5: Executive remuneration

Position	Ombudsman
Occupant	Bruce Barbour
Total remuneration package	\$194,643
\$ value of remuneration paid as a performance payment	Nil
Criteria used for determining total performance payment	NA

**The Ombudsman’s performance statement**

As the Ombudsman is not responsible to a Minister, no formal one-on-one review of his performance is undertaken. However, the Ombudsman appears before the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission on a regular basis to answer questions about the performance of our office.

**Industrial relations**

*Joint Consultative Committee*

The Joint Consultative Committee (JCC) is made up of representatives of staff, the Public Service Association and management. They meet to discuss issues of mutual concern including policy development.

During the year, the JCC discussed a range of matters including the negotiated public sector pay award that provides a 16% pay increase to staff over three and a half years of which 6% will not be funded. All public sector agencies must identify potential savings to be applied to the unfunded components of the pay increases. We will have difficulty in achieving the level of savings required without a significant reduction in our numbers of staff and service.

*Part-time work*

The office promotes part-time work. On 30 June 2001, 22 members of staff were employed on a part-time basis.

*Grievance procedure*

We have a grievance procedure designed in accordance with the provisions of the *Industrial Relations Act*. Although no staff lodged a formal grievance during 2000–2001, a number of issues were raised at meetings of the JCC.

*Trainee/apprentices*

We currently employ one trainee under the State Government’s 2000 by 2000 traineeship program. Our trainee attends TAFE one day a week as part of the traineeship. We do not employ apprentices.



Trainee Lilia Garbin



## Financial services

Financial services include budgeting, management reporting, accounts payable and purchasing. Our key achievements for 2000–2001 include:

- finalising the accounting manual,
- better use of technology to improve processing and data entry,
- smooth implementation of the GST,
- an unqualified audit report.

Next year we will upgrade our accounting system, streamline our accounting structure, improve internal financial reporting and review the recording of assets and stocktaking.

### Revenue

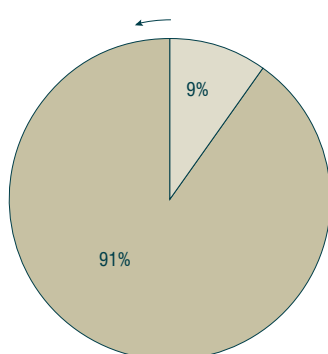
Most of our revenue comes from the government in the form of a consolidated fund appropriation. The government also makes provision for our superannuation and long service leave liabilities. A breakdown of revenue generated, including capital funding and acceptance of employee entitlements, is outlined in figure 6.

Our appropriation was increased during the year. We received \$600,000 to employ additional staff for our child protection jurisdiction and \$80,000 to review the police service's use of powers under the *Crimes (Forensic Procedures) Act 2000*.



**I have worked in financial services for the Ombudsman for nearly ten years. Our budget allocation has doubled in that time. By improving our work practices we have implemented changes such as the GST without significantly affecting the service we provide to staff and to external bodies such as the NSW Treasury. Mary Esteban**

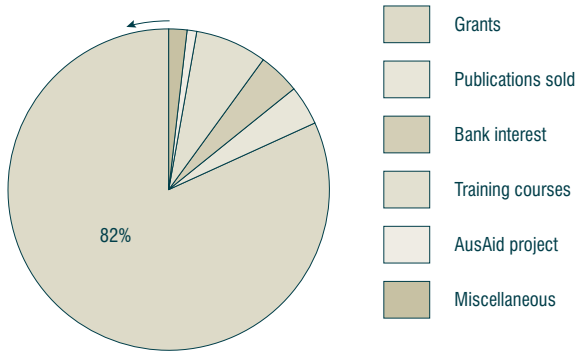
**Figure 6: Total revenue 2000/2001\***



<b>Government</b>	
Recurrent appropriation	\$8,408,000
Capital appropriation	\$127,000
Acceptance of superannuation & long service leave	\$751,000
<b>Total Government</b>	<b>\$9,286,000</b>
<b>From other sources</b>	<b>\$929,000</b>
<b>Total</b>	<b>\$10, 215,000</b>

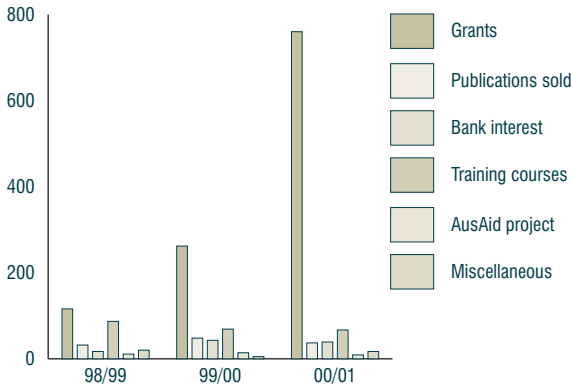
\* including capital funding and acceptance of employee entitlements

**Figure 7: Revenue from other sources**

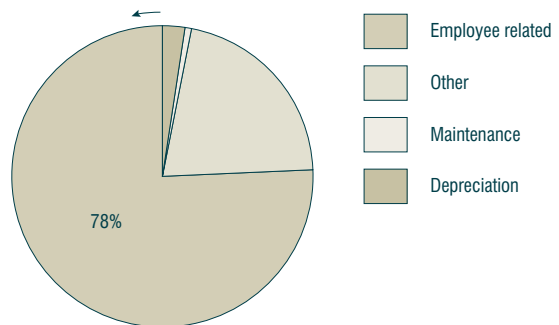


Grants	\$760,000
Publication sales	\$37,000
Bank Interest	\$39,000
Training courses	\$67,000
AusAid project	\$9,000
Miscellaneous	\$17,000
<b>Total</b>	<b>\$929,000</b>

**Figure 8: Revenue from other sources —three year comparison**



**Figure 9: Expenses as at 30 June 2001**



We generated additional revenue of \$169,000 through the sale of publications, bank interest and conducting training courses for public sector agencies. See figures 7 and 8.

The PCCM project continued during the year funded by a grant from the Premier’s Department. In 2000–2001, we received \$760,000 to continue implementing this project. Funds will be provided in 2001–2002 to complete the project.

### Expenses

Most of our revenue is spent on employee related expenses. These include salaries, superannuation entitlements, long service leave and payroll tax. Last year we spent more than \$7.3 million on employee related expenses.

The day to day running of the office including rent, postage, telephone, stores, training, printing and travel cost over \$2.04 million. Depreciation of equipment, furniture and fittings and other office equipment was \$233,000. See figures 9 and 10.

### Consultants

During the year we used three consultants to provide expert advice and assistance.

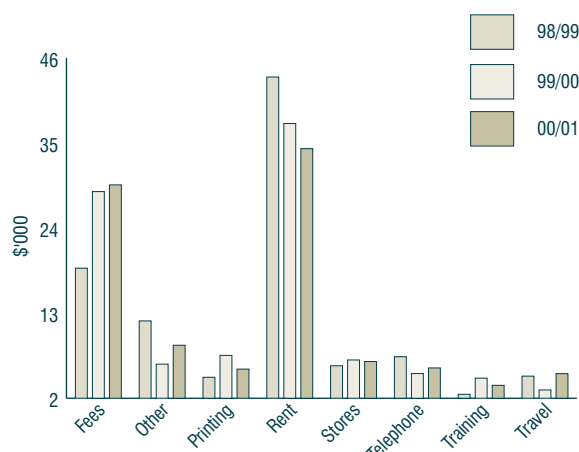
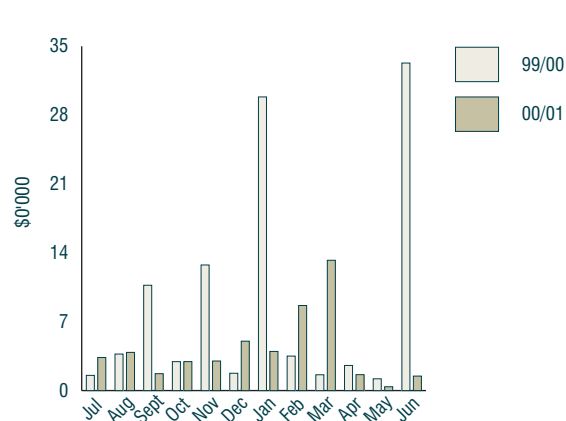
We engaged a consultant to audit our records management program. Under the *State Records Act 1998*, each public sector agency is required to have implemented a compliant system by January 2001. The consultant identified gaps in our program and made recommendations that will ensure compliance with the legislation.

In April 2001 we engaged Synercon Management Consulting to do an analysis of our current and future information needs. We will use this analysis as the project plan for the implementation of a document management system.

In June 2001 we engaged a consultant to help us develop a risk management model for dealing with complaints about police.

The total cost of consultants was \$22,051. There was no individual consultancy that cost an amount equal to, or in excess of, \$30,000.



**Figure 10: Expenses—three year comparison****Figure 11: Stores expenditure—two year comparison****Figure 12: Major assets**

Description	99/00	Aqu*	Dis*	00/01
File servers (mini computer)	11	1	1	11
Hub (terminal servers)	11	0	0	11
Personal computers	39	0	17	22
Printers	14	0	2	12
Photocopiers	4	0	0	4
Televisions and video equipment	8	0	0	8

\*Aqu=Aquisitions Dis\*=Disposals

### Stores expenditure

Figure 11 shows our stores expenditure during the year. Stores include asset purchases such as office and computer equipment, furniture and fixtures and consumables such as stationery. Because our usual expenditure is small, the purchase of major items can cause fluctuations in the level of expenditure.

A significant proportion of stores expenditure this year related to asset purchases for the PCCM system. Other major purchases include increasing the number of licences for our complaints management system and changes to the fitout of the office due to the employment of additional staff.

There is significant variation between this year's and last year's stores expenditure. This is due to PCCM expenditure, costs associated with the relocation of the office and Y2K preparation.

### Funds granted to non-government community organisations

We did not grant any funds to any non-government community organisations.

### Credit card use

We do not have any corporate credit cards.

### Assets

#### Major assets

Our major assets are detailed in figure 12.

#### Land disposal

We did not dispose of any land or property.

#### Major works in progress

The PCCM project continued during the year. We had expected to complete the project this year, but some delays were experienced and the completion date is now November 2001. Significant work has been done on the security aspects of the project and purchase orders were placed in May 2001 for the security infrastructure. IT staff will undertake intensive training to operate the security systems and this training should be completed by October 2001.

The overall project budget is significant. The Ombudsman's component is \$1.5 million capital funding, \$143,000 recurrent funding in 2000–2001 and \$380,000 ongoing funding from 2001–2002. These funds cover hardware and software acquisition, development, data migration from legacy systems, security infrastructure, maintenance and other ongoing recurrent costs.

### Minor works

A number of minor works were completed during the year. Some modifications to the fitout were undertaken at a cost of \$56,000. This included new workstations and leasehold improvements.

Due to the increase in staff, we increased the number of user licences for our case management system—Resolve. We purchased 40 additional licences at a cost of \$57,000. We also needed to obtain user licences for the PCCM system which cost \$76,000.

Other minor works included the upgrade to the PABX (\$14,000) and the purchase of a file server (\$14,500).

### Liabilities

We have two sources of liabilities—creditors who are owed money for goods and services they provide and staff who are owed accrued leave entitlements. There was a decrease in our liabilities as at 30 June 2001. Accounts payable decreased by \$89,000. Our liabilities also decreased due to the amortisation of the lease incentive. The amount owed to staff, which includes unpaid salaries and recreation leave, increased by \$143,000.

### Accounts payable policy

We have an accounts payable policy that states that all accounts must be paid within the agreed terms or within 30 days of receipt of invoice if terms are not specified. We notify suppliers of the policy in writing when we place orders with them for goods and services.

For accounts on hand as at 30 June 2001, see figure 13.

We regularly review our payment policy and aim to pay all accounts within the vendor credit terms 98% of the time. During 2000–2001 we paid just under 95% of our accounts on time, which represents a 1% decline from the previous year. The major problem that we encounter with paying accounts on time is that with short time frames—mostly within seven days, the account is received on or about the date that payment is due. We also questioned a number of invoices and disputed amounts with vendors. Payment was delayed until these disputes were resolved. We have not had to pay any penalty interest on outstanding accounts.

**Figure 13: Aged analysis of accounts on hand at the end of each quarter**

Quarter	Sep 2000	Dec 2000	Mar 2001	Jun 2001
Current (ie within due date)	\$22,508	\$69,406	\$48,836	\$108,000
Less than 30 days overdue	–	–	\$1,485	–
Between 30 days and 60 days overdue	–	–	–	–
Between 60 days and 90 days overdue	–	–	–	–
More than 90 days overdue	–	–	–	–
Total accounts on hand	\$22,508	\$69,406	\$50,321	\$108,000

### Performance indicator

Accounts paid on time				
Quarter	Target	1	2	3
September 2000	98%	92.59%	\$761,870	\$822,867
December 2000	98%	99.62%	\$794,384	\$797,389
March 2001	98%	94.18%	\$911,871	\$968,230
June 2001	98%	92.75%	\$1,035,766	\$1,116,733
Total	98%	94.57%	\$3,503,891	\$3,705,219

1=% paid on time 2=amount paid on time 3=total amount paid

**Interpretation**  
All public sector agencies have an obligation to pay accounts promptly. We aim to pay all accounts within the vendors credit terms at least 98% of the time. We did not meet our target paying only 94.57% within the terms set by the vendor. We are finding that there is an increasing number of invoices reaching the office after the expected date of payment. In these circumstances it is an impossibility to pay within the terms specified resulting in payment targets not being met. To a certain extent, the results are outside our control. These amounts do not include employee-related expenses.

### Value of leave

The value of recreation (annual) leave and extended (long service) leave owed for all staff for the 1999–2000 and 2000–2001 financial years is shown in figure 14.

**Figure 14: Value of recreation and long service leave**

	99/00	00/01
Recreation leave	\$403,585	\$470,940
Long service (extended) leave	\$709,661	\$897,813

### Risk management

We participate in the NSW Treasury Managed Fund which is the self-insurance scheme for state government agencies. The fund encourages agencies to improve their performance in a range of areas including prevention of claims, education and the adoption of risk management principles. Our goal is to continually improve our performance in this area with specific focus on overall risk management policy, fleet management and OH&S. For further details on our risk management and internal control program relating to our complaint handling and scrutiny functions see the 'How we operate' section.

### Workers compensation

Traditionally, we receive only a small number of workers compensation claims each year with most accidents occurring outside the workplace, such as when staff are travelling. To limit the number of claims, we have been actively promoting a safe work environment through workplace inspections and providing a counselling service. Further details about workers compensation and our general OH&S program were discussed earlier in this section.

### Fleet management

We have a small motor vehicle fleet of four vehicles. The performance indicator 'Insurance claims for motor vehicle accidents' provides data on the number of claims made to our insurer, the NSW Treasury Managed Fund as a result of motor vehicle accidents. The fund average represents all public sector claims.

#### Performance indicator

	99/00		00/01*	
	Fund	Omb	Fund	Omb
No. of claims	3,792	0	2,273	0
No. of vehicles	19,708	3	20,601	3
No. of claims per vehicle	0.192	0	0.11	0
Average cost per claim	\$2,607	\$0	\$2,774	\$0
Average cost per staff	\$502	\$0	\$306	\$0

\*NSW Treasury Fund's comparative statistical analysis 1999–2000 & 2000–2001 as at 31 March 2001. 2000/01 figures are to March 2001 only

**Interpretation**  
This performance indicator compares our performance with the overall performance of all participants in the NSW Treasury Managed Fund. We did not have any claims in the reporting period.

### Financial based internal audit

We use an accounting firm to undertake the financial based internal audit function. This internal audit consists of:

- an audit of internal controls within the accounting, payroll and leave functions,
- a review of our statutory obligations such as the calculation and treatment of payroll tax and fringe benefits tax,
- a review of the financial statements before submission to the Auditor General.

### Other risk management programs

We have also been addressing a range of risk management issues including internal control, corruption prevention, fraud control, office security, disaster recovery and preventative maintenance of equipment.



## Public relations

Our public relations unit is responsible for publications, media liaison and running our access and awareness program. Our access and awareness program is a separate goal under the corporate plan and is reported in 'Access and awareness'. The following details are about the non-access and awareness work of the public relations unit.

Our key achievements for 2000–2001 include:

- implementing an extensive media campaign covering electronic and print media to coincide with the Ombudsman's visits to regional areas in February and March 2001,
- developing a new logo and corporate image in conjunction with Mackay Branson Design,
- completing the first stage of our web site review including the conversion of publications into internet accessible formats,
- winning a bronze medal in the Australian Annual Report Awards.

Next year we will implement the new corporate image, introduce style guidelines for office documents, review the process for printed publications and finalise the review of our web site.

### New logo and corporate image

We have developed a new logo and corporate image that will appear on our stationery, publications including reports, guidelines and brochures and on our web site. The new logo is displayed on the cover of this report.

### Web site review

During the year we reviewed and updated the content of our web site. We included information about our training programs on the web site for the first time. We will continue to develop and improve the layout and content of the web site and hope to soon have complaint statistics and more of our publications accessible through the web.



## Records management

Records management includes file creation, file maintenance, archiving and disposing of records. In 1999–2000, we reviewed our records management program to make sure it complied with the *State Records Act*. Areas of concern were identified and this year we started a number of improvement projects including a review of archiving and disposal authorities.

Our key achievements for 2000–2001 include:

- completing an audit of our records management program,
- developing a records management policy,
- archiving 1,073 boxes of records representing over 10,100 files,
- using technology to improve work practices including the development of computer generated reports to streamline archiving,
- starting a review of our records disposal authorities.

Next year we will finalise our records disposal authorities, continue our archiving program and develop a series of policies and procedures manuals to help staff to comply with the *State Records Act*.

### *Records management program*

Late in the 1999–2000 reporting year, we engaged a consultant to review and audit our records management program. This review was done to assess record keeping and records management practices and to check that we complied with the *State Records Act* and guidelines issued by State Records.

The review found that staff had a good understanding of what records are, that there was an office wide practice of record keeping and high confidence that vital records are captured and retained. However, there were weaknesses in implementing and monitoring record keeping standards and records management principles. The review recommended a number of strategies including developing and implementing an office wide policy endorsed by the Ombudsman.

During 2000–2001 we have been working through the recommendations of the review.

### *Archiving*

Although we regularly send completed files to an offsite storage facility, the lack of space at the office meant we had to review our archiving program. As part of that review, we developed reports from our case management system that identified what files could be sent to storage. This has proved a valuable tool and has meant that staff have not had to retype lists of files. During the year we boxed over 10,100 files to be sent to offsite storage or to transfer to State Records as a permanent record of our work.



## Information technology

IT includes help desk/user support and network administration. Our key achievements for 2000–2001 include:

- establishing a help desk,
- improving network services with the employment of a dedicated network administrator,
- planning and developing security systems and associated training programs,
- developing reporting tools to assist performance monitoring,
- auditing internet usage,
- review security policies, practices and organisational structures.

Next year we will implement a computer specific security system, roll out PCCM, review policies in light of PCCM and further develop reporting and analysis tools.

### **Police Complaints Case Management system**

In its interim report, the Royal Commission into the NSW Police Service (Royal Commission) recommended that a new, enhanced and integrated PCCM system should replace several systems used within the police service. The new system should link with oversight agencies to form a single, complete record of complaints against the police.

The Premier's Department set up a project on behalf of the police service, the Ombudsman and the Police Integrity Commission (PIC) to review existing systems. The project objectives included reviewing systems operating in the three agencies, determining the requirements for new systems and enhanced processes, and acquiring and developing those systems.

During the year, our IT staff have been involved in a number of PCCM related projects including wide area network security and negotiating a service level agreement.

### *Wide Area Network security*

The aim of this project was to establish a secure data link between our office, the police service and PIC. Because of the sensitivity of the data being transmitted on the network, it was necessary to put in place security infrastructure to protect each of the agencies from unwanted intrusion into their computer systems.

Our IT staff were involved in the design of the wide area network, including its security components, operating issues such as fire protection and power supply, purchasing hardware and services and developing a training program for staff.

### *Service level agreements*

Two PCCM service level agreements were negotiated during the year. The first was an agreement between the participating agencies that established the standard of performance for the network. This included data access, availability during business hours, user authentication standards and the notification of security incidents.

The second service level agreement was with the security vendor. It related to the performance of the intrusion monitoring service and the management of security infrastructure during the initial start up phase of the case management system. A database of help desk issues and solutions has been established for future reference.

### **Help desk**

We established a help desk function in October 2000 to support staff in the use of computers and other technology. Since then, the help desk has come to the aid of many staff members, responding to calls on issues from printing problems to problems with applications such as word processing and our case management system. The help desk has also been proactive in providing training to staff.



Left to right: David Begg security administration, Geoff Pearce Manager IT, and Stan Waciega network and web/intranet administration

**I joined the office in 1986 in an investigation unit and later moved into IT—in fact, for over 10 years I was the only person in IT. Over the years our systems have grown considerably in complexity and sophistication. We recently established an IT team that includes security and network administrators, help desk support and an analyst programmer—a small but strong team ideally suited to this office.**

**I have witnessed significant technological and organisational change in the time that I have worked here. One constant is the commitment of staff, their skills and resourcefulness. This is a very interesting and rewarding place to work.** Geoff Pearce

### **Electronic service delivery**

We have implemented an electronic service delivery program, reviewed quarterly, to meet the government's commitment that all appropriate government services be available electronically by December 2001.

Our program includes two projects where cross-agency service delivery is planned. The PCCM project will be implemented in 2001 followed by a review of services delivered via the web or other electronic media. The customer counter project will, subject to funding, include a study of the feasibility of establishing a single point of contact for people wanting to make complaints or inquire about making complaints, about government services. We will be doing this study on behalf of all oversight agencies in NSW.



## General management

### Research and development

We were involved in a number of research projects throughout the year. Specific details on these projects, including the reviews of the *Crimes (Forensic Procedures) Act 2000* and the *Police Powers (Vehicles) Act 1998* and trends in child abuse are discussed in 'Scrutiny'.

### Overseas travel

In June 2001, the Ombudsman, Bruce Barbour, presented a paper as part of a panel of International Ombudsman at the Council of Canadian Administrative Tribunals International Conference in Quebec, Canada. The conference brought together key people in administrative law and justice from around the world to discuss issues affecting administrative justice, regulatory bodies and Ombudsman offices.

Greg Andrews, the Assistant Ombudsman (General), travelled to Papua New Guinea during the year as part of the Technical Monitoring and Review Group for the AusAid PNG Ombudsman Commission Institutional Strengthening Project. This project provides assistance to the PNG Ombudsman Commission to improve its management and professional skills and systems. We are participating in this review on a fee-for-service basis so AusAid meets all costs.

Juliet Dimond, Research Officer, attended the Forensic Identification Conference in Ontario, Canada. Attendance at this conference allowed Ms Dimond direct access to representatives from a number of jurisdictions that are implementing legislation similar to the *Crimes (Forensic Procedures) Act*. Ms Dimond is responsible for much of the research into the implementation of this legislation.

Lily Enders, Senior Investigation Officer, travelled to San Francisco, USA to present a paper at the American Society of Criminology Conference. Her paper was on 'Policing, Privacy and the Information Age: Unauthorised Access and Inappropriate Disclosure of Information Complaints in New South Wales'.

### Code of conduct

Our code of conduct provides practical guidance to staff in the performance of their duties and in handling situations that may present ethical conflicts. It sets out basic principles that staff are expected to follow and prescribes specific conduct in areas central to the exercise of the Ombudsman's functions and powers. No changes were made to our code of conduct during 2000–2001.



## Environmental issues

All organisations, including our office, have an impact on the environment. This impact includes generating emissions and waste and using resources such as water and energy. To monitor and ultimately reduce our impact, we have put in place a number of environmental programs including an energy management program and a waste reduction and purchasing strategic plan.

The owners of our building have also been proactive in improving the environmental performance of the building and have achieved significant results in water conservation, energy savings and reduction of CO<sub>2</sub> emissions.

### Energy management

In late 1998 the Premier announced the Government Energy Management Policy. This policy committed each agency to sustainable energy use, lower greenhouse gas emissions, better financial performance and improved environmental outcomes.

The policy outlined specific agency responsibilities including:

- the establishment of performance goals and reporting on outcomes in the annual report,
- reporting energy consumption to the Department of Energy at the completion of each year, and
- adoption of best practice in procurement of new assets.

### Developing our goals

A review of our activities identified that the energy we used was mainly electricity and fuel in our cars. Our energy management strategies are:

- reducing the total energy consumption, where cost effective and feasible, by 15% of the 1995 level by 2001 and 25% of the 1995 level by 2005,
- including 6% Green Power in electricity use when available under contract,
- purchasing (now leasing) personal computers which comply with SEDA's Energy Star requirement,
- including energy efficiency as an additional selection criteria for the purchase of any equipment,
- including an appropriate energy management/ environmental module in employee induction,
- implementing an employee education program.

### Benchmarking

The government's policy requires each agency to establish benchmarks. The baseline year is 1995-1996 and future reporting will be compared to this baseline.

### Petrol consumption

During 2000-2001 there have been decreases in the litres of petrol used, the litres per person, the cost per person and the gigajoules per person.

### Electricity consumption

Our electricity consumption has increased from 6.9 gigajoules per person in 1995-1996 (the baseline year) to 7.06 gigajoules this year. Our target was to reduce our consumption by 15%.

A number of factors affected our ability to reduce our energy consumption. Firstly, since 1996-1996 our staff level has increased by over 62%. We also installed a 24 hour air conditioning system in our computer room to regulate the temperature and protect our IT investment.

### Future direction

The focus of our energy management program for the coming year will be an awareness program for staff.

## Other environmental programs

### Waste reduction

We have a waste reduction and purchasing strategic plan which we submitted to the Environmental Protection Authority (EPA) for assessment in June 1998. During 2000-2001 we reported to the EPA on our waste reduction program. As part of this process we undertook an audit of the composition and quantities of waste being generated. This audit revealed that nearly all paper waste was being recycled.

Other strategies that we are pursuing include recycling toner cartridges, using paper with a recycled content and promoting email as the preferred internal communication tool.

### Water usage reduction

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

## Performance indicators

<b>Petrol consumption</b>				
	<b>00/01</b>	<b>99/00</b>	<b>98/99</b>	<b>95/96</b>
No. litres used	3042	4154	4296	3269
Cost	3694	3303	3099	4264
Litres converted to gig.	104	142.06	146.92	111.8
Staff no. at 30 June	117.2	93.63	91.49	69.7
Litres p.p.	25.96	44.37	46.96	46.9
Cost p.p.	31.52	35.28	46.96	61.18
Gig. p.p.*	0.89	1.52	1.61	1.6

\*Gig. = Gigajoules \*p.p. = per person

**Interpretation**  
We are committed to reducing total energy consumption where cost effective and feasible. Under the government's Energy Management Policy we are required to establish benchmarks and report on the progress of meeting the government's environmental outcomes. Electricity and petrol are the major types of energy used.  
This table shows petrol usage for the last three financial years and for the baseline year of 1995-1996. We have significantly reduced our petrol consumption in terms of litres used, cost per person and gigajoules per person.

<b>Energy consumption</b>				
	<b>00/01</b>	<b>99/00</b>	<b>98/99</b>	<b>95/96</b>
No. kilowatts used	229,653	—*	126,704	133,630
Cost	22,782	—	13,094	16,254
Kilowatts conv. to gig.*	827	—	456.13	481.07
Staff no. at 30 June	117.2	—	91.49	69.7
Kilowatts p.p.*	1959.49	—	1384.89	1917.22
Cost p.p.	194.39	—	143.12	233.2
Gigajoules p.p.	7.06	—	4.99	6.9

—\* We cannot provide accurate details of our electricity consumption over this year as we were on a common meter with other tenants in our building  
\*conv. to gig. = converted to gigajoules  
\*p.p. = per person

**Interpretation**  
We are committed to reducing total energy consumption where cost effective and feasible. Under the government's Energy Management Policy we are required to establish benchmarks and report on the progress of meeting the government's environmental outcomes. Electricity and petrol are the major types of energy used.  
This table shows electricity use for the last three financial years and for the baseline year of 1995-1996. We have increased our electricity consumption however this can be explained by the increase of staff and the installation of a 24hour air conditioning system in our computer room.



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### STATEMENT BY THE OMBUDSMAN

Pursuant to Section 45F of the Public Finance and Audit Act 1983 I state that

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act 1983, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the Public Finance and Audit (General) Regulation 1995 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position and transactions of the office; and
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

A handwritten signature in blue ink that reads "Bruce Harbour".

Bruce Harbour  
Ombudsman

13 July 2001





BOX 12 GPO  
SYDNEY NSW 2001

## INDEPENDENT AUDIT REPORT

### OMBUDSMAN'S OFFICE

**To Members of the New South Wales Parliament and the Ombudsman**

#### Scope

I have audited the accounts of the Ombudsman's Office for the year ended 30 June 2001. The Ombudsman is responsible for the financial report consisting of the accompanying statement of financial position, statement of financial performance, statement of cash flows, program statement - expenses and revenues and summary of compliance with financial directives, together with the notes thereto, and information contained therein. My responsibility is to express an opinion on the financial report to Members of the New South Wales Parliament and the Ombudsman based on my audit as required by sections 34 and 45E(1) of the *Public Finance and Audit Act 1983* (the Act). My responsibility does not extend to an assessment of the assumptions used in formulating budget figures disclosed in the financial report.

My audit has been conducted in accordance with the provisions of the Act and Australian Auditing Standards to provide reasonable assurance whether the financial report is free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates.

These procedures have been undertaken to form an opinion whether, in all material respects, the financial report is presented fairly in accordance with the requirements of the Act, Accounting Standards and other mandatory professional reporting requirements, in Australia, so as to present a view which is consistent with my understanding of the Office's financial position, the results of its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

#### Audit Opinion

In my opinion, the financial report of the Ombudsman's Office complies with section 45E of the Act and presents fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements the financial position of the Office as at 30 June 2001 and the results of its operations and its cash flows for the year then ended.

R J Smith  
Auditor General

SYDNEY  
17 August 2001

10/2000/01/000

# Ombudsman's Office

## Statement of Financial Performance

### For the year ended 30 June 2001

	Notes	Actual 2001 \$'000	Budget 2001 \$'000	Actual 2000 \$'000
<b>Expenses</b>				
Operating Expenses				
Employee related	2(a)	7,302	7,143	6,341
Other operating expenses	2(b)	2,045	1,490	2,215
Maintenance	2(c)	64	35	40
Depreciation and amortisation	2(d)	233	207	283
<b>Total Expenses</b>		<b>9,644</b>	<b>8,875</b>	<b>8,879</b>
Less:				
<b>Retained Revenue</b>				
Sale of goods and services	3(a)	37	46	49
Investment income	3(b)	39	30	43
Grants and contributions	3(c)	763	1,211	262
Other revenue	3(d)	90	2	87
<b>Total Retained Revenue</b>		<b>929</b>	<b>1,289</b>	<b>441</b>
<b>Gain/(loss) on disposal of non-current assets</b>	4	–	–	<b>6</b>
<b>NET COST OF SERVICES</b>	19	<b>8,715</b>	<b>7,586</b>	<b>8,432</b>
<b>Government Contributions</b>				
Recurrent appropriation	5(a)	8,408	7,733	7,521
Capital appropriation	5(b)	127	–	379
Acceptance by the Crown Entity of employee entitlements and other liabilities	6	751	586	532
<b>Total Government contributions</b>		<b>9,286</b>	<b>8,319</b>	<b>8,432</b>
<b>SURPLUS/(DEFICIT) FOR THE YEAR</b>		<b>571</b>	<b>733</b>	–
<b>TOTAL REVENUES, EXPENSES AND VALUATION ADJUSTMENTS RECOGNISED DIRECTLY IN EQUITY</b>				
		–	–	–
<b>TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH OWNERS AS OWNERS</b>				
	16	<b>571</b>	<b>733</b>	–

The accompanying notes form part of these statements

## Ombudsman's Office

### Statement of Financial Position

#### As at 30 June 2001

	Notes	Actual 2001 \$'000	Budget 2001 \$'000	Actual 2000 \$'000
<b>ASSETS</b>				
<b>Current assets</b>				
Cash	8	812	107	617
Receivables	9	100	72	66
Other	10	267	160	160
<b>Total Current Assets</b>		<b>1,179</b>	<b>339</b>	<b>843</b>
<b>Non Current Assets</b>				
Plant and Equipment	11	1,172	2,231	1,052
<b>Total Non-Current Assets</b>		<b>1,172</b>	<b>2,231</b>	<b>1,052</b>
<b>Total Assets</b>		<b>2,351</b>	<b>2,570</b>	<b>1,895</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	12	108	128	197
Employee entitlements	13	795	664	652
Other	14	34	169	169
<b>Total Current Liabilities</b>		<b>937</b>	<b>961</b>	<b>1,018</b>
<b>Non-Current Liabilities</b>				
Other	15	250	284	284
<b>Total Non-Current Liabilities</b>		<b>250</b>	<b>284</b>	<b>284</b>
<b>Total Liabilities</b>		<b>1,187</b>	<b>1,245</b>	<b>1,302</b>
<b>Net Assets</b>		<b>1,164</b>	<b>1,325</b>	<b>593</b>
<b>EQUITY</b>				
Accumulated funds	16	1,164	1,325	593
<b>Total Equity</b>		<b>1,164</b>	<b>1,325</b>	<b>593</b>

The accompanying notes form part of these statements

# Ombudsman's Office

## Statement of Cash Flows

### For the year ended 30 June 2001

	Notes	Actual 2001 \$'000	Budget 2001 \$'000	Actual 2000 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(6,753)	(6,933)	(5,884)
Other		(2,627)	(1,527)	(2,077)
<b>Total Payments</b>		<b>(9,380)</b>	<b>(8,460)</b>	<b>(7,961)</b>
<b>Receipts</b>				
Sale of goods and services		55	46	35
Interest received		48	30	26
Other		1,104	1,213	355
<b>Total Receipts</b>		<b>1,207</b>	<b>1,289</b>	<b>416</b>
<b>Cash Flows from Government</b>				
Recurrent appropriation		8,408	7,733	7,863
Capital appropriation		127	–	379
Cash reimbursements from the Crown Entity		321	314	233
Cash transfer to the Consolidated Fund		(135)	–	(207)
<b>Net cash flows from Government</b>		<b>8,721</b>	<b>8,047</b>	<b>8,268</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	19	<b>548</b>	<b>876</b>	<b>723</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Proceeds from sale of Plant and Equipment		1	–	8
Proceeds from lessor for lease incentives		–	–	183
Purchases of Plant and Equipment		(354)	(1,386)	(874)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(353)</b>	<b>(1,386)</b>	<b>(683)</b>
<b>NET INCREASE/(DECREASE) IN CASH</b>				
Opening cash and cash equivalents		617	617	577
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	8	<b>812</b>	<b>107</b>	<b>617</b>

The accompanying notes form part of these statements

## Ombudsman's Office

### Program Statement — Expenses and Revenues

#### For the year ended 30 June 2001

AGENCY'S EXPENSES AND REVENUES	Program 1*		Program 2*		Program 3*		Not attributable		Total	
	2001 \$'000	2000 \$'000	2001 \$'000	2000 \$'000	2001 \$'000	2000 \$'000	2001 \$'000	2000 \$'000	2001 \$'000	2000 \$'000
<b>Expenses</b>										
Operating expenses										
Employee related	3,322	2,912	2,353	2,454	1,627	975			7,302	6,341
Other operating expenses	861	982	671	849	513	384			2,045	2,215
Maintenance	30	19	19	15	15	6			64	40
Depreciation and amortisation	95	133	77	108	61	42			233	283
<b>Total Expenses</b>	<b>4,308</b>	<b>4,046</b>	<b>3,120</b>	<b>3,426</b>	<b>2,216</b>	<b>1,407</b>			<b>9,644</b>	<b>8,879</b>
<b>Retained Revenue</b>										
Sale of goods and services	(16)	(24)	(13)	(20)	(8)	(5)			(37)	(49)
Investment income	(17)	(20)	(13)	(16)	(9)	(7)			(39)	(43)
Grants and contributions	(761)	(262)	(1)	–	(1)	–			(763)	(262)
Other revenue	(3)	(8)	(86)	(79)	(1)	–			(90)	(87)
<b>Total Retained Revenue</b>	<b>(797)</b>	<b>(314)</b>	<b>(113)</b>	<b>(115)</b>	<b>(19)</b>	<b>(12)</b>			<b>(929)</b>	<b>(441)</b>
(Gain)/loss on disposal of non-current assets	–	(3)	–	(2)	–	(1)			–	(6)
<b>NET COST OF SERVICES</b>	<b>3,511</b>	<b>3,729</b>	<b>3,007</b>	<b>3,309</b>	<b>2,197</b>	<b>1,394</b>			<b>8,715</b>	<b>8,432</b>
Government contributions**							(9,286)	(8,432)	(9,286)	(8,432)
<b>NET EXPENDITURE/(REVENUE) FOR THE YEAR</b>	<b>3,511</b>	<b>3,729</b>	<b>3,007</b>	<b>3,309</b>	<b>2,197</b>	<b>1,394</b>	<b>(9,286)</b>	<b>(8,432)</b>	<b>(571)</b>	<b>–</b>

\* The name and purpose of each program is summarised in note 7.

\*\* Appropriations are made on an agency basis and not to individual programs. Consequently, government contributions must be included in the 'Not Attributable' column.

# Ombudsman's Office

## Summary of Compliance with Financial Directives

### For the year ended 30 June 2001

	2001				2000			
	Rec*	Exp**	Cap*	Exp**	Rec*	Exp*	Cap*	Exp*
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>ORIGINAL BUDGET APPROPRIATION/EXPENDITURE</b>								
• <i>Appropriation Act</i>	7,733	7,728	–	–	7,646	7,494	379	379
• Additional Appropriations	–	–	–	–	–	–	–	–
• s 21A PF&AA – special appropriation	–	–	–	–	–	–	–	–
• s 24 PF&AA – transfer of functions between departments	–	–	–	–	–	–	–	–
• s 26 PF&AA – Commonwealth specific purpose payments	–	–	–	–	–	–	–	–
	<b>7,733</b>	<b>7,728</b>	<b>–</b>	<b>–</b>	<b>7,646</b>	<b>7,494</b>	<b>379</b>	<b>379</b>
<b>OTHER APPROPRIATIONS/EXPENDITURE</b>								
• Treasurer's Advance	680	680	127	127	187	187	–	–
• s. 22 – expenditure for certain works and services	–	–	–	–	47	47	–	–
• Transfers from another agency (s. 26 of the <i>Appropriation Act</i> )	–	–	–	–	–	–	–	–
	680	680	127	127	234	234	–	–
<b>Total Appropriations/Expenditure/Net Claim on Consolidated Fund</b>	<b>8,413</b>	<b>8,408</b>	<b>127</b>	<b>127</b>	<b>7,880</b>	<b>7,728</b>	<b>379</b>	<b>379</b>
<b>Amount drawn down against appropriation</b>		<b>8,408</b>		<b>127</b>		<b>7,863</b>		<b>379</b>
<b>Liability to Consolidated Fund*</b>		–		–		<b>135</b>		–

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed).

The Liability to Consolidated Fund represents the difference between the 'Amount Drawdown against Appropriation' and the 'Total Expenditure/Net Claim on Consolidated Fund'.

Rec\* = Recurrent Appropriation

Exp\* = Expenditure

Cap\* = Capital Appropriation

Exp\*\* = Expenditure/Net Claim on Consolidated Fund

# Ombudsman's Office

## Notes to the Financial Statements

### For the year ended 30 June 2001

#### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### (a) Reporting Entity

The Ombudsman's Office, as a reporting entity, comprises all the operating activities of the Office.

The reporting entity is consolidated as part of the NSW Total State Sector and as part of the NSW Public Accounts.

##### (b) Basis of Accounting

The Office's financial statements are a general purpose financial report which has been prepared on an accruals basis and in accordance with applicable Australian Accounting Standards, other authoritative pronouncements of the Australian Accounting Standards Board (AASB), Urgent Issues Group (UIG) Consensus Views, the requirements of the Public Finance and Audit Act and Regulations, and the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer under section 9(2)(n) of the Act.

Where there are inconsistencies between the above requirements, the legislative provisions have prevailed.

In the absence of a specific Accounting Standard, other authoritative pronouncement of the AASB or UIG Consensus View, the hierarchy of other pronouncements as outlined in AAS 6 'Accounting Policies' is considered.

The financial statements are prepared in accordance with the historical cost convention. All amounts are rounded to the nearest one thousand dollars. All amounts are expressed in Australian currency. Except for the capitalisation of assets which was increased from \$2,000 to \$5,000, the accounting policies adopted are consistent with those of the previous year.

##### (c) Revenue Recognition

Revenue is recognised when the Office has control of the good or right to receive, it is probable that the economic benefits will flow to the Office and the amount of revenue can be measured reliably. Additional comments regarding the accounting policies for the recognition of revenue are discussed below.

###### (i) Parliamentary Appropriations and Contributions from Other Bodies

Parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as revenues when the Office obtains control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to the above is when appropriations are unspent at year-end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are now accounted for as liabilities rather than revenue.

The liability is disclosed in Note 14 as part of 'other current liabilities'. The Office has paid last year's liability to the Consolidated Fund of \$135,000.

###### (ii) Sales of Goods and Services

Revenue from sale of goods and services comprises revenue from the provision of products or services i.e. user charges. User charges are recognised as revenue when the Office obtains control of the assets that result from them.

###### (iii) Investment Income

Interest revenue is recognised as it accrues.

##### (d) Employee Entitlements

###### (i) Wages And Salaries, Annual Leave, Sick Leave and On-costs

Liabilities for wages and salaries, annual leave and vesting sick leave are recognised and measured as the amount unpaid at the reporting date at current pay rates in respect of employees' services up to that date.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the entitlements accrued in the future.

The outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee entitlements to which they relate have been recognised.

###### (ii) Long Service Leave and Superannuation

The Office's liabilities for long service leave and superannuation are assumed by the Crown Entity. The Office accounts for the liability as having been extinguished resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of Employee entitlements and other Liabilities'.

Long service leave is measured on a nominal basis. The nominal method is based on the remuneration rates at year end for all employees with five or more years of service. It is considered that this measurement technique produces results not materially different from the estimate determined by using the present value basis of measurement.

# Ombudsman's Office

## Notes to the Financial Statements

### For the year ended 30 June 2001

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

#### **(e) Insurance**

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government agencies. The expense (premium) is determined by the Fund Manager based on past experience.

#### **(f) Accounting for the Goods and Services Tax (GST)**

Revenues, expenses and assets are recognised net of the amount of GST, except:

- the amount of GST incurred by the Office as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the cost of acquisition of an asset or as part of an item of expense.
- receivables and payables are stated with the amount of GST included.

#### **(g) Acquisitions of Assets**

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is determined as the fair value of the assets given as consideration plus the costs incidental to the acquisition.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

#### **(h) Plant and Equipment**

During the year the Office reviewed its policy on the capitalisation of expenditure. The review took into consideration the NSW Treasury capitalisation guidelines, the movement in the cost of goods and services and expenditure patterns over time. The Ombudsman determined that the appropriate capitalisation threshold for the Office should be increased from \$2,000 to \$5,000 commencing from 1 July 2000.

The change has no impact on the statement of financial performance for this year as no assets were purchased between \$2,000 and \$5,000.

Values are determined on an asset-by-asset basis, although items that form part of a network are aggregated as a single asset and depreciated if their total value exceeds \$5,000.

#### **(i) Depreciation/Amortisation of Non-Current Physical Assets**

Depreciation/amortisation is provided for on a straight line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the Office.

Depreciation/Amortisation rates used are:

Computer equipment	33.33%
Office equipment	20%
Furniture and fittings	10%
Leasehold improvement	life of lease contract

#### **(j) Maintenance and repairs**

The costs of maintenance are charged as expenses as incurred, except where they relate to the replacement of a component of an asset, in which case the costs are capitalised and depreciated.

#### **(k) Leased Assets**

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is recognised at its fair value at the inception of the lease. The corresponding liability is established at the same amount. Lease payments are allocated between the principal component and the interest expense. The Office has no finance lease arrangement with another entity.

Operating lease payments are charged to the statement of Financial Performance in the periods in which they are incurred.

Lease incentives received on entering non-cancellable operating leases are recognised as a lease liability. This liability is reduced on a straight-line basis over the lease term.

#### **(l) Financial Instruments**

Financial instruments give rise to positions that are financial assets or liabilities (or equity instruments) of either the Office or its counterparties. These include cash at bank, receivables and accounts payable. Classes of instruments are recorded at cost and are carried at net fair value.



# Ombudsman's Office

## Notes to the Financial Statements

### For the year ended 30 June 2001

#### (i) Cash

Cash comprises cash on hand and bank balances within the Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11am unofficial cash rate adjusted for a management fee to Treasury. The average interest rate during the period and the period end interest rate were 4.83 % (4.25% 1999–00) and 4.0 % (5.0% 1999–00) respectively. The Office does not have any bank overdraft facility.

#### (ii) Receivables

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectable are written off. A provision for doubtful debts is raised when some doubt as to collection exists. The credit risk is the carrying amount (net of any provision for doubtful debts). No interest is earned on trade debtors. The carrying amount approximates net fair value. Sales of publications are made on 14 day terms. Fees for workshop are paid in advance or in accordance with the Ombudsman's policy on the provision of credit.

#### (iii) Trade Creditors and Accruals

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. No interest was paid during the 2000–01 year (nil for 1999–00).

#### (m) Reclassification of financial information

As a result of applying AASI 'Statement of Financial Performance' and AAS36 'Statement of Financial Position', the format of the Statement of Financial Performance (previously referred to as the Operating Statement) and the Statement of Financial Position has been amended. As a result of applying these Accounting Standards, a number of comparative amounts were represented or reclassified to ensure comparability with the current reporting period.

#### (n) Budgeted amounts

The budgeted amounts are drawn from the budgets as formulated at the beginning of the financial year and with any adjustments for the effects of additional appropriations s 21A, s 24 and/or s 26 of the *Public Finance and Audit Act 1983*.

The budgeted amounts in the Statement of Financial Performance and Statement of Cash Flows are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Statement of Financial Position, the amounts vary from the Budget Papers as the opening balances of the budgeted amounts are based on carried forward actual amounts i.e. per the audited financial statements (rather than the carried forward estimates).

## 2. EXPENSES

	2001 \$'000	2000 \$'000
(a) Employee related expenses comprise the following specific items:		
Salaries and wages (inc. rec. leave)	6,122	5,412
Superannuation	488	385
Long service leave	233	123
Workers' compensation insurance	32	31
Payroll tax and fringe benefits tax	397	366
Payroll tax on superannuation	30	24
	<b>7,302</b>	<b>6,341</b>
(b) Other operating expenses		
Auditor's remuneration		
– audit or review of the financial reports	15	15
Operating lease rental expense		
– minimum lease payments	701	831
IT leasing		
–minimum lease payments	110	55
Insurance	9	6
Consultants fee	34	25
Fees	446	541
Telephones	121	115
Stores	138	154
Training	75	102
Printing	118	167
Travel	106	68
Motor vehicle	22	23
Postal and courier	34	28
Advertising	44	25
Books and subscriptions	51	39
Energy	21	21
	<b>2,045</b>	<b>2,215</b>
(c) Maintenance		
Repairs and maintenance	64	40
	<b>64</b>	<b>40</b>

# Ombudsman's Office

## Notes to the Financial Statements

### For the year ended 30 June 2001

Note 2 (continued)

	2001 \$'000	2000 \$'000
(d) Depreciation and Amortisation expense		
Depreciation		
Plant and equipment	190	175
Amortisation		
Plant and equipment	43	108
	<b>233</b>	<b>283</b>

**3. REVENUES**

	2001 \$'000	2000 \$'000
(a) Sale of goods and services		
Sale of Publications	37	48
Other	–	1
	<b>37</b>	<b>49</b>
(b) Investment Income		
Bank interest	39	43
	<b>39</b>	<b>43</b>
(c) Grants and contributions		
Police Complaints Case Management project (PCCM)	760	262
Trainee salary subsidy (ATS/Career Start)	3	–
	<b>763</b>	<b>262</b>

*Conditions on contributions*

The Ombudsman's participation in the PCCM project is funded by a grant from the Premier's Department. Although this grant is recognised as retained revenue, the Ombudsman has limited discretion over its use as it is solely for the purposes of the PCCM project. The Ombudsman is required to provide expenditure details to the PCCM Steering Committee to ensure that funds are appropriately spent.

(d) Other Revenue		
Workshops	67	69
AUSAID PNG Ombudsman Institutional Strengthening Project	9	14
Mediation fee	–	1
National Investigation Conference	11	–
Others	3	3
	<b>90</b>	<b>87</b>

**4. GAIN/(LOSS) ON DISPOSAL OF NON-CURRENT ASSETS**

	2001 \$'000	2000 \$'000
Gain/(loss) on disposal of Plant and Equipment		
Proceeds from disposal	1	8
Written down value of assets disposed	(1)	(2)
<b>Gain/(loss) on disposal of non current assets</b>	<b>–</b>	<b>6</b>

**5. APPROPRIATIONS**

	2001 \$'000	2000 \$'000
(a) <b>Recurrent appropriations</b>		
Total recurrent drawdowns from Treasury (per Summary of Compliance)	8,408	7,863
Less: Liability to Consolidated Fund (per Summary of Compliance)	–	(135)
Less: Repayments to Consolidated Fund –lapsed appropriation	–	(207)
	<b>8,408</b>	<b>7,521</b>
Comprising:		
Recurrent appropriations (per Statement of Financial Performance)	8,408	7,521
<b>Total</b>	<b>8,408</b>	<b>7,521</b>
(b) <b>Capital appropriations</b>		
Total capital drawdowns from Treasury (per Summary of Compliance)	127	379
	<b>127</b>	<b>379</b>
Comprising:		
Capital appropriations (per Statement of Financial Performance)	127	379
<b>Total</b>	<b>127</b>	<b>379</b>

# Ombudsman's Office

## Notes to the Financial Statements

### For the year ended 30 June 2001

#### 12. CURRENT LIABILITIES – PAYABLES

	2001 \$'000	2000 \$'000
Accrued expenses/trade creditors	75	172
Payroll tax	10	8
Superannuation	17	7
Workshop income distribution	4	6
Fringe benefits tax	1	4
GST payable	1	–
	<b>108</b>	<b>197</b>

#### 13. CURRENT LIABILITIES – EMPLOYEE ENTITLEMENTS

	2001 \$'000	2000 \$'000
Recreation leave	471	395
Annual leave loading	72	55
Accrued salaries and wages	162	127
Payroll tax on recreation and long service leave	85	71
Workers compensation on recreation leave	5	4
Aggregate employee entitlements	<b>795</b>	<b>652</b>

#### 14. CURRENT LIABILITIES – OTHER

	2001 \$'000	2000 \$'000
Lease incentives	34	34
Liability to Consolidated Fund	–	135
	<b>34</b>	<b>169</b>

#### 15. NON-CURRENT LIABILITIES – OTHER

	2001 \$'000	2000 \$'000
Lease incentives	250	284
	<b>250</b>	<b>284</b>

#### 16. CHANGES IN EQUITY

	2001 \$'000	2000 \$'000
Balance at the beginning of the financial year	593	593
Surplus/(deficit) for the year	571	–
<b>Balance at the end of the financial year</b>	<b>1,164</b>	<b>593</b>

#### 17. COMMITMENTS FOR EXPENDITURE

	2001 \$'000	2000 \$'000
<b>(a) Capital Commitments</b>		
Aggregate capital expenditure for the acquisition of hardware and software for the Police Complaints Case Mgt (PCCM) Project contracted for at balance date and not provided for:		
Not later than one year	217	–
Later than one year & not later than 5 years	–	–
Later than 5 years	–	–
Total (including GST)	<b>217</b>	<b>–</b>
<b>(b) Other expenditure commitments</b>		
Aggregate other expenditure for the acquisition of monitoring services for unauthorised access/intrusion of PCCM and minor purchases contracted for at balance date and not provided for:		
Not later than one year	102	–
Later than one yr & not later than 5 years	–	–
Later than 5 years	–	–
Total (including GST)	<b>102</b>	<b>–</b>
<b>(c) Operating Lease Commitments</b>		
Future non-cancellable operating lease rentals not provided for and payable:		
Not later than one year	886	885
Later than one year and not later than 5 years	3,049	3,184
Later than 5 years	2,430	3,177
Total (including GST)	<b>6,365</b>	<b>7,246</b>

# Ombudsman's Office

## Notes to the Financial Statements

### For the year ended 30 June 2001

Note 17 (continued)

An estimated 1/11 of this amount is expected to be claimable from Australian Taxation Office for input tax credit.

The Office has entered into a 10-year lease for office accommodation commencing 1 October 1999. As well office equipment is acquired on a lease basis through the NSW IT Master Lease Facility. The NSW State Fleet Services provides leased cars to the Office.

#### 18. BUDGET REVIEW

##### *Net Cost of Services*

There was a significant variation between the budgeted net cost of services and actual. This variation was the result of a number of factors. Firstly, expenses incurred by the Ombudsman's Child Protection Function and of the review of the *Crimes (Forensic Procedures) Act 2000* (DNA testing) were higher than budget by \$769,000. Additional funding was provided for this purpose by Treasurer's Advances. As well there were unbudgeted recurrent expenses of \$180,000 relating to the Police Complaints Case Management system.

Total retained revenue was lower than anticipated. Delays with the development of the Police Complaints Case Management system resulted in the Office not receiving all the funding (as a grant) for this project.

##### *Asset and liabilities*

Current assets were \$840,000 higher than budget. This occurred due to significant unspent Police Complaints Case Management funds at year end. As well, other current assets increased partly due to the Office prepaying PCCM related security training.

Non-current assets were lower than anticipated due to delays in finalising the PCCM project. The expected completion of this project is now November 2001.

##### *Cash flows*

Cash flow from operating activities was \$328,000 lower than budget due to increased payments for the Ombudsman's Child Protection function and for the review of the DNA legislation *Crimes (Forensic Procedures) Act 2000*. As well, there were payments of a recurrent nature for the Police Complaints Case Management system which were not budgeted for.

Cash flows from investing activities was significantly lower than anticipated. There were delays with the PCCM project and the expected completion date is now November 2001.

#### 19. RECONCILIATION OF NET CASH FLOWS FROM

##### OPERATING ACTIVITIES TO NET COST OF SERVICES

	2001 \$'000	2000 \$'000
Net cash used on operating activities	548	723
Cash flows from Government/ Appropriations	(8,535)	(7,900)
Acceptance by the Crown Entity of employee entitlements and other liabilities	(751)	(532)
Depreciation/Amortisation	(233)	(283)
Decrease/(increase) in provisions	(143)	(145)
Increase/(decrease) in receivables	34	35
Increase/(decrease) in prepayments and other assets	107	31
Decrease/(increase) in creditors	89	(97)
Decrease/(increase) in other liabilities	169	(453)
Lease incentives	–	183
Net loss/(gain) on disposal of plant and equipment	–	6
<b>Net cost of services</b>	<b>(8,715)</b>	<b>(8,432)</b>

#### 20. RESTRICTED ASSETS

	2001 \$'000	2000 \$'000
Police Complaints Case Management system funds	355	9
	<b>355</b>	<b>9</b>

The Ombudsman received funding in the form of a grant from the Premier's Department for the Police Complaints Case Management System. These cover hardware and software acquisition, development, data migration from legacy systems and security infrastructure. The Ombudsman has limited discretion with these funds as they are specifically for the project.

At year end, \$355,000 of PCCM funds were unspent. The project is ongoing.

END OF AUDITED FINANCIAL STATEMENTS

## Appendix A: Police complaints profile

We manage complaints about police by creating a file for each complaint. Each file may contain a number of allegations about a single incident. For example, a person arrested following a fight at a hotel may complain to us about unreasonable arrest, assault and failure to return property. One incident, one complaint, many allegations. In 4,904 cases determined this year, 8,657 allegations were made. The following tables list these in categories and show how each was determined.

KEY	
1	Declined
2	Adverse finding
3	No adverse finding
4	Conciliation/other

Category	1	2	3	4	Total
<b>Criminal conduct</b>					
Conspiracy/cover up	55	6	112	0	173
Theft	22	8	101	1	132
Consorting	12	6	43	0	61
Bribery/extortion	18	0	34	0	52
Dangerous/culpable driving	0	2	0	0	2
Drug offences	56	18	81	0	155
Fraud	1	6	25	0	32
Perjury	10	3	15	1	29
Sexual assault	6	5	21	0	32
Murder/manslaughter	3	0	8	0	11
Other	15	15	35	0	65
<b>Total</b>	<b>198</b>	<b>69</b>	<b>475</b>	<b>2</b>	<b>744</b>
<b>Assault</b>					
Physical/mental Injury	51	26	291	5	373
No physical/mental injury	18	6	102	6	132
<b>Total</b>	<b>69</b>	<b>32</b>	<b>393</b>	<b>11</b>	<b>505</b>
<b>Investigations and prosecutions</b>					
Forced confession	1	0	7	0	8
Fabrication	37	9	50	1	97
Unjust prosecution	23	1	31	8	63
Suppression of evidence	2	0	11	0	13
Faulty investigation/prosecution	103	156	266	221	746
Disputes traffic infringement notice	118	0	4	5	127
Failure to prosecute	23	17	98	80	218
Failure to review prosecution	3	0	0	0	3
<b>Total</b>	<b>310</b>	<b>183</b>	<b>467</b>	<b>315</b>	<b>1,275</b>
<b>Arrest/detention/warrant</b>					
Unjustified search/entry	11	1	54	22	88
Unnecessary use of force/damage/resources	23	4	133	34	194
Faulty search warrant procedure	3	2	29	6	40
Strip search	4	1	25	6	36
Improper detention of intoxicated person	0	0	2	0	2
Unreasonable use of arrest/detention powers	31	5	125	27	188
<b>Total</b>	<b>72</b>	<b>13</b>	<b>368</b>	<b>95</b>	<b>548</b>

<b>Category</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Total</b>
<b>Inadvertent wrong treatment</b>					
Administrative matter arising from investigation	13	0	1	0	14
Property damage	2	3	11	4	20
<b>Total</b>	<b>15</b>	<b>3</b>	<b>12</b>	<b>4</b>	<b>34</b>
<b>Abusive remarks or demeanour</b>					
Race related	8	5	18	13	44
Other social prejudice	2	1	2	5	10
Traffic rudeness	40	3	12	86	141
Other	37	29	122	178	366
<b>Total</b>	<b>87</b>	<b>38</b>	<b>154</b>	<b>282</b>	<b>561</b>
<b>Management issues</b>					
Summons/warrant/ord	2	2	6	6	16
Delay in answering correspondence	13	1	2	4	20
Inappropriate permit/licence action	4	1	2	0	7
Condition of cells or premises	0	0	2	0	2
Deficient investigation	3	38	3	4	48
Deficient management	13	54	2	3	72
Other	91	13	14	20	138
<b>Total</b>	<b>126</b>	<b>109</b>	<b>31</b>	<b>37</b>	<b>303</b>
<b>Breach of police rules or procedure</b>					
Sexual harassment	2	17	15	2	36
Traffic/parking offences	27	23	47	30	127
Failure to provide/delay legal rights	14	10	91	36	151
Failure to return property	8	8	25	16	57
Threats/harassment	108	38	311	145	602
Unreasonable treatment	71	41	276	251	639
Drinking on duty	2	6	14	2	24
Faulty policing	10	3	11	15	39
Failure to take action	152	60	195	353	760
Breach of police rules and regulations	87	761	358	29	1235
Failure to identify/wear number	5	8	30	9	52
Misuse of office	25	18	59	9	111
Other	38	30	37	13	118
<b>Total</b>	<b>549</b>	<b>1023</b>	<b>1469</b>	<b>910</b>	<b>3951</b>
<b>Information</b>					
Inappropriate disclosure of confidential information	24	36	114	16	190
Failure to provide information/notify	14	59	72	106	251
Inappropriate access to confidential information	9	54	74	6	143
Providing false information	19	41	77	15	152
<b>Total</b>	<b>66</b>	<b>190</b>	<b>337</b>	<b>143</b>	<b>736</b>
<b>Summary of allegations</b>					
<b>Total</b>	<b>1,492</b>	<b>1,660</b>	<b>3,706</b>	<b>1,799</b>	<b>8,657</b>

## Appendix B: Public sector agencies—summary of complaint determinations\*

KEY		
Assessment only	Preliminary or informal investigations	Formal investigations
1 Outside our jurisdiction	7 Substantive advice, information provided without formal finding of wrong conduct	13 Resolved during investigation
2 Trivial/remote/insufficient interest/commercial matter	8 Advice/explanation provided where no or insufficient evidence of wrong conduct	14 Investigation discontinued
3 Right of appeal or redress	9 Further investigation declined on grounds of resource/priority	15 No adverse finding
4 Substantive explanation or advice provided	10 Resolved to Ombudsman's satisfaction	16 Adverse finding
5 Premature, referred to agency/concurrent representation	11 Resolved by agency prior to our intervention	<b>17 Total</b>
6 Investigation declined on resource/priority grounds	12 Conciliated/mediated	

Public sector agency	Assessment only						Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
Aboriginal Affairs, Dept of	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Ageing, Disability and Home Care, Dept of	1	1	0	1	0	0	2	0	0	0	1	0	0	0	0	0	6
NSW Agriculture	1	0	0	0	2	0	0	1	0	0	0	0	0	0	0	0	4
Ambulance Service of NSW	6	0	1	0	7	0	0	1	0	0	0	0	0	0	0	0	15
Anti-Discrimination Board	0	1	1	0	1	0	2	1	0	1	0	0	0	0	0	0	7
Attorney General's Dept	3	0	8	6	3	0	13	3	1	4	6	0	0	0	0	0	47
Board of Veterinary Surgeons of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Centennial Park and Moore Park Trust	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Central Coast AHS*	0	0	1	1	1	0	0	0	0	0	0	0	0	0	0	0	3
Central Sydney AHS*	0	1	0	1	0	0	0	0	0	2	0	0	0	0	0	0	4
Charles Sturt University, Riverina	0	0	1	0	1	0	0	1	0	0	0	0	0	0	0	0	3
CityRail	0	0	2	0	0	0	1	0	0	0	0	0	0	0	0	0	3
Commission for Children and Young People	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Community Relations Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Community Services, Dept of	13	0	3	4	35	0	32	6	0	8	2	0	0	0	0	0	103
Deniliquin Aboriginal Land Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Dental Board of NSW	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Dental Technicians Registration Board	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Office of the Director of Public Prosecutions	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Education and Training, Dept of	21	0	1	7	11	1	18	7	1	9	6	0	0	0	0	0	81
Eastern Sydney AHS*	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Energy Australia	0	1	4	1	2	0	0	1	0	0	0	0	0	0	0	0	9
Environment Protection Authority	0	0	0	2	2	0	3	0	0	1	0	0	0	0	0	0	8
Ethnic Affairs Commission	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Fair Trading, Dept of	2	2	1	4	7	0	22	2	0	5	2	0	0	0	0	0	47
NSW Fire Brigades	0	0	0	1	2	0	0	0	0	1	0	0	0	0	0	0	4
First State Superannuation Trustee Corp	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Gaming and Racing, Dept of	0	0	0	1	1	0	3	0	0	0	0	0	0	0	0	0	5
Goldenfields Water County Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Great Southern Energy	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Greyhound Racing Authority	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Harness Racing, NSW	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Health Care Complaints Commission	1	1	0	2	3	0	4	0	1	2	1	0	0	0	0	0	15
Health, Dept of	2	1	1	5	4	0	6	0	0	1	1	0	0	0	0	0	21
Healthquest	1	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	3
Home Care Service of NSW	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Home Purchase Assistance Authority	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Housing, Dept of	0	6	8	8	31	0	41	8	0	22	7	0	0	0	0	0	131
Hunter AHS*	1	0	1	1	2	0	0	0	0	1	0	0	0	0	0	0	6

\*AHS=Area health service

\*This appendix shows the determinations made in relation to public sector agencies other than the police service, local councils, the departments of Corrective Services and Juvenile Justice and the Corrections Health Service.

**KEY**

Assessment only		Preliminary or informal investigations					Formal investigations						
1	Outside our jurisdiction	7	Substantive advice, information provided without formal finding of wrong conduct					13	Resolved during investigation				
2	Trivial/remote/insufficient interest/commercial matter	8	Advice/explanation provided where no or insufficient evidence of wrong conduct					14	Investigation discontinued				
3	Right of appeal or redress	9	Further investigation declined on grounds of resource/priority					15	No adverse finding				
4	Substantive explanation or advice provided	10	Resolved to Ombudsman's satisfaction					16	Adverse finding				
5	Premature, referred to agency/concurrent representation	11	Resolved by agency prior to our intervention					17	<b>Total</b>				
6	Investigation declined on resource/priority grounds	12	Conciliated/mediated										

Public sector agency	Assessment only					Preliminary or informal investigations							Formal investigations					Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Hunter Water Corp	0	0	0	0	1	0	2	0	0	0	1	0	0	0	0	0	4	
Illawarra AHS*	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2	
Independent Commission Against Corruption	2	0	0	0	0	0	1	0	0	0	0	0	0	2	1	0	6	
Industrial Relations, Dept of	0	1	0	0	2	0	4	0	0	0	0	0	0	0	0	0	7	
Integral Energy	2	5	7	0	1	0	0	0	0	1	0	0	0	0	0	0	16	
Koompahtoo Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
La Perouse Local Aboriginal Land Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
Land Tax office (Office of State Revenue)	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Land Titles Office	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Landcom (NSW Land and Housing Corp)	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Land and Water Conservation, Dept of	1	0	0	2	2	0	16	2	1	1	3	0	0	0	0	0	28	
Legal Aid Commission of NSW	2	3	4	2	2	0	3	0	0	0	0	0	0	0	0	0	16	
NSW Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Local Government, Dept of	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2	
Macquarie University	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2	
Mid North Coast AHS*	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	2	
Mine Subsidence Board	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2	
Motor Accidents Authority	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Motor Vehicle Repair Industry Council	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2	
Music Examinations Advisory Board	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
National Parks and Wildlife Service	1	0	0	3	5	0	0	2	0	2	2	0	0	1	0	0	16	
New England AHS*	0	0	1	2	0	0	1	0	0	0	0	0	0	0	0	0	4	
NSW Aboriginal Housing Office	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
NSW Aboriginal Land Council	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	1	3	
Northern Rivers AHS*	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Northern Sydney AHS*	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Northpower	1	2	5	4	0	0	0	0	0	0	0	0	0	0	0	0	12	
NSW Fisheries	1	0	1	1	4	0	7	0	0	0	0	1	0	0	0	0	15	
NSW Lotteries	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	3	
NSW Medical Board	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
NSW Treasury	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
NSW Valuer General's Office	1	0	2	0	0	0	1	1	0	3	0	0	0	0	0	0	8	
Nungaroo Local Aboriginal Land Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Nurses Registration Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
Office of the Protective Commissioner	2	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	4	
Office of State Revenue	0	0	1	4	3	2	6	0	1	4	1	0	0	0	0	0	22	
Olympic Co-ordination Authority	1	0	0	0	0	0	1	0	0	2	0	0	0	0	0	0	4	
Olympic Roads and Traffic Authority	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	
Premier's Dept	1	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	3	
Privacy NSW	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	0	3	
Psychologists Registration Board	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2	
Public Authority Not Named	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Public Works and Services, Dept of	1	0	0	1	1	0	1	2	0	1	0	0	0	0	0	0	7	
Rail Access Corp	0	0	0	0	2	0	2	0	0	0	0	0	0	0	0	0	4	
Rail Services Australia	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Red Chief Aboriginal Land Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	

\*AHS=Area health service



**KEY****Assessment only**

- 1 Outside our jurisdiction  
 2 Trivial/remote/insufficient interest/commercial matter  
 3 Right of appeal or redress  
 4 Substantive explanation or advice provided  
 5 Premature, referred to agency/concurrent representation  
 6 Investigation declined on resource/priority grounds

**Preliminary or informal investigations**

- 7 Substantive advice, information provided without formal finding of wrong conduct  
 8 Advice/explanation provided where no or insufficient evidence of wrong conduct  
 9 Further investigation declined on grounds of resource/priority  
 10 Resolved to Ombudsman's satisfaction  
 11 Resolved by agency prior to our intervention  
 12 Conciliated/mediated

**Formal investigations**

- 13 Resolved during investigation  
 14 Investigation discontinued  
 15 No adverse finding  
 16 Adverse finding

**17 Total**

Public sector agency	Assessment only					Preliminary or informal investigations						Formal investigations				Total	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		16
Registry of Births, Deaths and Marriages	0	0	0	0	1	0	1	0	0	2	0	0	0	0	0	0	4
Rental Bond Board	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Residential Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Rice Marketing Board for the State of NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority of NSW	0	0	4	14	24	0	17	1	0	12	3	0	0	0	0	0	75
Rural Assistance Authority of NSW	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Rural Fire Service, Department of	0	0	0	0	1	0	3	0	0	1	0	0	0	0	0	0	5
Rural Lands Protection Board	0	0	0	2	1	0	1	0	0	1	0	0	0	0	0	0	5
South Eastern Sydney AHS*	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
South Western AHS*	0	1	2	0	1	0	0	0	0	0	0	0	0	0	0	0	4
Southern AHS*	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
Southern Cross University	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Southern Sydney AHS*	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
State Debt Recovery Office	0	0	6	16	4	0	6	3	0	4	3	0	0	0	0	0	42
State Electoral Office	1	0	0	1	1	0	0	0	0	1	0	0	0	0	0	0	4
State Emergency Service	0	0	0	0	1	0	2	0	0	1	0	0	0	0	0	0	4
State Forests of NSW	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State Library of NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
State Rail Authority of NSW	6	1	7	3	16	0	11	3	0	9	4	0	0	0	0	0	60
State Super Investment and Mgt Corp	0	3	0	1	1	0	10	3	0	5	3	0	0	0	0	0	26
State Transit Authority of NSW	2	0	1	0	6	1	3	0	0	1	0	0	0	0	0	0	14
Superannuation Administration Corp	0	0	0	0	2	0	1	1	0	1	1	0	0	0	0	0	6
Sydney Opera House	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
SOCO	0	0	1	2	0	2	3	1	0	3	1	0	0	0	0	0	13
Sydney Water Corp	0	1	2	1	3	1	2	0	0	1	0	0	0	0	0	0	11
TAFE	0	0	0	1	1	0	1	0	0	1	0	0	0	0	0	0	4
Tourism NSW	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
TransGrid	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Transport, Dept of	1	2	1	6	5	1	7	1	0	11	0	0	0	0	0	0	35
Universities Admissions Centre	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
University of New England	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
University of New South Wales	0	1	0	1	0	0	1	2	0	0	0	0	0	0	0	0	5
University of Newcastle	0	0	0	0	0	0	3	1	0	0	0	0	0	0	0	0	4
University of Sydney	0	2	1	2	1	0	3	0	0	1	0	0	0	0	0	2	12
University of Technology, Sydney	0	0	0	1	0	0	1	0	1	0	0	0	0	0	0	0	3
University of Western Sydney	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	0	3
University of Wollongong	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Urban Affairs and Planning, Dept of	1	1	0	1	1	0	0	1	0	4	0	0	0	0	0	0	9
Veterinary Surgeons Investigating Committee	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	0	3
VETAB	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Waterways Authority	0	0	0	1	3	0	4	2	0	0	0	1	0	0	0	0	11
Western Sydney AHS*	1	1	0	1	0	0	1	0	0	0	0	0	0	0	0	0	4
WorkCover NSW	2	0	1	4	4	0	10	1	0	1	0	0	0	0	0	0	23
<b>Total</b>	<b>89</b>	<b>43</b>	<b>85</b>	<b>137</b>	<b>232</b>	<b>8</b>	<b>307</b>	<b>67</b>	<b>6</b>	<b>143</b>	<b>50</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>4</b>	<b>1177</b>

\*VETAB=Vocational Education Training Accreditation Board

## Appendix C: Local councils complaints

**Figure 1: Nature of local council complaints**

Nature of complaint	Written	Oral
Building	7	14
Community services	14	23
Corporate/customer services	380	494
Development	142	589
Enforcement	114	275
Engineering services	73	160
Environmental services	62	257
Management	5	7
Misconduct	56	99
Object to a decision	18	115
Rates and charges	43	192
Strategic planning	20	56
Other	21	87
Non-jurisdictional issues	4	41
<b>Total</b>	<b>959</b>	<b>2,409</b>

**Building:** Building inspections, objections to building applications, conditions/refusal of application, processing

**Community services:** Parks and reserves, other facilities

**Corporate/customer services:** Meetings, elections, tendering, provision of information, contracts, resumptions, unfair treatment, liability, complaint handling

**Development:** Objection to development applications, conditions/refusals of applications, processing

**Enforcement:** Failure to enforce BA/DA conditions, orders, unauthorised works

**Engineering services:** Failure to carry out work/inadequate work, road closures/access, parking, traffic, drainage/flooding, works

**Environmental services:** Pollution, tree preservation, noise, health inspections, garbage collection, dog orders

**Misconduct:** Misconduct of councillors/staff, conflict of interest, pecuniary/non-pecuniary interest

**Figure 2: Local council complaints (written) received and determined—five year comparison**

	Received	Determined
96/97	805	796
97/98	976	987
98/99	824	838
99/00	848	823
00/01	959	956

## Local councils—summary of complaint determinations

KEY		
<b>Assessment only</b>		
1	Outside our jurisdiction	
2	Trivial/remote/insufficient interest/commercial matter	
3	Right of appeal or redress	
4	Substantive explanation or advice provided	
5	Premature, referred to agency/concurrent representation	
6	Investigation declined on resource/priority grounds	
<b>Preliminary or informal investigations</b>		
7	Substantive advice, information provided without formal finding of wrong conduct	
8	Advice/explanation provided where no or insufficient evidence of wrong conduct	
9	Further investigation declined on grounds of resource/priority	
10	Resolved to Ombudsman's satisfaction	
11	Resolved by agency prior to our intervention	
12	Conciliated/mediated	
<b>Formal investigations</b>		
13	Resolved during investigation	
14	Investigation discontinued	
15	No adverse finding	
16	Adverse finding	
17	<b>Total</b>	

Local council	Assessment only					Preliminary or informal investigations						Formal investigations				Total	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		16
Albury City Council	0	0	0	1	0	0	0	0	0	2	0	0	0	0	0	0	3
Armidale Dumaresq Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Ashfield Municipal Council	0	0	0	1	2	0	7	0	0	2	0	0	0	0	0	0	12
Auburn Council	0	0	0	1	0	0	3	1	0	0	0	0	0	0	0	0	5
Ballina Shire Council	0	0	1	1	0	0	4	0	0	1	0	0	0	0	0	0	7
Balranald Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Bankstown City Council	0	0	1	2	1	0	4	1	0	2	2	0	0	0	0	0	13
Bathurst City Council	0	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0	3
Baulkham Hills Shire Council	0	1	2	3	3	0	6	0	0	0	1	0	0	0	0	0	16
Bega Valley Shire Council	0	0	0	0	0	0	3	0	0	2	2	0	0	0	0	0	7
Bellingen Shire Council	1	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	3
Bingara Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	0	2	3	0	0	0	4	1	0	2	0	0	0	0	0	0	12
Bland Shire Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2
Blue Mountains City Council	0	0	0	1	3	0	6	0	0	3	0	0	0	0	0	0	13
Bombala Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Boorowa Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Botany Bay City Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2
Bourke Shire Council	0	0	0	0	1	0	3	1	0	0	0	0	0	0	0	0	5
Brewarrina Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Burwood Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	2
Byron Shire Council	0	1	1	0	0	0	7	2	0	1	1	0	1	0	0	0	14
Cabonne Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Camden Council	0	0	0	2	1	0	2	0	0	3	0	0	0	0	0	0	8
Campbelltown City Council	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Canada Bay City Council	0	0	0	0	0	1	1	0	0	2	0	0	0	0	0	0	4
Canterbury City Council	0	0	1	0	1	0	2	0	0	3	0	0	0	0	0	0	7
Central Darling Shire Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Central Northern County Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Cessnock City Council	0	0	1	1	1	0	3	0	0	1	0	0	0	0	0	0	7
Clarence River County Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Coffs Harbour City Council	0	1	0	2	1	0	2	0	0	0	0	0	0	0	0	0	6
Concord Municipal Council	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0	2
Cooma-Monaro Shire Council	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Coonamble Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Copmanhurst Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Council Not Named	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Cowra Shire Council	0	0	2	0	0	0	1	0	0	0	0	0	0	0	0	0	3
Deniliquin Council	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	0	3
Drummoyne Council	0	0	0	2	1	0	4	0	0	1	0	0	0	0	0	0	8
Dungog Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Eurobodalla Shire Council*	0	0	2	20	1	0	57	0	0	2	0	0	0	0	0	0	82
Evans Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Fairfield City Council	1	0	0	2	0	0	1	2	1	2	0	0	0	0	0	0	9
Glen Innes Municipal Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Gosford City Council**	1	2	3	3	4	0	53	0	0	3	1	0	0	0	0	0	70

\* 69 complaints for Eurobodalla Council were about the tender for the management of a swimming pool owned by council

\*\*37 complaints for Gosford Council were about changes to the waste collection contract

**KEY**

Assessment only		Preliminary or informal investigations					Formal investigations						
1	Outside our jurisdiction	7	Substantive advice, information provided without formal finding of wrong conduct					13	Resolved during investigation				
2	Trivial/remote/insufficient interest/commercial matter	8	Advice/explanation provided where no or insufficient evidence of wrong conduct					14	Investigation discontinued				
3	Right of appeal or redress	9	Further investigation declined on grounds of resource/priority					15	No adverse finding				
4	Substantive explanation or advice provided	10	Resolved to Ombudsman's satisfaction					16	Adverse finding				
5	Premature, referred to agency/concurrent representation	11	Resolved by agency prior to our intervention					17	<b>Total</b>				
6	Investigation declined on resource/priority grounds	12	Conciliated/mediated										

Local council	Assessment only					Preliminary or informal investigations							Formal investigations					Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Goulburn City Council	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	3	
Great Lakes Council	0	0	0	1	0	0	4	0	0	0	0	0	0	0	0	0	5	
Greater Taree City Council	0	1	2	1	0	0	2	0	0	2	0	0	0	0	0	0	8	
Green Valley Council	0	0	0	2	1	0	1	0	0	1	1	0	0	0	0	0	6	
Gunnedah Shire Council	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	0	3	
Gunning Shire Council	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2	
Hastings Council	0	0	0	2	2	0	4	0	0	0	0	0	0	0	0	0	8	
Hawkesbury City Council	0	0	0	0	2	0	3	0	0	0	0	0	0	0	0	0	5	
Holroyd City Council	0	0	0	1	0	0	2	0	0	2	0	0	0	0	0	0	5	
Hornsby Shire Council	0	1	1	5	2	0	7	2	0	3	0	0	0	0	0	0	21	
Hume Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2	
Hunters Hill Municipal Council	0	0	2	1	0	0	0	0	0	3	0	0	0	0	0	0	6	
Hurstville City Council	0	0	1	1	1	0	1	0	0	2	0	0	0	0	0	0	6	
Inverell Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Kempsey Shire Council	0	0	1	0	2	0	2	0	0	1	0	0	0	0	0	0	6	
Kiama Municipal Council	0	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	3	
Kogarah Municipal Council	0	1	1	0	1	0	4	0	0	3	0	0	0	0	0	0	10	
Ku-ring-gai Council	0	0	2	2	0	0	3	0	0	1	0	0	0	0	0	0	8	
Kyogle Council	0	0	0	0	0	0	4	0	0	1	0	0	0	0	0	0	5	
Lake Macquarie City Council	0	2	0	5	2	0	9	0	1	6	2	0	0	0	0	0	27	
Lane Cove Council	0	0	2	1	0	0	1	0	0	0	0	0	0	0	0	0	4	
Leichhardt Municipal Council	0	0	1	1	2	0	4	0	0	1	0	0	0	0	0	0	9	
Lismore City Council	0	0	1	0	2	0	4	1	0	2	0	0	0	0	0	0	10	
Lithgow City Council	0	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0	3	
Liverpool City Council	0	0	1	1	2	0	4	0	0	2	0	0	0	0	0	0	10	
Lower Clarence County Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	
Macleay Shire Council	0	0	0	1	1	0	1	0	0	0	0	0	0	0	0	0	3	
Maitland City Council	0	0	0	0	1	0	1	1	0	0	0	0	0	0	0	0	3	
Manilla Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	
Manly Council	0	0	2	1	2	0	1	0	0	0	0	0	0	0	0	0	6	
Marrickville Council	0	1	0	1	1	0	4	1	0	0	0	0	0	0	0	0	8	
Mid Coast County Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
Moree Plains Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2	
Mosman Municipal Council	0	0	2	0	0	0	3	0	0	2	1	0	0	0	0	0	8	
Mudgee Shire Council	0	2	0	1	0	0	2	0	0	1	0	0	0	0	0	0	6	
Mulwaree Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Murrumbidgee Shire Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	
Muswellbrook Shire Council	0	0	0	1	1	0	2	0	0	1	0	0	0	0	0	0	5	
Nambucca Shire Council	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	0	3	
Narrabri Shire Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2	
Narrandera Shire Council	0	0	0	0	1	0	6	1	1	0	0	0	0	0	0	0	9	
Narromine Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	
Newcastle City Council	0	0	2	1	0	0	7	0	0	2	0	1	0	0	0	0	13	
North Sydney Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2	
Oberon Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Orange City Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	
Parramatta City Council	0	0	0	1	0	0	7	0	0	0	0	0	0	0	0	0	8	
Parry Shire Council	0	0	0	1	2	0	2	0	0	0	0	0	0	0	0	0	5	

**KEY****Assessment only**

- 1 Outside our jurisdiction  
 2 Trivial/remote/insufficient interest/commercial matter  
 3 Right of appeal or redress  
 4 Substantive explanation or advice provided  
 5 Premature, referred to agency/concurrent representation  
 6 Investigation declined on resource/priority grounds

**Preliminary or informal investigations**

- 7 Substantive advice, information provided without formal finding of wrong conduct  
 8 Advice/explanation provided where no or insufficient evidence of wrong conduct  
 9 Further investigation declined on grounds of resource/priority  
 10 Resolved to Ombudsman's satisfaction  
 11 Resolved by agency prior to our intervention  
 12 Conciliated/mediated

**Formal investigations**

- 13 Resolved during investigation  
 14 Investigation discontinued  
 15 No adverse finding  
 16 Adverse finding

**17 Total**

Local council	Assessment only					Preliminary or informal investigations						Formal investigations				Total	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		16
Penrith City Council	0	1	0	0	0	0	2	0	0	1	0	0	0	0	0	0	4
Pittwater Council	0	0	4	5	0	0	2	0	0	3	1	0	0	0	0	0	15
Port Stephens Council	0	2	2	1	1	0	3	0	0	2	0	0	0	0	0	0	11
Principal Certifying Authority	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
Pristine Waters Council	0	0	0	1	3	0	1	0	0	0	1	0	0	0	0	0	6
Queanbeyan City Council	0	2	0	5	0	0	2	0	1	1	0	0	0	0	0	0	11
Randwick City Council	0	0	0	0	1	0	3	1	0	1	0	0	0	0	0	0	6
Richmond River County Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Richmond River Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Richmond Valley Council	0	0	0	0	0	0	2	0	0	0	1	0	0	0	0	0	3
Rockdale City Council	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Rous County Council	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ryde City Council	0	0	1	0	0	0	5	0	0	0	1	0	0	0	0	0	7
Scone Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Shellharbour City Council	0	1	1	0	1	0	3	0	0	0	0	0	0	0	0	0	6
Shoalhaven City Council	0	0	4	3	6	0	7	1	0	5	0	0	0	0	0	0	26
Singleton Shire Council	0	0	0	1	7	0	1	0	0	2	0	0	0	0	0	0	11
Snowy River Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
South Sydney City Council	0	1	1	1	1	1	8	2	0	1	0	0	0	0	0	0	16
Strathfield Municipal Council	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Sutherland Shire Council	0	0	2	0	1	1	5	2	0	2	1	0	0	0	0	0	14
Sydney City	0	0	1	1	0	0	0	0	1	0	1	0	0	0	0	0	4
Tamworth City Council	0	0	0	0	2	0	2	0	0	0	0	0	0	0	0	0	4
Tenterfield Shire Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
The Council of the Merriwa Shire	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Tumbarumba Shire Council	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	3
Tumut Shire Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2
Tweed Shire Council	0	0	2	2	2	0	6	0	0	0	0	0	0	0	0	0	12
Ulmarra Shire Council	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Uralla Shire Council	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
Urana Shire Council	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2
Wagga Wagga City Council	0	0	1	0	0	0	2	0	0	0	0	0	0	0	0	0	3
Walgett Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Warren Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Warringah Council	0	0	3	2	6	0	10	1	2	4	0	0	0	0	0	0	28
Waverley Council	1	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	3
Weddin Shire Council	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Wellington Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Wentworth Shire Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
Willoughby City Council	0	0	0	1	1	0	2	0	0	2	0	0	0	0	0	0	6
Wingecarribee Shire Council	0	0	0	1	0	0	4	0	0	11	2	0	0	0	0	0	18
Wollondilly Shire Council	0	1	1	0	2	0	1	0	0	3	0	0	0	0	0	0	8
Wollongong City Council	0	0	2	3	3	0	4	2	0	1	1	0	0	0	0	0	16
Woollahra Municipal Council	0	0	2	1	0	0	4	0	0	6	2	0	0	0	0	0	15
Wyong Shire Council***	0	0	0	2	0	0	48	0	0	2	0	0	0	0	0	0	52
Yass Shire Council	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	2
Young Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
<b>Total</b>	<b>6</b>	<b>24</b>	<b>73</b>	<b>114</b>	<b>98</b>	<b>3</b>	<b>441</b>	<b>33</b>	<b>7</b>	<b>132</b>	<b>22</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>956</b>

\*\*\*38 complaints for Wyong Council were about changes to the waste collection contract

## Appendix D: Corrections complaints

**Figure 3: Corrections complaints received (written and oral) by institution**

	Written	Oral
Dept of Corrective Services* (DCS)	132	1,301
Bathurst	13	68
Berrima	2	4
Broken Hill	1	14
Cessnock	8	79
Corrective Services Academy	1	0
DCS Transport Unit	3	3
Glen Innes	0	3
Goulburn	22	151
Grafton	5	56
Industrial Training Centre	2	11
John Morony	6	78
Junee	34	202
Kirkconnell	4	40
Lithgow	6	92
Malabar Special Program Centre	14	122
Mannus	1	4
Metropolitan Remand Reception Centre	25	199
MMTC, Remand Centre	8	92
Mulawa/Norma Parker/Emu Plains	14	103
Oberon	0	7
Parklea	6	57
Parramatta	4	34
Parramatta Transitional Centre	0	6
Periodic detention centres	4	16
Prison Hospital	5	50
Probation and Parole Service	5	9
Serious Offenders Review Council	1	3
Silverwater	10	82
Special Purpose Centre Long Bay	5	25
St Heliers	3	28
Tamworth	2	16
Outside our jurisdiction	0	1
<b>Total</b>	<b>346</b>	<b>2,956</b>

**Figure 3: Juvenile justice complaints received (written and oral) by institution**

	Written	Oral
Acmena	1	16
Cobham	1	10
Department of Juvenile Justice	7	75
Frank Baxter	1	63
Kariong	1	27
Keelong	0	7
Orana	0	4
Reiby	1	2
Riverina	0	6
Yasmar	3	13
<b>Total</b>	<b>15</b>	<b>223</b>

\* Oral complaints are not always about issues involving the centre where the detainee resides. Many are about systemic practices or incidents at other centres.

**Figure 4: Corrections complaints\* (written) received and determined—five year comparison**

	Received	Determined
96/97	466	456
97/98	456	451
98/99	434	452
99/00	363	363
00/01	346	349

\*includes Department of Corrective Services and Australasian Correctional Management

## Corrections—summary of complaint determinations

### KEY

#### Assessment only

- 1 Outside our jurisdiction
- 2 Trivial/remote/insufficient interest/commercial matter
- 3 Right of appeal or redress
- 4 Substantive explanation or advice provided
- 5 Premature, referred to agency/concurrent representation
- 6 Investigation declined on resource/priority grounds

#### Preliminary or informal investigations

- 7 Substantive advice, information provided without formal finding of wrong conduct
- 8 Advice/explanation provided where no or insufficient evidence of wrong conduct
- 9 Further investigation declined on grounds of resource/priority
- 10 Resolved to Ombudsman's satisfaction
- 11 Resolved by agency prior to our intervention
- 12 Conciliated/mediated

#### Formal investigations

- 13 Resolved during investigation
- 14 Investigation discontinued
- 15 No adverse finding
- 16 Adverse finding
- 17 Total**

Agency	Assessment only					Preliminary or informal investigations						Formal investigations				Total	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		16
Australasian Correctional Management	1	0	0	4	1	0	16	5	0	3	0	0	0	0	0	0	30
Corrections Health Service	0	1	2	3	3	0	6	6	0	3	0	0	0	0	0	0	24
Corrective Services, Dept of	7	5	3	48	56	0	97	49	2	42	10	0	0	0	0	0	319
Juvenile Justice, Dept of	5	0	0	0	0	0	8	1	0	4	1	0	0	0	0	0	19
<b>Total</b>	<b>13</b>	<b>6</b>	<b>5</b>	<b>55</b>	<b>60</b>	<b>0</b>	<b>127</b>	<b>61</b>	<b>2</b>	<b>52</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>392</b>

## Appendix E: Freedom of Information complaints

### Freedom of information—summary of complaint determinations

KEY		
<b>Assessment only</b>	<b>Preliminary or informal investigations</b>	<b>Formal investigations</b>
1 Outside our jurisdiction	7 Substantive advice, information provided without formal finding of wrong conduct	13 Resolved during investigation
2 Trivial/remote/insufficient interest/commercial matter	8 Advice/explanation provided where no or insufficient evidence of wrong conduct	14 Investigation discontinued
3 Right of appeal or redress	9 Further investigation declined on grounds of resource/priority	15 No adverse finding
4 Substantive explanation or advice provided	10 Resolved to Ombudsman's satisfaction	16 Adverse finding
5 Premature, referred to agency/concurrent representation	11 Resolved by agency prior to our intervention	<b>17 Total</b>
6 Investigation declined on resource/priority grounds	12 Conciliated/mediated	

Agency	Assessment only						Preliminary or informal investigations						Formal investigations				Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
Ashfield Municipal Council	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Attorney General's Dept	0	0	0	1	0	1	3	0	0	3	0	0	0	0	0	0	8
Ballina Shire Council	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
Bathurst City Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Baulkham Hills Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Camden Council	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2
Community Services, Dept of	0	1	0	0	0	0	2	4	2	1	0	0	0	0	0	0	10
Corrections Health Service	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Corrective Services, Dept of	2	0	0	0	0	0	0	1	1	1	0	0	0	0	0	0	5
Education and Training, Dept of	0	0	0	0	0	0	2	2	1	3	0	0	0	1	0	0	9
Environment Protection Authority	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Fair Trading, Dept of	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2
Fairfield City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Fish Marketing Authority	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gaming & Racing, Dept of	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	0	3
Gosford City Council	0	0	0	0	0	0	2	1	0	1	0	0	0	0	0	0	4
Harness Racing NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Health, Dept of	0	0	0	0	0	0	0	1	0	7	0	0	0	0	0	0	8
Housing, Dept of	2	0	0	0	0	0	1	1	0	2	0	0	0	0	0	0	6
Hunter AHS*	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Independent Commission Against Corruption	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Industrial Relations, Dept of	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Integral Energy	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Kogarah Municipal Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Lachlan Shire Council	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Lake Macquarie City Council	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	0	3
Land and Water Conservation, Dept of	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Landcom (NSW Land & Housing Corp)	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Local Government, Dept of	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Macquarie University	0	0	0	0	0	0	0	0	0	3	0	0	1	0	0	0	4
Maitland City Council	0	0	0	0	0	0	2	1	0	0	0	0	0	0	0	0	3
National Parks & Wildlife Service	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
New England AHS*	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
NSW Aboriginal Land Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Newcastle City Council	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2



KEY		
Assessment only	Preliminary or informal investigations	Formal investigations
1 Outside our jurisdiction	7 Substantive advice, information provided without formal finding of wrong conduct	13 Resolved during investigation
2 Trivial/remote/insufficient interest/commercial matter	8 Advice/explanation provided where no or insufficient evidence of wrong conduct	14 Investigation discontinued
3 Right of appeal or redress	9 Further investigation declined on grounds of resource/priority	15 No adverse finding
4 Substantive explanation or advice provided	10 Resolved to Ombudsman's satisfaction	16 Adverse finding
5 Premature, referred to agency/concurrent representation	11 Resolved by agency prior to our intervention	<b>17 Total</b>
6 Investigation declined on resource/priority grounds	12 Conciliated/mediated	

Agency	Assessment only					Preliminary or informal investigations						Formal investigations				Total	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		16
Northern Sydney AHS*	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
NSW Fisheries	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
NSW Police Service	7	1	0	1	2	2	5	1	3	15	2	0	1	0	0	0	40
NSW Treasury	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2
NSW Valuer General's Office	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Penrith City Council	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Pittwater Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Premier's Dept	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Roads and Traffic Authority	0	0	0	0	0	1	0	0	0	3	2	0	0	0	0	0	6
Rockdale Municipal Council	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2
Rural Assistance Authority of NSW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Scone Shire Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Severn Shire Council	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Snowy River Shire Council	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
South Eastern Sydney AHS*	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	0	3
State Forests of NSW	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
State Rail Authority of NSW	0	0	0	0	0	0	1	0	3	2	2	0	0	0	0	0	8
SOCOG**	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Sydney Water Corp	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Transport, Dept of	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	3
Tweed Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
University of New South Wales	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
University of Sydney	0	0	0	0	0	0	0	2	0	1	0	0	0	0	0	0	3
Urban Affairs and Planning, Dept of	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Victims Compensation Tribunal	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Wagga Wagga City Council	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Waterways Authority	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
Wentworth Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Western Sydney AHS*	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wollondilly Shire Council	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Yass Shire Council	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
<b>Total</b>	<b>16</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>7</b>	<b>28</b>	<b>36</b>	<b>11</b>	<b>69</b>	<b>7</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>188</b>

\*AHS=Area health service

\*\*Sydney Organising Committee for the Olympic Games

## Appendix F: FOI statement of affairs

The following information is provided in accordance with our annual reporting requirements under the *Freedom of Information Act*, the Freedom of Information (General) Regulation 2000 and Appendix B in the NSW Ombudsman 'FOI Procedure Manual'. Under section 9 and Schedule 2 of the FOI Act, the Ombudsman is exempt from the operation of the Act in relation to its complaint handling, investigative and reporting functions. We therefore rarely make a determination under the Act, as most applications we receive, which was the case with all but one application this year, relate to our exempt functions.

### Clause 9(1)(a) and (2) of the Regulation and Appendix B of the Ombudsman's FOI Procedure Manual

#### Section A: Numbers of new FOI requests

We received nine new FOI applications in the 2000–2001 year. None from 1999–2000 were brought forward into 2000–2001. All applications were processed and completed, none were withdrawn and one was transferred out.

FOI requests	Personal	Other	Total
A1 New (including transferred in)	4	5	9
A2 Brought forward	0	0	0
A3 Total to be processed	4	5	9
A4 Completed	4	4	8
A5 Transferred out	0	1	1
A6 Withdrawn	0	0	0
A7 Total processed	4	5	9
A8 Unfinished (carried forward)	0	0	0

#### Section B: What happened to completed requests?

Seven of the nine completed applications were for documents which related to the Ombudsman's complaint handling, investigative and reporting functions. In these matters an explanation of section 9 and our inclusion in Schedule 2 of the FOI Act was provided. One application sought access to documents held by another agency. In that matter the application was transferred to the agency under section 20 of the FOI Act. The remaining application sought access to documents that were not held by the Ombudsman.

FOI requests	Personal	Other
B1 Granted in full	0	0
B2 Granted in part	0	0
B3 Refused	0	0
B4 Deferred	0	0
B5 Completed*	4	4

Notes: \*The figures on the line B5 should be the same as the corresponding ones on A4. All but two of these applications related to functions of the office which are excluded from the operation of the Act. The other two applications sought access to documents not held by the Ombudsman. Therefore while eight applications were completed, they were not completed in terms of B1-B4.

#### Section C: Ministerial certificates

No ministerial certificates were issued in relation to FOI applications to the Ombudsman this year.

Ministerial certificates	No issued
C1 Ministerial Certificates issued	0

#### Section D: Formal consultations

No requests required consultations, formal or otherwise.

Request requiring formal consultations	Issued	Total
D1 Number of requests requiring formal consultation(s)	0	0

#### Section E: Amendment of personal records

We received no requests for the amendment of personal records.

Result of Amendment Request	Total
E1 Result of amendment—agreed	0
E2 Result of amendment—refused	0
E3 Total	0

#### Section F: Notification of personal records

We received no requests for notations in the period.

Requests for notification	Total
F1 Number of requests for notation	0

#### Section G: FOI requests granted in part or refused

No decisions to grant access in part or to restrict access were made.

Basis for disallowing or restricting access	Personal	Other
G1 s 19 (application incomplete, wrongly directed)	0	0
G2 s 22 (deposit not paid)	0	0
G3 s 25(1)(a1)(diversion of resources)	0	0
G4 s 25(1)(a) (exempt)	0	0
G5 s 25(1)(b), (c), (d) (otherwise available)	0	0
G6 s 28(1)(b) (documents not held)	0	0
G7 s 24(2)—deemed refused, over 21 days	0	0
G8 s 31(4) (released to Medical Practitioner)	0	0
G9 Totals	0	0

### Section H: Costs and fees of requests processed during the period

We received two application fees of \$30 and one of \$35. The two \$30 cheques were returned to the applicants and the \$35 cheque was transferred to the other agency under section 20 of the FOI Act.

	Assessed costs	FOI fees received
H1 All completed requests	\$0	\$95

### Section I: Discounts allowed

No fees were retained and therefore the question of discounts did not arise.

Type of discount allowed	Personal	Other
I1 Public interest	0	0
I2 Financial hardship—Pensioner/Child	0	0
I3 Financial hardship—Non profit organisation	0	0
I4 Totals	0	0
I5 Significant correction of personal records	0	0

### Section J: Days to process

Nine applications were dealt with within 21 days, while one was dealt with in 22–35 days.

Days to process	Personal	Other
J1 0–21 days	4	5
J2 22–35 days	1	0
J3 Over 35 days	0	0
J4 Totals	4	5

### Section K: Processing time

All applications were dealt with in 0–10 hours.

Processing hours	Personal	Other
K1 0–10 hours	4	5
K2 11–20 hours	0	0
K3 21–40 hours	0	0
K4 Over 40 hours	0	0
K5 Totals	4	5

### Section L: Reviews and appeals

No applications proceeded to internal review. Under section 52(5)(d) of the FOI Act we cannot review determinations. No applications were finalised by or indeed proceeded to the Administrative Decisions Tribunal (ADT).

<b>Internal reviews finalised</b>	<b>Total</b>
L1 Number of internal reviews finalised	0
<b>Ombudsman reviews finalised</b>	<b>Total</b>
L2 Number of Ombudsman reviews finalised	0
<b>District Court appeals finalised</b>	<b>Total</b>
L3 Number of ADT appeals finalised	0

### Section L: Details of internal review results

Bases of Internal Review	Personal		Other	
Grounds on which internal review requested	U*	V*	U*	V*
L4 Access refused	0	0	0	0
L5 Deferred	0	0	0	0
L6 Exempt matter	0	0	0	0
L7 Unreasonable charges	0	0	0	0
L8 Charge unreasonably incurred	0	0	0	0
L9 Amendment refused	0	0	0	0
L 10 Totals	0	0	0	0

\* U = Upheld \* V = Varied

### Clause 9(1)(b) and (3) of the Regulation

Dealing with the above matters took very little time and did not impact to a significant degree on our activities during the year. The preparation of our 'Statement of affairs' and 'Summary of affairs' also does not take much time and again could not be said to have impacted to any significant degree on our activities. In terms of clause 9(3)(c), (d) and (e), no major issues arose during the year in connection with our compliance with FOI requirements, and given that there could be no inquiries by us of our own determinations and there were no appeals of our decisions made to ADT, there is no information to give as specified at (d) and (e) of Clause 9.

## Appendix G: Legal changes

### New Acts and Regulations

#### Crimes (Forensic Procedures) Act 2000

Sections relating to our role commenced on 5 July 2000 with the remainder of the provisions commencing on 1 Jan 2001.

#### Police Powers (Drug Premises) Act 2001

This came into effect in July 2001.

#### Police Powers (Internally Concealed Drugs) Act 2001

This Act is expected to commence in early 2002. For more details see 'Monitoring the implementation of legislation' in 'Scrutiny'.

#### The Statute Law (Miscellaneous Provisions) Act (No2) 2000

This Act made a number of amendments to the *Ombudsman Act*. The changes became effective 8 December 2000.

Firstly, under existing provisions of the *Ombudsman Act*, the Ombudsman can keep complainants informed of the progress of investigations made in relation to their complaint. However, the provision of this information only applied to complaints under section 12 of the Act. As the Ombudsman conducts investigations into complaints made under other provisions of the Act (including complaints of child abuse made under section 25(G)) as well as complaints made under other Acts (including the *Freedom of Information Act* and the *Protected Disclosures Act*) sections 15 and 29 were amended to allow the Ombudsman to give the same information about investigations to any complainant, regardless of the provision or Act under which the complaint arose.

There was also a change to the definition of a child abuse conviction in section 25A of the *Ombudsman Act* which was amended to reflect the language now used in the *Crimes (Sentencing Procedures) Act*, which refers to a finding of guilt.

#### The Statute Law (Miscellaneous Provisions) Act 2001

This Act made amendments to the *Ombudsman Act* and the *Freedom of Information Act*. The changes became effective 17 July 2001.

#### Ombudsman Act 1974 amendments

The first amendment to the *Ombudsman Act* enables the Ombudsman to accept oral complaints if the Ombudsman considers it appropriate to do so. The Ombudsman is to reduce such a complaint to writing as soon as practicable.

The second amendment enables the Ombudsman to require a complainant to provide further written particulars in relation to the complaint within the time specified by the Ombudsman. This amendment will assist the Ombudsman to decide whether to make

particular conduct of a public authority the subject of an investigation.

The third amendment enables the Ombudsman to provide information obtained in discharging his functions to a public authority. This amendment also enables the Ombudsman to make comments to the authority regarding the complaint.

#### Freedom of Information Act 1989

The *Freedom of Information Act* was amended to extend the meanings of public authority and public office to cover bodies such as the Supreme Court. Prior to this amendment, public authorities and public offices had to be established by or under the provisions of a legislative instrument (that is an Act of Parliament or an instrument made under an Act). However, the Act now includes bodies and offices established for a public purpose otherwise than by or under a legislative instrument but continued by or under such an instrument.

## Appendix H: Disability Action Plan

Priority area for action	Goals/targets	Reporting year strategies	Outcomes/achievements
Physical access	Access to our building and any location or venue used by us to enable effective access by people with a disability	<ul style="list-style-type: none"> <li>Audit our building access; identify specific barriers that limit access for people with a disability to our services and employment opportunities, approach building management for any modification requests</li> <li>Audit our current venues for outreach activity; identify specific barriers that limit access for people with disabilities to our services</li> <li>Develop policy for booking venues used for outreach activities to ensure all venues booked are accessible to people with disabilities</li> </ul>	<ul style="list-style-type: none"> <li>The building where we are located recently underwent a major refurbishment; prior to work commencing, the owners of the building consulted a number of disability groups about access issues</li> <li>The building has wheelchair access (ramp and lift) and tactile ground surface indicators near all staircases, ramps and escalators</li> <li>The tenant directory is well lit and in a reasonably sized font</li> <li>The office has disabled toilet facilities on our public access floor</li> <li>No obvious barriers have been identified within our premises, particularly our public areas such as reception and interview rooms</li> <li>An audit of venues commonly used in our outreach program revealed no obvious barriers for people with disabilities; we have developed a check list for staff booking venues</li> </ul>
Promoting positive community attitudes	We actively promote people with disabilities as valuable members of the community	<ul style="list-style-type: none"> <li>Develop internal strategies to promote positive community attitudes</li> <li>Working in partnership with peak organisations, in particular, Department of Ageing and Disability to promote positive community attitudes (ongoing)</li> </ul>	<ul style="list-style-type: none"> <li>We continued consulting peak disability organisations including the Department of Ageing, Disability and Home Care.</li> </ul>
Staff training	All staff are trained and competent in providing services for people with a disability.	<ul style="list-style-type: none"> <li>Research appropriate training courses and providers.</li> <li>Review orientation and induction training to include components on disability issues</li> <li>Develop appropriate training program on disability awareness</li> </ul>	<ul style="list-style-type: none"> <li>We consulted disability organisations such as People With a Disability and the Spastic Centre regarding disability awareness training</li> <li>We developed a general disability training program and scheduled training sessions for the second half of 2001</li> <li>Staff are advised of our access and awareness program including our disability plan at induction</li> </ul>

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Priority area for action	Goals/targets	Reporting year strategies	Outcomes/achievements
Information about services	Our office and the service we provide is accessible to people with a disability	<ul style="list-style-type: none"> <li>• Review the information collected from our customer satisfaction survey and other resources to identify gaps and barriers for people with disability to access our services</li> <li>• Consult with peak groups about ways to improve our service to people with a disability</li> </ul>	<ul style="list-style-type: none"> <li>• 7.3% of respondents to our complainant survey indicated that they had a disability. This figure is significantly under the proportion of the NSW public who have a disability (17%)</li> <li>• 18.9% of respondents who stated that they have a disability indicated that personal contact would help them communicate better with the office, while 7% indicated a toll free number, 3.5% said an interpreter and 5.5% said feedback and progress reports; our plan will be amended to factor in this feedback</li> <li>• We developed a 'Compic' brochure for people with intellectual disabilities which will be distributed in the coming year</li> <li>• We distributed information about our child protection role to the disability sector; we conducted policy development workshops, information sessions and published articles in ACROD's newsletter</li> <li>• We made a presentation at a forum on 'Changes in child protection and substitute care for young people with a disability'</li> <li>• We networked with disability workers in regional areas and provided training on child protection legislation</li> </ul>
Employment in the public sector	To increase the number of staff with a disability	<ul style="list-style-type: none"> <li>• Investigate ways of advertising vacant positions and distributing job-related information in forms accessible to people with a disability including using the internet, large print or audio tapes and specialist recruitment agencies</li> <li>• Review EEO program to ensure strategies are in place that promote diverse recruitment practices</li> <li>• Review job descriptions to determine if there are any barriers for people with disabilities to apply for positions</li> </ul>	<ul style="list-style-type: none"> <li>• Vacancies and job information packages are placed on our website as well as being advertised in the print media</li> <li>• No specific strategies were implemented to distribute details to specific recruitment agencies; this will be pursued in the coming year.</li> <li>• Our EEO program was not reviewed during the reporting year; this will be done in the coming year.</li> <li>• Job descriptions are reviewed and revised if necessary as positions become vacant; however, a review of all position descriptions will be undertaken in the coming year</li> </ul>
Complaints procedures	To have in place an effective complaints resolution procedure for handling complaints by and for people with a disability	<ul style="list-style-type: none"> <li>• Review our current 'Compliment and Complaint Policy' to identify barriers for people with disabilities</li> <li>• Revise this policy to include strategies to enable people with a disability to participate in the process</li> </ul>	<ul style="list-style-type: none"> <li>• While our 'Complaints and Compliment Policy' identifies common factors that prevent people making a complaint, no special consideration has been given to barriers for people with disabilities; we will ensure that this issue is appropriately addressed when the policy is reviewed</li> </ul>

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## Publications list

The *Ombudsman Act* prevents us from releasing any information relating to an investigation unless it has been tabled in parliament. For this reason, most of our reports are not available to the public.

The following is a list of recent reports and other publications. For a more detailed publication list, phone 02 9286 1072.

### Recent reports

Reports to Parliament are \$10 unless otherwise stated (plus 10% GST). Postage included within Australia only.

2000	'Police and improper use of email'
2000	'Vehicle powers, questions and answers' (\$15)
2000	'Policing public safety' (\$20)
2000	'Handling of child abuse allegations against employees: An investigation into the system used by the NSW Department of Education and Training'
2000	'Investigation into Kariiong Juvenile Justice Centre' (\$20)
1999	'Policing of domestic violence in NSW'
1999	'Loss of commissioner's confidence'
1999	'The Norford report'
1999	'Officers under stress'

### Guidelines

Guidelines are free unless otherwise stated. Prices do not include 10% GST. Postage included within Australia only.

2001	Child protection legislation: What employers and employees need to know
2001	Responding to allegations of child abuse against employees
2001	Developing a child protection policy: A practical guide for agencies
2000	Investigating complaints: a manual for investigators (\$45)
2000	The complaint handler's toolkit (\$90)
2000	Effective complaint handling guidelines
2000	Public sector mediation guidelines
2000	Options for redress: Guidelines for redress for detriment arising out of maladministration
1999	Protected disclosures guidelines <i>3rd ed</i> (\$30)
1997	FOI policies and guidelines <i>2nd ed</i> (\$30)
1995	Good conduct and administrative practice for public authorities and officials (\$30)

### Fact sheets

Fact sheets are free.

2001	Women's issues: The Ombudsman and you
2000	Having trouble with unlawful development activity?
2000	Unhappy with a proposed development?
2000	Having trouble with your development application?
2000	Having trouble with your rates and charges

### Brochures

Brochures are free.

2000	Child protection
2000	General information. Available in: English, Vietnamese, Chinese, Arabic, Spanish, Greek, Turkish, Korean, Serbian, Italian and Croatian
2000	Guarantee of service
2000	Problems with a police officer?
2000	Problems in detention?
2000	Some tips for making a complaint
2001	That's not fair! (Aboriginal brochure)
2001	The new forensic procedures law and the Ombudsman
2000	Trouble with council?
2000	Unhappy with an FOI decision?
2001	Youth brochure

### Information sheets

Information sheets are free.

1997	Administrative good conduct
1997	Principles of administrative good conduct
1999	Functions and jurisdictions of the Ombudsman

### Poster

Turn to us. A3 colour poster

### Previous annual reports

The previous years' annual report costs \$10 (plus 10% GST). Older reports are free (subject to availability).

Visit our web site:

[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## Glossary

The following frequently used terms are used through this report:-

ACU	Aboriginal Complaints Unit
ACWA	Association of Child Welfare Agencies
ADT	Administrative Decisions Tribunal
AIS	Association of Independent Schools
CCER	Catholic Commission for Employment Relations
CCYE	Commission for Children and Young People
CEO	Chief Executive Officer
CHS	Corrections Health Service
CIG	Corrections Intelligence Group
CMF	Command Management Framework
COPS	Police Computer System
CSC	Community Services Commission
DCS	Department of Corrective Services
DET	Department of Education and Training
DoCS	Department of Community Services
DPP	Director of Public Prosecutions
EAPS	Ethnic Affairs Priority Statement
EEO	Equal Employment Opportunity
EWON	Energy and Water Ombudsman NSW
FOI	Freedom of Information
ICAC	Independent Commission Against Corruption
IEU	NSW/ACT Independent Education Union
IPB	Infringement Processing Bureau
JCC	Joint Consultative Committee
JIG	Joint Initiative Group
JPC	Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission
OC	Capsicum Spray
OPAC	Ombudsman, Police and Aboriginal Community Committees
PCCM	Police Complaints Case Management System
PIC	Police Integrity Commission
PODS	Police Oversight Data Store
police service	NSW Police Service
PPIP	Privacy and Personal Information Protection Act
PSMO	Public Sector Management Office
Royal Commission	Royal Commission into the New South Wales Police Service
SDRO	State Debt Recovery Office
SOORT	Statutory and Other Offices Remuneration Tribunal

## **Complaining to the Ombudsman**

Anyone can make a complaint to the Ombudsman. If you do not want to complain yourself, you can ask anyone—a relative, friend, solicitor, social worker, your local member of parliament—to complain for you.

### **How do I make a complaint?**

Start by complaining to the agency you are dissatisfied with. If you need advice at any time, you can phone us. If you are unhappy with the way an agency has handled your complaint, you can complain to us. Complaints should be in writing. Your complaint can be in any language. If you have difficulty writing a letter—due to language or a disability—we can help. We can also arrange for translations, interpreters and other services.

### **What should I include with my complaint?**

Briefly explain your concerns in your own words. Include enough information for us to assess your complaint to determine the most appropriate response. For example, describe what happened, who was involved, when and where the events took place. Remember to tell us what action you have already taken and what outcome you would be satisfied with. Include copies of all relevant correspondence between you and the agency concerned.

### **What happens to my complaint?**

A senior investigator will assess your complaint. Where appropriate we will phone the agency concerned and make inquiries. Many complaints are resolved at this stage. If we are not satisfied with the agency's response, we may investigate.

We do not have the resources to investigate every complaint, so priority is given to serious matters, especially if it is an issue that is likely to affect other people. If there are reasons why we cannot take up your complaint we will tell you.

### **What happens in an investigation?**

The first step in an investigation is to require the agency to comment on your complaint and explain its actions. Generally, we will tell you what the agency has said and what we think of its explanation. Some matters are resolved at this stage and the investigation is discontinued.

If the investigation continues, it can take several months until a formal report is issued. We will tell you what is likely to happen.

If we find your complaint is justified, the findings are reported to the agency concerned and the relevant minister. You will be told of the conclusions and findings. In a report, the Ombudsman may make recommendations. We cannot force an agency to comply with our recommendations, however, most usually do. If they do not, the Ombudsman can make a special report to Parliament.

### **What if I am unhappy with the Ombudsman's actions?**

If you are unhappy with our decision you can ask for it to be reviewed. However, a decision will only be reviewed once. All reviews are conducted by senior staff and by someone other than the staff member originally assigned your complaint. To request a review, telephone or write to the complaints manager in either the general, police or child protection teams.

If you are unhappy with any of our *procedures* write to:

Clerk to the Committee  
Committee on the Office of the Ombudsman and the Police Integrity Commission  
Parliament House, Macquarie Street, SYDNEY NSW 2000

The committee monitors and reviews our functions. It cannot review our decisions about individual complaints.



Left to right: Selena Choo, Project Officer with Jacqui Spedding, Publications Officer

## **Acknowledgements**

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

Our report is prepared against criteria set out by NSW Treasury and the Annual Report Awards.

Thank you to all staff who contributed to this year's annual report

### **Editorial team**

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