



# Who we are and what we do

The NSW Ombudsman is an independent and impartial watchdog established by the *Ombudsman Act 1974*. We are independent of the government of the day and accountable to the public through Parliament itself. Our central goal is to keep government agencies and some non-government organisations accountable — by promoting good administrative conduct, fair decision-making and high standards of service delivery — and protect the rights of people in NSW. We are responsible for keeping the following types of organisations under scrutiny:

- › agencies delivering public services — including police, correctional centres and state-owned corporations
- › organisations delivering services to children — including schools and child care centres

- › organisations delivering community services — including services for people with disabilities, people who are homeless and elderly people
- › agencies conducting covert operations — including the Crime Commission and the Independent Commission Against Corruption.

We have other specific functions that relate to:

- › the causes and patterns of deaths of certain children and people with disabilities
- › decisions made by public sector agencies about freedom of information applications
- › the administration of the witness protection program
- › the implementation of new pieces of legislation conferring additional powers on people such as police and correctional officers.

We investigate and resolve complaints from members of the public and from people who work for the organisations we scrutinise. Our work is aimed at exposing and eliminating conduct that is illegal, unreasonable, unjust or oppressive, improperly discriminatory, based on improper or irrelevant grounds, based on a mistake of law or fact, or otherwise wrong.

We aim for outcomes that are in the public interest. We investigate some of the more serious complaints, but in many cases we encourage the organisation being complained about to handle the matter themselves. We monitor the progress of these matters and provide advice where necessary. Our focus is on helping organisations to satisfactorily resolve any problems identified.

We help organisations to prevent or reduce the level of complaints made about them by reviewing their systems. Our proactive work also allows us to address problems if members of the public have legitimate grievances but, for whatever reason, do not or cannot take up the complaint themselves. We aim to reduce the volume of complaints to our office by providing training and advice to the organisations we scrutinise about how to effectively resolve and manage complaints. We also provide assistance, guidance and training to other watchdog agencies.

## Letter to the Legislative Assembly and Council

22 October 2009

The Hon. Peter Primrose MLC  
President Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

The Hon. Richard Torbay MP  
Speaker Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr President and Mr Speaker

I am pleased to present our 34th annual report to the NSW Parliament.

This report contains an account of our work for the 12 months ending 30 June 2009 and is made pursuant to ss.30 and 31 of the *Ombudsman Act 1974*.

The report also provides information about my office's functions under the *Police Act 1990* and information that is required pursuant to the *Annual Reports (Departments) Act 1985*, *Annual Reports (Departments) Regulation 2005*, *Freedom of Information Act 1989*, *Law Enforcement (Powers and Responsibilities) Act 2002* and *Disability Services Act 1993*.

The report includes updated material on developments and issues current at the time of writing (July–September 2009).

Yours sincerely



Bruce Barbour  
Ombudsman

## About this report

This report presents a comprehensive record of our operations and achievements for 2008–2009. It meets our legislative requirements and provides us with the opportunity to publicly report on our work.

The report contains information about our organisation, performance, business and financial affairs.

This year's report also features the introduction of a new chapter about our work with Aboriginal people.

We are committed to providing quality annual reports and this has been recognised by Australasian Reporting Awards Inc. Last year our annual report received a Silver Award.

This report and our other publications can be downloaded from our website: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## Our vision

We want to see fair, accountable and responsive administrative practice and service delivery in NSW.

## Our mission

In our own organisation and those we oversight, we work to promote:

- > good conduct
- > fair decision-making
- > protection of rights
- > provision of quality services.

## Our values

We will:

- > provide the same high quality service that we encourage other organisations to offer
- > be fair, impartial and independent, and act with integrity and consistency
- > be accessible and responsive to all who approach us, and seek solutions and improvements that will benefit the broader NSW community
- > be a catalyst for change and a promoter of individuals' rights.

## Our purpose

We aim to:

1. help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery
2. deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems
3. be a leading watchdog agency
4. be an effective organisation.



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# Our year in review



At the beginning of June, I took part in the International Ombudsman Institute (IOI) world conference in Stockholm, Sweden. One of the speakers provided a number of scenarios as part of their session and asked 'What would have happened if there had been no Ombudsman?' This was a powerful exercise, as it made all of the attending Ombudsmen think about their own experiences. We perform an essential role. Sometimes, because we have been in place for a long time, we can lose sight of the significance and important outcomes of our work. Here are some examples from 2008–2009 where, without our involvement, very real problems would not have been solved.

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

An elderly public housing tenant called us because he had not had hot water for three weeks. Appointments had been made for repairs, but none were kept. After we made inquiries a plumber went to the house, assessed the system and ordered a replacement. Temporary repairs meant the tenant had hot water until the new system could be installed.

Two children were placed in the care of the Minister for Community Services following their mother's death. We found that the Department of Community Services had done little to progress the administration of the mother's estate. This may have resulted in losses to the estate. After we started to investigate, the department arranged to administer the estate and uncovered additional assets. We have recommended they make an ex gratia payment to the children for any loss suffered as a result of the delay.

This year marks the 200th anniversary of the first Ombudsman in Sweden. That first office gave us our name, as well as a long heritage. Our office was established 34 years ago, but even in that comparatively short period of time we have seen our jurisdiction and our responsibilities grow. In the last year alone, we have been given a number of new legislative responsibilities — from reviewing and auditing controversial new police powers to coordinating the review of all child deaths in NSW. Our experience is that we cannot afford to wait for changes to happen and then react. We have to be continually assessing the way we do our work and making sure we keep pace with changing community expectations and changes to the way the government does business.

## Budgetary constraints

Changing expectations are not the only reason we have to constantly re-assess the way we work. Unfortunately, for a number of years, our office — along with all other government agencies — has been subject to constraints on its budget. We have had yearly efficiency dividends of 1% applied to our budget, effectively reducing our budget by more than \$1.4 million over the last seven years. We also have to meet pay increases of 4% per annum for three years negotiated by the government, but with only 2.5% of this increase being funded. One of the strategies we have adopted to deal with this issue is to restructure our office. This has included making the difficult decision of deleting two Assistant Ombudsman positions.



Bruce Barbour  
Ombudsman

These financial pressures will continue to impact on future budgets, meaning we will have less staff while the complexity and extent of our workload continues to increase. This report outlines the significant work we do every year across a broad range of areas. Work such as our oversight of complaints about police and employment-related child protection and our reviews of the deaths of children and people with disabilities are examples of our work that is required by law. Other work, such as dealing with complaints under the *Ombudsman Act 1974*, is discretionary.

When pressure is put on our budget, it is our discretionary work that — despite its importance — is the first to suffer. This is particularly disappointing, because it achieves extremely positive results for people who often have no other alternatives. Most recently in May, I again advised our Parliamentary Committee that the continuing budgetary constraints will impact on the outcomes we achieve. I have recently provided similar advice to the Premier and all Members of Parliament.

## Strategic planning

As an agency committed to improvement, we have used these constraints as a catalyst to further assess the way we operate and our future direction. At the end of 2008, I organised a strategic planning exercise for senior staff. After two productive days, we returned to the office with an outline of where we should be headed in the future. The same staff were then given the task of bringing about this change.

Five working parties were established, with responsibility for achieving the following outcomes:

- › realigning our work
- › improving our business processes
- › engaging better with our stakeholders
- › building our leadership capacity
- › leading the change as it happens.

We have worked quickly, and I am pleased with the direction we are taking. As with any change, this will be a challenge — but I believe that the work we are doing now will mean we are well placed to provide the best possible service in the future, given the continuing restrictions of our budget.

## Our systemic work

For a number of years, I have stressed the importance of our office working proactively to improve services provided to the community. This work is particularly important because it helps us to identify weaknesses in agency systems and policies. Our systemic work allows us to deal with issues that benefit large groups, rather than just individuals, as well as potentially reducing the number of future complaints. The following are examples of large scale investigations and reviews from the past year.

We try to resolve matters quickly and informally, but there will always be situations where we have to use our investigative powers. This year, we conducted a number of important investigations. We investigated the refusal of the Board of Studies to provide HSC students with the information used to calculate their final results, the Roads and Traffic Authority's (RTA) handling of two Freedom of Information (FOI) applications, and WorkCover's response to asbestos found at a retail site.

While we may begin investigating one aspect of an agency's conduct, during the investigation we occasionally become aware of other issues. For example, in the RTA matter, we looked beyond the handling of two FOI matters and reviewed Ministerial staff involvement in FOI decision-making, the adequacy of record-keeping, the appropriateness of claims of legal professional privilege, and the use of external consultants. One advantage of our broad jurisdiction is that we can look into all aspects of an agency's conduct.

For 15 years, my office has been pressing for an independent, comprehensive review of the FOI Act. None came, and in April last year I decided we would conduct the review. I believe we were well placed to do this as we have been involved with FOI since its introduction. Our final report was tabled in Parliament in February. I am pleased that the NSW Government has adopted most of the 88 recommendations made in the report and that two pieces of legislation — the *Government Information (Public Access) Act 2009* and the *Government Information (Information Commissioner) Act 2009* — received Parliamentary assent in June. If the new direction outlined in the legislation receives the financial and attitudinal support it needs, there is a real chance of changing the way people access government information in NSW. We will be watching this area closely to see if the results match up to what has been promised.

Unfortunately, the response to our recommendations is not always positive. In November, we released a report into the use of Taser weapons by the NSW Police Force. We recommended a two year freeze on any further roll out of Tasers to allow for further review and improvements to supporting policies, procedures and training. Despite this advice, as part of the 2009–2010 NSW Budget, the government announced that Tasers would be provided to all frontline officers.

In the human services area, we released our annual reports into reviewable child deaths and deaths of people with disabilities living in care. Our work around child deaths will be changing in the future, and we will be responsible for convening and supporting the Child Death Review Team.

We have audited the Department of Ageing, Disability and Home Care's (DADHC) implementation of their *Aboriginal Policy Framework (APF)* and *Aboriginal Consultation Strategy (ACS)* which guides their work with Aboriginal communities. Our review revealed that many people in Aboriginal communities were unaware of the services offered by DADHC and how to access them. We are now preparing a detailed report for each DADHC region, as well as a report identifying broader systemic issues.

At the beginning of our last annual report, I spoke briefly about our investigation into the implementation of the Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing (JGOS). We have now completed this investigation, and will soon be making a detailed report to Parliament. In broad terms, we found that — despite the efforts of committed frontline staff — the JGOS was not being implemented effectively. We identified weaknesses in the governance and accounting mechanisms for the JGOS, as well as systemic failings relating to discharge planning, training and development, and exchanging information. The Departments of Housing and Health agreed with our key recommendations and have made a commitment to address these failings. We will be watching this area closely to make sure those living in social housing are receiving the services and supports they need.

## Exchange of information

Our broad jurisdiction includes both government agencies and non-government service providers. This allows us to identify issues that are having a widespread impact, such as problems around exchanging of information.

We have raised the need for better systems in this area for many years, most recently in our submission to the Special Commission of Inquiry into Child Protection Services.

We highlighted the legislative complexity around sharing information, and stressed the need for greater legislative simplicity and clarity. The Commission agreed, and recommended amendments to allow for better exchanges of information when making a decision, assessment, plan or investigation relating to the safety, welfare and wellbeing of a child.

Our work has shown us that this is a problem that goes beyond child protection, impacting on those providing services to adults, and includes those working in areas such as domestic violence and mental health. During our JGOS investigation, we found many frontline staff were struggling with when and how they could share information with other organisations. They had real difficulties in situations where someone either refuses to, or is unable to, provide consent for the release of information. This can stop people from being provided with essential care and support.

I recognise that we have to strike a balance between effective care and protection for the most vulnerable in our society and the need to deal with personal information correctly. What we have now is not working, and time and again we speak with frontline staff confused and frustrated by the complex legislative system around the exchange of information. They are working hard to implement new initiatives, only to be hamstrung by their uncertainty and fear around what, if any, information they can pass on.

We need to provide these frontline workers with a greater level of certainty and guidance and make sure the people they support receive the level of service to which they are entitled. This is a pressing issue, and we will continue to push for change.

## Working with others

Engaging with other Ombudsman offices from across Australia and around the world allows us to look beyond our own experience. This improves our work, as well as giving us an opportunity to share our expertise and experience with others.

I am pleased to report that we have completed the nationwide trial of our unreasonable complainant conduct manual. All Australian Parliamentary Ombudsman offices took part in the trial and the results are reflected in the project report. We have provided unreasonable complainant conduct training to a wide range of organisations, both government and non-government. The final manual is now available, and we have also prepared a project report outlining our experiences and findings.

We have continued our work with Ombudsman offices from Australia, New Zealand and the Pacific as part of the Pacific Ombudsman Alliance (POA). This project, funded by AusAid, aims to provide support and guidance to smaller Pacific nations looking to establish a system of independent oversight. This is a particularly challenging project, as there is no one-size-fits-all approach. Every jurisdiction has its own needs and requirements. The POA Board has met several times, and we are providing practical support to a number of nations to draft legislation and establish offices.

Closer to home, we hosted our first Child Protection in the Workplace Symposium in May 2009. This event allowed academics, administrators, investigators and frontline staff to come together and share their experiences in this important area. We have received very positive feedback from those who attended and will hold similar events in the future.

## The year ahead

We have been given a number of new roles which we will begin working on during 2009–2010. In recognition of our work in the child protection area and with Aboriginal communities across NSW, the recent Special Commission of Inquiry into Child Protection Services recommended that we audit the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*. We were recently given specific funding to permit us to do this important work.

We are entering a challenging time in the history of our office. We will have less staff performing more work. This will mean we have to make hard decisions about the work we do.

The examples I began with show how important it is that we continue to help those who, without our assistance, may well slip through the cracks.



# Our organisation

Our office is divided into four specialist divisions — police, general, child protection and community services — and two teams that support these divisions, our corporate and cross agency teams. The police division is responsible for overseeing police complaints, 'keeping under scrutiny' related systems, and reviewing certain legislation giving police officers new powers. The general division is responsible for performing our other legislative functions — including reviewing legislative compliance and handling inquiries and complaints about a wide range of public sector agencies. The child protection division handles notifications from organisations providing services to children about the conduct of their staff that could be abusive to children and oversight related investigations. The community services division is responsible for reviewing the delivery of community services by the Department of Community Services and the Department of Ageing, Disability and Home Care, as well as non-government organisations funded by these departments to provide community services.

## Highlights

- › Reviewed our strategic planning program and established five working parties to identify strategies for improving the way we do our work, engaging better with stakeholders, building leadership capacity, implementing change and improving business support. [SEE PAGE 9](#)
- › Reviewed our personnel-related policies and systems, upgraded our human resources/payroll system and began preparing to implement 'KIOSK', a self-service personnel facility for staff. [SEE PAGE 12](#)
- › Worked with the Joint Consultative Committee to develop policies on good working relationships and the use of our CCTV. [SEE PAGE 11](#)
- › Began to design a professional development program for senior staff and continued to deliver our compulsory program of disability awareness, Aboriginal cultural appreciation and youth complaints training to staff. [SEE PAGES 15 & 16](#)
- › Began reviewing our environmental policies, including our outcomes and targets to reflect the NSW Government Sustainability Policy. [SEE PAGE 16](#)
- › Consolidated our existing security and risk-related policies which outline the systems we have in place to effectively manage risk. [SEE PAGE 10](#)

This chapter provides background information about how we operate.

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# Organisation chart

## General Division

### Monique Adofaci

Assistant Ombudsman

- › Inquiries and resolution
- › Departments and authorities
- › Juvenile justice and Corrections
- › Local government
- › Freedom of information
- › Protected disclosures
- › Secure monitoring and covert operations

## Community Services Division

### Steve Kinmond

Deputy Ombudsman and Community and Disability Services Commissioner

- › Monitoring service delivery
- › Systemic oversight and review
- › Complaint resolution and investigation
- › Reviewable deaths
- › Community education
- › Official Community Visitor scheme

## Child Protection Division

### Anne Barwick

Assistant Ombudsman

- › Employment-related child protection — oversight, monitoring and investigations
- › Systemic auditing
- › Complaint resolution
- › Community education

## Police Division

### Greg Andrews

Assistant Ombudsman

- › Oversight of police complaints
- › Systemic investigations and auditing
- › Intelligence
- › Legislative review

**Bruce Barbour**  
Ombudsman

## Executive

### Chris Wheeler

Deputy Ombudsman

- › Legal services
- › Special projects and investigations
- › Policy development
- › Development of public sector guidelines and standards

## Corporate Team

### Anita Whittaker

Manager

- › Personnel
- › Accounts
- › Publications
- › Public relations
- › Records and information management
- › Information technology
- › Library

## Cross Agency Team

### Julianna Demetrius

Manager

- › Oversight of Aboriginal and youth issues and initiatives
- › Major cross-jurisdictional investigations and reviews
- › Strengthening communication and collaboration between specialist divisions





## Executive team

### 1 **Bruce Barbour** LLB

Bruce has been the NSW Ombudsman since June 2000. He has 25 years experience in administrative law, investigations and management. Bruce has led the office through significant change and growth, including a merger with the former Community Services Commission in 2002. Bruce is the regional vice president of the International Ombudsman Institute, representing the Australasian and Pacific Region Ombudsman. He has played an active role in reforming that institute and has been involved in projects aimed at strengthening the capacity of existing Ombudsman in the South Pacific. Before his appointment as Ombudsman, Bruce was a senior member of the Commonwealth Administrative Appeals Tribunal and a member of the Casino Control Authority. He was also a former Director of the Australian Broadcasting Authority.

### 2 **Chris Wheeler** BTRP MTCP LLB (Hons)

Chris has been Deputy Ombudsman since 1994. He has 25 years experience in complaint-handling and investigations, as well as extensive experience in management and public administration. Chris has responsibility for freedom of information, protected disclosures and Ombudsman publications. He is the sponsor of the *Unreasonable Complainant Conduct* project and a member of the national research team for the *Whistling While They Work* project. He has also worked in state and local government, and as a town planner and solicitor.

### 3 **Steve Kinmond** BA LLB Dip Ed Dip Crim

Steve has held this position since February 2004. Before that, he was the Assistant Ombudsman (Police) for more than eight years. Steve has had over 13 years involvement in community services, and extensive investigation and management experience. He has also worked as a solicitor and run his own consultancy practice.

### 4 **Greg Andrews** BA (Hons 1) M Env Loc Gov Law Graduate Cert Public Sector Management

Greg has over 28 years experience as an investigator and has been an Assistant Ombudsman since 1988. He has extensive experience in management, investigations, education and training. Prior to joining the office, he worked in educational change management, university teaching and research, and legal publishing.

### 5 **Anne Barwick** BA Dip Soc Wk M Mgt (Community)

Anne was appointed to this position in March 1999. Her background includes experience as a social worker in the welfare, health, education and disability sectors. She has over 20 years experience in the management of community service organisations.

### 6 **Anita Whittaker** PSM BCom

Anita has worked in the NSW public sector for 30 years and has been the manager corporate since 1997. Anita has extensive experience in public sector administration and in financial and human resource management. Anita was awarded the Public Service Medal in 2000 in recognition of her outstanding service and her ongoing contribution to the Ombudsman's office.

### 7 **Julianna Demetrius** Dip Law (LPAB)

Julianna has been with the Ombudsman's office for nine years. She managed the Ombudsman's police division for five years and established the cross agency team in 2007. She has extensive experience in conducting systemic investigations involving broad community and agency consultations in the policing and human services field. Prior to joining the Ombudsman's office, Julianna worked as a solicitor, and in the fields of social research and urban design.

### \* **Monique Adofaci** MBA LLB (Hons)

Monique has over 15 years experience as a lawyer and a manager in the public sector. Before coming to work with the Ombudsman's office she worked at the DPP (NSW), the Crown Solicitor's Office, the National Crime Authority and as executive manager of City of Sydney Council. She was manager legal with the NSW Ombudsman since June 2006 and has been in her current role since May 2008.

\* Not pictured.

## How we keep organisations accountable

### Agencies delivering public services

#### Who we scrutinise

We scrutinise:

- › several hundred NSW public sector agencies including departments, statutory authorities, boards, correctional centres, universities and area health services
- › the police
- › over 160 local and county councils
- › certain private sector organisations and individuals providing privatised public services.

#### How we keep them accountable

We investigate and resolve:

- › complaints about the work of public sector agencies
- › complaints about the merits of agency decisions about freedom of information requests
- › protected disclosures from public sector staff and complaints about the way agencies have handled disclosures.

We oversee the NSW Police Force's investigations into complaints about police officers and check their complaint-handling systems. We visit juvenile justice centres and correctional centres to observe their operations and resolve concerns of inmates.

We scrutinise legislation giving new powers to police and correctional officers.

We hear appeals against decisions by the Commissioner of Police in relation to the witness protection program.

We provide training and guidance in investigations, complaint management and good administrative conduct.

## Organisations delivering services to children

#### Who we scrutinise

We scrutinise:

- › over 7,000 organisations providing services to children — including schools, child care centres, family day care, juvenile justice centres and organisations providing substitute residential care and health programs
- › the conduct of paid staff, contractors and thousands of volunteers working for these organisations.

#### How we keep them accountable

Organisations are required to notify us of any reportable allegations about, or convictions for, conduct that could be abusive to children. We oversee (and sometimes investigate) how organisations investigate these allegations about their staff, and keep under scrutiny their systems for handling such matters.

We deal with complaints from parents and other interested parties about how organisations have investigated allegations.

We keep under scrutiny the systems organisations have to prevent employees from behaving in ways that could be abusive to children.

We provide training and guidance about how to handle these kinds of allegations and convictions.

## Organisations delivering community services

#### Who we scrutinise

We scrutinise:

- › licensed boarding houses and fee-for-service organisations
- › child protection and family support services
- › out-of-home care services for children and young people
- › home and community care services
- › services for people with disabilities
- › supported accommodation and assistance program services.

The Department of Community Services and the Department of Ageing, Disability and Home Care provide many of these services. Non-government organisations providing these services also fall within our jurisdiction if they are funded, licensed or authorised by the Minister for Community Services or the Minister for Ageing and Disability Services.

## How we keep them accountable

We investigate and resolve complaints about the provision, failure to provide, withdrawal, variation or administration of community services.

We review:

- › standards for the delivery of community services
- › the systems organisations have to handle complaints about their services
- › the situation of children, young people and people with disabilities who are in out-of-home care
- › the deaths of certain children, young people and people with disabilities in care.

We inspect certain services where children, young people and people with disabilities live.

We coordinate the official community visitors scheme.

We provide information and training to consumers of community services and to organisations about complaint-handling and consumer rights.

We promote improvements to community service systems and access to advocacy support for people who are receiving, or are eligible to receive, community services.

## Agencies conducting covert activities

#### Who we scrutinise

We scrutinise law enforcement agencies such as the NSW Police Force, the NSW Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission.

#### How we keep them accountable

We review agency compliance with accountability requirements for undercover operations, the use of telephone intercepts, surveillance devices and some search warrants.

# Corporate governance



Developing, implementing and maintaining a robust system of corporate governance helps us to be an effective organisation — one of our key aims. This governance system has to keep pace with our responsibilities, as well as the resources available to us. In 2008–2009 our statement of corporate purpose continued to provide high level direction for our work.

Each year our business units develop detailed plans outlining how we will meet our vision and our four key corporate purposes in their area of work. These plans are supported by a range of office policies to guide staff in their work and promote consistency.

## Strategic planning

With an increasing workload and a shrinking budget, it is vital we make the best possible use of our resources. At the end of 2008, we began to review our strategic planning program, as well as our internal structure, our work processes, how we engage with stakeholders and our future direction. This work will help us to remain a vibrant, strategic and responsive organisation.

Our strategic planning review was largely the result of the significant financial pressures we face. To fund ongoing pay increases, we have to reduce positions in our office because current and future funding levels will not support our existing staff numbers.

The review began with two days of intensive analysis of our current situation and our future direction. Our senior staff developed a program for change that is being driven by a steering committee. Five working parties have been set up to look at five key areas — realigning our work, engaging better with our stakeholders and partners, building leadership capacity, leading the change, and improving business support. They are undertaking more detailed analysis of our processes, direction and strategies, making recommendations for change, and developing a framework to implement those changes.

### Realigning our work

The agencies we oversight do not remain static. They are constantly changing, and it is vital we keep pace with these changes and respond accordingly. This involves reviewing the work we are doing, how we can

better hold agencies to account, and checking how we allocate our time and resources. The working party has reviewed different areas of our work — including the way we handle enquiries and complaints, notifications, systemic investigations and reviews, as well as our education and training. They have made a number of recommendations for consolidation and improvement.

This work has fed into planning for broader structural change within our office. The proposed change in structure also reflects recent changes to the public sector.

### Engaging better with stakeholders and partners

Our work is built on effective communication and interaction with a range of different individuals and organisations. These include complainants, government agencies, non-government organisations, our Parliamentary Committee, other members of Parliament and occasionally the media.

Developing effective, results-focused relationships helps us to better understand our 'external environment' and achieve the best possible outcomes for the community. A better understanding of our stakeholders will also mean we can allocate our resources more effectively, improve and expand our proactive work, identify areas where we can work in partnership with others, and give us the opportunity to provide guidance and support to the agencies we oversight. The working party will consider the views of our staff and seek input from our stakeholders and partners.

## Building leadership capacity

We have to have a strong governance structure. We are reviewing our reporting structures, our business processes and the roles performed by our leadership group and all our staff. The working party has already recommended a number of changes to our governance framework.

We also need to expand our leadership group, helping us to adapt swiftly and professionally to the challenges of an ever-changing environment. To achieve this, we are looking at our workforce planning — checking if we have the right mix of skills for our current and future work. We are assessing our career planning, including opportunities for mobility within the office. We are also working to refine the roles and responsibilities of our leadership group, making sure we provide them with the skills needed to perform to the highest possible standard.

## Leading the change

This ambitious strategic planning process will have an impact on all our staff and work areas, so it is important that our staff are involved throughout the process. They need to be aware of what is happening, why it is happening and what the potential impact may be.

The Ombudsman has made it clear that all staff have an opportunity to contribute to this process. There are a number of ways staff can get involved. A link on our office intranet allows staff to read updates from the working parties, as well as access questionnaires and email their suggestions and ideas. Our Joint Consultative Committee (JCC) is also involved in the planning process.



This gives representatives of staff and their union, the Public Service Association, an opportunity to contribute to discussions and decision-making on behalf of their members. Regular progress reports are also provided at office-wide and division meetings.

### **Improving business support**

As part of assessing how we do our work, we need to make sure our business support systems meet our needs and are being applied consistently across the office. We are reviewing key support systems, assessing whether they are effective and efficient and identifying possible changes to enhance them. We also need to ensure that our support systems are flexible to enable us to adapt to changes in business processes. So far, we have consolidated the legal services provided within the office, recommended changes to our office-wide planning processes and reviewed our budget reporting processes.

### **Accountability**

We expect public sector agencies to be accountable for their actions and decisions. Our office is no different, and there are a number of different ways in which we are held to account.

### **Reviews of decisions**

We always provide complainants with reasons for the decisions we make. If they believe our decision is wrong, they can ask for a review. Each matter will only be reviewed once. When we receive a request for a review, we will call the complainant first and try to resolve the matter quickly and informally. If this is not successful, the review is allocated to a member of staff who has had no previous involvement in the complaint. The staff member assesses the original complaint as well as any issues raised in the review request. When they have completed the review, the staff member provides the file to the Ombudsman, along with their recommendation. The complainant will receive a letter from the Ombudsman outlining the outcome of the review. In some cases, this letter will also outline any restrictions on the complainant's future contact with our office.

### **Our Parliamentary Committee**

Our work is overseen by the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (the PJC). If someone is unhappy with the way we have dealt with them, they can take their complaint to the PJC. However, the PJC cannot:

- › investigate a matter relating to particular conduct
- › reconsider a decision we have made to investigate, not to investigate or to stop investigating a particular complaint matter or conduct
- › reconsider findings, recommendations/determinations the Ombudsman has made about a particular investigation or complaint.

The PJC is made up of representatives of both sides of Parliament, as well as independents and members of smaller parties. This ensures our independence as it means we are accountable to the Parliament, rather than the government of the day.

Our 15th general meeting with the PJC was held on 21 May 2009.

The Ombudsman and senior staff appeared before the committee to answer questions about our work. The committee members asked questions based on our last annual report — as well as our review of the FOI Act, our work in the area of juvenile justice and the use of Taser weapons by the NSW Police Force. Earlier in the year, the Ombudsman and Assistant Ombudsman (Police) appeared before the PJC to answer questions as part of their inquiry into early intervention systems for police. We also provided the PJC with a detailed written submission on this issue.

Following our review of the FOI Act, the government has made the PJC responsible for overseeing the work of the new Information Commissioner's office.

### **Other oversight bodies**

The PJC is not the only external body keeping an eye on our office. Like other public sector agencies, we come under the scrutiny of the Auditor-General, the Independent Commission Against Corruption, the Privacy Commissioner, the Anti-Discrimination Board, State Records and the NSW Treasury. We also produce four annual reports about our work and make a large amount of information about what we do available on our website.

### **Managing risk**

Like any organisation, it is important that we identify and effectively manage any risks relating to our work. As our key asset is the information we hold, our focus is on protecting that information. Agencies and members of the public have to be confident that the information they give us will be handled appropriately. Using a risk management framework, we identify any potential risk factors relating to our work and the controls we need to put in place to either eradicate or lessen those risks. This relates to our paper-based systems as well as our computer network and databases.

Our information security management processes work alongside programs to manage risk in other areas such as occupational health and safety, business continuity planning, accounting, leave management and payroll.

In our last annual report, we noted that we reviewed our information security policy at the beginning of 2008. After this review, we decided to amalgamate many of our existing security and risk-related policies into two policies — a security policy and an information security management policy. These core policies are supported by a number of supporting documents.

Our security and information management steering committee is responsible for ensuring we have appropriate systems in place to identify and effectively manage risks that arise in our work. This is particularly important when we make changes to our processes, or when we start work in a new area. The committee works closely with each business unit to identify these changes and plan our response to any potential risks. The committee meets every month, and is made up of representatives from each division.

To make sure we have the best possible information security systems in place, we have sought accreditation against a number of recognised standards. In 2002 and again in 2005, we were accredited under the Australian Information Security Standard AS7799. In 2007, we were accredited under the International Information Security Standard ISO/IEC 27001. We have received particularly positive reports after our accreditation audits and we have used these reports to improve our systems and practices.



# Our people



We have the equivalent of 170 full-time staff working for our office (see figure 1). These people are an energetic and diverse mix of experience and skill and come from a range of backgrounds — including investigative, law enforcement, community and social work, legal, planning, child protection and teaching. Our collective experience gives us insight into the agencies we keep accountable and helps us to be a persuasive advocate for change.

## Human resources

### Any exceptional movement in wages, salaries or allowances

In September 2008, the Industrial Commission endorsed the memorandum of understanding (MOU) between the NSW Government and the Public Service Association (PSA) governing conditions and workforce reforms in a number of areas — including sick leave, excess staff and annual leave liability reduction. This agreement approved wage increases of 4% per annum over a three year period starting in July 2008. This decision affected all staff covered by the Crown Employees (Public Sector — Salaries 2008) Award.

Although increases of 4% were approved, agencies — including the NSW Ombudsman — only received funding of 2.5% in their annual budget allocations. The expectation was that the MOU would result in savings to fund the unfunded component of the pay increases. If, for some reason, the MOU changes did not provide sufficient savings, agencies were required to identify other strategies to meet their ongoing obligations to pay the increases.

The MOU did not provide our office with any substantial savings. The Ombudsman advised the Department of Premier and Cabinet (DPC) as well as NSW Treasury that his only strategy to meet our ongoing pay obligations was to reduce staff numbers. He estimated that at least ten investigators positions would need to be deleted to cover the unfunded pay increases over the three years of the award. This would have a direct impact on the service we provide to the public.

The Ombudsman has no role in negotiating pay increases for his staff, as the Director General of DPC is the employer for industrial purposes.

From 1 October 2008 a 2.5% increase was paid to our statutory officers, except the Ombudsman who received 4%.

### Industrial relations policies and practices

Interpreting and implementing the changes agreed to in the MOU between the government and the PSA has involved significant discussion with staff, mostly through our formal consultative arrangement — the Joint Consultative Committee (JCC).

The JCC continued to work cooperatively during the year, particularly when discussing the impact of the unfunded pay increases on staff levels. The JCC has been kept informed of issues with interpreting new award provisions and our ongoing discussions with the Public Sector Workforce Office (PSWO). They have also considered broader policy changes agreed to in the MOU and

how best to implement those changes in our office.

We have had discussions with the PSA about our strategy to reduce positions to fund the unfunded component of the pay increases — all in the context of an increased workload, increased community expectations, and other financial imperatives, such as efficiency dividends.

The JCC has taken an active interest in the implementation of any structural or work process changes, particularly how these changes will impact on staff. The Ombudsman invited staff representatives of the JCC to participate in broader strategic planning activities including participating on working parties. For more details of our work in this area, see page 9 in Corporate governance.

The JCC continued its policy review program developing our good working relationship policy and a policy on the use of our CCTV. Their review of our co-lateral flexible working hours agreement was postponed because of the changes to these provisions in the new award.

**Figure 1 — Staff levels**

Position	04/05	05/06	06/07	07/08	08/09
Statutory officers	6.00	6.00	6.00	5.00	<b>6.00</b>
Investigative	67.12	69.60	66.17	65.90	<b>74.13</b>
Investigative support	30.64	30.44	34.00	35.65	<b>25.60</b>
Project and research	12.80	15.60	16.60	15.60	<b>14.10</b>
Training and community education	3.30	3.20	3.58	3.50	<b>3.30</b>
Inquiries	8.00	8.00	9.00	10.00	<b>7.00</b>
Community visitor support	2.80	2.80	3.00	2.80	<b>2.80</b>
Systemic review	10.29	11.70	12.10	13.40	<b>12.81</b>
Corporate	23.80	25.86	29.43	23.97	<b>24.74</b>
<b>Total*</b>	<b>164.75</b>	<b>173.20</b>	<b>179.88</b>	<b>175.82</b>	<b>170.48</b>

\* full-time equivalent

## Chief and senior executive service

Our office has six senior positions — the Ombudsman, two Deputy Ombudsmen and three Assistant Ombudsmen. During the year, women held two of these positions. Please see figures 2 and 3 for details of the levels of our senior positions and remuneration as at 30 June 2009. There was no change in the number of senior positions during the reporting year, however Anne Barwick retired in June 2009 after more than ten years as the Assistant Ombudsman (Children and Young People).

## Personnel policies and practices

Our staff are employed under the provisions of the *Public Sector Employment and Management Act 2002*. This Act, associated regulations and the Crown Employees (Public Service Conditions of Employment) Award 2009 set the working conditions of public servants. As this includes our staff, we have little scope to set their working conditions and entitlements. The Director General of DPC, through the PSWO, is the employer for this purpose and negotiates conditions and entitlements with the relevant unions.

In 2008–2009, the focus of our personnel activities was on implementing the significant changes to award conditions and entitlements that were agreed to by the government and the PSA. Changes to sick leave and family and community service (FACS) leave provided some unique challenges, particularly as inconsistencies in the award have made these new provisions difficult to apply. We have been liaising with the PSWO and other agencies to ensure consistent interpretation of these new provisions. We have had to reconcile FACS leave entitlements of all staff and change our personnel database to reflect new leave rules.

The reconciliation of sick leave balances are still to be done, as we are waiting on clarification of some of the new award provisions. At the time of writing, we have a number of outstanding issues with the PSWO that have delayed our implementation of the new conditions.

The MOU has also committed our office to:

- › changing our job evaluation process — this will now be done by a designated staff member rather than through a staff/management committee

- › implementing a public sector-wide capability framework — this will require a comprehensive review of the skills and capabilities we need and changing how we describe our positions
- › implementing e-recruitment — this is currently being developed by DPC
- › implementing a purchased leave scheme — this was recently approved by the PSWO
- › implementing a new flexible working hours scheme — this is still being negotiated by the PSWO and PSA.

We continued systematically reviewing all our personnel-related policies and systems to ensure that they help us achieve purpose 4 of our Statement of Corporate Purpose — to be an effective organisation.

We upgraded our human resources/payroll system during the year and started a project to implement 'KIOSK'. This is a self-service facility enabling staff to directly access and change their personal information in our personnel database, as well as request approval for leave. Implementing KIOSK will be a substantial project as it involves changes to business practice, significant testing and staff training.

## Anne Barwick retires after 10 years as Assistant Ombudsman (Children and Young People)

Anne joined our office shortly after we were given the new and important role of overseeing agencies' investigations into reportable allegations against their employees and keeping the systems to do so under scrutiny. Anne worked with both government and non-government agencies to establish and develop this jurisdiction, and was well regarded for her accessibility, clear advice and commitment to child protection.

Anne established industry forums to provide an opportunity for agencies to get together to share their experiences and discuss emerging issues. She gave presentations to a range of organisations and interest groups, and regularly met and consulted with agencies about the operation of the Ombudsman's employment-

related child protection function. Her positive approach encouraged agencies to consult with us and seek our advice and feedback in this area.

Anne also ensured that we established appropriate systems and procedures for handling notifications, and supported staff in the sometimes difficult task of reviewing investigations and calling agencies to account.

Over the past ten years, there have been substantial improvements in the way that agencies handle reportable allegations against their employees, and we have developed considerable expertise in the area of employment-related child protection. Our work is held in high regard by the agencies with whom we do business and this is due, in great part, to Anne's leadership.

Anne's commitment, skills and integrity were highly valued and our office, as well as the broader community, will continue to benefit from her influence in the area of employment-related child protection.

We thank Anne for her significant contribution to our office and wish her well in her retirement.



## Equal employment opportunity

Our EEO program aims to achieve fair practices and behaviour in our workplace. It includes:

- › recruitment, selection and promotion practices that are open, competitive and based on merit
- › access to training and development for all staff
- › flexible work arrangements that meet the needs of all staff and create a productive work environment
- › grievance-handling procedures that deal with workplace complaints promptly, confidentially and fairly
- › sound communication channels that give staff access to information and allow their views to be heard
- › management decisions made without bias
- › no unlawful discrimination or harassment in the workplace
- › respect for the social and cultural backgrounds of all staff.

The NSW Government has set targets for employing people from various EEO groups. Measurement against these targets is a good indication of how effective our EEO program has been. The tables below compare our performance to government targets.

### Preventing harassment and promoting respect for each other

After the harassment prevention training we provided for all our staff, our JCC has been reviewing our harassment prevention policy. We have now renamed it our 'good working relationship' policy. This policy will reinforce the obligations of all staff to make sure that our workplace is free of harassment. To promote respect for the social and cultural backgrounds of our staff, we continued our in-house training on Aboriginal cultural appreciation and we also continued disability awareness training.

**Figure 2 — Executive remuneration**

Position	Ombudsman
Occupant	Bruce Barbour
Total remuneration package	\$414,893
\$ Value of remuneration paid as a performance payment	nil
Criteria used for determining total performance payment	n/a

**Figure 3 — Chief and Senior Executive Service**

	2006	2007	2008	2009
SES Level 4	2	2	2	2
SES Level 2	3	3	2	3
CEO*	1	1	1	1
<b>Total</b>	<b>6</b>	<b>6</b>	<b>5</b>	<b>6</b>

\* CEO position listed under section 11A of the *Statutory and Other Offices Remuneration Act 1975*, not included in Schedule 2 for the *Public Sector Employment and Management Act 2002*.

## Performance Indicators

### Trends in the representation of EEO groups

EEO Group	Government target (%)	Ombudsman representation (%)				
		04/05	05/06	06/07	07/08	08/09
Women	50	72	72	71	73	71
Aboriginal & Torres Strait Islander people	2	2.1	2	2	2.5	3.6
People whose language first spoken as a child was not English	20	18	18	17	20	21
People with disabilities	12	6	7	7	6	7
People with disabilities requiring work-related adjustment	7	2.1	1.5	2	2	2.6

### Trends in the distribution of EEO groups

Interpretation: A distribution index of 100 indicates that the centre of the distribution of the EEO group across salary levels is equivalent to that of other staff. Values less than 100 mean that the EEO group tends to be more concentrated at lower salary levels than is the case for other staff. The more pronounced this tendency is, the lower the index will be.

In some cases the index may be more than 100, indicating that the EEO group is less concentrated at the lower levels. Where n/a appears, the sample was not sufficient to draw a conclusion. The distribution index is automatically calculated by the Department of Premier and Cabinet from information provided by the Ombudsman.

EEO Group	Benchmark or target	Ombudsman				
		04/05	05/06	06/07	07/08	08/09
Women	100	88	89	90	88	90
Aboriginal & Torres Strait Islander people	100	n/a*	n/a*	n/a*	n/a*	n/a*
People whose language first spoken as a child was not English	100	83	88	89	86	85
People with disabilities	100	n/a*	n/a*	n/a*	n/a*	n/a*
People with disabilities requiring work-related adjustment	100	n/a*	n/a*	n/a*	n/a*	n/a*

\* 'n/a' is used when sample size is small.

## Flexible work arrangements

We promote flexible work options to enable staff to balance their work and personal commitments. We offer part-time work, flexible working hours, working at home arrangements and a range of leave options. We have 42 staff who work part-time.

We have started initial discussions through our JCC on renegotiating our flexible working hours agreement, and we will continue with this in 2009–2010. Our review will need to complement public sector-wide changes to flexible working arrangements that were flagged as part of the recent pay increase negotiations.

## EEO and personnel policies and practices

Our personnel practices support EEO by ensuring a diverse and skilled workforce, fair work practices and behaviours, and employment access and participation by EEO groups. Figures 5 and 6 show the gender and EEO target groups of staff by salary level and employment basis — permanent, temporary, full-time or part-time.

## Occupational health and safety

As an employer, we are required to provide a safe work environment for our staff. We are subject to the provisions and responsibilities outlined in legislation such as the *Occupational Health and Safety Act 2000* as well as public sector occupational health and safety (OH&S) policies.

We use a risk management approach to our OH&S activities and have approved policies and supporting programs that provide guidance to both managers and staff in a range of areas. These include OH&S strategies and procedures, a return to work program, a first aid plan and workplace inspections.

## New OH&S representative

During the year, staff elected an OH&S representative. Their role is to review the measures taken to ensure the health, safety and welfare of staff at work. They also have the power to investigate OH&S matters and help to resolve issues. A number of matters were raised by the representative and action taken to resolve them.

## Supervisor responsibilities

As part of our focus on supervisor training, supervisors attend OH&S risk management training. They are also trained how to conduct workplace inspections and are required to regularly inspect the work areas of their staff, identifying and rectifying any issues.

## Reasonable adjustments

In 2008–2009, we modified a number of work areas or work processes to help staff who have either ongoing medical conditions or other specific needs — including desk adjustments, changing the placement of lights, and installing special software. Some of these modifications were made after medical or other external professional assessments.

## Pandemic influenza 2009 (swine flu)

This year we have had to deal with the threat of pandemic influenza 2009 or swine flu. We had already considered the impact of pandemic influenza a couple of years ago, when an outbreak of bird flu was anticipated. We were able to adapt and use the risk assessments and strategies developed as a response to bird flu to assist us prepare for the potential impact of swine flu.

We took a proactive approach to the general flu season this year, advising staff to stay at home if they had any flu-like symptoms.

## Emergency evacuation procedures

We continued to participate in our building's emergency evacuation training program, with all wardens attending training at least twice a year. We also took part in the building's emergency evacuation drills.

## Employee assistance program

We provide an employee assistance program (EAP), including a free 24-hour counselling service for staff and their families. Information sessions about the EAP were conducted during the year.

## Other supporting programs

We have a number of other programs that help us to meet our health and safety obligations. For example:

- › Hepatitis vaccinations — staff who visit correctional centres are vaccinated against Hepatitis A and B.

- › Flu shots — we organise flu shots for staff to prevent high levels of absenteeism during the flu season.
- › Basic first aid — we have appointed a number of staff as first aid officers to help us respond to minor workplace injuries. We cover the costs of their initial and ongoing training and pay them a yearly allowance for undertaking this role.

## Workers compensation

We participate in the NSW Treasury Managed Fund, a self-insurance scheme for the NSW public sector. We have been actively managing our workers compensation claims and, as a result, there was a slight reduction in claims reported to our insurer this year (see figure 4). We had two open workers compensation claims at 30 June 2009.

**Figure 4 — Workers compensation**

Claims entered in the year	07/08	08/09
Claims brought forward	9	6
New claims	6	5
Claims closed	9	9
Open claims 30 June	6	2

## Learning and development

We provide learning and development opportunities for our staff to help them to do their current job more effectively and gain new skills to progress their careers, both within our office and the public sector. This helps us to attract, develop and encourage skilled and committed staff — one of the goals of our statement of corporate purpose.

Our training schedule this year included coordinated induction sessions, job specific training and in-house workshops held by external training providers. Staff also attended a range of external courses to gain job-specific skills.

With ongoing financial pressures, the resources allocated to training in 2008–2009 were considerably less than the previous year. In future, we will need to take a more strategic approach to staff training to ensure that we continue to provide suitable ongoing development opportunities for all our staff — despite a reducing budget.



**Figure 5 — Percentage of total staff by level**

Level	Total staff (no.)	Subgroup as a % of total staff at each level		Subgroup as an estimated % of total staff at each level				
		Men	Women	Aboriginal & Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with disabilities	People with disabilities requiring work-related adjustment
< \$36,677	0	0	0	0	0	0	0	0
\$36,677–\$48,172	10	1	9	1	6	5	1	1
\$48,173–\$53,854	8	0	8	1	4	3	0	0
\$53,855–\$68,147	34	10	24	1	15	13	3	1
\$68,148–\$88,127	92	21	71	2	25	15	5	3
\$88,128–\$110,160	41	20	21	2	6	5	2	0
> \$110,160 (non SES)	3	1	2	0	0	0	1	0
> \$110,160 (SES)	5	3	2	0	0	0	1	0
<b>Total*</b>	<b>193</b>	<b>56</b>	<b>137</b>	<b>7</b>	<b>56</b>	<b>41</b>	<b>13</b>	<b>5</b>

\* This figure represents the actual number of full-time and part-time staff as at 30 June 2009 — not the full-time equivalent reported in figure 1.

**Figure 6 — Percentage of total staff by employment basis**

Employment basis	Total staff (no.)	Subgroup as a % of total staff in each category		Subgroup as an estimated % of total staff in each employment category				
		Men	Women	Aboriginal & Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with disabilities	People with disabilities requiring work-related adjustment
Permanent full-time	118	37	81	4	38	25	9	3
Permanent part-time	41	6	35	1	10	9	1	1
Temporary full-time	22	9	13	2	8	7	1	1
Temporary part-time	6	0	6	0	0	0	0	0
Contract — SES	5	3	2	0	0	0	1	0
Contract — non SES	1	1	0	0	0	0	1	0
<b>Total*</b>	<b>193</b>	<b>56</b>	<b>137</b>	<b>7</b>	<b>56</b>	<b>41</b>	<b>13</b>	<b>5</b>

\* This figure represents the actual number of full-time and part-time staff as at 30 June 2009 — not the full-time equivalent reported in figure 1.

### Developing professional skills

This year we organised two symposiums which many staff attended as part of their ongoing professional development.

- › The 7th National Investigations Symposium focused on maintaining and increasing investigative knowledge, skills and techniques for staff conducting fact-finding exercises.
- › Working Together: Advancing Child Protection in the Workplace brought together international and local experts and practitioners to reflect on what we have learnt over the past 10 years about the prevention of, and response to, child protection issues in the workplace. The symposium provided an opportunity to consider future challenges facing employers, such as the increasing use of technology by children and young people for social networking.

We continued to run our in-house developed investigation training

course to provide staff with appropriate job content training. This course covers various aspects of investigation work including report writing, planning, managing parties and evidence collection.

Staff also attended a range of external training including courses on presentation skills, public policy process, workplace effectiveness, communication skills and project management.

In addition, a number of staff took part in:

- › web accessibility and Web 2.0 training, as part of our website redevelopment project
- › public training sessions run by our own staff, including art of negotiation and dealing with unreasonable complainant conduct
- › training sessions run by external presenters on a range of issues specific to our complaint-handling and other activities.

### Raising awareness

One focus of our training program is on improving how we deal with the public. During the year we continued our disability awareness and Aboriginal cultural awareness training sessions. These courses both use attitudinal and practical sessions to illustrate issues facing Aboriginal people and people with disabilities.

In addition, we also deliver youth complaints training. Complaints systems are often designed by and for adults and can be intimidating and confusing for young people. It is important for us to be accessible to young people and have a consistent approach in our dealings with them. Staff who deal with the public are required to attend training to assist them to respond appropriately to young people who contact our office.

The overwhelming response to both courses has been positive and this training will continue in 2009–2010.

## Spotlight on supervisors

We continued our program of equipping supervisors with the necessary skills and knowledge to effectively carry out their responsibilities. This included training on supervisory skills, EEO and performance management.

## Better equipping new staff

Our formal induction program aims to provide all new staff members with clear and consistent information about our office and our policies, processes and obligations. During their first three months at the NSW Ombudsman, new staff receive training on security awareness and our electronic document management and case management systems.

They also attend an information session where representatives from across the office provide a brief overview of the role and structure of their area. We also hold 'Ombudsman What, When, Where and Why' training sessions — the first module of our investigation training program — for new staff to help them understand our functions, our jurisdiction and our responsibilities.

By law, we are required to provide procedural fairness ('the right to respond') before making investigation findings or recommendations. This year, we reviewed our practices and developed new guidelines for staff about procedural fairness that reflect recent developments.

## Improving our computer skills

After the upgrade of TRIM — our document management system — all staff attended information sessions that not only provided an outline of the system changes but also reinforced some basic TRIM functionality.

A number of staff also attended external training in Excel and Word.

## Supporting other programs

Staff development also means encouraging staff to undertake further study to enhance their skills. During 2008–2009, two staff members participated in the Public Sector Executive Development Programs sponsored by the Department of Premier and Cabinet, and five staff used study leave provisions to undertake tertiary education courses.

## The year ahead

In 2009–2010 we will continue a number of our current training programs, including supervisor training and our disability and Aboriginal cultural awareness courses.

Training will be provided as part of our program of IT application upgrades, including our case management system and Office 2007. We are currently developing refresher courses in TRIM after feedback from staff and will be offering training in advanced TRIM features.

A professional development program for senior staff is being developed to address the ongoing needs of this group. We have analysed the results of our survey of senior staff and will use this information to develop a tailored program.

## Environmental issues

In December 2008, the Premier released the NSW Government Sustainability Policy. This policy outlines how the government will lead by example in sustainable water and energy use, reducing greenhouse gas emissions, waste and fleet management, and sustainable purchasing. It combined a number of separate programs into one comprehensive environmental framework.

Implementing the new sustainability policy will ensure government agencies, including our office:

- > consider sustainability in all relevant decision-making
- > reduce their greenhouse gas emissions
- > are more efficient in their use of energy and water, and reduce the wider environmental impacts associated with water and energy use
- > meet the challenge of rising prices expected for energy, fuel, water and waste management
- > are more efficient in their use of vehicles
- > produce less waste and increase recycling in government activities
- > use purchasing power to drive efficiency and environmental sustainability.

The policy also sets new targets for reducing greenhouse gas emissions and environmentally sustainable purchasing practices.

We are currently reviewing our environmental policies, including our outcomes and targets, to reflect this new policy. For further information about our energy management see Appendix O.

**Figure 7 — Training expenditure**

Year	04/05 \$'000	05/06 \$'000	06/07 \$'000	07/08 \$'000	08/09 \$'000
Value	78	117	220	180	125

# Our performance

To retain the independence of the Ombudsman, the position is not responsible to an individual minister. Instead the Ombudsman appears before the Parliamentary Joint Committee to answer questions about the performance of our office. Our performance statement is a summary of our achievements during the year against the purposes outlined in our corporate plan. The breadth and diversity of our work is captured in Snapshot of the year.

## Our guarantee of service

We will:

- › consider each matter promptly and fairly, and provide clear reasons for our decisions
- › where we are unable to deal with a matter ourselves, explain why, and identify any other appropriate organisation where we can
- › help those people who need assistance to make a complaint to the Ombudsman
- › add value through our work.

## Statement of responsibility

The Ombudsman, senior management and other staff have put in place an internal and external control process designed to provide reasonable assurance about the achievement of the office's objectives. The Ombudsman, two Deputy Ombudsman, each Assistant Ombudsman and the managers of the respective corporate and cross agency teams assess these controls.

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



Bruce Barbour  
Ombudsman

This chapter provides a 'snapshot' of the matters we received this year and our performance against our statement of corporate purpose.

- |                         |    |
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# Performance statement

## Purpose

## Goals for 2008–2009

**1 Help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery**

- › Review and report on the service, systems and conduct of agencies.
- › Monitor and report on compliance with legislative obligations and responsibilities.
- › Make recommendations and suggestions for agency improvements and/or for improving the circumstances of individuals.
- › Promote best practice standards for agency service delivery and good conduct.
- › Provide training in delivery of service, good conduct and the rights of consumers to quality services.

**2 Deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems**

- › Implement and promote best practice investigation and complaint-handling methodologies within the office.
- › Use client feedback to improve our work.
- › Implement and promote best practice investigation and complaint-handling methodologies in agencies we oversee.
- › Help achieve redress for justified complaints.
- › Identify systemic causes of complaints and propose solutions.

**3 Be a leading watchdog agency**

- › Create positive relationships and work collaboratively with other Ombudsman and watchdog organisations.
- › Promote professional work practices with other Ombudsman and watchdog institutions.
- › Continuously improve our work practices.

**4 Be an effective organisation**

- › Have appropriate structures, policies and systems to support and enhance our service delivery.
- › Attract, develop, support and encourage skilled and committed staff.
- › Capture, use and share information and knowledge to support and enhance our service delivery.
- › Be an effective public sector agency that complies with applicable laws and policies and is accountable or transparent for our actions and decisions.



## Performance for 2008–2009

- › Tabled in Parliament reports about the use of Taser weapons by police, supporting people with an intellectual disability in the criminal justice system, our review of the *Freedom of Information Act 1989* and the implementation of four laws conferring additional powers on police.
- › Made recommendations for systemic change resulting from our investigations across mental health and housing, local council decision-making, accessing information about HSC marks, open disclosure by NSW Health, WorkCover’s handling of an incident of asbestos exposure, and ministerial involvement in FOI determinations (see Our business).
- › Reviewed the deaths of 162 children and 98 people with disabilities, the circumstances of 35 children aged 10 to 14 year in out-of-home care, the planning and delivery of services to meet the needs of 60 people living in residential centres, and the systems of 21 agencies for handling employment-related child protection allegations.
- › Undertook more than 200 community education and training activities, including providing 117 workshops and training sessions, reaching over 2,700 people.

- › Achieved positive outcomes for complainants including changes to decisions and policies, apologies, refunds and the correction of errors.
- › Over 70% of the deficiencies we identified in police complaint investigations were remedied.
- › Completed a review of complaint-handling by 20 agencies providing services under the DADHC-funded Community Participation program.
- › Provided feedback to over 70 public authorities aimed at improving their systems for handling employment-related child protection allegations and preventing abusive behaviours towards children.
- › Hosted a second complaint-handling forum for universities.
- › Published a new edition of our *Protected Disclosure Guidelines and Apologies — A Practical Guide*.

- › Held two successful symposiums — the 7th National Investigation Symposium which we co-hosted with ICAC attracted over 230 participants from Australia and overseas, while our employment-related child protection symposium was attended by 320 delegates from a range of government and non-government agencies in NSW and interstate.
- › Entered into new class or kind agreements with the NSW Police Force, the Department of Education and Training and each of the 11 Catholic dioceses to streamline our oversight of complaints about police and employment-related child protection notifications.
- › Provided training support to Ombudsman offices in Papua New Guinea and Vanuatu, and advised the Republic of Palau on legislation to establish a parliamentary Ombudsman and reform its Ethics Commission.
- › Worked with other Ombudsman offices across Australia to produce the *Managing unreasonable complainant conduct practice manual* and delivered related training.

- › Commenced an organisational restructure to respond to current financial pressures and recent changes to the public sector.
- › Undertook extensive maintenance and upgrading of our computer network infrastructure and connected it with DoCS’ computer network to allow our staff to remotely access critical information.
- › Commissioned Vision Australia to conduct a comprehensive audit of our website to gauge its accessibility to people with disabilities and made suggested changes.
- › Continued to implement a multifaceted office-wide training and development program for staff at all levels.
- › Increased in-house printing to reduce costs, improve stock control and eliminate waste.
- › Received a Silver Award for our 2007–2008 annual report.

## Future goals 2009–2010

- › Audit the ongoing implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.
- › Finalise our review of planning and support for 65 young people leaving statutory care.
- › Complete our investigation into DoCS’ handling of victims’ compensation claims for children under the parental responsibility of the Minister for Community Services.
- › Finalise our program of agency audits examining the handling of employment-related child protection allegations.
- › Complete our review of the implementation by DADHC of policies to improve the access of Aboriginal people to disability and aged care services.

- › Finalise our audit of the police handling of complaints relating to domestic and family violence.
- › Review the implementation of the ‘streamlined’ system for handling police complaints.
- › Monitor the implementation of the recommendations resulting from our review of complaint-handling by agencies providing services under DADHC’s Community Participation program.
- › Release our revised Complaint Handler’s Tool Kit.

- › Through the Pacific Ombudsman Alliance, support the three-month secondment of one of our officers to the Vanuatu Ombudsman.
- › Provide advice to the Office of Police Integrity about developing a strategy for auditing police work with Aboriginal communities in Victoria.
- › Conduct another four workshops across Canada on Managing unreasonable complainant conduct.

- › Complete the implementation of structural changes and business improvement processes to enable us to enhance our service delivery.
- › Upgrade our case management system, redesign our intranet and make further improvements to our website.
- › Finalise OCV online, the new data classification system that will be used by official community visitors.

# Snapshot of the year



This year a total of 32,994 complaints and notifications were brought to our attention by a variety of people — including members of the public, families of people who are receiving community services, Members of Parliament and staff who work in the public sector. They brought to our attention a broad range of concerns via 8,742 formal complaints and notifications and 24,252 informal complaints and inquiries.

## Responding to complaints and notifications

This year we finalised more formal complaints and notifications than we received (see figure 8).

As we have jurisdiction over a range of agencies and specific functions under a number of pieces of legislation, we categorise matters to ensure that we provide the most appropriate response. Figure 9 shows a breakdown of the complaints and notifications we received this year. From year to year the number of complaints and notifications we receive fluctuates. This year there were small decreases across all areas of our work and no discernable pattern. However, several of the complaints we received warranted close scrutiny, and in some cases, complex investigations. These investigations are outlined in Our business.

## How we handle different types of matters

We divide the complaints we receive into formal and informal matters. This determines the process we use to handle them. Generally, we define formal matters as written complaints and notifications and informal matters as complaints that are made over the telephone or in person.

If a complainant is a vulnerable member of the community and it may be unreasonable to ask them to make a written complaint, we will take their complaint verbally and treat it as a formal complaint.

People who may be considered vulnerable include inmates of correctional centres, young people and people with disabilities.

### Informal matters

We categorise most telephone calls, visits to our office and inquiries made to our staff when they are working out in the field as informal. In these situations, we are usually able to help people by giving them information or an explanation, referring them to another agency or the agency they are inquiring about, or advising them to make a complaint to us in writing.

### Formal matters

This year we finalised 8,903 formal matters (see figure 10). These can take anywhere from a few days to several months to finalise. Our response may be a clarifying phone call to the agency concerned or a full-scale investigation.

The main pieces of legislation that govern this aspect of our work are the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

Although we have coercive powers to require agencies to provide us with documents or answer our questions, we generally try to resolve complaints without using them. Most agencies that we contact are cooperative and understand that resolving a person's dissatisfaction with their organisation is usually beneficial to the agency as well.

If we do use our coercive powers, we classify the complaint as being 'formally investigated'. The actions that we take to finalise complaints include:

- resolving a complaint by persuading the agency concerned to take some action
- resolving a complaint by undertaking a formal investigation and making findings and recommendations — this year we finalised 44 matters this way (see figure 11)
- providing detailed information or advice to the complainant
- making inquiries and finding no wrong conduct.

## Performance indicator

### Requests for a review of our decision as a percentage of complaints finalised

Division	Target	07/08	08/09
Employment-related child protection	<6.0%	5 (7.1%)	4 <b>(8.3%)</b>
Community services	<6.0%	3 (0.4%)	6 <b>(1.5%)</b>
General	<6.0%	211 (5.8%)	169 <b>(5.0%)</b>
Police	<1.8%	55 (1.5%)	63 <b>(2.0%)</b>

**Figure 8 — Formal complaints and notifications received and finalised by our office — five year comparison**

Year	04/05	05/06	06/07	07/08	08/09
Received	10,714	10,304	9,692	9,320	<b>8,742</b>
Finalised	10,866	10,096	9,576	9,544	<b>8,903</b>

**Figure 9 — Complaints and notifications we received in 2008–2009 — by subject area**

Subject area	Formal	Informal	Total
Departments and authorities*	1,349	3,949	<b>5,298</b>
Local government	702	1,795	<b>2,497</b>
Correctional centres and Justice Health	750	3,062	<b>3,812</b>
Juvenile justice	70	255	<b>325</b>
FOI	186	407	<b>593</b>
Child and family services	449	868	<b>1,317</b>
Disability services	157	216	<b>373</b>
Other community services**	29	231	<b>260</b>
Employment-related child protection***	1,711	703	<b>2,414</b>
Police	2,948	2,832	<b>5,780</b>
Outside our jurisdiction*	391	6,636	<b>7,027</b>
Requests for information	–	3,298	<b>3,298</b>
<b>Total</b>	<b>8,742</b>	<b>24,252</b>	<b>32,994</b>

\* We sometimes receive written complaints about public sector agencies that are within our jurisdiction but the conduct complained about, on assessment, is found to be outside our jurisdiction. We initially classify these as 'formal' complaints received about public sector agencies. Written complaints received about agencies outside our jurisdiction, and oral complaints about both agencies and issues outside our jurisdiction, are dealt with informally by referring the complainant elsewhere. They are classified as 'outside our jurisdiction' from the outset.

\*\* This includes complaints about DoCS, DADHC and non-government agencies that are funded by one of those departments.

\*\*\* This includes notifications and complaints received.

**Figure 10 — Formal complaints and notifications finalised — by subject group — two year comparison**

Subject	07/08	08/09
Departments and authorities	1,354	<b>1,310</b>
Local government	788	<b>672</b>
Corrections and Justice Health	918	<b>714</b>
Juvenile justice	11	<b>73</b>
FOI	197	<b>224</b>
Community services*	737	<b>704</b>
Employment-related child protection	1,921	<b>1,715</b>
Police	3,254	<b>3,094</b>
Agency outside our jurisdiction	364	<b>397</b>
<b>Total</b>	<b>9,544</b>	<b>8,903</b>

\* This figure includes formal matters finalised in relation to child and family services, disability services and community services.

**Figure 11 — Number of formal investigations finalised — five year comparison**

Year	04/05	05/06	06/07	07/08	08/09
Total	67	66	63	47	<b>44</b>

## Reviews of our decisions

When we finalise a complaint that we have been dealing with directly, we write to the complainant and give reasons for our decision. If they are not happy with the decision and ask us to reconsider we:

- › explain our decision-making process in more detail — including the evidence and factors we took into account in making the decision
- › respond to any requests for a further review of our decision by having a senior officer — who was not involved with the original decision — review the file and provide advice to the Ombudsman.

The Ombudsman will then consider the matter and write to the complainant explaining the outcome.

Figure 12 shows that, compared with the number of formal complaints we finalised during the year, the percentage of cases where we were asked to review our decision was very low. Figure 13 shows that in 86% of cases the Ombudsman considered that the original decision made by the delegated officer was correct.

**Figure 12 — Requests for a review of our decision as a percentage of formal complaints finalised**

Subject	No. of requests	No. of formal complaints finalised	07/08 %	08/09 %
Employment-related child protection*	4	48	7.1	8.3
Community services**	6	704	0.4	0.9
Corrections/Juvenile justice/Justice Health	9	787	1.5	1.1
Freedom of information	10	224	3.0	4.5
Local government	52	672	11.8	7.7
Other public sector agencies	91	1,310	6.5	6.9
Police***	63	3,094	1.7	2.0
Outside our jurisdiction	7	397	0.8	1.8
<b>Total</b>	<b>242</b>	<b>7,236</b>	<b>3.5</b>	<b>3.3</b>

\* The majority of our work in the child protection area is overseeing how certain agencies handle allegations of conduct by employees that could be abusive to children. Only a small part of our work is handling complaints made directly to our office about how those allegations have been handled or about agencies' child protection systems. We deal with those complaints in much the same way as with complaints about NSW public sector agencies — we may decide to decline the complaint, make preliminary inquiries or investigate. This table shows that, of the 48 complaints made directly to our office, four complainants asked us to review the decision we made on how to handle the complaint.

\*\* This figure includes requests for a review of our decision in relation to child and family services, disability services and community services.

\*\*\* Although the system of handling complaints about police requires the NSW Police Force to directly investigate each complaint, and our office plays an oversight role, the police division considers all requests to review the way a notifiable complaint about a police officer was handled as a request to review our decision in relation to the NSW Police Force outcome. This table shows that, of the 3,094 complaints about police officers that we oversighted this year, 63 complainants asked for the outcome to be reviewed.

**Figure 13 — Outcome of reviews conducted**

Area	Original outcome affirmed		Resolved	Reopened	Total
	after reviewing the file only	after further inquiries			
Employment-related child protection	3	1	0	0	4
Community services	5	0	0	1	6
Corrections	3	2	0	4	9
Freedom of information	8	1	0	1	10
Local government	28	17	3	4	52
Other public sector agencies	52	20	12	7	91
Outside our jurisdiction	6	1	0	0	7
Police	60	1	0	2	63
<b>Total</b>	<b>165</b>	<b>43</b>	<b>15</b>	<b>19</b>	<b>242</b>
% of total (08/09)	68	18	6	8	100
% of total (07/08)	66	25	4	5	100
% of total (06/07)	70	21	3	6	100



## Compliments and complaints

Compliments and complaints help us to identify the aspects of our work that we do well, the areas of our service that need improvement, and expectations that exceed what we can reasonably deliver. We have an internal compliments and complaints policy, and we inform people who use our services about how to make a complaint about us. This year we received 176 compliments by letter, fax, email or phone about the quality of our advice, the assistance we gave to customers, and the information provided to agencies within our jurisdiction.

Against the 33,155 formal and informal complaints and notifications we finalised this year, we received 26 complaints about our work (see figure 14).

If a complaint is justified, we will generally take some form of action to resolve it. During 2008–2009, our responses to 26 complaints included apologising, providing explanations, and giving greater priority to identified files (see figure 15).

## Other work of the Ombudsman

In addition to handling complaints and notifications, we undertake systemic and proactive work such as conducting audits and review work, including child death and disability death reviews, legislative reviews and visits to the community to better inform our work. Figure 16 outlines the type of work we have undertaken in this area in 2008–2009. This work is also detailed in other chapters of this report.

**Figure 14 — Complaints about our office**

Issue	Total
Bias/unfair treatment/tone	5
Confidentiality/privacy related	1
Delays	3
Denial of natural justice	1
Failure to deal appropriately with complaint	9
Lack of feedback/response	3
Limits to jurisdiction	0
Faulty procedures	3
Inaccurate information/wrong decision	8
Poor customer service	5
Corruption/conflict of interest	0
Other	2
<b>Total issues</b>	<b>40</b>
<b>Total complaints</b>	<b>26</b>
<b>% of all matters finalised (formal and informal)</b>	<b>0.1%</b>

**Figure 15 — Outcome of complaints about our office**

Outcome	Total
Unjustified	17
Justified or partly justified	3
Some substance and resolved by remedial action	6
<b>Total</b>	<b>26</b>

**Figure 16 — Outline of other work of the Ombudsman**

Category	Type of work	08/09
<b>Audits</b>	Number of police records audited	10,400
	Controlled operation records audited	433
	Surveillance device warrants audited	374
	Witness protection appeals	3
	Number of child protection 'agency' audits conducted	18
<b>Police powers under review</b>	Number of reviews of legislation conferring new police powers concluded	2
	Number of reviews of legislation conferring new police powers in progress	4
<b>Visits</b>	Number of hours spent on visiting services (official community visitor program)	8,867
	Number of visits to residential services (official community visitor program)	3,239
	Correctional and juvenile justice centre visits	60
	Visits to regional and remote communities	73
<b>Reviews*</b>	Complaint-handling systems	20
	Number of individual reviews (section 13) of the circumstances of children and other persons in care	35
	Reviews (section 11(c)) of the delivery of community services	7
<b>Consultations</b>	Number of people consulted during systemic investigations and reviews	1,328

\* The number of reviewable deaths are recorded by calendar year. In 2008, the deaths of 88 people with disabilities in care and 145 children were reviewable.

## Balancing our books

Most of our revenue comes from the NSW Government in the form of a consolidated fund appropriation. Our final consolidated fund allocation for 2008–2009 was \$19.969 million. The government also provided \$1.333 million for employee entitlements such as long service leave. We were allocated \$543,000 for our capital program, which was spent on upgrading our computer systems, purchasing new office equipment, and updating and improving our fitout.

We generated \$251,000 through selling our publications, bank interest, fee-for-service training courses and our consultancy services to AusAid.

Most of our revenue is spent on employee-related expenses such as salaries, superannuation entitlements, long service leave and payroll tax. We spent more than \$18.02 million on these items in 2008–2009. The day to day running of our office costs us over \$4.079 million a year.

The cumulative effect of ongoing efficiency dividends — cuts to public sector agency budgets of 1% each year — as well as a further round of public sector pay increases, with 1.5% per year for three years unfunded, is having a significant impact on us. During the year, we began a comprehensive review of our strategic direction and supporting structures with the major imperative being to cut our costs. As nearly 80% of our expenses are employee-related, our cost cutting will inevitably mean a reduction in staffing levels — and this will have an impact on the services we can provide to the community.

The Ombudsman has raised this ongoing funding issue with the government, Members of Parliament, the Parliamentary Joint Committee on the Ombudsman and Police Integrity Commission and with NSW Treasury. See figure 17 for more details.

In 2008–2009, our operating revenue increased by 2.96% and our operating expenses by 2.5%. We had a reduction in our asset base as we used some of our cash reserves to support our complaint-handling and other work. We adopted this strategy for a number of reasons:

- There was a higher than anticipated and backdated pay increase awarded to public servants in September 2008 and we needed to properly consider the impact of this.
- There will be further unfunded pay increases in 2009–2010 and 2010–2011, as well as ongoing efficiency dividends on our work.

Our liabilities, of which nearly 74% are employee entitlements such as recreation (annual) leave and related on-costs, increased by \$113,000. During the year we reviewed our internal budgeting and reporting to make sure that the information we provide to our managers is comprehensive, relevant and timely. Our review looked at staffing projections, leave management, capturing commitments as well as the format of our expenditure reports.

We also considered training and other ongoing professional development for managers on interpreting financial information, acknowledging the importance of our senior staff being able to use financial information in their business planning and for decision-making. We will be implementing changes to our reporting in 2009–2010. For more details about our financial position, please see page 110 in Our financials.

**Figure 17 — Financial summary**

	07/08 \$'000	08/09 \$'000	Change %
Operating revenue inc. government contributions	21,461	<b>22,096</b>	2.96
Operating expenses	22,053	<b>22,605</b>	2.50
Total assets	2,258	<b>1,862</b>	-17.54
Total liabilities	1,893	<b>2,006</b>	5.97
Surplus/(deficit)	-592	<b>-509</b>	14.02
<b>Total equity</b>	<b>365</b>	<b>-144</b>	<b>-139.45</b>

# Our business

When the Ombudsman was first established in 1975, our sole function was to investigate complaints about certain NSW public sector agencies. Since then, our jurisdiction has expanded to include specific functions relating to police, local councils, the protection of children, the delivery of community services, the causes and patterns of deaths of certain children and people with disabilities in care, agency decisions on freedom of information applications, decisions by police about inclusion or exclusion from the witness protection program, protected disclosures, the use of powers to conduct controlled operations, and the operation of a number of new pieces of legislation conferring additional powers on police.

## Highlights

- › The Special Commission of Inquiry into Child Protection Services in NSW's findings and recommendations were consistent with areas of concern we have been highlighting through our work in the community services area, and in our submissions for reform, including the need for: a clearer and simpler legislative framework for the exchange of information between agencies; habitual non-attendance at school to be considered a relevant factor in determining whether a child is at risk of harm; less adversarial Children's Court processes; and greater participation by Aboriginal people in decisions about the welfare of Aboriginal children.
- › We were given new functions to convene the Child Death Review Team, audit the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, review the use of police powers to control criminal organisations, and audit compliance with laws related to the use of covert and criminal organisation search warrants.
- › To mark our 10 years of work in the employment-related child protection area, we held a successful symposium attended by 320 delegates.
- › Our extensive experience in reviewing agency determinations of FOI applications informed our review of the FOI Act. Significant reforms are now underway as a result of our report, *Opening up government*. The NSW Government accepted most of our 88 recommendations aimed at changing the way people access government information.

The following chapters detail our work in carrying out these functions during the past year.

› Inquiries	26
› Community engagement	28
› Working with Aboriginal people	36
› Children and young people	43
› People with disabilities	59
› Policing	66
› Juvenile justice	76
› Corrections	79
› Departments and authorities	84
› Local government	91
› Freedom of information	95
› Protected disclosures	103
› Covert operations	106



# Inquiries



This year we again received over 24,000 inquiries from members of the community contacting us to complain or inquire about a wide range of NSW public sector agencies. Providing information and assistance in response to these complaints and inquiries is one of the Ombudsman's key functions.

In most cases, our inquiries and resolution team are the first point of contact for people with our office. This team is also supported by staff from our specialist areas.

## Tips for making a complaint

- › It is usually best to write a letter of complaint, particularly if you are dealing with a large agency.
- › Summarise in a logical order what your complaint is about and attach any relevant documents.
- › Explain what action you think should be taken to resolve your problem, and ask for this action to be taken.
- › Keep records of your contact with the agency.
- › Be persistent.

## Contacting us

People contact us at various stages of the complaints process. Sometimes, incidents have just occurred. At other times, an individual may have been trying for some time to resolve their complaint with an agency directly but are not satisfied with how things are going. Some people are concerned that an agency will not properly handle a complaint about their own conduct.

On many occasions we assess an agency's action as reasonable and lawful. In these circumstances, a sound explanation from an independent agency — backed up with reference to specific policies, procedures and the relevant law — often reassures and satisfies a complainant.

It is important that public sector agencies take responsibility for handling complaints made about them. Most agencies now have well

documented complaint-handling policies and procedures. We generally expect people to give an agency an opportunity to address their complaint before making a complaint to us.

If we do assess a matter as warranting our action, we either advise the person to make a formal complaint to us in writing or accept an oral complaint. Many of the complaints we accept orally are from community members who are more vulnerable than most and need help to make a complaint.

Young people are one group who fit this description. They are often unaware of their rights and can believe that making a complaint is a waste of time because nothing will happen. Our staff are specially trained in handling complaints from young people. Case study 1 is an example of a matter where we took an oral complaint and immediate action to assist a vulnerable young person.

### Case study 1

A 17 year old complained that Housing NSW would not process his application for emergency accommodation because he was under the age of 18. After making inquiries with the department, we were concerned that they had not given the young person clear information about the process of applying for priority housing, leading to a misunderstanding.

While Housing NSW has specialist officers who work with vulnerable people once they are housed, the young man had dealt only with front counter staff. After raising our concerns with the department, they agreed to make our youth complaint guidelines available to all staff to help them effectively engage with young people and make sure their needs are met.

They also agreed to provide information sessions about communicating with young people for all staff dealing with high volume contact from members of the public. Temporary accommodation was arranged for the young person while his priority housing application was assessed.



Sometimes, we recognise a need to act immediately to address conduct by an agency that might cause unreasonable detriment or hardship to an individual. In these cases we make immediate inquiries with the agency concerned (see case study 2).

From the inquiries we receive, we sometimes identify trends that alert us to particular problems. In these circumstances, we contact the agency concerned to try to rectify the problem and prevent it from reoccurring (see case study 3).

Many people contact us about matters that are not within our jurisdiction. We regularly refer callers to other watchdog agencies or complaint-handling bodies including the Commonwealth Ombudsman, Telecommunication Ombudsman, Energy & Water Ombudsman, Financial Ombudsman Service or the NSW Office of Fair Trading. We make sure that anyone who contacts our office about something outside our jurisdiction receives an appropriate referral.

### Case study 2

A woman submitted an urgent application for marriage and change of name certificates because she needed to give them to a prospective employer before she could start work. Three weeks after lodging the urgent application, the woman was advised by the Registry of Births, Deaths and Marriages (RBDM) that she had submitted the wrong forms and would need to complete new ones. She did so immediately.

Two weeks later, she received one certificate but not the other. After contacting the RBDM, the woman was told that the second certificate had been sent to the wrong address.

Although it had been returned to the RBDM, they explained it would take 7–10 days to post it to the correct address. We contacted the RBDM who sent the woman her certificate by express post the same day.

### Case study 3

Recently, the Roads & Traffic Authority (RTA) changed their vehicle registration policy to allow people to register their vehicles for different lengths of time, rather than just for a whole year.

After receiving a number of calls from people concerned that RTA staff were not aware of this new policy and insufficient information about the processing of short-term registration applications was available, we contacted the RTA.

They agreed to provide additional information on their website and explained the steps they had taken to ensure their staff understood the new policy and procedures.

# Community engagement



An essential part of our work involves engaging effectively with the community — developing relationships with different groups, responding in a proactive way to issues and complaints, and increasing awareness of the role of our office. Community consultation also forms an important part of our investigative and research work. When we talk about ‘community’ we include local agency staff, community workers, consumers of services, peak bodies, advocacy groups, the public, and other agencies both here and abroad. As well as educating agencies within our jurisdiction about our role and their responsibilities, we know we can learn from the good practices of other oversight bodies both within Australia and overseas. We also have a responsibility to support new and developing Ombudsman offices in our region and internationally by sharing our knowledge and experience.

## Highlights

- › Supported 46 official community visitors (OCVs) to make 3,239 visits to 6,622 people living in 1,299 residential services across the state, resulting in the resolution of 2,435 issues. [SEE PAGE 29](#)
- › Undertook more than 200 community information and education activities, including providing 117 workshops and training sessions reaching over 2,700 people. [SEE PAGE 30](#)
- › Developed a new *Complaint Handling Kit* for community service organisations and published our *Managing unreasonable complainant conduct practice manual*. [SEE PAGE 31](#)
- › Visited and worked with a range of overseas Ombudsman offices in countries such as Papua New Guinea, Vanuatu, the Cook Islands, Canada and New Zealand. [SEE PAGE 32](#)
- › Travelled to 73 regional centres to conduct audits of agencies and services, undertake consultations with various groups connected with our investigative work, visit correctional and juvenile justice centres and deliver presentations, training sessions and forums. [SEE PAGE 32](#)
- › Participated in the Community Relations Commission’s review of the Ethnic Affairs Priority Statement (EAPS) program by attending focus groups and contributing a submission. [SEE PAGE 32](#)
- › Started to prepare our new disability action plan, made a submission to the Australian Government about developing a National Disability Strategy, and commissioned Vision Australia to audit our website to check it’s accessibility. [SEE PAGE 34](#)

## How we consult

A key focus of our work in recent years has been examining how well government policy is being implemented at a community level. Our investigations and reviews into issues such as policing domestic violence, police work with Aboriginal communities, support for people with mental health problems to maintain their social housing, meeting the needs of people with disabilities living in large residential centres, and improving access to services for Aboriginal people with disabilities have all involved extensive consultations with frontline agency staff, service providers and members of the public in numerous locations across the state.

These consultations help us to understand how government service delivery can affect individuals, identify common systemic issues that need to be addressed, and explore what works in local areas and why. They also allow us to test ideas and possible solutions to make sure that our final recommendations are workable.

As well as the community liaison and consultation work done by our staff during projects and investigations, we have dedicated units and positions that focus on working directly with the community. These include our community education unit, Aboriginal Unit, youth liaison officer and training officer. Some examples of their activities include:

- › conducting community education workshops about our role and how to make complaints
- › providing training on advocacy, complaint-handling and dealing with unreasonable complainants

- › attending community and cultural events and distributing information about our services.

We also ‘keep in touch’ with many community members through our role in administering the official community visitor scheme (OCV). We support OCVs visiting consumers of residential services in the community and help them to address matters that fall outside the scope of their powers, particularly issues of a serious nature. Our role also provides us with valuable insights into the quality of service provision to some of the most vulnerable people in the state.

In this chapter, we discuss our community education work and our work with OCVs — as well as our work across specific groups in the community such as people from different cultural and linguistic backgrounds (CALD), young people, people with disabilities, women and older people. Our work with Aboriginal people is outlined in the following chapter.

## Official community visitors

The Ombudsman is responsible for monitoring the official community visitor (OCV) scheme. OCVs are independent statutory appointees and their role is to ensure that people living in residential services in NSW receive the highest standard of care possible. They are appointed by the Minister for Community Services and the Minister for Ageing, Disability and Home Care for a period of up to six years.

OCVs visit services funded, licensed and/or authorised by either the Department of Ageing Disability and Home Care (DADHC) or the Department of Community Services (DoCS). This includes visiting:

- › people with disabilities
- › children and young people in out-of-home care
- › children and young people with disabilities in out-of-home care
- › people living in licensed residential centres (boarding houses).

OCVs are required to:

- › inform the Ministers and the Ombudsman on matters that affect the conditions of people in care
- › promote the legal and human rights of residents
- › consider matters raised by residents
- › provide information and assistance with advocacy
- › help to resolve any grievances and concerns residents may have.

Visits to services are regular and generally unannounced. OCVs observe the standard and adequacy of care that is being provided, talk to residents, staff and management, and try to resolve any issues they identify at the local level. If they are unable to resolve an issue, or the issue is serious, OCVs refer their concerns to us or the relevant minister.

### Administering the scheme

We administer the scheme, set visit priorities and provide support to visitors. We do this by:

- › monitoring the capacity of the scheme
- › recruiting and inducting OCVs
- › providing training and mentoring for OCVs
- › supporting OCVs at meetings with services and agencies, including conciliations (between service providers and residents) aimed at resolving complaints
- › assisting OCVs with travel and accommodation bookings
- › supporting OCV regional groups, sector groups and working parties
- › meeting periodically with OCV representatives to discuss the operation of the scheme
- › coordinating an annual conference for OCVs — this year's conference was attended by the Ministers for Community Services and Disability Services as well as senior public sector officials and discussed matters affecting the care and welfare of residents.

In 2008 we undertook a review of the scheme's capacity and identified five regions needing additional visitors. After an extensive recruitment process that attracted more than 120 applications, 13 people were selected for appointment as OCVs and started their duties on 1 January 2009.

This year we have continued our work on developing a new system that will enable OCVs to report electronically to services on the quality of care they provide. The system — which will be aligned with the *Disability Services Act 1993*, DADHC's Integrated Monitoring Framework and the Out-of-Home Care Standards — will be finalised later this year.

### Changes to better protect children

In 2008, the Special Commission of Inquiry into Child Protection Services in NSW reviewed the role of OCVs in overseeing residential care services for children and young people in out-of-home care. The Commission recommended that section 8 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA) be amended to allow information obtained by OCVs to be made available to the Children's Guardian, accreditator of out-of-home care services.

The government agreed with the recommendation and has made the legislative changes to the Act. The Children's Guardian met with OCVs at their 2009 annual conference to inform them of her views on information collection and sharing. In the coming year, we will meet with OCVs and the Children's Guardian to discuss this further and develop a memorandum of understanding to guide the exchange of information.

### Issues raised by visitors

In 2008–2009 the expenditure for the OCV scheme was \$812,723. This year the 46 OCVs conducted 3,239 visits to 1,299 services. They provided 8,867 hours of service to 6,622 residents.

During 2008–2009, OCVs identified 4,569 issues — 25% more than last year — of which 2,744 were finalised (60.1%). With the assistance and oversight of OCVs, services resolved 2,435 (89%) of the issues that were finalised (see figures 18 and 19). OCVs continue to monitor services' action about 1,825 ongoing issues that were identified during the year.

This year, some of the most common issues identified by OCVs included concerns about the provision of:

- › individualised services (17%)
- › a well maintained and home-like environment (13%)
- › appropriate and meaningful behaviour management plans and implementation of those plans (9%)
- › good health management including access to health care, nutrition including a choice of healthy and varied food, and consent (8%)
- › services that respect residents' right to privacy and dignity, and flexible services to meet individual needs (6%).

Each year, we table a report to Parliament on the work of the OCVs. This report provides more detail about the issues identified and the outcomes OCVs have achieved for residents. The report is available on our website. Case studies 4 and 5 are examples of outcomes achieved for residents.

#### Case study 4

A young man living in a group home in a semi-rural area told the OCV that he was not happy with where he lived and wanted to move. The young man had no access to public transport, limited access to recreational facilities, and was reliant on staff assistance. If he moved closer to the city, he would have more options to independently access services and participate in the community.

However, when the OCV looked at his individual plan, this goal was not recorded. The OCV raised this with the manager of the service who arranged a meeting with the young man.

The service agreed to help the young man move to a location closer to where he wished to live. He would live independently with drop-in support and would be monitored so that he could move back into supported accommodation if the need arose.

The OCV reports that the young man was excited about his future, including being able to travel independently to football games and movies.

**Figure 18 — Number of visits made by official community visitors in 2008–2009**

Target group of services	No. of services	No. of residents	No. of activity hours	No. of visits	
				07/08	08/09
Children and young people	136	248	1,092	307	435
Children and young people with disabilities	42	137	397	137	46
Children, young people and adults with disabilities	19	68	142	46	145
Adults with disabilities in residential care, including boarding houses	1,102	6,169	7,236	2,799	2,613
<b>Total</b>	<b>1,299</b>	<b>6,622</b>	<b>8,867</b>	<b>3,289</b>	<b>3,239</b>

**Figure 19 — Outcome of issues identified by OCVs and finalised in 2008–2009**

Target group of services	No. of visitable services	No. of issues identified	% of issues finalised	% of issues finalised*	% of issues finalised#	% of issues finalised^
				(resolved issues)	(unresolved issues)	(closed issues)
Children and young people	136	604	348 (57.6%)	269 (77.3%)	27 (7.8%)	52 (14.9%)
Children and young people with disabilities	42	273	159 (58.2%)	142 (89.3%)	6 (3.8%)	11 (6.9%)
Children, young people and adults with disabilities	19	49	34 (69.4%)	21 (61.8%)	8 (23.5%)	5 (14.7%)
Adults with disabilities in residential care, including boarding houses	1,102	3,643	2,203 (60.5%)	2,003 (90.9%)	80 (3.6%)	120 (5.5%)
<b>Total</b>	<b>1,299</b>	<b>4,569</b>	<b>2,744 (60.1%)</b>	<b>2,435 (88.7%)</b>	<b>121 (4.4%)</b>	<b>188 (6.9%)</b>

\* Where services take action to remedy the issue, resulting in improved services for residents.

# Where services are unable or unwilling to resolve issues. For example, issues that are beyond the capacity of services to resolve as they are affected by systemic budgetary, policy or other factors. OCVs may report such issues to the NSW Ombudsman with a view to complaint or other action.

^ Where issues are no longer relevant. For example, because a service closes or a resident with concerns relocates to another service.

### Case study 5

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

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

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

## Community education and training

Providing education and training to public sector agencies, non-government organisations and other bodies is an important part of our work. Our training focuses on promoting good administrative conduct, fair decision-making and high standards of service delivery. Providing training to agencies we oversee is also a way for us to help these agencies maximise the efficient use of their resources. We provide training to their staff about responding to unreasonable complainant conduct, negotiation skills and complaint-handling for frontline staff. Under the Community Services (Complaints, Reviews and Monitoring) Act we have a specific function to educate service providers, clients, carers and the community about standards for the delivery of community services. We also provide training and support to other Ombudsman offices in Australia and overseas.

In 2008–2009 we undertook more than 200 information, education and training activities, including 117 workshops and training sessions reaching over 2,700 people.

### Educating the community services sector

We provide a range of training courses, awareness activities and resources for the community services sector. In 2008–2009 we delivered 34 training sessions for service providers, consumers and advocates — with 14 of these being held in rural or regional areas such as Lismore, Broken Hill, Wollongong, Newcastle, Mudgee, Orange, Nambucca Heads, Wagga Wagga, Lithgow and Bathurst.

We also ran 22 complaint-handling training workshops for service providers, reaching approximately 300 organisations. These workshops are designed to help service providers to understand their responsibilities under CS-CRAMA and develop the knowledge and skills to handle complaints effectively. They are provided either through our public training calendar or as tailored 'in-house' sessions for specific services. Modules covered include frontline skills, effective complaint systems, resolution options and handling serious complaints. In keeping with our aim to continually improve the training we provide, we also reviewed and revised our workshop materials this year.



Demand for our training remains high and feedback from participants continues to be positive — over 98% of participants rated the workshops as 'good' or 'excellent' and almost all indicated the training would help them in practical ways in the workplace. Many participants reported that they intended to use our workshop materials to train additional staff in their organisations.

This year we also developed a new *Complaint Handling Kit* to help community service organisations to develop and improve their complaint-handling systems. The kit is available on our website.

The Rights Stuff is our program that provides consumers, advocates and carers with information and skills on how to effectively raise issues and resolve concerns with service providers and where to find support and assistance. This year we ran 12 workshops across the state and distributed over 500 copies of *The Rights Stuff — Tips for Making Complaints and Solving Problems Toolkit* at conferences, expos and launches. The toolkit continues to be a popular resource and is available from our website free of charge.

We have also formed a partnership with the Local Government and Shires Association to advise community services in local council areas throughout the state of their obligations under CS-CRAMA and the information and training we can provide to help them.

Our Deputy Ombudsman Outreach Forums to rural and regional areas continue to be well received. Forums were held this year in Newcastle and Broken Hill. We also:

- › worked in partnership with the Multicultural Disability Advocacy Association and the Ethnic Community Council to present a forum to culturally and linguistically diverse community service providers in western Sydney
- › participated in a number of expos throughout the metropolitan region facilitated by the Office of Fair Trading
- › attended the Macarthur Agencies Information Exchange Day which covered three local government areas in south western Sydney.

Since the successful launch of our electronic newsletter *Ombo Info* to the community services sector in June 2008, we have distributed another three issues during the year to a steadily increasing number of subscribers. This newsletter has proved to be an effective way of distributing targeted information to the community sector. We also placed information about our work in various community services peak body newsletters — including articles about our complaint-handling reviews of Community Participation programs and the child care sector, our child and disability death review work, the official community visitor scheme and our 2009 training calendar.

### **Managing unreasonable complainant conduct**

Complainants who engage in unreasonable conduct can take up a significant amount of an agency's time and resources and cause considerable stress to staff. In 2008–2009 demand for the training we provide in managing unreasonable complainant conduct continued to grow. This training is designed to give staff the strategies, skills and resources to confidently and fairly deal with this type of conduct.

This year we delivered 29 unreasonable complainant conduct training sessions to more than 600 staff from government and non-government agencies — including councils and universities in NSW, Victoria and South Australia. We were also invited by the New Zealand Health and Disability Complaints Commission and New Zealand Ombudsman to present the training to their staff and to other organisations in New Zealand — including the Banking Ombudsman, Ministry of Justice, Commerce Commission, Chief District Court Judge's Chambers and the Office of the Privacy Commissioner. The Deputy Ombudsman also presented two unreasonable complainant conduct workshops in Canada.

In addition, we ran a number of open workshops in Sydney to cater for agencies that have a small number of staff or cannot release a large number of staff on the same day. Feedback from participants continues to be very positive.

*Fabulous — perfectly balanced in terms of theory and practical exercises. Interesting and thorough.*

*I would like to thank you for a most informative and engaging workshop yesterday. The information gained in the workshop will be useful in the workplace and also for life skills in general. I hope that other department staff will have the opportunity to attend this workshop.*

Last year, we worked with the other Ombudsman offices in Australia to trial an interim practice manual designed to help agencies manage unreasonable complainant conduct. In June 2009, we published the final *Managing unreasonable complainant conduct practice manual*. This manual is available on our website together with the *Unreasonable Complainant Conduct Project Report*. At the time of writing almost 10,000 copies of the practice manual had been downloaded.

### **Our work with other agencies**

We work with agencies within our jurisdiction as well as other oversight bodies to share good practice and provide training in several areas of expertise. For example, in 2008–2009 we:

- › hosted a two-day symposium on employment-related child protection, which was attended by 320 delegates from a range of government and non-government agencies from NSW and interstate
- › co-hosted the 7th National Investigation Symposium, attracting over 230 participants from Australia and overseas
- › jointly with the ICAC, our Deputy Ombudsman delivered a program of workshops for approximately 200 staff from the Roads and Traffic Authority, as well as workshops for 25 staff from Waverly Council and 25 staff from the Department of Ageing, Disability and Home Care in Newcastle. The Deputy Ombudsman also provided training about Freedom of Information (FOI) to 25 staff from the Department of Health in North Sydney

- › jointly with the Department of Local Government (DLG), published draft complaint-handling guidelines for councils, and provided them with information to assist their 'Promoting Better Practice' reviews of councils
- › hosted local government liaison meetings attended by the ICAC and the DLG to promote collaborative exchange of information
- › published the sixth edition of our *Protected Disclosures Guidelines* which provide practical guidance to public officials who are responsible for implementing the *Protected Disclosures Act 1994*
- › conducted an inaugural forum for public authorities about employment-related child protection, providing staff from 28 agencies with training about their reporting responsibilities and the investigative process
- › made a number of presentations about our work overseeing the police complaints system to NSW Police Force senior managers and police officers, as well as students at the Police Academy.

### Our work abroad

As a leader in the field of accountable public administration, we are often asked to provide guidance and training to other Ombudsman offices overseas. For example, this year we continued our work with the Commonwealth Ombudsman in strengthening the offices of Pacific Island Ombudsman and expanding complaint-handling mechanisms in the South Pacific.

The Ombudsman and Assistant Ombudsman (Police) travelled to the Cook Islands to attend the inaugural board meeting of the Pacific Ombudsman Alliance, a new multi-nation partnership to improve good governance in the Pacific Islands. As part of this work, we provided training support to Ombudsman offices in Papua New Guinea and Vanuatu, and advised the Republic of Palau on legislation to establish a parliamentary Ombudsman and reform their Ethics Commission. We also presented mediation and other training for visitors from the Indonesian Ombudsman.

The Deputy Ombudsman was flown to Canada by the Forum of Canadian Ombudsman and the Canadian Defence Force Ombudsman to conduct workshops on managing unreasonable complainant conduct. He has been asked to return this year to conduct another four workshops across Canada.

The Ombudsman travelled to Stockholm, Sweden to attend the International Ombudsman Institute (IOI) Conference and deliver a paper *Actions speak louder than words: an Ombudsman's office and children*, and attend the IOI Board meeting. He also attended an IOI Board meeting in Hong Kong.

Our publications, particularly *Managing unreasonable complainant conduct practice manual* and *Apologies — A practical guide*, are regularly sought by overseas organisations.

### Visiting regional and remote communities

This year we visited over 73 regional and remote NSW communities to conduct consultations for investigations and audits of agencies and services, deliver presentations, training sessions and forums, inspect correctional and juvenile justice centres, and attend community festivals and events.

For more information about our work in regional and remote communities, see *Working with Aboriginal people*.

### Correctional and juvenile justice centre visits

An important part of our work involves regularly visiting juvenile justice and correctional centres across NSW. Although inmates and detainees can always contact us by telephone or in writing to make a complaint, our visits give them the opportunity to raise any concerns they may have about government or community services directly with our staff. During our visits we also speak with senior managers, observe the conditions and amenities in the centres and check paperwork. Many of the concerns and complaints we receive are handled informally through contact with senior staff at the centre.

This year we made 42 visits to correctional centres and 18 visits to juvenile justice centres. Our youth liaison officer and staff from our Aboriginal Unit also participate in these visits.

See *Juvenile justice and Corrections* for more details of our work in this area.

### Culturally and linguistically diverse communities

One of the key strategies in our Ethnic Affairs Priority Statement (EAPS) action plan is to raise awareness among culturally and linguistically diverse (CALD) communities about the role of our office and the services we provide. This year we participated in various multicultural events including the Carnival of Cultures in Ashfield, the Indonesian Information Expo in Randwick, the Russian Migrants Information Day in Maroubra, and the Migrant Employment Expo in North Sydney.

During a regional visit to Lismore, our youth liaison officer (YLO) met with a group of local Sudanese boys and an elder of the community. They were keen to know more about our role and how to make complaints, particularly about policing issues. Our YLO also gave a presentation to staff at the Granville Multicultural Community Centre about how we can help their clients.

This year we participated in the Community Relations Commission's (CRC) review of the EAPS program by attending focus groups and contributing a submission. The CRC is developing an updated EAPS Standards Framework for agencies to use for self-assessment and reporting. The new framework will be finalised later this year which will coincide with our EAPS planning cycle. We will start developing our 2010–2012 EAPS action plan next year.

### Young people

It is important that we identify the issues that affect young people and raise their awareness about the help and advice we can offer.

During the year our youth liaison officer (YLO) visited a number of services to educate staff who work with young people about the work we do, explore systemic issues of concern, and follow up individual matters.

After identifying that many youth refuge workers did not have a clear understanding of the Ombudsman's role, the YLO embarked on a program of visits to 27 youth refuges — twenty in the Sydney metropolitan area and seven in regional NSW. These visits directly resulted in a number of complaints being made to us by young people. Case study 6 is a good example of the positive outcomes that can result when services that come into contact with young people are open to our involvement.

### Case study 6

A young person wanted to complain about a youth refuge. After making a direct complaint to the refuge, they were still dissatisfied. The young person subsequently called our office on the recommendation of the refuge's coordinator. After hearing both sides of the story, we decided the service had acted appropriately and explained the reasons for this to the young person. They were satisfied with the explanation and re-engaged with the refuge.

Another way we raise awareness of our role is by contributing articles to *YAPRap*, a bi-monthly newsletter distributed to youth workers and young people across the state. This year we wrote articles about supporting people with an intellectual disability in the criminal justice system and our review of the *Law Enforcement (Powers and Responsibilities) Act 2002*, as well as a summary of our 2007–2008 annual report.

In 2008–2009 our YLO also visited Kempsey, Coffs Harbour, Grafton, Lismore, Tamworth, Armidale, Inverell, Glen Innes, Moree and Gunnedah to meet with juvenile justice community services staff, Police and Community Youth Clubs (PCYC) program officers, police youth liaison officers, youth refuge workers, Year 11 and 12 legal studies students and many other youth workers from a range of services.

The issues raised during these visits mainly concerned police, the Department of Community Services (DoCS), the Department of Ageing, Disability and Home Care (DADHC) and the Department of Education and Training. We provided feedback about police — and particularly their implementation of the *Young Offenders Act 1997* — to the NSW Police Force to help them develop their Youth Strategic Plan. Information we received from juvenile justice workers about the prevalence of intellectual disability among young offenders informed our investigation into DADHC's implementation of their policies aimed at improving the access of Aboriginal people to disability services. For more details about this investigation, see page 64 in *People with disabilities*. The feedback received about DoCS will assist us to carry out our functions relating to children and young people. See *Children and young people* for more information about this work.

During the year, the YLO also conducted a workshop with 12 young people for the *Create Your Future* program. This program is run by the CREATE Foundation, which supports young people in and leaving care. The workshop raised participants' awareness of their rights and where they can get help if they are treated unfairly by government agencies or community services.

### Places visited 2008–2009

Albury	Kurri Kurri
Armidale	Lightning Ridge
Batemans Bay	Lismore
Bathurst	Lithgow
Bega	Macksville
Bellambi	Merimbula
Blue Mountains	Metford
Bourke	Moree
Bowral	Mudgee
Broadmeadow	Muswellbrook
Brewarrina	Nambucca Heads
Broken Hill	Narrandera
Buronga	Newcastle
Byron Bay	Nowra
Canberra	Oberon
Cardiff	Orange
Casino	Parkes
Coffs Harbour	Queanbeyan
Coonamble	Raymond Terrace
Dapto	Shoal Bay
Dareton	Singleton
Darlington Point	Tamworth
Deniliquin	Tingha
Dubbo	Toronto
Forbes	Toukley
Gilgandra	Tuggerah
Glen Innes	Wagga Wagga
Goodooga	Walgett
Gosford	Wallaga Lake
Goulburn	Wellington
Grafton	Wickham
Griffith	Wilcannia
Gunnedah	Williamtown
Inverell	Wollongbar
Karuah	Wollongong
Kempsey	Yetholme
Kotara	





## Raising awareness in high schools

The Year 11 and 12 legal studies syllabus discusses the role of the Ombudsman. Our high school awareness program aims to improve the knowledge of legal studies teachers and students of our functions and current work. This year the YLO presented to over 100 students at six regional high schools.

We also surveyed legal studies teachers to assess their knowledge of the Ombudsman and obtain feedback about teaching resources they would like us to develop. In the coming year, we will be preparing materials based on this feedback to help teachers provide their students with accurate and up-to-date information about the work we do.

We conducted a Youth Week competition again this year, inviting legal studies students to answer: 'Why is it important for young people to have access to the NSW Ombudsman?' James McQuiggin from Mudgee High School was selected as the winner of a \$200 book voucher for the following entry:

*The Ombudsman is an integral pillar in the structure of our society as it holds up a quintessential right of the people: the power to question authority. The Ombudsman provides a vehicle of protest on neutral ground and is a fundamental link between the people and the government. Young people especially are exposed to government influences daily and it is important that a balance may be struck between authority and the individual. It is therefore vital that the young people of NSW have access to the Ombudsman's office as an avenue to voice opinion, question government authority and seek justice.*

We received 112 entries from 23 schools across the state. This is double the number of entries and schools from last year's Youth Week competition.

## People with disabilities

This year we completed our review of the adequacy of the Department of Ageing, Disability and Home Care's (DADHC) actions to identify and meet the needs and goals of 60 people with disabilities living in nine large residential centres operated by the department. We identified a number of important needs of individuals that were not being identified or met. We recommended that DADHC should develop a comprehensive action plan to address the issues outlined in our final report. For more details about this review, see page 62 in People with disabilities.

During the year we also reported the findings and recommendations of our investigation into the implementation of the *Joint Guarantee of Service for people with a mental health problem or disorder living in Aboriginal, community and public housing* (JGOS). Our final report contained 10 recommendations aimed at strengthening interagency cooperation and enhancing the capacity of the social housing system in NSW to better respond to the needs of some of the most vulnerable members of our community. For more details about this investigation, see Departments and authorities.

Last year, we started a review of DADHC's implementation of policies aimed at improving the access of Aboriginal people to disability services. In 2008–2009 we completed our audits of each of DADHC's six regions. We have now started to report our findings and recommendations to each region and have provided DADHC with feedback about a number of systemic issues we identified that warrant attention at a corporate level. For more information about this review, see Working with Aboriginal people.

In 2008–2009 we made a submission to the Australian Government about the development of a National Disability Strategy. Among other things, our submission identified the need to simplify access to the disability support system and improve integration across governments and program areas.

All NSW public sector agencies have a responsibility under the *NSW Disability Services Act 1993* to develop a disability action plan (DAP). We are currently developing a new DAP using the framework set out in the *Guidelines for disability action planning by NSW Government agencies*, released in late 2008. Our plan will identify strategies to achieve the following six outcomes:

- › identifying and removing barriers to services
- › providing information about our services in a range of accessible formats
- › making our facilities and services accessible
- › assisting participation in public consultations, government advisory boards and committees
- › increasing employment participation of people with disabilities in the NSW public sector
- › using government decision-making programs and operations to influence other agencies and sectors to improve community participation and quality of life.

We have formed an across-office reference group to guide the development of our new DAP.

This year we commissioned Vision Australia to conduct a comprehensive audit of our website to gauge its accessibility to people with disabilities. While the majority of content on our website is accessible, the audit identified a number of issues that we have now rectified. In the coming year, our website will be further developed to make sure it is fully compliant with the Web Content Accessibility Guidelines 2.0.

As an official supporter of the 2008 *Don't DIS my ABILITY* campaign, we held a morning tea for all staff on 3 December 2008 to celebrate the International Day of People with a Disability. The event was a huge success. Our staff were inspired by an insightful, witty and moving speech by the late Matt Laffan, a respected advocate for the rights of people with disabilities and an ambassador for the campaign. They were also entertained by a wonderful performance by students from St Edmund's School, Wahroonga — a school for children with vision impairment and other special needs.



## Women

We continue to monitor and evaluate the NSW Police Force's (NSWPF) implementation of the recommendations in our 2006 special report to Parliament, *Domestic violence: improving police practice*.

Over half the recommendations have now been implemented. New domestic violence standard operating procedures were finalised in November 2008, and a publicly available code of practice outlining NSWPF's strategic response to domestic violence will be launched by the end of 2009. We are working with the NSWPF to assist them to implement the remainder of our recommendations — including developing a good practice framework for the policing of domestic violence and a publicly available code of practice.

Throughout the year we have also engaged regularly with the Domestic Violence Coalition — the peak body in NSW advocating for women who experience domestic violence. We have provided them with information about our ongoing work in relation to domestic violence and helped them to identify effective ways of addressing issues of concern to the sector. For more details about our work in this area, see page 74 in Policing.

Our updated women's fact sheet focuses on areas of our work that specifically concern women, including alleged police failure to deal appropriately with domestic violence and sexual assaults reports. This year we distributed the fact sheet widely through mail-outs, information stalls and events — including the International Women's Day celebration in Hyde Park. Our staff distributed information about our services to hundreds of women who attended the event, and provided advice to those experiencing problems with specific government and non-government agencies.

## Older people

This year we redeveloped our brochure for seniors and distributed thousands of copies to people who visited our Seniors Day stall at the Royal Easter Show. We shared the stall with the Commonwealth Ombudsman, the Energy and Water Ombudsman (EWON) and the Aged-care Rights Service. We distributed show bags, spoke to hundreds of senior citizens about our role, and provided specific advice to many of them.

As part of our review of DADHC's implementation of policies aimed at improving the access of Aboriginal people to disability services, we consulted with a number of Elders groups throughout the state. This included many older Aboriginal people who are caring for children or grandchildren with disabilities. Our Aboriginal Unit staff attended the 'Elders Olympics' in Kempsey in November to promote our review and the role of our office. The event was attended by 287 Aboriginal people from all over NSW. Support for carers was identified in our review as a key area of service improvement for DADHC.

# Working with Aboriginal people



Our Aboriginal Unit was established in response to recommendations made by the Wood Royal Commission into police corruption. The unit's initial focus was resolving complaints from Aboriginal people about police. Rather than continuing to operate as a standalone unit within our police division, we recently decided to locate the Aboriginal Unit within our cross-agency team, a multi-disciplinary team which focuses on reviewing whole-of-government service delivery. The Aboriginal Unit now examines broader issues aimed at improving the service delivery by government agencies and non-government service providers to Aboriginal people in NSW. In addition to our complaint-handling role, we meet regularly with local service providers, agencies, and community members to explore ways to improve outcomes for Aboriginal people in their area.

## Highlights

- › The NSW Government tasked us with auditing the implementation of the *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, as part of its response to the recommendations made by the Special Commission of Inquiry into Child Protection Services in NSW. [SEE PAGE 36](#)
- › Completed audits of how effectively each of DADHC's six regions are implementing their *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*, and discussed systemic issues — such as flexible community transport services — that need to be addressed to improve services to Aboriginal people with disabilities. [SEE PAGE 41](#)
- › Worked with the Aboriginal Housing Office and the NSW Aboriginal Land Council to improve their complaint-handling practices, including offering to provide training for staff at local Aboriginal land councils. [SEE PAGE 38](#)
- › Provided the Police Minister with our report on the impact of the statewide implementation of on-the-spot fines ('CINs') on Aboriginal communities. [SEE PAGE 40](#)
- › Attended Good Service forums in eight regional areas, participated in NAIDOC week events across Sydney, and gave a presentation to 68 police Aboriginal community liaison officers at their annual conference. [SEE PAGE 42](#)

## Child protection in Aboriginal communities

In recent years, we have increased our focus on child protection issues in Aboriginal communities. In 2008, we released our report, *Supporting the carers of Aboriginal children* which examined, among other issues, compliance by the Department of Community Services (DoCS) with the Aboriginal Child Placement Principle. In recognition of our work in this area and with Aboriginal communities in NSW, the Special Commission of Inquiry into Child Protection Services (the Wood Inquiry) recommended that we audit the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*. This recommendation was accepted by the government.

During the past year, the Deputy Ombudsman and other staff have had a number of meetings with Aboriginal communities about their concerns for vulnerable Aboriginal children and their families. The NSW peak Aboriginal child and family agency — AbSec — and a senior representative of the Children's Guardian and DoCS have also participated in several of these meetings. The following is a discussion of some of the key issues we are progressing as a result of these consultations.

## A safe place for children and young people

One particular issue that has been raised by several communities is the number of children and younger teenagers on the street late at night. These children are not only at risk, but also become involved in anti-social behaviour. Other concerns about this group include substance abuse, domestic violence, chronic truancy and school suspensions. Police in these communities have consistently advised us that they are faced with a difficult choice because returning these young people to their homes can mean they are placed at further risk due to factors in the home environment.

In related discussions with agencies and organisations, it has become apparent that two issues need to be addressed. Firstly, there is a need to acknowledge and deal with the unacceptable risks associated with these children being on the street late at night. A number of communities have proposed a safe place model. Secondly, it is equally important to ensure that there are adequate programs in place in these communities to deal with the significant underlying issues within these children's families. We recently facilitated a meeting with several community members and service providers from Brewarrina to explore how a safe place model could operate. Discussions focused on the types of services that would need to be in place to support such a model.

Representatives from DoCS, the Association of Children's Welfare Agencies, AbSec, the Children's Guardian and community members have agreed to continue to meet regularly with us about this at risk group of young Aboriginal people. We will continue to use our powers under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to focus attention on the need for concrete action to be taken to deal with this issue.

### Local service delivery

Another concern that Aboriginal communities have raised with us is the adequacy of service provision by certain funded local community organisations — particularly how effectively they are reaching those who are most vulnerable. Aboriginal community working parties have also expressed their desire to see local community organisations held more accountable to their communities for the outcomes they are funded to deliver. Over the next 12 months we propose to examine this issue in more detail. Service accountability is often linked to the adequacy of governance arrangements and probity, as illustrated by case study 7.

### Aboriginal children in out-of-home care

Last year we reported on the findings and recommendations of our review of issues affecting carers of Aboriginal children and the adequacy of services and supports to help them provide quality care. We provided a copy of our report, *Supporting the carers of Aboriginal children*, to the Wood Inquiry.

The Inquiry supported the recommendations in our report — including the need for DoCS to have processes for fostering cultural identity and connectiveness for Aboriginal children in out-of-home care, and consult with communities about placement decisions for Aboriginal children. They also supported:

- › reviewing the role of the Aboriginal, Child and Family Secretariat and possibly expanding its activities to provide advice to DoCS on all facets of child protection work
- › strengthening the capacity for Aboriginal families to undertake foster and kinship caring roles
- › addressing practical health and education measures for Aboriginal children and young people in out-of-home care.

In finalising our report, we recognised that DoCS would need the opportunity to consider our recommendations in the context of the findings of the Wood Inquiry, and for this reason, recommended that DoCS provide its response to our report within two months of the Inquiry reporting its findings. In December 2008 we arranged a meeting with the Director General of DoCS and the NSW Children's Guardian to discuss the most effective way of monitoring compliance with recommendations made in *Supporting the carers of Aboriginal children* and other out-of-home care reports issued by our office and the Children's Guardian over the last 18 months. Since this meeting, a register of the systemic issues identified in these reports, including timeframes for implementing recommendations, has been developed. This document will be used to track progress through regular meetings between DoCS, the Children's Guardian and our office.

### Implementing the Aboriginal Child Placement Principle

Since releasing our report, several communities have raised concerns with us about DoCS' practices around placing Aboriginal children in out-of-home care, including a perceived lack of consultation with communities about where local children should be placed. We have visited several communities to discuss this concern. Recently, we attended a meeting with the Lightning Ridge community arranged by the newly formed Wurringah Women's group. Several members of this group are also members of the Lightning Ridge Community Working Party (CWP). The Wurringah group's focus is ensuring that children are kept safe and, as far as possible, with relatives and kin in their local communities. Consistent with the principles of self-determination outlined in the *Children and Young Persons (Care and Protection) Act 1998*, CWPs and other recognised community groups across the state are keen to form partnerships with DoCS to work together to keep children safe and connected to their families, community and culture. We are currently working with the Lightning Ridge community and DoCS to establish such a partnership.

The 'Care Circle' pilot currently operating in Nowra is also examining the issue of who should be consulted about placement and other important child protection decisions. The pilot has the potential to provide DoCS with some practical guidance about what good consultation looks like as well as highlighting associated challenges. It is important to recognise that different approaches need to be used in different communities to resolve the 'consultation question', and for each child involved, consideration must be given to the specific family and community who should be consulted.

One of the key challenges that needs to be addressed for an agency and community partnership of this type to work is the current legislative framework for exchanging information. In order for recognised and representative community groups to be able to receive information about children and their families from DoCS and other agencies, they will need to have 'prescribed body' status. Members of these groups will also need to be screened and appropriate safeguards put in place to ensure the integrity of the process.

#### Case study 7

We received information that raised a concern about the alleged active involvement of a person with a serious and recent criminal conviction in a community service funded by DoCS. The information provided also raised concerns about service quality and the participation by this person in the service's management. Concerns were also raised about the level of service being provided to the local community through other programs funded by DoCS to assist vulnerable families. This matter has focused our attention on whether there are adequate probity requirements in place in relation to potential employees and volunteers in funded community services.

We have sought advice from DoCS about how they manage probity issues in the context of the service agreements they enter into with organisations they fund. We are also considering whether to extend our inquiry to look at these issues for services funded by agencies other than DoCS. Additionally, we have requested information from DoCS about the number of families that have been assisted through specific programs it funds in this particular community and the nature of the outcomes achieved. DoCS is in the process of providing this information.

## Child sexual assault

During the past year, the Wood Inquiry has refocused attention on many of the issues in Aboriginal communities that were highlighted by *Breaking the Silence*, the 2006 report of the NSW Aboriginal Child Sexual Assault Taskforce (ACSAT). The government's response to the ACSAT report — the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* — was released in January 2007 and operates for five years until the end of 2011.

The plan's goals are to:

- › reduce the incidence of child sexual abuse in Aboriginal communities
- › reduce disadvantage and dysfunction in Aboriginal communities
- › build up Aboriginal leadership and increase family and community safety and wellbeing.

It commits the partners — 11 government agencies and a number of non-government organisations — to 88 immediate, medium-term and long-term actions in four key areas. These areas are law enforcement, child protection, early intervention and prevention, and community leadership and support.

Our role is to audit the implementation of the interagency plan. This will involve extensive and ongoing consultation with partner organisations as well as Aboriginal communities and agencies across the state. We will regularly report back to the partners to enable them to progressively make changes and improvements to the work they are doing.

In recommending that we be given this audit role, Justice Wood, noted that:

*The lack of independent oversight of implementation by the Ombudsman recommended in the ACSAT report (Recommendation 21) is of particular concern. The Inquiry could not access a report measuring success against the interagency plan and this task is not being undertaken by the Department of Aboriginal Affairs.*

Justice Wood also noted that although the interagency plan had generated significant levels of activity by agencies since its release, the existing performance indicators made it 'difficult to

assess' the actual impact on Aboriginal people or communities, or on those children and young people who are experiencing or are at risk of sexual assault. For this reason, it will be critical for us to examine progress against meaningful, measurable outcomes.

As a result of our work to date with Aboriginal communities, particularly in the policing and child protection areas, we have considerable knowledge of several of the key issues and initiatives that our audit will need to consider. Our examination of agency responses to child sexual assault needs to be carried out in the context of the developments taking place in the child protection area generally, including initiatives to strengthen capacity and leadership within Aboriginal communities.

We recently received advice that we would be funded over three years to carry out the audit. However, we are still awaiting advice from government as to whether legislation will be enacted to provide us with the legislative authority to perform this auditing role.

## Land councils and housing

The NSW Aboriginal Land Council's (NSWALC) local and regional councils are all public authorities under our jurisdiction. As they are set up under the *Aboriginal Land Rights Act 1983* (ALRA) as individual self-determining bodies, most problems should be able to be dealt with at council meetings. We encourage members to raise their concerns about their council at these meetings and to seek advice and assistance from NSWALC and the Registrar of the ALRA. However, our staff are able to provide advice about land council matters and — if necessary — accept complaints for assessment and inquiry.

In September 2008, we met with the Aboriginal Housing Office (AHO) and NSWALC in relation to a complaint about a local Aboriginal land council (LALC). This complaint raised systemic issues about the complaint-handling practices of LALCs generally, as well as the AHO's oversight role in ensuring compliance with their policies in this area. At this meeting, we discussed the potential for us to assist the NSWALC and the AHO by providing training to LALCs about good complaint-handling practice. They also agreed to a number of undertakings aimed at improving the way complaints about local Aboriginal land councils are managed.

The AHO agreed to amend their Housing Aboriginal Communities Program (HACP) policy to reflect the following:

- › a requirement that there must be a reasonable period of time before a housing applicant moves into a house to allow a fair and proper appeal process to take place
- › that housing providers will give the AHO a copy of any appeals lodged by housing applicants as part of the AHO's housing allocation verification process
- › the annual registration process will make compliance with complaint-handling procedures and practice a mandatory requirement.



Additionally, the AHO agreed to develop sample procedures for handling complaints and appeals to help housing providers meet the minimum standards set by the AHO and improve consistency generally.

We agreed to review and provide feedback on these sample procedures. The NSWALC also undertook to send us their complaint-handling policy for our review and comment. We all agreed that there would be merit in developing a protocol which would clearly articulate how the AHO, NSWALC and our office will respond when we receive the same complaints about individual LALCs. We are working with the NSWALC and the AHO to progress these undertakings.

This year we have also made inquiries into delays in processing Aboriginal land claims by the Department of Lands in various locations across NSW. For more details of our work in this area, please see page 86 in Departments and authorities.

## **Policing Aboriginal communities**

Our work with police and Aboriginal communities across the state continues to focus on trying to resolve issues at a local level, improving Aboriginal access to quality policing services, and helping police implement effective initiatives and reforms. We also work with the Police Commissioner and the NSWPF Aboriginal coordination team to ensure that local initiatives receive the support they need.

### **Improving relationships between police and Aboriginal communities**

In June 2009, the NSWPF's Western Region Aboriginal Spokesperson asked us to meet with him and senior police in Moree to discuss their progress in building and maintaining relationships with the local Aboriginal community. During our visit to Moree, we also met with the police Aboriginal Community Liaison Officers and a number of members of the community.

One of the issues discussed at the meeting was the difficulties police face in responding to conflicts between feuding families living in close proximity to each other at the local reserve. Tension had arisen because of perceptions of bias in police dealings with different families. For example, some offenders had been given bail conditions that prevented them from living at the reserve or associating with family members. We provided suggestions to police about the best way for them to explain their actions to the community to avoid the perception of bias. We continue to provide advice to the officers at the command on request. Case study 8 is another example of our work with police to strengthen relationships with community.

### **Case study 8**

We received a complaint on behalf of several members of an Aboriginal community which alleged that two police officers were having inappropriate sexual relationships with young, vulnerable Aboriginal girls from the community.

The complaint also raised concerns that the positive relationship between local police and the Aboriginal community had become fractured since a change in senior management. There was community concern about perceived harassment by certain police officers who were issuing traffic infringement notices to young Aboriginal men when a warning would have been more appropriate.

The community complained that their concerns were not being taken seriously, a perception perpetuated by the failure of local police to respond appropriately to their complaints over a period of time.

A number of young girls and women were reluctant to cooperate with the police investigation. Two police officers admitted having a sexual relationship with a 22 year old Aboriginal woman, but no direct evidence was found that the officers were using their positions to cultivate relationships with other young women.

The investigation made several sustained findings against one of the officers — including findings for falsifying official records, harassment, improper association and providing incorrect and misleading information. The officer was suspended from duties and nominated for loss of the Police Commissioner's confidence. The second officer also had a sustained finding of improper association recorded against him.

We recommended that police conduct a risk assessment of this officer's suitability to continue working in Aboriginal communities.

The investigation also made a sustained finding against another officer for causing malicious damage by driving a police vehicle over a young Aboriginal boy's pushbike. We suggested that police provide an apology to the family for the actions of the officer and for the poor response to their complaint about the matter. Additionally, we recommended that consideration be given to an ex gratia payment to allow the family to replace the boy's pushbike. The police agreed with our suggestions. We also recommended that prompt action be taken by police to repair some of the damage caused by the conduct of those officers.

Since the events which led to the complaint, a new commander has arrived and relations between police and the community have improved. The new commander chaired a meeting between police and community members, and police were also invited to participate in the local community working party meetings. Concerted efforts have been made to use these consultation mechanisms to explain police actions and resolve issues that have led to past complaints. The commander has also put in place better reporting and accountability systems, more intrusive supervision of officers, and improved complaint management processes. Among other positive initiatives, police have introduced a newsletter for distribution in the community and are planning to implement an employment project to encourage young Aboriginal people to consider a career in policing.

## Impact of criminal infringement notices on Aboriginal communities

In 2005 we completed an extensive review of the penalty notice provisions of the *Criminal Procedure Act 1986*, which gave police in 12 local commands in NSW the power to issue on-the-spot fines — known as criminal infringement notices (CINs) — to people suspected of committing certain minor criminal offences.

In late 2007, the scheme was implemented statewide and we were asked to conduct a further review of the impact of the CINs scheme on Aboriginal and Torres Strait Islander communities.

Police data shows that 8,681 CINs were issued in the first year of the scheme's statewide operation, mostly for offensive conduct (47%), offensive language (23%) and larceny or shoplifting (26%). By comparison, our initial review of the CINs trial in 12 commands found that the most common

offence for which CINs were issued was larceny (43%). Fewer CINs were issued for offensive conduct (25%) and offensive language (18%).

The wider use of CINs across NSW also saw a sharp increase in the number of CINs issued to Aboriginal people. In the five years before the statewide roll-out, 2.8% of all CINs issued in the trial locations were to Aboriginal people. After the statewide roll-out, Aboriginal people received 7.4% of all CINs issued and more CINs for offensive language than for any other offence. Almost half (45%) of CINs issued to Aboriginal people in the first full year of the statewide scheme were for offensive language.

Our final report on the statewide implementation of the CINs scheme examined what happens to CIN recipients who are unable

to pay their fines to the State Debt Recovery Office (SDRO) and who are referred for enforcement action and sanctions. This included detailed consideration of recent improvements to the administration of fines enforcement, and opportunities to further improve the fines system to better address and manage the impacts and risks to Aboriginal CIN recipients.

A critical challenge in this review was to reconcile significant anomalies in the data provided by the NSWPF and the SDRO. Our final report, provided to the Attorney General and the Minister for Police in August this year, included observations and recommendations aimed at improving the quality and reliability of record-keeping in relation to CINs.

### Case study 9

As a result of ongoing tension in a small coastal town between the Aboriginal community and a group of local non-Aboriginal people, a fight broke out between both groups, which resulted in several people sustaining serious injuries. Police laid charges on both sides. The matter was heard by the local court in June 2007 and resulted in the convictions of all the Aboriginal people who had been charged.

The convictions were later overturned on appeal. The court was highly critical of police for not complying with the requirements associated with formally interviewing Aboriginal people, in particular, failing to notify the Aboriginal Legal Service (ALS) that the individuals were in custody — as required under clause 24 of Regulation 2005, *Law Enforcement (Powers and Responsibilities) Act 2002* and the NSWPF Code of Conduct.

After we were alerted to a media report about the outcome of the appeal, we wrote to the relevant local area commander outlining our concerns about the police not following the legislative requirements associated with detaining 'vulnerable' people in custody. We also asked what steps had been taken to prevent the problems identified by the magistrate from happening in future.

In response to our letter, the local area commander said that local policy and procedures relating to 'vulnerable' people in custody would be re-examined. We were subsequently provided with information about the outcome of this review and advised that a centralised phone number for all police notifications to the ALS in NSW and the ACT had been established. Since this time, we have not received any further complaints of police failing to notify the ALS when an Aboriginal person is in custody.

### Detaining vulnerable people

Notifying the Aboriginal Legal Service when an Aboriginal person is in custody is a legislative requirement. Case study 9 outlines our role in improving police compliance with this legislative requirement at one police command.

### Police Aboriginal Strategic Advisory Committee

The main role of the Police Aboriginal Strategic Advisory Committee (PASAC) is to oversee the implementation of the NSWPF's *Aboriginal Strategic Direction* (ASD) and identify and share innovative ways of addressing issues that have statewide implications for the policing of Aboriginal communities.

PASAC is chaired by the Police Commissioner and includes representatives from Aboriginal peak bodies as well as the Department of Aboriginal Affairs and the Attorney General's Department. We have been a member of PASAC for several years.

## Aboriginal people with disabilities — the need for a more flexible approach

Last year we began a review of the Department of Ageing, Disability and Home Care's (DADHC) implementation of their *Aboriginal Policy Framework* (APF) and *Aboriginal Consultation Strategy* (ACS). These aim to ensure that Aboriginal people with disabilities and their carers have equal access to DADHC's programs and services and can participate in DADHC's planning and decision-making.

As part of our review, we visited 78 regional and metropolitan locations across the state and met with more than 410 people — including DADHC staff, local partners and service providers, consumers, carers and community groups in each of DADHC's six regions.

Despite the relatively high rate of disability among Aboriginal people, we found that Aboriginal communities often did not know about the services DADHC provide or fund for people with disabilities and their families. DADHC has produced some excellent promotional resources aimed at Aboriginal people, but building relationships with key Aboriginal organisations and community members is generally the most effective way to improve awareness of services and identify Aboriginal people who need them.

Although DADHC has made efforts across all regions to consult with Aboriginal communities, through our review, we are looking at DADHC's structures for consulting Aboriginal communities and how

DADHC might capitalise on these. Strong community engagement at a local level will enhance the capacity of each DADHC region to identify service gaps and address them in a more strategic way.

DADHC and their funded providers need to take a flexible approach to delivering services to Aboriginal people with disabilities and their families, and actively communicate to Aboriginal people how this flexibility can be applied to a variety of circumstances. During our consultations, many service providers and community members told us that the support Aboriginal people with disabilities and their families want from DADHC can be very different from the broader community. DADHC needs to ensure that services are not imposed on communities, but driven by community-identified need.

One of the areas of concern most frequently raised was community transport. Aboriginal people are often 'transport-disadvantaged' because of the comparatively low number of Aboriginal people who have driving licences or cars, combined with large geographical distances and a lack of public transport in many communities. The inability to access transport prevents many people with disabilities and their carers from accessing other health and support services.

Our review has also indicated that there is poor awareness in Aboriginal communities about the different types of community

transport that are available and how to access them. We have also been told that there is inadequate transport available and, when it is, it is often not sufficiently flexible to meet the needs of Aboriginal people. Together with the Ministry of Transport and NSW Health, DADHC has an important role to play in ensuring that Aboriginal people with disabilities and their families are able to access the transport they need. For these reasons, we are carefully considering this issue in our review.

Overall, DADHC has taken some very positive initiatives aimed at benefiting Aboriginal people with disabilities and their families. Challenges remain, and our review is considering potential areas for improvement. In a draft report we have recommended that DADHC establish an overarching accountability framework to monitor the work that regions are undertaking to meet the objectives of the APF, ACS and related policies.

We have now completed our audits of each of DADHC's six regions and are currently providing each region with a report detailing the findings and recommendations of our review. The first three of these reports have been completed and the rest will be provided over the coming months. We have also given DADHC feedback about systemic issues that need to be considered at a corporate level.

Other government and non-government agencies are increasingly being encouraged to participate in PASAC by sharing information about initiatives aimed at improving outcomes for Aboriginal communities. Often, the police can play a role in supporting or enhancing their work. During 2008–2009, PASAC focused particularly on Aboriginal employment issues. Project Murra — an innovative

Aboriginal traineeship program operating at Lake Illawarra Local Area Command — was showcased along with the Indigenous Police Recruitment Out West Delivery Project. Training for police on Aboriginal issues and improving support for new Aboriginal police recruits were also discussed.

In June 2009, the NSWPF's new *Aboriginal Employment Strategy* was formally launched. We are pleased that the strategy reflects a number of the observations and recommendations contained in *Working with Local Aboriginal Communities*, our 2005 report to Parliament about the implementation of the NSWPF's *Aboriginal Strategic Direction*.

## Community engagement

We maintain strong links with Aboriginal communities to identify and address issues that affect them, and regularly meet with local service providers, agencies, and community members to discuss ways of improving outcomes for Aboriginal people.

This year we consulted broadly with Aboriginal people for our review of DADHC's implementation of their *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*. We visited 78 regional and metropolitan locations across NSW and met with over 410 people, including many Aboriginal organisations, consumers of disability and aged care services and their advocates.

We also travelled to over 20 regional and metropolitan locations in NSW as part of our review of the impact of criminal infringement notices on Aboriginal and Torres Strait Islander communities. We consulted 457 Aboriginal community and interagency groups as well as Aboriginal client service specialists and staff from organisations such as the Attorney General's Department, Community Development Employee Program, local Aboriginal land councils, Aboriginal legal services and the Western Koori Interagency.

We regularly participate in Good Service forums across the state together with the Commonwealth Ombudsman, Energy & Water Ombudsman, Banking Ombudsman, Legal Aid NSW, the NSW Anti-Discrimination Board, the NSW Office of Fair Trading and the Health Care Complaints Commission. These forums provide an opportunity to inform Aboriginal communities about our role and their right to complain to us if they have difficulties with government or non-government agencies. This year staff from our Aboriginal Unit attended Good Service forums in Albury, Batemans Bay, Bega, Campbelltown, Coffs Harbour, Grafton, Moree and Narrandera.

During the year we also:

- › participated in NAIDOC week events across Sydney, informing more than 100 Aboriginal community members of our role
- › gave a presentation to 68 police Aboriginal community liaison officers at their annual conference
- › attended the National Disability Service Conference, meeting with a number of Aboriginal service providers and consumers
- › visited two Aboriginal children's services to provide them with advice about their child protection responsibilities
- › accepted an invitation from senior police to attend an Aboriginal flag raising ceremony at Moree and met with a number of community members and Elders
- › met with senior Ministry of Transport staff to discuss transport access for Aboriginal people
- › provided child protection training to Aboriginal students through the Education Centre Against Violence
- › gave a presentation about our role and work in the area of housing to 15 members of the Aboriginal tenant advocates network.

## Inspecting juvenile justice and correctional centres

We have an ongoing program of visits to juvenile justice and correctional centres in NSW. To ensure Aboriginal detainees or inmates have the opportunity to speak with another Aboriginal person about any concerns they may have, staff from our Aboriginal Unit come on visits to centres where there are large numbers of Aboriginal people.

During our visits, we also identify if centres are making adequate efforts to ensure the cultural needs of Aboriginal detainees and inmates are met. During 2008–2009, our Aboriginal Unit staff accompanied members from our corrections unit on 10 visits to juvenile justice and correctional centres.

For more details of our work in this area see page 78 in *Juvenile justice* and page 81 in *Corrections*.

## Aboriginal cultural appreciation training

To improve our staff's understanding of issues affecting Aboriginal people and their needs, we have developed a comprehensive Aboriginal cultural appreciation training package. Participation in this training is compulsory for all staff.

The training is presented by staff from our Aboriginal Unit and is designed to enable participants to:

- › better identify Aboriginal and Torres Strait Islander people
- › appreciate the impact of European colonisation on Aboriginal people
- › identify and develop strategies for effective communication with people from an Aboriginal background
- › develop skills required to work effectively with Aboriginal people
- › identify and discuss cultural awareness in the workplace
- › discuss current issues affecting Aboriginal and Torres Strait Islander communities
- › appreciate the diversity of Aboriginal culture by listening to personal stories from our staff.

This training has proved to be very popular with staff.

*I learnt many things I didn't already know, but should know.*

*The exercises were great for challenging our ideas/assumptions.*

*I gained a better understanding of issues facing Aboriginal people as well as practical tips.*



# Children and young people



Our responsibilities for protecting children are included in the *Community Services (Complaints, Reviews and Monitoring) Act 1993 (CS-CRAMA)* and Part 3A of the *Ombudsman Act 1974*.

In this chapter we outline our work in reviewing the deaths of children, handling complaints about the provision of community services for children, and reviewing the complaint-handling systems of providers. We also discuss our work in overseeing investigations into allegations of reportable conduct or reportable convictions against employees of certain agencies.

## Highlights

- › Reported the results of our review of the circumstances of 35 children aged 10 to 14 years in out-of-home care, and highlighted the importance of permanency planning. [SEE PAGE 47](#)
- › Began a review of planning and support for 65 young people who will leave statutory care this year. [SEE PAGE 47](#)
- › Initiated an investigation into how DoCS identify and process compensation claims for children and young people who have been victims of violent crime and are under the parental responsibility of the Minister for Community Services. [SEE PAGE 48](#)
- › Tabled in Parliament our *Report of Reviewable Deaths in 2007 Volume 2: Child deaths*, concerning the deaths of 162 children in 2007 and a special review of 47 other children who had no child protection history and died between 2003–2007. [SEE PAGE 48](#)
- › Held a successful child protection symposium, attracting over 300 delegates and a range of keynote speakers. [SEE PAGE 55](#)
- › Prepared a special report to Parliament about our work over the last 10 years, noting substantial improvements in the way agencies handle reportable allegations against their employees. [SEE PAGE 50](#)
- › Monitored 946 investigations involving allegations of sexual offences, sexual misconduct, or the serious physical assault of a child. [SEE PAGE 53](#)
- › Completed two major research projects examining the grooming of children in the workplace using the internet and sexual misconduct by school employees. [SEE PAGES 56 & 57](#)

## Community services

Since 2002, we have had broad ranging responsibilities for children and young people and people with disabilities under the CS-CRAMA.

Our responsibilities for children and young people include reviewing the deaths of children whose deaths are, or may be, due to abuse or neglect or occur in suspicious circumstances and children who, at the time of their death, were in statutory care, a disability accommodation service or a detention centre. We also handle complaints about the provision of community services for children and review the complaint-handling systems of providers. Our jurisdiction includes DoCS and services licensed, funded or authorised by the Minister for Community Services.

Our work under CS-CRAMA in the disability area is discussed in People with disabilities on page 59. Our work in overseeing the official community visitors scheme is outlined on page 28 in Community engagement.

## Employment-related child protection

Under Part 3A of the Ombudsman Act, reportable conduct is conduct that involves abusive behaviours towards children. This can include physical assault, sexual offences, behaviour causing psychological harm, ill-treatment or neglect. We receive notifications, assess and monitor investigations, directly investigate matters if we have serious concerns, and conduct audits and training activities to improve agencies' understanding of, and responses to, reportable allegations against their employees.

All public authorities are subject to the requirements of Part 3A if the reportable conduct arises in the course of a person's employment. Some public authorities — such as the Department of Education and Training (DET) and DoCS — are designated agencies and also need to notify reportable allegations if they arise from conduct that takes place outside of employment. Some non-government agencies are also subject to Part 3A requirements and must notify reportable allegations that arise both within and outside of employment. For more details on our work in this area see page 49 in this chapter.

## Special Commission of Inquiry into Child Protection Services

In November 2008, the Wood Inquiry — the Special Commission of Inquiry into Child Protection Services — issued its report and 111 recommendations.

In March 2009, the NSW Government released its response to the recommendations — *Keep Them Safe: A Shared Approach to Child Wellbeing* — which laid out plans to implement the vast majority of the inquiry's recommendations over five years.

The government supported key reforms — including raising the statutory threshold for reporting children at risk of harm to 'risk of significant harm', and establishing child wellbeing units within public sector agencies.

These units are designed to help agencies identify at-risk children and respond to their needs at the local level. They replace the system under which all children at risk of harm are reported to DoCS. The government's plan also provides for new or expanded services to enable more families to receive support, and the establishment of non-government regional intake and referral services to help link families and children to services in their local area. In addition, the plan envisages an enhanced role for the non-government sector in providing child and family services. The NSW Government's response to the Wood Inquiry will considerably change the child protection system over time. The proposed changes are designed to provide for:

- a more intensive focus by DoCS on the children identified as being most at risk
- a new and expanded child protection role for other government agencies
- an expanded role for non-government organisations.

With any significant change there are always risks and challenges. A critical issue will be how the varied components of the new multi-faceted system will be implemented. The expanded role of a range of government and non-government agencies has the potential to make these agencies more responsive to the needs of children at the local level, and ensure more families receive timely and appropriate support.

However, while the child wellbeing units will be operational in 2009, the regional intake and referral services will initially be only trialled in three areas for a 12-month period. After evaluation of these trials, the government currently plans to establish the services across the state by the end of 2011. The expansion of Brighter Futures, the primary avenue for early intervention, will be limited in the first instance to enabling the program to cater for an additional 200 families by mid 2010. Brighter Futures currently assists around 6,000 children each year. The government has committed to examining further enhancements of Brighter Futures after the evaluation of the program in 2010. Sustained health home visiting services for vulnerable teenage mothers is also a longer-term strategy, substantially starting between 2010 and 2011.

In establishing child wellbeing units across NSW — without the support of a statewide regional intake and referral system or significantly expanded early intervention services — there is a potential risk to the capacity of these units to be able to either directly provide, or arrange for, adequate support to vulnerable families across all areas of the state.

Additionally, under the reforms, the child protection system will need good coordination and information exchange — and will not function properly if it does not have this. The planning that is underway is therefore of vital importance, as will be the evaluation of the results of these plans after they have been implemented.

Although legislative and structural change has the potential to provide a clear framework for better collaboration between agencies, there must also be a significant cultural shift to deliver improved child protection practice. This cultural shift will be particularly important in relation to the plan to shift greater responsibility for child protection to both the non-government sector and a broader range of government agencies.

### **Changes to our responsibilities and jurisdiction**

Since the Wood Inquiry, legislation has been passed which transfers responsibility for supporting the work of the Child Death Review Team from the NSW Commission for Children and Young People to the Ombudsman.

Also, an amendment to CS-CRAMA was made in April 2009 which removes our responsibility to review the deaths of children or their siblings who were subject to a report to DoCS in the three years before they died. DoCS is now responsible for reviewing the deaths of these children. An additional amendment to CS-CRAMA means we are now required to report publicly on reviewable child deaths every two years, rather than each year. The first of these reports will cover the two-year period ending on 30 June 2010 and will report on all child deaths during this period which are, or may be, due to abuse or neglect or occur in suspicious circumstances. It will also cover children who, at the time of their death, were in statutory care, disability accommodation or in detention.

The Wood Inquiry also recommended that it would be appropriate for the Ombudsman to monitor and report to government on progress with

implementing the Aboriginal Child Sexual Assault Taskforce (ACSAT) report. The government agreed that we should audit the implementation of the interagency plan that is the government's response to the ACSAT report. For more details on our work in this area, see Working with Aboriginal people.

### **Child protection investigations**

In 2008–2009, we initiated four non-employment-related child protection investigations. In each case, we were investigating the actions of DoCS. We also finalised 10 investigations about three matters arising from our child death function. DoCS was the subject of all three matters and a number of other agencies were involved — including the NSW Police Force, the Department of Ageing, Disability and Home Care, Housing NSW, the Department of Education and Training, a children's hospital and a non-government organisation (NGO).

One of the concerns we identified was the capacity of an NGO to provide services to a high-risk family. This issue is particularly significant in the context of the expanded role envisaged for the non-government sector in the government's response to the Wood Inquiry.

One of the main catalysts for establishing the Wood Inquiry was the case of a seven year old girl who died of starvation in November 2007. Three days after her death, the Ombudsman announced an investigation into the actions of several government agencies in response to previous concerns that had been raised about the child and her family.

We completed our investigation in November 2008, and provided a report to the Wood Inquiry and all involved agencies and relevant Ministers.

Police charged the girl's parents with her death. After criminal proceedings are finalised in 2009, we will make a detailed special report to Parliament about this matter. Our report will highlight what can go wrong for children when agencies fail to work effectively together and fail to take shared responsibility for the care and protection of children. It will also illustrate the need to ensure critical child protection information is properly analysed and acted upon, high risk families are identified, and habitual non-school attendance is addressed.

## Complaint trends and outcomes

This year we received fewer complaints about child and family services than in 2007–2008, possibly because the Special Commission of Inquiry into Child Protection Services provided an avenue for some people to raise their concerns about child protection and related services.

It is not possible to directly compare the type of complaints received about child and family services in 2008–2009 to those we received in 2007–2008 as we have changed the way we report matters received.

In 2007–2008 we reported about all the service types subject of complaint. As a complaint can raise concerns about multiple service types, for example child protection and out-of-home care services, there were more complaints by service type than matters received.

In 2008–2009 we have reported only the service type primarily the subject of complaint and the number of complaints equals the number of matters received.

For the first time since we began handling complaints about child and family services, we received more formal complaints this year about out-of-home care services provided by DoCS and non-government services funded by DoCS (51%) than about child protection services (42%), primarily about DoCS (see figure 20).

The majority of complaints about out-of-home care services related to the assessment of children and young people and their carers when they enter care, the supports provided to carers, the planning of services targeted to the individual needs of children and young people in care and the casework activities undertaken to implement the plans.

**Figure 20 — Number of formal and informal matters received in 2008–2009 about agencies providing child and family services — by agency category**

Agency category	Formal	Informal	Total
<b>DoCS</b>			
Child protection services	186	382	568
Out-of-home care services	209	365	574
Children's services	3	20	23
Family support services	2	5	7
Adoption	2	1	3
<b>Sub-total</b>	<b>402</b>	<b>773</b>	<b>1,175</b>
<b>DADHC</b>			
Child protection services	0	2	2
Family support services	0	1	1
Out-of-home care services	0	1	1
<b>Sub-total</b>	<b>0</b>	<b>4</b>	<b>4</b>
<b>Other government agencies</b>			
Child protection services	1	1	2
Out-of-home care services	0	1	1
Children's services	2	0	2
Family support services	0	0	0
Adoption	0	0	0
<b>Sub-total</b>	<b>3</b>	<b>2</b>	<b>5</b>
<b>Non-government funded or licensed services</b>			
Child protection services	1	4	5
Out-of-home care services	20	36	56
Children's services	20	22	42
Family support services	2	3	5
Adoption	0	1	1
<b>Sub-total</b>	<b>43</b>	<b>66</b>	<b>109</b>
<b>Other (general inquiries)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Agency unknown</b>	<b>1</b>	<b>23</b>	<b>24</b>
<b>Sub-total</b>	<b>1</b>	<b>23</b>	<b>24</b>
<b>Total</b>	<b>449</b>	<b>868</b>	<b>1,317</b>

**Figure 21 — Outcomes of formal complaints finalised in 2008–2009 about agencies providing child and family services**



- Complaint resolved after inquiries, including local resolution by the agency concerned 142 (29.1%)
- Complaint declined after inquiries 235 (48.2%)
- Complaint declined at outset 70 (14.3%)
- Service improvement comments or suggestions to agency 12 (2.5%)
- Direct investigation 11 (2.3%)
- Referred to agency concerned or other body for investigation 3 (0.6%)
- Complaint outside jurisdiction 15 (3%)

Case studies 10, 11, 12 and 14 illustrate the importance of ensuring comprehensive assessment and planning and quality casework for children and young people in care. It is pleasing that the services subject of these complaints acknowledged and took action to address the concerns about the services provided.

We continue to receive complaints about the adequacy of investigation and assessment by DoCS of reports that children and young people have been abused or neglected, and the quality of DoCS' casework, intervention and provision of support to families of children assessed as being at risk of harm. Case study 13 illustrates the impact on children and families when poor decisions are made about ongoing risks to children and there is inadequate case management to address risks.

### Case study 10

Two children whose mother died in late 2006 were placed under the parental care of the Minister for Community Services in mid 2007. In April 2009, during an in-care review, we found that DoCS had received advice from a solicitor some eighteen months previously that the mother had not left a will and had owned a property. The solicitor had told DoCS that urgent steps should be taken to administer the mother's estate to avoid the accumulation of unpaid interest on the mortgage for the property — which could potentially diminish the children's inheritance. However, at the time of our review, it appeared that DoCS had done little, if anything, to progress the administration of the estate.

We decided to directly investigate the matter and identified that significant delays had occurred. DoCS has now begun to arrange administration of the estate and has located other assets owned by the mother. We have recommended that DoCS obtain independent expert advice as to any financial loss to the estate caused by its delay and, if so, to consider making an ex gratia payment to make amends, either to the estate or to the children.

### Case study 11

A woman caring for her twin grandsons after the death of her daughter told us her daughter's estate had been finalised and just over \$5,000 had been left to the twins.

The grandmother reported that, as the twins were under the parental responsibility of the Minister, she was unable to open a trust account to invest the children's inheritance. She was concerned that as the amount was not significant, the fees of the Public Trustee would be greater than the interest earned.

After we contacted DoCS, they agreed to establish an account for the children.

### Case study 12

We received information that raised questions about DoCS's placement of three Aboriginal children with a non-Aboriginal carer. The information indicated that DoCS had not assessed the children's extended family members as potential carers, despite receiving requests for more than six months to do so.

We spoke with senior DoCS staff who acknowledged some shortcomings in their practice. The matter is currently before the Administrative Decisions Tribunal so we are taking no further action at this stage. However the case illustrates the importance of appropriate and early consultation to ensure that DoCS are complying with the placement principles for Aboriginal and Torres Strait Islander children and young people.

### Case study 13

A woman caring for her niece and nephew complained to us about DoCS deciding to close the children's child protection files and leave the matter of their long term care to be dealt with by family members in the Family Court. The woman complained that, as a result, she and her husband were accruing legal costs that they could not afford.

Both children had child protection histories when DoCS arranged for them to be temporarily cared for by their aunt and uncle. DoCS assessed the aunt and uncle for the purpose of receiving a supported carers allowance and wrote to Centrelink saying the children would be with their aunt and uncle for a limited time.

When this period of time was over, DoCS assessed that the children would be at risk if they were returned to their parents. All parties agreed that the children's placement with their aunt and uncle would continue for another six months and signed a temporary care agreement to this effect.

In the months that followed, the carers sought guidance from DoCS about contact between the children and their parents and DoCS encouraged them to consider Family Court action.

Two months later, DoCS terminated the temporary care agreement but did not tell the carers or the parents.

When the parents asked for the children to be returned

to their care, they were told that it was a Family Court matter. DoCS then closed their files on the case.

Our investigation identified multiple deficiencies in the way DoCS handled this matter. The case planning and risk assessment were inadequate, as was the communication DoCS had with the children's parents and their carers. The temporary care agreement did not meet with legislative and practice requirements, and the children were not seen by DoCS until they were in the process of closing the case.

A number of factors contributed to this unsatisfactory situation. Too many staff handled the matter and some of these staff had a poor understanding of care arrangements. Record-keeping was also inadequate. We concluded that it was both wrong and unreasonable in the circumstances for DoCS to close the case and direct the parties to resolve the matter of the children's care in the Family Court.

In response to our recommendations, DoCS has accepted the errors made and agreed to apologise to both the carers and the parents. They will also make an ex gratia payment to the carers to cover the cost of the Family Court proceedings. The department has also agreed to tell us what strategies they have implemented to prevent the deficiencies in the handling of the case from re-occurring.



## Case study 14

A woman had been caring for her niece and nephew since February 2007. She applied for a supported carers allowance after she had become aware of it in April 2008. Although DoCS accepted the application, they would not backdate the payments to the time when the children came into the woman's care.

The department's financial guidelines state that if a carer makes a request to be assessed for the supported carers allowance and it is approved, the allowance may be backdated to the date of the request.

In response to our inquiries, DoCS established that although they were not involved with the placement of the children, the aunt had asked the department for assistance shortly afterwards. DoCS told us that the woman should have been advised at this time that she could be assessed for the supported carers allowance.

DoCS backdated payment of the allowance to the date on which the woman first sought assistance, which was one month after the placement began. They told us they had also taken steps to make sure that staff give carers appropriate information about the allowance in future.

## Reviewing complaint-handling by child care services

This year we commenced a review of complaint-handling systems in child care services in NSW. We will review 35 centres across the state and expect to report our findings in mid 2010.

The review will focus on long day care centres. Many long day care centres cater for children with special needs including those with disabilities or developmental delays and those at risk of abuse or neglect. DoCS sometimes encourages use of child care as part of a case plan for children at risk or to support a foster care placement.

Many peaks and key stakeholders in the child care sector have already been consulted and we have received significant support and cooperation from these parties. A training support initiative from our office in complaint-handling for the sector has also begun through a partnership with Children's Services Central, which provides professional development to eligible child care services in NSW.

## Reviews of children in care

### Children aged 10 to 14 years in out-of-home care

This year we reported on systems issues arising from our review of a group of 35 children between 10–14 years of age in out-of-home care.

All the children were aged between eight and 13 at the time their final care orders were made and just over half had been previously placed in out-of-home care before their current episode of care.

Most of the children had care and protection histories extending over their lifetime. Over a third of the children were reported to DoCS before the age of one and most of the remaining children were reported by the age of five. Compared with the group as a whole, the children who were initially reported to DoCS before the age of one were more likely to have additional needs in mid-childhood — such as developmental delay, mental health or educational issues.

We found that some children and young people did not receive health and development assessments when they entered care. Others received these assessments and had their needs identified, but did not receive appropriate services to meet these needs. The adequacy of health and developmental assessment for children entering out-of-home care is an issue we have raised with DoCS since 2003.

Most of the children we reviewed were given the opportunity to voice their interests, needs and wishes when their matters were before the Children's Court, but were less likely to participate in the ongoing planning or review of their care once their court case was finalised. Our review indicated that children placed with NGOs may be more likely to be given the opportunity to participate in decisions about their ongoing care.

There was significant room for improvement in the support provided by DoCS to kin and relative carers. We also found ongoing evidence of poor administrative practice, particularly in relation to the transfer of case management responsibility for children between different DoCS offices. It is concerning that children continue to be disadvantaged as a consequence of inadequate case transfer — an issue we first identified in 2002.

Our review highlighted that no matter what the age of a child when they enter out-of-home care, caseworkers need to make sure that 'permanency planning' is in place so that children do not unnecessarily move from placement to placement. It is also important to ensure that all placements, not only those identified as having 'high needs', are properly reviewed and supported. Generally, those children with unmet needs in areas such as educational support, counselling or health did not have an allocated caseworker.

We also made a number of positive findings. Children identified as 'high needs' were being well supported. Contact between children and their birth family was also being well supported when contact orders were in place. Additionally, it was apparent that children who were being restored to their birth family benefited from having a caseworker.

In response to our draft report, DoCS provided us with information about a number of strategies they are implementing to build capacity in the out-of-home care system and improve outcomes for children under the parental responsibility of the Minister for Community Services. The final report is available on our website.

### Young people leaving care

In 2004, our review of a group of young people with disabilities leaving statutory care identified many areas needing improvement. Since that time, the Department of Ageing, Disability and Home Care has received funding to provide additional accommodation for these young people. In 2008, the Minister for Community Services also released guidelines on providing assistance to young people leaving care or who have left care.

The Wood Inquiry noted these improvements, but also highlighted the importance of young people leaving care receiving adequate assistance and information about their entitlements to after care assistance. They also commented that little funding is spent on this group.

In February 2009, we began a review of a group of 65 young people who will leave statutory care this year. We are examining the young people's circumstances and the planning in place to support them to either transition to independent living, return home, or move to supported care funded or provided by DADHC. The results of our review of each young person will be reported to DoCS and, in some cases, to non-government agencies.

### **Victim compensation and children in care**

Some children and young people enter statutory care because they have been the victims of physical or sexual abuse. If such abuse constitutes a violent crime, children — like other community members — may be eligible for victim's compensation.

Our review of young people leaving care has identified concerns around DoCS not lodging applications for compensation on behalf of some young people who may be entitled to it.

As a result of these findings, we have decided to investigate DoCS's systems for identifying and processing victims compensation claims for children and young people who have been victims of violent crime and are under the parental responsibility of the Minister for Community Services.

### **Reviewable deaths of children**

We began reviewing child deaths in December 2002. Since then, the child protection system has been subject to a five-year reform program and, more recently, scrutiny by the Wood Inquiry.

Despite recent legislative amendments, the broad focus of our work — to identify trends and patterns and make recommendations to prevent and reduce the risk of deaths in future — remains unchanged. To do this, we examine information and records from various government and non-government organisations that provide services to children.

An advisory committee — which met twice in 2008–2009 — contributes to our review functions. There is a list of the members of this committee in Appendix N.

### **Our annual report**

In March 2009 we tabled our fifth annual report, *Report of Reviewable Deaths in 2007 Volume 2: Child Deaths*. It covered the deaths of 162 children in 2007, as well as observations from our review of the deaths of 47 children with no child protection history who died between 2003 and 2007.

In many cases, agencies responded effectively to children at risk. However, we identified policy and practice issues concerning the adequacy of agency identification and reporting of risk of harm, quality of response by DoCS and other agencies when children were determined to be at risk of harm, and interagency responses to children in need of care and protection. These are issues we have consistently identified and reported during the past six years.

### **The deaths in 2007 that we reviewed**

We took further action — including direct investigations and reports to agencies about issues we identified — in relation to 38 of the 162 deaths of children that we reviewed. This included 16 investigations into eight deaths and 33 reports to agencies about the deaths of 27 children.

In most cases, our work focused on DoCS — but some matters also involved area health services, the NSW Police Force, other government and non-government organisations.

### **Deaths of children not known to DoCS**

Each year, about eight per cent of the families of children whose deaths are reviewable have no, or no recent, child protection history. The deaths of these children are reviewable if they were due to abuse or neglect, or the circumstances of their death suggested abuse or neglect.

In 2008, we reviewed a group of 47 children who died in the five years from 2003 and who had not been subject to a report to DoCS.

The most common circumstances of death were homicides that occurred within the family and neglect-related deaths that involved drowning, transport or co-sleeping.

In relation to family homicide, we reviewed the deaths of 18 children. The majority of the children were aged five years and younger. Most of the perpetrators were the natural parents of the children. Of 14 identified perpetrators, nine were male and five were female. In most cases, mental illness was a significant contributing factor in the actions of the female perpetrators. Most of the male perpetrators also had some history of mental illness, primarily depression. A minority of the men also had histories of substance abuse.

We reviewed 16 drowning deaths that we identified as predominantly associated with inadequate supervision and inadequate safety measures to limit children's access to pools or other bodies of water. All but one of the 16 children who died were younger than three.

Most of the seven children who died in transport incidents were passengers in a vehicle driven by a parent, and in all cases we identified a significant level of carelessness on the part of the driver.

Our review also considered the co-sleeping deaths of six children whose families had no child protection history. All six children were infants and five were less than three months old. Two of the children were Aboriginal. In each of the children's families, we found evidence of a history of drug or alcohol use in the hours before the incident. Four of the six mothers used illicit drugs while pregnant.

### **Child protection in Aboriginal communities**

During the past year, the Deputy Ombudsman and his staff have had a number of meetings with Aboriginal communities about their concerns for vulnerable Aboriginal children and their families. The NSW peak Aboriginal child and family agency — AbSec — and a senior representative of the Children's Guardian have also participated in several of these meetings. These discussions have included a proposal by several communities in western NSW to establish a 'safe place' for children and young people needing temporary 'refuge'. The aim of the safe place is to keep children and young people within their own communities while agencies put in place supports for their families. This approach is consistent with the Aboriginal child placement principle.

Our discussions with community, DoCS and child and family peak bodies have also focused on the quality of service delivery by particular funded services, particularly in some of the more remote communities in NSW. For more details on our work in this area, see page 36 in Working with Aboriginal people.

## Employment-related child protection

Our child protection division oversees the investigations of certain agencies into allegations against their employees that involve abusive behaviours towards children. We also scrutinise the systems agencies have in place to prevent reportable conduct in the workplace and to respond to allegations against their employees.

Heads of all government and some non-government agencies — including non-government schools, substitute residential care agencies and children’s services — are required to notify us of reportable allegations and convictions against their employees within 30 days of becoming aware of them. Reportable allegations include:

- › sexual offences and sexual misconduct, including grooming
- › physical assault
- › ill-treatment and neglect
- › behaviour causing psychological harm
- › misconduct that may involve reportable conduct.

This year we received 1,667 notifications of reportable allegations, a decrease of nearly 10% from last year. We finalised 1,672 notifications (see figure 22). Last year we reported that notifications from the Department of Education and Training (DET) — previously our largest notifier — were declining. The trend has continued this year, with a further decrease in notifications by the DET of 31% (see figure 23). This decrease is due to the extension of our class or kind determination with the DET which means they don’t have to notify us about an increased range of lower risk allegations.

The substitute residential care sector is now our largest notifier, with 845 notifications received this year. Of those, 257 were notifications from non-government substitute residential care agencies, an increase of approximately 32% on last year. Half were received from one agency, Life Without Barriers (LWB).

**Figure 22 — Number of formal notifications received and finalised — five year comparison**

Matters	04/05	05/06	06/07	07/08	08/09
Received	1,815	1,786	1,995	1,850	1,667
Finalised	1,760	1,541	1,749	1,921	1,672

**Figure 23 — Number of formal notifications received by agency — two year comparison**

Agency	07/08	08/09
Department of Community Services	575	569
Department of Education and Training	628	432
Substitute residential care	195	257
Child care centres	60	90
Catholic systemic and independent schools	133	72
Independent schools	77	65
Department of Juvenile Justice	74	63
Other public authority — not local government	22	35
Department of Health	29	30
Family day care	17	19
Department of Ageing, Disability and Home Care	9	19
Department of Corrective Services	14	8
Councils	16	5
Department of Sport and Recreation	0	2
Other prescribed bodies	0	0
Agency outside our jurisdiction	1	1
<b>Total</b>	<b>1,850</b>	<b>1,667</b>

LWB is a large not-for-profit public company and charity organisation that operates across Australia and is one of the largest agencies providing substitute residential care in NSW. We hold regular liaison meetings with LWB and are working closely with them to improve their systems for preventing reportable conduct and responding to reportable allegations.

This year, we monitored approximately 30% of all notifications received. In addition, we made significant progress with our ongoing project on assessing and managing risks. Last year we reported that we would conduct an in-depth longitudinal study into sexual misconduct in the school environment. This study has been completed and discussed with a range of stakeholders (see page 57). We have also completed a preliminary analysis of risk factors involved in allegations of physical assault by teachers.

In May 2009 we held a successful child protection symposium. Over 320 delegates from a range of government and non-government agencies from across NSW and interstate attended. See the Working together: advancing child protection in the workplace section on page 55 for a full report on this symposium.

This year also marked the 10 year anniversary of the implementation of Part 3A of the *Ombudsman Act 1974*, which established the Ombudsman’s employment-related child protection jurisdiction. To mark this occasion, we drafted a special report to Parliament about our work in this area over the last ten years and our focus for the future.

## Inquiries and complaints

This year we received 703 inquiry calls. The majority (approximately 60%) were from agencies with queries about jurisdiction or the processes involved in making a notification or investigating an allegation. A significant number of calls were from alleged victims or their representatives (usually a family member) seeking information about our complaints process or advice about an investigation they were concerned about or dissatisfied with. We also received a number of inquiries from employees who were, or had been, the subject of reportable allegations.

## Ten years of operation: a review of the Ombudsman's employment-related child protection function — a special report to Parliament

The Ombudsman's role in employment-related child protection is to scrutinise certain employers' investigations of reportable allegations and convictions against employees, and to keep the systems for preventing reportable conduct and handling reportable allegations under scrutiny. This function, under Part 3A of the Ombudsman Act, was established in May 1999 as part of a broader scheme that includes a pre-employment screening system for people who work in child-related employment and prohibiting people with relevant convictions from working with children.

This year, we reviewed what has been achieved since Part 3A came into operation and considered the key issues that will need to be addressed in the future. We analysed our own statistical data and information gathered from agencies since the scheme began. We also obtained information from other sources by conducting interviews, convening focus

groups, and distributing a survey to agencies and peak bodies. We plan to table the results of our review in a special report to Parliament.

We concluded that, overall, the past decade has seen substantial improvements in the handling of reportable allegations against employees. Agencies are now better equipped to investigate allegations against employees because they have better systems in place, staff are more aware of the type of behaviour that is unacceptable and have a greater understanding of the dynamics of reportable conduct, and investigators are better trained to manage investigations. It is clear that our involvement and expertise in employment-related child protection has had a positive impact on agency practice.

However, we also identified a need for further reform. For example, agencies reported difficulties obtaining information from key bodies such as the NSWPF, there is some concern and

confusion about the operation of the pre-employment screening system, and there are continuing challenges in investigating allegations of an historical nature. Ongoing training for staff and those responsible for conducting investigations is required as well as the development of further tools to help agencies with decision-making and risk assessment. To strengthen existing systems and promote greater consistency across different jurisdictions, there is also a need for a national approach to employment-related child protection that includes the scrutiny of agencies' handling of allegations against their employees.

Finally, emerging issues — such as those associated with the use of technology in schools and substitute care, the management of reportable allegations against members of religious institutions, and the investigation of certain types of sexual misconduct — require careful consideration and possible legislative reform.

In most cases, we resolved the inquiry by providing general information and advice. Approximately 15% of all inquiries led to a notification. Case study 15 shows how the advice and guidance we provided as a result of an inquiry call led to appropriate action being taken to address significant risks posed to children by an employee.

As a complaint-handling body, we also deal with complaints about agency investigations into reportable allegations. This is a small component of our overall work, with 41 complaints received and 47 finalised this year. In almost half of these cases, we referred the complainants to the agency being complained about in the first instance. This gave the agency the opportunity to respond to the concerns. However, we directly pursued other complaints if we considered this to be in the public interest. Case study 16 is an example of how we took action to ensure a fairer outcome for an employee (a foster carer) who was the subject of an investigation.

### Case study 15

We received a call from the principal of an independent school advising us that police had attended the premises with a search warrant in relation to a person who was involved with the school as a volunteer during World Youth Week (WYW). Police would not provide any information about the allegations to the principal. This made it difficult for an informed risk assessment to take place and for a decision to be made about whether or not the volunteer should continue in his role at the school. The principal sought our advice about how best to handle the matter.

We advised the principal to make a report to the Department of Community Services (DoCS). We then helped the school in their dealings with DoCS and the police, resulting in police releasing information to DoCS — who subsequently provided a report to the school. This enabled an appropriate risk assessment to be done, and the head of the agency responsible for engaging WYW volunteers decided to terminate the volunteer's employment.

The volunteer was subsequently charged by the police with 44 counts of historical sexual assault. The matter is currently before the courts and we are monitoring the school's handling of the employment-related investigation.



## Case study 16

An agency notified us of an allegation that a foster carer had indecently assaulted an 11 year old boy in his care. The agency removed the boy and another child from the placement. We monitored the investigation of the allegation which was also the subject of criminal proceedings.

The carer raised a number of concerns with the agency about their handling of the matter. These included a lack of confidentiality and support during the investigation, and not being given an explanation why the second boy — who was not the alleged victim — had been removed from his care.

Nine months later, the carer contacted us and complained that the agency had not responded to his complaint. We wrote to the agency seeking information about what action they had taken to respond to the complaint. As a result of our inquiries, the agency wrote to the carer about his concerns and apologised for not responding to his complaint sooner. They provided us with a copy of that letter.

While we were satisfied that the agency had addressed the majority of the carer's concerns, we noted that they had not explained why they removed the 14 year old boy from his care. The removal of children from the care of an authorised carer is a reviewable decision under the *Administrative Decisions Tribunal Act 1997* and the *Children and Young People (Care & Protection) Act 1998*. We advised the agency of this and suggested they provide the carer with the reasons for the child's removal and the avenues of appeal available to him. We also wrote to the carer to inform him of our actions.

## Assessing agency notifications

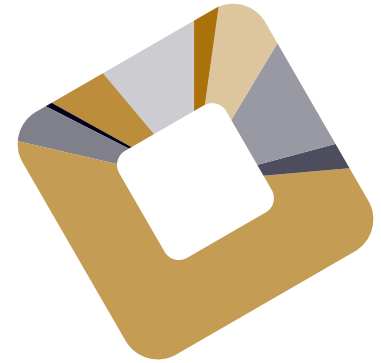
Of the 1,672 notifications finalised this year, we assessed 1,461 (88%) as being satisfactory. Approximately 10% were only finalised as satisfactory after our intervention. In the remaining unsatisfactory matters, we provided the agency with feedback about our assessment and advice about ensuring the appropriate handling of future matters.

## Figure 25 — Action taken on formal child protection notifications finalised in 2008–2009



- Agency's investigation oversighted 1,126 (67%)
- Agency's investigation monitored 496 (30%)
- Outside our jurisdiction 50 (3%)

## Figure 24 — What the notifications were about — breakdown of notifications received, by allegation



- Ill-treatment 38 (2%)
- Misconduct — that may involve reportable conduct 106 (6%)
- Neglect 206 (12%)
- Outside our jurisdiction 46 (3%)
- Physical assault 916 (56%)
- Behaviour causing psychological harm 65 (4%)
- Reportable conviction 8 (0%)
- Sexual misconduct 97 (6%)
- Sexual offences 185 (11%)

Figure 24 outlines what the notifications we received were about and figure 25 outlines the action taken on the formal child protection notifications finalised. Figure 26 breaks the notifications we received down by the sex of the alleged offender.

## Figure 26 — Who the notifications were about — breakdown of notifications received, by sex of the alleged offender

Issue	Female	Male	Unknown	Total
Ill-treatment	24	14	0	38
Misconduct — that may involve reportable conduct	27	79	0	106
Neglect	130	76	0	206
Outside our jurisdiction	19	23	4	46
Physical assault	512	402	2	916
Behaviour causing psychological harm	42	23	0	65
Reportable conviction	1	7	0	8
Sexual misconduct	16	81	0	97
Sexual offences	27	157	1	185
<b>Total notifications received</b>	<b>798</b>	<b>862</b>	<b>7</b>	<b>1,667</b>

## Performance indicators

Criteria	Target	08/09
Average time taken to assess notifications — working days	5	4
Average time taken to assess final investigation reports* — working days	40	41.5
Percentage of our formal investigation reports recommending changes to law, policy or procedures	80%	100%
Percentage of recommendations that were implemented	80%	100%

\* Decreased resources combined with a period of office closure affected our performance against this benchmark.

A key issue that we consider when assessing agency investigations is whether or not risk has been appropriately identified and addressed. This includes risks to children, employees, the investigation process itself and the agency. If we have significant concerns about risk, we may increase our scrutiny

by escalating our involvement. Case study 17 is an example where we identified risks to children and consequently decided to monitor the investigation.

When assessing agency investigations, we also consider whether the investigation has been fair and transparent for all those involved,

and whether we need to help the agency remedy any deficiencies and improve their systems for preventing reportable conduct and responding to reportable allegations. Case study 18 is an example of how we have responded to poor investigative practice, while case study 19 is an example of how our intervention led to a better outcome for an employee.

### Case study 17

We received a notification that a foster carer for a substitute residential care agency had smacked a child in her care on a number of occasions and used inappropriate forms of punishment to deal with the child's bad language. It was also alleged that the child had failed to thrive and this may have been because the environment provided by the carer was not supportive.

We had a number of concerns about the agency's investigation. Although the alleged victim had been removed from the placement, we were also concerned whether or not the agency had minimised the serious nature of the alleged conduct and made inadequate and inappropriate recommendations to address the potential risks to other foster children still living with the carer.

As a result, we monitored the investigation and required the agency to provide us with an updated risk assessment for the children still in the placement. In response, the agency acknowledged some deficiencies in their investigative approach and provided additional information which satisfied us that risks to the children were being managed. They also amended their category of notification to the Commission for Children and Young People (CCYP) to reflect the risks associated with the alleged conduct.

### Case study 18

We received a notification that a public sector employee had used excessive force to restrain two children in the course of his employment. Shortly after, the agency provided their investigation report and we identified a number of deficiencies. A lack of documentation meant it was not possible for us to assess whether the investigative process had been reasonable. Also, the agency had not made a finding or notified the CCYP on the basis that the employee resigned before the investigation was completed. It was also unclear to us whether or not procedural fairness principles had been adhered to.

We asked the agency for further information which they gave us. However, they advised that their practice was to discontinue investigations once an employee resigned.

We provided advice to the agency about the need to complete all reportable allegation investigations even if an employee resigns, including making all reasonable attempts to provide former employees with the opportunity to respond to the allegations and making a finding based on the available evidence. The agency accepted our advice and has changed their investigative procedures accordingly.

### Case study 19

An agency notified us that they had completed an investigation into an allegation that a child care worker had smacked a three year old child on the leg. The agency that employed the worker found the allegation 'not sustained — insufficient evidence' and notified the employee's details to the CCYP as a Category One matter.

We had concerns about the agency's finding and the action taken. From the available evidence, it was our view that the alleged conduct was of a trivial or negligible nature and so did not need to be notified to us. We asked the agency to review their finding and reconsider the Category One notification to the CCYP. The agency subsequently advised us that they had amended their finding, withdrawn the notification to the CCYP, and informed the employee of this.

## Exchanging information

An issue that arose this year concerned the exchange of information between agencies that have to investigate reportable allegations and, in particular, difficulties obtaining information from DoCS and the NSW Police Force (NSWPF). Agencies told us they often had problems obtaining this information and, even when they did receive it, it was often insufficient for the purpose of their investigations. We also identified as a broader issue the ability of agencies to share information with other employers about their employees, when this information would indicate that a particular employee may pose a risk to children.

Although our office may hold this information, strict confidentiality provisions prevent us from disclosing it except in very limited circumstances. On rare occasions we consider that the risks in a particular matter, and the unavailability of any other avenues, warrant us disclosing information under s.34(1)(b1) of the Ombudsman Act. This section allows us to disclose information to the NSWPF, DoCS or a public authority if it relates to the 'safety, welfare or wellbeing of a particular child or young person (or a class of children or young persons)'. Case study 20 is an example of how we have used this provision.

In November 2008, the Wood Special Commission of Inquiry into Child Protection Services in NSW made a number of recommendations about the exchange of information, having considered the concerns raised by many agencies in their submissions to

the inquiry. In April 2009, the *Children and Young People (Care & Protection) Act 1998* was amended to include provisions to facilitate the exchange of information between agencies that have responsibilities relating to the safety, welfare or wellbeing of children and young people. Under the new provisions, the scenario outlined in case study 20 would be avoided.

This is because a prescribed agency can now request information from another prescribed agency that relates to the safety, welfare or wellbeing of a particular child or young person or class of children or young persons to help them conduct an investigation, make a decision or provide a service to children, or manage any risk to the child or young person that might arise. We hope this will facilitate a better flow of information between agencies and result in more timely and thorough investigations in which decision-making and risk management are based on all the information available.

## Monitoring agency investigations

One of our strategies for managing the risks associated with allegations of a more serious nature is the use of our monitoring powers under s.25E of the Ombudsman Act. This allows us to have more input into complex investigations and to intervene in a timely manner if we have concerns about an agency's investigation. We monitored 946 matters in total this year — including matters monitored from the outset as well as those where monitoring started at some point during the investigation. The type of investigations monitored from the outset included those involving allegations of sexual offences (47%), sexual misconduct (31.5%) and the serious physical assault of a child (17.8%).

Case studies 21 and 22 show how our monitoring role contributed to successful outcomes.

### Case study 20

In July 2008, we were informed by the Department of Education and Training (DET) that they had been contacted by the principal of an independent school advising that a person employed by DET as a casual teacher had been dismissed from the school over a breach of their child protection guidelines. Allegations of grooming behaviour had been investigated and had resulted in a Category One notification to the CCYP. Due to privacy concerns, the principal was reluctant to provide DET with additional information about the allegations. As the person the subject of the allegation was a current employee, DET was not able to conduct a further 'working with children check' to inform their risk assessment about his suitability for continued employment. The employee also declined to give his consent for documentation relating to the independent school's investigation to be provided to the DET.

The DET sought our advice about how best to deal with this matter. After exploring all possible options for providing the information to DET by other means, we considered there were sufficient current risks to children to warrant the release of information about the matter to DET under s.34(1)(b1) of the Ombudsman Act. This allowed DET to conduct a risk assessment and make a decision about whether or not they would continue to employ the person. DET subsequently dismissed the person and placed him on their 'not to be employed' list.

### Case study 21

We received a notification of an historical allegation that a priest had disclosed having had sexual intercourse with children while travelling internationally. The allegation had initially been reported to the agency in 2002, but had not been notified to us at that time. The agency concerned identified the matter during a self-initiated review of complaints and contacted us for advice about how best to handle it.

As part of our monitoring of the investigation, we liaised with the agency and the local police and suggested possible lines of inquiry with the Federal Department of Immigration and Citizenship and the Australian Federal Police. As a result of our input, information was obtained from these agencies and a thorough and comprehensive investigation was conducted. The agency found there was some evidence to support the allegation, took steps to monitor the priest's conduct and contact with children, and made a Category One notification to the CCYP.

### Case study 22

We received a notification from an agency about allegations of sexual fondling and physical assault by a swimming instructor. Complaints were made to staff both by parents of the alleged victims and by other children.

Although the matter had been notified to us as a completed investigation, little documentation was provided and we were unable to ascertain if the allegations had been properly investigated. Given their serious nature and our concerns about deficiencies in the investigation, we decided to monitor the matter and asked the agency to take further investigative action to remedy the deficiencies. As a result of our intervention, the agency conducted further interviews of alleged victims and witnesses, reviewed their risk assessment and original findings, and subsequently notified the employee to the CCYP as a Category Two matter. Our advice and feedback helped the agency to better understand the evidentiary requirements of an investigation and address a number of operational and procedural concerns raised during the investigation.

## Direct investigations

We work with agencies in a number of ways to improve their systems for investigating allegations of reportable conduct. On rare occasions, particularly if we have serious concerns about an agency's ability to conduct an investigation and/or significant risks are not being addressed, we may use our formal powers to directly investigate a matter.

This year we started five investigations and finalised four. In two cases, the agency concerned fully complied with our recommendations. A further investigation into the probity checking systems of a large substitute residential care agency was discontinued, as we were satisfied that they were taking steps to improve their systems for authorising and assessing carers. However, we have made some suggestions for further action to improve their systems and processes.

In another matter, systemic concerns about a substitute residential care agency's systems for identifying and investigating reportable allegations led us to start an investigation (see case study 23).

### Keeping information confidential

Many of the matters we oversee are the subject of criminal proceedings and, in some cases, lead to a criminal conviction. Some also result in extensive media coverage, which may or may not be based entirely on fact or complete information. We are often asked to comment on our involvement in a matter.

Our work is governed by strict secrecy provisions in s.34 of the Ombudsman Act. Under the Act, neither the Ombudsman nor one of his officers can disclose any information obtained by them in the course of their work — except in very limited circumstances. These secrecy provisions are important for maintaining the integrity of the Ombudsman's office and our processes, as we are often given information on the basis that it remains confidential. It would be difficult for us to carry out our watchdog role if this were not the case. This is why we are unable to provide information to the media about the cases we handle, even to correct inaccurate media reporting.

### Case study 23

We received information that a substitute residential care agency had knowingly failed to notify a reportable allegation involving the sexual assault of a child. After inquiries that confirmed this failure, we decided it was in the public interest to investigate their handling of the allegations. The agency had concluded that the allegation was false and vexatious. We outlined our view that there was significant evidence to support the allegation. The agency amended their finding to acknowledge this evidence and, as a result, the employee was notified to the CCYP. However, we remained concerned about the agency's investigation, the inadequate systems that may have contributed to the allegations arising in the first place, and the agency's response to the allegation overall — including their risk management actions. We made adverse findings about these issues.

As we were also concerned about a number of systemic issues that arose during our investigation, we broadened the investigation's scope to examine the agency's systems for preventing reportable conduct and responding to reportable allegations.

We identified that the agency had:

- › failed to notify a significant number of reportable allegations within the timeframe specified in the Ombudsman Act
- › failed to ensure systems were in place to ensure the head of agency became aware of reportable allegations
- › failed to implement effective systems for preventing reportable conduct
- › conducted inadequate investigations into a number of reportable allegations
- › inadequate records management systems.

We made 12 recommendations aimed at improving the agency's systems, policies and procedures and they agreed to implement all of them. We have issued the final report in this investigation and we will monitor the agency's compliance with the recommendations.

## Auditing systems

Under s.25B of the Ombudsman Act, we are required to scrutinise the systems that agencies have in place for preventing reportable conduct and responding to reportable allegations. Auditing is one of the ways we fulfil this requirement. Our audit methodology includes reviewing relevant policies and procedures and conducting site visits during which we inspect the premises and interview staff and other relevant stakeholders. There are a number of reasons we may audit an agency — it may be part of a sector or industry group that works with highly vulnerable children or we may have identified a specific concern with the agency's systems (see case study 24).

This year we began 18 audits. Seven were systemic audits, while eleven were audits of our class or kind determinations with agencies that have demonstrated they have good systems in place for investigating reportable conduct. For example, we audited the DET and the Catholic Dioceses in NSW — to check compliance with the extended class

or kind determination that was implemented in July 2008 — and found that exempted matters were being handled satisfactorily by these agencies.

We also continued our systemic audits of the NSW Department of Health area health services, conducting a further five audits throughout the year. To date, we have made a number of recommendations about improving policies and procedures, providing training to managers and staff to improve their understanding of reportable allegations and the appropriate reporting protocols, developing templates for better documentation of investigations and improving record-keeping practices.

Although some agencies are apprehensive about the prospect of being audited, our aim is to provide feedback that will help them improve their systems for preventing reportable conduct and handling reportable allegations. We also identify good practice when we see it. Feedback from agencies that have been audited indicates they have generally found the process to be a positive and useful one.



## Case study 24

We decided to audit an agency providing substitute residential care because of ongoing concerns about their response to reportable allegations. Although we repeatedly provided feedback to the agency about deficiencies in their investigations, we continued to identify poor investigative practices, a lack of procedural fairness towards employees, and findings that were not supported by evidence. The aim of our audit was to identify the systemic factors affecting the agency's ability to properly investigate allegations of reportable conduct, and find out how well key employees understood the agency's responsibilities under the Ombudsman Act.

During the audit, we discovered that some of our feedback had not been given to the staff actually responsible for conducting investigations and some investigators were more skilled and experienced than others. We also found that staff knowledge of the Ombudsman Act was inadequate and had resulted in the notification of some exempted allegations.

We recommended that the agency review their processes for notifying matters to us, develop a process for providing our feedback to investigators, and provide additional training for all staff about their reporting obligations as well as investigation training for staff who have to investigate allegations. We also reviewed the agency's policies and procedures and recommended that some of these be amended to address specific child-related employment issues. We are now monitoring the agency's compliance with our recommendations.

## Working together: advancing child protection in the workplace

In 2008–2009 we delivered over 25 presentations, briefings, training sessions and forums to approximately 1,030 stakeholders from a range of agencies within our jurisdiction, including staff from substitute residential care agencies and child care students. We also conducted our inaugural forum for public authorities in November 2008, with 28 agencies receiving training about their reporting responsibilities and the investigative process.

As part of the information gathering process for our ten year report to Parliament, we conducted interviews and convened a number of focus groups with peak bodies and agencies from areas including education, health, children's services and substitute residential care.

## Our 2009 Symposium

This year we held a two-day symposium bringing together expert practitioners to discuss the unique issues arising from the investigation of reportable allegations and convictions.

Over 320 delegates attended the symposium.

Our keynote speakers focused particularly on the dynamics of child sexual assault. Dr Ethel Quayle (University of Edinburgh), Professor Max Taylor (University of St Andrews, Edinburgh), Professor Richard Wortley (Griffith University) and Detective Sergeant Eugene Stek (NSW Police Force)

addressed the specific issues of online offending, a situational approach to predicting and preventing child sexual assault, and the investigation of historical allegations.

The papers presented at the symposium addressed topics such as creating an organisational culture of safeguarding children, risk assessment in an employment context, the challenges inherent in conducting investigations of reportable conduct, interviewing children and adults, and child protection in religious communities. Our staff presented

a paper relating to working with volunteers and mentors, as well as the results of two major projects — a longitudinal study of risk factors in the sexual abuse of students by school employees and a review of the dynamics of face-to-face and online grooming. The results of these projects will be published separately in the future.

Information from the symposium has been included on our website and will be used to inform our ongoing training and education program for agencies in our jurisdiction.



### 2009 Symposium

**Working together: advancing child protection in the workplace**



We also distributed a stakeholder survey. The results of this survey are outlined in our special report discussed on page 50.

This year we also made direct contact with over 70 public authorities requesting information about their contact with children and the systems and processes they have in place for preventing, identifying and handling reportable allegations arising in the workplace. We provided feedback through correspondence, consultations and meetings with agencies and suggested amendments to existing policies, particularly IT policies.

As many notifications involve employees who have accessed child pornography at work, agencies need to provide clear guidance about the appropriate and inappropriate use of work computers and the internet.

An important part of our work is to help agencies to improve their systems for preventing reportable conduct and responding to reportable allegations. We do this in a variety of ways, including:

- › holding regular liaison meetings with the larger agencies in our jurisdiction to discuss any systemic issues that may arise in our assessment of their investigations
- › convening our first two-day symposium on employment-related child protection
- › holding case conferences with agencies to discuss issues arising from particular investigations.

### Agency liaison meetings

We regularly meet with agencies to discuss systemic or policy issues. For example, this year we:

- › met with the Department of the Arts, Sport and Recreation to discuss their current child protection policy

and procedures and canvass the possibility of Ombudsman training for staff. We subsequently provided feedback on the department's policy and procedures

- › held meetings with a number of religious orders to clarify their responsibilities to notify reportable allegations as well as when they may be required to act as the head of agency and conduct or assist with an investigation. We also met with the Salvation Army to discuss which of their programs involve providing services to children and are within our jurisdiction
- › started having regular liaison meetings with Life Without Barriers to discuss systemic issues arising from matters notified to us. We continue to hold regular liaison meetings with the DET, DoCS, the Department of Ageing, Disability and Home Care, NSW Health and the Department of Juvenile Justice

## Young people and the internet

We recently completed a project on young people and the internet with funding from the Federal Department of Immigration and Citizenship (DIAC). The project built on our work examining the grooming of children in the workplace and allowed us to explore how the internet is used to groom children in this context.

We found that the research into online grooming usually relates to an adult who is initially a stranger to the child. Grooming of this nature can proceed faster than face-to-face grooming and the adult may introduce sex talk very quickly. To establish whether use of the internet substantially changed the process of online grooming in a workplace context, we conducted a preliminary review of some investigation reports that we received from agencies.

Our research identified the following issues:

- › Emails, SMS and instant messaging are used to enhance the development of a 'special relationship' with the child in the stage of grooming before direct sex talk is introduced. These forms of communication may contribute to the perception of the exclusivity of the relationship

as they usually involve one-to-one discussion.

- › Technologies now allow for communication at all times of the day, including during the school day and at night. They can create a 'saturation' effect where emails, SMS and instant messaging overlay and intersect with other face-to-face communication that occurs during the day. They allow for discussion of the minutiae of daily events, attributing extra meaning to seemingly banal interactions and gestures during the day and potentially building the intensity of the inappropriate relationship.
- › New technologies may make the introduction of sex talk or exchange of sexual images less confronting and so may be used for the initial introduction of these topics.
- › Transcripts of online discussions between employees and young people often reflect issues identified in current research about face-to-face grooming. For example, online discussion allows an employee to assess the risk of a young person reporting inappropriate comments, and to more easily

attempt to assume a role of confidant or friend.

The use of internet and mobile communications in a workplace may be a situational factor that increases the risk of some relationships between employees and young people sliding from ones that are appropriate to ones that are inappropriate. Because this type of communication can be more casual in tone and content, it may provide an opportunity for communication to subtly shift the boundaries of the relationship. This could act as a trigger for grooming to begin by an individual who has, until that time, developed a close relationship with a young person with no specific ill-intent.

Our work so far highlights the importance of codes of conduct and acceptable use policies that set out guidelines for appropriate online communication in the workplace. It also highlights the need for employees, parents and young people to be educated in cybersafety as it relates to interactions with adults known to the child as well as with strangers. We will continue to work with agencies in this area to identify other prevention strategies for addressing this type of online grooming in the workplace.

› arranged for the Deputy Ombudsman to attend a liaison meeting with the Catholic diocesan child protection officers to provide advice on how best to handle requests for investigation documentation under the Freedom of Information Act. This has been an issue within the sector, leading to delays in finalising investigations.

### Case conferences

Complex issues often arise in matters we are monitoring and it can be useful to meet with the agency to discuss these, resolve any problems, and agree on a way forward to expedite the investigative process. For example:

› An agency asked for a case conference to discuss a matter that involved a number of complex issues that were affecting their ability to conduct a full and thorough investigation. The allegations arose in a small rural community and the alleged victim was related to the employee who was the subject of the allegations. There were significant concerns for the child's safety if the allegations were put to the employee. Although there was some involvement by the police, they had discontinued their investigation and had also asked the agency to take no further action

— given the implications for the alleged victim if the investigation were to continue. The agency sought feedback from us on their proposal to close the investigation. We met with the agency and discussed a number of issues, including whether or not there were any current concerns about the child. At our suggestion, the agency undertook some further inquiries and established that the child was settled and had good supports in place. They also put risk management strategies in place to ensure that the employee continues to be monitored and has no unsupervised contact with children.

## Sexual offences by school employees

This year we completed a project examining trends and patterns in the sexual abuse of children by school employees. Our aim was to identify elements in sexual offence and sexual misconduct matters that could signify reliable risk factors for risk assessment purposes. We reviewed approximately 100 matters where school employees — including teachers, non-teaching and support staff, volunteers and people engaged to provide services to children — were found to have committed a sexual offence against a student at the same school. We found that:

- › 64% of the perpetrators were teachers, including executive staff in schools such as principals and deputy principals. Of the 36% of perpetrators who were not teachers, 23% were clergy. The remaining employees included ancillary staff members, nurses, student teachers, cleaners and work experience supervisors.
- › 53% of the alleged victims were female and 47% were male.
- › Grooming occurred before the sexual offence in at least 80% of the matters reviewed. The figure was higher in matters involving teachers, with 92% of teacher perpetrators grooming their target before the sexual offence.
- › In 31% of matters, the grooming behaviours had been reported before the conduct escalated to a sexual offence. Of those

matters, 39% of reports were not acted on at all and 42% were acted on — but inappropriately. Only 19% of matters were acted on reasonably appropriately, albeit insufficiently.

- › While many sexual offences were committed on school premises, other locations were also common — including the child or perpetrator's home and cars or other vehicles.
- › Many children and young people did not recognise that the employee's conduct towards them was abusive until some years later — when they were able to identify that they were targeted, that they were not in a position to consent to what happened to them, and that they had been psychologically or otherwise harmed by the abuse.
- › SMS and internet-based chat technology was used in 31% of the matters we reviewed. However, many of the cases we reviewed involved offences that occurred before this technology became widely accessible.
- › The most common forms of out of school contact during the grooming and abuse stages were frequent telephone calls, overnight stays, teaching a child to drive, attendance at student parties, sporting activities and camping trips.

Employers often claim to have limited control over the activities of their employees outside the workplace. However when

these activities involve clients, students or other service users, this is not a valid assertion. It is well established that employers have the right to investigate and sanction the out of work conduct of their employees that has an impact on their business.

Agencies should have strict codes of conduct in place that prohibit certain conduct by employees that may place children at risk. Breaching codes of conduct that are designed to protect children should almost always be sufficient to warrant, at a minimum, the implementation of a formal risk management program for that employee.

Sometimes, agencies place inordinate weight on employees' explanations and denials of inappropriate conduct, and do not fully assess the risk factors inherent in breaches of codes of conduct and related policies. Our review also found that agencies often failed to take appropriate action until non-overt sexual grooming behaviours had escalated to sexual abuse.

We plan to use these findings to assist agencies to improve their capacity to identify potential risk factors — particularly those relevant to situational offenders — so that potential grooming conduct is interrupted at an early stage and risk management processes are put in place before there is evidence of the indecent or sexual assault of a child.

- ▶ An independent school notified us of historical sexual assault allegations against one of their employees. About two months later the school gave us their investigation report. Although the school had sustained the allegation and notified the employee to the CCYP as a Category One matter, they had not given us sufficient documentation to support their finding. In addition, during the course of the investigation, further allegations had arisen — involving additional alleged victims — that were not addressed by the school. It was unclear if the police had been notified at any stage and, if so, what information they had been given. We held a case conference with the school, during which we outlined what they needed to do to meet their reporting obligations and discussed providing information to the police about the allegations. The school subsequently provided the requested documentation to us and informed police about the allegations. The police have recently indicated to the school that criminal charges against the employee are likely.
- ▶ We received a notification from a public authority involving allegations that a supervisor of a 15 year old student on work placement engaged in inappropriate physical contact, made suggestive and inappropriate sexual comments, and tried to arrange time alone with the student. We monitored the investigation and provided advice about the process. However it became clear that the agency did not understand our role or their investigative responsibilities. We met with the agency to discuss their investigation and clarify a number of requirements. After the conference, the agency demonstrated a clearer understanding of the investigative process — including how to assess and manage risks — and subsequently made an appropriate referral to the CCYP. They also decided to review their work experience policy.

## Research into sexual misconduct and grooming

This year we completed two major research projects examining sexual misconduct by school employees and the grooming of children in the workplace using the internet.

The findings of these projects have enhanced our understanding of the issues and will enable us to assist agencies to improve their strategies for addressing them. We also continue to monitor the way agencies handle grooming allegations.

Case study 25 shows how we have provided advice to agencies about their risk management in relation to matters where we consider the

conduct is indicative of possible grooming behaviour and the agency has not responded adequately.

We have also identified some examples of good practice by agencies, where grooming issues have been considered and the risks recognised and managed appropriately. Case study 26 is an example of this.

### Case study 25

We received a notification from an independent school that a female teacher was engaging in behaviours towards a student that were concerning. The teacher was a sports coach and also had contact with the alleged victim in this capacity. It was alleged that the teacher had met the student on a number of occasions during the holidays, gone to the movies with him, transported him in her vehicle to sporting venues on numerous occasions, and engaged in conversations of a personal nature.

As we were concerned that the alleged behaviour may be indicative of grooming, we decided to monitor the matter. The school found that, while the behaviour had occurred, it did not reach the threshold of reportable conduct. Our assessment was that there was some evidence of grooming behaviour and we asked the school to review their finding. They did so, but maintained their original finding of 'not reportable conduct'.

A further allegation was subsequently received that the teacher had met with the student out of school. The school investigated this allegation and again made a finding of 'not reportable conduct'. After assessing this matter, we determined that the teacher had not been provided with adequate guidance about the inappropriateness of her behaviour following the first investigation and this had contributed to the behaviour continuing. As a result of our feedback, the school gave the teacher clearer guidance and direction about appropriate interactions with students and the need to maintain professional boundaries at all times.

### Case study 26

We received a notification involving an allegation of historical sexual assault of an unknown male child against an employee who had been contracted by an agency to talk to students on a specialist topic. The allegation had been made in confidence and the reporter was reluctant to provide the alleged victim's name. The agency interviewed the person who was the subject of the allegation and they denied any wrongdoing. However, as a result of the interview, the agency had concerns about the employee and decided to make further inquiries with various schools where they had worked to find out if any concerns had been raised about their conduct.

As a result of these inquiries, the agency was able to narrow the focus of the investigation to one school where certain staff had held concerns about the employee. They had noted these in their diaries at the time, but had not reported them. Further inquiries at this school revealed the name of a potential alleged victim. The investigator contacted this person's mother who informed him about some concerns she had in relation to her son and the employee. The alleged victim was then interviewed by the agency and disclosed a sexual offence by the employee. The agency reinterviewed the employee who provided certain information that did not negate the alleged conduct. The employee then requested a further interview where he provided a rationale for the alleged conduct that raised further concerns regarding his actions. The agency has commenced determining preliminary findings against this employee. We have commended the agency on their rigour in investigating this matter.



# People with disabilities



Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA), our responsibilities include handling and investigating complaints about disability and other community services; inquiring into major issues affecting people with disabilities and disability service providers; reviewing the care, circumstances and deaths of people with disabilities in care; monitoring, reviewing, and setting standards for the delivery of disability services; and coordinating official community visitors (OCV) in their visits to licensed boarding houses and supported accommodation (see *Community engagement* for details about the OCV scheme).

## Highlights

- › Completed a review of complaint-handling by 20 agencies providing services under the DADHC funded Community Participation program, and provided practical recommendations to help service providers improve their practices. [SEE PAGE 61](#)
- › Finalised a detailed review of how well DADHC plan and deliver its services to meet the individual needs of 60 people living in nine large residential centres. [SEE PAGE 62](#)
- › Tabled our *Report of Reviewable Deaths in 2007 Volume 1: Deaths of people with disabilities in care* in Parliament, including 12 recommendations for change. [SEE PAGE 62](#)
- › Highlighted some key challenges for services in supporting people with disabilities who are ageing and asked DADHC to develop policy responses to meet these challenges. [SEE PAGE 63](#)
- › Tabled a report in Parliament about the progress by a cross-government Senior Officers Group towards ensuring better outcomes for people with an intellectual disability in the criminal justice system. [SEE PAGE 65](#)

## Complaint trends and outcomes

This year nearly two-thirds (61%) of the formal complaints we received about disability services concerned accommodation support provided by DADHC and services that DADHC funds or licenses, including boarding houses.

The remainder of complaints about disability services concerned support provided by DADHC and their funded services to people with disabilities living in the community, most often with their families.

It is not possible to directly compare the number of complaints received about disability services this year to those we received last year as we have changed the way we report matters received. In 2007–2008 we reported about all the service types subject of complaint. As a complaint can raise concerns about multiple service types, there were more complaints by service type than matters received.

In 2008–2009 we have reported only the service type primarily the subject of complaint and the number of complaints equals the number of matters received.

## Complaints about disability accommodation

This year the majority of complaints about disability accommodation concerned support provided to people living in DADHC-operated or funded group homes (see case studies 27, 28 and 29).

The main issues raised were:

- › resident safety — including assaults by other residents or staff, the management of incidents, provision of behaviour support, and communication with families about incidents
- › service actions to meet the person's health needs — including responses to emerging health concerns, medication management, and action to address dietary or nutrition needs
- › adequacy of care — including complaints about inadequate supervision and staff training, inappropriate physical environments, unmet hygiene needs, and limited access to the community
- › consultation and communication — including complaint-handling, involvement of the person in decisions, and lack of choice
- › exiting the person from their accommodation — typically after admission to hospital or a mental health facility.

## Complaints about disability support

Community-based support for people with disabilities includes Home and Community Care (HACC) services, post-school and day programs, respite, case management services, and drop-in support. Services are either provided or funded by DADHC.

### Case study 27

A mother complained about the care provided to her daughter who had an intellectual disability and was living in a group home. At the time of the complaint, the woman's daughter was demonstrating an unusually high level of challenging behaviour — including verbal and physical aggression towards other residents and staff.

The mother complained to us after the service suggested that her daughter be temporarily relocated to another home to review her behaviours in a one-on-one environment. The mother considered this proposal to be inappropriate and believed her daughter's behaviours would not have escalated if the service had implemented and reviewed behaviour management strategies and adequately trained staff.

Our inquiries showed that the service had received numerous complaints from staff and the parents of other residents about the risks posed by the behaviour of the woman's daughter. They were in a difficult position, given their duty of care obligations to all residents.

We met with the mother and the service to conciliate the complaint. After the conciliation meeting, the service agreed to review the daughter's behaviour management and incident response plans and provide ongoing training to staff about them. They also agreed to manage the complaints from parents and staff in a manner that would uphold the individual needs of all residents.

### Case study 28

A mother complained that her teenage son, who had significant medical needs related to his disability, was not receiving adequate support because the casual staff employed in his group home lacked training. In addition, she alleged that the service did not respond to her complaints about these issues.

We met with the service to discuss the complaint and to examine records relating to her son's care and support. We found that the service was providing good support to the young man, but there were some communication issues between the mother and the service. We suggested they meet with the mother and develop a communication protocol with her. As a result, the service established communication guidelines and a family agreement with the mother so she can raise any concerns with them directly and have those concerns responded to.

### Case study 29

A mother complained about the level of care and support her son was receiving in his group home. The son had significant medical needs related to his disability and his mother believed the service had breached their duty of care by not complying with his health care plan. She alleged that there had been several medication administration errors and staff had not responded adequately to her son's health problems.

We contacted the manager of the service who told us they had employed an independent consultant to review the health care plan, make recommendations, and provide training to all staff in the group home. The service organised to meet with the mother and the consultant to discuss the recommendations and training in relation to her son's health care needs. We monitored the outcome of this meeting and the complaint was resolved to the satisfaction of both parties.

## Home and Community Care services

This year, complaints about HACC primarily concerned domestic assistance, community transport and home modifications. The main issues raised by complainants were that:

- › they could not get access to support, mainly due to a lack of service capacity
- › there had been extensive delays in supplying the service, usually home modifications
- › the service was not adequately communicating or consulting with them about the support
- › the service was misusing its funds or not complying with requirements
- › the service had not attempted to resolve their complaint.

## Other disability support services

Complaints about other community-based support services for people with disabilities included allegations that:

- › the person had not been able to get access to respite, therapy or behaviour management services or equipment (see case study 30)
- › the amount of support provided was inadequate, including a reduction in respite hours
- › the service had not adequately consulted with the person or involved them in decisions
- › the person had been assaulted while in the care of the service.

## Communication

Many of the complaints about services for people with disabilities this year resulted from poor communication between the service and the person with a disability and their family. This included instances where services had failed to respond to telephone calls or letters, had taken inadequate steps to consult about proposed changes, or had not provided reasons for decisions.

## Complaint-handling

A number of the complaints we received this year from, or on behalf of, people with disabilities concerned the way in which service providers had responded to their complaints. Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA), services are required to deal with complaints fairly, informally and quickly and at a place convenient to the complainant.

We received complaints that services had not responded to complaints that had been raised, had responded inappropriately, or were not following complaint-handling guidelines or policies (see case study 31).

## Reviewing complaint-handling

A key focus of our work is to help services to build a culture where complaints are seen as a positive and critical component of service improvement. We do this by reviewing the complaint-handling systems of services and recommending strategies for improving their procedures and practices. As part of a complaint-handling review, we also develop a training and education strategy with key stakeholders.

Using a modified version of the Australian Standard for Complaint-Handling, we completed a review this year of complaint-handling by 20 DADHC-funded organisations providing services under the Community Participation program. This program is designed for young people with disabilities and moderate to high support needs who require alternatives to paid employment, such as skills development to increase independence or further education. The organisations ranged in size from small agencies to major non-government services.

We examined service policies and procedures for complaint-handling and complaint records and interviewed management and staff. We provided a report to each service — which included recommendations to improve their complaint-handling — and a general report back to the sector as a whole.

A key factor contributing to whether a service had an effective complaints system was the level of commitment by senior management to developing and maintaining effective complaint practices and promoting a culture in which complaints are seen as an opportunity to improve service delivery.

While we identified many services that were responding to the specific needs of their service users in innovative ways, the complaint-handling policies of others required more development. Our recommendations focused on:

- › separating staff grievance and consumer complaint policies

### Case study 30

A mother of a young child with an intellectual disability and complex medical needs complained to us that DADHC had failed to respond to her correspondence. She had written to them with concerns about comments made to her by a departmental occupational therapist (OT) and the lack of assistance from DADHC in providing the necessary equipment to meet her daughter's needs. For example, she was having great difficulty in taking her daughter to appointments without an appropriate wheelchair.

After making inquiries with DADHC we referred the matter to them to resolve directly with the complainant. Following a meeting between the parties, DADHC made immediate arrangements for the child to receive a new needs assessment by a different and more senior OT. A wheelchair was loaned to the family so that the child could attend her medical appointments while arrangements were being made for the additional supports to be provided.

### Case study 31

A man living in a residential disability service complained about the organisation's service provision and complaint-handling. The man had a physical disability and relied on support staff to assist him with his daily care needs.

The man alleged that residential support staff had verbally abused him, were inadequately trained and supervised, were not following support plans, and sought retribution against him as a result of lodging complaints. He also alleged that the organisation's complaint-handling policies and procedures were not being followed.

Our inquiries showed that the service was unaware of the allegations of verbal abuse towards the client, but they committed to investigating and managing these allegations.

We provided complaint-handling training to staff and management of the service, including a review of their internal complaint-handling procedure. We also met with the manager of the service who agreed that this procedure would be consistently implemented, further training would be provided for staff, and initiatives would be developed to enhance the independence, decision-making and choice of residents.

- › providing information to service users about how to make a complaint
- › including messages in service policies about the role of complaints in improving services
- › making statements about protection from retribution if a service user makes a complaint
- › including information about providing assistance to complainants with special needs
- › providing training about managing and handling complaints to both staff and service users.

Since the review, we have met with DADHC and National Disability Services (NDS) — the peak agency for non-government disability services — to discuss complaint training needs for Community Participation services. We will continue to monitor the work of services to implement our recommendations.

**Figure 27 — Outcomes of formal complaints finalised in 2008–2009 about agencies providing disability services**



- Complaint resolved after inquiries, including local resolution by the agency concerned 78 (43%)
- Complaint declined after inquiries 68 (37.6%)
- Complaint declined at outset 20 (11%)
- Service improvement comments or suggestions to agency 3 (1.7%)
- Direct investigation 1 (0.6%)
- Referred to agency concerned or other body for investigation 5 (2.8%)
- Complaint outside jurisdiction 6 (3.3%)

**Figure 28 — Number of formal and informal matters received in 2008–2009 about agencies providing disability services — by agency category**

Agency category	Formal	Informal	Total
<b>DoCS</b>			
Disability accommodation services	0	1	1
Disability support services	0	2	2
<b>Sub-total</b>	<b>0</b>	<b>3</b>	<b>3</b>
<b>DADHC</b>			
Disability accommodation services	42	64	106
Disability support services	25	40	65
<b>Sub-total</b>	<b>67</b>	<b>104</b>	<b>171</b>
<b>Other government agencies</b>			
Disability accommodation services	0	2	2
Disability support services	2	2	4
<b>Sub-total</b>	<b>2</b>	<b>4</b>	<b>6</b>
<b>Non-government funded or licensed services</b>			
Disability accommodation services	49	44	93
Disability support services	35	17	52
Licensed boarding houses	4	13	17
<b>Sub-total</b>	<b>88</b>	<b>74</b>	<b>162</b>
<b>Other (general inquiries)</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Agency unknown</b>	<b>0</b>	<b>30</b>	<b>30</b>
<b>Sub-total</b>	<b>0</b>	<b>31</b>	<b>31</b>
<b>Total</b>	<b>157</b>	<b>216</b>	<b>373</b>

## People living in large residential centres

Residential centres accommodate people with disabilities in group settings. Large residential centres house more than 20 people on the one site. Almost three-quarters of the people who live in residential centres live in the nine large residential centres that are operated by DADHC.

### Review of individual planning in DADHC large residential centres

Disability services are required to meet the individual needs and goals of the people they support in the least restrictive way. Our work in recent years raised questions about how well DADHC's large residential centres were doing this. As a result, in 2008 we conducted a review of how services were planned and delivered to meet the individual needs of 60 people living in these large residential centres.

We reported on the review in June this year. We found that significant work is required to ensure that people accommodated in DADHC's large residential centres are active participants in the planning and delivery of their services.

Many residents were rarely involved in decision-making, relied heavily on DADHC for most or all aspects of their lives, had unmet communication needs, and lacked advocacy support.

Our review also showed that — within the existing model of service delivery and practice — there are significant challenges for DADHC in fostering independence and not restricting the rights of residents. We found low levels of resident involvement in skills development activities and considerable unmet needs in relation to socialisation and community integration.

We recommended to DADHC that they should develop a comprehensive action plan detailing the steps they will take in the next 12 months to address the issues identified in our report. We will monitor the development and implementation of this action plan. Our report is available on our website.

## Reviewing the deaths of people with disabilities in care

We are one of very few agencies in the world that review the deaths of people with disabilities in care. Our aim in carrying out this function is to prevent

or reduce the premature deaths of people living in the care of disability services or licensed boarding houses.

We focus on identifying procedural, practice and systems issues that may contribute to deaths or may affect the safety and wellbeing of people with disabilities in care, and then recommend changes or strategies that may help to address these issues.

### Our annual report

In November 2008 we released the fifth annual report about our work in this area, *Report of Reviewable Deaths in 2007 Volume 1: Deaths of people with disabilities in care*. This report is available on our website.

We reviewed the deaths of 98 people who died in 2007 — 83 people who lived in accommodation provided or funded by DADHC and 15 people who lived in licensed boarding houses. Our reviews of deaths in 2007 identified the following issues:

- › The need for services to improve support for people with complex health needs. This included the need to take action to address emerging health concerns such as pressure ulcers, better identify and manage nutrition and swallowing risks, and improve interagency work to provide coordinated and comprehensive support.
- › Inadequate first aid — we identified at least five people for whom first aid did not appear to be provided, or was stopped before paramedics were involved.
- › The improper use of 'advance care directives' for people who lacked the capacity to make informed decisions about their health care. These people are not able to make advance care directives, nor can this be done on their behalf.

We also reported the findings from our review of the deaths between 2003 and 2007 of people with Down syndrome and dementia. We closely examined the deaths of 63 people with Down syndrome, including 29 of them who had been diagnosed with dementia, and found that:

- › In comparison with the general population, dementia occurs in a higher percentage of people with Down syndrome and at a much younger age. There is also a strong link between Down syndrome and Alzheimer's disease.



- › There are two features of dementia in people with Down syndrome that are not typical of Alzheimer's disease — the development of seizures, and serious swallowing difficulties associated with weight loss and aspiration pneumonia. The onset of seizures in older adults with Down syndrome is often one of the first signs of Alzheimer's disease.
- › People with Down syndrome are more susceptible to reversible conditions that can be mistaken for dementia — including depression, medication side effects, and vitamin deficiencies.

Best practice in diagnosing and supporting people with Down syndrome and dementia should include establishing the person's baseline level of functioning, undertaking comprehensive assessments, ruling out reversible causes of decline, and providing flexible support to meet the needs of the individual.

We directed 10 recommendations to DADHC and two recommendations to NSW Health and are actively monitoring their implementation.

### Reviews of deaths

This year, we reviewed the deaths of 88 people with disabilities who died in 2008 — including 72 people who lived in the care of DADHC operated or funded services and 16 people who lived in licensed boarding houses. We took further action in relation to 13 of these deaths — such as meeting with services, seeking advice from our Reviewable Disability Deaths Advisory Committee, or reporting concerns to the service and requiring a response.

In addition to reviewing individual deaths, we also monitor the implementation of our recommendations and try to ensure that action is taken to address issues we have identified. For example, this year:

- › We met with General Practice NSW (GP NSW) and the Pharmacy Guild of Australia, NSW, to facilitate greater access to medication reviews for people with disabilities in care to reduce the risk associated with the concurrent use of multiple medications.
- › We met with GP NSW's Chronic Disease Management team to discuss GP referrals to respiratory and gastroenterology specialists.

- › We sought advice from NSW Health about their actions to ensure that people with disabilities in care receive appropriate support in hospital and departmental requirements are met.

As part of our work reviewing the deaths of people with disabilities in care, we also undertake research and projects. This year we worked with the National Centre for Classification in Health to:

- › analyse the underlying and direct causes of death of people with disabilities in care who died between 2003 and 2007
- › compare the leading causes of death for people with disabilities in care with deaths in the general population
- › review literature relating to risk factors that may contribute to these causes of death.

This work will help us to better understand the range of factors that may contribute to particular causes of death, and highlight areas that may warrant additional focus in the future. Our findings will be included in our next reviewable deaths report.

### Changes to reporting requirements

The Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009 was passed on 7 April 2009. The amendments made by the Bill requires us to report to Parliament on reviewable deaths every two years — rather than every year as has been the case to date.

This change only relates to the requirement to report to Parliament. It will allow agencies sufficient time to implement recommendations and show how they have met their commitments. We will continue to review deaths and respond to issues as they arise. Our other reporting powers ensure that, if warranted, we may report at any time on issues concerning reviewable deaths.

### Action following reviews

Our legislation enables us to provide information arising from our reviews to certain agencies or service providers. In 2006, following our reviews of the deaths of three people who lived in licensed boarding houses, we made a complaint to the Health Care Complaints Commission (HCCC) about a General Practitioner (GP), and provided information to support our complaint. From our review of all available records, it appeared that:

- › despite seeing two of the residents on a regular basis, the GP did not maintain any records of his consultations with them for at least the 12 months before they died
- › the GP saw a female resident the day before her death from suicide, but kept no record of the consultation, and
- › although the female resident required fortnightly injections of psychotropic medication, records indicated that the GP administered the medication three times in one week.

We considered that the issues warranted referral to the HCCC as they raised significant questions about the conduct of the GP in relation to those three residents, including the adequacy of the medical support provided to one of the residents who had lung cancer, and the appropriateness of the clinical decisions made in relation to a woman who relied on psychotropic medication to manage her mental illness. We also took into account the fact that the GP was the treating doctor for many residents at a number of licensed boarding houses.

Following an investigation by the HCCC, the GP appeared before a Professional Standards Committee Inquiry in 2009. The Committee found the GP guilty of unsatisfactory professional conduct, and ordered that he be reprimanded and conditions imposed on his registration requiring him to:

- › demonstrate his understanding of and compliance with the required standards in relation to medical records, and
- › submit to audit/s of his medical records.

### Ageing people with disabilities

Our work in recent years has highlighted a number of concerns about support for people with disabilities as they age, particularly if they are living in care. As for the general population, ageing is associated with increased support needs including reduced mobility and greater health concerns. For some people with disabilities, the ageing process begins at a younger age than for people in the general community. We have identified the following challenges for services in supporting ageing people with disabilities:

- › Services generally have to try to meet the changing needs of their ageing clients from within their existing resources, with no increase in funding to take account of increased support needs.
- › Ageing clients who live in supported accommodation are unable to access community-based aged care supports available to ageing people in the general community — such as Community Aged Care Packages. This is because of the existing separation between the disability and aged care sectors.
- › There is currently no clear policy guidance for services about ‘ageing in place’ for people with disabilities in care.

As the number of older people with disabilities in care rises, these challenges will become increasingly apparent. Therefore this year we recommended that DADHC develop a policy that clearly articulates and documents the directions, strategies and actions that they will take to support people with disabilities as they age. We have also asked DADHC to consider developing a policy for disability services to guide decision-making and the delivery of services when working with ageing people with disabilities. We are monitoring DADHC’s actions in response to our recommendations.

## DADHC’s Aboriginal policy framework

Last year we began a review to explore the adequacy of consultation mechanisms in place between DADHC, relevant service providers and Aboriginal communities at a local, regional and state level, and whether these mechanisms are giving Aboriginal people with disabilities better access to DADHC’s direct and funded services. As part of the review, we visited over 78 areas within each of DADHC’s six regions and met with more than 410 people, including DADHC managers and staff, service providers, consumers, carers and community members.

We are providing each region with a detailed report including our findings and recommendations and will be meeting with DADHC corporately to discuss a number of systemic issues identified by our review. For further information about the review, see page 41 in Working with Aboriginal people.

## Licensed boarding houses

Under the *Youth and Community Services Act 1973* (YACS Act), boarding houses are required to be licensed by DADHC when two or more people with disabilities live at the premises. Each licensed boarding house is subject to a set of licence conditions that specify the requirements expected of the licensee, licensed manager and staff of the boarding house.

However, legal advice provided to DADHC in 1999 indicated that many of the licence conditions may be *ultra vires* — that is, beyond the power of the department to enforce. These licence conditions include the administration and supervision of medication and access to health care, staffing suitability, and requirements to minimise financial exploitation, abuse, mistreatment and neglect of residents.

In 2002, we conducted an inquiry into DADHC’s monitoring of standards in licensed boarding houses and found that they had failed to take prompt action to overcome legal barriers to enforcing the full range of licensing conditions.

Our second inquiry in 2006 found that continuing uncertainty about the *ultra vires* issue — and DADHC’s ability to effectively monitor and enforce the licence conditions — was placing some residents in a particularly vulnerable situation. It also has a significant impact on their ability to implement our recommendations about licensed boarding houses — including those aimed at improving compliance with first aid requirements, record-keeping and the administration of medication.

DADHC started a review of the YACS Act in 2002. This review has now been incorporated into the responsibilities of an Interdepartmental Committee (IDC) on Reform of the Private Residential Service Sector.

Our 2008 report on the deaths of people with disabilities in care recommended that DADHC provide us with detailed advice about action taken by the IDC to progress the review of the YACS Act and reform of the private residential service sector. We also met with DADHC earlier this year to discuss their current and planned actions in relation to individual licensed boarding houses as well as the broader reform of the sector.

This year, DADHC told us that it sought Parliamentary Counsel advice in relation to the YACS Act, which indicates that matters relating to services and care that cannot be prescribed as conditions on a licence (as they may be *ultra vires*) can be prescribed by regulations as requirements imposed on licence holders. Within this context, DADHC is progressing work to identify those *ultra vires* conditions that should be included in a new regulation.

DADHC also advised that the IDC is working on a discussion paper on developing appropriate housing and support options for people with disabilities who reside in licensed boarding houses.

## Social housing tenants with mental health issues

Last year we reported that we had begun an investigation into the implementation of the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing* (JGOS), which aims to assist people with a mental health problem to access and maintain social housing.

We have now reported the findings and recommendations of this investigation. Our report noted some of the challenges associated with meeting the accommodation and support needs of people with a dual diagnosis of mental illness and intellectual disability.

For more details about this investigation, see page 89 in Departments and authorities.

## People with an intellectual disability and the criminal justice system

In 2002, a cross-government Senior Officers Group (SOG) was formed to improve outcomes for people with an intellectual disability in, or at risk of, contact with the criminal justice system. In 2004, we investigated DADHC's conduct as lead agency of the SOG and found significant problems with the operation of the group — including little evidence of cooperative work between the agencies.

In August 2008 we tabled a report in Parliament about the work of the SOG since our 2004 investigation. We found that a number of significant initiatives had started, but overall progress had been slow and more needed to be done to strengthen cross-agency service delivery for offenders with intellectual disabilities.

As the lead agency of the SOG, DADHC will report to us in 2009 and 2010 on the group's progress and whether the initiatives implemented have been effective. The SOG's 2009 progress report indicates that there is currently considerable impetus in the individual and collective work of the agencies to improve service delivery to, and outcomes for, the target group. In particular, the SOG has completed substantial work on developing an interagency agreement to guide the individual and collaborative work of the agencies, and developed an action plan for carrying out this work.

In the past year we have also met with DADHC and the Department of Corrective Services to discuss support and services for people with an intellectual disability in the criminal justice system.

### Case study 32

The death of a resident in 2008 raised questions about living conditions at a licensed boarding house and the adequacy of monitoring by DADHC. Our review of the man's death found that hospital staff had raised concerns about his hygiene and nutrition during an admission to hospital for pneumonia three months before. At that time, hospital staff noted that the man was at high risk of malnutrition and they had to use a peroxide solution to remove dirt from his skin and nails.

The man was found in his room by a staff member at the boarding house. He had been dead for at least 12 hours and had blood stains on his fingers, head and clothes. There was also evidence of blood stains on the walls and body tissue was found on two exposed nails on the back of the door to the room.

The police officers who attended the scene reported that the man's bedclothes were covered with cobwebs and dust, and faeces and used toilet paper were strewn around the room. There were also several unopened sandwich packages in the room.

At the same time as our review of the man's death, official community visitors complained to us about the failure of the licensed boarding house manager to address concerns they had identified. These included domestic duties not being attended to, smoking by residents indoors, the selling of cigarettes on the premises, broken windows, limited access to bathrooms and the dining room, and unsecured medication left on a shelf in the kitchen.

We met with DADHC to discuss these concerns. They told us about initiatives in place to improve the support provided to residents at the boarding house and to monitor compliance with the licence conditions. They also advised us that they were seeking legal advice in relation to the boarding house's ongoing failure to comply with many of the conditions of their licence.

DADHC subsequently told us they received legal advice that they did not have the power to enforce the licence conditions that apply to the health, wellbeing and cleanliness of residents and the facility. They said they were considering their options — including prosecution and/or revocation of the licence — in relation to the licensee's failure to comply with a fire safety order issued by the local council.

This year a decision was made to close the boarding house and DADHC are now in the process of finding alternative accommodation for the residents.

# Policing



The Ombudsman is responsible for providing independent oversight of the NSW Police Force's (NSWPF) handling of complaints about police, and for keeping under scrutiny their systems for doing so. In carrying out these responsibilities, our focus is ensuring the integrity and fairness of the police complaints system.

We can also conduct direct investigations into complaints about police where it is in the public interest to do so. In addition, since 1998 the NSW Parliament has also asked the Ombudsman to review the implementation of a number of new laws conferring additional powers on police. Our legislative review function requires us to check that the powers are exercised in a proper, fair and effective manner.

## Highlights

- Found that 13% of the 1,838 complaints about police we reviewed had not been properly investigated but, after our advice, police remedied over 70% of the investigative or proposed action deficiencies identified. [SEE PAGE 69](#)
- Audited almost 500 less serious complaints dealt with by police at the local level, and found a high level of compliance with notification requirements. [SEE PAGE 71](#)
- Reviewed the use of Taser weapons by the NSWPF and recommended improvements to police policies, procedures and training to make sure they are properly used. [SEE PAGE 72](#)
- Recommended that the NSWPF produce clear written guidelines about how to effectively investigate allegations of misuse of email and handle this type of complaint in a consistent way. [SEE PAGE 72](#)
- Commenced a major audit of the police handling of complaints relating to domestic and family violence. [SEE PAGE 74](#)
- Our review of the implementation of the *Law Enforcement (Powers and Responsibilities) Act 2002* tabled in Parliament, which recommended simplifying the personal search regime and general safeguards, clarifying the rights of occupiers, and improving record-keeping practices. [SEE PAGE 74](#)
- Our review of the implementation of Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*, including recommendations to strengthen safeguards for those detained or searched and increase protection for police, tabled in Parliament. [SEE PAGE 75](#)

## Our role in the police complaints system

Over many years, we have worked with the NSW Police Force (NSWPF) to develop a police complaints system that the public can have confidence in. We provide independent civilian oversight to ensure the system works well for everyone. For example, we:

- oversee the quality of investigations of serious complaints about police officers
- regularly inspect police records about their handling of less serious complaints
- work with police to improve complaint management practices and their professional conduct
- ensure police correct any significant deficiencies in their complaint investigations
- directly investigate matters that have not been properly investigated by police, if it is in the public interest to do so
- help to resolve some difficult complaints, particularly if ongoing relationships between police officers and the community are at stake
- keep under scrutiny the implementation of new legislation giving police additional powers
- report to the NSW Parliament about issues of significant public interest.

## Police complaint-handling guidelines

Last year we reported that new complaint-handling guidelines for police were implemented across the state in May 2008, following the success of the complaints streamlining trial. These guidelines have now been in operation for over a year and we have identified marked improvements in the timeliness of complaint-handling by the NSWPF and a significant increase in the number of complaints dealt with by informal resolution.

Based on a sample of complaints notified to us in 2006–2007, police assessed 28% of matters in 10 days or less.

This year, the figure rose to 39%. The amount of time taken by police to resolve complaints informally and complete investigations has also decreased (see figure 29). The measure for this is the number of days between the date the NSWPF receive a complaint and the date we receive an investigation or informal resolution report.

The number of complaints managed by informal resolution also increased from 3% of all notifiable complaints in 2007–2008 to 14% in 2008–2009.

Our visits this year to police local area commands gave us an opportunity to discuss the new complaints management processes with commanders and senior officers.

**Figure 29 — Timeliness of the completion of investigations and informal resolutions by the NSWPF**

	05/06	06/07	07/08	08/09
% of investigations less than 90 days	28	28	34	40
% of informal resolutions less than 45 days	21	14	15	41*

\* This is a corrected figure following discovery of an error in the table published in the original Annual Report [inserted 20/07/2010].



The feedback they have given has been universally positive.

However, we have identified a number of potential risks associated with the new process which requires complaints to be 'triaged'. These include police making inappropriate decisions about whether to conduct a formal or informal investigation for complaints alleging misconduct, not taking non-reviewable management action when it is warranted for matters dealt with informally, and not properly managing the expectations of complainants.

We have started a review of the implementation of the police complaint-handling guidelines. This will allow us to examine whether the NSWPF is adequately managing these risks and assess the overall impact of the new guidelines.

## Maintaining effective relationships with police

The NSWPF and the Ombudsman have complementary roles in ensuring that the police complaints system works effectively. To achieve this, we need to build and maintain constructive and professional working relationships.

Quarterly liaison meetings are held with the Commissioner of Police and the commander and senior staff of the Professional Standards Command (PSC) to track the implementation of major recommendations and resolve any procedural issues or problems that have arisen from our oversight of complaints. However this year, with a change in some of the senior positions at the PSC, a number of long-standing arrangements and understandings we have had with the NSWPF over several years are now being challenged by the PSC. We will continue to constructively engage with the PSC to deal with these issues.

We attend a range of committees with police and representatives from other agencies. For example, this year we participated in the Steering Committee and Project Team for the NSWPF's Early Intervention System project. We also attended the NSWPF Domestic Violence Steering Committee as part of our monitoring of the implementation of the recommendations in our 2006 special report to Parliament, *Domestic violence: improving police practice*. In addition, we continued to have an active role in the Police Aboriginal Strategic Advisory Committee (PASAC), which takes a high-level

strategic approach to improving the policing of Aboriginal communities.

During 2008–2009, we visited 12 local area commands to meet with commanders and senior staff — The Hills, Wollongong, Redfern, Lachlan, Campbelltown, City Central, Camden, Manly, Harbourside, Eastwood, Central Hunter and Hunter Valley. We also made presentations to:

- > professional standards duty officers, executive officers and other senior officers at Central Metropolitan, Southern, South West and Western regional commands
- > a state-wide meeting of professional standards managers
- > students at the Police Academy
- > police at a number of specialist courses.

## Overseeing complaints

Part 8A of the *Police Act 1990* provides the statutory framework for investigating and resolving complaints about police conduct. An agreement between the Ombudsman and the Police Integrity Commission (PIC) specifies which complaints must be notified to us and oversighted to ensure they are handled fairly and effectively, and which can be handled directly by police commanders. Less serious complaints — such as those about poor customer service, rudeness or minor unprofessional conduct — are dealt with by police without any direct oversight by us.

Once the NSWPF has dealt with a notifiable complaint, they send us a full report which we review. If we identify deficiencies, we can ask police to investigate the complaint

further or reconsider the actions taken. We can also suggest ways that complaint-handling could be improved.

If we are seriously dissatisfied with their handling of a complaint, we can report the matter to the Police Minister or Parliament.

## Complaint trends and outcomes

This year we received 2,948 formal or written complaints from the public, as notifications from police, or as referrals from the PIC (see figure 30). We also received 2,832 informal complaints by telephone or in person — we dealt with these by providing advice and, where appropriate, referrals.

Figure 32 shows the type of issues raised by notifiable complaints finalised this year. Appendix A breaks down each issue into the specific allegations made and the action taken.

Of the serious complaints we directly oversighted this year 1,790 were made by members of the public and 1,158 (or 39%) were made by other police officers — either internally or directly to us. Compared to the previous year, the percentage of complaints made by police themselves increased marginally by 3% (see figure 31). We continue to see this as a strong indicator of professionalism and intolerance for misconduct by a majority of serving police and a positive reflection of the health of the complaints system. Case study 33 is an example of a complaint from a member of the public and case studies 34 and 35 are examples of internal police complaints.

**Figure 30 — Formal complaints about police received and finalised — five year comparison**

Matters	04/05	05/06	06/07	07/08	08/09
Received	4,179	3,753	3,466	2,969	2,948
Finalised	4,367	3,833	3,555	3,254	3,094

**Figure 31 — Who complained about the police?**

This figure shows the proportion of formal complaints about police officers made this year by fellow police officers and from members of the general public, compared to the previous four years.

	04/05	05/06	06/07	07/08	08/09
Police	1,215	1,151	1,268	1,056	1,158
Public	2,964	2,602	2,198	1,913	1,790
<b>Total</b>	<b>4,179</b>	<b>3,753</b>	<b>3,466</b>	<b>2,969</b>	<b>2,948</b>

**Figure 32 — What people complained about**

Subject matter of allegations	No. of allegations
Arrest	130
Complaint-handling	222
Corruption/misuse of office	321
Custody/detention	140
Driving related offences/misconduct	90
Drug related offences/misconduct	179
Excessive use of force	679
Information	713
Inadequate/improper investigation	747
Misconduct	1,471
Other criminal conduct	510
Property/exhibits/theft	181
Prosecution related inadequacies/misconduct	232
Public justice offences	172
Search/entry	116
Service delivery	1,115
<b>Total</b>	<b>7,018</b>

Note: Please see Appendix A for more details about the action that the NSW Police Force took in relation to each allegation.

### Case study 34

In mid 2008, some officers travelled interstate to conduct an investigation. Without authorisation and while on-duty, they engaged in an extended shopping trip that involved the misuse of a police vehicle and neglect of duty. During the complaint investigation, it became clear that certain officers were bullying a colleague who they believed was the complaint informant. This bullying resulted in the officer feeling stressed and uncomfortable at work.

The investigation found that certain breaches of NSWPF policies and guidelines were seen as acceptable within the command. The unauthorised shopping trip was not an isolated occurrence and officers gave evidence that such conduct was a tolerated practice. The investigation also highlighted a culture where police officers who reported misconduct were isolated and intimidated.

Sustained findings were made against the officers involved. They were permanently transferred to different locations and duties and received reductions in increment and rank. After this negative culture within the command had been identified, the police decided to undertake a formal workplace review.

### Case study 35

After a truck that was transporting a large amount of produce rolled over, police and other emergency services attended the scene. An insurance agent determined the contents of the load to be unsalvageable and ordered its disposal. Police and other emergency services officers then took goods from the accident site.

An internal complaint was later received from a police officer who had become uncomfortable about taking some of the goods, even though he had been told by more senior police that this was an acceptable and common practice.

The investigation found that the manner in which the goods were obtained by police contravened the NSWPF's policy and guidelines about gifts and benefits. We raised a number of concerns about the adequacy of the investigation, including that police had not attempted to identify all the officers who had taken goods. We were also concerned that some of the officers involved were quite senior and had modelled inappropriate conduct that led to more junior officers seeing it as acceptable. NSWPF subsequently published details of the case in their internal magazine for police officers, including a reminder about the need to comply with the policy and guidelines on gifts and benefits and conflicts of interests.

### Case study 33

A couple complained that they and their car were unreasonably searched while they were driving in regional NSW. The woman had a medical condition which was reportedly exacerbated by the stress of the situation and her husband became agitated with police as he could see no reason for their actions. The search found nothing illegal.

The police who carried out the search said they believed the couple were carrying drugs based on their demeanour and the fact that they had turned sharply off the road when approaching the police vehicle. The investigation of the complaint found that the officers had acted appropriately, but the couple were dissatisfied with this outcome.

After assessing the investigation, we raised our concern with police that the couple's actions and demeanour alone did not give rise to a reasonable suspicion to justify the search. For the personal or vehicle search to have been lawful, police need to have suspected on reasonable grounds that the couple had prohibited drugs in their possession or in their car. The test of whether a suspicion is 'reasonable' is not only whether the police officer has the suspicion, but also whether a reasonable person — armed only with the information that the police officer had at the time — would have also held such a suspicion.

The police agreed with our view. Sustained findings were recorded and the main officer involved was placed on a performance enhancement agreement. The couple were satisfied with this result.

### Lying to protect colleagues

If a police officer is found to have lied before a court or during disciplinary proceedings, their credibility as a witness in court proceedings is seriously tainted. As a matter of course, the NSWPF considers dismissal or reviewable management action — including reduction in rank — if an officer is found to have acted without integrity. Case studies 36, 37

and 38 involve officers who risked their careers by lying to protect their colleagues. In each case, the officer gave detailed evidence that the misconduct by their colleague did not occur. However, sufficient evidence existed to show that misconduct had occurred and the officer's evidence was untrue.

### Case study 36

Four officers in a regional town were involved in transporting a young person to the local police station one evening. Afterwards, two of the officers reported that one of the others had used unreasonable force on the young man and hit him on the face. The third officer who witnessed the incident said that he saw nothing inappropriate.

Some time later, the third officer was interviewed again and his earlier evidence was challenged. He then stated that he had in fact seen the subject officer hit the young person on the face. Adverse findings were made against the officer for his untruthfulness, and he resigned after being told that a recommendation had been made for his dismissal.

### Outcomes

Figure 33 shows the type of action we took in response to complaints finalised this year.

We assess complaints about police when they are initially notified to ensure the method of investigation proposed by police is appropriate. We also check the quality of the investigation once it has been completed.

In 2008–2009 we reviewed 1,838 individual complaints that were fully investigated or conciliated by police. Of these, we considered 1,608 (or 87%) to have been satisfactory handled. However in 230 matters (or 13%), we found that the investigation — including its timeliness or the management action taken in response to the findings of the investigation — was deficient (see case study 39). Eight per cent of the investigations were deficient due to failings in the investigation methodology used or the management action proposed, while 6% were deficient on timeliness alone. Some investigations had multiple deficiencies.

### Case study 37

A speed camera detected an offence involving a police vehicle. The vehicle was clearly identified in the detection photograph. Radio logs, the unique digital identifier transmitted by the car's radio, and other evidence indicated two officers were using the vehicle and in the area at the time of the offence.

Both officers denied they had used the car in question on that day. They had not filled out the vehicle log and both said they had used another car. However, records showed the officers had responded to a number of jobs during the afternoon of the speeding offence using the radio of the car detected by the speed camera. Despite this evidence, several other officers supported the version of the officers involved in the incident.

The officer believed to have been driving the car was issued with a speeding fine for driving more than 15km/hr over the limit. He said he intended to challenge the matter at court, but did not do so and later paid the fine and court costs.

We met with police and suggested they conduct further interviews. They did so and made adverse findings that the officer driving the car had lied to the investigator and four other officers had tried to cover up his actions. The officer who had been driving resigned before any management action could be taken. The other officers were counselled by their commander.

### Case study 38

A police officer travelling on-duty in an unmarked police vehicle was stopped for speeding by a highway patrol (HWP) officer. The driver told the HWP officer he did not realise he was speeding and that his cruise control must have been accidentally switched off. He was issued with a fine for travelling more than 45km/hr over the speed limit, an offence that carries an automatic driving disqualification.

Interactions between drivers and HWP officers are captured on in-car video (ICV). In this case, there were problems recovering the footage from the ICV. After hearing that the ICV could not be recovered, the officer driving the vehicle appealed the fine and disqualification on the basis that he had been following a speeding car at the time. He described the speeding car and incident in detail.

The ICV footage was recovered shortly afterwards without the knowledge of the driver or the police officer who had been travelling with him. It showed the driver's account to be untrue and an investigation was initiated. After being asked to write a report about what had occurred, the passenger wrote a detailed account which supported the driver's untruthful version.

After being confronted with the ICV, the passenger admitted the truth and said that he had lied to protect the driver from internal disciplinary action.

Findings of untruthfulness were made against both the driver and the passenger. The Internal Review Panel was particularly concerned that in lying to protect the driver, the passenger had been prepared to discredit the HWP officer. The driver was dismissed from the NSWPF, while the passenger was transferred and had his pay reduced.

**Figure 33 — Action taken in response to formal complaints about police that have been finalised — three year comparison**

Action taken	06/07	07/08	08/09
Investigated by police and oversighted by us	2,157	1,983	1,395
Resolved by police through conciliation and oversighted by us	146	99	443
Assessed by us as local management issues and referred to local commands for direct action	498	490	468
Assessed by us as requiring no action (eg alternate redress available or too remote in time)	754	682	788
<b>Total complaints finalised</b>	<b>3,555</b>	<b>3,254</b>	<b>3,094</b>

Following our advice, police remedied over 70% of the investigation deficiencies we identified and 67% of the proposed management outcomes. We provided commanders with written feedback about an additional 198 investigations that we considered satisfactory, but where we identified opportunities to improve complaint-handling and investigation practices when dealing with similar matters in the future.

Another way we contribute to the quality of complaint investigations and outcomes is by monitoring investigations as they unfold if we believe it is in the public interest to do so. Monitoring can involve either observing interviews or reviewing investigation records progressively during the course of the investigation, or both. This year we started monitoring 15 new investigations and finalised our oversight of 22 complaint investigations that we had been monitoring. Case study 40 is an example of an investigation we monitored.

In 2008–2009, 64% of the police investigations we reviewed resulted in some form of management action. The most common action taken was formal counselling, followed by official reprimands or commanders' warning notices and performance agreements (see figure 34).

In some cases, a police officer is charged with a criminal offence during or at the end of an investigation. In matters where disciplinary action was finalised this year, 60 officers had been charged with a total of 259 offences. Case study 41 is an example of a complaint which resulted in a police officer being charged with a number of offences and convicted of two of these charges. See figure 35 for a five year comparison of charges against police arising from complaints that were finalised during each period. Figure 36 lists the type of charges involved in matters finalised this year.

This year the appointment of eight probationary constables was also terminated and 19 police were dismissed from the force following complaint investigations.

Much of the more serious management action taken resulted from internal police complaints. Seventy six per cent of the investigations finalised this year that resulted in officers being charged involved complaints made by other police officers.

### Case study 39

Part of determining whether complaints are properly investigated is ensuring that the police officers who are the subject of investigation are treated fairly.

Two police investigations resulted in misconduct findings against an officer. Management action was being considered when a person, unrelated to the two investigations, made new allegations that the officer had threatened and intimidated her. The NSWPF started AVO proceedings to protect that person but, as she did not wish to give evidence, the matter did not proceed to hearing. The new allegations were not investigated and the officer was not given an opportunity to respond to them.

The NSWPF proceeded to issue the officer with notice of a demotion order. The notice outlined the misconduct that the two investigations had established, as well as the new allegations, and invited the officer to make a submission.

Procedural fairness requires that an officer be given the opportunity to respond to allegations before the investigation is completed and before any sustained findings are made that could result in management action against them. As the NSWPF had not given the officer such an opportunity in this case, we believed there was a risk that the process was unfair and any reviewable action taken could be overturned on appeal.

After our intervention, police withdrew the proposed demotion decision and issued a warning to the officer about only the issues that had been properly investigated.

### Case study 40

An officer charged an Aboriginal woman after her 16 year old daughter alleged that she and her younger siblings had been assaulted by their mother.

While the mother was in police custody being charged with assault, the officer made a risk of harm report to DoCS which resulted in the woman's five year old child being taken into care and placed in a foster home. The Children's Court subsequently allocated parental care of the 13 year old daughter to the father.

All the assault charges against the woman were dismissed at court. Costs were awarded against police on the basis that the officer in charge failed to properly investigate various aspects of the assault allegations. The magistrate pointed out that some of the allegations dated back three years and had been investigated by police and DoCS with no action resulting. In addition, the magistrate criticised the officer for failing to interview the alleged victims before charging their mother.

The mother, who did not regain custody of her youngest child for over a year, complained to us about the conduct of the officer. This resulted in a police investigation in which no sustained findings were made, despite the criticisms of the magistrate that the officer acted unreasonably when charging the mother with assault.

We were concerned that the investigator did not take into account the findings of the magistrate. We met with the commander, who agreed that the officer had acted poorly. The commander directed that a sustained finding be recorded and personally explained the magistrate's criticisms to the officer to ensure the investigative shortcomings identified were understood.

**Figure 34 — Action taken by the NSW Police Force following complaint investigation — five year comparison**

	04/05	05/06	06/07	07/08	08/09
No management action taken	1,480	895	936	837	500
Management action taken	960	1,236	1,221	1,146	895
<b>Total investigations completed</b>	<b>2,440</b>	<b>2,131</b>	<b>2,157</b>	<b>1,983</b>	<b>1,395</b>



Similarly, more than 80% of referrals of police officers to the Internal Review Panel for reviewable management action resulted from complaints made by other officers.

## Maintaining the integrity of the police complaints system

As well as overseeing individual investigations, we regularly review the overall effectiveness of the police complaints system by conducting compliance audits.

### Auditing less serious complaints

Matters dealt with locally without our direct oversight are still recorded on the police complaints systems and are subject to our scrutiny through an audit process. Our 2008 audit examined almost 500 complaints from across the state and found a high level of compliance with the notification requirements. Police agreed to notify 16 matters that were not originally notified but should have been (see case study 42).

### Case study 42

An audit of complaints managed locally by police revealed a matter that had been inappropriately assessed. Over a period of months a more senior officer had asked out a junior colleague, attempted to engage her in conversations of a sexual nature, and tried to kiss her. As a result of this behaviour, the junior officer felt stressed, nervous and unsafe at work. However police had failed to assess the complaint as a sexual harassment matter. This meant it was not sent to the Internal Review Panel (IRP) as a mandatory notification. We advised the commander of our concerns and as a result the complaint was appropriately upgraded. A successful mediation was conducted between the complainant and the subject officer and the matter was sent to the IRP for determination. The IRP recommended a commander's warning notice be served on the subject officer.

### Case study 41

A junior officer and his brother (a police officer from another state) were drinking at a hotel. They began verbally harassing a man. A short time later, the hotel manager asked the officer and his brother to leave the premises due to their level of intoxication. When the man who had been harassed also left the hotel, the brothers followed and confronted him. The junior officer grabbed the man by the shirt and demanded his name, while his brother threatened to assault him.

Fearing for his safety, the man ran to a convenience store and called police on his mobile as he ran. The brothers pursued him. CCTV footage showed the brothers entering the convenience store and producing their police identification badges to the store attendant, a security guard and the man. The junior officer then grabbed the man around the neck and attempted to place him in a wristlock while his brother helped him to try to physically remove the man from the store. At this point, local on-duty police officers arrived and intervened.

The junior officer was suspended from duty and subsequently charged with common assault, improper use of police insignia, and stalking or intimidating with intent to cause fear of physical or mental harm. He pleaded guilty to the first two charges and the remaining charge was withdrawn. The magistrate ordered the officer to serve concurrent custodial sentences which were reduced to Community Service Orders totalling 700 hours on appeal.

The Police Commissioner required the officer to 'show cause' why he should not be removed from the NSWPF. However he resigned before the removal process was finalised.

**Figure 35 — Police officers criminally charged in relation to notifiable complaints finalised — five year comparison**

	04/05	05/06	06/07	07/08	08/09
No. of complaints leading to charges	78	65	63	50	63
No. of officers charged	81	64	60	49	60
<b>Total charges laid</b>	<b>155</b>	<b>101</b>	<b>184</b>	<b>136</b>	<b>259</b>
Officers charged following complaints by other officers	63	51	48	32	45
% of no. of officers charged	78	79	80	65	76

**Figure 36 — Complaint issues subject of charges — notifiable complaints finalised 2008–2009**

Type of charge	No. of charges
PCA and other driving related offences	14
Assault	35
Criminal conduct — other indictable	107
Criminal conduct — other summary	52
Dangerous/culpable driving	7
Domestic violence related	4
Excessive use of force — firearm drawn	2
Fraud	1
Manslaughter/murder	1
Public justice offences	6
Sexual assault	29
Unauthorised access/disclosure/alteration of information	1
<b>Total</b>	<b>259</b>

## Inspecting records at local area commands

This year we also inspected records at six local area commands — Eastern Beaches, Oxley, Penrith, Newcastle, Liverpool and St George. Among the thousands of records reviewed, we identified only a small number of complaints that should have been notified to us.

## Monitoring reviewable actions and observing internal review panels

Internal review panels provide expert advice to commanders and the Police Commissioner about appropriate sanctions for the most serious cases of misconduct and unprofessional conduct to ensure they are fair and proportionate. Our staff observe the majority of internal review panels, enabling us to closely monitor the process and outcomes for this type of disciplinary action.

## Performance indicators

Criteria	Target	08/09
Percentage of our formal reports about police complaints that made recommendations relating to law, policy or procedures	70%	100%
Percentage of our recommendations in formal reports supported or implemented by the NSW Police Force	80%	50%

Note: The rejection of the majority of recommendations in our report on *The Use of Taser Weapons by NSW Police Force* contributed significantly to the drop in this performance measure this year.

## Systemic investigations and reviews

### Misuse of email

In December 2000 we tabled a special report to Parliament, *Police and Improper Use of E-Mail*, about our review of 400 investigations into misuse of the police email system. We were concerned that police officers found to have received violent hardcore pornography, graphic images of bestiality, and racist material transmitted by other officers had not reported it as required and that commands had not been consistent in investigating

and managing the allegations. We found that misuse of the email system needed to be handled in a consistent and appropriate way to communicate the message that accessing, transmitting or creating sexually explicit or otherwise offensive material is unacceptable.

The Industrial Relations Commission subsequently overturned the dismissal of two officers who had sent highly offensive emails because of the marked inconsistency between their treatment and that of other officers whose conduct was similar.

In 2008, we became concerned again about the existence, and inconsistent handling, of a significant number of complaints alleging serious misuse

## The use of Taser weapons by police

In November 2008, we reported to Parliament on our investigation into the use of Taser weapons by specialist units within the NSWPF. The introduction of Taser weapons is of significant public interest because of their potential to dramatically change the way in which police manage and deploy the use of force, and widespread concerns about their safety.

We found the use of Tasers by the specialist units was reasonable and appeared to provide an alternative to the use of lethal weapons to resolve dangerous and high risk incidents. However, we also recommended changes to the training, policies and procedures governing Taser use because of deficiencies we identified. We supported the continued use of Tasers only on the basis that our recommendations were implemented in a timely manner.

Towards the end of our investigation, Taser weapons were given to some general duties officers. The experience of many overseas jurisdictions is that

general duties officers increasingly use Tasers to gain compliance of uncooperative people in situations where high levels of risk are not present. Given this, and the continuing uncertainty about the medical risks that Tasers may pose, we recommended that no additional roll out of Tasers take place until their use could be further scrutinised.

However, in June this year, the government announced that Tasers would be rolled out to all frontline officers.

General duties officers are instructed to use Tasers in accordance with the NSWPF Tactical Options model to protect human life. This means they are to be used to control people where violent resistance or confrontation occurs or is imminent, to protect officers in danger of being overpowered, to protect themselves or another person from injury, and for protection against animals.

We are already receiving complaints about inappropriate use of Tasers that may be

indicative of the 'mission creep' that has occurred in some overseas jurisdictions.

Unlike their use by the specialist squads that we reviewed, Tasers are often used in 'drive-stun' mode by general duties officers. This type of use has been found to be most susceptible to excessive use by police. It is also a feature in many Taser related deaths. There have been at least 20 such deaths reported in Australia and overseas in the eight months since we tabled our report.

Tasers are undoubtedly a useful weapon for police to protect human life in critical situations. However, we continue to have concerns that Tasers will increasingly be used by officers to gain compliance in relatively low threat situations — rather than being reserved for the high risk situations they were designed for. It remains our view that further improvements to police policies, procedures and training are essential to ensure that Tasers are properly used.

of the police email system. The Office of the Commonwealth Director of Public Prosecutions found that the transmission of one sexually explicit email could be a child pornography related offence. The content of another email was deemed so serious by another government agency that it dismissed an employee for sending it.

After reviewing the complaints that emerged in 2008, we found that inconsistencies still existed in the police handling of complaints about email misuse. We recommended that the NSWPF produce clear written guidelines to inform commands about how to conduct effective and proportionate investigations of allegations of email misuse. They agreed and are in the process of finalising these guidelines.

### **In-car video**

There is a general requirement that pursuits and vehicle stops are recorded with in-car video (ICV) when it is fitted in police vehicles. This is to protect both police officers and the community. Since the introduction of ICV, we have dealt with a number of complaints where ICV has shown that police have acted appropriately. We have also reviewed cases where ICV has shown that police have acted inappropriately (see case study 38). In other cases, the usefulness of ICV has been undermined through non-activation, incomplete recording, or the lack of audio recording. The value of ICV also depends on commanders and supervisors ensuring that relevant footage is properly reviewed.

We are currently reviewing a number of complaints to identify whether the systems governing the use of ICV provide police and the community with the full benefit of this tool.

## **Working with Aboriginal communities**

Our work with police and Aboriginal communities across the state continues to focus on resolving issues at a local level, and supporting police to create and strengthen genuine partnerships with Aboriginal people.

With the help of our Aboriginal Unit, we also work with the Police Commissioner and the NSWPF Aboriginal Coordination Team to ensure that local initiatives receive the support they need.

Increasingly, crime prevention partnerships and other local initiatives involve police working closely

with agencies such as community services, probation and parole, health and education. Together they plan and implement coordinated strategies to address child abuse and sexual assault, domestic and family violence, substance abuse and other issues that impact on community life. Community organisations and other non-government agencies with responsibilities for providing outreach services, emergency accommodation and other essential services are also an important part of developing local solutions. For more details about our work in this area, see page 39 in *Working with Aboriginal people*.

## **Policing domestic violence**

We continue to work with the NSWPF and the domestic violence sector to improve the policing of domestic and family violence. In previous years we

have reported on the implementation by the NSWPF of the majority of recommendations contained in our 2006 report to Parliament, *Domestic violence: improving police practice*. This year we have worked with police to ensure the outstanding recommendations are implemented. New domestic violence standard operating procedures were finalised in November 2008, and a publicly available code of practice outlining NSWPF's strategic response to domestic violence will be launched by the end of 2009.

We regularly liaise with the NSWPF corporate spokesperson for domestic violence and domestic and family violence team about issues we identify through complaints and our systemic work. Case study 43 is an example of the effectiveness of this approach.

### **Case study 43**

We oversighted a complaint about the failure of a police officer to properly investigate two reported domestic violence matters. One matter subsequently involved a domestic-related homicide. In this matter, the investigation of the complaint found that the officer failed to investigate an alleged breach of an ADVO protecting a woman from her ex-partner. The ex-partner had been imprisoned for offences relating to threats against the woman and damage to her property. After he was released from prison, the woman twice reported sighting her ex-partner near her home and making intimidating gestures towards her. The police officer did not undertake any inquiries. The day after making the second report, the woman discovered her new partner deceased in his home. Police subsequently arrested and charged her ex-partner with breach ADVO and murder.

The same officer was also found to have failed to properly investigate a separate domestic violence offence and provide adequate care to the victim. She admitted to the complaint investigator that she did not do more to investigate the matter at the time because she had 'after work plans'. The investigator's report noted that the officer had been displaying signs of negligence and had been counselled on a number of occasions for failing to properly investigate matters and for displaying a poor attitude to victims of crime.

As a result of the investigation, police determined that the officer should be issued with a warning notice and placed on a six month conduct management plan, assigned a mentor, receive domestic violence training, and thereafter, become the DVLO. We expressed our reservations to the LAC about the appropriateness of appointing the officer to the DVLO position, given the significance of her failings and the serious consequences that arguably flowed from her failure to act. While we appreciated that the proposed appointment was aimed at helping the officer to gain knowledge and understanding of domestic violence issues, we were concerned that this course of action devalued the critical role played by the DVLO, and presented a risk to the NSWPF.

We raised our concerns with the NSWPF corporate spokesperson for domestic violence and he agreed that the management action was inappropriate. He undertook to reinforce with police commanders the need for the DVLO role to be performed by officers with a high level of knowledge, experience and commitment to investigating domestic violence and supporting victims.

Some of the other issues we have discussed with the NSWPF this year include progress in relation to the development of a risk assessment tool to guide police in responding to domestic violence, the impact of privacy legislation on the ability of police to protect victims by linking them with support services, and how the NSWPF will implement changes arising from the Special Commission of Inquiry into Child Protection Services in NSW (Wood Inquiry), including the establishment of a new 'wellbeing unit'.

We also regularly engage with the domestic violence sector, including the Domestic Violence Coalition — the peak body in NSW advocating for women who experience domestic violence — providing them with information about our ongoing work and helping to identify effective ways of addressing issues of concern to the sector. We recently met with the coalition to discuss the impact of privacy legislation on the operation of victim support and referral programs, the capacity of the NGO sector to respond to police referrals, risk assessment by police of domestic and family violence matters, and our role in providing domestic violence advocacy training to the sector.

### **Audit of complaints**

The Police Act requires the Ombudsman to inspect the records of the NSWPF at least once every 12 months to check compliance with the legislation and keep under scrutiny the systems established for dealing with complaints. We are currently conducting an audit of the NSWPF's handling of approximately 400 complaints about the policing of domestic and family violence incidents in 2008.

The audit will enable us to assess the handling by police of domestic violence related complaints and the quality of the policing of domestic violence more generally. This will allow us to provide useful feedback to the NSWPF and the domestic violence sector.

The audit is timely given recent changes to the NSWPF's complaints management system (streamlining), how it responds to domestic violence (new legislation and standard operating procedures) and the relatively high priority of domestic violence on the political agenda (in 2009 government released a discussion paper to inform the development of a new domestic and family violence strategic framework for NSW and also announced a review

of domestic homicides). Additionally, the government's implementation of recommendations made by the Wood Inquiry has resulted in an expanded role for the NSWPF in relation to assessing the risk posed to children in circumstances where domestic violence is present in their lives.

The audit involves an inspection of files and information already currently held or accessible within our office, as well as consultation with the domestic violence sector. We expect to complete the audit by the third quarter of 2009 and will then provide a provisional report to the NSWPF for comment.

### **Reviewing the implementation of legislation**

Since 1998, the NSW Parliament has required the Ombudsman to review the operation of over 25 new laws.

We look closely at the agencies and people affected by these new laws to check that the powers are being used in a proper, fair and effective manner.

If we identify any problems or inconsistencies with the legislation, we can make recommendations to the appropriate minister about amending policies or procedures to improve the operation of the laws. At the end of each review, we prepare a report detailing our findings and recommendations which is provided to relevant ministers for tabling in Parliament.

The four review reports which were tabled in Parliament this year and the three legislative reviews of laws conferring new police powers currently in progress are discussed below. Appendix B lists our legislative review activities in 2008–2009.

#### **Law enforcement powers and responsibilities**

The *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) sets out the powers and responsibilities commonly used by police in NSW when exercising many of their key policing functions.

For two years we reviewed three areas of significant reform within LEPRA — powers and safeguards relating to personal searches on arrest and in custody, the establishment of crime scenes, and notices to produce documents.

Our final report was delivered to the Minister for Police and Attorney General in February 2009 and tabled in Parliament in May 2009.

We found that although the objectives of LEPRA have largely been met, officers vary in their understanding of and compliance with the personal search provisions — and these could be clearer and more consistent. We therefore recommended that Parliament consider some legislative amendments aimed at simplifying the personal search regime and general safeguards.

For the establishment of crime scenes, we recommended amendments to clarify occupiers' rights. We also recommended that the NSWPF develop standard operating procedures for the exercise of crime scene and notice to produce functions to provide officers with clear and consistent guidance, make sure officers use plain English wherever possible, and improve record-keeping practices to increase accountability and reduce duplication.

#### **Riot powers**

Under Part 6A of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA), the Ombudsman is required to 'keep under scrutiny' the police use of emergency powers introduced to assist in dealing with riots and other actual or threatened civil disturbances, and to report annually on our work and activities.

The NSWPF formally invoked the emergency powers once in 2008–2009 when, on Sunday 13 July 2008, the provisions were used in relation to an anticipated threat of large-scale public disorder thought likely to occur at an environmental protest in Newcastle. The protest event, Camp for Climate Action, centred on a five-day camp at Wickham in Newcastle, and a protest march past nearby rail and port facilities in Mayfield East.

Our report about the police operation, and about other issues related to the Part 6A emergency powers, is included at Appendix L of this report.

#### **Non-association and place restriction**

The *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001* was one of a package of new laws designed to target gang-related crime. It amended existing laws relating to sentencing, bail and sentence administration (for parole, leave and home detention) to establish specific orders and conditions that prohibit an offender or alleged offender from associating with specified persons and attending specified places.



We were required to keep under scrutiny the operation of the amendments for the first two years after they came into operation. Our final report was delivered to the Attorney General and Minister for Justice in December 2006 and was tabled in Parliament in December 2008.

Our review found that the non-association and place restriction orders were used infrequently at sentencing and there had been no appreciable increase in the use of bail or parole conditions restricting associations between offenders and other people, or restricting offenders from attending specified places.

In many respects, the new laws duplicated existing powers of courts, police and correctional authorities to impose these type of conditions on offenders or accused people — and these existing powers continued to be relied upon.

Given that the legislation was not meeting its objectives of targeting and breaking-up gangs, we recommended that Parliament consider whether some aspects should continue at all. We also made recommendations to give courts more flexibility to tailor orders on a case-by-case basis, including the development of new bail guidelines.

On 19 June 2009, the Courts and other Legislation Amendment Bill 2009 which included amendments relating to non-association and place restriction orders received assent.

*I thank the Ombudsman for his detailed and thorough review of the non-association and place restriction provisions contained in the report, and am pleased to implement all the legislative recommendations made via this bill...*

The Hon. Penny Sharpe, MLC.

### Drug detection trial

The *Police Powers (Drug Detection Trial) Act 2003* allowed police to set up road side check points and use drug 'sniffer' dogs on vehicles randomly stopped in 'outer metropolitan areas'. Our review report was tabled in Parliament in August 2008. Following our recommendation, Parliament allowed the legislation to expire due to the ineffectiveness of the trial powers.

### Terrorism

In September 2008, we provided the Attorney General and Minister for Police with our review report on Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*.

Under Part 2A a person can be detained by court order for up to 14 days to prevent, or preserve evidence of, a terrorist act. Part 3 allows police and Crime Commission staff to obtain covert search warrants if this would substantially assist in preventing or responding to a terrorist act.

The Act requires the Ombudsman to keep under scrutiny the exercise of preventative detention powers for five years and covert search warrant powers for two years, with a report to Parliament after two years. Our report was therefore an interim report on preventative detention and a final report on covert search warrants. It contains a number of recommendations that aim to strengthen safeguards for those detained or searched, as well as provide practical assistance and increased protection for police. The report was tabled in Parliament in October 2008.

### Criminal organisations

The *Crimes (Criminal Organisations Control) Act 2009* came into operation on 3 April 2009 and introduced a scheme for the declaration of criminal groups by an eligible Judge of the Supreme Court.

Once a declaration is made, control orders may be made against members of declared organisations. A controlled member will commit an offence if they associate with another controlled member of the declared organisation. Authorisation to carry on specified activities — such as work within certain high risk industries — is suspended when making an interim control order and cancelled when the order is confirmed.

The legislation was introduced in response to an escalation in violent crime involving outlaw motorcycle gangs. It aims to disrupt and restrict the activities of criminal organisations and their members.

On 19 May 2009 the *Criminal Organisations Legislation Amendment Act 2009* came into operation to clarify and support the operation of the Act. Among other changes, a new offence of recruiting a person to be a member of a declared organisation was created.

The Ombudsman is required to keep under scrutiny and report on the exercise of the powers by police under this Act for the first two years.

### Impact of criminal infringement notices on Aboriginal communities

For information about this review and our final report on the impact of the state-wide implementation of the criminal infringement notices scheme on Aboriginal communities, see page 40 in *Working with Aboriginal people*.

### Witness protection

The witness protection program was established under the *Witness Protection Act 1995* to protect the safety and welfare of Crown witnesses and others who have given information to police about criminal activities. The Ombudsman is responsible for hearing appeals about the exercise of certain powers and handling complaints from people in the program.

### Appeals

The Commissioner of Police has the power to refuse someone entry to the witness protection program or remove them from the program. A person directly affected by such a decision can appeal to the Ombudsman. The Ombudsman must determine an appeal within seven days of receiving it and our decision overrides the Commissioner's decision. This year we dealt with three appeals under the Act. One was upheld and two dismissed.

### Complaints

Everyone admitted to the witness protection program must sign a memorandum of understanding with the Police Commissioner. This memorandum sets out the basic obligations of the participant and includes provisions such as:

- › prohibitions on engaging in specified activities
- › arrangements for family maintenance, taxation, welfare or other social and domestic obligations or relationships
- › matters relating to their identity
- › the consequences of failing to comply with the provisions of the memorandum.

Witnesses must also be informed that they have the right to complain to the Ombudsman about the conduct of police in relation to any matters covered in the memorandum.

Historically, we have received only a few complaints from participants in the witness protection program. This year we received no complaints.

# Juvenile justice



We regularly visit juvenile justice centres in NSW to speak with young people in detention and the staff who look after them. During these visits we also examine the centre's records and inspect the facilities. It is our experience that young people in detention are more likely to raise issues of concern when we meet with them in person.

Young people in detention can also contact our office at any time. We recognise it can be difficult for young people to make a written complaint. For this reason, we treat oral complaints from young people in detention as formal complaints where appropriate.

## Highlights

- › Worked with the Department of Juvenile Justice and staff at individual centres to try to address the effects of continued overcrowding. [SEE PAGE 76](#)
- › Finalised 73 formal complaints and resolved 255 informal complaints about juvenile justice issues by providing practical and informed suggestions. [SEE PAGE 77](#)
- › Regularly visited juvenile justice centres around NSW to monitor how centres are running and talk to detainees and staff. [SEE PAGE 78](#)
- › Provided input to the department's new procedures for transferring detainees to adult correctional centres. [SEE PAGE 78](#)

## Overcrowding

We have reported on overcrowding in juvenile justice centres in each of our last three annual reports. This year the number of young people in detention has continued to rise. Each juvenile justice centre is designed to accommodate a particular number of detainees. When they have more than this, young people must sleep on mattresses on the floors of other detainees' rooms or in holding, admissions or interview rooms. For much of the last two years, overcrowding has been acute.

Our program of regular visits to juvenile justice centres means we have been able to see first-hand the effects of overcrowding. These include not being able to accommodate detainees near their families, delays in starting new unit based programs and enrolling detainees in school, lack of

holding room space for detainees who need to be confined or segregated, and significant use of overtime.

Common areas are also being used by more young people than intended and staff report that this, together with overcrowding more generally, is leading to frayed tempers on the part of both detainees and staff.

There is significant concern on the part of centre staff that the ongoing overcrowding will result in a serious incident which cannot be contained. We have noted an increase in the seriousness of punishments given to detainees, with many centre managers reporting they need to deal firmly with misbehaviour to prevent more serious incidents occurring.

There are particular risks associated with detainees sharing rooms, especially when they have been recently admitted and their behaviour is less well known (see case study 44).

### Case study 44

A detainee in custody for the first time alleged he had been sexually assaulted by two other detainees in a juvenile justice centre. At the time of the alleged assault, the detainees had been sleeping on mattresses in an interview room due to a shortage of beds. As the matter was before the court, we did not investigate the alleged incident. However, we made inquiries about how the centre was managing detainees when the number being held exceeded the number of beds.

Detainees at the centre were having to sleep in areas such as the clinic, holding rooms and interview rooms. We wrote to the department expressing our concern that centres are having to place detainees in 'overflow' areas like these that do not have basic safety features, such as call buttons and night lights. This is a significant departure from the department's standard practices. We suggested they review their arrangements for accommodating 'extra' detainees to ensure compliance with the legislation governing juvenile justice centres, including occupational health and safety requirements. In response, the department told us they had engaged an external consultant to identify risks and hazards in room sharing and using bunk beds, as well as to review existing and proposed controls for introducing bunk beds.

At times, juvenile justice centres are so overcrowded that they are declared 'closed' and unable to accept any more detainees from police custody. In some cases, this has resulted in young people being held at police stations for up to three days. The NSW Police Force charges the Department of Juvenile Justice (DJJ) for the costs of accommodating young people in these circumstances.

There is general agreement that changes to the *Bail Act 1978* and proactive policing of compliance with bail conditions are contributing to the increase in the number of juvenile detainees — and research by the Bureau for Crime Statistics and Research confirms this. We have met with senior DJJ staff several times during the year to discuss how they are managing the immediate situation, and find out what longer term planning is being done to predict and meet ongoing need for accommodation. The Ombudsman has also met with the Minister for Juvenile Justice.

While some additional beds have been created this year, it remains to be seen whether they will be sufficient to meet demand if the upward trend in detainee numbers continues. Fifty beds were created at the former periodic detention centre at Emu Plains — which has been leased by DJJ on a three year lease from the Department of Corrective Services — and another 15 became available at Orana Juvenile Justice Centre in August, but 23 beds were lost when Keelong Juvenile Justice Centre was closed following the mini-budget.

Given the significant cuts to its budget and the additional detainees it is being required to accommodate, we have been impressed by how DJJ has managed the difficult situation they have found themselves in. However, more robust action is needed by government to address both the short and longer term projections for numbers of young people in custody and — more particularly — to identify and address the causes of this increase in numbers. At the time of writing, the government had just commissioned an independent consultant to investigate the reasons for the juvenile incarceration rate and what can be done to reduce high rates of recidivism.

It is critical that effective action is taken to resolve the current situation. If the rate of juvenile incarceration in NSW continues at its current level or increases, the government will need to ensure that adequate funding is allocated to enable young people

to be safely accommodated and to have access to appropriate facilities, programs and activities. We will be closely monitoring both the outcomes of the review and the government's response to it.

## Complaint trends and outcomes

Informal complaints about juvenile justice increased slightly this year and formal complaints dropped from last year's high level (see figure 37). Young people are unlikely to write to us. We recognise this and will instead take an oral complaint over the telephone (see case study 46). Last year we increased our focus on this area of our work, which resulted in a 50% increase in the number of formal complaints we received. While numbers have reduced a little this year, we have continued to receive an elevated number of formal complaints.

We conducted 70 informal investigations as a result of these complaints, making some sort of preliminary investigation on all but three of the formal matters. Case study 45 is an example of a formal complaint being taken from a young person over the telephone. It resulted in a change to procedure which will benefit all potential visitors to centres.

This year, more young people came to see us in person during our visits to make a complaint. Figure 38 gives a breakdown of what they complained about. Over a quarter of complaints were about the daily routines in centres, a reflection of the issues associated with living in an institution as well as the ongoing overcrowding in all centres. Other issues complained about included misconduct by staff, unfair punishments and centre food.

**Figure 37 — Five year comparison of matters received and finalised**

Matters	04/05	05/06	06/07	07/08	08/09
Formal received	19	41	49	99	70
Formal finalised	21	44	47	98	73
Informal dealt with	216	257	219	243	255

**Figure 38 — What people complained about**

This figure shows the complaints we received in 2008–2009 about juvenile justice centres, broken down by the primary issue that complainants complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Buy-ups	0	3	3
Daily routine	17	70	87
Officer misconduct	4	33	37
Records/administration	2	5	7
Visits	6	12	18
Other administrative issue	2	24	26
Fail to ensure safety	3	2	5
Unfair discipline	8	21	29
Case management	1	5	6
Transfers	6	10	16
Mail	0	1	1
Child abuse-related	0	1	1
Work and education	2	2	4
Information	5	6	11
Day/other leave/works release	2	0	2
Classification	1	3	4
Legal problems	1	0	1
Probation/parole	0	2	2
Medical	6	16	22
Food and diet	1	27	28
Segregation	0	3	3
Property	3	5	8
Issue outside our jurisdiction	0	4	4
<b>Total</b>	<b>70</b>	<b>255</b>	<b>325</b>

### Case study 45

A young man was upset after getting a letter from a juvenile justice centre telling him that he was not allowed to visit his brother who was detained there. After our intervention, DJJ agreed that people should be told what to do if they think a decision to refuse visitor rights is unfair. As a result, the department has developed a new process for approving visitors and centre managers must now tell people how they can complain if they disagree with a decision.

### Case study 46

A 13 year old detainee called us because he was frightened he would be assaulted by other detainees when he started at the centre school. He had been fine up until then, having no problems with the boys in his unit. However, he had a history of conflict with boys from the other unit who would be at the school. We spoke to the centre manager about the young person's concerns. She arranged for a youth officer to be inside the classroom and changed the times the detainee entered and left the school, so they were different to the other students. The arrangements would be monitored for a while to see if there were any problems. The detainee was happy with this outcome.

## Visits to centres

There are nine juvenile justice centres in NSW. During the year, Keelong Juvenile Justice Centre was closed and Emu Plains Juvenile Justice opened. Broken Hill Juvenile Justice Centre used to be a part-time centre that held detainees for a few days before they transferred to another centre. However, it is now open most of the time and is used to accommodate detainees from Orana Juvenile Justice in Dubbo for seven to 10 days at a time to free up beds at Orana. Boys from the local area are keen to go to the centre as it means they get family visits. However, the centre has only eight beds, no school facilities and no catering facilities.

Because young people in detention are particularly vulnerable, we actively monitor how centres are running. This year we visited Emu Plains three times, Broken Hill once and each of the other centres twice. We send posters to centres in advance to tell detainees when we are coming. When we arrive at a centre, we interview the manager and other senior staff as necessary. We then individually meet with the detainees who have asked to see us in a private interview room. While at the centre, we also inspect the facilities and look at various records — including records about minor misbehaviours, segregations and complaints. We meet again with the centre manager before we leave to try to resolve as many of the issues as possible that we have identified during our visit.

As more than half of all young people sentenced to juvenile detention are Aboriginal, we ensure staff from our Aboriginal Unit are involved in as many centre visits as possible.

### Emu Plains Juvenile Justice Centre

Emu Plains Juvenile Justice Centre opened in early 2009, operating as an annex of Cobham Juvenile Justice Centre which is a short distance away. The building, previously a periodic detention centre, is leased by DJJ from the Department of Corrective Services. Extensive work was carried out to make the centre more secure and as suitable as possible for its new purpose, taking into account budgetary constraints and inherent limitations of the site. The centre has 25 double rooms, none of which have water or bathroom facilities — these are separately provided on each landing. The centre also lacks a full size dining room, has limited outdoor and recreation space and no oval. There is also no school.

When first opened, it was intended that Emu Plains would operate as a short-term remand centre to manage the large number of young people who now enter the system for 48 hours or less. This reduced the significance of the centre's limitations — for example, detainees in custody for such a short time would not be assessed to attend school. However, all detainees admitted to Cobham Juvenile Justice Centre are now sent to Emu Plains unless they are assessed as unsuitable due to mental health issues or an ongoing medical condition that requires the attention of a doctor. The length of their stay at Emu Plains varies.

Due to our concerns about the centre, the Ombudsman arranged to meet the Minister and Director General for Juvenile Justice at Emu Plains in February this year. Staff at Emu Plains have made commendable efforts to establish a functioning centre despite its significant limitations. However, the routines and facilities at the centre compare very poorly with those elsewhere. The lack of communal and recreational space means detainees spend up to 18 hours a day in their rooms, much longer than at other centres. There is also very limited capacity to conduct programs or activities, including individual counselling or group work activities.

Access to education is a critical issue. We are very concerned about there being no school at Emu Plains. We are aware that DJJ is exploring with the Department of Education and Training the possibility of running a school assessment class at the centre. This would at least enable detainees to enter school on their return to Cobham. Given that it is a legal requirement for young people of compulsory school age to attend school, it is imperative that the facilities at Emu Plains are upgraded in line with the standards in other centres if it is to be a permanent juvenile facility.

## New transfer procedures

Last year we reported that amendments to the legislation concerning children in detention had been made to add some new grounds for transferring detainees over 18 years old to an adult correctional centre. After the Supreme Court found some problems in the process followed by DJJ in transferring a number of detainees under the previous legislation, the department suspended all transfers in August 2008 pending a review of their procedures. We provided comments on the new draft transfer procedures earlier this year and understand that these will become operational shortly. We will monitor how the new transfer procedure operates in practice.



# Corrections



In the context of the corrections environment, good public administration means decisions and practices that result in a fair, reasonable and humane correctional system. We play a critical role in ensuring that complaints by inmates and their advocates are addressed.

Our specialist corrections unit regularly visits correctional centres to speak with inmates and staff. This provides us with first-hand insights into the routines, programs, departmental policies and procedures operating in a gaol environment.

## Highlights

- › Spent 142 person days visiting 42 correctional centres to talk to inmates and staff and observe conditions, routines and programs. [SEE PAGE 81](#)
- › Provided comments to DCS about regulations relating to inmate mail, after our investigation of a complaint from an inmate at the HRMU raised issues about privileged mail leaving the centre. [SEE CASE STUDY 51](#)
- › After we informed DCS of our view that wall-mounted rings are an instrument of restraint and their use constitutes a 'use of force', the Commissioner agreed to ensure they are authorised and that their use is properly recorded. [SEE PAGE 82](#)
- › Raised a number of concerns with the Commissioner about Wellington and Mid North Coast correctional centres, including the impact on inmates and staff of the additional beds placed at these centres, the adequacy of CCTV footage to maintain safety and security and insufficient access for inmates to programs. [SEE PAGE 81](#)

## Organisational culture

Our work in the area of corrections often involves challenges not experienced in other areas of our work. These include having limited access to the people who contact us. We cannot just pick up the phone and call to check the details of a complaint. Some are straightforward while others are more complex.

To do our work effectively, we need to have a shared understanding with the Department of Corrective Services (DCS) about the importance of accountability and what is in the public interest. The public interest is a major consideration informing our work and it should guide the work of other agencies and their staff too. Most people we deal with approach their work with the understanding that ensuring individuals are treated fairly and reasonably by agencies is in the public interest. While it happens frequently, this is not always the case.

Inmates have the right to complain, both internally and externally, when they believe they are not being treated fairly. In the past year we have experienced some resistance from within parts of the correctional system to this basic right. While we meet

and deal with some very professional staff, our presence in correctional centres to receive complaints from inmates is sometimes met with negative comments from staff. We are concerned this may be increasing.

In the past year, inmates have been publicly referred to by derogatory terms and references have also been made to us about inmates being 'whingers' and 'getting what they deserve'. In our view this is not appropriate. We would hope that DCS shares this view and appropriate behaviour and language would be modelled from the top down. All inmates are entitled to be treated fairly, reasonably and with dignity. This is in the interests of offender rehabilitation and therefore community safety. We have taken the opportunity to raise these issues directly with the Commissioner.

Unfortunately, many of the complaints we have received this year from inmates concern bullying and harassment by correctional centre staff. Some of these complaints have involved allegations of racial vilification or derogatory comments being made about the intellectual capacity of inmates. After an inmate complained to us during a visit to the minimum security area at one centre, we asked staff to immediately remove a reference to the inmate as 'Forrest Gump of the Week' from a whiteboard.

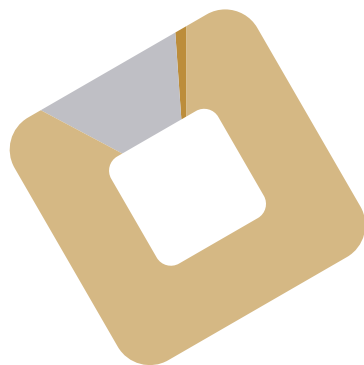
We have also had to speak with general managers at some centres about staff referring to inmates as 'Abos' or expressing their dislike of 'Asians'. In these circumstances, we ask general managers to ensure all staff are made aware of the department's obligation to make sure all inmates are treated fairly and equally.

### Case study 47

We received a number of complaints from inmates at Goulburn Correctional Centre about the management of Aboriginal inmates. In particular, staff were reportedly threatening the inmates with 'Operation Blacksnake'. The inmates interpreted this as a threat to 'string [them] up and make it look like another black death in custody'. We asked the department to investigate these claims and report back to us.

The department's investigation was competently conducted. However, each officer interviewed stated that 'Operation Blacksnake' was a joking reference to the black hose used to wash down cells. All denied hearing or seeing any officer do or say anything inappropriate. As the allegations could not be corroborated, we were unable to take further action.

**Figure 39 — Formal complaints finalised**



- Preliminary or informal investigation 593 (83%)
- Assessment only 114 (16%)
- Conduct outside our jurisdiction 7 (1%)
- Formal investigation 0 (0%)

Many people in the wider community have little sympathy for inmates because of the crimes they have been imprisoned for. However, we assess each complaint received from an inmate based on the information presented to us. Unless there is a particular reason for doing so (such as safety considerations), we consider the complainant's history should be irrelevant to the consideration and handling of their complaints or to administrative decisions that affect them. It is clear to us that some who work in the correctional system do not always adopt the same approach when making decisions that affect inmates. During the year we raised this issue with the Commissioner, noting that he and his staff should always deal with administrative processes involving inmates dispassionately and impartially.

The Commissioner has wide discretionary power to make significant decisions about inmates and is not technically required to give reasons for them. We understand that it is not always appropriate or possible to give inmates reasons for the decisions that affect them. However, where possible, it is good practice to do so. In addition, whether they are directly communicated to inmates or not, reasons for decisions should be available for external review by a tribunal, court or watchdog agency.

During our discussions with the Commissioner this year we have encouraged him to provide reasons, where possible, for significant decisions affecting individuals, and to record the reasons for all significant decisions about inmates. Recently, the Commissioner has indicated an understanding of the importance of this to good inmate case management and has provided further information when possible.

## Complaint trends and outcomes

This year has seen a significant increase in the number of inmates contacting us from Bathurst Correctional Centre. A possible reason for this is that the centre is frequently used to accommodate inmates who are on their way to a different centre. Sometimes the transfer process begins before there is an actual bed available at the receiving centre, so an inmate may have to spend some time 'in transit'. While in transit, inmates usually cannot work or participate in programs and may not be given their private property.

Compared to last year, there was also an increase in the number of contacts from inmates at Mid North Coast, Wellington and Parklea correctional centres. The increase in contacts from Parklea Correctional Centre may be associated with the government's decision to purchase management services for the centre from the private sector. This has resulted in greater restrictions on inmate routines due to industrial action. Some possible reasons for the increased number of contacts from Mid North Coast and Wellington are discussed later on page 81.

Complaints about Grafton Correctional Centre have dropped in the past year and fewer issues were raised with us on our visits. As we had no underlying concerns about this centre, we revised our visiting schedule to reduce the number of scheduled visits to this centre.

Current investigations (at 30 June)	No.
Under preliminary or informal investigation	99
Under formal investigation	0
<b>Total</b>	<b>99</b>

**Figure 40 — What people complained about**

This figure shows the complaints we received in 2008–2009 about correctional centre concerns, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Buy-ups	14	109	123
Day/other leave/works release	16	54	70
Classification	26	138	164
Daily routine	124	455	579
Legal problems	10	39	49
Officer misconduct	67	207	274
Probation/parole	21	91	112
Records/administration	44	134	178
Visits	48	193	241
Other administrative issue	22	125	147
Misconduct	1	0	1
Fail to ensure safety	6	26	32
Unfair discipline	30	107	137
Medical	23	162	185
Case management	29	94	123
Food and diet	15	57	72
Segregation	19	68	87
Property	81	277	358
Transfers	27	221	248
Mail	10	47	57
Periodic/home detention	4	10	14
Child abuse-related	0	1	1
Work and education	16	79	95
Issue outside our jurisdiction	3	20	23
Court cells	2	12	14
Security	10	54	64
Information	18	45	63
<b>Total</b>	<b>686</b>	<b>2,825</b>	<b>3,511</b>

This year we have been particularly concerned by an increase in the number of inmates claiming to have suffered detrimental action after contacting us with a problem, or who are reluctant to report serious misconduct for fear of retribution. Many inmates have reported allegations of serious misconduct by staff to us but, because they do not want to have their name associated with the complaint, it is difficult for us to be able to take further action.

Case studies 48, 49 and 50 provide examples of some of the complaints we have dealt with this year.

### Complaints about food

It is rare to come away from a visit to a centre without receiving a single complaint about food. We realise it will never be possible for Corrective Services Industries (CSI — the supplier of all meals to the correctional system) to meet the food preferences of over 10,000 people and so there will always be complaints, but there is certainly some room for improvement.

One of the main current issues with food is that the menu does not satisfactorily cover the cultural diversity of inmates, particularly those of Asian backgrounds. The removal of rice cookers and rice from the buy-up list in many centres has worsened the problem for these inmates, many of whom — including those born in Australia — have had rice as a staple in their diet for their entire life.

The inclusion of small satchels of microwave rice on the buy-ups does not go anywhere near meeting the needs of these inmates. Similarly, if Muslim or Jewish inmates wish to receive Halal or Kosher meals they must pay a contribution towards the cost of buying these meals from a private supplier. Resolving these two issues would go a long way towards reducing the more systemic complaints made about food.

### Visits to correctional centres

Transparency is vital to the health of any correctional system. We visit correctional centres to talk to inmates and staff and observe conditions, routines and programs. This year we spent 142 person days visiting 42 correctional centres.

After some of our visits we provided feedback to the Commissioner. We were happy to report the positive environment that we observed at Dawn de Laos. However, we raised a number of concerns about Wellington and Mid North Coast correctional centres including:

**Figure 41 — Formal and informal matters received about correctional centres and Justice Health — five year comparison**

	04/05	05/06	06/07	07/08	08/09
<b>Formal</b>					
Correctional centres, DCS & GEO	561	772	566	779	686
Justice Health*	41	80	69	61	64
Sub-total	602	852	635	840	750
<b>Informal</b>					
Correctional centres, DCS & GEO	2,852	3,242	3,010	2,902	2,825
Justice Health*	283	218	266	241	237
Sub-total	3,135	3,460	3,276	3,143	3,062
<b>Total</b>	<b>3,737</b>	<b>4,312</b>	<b>3,911</b>	<b>3,983</b>	<b>3,812</b>

\*Justice Health provides services in both correctional centres and juvenile justice centres. For simplicity, all Justice Health matters are reported in this figure.

#### Case study 48

An inmate's parole was being delayed because his parole officer had not provided a report to the State Parole Authority in time. The inmate understood he had been accepted into the Community Offender Services Program (COSP) and had signed forms for the parole officer agreeing to the rules of the centre. The officer did not appear at the parole hearing or provide a report and no record could be found of a referral being made to the COSP.

We contacted the parole officer's manager who advised us the inmate had been allocated a parole officer at another centre. As confusion about the actions of the original parole officer remained, we contacted the new parole officer who agreed to make the referral to COSP. The inmate subsequently contacted us to report that he had been admitted to the COSP and granted parole.

#### Case study 49

An inmate at Wellington Correctional Centre received a punishment of 'non-contact' visits for a minor correctional centre offence. She was due to have a visit from her 21 month old daughter, which had been arranged by the Department of Community Services and required much organisation. The inmate was upset because she would now not be able to hold her child.

She had requested that contact be allowed for the visit but this was declined. As the offence for which she received the punishment had been relatively minor, we asked the general manager of the centre to review the decision. He did so, and agreed to allow the woman to have the contact visit with her daughter.

- › the impact on inmates and staff of the additional beds placed at these centres — reportedly leading to more fighting among inmates due to their close proximity in cells — and the reduced amenity in the affected minimum security houses
- › the high number of remand inmates being accommodated in centres located far from their homes, often precluding personal visits and limiting the number of long distance phone calls they can make
- › the co-location of remand and sentenced inmates in accommodation and employment programs
- › the adequacy of CCTV footage to maintain proper safety and security in accommodation units that are not staffed

#### Case study 50

A young inmate who had been a victim of sexual assault as a child called us because he was worried about being placed in a cell with a child sex offender. We contacted the Metropolitan Special Programs Centre, but they were initially reluctant to take any action because the inmate was accommodated in a wing holding mainly sex offenders.

We pointed out that the inmate was primarily concerned about being placed in a cell with an inmate who had committed offences against children. A senior manager at the centre spoke to the inmate and later told us that he had been moved to another cell.

- › the suitability of places for inmates who are being punished or subject to other forms of management — including access to water, toilets and shade
- › the limited availability of employment in a designated working centre, impacting on the daily routine for inmates who do not have a job
- › insufficient access to programs to enable inmates to achieve their goals in a timely manner.

We also raised our concerns about the inappropriate housing of females in the Kevin Waller Unit of the Metropolitan Special Programs Centre (MSPC), which is a correctional centre for males. Among other problems associated with this is that the centre does not stock supplies of female sanitary products.

We are awaiting the Commissioner's responses to these concerns and will continue to monitor them.

### Wall-mounted restraints

In March 2008, during a routine visit by our staff to John Morony Correctional Centre, an inmate who was in segregated custody was escorted to the interview room in handcuffs by correctional officers. The officers secured his handcuffs to a metal ring mounted on the wall behind him. This meant the inmate was unable to move freely from the chest up.

Our staff were concerned at the way the inmate had been restrained as he did not appear to present any special threat towards them or anyone else. They were concerned the metal wall rings were not an authorised instrument of restraint as set out in the Crimes (Administration of Sentences) Regulation 2008, and they had not seen any instructions covering the use of such rings in DCS's Operations Procedures Manual.

After the visit, we wrote to the Commissioner several times asking for information about the use of metal wall rings to restrain inmates in NSW correctional centres. We were told that, in addition to John Morony, there were rings at Mid North Coast, Silverwater Women's and Lithgow correctional centres, as well as at the old Long Bay Hospital (now demolished). Metal rings were located in interview rooms and alongside the inmate telephones in segregation units at the centres. They had also been put in the showers and by the telephone in one of the old hospital wards. We were not told when the rings had been installed, but were told that they were

used 'with the concurrence of the respective general managers'.

The Commissioner confirmed there was no reference to wall-mounted rings in the department's Operations Procedures Manual. Only two centres had written instructions for staff about use of the rings, and these instructions referred to the equipment as 'anchor points' and 'wall-mounted restraints'.

The Commissioner advised us he did not consider a metal wall ring to be an instrument of restraint or its use as constituting a use of force. Therefore, the use of metal wall rings is not recorded as such. In the Commissioner's view, the handcuff is the instrument of restraint and the routine handcuffing of inmates is not required to be recorded as a use of force. He did not consider that there is a need to provide staff with training in the use of wall-mounted rings as they are already trained in the use of the handcuffs.

Our research established no other Australian jurisdiction uses metal wall rings or similar equipment in correctional centres.

We took the view the metal wall rings are instruments of restraint and their use constitutes a use of force and should be recorded as such. Under section 31AC of the Ombudsman Act, we suggested to the Commissioner the wall-mounted rings be removed from all correctional centres where they are located. We also asked the Commissioner to remind general managers that only instruments of restraint authorised by the Commissioner can be installed or used in correctional centres.

In response, the Commissioner advised us he did not intend to order the removal of the wall-mounted rings and — given his determination the wall-mounted rings are not instruments of restraint — it was not necessary to issue a reminder to general managers.

We sought independent legal advice from Mr Peter Garling SC who advised that, in his opinion, the metal rings are an instrument of restraint requiring authorisation under clause 122 of the Crimes (Administration of Sentences) Regulation 2008. Mr Garling also advised that use of the rings constitutes a use of force for the purposes of the Regulation. We gave a copy of this advice to the Commissioner and met with him. Subsequent to that meeting he has agreed to review all wall-mounted rings and for those locations considered necessary to ensure they are properly authorised and their use reported.

## Changing the rules

Over the past year the legislation covering the correctional system has been amended, each time without any opportunity being given to the Ombudsman to comment on proposed changes. Among the amendments introduced was a new security designation for some inmates and the use of separation and segregation for managing inmates. When consulted on such changes we look to see whether the amendments may incidentally remove or erode entitlements or introduce procedural problems in areas already identified as causing complaint, and then make suggestions to avoid these problems. We see this as an important way to reduce potential complaints.

## Working with official visitors

Last year we reported on our reduced access to official visitors (OVs) appointed by the Minister for Corrective Services. In 2008 the Commissioner and the then Minister for Justice decided we would no longer be given the personal contact details for OVs to correctional centres, court cell complexes and periodic detention centres. We were told contact with the OVs would have to be made through the general manager of the relevant centre.

As this arrangement limits our ability to have independent contact with OVs, we have refused to comply with it. The unfortunate result has been a reduction in regular liaison between our staff and OVs, reducing the effective referral of matters and our ability to limit the double handling of complaints.

## Overcrowding in cells

Last year we reported our concern about the exemption given to Wellington Correctional Centre, and potentially other centres, under clause 22 of the Public Health (General) Regulation 2002. The main purpose of the clause is to prevent health problems caused by overcrowding of premises and the close confinement of groups of people for long periods. In correctional centres, inmates can be confined to cells — where they must also shower and toilet — for between 12 and 18 hours each day.

The exemption allowed DCS to contravene clause 22 of the Regulation. This states that any room in which people sleep for



more than 28 days must have a floor area of 5.5 square metres for each person. Placing extra bunks in cells at Wellington meant the department had contravened this clause, leading to their application for an exemption from the Department of Health (Health). In granting the exemption, Health allowed DCS to continue to contravene the clause.

We advised DCS and Health of our concerns. Health responded swiftly, agreeing that they had given insufficient consideration to issuing the exemption. The then Minister for Health rescinded the exemption. Since that time, an interim exemption has been in place while Health, DCS and Justice Health develop arrangements for inspecting and approving the accommodation at Wellington. We expect to receive further advice about this shortly.

## Treatment for sex offenders

In last year's annual report, we discussed the high number of complaints received from inmates waiting to attend sex offender treatment programs. To date, the Custody Based Intensive Treatment (CUBIT) program for 'high risk' sex offenders has been run only at the MSPC. However, in response to our inquiries, DCS have advised us that they plan to begin running a second program at Parklea Correctional Centre from late 2009. This will enable an extra 35 to 40 inmates to access the program each year.

We will continue to monitor complaints about waiting periods associated with sex offender treatment programs and the department's efforts to improve timely access to these programs.

## High risk management unit

The high risk management unit (HRMU, commonly known as 'the Supermax') holds the smallest number of inmates in the state. However, we continue to receive a large number of contacts from the inmates housed there. This can largely be attributed to the very strict regime that operates at the centre. Clearly, many of the HRMU inmates pose a significant risk to the correctional system and the community, so additional measures to manage them securely are required. While many of these inmates will never be released from prison, some will return to the community. Treating inmates inhumanely does not help them to be receptive to rehabilitation.

Recently, the HRMU has instituted a new practice that requires inmates to wear hand and ankle cuffs each time they leave their cell to visit other areas of the HRMU, such as the clinic. They are also accompanied by several officers. We acknowledge the need for inmates to be cuffed whenever they move to an area outside of the HRMU. However, given the high level of security already present, it is difficult to see why both hand and ankle cuffs are required when inmates are within the HRMU. We have recently written to the Commissioner about this issue.

## Justice Health

Justice Health provides medical and dental services to the NSW correctional system, including services in some court cells and community settings. It is not our role to deal with complaints about the quality of health services received by offenders and, if these come to our attention, we may refer offenders to the Health Care Complaints Commission. We do deal with complaints about general service provision and access to health services from inmates. Most complaints we receive are about delays.

Justice Health aims to provide a service equivalent to that available in the wider community. However, as they do not control inmate routines, access to their clinics or availability for external medical appointments and procedures, this is sometimes difficult. Delays in receiving dental treatment continues to be the single most common health issue that inmates complain to us about.

Case studies 52 and 53 are examples of how we have dealt with complaints about access to health services.

### Case study 51

An HRMU inmate wrote to his solicitor because he was angry that a photo had been allegedly ripped during a search of his cell. The inmate told us he had put an additional letter inside the envelope for his solicitor to send on to his barrister. The correctional officer processing the mail noticed the letter was bulky and asked for permission from an Assistant Commissioner to open it. This permission was provided.

The Crimes (Administration of Sentences) Regulation gives privilege to correspondence between an inmate and their legal representatives, as well as to other exempt persons and bodies. The Regulation allows for incoming privileged mail to be opened by the inmate in the presence of an officer so the officer can ensure it does not contain anything prohibited. Similar provisions are not included for privileged mail leaving a centre, and this is an anomaly.

After our intervention, the Commissioner issued a memorandum reminding all staff about their responsibilities in handling inmate mail. He also advised that DCS would review the provisions of the Regulation relating to inmate mail and invited our comments, which we have provided.

### Case study 52

An inmate had been using a special cream to cover extensive scarring on his head. Justice Health told him that as the cream was essentially for cosmetic use, he would no longer be able to purchase it from them.

The scarring was the result of a serious assault on the inmate while in the correctional system and he had received compensation to allow him to purchase necessary medication for the rest of his life.

The cream had previously been considered a 'necessary medication'. We contacted Justice Health who reviewed the matter and agreed the inmate could continue to purchase the cream.

### Case study 53

An inmate who uses catheter bags was only given two by the clinic at his centre to last a week. He was told there had been a delay in ordering some stores from the supplier and he could use incontinence pads in place of the bags when he ran out.

We agreed this was not appropriate and contacted Justice Health. They arranged to obtain an interim supply of bags for the inmate from a local hospital.

# Departments and authorities



While our role has expanded over the years to include specialist functions relating to community services and workplace child protection, overseeing a large and diverse range of government agencies to ensure high standards of administrative practice is still an essential part of our work.

To maximise our effectiveness, we focus our limited resources on complaints about issues that could affect a large number of people. In this chapter we outline our systemic work as well as the positive outcomes we achieve for individuals.

## Highlights

- › Achieved 800 positive outcomes for complainants, including changes to decisions and policies, apologies and the correction of errors. [SEE PAGE 84](#)
- › Exceeded our performance targets in areas such as time taken to assess and finalise complaints and the percentage of our recommendations implemented by agencies. [SEE PAGE 86](#)
- › Conducted a formal investigation into an incident involving exposure to asbestos and found that WorkCover's actions at the site were unacceptable. [SEE PAGE 87](#)
- › Examined the significant backlog of Aboriginal land claims in NSW. [SEE CASE STUDY 58](#)
- › Provided examples of unclear phrases and paragraphs to assist the State Debt Recovery Office to improve the quality of the letters they send to the public. [SEE PAGE 88](#)
- › Worked with Housing NSW to develop some practical solutions to ensure tenants in rental arrears can negotiate reasonable repayment arrangements. [SEE CASE STUDY 64](#)
- › Conducted a mystery shopper audit of the Health Care Complaints Commission. [SEE PAGE 90](#)

## Complaint trends and outcomes

During 2008–2009 we received 1,349 complaints in writing (which we call 'formal' complaints) and 3,949 complaints over the telephone or in person (which we call 'informal' complaints, see figure 43).

We finalised 718 formal complaints through preliminary or informal investigations and five formal investigations that involved the use of the Ombudsman's coercive investigation powers (see figure 42).

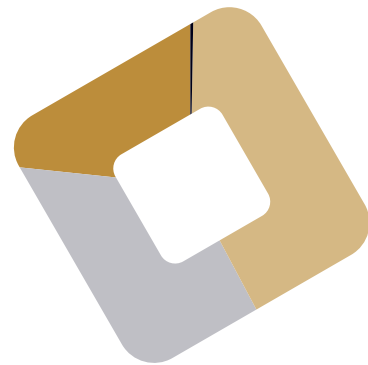
Over a quarter of complaints made allegations about poor complaint-handling and customer service (see figure 44). This is consistent with previous years but disappointing, especially in view of the State Plan's focus on improving public sector performance in both of these areas.

As a result of our involvement, we achieved 800 positive outcomes. These included agencies reviewing and changing their decisions, apologising to the complainant, correcting errors, and changing policies and procedures.

A full list of agencies we received complaints about this year and how we dealt with those complaints is in Appendix G.

The results we achieve include apologies (see case study 56), changes to decisions (see case study 54), new policies and procedures

**Figure 42 — Formal complaints finalised**



Current investigations (at 30 June)	No.
Under preliminary or informal investigation	66
Under formal investigation	1
<b>Total</b>	<b>67</b>

**Figure 43 — Five year comparison of matters received and finalised**

Matters	04/05	05/06	06/07	07/08	08/09
Formal received	1,355	1,329	1,158	1,348	1,349
Formal finalised	1,386	1,317	1,167	1,354	1,310
Informal dealt with	4,414	3,625	3,465	3,962	3,949

This figure does not include complaints about public sector agencies that fall into the categories of police, community services, local government, corrections or FOI.

being developed, more complete information being provided (see case study 55), better reasons being given for decisions, and refunds or ex gratia payments. However, as a consequence of our reduced budget, we will not be in a position to assist as many complainants in the future.

### Case study 54

The daughter of an elderly client of the Office of the Protective Commissioner (OPC) stayed at her mother's house when her mother was having cancer treatment. She told the OPC that she would be there until January 2009, but returned to the house one day in December to find that all the furniture and her personal belongings had been placed in storage. The OPC sent the woman a letter advising her of this the same day.

She complained to the OPC and asked them to refund the storage fees of \$1,677 but the OPC refused to do this. After we contacted them, they reviewed the complaint and agreed to refund the fees.

### Figure 44 — What people complained about

This figure shows the complaints we received in 2008–2009 about NSW public sector agencies other than those complaints concerning police, community services, councils, corrections and freedom of information, broken down by the primary issue in each complaint.

Please note that while each complaint may contain more than one issue, this table only shows the primary issue.

Issue	Formal	Informal	Total
Contractual issues	77	294	371
Natural justice	15	26	41
Corporate/customer service	3	0	3
Legal problems	0	2	2
Complaint-handling	199	443	642
Other administrative issue	11	183	194
Misconduct	23	53	76
Approvals	108	324	432
Charges/fees	151	340	491
Management	27	58	85
Medical	0	1	1
Policy/law	48	212	260
Enforcement	163	300	463
Objection to decision	129	489	618
Child protection	0	3	3
Customer service	204	634	838
Child abuse-related	0	2	2
Issue outside our jurisdiction	86	305	391
Engineering services	2	0	2
Information	103	280	383
<b>Total</b>	<b>1,349</b>	<b>3,949</b>	<b>5,298</b>

### Case study 55

The Ministry of Transport manages the School Student Transport Scheme which provides subsidised travel for eligible school students on rail, bus, ferry and coach services. Unsuccessful applicants for subsidised travel can appeal against the Ministry's decision to the School Student Transport Scheme Appeals Panel. The panel is an independent body made up of volunteers representing parent groups as well as representatives from the Department of Education and Training and RailCorp. It only meets when it has a number of applications to consider.

We received a complaint about the length of time taken by the panel to consider an appeal by parents who were concerned that they had to meet their child's full travel costs in the interim. Another complaint involved a student deemed eligible for a transport subsidy between school and home, but not to after school childcare. The panel would not consider this case because the student was eligible for a transport subsidy. However, no explanation of this was given to the parents.

We identified the need for parents to be provided with better information about matters that can be appealed and likely timeframes. The Ministry agreed to provide this advice on the acknowledgement letter sent to parents as well as their website. They also agreed to actively contact people at Christmas time when extended delays could be expected.

### Case study 56

We received a complaint from an 80 year old man who had been appointed as a justice of the peace (JP) in 1979. Legislative changes in 2002 mean that JPs are now appointed for five year periods, rather than for life. Around 60,000 JPs were advised by letter that they would need to apply for re-appointment by December 2006 if they did not want their appointment to lapse.

The man did not receive this letter or otherwise hear about the changes, despite an extensive media campaign, and continued to perform JP duties. It was only after reading a newspaper article around July 2007 that he realised his appointment had lapsed.

The man contacted us after complaining to the Attorney General's Department. He was upset at his treatment having served as a JP for 30 years and felt he had been placed in a position where, through no fault of his own, he may have acted unlawfully.

We suggested that the department tell the man whether there were likely to be any consequences resulting from him having performed JP duties after his appointment had lapsed. While acknowledging that the department may not have been at fault, we also advised them that an apology in these kinds of circumstances can help a complainant feel their grievance has been acknowledged.

The department offered an unreserved apology and expressed regret for the inconvenience and distress caused. They reassured the man that it was most unlikely he would be prosecuted for witnessing or certifying documents without lawful authority, and reiterated their earlier invitation to him to lodge an application for re-appointment.

## Investigation and enforcement

Many government agencies play an important role in enforcing legislative or administrative requirements that have a significant impact on people's lives. We regularly receive complaints about public safety or health issues that involve potentially serious consequences if they are not properly addressed. This year we have dealt with a number of complaints involving the failure of agencies to take adequate action in response to very serious issues (see the WorkCover matter and case study 57). Robust enforcement and compliance action are essential to give meaning to legislative protections and administrative safeguards and this will continue to be a focus of our work in the coming year.

### Resources to do the job

Scarce resources make it more important than ever that government and individual agencies make informed and thoughtful decisions about their priorities. This year we completed an extensive investigation into how the Department of Water and Energy and its predecessor agencies dealt with complaints by a landowner that his neighbour had illegally constructed dams on a river. We found that a significant under-resourcing of the department's compliance function was at the heart of their failure to deal properly with the landowner's complaints (see case study 59).

We also examined the significant backlog of Aboriginal land claims in NSW. Resolving the problems contributing to this backlog will require a whole-of-government approach (see case study 58).

### Adequate action

While informal resolution is often an appropriate and successful way to deal with a problem, it is important that matters are alternatively dealt with when agreement cannot be reached.

Our intervention helped resolve a number of complaints this year where no further action had been taken after initial informal attempts to fix problems had failed (see case studies 60 and 61).

## Performance indicators

Criteria	Target	08/09
Average time taken to assess complaints (within 48 hours)	90%	93%
Average time taken to finalise complaints (not including complaints about FOI)	7 weeks	5.5 weeks
Complaints resolved by providing advice or through constructive action by the public sector agency	65%	65%
Percentage of our formal investigation reports recommending changes to law, policy or procedures	90%	100%
Percentage of recommendations made in investigation reports that were implemented by public sector agency/authorities	80%	85%

### Case study 57

The unsuccessful purchasers of an apartment development in New Zealand complained to us about the adequacy of the Office of Fair Trading's (OFT) investigation into their complaint about false advertising and misrepresentations by a property developer and sales representatives. After making inquiries about OFT's investigation we had concerns about its adequacy. In particular, OFT had failed to contact the developer or sales representatives to obtain relevant information to inform their decision to take no further action about the complaint.

We suggested OFT re-open the investigation and outlined the specific matters we thought should be considered. OFT decided to engage an independent investigator to examine the complaint and find out why the initial investigation was deficient. As a result of our inquiries, OFT made changes to improve their practices and procedures in its compliance section, including systemic changes to its investigative processes.

### Case study 58

The Department of Lands (DoL) is responsible for assessing and investigating land claims made under the *Aboriginal Land Rights Act 1983*. In mid-2008 we became aware that there were 9,000 outstanding claims. We met with departmental staff responsible for handling claims, the Aboriginal Land Rights Registrar, and representatives of the NSW Aboriginal Land Council to identify the reasons for the problem.

We learned that in 2005, there were only 1,100 outstanding claims. Since then the number of new claims has been greater than the total number of claims made in the previous 22 years. At the department's current processing rate of 350 claims per year, it would take 25 years to deal with the backlog. There are already a group of undetermined claims that are between 18 to 20 years old. There are also 400 claims that need to be surveyed before titles to land can be transferred.

In 2007 the Auditor-General recommended the department reduce the time taken to process Aboriginal land claims as well as the time taken to transfer legal title to successful Aboriginal land claimants. It appears little progress has been made in either of these areas.

We asked DoL and the Department of Premier and Cabinet (DPC) about the strategies being considered to resolve the delays. DoL told us they are trying to streamline their processes within existing resources. DPC advised that they had met with the department a number of times to discuss our concerns and had suggested they seek additional funding to increase their resources and engage an external consultant to review claims processing and recommend ways to reduce the backlog.

We will continue to monitor the processing of Aboriginal land claims.



## WorkCover's handling of an asbestos exposure incident

A warehouse roof was badly damaged after a severe hailstorm in February 2005, causing asbestos fibres to be deposited. An employee at the warehouse complained to us that staff and members of the public had been exposed to 'friable' asbestos (a dangerous form of asbestos) in the warehouse. The complainant alleged that staff had been directed to clean up suspected asbestos material without wearing protective clothing or breathing apparatus. We were concerned about how the incident had been dealt with by WorkCover and that over three weeks passed before the site was correctly identified as containing friable asbestos. We therefore began a formal investigation.

Using our Royal Commission powers, we conducted a number of hearings to collect evidence. This included testimony from a renowned expert about cases in which people exposed to asbestos on an incidental basis had developed asbestos related diseases. We found that the occupational hygienist engaged by the employer failed to treat the

site as containing friable asbestos in accordance with the regulations, and that WorkCover failed to identify that a contractor engaged to clean the site was unlicensed to work with asbestos. We also found that WorkCover did not properly investigate the allegations that staff and members of the public may have been exposed to asbestos.

During our investigation we discovered that there are no regulations in NSW governing occupational hygienists. We also identified a lack of clear acceptance of responsibility for properly investigating allegations of people being exposed to asbestos. While WorkCover have a responsibility to enforce the provisions of the *Occupational Health and Safety Act 2000*, it remained unclear whether reports of asbestos exposures were being investigated in full. They also seemed to be reluctant to follow normal investigative processes, such as interviewing known witnesses.

Scientific evidence indicates that low levels of exposure to friable asbestos can lead to the

development of asbestos related diseases and death. We found that WorkCover's actions at the site were unacceptable. They failed to take appropriate enforcement action against the employer, did not inspect the site adequately, relied totally on the observations of the attending hygienist, and failed to ensure people were removed from potential exposure to asbestos.

We recommended that the responsible minister direct that an independent audit be conducted of WorkCover's processes for dealing with asbestos in workplaces, and that the feasibility of a state-wide plan to manage asbestos in workplaces be considered. We also recommended that occupational hygienists be regulated and licensed by WorkCover, in a similar way to the system that operates in the ACT. We made a number of additional recommendations about mandatory reporting of asbestos incidents, checking that asbestos removalists are licensed, improving WorkCover's training of their inspectors, and changing how they process an incident site.

### Case study 59

A landowner complained to us that the Department of Water and Energy (DWE) had not properly investigated his allegations that a neighbour had illegally constructed dams on a river, and failed to take adequate enforcement action against illegal damming of the river. The landowner argued that the damming significantly affected his access to water and our investigation substantiated his complaint.

We found that a significant under-resourcing of the department's compliance function was responsible for their failure to deal appropriately with the landowner's complaints. There are only 10 compliance officers to deal with water resources across NSW. Other regulatory agencies with the task of enforcing compliance appear to have far greater resources. For example, a number of councils have more parking officers than the DWE has compliance officers.

We recommended that the department give an apology and an ex gratia payment to the complainant, review the evidence of illegal damming and take appropriate action, review their training, records management, complaints management and corruption prevention policies, and take appropriate action to ensure their compliance branch is appropriately resourced. The department has agreed to implement all our recommendations and we are monitoring their progress.

### Case study 60

We received a complaint about a person who held a licence over a jetty and the Crown land it was on dumping concrete blocks under the jetty. The complainant had reported the matter to the Department of Lands and provided photographic evidence. The department had written to the licence holder on a number of occasions asking for the blocks to be removed and the licence holder assured them this had been done.

However, when the department reported this to the complainant, he provided further photographic evidence that showed the blocks had not been removed. The complainant became frustrated by the department's lack of action and contacted us.

As a result of our inquiries, the department agreed to issue the licence holder with an infringement notice and — if this did not result in the removal of the blocks — to hire a contractor to remove them and charge the cost to the licence holder.

## When an agency cannot help

It is important that government agencies are clear about what they can and cannot do. Case study 62 outlines a situation in which an agency did not take appropriate steps to ensure a complainant's expectations were realistic. This led to a misunderstanding that caused distress to the complainant and an unnecessary use of the agency's resources because the complainant had to contact them numerous times.

## E-toll tags and passes

This year we received an increased number of complaints and inquiries about the Road and Traffic Authority's (RTA) E-toll tags and E-toll passes. The issues raised were mainly problems with billing and delays by the RTA in responding to complaints. We raised these issues with the RTA. They decided to establish a position for a Customer Relations Coordinator who would be responsible for all customer and stakeholder complaints associated with tolling issues. We hope this will result in more effective complaint-handling and the provision of better quality service by the RTA.

## State Debt Recovery Office — better reasons for decisions

Every year, the State Debt Recovery Office (SDRO) processes nearly three million fines issued by a large number of agencies and is contacted by thousands of people who have received these fines.

A contributing factor to many complaints about the SDRO is poor communication in response to representations from members of the public. Letters sent by the SDRO often do not address the particulars of a person's claim, give reasons for declining to waive a fine, or encourage people to write back to the SDRO or contact us. This leads to more work for the SDRO and additional stress and frustration for the person who has received the fine. People are better able to make an informed decision about whether to pay a fine or dispute the matter in court if they are given clear and accurate information.

To address this issue, the SDRO have now started a quality assurance project aimed at improving the reasons given for decisions. We have given them examples from the complaints we receive of phrases

### Case study 61

A drover complained that a number of his horses had been improperly impounded by the Department of Environment and Climate Change after they found their way into a national park sometime in 2003. According to the drover, this happened because the park's fences were in a state of disrepair.

Before being impounded, the horses remained at large — potentially causing damage to the park and presenting a safety risk to park users. Over a period of six years, the department unsuccessfully attempted to come to an arrangement with the drover about removing the horses. The drover demanded that the department retrieve and return his horses. To complicate matters, ownership of the horses had not been properly established.

We suggested the department take formal action to impound the horses in accordance with the *Impounding Act 1993*. While this meant they would have to round up and enclose the animals, the Act provides a process for establishing ownership and then returning, selling or disposing of the animals and recovering costs from any identified owners. The department agreed to establish a temporary pound in the national park to accommodate the horses, place advertisements to identify other potential owners, and notify the drover about the impounding of the horses and the process for their return under the Impounding Act.

### Case study 62

A farmer complained about the State Council of the Livestock Pest and Health Authorities — all former Rural Lands Protection Boards were renamed Livestock Pest and Health Authorities in early 2009. The farmer told us the State Council had not taken sufficient action in response to his complaint about one of their regional offices. He claimed his sheep had become infected with lice from stock on a neighbouring property and that the regional office had failed to take appropriate action to prevent the lice spreading.

We asked the State Council to provide us with information about their role and functions, as well as how they deal with complaints about regional offices. After receiving this information, we realised the farmer's concerns were likely to have arisen because the regional office had not given him clear information about their role.

We asked the State Council to explain to him what they and the regional office are legally able to do, as well as what assistance and information they could offer if he had further concerns about the spread of sheep lice.

### Case study 63

A woman complained that she had been trying unsuccessfully for six months to get a refund from the RTA for over \$700 of tolls they had debited from her E-tag account in error. Her E-tag had been removed from her car while it was being serviced by a mechanic and swapped with another tag. The woman was only alerted to the problem when she began to receive much higher bills than normal.

After numerous telephone calls to the RTA, she was told that a cheque for \$260 had been posted to her. The woman contacted the RTA on another four occasions about the balance of the refund, but was unable to resolve the matter. After contacting us, we made inquiries with the RTA and they finally refunded the outstanding amount — some nine months after the woman first complained.

and paragraphs they commonly use in letters that are not particularly informative and appear to cause confusion. We hope the project will lead to an improvement in the content of letters and a reduction in the number of complaints to the SDRO and to us.

## Housing

Last year we reported that we commenced an investigation into the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing* (JGOS), which aims to assist social

housing applicants and tenants with mental health problems to establish or maintain a tenancy. In March 2009 we provided Housing NSW (Housing) and the Department of Health (Health) with the preliminary findings and recommendations of our investigation.

### Changes to public housing in NSW

In 2007, the NSW Government launched a plan to increase the community housing sector from 13,000 to 30,000 homes over the next 10 years. This increase is happening

in two ways — by supplying new community housing and by transferring public housing properties to community housing providers.

The *Housing Amendment (Community Housing Providers) Act 2007* provides a registration system for community housing providers in NSW that is managed by the Registrar of Community Housing. The Registrar is responsible for managing complaints about community housing providers and for ensuring registered providers comply with a regulatory code set out in the Housing Regulation 2009.

Due to the vulnerability and complex needs of many tenants, we take a proactive approach to complaints about public housing. About a third of these complaints are informally resolved after our intervention. However, our jurisdiction does not cover community housing providers. This means public housing tenants who live in homes that are transferred to community housing providers will no longer be able to complain to us about matters involving their tenancy. We have advised the Department of Premier and Cabinet about this and sought legislative amendment.

## Helping people with a mental illness access and sustain social housing

Originally established in 1997 as a partnership between Housing and Health, since 2003 the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing* (JGOS) has included the NSW Aboriginal Housing Office, Aboriginal Health and Medical Research Council of NSW and the Department of Community Services as signatories. Our comprehensive investigation examined the steps taken by Housing and Health to meet the aims of the JGOS and included consultations with over 460 people with experience of working with existing or potential social housing tenants with mental health problems.

We examined issues including awareness and knowledge of the JGOS, practical implementation of the JGOS principles at a local level, governance and performance measurement. We focused particularly on the level of involvement by Aboriginal organisations and the Supported Accommodation Assistance Program (SAAP) sector.

While we found evidence of good work happening in some areas and a large number of committed individuals who are passionate about improving the social outcomes of people living with mental illness, we were unable to conclude that the overall implementation of the JGOS has been effective. We identified a number of areas that would need to be addressed should the signatories to the JGOS decide to

maintain it.

However, in light of the significant changes to the social housing landscape since the JGOS was introduced, we recommended to Housing and Health that the JGOS be rescinded and the Housing and Human Services Accord become the primary governance model by which human services agencies implement their responsibilities to plan, coordinate and deliver services to those clients who need support to access and sustain social housing.

In response, Housing told us they plan to develop a new Housing and Mental Health Agreement under the Accord framework that will be closely aligned and integrated with the directions and actions of the NSW Implementation Plan for the National Partnership on Homelessness. Our final report includes a number of recommendations aimed at ensuring the new Agreement is implemented effectively. In this regard, it will be critical that the agencies take into consideration the changes that would have been required to strengthen the JGOS had they decided to maintain it.

We have also recommended changes to ensure that a supportive tenancy management approach is embedded in the everyday practices of housing workers, including the development of a risk assessment screening tool, the adoption of an early intervention approach to sustaining tenancies, the provision of a tenancy support program, and

the collection of relevant data and performance indicators.

We have requested detailed information in response to Housing's advice that they are committed to the development of a supportive tenancy management approach.

Our investigation revealed three major systemic issues that negatively impacted on the effective implementation of the JGOS: discharge planning, training and development, and exchanging information. Unless the problems we identified in relation to these issues are addressed, the success of the Housing and Mental Health Agreement will be similarly undermined. Our final report includes recommendations aimed at avoiding this.

In particular, we have recommended changes to promote a more consistent and accountable approach to discharge planning by area health services for mental health clients who have been hospitalised. We have also recommended consideration of legislative amendment to allow for information to be exchanged by agencies without consent in a broader range of circumstances where the wellbeing, health or safety of a person are at risk.

We have asked Housing and Health to provide us with detailed advice about the development of the new Housing and Mental Health Agreement. We will be closely monitoring this and the implementation of our recommendations.

The following case studies are examples of some of the practical outcomes we have been able to secure for individuals who have complained to us. We will closely monitor the implementation of this new complaints and registration system for community housing providers in the coming year to ensure that the Registrar has in place an effective system for handling complaints from community housing tenants.

It will also be important for us to monitor whether the Registrar has an adequate process for ensuring compliance by individual community housing providers with principles underpinning policies such as the JGOS.

## Customer service

### Mystery shopper audit

Since 1998 we have conducted a number of 'mystery shopper' audits of public sector agencies, including the Department of Ageing, Disability and Home Care, and 30 local councils. The main aim of our audits is to assist agencies to develop and maintain a high quality of customer service by alerting them to any problems we identify. Agencies generally regard the feedback we provide as valuable.

We decided to apply the customer service audit methodology to a watchdog body this year, so we conducted a mystery shopper audit of the Health Care Complaints Commission (HCCC). The audit involved 10 telephone calls, 10 letters and 10 emails. The scenarios used were based on the experiences of our staff in relation to the provision of health services as well as the type of issues generally received by the HCCC as outlined in their annual report.

Overall, the HCCC's standard of customer service was very good and all inquiries were answered extremely promptly. In particular, telephone inquiries were professionally handled by staff who demonstrated sensitivity and sympathy. Responses to letters were also consistently professional in their presentation. Some were of a very high standard, providing detailed and relevant information in relation to the specific area of inquiry.

Our audit identified some areas where minor improvement could be made. The HCCC welcomed the findings of our audit and indicated they would take action to make the improvements we suggested.

Unfortunately, due to resource constraints we will not be conducting any more mystery shopper audits.

### Case study 64

A legal centre complained that Housing NSW was demanding tenants in rental arrears repay three weeks rent every fortnight, and refusing to negotiate a different arrangement when they were unable to do so. The legal centre was concerned that some tenants were being forced into arrangements they could not afford and risked being evicted as a result.

We met with one of the department's area directors and arrived at some practical solutions to ensure tenants know they can negotiate alternative repayment arrangements when necessary and that negotiations are meaningful and fair. The department is currently reviewing how arrears are collected and tenancies terminated and we have asked them to keep us informed about this project.

We hope it will result in housing staff having appropriate tools and support to negotiate fair arrears repayment arrangements with tenants.

### Case study 65

We received a complaint from the Legal Aid Commission on behalf of a former Housing NSW tenant raising concerns about the department's management of his tenancy. The man had a documented history of mental illness. After the man had been housed by the department for a year, his mental health deteriorated and this coincided with nuisance complaints from neighbours, which ultimately led to his eviction. Legal Aid complained to us that the department had failed to prevent the man's eviction by not linking him with appropriate supports at an early stage.

After making inquiries with the department and examining the tenant's case file, we arranged to meet with staff from the local housing office to try to resolve the man's housing situation. It became evident that more efforts had been made by the department to support the man before the eviction than were reflected in the records accessed by Legal Aid. As a result of the meeting, the local office agreed to improve their processes for communicating with tenant advocates to help resolve tenancy issues promptly.

To facilitate this, the area director agreed to develop a protocol between his office and local legal and tenancy advocates. The department also agreed to assist the man to secure stable housing through the Private Rental Brokerage Scheme.

### Case study 66

A public housing tenant complained that her house was infested with rats and that the department had not organised a pest controller to treat the premises. She had contacted the maintenance line and local housing office without success. As a result of our inquiries, a pest controller was organised and the property treated.

### Case study 67

An elderly public housing tenant complained that he had been without hot water for two weeks and that appointments had been made for the repairs on a number of occasions — but these were not kept.

As a result of our inquiries, a plumber immediately assessed the hot water system and ordered a replacement. Temporary repairs were done until a new system could be installed.

### Case study 68

A correctional centre inmate who was also a public housing tenant complained that the department had charged him for damage to his property that occurred while he was incarcerated. As a result of our inquiries, Housing NSW reviewed the matter and waived the damage charge.



# Local government



Many of the everyday services we all rely on are provided by local councils. We have been responsible for overseeing complaints about councils for over 30 years, and in that time we have developed a good understanding of the unique issues and challenges of local government.

Our work goes beyond handling complaints. We regularly provide training and assistance to councils to help them improve the service they offer to the community. For example, this year we contributed to the Department of Local Government's (DLG) draft complaint-handling guidelines for local councils and provided information to the DLG to assist them with their 'Promoting Better Practice' review of councils.

## Highlights

- › Achieved positive outcomes in 89% of our investigations, ranging from apologies and compensation for complainants to changes to decisions, procedures and policies. [SEE PAGE 92](#)
- › Investigated a complaint into the illegal backdating of developer contributions, and obtained refunds for those overcharged totalling approximately \$1.9 million, and improvements to council meeting processes. [SEE CASE STUDY 69](#)
- › Negotiated with the Department of Local Government to provide information to councils about the lawful recovery of outstanding water charges rather than installing water restrictors or cutting off water supplies to tenants. [SEE CASE STUDY 72](#)
- › Helped councils to improve their policies and procedures and avoid a range of unlawful and unfair practices. [SEE PAGE 92](#)
- › Worked with Brewarrina Shire Council about access difficulties for residents with mobility issues; council installed ramps in the town centre and are highlighting access needs with local business owners. [SEE CASE STUDY 78](#)

## Complaint trends and outcomes

We received fewer overall complaints this year (see figure 46). Formal complaints about corporate and customer service issues reduced by 10.5%, complaints about enforcement issues reduced by 21% and development complaints reduced by 36%. However, corporate and customer service issues in councils

are still the areas of most concern to the community. This year there were significant increases in formal complaints about community services provided by councils, nearly triple the number last year. Complaints about environmental services were up by 28%, engineering services up by 38% and misconduct up by 16%. See figure 45 for the issues people complained about.

### Figure 45 — What people complained about

This figure shows the complaints we received in 2008–2009 about local government, broken down by the primary issue in each complaint.

Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Contractual issues	0	1	1
Strategic planning	10	36	46
Corporate/customer service	279	348	627
Misconduct	44	99	143
Management	2	5	7
Rates charges and fees	51	179	230
Uncategorised	1	68	69
Enforcement	93	217	310
Object to decision	19	100	119
Development	65	318	383
Community services	23	19	42
Issue outside our jurisdiction	12	49	61
Environmental services	41	187	228
Engineering services	62	169	231
<b>Total</b>	<b>702</b>	<b>1,795</b>	<b>2,497</b>

### Figure 46 — Five year comparison of matters received and finalised

Matters	04/05	05/06	06/07	07/08	08/09
Formal received	814	744	841	768	702
Formal finalised	833	720	837	788	672
Informal dealt with	2,138	1,891	1,992	1,965	1,795

We conducted 340 preliminary investigations and one formal investigation (see figure 47). Of these, we achieved positive outcomes in 89%, including apologies, compensation, admission and correction of errors, case reviews leading to changed decisions, changes to procedures and implementation of policies, staff training, and providing reasons and further information to complainants. In addition, we have six formal investigations underway. Some of these investigations involve wide-ranging and complex issues and require the dedication of significant resources.

### Rates, fees and charges

Councils have a right, and often an obligation, to charge annual rates and fees for the services they provide. It is not our role to intervene when a council lawfully charges fees and services. However, we do take action when we receive complaints about councils charging for services where they have no authority to do so or delays in reimbursing residents when rates are overpaid or a development bond has been satisfied. Our intervention in these cases has resulted in councils changing their practices and, in most cases, apologising to complainants.

### Managing complaints

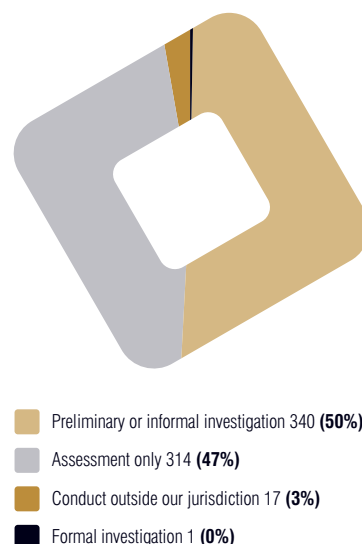
Many of the complaints we receive about councils stem from a perceived failure to take action, such as a failure to investigate, take enforcement action or monitor compliance. We expect councils to investigate these complaints in a timely manner and to clearly outline their reasons for decisions. We encourage them to develop and implement policies and procedures to ensure their staff understand how to apply their discretion and the community knows what they can reasonably expect.

### Cutting corners in tight financial times

Councils are regularly challenged by the need to balance the use of their resources against their statutory obligations and responsibility, as well as the expectations of their residents, to provide a number of different community services and facilities. In recent times, many councils have felt the effects of the global financial crisis and a range of government policy decisions.

Some councils have seen their investment reserves vanish or significantly reduce at a time when there are increasing expectations on local government to provide infrastructure and services. The NSW Government continues to maintain a tight control over rate increases through rate capping and the mini budget in November 2008 limited developer contributions to reduce the costs for homeowners. The squeeze on budgets has affected the way several councils have managed matters. One council attempted to improperly backdate fees (see case study 69) and others hung on to money that should have been refunded promptly (see case studies 70 and 71).

**Figure 47 — Formal complaints finalised**



Current investigations (at 30 June)	No.
Under preliminary or informal investigation	63
Under formal investigation	6
<b>Total</b>	<b>69</b>

### Case study 69

When a developer applied to Wingecarribee Council to pay outstanding developer contributions for his subdivision project, as required under his 2004 development consent, council decided to calculate the amount based on the Development Servicing Plan (DSP) that came into operation on 1 January 2007. This increased the cost by more than \$33,000. The developer wrote to council about this cost and the fact that the condition of consent did not authorise council to increase the charge or warn developers that charges could increase as a result of a new DSP. While the council acted quickly to review the standard wording for their development consents to allow for the increase, they did not change their decision to charge the increased amount. After the developer complained to us that council could not apply these developer contributions retrospectively, we found that council had already obtained legal advice that they could not apply the 2007 DSP charges to consents given before 1 January 2007. A comprehensive staff report had recommended that council accept this legal advice and only apply the increased charges to consents granted after 1 January 2007. Despite this advice, council decided to apply the 2007 DSP rate of contributions to all consents pre and post 1 January 2007.

Our investigation also revealed that council had been made aware that the additional revenue from applying the increased charges would be \$1.9 million. We also discovered that decisions about the DSP charges — and many other matters that should have been decided in open sessions of council — were being made by council's legal committee in closed meetings and that this approach to decision-making was not in accordance with the *Local Government Act 1993*.

We recommended that council refund to the complainant, and others with pre 2007 consents who had been required to pay increased charges, the amounts over and above what was required by their consents. We also recommended that they comply with the requirement of the Local Government Act and the Code of Meeting Practice that specifies the proper process for dealing with matters in closed meetings. Council accepted our recommendations and advised they would take corrective action as a matter of priority. They agreed to contact developers whose projects were approved before the 2007 plan came into effect but who paid contributions based on the 2007 plan and, where necessary, adjust contributions calculated improperly. Council also decided to disband the legal committee and follow the Code of Meeting Practice.

### Case study 70

An owner of a block of units complained to us that council had imposed additional waste charges without providing the appropriate bins associated with the service. This went unnoticed for over six years until the owner actually requested an additional service.

The owner then sought to recover the overpayment from council but was refused, and a request for council to review their decision went unanswered. After our intervention council apologised to the owner, issued a substantial refund and adjusted their records.

### Case study 71

A woman contacted us after Strathfield Municipal Council failed to respond to her letters and phone calls about the refund of a development application bond. When we made inquiries with council, immediate arrangements were made for the refund to the complainant. Council also apologised for the delay.

Some councils have attempted to improperly recover outstanding charges (see case study 72) and others imposed fees for which there was no authority (see case study 74). Yet another improperly required applicants to use a particular assessment process that earned more funds for the council (see case study 73).

### Case study 72

We received complaints which revealed that several councils (Goldenfields County Council, Coffs Harbour City Council and Wellington Shire Council) had threatened to cut off the water supply or install a water restrictor on properties rented by low-income tenants with young children because the owners had been unable to meet their payment plans for outstanding water charges. When we became involved, Wellington Council were intending to install a water restrictor on a property rented by a woman with a six month and a two year old child in the week before Christmas.

In each case, the council regarded it as quicker and more cost effective to collect outstanding water charges from the tenant rather than the landowner. However, the Local Government Act only allows councils to recover outstanding charges from occupiers of land in limited circumstances. None of these circumstances applied to these cases and the councils should have been dealing with the landowners for the outstanding debts.

We successfully intervened to ensure the councils dealt with the landowners directly and that water restrictors were not used when significant hardship would result for the tenants who were not legally liable for the debt. In the course of our inquiries, we discovered confusion and inconsistency in the approaches of councils to recovering outstanding water charges and using water restrictors to recover debts. We negotiated with the Department of Local Government about issuing a circular confirming the requirements for lawful recovery of outstanding water charges from residential tenants and the use of water restrictors.

### Case study 73

After receiving a complaint that Lismore City Council had failed to act on unauthorised development, we discovered the council was unlawfully assessing development applications and issuing development consents for 'as built' development. Under the *Environmental Planning and Assessment Act 1979*, development consent cannot be issued retrospectively to development that is carried out without consent.

Unauthorised development may instead be regularised through an application for a building certificate. Our inquiries revealed that because councils charge more for a development application than a building certificate application, there was a financial incentive for them to require development applications. After our intervention, council agreed to stop this unlawful practice and implemented procedures to ensure the building certificate application process was used when development had already taken place.

### Case study 74

In 2005–2006 we reported on our investigation into the fees charged by councils for access to documents. We found that many councils were illegally charging fees for providing information to the public that the Local Government Act states should be provided for free. At the end of that investigation we advised all councils of our findings and reminded them of their obligation.

This year, we contacted Hurstville City Council about their practice of improperly charging an archive retrieval fee for access to development applications and consents that were required to be provided free of charge. When we first raised the matter with council, they obtained external legal advice — but eventually conceded that these documents had to be available free of charge whether council decided to archive them or keep them on hand.

Similarly, a solicitor complained that Newcastle City Council was providing confusing information to the public about access to copies of available plans that formed part of development applications. His complaint revealed the wording on the application form could lead people to believe they had to pay for access to the plans, when in fact they only had to pay for photocopies of the plans.

We also discovered council was charging a minimum photocopying fee that was not allowed under the Local Government Act. Council agreed to amend their application form and to change their policy of setting a minimum photocopying fee.

For some councils, the current financial situation has impacted on the management of their resources. One council (see case study 75) refused to put in the resources required to properly investigate complaints about breaches of consent and unauthorised activity. Another council avoided being involved in issues raised about illegal development by incorrectly claiming they could not help (see case study 77). A country council hoped that by ignoring the communications from an applicant for a development application their already stretched planning staff might be able to cope (see case study 76). However, even in tight financial times councils need to be able to allocate sufficient resources to meet the basic needs of residents (see case study 78).

We regularly advise councils about the importance of good conduct and managing their resources to ensure they are able to meet their statutory obligations. Our *Good Conduct and Administrative Practice Guidelines* and *Enforcement Guidelines for Councils* reinforce this.

Good resource management is an important risk management tool. Where councils are able to maximise their credibility, accountability and transparency, they also minimise the risk of fraud, mismanagement and waste as well as breaches of legal or contractual obligations.

#### Case study 77

A family complained to Rockdale City Council about a chicken pen that had been built on their boundary by their neighbour. They told us they were 'brushed off' by council staff who claimed the structure was an aviary and therefore an 'exempt development' and there was nothing council could do to help. Our investigation found that council were incorrectly applying the State Environmental Planning Policy for exempt and complying development and they were required by Rockdale City Council to take some action. Acknowledging that they had provided incorrect advice, council apologised to the family and the owner of the chicken pen for the misunderstanding and confusion council had caused. The chicken pen was relocated to comply with council's development control plan.

#### Case study 75

A pensioner renting a house next to a block of land used to store shipping containers complained that Greater Taree City Council did not notify residents of a development proposal relating to an industrial development next to their properties. Council later failed to act on complaints about excessive noise and movement of containers early in the morning and late at night which were breaches of consent conditions for development and use of the land. Residents also complained that the operator of the storage yard was storing more containers than approved and was directing water runoff from the yard into the nearby creek.

When we first started inquiries, council claimed they had insufficient resources to monitor compliance.

However, we found that council did not properly investigate the complaints and failed to identify obvious activity which required council approval. In addition, they kept inadequate records of their actions and communications with the complainants and did not explain their decisions. Council's policy that guided notification to neighbours of development applications did not properly include tenants or occupiers of land, so we recommended that council amend this policy.

We also recommended that they review, amend or develop other policies for complaint-handling, record-keeping and for taking enforcement action to ensure developments and uses of land complied with the law. Council agreed with our recommendations, required the operator of the storage yard to lodge a section 96 application to modify the development consent, and issued a notice to the operator of their intention to issue an order to cease activity that was not approved.

#### Case study 76

An architect complained that Palerang Council had taken too long to deal with his clients' development application, was refusing to answer phone calls or letters, and would not meet with them to resolve issues of disagreement about the application. In response to our inquiries, council acknowledged delays in processing development applications and problems associated with inadequate resourcing. These situations often lead to frustration for applicants and further increase the workload for staff dealing with the additional communications.

We suggested that council apologise for the delay in dealing with the development application, and improve their written information to the community about the development application and approval process on their website to save staff having to handle these types of inquiries. We also suggested that council develop and adopt a policy and procedure to guide staff when processing development applications — including timeframes, considering submissions and meeting with applicants — and adopt a complaint-handling policy. Council agreed to implement all of our recommendations.

#### Case study 78

During a visit to Brewarrina, we met a woman who lives in the area and uses a wheelchair. She told us about the difficulties that she and other residents who are frail or have a disability experience getting around the town centre. This was due to a lack of accessible public toilets, no wheelchair access ramps into local shops and businesses, and the general disrepair of footpaths.

We contacted Brewarrina Shire Council to find out whether they planned to improve access and mobility for all ratepayers. The general manager agreed to consider this in the council's forthcoming budget preparation. The council is now undertaking a community strategic planning process that includes examining access issues, and have agreed to highlight access needs to private business owners in the town.

We were recently informed by members of the local community that council has installed a large number of ramps throughout the town centre. This has improved access to the town for residents who use wheelchairs or have other mobility difficulties.



# Freedom of information



The *Freedom of Information Act 1989* (the FOI Act) is the central way in which members of the public can access information held by government agencies. If someone is unhappy with the decision an agency makes in response to an FOI application, or they feel their application has not been dealt with correctly, they can either complain to our office or go to the Administrative Decisions Tribunal (ADT).

We can review the merits of the decision as well as the way in which it was handled by the agency. If they come to us, we ask the agency to provide us with all of the relevant documents. This allows us to understand the reasons for the decision, and decide if it was reasonable.

## Highlights

- › Tabled the report on our review of the FOI Act in Parliament, and had nearly all of our 88 recommendations accepted by the NSW Government. [SEE PAGE 96](#)
- › Investigated the RTA's practice of involving ministerial staff in the determination of FOI applications, and recommended changes to this practice as well as their use of external consultants and law firms. [SEE PAGE 97](#)
- › Recommended a review of NSW Health's open disclosure policy and guidelines in response to complaints about two area health services. [SEE CASE STUDY 80](#)
- › Requested the Department of Premier and Cabinet consider amending the annual reporting regulations to require the disclosure of pay and performance information for senior university executives. [SEE PAGE 98](#)
- › Found that the Office of the Board of Studies went to considerable lengths to prevent students accessing information about their HSC marks, and displayed a poor understanding of the FOI system. [SEE PAGE 99](#)
- › Finalised 224 FOI complaints and achieved 115 positive outcomes, including fees refunded and additional documents being found or released. [SEE PAGE 100](#)

## Proactive release of information by government agencies

In October 2008 the Premier released a memorandum asking agencies to identify and release, as soon as practicable, any information that can be made available to the public at minimal cost and without compromising the public interest. In particular, agencies were encouraged to routinely release information regularly sought under the FOI Act.

A number of agencies are now taking a much more proactive approach to releasing information since the memorandum was issued.

For example, the Department of Education and Training now has a policy of publishing information on their website after it has been released under FOI — if the information is considered to be of broad public interest.

For a number of years now we have reported on significant delays by the NSW Police Force in determining FOI applications. Although the following case study details two requests for information made in October 2007, which were not determined until October and November 2008, we are pleased to report that the police have substantially reduced their FOI backlog in the last twelve months and become much more efficient in dealing with FOI applications.

### Case study 79

We received two complaints from a newspaper journalist who made two applications to the NSW Police Force (NSWPF) in October 2007 for a variety of documents about the APEC summit held in Sydney the previous month. The applications were only determined at the internal review stage a year later.

One of the applications was for access to information about the use, cost and storage of fencing during APEC. Although the journalist was given some documents, access to many others was refused under the FOI business exemption clause. The journalist later reduced the scope of his application to information about the terms of the payment plan and the final amount paid for the fencing by the NSWPF. After we became involved, they released the information.

The other application was for the names of companies that received payments for work completed and services rendered during APEC. Our view was that information about the expenditure of public funds was in the public interest and should therefore be released to the applicant. The NSWPF agreed.

We also discovered that the contract amount for the APEC fencing was not disclosed on the NSW e-Tendering website as required by section 15A of the FOI Act. At our suggestion, the NSWPF checked and updated this and all their other contract notices on the website.

## Our review of the Freedom of Information Act

Last year we reported that we had started a review of the *Freedom of Information Act 1989* (FOI Act) after calls by us for a government review went unanswered for 10 years. In February 2009 we tabled a report in Parliament containing 88 recommendations, nearly all of which the NSW Government accepted and has taken action to implement. The passage of the new *Government Information (Public Access) Act 2009* and *Government Information (Information Commissioner) Act 2009* four months after our report was tabled will significantly change the way government information is accessed in NSW.

Our recommendations were informed by our extensive experience in dealing with FOI matters over almost 20 years, a number of formal investigations, and consultations with a range of practitioners in the field. To ensure we developed as complete a picture as possible, we used a variety of different methods to collect information. We selected 18 agencies to investigate and asked them to provide answers to detailed questions.

We also contacted all local councils and the Administrative Decisions Tribunal for information. We met with each of the agencies being investigated and audited a random selection of their FOI files. We also interviewed 70 agency staff involved in FOI and issued a public discussion paper — receiving 72 submissions from individuals, agencies and organisations.

Our review concluded that a truly effective system for accessing government information must have three different but complementary elements. These are:

- › a greater level of proactive disclosure of government information
- › new legislation containing strong protections for FOI officers
- › robust, independent and effective oversight by an independent information commissioner.

We clearly identified the need for a significant cultural shift across NSW government agencies to give practical meaning to the objects and intentions of the new legislation we recommended.

This will be an immense challenge and meeting it will require ongoing support and commitment from the Premier, all Ministers, the Department of Premier and Cabinet and chief executive officers. Change will not occur overnight — shifting entrenched attitudes will take time and involve sustained effort.

Public sector staff are sometimes criticised for not releasing information. Although some of this criticism is warranted, the government as a whole — as well as individual ministers and heads of agencies — are responsible for setting out clear expectations about the release of information. Support from the top and an independent Information Commissioner will be essential elements for realising the full potential of the new legislation. It is unfortunate the government did not agree with our recommendation the Information Commissioner be placed in the Ombudsman's office.

After 20 years, our involvement in FOI type matters will cease in early 2010.

## Opening up government

Review of the *Freedom of Information Act 1989*



## Involvement of ministerial offices in the determination of FOI applications

In February 2009, we finalised an investigation into the way the Roads and Traffic Authority (RTA) handled two FOI applications from a newspaper journalist. The investigation included interviews held using our Royal Commission powers under section 19 of the Ombudsman Act.

Our investigation revealed that the RTA had a longstanding practice of sending draft FOI determinations to the Minister's office and then waiting for their endorsement. RTA staff felt unable to finalise applications without this endorsement. They were also not inclined to make determinations that might be contrary to the views they understood the Minister's office to hold, whether or not those views were directly communicated by the Minister's staff or indirectly intimidated.

We could see no proper justification for the practice of sending draft FOI determinations to the Minister's office. It opens up the determination process to an unacceptable risk of political interference and has the potential to compromise the independence of the decisions made. It also regularly led to unjustifiable delays in processing FOI applications

as matters were stalled while a response from the Minister's office was pending. In the case of the journalist's applications, it affected the way the determinations were made.

As a result of our investigation, the RTA stopped involving the Minister's office in the determination process. The information requested by the journalist was provided and an apology given.

The appropriateness of involving the Minister's office in agency FOI applications is of relevance to the entire public sector. For this reason, we recommended that the Department of Premier and Cabinet develop a Code of Conduct to clarify the role and relationship of a Minister's staff with agency staff. A draft Code of Conduct has been prepared, but not yet finalised. We also recommended that the Premier issue a memorandum to all agencies making clear that ministerial offices are not to be involved in the FOI determination process when it relates to applications for agency documents. The Premier issued the memorandum in August 2009.

Our investigation revealed a number of additional issues of concern. These included deficiencies in the RTA's record-keeping and disclosure of information under section 15A of the FOI Act, an inappropriate use of legal professional privilege, and concerns about their use of external consultants. We asked the RTA to seek the advice of the Independent Commission Against Corruption (ICAC) and the Auditor-General about their arrangements for engaging external consultants to ensure they are appropriately accountable and manage the risk of corrupt conduct — or the perception of such conduct. We also asked the RTA to consult the Auditor-General about the appropriateness of the way they went about engaging external law firms and the expenditure associated with this. We understand that the Auditor-General plans to review the RTA's procedure for hiring consultants and evaluate whether the RTA's expenditure on external consultants is reasonable. The ICAC has issued recommendations to the RTA to assist it manage the risk of corruption in engaging external consultants.

### FOI investigations

This year we conducted a number of formal major investigations into complaints received about FOI determinations. We examined not only the determinations made, but also the conduct of the relevant agencies — the Roads and Traffic Authority, the Office of the Board of Studies, NSW Health, two area health services and the University of Newcastle — in handling the FOI applications.

Our investigation reports made broad-ranging recommendations that went well beyond whether documents the subject of the FOI applications should be released. These recommendations included developing a ministerial Code of Conduct, reviewing open disclosure policies and guidelines for

NSW Health, increasing transparency about the remuneration of senior university executives, and increasing the transparency and accountability of how Higher School Certificate (HSC) marks are calculated.

### Open disclosure in the healthcare system

The principle of 'open disclosure' has been adopted in the healthcare system in NSW, around Australia and internationally. It ensures that patients and their support people are properly informed when things have gone wrong in the provision of health care and, where appropriate, receive an apology. NSW Health has a mandatory open disclosure policy and guidelines (see case studies 80 and 81).

### University executives' pay and performance

In August 2007, a journalist asked us to review an FOI determination by the University of Newcastle to withhold documents about the performance bonus amounts paid to senior university executives, as well as aspects of their performance for which the bonuses were paid.

The university initially determined to fully withhold the documents. After an internal review, they decided to partially release the documents. However, the journalist was given blank pieces of paper containing only a few words.

### Case study 80

In 2008, we investigated two separate complaints about two area health services where the principle of open disclosure had not been properly applied. In both cases, the families of patients sought information about how their complaints about health services had been investigated. After their requests to obtain the information failed, the families attempted to access it through FOI.

We found that the area health services had not provided appropriate information to the patients' families, and failed to follow the open disclosure policy and guidelines. The lack of disclosure appeared to be mainly motivated by a desire to protect the reputation of staff involved in the incidents. We also found that the open disclosure policy did not adequately take into account the protections for apologies afforded by sections 68 and 69 of the *Civil Liability Act 2002*, and did not provide sufficient guidance to area health services about how to balance concerns for staff privacy with the appropriate disclosure of information. In addition, we found that NSW Health did not adequately monitor and ensure compliance with their open disclosure policy.

At our recommendation, NSW Health has now started a review of their open disclosure policy and guidelines. They are also examining how they can better audit the implementation of open disclosure.

As a result of our involvement, both area health services reviewed their FOI practices. We were pleased that one of the services resolved the complaint by providing the complainant with the information that was sought and an apology for the way their complaint was handled. We will continue to monitor the outcomes of NSW Health's open disclosure policy review.

### Case study 81

A journalist requested access to the final root cause analysis report on the hospital treatment of a child who subsequently died. The circumstances surrounding the child's death and the state of the public hospital system had received a considerable amount of media attention. The journalist obtained written consent from the child's family to access the report and gave this to the hospital. The hospital refused access based on the exemptions in Schedule 1 of the FOI Act relating to confidential information, internal working documents and documents concerning the operations of agencies.

We found that NSW Health's incident management policy made it clear that no particular individual could be identified from the final report therefore the report could be released to a third party under FOI. The staff involved in the incident should have been aware of this. In our view, these factors called into question the validity of the hospital's application of the FOI exemption clauses.

In addition, we found that disclosure of the report — which outlined the hospital's investigation into the incident but did not identify any root causes contributing to the child's death — would be in the public interest. After we intervened, the hospital agreed to release the report to the journalist.

Our investigation found that, as part of their internal review, the university had obtained legal advice that most of the FOI exemptions they relied on would be likely to be overturned by the Administrative Decisions Tribunal (ADT) or questioned by us if reviewed. Despite this, they continued to maintain that the documents were exempt.

We recommended that the university release the documents to the journalist and develop an FOI policy and procedure manual to guide university staff in processing FOI applications. The university refused to accept our recommendation that the documents be released. They told us that instead they would release a document setting out salary bands and performance payment percentages, but not the details of individual staff members. They indicated they would develop an FOI policy and procedure manual, taking our recommendations into consideration.

Senior university executives earn more than the Premier and the Prime Minister and this pay is largely funded from taxpayers' money. However, they are the only group of public sector staff in NSW for whom there is no legislative requirement to publicly report on bonuses received or particulars of performance assessments for which bonuses are paid. All other public sector agencies are required to publish these details in their annual reports. Publicly listed private companies are similarly obliged to report the performance bonus amounts of their executives in their annual reports.

The annual reporting requirements relating to the disclosure of performance pay and performance assessments of senior staff in the public sector were introduced to ensure there is accountability and transparency in the use of public funds. Our investigation report argued that the performance and pay of senior university executives should be similarly open to public scrutiny. We wrote to the Department of Premier and Cabinet and requested

that they consider amending the annual reporting regulations to require the disclosure of this pay and performance information for senior university executives.

While we have not yet received a response from the DPC we note that the NSW Legislative Council General Purpose Standing Committee No. 2. recently reported on their inquiry into the governance of NSW Universities and stated that:

*While offering significant salaries and generous performance bonuses to senior executive staff may provide an important competitive edge for some universities, given that approximately half of total university funding is provided by the Commonwealth Government, the disclosure of this information is a matter of public interest.*

The Committee recommended that, unless there were exceptional circumstances, the terms and conditions of employment contracts of university staff should be open to public scrutiny.



## The HSC scoring system

The Higher School Certificate (HSC) is the highest qualification for students leaving secondary school in NSW. Each year over 67,000 students sit for the HSC exams.

The Office of the Board of Studies (OBOS) NSW is responsible for conducting HSC exams and assessments and processing the calculation and awarding of marks.

A 'standards-setting' system is used to determine the achievement of HSC students. There are six performance bands. Each performance band for a course includes a description of the knowledge, skills and understanding typically demonstrated by students whose achievement falls within that band. The 'raw marks' of students are changed into final marks through a process of alignment to the performance scale ranging from 1 to 100. A rigorous system is in place to decide which raw marks equate with the cut-off points between performance bands. The so-called 'cut-off marks' change each year to take into account the difficulty of exam papers and other factors that may vary from year-to-year.

To understand how the answers they gave in an exam paper (or their performance of an assessment task) are translated into the final mark they received for a particular subject, a HSC student would need to know their raw marks — that is, the marks allocated for each of their answers — and the cut-off marks that were used to align raw marks to the HSC performance scale.

After the 2004 HSC, a group of students tried unsuccessfully to access their cut-off and raw marks from the OBOS. The next year, 49 students who sat the 2005 HSC lodged a 'class action' FOI application with the OBOS for access to all the information needed to understand how their final mark was derived. The OBOS did not release any of the information requested. After another failed attempt in 2007 to obtain the same information, a student complained to our office and we decided to investigate the matter.

The system for determining the achievement of HSC students is, from a public perspective, a mysterious 'black box' that is inaccessible to students, their families, teachers, tertiary institutions and prospective employers. The public just have to trust the OBOS to process approximately 40 million individual marks awarded to students without error. No information is provided to adequately explain how a particular student's results were arrived at or to guide students who may wish to test, scrutinise or challenge how their results were determined.

We found that the OBOS went to considerable lengths to prevent applicants from accessing the information sought after the 2004 and 2005 HSC. Some of the means adopted were contrary to principles of good administrative practice, while others ignored basic principles of good complaint-handling.

We also found that the OBOS displayed a poor understanding of certain aspects of the FOI system and did not act consistently with the objects of the FOI Act. In particular, they:

- ▶ incorrectly advised the complainant that the three sets of documents he requested either did not exist or could not be produced
- ▶ repeatedly failed to address the complainant's reasonable concerns or respond to his logical arguments about why the documents must exist or be able to be created
- ▶ incorrectly decided to treat the complainant's FOI application as 50 separate applications and failed to attempt to resolve the situation when the complainant disagreed with this decision, forcing him to escalate the matter to the ADT
- ▶ spent \$15,000 in legal fees, making no attempt during the 10 months in which the ADT proceedings were taking place to attempt to resolve what was, in our view, essentially a communication problem

- ▶ made the complainant submit a fresh FOI application when the issue should have been handled as part of an internal review
- ▶ misled the complainant into thinking that a decision had been reviewed by two different officers when in fact the same person who made the original decision subsequently reviewed that decision twice — but had the outcome of the review communicated to the applicant by other people.

We were also concerned about the way the OBOS responded to our involvement — at one stage this included misleading both us and the complainant. Without any apparent consideration for the detriment to 'public interest', the OBOS also claimed legal professional privilege over approximately 60 documents that were highly relevant to our inquiries. This substantially limited the evidence we could examine to determine why certain conduct had taken place.

We recommended that the OBOS consider introducing a more transparent system that allows students to see how their raw marks are transformed into final results. This would allow students who identify a possible error to have this investigated and, if necessary, corrected. We also recommended that future requests for raw marks and cut-off marks should be granted.

Although the OBOS initially rejected most of our major findings and recommendations, the Minister for Education and Training, and the newly appointed President of the Board of Studies accepted them. The Minister expressed her strong view that public sector agencies should cooperate with our office in our investigations and made it clear to the President that she expected that any future dealings with our office should be on this basis. Significantly, the President agreed to propose to the Board that they reconsider their current position not to release cut-off marks. He also directed the OBOS to release to the applicant his raw marks and the cut-off marks and marking guidelines for his subjects.

## Complaint trends and outcomes

This year there was an overall decrease in FOI complaints of almost 10 percent. In 2007–2008 we received 203 complaints and made ‘own motion’ inquiries in relation to 22 matters, including 18 formal investigations as part of our FOI review. This year we received 184 formal complaints about FOI applications and conducted ‘own motion’ inquiries into two FOI matters (see figure 48). We finalised 224 FOI complaints and achieved 115 positive outcomes — including the release of further documents in 37 cases, refunds of fees, additional documents found, procedural changes and apologies to complainants (see figure 49). As discussed above in ‘FOI investigations’, we also made a range of formal recommendations for the improvement of administrative systems in areas other than FOI.

We finalised 17 out of 18 own motion formal investigations which we conducted as part of our review of the FOI Act, and three further formal investigations into FOI complaints.

The trend in declining numbers of FOI complaints has continued up to the time of reporting, with the greatest decrease of 50% being recorded in July 2009. In our view, this trend may be attributable to greater openness by agencies following the Premier’s statements of support for a review of the FOI Act and issuing of a memorandum in October 2008 encouraging proactive release of information by government agencies. Another likely reason for the decrease is that the NSW Police Force has substantially reduced their backlog of FOI applications, which has in turn reduced the number of complaints we received about delays in determining FOI applications.

There has been an increase in third party objections to agencies releasing documents to applicants, with 11 this year compared to seven in 2007–2008.

This increase may also be attributable to greater willingness by agencies to release information (see figure 50).

The cultural change following the issuing of the Premier’s memorandum underscores the importance of leadership from the top, which we emphasised in *Opening up government*, our special report to Parliament.

**Figure 48 — Five year comparison of matters received and finalised**

Matters	04/05	05/06	06/07	07/08	08/09
Formal received	189	188	208	225	186
Formal finalised	182	198	205	197	224
Informal dealt with	345	294	316	422	407

**Figure 49 — Significant outcomes achieved in relation to complaints about freedom of information finalised in 2008–2009**

Outcome	No.
Legislative change	1
Policy/procedure change	8
Training implemented	5
Authority makes apology	7
Other remedy	7
Authority reviews case	4
No significant outcome	55
Further information provided	18
Authority admitted and corrected errors	7
Authority reviewed and changed decision	9
Authority provides reasons	3
Agreement reached through informal means	1
FOI documents released	37
FOI refund/remission of fees	2
FOI search made and documents made	6
<b>Total</b>	<b>170</b>

**Figure 50 — What people complained about**

This figure shows the complaints we received in 2008–2009 about freedom of information, broken down by the primary issue that each complainant complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Access refused	89	62	151
Agency inquiry	0	63	63
Amendments	5	2	7
Charges	6	10	16
Child abuse-related	0	1	1
Documents not held	8	9	17
Documents concealed	0	11	11
Documents lost	1	3	4
General FOI inquiry	0	71	71
Issue outside our jurisdiction	7	3	10
Pre-application inquiry	1	73	74
Pre-internal review inquiry	0	58	58
Third party objection	11	19	30
Wrong procedure	58	22	80
<b>Total</b>	<b>186</b>	<b>407</b>	<b>593</b>

To bring about a genuine and long lasting shift to a more open and accountable government, clear and regular statements of support for the objects and intentions of the FOI Act, and in future, the Government Information (Public Access) Act, must be made by the Premier and be backed up by all Ministers and CEOs. However, the cultural change appears to have had a significant impact primarily on those FOI matters that are more straightforward. The largest drop in complaints has been mainly those about delays and less contentious or clear cut merit decisions. We are still finding that agencies are reluctant to release documents which may be embarrassing or reveal matters of maladministration or failure to take appropriate action.

Consequently, complaints which disclose broader issues of maladministration have increased in both number and complexity and have taken up considerable resources. Some of these cases, such as the investigations into the RTA, open disclosure in the healthcare system, performance bonuses of university executives and the HSC system, are discussed in detail in the investigations section above.

Given that FOI complaints often draw attention to broader issues of maladministration, we will be seeking to put in place effective procedures and practices for the exchange of information with the new Information Commissioner, with the aim of ensuring the appropriate referral to this office of important matters of maladministration that arise out of complaints under the Government Information (Public Access) Act.

At this stage, the Government Information (Information Commissioner) Act would appear to make adequate provisions to facilitate the exchange of information between the Information Commissioner and the Ombudsman for this purpose.

As case studies 82, 83 and 84 illustrate, we dealt with a wide variety of complaints this year. In many cases, our suggestions to the relevant agencies included changes to practices, policies and procedures as well as comment on the merits of particular determinations.

### Case study 82

A solicitor applied to the Workers Compensation Commission (WCC) for a range of documents in relation to the selection and appointment of Approved Medical Specialists (AMSs) generally and 11 AMSs specifically. The solicitor was given access to some of the documents, but was refused access to most of them based on the exemptions in Schedule 1 of the FOI Act relating to personal affairs and internal working documents.

We found that although some of the documents falling within the scope of the application were held by the WCC and some were held by the WorkCover Authority, WorkCover had processed the application and had been processing FOI applications for the WCC for some time. This meant that documents held by the WCC had not been viewed by either the person who originally assessed the application or the person who conducted the internal review of the determination.

WorkCover and the WCC accepted our suggestion that the WCC should process their own FOI applications in future and released additional documents to the applicant.

### Case study 83

An unsuccessful job applicant was advised by Charles Sturt University that their policy was not to provide feedback about their reasons for recruitment decisions. She then made an FOI application to the university for the notes taken during her interview for a position and other documents relating to the recruitment process.

We made inquiries with the university and discovered that none of the documents that the applicant had requested existed. This was because the university's recruitment policy did not require the selection committee to record in writing the reasons for their decisions.

We suggested that the university should amend their staff recruitment and selection policy so that selection committees had to record in writing the reasons for their decisions, these records had to be kept in accordance with the requirements of the *State Records Act 1998*, and feedback was given to job applicants. We also suggested that the university write to the job applicant explaining why she was not successful in obtaining the position. They agreed to implement our suggestions.

### Case study 84

In October 2008, we received a complaint about an internal review determination made by the Department of Planning. The applicant had requested submissions made by companies to the sub-regional strategies forming part of the Metropolitan Strategy — a key planning program for managing land supply and economic development in the Sydney region.

The department initially decided to release the submissions, but after an objection by one of the companies at internal review they decided that three documents were exempt under the business affairs clause in the FOI Act.

We believed that the documents should be released to the applicant because they were submitted as part of a public consultation process. The companies made their submissions based on the understanding that these would form part of a transparent planning process. The department compiles a document for public comment that takes into account and, in some cases, partially reproduces or summarises the submissions made. No undertaking of confidentiality was given by the department and the companies did not request that their submissions be kept confidential.

The department agreed to release the documents after considering our views.

## Informal resolution

Our aim is to resolve FOI complaints, rather than formally investigate them. As the following case studies show, we often assist agencies and complainants to resolve matters through negotiation.

## Managing FOI applications without merit

Our FOI review, *Opening up government*, recommended that the government should introduce a provision for the Administrative Decisions Tribunal to make orders similar to the civil restraint orders in the UK Civil Procedure Rules. These orders cover applications that are totally without merit or that would result in an unreasonable division of resources.

In response to our recommendation, the government has included a provision (s.110) in the new *Government Information (Public Access) Act 2009* for orders to restrain the making of unmeritorious access applications. While we will not have any formal role under this Act, given our general interest in the management of unreasonable conduct by complainants and applicants, we intend to monitor the implementation and effectiveness of this provision over time to determine whether it is meeting its objective.

### Case study 85

A journalist applied for access to documents setting out details of compliance and penalty notices issued by the Office of Liquor Gaming and Racing (OLGR) against licensed premises, as well as details of decisions by the NSW Licensing Court between 1 July 2006 and 31 December 2007 as a result of action taken by the OLGR.

The journalist complained that the OLGR provided him with 85 pages of information that was difficult to interpret.

After meeting with the journalist, the OLGR agreed to provide him with straightforward information about licensed premises that had received compliance and penalty notices or had action taken against them, resulting in a decision by the NSW Licensing Court. This resolved the journalist's concerns.

### Case study 86

A newspaper journalist requested access to information about physical violence, persistent misbehaviour, serious criminal behaviour, possession of illegal substances, prohibited weapons and other information relating to the 10 schools in the Macarthur area registering the most suspensions and expulsions in 2007.

The Department of Education and Training argued that the release of the information would be detrimental to the schools and their students and we considered this reasonable. However, we negotiated with the department to release additional information about suspensions and expulsions that did not identify individual schools. The department agreed to release this information based on 25 schools in the Macarthur region.



# Protected disclosures



The *Protected Disclosures Act 1994* (the PD Act) aims to encourage the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector. Our office is one of the accountability bodies, along with the Independent Commission Against Corruption (ICAC), the Auditor General and the Police Integrity Commission, to which a public official can make a protected disclosure.

We also provide advice to those thinking about making a disclosure, as well as helping public authorities to implement the PD Act effectively and fairly. We provide practical training in partnership with the ICAC to staff from public authorities across the NSW.

## Highlights

- › Published a new edition of our *Protected Disclosures Guidelines*, including insights from the Whistling While They Work research project. [SEE PAGE 103](#)
- › Encouraged agencies to provide additional guidance, information and support for their nominated disclosure officers. [SEE CASE STUDY 88](#)
- › Handled 89 formal and informal complaints that raised issues about protected disclosures. [SEE PAGE 105](#)
- › Jointly with the ICAC presented 12 training workshops for agency staff responsible for handling protected disclosures. [SEE PAGE 104](#)

## Reviews of whistleblower legislation

The Parliamentary Joint Committee on the Independent Commission Against Corruption (ICAC Committee) reported on their review of the *Protected Disclosures Act 1994* (PD Act) in November 2006. This was the third review of the Act since its enactment. In July 2008, the ICAC Committee announced a further inquiry into the effectiveness of current laws, practices and procedures in protecting whistleblower employees who make allegations. We made submissions to the inquiry and the Deputy Ombudsman gave evidence at a public hearing in August. We expressed the view that this latest review presented the government with an opportunity to reconsider the current protected disclosures system in its entirety. If a new system was to be considered, we suggested it could:

- › provide for a presumption that a complaint or disclosure would be protected unless certain circumstances apply — in contrast to the current system where protection only applies if a wide range of specific conditions are met
- › place obligations on agencies that receive complaints and disclosures to have appropriate policies and procedures in place, deal with matters appropriately, keep complainants informed and handle matters in confidence where practicable.

We also reiterated in our submission that a central problem with the current system is its lack of a 'champion' and outlined in detail how an oversight body could promote and implement

a new system. Our work overseeing police and employment-related child protection complaints would give us the necessary expertise and experience to oversee the handling of protected disclosures by public sector agencies.

The ICAC Committee published a discussion paper in March 2009 and is expected to report on their inquiry later this year. In December 2008, the government indicated to us that they are open to considering more comprehensive reform of whistleblower protection laws in light of any recommendations in that report. After three parliamentary committee reviews and 15 years of little legislative change in this area, we are hopeful that some improvements to the system will be introduced in NSW in the near future.

## Guidelines for agencies

In April 2009, we published the sixth edition of our *Protected Disclosures Guidelines*. In addition to reflecting legislative amendments, this new edition includes:

- › insights from the Whistling While They Work research project
- › advice about establishing an effective internal reporting system
- › comment on the relevance of the motives of whistleblowers
- › guidance on assessing whether confidentiality is a practical option in each case
- › greater emphasis on the importance of agencies assessing the risk of reprisals
- › guidance on managing workplace conflict resulting from an internal disclosure

- › expanded guidance about protecting whistleblowers and managing their expectations
- › new model internal reporting policies for agencies, both state and local government.

These guidelines can be downloaded from our website.

It is important for agencies to be acutely aware of the impact a protected disclosure can have on a workplace. In case study 87, the agency investigated the allegations while the whistleblower continued to work under the direction of their line manager — who was the subject of the allegations. In our view this approach was not appropriate in this case, given the risk that the whistleblower would suffer retribution. In the latest edition of our guidelines, we discuss different strategies that agencies can use to manage these kinds of situations.

## Training workshops

This year we continued our joint efforts with the ICAC to provide training to staff responsible for handling protected disclosures within their agencies. The Deputy Ombudsman presented 12 workshops around Sydney and in regional areas, including Merimbula and Newcastle.

Case study 88 shows why training of this type is needed. It is critical that people who are responsible for handling protected disclosures understand their role in the process and have adequate knowledge and skills to be able to manage sensitive issues and the expectations of all those involved.

## Complaints

In each of the past five years, we have received about 50 written complaints in our non-police jurisdiction that raise issues relating to protected disclosures (see figure 51). This number is a marked decrease from the first 10 years of the PD Act's operation when the average yearly number was 156, peaking at 216 in 1997–1998. We were also notified of 1,158 police internal complaints and oversighted them in our police jurisdiction.

It is difficult to identify particular reasons for the decrease in our non-police jurisdiction. It may indicate that agencies are getting better at dealing with whistleblowers and their disclosures, particularly when the allegations relate to maladministration and there are unlikely to be any political issues that might further

### Case study 87

An employee complained to us that she was subject to detrimental action after making a protected disclosure. She alleged she was systematically bullied and isolated from the workplace through a reduction of her duties and changes to her job description.

We reviewed files held by the department and found that although the complainant initially made a protected disclosure and it was investigated, it was not recognised as such by the department. This appeared to be at least partly because the nominated protected disclosure officer who took the complaint was acting in the position and unaware of his responsibilities.

The department's investigation of the detrimental action complaint found that although the actions complained of occurred, they were not taken in reprisal for the protected disclosure. We were concerned about the department's findings and asked them to reinvestigate the complaint. After doing so, the department maintained that there was insufficient evidence to link the actions taken against the employee to the protected disclosure, chiefly because the main subject of the detrimental action complaint had started working in the area after the disclosure had already been made and was not the subject of the disclosure.

By the time the department finalised their second investigation, relationships in the workplace had significantly deteriorated and could not be dealt with through mediation as initially suggested. There had also been a restructure which meant the subject of the complaint and the employee who made the protected disclosure no longer worked together.

This case highlighted the importance of actively managing the workplace when a protected disclosure or a serious complaint is made, and providing appropriate support to the whistleblower. At our suggestion, the Deputy Director General apologised in writing to the complainant and the senior staff who were the subject of the detrimental action complaint were counselled about their handling of the matter. In addition, the department prepared an information kit for nominated disclosure officers — including a summary of their obligations and a reminder to brief officers who relieve in a nominated protected disclosure position about these obligations.

### Case study 88

We received a number of complaints about how a department had dealt with protected disclosures made by staff. Several complainants stated they had felt ostracised and exposed to additional workplace stress after investigations had been completed, irrespective of whether their disclosures were substantiated or not. We were also concerned that some serious matters appeared to have been handled with little or no input from the unit within the department with expertise in investigating allegations.

We met with the department and noted a number of initiatives that had already been put in place to address some of these issues, including a requirement that all disclosures be reported to and investigated by the relevant unit.

While the department's policies appeared sound, we found that the requirements of the PD Act — especially those relating to the assessment of disclosures — were not widely known by nominated disclosure officers. We also found that the positions held by disclosure officers were not consistent across the department and their level of training and experience in dealing with whistleblowers was minimal. This was exacerbated by the regular occurrence of people 'acting up' in designated positions.

As a result of our recommendations, the department agreed to improve the guidance, support and information given to staff. This included developing strategies for supporting whistleblowers, preparing an 'information pack' for nominated disclosure officers, providing guidance on managing and assessing disclosures, and reviewing the need for training.

inflame the situation. The decrease could also reflect the findings of the Whistling While They Work project that only 3% of public interest disclosures were reported to an external agency or the media in the first instance.

While the number of disclosures we receive about maladministration issues is going down, the number of disclosures to the ICAC about alleged corrupt conduct is increasing. This may be because public sector staff are more likely to have confidence in their agency's ability to address internal disclosures about maladministration issues (conduct relating to the carrying out of public duty) than their ability to address corruption issues (conduct fundamentally opposed to public duty).

Establishing a properly funded protected disclosures unit would provide an opportunity to centrally collect and analyse qualitative and quantitative information about protected disclosures across the public sector. In this way, trends in complaint numbers could be more rigorously evaluated.

## Whistling While They Work project

We are always working to improve the system in place for those making a protected disclosure, both in NSW and other jurisdictions around Australia. We contribute to research into whistleblowers, and provide information to State and Federal Parliamentary inquiries looking to improve whistleblower protection.

Last year we reported on our work on a report examining internal witness management systems as part of an ongoing collaborative national research project called Whistling While They Work. The draft of the second report of the project was released in July, entitled: *Whistling While They Work: Towards Best Practice Whistleblowing Programs in Public Sector Organisations*. That report focuses on how organisations can develop and implement new models for better practice in managing whistleblowing.

**Figure 51 — Protected disclosures received — five year comparison**

	04/05	05/06	06/07	07/08	08/09
Informal	65	68	42	53	47
Formal	49	52	34	43	42
<b>Total</b>	<b>114</b>	<b>120</b>	<b>76</b>	<b>96</b>	<b>89</b>

# Covert operations



The NSW Police Force, the Crime Commission, the Independent Commission Against Corruption and the Police Integrity Commission have the power to do a range of things — as part of a covert operation — that would otherwise be illegal.

We are responsible for scrutinising the compliance of these agencies with accountability requirements relating to the use of telecommunications intercepts and surveillance devices, undercover operations, and covert and criminal organisation search warrants.

## Highlights

- › Inspected the records of 433 controlled operations, 69 more than last year. [SEE PAGE 106](#)
- › The *Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009* came into force, making a number of amendments that we had recommended to bring it into line with the provisions of the Commonwealth *Telecommunications (Interception and Access) Act 1979*. [SEE PAGE 107](#)
- › The NSW Parliament gave us two new inspection and compliance functions in relation to covert and criminal organisation search warrants. [SEE PAGE 107](#)

## Agency compliance

Under the *Telecommunications (Interception and Access) (New South Wales) Act 1987* and the *Surveillance Devices Act 2007*, the relevant law enforcement agencies can intercept telephone conversations and plant devices to listen to and photograph or video conversations and track positions of objects.

Under the *Law Enforcement (Controlled Operations) Act 1997*, they can also carry out controlled or 'undercover' operations that may involve breaking the law by, for example, possessing illicit drugs.

The Australian Crime Commission, the Australian Federal Police and the Australian Customs and Border Protection Service are also authorised to conduct controlled operations under the NSW legislation. However, to date, only the Australian Crime Commission have used their powers under the NSW Act.

As covert operations involve significant intrusions into people's private lives, agencies may only conduct them if they follow the approval procedures and accountability provisions set out in the relevant legislation. An important function of the Ombudsman is to check that agencies comply with these requirements.

## Controlled operations

Controlled operations are an important investigation tool. They allow law enforcement agencies to infiltrate criminal groups — particularly those engaged in drug trafficking and organised crime — to obtain evidence to prosecute perpetrators of criminal offences or expose corrupt conduct.

The chief executive officer of the law enforcement agency gives approval for controlled operations without reference to any external authority. To ensure accountability, we have a significant role in monitoring the actual approval process.

Agencies must notify us within 21 days if an authority to conduct an operation has been granted or varied, or if a report has been received by the agency's chief executive officer on the completion of the operation.

We are required to inspect the records of each agency at least once every 12 months to ensure they are complying with the requirements of the Act. We also have the power to inspect an agency's records at any time — and make a special report to Parliament if we have concerns that should be brought to the attention of the public.

This year, we inspected the records of 433 controlled operations.



We report in detail on our monitoring work under the Law Enforcement (Controlled Operations) Act in a separate annual report that is available on our website. As well as reporting on compliance with the Act, the report includes details about the type of criminal conduct targeted in the operations and the number of people who were authorised to undertake controlled activities. It also provides some basic information about the results of those operations.

## Telecommunication interceptions

A judicial officer or member of the Administrative Appeals Tribunal grants a warrant for a telephone interception, so we do not scrutinise compliance with the actual approval process.

Our role is to make sure the agency carrying out the telecommunication interception complies with all the necessary record-keeping requirements. These records must document the issue of warrants and how the information gathered was used.

Some records have to be given to the Attorney General and all intercepted material must be destroyed once specified conditions no longer apply. All telephone intercept records have to be kept under secure conditions by the agency.

We are required to inspect each agency's records at least twice a year, and also have discretionary power to inspect their records for compliance at any time. We report the results of our inspections to the Attorney General.

On 13 May 2009, the *Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009* came into force. This Act made a number of amendments, which we had recommended, to bring it into line with the provisions of the Commonwealth *Telecommunications (Interception and Access) Act 1979*. For example, we now have comparable powers to the Commonwealth Ombudsman to obtain information or ask questions when inspecting an authority's records. The amended Act also enables us to exchange information with the Commonwealth Ombudsman about the administration of both the NSW and Commonwealth legislation.

## Surveillance devices

The *Surveillance Devices Act 2007* covers the installation, use and maintenance of listening, optical, tracking and data surveillance devices and restricts the communication and publication of private conversations, surveillance activities and information obtained from their use. It gives NSW law enforcement agencies the power to use surveillance devices to investigate crime and corrupt conduct and to use the evidence gained to identify or locate offenders.

Applications for warrants are made to eligible judges (or, in the case of tracking devices or retrieval warrants for tracking devices, to eligible magistrates) to authorise the use of most surveillance devices. The Act imposes a number of record-keeping, reporting, use and security responsibilities on law enforcement officers granted a warrant. It also requires the Ombudsman to inspect the records of each agency from time to time to determine the extent of compliance with the Act by the agency and its officers and to report to the Attorney General at six monthly intervals on the results of those inspections.

Our first report on our inspections of surveillance device records up to 31 December 2008 is available on our website.

## New functions

During the year, the Ombudsman was given two new inspection and compliance functions.

## Covert search warrants

On 7 April 2009, the NSW Government introduced new covert search warrant powers to combat organised crime. Supreme Court judges may now issue search warrants that enable police and other law enforcement officers to covertly enter and search premises to investigate serious criminal offences and, if necessary, enter properties adjoining or providing access to these premises. The warrants also authorise the executing officer to impersonate another person and do anything else that is reasonable to conceal the covert entry.

Our role is to inspect, every 12 months, the NSW Police Force, the NSW South Wales Crime Commission and the Police Integrity Commission's records in relation to covert search warrants to check they are complying with the requirements of the Act.

## Criminal organisation search warrants

The *Criminal Organisations Legislation Amendment Act 2009* came into operation on 29 May 2009. It enables an eligible Supreme Court judge to issue a new form of search warrant — a 'criminal organisation search warrant'. This warrant allows police to search in or on premises for things connected with an organised criminal offence. It was part of a package of new laws made in response to concerns about criminal conduct associated with outlaw motorcycle gangs.

The powers conferred by these warrants are the same as for existing search warrants, except that they operate for seven days instead of 72 hours and have a lower evidentiary threshold (reasonable suspicion) compared to ordinary search warrants (reasonable belief). Applications to the Supreme Court must be approved by a police officer of the rank of superintendent or above.

Our role is to inspect the records of the NSW Police Force every two years to ensure that the requirements of the Act are being complied with.



# Our financials

The financial statements that follow provide an overview of our financial activities during the reporting year. These statements, our supporting documentation, and our systems and processes have all been reviewed by our own auditors and the NSW Audit Office. We received an unqualified audit report.

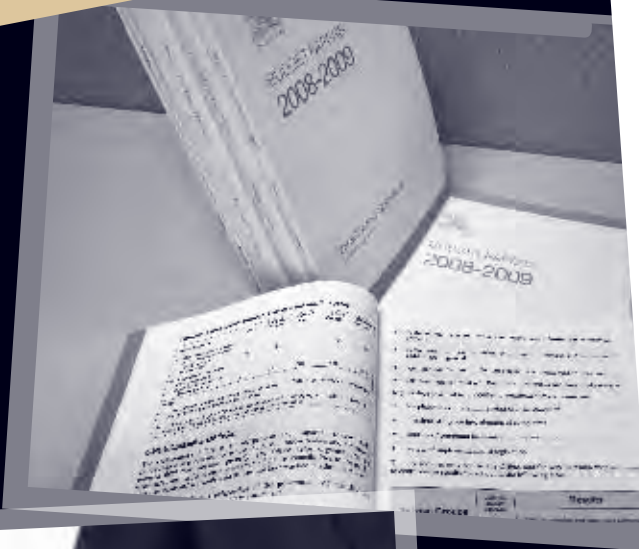
Ongoing efficiency dividends and unfunded pay increases are having a significant impact on the office. They have been the catalyst for a comprehensive review of our strategic plans, our structure and our process. The financial situation, as well as details on our strategic planning and restructure, is outlined in Our year in review and Corporate governance.

## Highlights

- › After an audit of our financial records and systems we received an unqualified audit report from the NSW Audit Office. [SEE PAGE 112](#)
- › We reviewed our internal budget management and reporting and fine tuned our processes. We have revised our budget monitoring and reporting tools and developed more targeted information to support business planning and decision-making. [SEE PAGE 24](#)
- › We paid 99.7% of our accounts on time, an improvement on 2007–2008. [SEE PAGE 111](#)
- › We generated \$251,000 in revenue, mostly through our training courses such as managing unreasonable complainant conduct. This revenue has been used to support our complaint-handling and other core work. [SEE PAGE 110](#)
- › We took a proactive approach to leave management which resulted in a reduction to our recreation (annual) leave liability. [SEE PAGE 111](#)

This chapter discusses our financial activities during the year.

- › Balancing our books 110
- › Financial statements 114



## Balancing our books

The Ombudsman receives funding from the NSW Government. Although we account for these funds on an office-wide basis — as reflected in our financials — internally we allocate them between our four business units and our corporate and cross agency teams. For NSW State Budget purposes, we also report against service groups. As we do not budget internally this way, the figures reported for service groups are estimates only and can vary depending on workload, priorities and staffing levels. Figure 52 shows the net cost of services by service group for the last four years.

## Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditures. Consolidated funds are accounted for on the operating statement after the net cost of service is calculated to allow for the movement in accumulated funds to be determined for the year. The government also makes provision for certain employee entitlements such as long service leave.

Our initial 2008–2009 recurrent consolidated fund allocation was \$19.986 million. After adjustments for changes in payroll tax rates and to cover a slight increase in our insurance premium, our final allocation was \$19.969 million.

Included in the Ombudsman's allocation is funding for our review of the implementation of new police powers. For details of these reviews see page 74 in Policing. Figure 53 shows the amount provided for the legislative reviews over the last five years. \$273,000 was allocated for our legislative review work in 2008–2009, which represents 1.36% of the Ombudsman's total recurrent allocation.

In 2008–2009 we budgeted that the Crown Entity would accept \$914,000 of employee benefits and other entitlements. However the actual acceptance was about \$1,333,000. This variance is due to the impact on long service leave liabilities of the greater than expected wage increases paid to public servants. An adjustment to our long service leave liability was also made following actuarial advice in June 2009.

**Figure 52 — Net cost of services by service group**

Service groups	05/06 \$'000	06/07 \$'000	07/08 \$'000	08/09 \$'000
Complaint advice, referral, resolution or investigation	8,675	9,263	9,755	10,405
Oversight of agency investigation of complaints	3,863	4,124	4,344	4,633
Scrutiny of complaint-handling systems	5,873	6,272	6,604	7,043
Review of the implementation of legislation	613	1,194	1,087	273
<b>Total</b>	<b>19,024</b>	<b>20,853</b>	<b>21,790</b>	<b>22,354</b>

**Figure 53 — Legislative reviews — amount provided over five years**

	04/05 \$'000	05/06 \$'000	06/07 \$'000	07/08 \$'000	08/09 \$'000
Received	433	633	1,073	1,085	273

We were allocated \$559,000 for our capital program but spent \$16,000 less than the allocation. Our capital program included upgrading our computer systems, purchasing new office equipment and updating and improving our fitout.

We generated \$251,000 through selling our publications, bank interest, fee for service training courses and our consultancy services to AusAid (see figure 54).

There is a breakdown of our revenue, including capital funding and acceptance of employee entitlements, in figure 55.

**Figure 54 — Revenue from other sources**

Revenue from other sources	Revenue \$'000
Workshops and publication sales	162
Grants	54
Bank interest	27
Other revenue	8
<b>Total</b>	<b>251</b>

**Figure 55 — Total revenue 2008–2009**

Government	Revenue \$'000
Recurrent appropriation	19,969
Capital appropriation	543
Acceptance of certain employee entitlements	1,333
Total government	21,845
From other sources	251
<b>Total</b>	<b>22,096</b>

## Expenses

Most of our revenue is spent on employee-related expenses such as salaries, superannuation entitlements, long service leave and payroll tax. Our operating statement shows that last year we spent more than \$18.02 million — or 79.72% of our total expenses — on employee-related items, an increase of 5.29% over the previous year.

Salary increases awarded to public servants were the main reason we had a \$285,000 or 2% increase in our salary expenses. Our superannuation expenses increased as did our payroll tax-related items. Our long service leave expenses doubled — this was partly the result of increases to our liability following the higher than anticipated wage increases paid to public servants and adjustments requested after an actuarial review. We were required to pay a \$44,000 hindsight adjustment for our workers compensation because of changes to the Treasury Managed Fund, the self insurance scheme for the NSW Government. This significantly increased our workers compensation expenses for 2008–2009.

**Figure 56 — Total expenses 2008–2009**

Total expenses	Expenses \$'000
Employee-related	18,020
Depreciation and amortisation	506
Other operating expenses	4,079
<b>Total</b>	<b>22,605</b>



The day-to-day running of our office costs us over \$4.079 million a year. Our significant operating items are rent (\$1.8 million), fees (\$812,000), travel (\$412,000), maintenance (\$206,000) and telephones (\$142,000). There were no consultants engaged during 2008–2009.

The financial statements show that \$506,000 was expensed for depreciation and amortisation. As we spent \$543,000 on our capital program, we had a slight increase in our asset base.

While capital funding is shown on the operating statement, capital expenditure is not treated as an expense — it is reflected on the balance sheet.

We have an accounts payable policy that requires us to pay accounts promptly and within the terms specified on the invoice. However, there are some instances where this may not be possible — for example, if we dispute an invoice or don't receive it with enough time to pay within the specified timeframe. We therefore aim to pay all our accounts within the specified timeframe 98% of the time. During 2008–2009 we paid 99.7% of our accounts on time (see figure 57). This exceeded our target and is a slight improvement in our performance from last year. We have not had to pay any penalty interest on outstanding accounts.

## Assets

Our balance sheet shows that we had \$1.862 million in assets at 30 June 2009. The value of our current assets decreased by \$438,000 from the previous year, while the value of our non-current asset base increased by \$42,000. This is an overall decrease of \$396,000 in our asset base from the previous year.

Nearly 34% of our assets are current assets, which are categorised as cash or receivables. Receivables are amounts owing to us and include bank interest that has accrued but not been received, fees for services that we have provided on a cost recovery basis, and GST to be recovered from the Australian Taxation Office. Also included in receivables are amounts that we have prepaid. We had \$300,000 in prepayments at 30 June 2009. The most significant prepayments were for rent and maintenance renewals for our office equipment and software support.

Our cash balance includes a \$43,000 advance payment from the New Zealand, Commonwealth and other state Ombudsman to cover costs for developing guidelines and training Ombudsman staff in dealing with unreasonable complainant conduct. We cannot use this cash for any other purpose so it is classified as a 'restricted asset'.

Our non-current assets, which are valued at \$1.233 million, are categorised as:

- plant and equipment — this includes our network infrastructure, computers and laptops, fitout and office equipment
- intangible assets — these include our network operating and case management software.

We were allocated \$559,000 in 2008–2009 for asset purchases and spent \$543,000. This is reflected in our capital consolidated fund appropriation. We will receive \$785,000 in 2009–2010.

## Liabilities

Our total liabilities at 30 June 2009 are \$2.006 million, an increase of \$113,000 over the previous year. Over 74% of this amount is the provision that we make for employee benefits and related on-costs, including accounting for untaken recreation (annual) leave which is valued at \$899,000. The Crown Entity accepts the liability for long service leave.

We owe about \$246,000 for goods or services that we have received but have not yet been invoiced. The value of accounts on hand at 30 June 2009 was \$125,162. Please see figure 59. We monitor the amounts that we owe on a regular basis to make sure that we are paying accounts within terms.

## Financial statements

Our financial statements are prepared in accordance with legislative provisions and accounting standards. They are audited by the NSW Auditor General (or delegate), who is required to express an opinion as to whether the statements fairly represent the financial position of our office. The audit report as well as the financials follow.

**Figure 57 — Accounts paid on time**

Quarter	Target %	Paid on time %	Paid on time \$'000	Paid \$'000
September 2008	98	99.61	5,211	5,232
December 2008	98	99.86	5,841	5,849
March 2009	98	99.77	4,768	4,779
June 2009	98	99.57	6,462	6,489
<b>Total</b>	<b>98</b>	<b>99.70</b>	<b>22,282</b>	<b>22,349</b>

**Figure 58 — Major assets**

Description	07/08	Acquisition	Disposal	08/09
File servers	24	–	5	19
Switches	15	1	–	16
Computers	226	–	4	222
Printers	14	10	1	23
Photocopiers	6	–	–	6
Telephone systems	1	–	–	1

**Figure 59 — Analysis of accounts on hand at the end of each quarter**

	September 2008 \$	December 2008 \$	March 2009 \$	June 2009 \$
Current (ie within due date)	300,451	93,262	121,863	89,607
Less than 30 days overdue	5,462	168,006	233,493	35,555
Between 30 days and 60 days overdue	2,819	–	–	–
Between 60 days and 90 days overdue	2,589	–	–	–
More than 90 days overdue	2,940	3,272	–	–
<b>Total accounts on hand</b>	<b>314,261</b>	<b>264,540</b>	<b>355,356</b>	<b>125,162</b>



GPO BOX 12  
Sydney NSW 2001

## INDEPENDENT AUDITOR'S REPORT OMBUDSMAN'S OFFICE

To Members of the New South Wales Parliament

I have audited the accompanying financial report of the Ombudsman's Office (the Department), which comprises the balance sheet as at 30 June 2009, the operating statement, statement of recognised income and expense, cash flow statement, service group statements and a summary of compliance with financial directives for the year then ended, a summary of significant accounting policies and other explanatory notes.

### Auditor's Opinion

In my opinion, the financial report:

- presents fairly, in all material respects, the financial position of the Department as at 30 June 2009, and its financial performance for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- is in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2005.

My opinion should be read in conjunction with the rest of this report.

### Department Head's Responsibility for the Financial Report

The Ombudsman is responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the PF&A Act. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### Auditor's Responsibility

My responsibility is to express an opinion on the financial report based on my audit. I conducted my audit in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the Department's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Department Head, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does not provide assurance:

- about the future viability of the Department,
- that it has carried out its activities effectively, efficiently and economically,
- about the effectiveness of its internal controls, or
- on the assumptions used in formulating the budget figures disclosed in the financial report.

#### Independence

In conducting this audit, the Audit Office of New South Wales has complied with the independence requirements of the Australian Auditing Standards and other relevant ethical requirements. The PF&A Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.



Peter Achterstraat  
Auditor-General

23 September 2009  
SYDNEY

# Financial statements



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21 September 2009

## Statement by the Ombudsman

Pursuant to section 45F of the *Public Finance and Audit Act 1983* and to the best of my knowledge and belief I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), 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 Regulation 2005 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position of the Ombudsman's office as at 30 June 2009, and transactions for the year then ended;
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

A handwritten signature in black ink, appearing to read "B. Barbour".

Bruce Barbour  
**Ombudsman**



## OMBUDSMAN'S OFFICE

### Operating Statement for the Year Ended 30 June 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
<b>Expenses excluding losses</b>				
Operating expenses				
Employee-related	2(a)	18,020	17,529	17,114
Other operating expenses	2(b)	4,079	3,807	4,245
Depreciation and amortisation	2(c)	506	538	694
<b>Total Expenses excluding losses</b>		<b>22,605</b>	<b>21,874</b>	<b>22,053</b>
<b>Revenue</b>				
Sale of goods and services	3(a)	162	72	142
Investment revenue	3(b)	27	50	66
Grants and contributions	3(c)	54	54	41
Other revenue	3(d)	8	15	14
<b>Total Revenue</b>		<b>251</b>	<b>191</b>	<b>263</b>
<b>Net Cost of Services</b>	17	<b>22,354</b>	<b>21,683</b>	<b>21,790</b>
<b>Government Contributions</b>				
Recurrent appropriation	4(a)	19,969	19,986	20,069
Capital appropriation	4(b)	543	559	298
Acceptance by the Crown Entity of employee benefits and other liabilities	5	1,333	914	831
<b>Total Government Contributions</b>		<b>21,845</b>	<b>21,459</b>	<b>21,198</b>
<b>Deficit for the year</b>		<b>(509)</b>	<b>(224)</b>	<b>(592)</b>

## OMBUDSMAN'S OFFICE

### Statement of Recognised Income and Expense for the Year Ended 30 June 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
<b>Total income and expense recognised directly in equity</b>		<b>-</b>	<b>-</b>	<b>-</b>
Deficit for the Year		(509)	(224)	(592)
<b>Total income and expense recognised for the year</b>	15	<b>(509)</b>	<b>(224)</b>	<b>(592)</b>

The accompanying notes form part of these financial statements.

## OMBUDSMAN'S OFFICE

### Balance Sheet as at 30 June 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
<b>Assets</b>				
<b>Current Assets</b>				
Cash and cash equivalents	7	194	445	707
Receivables	9	435	334	360
<b>Total Current Assets</b>		<b>629</b>	<b>779</b>	<b>1,067</b>
<b>Non-Current Assets</b>				
Plant and equipment	10	873	950	850
Intangible assets	11	360	262	341
<b>Total Non-Current Assets</b>		<b>1,233</b>	<b>1,212</b>	<b>1,191</b>
<b>Total Assets</b>		<b>1,862</b>	<b>1,991</b>	<b>2,258</b>
<b>Liabilities</b>				
<b>Current Liabilities</b>				
Payables	12	457	357	357
Provisions	13	1,468	1,435	1,386
Other	14	63	45	128
<b>Total Current Liabilities</b>		<b>1,988</b>	<b>1,837</b>	<b>1,871</b>
<b>Non-Current Liabilities</b>				
Provisions	13	18	13	13
Other	14	–	–	9
<b>Total Non-Current Liabilities</b>		<b>18</b>	<b>13</b>	<b>22</b>
<b>Total Liabilities</b>		<b>2,006</b>	<b>1,850</b>	<b>1,893</b>
<b>Net Assets/(Net Liabilities)</b>		<b>(144)</b>	<b>141</b>	<b>365</b>
<b>Equity</b>				
Accumulated funds/(deficits)	15	(144)	141	365
<b>Total Equity</b>		<b>(144)</b>	<b>141</b>	<b>365</b>

The accompanying notes form part of these financial statements.

## OMBUDSMAN'S OFFICE

### Cash Flow Statement for the Year Ended 30 June 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
<b>Cash flows from operating activities</b>				
<b>Payments</b>				
Employee-related		(16,525)	(16,566)	(16,285)
Other		(4,728)	(4,419)	(4,349)
<b>Total Payments</b>		<b>(21,253)</b>	<b>(20,985)</b>	<b>(20,634)</b>
<b>Receipts</b>				
Sale of goods and services		177	72	153
Interest received		56	50	85
Other		543	615	448
<b>Total Receipts</b>		<b>776</b>	<b>737</b>	<b>686</b>
<b>Cash Flows from Government</b>				
Recurrent appropriation		19,969	19,986	20,069
Capital appropriation (excluding equity appropriations)		543	559	300
<b>Net Cash Flows from Government</b>	17	<b>20,512</b>	<b>20,545</b>	<b>20,369</b>
<b>Net cash flows from operating activities</b>		<b>35</b>	<b>297</b>	<b>421</b>
<b>Cash flows from investing activities</b>				
Purchases of Leasehold Improvements, Plant and Equipment and Infrastructure Systems		(548)	(559)	(298)
<b>Net cash flows from investing activities</b>		<b>(548)</b>	<b>(559)</b>	<b>(298)</b>
<b>Net increase/(decrease) in cash</b>				
Opening cash and cash equivalents		707	707	584
<b>Closing cash and cash equivalents</b>	7	<b>194</b>	<b>445</b>	<b>707</b>

The accompanying notes form part of these financial statements.

Service group Statements<sup>1</sup> for the year ended 30 June 2009

	Service Group 1 <sup>2</sup>		Service Group 2 <sup>2</sup>		Service Group 3 <sup>2</sup>		Service Group 4 <sup>2</sup>		Not Attributable <sup>4</sup>		Total	
	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 \$'000
<b>Agency's expenses and revenues</b>												
<b>Expenses excluding losses</b>												
Operating expenses												
Employee-related	8,363	7,551	3,723	3,363	5,661	5,113	273	1,087	-	-	18,020	17,114
Other operating expenses	1,922	2,000	856	891	1,301	1,354	-	-	-	-	4,079	4,245
Depreciation and amortisation	239	328	106	146	161	220	-	-	-	-	506	694
<b>Total Expenses excluding losses</b>	<b>10,524</b>	<b>9,879</b>	<b>4,685</b>	<b>4,400</b>	<b>7,123</b>	<b>6,687</b>	<b>273</b>	<b>1,087</b>	<b>-</b>	<b>-</b>	<b>22,605</b>	<b>22,053</b>
<b>Revenue</b>												
Sale of goods and services	(76)	(67)	(34)	(30)	(52)	(45)	-	-	-	-	(162)	(142)
Investment revenue	(13)	(31)	(5)	(14)	(9)	(21)	-	-	-	-	(27)	(66)
Grants and contributions	(26)	(19)	(11)	(9)	(17)	(13)	-	-	-	-	(54)	(41)
Other revenue	(4)	(7)	(2)	(3)	(2)	(4)	-	-	-	-	(8)	(14)
<b>Total Revenue</b>	<b>(119)</b>	<b>(124)</b>	<b>(52)</b>	<b>(56)</b>	<b>(80)</b>	<b>(83)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(251)</b>	<b>(263)</b>
<b>Net Cost of Services</b>	<b>10,405</b>	<b>9,755</b>	<b>4,633</b>	<b>4,344</b>	<b>7,043</b>	<b>6,604</b>	<b>273</b>	<b>1,087</b>	<b>-</b>	<b>-</b>	<b>22,354</b>	<b>21,790</b>
Government contributions <sup>2</sup>	-	-	-	-	-	-	-	-	(21,845)	(21,198)	(21,845)	(21,198)
<b>Net expenditure/(revenue) for the year</b>	<b>10,405</b>	<b>9,755</b>	<b>4,633</b>	<b>4,344</b>	<b>7,043</b>	<b>6,604</b>	<b>273</b>	<b>1,087</b>	<b>(21,845)</b>	<b>(21,198)</b>	<b>509</b>	<b>592</b>
<b>Agency's assets &amp; liabilities</b>												
<b>Current Assets</b>												
Cash and cash equivalents	91	333	41	148	62	226	-	-	-	-	194	707
Receivables	205	170	91	76	139	114	-	-	-	-	435	360
Other	-	-	-	-	-	-	-	-	-	-	-	-
Non-current assets held for sale	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total current assets</b>	<b>296</b>	<b>503</b>	<b>132</b>	<b>224</b>	<b>201</b>	<b>340</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>629</b>	<b>1,067</b>



## OMBUDSMAN'S OFFICE

### Service group Statements<sup>1</sup> for the year ended 30 June 2009

	Service Group 1 <sup>2</sup>		Service Group 2 <sup>2</sup>		Service Group 3 <sup>2</sup>		Service Group 4 <sup>2</sup>		Not Attributable <sup>4</sup>		Total	
	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 <sup>3</sup> \$'000	2009 \$'000	2008 \$'000
<b>Agency's expenses and revenues</b>												
<b>Non-current Assets</b>												
Receivables	-	-	-	-	-	-	-	-	-	-	-	-
Other financial assets	-	-	-	-	-	-	-	-	-	-	-	-
Plant and equipment	412	400	183	178	278	272	-	-	-	873	850	-
Intangibles	170	161	75	72	115	108	-	-	-	360	341	-
<b>Total non-current assets</b>	<b>582</b>	<b>561</b>	<b>258</b>	<b>250</b>	<b>393</b>	<b>380</b>	-	-	-	<b>1,233</b>	<b>1,191</b>	-
<b>Total assets</b>	<b>878</b>	<b>1,064</b>	<b>390</b>	<b>474</b>	<b>594</b>	<b>720</b>	-	-	-	<b>1,862</b>	<b>2,258</b>	-
<b>Current liabilities</b>												
Payables	215	168	96	75	146	114	-	-	-	457	357	-
Provisions	692	653	308	291	468	442	-	-	-	1,468	1,386	-
Other	30	60	13	27	20	41	-	-	-	63	128	-
<b>Total current liabilities</b>	<b>937</b>	<b>881</b>	<b>417</b>	<b>393</b>	<b>634</b>	<b>597</b>	-	-	-	<b>1,988</b>	<b>1,871</b>	-
<b>Non-current liabilities</b>												
Provisions	8	6	4	3	6	4	-	-	-	18	13	-
Other	-	4	-	2	-	3	-	-	-	-	9	-
<b>Total non-current liabilities</b>	<b>8</b>	<b>10</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	-	-	-	<b>18</b>	<b>22</b>	-
<b>Total liabilities</b>	<b>945</b>	<b>891</b>	<b>421</b>	<b>398</b>	<b>640</b>	<b>604</b>	-	-	-	<b>2,006</b>	<b>1,893</b>	-
<b>Net assets/(Liabilities)</b>	<b>(67)</b>	<b>173</b>	<b>(31)</b>	<b>76</b>	<b>(46)</b>	<b>116</b>	-	-	-	<b>(144)</b>	<b>365</b>	-

<sup>1</sup> NSW Budget Paper No. 3 had replaced program statements with service group statements. Service group statements focus on the key measures of service delivery performance. Commencing from the 2008–2009 Budget Papers, activities of NSW budget dependent general government agencies are now structured into 'service groups', rather than 'programs'. The adoption of service groups is part of the Government's strategy to improve service delivery performance management and budgeting practices within the NSW Public Sector. Service Group Statements in the Budget Papers focus on key measures of service delivery performance such as the quality, quantity and cost of services. As a result, consistent with the Budget Papers, the ex-post financial reporting of assets, liabilities, revenue and expenses attributable to activities is now aligned to service groups rather than programs.

<sup>2</sup> The names and purposes of each service group are summarised in Note 6.

<sup>3</sup> Comparative amounts have been reclassified to align with the change in focus from programs to service groups.

<sup>4</sup> Appropriations are made on an agency basis and not to individual service groups. Consequently, government contributions must be included in the 'Not Attributable' column. The office does not budget internally around service groups, so the figures reported are estimates only and can vary depending on work load, priorities and staffing levels.

## OMBUDSMAN'S OFFICE

### Summary of compliance with financial directives

	2009				2008			
	Recurrent App'n \$'000	Expenditure/ net claim on consolidated fund \$'000	Capital App'n \$'000	Expenditure/ net claim on consolidated fund \$'000	Recurrent App'n \$'000	Expenditure/ net claim on consolidated fund \$'000	Capital App'n \$'000	Expenditure/ net claim on consolidated fund \$'000
<b>Original budget appropriation/ expenditure</b>								
> Appropriation Act	19,986	19,969	559	543	20,176	20,069	300	298
> Additional Appropriations	-	-	-	-	-	-	-	-
> s.21A PF&AA — special appropriation	-	-	-	-	-	-	-	-
> s.24 PF&AA — transfers of functions between departments	-	-	-	-	-	-	-	-
> s.26 PF&AA — Commonwealth specific purpose payments	-	-	-	-	-	-	-	-
	<b>19,986</b>	<b>19,969</b>	<b>559</b>	<b>543</b>	<b>20,176</b>	<b>20,069</b>	<b>300</b>	<b>298</b>
<b>Other appropriations/expenditure</b>								
> Treasurer's Advance	-	-	-	-	-	-	-	-
> s.22 — expenditure for certain works and services	-	-	-	-	-	-	-	-
> Transfers to/from another agency (s.31 of the Appropriation Act)	2	-	-	-	-	-	-	-
> Other (payroll tax adjustments)	(19)	-	-	-	-	-	-	-
	<b>(17)</b>	-	-	-	-	-	-	-
<b>Total Appropriations/Expenditure/Net claim on Consolidated Fund</b>	<b>19,969</b>	<b>19,969</b>	<b>559</b>	<b>543</b>	<b>20,176</b>	<b>20,069</b>	<b>300</b>	<b>298</b>
<b>Amount drawn down against Appropriation Liability to Consolidated Fund*</b>	-	<b>19,969</b>	-	<b>543</b>	-	<b>20,069</b>	-	<b>300</b>
	-	-	-	-	-	-	-	<b>2</b>

The Summary of Compliance is based on the assumption that Consolidated Fund monies are spent first (except where otherwise identified or prescribed).

\* If there is a 'Liability to Consolidated Fund', this represents the difference between the 'Amount drawn down against Appropriation' and the 'Total Expenditure/Net Claim on Consolidated Fund'.

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### 1 Summary of Significant Accounting Policies

##### (a) Reporting entity

The Ombudsman's office is a NSW Government Department. Our role is to make sure that public and private sector agencies and employees within our jurisdiction fulfil their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

The office is a not-for-profit entity (as profit is not its principal objective) and we have no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial report for the year ended 30 June 2009 has been authorised for issue by the NSW Ombudsman on 21 September 2009.

##### (b) Basis of preparation

Our financial report is a general purpose financial report, which has been prepared in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* and Regulation; and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer.

The financial statements have been prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations made are disclosed in the relevant notes to the financial report.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

The accrual basis of accounting and applicable accounting standards have been adopted.

##### (c) Statement of compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

##### (d) Insurance

Our 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, and is calculated by our past claim experience, overall public sector expense and ongoing actuarial advice.

##### (e) Accounting for the Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of GST, except where:

- GST incurred by us as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the acquisition of an asset or as part of an item of expense, or
- receivables and payables are stated with GST included.

Cash flows are included in the cash flow statement on a gross basis. However, the GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

##### (f) Income recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

###### (i) Parliamentary appropriations and contributions

Parliamentary appropriations and contributions from other bodies (including grants) are generally recognised as income when we obtain control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash.

An exception to this is when appropriations remain 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 accounted for as liabilities rather than revenue. The liability is disclosed in Note 14 as part of 'Other Current Liabilities'.

###### (ii) Sale of goods

Revenue from the sale of goods such as publications are recognised as revenue when we transfer the significant risks and rewards of ownership of the assets.

###### (iii) Rendering of services

Revenue from the rendering of services such as conducting training programs, is recognised when the service is provided or by reference to the stage of completion, for instance based on labour hours incurred to date.

###### (iv) Investment revenue

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

#### (g) Assets

##### (i) Acquisitions of assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by us. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

##### (ii) Capitalisation thresholds

Plant and equipment and intangible assets costing \$5,000 and above individually are capitalised. For those items that form part of our IT network, the threshold is \$1,000 individually.

##### (iii) Revaluation of plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 07-1). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment*.

Plant and equipment is measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative uses, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market buying price, the best indicator of which is depreciated replacement cost.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for fair value.

When revaluing non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation are separately restated.

For other assets, any balances of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus/deficit, the increment is recognised immediately as revenue in the surplus/deficit.

Revaluation decrements are recognised immediately as expenses in the surplus/deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

As a not-for-profit entity, revaluation increments and decrements are offset against each other within a class of non-current assets, but not otherwise.

Where an asset that has previously been revalued is disposed of, any balance remaining in the asset revaluation reserve in respect of that asset is transferred to accumulated funds.

Our assets are short-lived and their costs approximate their fair values.

##### (iv) Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, we are effectively exempted from AASB 136 *Impairment of Assets* and impairment testing. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

##### (v) Depreciation of plant and equipment

Depreciation 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.

All material separately identifiable components of assets are depreciated over their shorter useful lives.

Depreciation rates used are:

› Computer hardware	25%
› Office equipment	20%
› Furniture & fittings	10%
› Leasehold improvements	Useful life of 10 years (or to the end of the lease, if shorter)

##### (vi) Restoration costs

Whenever applicable, the estimated cost of dismantling and removing an asset and restoring the site is included in the cost of an asset, to the extent it is recognised as a liability.

##### (vii) Maintenance

The costs of day-to-day servicing or maintenance are charged as expenses as incurred, except where they relate to the replacement of a part or component of an asset, in which case the costs are capitalised and depreciated.



## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### (viii) 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.

Operating lease payments are charged to the Operating Statement 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.

#### (ix) Intangible assets

We recognise intangible assets only if it is probable that future economic benefits will flow to the office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition.

The useful lives of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for our intangible assets, they are carried at cost less any accumulated amortisation.

Our intangible assets are amortised using the straight-line method over a period of five years. The amortisation rates used are:

‣ Computer software 20%

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss. However, as a not-for-profit entity, the office is effectively exempted from impairment testing (refer to note 1(g)(iv).

#### (x) Receivables

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. These financial assets are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method, less an allowance for any impairment of receivables. Any changes are accounted for in the Operating Statement when impaired, derecognised or through the amortisation process.

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

### (h) Liabilities

#### (i) Payables

These amounts represent liabilities for goods and services provided to us as well as other amounts. Payables are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

#### (ii) Employee benefits and other provisions

##### (a) Salaries and wages, annual leave, sick leave and on-costs

Liabilities for salaries and wages (including non-monetary benefits), and annual leave that fall due wholly within 12 months of the reporting date are recognised and measured in respect of employees' services up to the reporting date at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.

Long-term annual leave that is not expected to be taken within 12 months is measured at the present value in accordance with AASB 119 *Employee Benefits*. Market yields on government bonds rates of 5.5% are used to discount long-term annual leave.

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 benefits accrued.

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 benefits to which they relate have been recognised.

##### (b) Long service leave and superannuation

Our liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. We account 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 benefits and other liabilities'.

Long service leave is measured at present value in accordance with AASB 119 *Employee Benefits*. This is based on the application of certain factors (specified in NSWTC 09/04) to employees with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for defined contribution superannuation schemes (ie Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For defined benefit superannuation schemes (ie State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employee's superannuation contributions.

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### (i) Budgeted amounts

The budgeted amounts are drawn from the budgets formulated at the beginning of the financial year with any adjustments for the effects of additional appropriations approved under s.21A, s.24 and/or s.26 of the *Public Finance and Audit Act 1983*.

The budgeted amounts in the Operating Statement and Cash Flow Statement are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Balance Sheet, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; ie per audited financial report (rather than carried forward estimates).

#### (j) Comparative information

Comparative figures, where appropriate, are reclassified so as to be comparable with the figures presented in the current financial year.

#### (k) New Australian Accounting Standards issued but not effective

At the reporting date, the following new Accounting Standards (which include Australian Accounting Interpretations) have not been applied and are not yet effective as per Treasury mandate:

- › AASB 101 (Dec 2007) and AASB 2007–8 regarding presentation of financial statements;
- › AASB 1048 (Mar 2009) regarding the interoperation and application of standards;
- › AASB 1049 (Oct 2007) regarding the whole-of-government and general government sector financial reporting;
- › AASB 2007–8 amendments to Australian Accounting Standards arising from AASB 101;
- › AASB 2007–9 regarding amendments arising from the review of AAS's 27, 29 and 31;
- › AASB 2007–10 further amendments to AASB 101;
- › AASB 2008–9 amendments to AASB 1049 for consistency with AASB 101;
- › Interpretation 1038 (Dec 2007) regarding contributions by owners;
- › Withdrawal of AAS 29 Financial Reporting by Government Departments — AASB undertook a short-term review of the Australian-specific standards, including AAS 29 and decided to relocate the requirement (where necessary) substantively unamended (with some exceptions), into topic-based statement.

The office has elected not to early adopt Exposure Draft ED 125 *Financial Reporting by Local Governments*. If adopted, the standard requires that revenue is not recognised until:

- › we have supplied the related goods and services, where grants are 'in-substance agreements for the provision of goods and services'; or
- › conditions have been satisfied, where grants are 'in-substance conditional grants (but not 'in-substance agreements for the provision of goods and services')'.

#### (l) Going concern

The current liabilities exceeded current assets as at 30 June 2009. The current liabilities include provision for leave of \$1.5 million of which \$1,165,000 is payable within 12 months. To meet current liabilities from current assets, the office receives fortnightly funding from the Crown Entity for recurrent and capital expenditure. The NSW Ombudsman's office is a 'going concern' public sector agency. We will receive Parliamentary appropriation as outlined in the NSW Budget Papers for 2009–2010 and for forward years.

Also refer to Note 20 Contingent Liabilities for further comment.

#### (m) First time adoption of AASB 1052 Disaggregated Disclosure requirement

Commencing from the 2008–2009 Budget Papers, activities of NSW budget dependent agencies are now structured into 'service groups' rather than 'programs'. The adoption of service groups is part of the Government's strategy to improve service delivery performance management and budgeting practice within the NSW Public Sector. Details are included in Note 6 of the account. The office does not budget internally around service groups, so the figures reported are estimated only and can vary depending on work load, priorities and staffing levels.

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

	2009 \$'000	2008 \$'000
<b>2 Expenses Excluding Losses</b>		
<b>(a) Employee-related expenses</b>		
Salaries and wages (including recreation leave)	14,512	14,227
Maintenance — employee-related*	76	82
Superannuation — defined benefit plans	445	375
Superannuation — defined contribution plans	1,031	997
Long service leave	865	433
Workers compensation insurance	128	67
Payroll tax and fringe benefit tax	846	831
Payroll tax on superannuation	82	82
Payroll tax on long service leave	35	20
	<b>18,020</b>	<b>17,114</b>
<b>(b) Other operating expenses include the following:</b>		
Auditor's remuneration — audit or review of financial reports	25	25
Operating lease rental expense — minimum lease payments	1,824	1,731
Insurance	12	18
Fees	812	839
Telephones	142	177
Stores	104	139
Training	125	180
Printing	135	120
Travel	412	467
Books, periodicals & subscriptions	56	47
Advertising	20	60
Energy	52	45
Motor vehicle	30	33
Postal and courier	31	36
Maintenance — non-employee-related*	206	268
Other	93	60
	<b>4,079</b>	<b>4,245</b>
<b>* Reconciliation — Total maintenance</b>		
Maintenance expenses — contracted labour and other	206	268
Employee-related maintenance expense included in Note 2(a)	76	82
<b>Total maintenance expenses included in Notes 2(a) and 2(b)</b>	<b>282</b>	<b>350</b>
<b>(c) Depreciation and amortisation expense</b>		
<b>Depreciation</b>		
Plant, equipment and leasehold improvements	320	328
<b>Total depreciation expense</b>	<b>320</b>	<b>328</b>
<b>Amortisation</b>		
Intangible assets	186	366
<b>Total amortisation expense</b>	<b>186</b>	<b>366</b>
<b>Total depreciation and amortisation expenses</b>	<b>506</b>	<b>694</b>

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

	2009 \$'000	2008 \$'000
<b>3 Revenue</b>		
<b>(a) Sale of goods and services</b>		
Sale of publications	1	10
Rendering of services	161	132
	<b>162</b>	<b>142</b>
<b>(b) Investment revenue</b>		
Interest	27	66
	<b>27</b>	<b>66</b>
<b>(c) Grants and contributions</b>		
Unreasonable Complainant Conduct Project	19	26
Young People and Internet Project	35	15
	<b>54</b>	<b>41</b>
<b>(d) Other revenue</b>		
Miscellaneous	8	14
	<b>8</b>	<b>14</b>
<b>4 Appropriations</b>		
<b>(a) Recurrent appropriation</b>		
Total recurrent draw-downs from Treasury (per Summary of Compliance)	19,969	20,069
	<b>19,969</b>	<b>20,069</b>
Comprising: Recurrent appropriations (per Operating Statement)	19,969	20,069
	<b>19,969</b>	<b>20,069</b>
<b>(b) Capital appropriation</b>		
Total capital draw-downs from Treasury (per Summary of Compliance)	543	300
Less: Liability to Consolidated Fund (per Summary of Compliance)	–	(2)
	<b>543</b>	<b>298</b>
Comprising: Capital appropriations (per Operating Statement)	543	298
	<b>543</b>	<b>298</b>
<b>5 Acceptance by the Crown Entity of Employee Benefits and Other Liabilities</b>		
The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:		
Superannuation — defined benefit	445	375
Long service leave	865	433
Payroll tax on superannuation	23	23
	<b>1,333</b>	<b>831</b>
<b>6 Service Groups of the Agency</b>		
<b>(a) Service Group 1: Complaint Advice, Referral, Resolution or Investigation</b>		
Objectives: This service group covers providing independent complaint advice and referral, handling complaints and dealing with protected disclosures. It also includes hearing witness protection appeals and conducting information and education programs for agencies and the community.		
<b>(b) Service Group 2: Oversight of Agency Investigation of Complaints</b>		
Objectives: This service group covers oversight of the NSW Police Force's handling of complaints about police and oversight of agency handling of allegations of child abuse.		
<b>(c) Service Group 3: Scrutiny of Complaint Handling and Other Systems</b>		
Objectives: This service group covers scrutiny of systems to prevent child abuse, dealing with police complaints and certain systems in the community services sector. It also includes review of the situation of vulnerable people, review of compliance with certain legislation and coordination of the official community visitor program.		



## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### (d) Service Group 4: Review of Implementation of Legislation

Objectives: This service group reviews implementation of legislation that expands the powers of NSW Police Force.

	2009 \$'000	2008 \$'000
<b>7 Current Assets — Cash and Cash Equivalents</b>		
Cash at bank and on hand	194	707
	<b>194</b>	<b>707</b>
For the purposes of the Cash Flow Statement, cash and cash equivalents include cash at bank and on hand.		
Cash and cash equivalent assets recognised in the Balance Sheet are reconciled at the end of the year to the Cash Flow Statement as follows:		
Cash and cash equivalents (per Balance Sheet)	194	707
Closing cash and cash equivalents (per Cash Flow Statement)	<b>194</b>	<b>707</b>
Refer Note 19 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.		
<b>8 Restricted Assets — Cash</b>		
Unreasonable Complainants Conduct Project	43	47
Young People and Internet Project	–	35
Liability to Consolidated Fund	–	2
	<b>43</b>	<b>84</b>
The Ombudsman received funding of \$15,000 in 2008–2009 from the New Zealand Ombudsman as their contribution to the Unreasonable Complainants Conduct project. In 2007–2008, \$123,000 was received from the Commonwealth and other state Ombudsman's office and the Department of Immigration and Citizenship. Amounts not expensed at 30 June 2009 are treated as a restricted asset for use in future years.		
<b>9 Current Assets — Receivables</b>		
Transfer of leave	3	8
Workshops	7	11
Bank interest	7	37
GST receivable	82	133
Legal fees	36	3
Other	–	16
Prepayments	300	152
	<b>435</b>	<b>360</b>
We consider all amounts to be collectible and as such, no allowance for impairment was established. Details regarding credit risk, liquidity risk and market risk, including financial assets that are either past due or impaired, are disclosed in Note 19.		
<b>Prepayments</b>		
Salaries and wages	5	–
Maintenance	103	108
Prepaid rent	162	11
Subscription/membership	14	14
Training	–	7
Motor vehicle	2	2
Employee assistance program	6	6
Travel	–	4
Other	8	–
	<b>300</b>	<b>152</b>

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### 10 Non-Current Assets — Plant and Equipment

	Plant and Equipment \$'000	Leasehold Improvement \$'000	Furniture and Fitting \$'000	Total \$'000
<b>At 1 July 2008 — fair value</b>				
Gross carrying amount	1,605	1,092	512	3,209
Accumulated depreciation	<u>(1,280)</u>	<u>(809)</u>	<u>(270)</u>	<u>(2,359)</u>
<b>Net carrying amount</b>	<b><u>325</u></b>	<b><u>283</u></b>	<b><u>242</u></b>	<b><u>850</u></b>

#### At 30 June 2009 — fair value

Gross carrying amount	1,572	1,285	554	3,411
Accumulated depreciation	<u>(1,339)</u>	<u>(881)</u>	<u>(318)</u>	<u>(2,538)</u>
<b>Net carrying amount</b>	<b><u>233</u></b>	<b><u>404</u></b>	<b><u>236</u></b>	<b><u>873</u></b>

#### Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of financial years is set out below:

#### Year ended 30 June 2009

Net carrying amount at start of year	325	283	242	850
Additions	108	193	42	343
Disposals	(141)	—	—	(141)
Depreciation write back on disposal	141	—	—	141
Depreciation expense	<u>(200)</u>	<u>(72)</u>	<u>(48)</u>	<u>(320)</u>
<b>Net carrying amount at end of year</b>	<b><u>233</u></b>	<b><u>404</u></b>	<b><u>236</u></b>	<b><u>873</u></b>

In July 2008, we reviewed our computer hardware assets and disposed obsolete equipment originally costing \$141,000 but, at the time of disposal, had a written down value of nil dollars.

#### At 1 July 2007 — fair value

Gross carrying amount	1,538	973	512	3,023
Accumulated depreciation	<u>(1,092)</u>	<u>(716)</u>	<u>(223)</u>	<u>(2,031)</u>
<b>Net carrying amount</b>	<b><u>446</u></b>	<b><u>257</u></b>	<b><u>289</u></b>	<b><u>992</u></b>

#### At 30 June 2008 — fair value

Gross carrying amount	1,605	1,092	512	3,209
Accumulated depreciation	<u>(1,280)</u>	<u>(809)</u>	<u>(270)</u>	<u>(2,359)</u>
<b>Net carrying amount</b>	<b><u>325</u></b>	<b><u>283</u></b>	<b><u>242</u></b>	<b><u>850</u></b>

#### Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of financial years is set out below:

#### Year ended 30 June 2008

Net carrying amount at start of year	446	257	289	992
Additions	67	119	—	186
Depreciation expense	<u>(188)</u>	<u>(93)</u>	<u>(47)</u>	<u>(328)</u>
<b>Net carrying amount at end of year</b>	<b><u>325</u></b>	<b><u>283</u></b>	<b><u>242</u></b>	<b><u>850</u></b>

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### 11 Non-Current Assets — Intangible Assets

	1 July 2008 \$'000	1 July 2007 \$'000	30 June 2009 \$'000	30 June 2008 \$'000
<b>Software</b>				
Gross carrying amount	2,875	2,763	3,080	2,875
Accumulated amortisation	(2,534)	(2,168)	(2,720)	(2,534)
<b>Net carrying amount</b>	<b>341</b>	<b>595</b>	<b>360</b>	<b>341</b>
			<b>2009 \$'000</b>	<b>2008 \$'000</b>

#### Reconciliation

A reconciliation of the fair value of software at the beginning of and end of financial years is set out below:

Net carrying amount at start of year			341	595
Additions			205	112
Amortisation expense			(186)	(366)
<b>Net carrying amount at end of year</b>			<b>360</b>	<b>341</b>

#### 12 Current Liabilities — Payables

Accrued salaries, wages and on-costs			211	135
Creditors			246	222
			<b>457</b>	<b>357</b>

#### 13 Current/Non-Current Liabilities — Provisions

##### Current employee benefits and related on-costs

Recreation leave			899	905
Annual leave loading			167	174
Payroll tax on recreation leave			49	54
Workers compensation on recreation leave			11	9
Payroll tax on long service leave			171	156
Other on-costs on long service leave			171	88
			<b>1,468</b>	<b>1,386</b>

##### Non-current employee benefits and related on-costs

Payroll tax on long service leave			9	8
Other on-costs on long service leave			9	5
			<b>18</b>	<b>13</b>

##### Aggregate employee benefits and related on-costs

Provisions — current			1,468	1,386
Provisions — non-current			18	13
Accrued salaries, wages and on-costs (Note 12)			211	135
			<b>1,697</b>	<b>1,534</b>

The value of annual leave and associated on-costs expected to be taken within 12 months is \$1,127,000. The office has a proactive annual leave management program, whereby all staff are encouraged to take their full entitlement each year. The value of long service leave on-costs expected to be settled within 12 months is \$38,000 and \$321,000 after 12 months.

#### 14 Current/Non-Current Liabilities — Other

##### Current

Unreasonable Complainant Conduct Project			43	47
Young People and Internet Project			—	35
Prepaid income			11	10
Liability to Consolidated Fund			—	2
Lease incentive			9	34
			<b>63</b>	<b>128</b>

##### Non-current

Lease incentive			—	9
			—	<b>9</b>

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### 15 Changes in Equity

	Accumulated Funds		Total Equity	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
Balance at the beginning of the financial year	365	957	365	957
Changes in equity — other than transactions with owners as owners	—	—	—	—
Deficit for the year	(509)	(592)	(509)	(592)
<b>Balance at the end of the financial year</b>	<b>(144)</b>	<b>365</b>	<b>(144)</b>	<b>365</b>

#### 16 Commitments for Expenditure

##### (a) Operating lease commitments

Future non-cancellable operating lease rentals not provided for and payable:

Not later than one year	2,011	1,876
Later than one year and not later than five years	2,014	470
Later than five years	—	—
<b>Total (including GST)</b>	<b>4,025</b>	<b>2,346</b>

The leasing arrangements are generally for leasing of property. The lease is a non-cancellable operating lease with a 10-year term, with rent payable monthly in advance. An option exists to renew the lease at the end of the 10-year term for an additional term of five years. The total operating lease commitments include GST input tax credits of \$365,894 which are expected to be recoverable from the Australian Taxation Office.

##### (b) Commitments for Other Expenditure

Future expenses not provided for and payable:

Not later than one year	12	—
<b>Total (including GST)</b>	<b>12</b>	<b>—</b>

We have purchased commitment of \$12,000 included GST input tax credits of \$1,067 which are expected to be recoverable from the Australian Taxation Office.

#### 17 Reconciliation of Cash Flows from Operating Activities to Net Cost of Services

Net cash used on operating activities	35	421
Cash flows from Government/Appropriations	(20,512)	(20,369)
Acceptance by the Crown Entity of employee benefits and other liabilities	(1,333)	(831)
Depreciation and amortisation	(506)	(694)
Decrease/(increase) in provisions	(87)	49
Increase/(decrease) in prepayments	148	—
Increase in payables	(100)	(98)
Increase/(decrease) in receivables	(73)	(274)
Decrease in other liabilities	74	6
<b>Net cost of services</b>	<b>(22,354)</b>	<b>(21,790)</b>

#### 18 Budget Review

##### Net cost of services

The actual net cost of services is higher than budget by \$671,000. There was an increase of \$491,000 in employee-related expenses due in part to higher than expected pay increases awarded to public servants and the flow on effect of this to leave liabilities. Of the increase in employee-related expenses, \$419,000 was increases in liabilities over budget assumed by the Crown Entity ie increases to long service leave and defined superannuation expenses. Increases to on-cost such as annual leave, workers compensation and superannuation on accrued long service leave as well as payroll tax on long service leave liabilities also increased. Since the global economic crisis we have experienced a significant drop in employee turnover. This has added to increased expenses.



## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### Assets and liabilities

Current assets are lower than budget by \$150,000, mostly due to a reduction in cash, including funds that were provided for specific projects continuing into 2009–2010. Our total liabilities also increased by \$156,000 due in part to our Payroll Tax liability payable on the 21 July 2009.

#### Cash flows

Net cash flows from operating activities were lower than budget by \$262,000. Total payments and receipts were higher than budget by \$268,000 and \$39,000 respectively. However, government contributions was lower than budget by \$33,000.

## 19 Financial Instruments

The office's principal financial instruments which are outlined below, arise directly from our operations. We do not enter into or trade financial instruments for speculative purposes. We do not use financial derivatives.

### (a) Financial instrument categories

Class:	Note	Category	Carrying Amount	
			2009 \$'000	2008 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	7	N/A	194	707
Receivables	9	Receivables (at amortised cost)	53	75
<b>Financial Liabilities</b>				
Payables	12	Financial liabilities measured at amortised cost	457	357

### (b) Credit risk

Credit risk arises when there is the possibility of the Ombudsman's debtors defaulting on their contractual obligations, resulting in a financial loss to the Ombudsman's office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment).

Credit risk arises from the financial assets of the Ombudsman's office, including cash, receivables and authority deposits. No collateral is held by the Ombudsman's office and the office has not granted any financial guarantees.

#### 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.

#### Receivables — trade debtors

All trade debtors are recognised as amounts receivable at balance date. Collectibility of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that we will not be able to collect all amounts due. The credit risk is the carrying amount (net of any allowance for impairment, if there is any). No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 14-day terms.

#### Other assets

All other assets are current and are mainly prepaid rent and maintenance agreements. The credit risk is the carrying amount. There is no interest earned on prepayments.

	Total \$'000	Past due but not impaired \$'000	Considered impaired \$'000
<b>2009</b>			
< 3 months overdue	5	5	—
3 months — 6 months overdue	33	33	—
> 6 months overdue	3	3	—
<b>2008</b>			
< 3 months overdue	28	28	—
3 months — 6 months overdue	—	—	—
> 6 months overdue	—	—	—

The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7.

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### (c) Liquidity risk

Liquidity risk is the risk that the Ombudsman's office will be unable to meet its payment obligations when they fall due. The Ombudsman's office continuously manages risk through monitoring future cash flows planning to ensure adequate holding of high quality liquid assets.

#### Bank overdraft

The office does not have any bank overdraft facility.

#### Trade creditors and accruals

The liabilities are recognised for amounts due to be paid in the future for goods and 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. We did not pay any penalty interest during the year.

The table below summarises the maturity profile of the Ombudsman's office financial liabilities.

	Weighted Average Effective Int. Rate	Amount Nominal \$'000	< 1 yr	1–5 yrs	> 5 yrs
<b>2009</b>					
<b>Payables:</b>					
Accrued salaries, wages and on-costs	–	211	211	–	–
Creditors	–	246	246	–	–
	–	<b>457</b>	<b>457</b>	–	–
<b>2008</b>					
<b>Payables:</b>					
Accrued salaries, wages and on-costs	–	135	135	–	–
Creditors	–	203	203	–	–
	–	<b>338</b>	<b>338</b>	–	–

#### (d) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Ombudsman's office exposure to market risk are primarily through interest rate risk. The Ombudsman's office has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on the result and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Ombudsman's office operates and the time frame for the assessment (ie until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the balance sheet date. The analysis is performed on the same basis for 2008. The analysis assumes that all other variables remain constant.

	Carrying amount \$'000	-1%		+1%	
		Profit \$'000	Equity \$'000	Profit \$'000	Equity \$'000
<b>2009</b>					
<b>Financial assets</b>					
Cash and cash equivalents	194	(2)	(2)	2	2
Receivables	53	(1)	(1)	1	1
<b>Financial liabilities</b>					
Payables	457	(5)	(5)	5	5
<b>2008</b>					
<b>Financial assets</b>					
Cash and cash equivalents	707	(7)	(7)	7	7
Receivables	75	(1)	(1)	1	1
<b>Financial liabilities</b>					
Payables	338	(3)	(3)	3	3

## OMBUDSMAN'S OFFICE

### Notes to the financial statements for the Year Ended 30 June 2009

#### (e) Fair value

Financial instruments are carried at cost. The fair value of all financial instruments approximates their carrying value.

	Carrying Amount		Fair Value	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
<b>Financial assets</b>				
Cash	194	707	194	707
Account receivables	53	75	53	75
<b>Financial liabilities</b>				
Account payables	457	338	457	338

#### 20 Contingent liabilities

Due to ongoing financial pressures caused by unfunded public sector pay increases and the imposition of efficiency dividends, the Ombudsman needs to reduce positions as future funding will not be able to support the current staff establishment. In July 2009 the Ombudsman approved some broad structural changes including the deletion of an Assistant Ombudsman position following the retirement of the occupant. A second Assistant Ombudsman position was deleted, which resulted in an redundancy type payout for the then occupant. The Ombudsman will need to reduce further positions, however the details of this is still being considered in light of legislative, strategic and other workload requirements. The structural changes will include transferring responsibility for areas of work from one internal branch/division to another to better reflect recent structural changes in the NSW public sector. The cost of any changes will be made from within existing resources as one of the triggers for structural change is the ongoing and worsening financial position that we face.

The Ombudsman has indicated that the broad structure will be in place by October 2009 however, more detailed work is continuing to identify further opportunities for cost savings. The Ombudsman has advised the Government, the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Committee and the NSW Treasury of the financial situation and that the need to reduce staffing levels will impact on the level of service that we provide to the community. Further details can be found in the Ombudsman's 2008–2009 Annual Report.

No provision has been made in our accounts for the period ending 30 June 2009 for the restructure. As mentioned above, the cost of any changes will be met from within existing resources.

#### 21 After Balance Date Events

There were no after balance date events.

#### End of the audited financial statements

# Appendices

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# Appendix A

## Profile of notifiable police complaints 2008–2009

Figure 60 — Action taken on finalised notifiable complaints about police officers, categorised by allegation

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
<b>Arrest</b>				
Improper failure to arrest	18	6	0	24
Unlawful arrest	22	26	7	55
Unnecessary use of arrest	21	22	8	51
<b>Total</b>	<b>61</b>	<b>54</b>	<b>15</b>	<b>130</b>
<b>Complaint-handling</b>				
Deficient complaint investigation	3	10	1	14
Fail to report misconduct	10	70	5	85
Fail to take a complaint	2	9	0	11
Inadequacies in informal resolution	0	0	1	1
Provide false information in complaint investigation	5	104	2	111
<b>Total</b>	<b>20</b>	<b>193</b>	<b>9</b>	<b>222</b>
<b>Corruption/misuse of office</b>				
Explicit threats involving use of authority	4	10	0	14
Improper association	45	89	5	139
Misuse authority for personal benefit or benefit of an associate	39	89	8	136
Offer or receipt of bribe/corrupt payment	19	9	0	28
Protection of person(s) involved in criminal activity (other)	2	2	0	4
<b>Total</b>	<b>109</b>	<b>199</b>	<b>13</b>	<b>321</b>
<b>Custody/detention</b>				
Death/serious injury in custody	1	0	0	1
Detained in excess of authorised time	2	2	1	5
Escape from custody	1	7	4	12
Fail to allow communication	1	2	1	4
Fail to caution/give information	2	4	0	6
Fail to meet requirements for vulnerable persons	3	6	1	10
Improper refusal to grant bail	0	1	0	1
Improper treatment	22	44	11	77
Inadequate monitoring of persons in custody	0	2	1	3
Unauthorised detention	6	11	4	21
<b>Total</b>	<b>38</b>	<b>79</b>	<b>23</b>	<b>140</b>
<b>Driving related offences/misconduct</b>				
Breach pursuit guidelines	0	9	1	10
Dangerous driving causing grievous bodily harm/death	0	3	0	3
Drink driving offence	7	23	1	31
Fail to conduct breath test/analysis	0	1	0	1
Negligent/dangerous driving	5	15	2	22
Unnecessary speeding	8	13	2	23
<b>Total</b>	<b>20</b>	<b>64</b>	<b>6</b>	<b>90</b>
<b>Drug related offences/misconduct</b>				
Cultivate/manufacture prohibited drug	1	4	0	5
Drinking/under the influence on duty	11	10	0	21
Protection of person(s) involved in drug activity	20	21	6	47
Supply prohibited drug	30	17	1	48
Use/possess restricted substance	3	2	0	5
Use/possession of prohibited drug	16	34	3	53
<b>Total</b>	<b>81</b>	<b>88</b>	<b>10</b>	<b>179</b>

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
<b>Excessive use of force</b>				
Assault	195	372	77	644
Firearm discharged	2	3	1	6
Firearm drawn	7	7	0	14
Improper use of handcuffs	3	8	4	15
<b>Total</b>	<b>207</b>	<b>390</b>	<b>82</b>	<b>679</b>
<b>Information</b>				
Fail to create/maintain records	9	133	16	158
Falsify official records	5	55	3	63
Misuse email/internet	15	39	11	65
Provide incorrect or misleading information	23	41	6	70
Unauthorised access/disclosure/alteration of information/data	67	252	33	352
Unreasonable refusal to provide information	2	3	0	5
<b>Total</b>	<b>121</b>	<b>523</b>	<b>69</b>	<b>713</b>
<b>Inadequate/improper investigation</b>				
Delay in investigation	18	14	1	33
Fail to advise outcome of investigation	5	4	1	10
Fail to investigate (customer service)	164	160	29	353
Improper/unauthorised forensic procedure	0	1	1	2
Improperly fail to investigate offence committed by another officer	0	3	1	4
Improperly interfere in investigation of offence committed by another police officer	3	22	3	28
Inadequate investigation	131	138	48	317
<b>Total</b>	<b>321</b>	<b>342</b>	<b>84</b>	<b>747</b>
<b>Misconduct</b>				
Allow unauthorised use of weapon	0	2	1	3
Conflict of interest	8	67	12	87
Detrimental action against a whistleblower	1	9	0	10
Dishonesty in recruitment/promotion	7	6	0	13
Disobey reasonable direction	2	55	7	64
Fail performance/conduct plan	0	2	0	2
Failure to comply with statutory obligation/procedure (other)	101	600	76	777
False claiming for duties/allowances	2	29	1	32
Inadequate management/maladministration	25	75	11	111
Inadequate security of weapon/appointments	2	18	1	21
Inappropriate intervention in civil dispute	2	3	0	5
Minor workplace related misconduct	3	32	2	37
Other improper use of discretion	0	16	2	18
Unauthorised secondary employment	10	29	4	43
Unauthorised use of vehicle/facilities/equipment	11	50	9	70
Workplace harassment/victimisation/discrimination	30	139	9	178
<b>Total</b>	<b>204</b>	<b>1,132</b>	<b>135</b>	<b>1,471</b>
<b>Other criminal conduct</b>				
Conspiracy to commit offence	2	7	0	9
Fraud	0	27	0	27
Murder/manslaughter	6	0	0	6
Officer in breach of domestic violence order	2	4	0	6
Officer perpetrator of domestic violence	0	19	1	20
Officer subject of application for domestic violence order	6	14	0	20
Other indictable offence	28	151	1	180
Other summary offence	34	132	7	173
Sexual assault/indecent assault	13	54	2	69
<b>Total</b>	<b>91</b>	<b>408</b>	<b>11</b>	<b>510</b>

Category	Allegations declined	Allegations subject of investigation	Allegations conciliated or informally resolved	Total
<b>Property/exhibits/theft</b>				
Damage to	5	5	2	12
Fail to report loss	0	2	0	2
Failure or delay in returning to owner	25	5	3	33
Loss of	6	21	14	41
Theft	14	41	2	57
Unauthorised removal/destruction/use of	9	19	8	36
<b>Total</b>	<b>59</b>	<b>93</b>	<b>29</b>	<b>181</b>
<b>Prosecution related inadequacies/misconduct</b>				
Adverse comment by Court/costs awarded	5	16	5	26
Fail to attend Court	6	24	4	34
Fail to check brief/inadequate preparation of brief	2	30	9	41
Fail to notify witness	2	12	3	17
Fail to serve brief of evidence	4	24	3	31
Failure to charge/prosecute	13	12	5	30
Improper prosecution	11	10	6	27
Mislead the Court	6	5	2	13
Mislead the defence	0	1	0	1
PIN/TIN inappropriately/wrongly issued	10	1	1	12
<b>Total</b>	<b>59</b>	<b>135</b>	<b>38</b>	<b>232</b>
<b>Public justice offences</b>				
Fabrication of evidence (other than perjury)	15	10	0	25
Involuntary confession by accused	0	1	1	2
Make false statement	16	14	4	34
Other pervert the course of justice	35	47	3	85
Perjury	3	7	1	11
Withholding or suppression of evidence	4	10	1	15
<b>Total</b>	<b>73</b>	<b>89</b>	<b>10</b>	<b>172</b>
<b>Search/entry</b>				
Failure to conduct search	0	4	1	5
Property missing after search	2	4	2	8
Unlawful entry	4	5	0	9
Unlawful search	21	26	22	69
Unreasonable/inappropriate conditions/damage	3	8	6	17
Wrongful seizure of property during search	2	3	3	8
<b>Total</b>	<b>32</b>	<b>50</b>	<b>34</b>	<b>116</b>
<b>Service delivery</b>				
Breach domestic violence SOPs	8	21	2	31
Fail to provide victim support	15	29	10	54
Fail/delay attendance to incident/'000'	16	13	6	35
Harassment/intimidation	117	66	59	242
Improper failure to WIPE	10	15	4	29
Improper use of move on powers	0	2	0	2
Neglect of duty (not specified elsewhere)	34	67	11	112
Other (customer service)	138	107	62	307
Rudeness/verbal abuse	81	93	31	205
Threats	40	40	18	98
<b>Total</b>	<b>459</b>	<b>453</b>	<b>203</b>	<b>1,115</b>
<b>Total summary of allegations</b>	<b>1,955</b>	<b>4,292</b>	<b>771</b>	<b>7,018</b>

The number of allegations is larger than the number of complaints received because a complaint may contain more than one allegation about a single incident or involve a series of incidents.

Note: The equivalent table published in our previous annual report contained some inaccuracies due to an unidentified programming error. The table has been corrected in the website version of our 2007–2008 annual report.

# Appendix B

## Status of legislative reviews — as at 30 June 2009

Status	Legislation	Brief description
Review reports tabled in Parliament in 2008–2009	<i>Police Powers (Drug Detection Trial) Act 2003</i>	Allows police to use drug 'sniffer' dogs on vehicles randomly stopped in 'outer metropolitan' areas. Provided to the Attorney General in June 2008 and tabled in August 2008.
	<i>Justice Legislation (Non-association and Place Restriction) Act 2001</i>	Allows police and courts to put restrictions — when determining bail conditions, imposing a sentence or allowing parole — on the places that a person can be in and the people they can associate with. Provided to the responsible Ministers in December 2006 and tabled in December 2008.
	<i>Law Enforcement (Powers and Responsibilities) Act 2002 — Part 4, Divisions 2 and 4</i>	Regulates the safeguards connected with searching people after they have been arrested or while they are in police custody.
	<i>Law Enforcement (Powers and Responsibilities) Act 2002 — Part 5, Division 3</i>	Allows police to issue notices to financial institutions to produce information about their customers for criminal investigations.
	<i>Law Enforcement (Powers and Responsibilities) Act 2002 — Part 7</i>	Regulates police powers for establishing crime scenes. Provided to the responsible Ministers in February 2009 and tabled in May 2009.
	<i>Terrorism (Police Powers) Act 2002 — Part 3</i>	Allows police and the Crime Commission to execute covert search warrants. Provided to the responsible Ministers in September 2008 and tabled in October 2008.
Current reviews	<i>Terrorism (Police Powers) Act 2002 — Part 2A</i>	Allows police to hold people suspected of involvement in terrorist-related activities in preventative detention. Interim report provided to the responsible Ministers in September 2008 and tabled in October 2008.
	<i>Criminal Procedure Act 1986 — Part 3 'Penalty notice offences'</i>	Allows police to issue penalty notices for certain criminal offences. Focus of review is the impact on Aboriginal and Torres Strait Islander communities.
	<i>Law Enforcement Legislation Amendment (Public Safety) Act 2005</i>	Additional powers to police to prevent or control large-scale public disorder.
	<i>Crimes (Criminal Organisations Control) Act 2009</i>	Allows the Commissioner of Police to seek a declaration from a Supreme Court judge that a criminal gang or organisation is a declared criminal organisation and the subsequent application for interim control orders and control orders against members of declared organisations.



# Appendix C

## Child and family services

**Figure 61 — Complaints issues for child and family services received in 2008–2009**

Figure 61 shows the issues that were complained about in 2008–2009 in relation to child and family services. Please note that each complaint we received may have more than one issue.

Program area Issue	Child protection		Out-of-home care		Children's services		Family support		Adoption		Total
	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	Formal	Informal	
Casework	112	115	96	107	1	5	3	6	0	0	445
Meeting individual needs	33	39	122	149	1	3	0	2	0	0	349
Object to decision	32	78	18	91	0	3	0	3	0	0	225
Case management	37	41	68	42	1	2	0	0	0	0	191
Customer service	13	36	29	45	2	3	2	2	0	0	132
Complaints	20	30	20	37	7	3	0	1	2	0	120
Information	23	35	22	40	6	4	0	0	0	1	131
Assault/abuse in care	11	12	15	30	1	1	0	0	0	0	70
Investigation	14	22	5	16	2	2	0	0	0	0	61
Professional conduct	16	36	18	17	2	2	0	1	0	0	92
Allowances/fees	1	2	20	25	6	7	0	0	0	0	61
Clients rights/choice/ participation	1	4	5	6	0	1	1	0	0	0	18
Policy/procedure/law	1	7	2	5	1	3	0	0	0	0	19
Legal problems	4	4	3	1	0	0	0	0	0	0	12
Service management	1	1	2	4	2	6	0	0	0	0	16
Access to service	0	4	0	0	3	5	0	1	0	0	13
File/record management	0	3	2	5	0	0	0	0	0	0	10
Safety	4	5	2	4	1	1	0	0	0	0	17
Client finances and property	0	0	2	2	0	1	0	0	0	0	5
Service funding/licensing/ monitoring	0	0	3	1	0	1	0	0	0	0	5
Outside our jurisdiction	11	68	1	13	0	8	0	1	0	0	102
Not applicable	0	16	0	4	0	1	0	1	0	0	22
<b>Total</b>	<b>334</b>	<b>558</b>	<b>455</b>	<b>644</b>	<b>36</b>	<b>62</b>	<b>6</b>	<b>18</b>	<b>2</b>	<b>1</b>	<b>2,116</b>

**Figure 62 — Child and family services — formal complaints finalised**

Figure 62 shows the outcomes of formal complaints finalised about child and family services this year.

Program area	A	B	C	D	E	F	G	Total
Child protection services	36	110	42	5	2	10	7	212
Out-of-home care	21	118	96	7	0	0	6	248
Children's services	13	5	1	0	1	0	2	22
Family support services	0	1	2	0	0	1	0	4
Adoption	0	1	1	0	0	0	0	2
<b>Total</b>	<b>70</b>	<b>235</b>	<b>142</b>	<b>12</b>	<b>3</b>	<b>11</b>	<b>15</b>	<b>488</b>

### Description

<b>A</b>	Complaint declined at outset
<b>B</b>	Complaint declined after inquiries
<b>C</b>	Complaint resolved after inquiries, including local resolution by the agency concerned
<b>D</b>	Service improvement comments or suggestions to agency
<b>E</b>	Referred to agency concerned or other body for investigation
<b>F</b>	Direct investigation
<b>G</b>	Complaint outside jurisdiction

# Appendix D

## Disability services

**Figure 63 — Complaints issues for disability services received in 2008–2009**

Figure 63 shows the issues that were complained about in 2008–2009 in relation to disability services. Please note that each complaint we received may have more than one issue.

Program area Issue	Disability accommodation		Disability support		Total
	Formal	Informal	Formal	Informal	
Meeting individual needs	67	43	13	14	137
Case management	35	15	15	5	70
Assault/abuse in care	26	15	4	3	48
Service management	12	19	4	6	41
Customer service	5	5	8	7	25
Professional conduct	11	9	8	5	33
Access to service	4	6	14	17	41
Complaints	11	16	8	4	39
Client rights/choice/participation	12	9	4	2	27
Object to decision	6	3	11	11	31
Safety	11	11	0	1	23
Casework	2	2	0	1	5
Information	5	9	2	1	17
Investigation	1	1	3	2	7
Service funding/licensing/monitoring	4	5	2	1	12
Client finances and property	2	2	1	0	5
Policy/procedure/law	1	4	1	1	7
File/record management	1	1	1	0	3
Allowances/fees	1	1	2	4	8
Legal problems	0	0	0	0	0
Outside our jurisdiction	4	7	4	13	28
Not applicable	1	7	0	7	15
<b>Total</b>	<b>222</b>	<b>190</b>	<b>105</b>	<b>105</b>	<b>622</b>

**Figure 64 — Disability services — formal complaints finalised**

Figure 64 shows the outcomes of formal complaints we received about disability services this year.

Program area	A	B	C	D	E	F	G	Total
Disability accommodation services	11	45	46	1	3	1	2	109
Disability support services	9	23	32	2	2	0	4	72
<b>Total</b>	<b>20</b>	<b>68</b>	<b>78</b>	<b>3</b>	<b>5</b>	<b>1</b>	<b>6</b>	<b>181</b>

### Description

<b>A</b>	Complaint declined at outset
<b>B</b>	Complaint declined after inquiries
<b>C</b>	Complaint resolved after inquiries, including local resolution by the agency concerned
<b>D</b>	Service improvement comments or suggestions to agency
<b>E</b>	Referred to agency concerned or other body for investigation
<b>F</b>	Direct investigation
<b>G</b>	Complaint outside jurisdiction

# Appendix E

## Other community services

**Figure 65 — Number of formal and informal matters received in 2008–2009 about other community services — by agency category**

Agency category	Formal	Informal	Total
<b>DoCS</b>			
Supported accommodation and assistance program services	2	0	2
General community services	0	65	65
Aged services	0	0	0
Disaster welfare services	0	0	0
Other	1	24	25
<b>Sub-total</b>	<b>3</b>	<b>89</b>	<b>92</b>
<b>DADHC</b>			
Supported accommodation and assistance program services	0	0	0
General community services	0	4	4
Aged services	4	31	35
Disaster welfare services	0	0	0
Other	1	7	8
<b>Sub-total</b>	<b>5</b>	<b>42</b>	<b>47</b>
<b>Other government agencies</b>			
Supported accommodation and assistance program services	0	0	0
General community services	0	0	0
Aged services	0	1	1
Other	0	3	3
Disaster welfare services	0	0	0
<b>Sub-total</b>	<b>0</b>	<b>4</b>	<b>4</b>
<b>Non-government funded or licensed services</b>			
Supported accommodation and assistance program services	11	4	15
General community services	2	5	7
Aged services	2	10	12
Other	0	5	5
Disaster welfare services	0	0	0
<b>Sub-total</b>	<b>15</b>	<b>24</b>	<b>39</b>
<b>Other (general inquiries)</b>	<b>1</b>	<b>11</b>	<b>12</b>
Agency unknown	5	61	66
<b>Sub-total</b>	<b>6</b>	<b>72</b>	<b>78</b>
<b>Total</b>	<b>29</b>	<b>231</b>	<b>260</b>

Some complaints about supported accommodation and general community services may involve complaints about child and family and disability services.

## Figure 66 — Complaints issues for other community services received in 2008–2009

Figure 66 shows the issues that were complained about in 2008–2009 in relation to general community services. Please note that each complaint we received may have more than one issue.

Program area Issue	Other community services		Total
	Formal	Informal	
Access to service	8	25	33
Customer service	1	15	16
Professional conduct	0	10	10
Complaints	3	11	14
Meeting individual needs	4	16	20
Object to decision	4	14	18
Allowances/fees	0	9	9
Information	0	8	8
Clients rights/choice/participation	0	2	2
Case management	2	13	15
Service funding/licensing/monitoring	0	2	2
Files/record management	1	1	2
Assault/abuse in care	1	7	8
Casework	1	34	35
Service management	4	7	11
Policy/procedure/law	0	2	2
Investigation	0	1	1
Safety	2	2	4
Legal problems	0	7	7
Client finances and property	0	2	2
Outside our jurisdiction	5	47	52
Not applicable	3	43	46
<b>Total</b>	<b>39</b>	<b>278</b>	<b>317</b>

## Figure 67 — Other community services — formal complaints finalised

Figure 67 shows the outcomes of formal complaints finalised about general community services this year.

Program area	A	B	C	D	E	F	G	Total
Supported accommodation and assistance program services	3	9	3	2	0	0	1	18
General community services	2	0	1	0	0	0	0	3
Aged services	2	3	3	0	0	0	1	9
Other	3	1	0	0	0	0	1	5
<b>Total</b>	<b>10</b>	<b>13</b>	<b>7</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>35</b>

### Description

<b>A</b>	Complaint declined at outset
<b>B</b>	Complaint declined after inquiries
<b>C</b>	Complaint resolved after inquiries, including local resolution by the agency concerned
<b>D</b>	Service improvement comments or suggestions to agency
<b>E</b>	Referred to agency concerned or other body for investigation
<b>F</b>	Direct investigation
<b>G</b>	Complaint outside jurisdiction

# Appendix F

## Public sector agencies

**Figure 68 — Action taken on formal complaints finalised in 2008–2009 about all public sector agencies — summary table**

Figure 68 shows the action we took on each of the written complaints that we finalised this year about public sector agencies (except the NSW Police Force, DoCS and DADHC and those relating to child protection notifications), broken down into agency groups. See Appendices G, H, I and J for a further breakdown into specific agencies in those groups.

Complaint about	Assessment only			Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Local government	331	6	191	2	85	27	29	0	0	0	0	0	1	672	
Departments and authorities	587	28	319	12	248	78	30	2	1	0	0	0	5	1,310	
Bodies outside jurisdiction	397	0	0	0	0	0	0	0	0	0	0	0	0	397	
Freedom of information	104	4	18	2	61	5	10	0	0	1	16	0	3	224	
Corrections and Justice Health	121	45	269	33	185	51	8	2	0	0	0	0	0	714	
Juvenile Justice	3	4	28	2	25	10	1	0	0	0	0	0	0	73	
<b>Total</b>	<b>1,543</b>	<b>87</b>	<b>825</b>	<b>51</b>	<b>604</b>	<b>171</b>	<b>78</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>16</b>	<b>0</b>	<b>9</b>	<b>3,390</b>	

### Description

**A Decline after assessment only, including:**

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

**Preliminary or informal investigation:**

**B** Substantive advice, information provided without formal finding of wrong conduct

**C** Advice/explanation provided where no or insufficient evidence of wrong conduct

**D** Further investigation declined on grounds of resource/priority

**E** Resolved to Ombudsman's satisfaction

**F** Resolved by agency prior to our intervention

**G** Suggestions/comment made

**H** Consolidated into other complaint

**I** Conciliated/mediated

**Formal investigation:**

**J** Resolved during investigation

**K** Investigation discontinued

**L** No adverse finding

**M** Adverse finding



# Appendix G

## Departments and authorities

**Figure 69 — Action taken on general formal complaints about departments and authorities finalised in 2008–2009**

Agency	Assessment only		Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Aboriginal Housing Office	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Accredited Certifier	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ambulance Service of NSW	6	0	1	0	1	1	0	0	0	0	0	0	0	9
Attorney General's Department	5	1	2	0	1	0	0	0	0	0	0	0	0	9
Board of Architects of NSW	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Board of Studies NSW	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Board of Vocational Education and Training	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Building and Construction Industry Long Service Payments Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Building Professionals Board	2	0	1	0	1	1	0	0	0	0	0	0	0	5
Charles Sturt University	1	0	2	0	1	1	0	0	0	0	0	0	0	5
Coal Compensation Board	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Consumer, Trader and Tenancy Tribunal	5	0	0	0	0	1	0	0	0	0	0	0	0	6
Dental Board of NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Dental Technicians Registration Board	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Department of Arts, Sport and Recreation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Department of Commerce	22	1	8	1	10	2	2	0	0	0	0	0	0	46
Department of Education and Training	45	5	20	1	17	9	2	1	0	0	0	0	0	100
Department of Energy, Utilities and Sustainability	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Department of Environment and Climate Change	9	0	7	0	2	2	1	0	0	0	0	0	0	21
Department of Health	42	1	7	0	4	2	1	0	0	0	0	0	3	60
Department of Lands	13	2	9	0	7	2	0	0	0	0	0	0	0	33
Department of Local Government	3	0	0	0	2	1	0	0	0	0	0	0	0	6
Department of Planning	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Department of Premier and Cabinet	0	0	0	0	0	1	1	0	0	0	0	0	0	2
Department of Primary Industries	12	0	3	0	2	0	1	0	0	0	0	0	0	18
Department of State and Regional Development	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Department of Water and Energy	4	0	3	0	1	0	1	1	0	0	0	0	1	11
Director of Public Prosecutions	4	0	0	0	0	0	0	0	0	0	0	0	0	4
Electoral Commission NSW	2	0	0	0	0	1	0	0	0	0	0	0	0	3
Energy Australia	6	0	0	0	0	0	0	0	0	0	0	0	0	6
First State Superannuation Trustee Corporation	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Growth Centres Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Guardianship Tribunal	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Health Care Complaints Commission	7	1	2	0	0	0	0	0	0	0	0	0	0	10
Historic Houses Trust	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Department of Housing	43	3	63	0	50	19	1	0	0	0	0	0	0	179
Hunter Water Corporation Limited	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Illaroo Co-operative Aboriginal Corporation	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Independent Commission Against Corruption	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Industrial Relations Commission of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Integral Energy	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Jenolan Caves Reserve Trust	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Legal Aid Commission of NSW	12	0	4	1	1	2	1	0	0	0	0	0	0	21
Livestock Health and Pest Authority	5	0	0	0	2	0	0	0	0	0	0	0	0	7
Local Government Boundaries Commission	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Lord Howe Island Board	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Macquarie University	5	0	3	0	6	0	0	0	0	0	0	0	0	14
Metropolitan Local Aboriginal Land Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
MidCoast Water	0	0	2	0	1	0	0	0	0	0	0	0	0	3
Mine Subsidence Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ministry of Transport	3	0	5	0	1	1	1	0	0	0	0	0	1	12
Motor Accidents Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1

Agency	Assessment only		Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Motor Vehicle Repair Industry Authority	1	0	0	0	1	0	0	0	0	0	0	0	0	2
NSW Fire Brigades	3	0	2	1	1	2	0	0	0	0	0	0	0	9
NSW Heritage Office	0	0	0	0	1	0	0	0	0	0	0	0	0	1
NSW Lotteries	2	0	0	0	0	0	0	0	0	0	0	0	0	2
NSW Maritime Authority	4	0	1	0	0	2	0	0	0	0	0	0	0	7
NSW Medical Board	4	0	2	0	1	0	0	0	0	0	0	0	0	7
NSW Office of Liquor, Gaming and Racing	3	0	0	0	0	0	0	0	0	0	0	0	0	3
NSW Treasury	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Nurses and Midwives Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Office of Protective Commissioner	14	0	14	0	22	1	1	0	0	0	0	0	0	52
Office of the Public Guardian	3	0	0	0	4	0	0	0	0	0	0	0	0	7
Office of State Revenue	81	5	64	1	32	10	2	0	0	0	0	0	0	195
Office of the Legal Services Commissioner	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Pillar Administration	4	0	0	0	1	0	0	0	0	0	0	0	0	5
Police Integrity Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Psychologists Registration Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Public Trustee	6	0	3	0	5	1	1	0	0	0	0	0	0	16
Rail Corporation New South Wales	28	0	8	1	2	1	2	0	0	0	0	0	0	42
Redfern-Waterloo Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Registry of Births, Deaths and Marriages	3	1	3	0	16	2	0	0	0	0	0	0	0	25
Rental Bond Board	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	79	5	37	1	32	10	2	0	0	0	0	0	0	166
Rural Assistance Authority	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Rural Fire Service NSW	3	0	2	0	1	0	0	0	0	0	0	0	0	6
Sheriff's Office	1	0	0	0	0	1	0	0	0	0	0	0	0	2
Southern Cross University	2	0	2	0	0	1	0	0	0	0	0	0	0	5
State Authorities Superannuation Trustee Corporation	1	0	0	0	0	0	1	0	0	0	0	0	0	2
State Contracts Control Board	1	0	0	0	0	0	0	0	0	0	0	0	0	1
State Transit Authority of NSW	7	0	0	0	3	0	0	0	0	0	0	0	0	10
Sydney Catchment Authority	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Sydney Ferries Corporation	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Sydney Water Corporation	4	0	0	0	0	0	0	0	0	0	0	0	0	4
Tourism NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Unnamed agency	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Universities Admissions Centre	3	0	0	0	0	0	0	0	0	0	0	0	0	3
University of New England	6	2	1	0	0	0	0	0	0	0	0	0	0	9
University of New South Wales	5	0	4	1	1	0	0	0	0	0	0	0	0	11
University of Newcastle	3	0	4	2	1	0	1	0	0	0	0	0	0	11
University of Sydney	10	0	6	0	0	0	4	0	0	0	0	0	0	20
University of Technology	2	0	0	0	0	0	0	0	0	0	0	0	0	2
University of Western Sydney	4	0	4	0	1	0	0	0	0	0	0	0	0	9
University of Wollongong	0	1	4	1	0	0	2	0	0	0	0	0	0	8
Valuer General	4	0	0	0	2	0	0	0	0	0	0	0	0	6
Veterinary Practitioners Board of NSW	0	0	1	0	0	0	0	0	0	0	0	0	0	1
WorkCover Authority	8	0	4	0	3	1	1	0	0	0	0	0	0	17
<b>Total</b>	<b>589</b>	<b>28</b>	<b>318</b>	<b>12</b>	<b>247</b>	<b>79</b>	<b>30</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>1,310</b>

## Description

### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

### Preliminary or informal investigation:

- B** Substantive advice, information provided without formal finding of wrong conduct
- C** Advice/explanation provided where no or insufficient evidence of wrong conduct
- D** Further investigation declined on grounds of resource/priority
- E** Resolved to Ombudsman's satisfaction

- F** Resolved by agency prior to our intervention
- G** Suggestions/comment made
- H** Consolidated into other complaint
- I** Conciliated/mediated
- Formal investigation:**
- J** Resolved during investigation
- K** Investigation discontinued
- L** No adverse finding
- M** Adverse finding

# Appendix H

## Local government

**Figure 70 — Action taken on formal complaints finalised in 2008–2009 about local government**

Figure 70 shows the action we took on each of the written complaints finalised this year about individual councils.

Council	Assessment only			Preliminary or informal investigation						Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Accredited Certifier	2	0	2	0	0	1	0	0	0	0	0	0	0	5
Albury City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Armidale Dumaresq Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Ashfield Municipal Council	1	0	2	0	1	0	0	0	0	0	0	0	0	4
Auburn Council	2	0	0	0	3	0	0	0	0	0	0	0	0	5
Ballina Shire Council	3	0	3	0	0	0	0	0	0	0	0	0	0	6
Bankstown City Council	0	0	3	0	1	0	0	0	0	0	0	0	0	4
Bathurst Regional Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Bega Valley Shire Council	5	0	1	0	1	0	0	0	0	0	0	0	0	7
Bellingen Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Berrigan Shire Council	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Blacktown City Council	1	0	5	0	1	1	1	0	0	0	0	0	0	9
Bland Shire Council	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Blue Mountains City Council	6	0	2	0	2	0	1	0	0	0	0	0	0	11
Bombala Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Boorowa Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Botany Bay City Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Brewarrina Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Broken Hill City Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Burwood Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Byron Shire Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Camden Council	1	0	3	0	0	0	1	0	0	0	0	0	0	5
Campbelltown City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Canterbury City Council	1	0	2	0	4	0	0	0	0	0	0	0	0	7
Carrathool Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Central Darling Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Central Tablelands Water	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Cessnock City Council	2	0	2	0	0	0	0	0	0	0	0	0	0	4
City of Canada Bay Council	1	0	2	0	1	1	0	0	0	0	0	0	0	5
Clarence Valley Council	2	0	5	0	0	1	0	0	0	0	0	0	0	8
Cobar Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Coffs Harbour City Council	3	0	1	0	0	0	0	0	0	0	0	0	0	4
Cooma-Monaro Shire Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Coonamble Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Cowra Shire Council	1	0	2	0	1	0	0	0	0	0	0	0	0	4
Eurobodalla Shire Council	3	0	4	0	0	1	0	0	0	0	0	0	0	8
Fairfield City Council	2	0	6	0	0	0	0	0	0	0	0	0	0	8
Glen Innes Severn Council	1	0	0	0	2	0	0	0	0	0	0	0	0	3
Goldenfields Water County Council	0	0	0	0	1	1	0	0	0	0	0	0	0	2
Gosford City Council	11	0	11	1	4	1	0	0	0	0	0	0	0	28
Goulburn Mulwaree Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Great Lakes Council	3	0	1	0	0	0	0	0	0	0	0	0	0	4
Greater Hume Shire Council	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Greater Taree City Council	3	0	5	0	4	1	0	0	0	0	0	0	1	14
Gunnedah Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Gwydir Shire Council	3	1	1	0	0	0	0	0	0	0	0	0	0	5
Harden Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2

Council	Assessment only		Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Hawkesbury City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Holroyd City Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Hornsby Shire Council	6	0	2	0	5	0	0	0	0	0	0	0	0	13
Hunters Hill Municipal Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Hurstville City Council	6	0	0	0	2	1	1	0	0	0	0	0	0	10
Kempsey Shire Council	3	0	0	0	0	0	2	0	0	0	0	0	0	5
Kiama Municipal Council	3	0	0	0	1	0	0	0	0	0	0	0	0	4
Kogarah City Council	4	0	4	0	0	0	0	0	0	0	0	0	0	8
Ku-ring-gai Council	9	0	0	0	1	0	0	0	0	0	0	0	0	10
Kyogle Shire Council	0	0	1	0	1	0	0	0	0	0	0	0	0	2
Lachlan Shire Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Lake Macquarie City Council	10	0	1	0	1	0	0	0	0	0	0	0	0	12
Lane Cove Municipal Council	1	0	2	0	0	0	0	0	0	0	0	0	0	3
Leichhardt Municipal Council	2	0	4	0	2	0	0	0	0	0	0	0	0	8
Lismore City Council	7	0	2	0	0	1	1	0	0	0	0	0	0	11
Lithgow City Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Liverpool City Council	3	0	2	0	0	1	0	0	0	0	0	0	0	6
Liverpool Plains Shire Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3
Maitland City Council	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Manly Council	2	0	1	0	0	0	0	0	0	0	0	0	0	3
Marrickville Council	3	1	1	0	4	2	1	0	0	0	0	0	0	12
Mid-Western Regional Council	0	0	2	0	0	0	0	0	0	0	0	0	0	2
MidCoast Water	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Moree Plains Shire Council	1	0	0	0	1	0	1	0	0	0	0	0	0	3
Mosman Municipal Council	3	0	2	0	0	1	1	0	0	0	0	0	0	7
Murray Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Nambucca Shire Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Narrandera Shire Council	2	0	0	0	2	0	0	0	0	0	0	0	0	4
Newcastle City Council	7	0	2	0	1	0	1	0	0	0	0	0	0	11
North Sydney Council	6	0	0	0	0	2	0	0	0	0	0	0	0	8
Orange City Council	0	0	3	0	1	0	0	0	0	0	0	0	0	4
Parramatta City Council	4	0	6	0	2	0	0	0	0	0	0	0	0	12
Penrith City Council	3	0	3	0	3	0	0	0	0	0	0	0	0	9
Pittwater Council	8	0	2	0	3	1	0	0	0	0	0	0	0	14
Port Macquarie-Hastings Council	5	0	1	0	3	0	0	0	0	0	0	0	0	9
Port Stephens Shire Council	6	0	4	0	1	0	1	0	0	0	0	0	0	12
Queanbeyan City Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Randwick City Council	2	0	1	0	1	0	0	0	0	0	0	0	0	4
Richmond Valley Council	5	0	3	0	2	1	0	0	0	0	0	0	0	11
Richmond River County Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Rockdale City Council	5	0	0	0	1	0	2	0	0	0	0	0	0	8
Rous County Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ryde City Council	6	0	2	0	1	1	2	0	0	0	0	0	0	12
Shellharbour City Council	4	0	4	0	1	0	0	0	0	0	0	0	0	9
Shoalhaven City Council	8	0	5	0	1	1	0	0	0	0	0	0	0	15
Singleton Shire Council	0	0	1	0	0	0	1	0	0	0	0	0	0	2
Snowy River Shire Council	5	0	0	0	0	0	0	0	0	0	0	0	0	5
Strathfield Municipal Council	3	0	0	0	2	0	0	0	0	0	0	0	0	5
Sutherland Shire Council	11	0	2	0	0	0	1	0	0	0	0	0	0	14
Sydney City Council	19	0	4	0	4	0	1	0	0	0	0	0	0	28
Tamworth Regional Council	2	0	2	0	1	0	0	0	0	0	0	0	0	5
Tenterfield Shire Council	1	0	0	0	1	0	1	0	0	0	0	0	0	3
The Hills Shire Council	4	0	4	0	0	1	1	0	0	0	0	0	0	10
Tumut Shire Council	0	0	1	0	0	0	1	0	0	0	0	0	0	2

Council	Assessment only		Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Tweed Shire Council	9	0	3	0	1	1	0	0	0	0	0	0	0	14
Upper Hunter Shire Council	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Upper Lachlan Shire Council	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	5	0	2	0	0	1	0	0	0	0	0	0	0	8
Walcha Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Walgett Shire Council	2	0	0	0	0	0	1	0	0	0	0	0	0	3
Warringah Council	9	0	5	1	1	1	0	0	0	0	0	0	0	17
Waverly Council	3	0	2	0	2	0	0	0	0	0	0	0	0	7
Weddin Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wellington Council	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Wentworth Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Willoughby City Council	0	0	2	0	0	0	0	0	0	0	0	0	0	2
Wingecarribee Shire Council	2	1	3	0	0	0	1	0	0	0	0	0	0	7
Wollondilly Shire Council	2	0	2	0	0	0	0	0	0	0	0	0	0	4
Wollongong City Council	13	1	4	0	1	2	0	0	0	0	0	0	0	21
Woollahra Municipal Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Wyong Shire Council	1	1	6	0	0	1	1	0	0	0	0	0	0	10
Young Shire Council	0	0	2	0	0	0	0	0	0	0	0	0	0	2
<b>Total</b>	<b>332</b>	<b>6</b>	<b>191</b>	<b>2</b>	<b>85</b>	<b>27</b>	<b>28</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>672</b>

## Description

### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

### Preliminary or informal investigation:

**B** Substantive advice, information provided without formal finding of wrong conduct

**C** Advice/explanation provided where no or insufficient evidence of wrong conduct

**D** Further investigation declined on grounds of resource/priority

**E** Resolved to Ombudsman's satisfaction

**F** Resolved by agency prior to our intervention

**G** Suggestions/comment made

**H** Consolidated into other complaint

**I** Conciliated/mediated

### Formal investigation:

**J** Resolved during investigation

**K** Investigation discontinued

**L** No adverse finding

**M** Adverse finding



# Appendix I

## Corrections

**Figure 71 — Action taken on formal complaints finalised in 2008–2009 concerning people in custody**

Figure 71 shows the action we took on each of the formal complaints finalised this year concerning people in custody.

Agency	Assessment only			Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M		
Department of Corrective Services	103	40	225	28	149	38	8	2	0	0	0	0	0	593	
Department of Health	11	1	27	2	17	6	0	0	0	0	0	0	0	64	
GEO Australia	7	4	17	3	19	7	0	0	0	0	0	0	0	57	
Department of Juvenile Justice	3	4	28	2	25	10	1	0	0	0	0	0	0	73	
<b>Total</b>	<b>124</b>	<b>49</b>	<b>297</b>	<b>35</b>	<b>210</b>	<b>61</b>	<b>9</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>787</b>	

### Description

**A Decline after assessment only, including:**

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

**Preliminary or informal investigation:**

- B** Substantive advice, information provided without formal finding of wrong conduct
- C** Advice/explanation provided where no or insufficient evidence of wrong conduct
- D** Further investigation declined on grounds of resource/priority
- E** Resolved to Ombudsman's satisfaction

**F** Resolved by agency prior to our intervention

- G** Suggestions/comment made
- H** Consolidated into other complaint
- I** Conciliated/mediated

**Formal investigation:**

- J** Resolved during investigation
- K** Investigation discontinued
- L** No adverse finding
- M** Adverse finding

**Figure 72 — Number of formal and informal complaints received in 2008–2009 about correctional centres, DCS and GEO**

Institution	Formal	Informal	Total
Bathurst Correctional Centre	40	164	204
Berrima Correctional Centre	2	25	27
Broken Hill Correctional Centre	1	14	15
Cessnock Correctional Centre	10	50	60
Community Offender Services	19	28	47
Cooma Correctional Centre	7	15	22
Corrective Services Department	127	191	318
Court Escort/Security Unit	13	16	29
Dawn De Laos Special Purpose Centre	8	27	35
Dillwynia Correctional Centre	12	98	110
Drug Dog Detector Unit	1	0	1
Emu Plains Correctional Centre	13	40	53
GEO Australia	1	0	1
Glen Innes Correctional Centre	3	11	14
Goulburn Correctional Centre	47	209	256
Grafton Correctional Centre	3	34	37
Department of Corrective Services Head Office	0	1	1
High Risk Management Unit	21	35	56
Ivanhoe "Warakirri" Correctional Centre	0	1	1
John Morony Correctional Centre	8	24	32
Junee Correctional Centre	57	301	358
Kariong Juvenile Correctional Centre	2	21	23
Kirkconnell Correctional Centre	6	48	54
Lithgow Correctional Centre	25	84	109

Institution	Formal	Informal	Total
Long Bay Hospital	12	67	79
Mannus Correctional Centre	1	6	7
Metropolitan Remand and Reception Centre	42	192	234
Metropolitan Special Programs Centre	43	207	250
Mid North Coast Correctional Centre	13	206	219
Oberon Correctional Centre	1	11	12
Outer Metropolitan Multi Purpose Centre	2	4	6
Parklea Correctional Centre	35	162	197
Parramatta Correctional Centre	1	36	37
Periodic Detention Centres	4	2	6
Silverwater Correctional Centre	8	77	85
Silverwater Women's Correctional Centre	16	74	90
Special Purpose Prison Long Bay	1	10	11
St Heliers Correctional Centre	4	17	21
Tamworth Correctional Centre	4	17	21
Wellington Correctional Centre	71	300	371
Women's Transitional Centres	1	0	1
Yetta Dhinnakkal (Brewarrina) Correctional Centre	1	0	1
<b>Total</b>	<b>686</b>	<b>2,825</b>	<b>3,511</b>

\*Some complaints may involve more than one centre

**Figure 73 — Number of formal and informal complaints received in 2008–2009 about juvenile justice centres and DJJ**

Institution	Formal	Informal	Total
Acmena Juvenile Justice Centre	12	35	47
Cobham Juvenile Justice Centre	10	40	50
Emu Plains Juvenile Justice Centre	3	15	18
Frank Baxter Juvenile Justice Centre	31	67	98
Juniperina Juvenile Justice Centre	4	20	24
Department of Juvenile Justice	4	29	33
Keelong Juvenile Justice Centre	2	15	17
Orana Juvenile Justice Centre	0	3	3
Reiby Juvenile Justice Centre	3	14	17
Riverina Juvenile Justice Centre	1	17	18
<b>Total</b>	<b>70</b>	<b>255</b>	<b>325</b>

# Appendix J

## Freedom of information

**Figure 74 — Action taken on formal complaints finalised in 2008–2009 about FOI**

Figure 74 shows the action we took on each of the written complaints finalised this year about individual public sector agencies relating to freedom of information.

Agency	Assessment only		Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Attorney General's Department	0	0	0	0	2	0	0	0	0	0	0	0	0	2
Blue Mountains City Council	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Burwood Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Catholic Independent School	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Charles Sturt University	1	0	0	0	0	0	1	0	0	0	0	0	0	2
Department of Corrective Services	4	0	0	0	2	0	1	0	0	0	1	0	0	8
Crown Solicitors Office	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Department of Ageing, Disability and Home Care	1	0	1	0	0	0	0	0	0	0	0	0	0	2
Department of Commerce	1	0	0	0	2	0	0	0	0	0	1	0	0	4
Department of Community Services	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Department of Education and Training	8	1	1	0	1	0	1	0	0	1	0	0	0	13
Department of Environment and Climate Change	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Department of Health	9	1	3	0	14	1	0	0	0	0	3	0	0	31
Department of Lands	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Department of Planning	6	0	0	0	1	0	0	0	0	0	1	0	0	8
Department of Premier and Cabinet	3	0	1	0	1	0	1	0	0	0	1	0	0	7
Department of Primary Industries	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Department of Water and Energy	0	0	1	0	1	1	0	0	0	0	0	0	0	3
Energy Australia	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Goulburn Mulwaree Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Greater Taree City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Griffith City Council	1	0	1	0	1	0	0	0	0	0	0	0	0	3
Health Care Complaints Commission	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Hornsby Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Department of Housing	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Lismore City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Liverpool City Council	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Macquarie University	0	0	2	0	0	0	1	0	0	0	1	0	0	4
Manly Council	0	0	0	0	1	0	1	0	0	0	0	0	0	2
Ministers/MPs/Governor/Parliament	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ministry for Police	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Ministry of Transport	1	0	0	0	0	0	1	0	0	0	0	0	0	2
NSW Fire Brigades	0	0	1	0	0	0	0	0	0	0	0	0	0	1
NSW Maritime Authority	1	0	0	0	0	0	0	0	0	0	0	0	0	1
NSW Medical Board	1	0	2	0	0	0	0	0	0	0	0	0	0	3
NSW Office of Liquor, Gaming and Racing	0	0	0	0	1	0	0	0	0	0	0	0	0	1
NSW Police Force	28	2	4	2	16	2	2	0	0	0	0	0	0	56
Office for Children	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Office of State Revenue	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Pillar Administration	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Pittwater Council	2	0	0	0	0	0	0	0	0	0	0	0	0	2
Public Trustee	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Rail Corporation of New South Wales	2	0	0	0	4	0	0	0	0	0	1	0	0	7
Randwick City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Richmond Valley Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Roads and Traffic Authority	4	0	0	0	1	0	0	0	0	0	1	0	2	8

Agency	Assessment only		Preliminary or informal investigation							Formal investigation				Total
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Rockdale City Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Rous County Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Shellharbour City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Snowy River Shire Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Southern Cross University	0	0	0	0	0	0	0	0	0	0	1	0	0	1
State Transit Authority of NSW	2	0	0	0	1	0	0	0	0	0	0	0	0	3
Sutherland Shire Council	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Sydney City Council	0	0	0	0	1	0	0	0	0	0	1	0	0	2
Sydney Ferries Corporation	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Tweed Shire Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
University of New England	1	0	0	0	1	0	0	0	0	0	0	0	0	2
University of Newcastle	0	0	0	0	0	0	0	0	0	0	0	0	1	1
University of Sydney	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Veterinary Practitioners Board of NSW	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Wagga Wagga City Council	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Warringah Council	1	0	0	0	0	0	0	0	0	0	0	0	0	1
WorkCover Authority	1	0	0	0	1	1	1	0	0	0	0	0	0	4
<b>Total</b>	<b>104</b>	<b>4</b>	<b>18</b>	<b>2</b>	<b>61</b>	<b>5</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>16</b>	<b>0</b>	<b>3</b>	<b>224</b>

## Description

### A Decline after assessment only, including:

Conduct outside jurisdiction, Trivial, Remote, Insufficient interest, Commercial matter, Right of appeal or redress, Substantive explanation or advice provided, Premature — referred to agency, Concurrent representation, Investigation declined on resource/priority grounds

### Preliminary or informal investigation:

**B** Substantive advice, information provided without formal finding of wrong conduct

**C** Advice/explanation provided where no or insufficient evidence of wrong conduct

**D** Further investigation declined on grounds of resource/priority

**E** Resolved to Ombudsman's satisfaction

**F** Resolved by agency prior to our intervention

**G** Suggestions/comment made

**H** Consolidated into other complaint

**I** Conciliated/mediated

### Formal investigation:

**J** Resolved during investigation

**K** Investigation discontinued

**L** No adverse finding

**M** Adverse finding

# Appendix K

## FOI report

The following information is provided in accordance with the *Freedom of Information Act 1989* (FOI Act), the Freedom of Information Regulation 2005 and the NSW Ombudsman's FOI Procedure Manual. Due to the small number of FOI applications received no tables are provided this year.

We processed five new FOI applications during 2008–2009 and one internal review.

Two applications requested only information related to the complaint-handling functions of this office, one in relation to complaints involving a police officer and one in relation to a complaint involving a child protection matter.

A third application requested both documents relating to a complaint about the NSW Police Force and documents about the appointment of one of our officers.

All three requests for documents relating to our complaint-handling functions were refused on the basis that this office is exempt from the operation of the FOI Act by virtue of Schedule 2 and section 9 of the FOI Act in relation to applications that ask for documents that relate to our complaint-handling, investigative and reporting functions.

The request for documents related to the appointment of the officer was granted and the documents were released to the applicant with minor deletions pursuant to clause 6(1) of Schedule 1 to the FOI Act, as the information contained the personal affairs of the officer, such as the home address, the disclosure of which would have been unreasonable. The applicant requested an internal review. The internal reviewer upheld the initial decision but also found a number of additional documents related to the appointment of the officer, which were released to the applicant with the address deleted pursuant to cl.6(1).

In the case of the two remaining applications, one requested access to the minutes of the Protected Disclosures Act Implementation Steering Committee and was granted in full. The other application requested access to documents created by a recruitment selection panel. This application was granted in part with some information deleted pursuant to cl.6(1) as it related to the personal affairs of third parties, the release of which would have been unreasonable.

We received \$160 in application fees. We refunded the application fees in the case of the two applications that requested only documents relating to our exempt functions. We did not charge any processing fees.

All applications were determined within the statutory timeframe of 21 days or 14 days in the case of the internal review. All applications were processed within 10 hours, except one which took 11 hours.



# Appendix L

## Report on police use of emergency powers to prevent or control public disorder

This report is provided in accordance with section 87O(5) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). The Act requires the Ombudsman to report each year on the work we do to keep under scrutiny the exercise of the powers conferred on police officers to prevent or control public disorder.

In December 2007, the NSW Parliament passed laws to extend the emergency powers available to police to deal with riots and other actual or threatened civil disturbances. These laws — known as Part 6A of the *Law Enforcement (Powers and Responsibilities) Act* — replaced temporary Part 6A provisions that had been quickly introduced in response to mob violence in Cronulla, Sydney on 11 December 2005, and violent reprisal attacks in Sydney's southern and eastern suburbs in the days that followed.

This report includes information about:

- › police use of the emergency powers in 2008–2009
- › the activities undertaken to reach agreement with the NSW Police Force (NSWPF) on the information needed to fulfil our review requirements
- › ongoing police preparations to use the Part 6A powers if there are other emergencies in the future.

### Police uses of the Part 6A powers in 2008–2009

The NSWPF formally invoked the Part 6A emergency powers once in 2008–2009. On Sunday 13 July 2008, Assistant Commissioner Lee Shearer authorised the use of the special powers to prevent an anticipated threat of large-scale public disorder that she believed was to occur at an environmental protest in Newcastle.

The protest, Camp for Climate Action, centred on a five-day camp (10–15 July) at Wickham in Newcastle, and a protest march past nearby rail and port facilities in Mayfield East on 13 July. Police feared that 'splinter groups' of activists threatened to turn an otherwise peaceful camp and protest march into 'a large scale public order incident or incidents'. Police also had concerns that other sites would be targeted on 14 July.

The effect of the Part 6A declaration was to authorise police to use special powers over a large area incorporating Newcastle's port area and adjacent suburbs — including Wickham, Carrington, Tighes Hill, Mayfield, Mayfield East, Kooragang and parts of Sandgate. For the 48 hours that the authorisation was in place, police were able to stop and search people and vehicles in the authorised area, and require members of the public to provide details of their identity. Police also relied on the special powers to seize and detain items and direct groups to disperse.

Although police reported no arrests directly arising from their use of the Part 6A powers, by the end of the operation there had been 63 arrests, 17 charges, 53 infringement notices issued and one arrest relating to a breach of the peace. The charges were for offences including assault police, resist arrest, hinder police, malicious damage, remain on inclosed lands and the wilful obstruction of police. The infringement notices were for offences relating to providing a false name to a police officer, remaining on rail infrastructure and other transit related offences.

A comprehensive NSWPF review of this event focused on two important aspects of the police operation and the use of the emergency powers at Newcastle. These were:

- › whether the anticipated threat of public disorder was of sufficient scale and seriousness to justify the police decision to invoke the powers
- › whether individual police uses of the special powers complied with the legislative requirements.

### The police decision to authorise the emergency powers

The senior police commander who reviewed the records of the operation at Newcastle concluded that the threat of large scale public disorder 'certainly existed' and the authorisation was justified. In reaching this conclusion, he noted:

- › records of police observations of protesters rehearsing tactics to break through police lines protecting the rail and port facilities

- › that several groups had stated their intent to break away from the protest march to trespass on rail property and undertake 'arrest-able actions'
- › reports of actual damage to rail infrastructure shortly before the powers were invoked.

For police to invoke the special powers, section 87D of LEPRA requires the officer giving the authorisation to have 'reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future'. They must also be satisfied that the exercise of the special powers 'is reasonably necessary to prevent or control the public disorder'. The Act defines 'public disorder' as 'a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations'.

The NSWPF have previously stated that information about disruptive groups threatening to engage in unlawful activity would not ordinarily be enough to warrant an authorisation to use the emergency Part 6A powers in the context of a legitimate protest or assembly. Please see — NSW Ombudsman, *Review of Emergency Powers to Prevent or Control Public Disorder*, September 2007, pp.10–11. This is consistent with Parliament's intent that the powers are only used in emergencies and is partly reflected in current advice to officers responsible for making these decisions:

*The second reading speech makes it clear that 'public disorder' is not intended to include peaceful protests. It is restricted to riots or similar situations. The mere fact that there are a lot of people at an event, such as a football match, where there may be fights between opposing fans, would not be sufficient to amount to a large-scale public disorder. (NSWPF, Public Order Management Handbook).*

The police decision to authorise the special powers at Newcastle on the day of the planned protest march noted information that 'climate change activists' had:

- › collected lengths of timber that could be used to attack police
- › indicated their intent to employ tactics to break through lines of police protecting the coal terminal
- › rehearsed tactics to scale fences and resist police force
- › indicated their intent to 'attack critical infrastructure' and stop a coal train
- › stockpiled missiles (oranges) to throw at police.

The authorisation also noted information indicating that some protesters might throw containers of urine. Supporting documents show there was evidence that at least one protester expressed an intent to use 'urine bombs', and a 'situation report' the evening before the march indicated there had been further discussion of this issue. Police concerns about the threat of violent confrontation with protesters appeared to be realised shortly after the powers were invoked, when the police Command Post broadcast information 'that the activists are filling up bottles with urine and putting leg guards on'. (Police intelligence log, 10:24, 13 July 2008).

Although all of these factors contributed to the police decision to invoke the emergency powers, formal authorisation occurred on the morning of the planned march only after police were alerted to an apparent attempt to derail a coal train. Rail staff reported that an intruder or intruders had used railway ballast to jam a switching rail at a rail junction near a road overpass at Scholey Street, Mayfield. This was about 600 metres west of the planned route for the march. The rail staff advised that if their sensors had not detected the incursion, the pile of ballast blocking the track and jamming the junction could have derailed an oncoming train and demolished an overhead bridge. The seriousness of this threat to public safety is reflected in a subsequent police situation report and appears to provide a clear basis for invoking the emergency powers.

The NSWPF review of the operation concluded that this incident, together with earlier information gathered about protest activities, clearly indicated 'the high likelihood of a civil disturbance giving rise to a serious risk to public safety'.

Before police were advised of the apparent derailment attempt, much of the information about the threat of unlawful activity likely to be associated with the protest indicated that groups were planning to break away from the march and try to force their way past police guarding the rail and port facilities. Numerous sources indicated that the main objective of the protesters was to block tracks and lock themselves to rail property to disrupt coal deliveries to the port. Although unlawful, it is not clear whether this would have been enough to justify authorising the use of the emergency powers. One difficulty for police is that breakaway groups were guarded in their comments about the degree of force they might use to access the rail property.

The law required the officer authorising the emergency powers to reasonably believe that the threat posed by the breakaway groups and other such activity would have constituted the threat of a 'large-scale public disorder', and be satisfied that the special powers were 'reasonably necessary' to control or prevent the disorder. The additional information about jamming the rail junction, together with the information gathered earlier about unlawful activity being planned by breakaway groups, appeared to provide a clear trigger for authorising the powers in this case.

After the Camp for Climate Action protest, we received a complaint from volunteers who provided legal support to protest participants. This group questioned the basis for police using emergency powers to deal with a 'lawful, non-violent and peaceful' march:

*There was nothing in the march that could meet the descriptions of 'large scale public disorder' or a riot that could be used as a basis for lawfully obtaining the authorisation. While it was the stated intention of some of the protesters to cross onto the train tracks, police had sufficient powers to line the fence and act when trespasses occurred. The characterisation of the procession itself as a large-scale public disorder, or the threat of one, is an extraordinary leap beyond the intention and scope of the [Part 6A powers] ... Anticipated acts of peaceful and non-violent civil disobedience are not a riot, or of a nature against which emergency powers were intended to be invoked.*

The complainants noted that authorising use of the emergency powers to deal with the threat of unlawful activities by some people involved in the protest, effectively made all participants (and anyone else in the authorised area) potentially subject to the risk of arbitrary searches, directions to disperse, removal of phones, and being required to provide details of their identity. Ordinary citizens became subject to laws intended for 'thugs and hotheads'.

The complaint underlines the tensions associated with authorising the use of the Part 6A emergency powers in the context of organised assemblies and demonstrations. We highlighted this issue in our 2007 report on earlier uses of the emergency powers (NSW Ombudsman, *Review of Emergency Powers to Prevent or Control Public Disorder*, pp.11–12):

*In theory, there is clearly the potential for the laws to be applied in circumstances not necessarily reflecting the intention of government in passing Part 6A. In practice, this has not occurred to date. Use has been confined to circumstances that could in no way be characterised as peaceful protests. Police procedures largely reflect Parliament's intention.*

After reviewing the police report and supporting documentation about the operation at Newcastle, it is evident that there was enough information available to police to support a decision to invoke the emergency powers in this instance. Whether this constituted a threat of 'a riot or other civil disturbance that gives rise to a serious risk to public safety' and the use of the special powers was 'reasonably necessary to prevent' this disorder is, under Part 6A, a judgement for police to make. It is impossible to know whether the police use of the emergency powers helped prevent a large-scale riot or civil disturbance on this occasion — only that police had genuine and well-documented grounds for concern, that the powers were authorised and used, and that no riot or civil disturbance occurred.

Our 2007 review considered whether the powers could be used to police unlawful behaviour associated with otherwise peaceful protests and assemblies. In their submission to our review, the NSWPF argued that the current provisions already effectively preclude this possibility:

*It is difficult to see how a peaceful assembly could ever fit into the definition of 'public disorder'. A peaceful assembly could never be categorised as a 'riot or other civil disturbance giving rise to a serious risk to public safety'. The limited occasions on which the powers have been used, and the circumstances in which they were, indicate the fear of police misuse to deal with legitimate protests has not been realised. (NSWPF submission, 7 February 2007)*

Despite police assurances that the powers could not be used to police genuine protests and demonstrations, our review found that concerns persisted. For this reason, we recommended that:

- the NSWPF amend Part 6A procedures to set out the factors that officers should take into account when considering whether a 'large-scale public disorder' is occurring or imminent
- parliament consider including further safeguards in Part 6A of LEPR to provide an assurance of the right to peaceful assembly, similar to that set out in section 200 of LEPR. This explicitly precludes police from using the standard 'move-on' powers in relation to an industrial dispute, an apparently genuine demonstration or protest, a procession or an organised assembly.

The formal NSW Government response to our 2007 review supported both recommendations.

The current prohibition on using the powers in protest situations is NSWPF policy, not a legislative requirement. The police authorisation to use Part 6A powers for the Camp for Climate Action protest at Newcastle highlights the need for transparent standards about when an otherwise peaceful assembly — arranged with the approval of police under a statutory framework established by Part 4 of the *Summary Offences Act 1998* — might become subject to the emergency powers. Please see Appendix C of our report, *Review of Emergency Powers to Prevent or Control Public Disorder*, September 2007 for a description of how the scheme for authorising public assemblies works in practice.

We are currently pursuing a progress report from the NSWPF on the implementation of the recommendations of our 2007 report.

The NSWPF review of the Newcastle operation also considered the form of the authorisation and the target area where the special powers could be used. The review noted that the police managing the operation complied with all of the procedural requirements set out in section 87F of LEPR.

The original authorisation described the target area in the following terms:

- the area targeted by this authorisation is: The suburbs of Sandgate, Mayfield West, Mayfield, Mayfield East, Mayfield North, Tighes Hill, Wickham, Carrington, Islington, Newcastle and Kooragang Island
- the boundaries for the target area are: Wallsend Road, Sandgate to the northern railway line then all areas east of the railway line from Sandgate to Newcastle.

The NSWPF review concluded that the area targeted by the authorisation was appropriate, covering 'all areas in which intelligence suggested public disorder would occur, including coal, rail and port facilities and the electoral office of Michael Costa MP'. However, it also concluded that the area could have been better defined — arguing that 'the northern railway line is not easily identified on initial observation' and the outer boundaries to the north and east might not have been clear to all police involved in the operation. This issue is considered later in this report in relation to searches that occurred outside the authorised target area.

#### **Individual police uses of the special powers**

The other key issue considered in the police review of the Newcastle operation is whether individual police uses of the special powers complied with the legislative requirements.

In broad terms, the information provided by the NSWPF indicates that the Part 6A powers were used selectively and with restraint. For example, although the authorisation formally provided police with powers to 'lock down' and control public access to a wide area next to Newcastle's port precinct, there is no evidence that cordons or roadblocks were used to deter members of the public from accessing the area or joining the protest march. Roadblocks were put in place, but these were part of a traffic management plan established in consultation with the

event organisers and used to facilitate lawful protest activity. Supporting police records are consistent with this description of the roadblocks.

A number of the specific uses of police powers during the period that the authorisation was in place (from 9.45am on Sunday 13 July 2008 until 9.45am on Tuesday 15 July 2008) appear to relate to actual or attempted trespasses on rail property, protesters locking themselves to rail property to disrupt movements of coal trains, and stopping and searching vehicles or pedestrians on public roads near port facilities and other targets of protest activity. Although the police records of these incidents often refer to the Part 6A authorisation, it is apparent that officers relied on conventional powers to deal with incidents involving trespass, hindering police, resisting arrest and other unlawful activity.

On the other hand, the police review of the operation also highlights two instances where the police records indicate that the officers purporting to use the Part 6A powers apparently failed to comply with the legislative requirements.

- one instance related to a police search of a panel van parked in the Bar Beach car park on the morning of 15 July 2008. Although within the authorisation period, the van was parked well outside the target area described in the Part 6A authorisation. The police record of the search indicates that the only basis for the search was that a Part 6A authorisation was in place (NSWPF review, Appendix P)
- the other incident involved police stopping and searching a vehicle and its occupants. The search was reported to have occurred in Mayfield at 9am on the day of the protest march. The search was within the target area but occurred before the authorisation was in place. While the search appears to have been unlawful, the police review noted that the delay of more than two weeks in recording the searches on COPS could have led to a recording error. The delay in recording the incident would also have made it difficult for the supervisor verifying the record to check and address the anomaly at that time (NSWPF review, Appendix J).



For the search of the vehicle that was parked outside the authorised area, the NSWPF review noted that there was some ambiguity in the way the target area was described in the original authorisation, and this might have contributed to confusion about whether Bar Beach was within the target area where the special powers could be used. The review recommended that:

- targeted areas under Part 6A authorisations be better defined and clearly indicated on maps that can be issued to all police likely to use associated powers
- all incidents relating to the use of Part 6A powers and general operational information be recorded on COPS as soon as possible and be subjected to stricter quality controls.

The review report also included other COPS records indicating poor compliance with the Part 6A requirements. One record related to the search of a vehicle driven by a tourist who was parked at the Strzelecki Scenic Lookout at 8am on 15 July 2008. The search occurred within the authorised period but well outside the target area defined in the authorisation (NSWPF review, Appendix S). The second record related to a woman searched on Hunter Street at 12.50pm on 14 July 2008, just outside the target area (NSWPF review, Appendix S).

The review report also included details of police interactions with members of the public where the powers used were only partly explained by the relevant COPS record. For instance, one COPS record refers to police performing 'guard duties' at a bridge within the target area on Industrial Drive, Mayfield East, and asserts that 'police were given powers to demand name and address of persons that entered the area'. The record states that identification details were sought from a photographer who went to cross the bridge at 10am on 13 July 2008.

Although the Part 6A power to require disclosure of identity applies only if 'the police officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder' (section 87L), the police record of this interaction states that the photographer 'freely supplied his name and address' to police and 'allowed police to briefly search his bags'. While the COPS record

provides no indication that police suspected the photographer would become involved in a public disorder, there is also no indication that he was required to provide particulars of his identity (NSWPF review, Appendix M).

The police review of the Newcastle operation also touched on issues that were considered in earlier reviews. One COPS record refers to five plastic barrels and two bins seized from protesters at Islington Park, Newcastle on the morning of the march (NSWPF review, Appendix S). Section 87M of LEPRA allows police to seize items that 'will assist in preventing or controlling a public disorder' or which 'may provide evidence of the commission of a serious indictable offence'. Although the basis for police seizing the barrels and bins at Islington Park was not noted in the COPS record of this event, neither the legislation nor NSWPF policy currently requires officers to note their reasons.

Our 2007 report included recommendations that the seizure power be amended to broaden the discretion for police to seize items where this is likely to assist in preventing or controlling a public disorder (Recommendation 8), and that police procedures be amended to require officers to record their reasons for seizing and detaining items (Recommendation 9b). The NSW Government response to the 2007 report supported both recommendations. While the legislation was amended, it appears the procedural changes are yet to be implemented.

When considering evidence of any individual police officer failing to comply with the Part 6A provisions or procedures, it is important to note that Part 6A powers are rarely used. They can only be invoked in the event of actual or imminent emergencies, are often authorised at very short notice, and are typically used in the context of large, complex operations involving many officers with little experience in using the powers. Therefore, some level of miscommunication, mistakes or non-compliance on the part of individual frontline officers is to be expected. The detailed NSWPF review of the use of Part 6A powers in the operation at Newcastle found no evidence of officers deliberately or wilfully misusing the powers.

We support the recommendations in the police review of the Newcastle operation — that is, if there are similar operations in the future officers are given maps of the authorised target areas, incidents relating to the use of Part 6A powers and general operational information are recorded on COPS as soon as possible, and there are stricter checks of the records created. These measures should help to quickly identify any deficiencies and ensure that officers learn from their experience and understand the standards expected in operations that rely on the emergency Part 6A powers.

Implementation of these police recommendations will be included in our current monitoring of their implementation of the recommendations from our 2007 report.

### **Police agreement to provide information related to the Part 6A powers**

Shortly after the assent of the amended Part 6A legislation in late 2007, we took steps to initiate an information agreement with the NSWPF to facilitate our ongoing review function.

The NSWPF were quick to agree to interim reporting arrangements so we could be promptly advised of any uses of the powers. Consistent with this interim agreement, police provided basic information to enable us to partly fulfil our review functions. However, they delayed providing more complete information until the precise terms of these arrangements were confirmed in writing.

After detailed consideration of our review functions and some minor amendments to the draft information agreement that we had proposed, the NSWPF finally endorsed the agreement in March 2009 — more than a year after it was proposed. Despite the long delay, we are satisfied that the agreement will provide us with the information needed to fulfil our legislative responsibilities.

The NSWPF has agreed to notify us at the time of any emergency authorisation or approval enabling police to use the Part 6A provisions and — within three months of the end of any emergency authorisation — provide:

- documentation relating to police decisions to invoke the emergency powers
- detailed advice on the powers used
- details of any people detained or charges preferred and/or other legal action taken
- any reports or evaluations
- information about significant additional costs.

They will provide similar information for powers used in conjunction with any authorisation to prohibit the sale or supply of liquor, or any written instrument to establish an emergency alcohol-free zone under Division 2 of Part 6A.

The NSWPF have also agreed to provide bi-annual reports summarising activities undertaken by police in relation to all uses of the Part 6A powers, advice about instances where the powers were seriously considered but not used, any training or amendments to procedures, any other relevant initiative or development, and any other comments the Commissioner wishes to make on the exercise of Part 6A powers.

We have asked that the next bi-annual report, due in late October 2009, includes updated advice about the implementation of the recommendations in our 2007 report on the emergency powers.

### **Other relevant activities**

Our information agreement with the NSWPF includes providing advice about other significant activities undertaken by police in relation to Part 6A.

Superintendent Alan Clarke, Commander of the Major Events and Incidents Group, provided the first of these reports in May 2009. The report included:

- advice noting that there were no other occasions in 2008–2009 when police considered invoking the Part 6A powers
- information about significant training undertaken as part of ongoing police preparations to use the powers at short notice if required. This included advice on training briefs for frontline officers and a week-long course provided by the Police Prosecutions Command for senior officers on the Incident Command and Control Course
- details of amendments to police procedures, including changes recommended in our 2007 report on the powers.

The report concluded with the following observation:

*Although Part 6A powers have been activated on only one occasion during the review period, they remain an important tactical option for the successful management of large scale public order incidents.*

*In general, many high-risk events and incidents can be successfully managed and controlled without the need to activate Part 6A powers. However, these powers are critical to police and the broader community when negotiation or other options prove ineffective and large disorder is imminent.*



# Appendix M

## Significant committees

Our staff members are members of the following inter-organisational committees:

Staff member	Committee name
Ombudsman — Bruce Barbour	Director on the Board of the International Ombudsman Institute; Regional Vice President for the Australasian and Pacific Ombudsman Regional Group; Board Member Pacific Ombudsman Alliance; Institute of Criminology Advisory Committee; Reviewable Disability Death Advisory Committee; Reviewable Child Death Advisory Committee
Deputy Ombudsman — Chris Wheeler	Protected Disclosures Act Implementation Steering Committee; Whistle While They Work Steering Committee
Deputy Ombudsman/Community and Disability Services Commissioner — Steve Kinmond	Police Aboriginal Strategic Advisory Committee (PASAC); Reviewable Disability Death Advisory Committee; Reviewable Child Death Advisory Committee
Assistant Ombudsman (Police) — Greg Andrews	International Network for the Independent Oversight of Police; Early Intervention System Steering Committee
Assistant Ombudsman (Children and Young People) — Anne Barwick	Child Protection and Sex Crimes Squad Advisory Council
Cross Agency Team Manager — Julianna Demetrius	PASAC, NSW Police Force Domestic Violence Steering Committee
Senior Investigation Officer (Aboriginal Unit) — Laurel Russ	PASAC
Team Manager (General) — Anne Radford	Joint Initiatives Group
Inquiries and Resolution Team Manager — Vince Blatch	Joint Initiatives Group
Senior Investigation Officer — Maxwell Britton	Corruption Prevention Network
Project Manager (Police) — Brendan Delahunty	Network of Government Agencies: Gay, Lesbian, Bisexual and Transgender Issues; PASAC
Youth Liaison Officer — Mandy Loundar	Youth Justice Coalition, NSW Police Force Youth Issues Advisory, Multicultural Youth Issues Network

# Appendix N

## Expert advisory committees

Two expert advisory committees assist us to perform our reviewable deaths functions. In 2008–2009, the Reviewable Disability Death Advisory Committee met once and the Reviewable Child Death Advisory Committee met on two occasions. Our advisory committees continue to provide the Ombudsman with valuable advice on complex child and disability death matters, policy issues and health practice issues.

### Reviewable Disability Death Advisory Committee

Mr Bruce Barbour	Ombudsman (Chair)
Mr Steve Kinmond	Deputy Ombudsman/Community and Disability Services Commissioner
Ms Margaret Bail	Human Services Consultant
Dr Helen Beange	Clinical Professor, Faculty of Medicine, University of Sydney
Ms Linda Goddard	Course Coordinator, Bachelor of Nursing, Charles Sturt University
Associate Professor Alvin Ing	Senior Staff Specialist, Respiratory Medicine, Bankstown-Lidcombe Hospital and Senior Visiting Respiratory Physician, Concord Hospital
Dr Cheryl McIntyre	General practitioner (Inverell)
Dr Ted O'Loughlin	Paediatric Gastroenterologist, The Children's Hospital, Westmead
Associate Professor Ernest Somerville	Prince of Wales Clinical School, Neurology
Ms Anne Slater	Physiotherapist, Allowah Children's Hospital
Dr Julian Troller	Associate Professor, MD, MB BS, FRANZCP; Chair, Intellectual Disability Mental Health, School of Psychiatry, University of New South Wales
Dr Rosemary Sheehy	Geriatrician/Endocrinologist, Central Sydney Area Health Service

### Reviewable Child Death Advisory Committee

Mr Bruce Barbour	Ombudsman (Chair)
Mr Steve Kinmond	Deputy Ombudsman/Community and Disability Services Commissioner
Dr Judy Cashmore	Associate Professor, Faculty of Law, University of Sydney; Honorary Research Associate, Social Policy Research Centre, University of New South Wales; Adjunct Professor, Arts, Southern Cross University
Dr Ian Cameron	CEO, NSW Rural Doctors Network
Dr Michael Fairley	Consultant Psychiatrist, Department of Child and Adolescent Mental Health at Prince of Wales Hospital and Sydney Children's Hospital
Dr Jonathan Gillis	Senior Staff Specialist in Intensive Care, The Children's Hospital, Westmead
Dr Bronwyn Gould	Child protection consultant and medical practitioner
Ms Pam Greer	Community worker, trainer and consultant
Dr Ferry Grunseit	Consultant paediatrician, former Chair of the NSW Child Protection Council and NSW Child Advocate
Associate Professor Jude Irwin	Associate Professor, Faculty of Education and Social Work, University of Sydney
Ms Toni Single	Clinical Psychologist, former Senior Clinical Psychologist, Child Protection Team, John Hunter Hospital, Newcastle
Ms Tracy Sheedy	Manager, Children's Court of NSW

# Appendix O

## Compliance annual reporting requirements

Under the *Annual Reports (Departments) Act 1985*, the Annual Reports (Departments) Regulation 2005 and various Treasury circulars, our office is required to include in this report information on the following topics. All references to sections are to sections in the Annual Reports (Departments) Act and all references to clauses are to clauses in the Annual Reports (Departments) Regulation, except where stated otherwise. TC means Treasury Circular, PC means Premier's Circular, PM means Premier's Memoranda.

Legislative provision	Topic	Comment
s.11A	Letter of submission	See the inside front cover
s.16(5)	Particulars of extensions of time	No extension applied for
s.11	Charter	See page 1, 17 and Appendix O
Sch.1 to the Annual Reports (Departments) Regulation 2005 TC 01/12	Aims and objectives	See pages 18–19
	Access	See the back cover
	Management and structure:	See pages 6–7
	‣ names of principal officers, appropriate qualifications	
	‣ organisational chart indicating functional responsibilities	
	Summary review of operations	See inside front cover and page 8
	Funds granted to non-government community organisations	We did not grant any funds of this sort
	Legal change	See Appendix O
	Economic or other factors	See pages 24 and 109–111
	Management and activities	See pages 9–24 and 28–35
	Major works in progress	There were no such works
	Research and development	See pages 72–75, 110 and Appendix B
	Human resources	See pages 11–16
	Consultants	We used no consultants this year
Equal Employment Opportunity	See pages 13–14	
Disability plans	See Appendix O	
Land disposal	We do not own and did not dispose of any land or property	
Promotion — overseas visits	<p>The Ombudsman and Assistant Ombudsman (Police) attended the inaugural board meeting of the Pacific Ombudsman Alliance — a new multi-nation partnership to improve good governance in the Pacific Islands in March this year. As part of this work, our trainer provided training support to Ombudsman offices in Papua New Guinea and Vanuatu in June this year. The Assistant Ombudsman (Police) visited the Republic of Palau in April this year to provide advice on legislation to establish a Parliamentary Ombudsman and reform its Ethics Commission. The cost of these activities were funded by an AusAID grant managed by the Commonwealth Ombudsman.</p> <p>The Ombudsman attended the International Ombudsman Institute (IOI) Conference in Stockholm, Sweden in June this year to deliver a paper and attended the IOI Board meeting. Half of the costs were funded by our office, and the remainder personally covered by the NSW Ombudsman. The Ombudsman also attended an IOI board meeting in Hong Kong in November 2008. The majority of expenses for this travel were met by the Ombudsman personally.</p> <p>The Deputy Ombudsman delivered a paper and conducted workshops on Managing unreasonable complainant conduct in Toronto, Canada in October 2008. The travel costs were covered by the Forum of Canadian Ombudsman and the Canadian Defence Force Ombudsman.</p> <p>Our training officer and an investigation officer delivered unreasonable complainant conduct training in Wellington, New Zealand in July 2008. This was fully funded by the organisation who arranged for our staff to provide training.</p> <p>See pages 4 and 32</p>	

Legislative provision	Topic	Comment	
s.11	Consumer response	See pages 22–23	
Sch.1 to the Annual Reports (Departments) Regulation 2005 TC 01/12 cont'd	Guarantee of service	See page 17	
	Payment of accounts	See page 111	
	Time for payment of accounts	See page 111	
	Risk management and insurance activities	See pages 10 and 14	
	Controlled entities	We have no controlled entities	
	Ethnic affairs priorities statement and any agreement with the CRC	See Appendix O	
s.9(1)	NSW Government Action Plan for Women	See Appendix O	
	Occupational health and safety	See page 14	
	Waste	See Appendix O	
	Financial statements	See pages 112–113	
	cl.4	Identification of audited financial statements	See pages 114–133
	cl.6	Unaudited financial information to be distinguished by note	Not applicable
cl.5 TC 00/16	Major assets	See page 111, figure 58	
	Copy of any amendments made to the Code of Conduct	The Code of Conduct was not amended during the reporting period. The Code of Conduct may be accessed on our website at <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>	
	Particulars of any matter arising since 1 July 2009 that could have a significant effect on our operations or a section of the community we serve	See pages 2–3 and 9–10	
	Total external costs incurred in the production of the report	\$24,281 (including \$14,396 to print 800 copies)	
	Is the report available in non-printed formats?	Yes	
	Is the report available on the internet?	Yes, at <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>	
cl.7, 8; TC 00/24; PC 92/4	Executive positions	See page 13	
s.68 <i>Freedom of Information Act 1989</i>	Statistical and other information about our compliance with the Freedom of Information Act	See Appendix K	
<i>Privacy and Personal Information Protection Act 1998</i>	Privacy management plan	We have a privacy management plan as required by s.33(3) of the <i>Privacy and Personal Information Protection Act 1998</i> . This also covers our obligations under the <i>Health Records and Information Privacy Act 2002</i> . We had no requests for an internal review under part 5 of the Act this year.	
PM 91–3	Evaluation of programs worth at least 10% of expenses and the results	We reviewed our work processes and how we capture and report on data across all our programs. See pages 2–3 and 9–10	
PM 94–28	Departures from <i>Subordinate Legislation Act 1989</i>	This year we did not depart from the requirements of the <i>Subordinate Legislation Act</i> .	
PM 98–35	Energy management	See Appendix O	
PM 00–12	Electronic service delivery	We have an electronic service delivery program to meet the government's commitment that all appropriate government services be available electronically. We provide an online complaints form, an online publications order form and a range of information brochures on our website.  During the reporting year we reviewed and redesigned our online complaint form.	
TC 99/6	Credit card certification	The Ombudsman certifies that our credit card use has met best practice guidelines in accordance with Premier's memoranda and Treasury directions.	
s.42(8) <i>Ombudsman Act 1974</i>	Must distinguish between complaints made directly to our office and those referred to us	There were six complaints referred to us from other agencies.	

## Legislation relating to Ombudsman functions

- › *Ombudsman Act 1974*
- › *Community Services (Complaints, Reviews and Monitoring) Act 1993*
- › *Police Act 1990*
- › *Freedom of Information Act 1989*
- › *Protected Disclosures Act 1994*
- › *Witness Protection Act 1995*
- › Enabling legislation for each of the NSW universities (as amended by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*)
- › *Children and Young Persons (Care and Protection) Act 1998*
- › *Law Enforcement (Controlled Operations) Act 1997*
- › *Telecommunications (Interception and Access) (New South Wales) Act 1987*
- › *Law Enforcement (Powers and Responsibilities) Act 2002*
- › *Surveillance Devices Act 2007*
- › *Police Powers (Drug Detection Trial) Act 2003*
- › *Terrorism (Police Powers) Act 2002*
- › *Criminal Procedure Act 1986*
- › *Crimes (Criminal Organisations Control) Act 2009* (as amended by the *Criminal Organisations Legislation Amendment Act 2009*)

## Litigation

This year we have been a party to the following legal actions:

### FOI related proceedings

- › *McGuirk v NSW Ombudsman* (no. 3) [2008] NSWADT 242 — Administrative Decisions Tribunal — decision delivered 29 August 2008; Mr McGuirk's costs application dismissed.
- › *McGuirk v NSW Ombudsman* (no. 2) [2009] NSWADTAP 9 — Administrative Decisions Tribunal Appeal Panel — decision delivered 4 March 2009; Mr McGuirk's application to re-open refused.

### General proceedings

- › *McGuirk v NSW Ombudsman* — Court of Appeal (Giles JA; Hodgson JA) — judgment delivered 19 December 2008 — Mr McGuirk's application for leave to appeal decision of Rothman J. of 13 November 2007 refused.
- › *Cheng v NSW Ombudsman* — Supreme Court (Hall J.) — judgment delivered 5 March 2009

— Mr Cheng's application for leave to bring proceedings refused and summons dismissed.

- › *Rae v NSW Ombudsman* — Administrative Decisions Tribunal (Equal Opportunity Division) — NSW Ombudsman application for dismissal on jurisdictional grounds refused.

## Legal changes

### Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009

This Act amends the *Children and Young Persons (Care and Protection) Act 1998*, the *Commission for Children and Young People Act 1998*, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and other Acts to give effect to recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry). Amongst other things, the Act provides for the NSW Ombudsman to convene the Child Death Review Team and take responsibility for the team's secretariat and research functions. To date, some of the provisions of this Act have commenced while others will commence on proclamation.

### Law Enforcement (Powers and Responsibility) Amendment (Search Powers) Act 2009

This Act provides the NSW Ombudsman with the function of monitoring the operation of provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to the issue of covert search warrants and reporting annually to the Minister. The Act also removes the provision for monitoring by the NSW Ombudsman of certain provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* as the statutory review period in relation to these provisions has ended.

### Surveillance Devices Act 2007

This Act provides for the issue of a warrant by an eligible Judge, on the application of a law enforcement agency, authorising the use and retrieval of a surveillance device (or an eligible Magistrate authorising the use and retrieval of a tracking device). The Act also provides the NSW Ombudsman with the function of inspecting the related records of each law enforcement agency (other than the Australian Crime Commission) authorised to seek a warrant under the Act and reporting at six-monthly intervals to the Minister.

### Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009

This Act harmonises the provisions of the *Telecommunications (Interception and Access) (New South Wales) Act 1987* with the *Telecommunications (Interception and Access) Act 1979* (Cth) and in particular, provides the NSW Ombudsman with comparable powers to the Commonwealth Ombudsman to obtain information and ask questions when inspecting an eligible authority's records concerning telecommunication interception. The Act also enables the NSW Ombudsman to exchange certain related information with the Commonwealth Ombudsman.

### Crimes (Criminal Organisations Control) Act 2009

This Act provides for an eligible Judge, on the application of a senior police officer, to make a declaration in respect of an organisation and a control order in respect of a member of a declared organisation. The Act provides the NSW Ombudsman with the function of monitoring the exercise of powers under this Act for a period of two years and reporting to the Attorney General and the Commissioner of Police.

### Criminal Organisations Legislation Amendment Act 2009

This Act provides for the issue, by an eligible Judge on the application of a police officer, of a criminal organisation search warrant. The Act also provides the NSW Ombudsman with the function of inspecting the related records of the NSW Police Force to ascertain compliance with the requirements of the related provisions of the Act and reporting biennially to the Minister.

## External legal advice sought

- › Mr MG Sexton SC, Solicitor General — advice regarding the operation of s.24(2) of the *Ombudsman Act 1974*
- › Dr JE Griffiths SC — advice regarding the operation of s.24(2) of the *Ombudsman Act 1974* and the *Disability Services Act 1993*
- › Mr PR Garling SC with Ms K Stern — advice regarding the operation of clauses 121, 122 & 123 of Crimes (Administration of Sentences) Regulation 2008.



## Ethnic Affairs Priority Statement — future plan

Key result area	Initiative	Time frame	Intended outcome
Planning	Actively participate in the review of the Ethnic Affairs Priority Statement (EAPS) program conducted by the Community Relations Commission.	Ongoing	As a key EAPS agency, contribute to the review of the EAPS program.
	Develop our 2010–2012 EAPS action plan against the requirements of the new EAPS Standards Framework.	June 2010	Develop an EAPS action plan that forms an integral part of our corporate plan and business plans.
	Coordinate office EAPS activities to ensure the implementation of EAPS action plan.	Ongoing	A coordinated approach to improve access and awareness by culturally and linguistically diverse (CALD) communities.
Social justice	Establish and maintain effective communication with key CALD organisations and workers to identify any barriers to access and develop strategies to minimise these.	Ongoing	Improved participation by CALD communities in our decision-making on access issues.
	Develop and implement effective communication strategies to raise awareness of our role among CALD communities.	Ongoing	Improved awareness of the role of the Ombudsman by CALD communities.
	Form partnership with other complaint-handling bodies and key agencies relevant to CALD communities to improve access to the NSW complaint system by CALD communities.	Ongoing	Improved access by CALD communities to NSW complaint system.
	Implement any new strategies identified in our EAPS action plan for 2010–2012.	Ongoing	Improved access by CALD communities to the Ombudsman.
Community harmony	Provide training on cross cultural issues and effective communication skills with CALD communities to our frontline staff, managers and other key staff.	Ongoing	Increased staff competence in service provision to CALD communities.
	Participate in cultural activities and festivals.	Ongoing	Improved community relations.

## Disability Strategic Plan

Priority area for action	Goal	Strategy	Outcomes
Physical access	Ensure that our office and any other locations we use are accessible to people with disabilities.		<p>Our building is wheelchair accessible with ramp and lift. The areas near staircases, ramps and escalators are fitted with tactile ground surface indicators. Our public access area is accessible by wheelchair, and we have toilet facilities for people with disabilities.</p> <p>We are currently developing a new Disability Action Plan (DAP). Physical barriers to access are one of the four types of access barriers we have identified. We are developing policies, procedures and strategies to ensure that our office and other venues we use are accessible.</p>
Information about services	Our office and the services we provide are accessible to people with disabilities.		<p>This year we conducted a full audit of our website to identify any accessibility issues against the standards set out in the Web Content Accessibility Guidelines (WCAG) 2.0. We have now rectified all issues relating to Level A and Level AA criteria. We are developing a plan to redesign our website in 2009–2010 so that it will be fully WCAG 2.0 compliant.</p> <p>Our general information brochure is available in a number of accessible formats including large print, Braille, discs with Braille labels and audiotapes which are distributed to key disability services via Vision Australia.</p>

Priority area for action	Goal	Strategy	Outcomes
Staff training	Staff are trained and competent in providing services for people with disabilities.	Conduct disability awareness training for staff.	Our in-house training aims to raise awareness of disability issues among staff and focuses on attitudinal and practical issues affecting people with disabilities. The majority of our staff, including senior officers, have now completed the training and the feedback has been positive. We will continue to offer the training to all staff.
Employment in the public sector	To employ more staff who have a disability.		7% of our staff have a disability, with 2.6% requiring work-related adjustments.
Promoting positive community attitudes	Actively promote people with disabilities as valuable members of the community.	Working in partnership with peak organisations to promote positive community attitudes.	<p>We sponsored the 2008 <i>Don't DIS my ABILITY</i> campaign and held a morning tea for all staff to celebrate International Day of People with Disability. Highlights of the event included a speech by the late Matt Laffan and a performance by students from St Edmund's School, Wahroonga.</p> <p>We reviewed the adequacy of the Department of Ageing, Disability and Home Care's (DADHC) actions to identify and meet the needs and goals of people living in large residential centres, and recommended that the department should develop a comprehensive action plan to address the issues in our final report.</p> <p>Last year we started an investigation into the implementation into the Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing (JGOS), which aims to assist people with a mental health problem to access and maintain social housing. We have reported on our findings and recommendations and noted some of the challenges associated with meeting the accommodation and support needs of people with a dual diagnosis of mental illness and intellectual disability.</p> <p>We made a submission to Australian Government on the National Disability Strategy and outlined issues affecting people with disabilities, including the need to simplify access to the disability support system and improve integration across governments and program areas.</p>
Complaints procedure	Our office and the services we provide are accessible to people with disabilities.	Develop strategies to let people with disabilities know about our compliments and complaints policy.	<p>We have developed a new resource kit that aims to assist community service organisations to develop and improve their complaint-handling systems.</p> <p>We have run 22 complaints-handling training workshops around NSW, reaching 300 organisations in the community services sector.</p> <p>For consumers of community services we have provided 12 workshops across the state and distributed over 500 copies of our updated <i>The Rights Stuff — Tips for Making Complaints and Solving Problems Toolkit</i>.</p>

## Action Plan for Women — progress report

Objective	Outcomes
Reduce violence against women	<p>This year we continued to actively monitor the implementation by the NSW Police Force (NSWPF) of the recommendations contained in our 2006 report to Parliament on the policing of domestic violence. Most of the recommendations have now been implemented. We are working with the NSWPF to ensure a domestic and family violence code of practice and good practice framework are developed.</p> <p>We regularly attend domestic violence stakeholder forums to provide information and advice about our work in this area.</p>
Promote safe and equitable workplaces that are responsive to all aspects of women's lives	<p>We recognise that managing work and family responsibilities is one of the toughest challenges faced by female staff, who are usually the primary carer of family. By promoting flexible working conditions such as flexible working hours, part-time and job share arrangements, and leave for family responsibilities, we are able to assist and support women to pursue their career while caring for their families.</p> <p>We are committed to achieving and maintaining a workplace free from all forms of harassment. We have procedures in place for dealing with staff complaints and grievances.</p>
Maximise the interests of women	<p>We updated our women's fact sheet which provides information about our work that concerns women, such as overseeing complaints about police failure to deal appropriately with reports of domestic violence and sexual assault. We distributed the fact sheet widely through mail-outs, information stalls, and other agencies' events.</p> <p>We joined the International Women's Day celebration by having a stall in Hyde Park. Our staff distributed information about our services to hundreds of women who attended the event, and provided advice to those who had problems with specific government and non-government agencies.</p>
Improve the access of the women to educational and training opportunities	<p>We implement government policies on EEO and select and promote staff on merit.</p> <p>We provide our staff with equal educational and training opportunities to further their careers.</p>
Promote the position of women	<p>Our workforce is diverse and skilled featuring a high representation of women at all levels. Women make up 71% of total staff and 68% of staff grade six and above. All but two of our division/team managers are women, two of our three senior officers are women and two of our six statutory officers are women.</p>

## Energy management

### Petrol consumption

Our fleet improvement plan identifies strategies to improve our fleet performance score. The initial target, set by government, was that all public sector agencies would achieve a score of at least 12/20. We have exceeded this target, currently achieving a score of 13.33. The scores, which are calculated by a tool made available by the Department of Environment and Climate Change, rate the "green" performance of our vehicles including emissions and petrol consumption. The closer the number is to 20, the better the score.

During the year we reviewed the need for four vehicles and decided to reduce our fleet by one. Our decision to have cars that are fuel efficient has paid dividends, as we have travelled more kilometres this year than previous years but have used less fuel. This has contributed to a reduction in the greenhouse gas emissions our fleet produces. We achieved the government target of a 20% reduction in greenhouse gas emissions based on our 2004–2005 performance.

### Electricity consumption

Our electricity use decreased in 2008–2009 as a result of various energy saving initiatives. We are working on ways to further conserve our energy usage — including staff education and awareness and energy efficient purchases,

particularly of computer hardware. We purchased 6% GreenPower.

In 2009–2010 we will audit our energy use to develop strategies to obtain a 4.5 National Australian Built Environment Rating System (NABERS) rating by 2011.

## Performance Indicators

### Petrol consumption

	04/05	05/06	06/07	07/08	08/09
Petrol (l)	5,326	5,159	4,787	4,145	<b>3,250</b>
Total (GJ)	182	176	162	142	<b>111</b>
Distance travelled (km)	54,738	51,602	35,086	32,963	<b>38,064</b>

### Energy consumption

	05/06	06/07	07/08	08/09
Electricity (kWh)	355,301	311,713	348,358	<b>302,172</b>
Kilowatts converted to gigajoules	1,279	1,222	1,254	<b>1,088</b>
Occupancy (people)	187	191	187	<b>193</b>
Area (m <sup>2</sup> )	3,133	3,133	3,133	<b>3,133</b>

### **Waste reduction and purchasing program**

We are committed to reducing the amount of waste going to landfill and implement a range of strategies to reduce waste, increase recycling, and purchase more recycled content products.

### **Reducing generation of waste**

We are continually looking at ways to improve our waste management practices. We promote email as the preferred internal communication tool and encourage staff to print double-sided. We have an electronic record management system that allows staff to access information such as policies, procedures and internal forms — reducing the need for paper copies. Our publications are available to download from our website so we print smaller quantities than in the past.

### **Resource recovery**

We have individual paper recycling bins at workstations and larger 240 litre bins throughout the office for secure paper destruction. All office wastepaper, cardboard, glass, plastic and aluminium is collected for recycling. We are a member of Planet Ark Close the Loop resource recovery program and recycle our used toner cartridges, bottles, drums, inkjets and ribbons. Our results for 2008–2009 are shown in figure 75.

We do regular checks of our general waste and recycling bins to identify any recyclable paper in the general waste stream or any contamination in the recyclable paper bins.

### **Using recycled material**

We use Australian 80% recycled paper containing waste fibre diverted from Australian landfills and 20% new fibre from sustainably managed forests. Our stationery and publications are printed on either recycled, acid free or chlorine free paper.

We only use printers who have a certified environmental management plan (ISO 14001). Where possible and cost effective, we use Forest Stewardship Council (FSC) certified stock. The FSC is one of the few independent bodies capable of accurately determining fibre origin by tracking it from forest to printer (see inside back cover for more information).

### **Reducing water usage**

The owners of our building have implemented new energy and water saving equipment. The building now has a NABERS water star rating of 3.

**Figure 75 — 2008–2009 Planet Ark Close the Loop Resource Recovery Recycling**

<b>Items by category</b>	<b>Weight in kilograms</b>
Bottle	3.76
Cartridge	146.19
Copier bottle	3.24
Fuser	20.48
Inkjet	0.50
Waste collector	1.00
Total diverted from landfill	175.20

# Appendix P

## Publications list

We produce a range of publications including general information for the public, guidelines for agencies and organisations we oversight, discussion papers seeking information from the public, final reports at the conclusion of legislative reviews, annual reports outlining the work we have done during the financial year and special reports to Parliament about public interest issues.

A list of the publications we issued during 2008–2009 follows. Our publications are available in Acrobat PDF online at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au). Hard copies are available by contacting us or submitting an online publications request on our website.

### Special reports to Parliament

- › Opening up government — Review of the *Freedom of Information Act 1989*
- › The use of Taser weapons by New South Wales Police Force: A special report to Parliament under section 31 of the *Ombudsman Act 1974*
- › Supporting people with an intellectual disability in the criminal justice system: Progress report

### Annual reports

- › NSW Ombudsman Annual Report 2007–2008
- › *Law Enforcement (Controlled Operations) Act 1997* Annual Report 2007–2008
- › Official Community Visitors Annual Report 2007–2008
- › Report of Reviewable Deaths in 2007 Volume 1: Deaths of people with disabilities in care
- › Report of Reviewable Deaths in 2007 Volume 2: Child Deaths

### Discussion and issues papers

- › Discussion Paper: Review of the *Freedom of Information Act 1989*

### Reports and submissions

- › Report under Section 49(1) of the *Surveillance Devices Act 2007* for the six months ending December 2008
- › Community participation complaint-handling review
- › Review of individual planning in DADHC large residential centres
- › Review of individual planning in DADHC large residential centres: Summary report
- › Group review of the situation of children younger than five in out-of-home care and under the parental responsibility of the Minister for Community Services
- › Review of a group of children aged 10 to 14 in out-of-home care and under the parental responsibility of the Minister for Community Services
- › NSW Ombudsman's submission to the review of the *Children and Young Persons (Care and Protection) Act 1998*
- › NSW Ombudsman submission to National Child Protection Framework

### Legislative review reports tabled in Parliament

- › Review of the *Police Powers (Drug Detection Trial) Act 2003*
- › Review of the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*
- › Review of certain functions conferred on police under the *Law Enforcement (Powers and Responsibilities) Act 2002*
- › Review of Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*

### Fact sheets and guidelines

- › Apologies — A practical guide — 2nd edition
- › Protected Disclosures Guidelines — 6th edition
- › Managing unreasonable complainant conduct practice manual
- › Reporting of progress and results of investigations
- › Managing information arising out of an investigation — balancing openness and confidentiality
- › Our work with Aboriginal communities (updated)

### Brochures

- › Some tips for making a complaint: What to do if you want to make a complaint (updated)
- › Have you got a problem with a NSW agency? (large print)

### Newsletters

- › *Ombo Info* volume 1, issue 1
- › *Ombo Info* volume 1, issue 2
- › *Ombo Info* volume 2, issue 1
- › *Ombo Info* volume 2, issue 2

### Other publications

- › Community Services Training Calendar 2009
- › NSW Ombudsman training for public sector staff (promotional brochure)



# Appendix Q

## Our staff

Abdipranoto Luci	Dolan Jessica	Macklin Paul	Ralph Nina
Adofaci Monique	Donaldson Stella	Madden Jane	Reynolds Ben
Afflick Monalyn	Donnelly Terry	Magnus Jonathan	Riordan Vincent
Agius Jennifer	Doyle Shelagh	Maguire Steven	Robertson Cathy
Akrivos Maria	Du Lisa	Maigre Michelle	Robinson Gareth
Allen Janine	Edmonds Claire	Mallia Mark	Rodd Chris
Andreallo Daniel	Eisenhuth Brooke	Maniruzzaman Mani	Rose Elizabeth
Andrews Greg	Enders Lily	Manns Terry	Rowley Pamela
Ansari Ayishah	Evans Frances	Martin Tania	Russ Laurel
Arestides Tracylee	Fenton Sheena	Matthews Jane	Ryan Carol
Arora Sharat	Fernandez Claire	McAuley Barbara	Ryan David
Aswani Bina	Fernandez Criselda	McCallan-Jamieson Ian	Ryan Janette
Banwell Kirsteen	Fitzpatrick Amie	McCleary Mary	Ryan Louise
Barbour Bruce	Flanagan Jo	McDonald Kate	Sanders Katrina
Barlow Ruth	Ford Helen	McKenzie Alison	Sandler Marissa
Barton Margo	Formby Lisa	McKenzie John	Savage Kelly
Barwick Anne	Garcia Rebeca	McKenzie Kathryn	Scanlon Leigh
Bautista Zaldy	Gazzard Kerrie	McKinlay Stuart	Seeto Belinda
Bayler Trisha	Gennery Joan	McMahon Tracey	Shea Alison
Blatch Vince	Gleeson Michael	McNamara Gabrielle	Shivakotee Binam
Blundell Nicole	Grant Judith	Meade Sue	Shone Kate
Borg Kelly	Grima Jacqueline	Mellon Rebecca	Silver Sanya
Borg Maryanne	Harris Sarah	Meneguz Lilia	Simon Kelvin
Borthwick Maya	Haydon Sally	Mewing Natasha	Simpkins Justine
Brassert Alex	Heazlewood Alice	Middledorp Kate	Slowik Teresa
Britton Maxwell	Hemmings David	Millett Tom	Smithers Kate
Brogden Veronica	Hermanto Lucky	Morahan Gabriella	Smithett Penny
Brough Heather	Hicks Alex	Morris Katrina	Smithson Marie
Brown Michelle	Hitzegrad Reinhard	Morse Oliver	Smyth Frances
Brunt Christine	Humphrys Elizabeth	Mueller Helen	Snell David
Burford Elizabeth	Janson Philomena	Munro Wendy	Stacey Karen
Burford Jillian	Johnston Adam	Nguyen Bao	Stanford Storm
Burford Peter	Kaye Margaret	Nguyen Trong-Hieu	Stephenson Luke
Busby Jane	Kell-Clarke Bridgette	Noble Jenny	Stewart Michelle
Cameron Tamaris	Kelly Patricia	Noble-Paulinich Michele	Sumaktas Ebru
Campbell-McLean Carolyn	Kenny Kim	O'Donahue Rodney	Swan Kim
Carter Christine	Kinmond Steve	O'Donovan Sheila	Szaraz Les
Cheung Trinh	Kiriczenko Sophia	Ovenden Katharine	Talbot-Sapsford Samantha
Chie David	Klower Amanda	Palma Claudio	Tan Aimee
Choo Selena	Koorey Emma	Paneras Katerina	Tapa Mele
Christodoulou Andrew	Koren Diana	Papanastasiou Anna	Tran Cuong
Chung Chi	Kosh Wayne	Parsons Kylie	Vasquez-Lord Merly
Ciano Cathy	Kuiters Frank	Phelan Sue	Ware Carla
Cohen Alice	Kwan Ivy	Philip Joy	Wheeler Chris
Cohen Terri	Kwo Angel	Phillips Lin	White Candice
Conaty Michael	Lai Alexandra	Piga Yvon	Whittaker Anita
Coombes Padmadakini	Lam Helen	Piper Rebecca	Williams Greg
Coppin Janet	Langran Samantha	Polak Josephine	Williams Marcelle
Coughlan Janette	Law Teresa	Powell Michele	Wingrove Robert
Craig Irene	Lee Justin	Power Julie	Withers Julie
Curran Rebecca	Legg Bronwyn	Primmer Glenn	Wolf Monica
Dacey Matthew	Lenihan Barry	Purches Bryce	Woodward Nadine
Dawson Gary	Lobos Jacqueline	Pye Emily	Yetzotis Nick
Delahunty Brendan	Loundar Mandy	Quiohilag Jeremie	Zizic Anna
Demetrius Julianna	Lowe Lucy	Quirke Michael	Zurek Yvette
Denning Emma	Lowe Timothy	Radford Anne	
Di Bartolomeo Rebecca	Lumbewe Adrian	Rakvin Christine	

# Glossary

AAT	Administrative Appeals Tribunal	HACC	Home and community care
ACS	<i>Aboriginal Consultation Strategy</i>	HCCC	Health Care Complaints Commission
ACSAT	Aboriginal Child Sexual Assault Taskforce	ICAC	Independent Commission Against Corruption
ADT	Administrative Decisions Tribunal	IOI	International Ombudsman Institute
AFP	Australian Federal Police	JCC	Joint Consultative Committee
AHO	Aboriginal Housing Office	JGOS	Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing
AIS	Association of Independent Schools	JIG	Joint Issues Group
APF	<i>Aboriginal Policy Framework</i>	JIRT	Joint Investigation Response Team
ASD	Aboriginal Strategic Direction	LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>
AVO	Apprehended violence order	LG Act	<i>Local Government Act 1993</i>
CALD	Culturally and linguistically diverse	LWB	Life Without Barriers
CAT	Cross agency team	MRRC	Metropolitan reception and remand centre
CCER	Catholic Commission for Employment Relations	NSWALC	Aboriginal Land Council
CCTV	Closed-circuit television	NSWPF	NSW Police Force
CCYP	Commission for Children and Young People	OBOS	Office of the Board of Studies
CINs	Criminal infringement notices	OCVs	official community visitors
CRC	Community Relations Commission	OFT	Office of Fair Trading
CS-CRAMA	<i>Community Services (Complaints, Reviews and Monitoring) Act 1993</i>	OH&S	Occupational health and safety
CTTT	Consumer, Trader and Tenancy Tribunal	OOHC	Out-of-home care
DADHC	Department of Ageing, Disability and Home Care	OPC	Office of the Protective Commissioner
DCS	Department of Corrective Services	OSR	Office of State Revenue
DET	Department of Education and Training	PADP	Program of appliances for disabled people
DJJ	Department of Juvenile Justice	PASAC	Police Aboriginal Strategic Advisory Committee
DLG	Department of Local Government	PD Act	<i>Protected Disclosures Act 1994</i>
DoCS	Department of Community Services	PIC	Police Integrity Commission
DoH	Department of Housing	PJC	Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission
DoL	Department of Lands	POA	Pacific Ombudsman Alliance
DPC	Department of Premier and Cabinet	PPIP Act	<i>Privacy and Personal Information Act 1998</i>
DSA	<i>Disability Services Act 1993</i>	PSC	Professional Standards Command
DVLO	Domestic violence liaison officer	RTA	Roads and Traffic Authority
DWE	Department of Water and Energy	SAAP	Supported accommodation assistance program
EAPS	Ethnic affairs priority statement	SDRO	State Debt Recovery Office
EEO	Equal employment opportunity	YLO	Youth liaison officer
EWON	Energy and Water Ombudsman (NSW)		
FOI	Freedom of information		

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# 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, a friend, advocate, lawyer, your local Member of Parliament — to complain for you.

## How do I make a complaint?

Start by complaining to the organisation involved. Contact us if you need advice about this. If you are unhappy with the way an organisation has handled your complaint, you can complain to us, preferably in writing. Your complaint can be in any language. If you have difficulty writing a letter, 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 and decide what we will do. 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 you would like to see happen. Include copies of all relevant correspondence between you and the organisation concerned.

## What happens to my complaint?

A senior investigator will assess your complaint. We may phone the organisation concerned to make inquiries. Many complaints are resolved at this stage. If we are not satisfied with the organisation'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 we cannot take up your complaint we will tell you why.

If your complaint is about a police officer, we will refer your complaint to the NSW Police Force for resolution or investigation. They will contact you about any action they have taken as a result of your complaint. We will oversee how they deal with your complaint.

## What happens in an investigation?

First we ask the organisation to comment on your complaint and explain their actions. Generally, we will tell you what the organisation has said and what we think about their response. 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 organisation concerned and the relevant minister. You will be told about our findings. The Ombudsman may make recommendations in the investigation report. We cannot force an organisation to comply with our recommendation; however, most usually do. If the organisation does not comply, 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 your complaint to be reviewed. However, a decision will only be reviewed once. A senior staff member who did not originally work on your complaint will conduct the review. To request a review, telephone or write to us.

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.

## Acknowledgements

Our annual report is a public record of our work and through it we are accountable to the people of NSW. Our report is prepared against criteria set out by NSW Treasury and the Annual Report Awards. It is available from our office or our website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

Many thanks to everyone who contributed to this year's annual report, but particularly our statutory officers, Anita Whittaker and the staff involved in coordinating their division's contribution: Gareth Robinson, Judith Grant, Emma Koorey and Tom Millett.

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