

Public administration

An essential part of the work of an Ombudsman is dealing with complaints from members of the public. The public administration division deals with complaints from individuals who feel they have been treated unfairly or unreasonably by state government agencies and local councils.

As well as resolving complaints whenever we can, we work with agencies to bring about improvements to their systems so that the same problems do not keep happening. We travel across the state to visit adult correctional centres to take complaints from inmates, speak with staff to resolve issues and observe conditions and routines.

We use information from complaints to identify and proactively investigate public interest issues. In this way we can benefit a large number of people, often those who are less likely to come forward and complain.

This year we continued our work about the management of asbestos (see page 33) and conducted a major investigation into the operation of Kariong Juvenile Correctional Centre, the only custodial facility for young people in NSW managed and operated by the adult correctional system (see page 37).

We established a specialised unit to carry out our new functions in relation to public interest disclosures. In addition to dealing with protected disclosures and complaints about how disclosures are handled by agencies, we have a role in providing advice, information and training public as well as monitoring and auditing public sector agencies' compliance with the new Public Interest Disclosures Act (see page 47).



Highlights

- | In response to our report to Parliament on asbestos the government agreed to appoint a Heads of Asbestos Coordination Authorities, develop a state-wide plan for asbestos, fund a public awareness campaign and provide funding to remediate the Woods Reef asbestos mine. [SEE PAGE 33](#)
- | Investigated how the NSW Trustee and Guardian makes financial decisions on behalf of vulnerable people. [SEE PAGE 35](#)
- | Encouraged the provision of better and more accessible information for parents with children at school, TAFE students, young people using legal aid, and people involved in motor vehicle accidents in NSW. [SEE PAGES 31, 34](#)
- | Conducted an investigation into the behaviour management program at Kariong Juvenile Correctional Centre, and recommended wide-ranging changes to improve the management and evaluation of the program. [SEE PAGE 37](#)
- | Monitored how inmates were disciplined at a range of centres, and negotiated a range of successful individual outcomes as well as improvements to overall policies and procedures. [SEE PAGE 38](#)
- | Achieved a number of positive outcomes for people who complained about delays in councils investigating and taking action about their complaints. [SEE PAGE 43](#)
- | Produced model internal reporting policies for state government agencies and local councils, and five practice notes to help agencies implement the new PID Act. [SEE PAGE 48](#)

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Departments and authorities

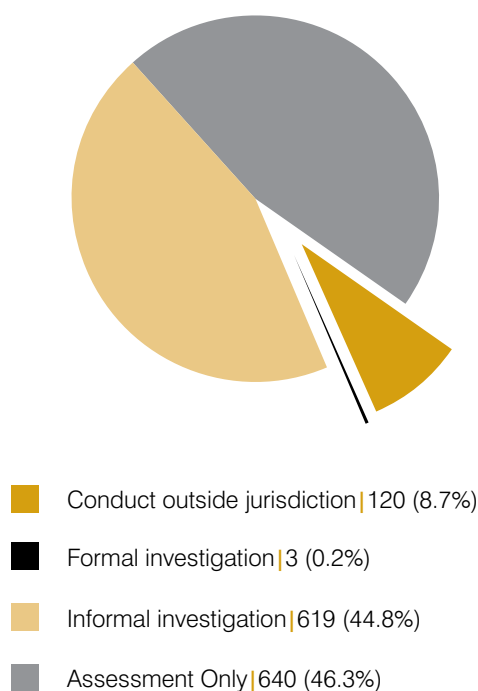
Complaint trends and outcomes

This year we were contacted on over 4,200 occasions by people with concerns about NSW departments and authorities, other than complaints concerning police, community services, councils, corrections and Freedom of Information, 1,381 complaints were made in writing (which we call formal complaints) and 2,903 were made over the telephone or in person (which we call informal complaints) – see figure 21. We conducted 619 preliminary or informal investigations and three formal investigations that involved using the Ombudsman's coercive investigation powers – see figure 20.

Disappointingly, the most common issue complained about was customer service. Over 17% of the complaints we received were primarily about poor customer service – see figure 22. With the new state government's focus on improved customer service across the public sector, we trust there will be a reduction in this figure in the coming year.

In 2009-2010, we reviewed and changed our internal arrangements for handling complaints about human services agencies – Housing, Health and Juvenile Justice. Previously complaints about Housing NSW and Health were included in our complaint figures for departments and authorities. From this year, we will report separately about complaints for these two agencies – see figure 24. Complaints about Juvenile Justice are reported in the human services section – see page 73.

Figure 20: Formal complaints finalised



Current investigations at 30 June 2011	No.
Under preliminary or informal investigation	74
Under formal investigation	3
Total	77

Figure 21: Formal and informal matters received and finalised

Matters	06/07	07/08	08/09	09/10	10/11
Formal received	1,158	1,348	1,349	1,438	1,381
Formal finalised	1,167	1,354	1,310	1,414	1,382
Informal dealt with	3,465	3,962	3,949	3,777	2,903

* This figure does not include complaints about public sector agencies that fall into the categories of police, community services, local government, corrections, human services or FOI.

Figure 22: What people complained about

This figure shows the complaints we received in 2010–2011 about NSW public sector agencies broken down by the primary issue in each complainant. Please note that while each complaint may contain more than one issue, this table only shows the primary issue.

Issue	Formal	Informal	Total
Approvals	38	149	187
Charges/fees	117	439	556
Child abuse-related	0	2	2
Complaint-handling	205	244	449
Contractual issues	24	43	67
Correspondence	15	36	51
Costs/charges	9	35	44
Customer service	198	543	741
Enforcement	59	87	146
Hardship	7	15	22
Information	71	173	244
Management	72	47	119
Misconduct	36	43	79
Natural justice	19	40	59
Issue outside our jurisdiction	48	195	243
Nominations and third party	7	11	18
Object to decision	195	446	641
Object to decision/ application forms	129	136	265
Other administrative issue	31	115	146
Policy/law	95	96	191
Records	6	8	14
Total	1,381	2,903	4,284

Figure 23: Performance indicators

2010-2011 criteria	Target	Result
Percentage of complaints assessed within two days	90	98
Average time taken to finalise complaints (not including complaints about FOI)	7 weeks	5 weeks
Complaints resolved by providing advice or through constructive action by the public sector agency (%)	65	69
Recommendations or suggestions for changes to law, policy or procedures in formal investigation reports (%)	90	100
Recommendations made in investigation reports that were implemented by public sector departments and authorities (%)	80	83

NB: These statistics include complaints about departments and authorities, corrections, local government and FOI.

Helping to improve performance

As well as resolving individual complaints, we help departments and authorities improve how they do their work. Wherever possible, we try to identify changes that will help an agency improve its service and avoid the same problems occurring again. This could involve the agency reviewing and changing a policy or procedure, providing training to staff, or improving their communication with members of the public – case studies 1 – 4 illustrate this.

Case study 1: A problem with noise

We received a complaint from a resident who lived next to a Sydney Water pumping station. They alleged the former Department of Environment, Climate Change and Water (now the Office of Environment and Heritage or OEH) had not dealt appropriately with their complaint against Sydney Water in a dispute about which location at the complainant's property was most affected by noise from the pumping station. OEH's industrial noise policy provides guidelines for measuring noise from industrial activities and determining the most affected point. After reviewing the complaint we determined that the policy was ambiguous on where noise impacts should be measured and how disputes could be resolved if there was a disagreement between the noise generator and the affected party.

We wrote to OEH suggesting they review whether their current procedures were adequate and in keeping with industry practice, and take steps to amend their policy if appropriate. We also suggested they consider whether dispute resolution mechanisms should be included in the policy and what the role of OEH should be in resolving any disputes. OEH advised that disputes of this nature are rare but agreed to review their policy, taking our concerns into account.

Case study 2: Better information for students

A student complained about the delay in receiving a certificate for a permaculture course she had completed. The course was auspiced by TAFE. She also raised concerns about the way the course was conducted, including the treatment of students by teachers and a lack of awareness of the complaint-handling process.

TAFE acknowledged there was a need to improve communication with students. They said they would send a survey to students each semester, and make sure that each student was given a TAFE student guide at the beginning of their course outlining how to make suggestions and complaints.

Case study 3: Who is liable for costs?

As a result of a complaint to us, the Roads & Traffic Authority (RTA) reviewed and rewrote their policy on determining liability for costs resulting from motor vehicle accidents – such as damage to RTA property, traffic control and clean-up costs.

A father had objected to the RTA's decision that his son was liable for the costs of an oil spill, but was given confusing advice about how to dispute liability. He was also made to submit a formal application for access to the information that the RTA had relied on as evidence of liability. When he finally received this information, he found it contained no evidence his son was liable for the costs.

Our inquiries highlighted the need for the RTA to review their processes for issuing invoices and recovering costs relating to accidents. They resolved the particular complaint and have significantly changed their procedures. People are now given clear advice about how to dispute liability when they receive an invoice for costs, and the RTA has developed internal procedures to guide staff when deciding if there is sufficient evidence to establish liability.

Case study 4: Paying school fees

We received a complaint that alerted us to possible problems with information given to parents about voluntary fees collected by schools. Contrary to Department of Education and Communities policy, we learnt that a school was invoicing parents and carers but not telling them that the fees were voluntary. A parent had complained to the Director General, but after receiving an inadequate response she contacted our office. Although the problem had been brought to the attention of the school, they were going to wait until the next school year to give out the correct information. After our intervention, the school was directed to put the correct information into a newsletter as soon as possible.

We decided to look at what other schools did about school fees and found many other examples of schools giving incorrect or confusing information about voluntary contributions and subject fees.

We raised our concerns with the department who told us they received very few complaints about this issue. Given that we found many cases where schools were not following the correct policy, we did not think that the number of complaints could be used as a measure of schools complying with the policy. The department agreed to our suggestions about including the policy about voluntary contributions as a standard item on individual school websites and reminding regional directors and principals of the voluntary nature of contributions.

Housing issues

In last year's annual report we discussed the expansion of the community housing sector under funding from the Commonwealth Government. Our office does not have jurisdiction to handle complaints about non-government community housing providers. The Registrar of Community Housing, appointed in 2009, has a regulatory responsibility for community housing providers. We regularly liaise with the Registrar and with the Community Housing Division (CHD) of Housing NSW to coordinate our respective responsibilities for complaints about public and community housing.

Helping people with a mental illness access and sustain housing

We have been monitoring the progress by agencies in implementing the recommendations we made in our special report to Parliament in 2009 about the *Joint Guarantee of Service (JGOS) for people with mental health problems and disorders living in Aboriginal, community and public housing*.

This year we asked Housing NSW about their progress with developing the new Housing and Mental Health Agreement – this agreement is intended to replace the JGOS and address the recommendations of our report. In response to concerns raised with us by non-government organisations in the homelessness and mental health sectors, we emphasised to Housing NSW the importance of communicating with these organisations about the steps taken to develop the agreement to date and consulting with them about future plans. We suggested that Housing NSW arrange to meet with the relevant peak bodies as soon as possible.

In December 2010, Housing NSW responded by giving us their schedule for planned consultations. In March 2011, they also gave us a draft copy of the Housing and Mental Health Agreement. We recommended that the draft be revised to have a stronger focus on governance arrangements – including how the implementation of the agreement will be demonstrated and monitored. We have since provided more detailed feedback on a later draft, and we understand that the agreement will soon be finalised. We will continue to monitor progress through our regular liaison meetings with Housing NSW.

Resolving complaints from public housing tenants

In 2010-2011, we finalised 309 formal complaints from or on behalf of public housing tenants – up by 39% from 2009-2010 (223 formal complaints).

The complaints we received were primarily about:

- | delays in processing and making decisions about applications for public housing, particularly applications for priority or emergency housing
- | arrangements for and delays in providing housing maintenance and repair services
- | disputes about rents and utility fees
- | customer service and complaint-handling.

This year we conducted preliminary or informal investigations into 60% of the formal complaints we received. We resolved or made suggestions for improved services in 74% of cases. Most of the remaining complaints were finalised by referring tenants to Housing NSW so they had an opportunity to resolve the complaint directly.

We regularly meet with representatives from Housing NSW to discuss issues arising from complaints, and their plans for addressing these issues and improving their frontline complaint-handling.

Figure 24: What people complained about

This figure shows the complaints we received in 2010–2011 about Housing NSW and Health. Please note that while each complaint may contain more than one issue, this table only shows the primary issue. Note from this year, we are reporting complaints for these separately.

Issue	Formal	Informal	Total
Approvals	63	125	188
Charges/fees	28	61	89
Complaint-handling	35	83	118
Contractual issues	72	184	256
Customer service	74	340	414
Enforcement	4	16	20
Information	16	68	84
Management	7	20	27
Misconduct	6	14	20
Natural justice	2	12	14
Issue outside our jurisdiction	23	58	81
Object to decision	37	178	215
Other	16	48	64
Policy/law	4	19	23
Property	1	1	2
Classification	1	0	1
Records/administration	4	1	5
Total	393	1,228	1,621

Case study 5: A positive outcome in the end

The mother of a 15 year old disabled boy and a seven year old girl complained about a delay of more than 12 months in Housing NSW's assessment of her application for housing. The woman explained that she had left her previous home because of domestic violence. She and her children initially lived with her parents, but as this was no longer an option they had been living in a succession of hotels, motels and caravan parks. This arrangement had been going on for nearly 13 months.

We contacted Housing NSW and they advised us that there was a high demand for housing in the area where the complainant lived, and her application was one of a large number awaiting assessment. At our suggestion, Housing NSW agreed to meet with the woman to discuss her circumstances and options. They subsequently assisted her and her family to obtain supported housing in a location close to the health and other services she needed.

Case study 6: Phone problems solved

After Housing NSW transferred an elderly woman and her husband to a new property, the woman complained that there was a problem with the phone connection. The couple depended on a working phone to access necessary health and medical supports.

Housing NSW referred the woman to the phone provider who charged for a technician to visit the property. The couple could not afford the charge and asked Housing NSW to meet with them to discuss an alternative solution. When Housing NSW did not do so, the woman complained to our office. After we referred the matter to Housing NSW, they quickly arranged for the necessary repairs to be completed with no cost to the couple.

Reforming asbestos management

Our report to Parliament

In November 2010, we tabled our report to Parliament on *Responding to the asbestos problem: The need for significant reform in NSW*. Given the significant problems we found in the way asbestos issues were being handled by government, we recommended that the NSW Government:

- | establish and adequately fund an Asbestos Coordination Authority
- | introduce an Asbestos Act to facilitate effective measures to appropriately address asbestos issues
- | develop a statewide plan for dealing with asbestos and allocate adequate funding to implement it.

We also recommended allocating funding for the remediation of the Woods Reef asbestos mine site near Barraba, developing a comprehensive public awareness program about asbestos for all sections of the community, the Division of Local Government issuing a model asbestos policy to all councils, and introducing vendor disclosure laws to provide mandatory certification of the presence of asbestos in residential buildings.

In August 2011, the Minister for Finance and Services tabled the government response to our report. We welcomed the government's positive response to our recommendations. It was clear that serious consideration had been given to the significant issue of asbestos in our community and the government's proposals are a good first step towards meeting the challenges of dealing effectively with the management of asbestos.

The government supported the findings in the report and in large part has agreed to the recommendations we made. Of the recommendations not accepted, the government put forward alternative measures and will establish a new Heads of Asbestos Coordination Authorities to coordinate the issues we identified.

We will continue to monitor this important issue and the work of the new coordination body to ensure effective and comprehensive reform is undertaken.

Asbestos surveys in NSW schools

We are currently investigating the management of a contract by the Department of Services, Technology and Administration for carrying out asbestos surveys in public schools. We are concerned that certain conditions of the contract may not have been complied with in relation to the qualifications and experience required of the people who did the on-site inspections and that, as a result, the accuracy of asbestos registers in schools may be in doubt. We expect to report on this investigation later this year.

Investigating the release of airborne dust containing asbestos

A complaint we received alleged that a contractor engaged by the RTA to remove materials containing asbestos from a road construction site near a housing estate in Queanbeyan had failed to take appropriate measures to prevent dust and asbestos fibres becoming airborne. We found that there were deficiencies in how the incident was investigated by the relevant government agencies – including a failure to interview workers at the site and other witnesses. We met with WorkCover to discuss our concerns about how they conduct investigations into workplace incidents. They agreed to examine best practice models for investigating workplace OH&S issues and review their policies, practices and procedures in this area.

We will continue to monitor how WorkCover addresses these important issues.



The Woods Reef asbestos mine was a focus of our recent investigation and report to Parliament.

Knowing how and where to complain

As well as having good complaint-handling systems, agencies need to tell members of the public about them. This is particularly important for large, dispersed government departments such as the Department of Education and Communities that has schools and offices all over the state. Parents and carers may not be aware of the structure of government or that the school their child attends is part of a large department. We encourage departments to do all they can to make people aware of how to complain – see case studies 7 and 8.

Agencies should also have mechanisms in place to collect information from complaints to improve their business processes. Complaints can give agencies valuable information about how well policies are being implemented at a local level, if procedures are being complied with across the organisation, and what changes may be needed to fix systemic problems.

Case study 7: Beneficial changes for all parents

A mother of two primary students complained about bullying and that the school did not contact her when one of her sons fractured his wrist. She was not happy with the school's response to her concerns, but she did not know who else to contact. When her husband phoned the regional office of the Department of Education and Communities, the staff member he spoke to told him that he found it hard to believe the allegations about the school. The woman then wrote to the Director General's office but did not get a response, so after six weeks she contacted us.

We were concerned about what happened in this case and that insufficient information may be available to parents about how to make complaints. We found that:

- | the department only had a general policy on its website that did not clearly explain the process for school complaints and the role of the regional office
- | the individual school did not tell parents how to escalate a complaint
- | the phone call to the regional office was not handled appropriately – the staff member did not appear to have dealt with the matter impartially and did not record or act on the complaint
- | there was a problem with communication between the Director General's office and the regional office about who should respond.

After speaking with the department, they agreed the information currently available might not be clear to parents and carers and needed to be changed. They updated their complaint guidelines to reflect the different types of complaints the department might receive and what to do. A new system was introduced to stop confusion between the Director General's office and regional offices, and complaint-handling issues were also discussed with Regional Directors.

The complainant was satisfied that her experience had helped to improve the system for all parents.

Case study 8: Making information accessible

A father complained that Legal Aid did not respond to a written complaint by his 13 year old daughter after she was interviewed by an Independent Children's Lawyer (ICL) as part of family court proceedings. Interviews with ICLs are conducted only with the young person – there is no third party present. We made inquiries and found that Legal Aid's complaint-handling policy was not followed in this case. It was not recorded as a complaint and the ICL contacted the young person after receiving the complaint to set up a meeting to discuss her concerns – without having another person present.

As a result of our inquiries, Legal Aid agreed to improve their website to make it clearer on how to make a complaint. They also changed their factsheet to include a new paragraph 'What if you are unhappy with your lawyer?'. The factsheet also has contact details for our office. Legal Aid intends to liaise with us about proposed changes to their website, including providing better information for young people about the complaints process.

Improvements in handling complaints by the Office of Liquor, Gaming and Racing

Complaints about a lack of action on complaints about noise from licensed premises in Sydney and the Newcastle area prompted us to visit the Office of Liquor, Gaming and Racing to review their files and interview staff responsible for dealing with noise disturbance complaints. We were extremely concerned at what we found.

Although we appreciate there have been significant changes to the legislation and to the agency, it appeared there was a lack of guidance to staff about how complaints should be handled – including the circumstances in which conferences would be held, the criteria for deciding when to hold a conference, time frames in which matters should be dealt with, and who the decision-makers were. Record-keeping was poor – with very few file notes of phone calls received or made by staff, emails to and from the agency were not on file, and key decisions were not documented.

The agency responded with commendable frankness. As well as taking action on the complaints, they provided detailed information about the changes being implemented in the agency. These included measures to deal with the backlog of noise disturbance complaints, new administrative procedures and key performance indicators, improvements to record-keeping, and the introduction of a case management system.

At a follow up site visit six months later, we found that considerable improvements had been made. These included:

- | significant improvements in record-keeping practices – with well-ordered files, file notes of telephone conversations, and copies of emails and other correspondence on file
- | prompt responses to emails and telephone calls
- | key decisions being documented with reasons
- | timely progress being made on files.

Decision-making at the NSW Trustee and Guardian

The NSW Trustee and Guardian manages the financial estates of people who lack the capacity to manage their own money, so their role is crucial to the wellbeing of a significant number of vulnerable people. This year we started a wide-ranging formal investigation into the standard of their administrative decision-making.

We are aware that the Trustee and Guardian has had a number of organisational challenges over recent years – including a major restructure of the former Office of the Protective Commissioner, relocating from the Sydney CBD to Parramatta, the merger of the Public Trustee and Office of the Protective Commissioner, and inadequate and incompatible IT systems. We appreciate that considerable time and resources have had to be allocated to managing these changes.

Although the Trustee and Guardian has demonstrated a commendable willingness to acknowledge that problems exist, to share information about measures being taken internally, and to accept suggestions about how to address deficiencies, we continue to receive complaints which suggest that administrative processes and procedures are not improving.

We are working collaboratively with them to investigate:

- | delays in decision-making
- | delays in implementing suggestions from our office that have been agreed to
- | lack of compliance by staff with changes when they have been actioned
- | failures to identify systemic issues in administrative practices
- | failures to respond to correspondence and phone calls.

Managing representations about fines

We have been looking at the administrative arrangements at councils for managing representations about fines. The service level agreements all councils have with the State Debt Recovery Office (SDRO) can result in members of the public having dealings with both the SDRO and their local council when making representations for a fine to be waived. Under these agreements, the SDRO provides administrative services for processing penalty notices issued by councils and for enforcing outstanding fines and penalty notice amounts.

We have invited a number of councils to participate in a project to improve our understanding of how this dual system works in practice – particularly how it affects members of the public making representations. The project involves reviewing a council's policies and procedures for dealing with representations about fines, auditing a number of representations made to that council, and interviewing staff about how they do their work in practice. We anticipate reporting back to councils and the SDRO on our findings later this year.

Are they part of government or not?

As the provision of government services becomes more complex, the relationships between the public, private and non-government sectors can be unclear. Case studies 9 and 10 highlight the issues that can arise and the need to carefully manage these relationships.

Case study 9: Referral service could be unfair

The owner of a plumbing company operating in the Newcastle area complained that Hunter Water had a referral service on their website that directed customers to one particular company which they called their 'partner'. Customers of Hunter Water could call the referral service and be connected with a 'trusted plumber' 24 hours a day.

The complainant thought this referral service and the endorsement of a single plumbing company was likely to dissuade people from using other plumbing companies in the area, such as his own.

Hunter Water told us they had set up the referral service to provide customers with a reliable plumber to contact for assistance, after receiving feedback from customers that they had difficulty locating a good plumber.

It seemed to us that Hunter Water was effectively promoting and advertising the services of a single, privately owned plumbing company in the area. We wrote to them expressing our concerns about the negative effect that this might have on other plumbers in the region. It seemed that the benefit of the referral service to the plumbing company was substantial, including the potential business from the 445 customers that were referred by Hunter Water and 194 referral cards left by Hunter Water in letter boxes.

We also expressed the view that by referring to the company as a 'trusted, licensed plumbing partner' Hunter Water was explicitly endorsing the company.

Hunter Water agreed that they would consider opening up the referral service to other plumbing companies in their upcoming re-evaluation of the scheme.

Case study 10: Monitoring accredited providers

We are currently investigating how Sydney Water accredits and monitors their accredited providers. When land is developed, approval must be obtained from Sydney Water to do work that might affect its assets – such as the sewer line. The developer must get a Sydney Water-accredited provider to perform what is called a 'peg-out' to verify the location of the sewer. The providers are accredited by Sydney Water, but not employed by them. The peg-out can only be done by either Sydney Water or one of its accredited providers.

We received a complaint from a developer who had contracted an accredited provider to perform a 'peg-out.' The provider incorrectly plotted the location of the sewer and, as a result, the builder hit the sewerage pipe. The complainant estimates that the combined cost of the damage to his property and his neighbour's property was around \$50,000.

At that time, Sydney Water did not require its providers to have insurance to cover such eventualities so the complainant was unable to recover any money from the provider. Sydney Water also denied any liability for the actions of the provider, so the complainant was unable to recover any of the cost of the damage from them.

Although Sydney Water might not be legally liable for the damage to the property, we felt that they had a responsibility to ensure that accredited providers – doing work that Sydney Water would have performed under other circumstances – were properly trained, monitored and insured, and that developers such as the complainant were not adversely affected by the contracting out of this work. The investigation is ongoing.

Corrections

The Prison Ombudsman

Providing comprehensive oversight of the correctional system requires a balanced approach – a mix of reacting to and trying to resolve the individual complaints we receive and proactively addressing matters that may potentially affect large numbers of inmates.

Our approach includes:

- | responding to complaints – small improvements accumulate and add to overall accountability and transparency and help increase the human rights focus of the system. Several individual, even small complaints can lead to inquiries and resolutions that may affect more people, a whole centre or even be implemented system-wide
- | conducting proactive inquiries and reviews – using our ‘own motion’ powers. The issues we look at come from a range of sources, like visits, evaluating complaints, reading reports or other information in the public arena about corrections. We are also able to review and hopefully rectify issues before they lead to complaints.

To help us implement this balanced approach, we have a specialist corrections unit with five staff. They each have a thorough understanding of the operational aspects of the correctional system, as well as experience in working within the unique and complex environment it presents. Our corrections unit is assisted by other Ombudsman staff to provide our extensive program of visits to correctional centres. When large-scale investigations are undertaken, such as the one involving Kariong, they are also able to call on specialist investigators from within our office.

Meeting the challenges

Our staff are available to people involved in the correctional system in a variety of ways – primarily by phone, but also by receiving letters, emails and online complaints and through our visits. Regardless of how we receive an inquiry or complaint, it is fully assessed to check that it is in our jurisdiction, what the person has already done to sort out the problem, and what would be the benefit – to the individual or to the community – if we take some action. This type of assessment is common to all areas of the Ombudsman’s work, but in the correctional environment there are further hurdles. If an inmate decides to call us, then our initial assessment must be done within the time constraint of their 10 minute phone call – which becomes only seven minutes by the time it is answered by an investigation officer in our corrections unit or the inquiries team. Although the call to us is free of charge to the inmate – and not monitored by correctional staff – it is a very short period in which to gain a thorough understanding of the issues and decide if we should take any action, or even to just provide advice.

This year we have taken more than 3,000 calls in the corrections area which have involved this initial assessment, as well as many hundreds more in responding to already open complaint cases. We took some kind of investigative action in about 400 of those cases.

The challenges of working in the correctional environment go beyond the short phone calls – and the inability to call an inmate back if you miss their call or have something to discuss with them about their case. There are also the difficulties of sourcing evidence in a closed system,

overseeing complaint-handling within a culture that is unique because those being complained about generally are also responsible for every aspect of the complainant’s daily life, and the limited opportunities for the complainant to be an equal partner in securing an outcome to their complaint.

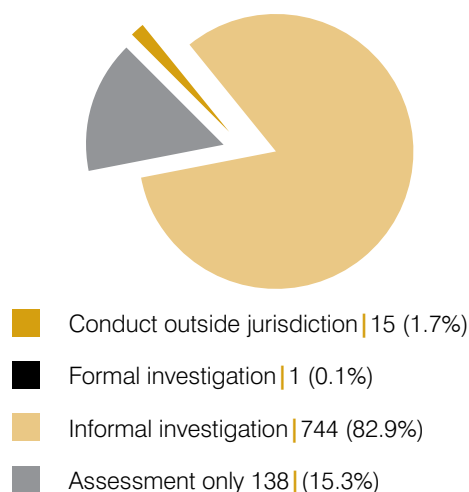
These challenges are one of the reasons our visits to correctional centres are so important. A primary focus of these visits has always been to help the inmates with complaints – providing an inquiry and referral service, but also actually helping them to make a complaint if necessary. Our visits give the inmates an opportunity to fully discuss their concerns and to present any relevant documents – all of which helps us to give them the best advice.

Complaints and trends

While the number of overall contacts received in the corrections area rose by only just over 2%, the number of these which were formal complaints increased by 22%, up from 671 in 2009-2010 to 821 this year (see figure 27). We were able to keep up with this increase, and in fact finalised 24% more complaints this year than we did in the previous year.

The breakdown of issues about which people complained show the largest areas of complaint remained consistent with previous years – being daily routine, access to health services and lost property (see figure 26). These are all endemic issues in correctional systems. While complaints alleging officer misconduct dropped, there were significant increases in those about classification and segregation, and complaints about food rose from 59 to 105. This dissatisfaction with the food is unsurprising when we see the large number of prison-provided meals which are thrown away uneaten by many inmates each time we visit correctional centres.

Figure 25: Formal complaints finalised



Current investigations at 30 June 2011	No.
Under informal investigation	36
Under formal investigation	4
Total	40

Figure 26: What people complained about

This figure shows the complaints we received in 2010–2011 about correctional centre concerns, 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
Buy-ups	19	106	125
Case management	17	88	105
Classification	31	179	210
Community programs	1	6	7
Court cells	1	6	7
Daily routine	183	489	672
Day/other leave/works release	15	37	52
Fail to ensure safety	22	55	77
Food and diet	28	77	105
Legal problems	10	57	67
Mail	14	72	86
Medical	49	435	484
Information	15	56	71
Issue outside our jurisdiction	13	41	54
Officer misconduct	74	169	243
Other	37	193	230
Periodic/home detention	1	12	13
Probation/parole	20	123	143
Property	100	313	413
Records/administration	59	119	178
Security	20	61	81
Segregation	30	84	114
Transfers	29	166	195
Unfair discipline	26	129	155
Visits	45	185	230
Work and education	5	92	97
Total	864	3,350	4,214

Figure 27: Formal and informal matters received

Matters	06/07	07/08	08/09	09/10	10/11
Formal					
Correctional centres, CSNSW and GEO	566	779	686	671	821
Justice Health*	69	61	64	53	43
Subtotal	635	840	750	724	864
Informal					
Correctional centres, CSNSW and GEO	3,010	2,902	2,825	3,096	3,088
Justice Health*	266	241	237	303	262
Subtotal	3,276	3,143	3,062	3,399	3,350
Total	3,911	3,983	3,812	4,123	4,214

*Justice Health provides services to correctional centres. For simplicity, all Justice Health matters are reported in this figure.

Issues in corrections

Although we focus on the NSW correctional system, our staff are in regular contact with other offices in Australia and overseas that provide similar roles for their correctional systems. It is often noted – especially in complaint-handling – that there are various issues which are common to correctional systems around the world. Some of these common issues include the:

- | vulnerability of certain inmates – such as women, young people, people with disabilities and older inmates – each bringing their own challenges and needs
- | use of force and restraints and how inmates are disciplined
- | increasing number of inmates who have mental health illnesses
- | increasing use of multi-bunk accommodation
- | ageing facilities in which inmates are accommodated that no longer meet the needs of a modern correctional environment
- | long term segregation/separation of some inmates
- | large numbers of Aboriginal people in custody.

We have included several case studies showing how these issues have arisen in our correctional system and what we have tried to do to address them.

We may also become involved if a staff member at a correctional centre complains about 'non-industrial' type issues relating to employment. During the past year we received several complaints from staff about delays by Corrective Services in dealing with complaints that had been made about them. In those cases we did make contact about the delays – not dealing with a complaint in a timely manner is an administrative action (or inaction) and not related directly to the officer's employment. Generally, the matters raised with us were resolved after our inquiries.

Investigating the behaviour management program at Kariong Juvenile Correctional Centre

Kariong Juvenile Correctional Centre is unique in that it is neither a juvenile justice centre nor an adult correctional centre. It is operated by Corrective Services NSW and the inmates are young men aged between 16 and 21 years old. They are all maximum security inmates due to their offence or their poor behaviour – this is why they are placed at this centre rather than a juvenile justice centre.

In last year's annual report, we flagged our concerns about the behaviour management program at Kariong and this year we conducted an 'own motion' investigation to examine those issues. The program determines almost every aspect of an inmate's day-to-day life – from the property they can have in their cells, the number of phone calls they can make, their buy-ups, the length of time they can spend out of their cells and units, their attendance at school and their participation in recreational activities.

Our investigation included an analysis of information provided by Corrective Services about the program, an audit of inmate records to see how the program worked in practice, and interviews with operational and program staff at both Kariong and head office as well as staff from Justice Health.

We found deficiencies with:

- | compliance with the requirements of the program
- | the adequacy and extent of programs and activities
- | the oversight of the program.

The staff at Kariong are managing a number of substantial challenges. Although they accommodate only a small number of adolescent inmates, some of them have significant behavioural issues and others have committed serious offences. There is considerable turnover in the inmate population, with some being on remand and others being sentenced. Some will become eligible to return to a juvenile justice centre or transfer to an adult correctional centre, but others will stay at Kariong for years.

We found that what is happening in practice at Kariong falls short of what is required by the documented program. The lack of any evaluation means there is no assurance that the program – even if it was implemented appropriately – would achieve its objectives. The lack of oversight, management reporting and evaluation means that Corrective Services cannot know how successful or unsuccessful the program is at modifying behaviour. As the program has been in place for over six years with only minor changes, this is of considerable concern.

Corrective Services responded positively to the deficiencies we identified in our investigation. After being notified of our provisional findings, the Commissioner authorised immediate changes to particular aspects of the program – such as limiting the amount of time a newly received inmate can remain on the assessment phase - and a comprehensive review of the entire program. We anticipate working constructively with Corrective Services to monitor the implementation of the further wide-ranging changes, which recognise the age and immaturity of the inmates in the centre, that need to be made.

Inmate discipline

Discipline in a correctional centre is important. Following rules contributes to rehabilitation, and is also an integral part of communal living. The Crimes (Administration of Sentences) Regulation sets out a disciplinary system including types of correctional offences and permitted punishments. This is supported by policies and procedures that guide staff and management in charging and punishing inmates. Last year we wrote of our intention to proactively monitor the disciplining of inmates as there are several areas where we believe the overall disciplinary process can be improved.

Case study 11: Inconsistent decisions

When an inmate at Wellington Correctional Centre refused to 'pick up rubbish' he was charged with a correctional offence for disobeying a direction. The charge was adjudicated by a principal officer of the centre who made a recommendation it be dismissed, but did not record his reasons. When the general manager of the centre reviewed the recommendation, he found the inmate guilty and punished him with 28 days loss of amenities. Again, there were no details about why the general manager had made this decision – except that he had been in the area when the inmate was told to pick up the rubbish. However, he had not provided any evidence of this to the original misconduct hearing. Corrective Services's operations procedures did not say what should happen if the general manager – who becomes the final decision-maker in the process – is involved in the offence the inmate is charged with. We suggested to Corrective Services this should be clarified. The Commissioner accepted this suggestion and issued further procedural information as a result.

Case study 12: A fair hearing

The disciplinary process is designed to include procedural fairness, so when an inmate is told the initial adjudicator is recommending they be found guilty they can ask to put their case to the general manager. An inmate at the Mid North Coast Correctional Centre complained when he was not given the opportunity to do this. When we made inquiries, the general manager told us he thought it was at his discretion whether or not to hear the inmate's case. After reviewing the procedures he contacted us again and agreed the inmate should be heard – and he was.

A problem associated with inmate discipline – and about which we have had many complaints over the years – seems to have finally been addressed by Corrective Services. A standard form of punishment is to remove an inmate's amenities or privileges - such as a television - but when they share a cell this also punishes their cellmate. The Official Visitors also saw this as a serious problem and when they raised it at their conference in June 2011, the Commissioner finally issued a direction to all staff that inmate punishments should not affect cellmates. We will be looking to ensure this direction is consistently implemented across all centres in the coming year.

Extra bunks in cells

Over the past few years we have been involved in extensive and ongoing inquiries with both Corrective Services and Justice Health about the health issues arising from introducing additional beds or bunks into cells in some of the more recently built correctional centres that were not designed for so many inmates. We made specific inquiries about Wellington and Mid North Coast Correctional Centres. After inspections and liaison between Corrective Services and Justice Health, we received advice in March 2011 that the additional bunks introduced retrospectively into those centres would no longer be used. This was because the numbers in the correctional system had dropped and a new centre at Nowra had opened, relieving some of the pressure.

This was a positive outcome. However we decided to monitor the physical removal of these beds because we were concerned that, despite the current assurances, any rapid increase in the inmate population would see them returned to use again. Before this could happen, we visited Wellington Correctional Centre and were once again confronted with inmates complaining of being in the affected cells with all bunks being used. This was quickly resolved with local management at the time of our visit, but it showed there was cause for our original concerns. We have recently written to the Commissioner once again about this matter and have now included similar issues in relation to Area 5 at Parklea Correctional Centre.

The South Coast Correctional Centre which opened this year at Nowra does have cells containing three bunks cells, but Corrective Services's request to NSW Health for permission to breach the Public Health Regulation to allow this to happen within the cells as they were originally designed was rejected during construction so additional space was added to the affected cells. This does give more space to the inmates who must use the cells.

Regardless of any extra space allocated to a cell, or exemptions provided by NSW Health, there are still significant privacy and decency issues when two or three inmates are forced to use a toilet and shower within the one cell, as well as eat and sleep there. The reduction in the inmate population during 2010 – which the Commissioner

noted in July 2011 had left many hundreds of 'empty beds' in the system – should mean these extra bunks are no longer needed, and could be removed.

Visiting correctional centres

Simply being in a correctional centre is an important part of our oversight. Our regular visits to centres provide opportunities for us to receive and resolve complaints and pass on advice. Visits also help us to keep up-to-date with what is happening in the centres, the people who work there, and how issues are managed. We talk with staff and managers and try to resolve any problems that are raised with us on the visit or that we have received in the office. These 'problems' range from issues about the very basic necessities, such as not having a pillow or enough clean clothes, to wider issues affecting the whole correctional system.

Case study 13: A simple request

An inmate at the Metropolitan Remand & Reception Centre (MRRRC) told us he had not been given a pillow, so we arranged for him to receive one before we left the centre.

When we visited Bathurst Correctional Centre in May, six inmates came to complain they had no pillows. Again we raised this with local management who later told us stores had been ordered and pillows distributed to all inmates who needed them.

To anyone not in custody it is difficult to understand how someone could not be able to resolve a complaint themselves about not having a pillow. Correctional centres are funny places where even pillows can be a commodity, and of course sometimes people just do not take care of them. Often the problem occurs because the ordering system has not worked, because no one cared enough to put in the order, or there simply was not enough money in the budget at that time to order more linen.

Case study 14: Laundry facilities

On a visit to Parramatta Correctional Centre in March last year we found out that inmate clothing was only being laundered once a week. When we looked at the Corrective Services policy about clothes issued to inmates, we realised that having three t-shirts with laundry being done only once a week was not very hygienic. We also had access to a report Justice Health had prepared covering issues such as the laundering of inmate clothing and linen. We therefore suggested to Corrective Services that they review both the amount of clothing issued to each inmate and how frequently it is laundered. During the year we received regular advice from Corrective Services about their actions to follow up on our suggestions. Additional clothing is now being issued to inmates when they first come into custody and laundry facilities have been improved – including providing extra machines and laundry days at most centres.

Case study 15: Poor procedures

At John Morony Correctional Centre an inmate complained that when he was strip searched the officers had made him firstly lift his penis for inspection of his groin area and then use his fingers to hold his mouth open. He was rightly concerned that performing the search in that order was unhygienic and undignified. We agreed with him and raised it with the general manager who ensured all staff were made aware of the correct operational procedure.

Grafton Correctional Centre

In our annual reports we have sometimes noted concerns about the standard of accommodation at some correctional centres, such as Grafton. Parts of Grafton Correctional Centre are very old (it was originally built in 1893), so inmates are often living in conditions that are far from ideal. However, Corrective Services needs to use these old centres to be able to provide inmate accommodation across the entire state. In responding to our earlier concerns about the minimum security 'dormitory' conditions at Grafton, the Commissioner noted this was the only way sufficient numbers of beds could be provided for inmates from the region.

When we went to Grafton in February this year, a few inmates complained about the cells in the maximum security wing. Our first impression of the wing was the lack of air. In February it is hot and humid on the north coast and, in a not very effective attempt to address this, staff had provided an 'industrial' sized fan in the middle of the wing and the inmates had strategically placed cardboard in the windows of their cell door to try to direct some breeze into their cells. Our greater concern was when we went into the cells and saw the bunks, and noted the number of hanging points they provided. We are aware there were plans several years ago to build a new correctional centre in the Grafton area, but there has been no recent further news about those plans. We wrote and asked the Commissioner what action he could take to make the cells safer and he told us the bunks are considered to be suitable for use, and in fact are found in several other correctional centres. The Commissioner outlined strategies staff employ to monitor and prevent attempts at self-harm which we acknowledge. However we are still concerned the current beds provide a mechanism for self harm for those inmates who are not subject to special management or extra watches – and make a spontaneous decision when something goes wrong or they get bad news.

All deaths are not preventable but all steps should be taken to prevent those that can be averted. We will continue to pursue this issue with the Commissioner.

Wearing identification badges

Corrective Services staff are supposed to wear a badge which identifies them while they are on duty. The Commissioner has issued several memos to all staff reminding them of this, as it is both an accountability and customer service component of their staff conduct and ethics guide. As we visit correctional centres across the state, we have noticed a very low compliance rate – specifically among non-commissioned officers – so we have been communicating with the Commissioner about how this can be improved.

Wearing a form of personal identification is of great importance in maintaining accountability for the actions taken by staff. When most people are wearing a uniform, it is very difficult for a complaint to be followed up if the only identification is that it was 'the person with black hair who was wearing a blue uniform'. We have suggested to Corrective Services various ways of resolving this issue, such as using combinations of letters and numbers and will continue to discuss this with them until there is a resolution.

Safety, dignity and humanity

Much is lost by a person who goes into full-time custody – many rights and many more privileges. Each inmate however is a person and is entitled to be safe, have due dignity and be treated with humanity. These are fundamental to our society. Sometimes, along with the rights and privileges, these 'fundamentals' get overlooked. This can particularly be the case with inmates from especially

vulnerable groups such as those with disabilities, mental health illnesses, and those who are significantly older or younger than the average inmate. Often these are the types of issues that inmates will contact us about – and which we try to help them resolve.

Case study 16: Setting up a phone account

When an inmate arrives at a correctional centre it can take a couple of days for their phone account to be set up. One man who met us at the MRRC had both an identified intellectual disability and a physical disability. He told us he had been waiting for a long time to have his phone activated. He was sure he had given the right information to the officers about his phone numbers and that his mum had put money into his account. We asked the Area Manager about this and when he checked he found that although the account had been set up it had also been deactivated in error. The problem was immediately resolved.

Case study 17: Fearful of a hair cut

The Metropolitan Special Programs Centre (MSPC) includes several wings designated as providing additional support for inmates who need assistance because of either an intellectual or physical disability. One of the men from this area called us (assisted by his wing delegate) because an officer had allegedly told him if he did not remove his 'rats tail' hairstyle within 24 hours he would be held down by 'the squad' while it was cut off. We called the centre and the Manager of Security told us he had previously told staff to advise inmates not to have the rat's tail hairstyle because another inmate suffered serious head injuries when it was used against him in a fight. The manager spoke to the staff member in the area and made sure the officer returned and told the inmate he would not be held down and have his hair forcibly cut. The inmate called us later to say the officer had spoken with him again and apologised.

Many inmates must also deal with mental health problems, ranging from general anxiety about being in custody to significant mental health illnesses. This provides increasing challenges to both correctional and Justice Health staff in managing their behaviours and their illness needs. Some inmates have both mental health issues and intellectual and physical disabilities.

Case study 18: Not understanding why

If an inmate threatens either the good order of a correctional centre or the safety of officers they may be placed into administrative segregation, removing them from association with other inmates. A man who called us said he was in segregation and he didn't know why. He said he had a brain injury and epilepsy. We agreed to find out what had happened and ensure someone spoke with him. The officer we spoke with explained the inmate had sent letters to his mum threatening to kill correctional officers. Staff were aware the inmate had previously been identified as at risk of self harm, and although the threats were seen as childish they still had to ensure the safety of their officers. The Area Manager explained the inmate had been told what was happening to him, but agreed to speak with him again about why he was segregated – he also indicated this segregation would finish in the coming days.

Case study 19: Problems on 'watch'

When inmates are at risk of self-harm they are jointly managed by corrections and Justice Health staff. This may include being placed in a cell on their own with little access to their property. They will also be checked at regular intervals or even watched continually by CCTV. An inmate at Grafton had returned to custody under stressful circumstances and asked for a sleeping tablet, so he was placed on 'watch'. He complained to us this also meant he was under bright light 24 hours a day and had been told this would last for 14 days when he would be reviewed again. When we spoke with Justice Health they advised the inmate was reviewed each day and it had been recommended he now be located with another inmate as a form of safe housing. The need for the light to be on was a decision made by Corrective Services to ensure he could be easily observed at all times.

Many women who come into custody are also the primary caregivers for their children. Although there are some limited programs and locations that allow greater levels of contact and interaction between mothers and children, most have to rely on phone calls to keep in touch.

Case study 20: Keeping in touch

A woman at Silverwater Women's Correctional Centre had difficulty making phone contact with her family and her housing provider and needed to sort out an urgent problem. She had asked for assistance from staff at the centre and when they were unable to help she contacted us. We immediately advised her she could call the housing provider via a freecall number on her inmate phone, in a similar way to how she had called us. We also called the Manager of Security who told us there had been some issues with the phones, but the problem seemed to be the woman didn't have enough money in her account to call her family. The manager agreed if this was the case he would make sure staff made a 'welfare' call available to her, so she could sort out the urgent family problem.

Inmates are vulnerable for the same reasons as the rest of the community – including being the victims of crime while they are in custody. It is not possible for them to pick their cellmate and so it is vitally important those who do allocate cellmates have all the relevant information to make a sound decision.

Case study 21: Sharing a cell

A 19 year old inmate was sexually assaulted by another inmate. The perpetrator was charged and convicted of the offence. At the time he committed this offence, he was in custody for committing a similar assault on another cellmate. Our inquiries indicated that there were not sufficient checks and alerts done before decisions were made about who should share a cell. We suggested some ways computer and other checks could be improved and Corrective Services NSW agreed to make changes.

Dignity and humanity also includes having access to basic needs, such as enough to eat.

Case study 22: Improving food supplies

Phone contact from an inmate late in the day often relates to a complaint about food. A call from Junee was made by one inmate, but several more could be heard in the background supporting what he was saying. There were 37 inmates in the pod and they were claiming they had not received enough food for everyone that night. They described the meal and we agreed it didn't sound reasonable. Pod staff were unable to arrange for any additional food to be brought from the kitchen. After we contacted the general manager, he had the food checked the following evening after it left the kitchen and found it lacking. He outlined to us various steps he then put in place for improving the overall quantity and quality control of inmate food at the centre.

During the year we have also responded to complaints about the Commissioner's decision to bar all inmates from having photos taken to be sent to their families – because one inmate's photo had appeared on Facebook. For those who are serving a long sentence, and especially for women with children the total ban was a harsh reaction. We wrote to the Commissioner about this issue as photographs are an important way of maintaining an inmate's relationship with their family, increasing the likelihood of a positive return to their community. We were recently advised the Commissioner had reviewed this decision and would allow medium and minimum security inmates to have photos sent to their families. Our concern is that those inmates who have a maximum security rating are the ones who will usually spend longer periods in custody, and whose relationships are generally subject to greater strains than others.

In the High Risk Management Correctional Centre (HRMCC) the property an inmate can have in their cell is controlled and limited. An inmate asked for access to his 'legal documents' including the brief of evidence and judgement so he could begin work on an appeal. His request was denied and he was told only inmates who already had an appeal underway could have such documents. It was difficult to see how the inmate could decide about proceeding with an appeal without reading these documents and we also felt the policy may be improperly impeding their legal rights. Our inquiries prompted Corrective Services to seek advice from their legal branch and subsequently to send out a direction advising all staff that inmates are to be given access to their legal documents even if they do not have a current appeal.

Another inmate in the HRMCC complained about the new high security inmate transport vehicle used by Corrective Services to take him to court. We made arrangements with the Inmate Transport area to see these new vehicles, as well as a sample of all other types of vehicles used to move inmates. After inspecting the van complained about, we understood why the inmate might be uncomfortable as the area in which they sit does not allow a great range of movement. However Corrective Services provided certification to show that the vans comply with all relevant requirements. We were also told the entire fleet of trucks used to move inmates around the state will have responsive intercom systems installed by 2013. This will improve inmate safety if they become ill or are assaulted by other inmates.

Community offender services

The government and the community is increasingly looking for ways to divert offenders from full-time custody, as well as help those who are released to not return. Community

Offender Services is the area of Corrective Services with responsibility for this work.

We received a complaint from a woman who was concerned she had not been given proper information about the man she had been living with, who had subsequently abused her daughter. This raised issues about how decisions had been made about the woman and her children – and the offender – by a variety of agencies, including Community Offender Services, Community Services and the NSW Police Force. The inquiries we made covered all of these agencies and the outcomes are discussed further in the Stakeholder engagement chapter at page 95. To read about the circumstances of this matter see page 68 in the Children and young people chapter.

Case study 23: Problems with property

Community Offender Services Programs (COSP) centres are a relatively recent initiative of Corrective Services. These centres are available to help offenders who are leaving custody by providing short-term accommodation and support in adjusting to community life and any court or parole requirements. After we were contacted by some offenders who had been returned to custody after living in different COSPs, we found some deficiencies in the policy and procedures relating to their property and what should be done with it when they left suddenly. Corrective Services responded positively and the policy and procedures were clarified and reissued to ensure all property held by residents in the COSP complied initially with what they are allowed to have, was accurately recorded as in their possession, and then properly dispersed if that becomes necessary.

Aboriginal inmates at Goulburn

For several years Aboriginal inmates at Goulburn have complained they are not treated or accommodated in the same way as other inmates at that centre. Certain changes were made to the management of Aboriginal inmates at Goulburn after a very serious incident in 2002. Inmates at Goulburn are separated into wings and yards depending on their race, so it is possible for treatment of various groups to differ. We have spoken regularly on our visits with management at the centre about the concerns raised with us. For example, Aboriginal inmates are not allowed to have a 'sweeper' from among their own group, they have double security doors, and the windows in the cells are covered – causing a lack of air and encouraging mould and mildew. This year one inmate who complained to us also told us he had made a similar complaint to the Anti-Discrimination Board. We are waiting to hear the outcome of his matter which is now before the Administrative Decisions Tribunal before deciding what future action we may need to take.

Justice Health

Inmates in custody and offenders in court cells receive medical attention and treatment from Justice Health, which is part of NSW Health. Their objective is to provide health care in the correctional system of an equivalent standard to that available in community settings. Resources are limited and there are often problems in retaining sufficient medical and other professional staff to provide the level of services desired. Although most inmates can be triaged relatively quickly by nurses at their correctional centres, there are often long lists of inmates waiting to see a doctor, dentist, optometrist or other specialist provider. This, of course, leads to complaints.

Case study 24: Delays in getting medication

Coming into the correctional system as someone who is prescribed medication in the community does not necessarily mean you will receive that medication straight away. If an inmate can provide details of their community prescribing doctor and contact can be made, Justice Health staff will try to find out details of the prescription and arrange for it to be continued in custody. Sometimes this does not happen because, for example, the medication is not able to be used in a custodial setting. One inmate who called us complained he had not been prescribed his psychotropic medication after 12 days in custody. There are severe side effects when this type of medication is stopped suddenly and the inmate was very aggressive. When we spoke to the Mental Health Nurse at his centre we were told the inmate was unable to be given a prescription from a community-based doctor and so he needed to be seen by a psychiatrist to get a new prescription. There was also a concern he had not in fact been consistently taking his medication for several days before he came into custody. We were told he was on the list to be seen by a psychiatrist, but the list was long – and continues to grow daily because of the increasing number of people coming into custody with mental health needs.

Local government

Investigating and assisting councils

In recent years we have completed a number of significant investigations that have identified serious and systemic administrative failures in councils, and have made formal recommendations to help councils improve their services to the community.

However, the majority of our work with councils is carried out in a largely informal and consultative manner. We believe it is important for us to be able to assist councils – by, for example, giving them strategies for improvement and providing guidance publications – without the need for resource intensive formal investigations.

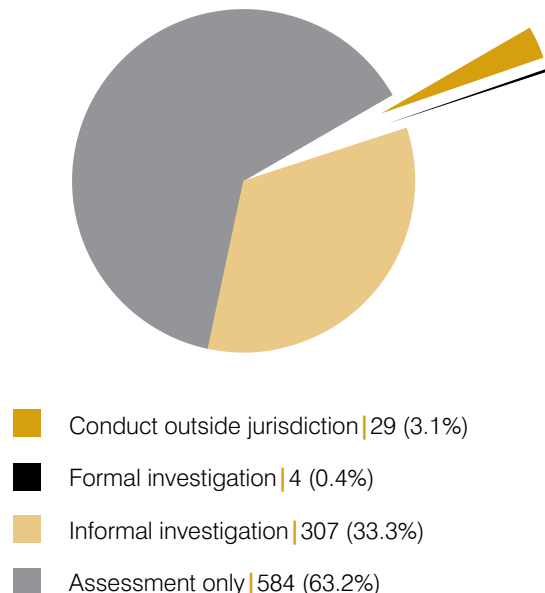
Although complaints about customer service are trending downward, customer service was still the focus of many of the complaints we received about councils this year. We have developed a number of guidelines to help councils improve their administrative practices and we reinforce the benefit of these publications wherever possible. From time to time, we also have to give guidance on the appropriate use of those guidelines if they have been misinterpreted.

Complaint trends and outcomes

There was further increase of 8% in the number of complaints we received about councils this year, on top of the 20% increase last year (see figure 29). This can be partly explained by the increase in complaints about Manly Council after our comprehensive investigation last year. Another substantial source of complaints was Pittwater Council, following a development proposal for a Woolworths store in Newport - 61 complaints compared to 17 last year.

There has been a marked increase in development complaints (53%), accounted for by the Pittwater Council complaints. Complaints about strategic planning also increased from 10 last year to 53 this year, as many councils are reviewing and bringing their statutory planning instruments up to current standards. A pleasing trend is a continuing drop in customer service complaints by 31% (see figure 30).

Figure 28: Formal complaints finalised



Current investigations at 30 June 2011	No.
Under informal investigation	26
Under formal investigation	1
Total	27

Figure 29: Formal matters received and finalised and inquiries

Matters	06/07	07/08	08/09	09/10	10/11
Formal received	841	768	702	843	912
Formal finalised	837	788	672	875	924
Inquiries dealt with	1,992	1,965	1,795	1,720	1,979

Figure 30: What people complained about

This figure shows the complaints we received in 2010–2011 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
Community services	7	18	25
Corporate/customer service	159	454	613
Development	142	315	457
Enforcement	133	264	397
Engineering services	97	153	250
Environmental services	79	166	245
Management	3	9	12
Misconduct	38	96	134
Issue outside our jurisdiction	30	36	66
Objection to decision	89	176	265
Rates, charges and fees	81	196	277
Strategic planning	53	19	72
Uncategorised	1	77	78
Total	912	1,979	2,891

Case study 25: Some progress made

Last year we reported on a major investigation into Manly Council's poor administrative practices, making 24 recommendations for improvement.

Council has now established a Councillors Implementation Working Group to 'monitor and provide feedback to the Ombudsman on the implementation of his recommendations' and they have dedicated a page on their website to updating their progress.

Although council has taken steps to comply with a number of our recommendations, there have also been some outcomes that do not reflect our recommendations. For example, we recommended that council should apologise to certain complainants and make an ex-gratia payment for their legal costs, but they refused to do so.

We continue to monitor their responses to our recommendations, and look forward to seeing the results of the promoting better practice review that the Division of Local Government (DLG) are currently undertaking at Manly Council.

Helping councils to handle unreasonable complainant conduct

We expect both councils and complainants to act reasonably in relation to handling and making complaints. One of our most recent publications – the *Managing Unreasonable Complainant Conduct practice manual* – has been widely used by councils, but we are still struck by the number of complainants who we believe have acted inappropriately.

Case study 26: Making unreasonable demands

We recently took the extraordinary step of informing a complainant that we believed he had acted unreasonably and made unreasonable demands on a council. A comprehensive and exhaustive review of his complaint found that after some 15 years – in which he had made numerous voluminous complaints to his council and to us about a number of issues – we could see no evidence of any conduct that would warrant us investigating the council.

Another complainant, frustrated by an action taken against him by their council, sent a further email to us after the council had taken what we believed to be reasonable steps to resolve his issue. This 32 page email was also sent to some 23 Ministerial offices and almost 100 media individuals. We provided the complainant with guidance about more appropriate ways to make a complaint in the future.

Case study 27: Giving reasons for restrictions

A man complained that Upper Lachlan Shire Council had declared him vexatious and refused to deal with him any further – without giving him their reasons for this. After making inquiries with the council we reinforced with them that, although they were entitled to decide to restrict the access of complainants in defined circumstances, they should also inform the complainant about the reasons and circumstances surrounding their decisions. We also highlighted that complainants should not be personally labelled as vexatious, but their conduct could be identified as falling within areas of unreasonable behaviour. Council agreed with our suggestion to apologise to the complainant and explain their reasons for restricting his access.

Case study 28: Managing unreasonable conduct

A complainant objected to having her contact with council limited to the general manager only. He had cited occupational health and safety as his reason for preventing her from contacting staff in council's rates section. We contacted the general manager and were able to provide informal guidance on managing unreasonable conduct and satisfy ourselves that no further action on our part was required. The general manager in turn agreed to develop a policy on handling unreasonable complainant conduct that has been drafted for adoption by council.

Failing to act on complaints

Complainants frequently come to us when they feel that their council has ignored their complaints. Unfortunately, there are times when it is clear that some councils have no intention of resolving issues raised by complainants without our intervention, despite their responsibility to do so. We have achieved a number of positive outcomes for complainants, but we also focus on suggesting improvements to council to ensure they don't repeat poor service.

Case study 29: A long history of inaction

A man complained to us about Narrabri Shire Council not taking any action in response to his complaint about lack of access to his remote property and their failure to repair damage done to his property by council quarrying. He had been pursuing legal access to his property since soon after buying it in 2003. He said council had misrepresented the status of the only road to his property, listing it as a shire road when this was not the case. In 2005, council passed a resolution to remedy the situation but, for reasons which were unclear, had failed to act on the resolution. Over the years the road had become virtually impassable, restricting his use of the property. Council had also refused to rehabilitate land around a quarry on his property despite there being significant erosion, denying they had used the quarry as recently as the complainant claimed. Despite making a formal written complaint to the general manager in April 2010, the matters remained unresolved.

As a result of our inquiries, council agreed to remediate the quarry damage and ensure the dedication of the first 1.4km of the road to the complainant's property. This positive response to part of the complaint was welcomed. However, we were concerned it took council some five months to respond to our inquiries – and even then with a very limited response. They didn't adequately address significant issues raised by the complainant – including the status of the remainder of the road, their poor handling of the matter over many years, the incorrect information given by council staff to the complainant about their obligations to remediate property damage, their management of external legal advisors, and the adequacy of their record-keeping practices and complaint-handling system.

In addition to not adequately addressing all of the complainant's concerns, it appeared to us that council had not investigated the history of the matter to the extent necessary to identify administrative and procedural deficiencies in their processes and procedures. They needed to do this to prevent the same problems happening again.

We made a series of detailed suggestions about action to resolve the remaining issues, which council accepted. We will carefully monitor council's compliance.

Case study 30: Unexplained delays

A property owner complained about the way Blue Mountains City Council had handled her concerns about damage to her property caused by stormwater flowing from five neighbouring upslope properties. She felt that council had not take sufficient action to require her neighbours to undertake the necessary drainage works to lessen the amount of water flowing onto her property. She was also dissatisfied because when she first complained to council they did not respond and then, when they did respond, she felt bullied and intimidated by the council officer.

It is not our role to make a technical judgment on council's decision about what action was necessary to address the stormwater problem. However, we were concerned about how they had handled the complaint. When we first became involved, council acknowledged that they had not responded nor kept the property owner informed of the action they had taken to address her concerns. They offered an apology and assured us that,

when the further work due to be done in the next week was completed, they would let her know.

Close to two months later, the property owner advised us that she had still heard nothing from council. When we contacted council, they explained the reasons for the delay and completed the work within the week. However, in their letter to the property owner telling her the outcome of the work, they did not mention – much less apologise – for the delay.

We suggested that council could handle these situations better in the future if they were to formally adopt their complaints policy and provide training to staff. They have since advised us that they expect to put a reviewed policy before council in June 2011 and they will consider training for staff, depending on the resources available.



Councils failing to act on complaints is highlighted in case study 30 about stormwater damage.

Code of conduct issues

All councils are required to adopt a code of conduct which sets out the standards of conduct expected from council officials. Each council's code has to incorporate the terms of the model code of conduct (see section 440 of the *Local Government Act 1993*) prepared by the DLG. The code applies to councillors, the general manager and all council staff. As well as expected standards of conduct, the code also sets out obligations for managing conflicts of interests and provides a mechanism for dealing with allegations of breaches of the code.

Generally, we don't investigate complaints about breaches of a council's code of conduct. We encourage the complainant to raise their concerns directly with the council for them to deal with it in accordance with the provisions of the code. If a person claims that a council has not adequately dealt with such a complaint, we generally refer them to the DLG as they monitor councils' compliance with the code and review the model code and the guidelines.

We have discussed with the DLG the need for improvements to the current code and guidelines, and in June 2011 they released a discussion paper for councils in NSW for a review of the model code. We will continue to work with DLG to improve consistency and clarity in this important area of local government.

Case study 31: Wasting scarce resources

We have received approximately 30 complaints this year about the poor handling of alleged code of conduct breaches. Some of these complaints have been from councillors aggrieved about:

- | being the subject of a complaint
- | being investigated for possibly breaching the code
- | inadequate action being taken on their complaints about the conduct of others.

We have also received complaints and phone calls from exasperated general managers besieged by councillors making accusation and counter accusation against each other. These have then spilled over to accusations against the general manager and others appointed to review the alleged breaches. We are aware of some councils who now find it nearly impossible to appoint independent reviewers to investigate alleged breaches due to the difficulties and complaints previous reviewers have been subjected to while conducting their investigations.

It appears the code of conduct – although providing a needed set of minimum standards of conduct – has become yet another means for some councillors to engage in political point-scoring and mischief-making. In the process, considerable resources are being spent by councils already under financial pressure, on matters that do not justify such expense. Sadly, even when a council has attempted to deal with matters promptly and fairly, one party will sometimes pursue the matter externally to the Ombudsman, ICAC or the DLG in their pursuit of ‘justice’. We can quickly decline to be involved in such matters, but councils can be embroiled in them for years. It is unfortunate that councils are unable to recoup the costs incurred from those people who misuse the complaints process for political ends.

Of course, we have also received complaints that raised genuine and serious concerns about the conduct of councillors and council staff – as well as about the poor handling of complaints by councils and independent reviewers. There can be considerable differences in the processes, timeframe and assessment criteria used by reviewers, so it is perhaps understandable that someone may feel aggrieved by being apparently treated differently from another person accused of similar conduct.

Freedom of information

A successful transition

Under the transitional provisions of the *Government Information (Public Access) Act 2009* (the GIPA Act), we received 49 Freedom of Information (FOI) complaints about applications that were lodged before the GIPA Act came into operation.

As expected, the number of complaints gradually reduced over the course of the year. We received 52 complaints with the last complaint recorded in February 2011. We finalised 89 FOI complaints in this period, clearing our backlog from the previous year (see figure 31). We formally investigated four complaints, while the rest were resolved or finalised through informal means.

Figure 31: Formal matters received and finalised and inquiries

Matters	06/07	07/08	08/09	09/10	10/11
Formal received	208	225	186	145	52
Formal finalised	205	197	224	136	89
Inquiries dealt with	316	422	407	263	127

Figure 32: What people complained about

This figure shows the complaints we received in 2010–2011 about Freedom of Information, 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
Access refused	26	14	40
Agency inquiry	0	13	13
Amendments	0	1	1
Charges	1	1	2
Documents not held	2	7	9
Documents concealed	0	4	4
General FOI inquiry	0	56	56
Issue outside our jurisdiction	2	2	4
Pre-application inquiry	1	14	15
Pre-internal review inquiry	2	10	12
Third party objection	4	2	6
Wrong procedure	14	3	17
Total	52	127	179

Figure 33: Significant outcomes achieved in relation to complaints about FOI finalised in 2010–2011

Issue	Total
Review of case/conduct/decision/finding by agency	2
Internal processes reviewed or to be reviewed by agency	3
FOI search made and documents found	2
Documents released or to be released by agency fully/partly	18
Policy/procedure to be changed by agency/Minister	5
Apology given by agency	1
Decision/finding changed by agency	6
Reasons provided by agency for decision/action/finding	4
Fees and charges to be reduced/waived/refunded by agency	3
Otherwise resolved to Ombudsman's satisfaction	2
Further information provided to clarify/explain issue or agency action	11
Referral of complainant to appropriate body	1
Total	58

The following case studies are a sample of our FOI work.

Case study 32: Ministerial advisor salaries

The Office of the former Leader of the Opposition applied under FOI for salary details of ministerial media advisers. The Department of Premier and Cabinet provided a document that set out the salary ranges, but decided to exempt the exact salaries and the names of the advisers.

We suggested the exact salaries be released without the names, but the department refused. This was due to concerns that the names of the media advisers could be easily worked out from other sources and this would lead to unreasonable disclosure of their personal affairs.

During our investigation of the complaint, one of the media advisers argued that the release of her salary details would have an adverse impact on her spouse's financial affairs. She maintained that if the details of her salary became known, it would hamper her spouse's ability to ask for increased rent from tenants at their investment properties. Another media advisor argued that because she directed senior staff of a government agency, the release of her salary would be embarrassing to her. We expressed concern to the department about ministerial media advisers directing agency staff.

The department complied with our recommendation to release salary bands and offered to release further details of expenditure on ministerial media advisers to the complainant.

Case study 33: Accessing taser videos

Last year we reported on the NSW Police Force's (NSWPF) initial refusal to comply with our suggestion that copies of videos of police officers using tasers be released, after the faces of the subjects had been obscured. We formally investigated the matter and recommended releasing copies of the videos. We also recommended that the NSWPF develop a policy – in consultation with the NSW Information Commissioner – for dealing with and determining any future applications under the GIPA Act for access to taser videos. NSWPF agreed with our recommendations, released the taser videos to the journalist, and began drafting the policy.



Case study 34: Redundancy payments for ministerial staffers

The Office of the former Leader of the Opposition complained about the Department of Premier and Cabinet's refusal to provide specific information about redundancies paid to staff previously employed in a ministerial office, who were then re-employed with either the same or a different Minister.

The department provided an aggregate figure of \$705,734 representing redundancies paid to 19 staff between 2005 and 2010, but refused to provide the amounts of individual redundancies, stating this would be an unreasonable disclosure of the staff's personal affairs. We made three formal suggestions to the department for the release of the individual figures. They refused to follow our suggestions, arguing that due to the small number of staff affected their identities could be worked out from other sources. We wrote to the department expressing our view that while it may have been possible to find out which ministerial employee received a particular redundancy payment, the information was not evident from the document itself. In our view there was an overriding public interest in the disclosure of the details of all individual payments of public funds, particularly in the several cases where a ministerial employee was re-employed by the same office or re-employed in another ministerial office not long after receiving a redundancy payment.

As a general principle, it seemed to us that information about the remuneration paid to a public official should not be treated as if it were a matter of complete secrecy. In late March, the department advised us they were reviewing their determination in accordance with our suggestions. However, before we received final advice from the department about whether the details would be released, the applicant had withdrawn the complaint following the NSW state election.

Case study 35: Poor practices at Manly Council

We received a complaint from a resident of Manly Council about its determination of his FOI application for documents about a long-standing barking dog complaint. We began a formal investigation into council's handling of the FOI matter as well as issues related to the substantive complaint.

During our investigation, we found a number of concerning practices in council's dealing with FOI applications, including:

- | making applicants attend council chambers to view documents when they requested copies
- | charging for photocopying
- | referring to so-called restricted documents and withholding them without giving reasons
- | improperly excluding material from the scope of applications without providing reasons.

Council agreed to implement most of our recommendations, but advised that they would not stop their practice of charging photocopying fees for access to documents, as they believed section 7(2) of the GIPA Act enabled councils to charge such fees. We wrote to council noting that section 7(2) of the GIPA Act relates to information that is proactively released by an agency and does not apply to access applications. We also referred the matter to the Office of the Information Commissioner as they are now the appropriate regulatory body for this issue.

The Information Commissioner agreed with us that an agency has no basis under the GIPA Act to apply photocopying charges distinct from any processing fees and advised they would follow up with council to confirm the requirements under the Act.

Documents that should have been released

In last year's annual report, we included a case study about Sydney Water's failure to release documents to a journalist under the FOI Act. The documents disclosed the names of the top 50 commercial water users and the amount of water they used in certain years. Sydney Water released information about aggregate data, but maintained that the documents disclosing the names of the companies were exempt as they concerned the business affairs of the companies and were therefore confidential. They argued that their customer contract obliged them to keep information about the water use of their commercial customers confidential, and – although information about water usage was not confidential in itself – in combination with the names of the users it 'could provide an opportunity to other competitors'.

At the time that last year's annual report was published, we had written to Sydney Water suggesting that they should release the documents as it was in the public interest. We considered that members of the public had a right to know which businesses were consuming the most water in NSW and whether or not those businesses were taking action to reduce their water consumption. We also asked the Information Commissioner about whether she believed the documents should be released, and she agreed with our conclusions.

We have now finalised our investigation into Sydney Water's conduct in this matter and have sent a copy of our final report to the journalist who made the original complaint, Sydney Water and the relevant Minister. In that report, we maintained our view that the documents should be released. Sydney Water subsequently told us it is redetermining the application.

Public interest disclosures

Implementing large-scale reform

There have been major changes to the protected disclosures system in NSW. In our last annual report, we spoke about the Parliamentary Committee for the Independent Commission Against Corruption's (the ICAC Committee) final report after their review of the *Protected Disclosures Act 1994*. In October, the government introduced legislation to amend the Act in line with the ICAC Committee's recommendations. The Bill passed through Parliament and came into operation in March this year. The changes to the Act will come into force in three stages.

The first stage

The first stage included a new name for the Act. We have argued for some time that the name needed to be changed to place greater emphasis on the purpose of the legislation – rather than on the mechanism for achieving that purpose. The new name of the Act – the *Public Interest Disclosures Act 1994* (PID Act) – now reflects its purpose. This change also brings the title of the Act into line with most other Australian jurisdictions.

The initial changes in March also included the establishment of the Public Interest Disclosures Steering Committee. This committee is responsible for providing advice to the Premier on the operation of the PID Act and recommending any necessary reforms, as well as providing advice to the

Premier on reports of our work under the Act. It is made up of the following members:

- | the Ombudsman, who is the chair of the committee
- | the Director General of the Department of Premier and Cabinet
- | the Auditor-General
- | the Commissioner for the Independent Commission Against Corruption
- | the Commissioner for the Police Integrity Commission
- | the Chief Executive of the Division of Local Government
- | the Commissioner of Police.

There were a number of issues the ICAC Committee noted, but did not recommend any changes. This was because they received insufficient evidence during their review to reach a firm view. They therefore recommended that the Steering Committee consider these matters such as:

- | how the PID Act applies to volunteers
- | including additional types of conduct within the PID Act
- | including the Health Care Complaints Commission as an investigating authority
- | whether third party service providers should be able to receive and deal with reports of wrongdoing on behalf of agencies.

The Steering Committee met for the first time on 3 August 2011. It is scheduled to meet four times a year, with additional meetings to be held if necessary.

The second stage

From 1 July 2011, our office has a range of additional functions under the PID Act. These are discussed in more detail in the following sections. Agencies will also have to start developing their own internal reporting policies and procedures, based on our guidance material and model policies. These policies and procedures must be in place by 1 October 2011.

The third stage

From 1 January 2012, agencies will have to start recording information about the disclosures they handle under the PID Act. Details about the information to be recorded and reported on will be set out in regulations to the Act. These regulations will be developed in consultation with the Steering Committee.

Making further legislative changes

One of the incoming government's commitments as part of its 100 Day Plan was to improve protections for those who report wrongdoing in NSW. These changes are set out in the Public Interest Disclosures Amendment Bill 2011, which at the time of writing is being considered by Parliament.

The Bill will make a number of important changes to the PID Act, including:

- changing all references to 'protected disclosure' to 'public interest disclosure'
- introducing legislative responsibilities for heads of agencies
- introducing a requirement for agencies to report to us regularly on the disclosures they deal with.

We will amend our guidance material to incorporate any changes this Bill makes to the PID Act.

An expanded role for the Ombudsman

The PID Act expands our role. We have always been responsible for receiving and dealing with protected disclosures about maladministration, as well as receiving complaints about the way disclosures are handled by agencies. We will continue to perform these roles, but will also be responsible for a number of other areas. Our role now includes:

- giving information, advice, assistance and training to public sector agencies and their staff on any matters relevant to the PID Act
- issuing guidelines and other publications to help public sector agencies fulfil their functions under the PID Act and draft their internal reporting policies and procedures, plus assist their staff to understand the protections available to them under the PID Act
- monitoring and auditing whether public sector agencies are complying with the Act and reporting to Parliament on both these functions
- preparing reports and recommendations for the Premier about legislative and administrative changes to achieve the objectives of the PID Act
- providing support to the new Public Interest Disclosures Steering Committee, including preparing an annual report on their work.

This is both a challenging and exciting new area of responsibility for us. For the system around public interest disclosures to work effectively, we have to work towards a

change in culture across the NSW public sector. This will see public sector staff recognising the value of reporting wrongdoing and accepting that making such reports is part of their everyday responsibilities.

We have four key objectives that we believe will help us to achieve this change. These are to:

- increase awareness of the procedures for making protected disclosures and the protections provided by the PID Act
- improve the handling of disclosures and the protection and support for people who make them
- improve the identification and remedying of problems and deficiencies revealed by disclosures
- ensure an effective statutory framework is in place for making and managing disclosures and protecting and supporting the people who make them.

The Ombudsman has established a public interest disclosures unit (PID unit) to achieve these objectives.

Consulting and providing information

We will be consulting widely with the people involved in dealing with public interest disclosures and the people who make them. This includes public authorities, their staff, other investigating agencies, unions, academics, journalists and commentators and interest groups such as Whistleblowers Australia. We have started this process with several information sessions.

The first session was held in May and was facilitated by Dr AJ Brown. It was an opportunity to bring together many of the people who have an interest or involvement in whistleblowing, including people who contributed to the Whistling While They Work research project. We provided the group with an outline of the changes, including our new role. We also gave them drafts of our objectives under the PID Act, as well as our model internal reporting policy for agencies. We received very useful comments both during the session and in the weeks afterwards.

We have held a number of information sessions since then for agency staff involved in handling disclosures. We provided information about the changes to the PID Act including the timeframe, as well as the roles and responsibilities of agencies and their staff. We will continue to hold these sessions as agencies change their systems.

Developing guidelines and model policies

Ever since the *Protected Disclosures Act 1994* came into operation in 1995, we have realised the importance of providing guidance material to agencies. This is why we produced our Protected Disclosures Guidelines, which were in their sixth edition when the changes to the Act started this year. In light of the changes to our role and the Act, we decided that a different approach was needed.

Our guidelines are now in the form of a series of individual practice notes, that can be read together or as individual topics. The first five topics were released on 1 July 2011. They covered management commitment, internal reporting policies and procedures on who can report wrongdoing, what should be reported, and the roles and responsibilities of key players. All of our guidance material is available on our website. We plan to have the remaining 25 practice notes finalised by the end of the year.

We have also produced two model internal reporting policies – one is for state government agencies and the other local councils. They provide guidance to agencies and their staff about dealing with reports of wrongdoing appropriately.

Separating a complaint from an industrial dispute

In May 2008, six staff members in Macquarie university's Centre for Policing, Intelligence and Counter Terrorism (PICT) wrote twice to the Vice-Chancellor and Deputy Vice-Chancellor expressing serious concerns about a number of issues. These issues included recruitment processes, workload issues, and decisions to assign traditionally academic work to administrative staff. They also alleged that there was general harassment and bullying of staff, which became worse in retaliation for individual staff raising concerns with PICT management.

The concerns were raised in the context of a broader industrial dispute about the working conditions of staff.

In June 2009, one of the staff members made a protected disclosure to our office. They claimed that the concerns of the staff members had never been taken seriously and each person had suffered some form of retribution for having complained. Some of them had resigned after being harassed and others had not had their contracts renewed.

Our primary concern was about the way the university had handled the complaints. They did not appear to have recognised that – in addition to a number of industrial issues that were being negotiated with the union – the complainants had also alleged that they had suffered retribution for having complained in the first place.

Following involvement from our office and the ICAC, the Internal Audit Bureau (IAB) investigated the allegations in 2010. They found that many of the allegations were substantiated and there were 'justifiable perceptions that the processes of recruitment and selection are corrupt' although none amounted to 'corruption.' The IAB made a number of recommendations for systemic improvements, most of which were accepted. The university had already made structural changes to the PICT which they believed addressed some of the issues.

The IAB also found that there was no evidence the university had investigated the May 2008 complaints, beyond providing a copy of one of the letters to the Director of the PICT for his response. This response informed the Deputy Vice-Chancellor's view that the complainants were a group of people making vexatious claims.

We found the university's attitude towards criticisms of the way they had handled the original 2008 complaints to be of some concern. In particular, they did not accept responsibility for failing to make any inquiries into the complaints. Instead, they claimed the complainants failed to provide particulars and also questioned the validity of a number of conclusions in the IAB report.

Allegations by staff that they are bullied and harassed in retaliation for complaints is a serious issue that should be looked into. If an organisation ignores such concerns, they risk staff not reporting serious wrongdoing for fear of reprisals. In our view, the university was responsible for asking the complainants for further details to support their allegations. The complainants should not have had to escalate the matter to two oversight bodies for an investigator to look into their concerns.

One of the IAB report's recommendations was that the university apologise to the complainants for mishandling their complaints. This had not occurred by March 2011, when the IAB report was leaked to *The Australian newspaper* and made the subject of three critical reports over a three week period.

The second newspaper article was written by one of the complainants and quoted an internal email that was sent by a dean at the university to all of his staff in response to the first newspaper article. The dean attempted to reassure staff that 'there was no evidence of wrongdoing [meaning criminal behaviour] found', that 'I find the article today a highly coloured version which puts everything in the worst light possible. But that is what newspapers will do ... and all this happened ages ago in a context which no longer exists ... [and] it has been fully dealt with within the university ... as soon as it was received.' In our view this message was clearly misleading.

On 22 March 2011 the six complainants wrote an open letter to the Vice-Chancellor, outlining their perception that the university's response to the IAB report was 'insufficient' and demanding an official apology from the university for failing to respond to their complaints.

After we sought clarification from the university, it became clear that they still had not recognised the problems with their approach. Staff willingness to report wrongdoing largely depends on how they perceive their organisation is going to handle their report. In this case, we were concerned that university staff would perceive that the university had dismissed the complainants' concerns as a media beat-up, and had refused to apologise because they took no responsibility for the ongoing dissatisfaction of the complainants. This might act as a disincentive for anyone thinking about making a protected disclosure in the future.

We believe the complainants reported honest concerns about the way PICT was operating. They wanted the problems to be fixed. The appropriate response would have been to support what they did, make further inquiries into their concerns and – if their concerns showed the university where positive systemic improvements could be made – tell them about those improvements and acknowledge the contribution they had made.

Instead, when the complainants first reported their concerns, they suffered retribution. When they complained about that, the university ignored them. Even when it was confirmed by an investigation, the university disputed the validity of the findings and blamed the complainants for not providing enough details when they made their initial complaints.

After discussing our views with the university, they have agreed to apologise to two of the complainants who escalated the matter to our office and the ICAC, 'in respect of any failure of due process in dealing with their complaints.' They have advised that they are reviewing their complaint-handling and investigation procedures and will continue to promote a culture in which staff feel confident that their genuine concerns will be handled appropriately.

Delivering training

We are starting to provide training to agencies and their staff to raise awareness of the PID Act. We will be developing more targeted training courses for staff dealing with disclosures, as well as senior staff and supervisors.

Even with targeted training, we will not be able to reach everyone covered by the Act. We are therefore developing e-learning tools to provide quick advice and guidance to staff about their rights and responsibilities.

Offering guidance

Agencies will have to build their internal reporting systems and deal with reports of wrongdoing appropriately. While we cannot do this work for them, we are available to provide advice and guidance. Our PID Unit is almost fully staffed, and we will provide whatever assistance we can to agencies and their staff. For more information, please contact our office and ask to speak to someone in the PID Unit.

Handling complaints

The number of protected disclosures we received in 2010-2011 remained largely the same as last year (see figure 34). We expect the number of public interest disclosures complaints to increase next year as a result of greater public sector awareness and understanding of the PID Act.

It is important that agencies deal with as many matters as they can themselves as, in our experience, this leads to a better outcome. We prefer to focus on dealing with complaints about disclosures being handled badly by an agency.

We will also deal with disclosures that are made about heads of agencies. Even in agencies with the best possible systems, those making disclosures might be worried that the head of an agency will influence how their matter is handled. Our model policy includes advice to staff to report suspected wrongdoing involving their agency head directly to one of the investigating bodies listed in the PID Act.

In future, our work will go beyond handling disclosures. We plan to give greater focus to the issues that arise after the subject matter of a disclosure has been largely dealt with. The Bill before Parliament will expand our capacity to perform a conciliation role. This will allow us to help solve some of the underlying problems, which can often do more damage to the reputation of an agency than the subject of the disclosure.

We have also noticed a recent trend for complainants, particularly councillors, to announce publicly they have made a protected disclosure. We assume they do this either to gain political advantage or to provide their complaint with a level of importance it may not have otherwise received. Reporting wrongdoing should not be used as a political tool. The objects of the PID Act are to provide protections against reprisals and remove barriers to reporting wrongdoing. We recognise there may be circumstances where a councillor may require protection against reprisals, but we would question whether they require the protection if they are willing to announce their disclosure.

Figure 34: Protected disclosures received

Matters	06/07	07/08	08/09	09/10	10/11
Informal	42	53	47	43	41
Formal	34	43	42	35	39
Total	76	96	89	78	80

Case study 36: Keeping people informed

A member of staff made a disclosure about a government agency to the ICAC and the agency at the same time. The disclosure was investigated and the allegation was not substantiated. Other allegations made against the person who was the subject of the disclosure were found to be true and the person was dismissed. The complainant then complained to us that they were not told what had been done.

We looked into the matter and found the agency had handled the disclosure properly. They had been in constant contact with the complainant as the matter had progressed because the complainant was assisting them with their inquiries. However, they had not written a letter advising the complainant of the final outcome as they thought this was the ICAC's responsibility.

We suggested the agency amend their procedures so there was more certainty if a similar matter arose in the future. They have now changed their procedures and will consult with the investigating body to check who is responsible for responding to the person who made the disclosure.