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Embargoed until 10am Thursday 22 October 2009

NSW Ombudsman **Annual Report 2008-2009**

Ombudsman gets results

The NSW Ombudsman Bruce Barbour today tabled his Annual Report for 2008-2009.

In 2008-2009 the office received 32,994 complaints and notifications. Of these:

- 24,252 were informal complaints and inquiries
- 8,742 were formal complaints and notifications.

The office audited over 10,000 agency records, and consulted more than 1,300 people as part of our systemic investigations and reviews.

The Ombudsman continues to tackle systemic problems in public administration as well as helping fix immediate problems for those forced to fight with a big, unresponsive bureaucracy.

“We provide an important public safety net when people are let down because of incompetence or unreasonable conduct” Mr Barbour said. **“Overcoming delays, miscommunication and misunderstanding to achieve quick, positive outcomes for problems that should never have happened is a core part of what we do.”**

A tenant repeatedly complained to the department of housing about an infestation of rats but no action was taken. Our inquiries resulted in the property being treated by a pest controller (case study 66).

A woman complained her council had failed to respond to her request for a refund of a development application bond. After we got involved, the council apologised for the delay and arranged for an immediate refund (case study 71).

A number of tenants complained that councils had either cut off or restricted their water because their landlords had failed to pay their rates. We contacted each council and made sure they dealt directly with the landowners. **“Tenants should not be punished**

and suffer hardship for debts they are not legally liable for and actions of their landlords over which they have no control” said the Ombudsman.

An elderly public housing tenant contacted our office after being without hot water for two weeks. Appointments had been made to have the system repaired, but none were kept. We intervened, and soon after a plumber installed an interim system while a replacement was ordered (case study 67).

A mother of a boy with significant medical needs relating to his disability complained he was not receiving the support he needed due to casual staff at his group home being inadequately trained. She was also frustrated because the service caring for him had not responded to her complaints. We met with the service provider and examined their records. We found the young man was receiving good support, but the service was not communicating effectively with his mother. With our help, they now have a system in place to improve the lines of communication (case study 28).

“People’s frustration and anger with government departments often stems from poor communication” said the Ombudsman. **“Agencies have to make sure people know what is going on, otherwise they are likely to assume the worst. Small problems should be dealt with quickly before they have the opportunity to escalate.”**

Other issues of Interest

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Integrity matters

The Annual Report of the Ombudsman tabled in Parliament today highlights the need to restore integrity to NSW government services.

“Too many public servants think integrity is an old fashioned, optional concept” said Ombudsman Bruce Barbour. **“Integrity is essential to good public administration and is something the public demands – it isn’t out of style and it certainly isn’t optional.”**

Questionable ethics and integrity lapses are problems identified in many areas of the Ombudsman’s work. They range from a council knowingly levying an illegal charge to police lying to protect colleagues from disciplinary action; public servants taking irrelevant considerations into account when processing FOI applications, or misleading people about whether documents even exist.

“We are never going to prosper as a state unless the public and our business community have confidence that officials do the right thing” Mr Barbour said.

A local council went against its own staff and legal advice to retrospectively apply a new development contribution charge to a number of older development consents. The council hoped to raise almost \$2 million of additional revenue from this unauthorised charge. Decisions about the new charges were made behind closed doors instead of in open council session as required by the Local Government Act. After the Ombudsman began to investigate, the council apologised and refunded the complainant who had been inappropriately charged. They are also contacting other affected developers and will refund amounts charged improperly (see case study 69).

A police officer was stopped for speeding in an unmarked police car. The offence involved a fine and automatic driving disqualification. He later appealed the fine and disqualification when he believed the video taken in the police car covering the incident could not be retrieved. At that stage he claimed he had been following a speeding car

which he described in detail. The police officer who was a passenger also wrote a report supporting this version. The video footage was recovered and clearly showed these accounts to be untrue. When confronted, the passenger admitted lying to protect the driver from internal disciplinary action (see case study 38).

In another case, two police officers tried to get out of a speed camera fine by claiming they were driving a different police vehicle despite substantial evidence to the contrary. Other police officers tried to cover up their actions (see case study 37).

“Cases like this bring discredit to the NSW Police Force” said the Ombudsman. **“Such cases can undermine our justice system and unfairly taint other honest, hard working police officers.”**

The Board of Studies went to great lengths to prevent FOI applicants accessing information about their higher school certificate results. This included incorrectly claiming that three sets of documents either did not exist or could not be produced. The Board also resisted the Ombudsman during his investigation, which ultimately resulted in the release of the information (see page 99 for more information).

An investigation of the Roads and Traffic Authority (RTA) revealed a long standing practice of sending draft FOI determinations to the Minister’s office and waiting for their endorsement before finalising and issuing them, even if this led to long delays. Despite their obligation to make independent decisions, this process meant RTA staff were reluctant to make determinations contrary to the views they understood the Minister’s office to hold. Following the Ombudsman’s recommendations the Premier issued a memorandum in August 2009 making it clear that ministerial offices are not to be involved in the FOI determination process when it relates to applications for agency documents (see page 97 for more information).

“Holding people accountable for their actions continues to be a critical element of good public administration and there is a continuing need for the Ombudsman to make sure this happens” Bruce Barbour said.

Other issues of Interest

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34	68	Police officers bully a colleague they believed made a complaint against them

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Improving government services

The NSW Ombudsman Bruce Barbour today tabled his Annual Report for 2008-2009.

The Ombudsman doesn't just get good outcomes for individual citizen complaints. Increasingly the Ombudsman is proactively investigating systemic problems. This year's report highlights positive outcomes on a range of major projects aimed at fixing administrative problems. In this way we can benefit a large number of people, often those who are less likely to come forward and make a complaint.

“Our systemic investigations allow us to go beyond the legislation, policy and procedure to see what is actually happening” Mr Barbour said. **“Elaborate policies and procedures are of no use if they are not effective or are not being correctly applied.”**

This year, the Ombudsman completed a review of the *Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing* (JGoS). Following a lengthy investigation, which included interviews with hundreds of front line staff, consumers and stakeholders, he found that current discharge planning, training and development and exchange of information between agencies were all hampering the JGoS' effectiveness. **“Our recommendations are aimed at overcoming these failings, ensuring those relying on social housing receive the support they need and deserve”** said the Ombudsman (see page 89 for more information).

The Ombudsman also reviewed the Department of Ageing, Disability and Home Care's (DADHC) implementation of their policies for providing services to Aboriginal communities. He found that while DADHC had attempted to promote their work, Aboriginal communities often did not know what the department did, let alone what services were available. **“Building good relationships is the key to working with Aboriginal communities”** said the Ombudsman. **“The department needs to work**

more effectively with communities to develop appropriate, flexible approaches to delivering services” (see page 41 for more information).

Another project examined the impact on Aboriginal communities of issuing on-the-spot-fines, or criminal infringement notices (CINs) for minor offences. This followed a state-wide roll out of the CINs scheme in 2007. The Ombudsman’s review found the roll out was accompanied by an increase in the number of CINs issued to Aboriginal people. In a five year trial period, 2.8% of CINS were issued to Aboriginal people. Since the roll out this has jumped to 7.4% with more than half of the CINs being for offensive language. The Ombudsman also looked at what happens to CIN recipients who are unable to pay their fines and are referred for enforcement action. **“There is a real risk that mounting debt resulting from minor matters and enforcement action will lead to more serious secondary offending”** said the Ombudsman (see page 40 for more information).

The government accepted most of the 88 recommendations made by the Ombudsman and passed two reforming Acts following his review of the *Freedom of Information Act 1989*. **“The developments following our report have been very promising and herald a new era of accountability in government”** said the Ombudsman. **“But I will be watching carefully to make sure the new system measures up to the promises that have been made”** (see page 96 for more information).

For children and young people living in care, leaving that care can be a challenging and frightening experience. We have reviewed the situation of a group of young people leaving care, assessing the level of support they have received from involved agencies. **“Support, if it is to be effective, must go beyond the doors of out of home care”** the Ombudsman said. **“We have to make sure we do not leave these young people unable or ill-equipped to fend for themselves.”**

Other issues of Interest

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47-48	Reviews of children in care
56	Young people and the internet research project
57	Sexual offences by school employees research project
72	The use of Taser weapons by police
87	Workcover’s handling of an asbestos exposure incident