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Embargoed until 11.30am 25 October 2006

NSW Ombudsman Annual Report 2005–06

Police

Snapshot 2005-06

- 3,753 written complaints received about police, including 1,151 reports from police officers
- 101 criminal charges against 64 officers – most (79%) of these inquiries began with reports from other officers
- 2,379 police investigations or conciliations oversighted by the Ombudsman – 90% handled well by police commands, with no further action required
- 1236 investigations (58%) led to some action being taken, including criminal charges, counselling, performance agreements, training and closer supervision
- 5 detailed Ombudsman reviews on new police powers tabled in Parliament, recommending significant legislative and procedural changes. 3 other reports completed and provided to Ministers for tabling before Parliament
- 8 local commands investigated to assess their work with local communities, highlighting improvements in police work to reduce youth crime and tackle domestic violence and sexual assaults more effectively.

“Most police commanders are making genuine efforts to deal effectively with complaints, and they are achieving good results. However, commanders require the support of senior police to streamline complaints handling. We have recommended changes to reduce the red tape involved in less serious complaints. We have also met with commanders across NSW and made suggestions to reduce the time they spend resolving minor matters,” said Ombudsman Bruce Barbour when tabling his 2005-2006 annual report.

The Ombudsman reviewed 2379 police investigations and conciliations, and 90% were satisfactory. Police commanders acted upon concerns raised in 92% of matters that were not satisfactory.

“Police have been charged with more than 100 criminal offences in the last year, including serious assault and driving charges. Most criminal charges result from other police officers coming forward and reporting misconduct,” said Mr Barbour.

Systems reviews and recommendations by the Ombudsman have closed loopholes in the complaints system, targeting complaints referred to police by the Police Integrity Commission and

Ombudsman, misconduct matters arising in criminal proceedings, and serious allegations made against police in civil processes. Resulting changes will reduce the chance that serious police misconduct will slip through the cracks.

The annual report also provides an update on our achievements in working with police and Aboriginal communities to identify and share best practice.

“I am particularly proud of the work of our Aboriginal Complaints Unit. Our audits are assisting police and Aboriginal communities to achieve substantially better results in addressing family violence and youth crime. I congratulate Aboriginal people and police for their genuine commitment to positive change,” the Ombudsman said.

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Employment-related child protection

Snapshot 2005-06

- 1,786 notifications alleging reportable conduct by employees toward children
- 1056 notifications (59%) alleging physical assault of children
- 307 notifications (17%) alleging sexual offences or sexual misconduct toward children. Most involve male employees
- 381 agency investigations monitored
- 31 agencies' child protection practices audited.

“This year the Ombudsman was notified of more than 300 allegations of sexual assault or sexual misconduct by employees towards children, including possession of child pornography. We have focussed our efforts to ensure these matters have been properly handled by agencies,” said Ombudsman Bruce Barbour.

The Ombudsman has also closely studied the warning signs of employees who may be grooming children with the aim of involving them in sexual acts. This research has identified common grooming behaviours and best practice approaches to investigating grooming allegations against employees. The findings are now being provided to agency managers and investigators through industry forums.

In 2005-2006, the Ombudsman also focussed on the protection of children in long day care centres. Three child care agencies were investigated because of substantial concerns about their systems for handling allegations against employees. Even though the agencies had child protection policies, employees did not understand them and some allegations had not been properly investigated.

“Children in long day care deserve the best protection. We have investigated some large child care providers who have not cooperated with our attempts to audit their systems. These investigations have improved their practices. We will continue to closely monitor this sector,” said Mr Barbour.

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Protected disclosures

The NSW Protected Disclosures Act needs significant amendment

The Ombudsman, Bruce Barbour, said that the NSW Protected Disclosures Act “**requires significant amendment to achieve its original objectives,**” when he tabled his Annual Report in Parliament today. He suggested “**major structural changes to the sections of the Act that deal with redress for whistleblowers and statutory obligations on agencies**”. The Ombudsman also recommended that a specialist protected disclosures unit be established to assist agencies and monitor implementation of the Act.

This year the NSW Ombudsman outlined his concerns about the Act to the current Parliamentary review of the Act. The committee is yet to table its report on the review.

Whistling While They Work: A national research project

Whistling While They Work is a national research project into the management and protection of Australian public sector whistleblowers. The NSW Ombudsman is one of over 20 Australian bodies involved. The project has attracted more than 1 million dollars in funding, and is believed to be the largest study of whistle blowing in the world.

“**The effective protection of whistleblowers and other internal witnesses to corruption, misconduct and maladministration is one of the great-unsolved problems of public sector governance,**” said the Ombudsman.

“**While whistleblowers are uniquely placed to expose serious problems in their workplaces, they are also often subjected to severe reprisals,**” he said.

The project was launched in July 2005. To date over 300 state and federal agencies and over 7,000 public officials have responded to surveys. It is anticipated that the project will be completed by early 2008, with the publication of several major papers and reports on various aspects of whistle blowing practice, management and legislation in Australia.

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Freedom of Information

Decreasing rate of full release of documents in NSW

“The significant and disturbing downward trend in the full release of documents under FOI has continued for the ninth year running,” the Ombudsman said today when tabling his Annual Report to Parliament.

In 1995-96, over 80% of FOI applications resulted in the full release of documents. This figure has steadily declined to only 55% in 2004-05. Over the same period the numbers of applications where only some documents or some parts of documents have been released has tripled (from 12% to 34% of determinations).

“NSW has the lowest rate of full release of documents of all mainland states and the Commonwealth,” the Ombudsman said. “The rate of full release in NSW is 20% below the average for these other states and the Commonwealth.”

Review of the FOI Act needed

“We have been calling for a comprehensive review of the FOI Act for over a decade,” the Ombudsman said today when tabling his Annual Report to Parliament. “In the absence of any such review, we will consider conducting our own review of the FOI Act next year,” he said.

Over the 17 years since the FOI Act was introduced, amendments have been piecemeal resulting in the Act becoming fragmented, and not in line with current circumstances. For example, since the implementation of the Act, agencies have been moving from paper-based document management systems towards electronic systems. The Act has not made adequate provision for these changes.

“As I have been saying for years, the FOI Act is not effective in keeping agencies accountable to the public,” said Ombudsman Bruce Barbour.

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Community Services

Snapshot 2005-06

- 1683 community services complaints received
- 946 (56%) complaints about Department of Community Services
- 283 (17%) complaints about Department of Ageing, Disability and Home Care
- 283 formal complaints (48%) resolved by Ombudsman after inquiries
- 13 investigations into the family care and protection system completed
- 2 Ombudsman special reports, the first about DADHC's progress in improving services for children with a disability and their families, and the second on DADHC's deficiencies in monitoring licensed boarding houses.

“While DoCS is working to improve its capacity, the work undertaken by my office continues to raise concerns that DoCS does not always respond adequately to children who are reported to be at risk of harm. Ensuring a timely and effective response to children who may be at risk is a critical area for DoCS performance,” said Ombudsman Bruce Barbour.

The Ombudsman's annual report also highlights the failure of some disability accommodation and support services to properly protect and care for people with a disability. These services are provided, licensed or funded by DADHC. Common causes for complaint include abuse or neglect of disabled residents, failing to consult with residents and their families about relocations, and a lack of respite care.

“DoCS is halfway through its \$1.2 billion, 5 year reform program. The government has also committed to a long-term plan, *Stronger Together*, to improve disability accommodation and support. These are significant community investments, with the real potential to benefit children and disabled people. The Ombudsman's job in coming years is to ensure that there is a measurable and sustained improvement in the services DoCS and DADHC provide,” Mr Barbour said.

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Public services

- 4954 complaints received about 113 general government departments and statutory authorities
- 661 preliminary and formal investigations conducted.

“Most complaints about government agencies are about poor customer service and complaint handling, fees and charges and enforcement issues,” the Ombudsman said today when tabling his Annual Report to Parliament.

The report highlights the NSW government’s commitment of \$12.9 million for the Valuer General to implement the major recommendations of the Ombudsman’s investigation into land valuations. The investigation identified weaknesses in the quality control process that produced unacceptable margins of error.

“The implementation of our recommendations will lead to substantial improvements in the accuracy and consistency of land valuations,” Mr Barbour said.

The Ombudsman’s annual report also documents an investigation into the Office of Fair Trading’s procedures for assessing builders’ licence applications. The investigation examined the licensing of a builder who left a Dural couple’s house unfinished and with serious defects. OFT licensed the builder without checking his history. However, OFT’s own records listed him as a director of two other failed building companies and with an outstanding debt to OFT. The Ombudsman found the OFT had no criteria for assessing an applicant’s overall fitness to hold a building licence. Information exchange between OFT’s insurance debt recovery arm and licensing section was also deficient.

“The complainants have been compensated for the Office of Fair Trading’s errors. There are new processes so that up to date information about builders’ insurance claims is available to the public. There are also improved decision-making guidelines and more rigorous background checks. These changes should reduce the chance that unsuitable builders are licensed,” said Mr Barbour.

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Local government

- 2635 complaints to the Ombudsman about local councils
- 361 preliminary or formal investigations conducted
- 260 positive outcomes achieved, including councils changing decisions and policies, providing apologies and giving reasons.

“Complainants continue to come to the Ombudsman when they are not satisfied with the hearing they receive from councils. In more than 70% of matters we take up, we are getting better outcomes for complainants or changed procedures in councils,” Ombudsman Bruce Barbour said.

An Ombudsman investigation found Leichhardt Council was charging illegal fees for providing information to the public. This was despite a Local Government Act requirement to provide the information for free. Other councils were also charging unlawful fees to cover processing and file retrieval costs, or charging unreasonable amounts for photocopying.

“Our investigation found many councils with unreasonable photocopying charges and unlawful processing fees. We have put a stop to these charges, and to unnecessary red tape for persons seeking access to council documents,” said Mr Barbour.

The Ombudsman also reported on a number of councils accepting existing use claims without requiring sufficient evidence from applicants and without taking all available evidence into account. An existing use classification enables a development to continue on land where planning laws would now prohibit it.

“Planning laws are to ensure properties are only developed or used for appropriate purposes. Councils need to be able to justify decisions to accept or reject existing use claims inconsistent with current planning requirements. This means they must keep proper records of the inquiries and decisions made in relation to each claim for existing use,” Mr Barbour said.

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The corrections and juvenile justice systems

- 3460 inmate complaints were received by phone or during visits to correctional centres – up 10%
- 852 formal written complaints received – up 41%
- 710 preliminary and formal investigations conducted with 537 positive outcomes achieved
- 148 person days visiting and inspecting 27 correctional centres
- 298 complaints about juvenile justice – up 25%
- 18 visits to 9 juvenile justice centres.

The most common corrections complaints were about daily routine issues –including complaints of unreasonable treatment, lack of basic amenities, inadequate hygiene, no access to telephones, lack of activities and staff lockdowns.

“We can resolve most of these matters with correctional officers on the spot, and without the need for formal and time consuming investigations,” said NSW Ombudsman Bruce Barbour.

Junee Correctional Centre – the only privately run correctional centre – is the subject of significantly more complaints than any other centre. Major issues were raised this year about inmate security and access to legal advice. The many complaints to the Ombudsman about these and minor issues indicate that Junee’s internal complaint procedures are not working well.

269 complaints followed problems arising during family visits to correctional centres. After Ombudsman inquires, the Department of Corrective Services has improved procedures for children entering correctional centres for child parent days. It has also improved the facilities for parents and carers visiting the Metropolitan Special Program Centre.

“Getting the balance right in corrections is difficult. A reason for imprisonment is punishment. However, the community also expects humane conditions that encourage inmate rehabilitation. Family visits are critical to the prospects of an offender’s successful return to the community. The department has responded constructively to family access issues we have raised,” Mr Barbour said.

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Regional and suburban references

Bateman's Bay Court holding cell	Case study 32	P87
Bourke and Brewarrina		P28
Cobham Juvenile Justice Centre	Case study 44	P98
Dural	Case study 13	P59
Goulburn Correctional Complex (HRMU)		P94
Goulburn Police College	Case study 48	P105
Inner City	Case study 12	P59
Inner West	Case study 30	P85
Junee Correctional Centre		P90
Junee Correctional Centre	Case study 36	P90
Junee Correctional Centre	Case study 37	P90
Junee Correctional Centre	Case study 38	P91
Junee Correctional Centre	Case study 39	P91
Kogarah City Council	Case study 28	P84
Kariong Juvenile Justice Centre		P94
Leichhardt Council		P82
Lithgow Correctional Centre	Case study 31	P87
Macquarie Fields	Case study 6	P43
Metropolitan Remand and Reception Centre	Case study 43	P96
Metropolitan Special Programs Centre	Case study 34	P89
Metropolitan Special Programs Centre	Case study 42	P92
Parramatta Correctional Centre	Case study 41	P92
Reiby Juvenile Justice Centre		P99
Tweed Shire Council	Case study 29	P85
University of NSW		P110