



35
years

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ANNUAL | 2009 REPORT | 2010

Highlights

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This year we **visited 62** regional and remote communities in NSW

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Five Special Reports were tabled in Parliament

SEE PAGE 169

To be more responsive, in October we **restructured our office**

SEE PAGE 4

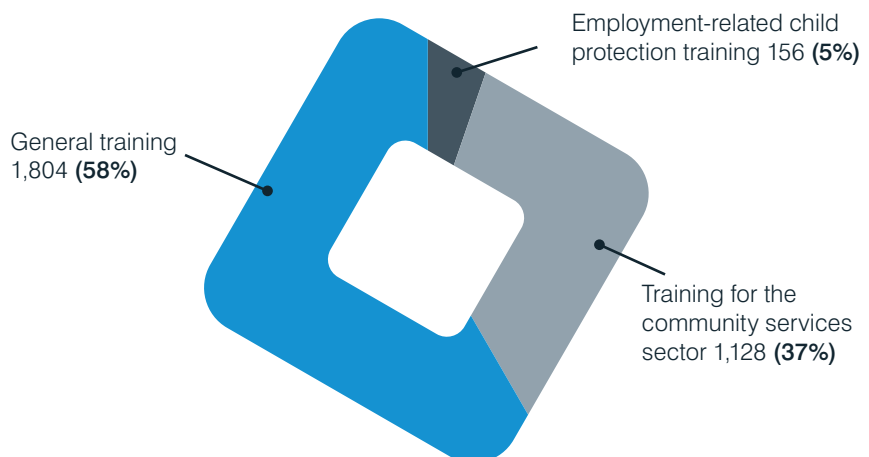
Formal complaints and notifications **received = 8,712**

SEE PAGE 7

To support agencies improve their service provision, we **increased our training program**

SEE PAGE 41

Training workshop participants



Our vision

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

Our mission

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

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

Our purpose

We aim to:

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

Our values

We will:

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

Our guarantee of service

We will:

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

Recognising
35 years of
service

Complaints about local government **increased by 20%**

SEE PAGE 100

7,250
police records audited

SEE PAGE 10

Letter to the Legislative Assembly and Council

22 October 2010

The Hon. Amanda Fazio MLC
President Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

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

Dear Madam President and Mr Speaker

I am pleased to present our 35th annual report to the NSW Parliament.

This report contains an account of our work for the 12 months ending 30 June 2010 and is made pursuant to ss.30 and 31 of the *Ombudsman Act 1974*.

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

The report includes updated material on developments and issues current at the time of writing (July–September 2010).

Yours sincerely



Bruce Barbour
Ombudsman

Total number complaints informally handled

= **23,797**

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We **continued to be a leader** in setting standards for complaint handling through our work with managing unreasonable complainant conduct [SEE PAGE 41](#)

Complaints increased about child and family services by **13%**, child protection services by **10%** and out-of-home care by **33%**

SEE PAGE 50

For the third consecutive year we **finalised more complaints** than we received

SEE PAGE 6

Consulted 1,839 people during systemic investigations and reviews

SEE PAGE 10

Our inquiries and resolution team received **500 calls and visits** each week

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Who we are and what we do

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

- › agencies delivering public services – including police, correctional centres and state-owned corporations
- › organisations delivering services to children – including schools and child care centres
- › organisations delivering community services – including services for people with disabilities, people who are homeless and elderly people
- › agencies conducting covert operations – including the Crime Commission and the Independent Commission Against Corruption.

We have other specific functions that relate to:

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

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

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

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

To **strengthen our governance systems** we established an audit and risk committee

SEE PAGE 13

We achieved a **4 star energy rating** recognising our commitment to the environment.



Operating revenue = **\$21,968m**

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SEE PAGE 11



Managing our organisation

Highlights

- › Implemented a new structure that better reflects structural changes to the public sector. [SEE PAGE 4](#)
- › Dealt with 32,509 complaints and notifications, finalising more formal complaints and notifications than we received. [SEE PAGE 6](#)
- › Improved our environmental performance, receiving a 4 star NABERS rating for our tenancy. [SEE PAGE 11](#)
- › Reviewed our governance and business planning processes, ensuring that we are flexible and responsive to emerging needs. [SEE PAGE 11](#)
- › Established an audit and risk committee with independent members, complying with the NSW Treasury policy on this topic. [SEE PAGE 13](#)
- › Fully or part achieved all but one of the goals we set for 2009–2010. The goals only part achieved were for projects or other work that span more than one financial year. [SEE PAGE 16](#)
- › Reviewed our access and equity strategies. [SEE PAGE 19](#)
- › Reviewed and developed a number of personnel policies, to better support our staff. [SEE PAGE 19](#)
- › Committed resources to the ongoing development of staff, with a focus this year on developing our leadership group. [SEE PAGE 22](#)

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2009–2010 saw significant change for the office as we implemented a new structure to better reflect how public services are delivered. This change will help us be more responsive to the emerging needs of the community.

We also took the opportunity to review our governance structures and our business planning to ensure that they are better aligned to our Statement of Corporate Purpose. We looked at ways to improve our work practices as well as our performance monitoring and reporting.

We aim to be an employer of choice and are committed to the ongoing support and development of our staff. Our success is the result of their hard work and commitment.

As our work is about promoting good administration and effective accountability, we believe that we must work to the same standards that we promote. Our structure, governance systems, performance monitoring and development of our staff all contribute to making us an effective organisation. These matters are outlined in this chapter.

A year in review

This year marks the 35th anniversary of our office. While this is not a landmark date, it does present an opportunity to take stock – to look back at the last 35 years to see what has changed for our office, for the agencies we deal with, and for the community. There are a number of highlights throughout this year's report comparing where we started out to where we are now. These comparisons make it clear how far we have come.

Our work and the way we do it will continue to change – with new issues, new responsibilities and new challenges. One constant however has been our commitment to good quality service and ensuring the best outcomes for the people of NSW.

Another hallmark of our office over 35 years has been the professional, skilled and committed staff who have worked here. This year has been a challenging year and I would particularly like to thank all of them for their hard work, as well as their ability to adapt to change and thrive within our new structure. We are extremely lucky to have such a highly skilled and dedicated team.

Our new structure

In our last annual report, I noted we were in the middle of a substantial strategic planning process. One of the major developments to come out of this has been a change to the way our office is structured. This was partly driven by the financial pressure placed on us, as well as the departure of a number of senior staff. We also saw this as an opportunity to bring our structure more in line with recent changes to the public sector. Our office is now made up of four branches – the human services branch, the public administration and strategic projects branch, the police and compliance branch, and the corporate branch. More information about this structural change is included at page 4.



One of the foundations of our office is our independence. We are not answerable to the government, and we are not an advocate for the community. We are independent and impartial and we work to achieve the best outcome for all involved

Achieving results

To be effective, our office has always looked for ways to improve the way we do our work. One of the most important changes we have made is developing stronger relationships with those we deal with. This year's report reflects this focus, with a new chapter dedicated to our work around stakeholder engagement.

Some of our best results have come from taking a more consultative, informal approach to our work. We have conducted a number of targeted forums and focus groups. These are aimed at bringing various parties together, discussing relevant issues, and working to find some form of practical resolution and future direction.

This has been very effective in areas such as responding to domestic violence, decision-making around housing for those with a disability, and the processes used to assess the integrity, character and honesty of prospective employees and volunteers providing community services.

We have also increased the amount of training we offer to agencies and the community. Providing clear, relevant and targeted training in areas such as complaint-handling and good administrative practice can help to change the culture of organisations. The community education and training section of this year's report reflects our strong commitment to training (see pages 41–44 for further information).

New responsibilities and new challenges

Our roles and responsibilities have increased a great deal over 35 years, and this has continued in the last year. As part of the government plan for child protection reform, *Keeping Them Safe*, my office has been given the responsibility of auditing the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

This is one of the largest single pieces of work we have ever taken on, and we are working hard to ensure we collect all relevant information. We will report on our findings at the end of 2012. There is more detail about the audit on page 33 in *Working with Aboriginal communities*.

Keeping Them Safe is the government's response to the recommendations of Justice James Wood's Special Commission of Inquiry into Child Protection Services in NSW. He also recommended we coordinate and support the NSW Child Death Review Team. The government initially rejected this recommendation, choosing to leave the role with the Commission for Children and Young People, but the implementing Act was eventually amended to comply with Justice Wood's original recommendation.

We were recently given the requisite funding for this role, but we are still waiting for the necessary legislative changes to be made to allow us to do the work properly. We anticipate the role will be transferred to our office later this year.

The widespread change to child protection in NSW brings with it a range of challenges and risks for all involved. We will be monitoring its implementation carefully, particularly in assessing the capacity of the new system to respond to serious child protection reports and the planning and rollouts of services to support vulnerable families.

We have also seen the end of an era. We have had a complaint-handling and external review role under the *Freedom of Information Act 1989* (FOI Act) since it was first introduced. This came to an end on 1 July this year with the introduction of the *Government Information (Public Access) Act 2009* (GIPA Act).

We will continue to deal with complaints and review requests made before 1 July 2010, but the new Office of the Information Commissioner (OIC) will take up our former role in relation to GIPA Act decisions. I am pleased that Ms Deirdre O'Donnell has been appointed as the inaugural Information Commissioner. We will provide her with any assistance we can, and hope our hard work of the last twenty years will contribute to a more open and transparent government in the future.

Financial pressures

In our last annual report, I outlined the ongoing pressure being placed on our office by unfunded pay increases and efficiency dividends. These have continued to affect us this year.

I recognise the importance of ensuring that public sector agencies are as efficient as possible, but I do not believe applying blanket efficiency dividends to the entire public service is an effective way of doing this. Unlike larger agencies, my office does not have a great deal of discretionary income. Over 80% of our budget goes to paying our staff.

Put very simply, reductions in our budget mean reductions in staff numbers. It also means we simply cannot do the same amount of work as we have in the past. This is not just an issue facing NSW.

A recent review of the Commonwealth public service heard evidence from agencies that the efficiency dividend was a 'blunt instrument with which to pursue efficiency gains and has harsh impacts on smaller agencies.' This has meant that in some areas of our work we have not been able to conduct as many investigations as we have in the past.

Protecting our independence

One of the foundations of our office is our independence. We are not answerable to the government, and we are not an advocate for the community. We are independent and impartial and we work to achieve the best outcome for all involved. An important aspect of maintaining our independence is community perception. We not only have to be independent, we have to be seen to be so.

Following the creation of 12 super agencies in NSW, my office has contacted the Department of Premier and Cabinet on a number of occasions to request various changes to properly reflect our independence. Watchdog bodies are not the same as other agencies and should not be treated as such. We have jurisdiction over all government departments, including the Department of Premier and Cabinet, and community confidence can quickly be eroded if there is a perception that we are answerable to a government department.

In June, Commissioner David Ipp of the Independent Commission Against Corruption (ICAC) and I wrote to the Premier about our rental arrangements. We expressed our concern about plans for the State Property Authority (SPA) to take responsibility for the contractual relationship with our respective landlords. This decision was made without any consultation with either of our offices. The SPA falls within both ICAC and our jurisdiction, creating a potential conflict. We also stressed the extremely sensitive nature of much of the information held by both our offices and the security issues this raises.

We have since been contacted by the SPA and told they will not be taking over responsibility for our rental contract at this stage, but that our situation will be considered again in the future.

Changes to our Act

Sometimes, seeking amendments to help us do our work is a very challenging process. I have been trying to get a simple but important amendment made to the Ombudsman Act for a number of years. We are the only parliamentary Ombudsman in Australia that cannot require agencies to produce information over which they claim legal professional privilege. This can prevent us from accessing essential information during an investigation. For several years I have tried to get nine words, repeated twice, removed from our Act. This amendment would bring us into line with other Ombudsmen, as well as other watchdog bodies in NSW – such as the ICAC and the Police Integrity Commission (PIC).

At the beginning of this year, I decided to prepare a special report to Parliament outlining the need for change as well as our unsuccessful attempts to have the Act amended. Soon after the report was released, the independent Member for Port Macquarie, Mr Peter Besseling, introduced a private members Bill into Parliament to make the necessary amendment to our Act. The Bill passed the Legislative Assembly on 2 September, with support from both sides of Parliament. At the time of writing, it was yet to be considered by the Legislative Council.

This is my tenth year as Ombudsman. In that time, there has been a great deal of change within the office. These changes have helped to ensure the work we do continues to make a real difference to the people of NSW, and I am looking forward to the challenges of the year ahead.



Bruce Barbour
Ombudsman

Our structure

Pressures placed on our budget and the departure of several senior staff presented an opportunity to assess how we do our work, and in October 2009 we implemented a major restructure. Our restructure was also an opportunity to reflect changes to the public service, following the creation of the 12 super agencies in July 2009.

Our office is now divided into four branches:

- › police and compliance
- › human services
- › public administration and strategic projects
- › corporate.

Police and Compliance Branch

This branch combined our police division and our secure monitoring unit (SMU).

The police division is responsible for ensuring the NSW Police Force handles complaints about police fairly and correctly. They also review new police powers as requested by the NSW Parliament.

The SMU handles appeals and complaints under the Witness Protection Act. They also inspect the records of eligible authorities and law enforcement agencies to assess and report on their compliance with certain legislation providing them with exceptional powers.

See pages 74–86 for more information about the work of the police and compliance branch.

Human Services Branch

In creating our human services branch, we brought together the community services and the employment-related child protection divisions. This was a logical merger as these two divisions regularly deal with the same agencies and service providers.

The community services division handles complaints about, and monitors and reviews the delivery of, community services as well as reviewing their complaint-handling systems. They deal with a number of human services agencies, including Community Services, Ageing, Disability and Home Care, and non-government community service providers. As part of the restructure, this division also took on responsibility for our work with Juvenile Justice, NSW Housing and NSW Health.

The employment-related child protection division oversees the investigation of certain agencies into allegations against their employees that involve inappropriate or abusive behaviours towards children. The heads of all government and some non-government agencies – including non-government schools, children’s services and out-of-home care agencies – are required to notify us of any reportable allegations or convictions involving their employees within 30 days of becoming aware of them. The division also looks at the systems agencies have in place to prevent these types of reportable conduct occurring in the workplace and to respond to any allegations against their employees.

See pages 46–72 for more information about the work of the human services branch.

Public Administration and Strategic Projects Branch

This branch combines our former general division, now the public administration division, and our former cross agency team which is now the strategic projects division.

The public administration division deals with complaints about public authorities, local councils and correctional centres. It also includes our inquiries and resolution team – often the first point of contact for people who complain or inquire about government agencies.

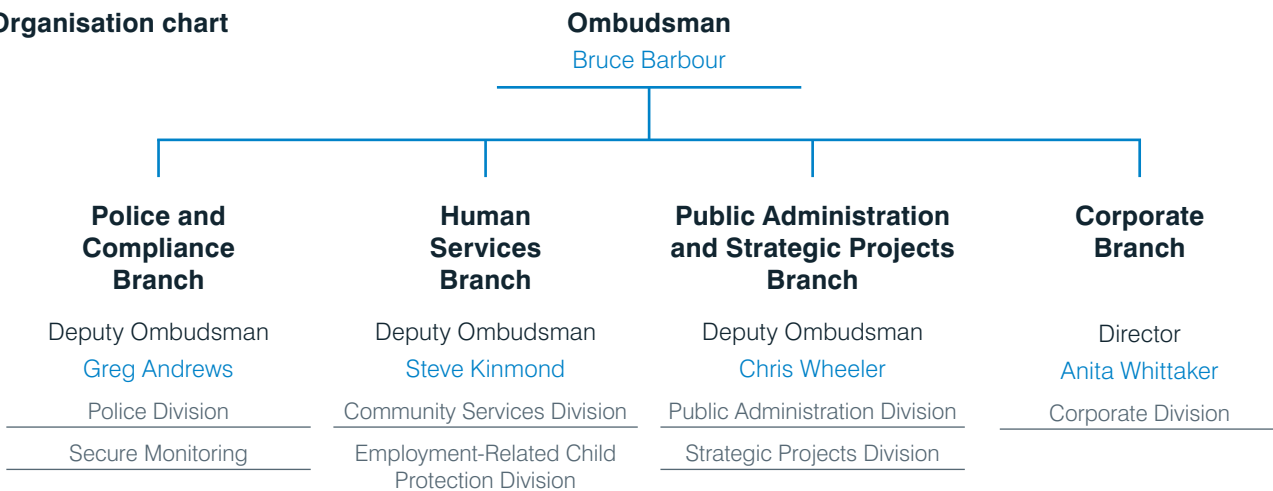
The strategic projects division (SPD) is responsible for leading major projects and investigations, particularly those that cross the jurisdictions of the Ombudsman’s various operational areas. It also has a focus on Aboriginal and youth issues, so includes our youth liaison officer and Aboriginal Unit. Since the office restructure, the SPD is also responsible for our community education and training unit. This is the first time all of our external training activities have been brought together in one part of the office.

See pages 88–112 for more information about the work of the public administration division and pages 24–44 and 90 for information about the work done by the strategic projects division.

Corporate Branch

The corporate branch has remained unchanged and continues to provide support to the whole of our office. They provide strategic planning, personnel, staffing, payroll, internal training, accounting, records, information technology, publications, media and public relations services.

Organisation chart



Executive team



Bruce Barbour

LLB

Ombudsman

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



Chris Wheeler

BTRP MTCP LLB (Hons)

Deputy Ombudsman

Chris Wheeler has been the Deputy NSW Ombudsman since 1994. He has over 25 years experience in complaint-handling and investigations, as well as extensive experience in management and public administration. Chris has responsibility for the public administration and special projects branch of the NSW Ombudsman. He has particular responsibility for protected disclosures and Ombudsman publications and is the sponsor of the Unreasonable Complainant Conduct project and a member of the national research team for the Whistling While They Work project.



Greg Andrews

BA (Hons) M Env Loc Gov Law, Graduate Cert Public Sector Management

Deputy Ombudsman

Greg was appointed Deputy Ombudsman in 2009. In his previous roles as Assistant Ombudsman he managed the police related functions of the Ombudsman and, for many years, the investigation of complaints about most state and local government agencies currently performed by our public administration division. He has extensive experience in management, investigations, dispute resolution, and education and training. Prior to joining the office, he worked in educational change management, university research and teaching, and legal publishing.

Recognising 35 years of administration



Steve Kinmond

BA LLB Dip Ed Dip Crim

Deputy Ombudsman and Community and Disability Services Commissioner

Steve has held this position since February 2004. Before that, he was the Assistant Ombudsman (Police) for more than eight years. Steve has had over 14 years involvement in community services, and extensive investigation and management experience. He has also worked as a solicitor and run his own consultancy practice.



Anita Whittaker

PSM BCom

Director

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



Julianna Demetrius

Dip Law (LPAB)

Director

Julianna has been with the Ombudsman's office for ten years. She managed the Ombudsman's police division for five years and established the cross agency team in 2007. She has extensive experience in conducting systemic investigations aimed at improving service delivery in the justice and human services sectors. Since late 2009, Julianna has been the director of the newly established strategic projects division. Prior to joining the Ombudsman's office, Julianna worked as a solicitor, and in the fields of social research and urban design.

How we keep organisations accountable

Agencies delivering public services

Who we scrutinise

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

How we keep them accountable

We investigate and resolve:

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

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

- › scrutinise legislation giving new powers to police and correctional officers
- › hear appeals against decisions by the Commissioner of Police about the witness protection program
- › provide training and guidance in investigations, complaint management and good administrative conduct.

Organisations delivering services to children

Who we scrutinise

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

How we keep them accountable

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

- › deal with complaints from parents and other interested parties about how organisations have investigated allegations
- › keep under scrutiny the systems organisations have to prevent employees from behaving in ways that could be abusive to children
- › provide training and guidance about how to handle these kinds of allegations and convictions.

Organisations delivering community services

Who we scrutinise

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

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

How we keep them accountable

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

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

We also:

- › visit certain services where children, young people and people with disabilities live
- › coordinate the official community visitors scheme
- › provide information and training to consumers of community services and organisations about complaint-handling and consumer rights
- › promote improvements to community service systems and access to advocacy support for people who are receiving, or are eligible to receive, community services.

Agencies conducting covert search warrants

Who we scrutinise

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

How we keep them accountable

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

Facts and figures

This year we received a total of 32,509 complaints and notifications from a variety of people – including members of the public, families of people who are receiving community services, Members of Parliament and staff who work in the public sector. They brought wide-ranging concerns to our attention via 8,712 formal complaints and notifications and 23,797 informal complaints and inquiries to our office.

Responding to complaints and notifications

This is the third consecutive year we have finalised more formal complaints and notifications than we received (see figure 3). As our jurisdiction covers a range of agencies and specific functions under a number of pieces of legislation, we categorise matters to ensure that we provide the most appropriate response.

We sometimes receive written complaints about public sector agencies that are within our jurisdiction, but then we find that the conduct complained about is outside our jurisdiction. We initially classify these as 'formal' complaints received about public sector agencies. Written complaints received about agencies outside our jurisdiction, and oral complaints about both agencies and issues outside our jurisdiction, are dealt with informally by referring the complainant elsewhere. They are classified as 'outside our jurisdiction' from the start. Figure 1 shows a breakdown of the formal and informal complaints and notifications we received this year.

From year to year the number of complaints and notifications we receive fluctuates. This year there were small decreases in some areas of our work, but no discernable pattern. However several of the complaints we received warranted close scrutiny and, in some cases, complex investigations. These investigations are outlined in the 'business activities' section of this report. There were increases in other areas of our work – such as complaints received about local government, corrections, and agencies providing child and family services.

Figure 1: Complaints and notifications we received in 2009–2010

Subject area	Formal	Informal	Total
Departments and authorities	1,438	3,777	5,215
Local government	843	1,720	2,563
Correctional centres and Justice Health	724	3,399	4,123
Juvenile justice	72	212	284
FOI	145	263	408
Child and family services	552	941	1,493
Disability services	168	187	355
Other community services ¹	55	126	181
Employment-related child protection ²	1,406	636	2,042
Police	3,032	2,498	5,530
Outside our jurisdiction	277	6,245	6,522
Requests for information	0	3,793	3,793
Total	8,712	23,797	32,509

¹ Includes complaints about Community Services, ADHC and non-government agencies.

² Formal includes 1,366 notifications and 40 complaints received.

How we handle different types of matters

We divide the complaints we receive into formal and informal matters. This determines the process we use to handle them. Generally, we define formal matters as written complaints and notifications and informal matters as complaints that are made over the telephone or in person. If a complainant is a vulnerable member of the community and it may be difficult for them to make a written complaint, we will take their complaint verbally and treat it as a formal complaint.

People who may be considered vulnerable include inmates of correctional centres, people with disabilities and young people. We may also arrange Telephone Typewriter (TTY) services and interpreting and translation services for people from culturally and linguistically diverse (CALD) communities.

Figure 2: Formal complaints and notifications finalised

Subject	07/08	08/09	09/10
Departments and authorities	1,354	1,310	1,414
Local government	788	672	875
Corrections and Justice Health	918	714	722
Juvenile justice	11	73	62
FOI	197	224	136
Community services ³	737	704	720
Employment-related child protection	1,921	1,715	1,483
Police	3,254	3,094	3,093
Agency outside our jurisdiction	364	397	276
Total	9,544	8,903	8,781

³ Includes formal matters finalised in relation to child and family services, disability services and community services.

Informal matters

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

Formal matters

This year we finalised 8,781 formal matters (see figure 2). This can take anywhere from a few days to several months. Our response may range from a clarifying phone call to the agency concerned to conducting a full-scale investigation.

Figure 3: Formal complaints and notifications received and finalised

Year	05/06	06/07	07/08	08/09	09/10
Received	10,304	9,692	9,320	8,742	8,712
Finalised	10,096	9,576	9,544	8,903	8,781

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

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

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

- › persuading the agency concerned to take some action
- › providing detailed information or advice to the complainant

Reviews of our decisions

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

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

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

Figure 5 shows the number of requests for reviews received in the reporting year, and also shows that, compared with the number of formal complaints we finalised during the year, the percentage of cases where we were asked to review our decision was very low.

The majority of our work in the child protection area is overseeing how agencies handle allegations of conduct by employees that could be abusive to children.

Only a small part of that work is handling complaints made directly to our office about how those allegations have been handled or about agencies' child protection systems.

- › making inquiries and finding no wrong conduct
- › undertaking a formal investigation and making findings and recommendations (this year we finalised 26 matters this way, see figure 4).

Although we have the option to undertake formal investigations, our current strategy is to focus on major investigations and reviews (see figure 9).

Figure 4: Number of formal investigations finalised

Branch	Total
Human Services	6
Police and Compliance	2
Public Administration and Strategic projects	18
Total	26

We deal with those complaints in much the same way as with complaints about NSW public sector agencies – we may decide to decline the complaint, make preliminary inquiries or investigate.

Figure 5 shows that, of the 41 complaints made directly to our office about employment-related child protection, five complainants asked us to review the decision we made on how to handle the complaint.

Although the system of handling complaints about police requires the NSW Police Force to directly investigate each complaint and we play an oversight role, the police division considers all requests to review the way a notifiable complaint about a police officer was handled as a request to review our decision in relation to the NSW Police Force outcome. Of the 3,093 complaints about police officers that we oversighted this year, 42 complainants asked for the outcome to be reviewed.

Figure 5: Requests for a review of our decision as a percentage of formal complaints finalised

Subject	Number of:		Percentage breakdown				
	requests for review	formal complaints finalised	05/06	06/07	07/08	08/09	09/10
Employment-related child protection ⁴	5	41	6.3	2.5	7.1	8.3	12.2
Community services/Juvenile justice ⁵	5	782	1.9	1.4	0.4	0.9	0.6
Corrections/Justice Health	12	722	1.0	3.0	1.5	1.1	1.7
Freedom of information	6	136	7.6	3.4	3.0	4.5	4.4
Local government	70	875	9.6	10.2	11.8	7.7	8.0
Other public sector agencies	74	1,414	6.5	7.0	6.5	6.9	5.2
Police	42	3,093	1.6	1.7	1.7	2.0	1.4
Outside our jurisdiction	1	276	0.5	1.0	0.8	1.8	0.4
Total	215	7,339	3.2	3.6	3.5	3.3	2.9

⁴ The total in this figure excludes the 1,442 child protection notifications we finalised this year. See text for an explanation.

⁵ Includes requests for a review of our decision in relation to child and family services, disability services and community services. Juvenile justice was previously reported with corrections and Justice Health.

Figure 6 shows that in 73% of cases the Ombudsman considered that the original decision made by the delegated officer was correct. As each review may take days or weeks to complete, some reviews may not be finalised the same year the request is received. This makes the total review finalised figure different from the total review request figure.

Figure 6: Outcome of reviews conducted in 2009–2010

Area	Original outcome affirmed after:		Resolved	Reopened	Total
	reviewing the file	further inquiries			
Employment-related child protection	4	1	0	0	5
Community services	3	0	0	2	5
Corrections	9	1	0	2	12
Freedom of information	5	1	0	0	6
Local government	43	18	3	5	69
Other public sector agencies	47	13	3	6	69
Outside our jurisdiction	1	0	0	0	1
Police	35	0	0	0	35
Total	147	34	6	15	202
Percentage of total	73	17	3	7	100

I would like to take the opportunity to thank you for all that you have done in regard to my matter. The office of the NSW Ombudsman has restored my belief that there is an opportunity for citizens to have their complaints heard by your office.

Thank you for your swift action ... I have never used the Ombudsman service before but thank goodness there is an organisation that can get a result for the ordinary person.

Compliments and complaints

Compliments and complaints help us to identify the aspects of our work that we do well, the areas of our service that need improvement, and expectations that exceed what we can reasonably deliver. We have an internal compliments and complaints policy, and we inform people who use our services about how to make a complaint about us.

This year we recorded 129 compliments by letter, fax, email or phone about the quality of our advice, the assistance we gave to customers, and the information provided to agencies within our jurisdiction. While we do receive formal compliment letters from members of the public and agency representatives about how our work has benefited them, we also often receive informal feedback during our consultative work or after a training, information or briefing session.

Against the 32,578 formal and informal complaints and notifications we finalised this year, we received 28 complaints about our work (see figure 7). If a complaint is justified, we will generally take some form of action to resolve it. During 2009–2010, our responses included apologising, providing an explanation, and giving greater priority to identified files (see figure 8).

Figure 7: Complaints about our office

Issue	05/06	06/07	07/08	08/09	09/10
Bias/unfair treatment/tone	4	6	6	5	8
Confidentiality/privacy related	4	2	1	1	3
Delays	7	6	5	3	6
Denial of natural justice	0	1	1	1	1
Failure to deal appropriately with complaint	14	13	11	9	8
Lack of feedback/response	2	4	5	3	5
Limits to jurisdiction	2	0	0	0	0
Faulty procedures	7	4	2	3	1
Inaccurate information/wrong decision	4	8	2	8	7
Poor customer service	16	17	5	5	7
Corruption/conflict of interest	3	2	2	0	3
Other	2	6	3	2	1
Total issues	65	69	43	40	50
Total complaints	46	44	27	26	28
Percent of all matters finalised (formal and informal)	0.1	0.1	0.1	0.1	0.1

Figure 8: Outcome of complaints about our office in 2009–2010

Outcome	Total
Unjustified	14
Justified or partly justified	3
Some substance and resolved by remedial action	11
Total	28

Systemic and proactive work

In addition to handling complaints and notifications, we undertake systemic and proactive work such as conducting audits and reviews – including child and disability death reviews and legislative reviews – and visiting communities and regional centres throughout NSW. Figure 9 outlines some of the systemic and proactive work we have done during 2009–2010. This work is also detailed in other chapters throughout report.

Figure 9: Systemic and proactive work

Category	Type of work	08/09	09/10
Audits	Police records audited	10,400	7,250
	Controlled operation records audited	433	342
	Surveillance device warrants audited	374	449
	Covert search warrants audited	n/a	48
	Witness protection appeals	3	0
	Child protection 'agency' audits conducted	18	11
Police powers under review	Reviews of legislation conferring new police powers completed	2	1
	Reviews of legislation conferring new police powers in progress	4	3
Visits	Hours spent on visiting services (OCV program)	8,867	5,941
	Visits to residential services (OCV program)	3,239	3,335
	Correctional and juvenile justice centre visits	60	65
	Regional and remote communities visited	73	61
Reviews ⁶	Complaint-handling systems	20	34
	Individual reviews (section 13) of the circumstances of children and other people in care	35	50
	Reviews (section 11(c)) of the delivery of community services	7	0
Consultations	People consulted during systemic investigations and reviews	1,328	1,839

⁶ During 2009–2010 the deaths of 108 people with disabilities in care and 45 children were reviewable.

Balancing our books

Most of our revenue comes from the government in the form of a consolidated fund appropriation. Our final consolidated fund appropriation for 2009–2010 was \$19.833 million. The government also provided \$948,000 for certain employee entitlements such as long service leave. We received \$751,000 for our capital program – this was spent on replacing our desktops and laptops, upgrading hardware, purchasing new office equipment, and updating and improving our fit-out.

We generated \$436,000 through sales of our publications, bank interest and fee-for-service training courses.

Most of our revenue is spent on employee-related expenses including salaries, superannuation entitlements, long service leave and payroll tax. We spent just under \$17 million on these items in 2009–2010. The day-to-day running of our office costs us over \$3.8 million a year.

The cumulative effect of ongoing efficiency dividends – cuts to public sector agency budgets of 1% each year – as well as a further round of public sector pay increases, of which 1.5% per year for three years is unfunded, is having a significant impact on us.

During the year we implemented a comprehensive structural change, with the major imperative being to cut costs. As over 80% of our expenses are employee-related, our cost cutting will inevitably mean a reduction in staffing levels – and this will have an impact on the services we can provide to the community.

Figure 10: Financial summary

	08/09 \$'000	09/10 \$'000	Change %
Operating revenue inc. government contributions	22,096	21,968	-0.58
Operating expenses	22,605	21,135	-6.5
Total assets	1,862	3,363	80.61
Total liabilities	2,006	2,675	33.35
Surplus/(deficit)	(509)	832	263.46
Total equity	(144)	688	577.78

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

As mentioned last year, we had reviewed our internal budgeting and reporting to make sure that the information we provided to our managers was comprehensive, relevant and timely. Our review looked at staffing projections, leave management and capturing commitments as well as the format of our expenditure reports.

We also considered training and other ongoing professional development for managers on interpreting financial information, acknowledging the importance of our senior staff being able to use financial information in their business planning and decision-making. During the year we refined these changes and included financial management training in our executive leadership training program.

During the year we established an audit and risk committee, as required under the NSW Treasury policy for internal audit and risk management in the public sector. This committee, through our internal audit program, will strengthen our governance program and provide some further assurance to the Ombudsman that our financial processes comply with legislative and office requirements. See page 13 in Corporate governance for more details on our audit and risk committee.

As indicated in the financial summary table (figure 10), our operating revenue decreased by 0.58% in 2009–2010 and our operating expenses by 6.5%. The major area of change in our revenue base was the \$385,000 reduction in the acceptance by the crown of employee benefits and other liabilities. We had estimated that there would be a reduction in this revenue item in 2009–2010. We had also budgeted for lower expenses after, among other things, a reduction in the funding provided for our legislative review program.

We had an increase in our asset base, with our cash and cash equivalents increasing substantially. However our liabilities have also increased more than anticipated, mainly because we drew down more funds than required – as detailed in our statement of compliance with financial directives. These funds will be returned to the consolidated fund in 2010–2011. Our employee-related liabilities, such as recreation (annual) leave and related on-costs, decreased slightly.

For more details about our financial position, see the 'Financial management' section of the report (see page 114).

Environmental program

The NSW Government Sustainability policy, which was released in December 2008, commits NSW public sector agencies to sustainable water and energy use, reducing greenhouse gas emissions and waste, improving fleet management and sustainable purchasing. Our environmental program this year focused on implementing this policy. In addition, we actively worked with the building owners to improve the environmental performance of the building.

In 2009–2010 our environment strategies included:

- › monitoring our energy usage through auditing, preventive maintenance, staff education programs and purchasing energy efficient equipment
- › purchasing 6% Green Power
- › improving our National Australian Built Environment Rating System (NABERS) rating – after an independent audit of our energy program we were awarded a 4 star rating, an improvement of ½ a star
- › monitoring the type of waste generated in our office and implementing strategies to reduce contamination of the waste stream
- › improving our fleet performance through reduced petrol consumption, using fuel efficient vehicles, and achieving or exceeding the government fleet performance target for passenger vehicles
- › using environmentally friendly paper and environmentally friendly printers
- › recycling 100% of our toner cartridges

- › negotiating improved environmental commitments as part of our lease renegotiations
- › supporting the building environmental programs.

We are committed to continuously improving our environmental performance. Next year, we will consolidate our achievements and work towards improving our NABERS star rating to obtain the required government target of a 4.5 star rating by July 2011.

For more information about our environmental program, see Appendix P.

Corporate governance

Developing, implementing and maintaining a robust system of corporate governance helps us to be an effective organisation – one of our key aims. This governance system has to keep pace with our responsibilities, as well as the resources available to us. In 2009–2010 our Statement of Corporate Purpose continued to provide high level direction for our work.

In our last annual report, we discussed why we were reviewing our strategic planning processes, our organisational structure, our work processes and priorities, our business support systems, our engagement with our stakeholders and our leadership capabilities. This work continued in 2009–2010 and has led to a number of significant changes to our structure and the way we do our work.

Strategic planning

This year we developed a new strategic planning framework to better support our Statement of Corporate Purpose and strategic direction. Our senior staff agreed that our business planning needed to be better coordinated and undertaken as a whole of office exercise, so they developed and endorsed a new planning framework.

This new framework will guide our future planning activities and will ensure a whole of office focus in addressing the challenges and critical issues we face. We are also moving away from plans that were often long and complex to a more strategic, outcome focused approach with stronger links to our other planning activities.

Responding to a changing environment

We operate in a complex and changing environment, so we need to be able to effectively respond to a range of challenges. Our strategic planning activities, which include assessing our operating environment, highlighted the need for us to have:

- › a flexible structure capable of responding to emerging whole of government, multi-agency or across office issues
- › a seamless approach to both the public and the agencies that we deal with – ensuring that there is no duplication or inconsistency in how we perform our work
- › skilled and competent staff who can adapt to a changing environment
- › strong and effective leadership
- › sound business processes that support our work and help us to achieve our Statement of Corporate Purpose.

Business improvement

A small business improvement unit was created as part of our strategic planning. This unit is looking closely at our systems, reviewing our critical processes, identifying any possible areas for improvement, and working closely with the divisions to help them get the most out of our resources.

Managing our office

The management of our office is overseen and driven by the senior officers group (SOG), the division managers group (DMG) and the strategic leadership group (SLG).

The SOG is made up of the Ombudsman, three Deputy Ombudsmen, and the Directors of the corporate branch and strategic projects division. The SOG meets weekly to update each other on their work and discuss any significant issues within their branch.

The DMG is made up of the managers of each division. They meet at least once a month to discuss operational issues and any changes to office policy and procedure.

The SLG is made up of our senior officers, managers and senior staff. Their initial responsibilities have centred on the strategic planning process, identifying areas where we have achieved our goals and where we can do more. This group will also have a broader ongoing role as part of our corporate governance system, helping to keep us accountable against our business plans.

Leadership capabilities

We are implementing a leadership development program to ensure our senior staff are able to effectively meet a range of future challenges. This will give the group any additional training and skills they need, as well as provide opportunities for them to draw on the experiences of leaders from other organisations.

Strong policies and procedures

Any effective system of corporate governance has to be built around clear, effective and up-to-date policy documents. Our policies, which are a statement or instruction from the Ombudsman that sets the way particular issues are to be addressed or particular decisions are to be made, ensure consistency of work practices throughout the office. We aim to review all our office policies every two years.

This year we have reviewed or created 22 policies – including our Statement of Corporate Purpose, our internal audit and audit and risk committee charters, and our access and equity policies and supporting programs.

Staff are made aware of any new or changed policy, and it is a requirement of our code of conduct that staff comply with all office policies.

How we are held to account

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

Reviews of decisions

We always provide complainants with reasons for the decisions we make. Some people will be unhappy with these reasons. If they believe our decision is wrong, they can ask for a review. Each matter will only be reviewed once.

When we receive a request for a review, we call the complainant first and try to resolve the matter quickly and informally. If this is not successful, the review is allocated to a member of staff who has had no previous involvement in the complaint. This staff member assesses the original complaint as well as any issues raised in the review request. When they have completed the review, they give the file to the Ombudsman along with their recommendation. The complainant will receive a letter from the Ombudsman outlining the outcome of the review. In some cases, this letter will also outline any restrictions on the complainant's future contact with our office.

This process provides members of the public with an avenue of review, but it also gives us an opportunity to improve the way we handle matters – particularly the way we communicate our decisions. Information about review requests from this year is included at page 8.

Our Parliamentary Committee

Our work is overseen by the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (the PJC). This ensures our independence as it means we are accountable to the Parliament, rather than to the government of the day.

If someone is unhappy with the way we have dealt with them, they can take their complaint to the PJC. The PJC can consider the way in which we have handled their matter, and will often contact us for additional information. However, the PJC cannot:

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

The PJC is made up of representatives of both major parties, as well as independents and members of smaller parties.

Our 16th general meeting with the PJC was held on 30 November 2009. The Ombudsman and senior staff appeared before the committee to answer questions about our work. The committee asked a range of questions – following up issues from our last annual report and seeking further information on budgetary pressures, the use of legal professional privilege by agencies to refuse to provide us with information, our contact with Corrective Services official visitors, and the use of Taser weapons by the NSW Police Force. The PJC's final report from this meeting can be downloaded from the NSW Parliamentary website.

The PJC is now responsible for overseeing the work of the newly created Office of the Information Commissioner. A Bill before Parliament recommends that the PJC should also be responsible for overseeing the work of Privacy NSW.

Other oversight bodies

The PJC is not the only external body that oversees our office. Like other public sector agencies, we come under the scrutiny of the Auditor-General, the Independent Commission Against Corruption, the Information Commissioner, the Privacy Commissioner, the Anti-Discrimination Board, State Records and the NSW Treasury.

We also produce a number of annual reports about our work and make a large amount of information about what we do available on our website. This information has increased since the introduction of the GIPA Act on 1 July 2010.

Managing risk

Like any organisation, it is important that we identify and effectively manage any risks relating to our work. As our key asset is the information we hold, our focus is on protecting that information. Agencies and members of the public have to be confident that the information they give us will be handled appropriately.

Using an information security management system model, we identify any potential risk factors relating to our work and put in place the necessary controls to either eradicate or reduce those risks.

This relates to our paper based systems as well as our computer network and databases.

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

Several years ago, we identified and assessed all of the risks we face. We grouped these risks under the following six areas:

- › unauthorised or inappropriate disclosure of information held by our office
- › unauthorised or inappropriate access to information in agency databases to which we have access
- › significantly inaccurate or incomplete information used in reports, correspondence or as the basis for findings, recommendations, suggestions or decisions
- › inadequate documentation or unintended destruction of business information or corporate knowledge
- › software and hardware problems resulting in major operating systems being out of action for significant periods
- › an inability to comply with statutory obligations.

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

The new requirement to have an audit and risk committee gives us another level of assurance about our risk management practices. Although both of these committees have different responsibilities, they will need to work closely to ensure that our risk management framework meets our ongoing requirements.

We are currently reviewing our risk management policy and promoting it to a standalone document, rather than an annexure to our information security policy as it is now.

The revised policy and our risk management framework will comply with the new standard for risk management – AS/NZ ISO 31000: 2009.

To make sure we have the best possible information security systems in place, we have accreditation against an international standard. This accreditation and our compliance with the standard is monitored through yearly audits. We have received positive reports after our accreditation audits, and we have used these reports to improve our systems and practices. We were audited in 2010.

Internal audit and the risk management committee

The NSW Treasury released its new policy on internal audit and risk management in August 2009. This policy requires public sector agencies to establish an internal audit and risk management program that has six core requirements. These requirements are to:

- › establish and maintain an internal audit function
- › establish and maintain an audit and risk committee
- › appoint an independent chair and a majority of independent members for the committee
- › maintain governance arrangements that ensure both the real and perceived independence of the committee and the strength and quality of its oversight and monitoring role
- › implement a risk management process that is appropriate to the needs of the department and consistent with the current risk standard
- › ensure that operation of the internal audit function is consistent with the relevant standard – that is, IIA International Standards for the Professional Practice of Internal Auditing and any additional practice requirements set by the policy.

Under the policy, the Ombudsman – following advice from the audit and risk committee – has to attest to compliance with these six core requirements.

We are well on our way to implementing the policy. We have already established our audit and risk committee, appointed independent members, reviewed our current internal audit and risk management activities, and started a review of our risk management policy to ensure alignment to the new risk management standard.

Our audit and risk committee has three members. Mr Jason Masters is the independent chair, Ms Carolyn Burlew is the independent member, and the Deputy Ombudsman Chris Wheeler is our office representative. The committee has met twice during 2009–2010, including a briefing by the heads of each branch on their work and challenges.

Although complying with the policy is a requirement under the *Public Finance and Audit Act 1983*, it also presents an opportunity. The committee will form an important part of our corporate governance framework and we look forward to drawing on their experience and expertise to improve our systems.

Internal Audit and Risk Management Statement for the 2009–2010 Financial Year for NSW Ombudsman

I am of the opinion that the NSW Ombudsman's Office has internal audit and risk management processes in place that are, in all material respects, compliant with the core requirements set out in Treasury Circular NSW TC 09/08 *Internal Audit and Risk Management Policy*. These processes provide a level of assurance that enables the senior management of the NSW Ombudsman's Office to understand, manage and satisfactorily control risk exposures.

I am of the opinion that the Audit and Risk Committee for the NSW Ombudsman is constituted and operates in accordance with the independence and governance requirements of Treasury Circular NSW TC 09/08. The Chair and Members of the Audit and Risk Committee are:

- › Chair – Mr Jason Masters (three year appointment)
- › Independent member – Ms Carolyn Burlew (one year appointment)
- › Non-independent member – Mr Chris Wheeler, Deputy Ombudsman (Public Administration and Strategic Projects Branch).

Yours sincerely



Bruce Barbour
Ombudsman

Our performance statement

Purpose and goals

Performance for 2009–2010

- 1. Help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery:**
- › review and report on the service, systems and conduct of agencies
 - › monitor and report on compliance with legislative obligations and responsibilities
 - › make recommendations and suggestions for agency improvements and/or for improving the circumstances of individuals
 - › promote best practice standards for agency service delivery and good conduct
 - › provide training in delivery of service, good conduct and the rights of consumers to quality services.

- › Tabled reports in Parliament about legal professional privilege, critical challenges for reforms to the child protection system, the need for an effective interagency response to children at risk, and helping people with a mental illness access and sustain social housing. [SEE PAGE 169](#)
- › Finalised a provisional report on our inquiry into the delivery of community services to the Bourke and Brewarrina communities. [SEE PAGES 34–35](#)
- › Made recommendations to the NSWPF about the use of in-car video and tasers, and their practices for destroying fingerprints and classifying and notifying complaints. [SEE PAGES 78–80](#)

- 2. Deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems:**
- › implement and promote best practice investigation and complaint-handling methodologies within the office
 - › use client feedback to improve our work
 - › implement and promote best practice investigation and complaint-handling methodologies in agencies we oversight
 - › help achieve redress for justified complaints
 - › identify systemic causes of complaints and propose solutions.

- › Changed our complaint assessment processes and realigned work into assessment and resolution and investigation streams in our public administration division. [SEE PAGE 105](#)
- › Completed our audit of the police handling of over 400 complaints relating to domestic and family violence, and held meetings with the Professional Standards Command to discuss strategies for improving police complaint-handling systems. [SEE PAGES 80–81](#)

- 3. Be a leading watchdog agency:**
- › create positive relationships and work collaboratively with other Ombudsman and watchdog organisations
 - › promote professional work practices with other Ombudsman and watchdog institutions
 - › continuously improve our work practices.

- › Discussed the operation of the working with children background check and contributed to the statutory review of the Commission for Children and Young People Act. [SEE PAGES 61, 80](#)
- › Worked with the Commonwealth Ombudsman to assess the training needs of Ombudsman offices in Papua New Guinea and Vanuatu . [SEE PAGE 31](#)
- › Continued working with Pacific region Ombudsman. [SEE PAGES 31–32](#)

- 4. Be an effective organisation:**
- › have appropriate structures, policies and systems to support and enhance our service delivery
 - › attract, develop, support and encourage skilled and committed staff
 - › capture, use and share information and knowledge to support and enhance our service delivery
 - › be an effective public sector agency that complies with applicable laws and policies and is accountable or transparent for our actions and decisions.

- › Implemented our new organisational structure. [SEE PAGE 4](#)
- › Piloted desktop virtualisation, upgraded our telecommunications systems and replaced our PABX and voicemail system. [SEE PAGE 115](#)
- › Developed a leadership program to discuss and enhance the skill of our leadership group and provided diversity training for staff. [SEE PAGE 12](#)

Future goals

- | | |
|---|---|
| <ul style="list-style-type: none"> › Promoted good public administration by making suggestions and recommendations ranging from waiving fees, providing disability training for front-line staff, and improving liaison between agencies about fine enforcement systems to setting up a co-regulators asbestos working group. SEE PAGES 89–92 › Undertook more than 271 information, community education and training activities reaching over 10,237 people, including providing 144 training workshops. SEE PAGE 41 | <ul style="list-style-type: none"> › Review police practice about the way complaints are informally resolved and how they measure complainant satisfaction. › Work with the Commission for Children and Young People to review existing arrangements with agencies that exclude the notification of reportable allegations and relevant employment proceedings. › Provide NSW Health with a report summarising the recommendations from our two-year audit project. › Complete our analysis of causes of death for people with disabilities in care, and report on our consultations with families of children with disabilities who live at home. › Deliver complaint-handling and employment-related child protection training to Aboriginal out-of-home care services. › Work with the NSWPF to draft standard operating procedures for use by LACs to prevent excessive delays in assessing matters referred to them that involve a person engaged in child-related employment. |
| <ul style="list-style-type: none"> › Negotiated a new MOU with the Division of Local Government to better manage a range of complaints able to be dealt with by both our agencies, and encouraged councils to provide training for their staff to improve their investigation work. SEE PAGE 31 › Suggested changes to legislation on internal reporting policies to provide protection for disclosures about access to government information under the GIPA Act. SEE PAGE 104 | <ul style="list-style-type: none"> › Review our procedures manual and our compliments and complaints policy. Review the way complaints have been assessed under the NSWPF's Complaint Handling Guidelines, which were rolled out in 2008 to streamline the resolution and investigation of complaints about police. › Collect information from the substitute residential care and independent school sectors to help us target our auditing and education projects. › Incorporate the findings from our research into our investigation procedures to enhance agency engagement, particularly in developing recommendations. › Develop a complaint-handling training program, in consultation with National Disability Services NSW, to meet the needs of the disability services sector. |
| <ul style="list-style-type: none"> › Hosted three successful forums on domestic violence, probity and the devolution of large institutions. SEE PAGES 28–29 › Provide agencies with current information on best practice and other relevant employment-related child protection issues, we introduced a 'practice update' fact sheet. SEE PAGE 56 | <ul style="list-style-type: none"> › Co-host the 8th National Investigation Symposium in November 2010. › Continued our work with other Ombudsman offices across Australia on phase 2 of the managing unreasonable complainant conduct project. |
| <ul style="list-style-type: none"> › Finalised new data classification and reporting system (OCV online) used by official community visitors. SEE PAGE 71 › Established an independent audit and risk committee and reviewed our governance structures. SEE PAGE 13 | <ul style="list-style-type: none"> › Review our chart of accounts to improve expenditure classification, monitoring and reporting. › Implement our disability and multicultural action plans and upgrade our HR system. › Enhance Resolve, our case management system. › Finalise improvements to our website. › Implement desktop virtualisation to streamline IT processes and reduce IT costs. |

Progress report

Each year we identify priorities or future goals for the next reporting period. The following table identifies the goals that we set for 2009-2010 and provides a short statement on our achievements, with references, where appropriate, to some more detailed information in our report about this goal.

Purpose	Goals for 2009–2010	Result	
Help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery	<ul style="list-style-type: none"> › Audit the ongoing implementation of the <i>NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities</i>. 	Audits progressing (three-year review). SEE PAGE 33	✓
	<ul style="list-style-type: none"> › Finalise our review of planning and support for 65 young people leaving statutory care. 	Undertaken a review and extended to include 124 young people in 2009. SEE PAGE 51	✓
	<ul style="list-style-type: none"> › Complete our investigation into CS handling of victims' compensation claims for children under the parental responsibility of the Minister for Community Services. 	Special report to Parliament tabled. SEE PAGE 51	✓
	<ul style="list-style-type: none"> › Finalise our program of agency audits examining the handling of employment-related child protection allegations. 	Annual audits conducted. SEE PAGE 57	✓
	<ul style="list-style-type: none"> › Complete our review of the implementation by ADHC of policies to improve the access of Aboriginal people to disability and aged care services. 	Review completed. Special report to Parliament tabled 21 September 2010. SEE PAGE 36	✓
Deal effectively and fairly with complaints and work with organisations to improve their complaint-handling systems	<ul style="list-style-type: none"> › Finalise our audit of the police handling of complaints relating to domestic and family violence. 	Audit conducted and preliminary report provided to NSWPF. SEE PAGE 81	✓
	<ul style="list-style-type: none"> › Review the implementation of the 'streamlined' system for handling police complaints. 	Reviewed and monitoring progress. SEE PAGE 75	✓
	<ul style="list-style-type: none"> › Monitor the implementation of the recommendations resulting from our review of complaint-handling by agencies providing services under ADHC's Community Participation program. 	Monitored the progress of services implementing the recommendations. SEE PAGE 64	✓
	<ul style="list-style-type: none"> › Release our revised Complaint Handler's Toolkit. 	We decided not to release a revised toolkit at this time. however we have reviewed some of the component guidelines in the toolkit, which are available on our website.	—
Be a leading watchdog agency	<ul style="list-style-type: none"> › Through the Pacific Ombudsman Alliance, support the three-month secondment of one of our officers to the Vanuatu Ombudsman. 	One of our staff members was seconded to the Vanuatu Ombudsman's office. SEE PAGE 32	✓
	<ul style="list-style-type: none"> › Provide advice to the Office of Police Integrity about developing a strategy for auditing police work with Aboriginal communities in Victoria. 	Met with Police Indigenous Relations Staff from the Office of Police Integrity Victoria. SEE PAGE 31	✓
	<ul style="list-style-type: none"> › Conduct another four workshops across Canada on managing unreasonable complainant conduct. 	Workshops conducted and more workshops are planned for 2010-2011. SEE PAGE 32	✓
Be an effective organisation	<ul style="list-style-type: none"> › Complete the implementation of structural changes and business improvement processes to enable us to enhance our service delivery. 	Our new structure was implemented. SEE PAGE 4	✓
	<ul style="list-style-type: none"> › Upgrade our case management system, redesign our intranet and make further improvements to our website. 	Our case management system was upgraded and our project to enhance functionality commenced; our intranet was upgraded and made more user friendly; we continued our website design, which should be finalised in 2010-2011. SEE PAGE 115	✓
	<ul style="list-style-type: none"> › Finalise OCV online, the new data classification system that will be used by official community visitors. 	OCV online finalised. SEE PAGE 71	✓

Measuring our performance

To retain the independence of the Ombudsman, the position is not responsible to an individual minister. Instead the Ombudsman appears before the Parliamentary Joint Committee to answer questions about the performance of our office.

Information about the quantity, quality, timeliness and impact of our work is essential to achieving our corporate goals. Performance benchmarks measuring these factors are established at the corporate, team and individual staff level and workflow statistics are used to inform procedural changes.

Our performance statement (see pages 14–15) is a summary of our achievements during the year against the purposes outlined in our corporate plan.

Tracking our performance

We track our performance at two levels – in relation to individual matters including complaints and projects and in relation to our systems and structures for completing work.

Data from our case management system is used to monitor turnaround times and identify where there may be backlogs, delays or inefficiencies. For example, we periodically review all files that have been open for more than six months and develop strategies to address any issues that may be causing unnecessary delay.

The integrity and accuracy of the data we keep is crucial to the effectiveness of our work and our ability to monitor our performance. We periodically conduct internal audits of the recording of information on our case management system to check that it is accurate.

Informing decision-making

Our assessment of complaints and notifications also needs to be sound and consistent. We have systems for consultation and discussion to ensure that the appropriate decision is made at the outset. We also make sure that if a complainant asks for a review of our decision, a more senior member of staff conducts the review.

We use close supervision and periodic file audits to review the quality and consistency of our work. This helps ensure that the decisions we make are sound and files are managed efficiently and effectively.

It is also important that any correspondence and reports we send out are factually accurate and properly reasoned. We have rigorous procedures for supervising, checking and authorising these documents.

Our people

We have 197 people working for our office on either a full or part-time basis. These people are an energetic and diverse mix of experience and skill and come from a range of backgrounds – including investigative, law enforcement, community and social work, legal, planning, child protection and teaching. Our collective experience gives us insight into the agencies we keep accountable and helps us to be persuasive advocates for change.

Human resources

Any exceptional movement in wages, salaries or allowances

In September 2008, the Industrial Commission endorsed a memorandum of understanding (MOU) between the NSW Government and the Public Service Association (PSA) to change award conditions and implement workforce reforms in a number of areas – including sick leave, excess staff and annual leave liability reduction. This agreement approved wage increases of 4% per annum over a three year period starting in July 2008, including a 4% increase effective July 2009. This decision affected all our non-senior executive staff.

Although increases of 4% were approved, funding of only 2.5% was provided in the annual budget allocations of agencies, including the Ombudsman. It was expected that the MOU would result in savings to fund the unfunded component of the pay increases. If the MOU changes did not find sufficient savings, agencies had to identify other strategies to meet their ongoing obligations to pay the awarded pay increases. The only strategy available to the Ombudsman was to reduce staff numbers.

The Ombudsman has no role in negotiating pay increases for his staff, as the Director General of the Department of Premier and Cabinet (DPC) is the employer for industrial purposes. From October 2009, a 3% increase was paid to our statutory officers including the Ombudsman.

Personnel policies and practices

Our staff are employed under the provisions of the *Public Sector Management and Employment Act 2002*. This Act, associated regulations and the Crown Employees (Public Service Conditions of Employment) Award 2009 set the working conditions of all public sector staff. We therefore have little scope to set working conditions and entitlements for our staff. The Director General of the DPC negotiates conditions and entitlements with the relevant unions.

As mentioned in our 2008–2009 annual report, there were significant changes to award conditions and entitlements after the signing of the MOU. Implementing these changes – particularly to sick leave and family and community services (FACS) leave – provided challenges for us as there were inconsistencies in the award that made these provisions difficult to apply. To address these inconsistencies the Ombudsman approved a number of new policies this year, including a FACS leave policy. We are still negotiating a policy for sick leave through our Joint Consultative Committee (JCC).

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

We updated or reviewed our good working relationship policy, reasonable adjustment policy, child protection policy, study assistance policy, breastfeeding policy and our Aboriginal employment strategy. All policies created or reviewed were negotiated through our JCC.

We mentioned last year that we would be implementing 'KIOSK', a self-service facility enabling staff to directly access and change their personal information in our personnel database. KIOSK also allows staff to monitor and apply for leave online.

This project was delayed due to staffing changes in our personnel section, the need to reprioritise our work after the Ombudsman's decision to restructure in October 2009, and the impact of the introduction of e-recruitment in the public sector.

Priority projects for 2010–2011 will include implementing KIOSK and finalising the rollout of e-recruitment.

Working with our JCC

The MOU between the NSW Government and the PSA resulted in changed award conditions and workforce reforms affecting all staff covered by the public sector salaries award. Interpreting and implementing these changes was the subject of significant discussion with staff, mostly through our formal consultative arrangement – the JCC.

The JCC continued to work cooperatively during the year particularly when discussing the office restructure, the impact of the unfunded portion of the pay increases, and award and entitlement changes. For example, they:

- considered broader policy changes agreed to in the MOU and how best to implement these for our office
- monitored our job evaluation outcomes, after we adopted a new process of having evaluations done by a designated staff member rather than a committee
- discussed changing our flexible working hours scheme, changes to sick and FACS leave, and the introduction of purchased leave
- took an active interest in the review of our structure and the Ombudsman's decision to have a formal restructure in October 2009
- discussed the impact of the restructure on staff, and how work processes, priorities and outcomes were affected, and whether there would be any increase in workloads.

The involvement of the JCC, and the staff representatives in particular, enabled the restructure to be implemented without undue anxiety among staff.

Priority areas for the JCC in 2010–2011 will be finalising their review of our collateral flexible working hours agreement. This was delayed due to the discussion between DPC and the PSA about sector wide changes.

Figure 11: Staff levels

Position	05/06	06/07	07/08	08/09	09/10
Statutory officers	6.00	6.00	5.00	6.00	4.00
Investigative	69.60	66.17	65.90	74.13	70.18
Investigative support	30.44	34.00	35.65	25.60	23.40
Project and research	15.60	16.60	15.60	14.10	20.66
Training and community education	3.20	3.58	3.50	3.30	2.30
Inquiries	8.00	9.00	10.00	7.00	9.94
Community visitor support	2.80	3.00	2.80	2.80	2.80
Systemic review	11.70	12.10	13.40	12.81	10.10
Corporate	25.86	29.43	23.97	24.74	27.17
Total*	173.20	179.88	175.82	170.48	170.55

* full-time equivalent

Chief and senior executive service

Our office has four senior positions – the Ombudsman and three Deputy Ombudsman. The number of senior positions was reduced by two following the office restructure in October 2009.

As at 30 June 2010, all senior staff were males. Please see figures 12–14 for details of the levels of our senior positions and their remuneration. In addition to chief and senior executive service (SES) staff, we employ a number of senior officers, which is a public sector classification with equivalent pay scales to the SES. Details of all our executive officers, both SES and senior officers, can be found in figure 12. As at 30 June only 2 or 29% of our executive were women. This is a reduction from the previous year.

Figure 12: Chief and senior executive service

Position	05/06	06/07	07/08	08/09	09/10
SES Level 4	2	2	2	2	3
SES Level 2	3	3	2	3	0
CEO*	1	1	1	1	1
Total	6	6	5	6	4

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

Figure 13: Senior officers with remuneration equal to or exceeding SES level 1

	05/06	06/07	07/08	08/09	09/10
Total number	7	9	8	9	7
Number of women	2	4	4	4	2
Percentage of women	29	44	50	44	29

Figure 14: Executive remuneration

Position	Ombudsman
Occupant	Bruce Barbour
Total remuneration package	\$427,356
\$ Value of remuneration paid as a performance payment	Nil
Criteria used for determining total performance payment	n/a

Equal employment opportunity

Our EEO program aims to achieve fair practices and behaviour in our workplace. These include:

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

The NSW Government has set targets for the employment of people from various EEO groups. Measurement against these targets is a good indication of how effective our EEO program has been. The following performance indicators compare our performance against these government targets.

Performance indicator: Trends in the distribution of EEO groups

2009–2010 EEO Group	Target	Result				
		05/06	06/07	07/08	08/09	09/10
Women	100	89	90	88	90	87
Aboriginal and Torres Strait Islander people	100	n/a	n/a	n/a	n/a	n/a
People whose language first spoken as a child was not English	100	88	89	86	85	83
People with disabilities	100	n/a	n/a	n/a	n/a	106
People with disabilities requiring work-related adjustment	100	n/a	n/a	n/a	n/a	n/a

Interpretation: A distribution index of 100 indicates that the centre of the distribution of the EEO group across salary levels is equivalent to that of other staff. Values less than 100 mean that the EEO group tends to be more concentrated at lower salary levels than is the case for other staff. The more pronounced this tendency is, the lower the index will be. In some cases the index may be more than 100, indicating that the EEO group is less concentrated at the lower levels. Where n/a appears, the sample was not sufficient to draw a conclusion. The distribution index is automatically calculated by the Department of Premier and Cabinet from information provided by the Ombudsman.

Performance indicator: Trends in the representation of EEO groups

2009–2010 EEO Group (%)	Target	Result				
		05/06	06/07	07/08	08/09	09/10
Women	50	72	71	73	71	72
Aboriginal and Torres Strait Islander people*	2.6	2	2	2.5	3.6	3.1
People whose language first spoken as a child was not English	20	18	17	20	21	19
People with disabilities	12	7	7	6	7	12
People with disabilities requiring work-related adjustment	7	1.5	2	2	2.6	3.7

* Target was changed from 2% to 2.6% during the 2009–2010 reporting year.

Promoting good working relationships

In December 2009, the Ombudsman approved a good working relationship policy. It was negotiated through our JCC and reinforces the obligations of all staff to ensure that our workplace is free from harassment. We are also currently reviewing our grievance handling policy.

To promote respect for the social and cultural backgrounds of our staff, we continued our in-house training on Aboriginal cultural appreciation. Our aim is for all staff to attend this course. We also continued our disability awareness training, using attitudinal and practical sessions to illustrate issues facing people with disabilities. This training also focused on improving our work practices when dealing with people with disabilities.

This year, we also conducted cultural awareness training to promote respect and understanding for people from diverse backgrounds.

Access and equity programs

This year, we undertook a comprehensive review of our access and equity programs as it is essential that our office is accessible to anyone who needs us. This review and the strategies we developed support our EEO outcomes.

Multicultural policies and services program (MPSP)

Under MPSP, all NSW Government agencies must implement and report on their strategies to enhance and promote multiculturalism. Our MPSP outlines our strategies to:

- › deliver services that are appropriate to a culturally diverse client group
- › put in place flexible and inclusive consultation processes that are integrated into our planning processes
- › provide training for staff on cultural diversity issues
- › provide language services and information in ways that will reach all areas.

For more details about our MPSP, see Appendix Q.

Aboriginal policy

This policy outlines our commitment to improving our services to Aboriginal people as well as working with key agencies to improve the delivery of their services. (See page 32 in Working with Aboriginal communities for more details of our work in this area). The policy details strategies we have or will have in place to comply with our legislative obligations or policy responsibilities and identifies the following priority areas:

- › improved services and outcomes
- › accountability
- › improved accessibility
- › employment opportunities
- › cultural appreciation training
- › welcome/acknowledgement of country
- › monitoring and reporting
- › supporting plans.

To improve employment opportunities within our office, we have also developed an Aboriginal employment strategy action plan.

Disability action plan (DAP)

This plan outlines our commitment to achieving the outcomes for people with disabilities set out in the NSW state plan and guidelines for disability action planning by NSW government agencies. Our DAP, which complies with Section 9 of the *NSW Disability Services Act 1993*, outlines our strategies to:

- › identify and remove barriers
- › provide information about our services in a range of accessible formats
- › make our facilities and services accessible
- › assist participation in public consultations, government advisory boards and committees
- › increase employment participation of people with disabilities in the NSW public sector
- › use government decision-making programs and operations to influence other agencies and sectors to improve community participation and quality of life.

Our DAP will guide the delivery of programs and services to people with disabilities until the end of 2014. For more details about our DAP, see Appendix Q.

Flexible work arrangements

We promote flexible work options to enable staff to balance their work and personal commitments. We offer part-time work, flexible working hours, working at home arrangements and a range of leave options. We have 58 staff who work on a part-time basis.

We began discussions through our JCC on renegotiating our flexible working hours agreement, but this was delayed due to sector wide discussions on this issue in the Industrial Relations Commission.

We also started negotiations on a purchased leave scheme and this should be finalised in early 2010–2011.

EEO and personnel policies and practices

Our personnel policies support EEO by ensuring a diverse and skilled workforce, fair work practices and behaviours, and employment access and participation by EEO groups. Figures 15 and 16 show the gender and EEO target groups of staff by salary level and employment basis – permanent, temporary, full-time or part-time.

This year, we maintained our strong commitment to training – providing a range of professional development opportunities for staff, programs to improve the skills of supervisors, as well as our in-house programs on Aboriginal cultural appreciation and disability awareness.

Figure 15: Staff numbers by employment basis

Employment basis	Total staff (no.)		Breakdown by EEO group					
	Men	Women	Aboriginal and Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with disabilities	People with disabilities requiring work-related adjustment	
Permanent Full-time	112	34	78	4	32	23	14	5
Permanent Part-time	48	8	40	2	11	9	4	2
Temporary Full-time	21	7	14	0	7	5	1	0
Temporary Part-time	6	1	5	0	1	0	1	0
Contract – SES	3	3	0	0	0	0	2	0
Contract – Non SES	1	1	0	0	0	0	1	0
Training Positions	0	0	0	0	0	0	0	0
Retained Staff	0	0	0	0	0	0	0	0
Casual	0	0	0	0	0	0	0	0
Total	191	54	137	6	51	37	23	7

Figure 16: Staff numbers by level

Level	Total staff (no.)		Breakdown by EEO group					
	Men	Women	Aboriginal and Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with disabilities	People with disabilities requiring work-related adjustment	
< \$38,144	0	0	0	0	0	0	0	
\$38,144–50,099	9	1	8	1	6	5	2	1
\$50,100–56,008	11	0	11	0	5	4	0	0
\$56,009–70,873	36	6	30	1	16	13	3	0
\$70,874–91,652	85	24	61	3	19	10	9	5
\$91,653–114,566	42	18	24	1	5	5	6	1
> \$114,566 (non SES)	5	2	3	0	0	0	1	0
> \$114,566 (SES)	3	3	0	0	0	0	2	0
Total	191	54	137	6	51	37	23	7

The year ahead

2010–2011 will see the introduction of a public sector e-recruitment system. This will require us to review our recruitment processes and, where possible, align them to the new sector wide system.

Recent changes to the conditions of service award commits agencies to implementing a capability framework, changing the way positions are described. Position descriptions using capabilities are also required for the new e-recruitment system. We have begun a review of our position descriptions in light of these new requirements which will be finalised next year.

Occupational health and safety

As an employer, we are required to provide a safe work environment for our staff. We are subject to the provisions and responsibilities outlined in legislation such as the *Occupational Health and Safety Act 2000* as well as public sector occupational health and safety (OH&S) policies. We use a risk management approach to our OH&S activities and have approved policies and supporting programs in place that provide guidance to both managers and staff in a range of areas including:

- › occupational health and safety strategies and procedures
- › a return to work program
- › a first aid plan
- › workplace inspections.

New OH&S representative

During the year, staff elected a new OH&S representative whose role is to keep under review the measures taken to ensure the health, safety and welfare of staff at work. This representative has the power to investigate OH&S matters and help to resolve issues. A number of matters were raised by the representative and action was taken to resolve them.

Reasonable adjustments

During the year, we modified a number of work areas or work processes to help staff who have either ongoing medical conditions or other specific needs. Adjustments were made to workstations, changing the placement of lights and installing special software. Some of these modifications were made after medical or other external professional assessments. We also reviewed our reasonable adjustment policy.

Emergency evacuation procedures

We continued to participate in the building's emergency evacuation training program with all wardens attending training at least twice a year. All staff participated in the building's emergency evacuation drill.

Promoting staff wellbeing

We provide an employee assistance program (EAP) including a free 24-hour counselling service for staff and their families. Also, to support our staff in a high volume work environment that is undergoing change, we engaged IPS – our EAP provider – to conduct lunchtime briefings on topics such as stress management, conflict resolution and increasing motivation.

Other programs to support OH&S

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

- › Hepatitis vaccinations – staff who visit correctional centres are vaccinated against hepatitis A and B.
- › Flu shots – we organise flu shots for staff to prevent high levels of absenteeism during the flu season.
- › Basic first aid – we have appointed a number of staff as first aid officers who are able to respond to minor workplace injuries. We cover the costs of any initial and any ongoing training and pay these staff a yearly allowance for undertaking this role.

Workers compensation

We participate in the NSW Treasury Managed Fund, a self-insurance scheme for the NSW public sector. Although we actively manage our workers compensation claims, there was an increase in the number of claims reported to our insurer this year compared with the previous year (see figure 17). This year nine workers compensation claims were reported.

Figure 17: Workers compensation

Claims entered in the year	06/07	07/08	08/09	09/10
Claims brought forward	9	9	6	2
New claims	9	6	5	9
Claims closed	9	9	9	7
Open claims 30 June 2010	9	6	2	4

Figure 18: Workers compensation incidence rate

Number of	05/06	06/07	07/08	08/09	09/10
Injuries reported	11	5	6	5	9
Employees (full-time equivalent)	172.3	179.88	175.82	170.48	170.55
Incidence rate (%)	6.38	2.79	3.41	2.93	5.28

Another indicator of the success of our strategies to reduce injuries at work is to calculate the incidence of claims as a percentage of our equivalent staff numbers. Figure 18, shows that our incidence rate increased from just under 3% to 5.28% in 2009–2010. Four of the new claims received were from injuries that occurred outside our office, either on the journey to or from work or during lunchtime. These types of claims are covered under the workers compensation scheme. The public sector incidence rate target is 2.2%.

Working together: public sector workplace health and safety and injury management strategy

In June 2010, the NSW Government released its new strategy to reduce the incidence and severity of injury and illness to public sector employees. The ultimate aim is to decrease the duration and cost of workers compensation claims and improve return to work outcomes.

During 2010–2011, we will be reviewing our OH&S program to ensure that our activities support the working together strategy.

Learning and development

One of the goals of our Statement of Corporate Purpose is to attract, develop and encourage skilled and committed staff. One way of achieving this is to provide learning and development opportunities that enable staff to more effectively perform their current role and gain skills to assist them progress their careers.

This year we continued our multifaceted training schedule which included coordinated induction sessions, job specific training, and in-house workshops held by external training providers. Staff also attended a range of external courses to gain job specific skills.

With ongoing financial pressures, the resources allocated to training in 2009–2010 were less than the previous year. We took a more strategic approach to staff training to ensure that, even with a reducing budget, we continue to provide ongoing development opportunities for our staff.

Figure 19: Training expenditure

Year	Value \$'000
05/06	117
06/07	220
07/08	180
08/09	125
09/10	101

Developing professional skills

We encourage staff to attend training courses and conferences to enhance their professional skills and to support the work of the office.

This year, our staff attended a range of conferences – including the National Juvenile Justice Seminar, the National Disability Summit and the Indigenous Young People, Crime and Justice Conference. These conferences gave staff the opportunity to learn from industry experts, to improve their understanding of contemporary issues impacting on our work, and to network with people with similar roles, experiences and skills.

Staff also attended a range of external training including courses on presentation skills, fringe benefits tax, speed reading, communication skills and project management.

A number of staff also attended our public focused training sessions run by our own training staff, such as Managing Unreasonable Complainant Conduct.

We also arranged for external presenters to hold training sessions on a range of issues specific to our complaint-handling and other activities.

Leadership development

At our executive planning day, we agreed that we needed to invest more in developing our senior staff. As a group, they are less likely to attend training or other professional development activities and this can mean that their skills to address contemporary management and strategic issues may be outdated.

The leadership program we are developing will initially focus on strategic planning and thinking, managing change, and financial and human resource management.

This year a number of our senior staff attended 'Expanding your leadership capabilities' training.

Raising awareness

We continued our training on improving how we deal with the public. During the year, we ran our disability awareness and Aboriginal cultural awareness training sessions for staff. Both courses were developed in-house and attendance is compulsory as all our staff need to fully understand the needs and issues affecting these groups.

This year, we also engaged the Baulkham Hills Holroyd Parramatta Migrant Resource Centre to conduct cultural awareness training.

Spotlight on supervisors

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

Figure 20: Time spent on training

Number of	Total
Courses attended	73
Full-time equivalent staff	170.55
Total time spent – hours	2,178.6
Total time spent – days	311.28
Days training per staff member	1.83

Better equipping new staff

Our formal induction program ensures that all new staff receive consistent information about our office and our policies, processes and obligations. Within the first three months of joining the Ombudsman, new staff attend training on our electronic document management and case management systems, security awareness training, and an information session where representatives from across the office provide a brief overview of the role and structure of their area. To inform all new staff about our functions, jurisdiction and responsibilities we hold Ombudsman What, When, Why and How training sessions – this is the first module from our investigation training program.

Supporting other programs

Staff development also means encouraging staff to undertake further study to enhance their skills. During 2009–2010, two staff members participated in the Public Sector Executive Development Programs sponsored by the DPC and four staff used study leave provisions to undertake tertiary education courses.

The year ahead

Our office is organising the National Investigation Symposium to be held in November 2010, and this is a unique opportunity for our staff to maintain and increase their investigative knowledge, skills and techniques. We are also updating our in-house investigation training course and will offer this to staff in 2010–2011.

We have begun to capture training details in our centralised human resources database and next year will be able to report office wide on our training activities. Figure 20 shows the time spent on training in 2009–2010.



Business activities

1 Cross jurisdiction

Highlights

- › Resolved individual and systemic issues through inquiries made to the office. [SEE PAGE 24](#)
- › Hosted three successful specialist forums – a domestic violence community stakeholders forum, a forum convened in partnership with the Disability Council of NSW and a roundtable forum made up of lead human services agencies and peak representative bodies to look for ways to strengthen probity standards in organisations funded to deliver services. [SEE PAGES 28–29](#)
- › Finalised a provisional report on our inquiry into the delivery of community services to the Bourke and Brewarrina communities. [SEE PAGES 34–35](#)
- › Brought together the heads of health, police and other agencies to work on ways to give victims of sexual assault in remote areas easier access to medical practitioners to undertake forensic examinations. [SEE PAGE 37](#)
- › Initiated research into the availability and effectiveness of interventions used to identify and manage young people. [SEE PAGE 38](#)
- › Undertook more than 271 information, education and training activities reaching an estimated 10,237 people. [SEE PAGES 41–44](#)

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An important part of our role is to help members of the public and agencies to deal with complaints and related issues. We also actively reach out to various stakeholders to increase awareness of our role, identify critical issues and look for ways to improve our service, and we work hard to bring about positive changes in relation to significant issues.

This section reports on the work of our strategic projects division, which leads major projects and investigations that cross the jurisdictions of the Ombudsman's various operational areas, including much of our work with Aboriginal communities and young people. The division also has responsibility for our community education and training work.

Inquiries

Our inquiries and resolution team receive nearly 500 calls and visits each week from members of the community wanting to make contact with us or complain about a range of public sector agencies in NSW.

We listen carefully to their complaints and advise them on their options and what action they should take. Our good working knowledge of the functions and policies of most NSW agencies enables us to help complainants clarify the issues they have and what a reasonable outcome might be, as well as explain the process they should follow for making a complaint to the agency concerned.

Resolving individual and systemic issues

The frontline contact we have with the public enables us to resolve individual conduct or service issues as well as identify systemic failures – such as lack of information, delays in decision-making, or problems in the application of a law, policy or procedure – that we may be alerted to after receiving a number of calls about the same issue. We encourage agencies to address these systemic issues so that future service users do not have similar difficulties.

For example, we are often contacted by Housing NSW tenants, applicants and neighbours about issues such as eviction and homelessness, maintenance and refused housing applications. We may provide advice to the complainant about Housing NSW's policies and procedures to explain that they have acted appropriately, or suggest options for taking the matter further – either on appeal or through Housing NSW's Client Feedback unit. Alternatively, we may contact Housing NSW to ensure appropriate action is being taken in response to an individual's specific case or to alert them to the need to review a particular policy or procedure.

For further details about our work in the housing area, see page 89 in Departments and authorities.

Helping vulnerable people

Many vulnerable people contact us each year – their lives are often complex, and they frequently have contact with a number of government agencies and non-government services. Often, clients with complex needs require assistance in making what would otherwise be considered straightforward inquiries. This is usually because they lack confidence, or because they may have had difficulty understanding the reasons provided by a government agency for a decision or a process.

For example, an inmate contacted us after she had been transferred from one correctional centre to another. She was anxious to speak with her family as she had just found out she was pregnant. However, centre staff had not fully set up her phone account. She called us two days after her arrival about this, so we called the centre. Centre management immediately rectified the situation and the inmate was able to speak with her family.

CS 1: Elderly couple confused about move

An elderly non-English speaking couple called us about Housing NSW wanting to relocate them. They felt they were under threat of eviction. The move was a result of building work funded by the Commonwealth government's stimulus package. Housing NSW decided to repair or rebuild many public houses across NSW with this funding. However, the couple did not understand this process. We clarified the couple's concerns via an interpreter, spoke with Housing NSW who then contacted the couple through an interpreter, and the matter was resolved. Housing NSW also informed us about how they were implementing the stimulus program and managing affected tenants, including appeal options. We then used this information in our daily work to ensure other callers understood the process.

CS 2: Better contact between the NSW TG and the SDRO

A client of the NSW Trustee and Guardian (NSWTG) had a large State Debt Recovery Office (SDRO) debt after being fined for travelling without a ticket a number of times. His father complained to us that as his son has a mental illness – and the fines were issued when his son was unwell – they should be waived. Although the NSWTG made an arrangement for the fines to be paid, the ongoing repayment arrangement was causing hardship for his son. His father wanted the NSWTG to be more proactive in asking the SDRO to cancel the debt.

When we first made contact with the NSWTG they maintained that there was no basis for asking the SDRO to waive the fines. In addition, fines may be sent directly to the client so the NSWTG may not know that they exist. We did not think this was satisfactory and contacted the SDRO to find out what could be done. As a result of our involvement, it was agreed the client's debt would be cancelled in full and a formal contact arrangement was established between the SDRO and NSWTG. The NSWTG agreed to review their client data to get a better understanding of what fines were outstanding and whether they could ask the SDRO to consider waiving them.

Handling unreasonable expectations

We pride ourselves on the professional and respectful way we handle unreasonable complainant conduct. Our approach is based on our *Managing Unreasonable Complainant Conduct Practice Manual*. This practice manual is available to all agencies on our website.

A small minority of complainants have unreasonable expectations about what they want to see happen or find it hard to control their anger about what has, or what they perceive has, happened to them. Some will never give up on the outcome they believe is right and fair. Our staff have to manage these expectations and help complainants understand what a reasonable outcome in their case might be. Not all complainants of course accept this.

CS 3: Finding out both sides of the story

An inmate from a correctional centre contacted us complaining about his lack of medical assessments and access to medication. We acknowledged how he felt, explained we would make inquiries, and what – based on our understanding of the correctional system – he could realistically expect to happen. Our focus was on his access to the clinic and the information he was given, as medical assessments are clearly outside our general expertise. We contacted the centre’s Justice Health staff about the inmate’s concerns.

The centre’s Justice Health staff told a different story to the one the inmate gave us. They confirmed he was accessing the clinic for assessment and outlined the treatment they could provide. They also appeared to be communicating satisfactorily with him. We discussed this outcome with the inmate, but he clearly did not want to hear this. His focus was solely on receiving the particular medication he wanted. Unfortunately, he remained frustrated and agitated and felt no one was listening to him. However, our staff were able to make it clear that if he wished to raise concerns about decisions relating to his medication, he would need to raise them with the Health Care Complaints Commission.

Improving access to our services

We select our inquiry and resolution staff for their ability to communicate well with many different people. We also use Telephone Typewriter (TTY) services and interpreting and translation services to ensure all members of the community have access to our services and can understand our discussions.

Often, we need to refer complainants to another agency as their complaint is outside our jurisdiction. This year we reviewed our online complaint form to help complainants access the relevant agency more quickly and easily. Complainants can now learn at the very outset if their complaint is outside our jurisdiction and be given the contact details for the relevant agency. For example, a complainant selecting ‘banking’ on our initial drop down list is given the contact details for the Financial Ombudsman Service and a brief explanation why they should be contacted. This saves everyone involved both time and effort and helps to promote a more speedy resolution of a complainant’s concerns.

Our website also has tips for making a complaint – including information about what to include in your letter, who to send it to, and what to do if you are unsuccessful.

In the past, we have explored the possibility of implementing a ‘one-stop-shop’ for all complaints about NSW public sector agencies. The basic concept is that anyone who had a complaint about any aspect of public administration in NSW could contact us for relevant advice and the appropriate referral. We envisaged this to include an online complaints system (single electronic portal and postal address) where complainants would not need to understand the complexities of the integrity/watchdog environment to know which agency was the most appropriate to deal with their complaint. Unfortunately, the necessary funding was not available at the time to implement this.

However, we are now revisiting the idea and plan to start discussions with the other complaint-handling organisations within NSW about developing a Complaints NSW website. This website would provide direct access and information to each individual agency, and broad information about complaint-handling – including tips and other useful advice. We will report on developments in our annual report next year.

Stakeholder engagement

Engaging with key agencies, groups and individuals is an essential part of our business. By reaching out to our stakeholders we aim to identify critical issues of concern for members of the public and significant agency developments, lower the barriers to accessing our services, and increase awareness of the role of our office.

Who are our stakeholders?

Our stakeholders include consumers of our services, local agency staff, community workers, peak bodies and advocacy groups, the public and other agencies. We try to reach as many members of the public as we can, including those living in regional and remote areas.

The consultations we do as part of our audit and investigation activities are particularly valuable. They enable us to work with a range of groups on priority issues, report key concerns to agencies, and work closely with all parties to deliver practical improvements. We also actively seek the views of other agencies and stakeholders by convening specialist or targeted forums for information about specific issues. These consultations provide us with valuable feedback about our business processes and the scope for further improvements.

As well as educating agencies within our jurisdiction about our role and their responsibilities, we work with other oversight bodies both within Australia and overseas. We support new and developing Ombudsman offices in our region and internationally by sharing our knowledge and experience to promote accountable public administration.

Figure 21: Informal inquiries

	05/06	06/07	07/08	08/09	09/10
Inquiries	21,855	21,419	24,561	24,215	23,797

Reaching out to a diverse community

The largest group of people we have contact with are complainants. This year we handled more than 23,000 complaints informally and more than 8,000 formally. The informal complaints are mostly dealt with by our inquiries staff over the telephone or in person at our office.

The feedback we receive from complainants helps us to identify areas where we can improve our services. Our policy on complaints and compliments provides a framework for adopting this customer feedback. See page 9 in Facts and figures for more details.

Our website provides useful information about the role of our office, how to resolve matters without our help and, where necessary, how to make a complaint. Members of the public, agency staff and community service providers can access a range of publications from our website – including guidelines, fact sheets and brochures in other languages. Our online complaints form also makes it easier for people to lodge a complaint with our office.

Our Aboriginal Unit, youth liaison officer, community education and training unit and other specialist staff work hard to extend the reach and impact of our office, opening doors to those who might have difficulty accessing our services. Their work includes educating stakeholders about the role of our office, attending community and cultural events, delivering workshops and training sessions, and assisting complainants to resolve issues.

A number of our senior officers also regularly take part in these events and the resulting discussions play an important part in informing our systemic and investigative work.

Visiting regional and remote communities

Providing services to smaller, more geographically dispersed communities can be resource-intensive. As establishing regional or remote offices is neither practicable nor cost-effective for a small agency like ours, we use other strategies to service these areas.

Our toll-free number allows anyone living in NSW's regional and remote communities to contact for the cost of a local call for advice and assistance. Our phone links to prisons and juvenile justice centres provide similar access to detainees.

We also regularly visit regional and remote centres in response to community requests or to assist with critical issues. This year we visited at least 62 regional and remote communities in NSW to:

- › conduct consultations for investigations and audits of agencies and services
- › deliver presentations, training sessions and forums
- › visit correctional and juvenile justice centres
- › attend community festivals and events.

During these visits, our staff members try to address other concerns raised with our office – by meeting with local agencies or service providers to resolve any issues and provide feedback to the office.

We conducted 48 correctional centre visits and 17 juvenile justice centre visits across the state this year, and 26 of the correctional centre visits and nine of the juvenile justice centre visits were to regional and remote areas.

Although inmates of correctional centres and detainees in juvenile justice centres have telephone and postal access to lodge complaints with our office, our visits to these facilities are an important part of our work.

They enable us to monitor the conditions in the centres and to give detainees the opportunity to raise concerns directly with us. Where possible, our Aboriginal Unit staff take part in these visits, ensuring that Aboriginal detainees have an opportunity to speak with another Aboriginal person about any concerns.

We also give training, presentations and information sessions about our work across NSW. This year, 78 of these sessions were delivered in regional locations. For more details, see page 41 in Community education and training. For more information about our work in regional and remote communities, see page 32 in Working with Aboriginal communities.

Our community engagement activities

We work in partnership with a range of government agencies and service providers to ensure community members have access to our services and to increase access and awareness of our role. For example, this year:

- › Together with the Energy & Water Ombudsman, we participated in the International Women's Day celebrations and distributed joint information packages to women who attended the event.
- › With the Commonwealth Ombudsman, Energy & Water Ombudsman, Financial Services Ombudsman and the Aged Rights Service, we staffed an information stall for two days of the Sydney Royal Easter Show and distributed information about our roles to thousands of attendees.
- › We are working with the National Disability Services (NDS) to develop a complaint-handling training program specifically designed to suit the needs of the disability services sector. This program will be delivered in metropolitan and regional centres across NSW in 2011.
- › We participated in Good Service forums across the state with the Commonwealth Ombudsman, Energy & Water Ombudsman, Banking Ombudsman, Legal Aid NSW, the NSW Anti-Discrimination Board, the NSW Office of Fair Trading and the Health Care Complaints Commission – visiting various Aboriginal communities to explain how to access services and make complaints.

We also actively participated in community events and activities reaching a wide range of people, including:

- › The 2010 Youth Harmony Festival organised by the Community Relations Commission, distributing information to community members and networking with migrant resource centre and community service workers.
- › A number of multicultural events around the Sydney metropolitan area to raise awareness about our office among culturally and linguistically diverse communities.
- › The Tamworth Disability Expo.

- > A community legal education video project targeted at the Fairfield Local Government area to increase awareness about the role of our office among culturally and linguistically diverse communities.
- > Co-sponsoring the *Don't Dis my Ability* campaign to celebrate International Day for People with Disabilities. We held an information stall in our building foyer to promote the event, followed by an afternoon tea. Krystal Keller, a 25 year old professional recording artist, musician and public speaker told her story and performed.

Our Deputy Ombudsman also delivered an information session to 70 community workers who work with non-English speaking clients in Bankstown as part of the Deputy Ombudsman Outreach Forum program.

We arranged a cultural awareness workshop for our staff focusing on issues affecting new and emerging communities from Karen, Sri Lankan and Tamil communities. The workshop was presented by staff from the Hills Holroyd Parramatta Migrant Resource Centre and refugees from these communities.

We also provided briefings and information sessions to a range of services and community groups throughout the year including Gilgai Aboriginal Service clients, Illawarra community members and police, Illawarra Law and Justice Cluster, Men's Health Information and Resource Centre, Wollongong JIRT and out-of-home care service providers. For more details on our engagement activities, see pages 39–40 in Working with Aboriginal communities.

Places visited 2009–2010

Albury	Dubbo	Merimbula	Port Macquarie	Walgett
Armidale	Glen Innes	Menindee	Port Stephens	Wallaga Lakes
Batemans Bay	Goulburn	Mildura	Queanbeyan	Wallsend
Bathurst	Grafton	Moree	Richmond	Wellington
Bega	Hay	Moruya	Tamworth	Wilcannia
Berrima	Junee	Mudgee	Taree	Wollongong
Bingara	Kariong	Muswellbrook	Tenterfield	Wyong
Bourke	Kempsey	Newcastle	Tumbarumba	Yamba
Brewarrina	Kiama	Nowra	Wagga Wagga	Yanco
Broken Hill	Lake Macquarie	Oberon		Yass
Canobolas	Leeton	Orange		
Cessnock	Lightning Ridge	Peak Hill		
Cooma	Lismore			
Dapto	Lithgow			
Dareton				
Deniliquin				



Now that I understand your role a bit better, I am very impressed by the work you do and your commitment to making a difference through your role with the Ombudsman's office ... I hope that similar opportunities to visit communities across NSW would arise again.

Working with agencies and key stakeholders

Regular liaison meetings with different groups, convening forums on specific issues and our participation in committees and advisory boards help us keep informed of issues. Our audit, investigation and review work also enables us to work with a large number of agencies and service providers.

This year we reviewed the complaint-handling systems of service providers, conducted child protection audits, and consulted with families of children with disabilities living at home for information about their experiences in obtaining services and support. We also consulted broadly as part of our audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*. These consultations inform our audits, but also form an important part of our ongoing responsibility to educate our stakeholders about the work we do.

Convening forums

This year we hosted specialist forums to seek the input of stakeholders from a range of agencies and services about particular issues or aspects of our work, including some of our investigation and review work. The three main forums were:

- › a domestic violence community stakeholders forum made up mostly of community workers involved in supporting victims of domestic violence
- › a forum on devolution, in partnership with the Disability Council of NSW, about the closure of institutions housing people with disabilities.
- › a forum of NSW Government agencies with responsibilities for health and human services, peak bodies and oversight and regulatory bodies to discuss probity issues in funded services.

Devolution forum

In 1998, the NSW Government announced its intention to close all large residential centres for people with disabilities by 2010. Although a significant amount of devolution activity has taken place since 1998, there is still much to be done in relation to the closure of large residential centres in both the government and non-government sectors. Against this background, and in partnership with the Disability Council of NSW, we decided to host a forum to provide the opportunity for people with disabilities and other stakeholders to engage in open discussions about the progress of this initiative so far, the lessons learned and the challenges ahead.

Our forum in June was facilitated by Julie McCrossin. Close to 300 people attended – including people with disabilities, family representatives, service providers, advocates and government agency representatives.

Some of the key issues raised were the need for greater involvement by people with disabilities and their families in future planning, a greater focus on individuals, increased diversity in accommodation and support options, community-based support in regional and rural NSW, and maintaining relationships between people with disabilities and the community.

Our report on this issue was tabled in Parliament in August this year and is available on our website.

For more details about this forum, see page 66 in *People with disabilities*.

Many thanks for your organisation and calm persona. And thank you to you, Steve [Deputy Ombudsman and Community and Disability Services Commissioner] and Bruce [NSW Ombudsman] for allowing us to share yesterday's discussion. It was an enlightening exposure to past and future challenges. The discussion was frank, as we had hoped ... ably assisted by the skill, warmth and talent of Julie as facilitator. And a success!

Domestic violence community stakeholders forum

In December 2009, we hosted our inaugural Domestic Violence Community Stakeholders Forum that attracted 60 participants from the domestic violence sector. The forum was well received and provided participants with the opportunity to speak with us directly about any issues and concerns they had about the response by police and other agencies to domestic violence. We provided an update about our ongoing work and progress made since our 2006 investigation, our current audit of domestic and family violence complaints, and the impact of the key changes flowing from the Wood Inquiry on the domestic violence sector.

The outcomes from the forum have helped inform our current domestic violence audit and ongoing monitoring of significant domestic violence issues with the NSW Police Force (NSWPF). Some of the key issues raised at the forum by participants included:

- › An alleged failure by police to identify the 'primary aggressor' issue. Participants expressed concern about the number of women being charged with domestic violence-related offences and having an apprehended domestic violence order (ADVO) taken out against them. We undertook to ask the NSWPF to review where there is evidence that an ADVO has been made in inappropriate circumstances. The NSWPF Corporate Spokesperson has since agreed to support research conducted by the Domestic Violence Coalition which will track incidents involving women charged with domestic violence-related offences and/or where an ADVO is taken out against them.
- › Increased domestic violence training for police. The forum identified a need for local domestic violence services to be involved in the delivery of police training at a local level and for there to be a consistent requirement across all police commands. Our 2006 report, *Domestic Violence: improving police practice*, stressed the importance of the NSWPF developing and implementing a good practice framework for policing domestic violence. We also asked the NSWPF Aboriginal Coordination Unit to work with Aboriginal Legal Services on proposed changes to ensure Aboriginal women endorse the content of training relating to Aboriginal family violence.
- › Domestic violence advocacy training. Participants welcomed the opportunity to receive this type of training. As a result, this year we helped the Women's Legal Services (WLS) NSW provide advocacy training to a range of community service providers as part of *Reaching out for Rights*, a project developed by WLS. The primary aim of this project is to help women from various backgrounds such as Aboriginal women, women from culturally and linguistically diverse communities, refugee women and women living with disabilities who experience barriers negotiating the justice system. We visited 12 regional locations across the state and reached 180 workers as part of this program of training. See page 81 in *Policing* for more details about our work in the area of domestic violence.

Thank you for holding the Ombudsman's inaugural Domestic Violence Community Stakeholders Forum.

I found the occasion extremely worthwhile and I very much appreciated the respect and recognition you and your colleagues gave to the workers who are in the community sector working specifically with domestic violence issues. Thank you for making yourselves available and approachable.

Probity roundtable forum

In April this year we convened a forum of NSW government agencies with responsibilities for health and human services (funding agencies), peak bodies that represent many of the thousands of non-government organisations funded to deliver services (funded organisations) and oversight and regulatory bodies with responsibilities in this area. The forum examined the various screening processes used by funded services when checking the probity of prospective employees, management committee members and volunteers involved in planning or delivering community services.

The forum identified deficiencies in the probity checking that government agencies require funded organisations to conduct and the systems in place to promote and monitor compliance. There was also confusion about what organisations should do when concerns came to light.

There was some agreement that funded organisations must be accountable for the services they are funded to deliver – including taking appropriate steps to assess and manage issues related to the probity and integrity of the personnel involved in planning and delivering these services. Government agencies also have an important part to play in developing appropriate minimum standards for probity checking and helping organisations to achieve these standards.

The forum invited discussion about a range of practical issues, including:

- › who and what should be checked and how the checks should be done
- › the responsibilities of employers to complete and record any proceedings relating to serious allegations, even if the employee resigns before a matter is finalised
- › the requirements on, and expectations of, previous employers when providing references
- › the requirements on, and expectations of, prospective employers in relation to carrying out previous employment and other referee checks – including the nature of the information they should seek and how best to obtain it
- › processes for requiring declarations and consents from those seeking appointments/employment as part of the pre-appointment checks
- › requirements in relation to accessing, recording and using information from various sources as part of the checking processes – including measures needed to protect the privacy of individuals checked
- › documenting decision-making processes
- › critical procedural fairness requirements and internal review mechanisms for individuals who have been refused employment on the basis of probity issues identified through criminal record or other probity checks.

At the end of the discussions, we agreed to prepare a discussion paper setting out the issues and inviting feedback about practical options for improving current practices. In preparing this document we drew on the information and views discussed in that forum as well as subsequent consultations with other stakeholders, the responses of funding agencies to our requests for additional information, and our own experiences investigating probity related issues in the health and human services sectors.

Draft copies of the discussion paper were sent to all those involved in the forum or consulted afterwards, with an invitation to provide feedback about reforming practices in this area. This included a request for the Director General of the Department of Human Services to comment on behalf of the department and its agencies – including Community Services, Ageing, Disability and Home Care, Housing NSW, Aboriginal Affairs NSW and Juvenile Justice.

After reviewing the comments and submissions from roundtable participants and other stakeholders, we intend to finalise the discussion paper and make it public. For more details about our work in this area, see page 61 in Children and young people.

Improving how we engage with our stakeholders

We gain valuable information and insights from our project, investigation and auditing work and our other regular liaison with agencies. To improve the quality and consistency of this work, we recently set up an internal working party to develop a stakeholder engagement strategy and provide advice on its implementation. The strategy should help to maximise the impact of these activities, strengthen our stakeholder partnerships, and identify opportunities for further improvements.

This stakeholder engagement work also complements other recent changes. Our organisational restructure prompted us to review our existing strategies and adopt a more streamlined approach when dealing with agencies that have frequent contact with our office. Some agencies – such as those with child protection responsibilities – have regular contact with the Ombudsman's various operational areas, so a review of how we engage and work with different stakeholders was timely. The creation of the community education and training unit which is housed in the office's strategic projects division also means that one area of the office is responsible for our work in educating our stakeholders.

Each of our business areas will build stakeholder engagement strategies and commitments into their business and project plans, and regularly seek feedback from agencies about how our work could add value to the work that they do. For more details about our strategic planning activities, see page 11 in Corporate governance.

The lasting benefits of an Ombudsman investigation are the systemic improvements made to public administration. Such changes require the most appropriate recommendations to be made and to be fully implemented by agencies. As agencies are the experts in their business, their input is essential to developing the recommendations needed to address the problems identified. In addition, we cannot direct agencies to make changes. Changes are more likely to be implemented, and implemented more effectively, when an agency has been involved in the investigation process at critical stages.

For a number of years we have used a range of formal and informal techniques in connection with our systemic investigation and review work. For example, ongoing consultation with agencies has been a feature of our investigations into the policing of domestic violence, the adequacy of supports provided to social housing tenants with a mental illness and police work with Aboriginal communities. This is because the majority of our 'evidence' in these types of matters is sourced from well-targeted consultations with practitioners.

A critical factor in the high implementation rate of our recommendations in these types of investigations and reviews is due to the consultative approach we take with agencies at not only a corporate level but through our ongoing engagement of frontline agency staff and managers in the investigative process, including 'road-testing' the practicality of our recommendations with them. However, these types of techniques have generally been confined to our work in connection with reviewing agency service delivery and have been used less frequently in connection with more formal investigations where our 'evidence-base' is largely drawn from documentation and/or where we use our coercive powers to obtain information. One important project completed this year involved reviewing how we engage with public sector agencies when conducting formal investigations.

Our review included:

- › interviews with staff from the seven other parliamentary Ombudsman across Australia and staff from the NSW Audit Office to review their strategies for engaging with agencies during investigations
- › interviews with staff from a range of agencies that have been the subject of an Ombudsman investigation in the past few years
- › an examination of our practices to identify innovative ideas.

We asked agency staff about their experience of being investigated and explored how their agency managed being the subject of investigation, their understanding of our processes, and how they responded to our invitation to comment on provisional findings and recommendations.

While many agency interviewees reported a positive experience in terms of their understanding of our investigation process, appreciation of the methodology used and ability to contribute to the development of recommendations, we also identified areas for improvement.

Key issues were increased communication and more detailed information about the investigation process under the Ombudsman Act. In addition to formal communication by letter, agencies said they would find more informal contact by email, telephone and meetings during an investigation beneficial.

This would help them better understand our requests for information and give them an opportunity to ask questions about our processes and likely timeframes and discuss provisional recommendations in very practical terms. They also said that while our correspondence provided useful information about our investigation process, some terms in the Ombudsman Act were confusing and more information about what to expect would allow managers to better manage staff expectations and concerns.

We are incorporating these findings into our plans for formal investigations. Each investigation is unique. How we engage and communicate with an agency must depend to some extent on the nature of the conduct being investigated. However, our research has confirmed that many of the techniques used in our consultation-based investigations can be applied to a range of contexts. Our planning for all investigations will now include specific consideration of how we will communicate with the particular agency throughout the investigation. We are also producing a fact sheet for agencies about the key stages of our investigation process and reviewing our correspondence to make sure that Ombudsman Act terms and requirements are explained in plain English.

Maintaining good working relationships

Maintaining good working relationships with peak bodies, government agencies, unions, interest groups and other key stakeholders is important to us. These links mean that people are likely to be more forthcoming with information and receptive to our recommendations, and complaints will be more promptly resolved. We regularly meet with, give presentations to and convene discussions with a range of organisations that advocate on behalf of members of the public and advise government on policy issues.

We have regular agency liaison meetings with government agencies – including Community Services, Housing NSW, NSW Health, Juvenile Justice, Ageing, Disability and Home Care, the NSW Police Force (NSWPF) and the Department of Education and Training (DET) – as well as with a range of non-government stakeholders. For example, this year we:

- › Met with representatives from Housing NSW, the Office of Community Housing and the Registrar for Community Housing to discuss the impact of the expansion of the community housing sector and creation of the Registrar's function on our jurisdiction.
- › Held quarterly meetings with senior officers from the NSWPF Professional Standards Command to discuss strategies for improving police complaint-handling systems, and shared information about current projects and initiatives.
- › Met representatives of the newly incorporated Women's Domestic Violence Court Advocacy Service (WDVCAS) Network to learn about their role and discuss how we might work together to improve service delivery to victims of domestic violence. The network represents the 28 services that operate in local courts throughout NSW.
- › Participated in a focus group run by the Education Centre Against Violence about domestic violence training needs, and a focus group organised by People with Disabilities to inform a project examining the domestic violence experiences of people with disabilities living in boarding houses.
- › Continued to regularly liaise with the Domestic Violence Coalition (the peak body in NSW advocating for women who experience domestic violence). These consultations led to us progressing several areas of concern with the NSWPF Corporate Spokesperson for Domestic Violence.
- › Met with the Commission for Children and Young People (CCYP) on a number of occasions to discuss a range of operational issues. We also provided input into the statutory review of the CCYP's legislation and the Audit Office's review of the system. For more details, see page 61 in Children and young people.
- › Met with the NSW Board of Studies to discuss closer liaison between us about monitoring child protection systems in the education sector, and met with a number of independent school associations to improve their understanding and handling of reportable allegations.
- › Attended quarterly liaison meetings with the ICAC and the Division of Local Government to discuss local government issues and exchange information about complaints.

We help agencies to improve their preventative systems and investigative practice in a number of other ways – including regular liaison meetings with larger agencies and case conferences to discuss issues about individual investigations.

In addition to our liaison meetings, we participate in a range of forums and information sessions such as the Association of Children's Welfare Agencies (ACWA) Cross Sector Forum, *Keep Them Safe* Regional Forum, Community Services Key Government Stakeholder Workshop, the NSW Conversation Exchange Opportunities Networking function, the *Keep Them Safe* Aboriginal Stakeholders Forum, Child Protection Forum and the NSWPF Domestic Violence Stakeholder Forum.

This year we gave regular presentations about our role to various stakeholders and staff from a range of government departments and agencies, peak bodies and community organisations including groups of police officers – such as the NSWPF Professional Standards Command's internal investigations course, meetings of professional standards duty officers, and new recruits at the Police Academy in Goulburn.

We also work with other stakeholders in the community services sector to canvass views on issues identified through our monitoring activities and to promote improved service delivery. For example in July and November 2009, we held roundtable discussions with disability peak agencies.

Participating in committees and advisory groups

Our staff are also members of a number of advisory groups and committees. These groups help us keep informed of current issues and provide us with an opportunity to update agency staff on specialist areas of our work. See Appendix L.

Two expert advisory committees help us to perform our reviewable death functions. In 2009–2010 the Reviewable Disability Deaths Advisory Committee met twice and the Reviewable Child Deaths Advisory Committee met once. These committees provide the Ombudsman with valuable advice on complex child and disability death matters, policy issues and health practice issues.

In September 2009, we wrote to the current members of the Child Deaths Advisory Committee noting our office was undergoing significant change in relation to child death reviews, and planning for the pending transfer of the Child Death Review Team to this office. In the context of these changes, we advised members we would be reviewing the type and nature of external advice required to perform the revised function. In February this year, after an internal review, we formally disbanded the existing committee and then held a morning tea for members in March 2010. We have developed revised terms for an advisory structure and aim to have this in place by December 2010.

Working with other oversight agencies

As well as seeking feedback from the agencies we oversight, we also liaise with other oversight bodies to share good practice and exchange information. During 2009–2010 this included joint work with:

- › The Crime and Misconduct Commission, Queensland to discuss projects relating to our Aboriginal child sexual assault audit and to exchange information about our police improper associations policy.
- › The Office of Police Integrity in Victoria about developing a strategy for auditing police work with Aboriginal communities in Victoria.
- › The Commonwealth Ombudsman to discuss the potential of cooperation between our offices in working with Aboriginal communities.
- › Various agencies with an interest in and ability to contribute to our audit of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* – including the Commonwealth Ombudsman, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Australian Crime Commission.
- › ICAC in delivering five workshops on managing protected disclosures for 196 participants from a range of agencies.
- › A project reference group established to develop a proposal by the Office of Police Integrity, Victoria and the Crime and Misconduct Commission, Queensland to conduct a pilot study of community attitudes and perceptions about police misconduct.
- › The Division of Local Government to negotiate a new agreement on better ways to manage a range of complaints able to be dealt with by both our agencies, and encourage councils to provide training to their staff to improve their investigation work.
- › The Energy & Water Ombudsman, who engaged our Aboriginal Unit to deliver Aboriginal cultural appreciation training for their staff.
- › Other Ombudsman offices across Australia on the second stage of a managing unreasonable complainant conduct project to develop additional strategies for complaint-handlers and make the practice manual more relevant for those required to maintain links with the complainant or provide services to rural or remote locations.

Engaging with our international partners

We continue to support new and developing Ombudsman offices and other oversight bodies in our region by sharing our knowledge and experience on ways to promote accountable public administration.

A key priority is to strengthen the recently established Pacific Ombudsman Alliance (POA) and its member organisations. The POA is a multinational group of Ombudsman and allied institutions from countries that are part of the Pacific Islands Forum.

The Board of the POA has identified a need for training materials that could be adapted to suit the needs of all the Ombudsman organisations throughout the Pacific. Sheila O'Donovan, a training officer from our office, and Carolyn Langley, an International Program Officer from the Commonwealth Ombudsman's Office, assessed the training needs of Ombudsman offices in Papua New Guinea and Vanuatu, and looked for ways to support training and professional development in the Pacific region generally. This required them to identify common work requirements across a number of Ombudsman officers, identify what materials already exist and determine what, if any, modifications or alterations would be required to make the training packages useful throughout the Pacific.

In late 2009, one of our staff completed a three-month placement as legal officer for the Vanuatu Ombudsman's office in Port Vila. His work included helping to finalise a major report that recommended terminating a government copra subsidy scheme and criminally charging two individuals responsible for the collapse of the scheme. The secondment, arranged at the request of the Vanuatu Ombudsman and funded by the POA, provided legal and other specialist advice and support for a range of complaints investigation work while the Vanuatu Ombudsman's permanent legal officer was on maternity leave. With the support of the POA, we also helped arrange a one-day forum that brought together a number of Vanuatu government agencies and national leaders to consider proposed reforms to the role of their Ombudsman.

Following the success of this placement, we recommended that the POA work with the Vanuatu Ombudsman, Australian Volunteers International and other potential partners to find a suitably qualified volunteer for a longer term placement. The POA and the Australian Youth Ambassadors for Development (AYAD) program have recruited an AYAD volunteer from Melbourne. Together with International Program staff from the Commonwealth Ombudsman's office, we briefed the volunteer and provided basic training before her 12-month placement began in August. We continue to look for ways to support her work. If successful, we hope this will be the first of a number of volunteer placements supported by the POA and its Australian affiliates.

As part of our ongoing support for the Indonesian Australian Ombudsman Linkages and Strengthening Program, our Deputy Ombudsman (Police) travelled to Jakarta in late 2009 for a series of meetings and workshops with staff from the newly established Office of the Ombudsman of the Republic of Indonesia.

Following the success of earlier training with the Forum of Canadian Ombudsman and the Canadian Defence Force Ombudsman, our Deputy Ombudsman was again asked to return to Canada to facilitate four more managing unreasonable complainant conduct workshops across Canada.

Throughout the year we provided training and other advice and support to visitors from other international oversight bodies. This included briefings on the role of our office and information exchanges with representatives from the National Police Commission and National Police Force Indonesia, the National Population and Family Planning Commission China, the High Commissioner of the Kingdom of Swaziland, the Compliance Review Panel of the Asian Development Bank and the Office of the Samoan Ombudsman.

The Ombudsman and Deputy Ombudsman also had meetings with senior representatives from the Public Sector Integrity Commission, Ottawa, the Consul General of Canada, the Consul General of Taiwan and the Independent Complaints Reviewer from the United Kingdom.

These visits provided valuable opportunities for our staff to learn about the work of our colleagues overseas. The Chief Ombudsman of Papua New Guinea (PNG), Mr Chronox Manek, who survived an apparent attempt on his life in late 2009, spoke with staff when he visited in early 2010 about the challenges facing his organisation and about strategies for reforming the public sector in PNG.

In 2009–2010 we also entered into an agreement with the Anti-corruption and Civil Rights Commission of Korea (ACRC) to facilitate closer contact between our two agencies and explore other approaches to complaint-handling and investigation. As part of this agreement, we hosted a four-month professional training placement for an officer from the ACRC to work with our investigators. Also in 2010, an officer from the Independent Police Complaints Commission in London spent three months working with our police division investigators and researchers as part of a sabbatical program.

Our publications – such as our *Effective Complaint Handling Guidelines* – are also regularly sought by other international Ombudsman offices to help them develop similar guidelines for their staff.

When the Government of Canada developed its Guide to Effective Complaint Management, it drew heavily on the New South Wales Ombudsman's Guide, which was considered by Canada to be public sector best practice. – [Senior Advisor Treasury Board of Canada]

Working with Aboriginal communities

Our Aboriginal Unit was established in 1996 to try to bring police and Aboriginal communities together to address entrenched problems, help break down distrust, and implement key reforms. The success of the unit's work in this area prompted us to look for ways to extend this approach to helping Aboriginal communities engage and build bridges with other government agencies and services.

The Aboriginal Unit is now part of our strategic projects division, a multidisciplinary team responsible for reviewing whole-of-government service delivery. This includes focusing on examining interagency programs and other measures aimed at improving service delivery for Aboriginal people across NSW.

Protecting children in Aboriginal communities

Much of our current work with Aboriginal communities focuses on the availability and effectiveness of child protection services and programs. This year we began a major three-year review of government programs and initiatives to implement the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

We are also monitoring the implementation of *Keep Them Safe*, a five-year action plan detailing the NSW Government's broader response to the Wood Inquiry. Although *Keep Them Safe* is intended to strengthen programs for children and young people generally, not just those in Aboriginal communities, the over-representation of Aboriginal children in NSW's child protection system means that our Aboriginal communities have a keen interest in this work.

A related initiative is our ongoing efforts to bring agencies, community groups and Aboriginal people together to address long-standing family violence and child protection issues, notably the need for better coordinated and more responsive services for vulnerable children and their families. Despite marked improvements in recent years, our ongoing work with Aboriginal communities and community-based services shows the need to give continued priority to these issues.

Strategies to prevent child sexual assault

The strategic projects division, which includes our Aboriginal Unit, is leading our three-year audit of the implementation of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*, arguably the broadest and most challenging audit role the Ombudsman has ever undertaken.

The decision for us to audit the interagency plan followed the NSW Government's March 2009 release of *Keep Them Safe*, a five-year action plan detailing the government's response to the recommendations of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Inquiry). When Justice James Wood assessed what the interagency plan had achieved in its early years, he found that it had generated significant levels of activity – but it was 'difficult to assess' the actual impact on Aboriginal people or communities, or on those children and young people who are experiencing or are at risk of sexual assault. Last year, *Keep Them Safe* then endorsed the Wood Inquiry's recommendation that we audit the implementation of the interagency plan.

It is a detailed plan with 88 actions in three broad categories. These categories are:

- › items for immediate statewide implementation
- › measures to be tailored to key locations where communities require intensive assistance
- › proposals for further consideration and possible implementation in the longer term.

The 'partners' responsible for implementing these actions include eleven NSW Government agencies, a diverse range of organisations such as the Aboriginal Housing Office, the NSW Aboriginal Land Council, Police and Community Youth Clubs and the Office of the Director of Public Prosecutions, and non-government peak bodies and organisations with educational responsibilities such as the Education Centre Against Violence and the Commission for Children and Young People. We will regularly report back to these partners to enable them to progressively make changes and improvements to the work they are doing.

One challenge is to take account of major initiatives introduced since the plan started in January 2007, particularly significant and ongoing reforms of the child protection system in NSW – such as child wellbeing units, family referral services, and changes to the mandatory reporting system and exchange of information. A range of key programs and initiatives such as Safe Families, Aboriginal Intensive Family Based Service and Brighter Futures – as well as the Federal Government's Remote Service Delivery Strategy and Indigenous Child and Family Centres have also been, or are being, implemented since the plan's release in January 2007.

Our audit framework will take account of these recent changes, particularly those designed to improve service delivery to Aboriginal communities. We have grouped the various directions and outcomes under three broad areas:

- › law enforcement and justice
- › early intervention and prevention
- › strengthening Aboriginal communities.

By mid-2011 we plan to publish an interim report detailing agency progress in implementing initiatives linked to these three broad areas and significant themes to emerge from our consultations so far. A related challenge will be to develop meaningful measures that can show which programs and initiatives are achieving real progress.

Our consultations with communities across NSW will be crucial to assessing agency efforts to improve service availability and service delivery. Most of our consultations so far have focused on communities that have been earmarked for priority assistance under the Safe Families program. This is an early intervention and community engagement program which will operate in far west NSW. To-date we have conducted detailed consultations in Broken Hill, Menindee, Lightning Ridge, Walgett, Wilcannia, Brewarrina, Bourke, Narooma and Wallaga Lake.

The consultations also provide us with valuable information about how agencies are working with communities to make decisions about child protection, the potential for child protection groups in communities, establishing safe places for children and families, and the take-up and success of key programs such as Brighter Futures and the Intensive Family Based Services. We are also closely examining the gradual implementation of Safe Families and how the program can be integrated into the existing service system.

We will also continue consultations in Mt Druitt, Taree/Purfleet, Toomelah/Boggabilla and Shoalhaven – the four locations where Aboriginal Affairs NSW is implementing a combination of location-specific actions and statewide plans and initiatives.

Our examination of agency responses to child sexual assault is also being informed by our statutory function to monitor the delivery of community services as well as our general complaint oversight role of government agencies within our jurisdiction. This includes a major inquiry into how well Community Services and other agencies provide services to rural and remote communities with a focus on Brewarrina and Bourke. We have also started an interagency review of the array of procedures used by non-government service providers when checking the probity of prospective employees, management committee members or other volunteers involved in planning or delivering services.

Our initial consultations have sought to get a 'snapshot' of critical information about individual communities that are being targeted for priority attention through various government initiatives. Our follow-up visits and consultations will look for progress in key areas. This is a crucial step in examining progress against meaningful, measurable outcomes.

We are also considering the impact of relevant Commonwealth initiatives in these areas. We recently met with the Commonwealth Coordinator General for Remote Indigenous Services and the NSW Coordinator General – who is also the CEO of Aboriginal Affairs NSW. We have agreed that, where appropriate, we will continue to raise significant issues as they unfold during the course of our review with both coordinators general, particularly in relation to state and federal funding and coordination of programs, aspects of service design and delivery, and appropriate governance structures.

Lessons learnt from WA prosecutions

As part of our review of the NSW *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*, we wanted to learn more about some promising work by police in five remote towns in the West Kimberley region of Western Australia – a series of operations in 2007 had culminated in a number of arrests and prosecutions for child sexual assault offences.

The operations followed years of reform brought about by the 2002 Gordon Report, a major review of WA government agencies' handling of complaints of family violence and child abuse in Aboriginal communities. That report and its 197 findings and recommendations led to significant changes – including marked increases in the number of health workers, the establishment of multifunctional police centres in remote areas that provided a permanent police presence in many communities, and easier access to other essential services. In the Kimberley region we were told these reforms were a critical factor in the increased confidence in reporting sexual offences to police.

As the number of disclosures rose, there were concerns that the subsequent arrests and charges of alleged offenders would over-load the courts – creating considerable delays, impacting on victims and compromising prosecutions. For this reason the Chief Justice of the Children's Court formed an Indigenous Justice Taskforce in July 2007, bringing together the judiciary, criminal justice agencies and other services. The aim was to provide sufficient court, legal and support services to reduce the likely delays, ensure that those who were accused of adult and juvenile sex offences received a fair trial, and minimise the impact and disruption on alleged victims and witnesses travelling from remote communities.

In January 2010, we contacted a number of service providers in Western Australia asking for information about their experiences and what advice they might have for justice agencies, child protection services and Aboriginal communities confronting similar issues in NSW.

Although many were keen to share information, it soon became clear that we would need to meet with key stakeholders personally to get a clear understanding of the complex array of difficult and sensitive issues involved and whether there were mistakes that could be avoided in future operations. The director of our strategic projects division and our Aboriginal Unit manager therefore visited Western Australia in May to meet with a range of agency representatives involved in child protection.

Over a period of 14 days we had 20 separate meetings involving 63 participants at Perth, Kununurra, Halls Creek, Fitzroy Crossing, Broome and Kalumburu. We interviewed senior members from the 2007 *Indigenous Justice Taskforce* including the President of the Children's Court in Perth, the Director of Legal Services and Aboriginal Legal Services, senior police from the Child Sexual Assault Squad in Perth, the Registrar, victim support groups, and other staff involved in the protection of children – including the WA Minister for Child Protection, the Director General, women's groups, the Department of Child Protection and Aboriginal community members.

We were touched by the generosity of the many people who were so willing to meet with us to share their insights and experience, and appreciated their candour in explaining some difficult and sensitive issues. We came away with a clear understanding of the many difficulties faced by service providers and remote communities in these situations. In this regard, the most significant concern expressed related to the lack of support services for victims and their families, not only during the court process, but when offenders return to communities. There was also a strong call for support services, including culturally appropriate healing programs for men, to be made available in remote communities.

Despite the mistakes made – including issues that led to failed prosecutions and created divisions and community dissent – many of those affected said they believed that authorities had learned from these mistakes and that, on balance, they would have the confidence to bring issues forward again in the future.

We plan to include our analysis of these issues in our interim report on the efforts of agencies in NSW to implement the interagency plan.

Improving service delivery in Western NSW

Since receiving a complaint from the Brewarrina Aboriginal Community Working Party (ACWP) in August 2007 that alerted us to concerns about the adequacy of the response of Community Services to vulnerable children and their families in this community, we have worked closely with the Brewarrina ACWP, representatives of local service providers and Community Services staff from the Western region to explore how Community Services might improve their caseworker presence and service delivery in this region.

Despite attempts to increase caseworker numbers in high-need areas and provide staff in these locations with better infrastructure and support, these initiatives appear to have had little impact in towns such as Brewarrina or Bourke. Community leaders regularly talk to us about the need to improve the circumstances of vulnerable Aboriginal children and their families and their concerns about the unacceptable over-representation of Aboriginal children in the child protection system.

The current chair of the Murdi Paaki Regional Assembly (MPRA) and former Chair of the Bourke ACWP, Mr Alistair Ferguson, has frequently raised the need for government agencies to address the Bourke ACWP's long-standing concerns about inefficiencies in the Bourke area – including the urgent need to slash the number of reference groups and management committees for individual programs and services. He has called on agencies to help create a truly representative local governance structure to ensure that services are delivered in a more coordinated, flexible and effective way and service providers can be held to account by the communities they are funded to serve.

Community leaders in both Bourke and Brewarrina have repeatedly raised concerns with us and Community Services about the limited reach of the Intensive Family Based Service (IFBS) and Brighter Futures Program. They question the sustainability of these programs in their current form when they appear not to be providing 'good value for money'. This is against a background where the community was informed that the IFBS in Bourke was supporting just two families – despite the program's funding base of approximately \$800,000.

In light of these and a number of related concerns, we decided to formally inquire into and review the delivery of community services to the Bourke and Brewarrina communities.

Our inquiry also considers the circumstances of three 'at-risk' families who were brought to our attention by the Brewarrina ACWP to illustrate the 'systemic impact' of Community Service's diminished service capacity in the Western region. While we have not made Community Service's response to these families the subject of our inquiry, due to the serious and potentially ongoing nature of the risks involved for these children, we have sought specific advice from Community Services about their current circumstances.

Decisions involving the placement of Aboriginal children in out-of-home care

Our 2008 report, *Supporting the carers of Aboriginal children*, highlighted issues affecting Aboriginal children in out-of-home-care, the urgent need to improve the services and supports that enable their carers to provide quality care and the critical importance of Community Services applying the Aboriginal Child Placement Principle, a decision framework aimed at – where appropriate – keeping Aboriginal children close to their family and kin if circumstances require them to be removed from their parents' care. At the heart of the principle is a legislative requirement that Community Services involve Aboriginal communities in decisions about the care of their children.

At the request of the Wirringah Women's group in Lightning Ridge, we facilitated a community meeting with over 80 community members attending. As a result, we initiated an urgent review of a Community Services decision to place a family of six children, aged from 14 days to 14 years, with four separate carers at Walgett, Bourke, Cobar and Mudgee. The concerns around the decision to remove the children from their parents' care, was being dealt with by the Court. We pursued the complainant's concerns about the impact of placing the children so far apart and delays in allowing the courts to review the management of their cases.

We have finalised a provisional report and plan to publish details of this inquiry after receiving a response from Community Services. Although the report focuses on Community Services' response to concerns raised by the Brewarrina and Bourke ACWPs, we recognise that the NSW Government's commitment to providing better protection to Aboriginal children and support for their families through *Keep Them Safe* is not the responsibility of Community Services alone. For this reason, we have recommended that in preparing its response to our report, Community Services should consult the chief executives of each of the agencies within the Department of Human Services, as well as other agencies including the NSWPF, Department of Education and Training, NSW Health, the Aboriginal Child Family & Community Care State Secretariat (AbSec) and the Chairpersons of the MPRA and Brewarrina and Bourke ACWPs.

Our final report is likely to include recommendations aimed at giving effect to those immediate and longer-term goals outlined in *Keep Them Safe* that are designed to improve service delivery to Aboriginal communities, in particular, those that relate specifically to the current service delivery challenges being faced by the Brewarrina and Bourke communities. Our report also includes significant commentary about issues which have relevance for the broader human services and justice sector in terms of improving service delivery to rural and remote communities.

The parents were granted twice weekly access to their children. However, as a round-trip from Lightning Ridge to Walgett, Bourke, Cobar, Mudgee and then back to Lightning Ridge is about 1400km, the parents needed to drive many hours to visit their children. Community Services correctly identified that it would be too difficult for the children to visit their parents because of the distances involved. And as the 14-day-old baby was being breastfed at the time of her removal, the logistics of providing breast milk to the baby restricted the mother's availability to travel.

The Deputy Ombudsman and other senior staff commenced urgent inquiries. Community Services initially advised that they had tried to place the children with a single set of foster carers closer to the parents in Walgett but could not find a suitable placement. However, an aunt from Moree had requested to take the children and seemed capable of doing so, but was waiting for Community Services to undertake an appropriate foster care assessment in order to confirm the suitability of this option.

The complaint to us concerned Community Services' apparent lack of urgency in assessing the aunt's suitability to care for the children, and delays in bringing the matter back to court so the care orders could be reviewed.

Community Services responded quickly. It began by co-locating some of the children and expedited its assessment of the aunt as a prospective relative carer. A short time later, the four youngest children were placed with the aunt in Moree and the older two were placed with a carer in Walgett, about 200km away. The parents moved to Walgett to further reduce the travel time.

We facilitated a follow-up meeting with community members and Community Services in November. As a result of our intervention, Community Services also began working with Wirringah and other groups to increase the availability of out-of-home-care care placements in Lightning Ridge. Together they did some excellent work, significantly increasing the number of carers in that area. Planning discussions also commenced with the community which led to the signing of a service level agreement between Community Services and the Lightning Ridge Aboriginal Community Working Party in May this year.

I feel now, since we've spoken to the Ombudsman and got him involved ... I wasn't in the first meeting but everyone else was. I've seen him a couple of weeks ago. Since then we've come forward with a new worker and they've done a lot for us. They've changed our perception of how we see the [Community Services] department. Before we didn't want nothing to do with them but now we're working with them because they're working with us. A local mother whose children were removed from her care

Strengthening Aboriginal out-of-home care services

For a number of years, we have worked closely with the Aboriginal community to improve service delivery to vulnerable children and young people. This year we started a comprehensive review of Aboriginal out-of-home care services, including foster care.

As at May 2009, there were approximately 4,500 Aboriginal children in foster care in NSW. These are some of the state's most vulnerable children, representing 31% of all children in substitute residential care in NSW.

The purpose of our review is to examine the systems Aboriginal out-of-home care agencies have for handling complaints and how well they are fulfilling their child protection responsibilities under Part 3A of the *Ombudsman Act 1974*. Our goal is to strengthen these agencies, by helping them to improve their systems and practices.

There are eight Aboriginal out-of-home care services located throughout the state. After consulting with AbSec, we have conducted comprehensive reviews of three of these services and will review the rest in the coming year.

Our initial reviews identified some excellent practice, but also identified the need for agencies to improve their understanding of their legislative child protection responsibilities under Part 3A of the Act and their complaint-handling systems. As a result we have developed a comprehensive and tailored program of training that we will provide in October 2010, together with AbSec, to each of the Aboriginal out-of-home care services.

Supporting Aboriginal people with disabilities

Last year we reported on our review of the implementation of Ageing, Disability and Home Care's (ADHC's) *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy*. At both a corporate and regional level, ADHC has responded very positively to the review and implemented a number of significant changes to improve service delivery to Aboriginal people. During the review, an Aboriginal Service Development and Delivery Directorate was established, plus ADHC recently created an Aboriginal Strategy, Development and Evaluation Unit within the directorate. This unit will be responsible for supporting the delivery of responsive services to Aboriginal people through building capacity and monitoring, evaluating and reporting ADHC's efforts in this area.

ADHC has also made a commitment to revise their *Aboriginal Policy Framework*. The new framework will identify a range of key result areas and outline performance indicators, strategies and implementation tools. Each region will be required to have their own Aboriginal strategic plan consistent with the key result areas. ADHC is also going to establish a strategic advisory committee to which regions will be held accountable for implementing their Aboriginal strategic plans.

Our review has also informed ADHC's development of a new 'Aboriginal service model' to be trialled in the Southern region, followed by the Northern and Metro North regions. It will focus on better coordination of service delivery and will involve Aboriginal people having a greater say in how and from whom the services they need are sourced and delivered. This is an important development and one that has the potential to significantly enhance outcomes for Aboriginal people with disabilities and their families.

Individual regions have also taken steps to improve service delivery to Aboriginal people. During our review all regions established Aboriginal employee networks, some set up internal working groups, and several reviewed their approach to consulting with Aboriginal communities by forming advisory committees or tapping into existing mechanisms, and establishing or renewing links with key Aboriginal organisations. Regions also welcomed the opportunity to respond to the concerns of individual Aboriginal people that we identified during our review.

The findings and recommendations of our review were the subject of a special report to Parliament tabled in September this year.

Complaints and investigations

Land councils and housing

With the support of the Registrar of the Aboriginal Land Rights Act (ALRA), we have begun to review the systems for handling complaints about Local Aboriginal Land Councils in NSW.

Although we received just eight complaints about land councils in 2009–2010, ours is one of a number of agencies with responsibilities in this area. Depending on the issue, these complaints may be dealt with by us, the Registrar, the Independent Commission Against Corruption, the NSW Aboriginal Land Council (NSWALC), the Administrative Decisions Tribunal, Aboriginal Affairs NSW or the Aboriginal Housing Office.

With recent increases in federal funding assistance to land councils and Aboriginal housing organisations, there is also scope for an increase in grievances and disputes involving Commonwealth Government agencies.

To reduce duplication, we have agreed that our assessment of any complaints we receive about land councils will include checking with the Registrar and the NSWALC to see if they have also been advised of the matter. However much more needs to be done to streamline complaint-handling and improve outcomes, so we have agreed with a request by the Registrar to convene a meeting of all agencies with complaint-handling responsibilities in this area to develop a complaint-handling framework.

The review will also consider the procedures for handling complaints about the Aboriginal Housing Office, housing providers funded through the AHO and the Housing Aboriginal Communities Program. We understand the agencies responsible for monitoring these issues, including the NSWALC, have made some policy and procedural changes aimed at improving practices in this area. Bringing all parties together to discuss complaint-handling practices should provide an opportunity to assess whether any further changes are needed.

Although we had hoped to begin this process in early 2010, this project had to be deferred until early 2011 because of other commitments – including our review of child protection initiatives and an interagency review of the procedures used by non-government services when checking the probity of prospective employees and others with key responsibilities.

Probity concerns not addressed

A case study in last year's annual report highlighted concerns about a recently convicted serious drug offender being involved in managing an organisation funded by Community Services to assist vulnerable people, including people presenting with substance abuse problems. When Community Services referred our concerns to the chairperson of the organisation (who happened to be the man's brother), the chairperson made it clear that the board valued the man's experience, that he had been asked to temporarily stand down 'until this has been sorted out', and that the organisation required guidance on the standards expected by Community Services when managing these kinds of issues. In response, Community Services indicated that they were satisfied with the action taken and 'concluded' their involvement in the matter.

Our review found that many critical issues were yet to be addressed. In particular, it was unclear whether the organisation recognised any need to address the risks likely to be associated with the man's ongoing involvement in the operations of the service or had taken steps to mitigate those risks. Then, when they sought specific guidance on these issues, it was unclear what (if any) practical information and assistance Community Services provided. It was also unclear whether Community Services had any concerns about the organisation's actions or if steps had been taken to ensure that appropriate procedures and/or governance arrangements were in place to manage ongoing or future probity risks involving employees, board members or volunteers at this and other services.

As part of a further investigation, we asked Community Services to:

- › review their handling of this matter
- › have discussions with the organisation about assessing the risks posed by any ongoing involvement of this individual in the operation of the service
- › examine the adequacy of procedures for assessing and managing future risks relating to him and any existing or prospective employees, volunteers and elected members of the board of management.

In response, Community Services acknowledged our concerns and indicated that it had gone to some effort to convey these to the organisation's board, particularly in relation to the need to manage community perceptions about the probity of individuals involved in the planning and delivery of client services. However, it also noted that the board valued the man's skills and there was nothing in the current guidelines to stop him from volunteering for a board position in the future.

As to the adequacy of current procedures, Community Services acknowledged the lack of guidance on probity issues in key policy documents, including its *Good Practice Guidelines for Funded Services Manual* and its *Fraud Risk Assessment for Service Providers*. On the other hand, we were told that 'Community Services emphasises in its discussions with funded agencies that one benchmark of a well managed organisation would be that members of the board and the executive have undergone probity assessments'. Community Services said it had some concerns and will continue to monitor the agency. If requested, it will provide advice to assist it to manage probity risks.

As this case, and a number of others we have reviewed, raised broader questions about how best to strengthen and support appropriate probity standards in funded services generally, not just those funded by Community Services, we convened a probity forum with stakeholders from across the human services and health sectors. For information about the forum and about a discussion paper we issued following the forum, see page 29 in Stakeholder engagement.

Policing issues in Aboriginal communities

The principal forum for raising and addressing key policing policy issues in Aboriginal communities is the Police Aboriginal Strategic Advisory Committee (PASAC). This is a high level meeting convened by the Commissioner three times a year to address priority issues and oversee the implementation of the NSW Police Force's programs, especially those listed in their *Aboriginal Strategic Direction* policy.

PASAC enables the Commissioner to bring together, and seek advice from, Aboriginal leaders from peak representative groups and government bodies such as Aboriginal Affairs NSW and the Attorney-General's Aboriginal Justice Advisory Committee. We have been an active member of PASAC since the former Commissioner revitalised the group and made it central to the NSWPF's strategies for inviting input from other government agencies and Aboriginal leaders on issues and problems of mutual concern.

Through PASAC we have been able to monitor and observe some impressive changes in the NSWPF's work with Aboriginal people. Some current initiatives include:

- › strong progress in implementing Aboriginal recruitment, training and employment programs
- › police-led initiatives to work with communities to tackle entrenched substance abuse problems
- › impressive changes to the NSWPF's approach to Aboriginal cultural appreciation training – including joint training with other agencies.

Our involvement in PASAC has also enabled us to raise issues that require a policing response, but which also rely on input from other agencies. This includes at least two important initiatives in relation to our three-year review of the *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities*.

The first relates to the limited availability of suitably qualified medical practitioners to undertake forensic examinations of sexual assault victims, especially in outlying regions and remote towns. This issue has long been recognised as a significant impediment to victims coming forward to report sexual assaults, and to the success of prosecutions when they do come forward. With the support of PASAC, we were able to bring together the heads of NSW Health, the NSW Police Force, Community Services and Aboriginal Affairs NSW to begin planning changes that should have a real impact.

The second relates to difficulties that police, other agencies and communities experience in dealing with young people who engage in high levels of risk-taking behaviour, and who also put themselves at considerable risk of harm. Through PASAC, we sought the support of police and other agencies for an intensive, interagency review of the availability and effectiveness of current interventions, starting with two towns in Western NSW. The aim is to assess and look for ways to improve early intervention and prevention work.

Our review of a cohort of children and young people at risk

Our review will consider, but not be limited to, examining information holdings relating to all children aged from 8 to 11 years from the two nominated locations in Western NSW who present with the following risk indicators:

- › repeated contact with police (including diversionary options under the Young Offenders Act)
- › habitual non-attendance at school, repeated or long suspension and expulsions
- › risk of harm reports to Community Services, and
- › any contact with Juvenile Justice, including a period of detention in a juvenile justice facility.

Our review will focus on all children in these locations who meet the criteria, not just Aboriginal children. It will also consider comparative data about an earlier cohort of young people from these locations.

The NSW Police Force agreed to provide the initial data sample for cross-matching purposes. This data will be analysed and compared with relevant records held by Community Services, Juvenile Justice and the Department of Education and Training, including education data on suspensions, expulsions and school attendance.

Any individual or family 'profiles' will be developed in conjunction with agencies. The agencies agreed to examine what work can realistically be done to assist these young people and their families. Our aim is to assist agencies to develop a clear picture of information holdings and the number of families and children involved – to determine the extent, and nature of, the existing need in these locations – but also to allow agencies to identify what can and cannot realistically be done to assist the children and families identified through our review.

Western region human services and justice agency managers undertook to take responsibility for case-managing the children and families identified as needing assistance.

Handling complaints

Handling complaints about policing remains an important part of our work with Aboriginal people, and enables Aboriginal communities and services to raise important local level concerns.

CS 4: Three arrests that shouldn't have happened

In March 2010 we received a complaint from the Aboriginal Legal Service in Kempsey about an Aboriginal young person who was arrested for breach of bail. Although the young person's mother informed police that her son was no longer subject to bail conditions that imposed a curfew, police records showed he was. He was eventually released from police custody after inquiries confirmed that the bail conditions had been removed by the court two weeks earlier.

Police investigated the matter and found that there was a delay in the local court in amending the bail details on the JusticeLink computer system and that police had acted in 'good faith'. A meeting was proposed between police and the Local Court Registrar to discuss changes needed to avoid similar problems from recurring.

A week later we received another complaint from the same legal service about another Aboriginal young person who had been arrested for breach of bail. Like the previous complaint, he was arrested despite his mother informing police that the bail conditions had changed. The young person was released from police custody after further inquiries confirmed that he was not in breach.

The officer investigating this complaint found that the young person's arrest was improper as the arresting officer made no attempt to verify the mother's advice about the change in bail conditions. The arresting officer was counselled and the investigating officer emailed all officers in the command reminding them about the need to check all relevant records or systems before arresting anyone for breach of bail. He also recommended that:

- › all supervisors and officers acting as supervisors be given access to 'Court Process' records on the police COPS computer system
- › all supervisors and acting supervisors be trained to update bail conditions on COPS immediately after bail hearings if the court processing officer is not working
- › the procedures for bail compliance checks and arrests be amended.

A few days later, we received a third complaint from the same legal service raising similar issues. In this case police went to the home of an Aboriginal man and arrested him for an alleged breach of bail, despite him advising them of changes to his bail conditions. As he was unable to locate the associated paperwork, he was arrested and taken to the police station and detained until police confirmed that his bail conditions had in fact been removed. The investigation of this complaint concluded that police acted in 'good faith' as court staff had apparently failed to delete his previous reporting arrangements.

We asked the Local Area Command to review their handling of all three matters. Despite the complaints raising similar issues, only one of the investigations recommended action that was likely to address the cause of the problem and prevent it from recurring. Also, in all three cases, there were questions about the reasonableness of the arrests – but only one investigation appeared to concede that police perhaps could have acted differently.

We also asked the commander to consider apologising for the actions of police, and to provide us with feedback about the proposed meeting with the Local Court Registrar and other actions to remedy the problem. We will continue to monitor this issue closely.

Our work in relation to Aboriginal people in detention

Staff from our Aboriginal Unit accompanied staff from our corrections unit on 18 visits to juvenile justice and correctional centres this year. This helps to ensure that Aboriginal detainees have the opportunity to speak with another Aboriginal person about any concerns they may have.

This is particularly important in juvenile justice centres, where 53% of detainees are Aboriginal. According to some estimates, 86% of juvenile justice detainees in Western NSW are Aboriginal.

During our visits we also see if centres are making adequate efforts to meet the cultural needs of Aboriginal detainees and inmates.

CS 5: A good compromise

An Aboriginal inmate at Broken Hill Correctional Centre asked to attend his father's funeral in Wilcannia, 190km away. His application was supported conditionally by the centre, but later declined after head office determined that the travelling distance and other factors meant the centre could not accommodate the request.

As a result of our inquiries, the centre agreed to make the following arrangements. The Aboriginal priest who conducted the funeral service later attended the centre for a memorial service that included a DVD recording of the funeral. All inmates related to the deceased were invited to attend, given an extra 'friends and family' visit on the day of the funeral as well as additional phone access.

The centre also arranged for a wreath to be sent to Wilcannia for the funeral service on behalf of the son. Although disappointed that the son could not attend the funeral, the family understood the reasons and were very happy with the compromise arranged by the centre.

Reducing the number of Aboriginal people in detention

Our work on Aboriginal detention issues this year included preparing a detailed submission to a federal parliamentary inquiry into the high numbers of Aboriginal and Torres Strait Islander juveniles and young adults involved in the criminal justice system. This submission outlined some of the key issues and initiatives we have identified through our work with Aboriginal people, including:

- › *Early identification of risk.* We highlighted the risks associated with chronic non-attendance at school, issues associated with risk of harm reports to Community Services, and problems linked with family violence, homelessness and offending behaviour. Early intervention is critical to reduce the likelihood of a young person being in contact with the criminal justice system.
- › *Police strategies to divert young offenders from the criminal justice system.* Much of our past work in auditing the implementation of the NSW Police Force's *Aboriginal Strategic Direction* focused on local strategies to divert Aboriginal young people from crime and anti-social behaviour. We outlined some of the key issues that police need to address to improve outcomes through these schemes.
- › *Alternative pathways.* Our consultations with Aboriginal communities have indicated that for some young people there can be significant benefits in taking them out of environments that contribute to and reinforce their risk-taking behaviours. Providing alternatives designed to strengthen their pride in their culture and bring them together with Aboriginal role models can help them to make more positive choices.

We also argued that addressing the high level of Aboriginal young people's involvement with the criminal justice system ultimately depends on improving agency strategies to identify and manage those young people and their families at greatest risk, and providing well-integrated services to them.

Engaging with other agencies, organisations and community groups

State and federal agencies

Our partnerships with other agencies and organisations are critically important. For example in November 2009, the Ombudsman and the Community and Disability Services Commissioner gave keynote addresses on the lessons learnt from our years of working with Aboriginal communities, and an overview of the Ombudsman's work in relation to child protection to 200 delegates at AbSec's Annual Conference. AbSec is the peak NSW Aboriginal body providing advice on child protection and out-of-home care policies to government and non-government sectors.

During 2009–2010, we also:

- › Met regularly with Aboriginal representative organisations, Aboriginal service providers and Aboriginal staff in key agency roles to discuss service delivery issues and gather information to inform our audit work.
- › Liaised with Aboriginal Affairs NSW, at both a corporate and local level, to discuss our audit programs, provide feedback and exchange information about service delivery in the regions we visit.
- › Provided briefings to the Ministerial Advisory Panel (MAP), an expert advisory panel set up to advise the Minister for Aboriginal Affairs on implementing the interagency plan.
- › Met with the Children's Guardian about our review of Aboriginal out-of-home care agencies, and the Department of Transport and Infrastructure about our review of the implementation of ADHC's Aboriginal Policy Framework and Aboriginal Consultation Strategy.

We share our knowledge about our work with Aboriginal communities with other Ombudsman offices and oversight bodies. This year we met with Police Indigenous Relations staff from the Victorian Office of Police Integrity to explain our audits of the NSW Police Force's Aboriginal Strategic Direction policy. We also met with the Crime and Misconduct Commission, Queensland to discuss projects relating to past and current audits.

Federal government agencies are increasingly taking an interest in our work with Aboriginal communities. For example, we have had discussions with the Commonwealth Ombudsman on the scope for collaborative work between our offices, and met with the Department of Families, Housing, Community Services and Indigenous Affairs and the Coordinator General for Remote Indigenous Services – who oversees the performance of Australian government agencies in meeting their commitments to implement the National Partnership Agreement on Remote Service Delivery (RSD).

In light of the highly sensitive information sometimes gathered through our audits and consultations, we have consulted the Australian Crime Commission (ACC) to discuss our role, the approach that we have adopted, and where our work might intersect ACC investigations into abuse and corruption.

Community groups

Much of our current work in Aboriginal communities is focused on practical ways to improve child protection and wellbeing. We also reach out to communities through a number of established programs, such as the Good Service forums. We run these forums – together with the Commonwealth Ombudsman, Energy & Water Ombudsman, Banking Ombudsman, Legal Aid NSW, the NSW Anti-Discrimination Board, the NSW Office of Fair Trading, the Health Care Complaints Commission and Law Access – in various parts of NSW. They provide an opportunity to inform Aboriginal communities about our role and their right to complain about difficulties with government or non-government agencies. This year, staff from our Aboriginal Unit attended Good Service forums in Nowra, Peak Hill, Penrith and Wellington.

During 2009–2010, we also:

- › Participated in four NAIDOC week events across Sydney, enabling us to meet with and discuss the concerns of hundreds of Aboriginal community members at each event.
- › Gave a presentation on Aboriginal issues, policing and the role of the Ombudsman to 64 criminology students from the University of NSW.
- › Participated in the Ideas Expo in Merimbula, presenting to 30 people including people with disabilities and their families, carers and supporters as well as health professionals, disability and aged care mainstream service providers, university students, schools and government agency staff.
- › Supported the Aboriginal Affairs NSW 'Everybody's Business' Aboriginal Child Sexual Assault Prevention Information Day in Nowra, enabling us to meet with a number of Aboriginal service providers including members of the Shoalhaven Safe Community Aboriginal Partnership and Shoalhaven Aboriginal Child Sexual Assault Steering Committee.
- › Attended the National Conference on Indigenous young people, crime and justice which aimed to identify and share research and practice on the over-representation of Indigenous young people in the criminal justice system. The conference had a major focus on Indigenous children and young people who interact with the criminal justice system early or repeatedly, have complex needs, and require targeted responses from the justice, education, child protection, family support and cultural services systems.
- › Attended the National Indigenous Service Delivery Conference in the Northern Territory.
- › Addressed delegates at the Aboriginal Education Consultative Group (AECG) State Conference, which was well received – the AECG President has since endorsed regular meetings between our office and the AECG in relation to our projects.
- › Gave a presentation to 150 people about our review of ADHC's implementation of their *Aboriginal Policy Framework* and *Aboriginal Consultation Strategy* for Aboriginal people with disabilities at ADHC's Northern Region Conference. We also presented on our work in this area at ADHC's Aboriginal Service Development and Delivery Directorate Planning Day and to attendees of the Ministry of Transport Forum.
- › Gave a presentation to 70 community members at the Aboriginal Elder's Forum in Moree – the forum was a joint venture between NSW Aboriginal Affairs, Tamworth Indigenous Coordination Centre, Moree Plains Shire Council and our office. It gave community Elders the opportunity to have their say about important issues in their community.
- › Attended the official signing ceremony of the first formal Memorandum of Understanding (MOU) between Community Services and AbSec to help improve safety for Aboriginal children. The event underpinned two new projects as part of the government's *Keep Them Safe* plan – the Aboriginal consultation model and the establishment of four new Intensive Family Based Services.
- › Attended a barbecue lunch and met with 35 community members and service providers, including 26 Aboriginal Elders from the Bega, Eden and Wallaga Lakes area. Our presence allowed Aboriginal community members to discuss a number of issues that they wanted relevant service providers to consider and address. For example, residents at Wallaga Lakes raised their concerns about housing issues – including issues relevant to our inquiry into various agencies' responses to the problems associated with friable and bonded asbestos in the community. See page 92 in Departments and authorities for more information about this investigation.

Providing Aboriginal cultural appreciation training

Following the success of our internal Aboriginal cultural appreciation training for our staff, this year we were engaged by the Energy & Water Ombudsman to deliver a joint training package for their staff.

The training program is presented by staff from our Aboriginal Unit and is designed to help improve understanding of issues affecting Aboriginal people and their needs.

The training has been well received by participants, particularly the sharing of personal stories from our Aboriginal Unit staff members. We have delivered three sessions so far to EWON staff, with planned training to be delivered to new staff in the near future.

Thank you for organising the recent Aboriginal cultural appreciation training for EWON staff ... It is always difficult to pitch training to meet the needs of staff across different functional areas and with varying levels of knowledge and experience, but the feedback from participants was overwhelmingly positive. Staff were particularly appreciative to Laurel, Carla, Kylie [NSW Ombudsman staff] and Rose [Indigenous Project Officer, EWON] for sharing their personal stories and I think this session really contributed to its success.

[Manager Service Development, EWON]
Community education and training

Community education and training

Providing education and training to public sector agencies, non-government organisations and other bodies is an important part of our work.

Our training focuses on promoting good administrative conduct, fair decision-making and high standards of service delivery. Delivering training – about complaint-handling, responding to unreasonable complainant conduct and negotiation skills – is also a way for us to help the agencies we oversee maximise the efficient use of their resources. Our work in this area also provides us with a valuable opportunity to receive feedback from practitioners.

Overview

Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* we have a specific function to educate service providers, clients, carers and the community about standards for the delivery of community services in NSW.

We also provide training and support to other Ombudsman offices in Australia and overseas. Our training is offered on an 'open' basis via our public training calendar, and on an 'in-house' basis tailored to suit the needs of a variety of organisations.

In addition to training, we provide briefings and information sessions, give presentations, and develop resources and publications. The audits and reviews we conduct with agencies and services, such as our complaint-handling reviews, are also an important part of our ongoing responsibility to educate our stakeholders. See page 25 in Stakeholder engagement for more details of our work in this area.

In 2009–2010 we undertook more than 271 information, education and training activities reaching over 10,237 people. This included 144 training workshops with 3,088 participants. Of these training workshops, 67 were targeted at the NSW community services sector, 49 at NSW government agencies and another 30 at federal, other Australian state and international agencies.

General training

Our 'general' training program consists of three key workshops that help people to develop skills and strategies for effectively dealing with complaints – Complaint-handling for frontline staff, Managing unreasonable complainant conduct, and The art of negotiation. These workshops are open to all sectors, public agencies, community services and private organisations.

This year we also developed a new training package – Aboriginal cultural appreciation, and the Deputy Ombudsman delivered Better management of protected disclosures workshops in conjunction with the ICAC.

In 2009–2010, we ran 74 general training workshops reaching 1,804 people. Thirty four of these workshops were delivered in the Sydney Metropolitan region, 11 in regional centres across NSW, 25 in other states and four in Canada.

Best presentation I have been to. Well run – to time, clear and concise.

Managing unreasonable complainant conduct

> Stage 1

In June 2009, we published the first edition of our *Managing Unreasonable Complainant Conduct Practice Manual*. It is available on our website and was the end result of 'Stage 1' of a joint project involving all Australian parliamentary Ombudsman offices.

The manual is designed to help agencies and their staff take a systematic and consistent approach to managing challenging interactions with their complainants. It provides guidelines, suggestions and strategies to assist organisations address the safety concerns raised by unreasonable conduct and ensure adequate resources are available to enable staff to properly manage such cases. These guidelines and strategies aim to supplement an organisation's existing operational policies and procedures.

We have had a very positive response to the manual. As a result, we have delivered 54 training workshops on Managing unreasonable complainant conduct, reaching over 1,396 participants from public and private organisations across Australia. Forty one of these workshops were delivered as 'in-house' training sessions for organisations and 13 were delivered as part of our public training calendar. Four of these workshops were delivered by the Deputy Ombudsman in locations across Canada, following the success of earlier training with the Forum of Canadian Ombudsman and the Canadian Defence Force Ombudsman.

> Stage 2

Although the various strategies in the current practice manual cover most circumstances that can arise, some strategies can only be implemented by organisations that have the discretion to end their relationship with the complainant. A further issue for some smaller non-government service providers and those involved in remote service delivery is that they have restricted resources and may have difficulties implementing some of the suggested strategies. We have now embarked on 'Stage 2' of this project to develop additional strategies for complaint handlers working in these specific situations.

Nine workshops involving 27 focus groups across Australia have been held so far with representatives from approximately 80 agencies participating. Our objective is to gain insights from a range of people with experience in dealing with unreasonable complainant conduct in these situations. We are also interested in exploring methods organisations may have used to help rebuild productive relationships between a complainant and the organisation when such relationships have broken down.

Handling protected disclosures

In conjunction with the ICAC, our Deputy Ombudsman conducted five Better management of protected disclosures workshops during 2009–2010, reaching 196 people from a range of agencies including local councils. This workshop provides information about protecting whistleblowers – people who report improper, corrupt or unlawful behaviour in the public sector and managing their disclosures. It includes definitions of what constitutes a protected disclosure, what types of wrongdoing are covered, and the protection from reprisals afforded to those making the disclosure.

One of the main concerns for public sector agencies is how to manage disclosures and ensure that they are properly investigated. The workshop also includes information on the legal protections available and answers practical questions about who disclosures should be made to and how they should be investigated. For more details of our work in this area see page 109 in Protected disclosures.

Aboriginal cultural appreciation training

Our Aboriginal Unit has developed a new *Aboriginal cultural appreciation* workshop, based on their experience in examining ways to improve service delivery for Aboriginal people in NSW. In addition to the Aboriginal Unit's complaint-handling role, our staff meet regularly with local service providers, government agencies and community members to explore ways to improve outcomes for Aboriginal people in their area.

The workshop is designed for frontline workers from the community and government sectors and is only delivered 'in-house', so we can tailor the training package to meet the specific needs of the organisation. The training aims to better equip organisations to provide a culturally responsive, flexible and consistent service to Aboriginal and Torres Strait Islander people.

We provide an overview of Aboriginal history and culture, as well as culturally appropriate communication protocols and strategies to help participants to more effectively assist Aboriginal and Torres Strait Islander people.

During 2010, our Aboriginal Unit delivered three of these in-house workshops. For more information about the Aboriginal Unit's work, see page 32 in Working with Aboriginal communities.

Employment-related child protection training

With over ten years experience in overseeing reportable conduct allegations, our employment-related child protection training is designed for those who undertake and review investigations of reportable conduct allegations involving employees.

In addition to the training workshops we offer, we also develop resources and give briefings and information sessions about our employment-related child protection function to schools, health services, child care centres, out-of-home care services and other public authorities, including interstate agencies. For more information about our work in this area, see page 62 in Children and young people.

A very knowledgeable presenter
– one of the best workshops
attended in a long while.

Responding to allegations against employees

Our Responding to allegations against employees workshop provides an overview of employers' obligations under the Ombudsman Act and examines the steps in the investigation process, risk assessment and management. We delivered six of these workshops during 2009–2010, reaching 136 people. This training package was also reviewed this year and initial feedback from the revamped workshop and materials has been positive. We have four 'open' workshops scheduled for 2010, with additional workshops scheduled to be delivered 'in-house'.

Handling serious allegations

In 2010 we expanded our training program to include a workshop on handling serious employment-related child protection allegations. This workshop is for investigators, heads of agencies, managers and supervisors who conduct and review investigations of allegations that may involve a criminal element.

Delivered by the Deputy Ombudsman who is also the Community and Disability Services Commissioner, this workshop provides participants with specialist and practical knowledge that will help them deal with some of the more complex challenges associated with handling serious allegations. The first workshop was held in June 2010, with another six 'open' workshops and four 'in-house' workshops scheduled for July to December 2010.

Training for the community services sector

We provide a range of training workshops, awareness activities and resources for the community services sector. In 2009–2010 we delivered 65 training workshops for service providers, consumers and advocates, reaching more than 1,128 people. Thirty seven of these workshops were held in rural or regional areas such as Batemans Bay, Bega, Cooma, Dapto, Deniliquin, Dubbo, Gosford, Grafton, Lake Macquarie, Lismore, Lithgow, Newcastle, Nowra, Port Macquarie, Taree, Tenterfield and Wollongong.

Just wanted to say thank you again, the feedback from the workshop was overwhelmingly great ... the managers expressed their appreciation at the fact that it was extremely practical, informative and relevant to their daily work.

Complaint-handling and management training

Forty three of the 65 workshops we delivered were complaint-handling training for service providers, reaching approximately 814 people working in the community services sector. These workshops help service providers to understand their responsibilities under CS-CRAMA and develop the knowledge and skills to handle complaints effectively. During 2009–2010, we delivered 32 workshops 'in-house' to services, and 11 as part of our public training calendar.

During 2010, we reviewed our complaint-handling training packages for the community services sector and tailored them into two complementary packages – Frontline skills for complaint-handling, and Effective complaint management. Together with The Rights Stuff training package, we now have a suite of training packages that target frontline staff, managers and consumers of community services.

Recognising
35 years of
commitment

Frontline skills for complaint-handling

This workshop helps community services staff who come into regular contact with clients to develop effective skills and appropriate strategies for complaint-handling. Participants are given a step by step model for dealing with complaints – examining different types of complainant behaviour and overcoming personal and organisational barriers to making and resolving complaints. Evaluations from this workshop continue to be very positive, with the majority of participants rating the workshop as excellent. Feedback from participants has included that they found the workshop ‘lively, interactive and practical’, ‘very helpful’ and, importantly, that it has helped them ‘feel more confident about dealing with complaints’.

Effective complaint management

This new workshop, tailored for managers and executives of community services, builds on our previous community services training modules to provide an overview of the essential elements of an effective complaint-handling system.

It uses Australian Standards as a reference and provides guidance about what good complaint policies should look like. It also looks at cultural and organisational issues relating to complaints and how they can be used to improve service delivery.

Of the four Effective complaint management workshops delivered in the first six months of 2010, the majority of participants evaluated this new workshop as good or excellent. Feedback from participants indicated that they found the workshop useful and interactive, and that it provided them with ‘really practical information’ and ‘very practical tools to implement an empowered complaints culture’ as well as ‘an opportunity to reflect on existing organisational systems’.

Training for consumers of community services and their advocates

The Rights Stuff is a workshop that has been specifically developed for consumers of community services, their families, carers and advocates. It provides practical information and tips to build confidence in raising issues with service providers and resolving complaints.

We delivered eight of these workshops during 2009–2010, including six in regional locations such as Bega, Lismore and Newcastle. The majority of participants rated this workshop as excellent or good, noting that the most useful aspects were learning ‘how to complain’, ‘how to contact the Ombudsman’, that it is ‘good to know there are other supports available’ and that they came away from the workshop with ‘more courage to speak up to others’.

Domestic violence advocacy training

This year, we partnered with Women’s Legal Services (WLS) NSW to provide advocacy training to workers in the community, health and legal sectors as part of *Reaching out for rights*. This is a project developed by WLS to give workers the skills they need to help women experiencing family violence to successfully navigate the justice system. One hundred and eighty workers attended workshops in 12 locations in the Mid North Coast, Far South Coast, Far South West and Goulburn/Yass as well as in metropolitan Sydney.

Our staff provided attendees with information about the role of the Ombudsman, police responsibilities in relation to domestic violence, and how to assist women to complain if they feel they have not received appropriate help from the NSWPF or other agencies. The project particularly aims to help women who experience barriers when negotiating the justice system – such as Aboriginal women, women from culturally and linguistically diverse (CALD) backgrounds, refugee women and women living with disabilities.

As a result of this training, several participants decided to establish a local domestic violence committee involving local police. The training also dispelled a range of myths about the police complaints system and gave participants useful guidance about advocating for their clients – including when to involve the Ombudsman. See page 81 in *Policing* for more details of our work in the area of domestic violence.

Training for disability services staff

This year we began delivering training to direct care staff in disability services on the key findings from our disability death reviews. The training provides a useful forum for improving staff awareness, resolving concerns, and discussing any practical challenges or regional differences in practice. During 2009–2010 we delivered three of these sessions to 25 participants. Next year, we will expand our training to a wider range of services. See page 67 in *People with disabilities* for more information about our disability death reviews.

Community education

Our community education activities are central to ensuring that people in the community are aware of our office and understand our role. We undertake a wide range of activities to ensure we remain accessible – such as giving presentations and information sessions, attending community events, conducting forums and roundtables, and visiting regional and remote communities to consult them about agency service delivery.

We produce a number of guidelines, fact sheets and resources used in our community education activities. Some of the publications we issued include assorted fact sheets, guidelines, brochures, two electronic newsletters, four reports and submissions, three annual reports and five special reports to Parliament. We also distributed subject-based summaries of our 2009–2010 annual report to a range of peak bodies and organisations in the child welfare, disability, justice and Aboriginal community sectors.

For more information about our community engagement activities, see page 25 in *Stakeholder engagement*.

Deputy Ombudsman Outreach Forums

Our Deputy Ombudsman Outreach Forums are aimed at community sector workers in regional and rural centres across NSW. As this State’s Community and Disability Services Commissioner, the Deputy Ombudsman provides an overview of our role and the specific work we do in the community services sector. We held three of these forums this year – two in Queanbeyan with 50 participants, and one forum in Bankstown reaching 70 community workers who work with non-English speaking clients.

For more information about other forums we hosted for our stakeholders during 2009–2010, see page 28 in *Stakeholder engagement*.

Presentations and information sessions

Some of the events we were involved in this year include:

- › Corrective Services Official Visitors Conference – presenting to 60 OCVs and Corrective Services NSW senior management staff.
- › Australian Public Sector Anti-Corruption Conference 2009 in Brisbane – presenting to 50 delegates.
- › Integrity Agency Forum for Police Researchers at the Crime and Misconduct Commission Queensland – on Ombudsman investigations into policing strategies to address domestic violence and police work with local Aboriginal communities.
- › NSW FOI Practitioners Network meeting – two sessions for 140 people.
- › Keep Them Safe Forum hosted by National Disability Services at Parliament House – to 150 people about the Wood report.
- › National Police Integrity Colloquium in Melbourne – to 20 people on current issues and the work of our police and compliance branch.
- › Illawarra Social Housing Forum – about our investigation into the Joint Guarantee of Service for people with mental health problems and disorders living in Aboriginal, community and public housing.
- › Official Community Visitors Conference.
- › Joint Investigation Response Team Conference – to 200 delegates.
- › Regional Support Workers Forum hosted by National Disability Services – two sessions in regional locations about the role of the Ombudsman and tips on how to handle a complaint.

In addition to these presentations, the Deputy Ombudsman made a number of presentations about complaint management at conferences, symposiums and forums in Sydney, Brisbane, Canberra and Melbourne.

As part of the Child Wellbeing Unit (CWU) Development Program in 2009, we gave three presentations to 105 team leaders and assessment officers about issues such as risk assessment and cumulative risk.

We also gave presentations at key child protection forums on sexual offences by school employees against children and online grooming, and provided a briefing to PANOC and sexual assault services at their statewide meeting.

For further details about our presentation and information sessions to Aboriginal stakeholders see page 32 in Working with Aboriginal communities.

Ombo Info electronic newsletter

The first issue of our new-look electronic newsletter Ombo Info was released in 2010. It is published three times a year and aims to increase public awareness about the work that we do. The first issue covered topics ranging from reviewing the circumstances surrounding the tragic deaths of two young children and examining what is needed to improve service delivery to people with a mental illness, to monitoring the use of new laws giving additional powers to police and delivering training to a range of agencies and organisations.

Previous issues of Ombo Info focused mainly on our work in the area of community services. While we will continue to report on this work, Ombo Info now includes updates about a broader range of our functions and activities. To subscribe to our newsletter, please go to our website and click on 'Subscribe to e-newsletter' under Quick links on the right hand side of the page.

Our new community education and training unit

In 2009, we formed a new cross-office unit to better coordinate our community education and training functions. This has enabled us to improve the way we plan and deliver these activities, including tailoring packages to suit the needs of a more diverse audience and developing more training options. Several of our new courses have been developed by senior investigators and practitioners across several disciplines.

The unit is located within the strategic projects division (SPD), which is responsible for leading major projects and investigations, in particular those that cross the jurisdictions of the Ombudsman's various operational areas. The Ombudsman's Aboriginal Unit and youth liaison officer are located within this division, and for this reason, the division has a focus on Aboriginal and youth issues.

For example, the coordinated approach to planning our 2010 training calendar allowed us to match general training workshops up with community services training, providing more opportunities to access our training in regional areas. During 2010, three Managing unreasonable complainant conduct workshops were held in conjunction with our community services complaint-handling and management workshops in regional areas.

A large focus of this new unit during 2010 was the review of training materials to ensure currency and consistency, as well as the development of a number of new training packages – Aboriginal cultural appreciation, Handling serious allegations and Domestic violence advocacy. We also developed a new 'Introduction to the Ombudsman' publication and presentation that can be used by staff in their community education activities.

Our plans for the coming year include:

- › broadening the focus and participation of our staff in Ombudsman outreach forums
- › building on our engagement with young people and the youth sector
- › developing a practical complaint-handling framework
- › preparing a complaint-handling training program, with National Disability Services NSW, to meet the needs of the disability services sector
- › delivering complaint-handling and employment-related child protection training to Aboriginal out-of-home care services
- › rolling out Managing unreasonable complainant conduct stage 2.

In the last 35 years, we have developed strong ties with other Ombudsman offices both in Australia and overseas.

These connections allow us to provide training courses to organisations across the country and around the world.

Highlighting
35 years



Highlights

- › Tabled two special reports in Parliament about the deaths of 'Ebony' and Dean Shillingsworth, and the challenges these deaths pose for the new system for responding to children at risk of harm. [SEE PAGE 48](#)
- › Initiated four investigations into issues such as probity checking for carers, the accuracy of evidence submitted to the Children's Court, and the lack of support for young people in refuges. [SEE PAGE 48](#)
- › Prepared draft procedures to help the NSW Police Force provide better support to agencies dealing with reportable conduct involving criminal allegations. [SEE PAGE 59](#)
- › Began an investigation into the problems homeless people with physical disabilities have accessing SAAP services. [SEE PAGE 64](#)
- › Started consultations with families of children with disabilities who live at home about the adequacy of the services and support they receive. [SEE PAGE 65](#)
- › Held a successful community forum, in partnership with the Disability Council of NSW, on the closure of institutions housing people with disabilities – attended by close to 300 people. [SEE PAGE 66](#)
- › Supported 42 community visitors to make 3,335 visits to 6,422 people living in residential services in NSW. [SEE PAGE 69](#)

› Children and young people	46
› People with disabilities	62
› Official community visitors	69

2 Human Services

We handle inquiries and complaints about a range of human service agencies, including Community Services; Ageing, Disability and Home Care, Juvenile Justice, and certain non-government service providers. Our work in relation to housing is discussed in Departments and authorities.

We review the delivery of community services and oversee investigations into allegations of reportable conduct or reportable convictions of some employees. We regularly visit juvenile justice centres in NSW to speak with detainees and staff, and to inspect the facilities.

Children and young people

In this chapter we outline our work in reviewing the deaths of children, handling complaints about, and reviewing systems for the provision of community services to children and reviewing the situation of children in care. We also discuss our role in overseeing investigations into reportable employment-related child protection allegations and our work with young people in detention.

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

> Community services

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

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

Our work under CS-CRAMA in the disability area is discussed in *People with disabilities* on page 62. Our work in overseeing the official community visitors scheme is outlined on page 69.

> Employment-related child protection

Under Part 3A of the Ombudsman Act, reportable conduct is conduct that involves abusive behaviours towards children. This can include physical assault, sexual offences, behaviour causing psychological harm, ill-treatment or neglect.

We receive notifications, assess and monitor investigations, directly investigate matters if we have serious concerns, and conduct audits and training activities to improve agencies' understanding of, and responses to, reportable allegations against their employees.

All public authorities are subject to the requirements of Part 3A if the reportable conduct arises in the course of a person's employment. Some public authorities – such as the Department of Education and Training (DET) and Community Services – are designated agencies and also need to notify reportable allegations if they arise from conduct that takes place outside of employment. Some non-government agencies are also subject to Part 3A requirements and must notify reportable allegations that arise both within and outside of employment. For more details on our work in this area see page 54 in this chapter.

Changes to child protection

In 2009–2010 the NSW Government began to implement changes to improve the child protection system. These changes arose from the Special Commission of Inquiry into Child Protection Services in NSW.

In January 2010, a new system for responding to children at risk of harm came into operation. It is part of the government's five-year reform plan known as *Keep Them Safe: A Shared Approach to Child Wellbeing*. The new system has the following three main elements.

- > A child must now be assessed as being at risk of significant harm to warrant a response by Community Services. This higher threshold is intended to allow Community Services to concentrate their efforts on children and young people who are most at risk.
- > New child wellbeing units (CWU) have been set up in public sector agencies to help identify and report children and young people at risk of significant harm, and help at-risk children who do not meet the new threshold.

- > Additional service delivery for vulnerable children and families who fall below the statutory intervention threshold is being trialled through pilot family referral services. These began operating in May 2010 in Dubbo, Newcastle and Sydney and will test different methods for linking families with supports in their local area.

In addition, initiatives are underway to expand early intervention and prevention services, and build up the skills and capacity of the non-government sector. *Keep Them Safe* also includes commitments to strengthen child protection by expanding parts of the universal service system – for example, by making home visits available to every family with a newborn and providing access to preschool education for every four-year-old.

Over the next few years, Justice Wood's inquiry and the NSW Government's acceptance of the vast majority of the Inquiry's recommendations will see a vastly changed child protection system in this state.

We have previously noted that with any significant change there are always risks and challenges, and the proposed changes to the child protection system in NSW are no exception. We have urged government to consider some of the potential issues that may arise in the reform environment, in order for problems to be anticipated and managed.

A critical issue will be how the varied components of the new multifaceted system will be implemented. The recommended changes of the Special Commission of Inquiry presumed adequate provision of an array of universal and targeted services, working together to ensure the provision of timely and appropriate support to children and their families.

However, the introduction of new services is taking place differentially. As noted above, family referral services are being trialed on a pilot basis in a limited number of locations and early intervention services are being expanded in the first instance on a limited basis. The non-government sector does not have its own CWU and nor do the private or Catholic school sectors.

Implementing the new system in this way means that there are potential risks in the ability of agencies and services to respond to concerns about children wherever they may be and to either directly provide, or arrange for, adequate support to vulnerable families across all areas of the state.

Adequate identification of risk is also critical and we have questions about the ability of agencies to identify cumulative risk of harm to children. In order to do this, agencies need adequate access to information about previous child protection reports to help them make informed assessment, referral and support decisions.

This has been acknowledged in *Keep Them Safe*, and legislative changes promote improved and easier processes for exchanging information. However, how effectively these provisions are applied and supported in practice needs to be closely monitored. We have concerns, for example, that the CWUs have only limited access to information on KiDS, the Community Services database, and the non-government sector will have no access at all.

However, on a positive note, in response to suggestions from this office, Community Services staff are now seconded to CWUs.

The new system also provides for the gradual transition of most out-of-home care to the non-government sector. This represents a significant financial and planning challenge. Given the large number of children who are currently under the care of Community Services and do not have a caseworker, the shift to the non-government sector, where significant caseworker support for children is the norm, will come at a high cost.

However, the cost of these changes represents only one challenge. It will also be critical for Community Services to develop a blueprint that clearly details how, in a practical sense, the transition can take place in a way that matches the capacity of the sector to undergo what will be a massive expansion in services and workforce. These changes, either implemented or planned, represent a major restructuring of the child protection system.

They involve a significantly bigger role for the non-government sector and a much greater emphasis on collaboration and cooperation between all agencies and services in the system. They also come at a significant financial cost which at this stage does not appear to have been fully identified in publicly released planning documents.

Our role in monitoring the child protection system previously focused primarily on Community Services as the lead agency, although we also scrutinised the policies and work of other public and community sector agencies. However, in line with the systemic changes under *Keep Them Safe*, we will be taking on broader responsibilities in the public and community sectors.

It is vital that comprehensive evidence is collected to assess the effectiveness of the new system and identify and address problems in a timely way. This is all the more crucial given that only some of the changes are in force and others will be introduced over the longer term.

For these reasons, we have taken a keen interest this year in the development of an evaluation framework for *Keep Them Safe*. We have assessed the draft framework against the results of our monitoring of the child protection system since 2002, and provided advice and recommendations to the group responsible for developing it. We have also met and consulted with government agencies, non-government peak associations and CWU staff about policy and operational issues during the early stages of the new system. In terms of our monitoring role, we will also be keen to assess the capacity of the new system to respond to serious child protection reports, as well as examining the planning and rollout of new services to support vulnerable families.

Highlighting
35 years

How child-protection has changed

The fourth and fifth volumes of Justice James Wood's 1997 report following the Royal Commission into the NSW Police Service dealt with paedophilia in NSW. Justice Wood's recommendations around this issue stressed the need for better systems, including agencies adopting pre-employment screening checks, establishing closer interagency cooperation, reviewing their record management practices in relation to disciplinary processes and developing ongoing child protection training for employees.

Parliament accepted these recommendations, and our Act was amended in 1999 to require heads of agencies, and certain non-government agencies, to report all child abuse allegations and convictions against their employees to us. We monitor their investigations into such allegations carefully, making sure they are dealt with appropriately. We also have a broader role, keeping under scrutiny the systems for preventing child abuse by employees.

Special reports to Parliament

In October 2009 we tabled a special report in Parliament – *The Death of Ebony: The need for an effective interagency response to children at risk*. In December 2009, we tabled another special report – *The Death of Dean Shillingsworth: Critical challenges in the context of reforms to the child protection system*.

The separate deaths of these two children in 2007 were the catalyst for the Special Commission of Inquiry into Child Protection Services in NSW. We investigated both matters and provided our findings to the Inquiry. However we did not table the special reports in Parliament until after the end of the criminal proceedings in each case. These reports are available on our website.

Child protection investigations

In 2009–2010 we initiated four child protection investigations, each concerning the actions of Community Services, and finalised three investigations.

One of the investigations we began in 2009–2010 was about how Community Services handled victims' compensation for children and young people in statutory care (see page 51).

Another was about the accuracy of affidavit evidence submitted by Community Services to the Children's Court (see case study 6). These matters highlight the importance of ensuring that Community Services staff have a sound understanding of children's entitlements, act in a timely way on behalf of the children and young people in statutory care, and meet the highest professional standards when presenting evidence to the Children's Court.

In previous years we have raised with Community Services our concerns about their failure to develop and implement a policy and protocols for children living in youth refuges. It is now six years since Community Services acknowledged the need to have protocols with youth refuges about who is responsible for ensuring the needs of these children are met. In the case we investigated, Community Services gave minimal support to a child whose circumstances clearly warranted protective intervention (see case study 7).

CS 6: Inaccurate evidence and assessments

Two and a half years before complaining to our office, a woman's three children were removed from her care. At the time of the incident which led to the children's removal, the woman had been under significant financial and emotional strain. She did not speak English well, her youngest child had been very sick, her husband had had to leave Australia to find suitable employment, and the family were living in cramped conditions. When the oldest of the children complained that she had been hit by her mother and mistreated by her brother, a report was made to the Child Protection Helpline which resulted in the children being removed.

The girl was interviewed by a Joint Investigation Response Team made up of staff from Community Services and the NSW Police Force (NSWPF). The mother was interviewed the following day and admitted to hitting the girl. She subsequently pleaded guilty to a charge of assault causing actual bodily harm and was given a good behaviour bond with no conviction recorded. She was also interviewed about her daughter's allegations about her brother. After the interview, Community Services applied for care applications for the three children.

At the time the mother complained to us, the two older children were living with her again but her youngest child was in statutory care and Community Services had applied to the District Court for the child to remain in care until she turned 18. This was on the grounds that the brother posed a risk to the youngest child and the mother was not protective.

The mother complained to us about a number of things. However, we decided to focus our investigation on the accuracy of the affidavit evidence submitted by Community Services to the Children's Court. This was because our review of the case showed that the handling of the eldest daughter's allegations about her brother was pivotal to subsequent decisions Community Services made about the woman's youngest child.

Our investigation identified multiple errors and incorrect statements in the initiating affidavits filed by Community Services in the care proceedings for the three children. These errors were repeated in risk and other assessments over the years and in this way gained currency. Over the three year period that the case was before either the Children's Court or the NSW District Court, we also found that Community Services staff relied on factually incorrect evidence that supported their position and discounted any evidence which did not.

In response to our provisional investigation report, Community Services commissioned a former Children's Court Magistrate to review the legal files in the case. This review confirmed our findings and made urgent recommendations for statewide training to ensure that in future evidence presented by Community Services to courts is accurate.

We have made a number of recommendations to Community Services. These include apologising to the family and giving the mother a substantial ex-gratia payment that takes into account the trauma she and her children have suffered, the dislocation of the family over three years, and the impact of this on her and the children. Community Services have told us that they intend to provide training for their managers about the NSW Government's model litigant principles and the agency's obligations when presenting evidence to the Children's Court.

Community Services's case to have the youngest child placed in long-term care was heard in the District Court in early 2010. It collapsed when the therapist who had been working with the brother – and who was of the understanding that the allegations made by the girl about her brother had been independently verified – found this not to be the case. Community Services agreed to settle the matter by organising the return of the youngest child to her mother's care.

CS 7: Lack of support for young people in refuges

A crisis youth refuge complained to us about Community Services deciding to close their file for a 13 year old girl after having arranged for her to be placed at the refuge. In their complaint, the refuge noted the girl's child protection history and that she had no support from her family. She had high support needs that they were unable to meet, and when they raised this with Community Services they said there was nothing they could do. At the time of the complaint, the girl had been at the refuge for over six months.

Our inquiries confirmed that before her placement at the refuge the girl had an extensive child protection history, starting when she was a toddler. The evidence we examined showed a history of neglect, maltreatment and emotional abuse.

Over the years, Community Services had not responded to many of the risk of harm reports about the girl. Even when they did do risk assessments, they did not follow up on the risks that were identified. When the girl, then aged 12, could no longer cope with her treatment at home and left to live with a relative, Community Services did not do a proper assessment of her needs. When the relative could no longer look after her, Community Services found a refuge for the girl and closed their file on her. At the time we started our investigation, the girl had dropped out of school because it was too hard for her to get there.

We were particularly concerned about evidence indicating that the girl was developing significant mental health problems but was not receiving appropriate support. Despite Community Services publicly acknowledging for years the need for a policy and protocols for children living in refuges, they had not addressed this issue.

After we completed our investigation, we recommended Community Services provide us with monthly reports on the actions they are taking to find an appropriate placement for the girl and address her identified needs. They have advised us that the girl is now the subject of Children's Court care proceedings. She has recently been moved to a long-term accommodation service for young people with medium to high needs, and Community Services is now developing a detailed case plan for her. Although these actions to meet her needs are welcome, if the girl had been provided with adequate protective intervention a year and a half ago – when it was apparent that she had been abandoned by her family – her needs would be nowhere as great as they are now.

The second issue we considered in our investigation was the lack of policies for children under 16 years of age living in youth refuges. This is an issue we have been raising with Community Services since 2004. Unfortunately, over that six year period, despite several reviews by Community Services of the Youth SAAP policy it eventually developed in 2006, and repeated requests for advice by this office about the status of the latest policy, we have seen little or no effective action on this issue.

Community Services has now advised us that – after the recent legislative changes – their 'revised Youth SAAP policy' will clarify that Community Services will only provide financial and casework support to children living in youth refuges if they are under the parental responsibility of the Minister or where 'there has been a substantiated report of risk of significant harm' and they have an open case with Community Services.

This proposed policy is concerning. It will not ensure that children, like the 13 year old girl referred to in this case study – will receive the support they so desperately need.

Carer probity checking – community services

One of our investigations related to the screening of prospective carers for children in out-of-home care. Everyone that applies to become an authorised foster or relative carer must undergo screening, criminal record checking, and an assessment of their suitability to be carers. These checks are a critical part of child protection work. They are intended to ensure that children who have been removed from their families are not placed at further risk.

However the adequacy of carer assessment and probity checking has been a matter of recurring concern in our work. For example, in 2005 we found that Community Services had failed to adequately assess and check a couple who were given the care of a baby and an older sibling. The baby died in late 2003 of non-accidental injuries while in the couple's care.

As part of their response to the matter, Community Services conducted an audit of carer assessments in one of their regions and found that criminal record checks had not been done in a number of cases.

In our investigation this year, we again found that the assessment of carers by Community Services was inadequate and probity checking was deficient. In this case, a baby suffered serious non-accidental injuries in 2009 while in the care of relatives.

Carer probity checking – non-government organisations

Against this background, while monitoring agencies' handling of reportable allegations, we have also identified weaknesses in the probity checking processes employed by some non-government designated out-of-home care agencies. While these agencies require all potential carers to undergo screening in accordance with the legislation, unlike Community Services' carers, a check of the Community Services' Key Information Directory (KiDS) is not routinely conducted.

In a number of cases, we have learnt that designated agencies have authorised carers without being aware of critical information held by Community Services, that raises questions about the person's appropriateness to provide foster care to children.

We are currently examining this issue, as we see that it is critical that children who are removed from their families are not placed at further risk – regardless of whether they are placed with a carer from Community Services or a designated agency.

For further details about our work in relation to probity checking by funded organisations in the human services sector see page 29 in Stakeholder engagement.

Complaint trends and outcomes

There was a 13% increase in complaints about child and family services in 2009–2010 compared to 2008–2009. We received 23% more formal complaints this year – 552 formal complaints compared to 449 last year – and 8% more informal complaints (see figure 22).

There was also a 10% increase in formal complaints about child protection services, primarily provided by Community Services.

There was a significant increase (33%) in formal complaints about out-of-home care services provided by Community Services and non-government services funded by Community Services and accredited by the Office of the Children's Guardian. We received 304 complaints in 2009–2010 compared to 229 in 2008–2009. The majority of these complaints (90%) concerned out-of-home care services provided by Community Services. These complaints about out-of-home care services made up 55% of all the formal complaints we received about child and family services this year.

On a more positive note, there was an increase in the number (190 v. 142) and proportion (36% v. 29%) of formal complaints about child and family services that were resolved this year, compared to last year. This resulted in improvements to services for children and young people and their families. In particular, 43% of formal complaints about out-of-home care services were resolved.

For child protection services, the concerns most frequently raised were about the quality of Community Service's casework, case management and decision-making after reports about risks of significant harm of children and young people.

Figure 22: Formal and informal matters received in 2009–2010 about agencies providing child and family services

Agency category	Formal	Informal	Total
> Community Services			
Child protection services	204	276	480
Out-of-home care services	274	514	788
Children's services	2	19	21
Family support services	5	11	16
Adoption	0	1	1
Sub-total	485	821	1,306
> ADHC			
Child protection services	0	0	0
Family support services	0	0	0
Out-of-home care services	0	0	0
Sub-total	0	0	0
> Other government agencies			
Child protection services	0	1	1
Out-of-home care services	0	1	1
Children's services	0	1	1
Family support services	0	0	0
Adoption	0	0	0
Sub-total	0	3	3
> Non-government funded or licensed services			
Child protection services	3	20	23
Out-of-home care services	30	50	80
Children's services	29	31	60
Family support services	3	10	13
Adoption	0	0	0
Sub-total	65	111	176
Other (general inquiries)	0	2	2
Agency unknown	0	2	2
Outside our jurisdiction	2	2	4
Sub-total	2	6	8
Total	552	941	1,493

Figure 23: Outcomes of formal complaints finalised in 2009–2010 about agencies providing child and family services



- Complaint resolved after inquiries, including local resolution by the agency concerned 190 (36%)
- Complaint declined after inquiries 171 (32%)
- Complaint declined at outset 131 (25%)
- Service improvement comments or suggestions to agency 11 (2%)
- Direct investigation 3 (1%)
- Referred to agency concerned or other body for investigation 1 (0%)
- Complaint outside jurisdiction 23 (4%)

The most frequently raised concerns about out-of-home care services were the assessment, planning and provision of services that were relevant to the needs of the children and young people in care, as well as the quality of overall case management and decision-making.

There was also a small increase in the number of complaints we received about children's services compared to last year. This year we received 31 formal complaints about child care centres (25 in 2008–2009) and 82 complaints overall (67 overall in 2008–2009).

During the year, we reviewed complaint-handling systems in long day care centres and provided information to long day care centres, peak child care agencies, Community Services and the National Childcare Accreditation Council about the Ombudsman's oversight of child care centres. Our review – and the information we provided – may have resulted in this increase in complaints. We will be reporting in detail about the outcome of this review in next year's annual report.

Reviewing deaths of children

In April 2009, an amendment to CS-CRAMA removed our responsibility to review the deaths of children or their siblings who were subject to a report to Community Services in the three years before they died. Community Services is now responsible for reviewing the deaths of these children. We continue to be responsible for reviewing the deaths of children in care, and those whose deaths are or may be due to abuse or neglect or occur in suspicious circumstances.

Under the amended definition of reviewable deaths, we reviewed the cases of 45 children who died in the 12 months from 1 July 2009. Of these, seven deaths were due to abuse, fourteen were due to neglect and eight were suspicious of abuse or neglect. The death of one of the 16 children who died in care was also suspicious of neglect.

Another amendment to CS-CRAMA requires us to report publicly on reviewable child deaths every two years, rather than each year. The first of these reports will cover the period from 1 January 2008 to 30 June 2010.

Other legislation has been passed which transfers responsibility for supporting the work of the Child Death Review Team from the NSW Commission for Children and Young People to the Ombudsman. This transfer is expected to take effect in the coming year.

Promoting improvements through our reviews

Applying for victims compensation

In 2009, we undertook a review of a group of young people who were turning 18 and leaving statutory out-of-home care. A number of these young people had been placed in care because of serious abuse.

Victims of violent crime in NSW are entitled to make a claim under the state's statutory scheme for victims compensation. For children and young people who have been placed in care as a result of violent crime, Community Services are responsible for making a claim on their behalf.

This responsibility extends to children and young people under the parental responsibility of the Minister for Community Services who are placed with carers supported by non-government agencies.

During our review of the support being provided to young people leaving care, we found that many had child protection histories indicating potential eligibility for victims compensation. Despite this, these young people had not had an application for victims compensation made on their behalf during their time in care.

Because of this, we decided to look more broadly at the number of claims Community Services had made on behalf of the children and young people they were responsible for. Although there were more than 16,000 children and young people in care in NSW as at June 2009, Community Services had only lodged 52 claims for compensation on behalf of children in 2008–2009. We therefore decided to investigate the matter.

With the assistance of the Children's Court, we identified a group of 95 children and young people where evidence indicated that they were likely to have been a victim of violent crime before their entry into care. We asked Community Services about how they established whether a child was entitled to claim for compensation and, if so, how they ensured a timely application for compensation was made.

Our investigation found that:

- There were inconsistencies in the way children who had been victims of crime were supported.
- No compensation claims had been made for a significant number of children in care.
- Even if Community Services identifies that a child or young person is eligible to lodge a claim, this does not ensure that a claim is lodged on their behalf before they turn 18. Responsibility for lodging a claim is then transferred to the young people themselves. This is an unfair burden to place on young people who often leave care with significant needs and few supports.
- The current systems for processing victims compensation claims means that significant numbers of children and young people who are, or have been, in care may suffer financial loss because timely claims have not been lodged on their behalf.

- Many children and people are at risk of not being identified as eligible to lodge a claim.

Overall, our findings show Community Services currently does not have the necessary systems in place to ensure that all children and young people in its care, who are entitled to apply for victims compensation, are assisted to do so in a timely manner.

Community Services accepted our findings and recommendations and said that they are committed to improving their support for children in care who have been victims of violent crime.

Our recommendations aim to make sure that every eligible child who is in care now and every eligible child who enters care in the future, receives appropriate support services – including, where appropriate, an application for compensation made on their behalf. Because of the importance of this issue, we issued a report to Parliament. A copy of this report is available on our website.

Helping young people leaving statutory care

Agencies supervising young people who are in statutory care are required by law to prepare and support them when they leave care. This is usually when they turn 18.

Many young people leaving care lack the social, financial and emotional supports typically available to their peers living with their families. Some are expected to leave their care placement abruptly once they turn 18. However, proper planning and support for young people when they are preparing to leave care can have a significantly positive impact on their future lives.

We decided to review the leaving care planning for a group of 124 young people who turned 18 in 2009. Some of our findings were that:

- The government's guidelines on supporting care leavers are not being consistently implemented across NSW.
- Most of the young people in our sample group of 124 turned 18 and left care without an endorsed leaving care plan.
- Young people with disabilities who need ongoing supported care when they turn 18 are generally well supported, but other young people who have high support needs – not related to disability – are not well supported once they leave care.

- › Young people who live with extended family, or are in stable foster care placements supervised by Community Services, were more likely than other care leavers to turn 18 without an adequate leaving care plan in place.
- › The arrangements to support young people who are still at school when they turn 18 are confusing and not equitable.
- › Only one in five of the Community Services teams we interviewed said they provide after care support consistent with the government's leaving care guidelines. This means that if young people leave care without a plan about how they will be supported, it is likely that they will not be followed up once they turn 18.
- › Even though financial support is available for young people when they leave care, the administrative arrangements for approving and providing financial assistance are cumbersome and protracted. As a result, young people who need support after leaving care often 'give up' trying to obtain it.

In response to our draft report, Community Services said that they are undertaking a range of activities to improve their services to care leavers. These include:

- › developing information resources for young people and their carers
- › developing and implementing a new case planning framework
- › reviewing their procedures for approving leaving care plans and providing financial assistance for care leavers completing their secondary education.

There is a copy of our report on our website.

Reviewing services for children on short-term care orders

Every child has the right to a permanent and stable home, preferably with their own family. In NSW, the care and protection legislation requires that when a child or young person is removed from their family because of abuse or neglect, consideration must be given to whether they can be realistically restored to the care of their parents. If not, a plan must be developed about how they will be provided with a permanent and stable home. This is called 'permanency planning'.

This year, we initiated a review of a group of children where the Children's Court has issued two-year care orders and the goal of the child's care plan is to be restored to their parents' care. We wanted to establish whether parents and children were being adequately supported to achieve this goal and whether Community Services was carrying out a comprehensive assessment before returning children to their parents.

Juvenile justice

Review of young people at risk of harm who are also engaged in offending behaviour

NSW has one of the highest rates of juvenile incarceration in Australia. This year the number of young people in detention has continued to increase, with more young people remanded across the state in custody and more on community service orders. Fifty three percent of young people in detention across the state are Aboriginal. In Western NSW, this figure as at August 2010 was 86%.

In response to this and the urgent concerns raised by a number of Western NSW community leaders, advocates and some government agencies, we have initiated a review of interventions aimed at young people who are at risk of harm and who are also engaging in high levels of risk-taking behaviour. This behaviour includes serious offending, by an increasingly younger group of children. Many of these young people end up in detention.

Our review will examine data from the NSW Police Force, the Department of Education and Training, Community Services and Juvenile Justice to identify the cohort of children most at risk, and will explore whether current initiatives and interventions to divert them from the criminal justice system are working. Although concerns were raised about a number of communities, the initial stages of our review are focused on initiatives in Bourke and Brewarrina.

Justice and human service agencies have agreed to review the adequacy of responses to the needs of these young people and their families to date, and assess what further action should be taken to provide appropriate supports. For further details about our work in this area see page 34 in Working with Aboriginal communities.

Review of the juvenile justice system

In July 2009, the NSW Government commissioned the first independent review of the juvenile justice system since 1993. The Minister for Juvenile Justice said the review was being done to improve policy and practice and to try to reduce NSW's juvenile re-offending rates.

The Minister asked the Ombudsman to comment on the report before its public release. We provided feedback on several of the review recommendations about arrangements for providing independent advice on juvenile justice issues, and a proposed special inquiry into police practices affecting children and young people.

In May 2010 the government released the review. In summary, it found that prevention and early intervention measures were the best method for reducing entry to the juvenile justice system and re-offending. Reducing juvenile crime requires coordinated action across government agencies, non-government organisations and the community. The review recommended numerous reforms and a 'justice reinvestment' policy. This would involve a major diversion of funding away from the expansion of detention centres to community-based programs to address the causes of juvenile offending.

The government rejected that approach and opted broadly to maintain their current approach to juvenile justice. They said the ongoing implementation of initiatives, including those under the *Keep Them Safe* child protection reform program and prevention strategies under the State Plan, would help to address issues associated with juvenile crime. They also separately announced new spending to build extra accommodation at the Cobham Juvenile Justice Centre in Sydney and to redevelop the Riverina Juvenile Justice Centre.

The review report and the government's response are available on the Juvenile Justice website: www.djj.nsw.gov.au/strategic_review.htm

A more positive approach in June this year was that Juvenile Justice launched a pilot after-hours Bail Assistance Line service in Dubbo to help young people who are eligible for bail, but unable to meet bail conditions.

The pilot involves police calling Juvenile Justice staff to try to secure accommodation and services for young people who would otherwise be remanded in custody. Support services for the pilot are being provided by a non-government organisation and there are plans to extend the pilot program to Sydney and Newcastle. Recent advice from Juvenile Justice is that this initiative has led to significant reductions in the number of young people on remand.

Figure 24: Outcomes of formal complaints finalised in 2009–2010 about juvenile justice



- Complaint resolved after inquiries 22 (35%)
- Complaint declined after inquiries with substantive advice, information provided 31 (50%)
- Complaint declined at outset after assessment 6 (10%)
- Service improvement comments or suggestions to agency 2 (3%)
- Complaint outside jurisdiction 1 (2%)

CS 8: Punishments need to be appropriate

Legislation governing detention centres provides a range of punishments for misbehaviour by detainees, including confining a detainee to their cell or a holding room. When we examined records at one centre, we noticed that the punishment for minor misbehaviour was mostly confinement – including a large number of 24-hour confinements. This form of punishment was being used for a relatively wide range of misbehaviour and there did not seem to us to be any consistent decision-making.

Also, some of the records showed that minor incidents – like a detainee not wearing the correct T-shirt – were quickly escalating into behaviour that resulted in the imposition of a 24-hour confinement. We talked to the centre manager about these issues and were advised that confinement approval procedures had recently been changed to ensure a more consistent approach. We were satisfied with the centre’s approach and decided to monitor the situation during future visits.

Figure 25: Formal and informal matters received and finalised

Matters	05/06	06/07	07/08	08/09	09/10
Formal received	41	49	99	70	72
Formal finalised	44	47	98	73	62
Informal dealt with	257	219	243	255	212

Visiting centres

There are nine juvenile justice centres in NSW, including a temporary centre at Sydney’s Emu Plains. During the year we conducted 17 visits. We visited eight centres twice and went once to the centre at Broken Hill. Given that half of all detainees are Aboriginal, we regularly try to involve staff from our Aboriginal Unit in visits.

The purpose of our visits is to actively monitor how centres are running. We arrange our visits in advance and send posters that advertise our presence to detainees and invite them to meet us. We have found that young people in detention are more likely to raise their concerns with us in person than by notifying us about a complaint.

The concerns raised with us ranged from daily routines that were preventing some detainees from telephoning family members to a centre’s refusal to allow detainees to display posters of sporting teams, and a request by six detainees – aged 12 to 14 years – to be allowed to eat breakfast together rather than alone in their cells.

In all these cases, we discussed the concerns with centre managers. They took action to address the issues, including reversing the ban on sports posters and varying access to telephones. The centre that required detainees to eat breakfast alone advised that this was done for security reasons, but detainees were able to congregate for other meals.

When we visit a centre, we also inspect the facilities and examine log books about misbehaviour, segregation, staff use of force and complaints. We check that records are complete and punishments for minor misbehaviour are reasonable and consistent.

During some of our visits this year, we noted records indicating what appeared to be harsh punishments for relatively minor misbehaviour. When we raised our concerns, the centre managers agreed that some punishments were unreasonable and initiated closer monitoring of the punishment regime. One of these cases is outlined in case study 8.

CS 9: Poor conditions in holding rooms

At times, juvenile justice centres place detainees in holding rooms for confinement or segregation. At two centres we were concerned about the dirty state of the holding rooms. In one centre, two holding rooms had dirty toilets and one room had a blood-stained ceiling, floor and walls. We were told that a detainee had bitten his lip and sprayed blood around the room, but he had not been the most recent occupant. This meant that the room had not been cleaned before another boy was segregated there. After we raised our concerns, the centre agreed to use their contract cleaner to deal with the rooms. The centre manager also advised us that staff were responsible for ensuring the rooms were cleaned after a shift change and this would be monitored in future.

At another centre, we saw two holding rooms occupied by detainees who were lying on concrete slabs. There were mattresses available for each room, but these had been removed and left outside. After we brought this up with centre management, they immediately instructed staff to stop removing mattresses in all circumstances – unless a holding room occupant was assessed as being at high risk of self harm.

Figure 26: What people complained about

This figure shows the complaints we received in 2009–2010 about juvenile justice centres, broken down by the primary issue that complainants complained about. Please note that each complaint may contain more than one issue, but this table only shows the primary issue.

Issue	Formal	Informal	Total
Buy-ups	0	8	8
Case management	5	5	10
Child abuse-related	0	0	0
Court cells	2	0	2
Classification	0	2	2
Daily routine	13	52	65
Day/other leave/works release	1	3	4
Fail to ensure safety	3	2	5
Food and diet	7	32	39
Information	2	2	4
Issue outside our jurisdiction	1	1	2
Legal problems	0	1	1
Mail	2	4	6
Medical	6	7	13
Officer misconduct	13	18	31
Other administrative issue	3	33	36
Property	1	1	2
Records/administration	0	2	2
Security	0	0	0
Segregation	0	3	3
Transfers	0	7	7
Unfair discipline	4	8	12
Visits	0	4	4
Work and education	1	2	3
Total	64	197	261

Access to education and training

The Department of Education and Training (DET) operates schools in detention centres – they are called Education and Training Units (ETUs). DET's policy on suspending students from schools applies to ETUs. While appreciating the policy may need to be applied flexibly to students in a detention centre, we were concerned when complaints we received suggested ETUs might be doing things differently from each other and some practices might not be in accordance with the DET's policy. In particular, we were concerned about a complaint from a young person who said they had been sent out of school, had not been seen by the principal despite their requests, and did not know if they could go back to school.

We asked DET how their suspensions policy is applied in practice in ETUs. They responded by taking the matter to a meeting of ETU principals. DET subsequently advised us that the suspension procedures used for the young person who complained to us were not in line with policy requirements. The meeting of principals confirmed that there was a need for additional protocols to manage suspensions in all detention centre schools, and DET told us that this would ensure procedural fairness for detainees who were suspended.

DET also told us that all ETUs were reviewing their current risk management procedures and suspension procedures will be updated as part of this exercise. We will monitor the results of this work in all the centres we visit.

We also asked DET about supply and demand for ETU places at the state's largest juvenile justice facility – the Frank Baxter centre – that has capacity for 120 detainees. They told us that they staff their units in detention centres on the basis of annual advice from Juvenile Justice about the number of education places they anticipate will be required. This year at Frank Baxter, the ETU capacity is 90 full-time student places. However, because numbers in the centre and in classrooms fluctuate for reasons including detainee movements, court appearances and internal risk assessments, there can be a shortfall of up to 15 places in the ETU.

DET told us they would meet with Juvenile Justice to discuss ways to address the unmet demand for education and training for these detainees.

Adequate access to education and training for juvenile justice detainees is clearly linked to prospects for rehabilitation. We will monitor the results of the agencies' discussions.

Employment-related child protection

Our employment-related child protection division oversees the investigations of certain agencies into allegations against their employees that involve inappropriate or abusive behaviours towards children. The heads of all government and some non-government agencies – including non-government schools, children's services and out-of-home care agencies – are required to notify us of any reportable allegations or convictions involving their employees within 30 days of becoming aware of them.

These reportable allegations include:

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

We also scrutinise the systems that agencies have in place to prevent these types of reportable conduct occurring in the workplace and to respond to any allegations against their employees.

Recognising
35 years of
impartiality

Figure 27: Formal notifications received and finalised

Matters	05/06	06/07	07/08	08/09	09/10
Received	1,786	1,995	1,850	1,667	1,366
Finalised	1,541	1,749	1,921	1,672	1,442

This year we received 1,366 notifications of reportable conduct, a decrease of 18% on last year. We finalised 1,442 notifications (see figure 27). The downward trend in notifications over the last two years continues, with the most noticeable decrease (46.7 %) this year coming from Community Services (see figure 28). This is primarily due to extended class or kind determinations that have exempted a range of lower risk allegations from having to be notified.

We are currently updating the information we have on various sectors within our jurisdiction to obtain a more comprehensive overall picture of reporting trends. This will allow us to better target our oversight, audit and education work.

Inquiries and complaints

We received 636 inquiry calls this year, a decrease of 9.5% on last year. Most inquiries (approximately 65%) were from agencies with jurisdictional queries or wanting advice about how to manage an investigation. However, we also received inquiries from employees who were the subject of investigations and families of alleged victims. Employees most commonly raised concerns about a perceived lack of procedural fairness and the notification process to the Commission for Children and Young People. Forty-five percent (45%) of those calling on behalf of the alleged victim sought general advice about complaints processes.

Although it is a small component of our work overall, we also look at complaints about how agencies have handled investigations into reportable allegations. This year, we received 40 complaints and finalised 41. In approximately one-third of these matters, we finalised the complaint by making inquiries with the agency or asking them to take certain actions to respond to the concerns raised by the complainant.

Figure 28: Formal notifications received by agency

Agency	08/09	09/10
Ageing, Disability and Home Care	19	13
Catholic systemic	72	54
Child care centres	90	74
Community Services	569	303
Corrective Services	8	13
Councils	5	6
Department of Education and Training	432	380
Department of Health	30	24
Family day care	19	15
Independent schools	65	65
Juvenile Justice	63	57
Other prescribed bodies	0	0
Other public authority – not local government	35	35
Sport and Recreation	2	2
Substitute residential care	257	321
Agency outside our jurisdiction	1	4
Total	1,667	1,366

Monitoring agency investigations

One of our strategies for managing allegations of more serious conduct against employees is to use our s.25E monitoring powers under the Ombudsman Act. These powers allow us to have a more direct input into an agency's investigation and to promptly intervene if we have any concerns. This year we monitored 47% of all notifications that we received – an increase of 17% on last year. The increased number of class or kind determinations exempting more minor matters means we are now dealing with a higher percentage of more serious allegations – and the bulk of these need to be formally monitored.

There have been a number of changes to the child protection system over the past year, and agencies within our jurisdiction have had to manage this changing environment. These changes are outlined in more detail on page 46 of this chapter.

In the area of employment-related child protection, recent class or kind determinations mean that allegations of physical assault or neglect do not now have to be notified to us unless the alleged behaviour resulted in, or had the potential to result in, 'significant harm or injury' to a child.

Extending the range of matters exempted from notification has allowed us to focus on improving the investigations of more serious matters, which often involve criminal allegations. For example, we have been able to:

- › review matters more rigorously
- › have discussions with Community Services and the NSW Police Force (NSWPF) to improve the support they provide to employers
- › increase our support to employing agencies during our oversight of their matters.

Exchanging information

Last year, we reported on the difficulties agencies in our jurisdiction were having with obtaining information from Community Services and the NSWPF. In October 2009, Chapter 16A of the *Children and Young Persons (Care & Protection) Act 1998* (the Act) was enacted to facilitate the exchange of information between government and non-government organisations relating to a child or young person's safety, welfare or wellbeing.

There has been some confusion about the new provisions, as agencies must still use s.248 of the Act to obtain information from Community Services. However, it appears so far that the exchange of information between the statutory child protection bodies and employing agencies has improved significantly (see case study 10).

CS 10: Chapter 16A making a difference

We received a notification from an agency that a foster carer had indecently assaulted an 11 year old girl. The allegation was referred to Community Services and to the Joint Investigation Response Team (JIRT). The agency was initially advised that, after interviewing the alleged victim, JIRT substantiated the allegations but – as the alleged victim did not wish to proceed with any criminal action – the investigation was discontinued. However, the agency was subsequently told by a Community Services caseworker that the allegations had not in fact been substantiated.

Given the serious nature of the allegations and the conflicting advice received, the agency requested information from Community Services and the NSWPF. Community Services declined to provide the risk of harm report and referred the agency to the police. Police also refused to provide information and referred the agency to Community Services. The agency then advised us that they were unable to make a finding in the matter.

We provided advice to the agency about the legislative changes that had occurred since their unsuccessful requests for information. They then made a further request for information under Chapter 16A of the Act. As a result of this request, the agency was provided with relevant information from police and was able to make an appropriate finding in the matter.

Figure 29: What the notifications were about – breakdown of notifications received, by allegation



- Ill-treatment 40 (3%)
- Misconduct – that may involve reportable conduct 115 (8%)
- Neglect 141 (10%)
- Outside our jurisdiction 69 (5%)
- Physical assault 666 (50%)
- Behaviour causing psychological harm 84 (6%)
- Reportable conviction 3 (0%)
- Sexual misconduct 79 (6%)
- Sexual offences 169 (12%)

Figure 30: Action taken on formal child protection notifications finalised in 2009–2010



Practice update

In 2009–2010 we published a practice update on our website, 'Making a Finding', which outlines the findings available to agencies when they have completed their investigations. This update includes a finding not previously available, 'not sustained – lack of evidence of weight'. It can be used in matters where the evidence available is of such poor probative value or lacking in weight that it warrants a finding that, on the balance of probabilities, the conduct did not occur.

Assessing notifications

Half the notifications we received (50%) involved physical assault and 12% involved sexual offences (see figure 29). Figure 30 outlines the action taken on the formal child protection notifications finalised and figure 31 breaks down the notifications received by the sex of the alleged offender.

Figure 31: Who the notifications were about – breakdown of notifications received, by sex of the alleged offender

Issue	Female	Male	Unknown	Total
Ill-treatment	30	10	0	40
Misconduct – that may involve reportable conduct	20	95	0	115
Neglect	86	55	0	141
Outside our jurisdiction	29	35	5	69
Physical assault	360	301	5	666
Behaviour causing psychological harm	60	24	0	84
Reportable conviction	1	2	0	3
Sexual misconduct	21	57	1	79
Sexual offences	36	133	0	169
Total notifications received	643	712	11	1,366

The majority of notifications finalised this year (82%) were satisfactory, although approximately 8% of these required some intervention from us before being finalised. If there are deficiencies in an agency's investigation, we may provide feedback and suggestions for handling matters better in the future. If we consider it is in the public interest to address deficiencies more directly, we may request further information or ask the agency to pursue other lines of inquiry or formally request a review of the agency's finding. Case study 11 is one example of where we intervened to address poor investigative practice.

CS 11: Monitoring leads to a better outcome

We were notified of a number of allegations of physical abuse, psychological harm and ill-treatment against a foster carer who, along with his partner, was caring for three children. There were a number of deficiencies in the agency's investigation – including a lack of planning and risk management, inadequate information gathering and documentation, and no information that the foster carer was informed of his rights in the investigative process. We also disagreed with the agency's findings and their decision that no notification was required to the CCYP about the employee's conduct.

We decided to monitor the matter and sought further information from the agency. They gave us this additional information, but we were still concerned that no notification had been made to the CCYP – despite the finding that some of the alleged conduct occurred – and additional allegations made against the foster carer's partner had not been formally brought to our attention. We also found out from the agency that two of the three children had been removed from the placement, but no formal risk management strategies had been put in place for the child that was still there.

We discussed our concerns with the agency and asked them how they were monitoring the remaining child. We suggested that the agency discuss the matter with the CCYP for advice on whether notification was required, and requested them to formally notify us of the additional allegations involving the foster carer's partner. The agency subsequently notified the CCYP and started an investigation into the allegations involving the partner.

If we identify significant systemic issues arising from a notification, we may audit the agency's systems or initiate a direct investigation. We also provide positive feedback when we identify particularly good investigative practice by an agency. Case study 12 is an example of a thorough and appropriate investigation by an agency.

CS 12: A sensitive but thorough investigation

An agency notified us of allegations that a teacher was engaged in concerning conduct with two students who were Sudanese refugees. He was spending time out of school with them, providing them with money for food, and giving both students preferential treatment. The alleged behaviour possibly indicated an overly intimate and inappropriate relationship involving multiple instances of breaching professional boundaries.

The agency conducted a thorough and well-balanced investigation into the allegations. Of particular note was their sensitive consideration of cultural issues in regard to the students. These cultural factors helped the agency understand why the children had felt uncomfortable with the nature of the attention the teacher had shown towards them. Although the agency found that the alleged conduct did not meet the threshold for reportable conduct, they took appropriate steps to suggest the employee adopt more appropriate ways of supporting the children.

Looking to the future

The employment-related child protection scheme has been in operation for over 10 years and we continue to see ongoing improvements in practice across a range of sectors within our jurisdiction.

Streamlining the system

We are now focusing on areas where the system needs to be streamlined and strengthened.

> Our audit program

We believe that reportable allegations that are less serious in nature and therefore present a lower risk should be dealt with more efficiently so that agencies don't have to spend excessive time and resources on managing minor issues.

Over the coming year, we will offer additional class or kind determinations to agencies that demonstrate a good understanding of how to appropriately handle reportable allegations. However, coupled with this, we will increase our auditing of these agencies to ensure that they maintain good practice in their handling of lower risk cases and comply with their class or kind determinations.

Over the past twelve months, we have completed 14 of these 'class or kind' audits.

> Area health services

In 2009–2010, we completed systemic audits of all area health services to check how well they were dealing with reportable conduct. A number of area health services showed very solid practice and compliance with earlier recommendations we had made about potential areas for practice improvement – including developing a handout for new staff that provides information about the Ombudsman's legislation, updating training about reporting roles and responsibilities, and developing a database register to record all reportable allegations involving staff.

> Boarding schools

We completed audits of three government and a number of non-government boarding schools. Effective child protection policies and procedures are very important in these schools, particularly around out of school hours supervision and the maintenance of professional boundaries.

Our audits of the government boarding schools found that staff were deeply committed to the welfare of the students in their care and that overall the policies and procedures clearly outlined what was expected of staff. We also noted that the Department of Education and Training (DET) has drafted comprehensive standards of good practice for boarding schools that, once finalised, will provide schools with a useful tool for regularly reviewing and assessing their systems.

› Aboriginal out-of-home care services

For a number of years we have worked closely with the Aboriginal community to improve service delivery to vulnerable children and young people. This year, we started a comprehensive review program of Aboriginal out-of-home care services.

The purpose of our review program is to examine how Aboriginal out-of-home care agencies are fulfilling their child protection responsibilities under Part 3A of the *Ombudsman Act 1974*, and to examine their complaint-handling systems in line with our responsibility under section 14 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA). Our goal is to strengthen these agencies, by assisting them to improve their systems and practices. For further details see pages 35–36 in Working with Aboriginal communities.

Our focus for next year

The feedback we have received from the agencies we have audited this year has been overwhelmingly positive. We have identified two additional sectors for audits in the coming year – the out-of-home care and independent education sectors.

The out-of-home care sector provides services to a highly vulnerable group of children and needs to have good systems in place for dealing with allegations against carers. We will be developing a targeted audit program to assist these agencies improve their systems for handling employment-related child protection allegations.

The independent education sector is a very large and diverse sector, ranging from Catholic systemic to small independent schools. Through our auditing, we are keen to find out if schools in this sector are fully aware of their reporting and investigative responsibilities.

Performance indicators

2009–2010 criteria	Target	Result
Formal investigation reports recommending changes to law, policy or procedures (%)	80	100
Recommendations that were implemented (%)	80	100
Average time taken to assess notifications (working days)	5	6
Average time taken to finalise/assess final investigation reports (working days)	70	45.5

Strengthening the system

Proactive monitoring of individual matters is one of the ways we work to strengthen the employment-related child protection system in NSW. It involves providing direct support and advice to agencies, particularly in relation to serious reportable conduct matters. Agencies often need to have a better understanding of how to appropriately manage matters involving criminal allegations – and they need to be well supported by Community Services and the NSW Police Force. We have strengthened our focus on looking at ways to promote greater interagency cooperation and improve understanding of the responsibilities of key agencies when there is an allegation of serious reportable conduct.

Matters involving serious criminal allegations

Ensuring serious criminal allegations are reported to the police

We have initiated two investigations related to the failure of Community Services to promptly advise police of serious criminal allegations of reportable conduct. In the first investigation, allegations of sexual assault made against a teacher that were reported to the Helpline by the school were not referred to the Joint Investigation Response Team (JIRT). The matter was initially closed by Community Services. Some weeks later, the school acted on our advice and directly notified the matter to police. Community Services then belatedly made a JIRT referral.

In the second investigation, a report was made to Community Services about a historical allegation of sexual assault. The alleged victim claimed that he had been sexually assaulted by a teacher when he was a student at school. He also indicated that he wished to remain anonymous and did not wish to be involved in any criminal investigation.

The person to whom the alleged victim made these allegations reported the matter to Community Services, but did not provide the name of the alleged victim. Community Services closed the matter without taking any action, apart from referring the allegations to the employing agency. We were concerned that, in light of the seriousness of the allegations, the young man's expressed concern that the teacher may have abused other students – and the fact that he was still engaged in child-related employment – meant that there was a significant risk of harm to a range of children.

We were also concerned that the NSWPF had not been advised of the allegations by Community Services, even though they concerned non-consensual sexual intercourse between a teacher and a student.

In a provisional report on these two investigations, we suggested that Community Services should review their policies and practice for historical allegations and check that they provide adequate information and guidance about:

- › the need to ensure that significant criminal allegations are reported to police, even if Community Services staff believe police may have difficulty in pursuing a criminal inquiry
- › the circumstances that warrant a JIRT referral and those that require a referral to a local police command
- › the particular issues that need to be taken into account when responding to matters involving employees who work in child-related employment.

We have also sought advice from NSW Health about the adequacy of their policies and procedures for handling historical allegations of child abuse, including maintaining client confidentiality.

Ensuring an adequate response by police

In some matters, delays by police in responding to allegations that have been reported to them have impacted on an employing agency's ability to properly manage risk and conduct their own investigations in a timely way. Case study 14 is an example of where we intervened to progress an investigation where concerns existed about the need to manage risks.

Guidelines for the NSW Police Force to better support employing agencies

During the past 12 months we have met with the NSW Police Force (NSWPF) to explore ways of providing better support to employing agencies that have to deal with reportable conduct involving criminal allegations. Recently, we prepared draft procedures for the NSWPF about their responsibility to support employers in these circumstances. These procedures outline the legislation relating to employment-related child protection matters, and give clear direction to police about the need to keep employing agencies advised of any action that they are taking as part of a criminal investigation into the allegations.

We stress the need for the NSWPF to advise employers of any information they need to know to manage any risks to children for whom they have a duty of care, and to ensure ongoing and timely contact with the employing agency during any police investigation and related criminal proceedings. The NSWPF have agreed to consider our draft guidelines.

Serious allegations about non-workplace conduct

A particularly challenging area for employing agencies is when serious child abuse allegations are made against their employees in connection with incidents occurring outside the workplace. For designated agencies – that have to deal with these matters as reportable conduct – it can be very difficult for them to investigate the allegations, particularly given their limited authority to inquire into the private lives of their employees. To help agencies handle these matters, the police and Community Services need to better appreciate both the presenting risks and the challenges for employers in being able to effectively respond to allegations of this kind. Case study 13 shows the need for agencies to be well supported in relation to alleged non-workplace conduct.

CS 13: Hard to handle non-workplace conduct

We received an allegation that a teacher had physically assaulted and sworn at his stepson. A report was made to Community Services, who subsequently advised the agency that it would not be taking any action to investigate the allegations. The agency requested information from Community Services under s.248 of the *Children and Young Persons (Care & Protection) Act 1998*. They were given limited information in the form of a copy of the Helpline report. As the agency was unable to interview the alleged victim, they put the allegations to the teacher for his response and then finalised their investigation.

We were concerned that Community Services had not notified the alleged physical assault of the child to police. When following up this matter, we learnt that the NSWPF had information that was directly relevant to the allegations. Without this information, the employing agency was left with an obligation to investigate this non-workplace issue with very little information.

CS 14: Delays cause concerns about managing risk

We were notified of allegations that a teacher had sexually assaulted a number of female children within his family. The allegations were reported to police. The agency was advised that police would be investigating and the employee should not be alerted to the allegations while their investigation was underway. As a result, the teacher remained on active duty. Nearly 12 months later, despite regular liaison between the agency and police, the police investigation had not progressed and the agency was unable to take any risk management action in regard to the employee. We were concerned about this delay and asked the police for information about the status of their investigation. We then worked with our police division to make further inquiries about the reasons for the delays.

As a result of our inquiries, police subsequently advised the agency that they would not be taking any further action as they had exhausted all lines of inquiry and gave the agency clearance to start its own investigation. The agency then sought information from the police and, as a result of their inquiries, a further allegation came to light and the employee was removed from active teaching duties for the remainder of the investigation. A number of the allegations against the employee were eventually sustained and these findings were reported to the CCYP.

Sexual offences and sexual misconduct

We deal with a number of matters each year where there are clear allegations of sexual offences. In 2009–2010 the figure was 169 matters, 12% of the total notifications we received.

However another related type of allegation is where there is evidence of inappropriate or improper conduct by an employee that suggests that they may be engaging in more serious misconduct of a sexual nature. This area is a significant challenge for employers and we have been proactive in facilitating discussions between police and employing agencies in these cases.

We have also had a series of informal meetings with police to learn about 'cutting edge' police investigative processes so we are able to provide good strategic advice to agencies in cases where an employee has a profile that the police may be interested in. Cases studies 15 and 16 are examples of where we have intervened in this way.

CS 15: The importance of past history

A person who had contact with children in a school context provided sexually explicit images to two teenage girls via his mobile phone. The issue was whether the images were conveyed accidentally. However, following our inquiries, it came to light that the person had a more serious history of admitted sexual impropriety towards younger children. We reported this additional information to police to help them investigate the circumstances relating to the sexually explicit images being provided to the teenage girls. The investigation is ongoing.

CS 16: Checking all potential sources of information to make sure

A school principal received an anonymous complaint alleging that one of the teachers at the school had been reported to police and asked to leave a teaching post in another state for taking inappropriate photographs of students. As part of the allegations, the anonymous complainant further alleged that the teacher's wife had left him out of concern for the safety of her children. The complaint also referred to the fact that the teacher frequently visited 'hard porn sites'.

The agency made some inquiries with local police, who advised that he was not known to police in NSW or interstate. The agency then decided that there were no other lines of inquiry available and finalised their investigation without putting the allegations to the teacher.

We had concerns that the allegations had not been sufficiently investigated and that the teacher remained exposed if further anonymous complaints were made. We were also concerned that no inquiries had been made with previous employers, despite the allegation that there had been previous disciplinary proceedings against the teacher. We also considered that the agency could have contacted the Child Protection and Sex Crimes Squad to find out if they had any 'intelligence' on the teacher – given the allegation that he visited 'hard porn' sites.

We met with the agency to discuss our concerns and they then made further inquiries with the Sex Crimes Squad, interstate police and previous employers. By pursuing these further lines of inquiry, the agency was able to demonstrate that the allegations had been satisfactorily investigated and no further action was required in regard to the teacher.

Agencies must take appropriate risk management action when dealing with matters where the evidence would suggest a pattern of concerning behaviour on the part of an employee. Case study 17 is an example of good risk management by an agency during and at the end of the investigation.

CS 17: Properly managing both the teacher and the risk

We received a notification that a teacher was engaged in an inappropriate relationship with a female student. There seemed to be significant personal contact, including spending time alone with the student out of school and exchanging text messages. Although the teacher initially remained on active duty after the school learnt of the allegations, a number of additional allegations involving other female students came to light during the investigation. This led the agency to conduct a further risk assessment and place the teacher on alternative duties. The agency informed the teacher in writing of the reasons for taking this action and made sure support was available to the teacher during the investigation.

After a comprehensive investigation, the agency found that the teacher had engaged in a pattern of concerning behaviour with a number of female students. They made findings against the teacher which were notified to the CCYP. The teacher was reprimanded and his conduct will be formally monitored for a significant period of time.

Convening case conferences about complex matters

Complex issues often arise out of investigations and it can be useful to meet directly with an agency to discuss these issues and agree on the best way forward. For example:

- › We received a notification from an out-of-home care agency about a family member of foster carers who was living at his parents' home and had been the subject of several sexual assault allegations. The agency had decided to leave the foster children in the placement on the basis that the carers appeared to be protective towards them and the children were attached to the carers. However, we had concerns that significant risks regarding the family member were not being addressed. The carers seemed not to believe the child protection concerns about their son and therefore could not be relied upon to be protective. We met with the agency and Community Services to discuss our concerns. As a result, further inquiries were made which highlighted significant risks to the children and a decision was taken to remove the children from the placement.
- › An agency asked to meet with us to discuss the best way to manage a matter where multiple allegations were being made against its employees by an anonymous complainant. We provided advice and guidance about the level of investigation required, particularly if allegations lacked detail or an employee was not directly identified, and discussed whether some employees should be informed about the allegations in light of the complex nature of this matter. We also agreed on strategies for managing the volume of complaints, a number of which were being received electronically.
- › We received a notification from an out-of-home care agency that a family member of a foster carer had indecently assaulted a 14 year old foster child in the placement. The agency had started an investigation into the matter but had not notified police of the allegation, despite it being an allegation of criminal conduct. We met with the agency to clarify their reporting responsibilities and they then reported the allegation to police.
- › We held a roundtable meeting with Police, DET and Health to discuss the best way to progress a matter involving a historical allegation about a person currently engaged in child-related employment.

The child care sector – a priority area for change

- › As part of our strategic planning for the coming year, we have identified the child care sector as an area of high priority. Our work with this sector over the past 11 years has shown that many services within the sector lack the necessary skills and expertise to conduct competent investigations into reportable conduct allegations. Many services also have a lack of understanding of their responsibilities to report these matters to our office.
- › As the largest sector within our jurisdiction, which also services a highly vulnerable client group, it is critical that improvements are made to the way agencies in this sector respond to child protection allegations made against their employees. However, the sector is not only large, it is very diverse, ranging from large community-based service providers to private chains and small family-run businesses. It includes not only child care centres, but home-based family day care schemes and sole providers. And there is also a regular turnover of staff and service owners, which make it difficult to retain investigative expertise.
- › Against the background of these concerns and the significant challenges in achieving sector-wide improvement in practice, we are keen to explore options for enhanced training and additional support services to agencies across this sector to assist them to meet their legal obligation to respond appropriately to child protection allegations made against their staff and to broader child protection issues that they are faced with.

Our submission to the CCYP Review

On 15 April 2010 the Minister for Youth, the Honourable Peter Primrose, announced a statutory review of the *Commission for Children and Young People Act 1998*. Section 53(2) of the Act specifies that the review must be done five years after the *Commission for Children and Young People Amendment Act 2005* was assented to in December 2005. The review was brought forward after an operational review of the CCYP and the Auditor-General's findings into the effectiveness of the Working With Children Check.

In our submission we stated that we believed the statutory review should consider whether the overall legislative framework for reporting relevant employment proceedings and conducting child-related employment screening delivers a genuinely integrated and efficient system for protecting the safety of children and the rights of employees and employing agencies. A full copy of our submission is available on our website.

Notifying the CCYP of minor conduct

We are concerned that certain 'one off' and minor child-related employment matters are still required to be notified to the CCYP. This is neither efficient nor fair to the affected employees – and it is inconsistent with the original vision of designing a system that focuses on identifying those who may pose an unacceptable risk to children.

Incomplete relevant employment proceedings

A problem can arise if individuals – who are the subject of very serious allegations – move from one area of child-related employment to another, without their new employer even being aware of the previous employer's uncompleted investigation into the outstanding allegations. This gap in the system needs to be addressed (see case study 18).

CS 18: Alleged offenders moving on

Allegations of serious sexual misconduct were made against a teacher at an independent school. When confronted with the allegations, the teacher immediately resigned. He then sought and obtained employment with another organisation. His Working With Children Check was clear as the original school had not finalised their investigation and made a notification to the CCYP. The current employer subsequently became aware of the concerns about the teacher, but only after they had offered the teacher permanent employment.

Strengths and limitations in the current approach to screening

A key strength of the NSW system is the consideration of Relevant Employment Proceedings (REPs) in working with children background checks. This allows actions or behaviours that do not meet the threshold for police investigation or criminal charges – but provide critical information for assessing the risk a person poses to children – to be considered. There are however a number of limitations in the current screening system.

Limitations

> Scope of records considered

To ensure that the scope of records considered in screening is sufficient to identify all behaviour that may constitute a risk to children, we proposed that the statutory review consider the breadth of records currently considered when conducting employment screening. In particular, we suggested that the review should consider whether a broader range of offences should be considered. The screening carried out in Queensland under the 'blue card' system includes, in its relevant serious offence list, crimes committed against adults and property as well as drug offences. Alternatively, we recommended that the review should consider including a full criminal record check as part of standard employment screening.

> Lack of review and updating of information

A significant benefit of the blue card system in Queensland is firstly that certification is for a limited period (three years) and must be renewed. Secondly, the Queensland Police and the Commission for Children and Young People and Child Guardian (CCYPCG) systems are linked. This enables blue card holders to be flagged on the police system, with police having a statutory requirement to advise the CCYPCG of relevant changes to information held about them. The CCYPCG can then notify employers of any suspension of a blue card and further action, such as additional risk assessment, can be taken.

We suggested that the review consider – as part of the overall screening and/or certification process for people seeking child-related employment – a system that includes a periodic recertification requirement of a person's suitability for working with children. Although we support the adoption of a certification system for NSW, we are firmly of the view that any effective child-related employment screening system should also include checks of completed relevant employment proceedings.

> Child-related employment screening for police

Given that policing activities incorporate significant contact with children and young people, we argued in our submission that it is in the public interest for general duties police officers to have a working with children background check.

> Screening of adults in family day care settings

Working with children background checks have recently been extended to adults who live with foster carers and family day carers. The CCYP has advised us that this screening will only apply to new carers. We are concerned that there a significant number of people who are already living with foster carers or family day carers who have not been subject to any form of screening – and there is no legislative provision for this to occur. We therefore suggested that the review consider recommending an amendment to the Act to ensure that all adults living with existing foster carers and family day carers are subject to checks.

Probity checking

In April this year we convened a forum of NSW government agencies with responsibilities for health and human services (funded agencies), peak bodies that represent many of the thousands of non-government organisations funded to deliver services (funded organisations) and oversight and regulatory bodies with responsibilities in this area. The forum examined the various screening processes that funded services may use when checking for information about the probity of prospective employees, management committee members or other volunteers involved in the planning or delivery of services.

Through the forum we sought advice on:

- › current practices, including the nature of screening that government agencies require funded organisations to conduct and the systems in place to promote and monitor compliance, and
- › the adequacy of current systems for ensuring that problems that come to light through employment screening and other probity checks are appropriately assessed and managed.

We prepared a discussion paper outlining the current inconsistencies with respect to probity checking practices across the human services and health sectors, and suggested options for developing a consistent probity checking system to support stronger probity standards in the non-government sector.

For further details see page 29 in Stakeholder engagement.

Carer approval checks

This year we commenced an investigation into the adequacy of Community Service's screening of prospective carers for children in out-of-home care.

During the course of our investigation, Community Services advised us that they had conducted a statewide audit of carer assessments; this work found that in one of the agency's local offices involved in our investigation, adequate probity checks or other assessments were lacking for 88 carers.

At the time of writing our investigation was not finalised but Community Services reported that work was underway in several local offices to ensure that all carer assessments complied with policy.

Another concern from our review work involves the probity checking of authorised carers in non-government out-of-home care agencies. In particular, we are concerned that there is no guarantee that – as part of the carer approval process – a check is carried out as to whether any child protection reports have been made about the prospective carers. Although the Community Services policy requires its staff to conduct risk of harm report checks for prospective carers, they do not carry out these checks for prospective carers seeking authorisation by non-government out-of-home care agencies.

Engaging with agencies

This year we presented over 16 workshops, briefings and forums to a range of agencies and approximately 440 stakeholders including out-of-home care, children's services and other public authorities. We also have regular meetings with agencies – such as DET, Community Services, NSW Health, Juvenile Justice, Ageing, Disability and Home Care and a range of non-government stakeholders – to discuss systemic or policy issues. For further details, see page 42 in Stakeholder engagement.

In addition, we help agencies to improve their preventative systems and investigative practice in a number of other ways – including regular liaison meetings with larger agencies and case conferences to discuss issues about individual investigations. We visited a number of juvenile justice centres to provide detainees with information about their complaint options. We also audited documentation to ensure that any reportable allegations were being appropriately identified and reported in line with reporting obligations under the Ombudsman's legislation. For further details see page 57.

We have also developed a training program on responding to employment-related child protection allegations as well as an advanced training course on handling serious allegations involving criminal conduct. There has been a strong demand for this training with 20 people attending the first course delivered in June this year. All six workshops for 2010 have been filled. These are discussed more fully in Community education and training.

People with disabilities

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

People with disabilities in care

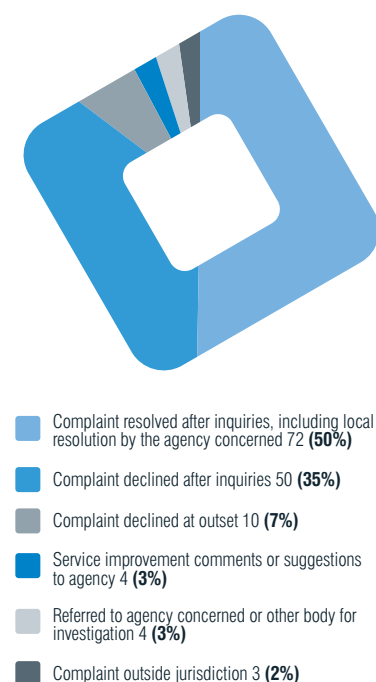
Most of the complaints we receive about disability services are about the care given to people with disabilities living in accommodation provided by Ageing, Disability and Home Care (ADHC) and services that ADHC funds or licenses. The main complaint issues this year related to:

- › **Safety** – including assaults by other residents, action by services to minimise or prevent assaults, provision of behaviour support, use of restrictive practices, support to victims of assault, and communication with families about incidents.
- › **Health** – including responses to changing health needs, implementation of health/medical recommendations, medication management, and use of health care plans.
- › **Adequacy of care** – including complaints about reductions in staffing, limited access to the community, inadequate individual planning, and limited involvement in meaningful activities.
- › **Accommodation changes** – including compatibility of residents, adequacy of planning to inform decisions, consultation with residents and families, assessment of risks, and decisions to exit residents.

Figure 32: Formal and informal matters received in 2009–2010 about agencies providing disability services

Agency category	Formal	Informal	Total
> Community Services			
Disability accommodation services	0	1	1
Disability support services	2	5	7
Sub-total	2	6	8
> ADHC			
Disability accommodation services	50	40	90
Disability support services	28	42	70
Sub-total	78	82	160
> Other government agencies			
Disability accommodation services	0	0	0
Disability support services	0	2	2
Sub-total	0	2	2
> Non-government funded or licensed services			
Disability accommodation services	61	44	105
Disability support services	26	21	47
Boarding houses	1	5	6
Sub-total	88	70	158
Other (general inquiries)	0	0	0
Agency unknown	0	26	26
Outside our jurisdiction	0	1	1
Sub-total	0	27	27
Total	168	187	355

Figure 33: Outcomes of formal complaints finalised in 2009–2010 about agencies providing disability services



CS 19: A good mediated outcome

A private guardian made a complaint to us about the care provided to a woman living in a funded group home. The woman had injuries and bruising, including a broken collar bone, which the service was unable to explain. The guardian said there was a delay in the woman receiving medical attention, the service had not notified the guardian of the injuries in a timely manner, and had used restraints without consent. The service was also understaffed and there was poor communication between management and staff.

We contacted the service and identified some areas that could benefit from improvement, particularly in relation to communication. As a result of the incident and the lack of communication between the parties, there was a breakdown of trust between them. We facilitated mediation between the guardian and the service – communication and the facts of the injuries were discussed and apologies were given by both parties.

The service also agreed to complete a formal investigation report on the incident, conduct risk-assessments, review practices at the day program the woman attended, and review the compatibility of the residents in the group home. Both parties were satisfied with the outcome of the mediation, and we finalised the complaint after monitoring the progress of agreed actions.

CS 20: Assault in respite care

In July 2009, there were a number of media reports about an assault in an ADHC respite house. A 22 year old male client reportedly assaulted a 15 year old girl who had been staying at the service while her mother recovered from knee surgery. As a result of the assault, the girl required hospitalisation and emergency surgery. Media articles reported that the male client had previously assaulted another client at the respite service, and that an 11 year old child had been offered respite care in the same house.

We met with ADHC to discuss the matter and agreed there were serious questions about the actions taken by ADHC to ensure the safety and wellbeing of clients, provide them with appropriate support, respond to incidents, and ensure adequate communication with families and other services. There was also a question as to whether ADHC staff had breached policy by placing children in respite care with adults.

ADHC appointed an independent consultant to investigate the matter and we received their final report in May this year. There were serious deficiencies in the region in which the respite house was located which meant that clients were not being provided with timely and appropriate services. These deficiencies included:

- > poor understanding of the roles and responsibilities of individual staff positions
- > a failure of senior management to address problems identified over time
- > poor compliance with departmental policy and procedures in critical areas.

The report made over 180 recommendations to address the deficiencies and ADHC has accepted all of them. We will continue to monitor their implementation.

CS 21: Move to group home poorly planned

We received a complaint from an official community visitor (OCV) about a woman with disabilities and complex behaviour needs who was moved from interim accommodation to a new group home with a funded service. The OCV raised concerns about the adequacy of the transition planning, the limited involvement of the client in this planning, and the short timeframe for the move to occur. After discussions with ADHC and the Public Guardian, we referred the matter to ADHC to resolve and report back to us.

We finalised the complaint after receiving advice from ADHC that they had updated and provided all relevant plans to the Public Guardian, the guardian had consented to the move, the client had reportedly settled in well and had indicated that she was happy with the move, and ADHC was providing weekly updates to the Public Guardian.

Four months later, the OCV told us that the group home had 'broken down' due to the incompatibility of the residents. We met with ADHC, the funded service and the OCV to confirm the current and future living arrangements of the three young women in the group home – each of whom had complex support needs and a history of unsuccessful placements. In the meeting, we were advised that the client profiles had not been updated since 2007 so did not contain current information, the placement had started to break down within four weeks, and after eight weeks all residents had returned to separate accommodation and living arrangements with 1:1 staffing support.

It had been known before the group home was set up that the three proposed residents had been supported in 1:1 situations because of their challenging behaviours, histories of trauma, personality disorders and mental health issues – and that each of them had little or no history of living successfully with other people. As a result, we had concerns about the planning, assessment and transition process used by ADHC in creating the group home.

ADHC told us that they would review the adequacy of their processes for establishing the group home. The review would consider whether a change in process and practice could ease future transitions for the three women or other clients in a similar situation, minimise any detrimental impact on individuals of a failed placement, and maximise the potential of a successful transition. We have referred the matter to ADHC to investigate and report back to us, and they have appointed an external consultant to do the review.

People with disabilities in the community

Community-based support for people with disabilities includes Home and Community Care (HACC) services, post-school and day programs, respite, case management services and drop-in support. Services are either provided or funded by ADHC. This year, complaints tended to focus on:

- › Access to accommodation – including complaints about people with disabilities remaining in hospital or mental health units due to difficulties in obtaining supported accommodation.
- › Access to in-home support – including inability to obtain support due to a lack of service capacity, and loss of service after moving areas.
- › Adequacy of support and the professional conduct of staff.
- › Fees – including complaints about being charged for in-home support while in hospital and being over-charged.

Accessing SAAP services

In May 2004, we tabled a special report to Parliament about homeless people and the Supported Accommodation Assistance Program (SAAP). One of our findings was that people with physical disabilities were often excluded from SAAP because of the physical accessibility of premises. For example, we found 41.6% of agencies (95 agencies) excluded people with physical disabilities in their eligibility policies – that is, almost half the agencies surveyed did not consider them eligible to become service clients.

We recommended that Community Services, with Housing NSW, develop a joint plan of action to improve access to SAAP by people with physical disabilities. Community Services supported this recommendation, but their proposed strategies for doing this have kept changing over time and we have been unable to identify any substantive progress. In February 2010, we began an investigation into the actions of Community Services in relation to access of people with physical disabilities to services provided under SAAP. This investigation is continuing.

Community Participation services

In addition to handling complaints about disability services, one of the key functions of our office is to review the complaint-handling systems of service providers and to assist services to improve their complaint-handling procedures and practices.

Last year we reported on the findings from our review of complaint-handling in ADHC-funded Community Participation services. The Community Participation program provides young people with disabilities and moderate to high support needs with alternatives to paid employment, such as skills development to increase independence. One of the key recommendations from our review was the need for services to ensure that staff receive training in effective complaint-handling.

Since completing our review, we have monitored the progress of services in implementing our recommendations.

This year, ADHC has developed a fact sheet for Community Participation services that summarises the recommendations of our review and the resources available to help services improve their complaint-handling processes. ADHC also told us that they are going to provide training opportunities, information and other service system development initiatives. We have provided feedback on the fact sheet and will monitor the work of ADHC and funded services in this area.

Through our complaint-handling reviews, we have identified the need to improve sector-wide practice in this area. We are currently working with National Disability Services (NDS) to develop a complaint-handling training program specifically designed to suit the needs of the disability services sector. The program will be delivered in metropolitan and regional centres across the state in 2011.

Children and young people with disabilities

Consulting with families

During May and August 2010, we carried out a consultation project with families who have a child with a disability living at home about their recent experiences in obtaining information, services and support for specialist disability services and mainstream services.

Consultations included telephone interviews and focus groups in metropolitan and regional areas, and meetings with disability peak agencies, advocacy organisations and a selection of service providers.

We consulted with more than 300 people during the course of the project and will release our report on this work later this year.

During the consultations, we were also contacted by many families of adults with disabilities who are living at home – wanting to discuss their experiences in obtaining services and support. The information provided by these families will inform our further work in this area.

CS 22: Children with disabilities in school

In March this year, there were a number of media reports about children with disabilities in a western suburbs primary school being confined during recess and lunch to a 'caged' area of the playground for safety reasons. The media reports indicated that the fenced-off area had no grass, water or toilets, and that parents had been making complaints to the school, the department and the Minister about the situation for seven months.

We made inquiries with the Department of Education and Training and visited the school to meet with the principal and inspect the site. The principal told us that in 2008 she was approached by parents of children in the support unit, raising concerns about safety. The layout of the school meant that the children – who tended to run around and not follow directions – were at risk. In consultation with parents, it was decided that an area would be fenced and used as a transition area. As socialisation was a key factor, the area was created in one of the existing playgrounds. The ground surface was dirt, which was the same as the surrounding playground.

On enrolment, the Assistant Principal Support and parents identify children who need assistance to learn how to safely use the playground. These identified children are required to be in the enclosed area at recess and lunch until they get used to the playground environment, other children and noise. They are then transitioned by staff into the main area of the playground by spending increasing lengths of time in that larger area.

At the time of our visit, we were informed that there were currently no children who were required to be in the enclosed area – but many children chose to use the area because of the shaded seating under a heritage-listed tree. Students were able to come and go out of the area via a latched gate, and the area was not segregated.

We also found that although one parent had made a complaint, this was about the ground surface of the enclosed area – not the existence of the area itself. The weekend after the media coverage, the area was resurfaced with special rubber flooring. We advised the department that we would not be taking further action.

Young people with disabilities leaving care

In late 2009, the Public Guardian raised concerns with us about the process for young people with disabilities leaving the care of the Minister for Community Services. One of the key concerns was that the Public Guardian was often not involved in the leaving care planning until late in the process, to the detriment of the young person.

In March this year, we facilitated a meeting between the Public Guardian, the Guardianship Tribunal and Community Services to discuss this matter.

It was agreed that Community Services would identify young people in out-of-home care who have turned 16 and are likely to need at least some aspects of guardianship after leaving care. They would then start guardianship applications for these young people to appoint a guardian – who would advocate for the young person during the ages of 16 to 18 years to ensure their smooth transition to after care services and support.

Community Services and the Public Guardian have also agreed to improve their collaborative work to ensure good outcomes for young people leaving care, including providing information and training for staff.

People with disabilities who are ageing

Last year, we recommended to ADHC that they develop a policy that clearly articulates and documents their directions, strategies and actions for supporting people with disabilities as they age. We also recommended that they develop a policy for disability services to guide decision-making and the delivery of services when working with people with disabilities who are ageing.

In July 2009, ADHC told us that they were developing an overarching statement/position on ageing – including how people are supported in the disability specialist support system. They said that further operational policy needs would be assessed once the statement was finalised.

To date, ADHC has not released an overarching statement on ageing or developed policy guidance for disability services. However, this year they have funded an 'ageing in place' research project to identify the ways in which ageing affects the support needs of people with disabilities and their carers. They plan to use this information to develop a service response strategy that meets clients' changing needs and promotes ageing in place.

Our work in reviewing the deaths of people with disabilities, and our liaison with service providers, indicates that the lack of a clear position about people with disabilities who are ageing continues to be an issue. We also handled five complaints about younger people with disabilities who had been, or were proposed to be, placed in aged care facilities. While two of the placements related to palliative care, the other complaints concerned younger people with disabilities being admitted to nursing homes reportedly because of a lack of suitable supported accommodation options.

We have concerns about the placement of younger people with disabilities in aged care facilities, particularly in light of the Younger People in Nursing Homes program that is aimed at getting these individuals out of aged care facilities and preventing their inappropriate admission. We will continue to pursue this issue.

People living in large residential centres

Individual planning in large residential centres

Last year we released a report about how services were planned and delivered to meet the individual needs of 60 people living in ADHC's large residential centres. We raised significant concerns about residents not being active participants in the planning and delivery of their services, rarely being involved in decisions that affect them, having limited opportunity to make choices and develop and practise life skills, not having meaningful involvement in the broader community and lacking advocacy support.

In response to our findings and recommendations, ADHC developed action plans that detail the steps they will take to address the issues identified in our report. This year, we have been monitoring ADHC's progress in implementing the action plans by obtaining regular progress reports and speaking with OCVs about what they have noticed during their visits.

A successful forum on devolution

In 1998, the NSW Government announced that all government and non-government institutions housing people with disabilities would close by 2010. Today, over 1,600 people with disabilities still live in institutions (also known as large residential centres). The government's commitment remains that institutions will close, but progress has been slow and there is little publicly available information on current plans for devolving the existing centres.

We decided to hold a public forum so that people with disabilities and other stakeholders could engage in constructive discussions on the progress towards closing institutions and the related challenge of providing options for people with disabilities to live their lives to the full within the community. This forum, on the closure of institutions or 'devolution', was held in June this year in partnership with the Disability Council of NSW.

The forum was facilitated by Julie McCrossin and attended by close to 300 people – including a broad mix of people with disabilities, family representatives, service providers, advocates and government representatives. The Chief Executive of ADHC spoke about the current status of devolution, a panel of people with disabilities and their representatives described their experiences moving out of institutions, and a panel of service providers, staff and a researcher outlined what it takes to successfully deliver community-based support.

Attendees at the forum had a diverse range of views, but there were a number of areas of broad agreement. These included that:

- › People with disabilities and their families need to have direct and meaningful involvement in discussions on devolution and planning for the future.
- › One model of housing and support does not suit everyone, and there needs to be a focus on individuals.
- › People with disabilities and their families need choices. There needs to be greater diversity of housing options, not just group homes. Participants discussed self-directed funding, the inclusion of people with disabilities in affordable housing options, shared equity arrangements, partnerships between government, non-government and people with disabilities and their families, and the need for more innovative options.
- › Devolution and community-based support for people with disabilities needs to include consideration of regional and rural NSW.
- › It is important to have a focus on relationships, including maintaining relationships between people with disabilities and their families as well as fostering and facilitating relationships with the broader community.

We encouraged participants to provide feedback to us on the forum and their key recommendations from the day. We received 115 written responses, and continue to receive feedback through a variety of means. The recommendations are broadly in line with the issues highlighted above, but have also emphasised the need for increased resourcing.

Our report on this issue was tabled in Parliament in August this year. It examines the progress of work in ADHC large residential centres to improve the lives of people with disabilities living there, considers the progress of devolution, reports on the outcomes of the forum, and makes recommendations for the future.

Deaths of people with disabilities in care

Reviews of deaths in 2009

We review the deaths of anyone living in, or temporarily absent from, residential care provided by a disability service or a licensed boarding house. Our focus is to identify procedural, practice or systems issues that may contribute to deaths or may affect the safety and wellbeing of people with disabilities in care, and recommend strategies that may help to prevent or reduce these deaths.

In 2009, we reviewed the deaths of 104 people with disabilities – 87 people who lived in disability services and 17 people who lived in licensed boarding houses. To date, we have taken further action in relation to 23 of these deaths – such as meeting with services, seeking advice from our Reviewable Disability Deaths Advisory Committee, reporting concerns to the service, or conducting an investigation (see case study 23).

CS 23: Poor response to critical health issues

This year we investigated the conduct of ADHC in relation to the death in February 2009 of a 58 year old man who lived in a government-operated large residential centre. He had a severe level of cognitive impairment, communication difficulties, and relied on a wheelchair for mobility. He also had significant health concerns that required ongoing management and regular review, including epilepsy and gastroesophageal reflux disease.

The man was booked in to have a colonography and received bowel preparation medications in the days leading up to the test. The evening before he was due to have the colonography, nursing staff at the residential centre received a copy of the man's pathology results. These indicated that he had electrolyte imbalance, with elevated sodium levels and low potassium levels. Staff called an after hours medical service and were advised over the telephone to administer Gastrolyte, an electrolyte replacement to prevent dehydration.

That evening and the following morning, staff recorded that the man was accepting very little fluid. They had tried to syringe thickened fluids into his mouth, but he was swallowing only a small amount. The man went to the colonography appointment, but when he returned he refused all food and accepted only a small amount of fluid. In the late afternoon, staff noted that the man's condition had deteriorated. He had become listless and lethargic and was no longer sitting upright in his wheelchair. Staff put him in bed and noted an hour later that he had started dribbling and had a fixed stare.

Staff contacted the after hours nurse manager, and called for an ambulance 17 minutes later. On arrival at hospital, the man was found to be extremely dehydrated and had a number of life-threatening electrolyte abnormalities, including acute kidney failure. His condition did not improve and he died the following morning from pneumonia.

We found that the actions of ADHC staff in response to the man's critical health issues were inadequate because they:

- › did not call for a review of his condition by the centre's medical officer at any point, despite significant health risks and numerous triggers to do so
- › did not clearly identify the risk of dehydration or take adequate action to address the risk
- › were not responsive to the change in the man's health needs the evening before his death and did not identify that his condition was critical and required immediate medical attention.

We also found that staff had withheld the man's anti-convulsant and anti-reflux medications on two consecutive occasions during this period, without medical authority to do so.

We have made a number of recommendations to ADHC to address the issues in our report. These are targeted at improving practice in the large residential centre and ensuring that nursing staff across ADHC's residential centres have the skills and knowledge to adequately fulfil their responsibilities. ADHC has accepted all of the recommendations and we will monitor their implementation.

Systemic work

In addition to reviewing individual deaths, we also undertake research and projects and try to improve outcomes for people with disabilities in care, and minimise preventable deaths, through our systemic work. The following activities have been a focus for us this year.

Training for staff in disability services

We have started delivering training to direct care staff in disability services on the key findings from our reviews. This training provides a useful forum for improving staff awareness, resolving concerns and discussing any practical challenges or regional differences in practice. Next year, we plan to expand our training to a wider range of services.

Improving support for people with disabilities in hospital

Through our reviewable deaths reports, we have consistently made recommendations aimed at improving the support provided to people with disabilities in hospital. We have seen some progress – with the development of relevant policies by ADHC and NSW Health, and the implementation of local area agreements between some disability services and local area health services or individual hospitals. However there continues to be problems in this area, including a lack of clarity about who pays when disability services staff provide support to their clients while they are in hospital.

In October, we met with NSW Health, ADHC and the peak non-government organisation National Disability Services to discuss work to resolve these issues. We were advised that NSW Health and ADHC have agreed to develop a statewide protocol with the mandatory principles that should be included in local arrangements between area health services and ADHC regions. They are also preparing a template for hospitals and disability providers to help them develop local protocols.

ADHC has released a first draft of the statewide protocol to disability services for comment. We will continue to monitor the progress of this work and the implementation of the protocol once it is released.

Promoting access to mainstream health programs

Many of the people whose deaths we review have chronic health issues – such as respiratory illness, diabetes and gastroesophageal reflux disease. They often have multiple admissions to hospital, but are rarely linked in with chronic disease management programs that are available to the general community. These programs provide health support to people in their homes and help to reduce unplanned and avoidable admissions to hospital.

The report from the Garling Inquiry into the acute care system included recommendations that NSW Health expand their severe chronic disease management program to all high risk patients over the age of 18, and develop a plan for expanding the Hospital in the Home programs of care for chronic and complex patients. Under the *Caring Together* action plan, NSW Health is undertaking work to implement these recommendations.

We are currently exploring opportunities with NSW Health and ADHC for ensuring that people with disabilities and chronic and complex health needs are linked in with these mainstream health programs. In October 2009, we were advised that this is an agenda item on the ADHC/NSW Health Senior Officers' Group, and that the agencies would be undertaking work to identify people with disabilities in care who meet the criteria for chronic disease management programs.

Analysing causes of death

Last year we engaged the National Centre for Health Information Research and Training (NCHIRT) to analyse the causes of death of people with disabilities in care who died between 2003 and 2007, compare their leading causes of death to those of the general population, and review the literature on risk factors that may contribute to these deaths.

This year we have contracted NCHIRT to expand the analysis to include deaths of people with disabilities in care in 2008 and 2009, and to extend the comparison with the general population across the three-year period of 2003–2005.

This work will help to improve our knowledge about particular causes of death and potential factors that may contribute to those deaths, and help us to identify and target strategies for reducing or preventing premature deaths. Our findings will be included in our next reviewable deaths report.

Aboriginal people with disabilities

Last year we reported that we had begun a review of Ageing, Disability and Home Care's implementation of their *Aboriginal Policy Framework and Aboriginal Consultation Strategy*, which aim to ensure that Aboriginal people and their carers have equal access to ADHC's programs and services and can participate in ADHC's planning and decision-making. The review involved audits of each of ADHC's six regions.

This year we provided each region with a detailed report outlining our findings and recommendations. We also prepared a report summarising the main systemic issues that we identified across all regions.

For more details about our work in this area see page 36 in *Working with Aboriginal communities*.

Licensed boarding houses

Under the *Youth and Community Services Act 1973* (YACS Act), boarding houses are required to be licensed by ADHC when two or more people with disabilities live at the premises. Licence conditions specify the requirements expected of the licensee, licensed manager and staff. However, many of the licence conditions are considered to be unenforceable or *ultra vires*. Since at least 2002, we have raised concerns about the unenforceability of the licence conditions and the associated reduced safeguards for residents.

Last year, we reported that ADHC had started work on identifying the *ultra vires* conditions that should be included in new regulations to resolve the issue of enforceability. The Youth and Community Services Amendment (Obligations of Licensees) Regulation 2010 has been enacted this year.

The prescribed standards in this regulation were already covered in the existing licence conditions, but they provide minimum standards and ensure that these requirements are enforceable by ADHC.

However, our reviews of the deaths of people with disabilities in licensed boarding houses have identified areas where the minimum standards need to be improved. In particular, regardless of the accommodation setting, at least one person on shift should have current first aid qualifications. Under the current standards, only one staff member must hold current first aid qualifications, which is of no benefit to residents when that staff member is off duty.

In June, ADHC released a Regulatory Impact Statement for a new Youth and Community Services Regulation 2010 and consultation with stakeholders. They propose to remake the current provisions and incorporate additional provisions covering:

- › The requirement that one staff member on duty must hold qualifications in the administration of first aid.
- › Requirements about the administration of prescribed medications – including the obligation to provide certain prescribed medications to residents in dose administration aid devices (pre-packed blister packs) and maintain records of these administrations.

In our feedback to ADHC on the proposed Regulation, we emphasised the urgent need for the review of the YACS Act to be completed, as the amendment of the existing regulations does not remedy the broader problems with the legislation. In our feedback, we stated our view that:

- › The YACS Act is outdated, provides inadequate protection to residents of licensed boarding houses, and fails to uphold the rights of people with disabilities.
- › A review of the legislation is required to resolve broader questions about the appropriateness of boarding house accommodation for some people with disabilities, and to ensure that the accommodation and support options available to people with disabilities provide choice and a decent quality service.
- › The existing legislation does not apply to people with disabilities living in unlicensed boarding houses. There are inadequate safeguards for people with disabilities living in these facilities, including restrictions on agencies such as ADHC to investigate complaints about potentially illegal operators.

In their Regulatory Impact Statement, ADHC indicates that an Interdepartmental Committee (IDC) on Reform of the Shared Private Residential Services Sector is 'developing a whole of government approach to the broader boarding house sector and is considering options for future regulatory requirements including reform, repeal and consolidation of existing legislative instruments, including the YACS Act.'

In our feedback on the proposed Regulation, we noted that the IDC has been in operation since 2008, and ADHC had previously told us that the committee would release a discussion paper for public consultation at the end of 2009. To date, we have not received any information to suggest that this work has progressed.

We believe that it is critical that a plan for this broader reform work is developed and progressed as a matter of priority.

CS 24: Concerns about licensing issues

An advocate made a complaint to us about ADHC's actions in relation to a licensed boarding house following the death of the licensee or licensed manager. The advocate alleged that ADHC had:

- › acted unlawfully by failing to revoke the licence upon the death of the licensee, as required by the *Youth and Community Services Act 1973*
- › no lawful authority to deal with the executor of the estate of the deceased licensee as if the estate was the licence holder
- › failed to act on the unlicensed operation of the boarding house
- › failed to follow operational policies for closures and licence applications
- › failed to provide residents with the opportunity to relocate to alternative appropriate accommodation
- › not provided a satisfactory response to the advocate's complaint.

We had concerns about ADHC's dealings with the executor of the estate, the assessment of the licence application made by the spouse of the deceased licensee, and the granting of a licence to the spouse. We have started an investigation into ADHC's conduct and their dealings with other licensed boarding houses where the licensee or licensed manager has died.

Supporting inmates with intellectual disabilities

In May 2004, three additional support units were opened at the Metropolitan Special Programs Centre (MSPC) for inmates with an intellectual disability. These units accommodate offenders who, because of their disability, require placement outside the mainstream correctional centre environment for assessment, general management or to participate in a specific program to address offending behaviour. Staff in the units also liaise extensively with external service providers such as ADHC to ensure offenders have access to appropriate support services once they are released from custody.

In 2006 and 2008, we met with Corrective Services to discuss issues relating to inmates with an intellectual disability, and raised our concerns that two of the three designated support units at the MSPC were being used to house other inmates. In June 2009, we learnt that inmates with an intellectual disability were still only being accommodated in one of the designated units.

Corrective Services indicated that one current unit provided assessment and general programs, but when all three additional support units became fully operational they would be able to conduct assessments, therapeutic programs, vocational training, work options and more intensive pre-release planning.

In September 2009, we asked Corrective Services what progress had been made towards opening the other two units, and what access inmates with intellectual disabilities currently had to therapeutic and pre-release programs.

In November 2009, the department advised that all three additional support units at the MSPC were now accommodating inmates with an intellectual disability, in addition to the pre-existing unit in Goulburn Correctional Centre.

Official community visitors

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

OCV functions

OCVs visit residents who live in services funded, licensed or authorised by either Ageing, Disability and Home Care (ADHC) or Community Services (CS). These include services for people with disabilities, children and young people in out-of-home care (including those with disabilities), and people living in licensed boarding houses.

The functions of OCVs include:

- › informing the Ministers and the Ombudsman about matters that affect the conditions of residents
- › promoting the legal and human rights of residents
- › considering matters raised by residents
- › providing information and assistance on advocacy
- › helping to resolve any grievances and concerns residents may have.

OCVs make regular visits to services. They observe the standard and adequacy of care that is being provided, talk to residents, staff and management and – where possible – try to resolve any issues they identify directly with services. If they are unable to resolve an issue or an issue is serious, OCVs may decide to refer their concerns to the Ombudsman or to the relevant Minister.

Administering the scheme

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

- › monitoring the capacity of the scheme
- › recruiting, inducting and training OCVs
- › supporting OCVs at meetings with services and agencies – including conciliations aimed at resolving complaints between service providers and residents
- › providing administrative support including help with travel and accommodation bookings
- › meeting and consulting regularly with OCVs about the operation of the scheme.

We also coordinate an annual conference for OCVs. This year's conference was attended by the Minister for Community Services and the Minister for Disability Services, featured addresses by key sector agencies about current issues and initiatives affecting residents of visitable services, and provided workshops for OCVs on negotiation skills and report writing.

During the year, 10 OCVs completed their terms of appointment or finished their terms early due to changed personal circumstances. In the coming months we will conduct a general recruitment to replace them.

Issues raised by visitors

In 2009–2010 the budget for the OCV scheme was \$757,000. This supported 42 OCVs to go to 1,243 services, conducting 3,335 visits to 6,422 residents. OCVs provided 5,941 hours of service to residents.

During 2009–2010, OCVs identified 5,250 issues of which 3,782 were finalised (72%). Services, with the assistance and oversight of OCVs, resolved 3,187 (84%) of the issues that had been finalised (see figures 34 and 35).

OCVs continue to monitor services' action about 1,468 ongoing issues that were identified during the year.

Figure 34: Issues identified and finalised by Official Community Visitors in 2009–2010

Services	Number of issues:		Breakdown of finalised issues:		
	Identified	Finalised	Resolved ¹	Unresolved ²	Closed ³
Children and young people	779	511 66%	407 80%	92 18%	12 2%
Children and young people with disabilities	298	259 87%	164 63%	12 5%	83 32%
Children, young people and adults with disabilities	128	97 76%	78 80%	0 0%	19 20%
Adults with disabilities including residents of boarding houses	4,045	2,915 72%	2,538 87%	246 8.5%	131 4.5%
Total	5,250	3,782 72%	3,187 84%	350 9%	245 7%

1 Services take action to remedy the issue, resulting in improved services for residents.

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

3 Issues are no longer relevant. For example, because a service closes or a resident of a visitable service about whom an issue has been identified relocates to another service.

Figure 35: Visits by Official Community Visitors in 2009–2010

Services	Number of:			
	Services	Residents	Hours	Visits
Children and young people	138	249	511	499
Children and young people with disabilities	36	122	313	168
Children, young people and adults with disabilities	16	56	127	65
Adults with disabilities in residential care, including boarding houses	1,053	5,995	4,990	2,603
Total	1,243	6,422	5,941	3,335

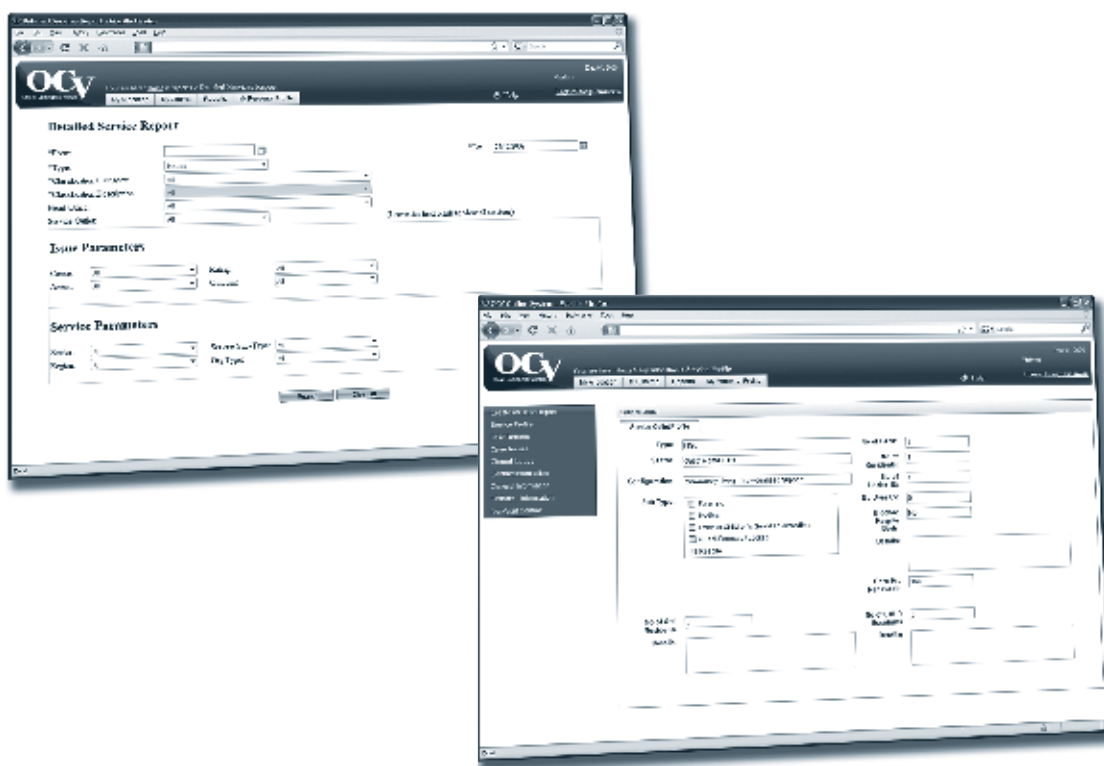
OCV Online

This year we developed a new OCV IT and reporting system that will enable OCVs to electronically report to services about the quality of care provided to residents. The system – called OCV Online – benchmarks the service issues identified by OCVs against the Disability Services Standards, ADHC's Integrated Monitoring Framework, the NSW Children's Guardian Out-of-Home Care (OOHC) Standards and the Guardian's Accreditation framework. The system started operating on 1 July 2010.

OCV Online improves the effectiveness of the scheme by:

- › providing greater consistency and quality in OCV reporting about service provision against relevant legal and policy requirements
- › replacing the current paper based systems with a fully integrated electronic reporting and document management system
- › ensuring that historical information about visitable services and service quality is recorded, available and accessible
- › enabling statewide access to the system from any location
- › providing data for OCVs, the Ombudsman and services about the trends and patterns of service provision in disability and OOHC services.

OCV Online was designed, developed and implemented as a major cross-office project within our office, in consultation with OCVs and key agencies within the community services sector.



At the end of our first year, the office had a staff of 15 people. This included the Ombudsman, three stenographers and six investigators.

35 years on, we now have a full time staff of 170, which includes investigators, project staff, trainers, IT professionals, and more. Our staff bring a broad range of experience and different perspectives with them to the office, improving the standard of our work.

Highlighting
35 years

Some of the most common issues identified by OCVs this year were about the provision of:

- › services targeted to the assessed individual needs of residents – 952 (18%) of the issues identified by OCVs
- › relevant and meaningful behaviour management plans and implementation of those plans – 648 (12%) of the issues identified by OCVs
- › the provision of a well maintained, clean and home-like environment for residents – 523 (10%) of the issues identified by OCVs.

Each year, we report to Parliament on the work of the OCVs and provide further details about the issues and outcomes that have been achieved for residents. Case studies 25 and 26 are examples of the outcomes our OCVs have achieved this year.

CS 25: A better way of lifting

A woman in residential care had significant mobility problems and needed staff assistance to get in and out of her wheelchair. She was reluctant to accept assistance and, as a result, had a number of falls. This led to increased tension between the woman and the staff who had difficulties in helping her back into the wheelchair.

The woman told an OCV that she sometimes avoided calling staff to help her because they complained about her weight and how difficult this made it for them.

Staff said they were concerned about manually lifting the resident because of her increasing weight and their fears of injury. The service had promised to introduce a manual lifter, but the staff were not confident that this would address the occupational health and safety issues.

The OCV discussed the matter with the service manager who arranged a home assessment. This assessment recommended installing an electronic overhead lifter. The overhead lifter allowed staff to transfer the resident from bed to chair mechanically, plus gave the resident control over the speed of the lift and the position she could adopt while it was done. The woman's ability to control the process made her feel more at ease about being assisted, alleviating the tensions between her and the staff, and resolving the problem.

CS 26: Access to food

For children and young people living in residential care it is critical that the environment they live in is as home-like as possible. During visits over a 12-month period to three homes run by a service provider, an OCV identified a number of similar issues about the food provided.

In each of the houses, all food was kept in the staff office in a locked fridge. Although the service provided nutritious meals at scheduled meal times, there was no food available in the kitchens for the young people to have a snack when they wanted. Outside of set meal times, anyone who wanted something to eat had to ask a staff member for something from the locked fridge in the office. Some of the young people told the OCV that they felt uncomfortable about doing this. They felt they were living in an institution rather than a home.

When the OCV raised this concern with staff and management, they could not understand why this was an issue. They believed residents were given good, healthy food on a regular basis and the home environment was clean, safe and met the sector standards. Staff explained that the reasons for the restrictions on the food included one resident's medical condition, that required a strict diet regime, and because residents regularly used food in food fights or wasted it.

The OCV expressed concern that the restrictions affected the human rights of the young people and that their views were not being taken into account. The service accepted the OCV's suggestions and worked with staff to ensure the practice stopped and new procedures were put in place.

The OCV reports that all three homes now have food available in the kitchens that is easily accessible and the new arrangements better meet the needs of the young people.